

Legal Policy on Food Safety in the Fulfillment of Health Right

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Abstract

Recent food emergencies throughout the world have raised some serious ethical and legal concerns for nations and health organizations. While the legal regulations addressing food risks and foodborne illnesses are considerably varied and variously effective. The research uses a descriptive method is a method that examines the status of human groups, an object and a condition, a system of thought or an event in the present. It was conducted in North Sulawesi Province as the research location based on the reality in this area where there are markets that sell extreme animals. The results show that the highest causes of poisoning in North Sulawesi Province are animals, but in practice local government policies in food safety and the health right, especially those related to the sale and purchase of extreme animals in several traditional markets are still limited to appeals and statements that are not stated in written law and are not has sanctions so it does not have the power to be enforced. In order to accommodate the community's need for food safety and health, ideally, the policy should be in the form of a written law so that it can be enforced through the application of sanctions. Efforts to fulfill the community's right to food safety and health, it is necessary to establish a law in the form of a regional legal product that contains mechanisms, procedures, standardization and sanctions in the sale of extreme animals.

Keywords: Food; Extreme Market; Health Right; Legal Policy; Public Health.

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INTRODUCTION

Public health is a pillar of national development because health as basic human needs so that it is placed as right that must be protected by the State as one of the efforts for the establishment of Indonesian human resources, increasing the resilience and competitiveness and to realize national development goals [1]. Health right is regulated in the 1945 Constitution of the Republic of Indonesia as a constitutional right. It shows that health as one of the rights guaranteed by the constitution so that it is the responsibility of the State to fulfill it. The basic philosophy of guaranteeing the right to health as a human right is human dignity (*raisen d'etre*) [2]. It shows that the health right is the embodiment of the concept of a welfare state (*welvaart staat or welfare*

state), the state actively participates in the welfare of its people (*welfare state*) or known as *verzorgingsstaat*, or called *sociale rechtsstaat (social law state)*, where the state is required to realize welfare and social justice for all its people [3].

The elaboration of human rights to health is the establishment of Act No. 36 of 2009 concerning health which among other things regulates the responsibilities of the state, both the Government, Provincial and Regency/City that must be carried out, including planning, regulating, organizing, fostering and supervise the implementation of health efforts that are equitable and affordable by the community, the availability of the environment, order, health facilities both physical and social for the community to achieve the highest degree of health, the availability of resources in the health sector that is fair and equitable for the entire community to obtain a standard of health as high as possible, availability of access to

¹Absori, A., Nugroho, S. S., Haryani, A. T., Sarjiyati, S., Budiono, A., Nugroho, H. S. W., & Jayanuarto, R. (2020). The Prospect of Environmental Law to Achieve Healthy Environmental Development in Indonesia. *Medico Legal Update*, 20(1), 204-208.

²Majda El Muhtaj, *Dimensi-Dimensi HAM: Mengurai Hak Ekonomi, Sosial, dan Budaya*, Rajawali Pers, Jakarta, 2008. p. 152

³Rudy Hendra Pakpahan and Eka N.A.M.Sihombing, *Tanggung Jawab Negara Dalam Pelaksanaan Jaminan Sosial*, Jurnal Legislasi Indonesia (*Indonesian Journal of Legislation*), Vol. 9 No. 2 - July 2012, p. 168

information, education, and health service facilities, empowering and encouraging the active role of the community in all forms of health efforts, availability of all forms of quality, safe, efficient, and affordable health efforts, implementation of guarantees in public health through the national social security system for individual health efforts [4]. Based on the legal framework, the resources in the health sector that must be provided by the government and local governments are budgets, health personnel, health supplies, pharmaceutical preparations, medical devices and service facilities and health technology.

One of the factors that greatly affect health is food, so it can be said that food safety is an effort to fulfill the health right so that policies related to food safety are very urgent in the discussion of fulfilling the health right. The urgency of food safety in fulfilling the health right can be seen clearly at this time where Covid-19 pandemic is one of the problems that is very closely related to health and demands food safety for the community so that it can provide guarantees for the fulfillment of their right to health [5]. As a response to this condition, the government will determine the status of a disaster emergency according to the scale of the disaster. For the national scale is the President, the Province is Governor and the Regency/City is Regent/Mayor.

The determination of the status of a certain state of emergency for a disease outbreak due to Covid-19 is based on a decision at a coordination meeting between ministries/agencies at the Office of the Coordinating Ministry for Human Development and Culture on January 28, 2020. The government has determined Covid-19 as a certain state of emergency for a disease outbreak that determined by the National Disaster Management Agency through decree No. 13 A of 2020 concerning the Extension of the Status of Certain Emergency Disasters due to Corona Virus Disease in Indonesia, in which the government stipulates the Covid-19 outbreak as a certain state of emergency for disease outbreaks. This status is valid until May 29, 2020.

