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Legal Protection for Food Commodity Farmers against Food Import Regulations in Facing the Global Market

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Abstract

The changes that occur in the Job Creation Law are in contrast to the Food Law, namely being able to fulfill food needs in a sovereign and independent manner. Changes in food imports from quota restrictions to relaxed ones. There are many opinions that this policy is not pro-farmer welfare. The equal position of food imports alongside domestic production and national food reserves in order to fulfill food availability is initial evidence. Even though Indonesia wants to realize its ideals towards a Golden Indonesia 2045, namely that the government strives to make Indonesia a developed, sovereign and sustainable country. This research has three problems, namely, 1). Whether changes to regulations related to food imports by the Job Creation Law can provide legal protection to food commodity farmers in facing the global market, 2). What are the opportunities and obstacles for farmers in developing food commodities in Indonesia in facing the global market, 3). What is the future

legal construction regarding legal protection for food commodity farmers in facing the global market, especially regarding food imports? The research method uses a normative juridical research type with statutory, conceptual and comparative approaches. Discussion result. The Job Creation Law which amends articles in the Food Law and the Farmers Protection and Empowerment Law, especially regarding the regulation of food imports, has placed food imports on an equal footing with domestic production and food reserves. Efforts to protect farmers through tariff barriers are limited by the provisions of the Agreement on Agriculture (AoA), as a consequence of Indonesia as a member of the World Trade Organization (WTO) and as a follow-up to Indonesia ratifying WTO provisions. Through non-tariff barriers in the form of quotas or quantitative restrictions according to AoA provisions is prohibited.

Keywords: Legal Protection of Farmers, Food Commodities, Global Markets

Introduction

Food is a basic human need that is needed every day, so food is a primary need for every human being in the world, so it is always a global issue that is endlessly discussed. In the current millennial era, we are faced with the threat of a food crisis. Since 2008, FAO has predicted a 60% increase in world food needs, especially in developing countries, in 2030 and will continue to increase in 2050. Other world food organizations predict that in 2050, the earth will face major climate change which will result in reduced crop yields and crop failures so that the world will face the potential for global famine.¹ Extreme climate change is not the main cause of the world food crisis. There are other causes that also play a role in increasing the world food crisis. Among them, the increase in world population, quite high food commodity prices, and the addition of the Russian invasion of Ukraine in February 2022. Food prices have been high since the Covid-19 pandemic, and there are also concerns about a global food crisis when Russia invaded Ukraine.

With the formation of Law Number 18 of 2012 concerning Food (hereinafter abbreviated to the Food Law), many groups, both organizations observing the interests of farmers and farming business actors, think that the Food Law does not favor small farmers. In detail, there are only one or two articles in the Food Law that regulate protection for small farmers. The majority of these articles are regulated equally, without any special provisions aimed at small farmers. Apart from that, there are also those who reveal that the Food Law has led to the commercialization of food, the state has given less priority to paying attention to

¹ Badan Meteorologi Klimatologi dan Geofisika, 2023, *Tidak Pandang Bulu, Krisis Pangan Hantui Seluruh Negara Tahun 2050*. www.bmkg.go.id/press-release/

small-scale food business actors and the ambiguity of food policy, especially regarding the government's import policy for food and agricultural products due to insufficient national food reserves, has it becomes clear that the state's protection of small-scale food businesses and the ambiguity of food policy, especially regarding the government's food import policy for food and agricultural products due to insufficient national food reserves.²

The Food Law still has problems that most people think are not in favor of small-scale farmers. In the midst of the Covid-19 pandemic, the government together with the House of Representatives passed the Job Creation Law which was then ratified as Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. Law (hereinafter referred to as the Job Creation Law). Experts call this law the Omnibus Law. In this law, many regulations are divided into several clusters which are changed in the form of articles, including the Food Law which is also changed. Not only was the Food Law changed, it also changed regulations related to the agricultural sector, namely Law Number 19 of 2013 concerning Protection and Empowerment of Farmers, Law Number 13 of 2010 concerning Horticulture, Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land, and Law Number 29 of 2000 concerning Protection of Plant Varieties.

The problem of changing regulations in the Job Creation Law, especially food import provisions which amend the Food Law and Law Number 19 of 2013 concerning Farmer Protection and Empowerment (abbreviated to the Farmer Protection and Empowerment Law) regarding food imports which are aligned with domestic production and national food reserves. Small farmers feel that the existence of the Job Creation Law which changes the two laws regarding food imports is actually very detrimental to domestic farmers because the allowance for food imports is directed towards a free trade scheme. The regulatory content of the Job Creation Law which amends the Food Law and the Farmers Protection and Empowerment Law has the potential to weaken agricultural food production efforts. One important aspect of this change is the relaxation of food import policy provisions compared to the provisions of the previous regulations. This means that food import regulations are currently looser. Farmers believe that their agricultural products will be cheaper and of better quality compared to imported agricultural products. Imported agricultural food products