The emergence of this virus is thought to have come from the people of Wuhan who like unusual food or food in the form of wild animals that are not consumed by public. Corona virus that spreads in Wuhan is thought to have originated from wild animals

sold at the Huanan Seafood Market, Wuhan, China. Initial suspicion that the wild animal is a bat or snake, but so far it has not been proven, maybe many Chinese people are no longer a problem in terms of food. But eating meat, organs, or parts of rare animals or plants has become an identity for some people." Huanan Seafood Market itself is a traditional market that sells various daily necessities, but this market also sells unusual items, including live wild animals or ready to be processed [6].

As described above, it can be seen that although there is no certainty regarding the relationship between extreme animals in China and the spread of Covid 19, however, the presence of extreme animals must still be considered so that their existence as food consumed by some people does not cause unrest in society and conditions of uncertainty due to differing views on the origin of the virus.

Selling of extreme animals also occurs in one area in North Sulawesi Province, namely Tomohon Market. Traditional market Tomohon was originally a place for people to buy basic necessities, but it developed into a cultural tourism object in Tomohon city. As a tourist attraction, Tomohon has a uniqueness that makes it survive and get the attention of tourists. The uniqueness as a tourist attraction available at Tomohon is the existence of stalls to sell unusual animals, especially for people from outside Minahasa. In these stalls, animals such as snakes, dogs, forest rats, bats, lizards, wild boars and others are usually displayed and because of the animal trading activities above, Tomohon is also famous for its extreme culinary. Apart from Tomohon, trade in extreme animals can also be found on Mangga Besar, West Jakarta. Around eight stalls, with yellow cloth lined 700 meters along the road, serve processed foods from wild animals, such as cobras, lizards, turtles, bats, geckos, pythons, to monkeys. Mangga Besar area is very crowded with visitors to taste the processed food of wild animals.

The existence of extreme markets in Tomohon and in West Jakarta so far has not caused any problems and has even become a tourist attraction and a source of regional income. However, with Covid 19 pandemic which was thought to have first originated from the Extreme Market in Wuhan, the existence of this extreme market later became one of the markets that needed to be discussed related to the people's right to obtain health to find local government policies on food

⁴Aisyah, H. S., Munir, A., Zulkarnain, R. P., Djatmiati, T. S., Mazhuri, M., & Irianto, H. (2020). Legal Protection of Citizens: The Alcoholic Beverages in Licensing, Taxation, and Supervision in Indonesia. *Journal of Drug and Alcohol Research*, 9(1), 1-4.

⁵Qodir, Z., Effendi, G. N., Jubba, H., Nurmandi, A., & Hidayati, M. (2020). Covid-19 and Chaos In Indonesia Social-Political Responsibilities. *Journal of Talent Development and Excellence*, 12(1), 4629-4642.

⁶Grid Health ID. (2020). "Virus Corona Alias Wuhan Disebabkan Kegemaran Masyarakat Mengonsumsi Hewan Liar Seperti Kelelawar, Bagaimana dengan Extreme Market di Tomohon Sulut?" Source: <https://health.grid.id/read/351998317/virus-corona-alias-wuhan-disebabkan-kegemaran-masyarakat-mengonsumsi-hewan-liar-seperti-kelelawar-bagaimana-dengan-extreme-market-di-tomohon-sulut?page=all>

safety in the context of fulfilling the right to food health.

METHOD OF RESEARCH

The research uses a descriptive method is a method that examines the status of human groups, an object and a condition, a system of thought or an event in the present. It was conducted in North Sulawesi Province as the research location based on the reality in this area where there are markets that sell extreme animals. To analyze the data obtained, it was further processed and analyzed through qualitative analysis. This analysis was done using a theoretical basis as an analytical tool in explaining the phenomena that became the subject of this research.

Understanding Health as a Human Rights Dimension

The concept of human rights in its development has gone through 3 (three) stages, and this is the underlying reason that human rights are grouped into three categories, namely first-, second- and third-generation human rights. The first generations of human rights are human rights in the civil and political fields, which T. Koopmans calls *de klassieke grondrechten* (classical basic rights) [7]. Based on the grouping, the right to health belongs to the second and third generations. If it is associated with "individual health", then the health right is included in economic, social and cultural rights, if it is associated with public health, it will be included in the right to development [8]. In its development, the health right was initially solely related to medical care, but later developed to include various aspects of both individual and public health and the environment. So the right to health as a human right is an understanding of "genus", which is a series of a group of specific rights [9].

In the perspective of fulfilling the basic rights of citizens to health, the government is bound by the responsibility to ensure adequate access for every citizen to proper and optimal health services, as an effort to respect, to protect and to fulfill. The obligation of the State to implement human rights norms on the right to health is based on several principles, namely the availability of health services, accessibility, acceptance and quality [10]. The idea of the right to health as a human right continues to develop in both national and

international law. In Article 4 of Act No. 23 of 1992 concerning Health. Meanwhile, in international law, various human rights instruments have been developed, including the International Covenant on Economic, Social and Cultural Rights which was established in 1966. In Article 12 paragraph (1) The Covenant states that "everyone has the right to the enjoyment of the highest attainable standard of physical and mental health" [11]. The right to food safety is a human right that needs protection from the State as an inseparable part of fulfilling the basic rights of citizens to health. As known that so many health problems that arise because of food problems. Transmission of viruses or bacteria that cause various diseases on this earth mostly arises because of the insecurity of food consumed by the community.

Basically, policy is a decision intended to overcome certain problems, to do out certain activities, to do certain activities, or to achieve certain goals, which are conducted by authorized government institutions in the context of conducting the tasks of State government and nation building. The public policy is whatever governments choose to do or not to do" [12]. A Germany expert, Crinson stated that policy is a concept, not a specific or concrete phenomenon, so its definition will face many obstacles or in other words it is not easy. Furthermore, Crinson also confirmed that policies will be much more useful if they are seen as instructions for action or a series of decisions or decisions that are interconnected with each other [13].

Food safety has captured the world's attention in the last decade. Concern for food regulation is triggered by the community need to obtain whole, safe, healthy and nutritious food. People are increasingly critical of the food they consume and are increasingly demanding a product that is healthy and hygienic [14]. The emergence of an increasingly widespread epidemic in recent times has caused great concern. Contamination of food products due to unhygienic production or infected raw materials has caused concern for the entire world community today. This shows that food security is closely related to the human right to obtain health.

Internationally, there is a commission that has the task of regulating world food regulations and legislation. Each country has a similar commission in

⁷Soemantri, S. (1998). *Refleksi HAM di Indonesia*, Papers in International Humanitarian Law Reasoning and Human Rights Law, cooperation of the Faculty of Law UGM and ICRC, June 1998, p. 5

⁸Muladi. (2004). *Sumbang Saran Perubahan UUD 1945*, Yayasan Habibie Center, p. 63

⁹Perwira, I. (2008). *Memahami Kesehatan Sebagai Hak Asasi Manusia*, ELSAM, Jakarta, p. 12

¹⁰Dedi Afandi, (2008). *Hak Atas Kesehatan Dalam Perpektif HAM*, Jurnal Ilmu Kedokteran, Jilid 2 Nomor 1 – March 2008

¹¹The covenant has been ratified by Act No. 12 of 2005.

¹²Syafii, I.K. (2002). *Sistem Pemerintahan Indonesia (Edisi Revisi)*, Rineka Cipta, Jakarta, 2002., p. 54; Farien A, and Alam, A.S. (2012). *Studi Kebijakan Pemerintah*. Bandung: Refika Aditama, p 32

¹³Leo, A. (2017). *Dasar-dasar Kebijakan Publik*. Bandung : Alfabeta., p. 17

¹⁴Vivid Izziyana, W., Absori, A., Harun, H., Wardiono, K., Muin, F., Dimiyati, K., & Bahtiar, B. (2019). Legal Protection of Health Rights for Indonesian Migrant Workers Abroad. *Indian Journal of Public Health Research & Development*, 10(6), 801-805.

charge of managing the food affairs of each country. For example, the United States has a U.S. Department of Agriculture (USDA) to guarantee the production of meat and poultry. Europe has a European Commission (EC) which oversees all members of the European Union in order to guarantee and oversee the food security of each region. In Indonesia, the Food and Drug Monitoring Agency was formed which directly regulates food security and safety policies in Indonesia.

In an effort to realize food security in Indonesia, there are 3 (three) parties that play the most role, namely consumers, business actors and the government. The results of this research indicate that from all respondents on the consumer side there are consumers who want to consume food and want quality and healthy food regardless of the price or class of food they consume. Others have a classy diet, which supports their lifestyle and social class regardless of the quality of the food they consume. Some respondents choose food according to the habits in their environment since childhood until now.

The next parties who play a role are business actors. Business actors are parties that provide food for public consumption. The existence of these business actors is of course very important to be able to support the availability of food needed by consumers so that in interviews with business actors it was stated that the determination of the food they sell is strongly influenced by consumer demand for food. Several business actors who were respondents in this study stated that the selection of the food they sell is based on the needs of the community where the food will be traded. Several business actors stated that food selection was based on trends that were developing in society.

In addition to business actors and consumers, both central and local governments play a very important role in food safety because local governments have the authority to determine policies related to food safety in the regions. In this study, respondents from local governments mentioned several legal bases for policies by the government in food safety. In interviews with respondents from the local government, it was stated that food security basically consists of 2 (two) types, namely spiritual security and physical security. Spiritual security is related to religion and beliefs of the community while physical security is security related to the freedom of consumers from harmful substances such as chemical, physical and microbiological.

The findings of research shows that the safety and quality of food products is strongly affected by several things, namely the first is good handling practices, good manufacturing practices, and good transportation/distribution practices. To realize this, there are 3 (three) things that need to be implemented, namely regulation, legislation, and standardization. With this legislation, regulation and standardization, it

is hoped that the food consumed by the community is quality food and is able to provide health insurance to the community so that it can be said that safe food is one of the fulfillments of human rights to obtain health rights. The main human asset is health. To be healthy, humans must be supported by nutritious food and a supportive environment to grow and develop.

Local Government Policy on Food Safety in the Framework of Fulfilling the Right to Health

North Sulawesi Province is a province that has many characteristics and uniqueness that distinguishes it from other provinces in Indonesia. One of the areas in North Sulawesi Province that is unique is Tomohon. As a small city, Tomohon city is a city that always explores regional potential for tourism development in the area by not eliminating the distinctive and traditional characteristics of the area. One of the uniqueness of Tomohon that can be found in traditional markets in this area is the availability of stalls to trade unusual animals for people in other areas, such as snakes, dogs, rats, wild boars, bats, lizards, and others. This is what causes the market in Tomohon to be called extreme culinary.

Until 2020, extreme culinary tourism in North Sulawesi is one of the tourism objects that increase the income of this area, but at the end of 2020, the spread of the Covid-19 pandemic caused attention to the existence of extreme markets in North Sulawesi Province to experience a change in focus, from initially being one of the worst [¹⁵]. One tourist attraction for travelers becomes the object of discussion regarding the possible dangers of the animals being traded. In a study conducted on respondents from the community, the results showed that most of the respondents had no longer consumed extreme animals since the spread of Covid-19, but some of the respondents stated that they continued to consume them on the grounds that they consumed the animals after going through good processing, namely by cooking and accompanied by spices that are believed to be able to kill viruses or bacteria in these animals. From the side of business actors, there are business actors who continue to sell these animals because there is still a lot of consumer demand, there are also traders who continue to sell because they do not have other sources of livelihood and a small number of traders who said they had stopped because of the spread of Covid-19.

Food control is the responsibility of both central and local governments [¹⁶]. One of the

¹⁵Yahya, A. (2021, May). State Responsibility Towards the Right to Health in the Age of Covid-19 Pandemic in Indonesia. In *1st International Conference on Law and Human Rights 2020 (ICLHR 2020)* (pp. 10-17). Atlantis Press.

¹⁶Safitri, M., & Firman, F. (2021). Animal Welfare and Covid-19 in Indonesia: A Neglected Legal Issue.

institutions that has the authority to control food is the Center for Drug and Food Control [17]. In an interview with an informant from BPPOM, it was stated that food safety is a need of the community because it greatly affects the health of the Indonesian people. One of the efforts made by BPPOM in realizing safe and healthy food is through regular socialization to the community so that people gain knowledge and understanding about food that is safe for their consumption. This socialization is done either directly or indirectly.

The results showed that market sampling and testing was safe from harmful in North Sulawesi Province only related to chemicals. This does not seem to correlate with the previous table which shows that the main cause of poisoning is animals. Supposedly, with data that animals are the highest cause of poisoning in North Sulawesi Province, the implementation of safe markets should not rule out the existence of extreme animals being traded in several markets in North Sulawesi Province. As for extreme animals, BPPOM has participated with local governments to provide socialization about the dangers that these extreme animals can cause. In this interview it was stated that for the sale and purchase of extreme animals, BPPOM cannot take action because there has never been a prohibition on the sale of these animals and if the local government issues the prohibition, it is not the authority of BPPOM in its enforcement but is the authority of the local law enforcement officers in the area. North Sulawesi Province. Regarding the implementation of the authority of the provincial government of North Sulawesi, based on data from BPPOM, the implementation of safe market supervision turned out to be zero.

From the results of the research above, it can be said that efforts to realize healthy food, especially those associated with extreme animals in North Sulawesi are currently carried out limited to socialization from BPPOM in collaboration with the local government. However, by observing the views of respondents from business actors and the community, it appears that some people and business actors still think that there is no link between these extreme animals and the spread of Covid-19 because according to them, the consumption of extreme animals in North Sulawesi is carried out through processing that is safe for health. Observing this, it can be seen that the socialization efforts did not give significant results to the government's efforts to create safe food in North Sulawesi Province, especially during the Covid-19 Pandemic. The government and local governments

could not make efforts other than appeals and socialization because until now there is no regulation in this area that prohibits the sale of extreme animals in traditional markets. In response to this, a resource person from the North Sulawesi Regional Government stated that the problem of selling extreme animals is not an easy thing, especially to issue regulations that are prohibitive in nature. The sale of extreme animals has been carried out for a long time and so far there are almost no health problems reported by the public that arise due to the consumption of these animals, so it will be difficult to issue regulations that may cause large excesses to the community. In addition to dealing with community culture and habits that have been passed down from generation to generation, another problem that will be encountered is related to people's income where the prohibition of selling extreme animals will affect people's livelihoods.

In the interview it was stated that when viewed from the process of sending these extreme animals, basically it can pose a health hazard because animal meat shipments from other provinces do not go through the freezing process but only use ice cubes while the distance traveled can reach 1500 km. It was also stated that the extreme name for the sale of animals was not only because of the type of animal being sold but also the process of slaughtering that was unusual for the general public. However, because the buying and selling of extreme animals has become a habit and has been passed down for generations and the community believes that processing extreme animal meat is safe for health, it is difficult to stop this activity in North Sulawesi Province.

Observing the results of the research, it can be seen that law as an instrument whose presence is expected to provide regulation in the context of realizing justice, benefit and legal certainty cannot stand alone and will be affected by non-legal factors. Consideration of community livelihoods and consideration of community acceptance of a value and habit show that the law is not clean from non-legal elements both in its formation and implementation.

For all criminal cases related to drug and food control in North Sulawesi Province, the criminal cases that were delegated to the police were only those related to drugs while those for food only reached the P21 stage. This shows that until now the enforcement of criminal law for food safety violations has not been fully implemented in this area. Regarding the presence of extreme animals in traditional markets, in an interview with local government officials from the Food Service of North Sulawesi, it was stated that it is not possible to enforce criminal law in this matter because there is no regulation that provides sanctions for the sale and purchase of extreme animals unless it relates to the existence of extreme animals in traditional markets, with protected animals.

Hasanuddin Law Review, 7(1), 1-11. doi: <http://dx.doi.org/10.20956/halrev.v7i1.2502>

¹⁷ Astuti, E. K. (2019). The Role Of Government In Fulfilling The Rights To Health Services For Citizens Through Bpjs Kesehatan. *Indonesian Law Journal*, 12, 105-118.

In relation with all the descriptions above, it can be said that the policy of the North Sulawesi provincial government in realizing food safety, especially in relation to the marketing of extreme animals during the Covid-19 pandemic, is manifested in the form of statements and appeals and there is no policy that is set forth in the form of a law that has coercive power that can be the basis for taking an action to impose sanctions in the event of a violation. Thus, it is associated with the right to food security and the right to health, although there are shortcomings in several laws and regulations relating to the sale of extreme animals, but in the position of regional regulations as an attribution that is directly given by the constitution by affirming the authority the formation of a regional regulation to accommodate the interests of the community in the region, ideally the provincial government of North Sulawesi can formulate food safety and health policies related to the trade in extreme animals in the form of regional regulations so that arrangements can be made whose substance is in accordance with the conditions and needs of the people of North Sulawesi.

CONCLUSION

The data on the highest causes of poisoning in North Sulawesi Province are animals, but in practice local government policies in food safety and the health right, especially those related to the sale and purchase of extreme animals in several traditional markets are still limited to appeals and statements that are not stated in written law and are not has sanctions so it does not have the power to be enforced. In order to accommodate the community's need for food safety and health, ideally, the policy should be in the form of a written law so that it can be enforced through the application of sanctions. Efforts to fulfill the community's right to food safety and health, it is necessary to establish a law in the form of a regional legal product that contains mechanisms, procedures, standardization and sanctions in the sale of extreme animals in North Sulawesi Province.

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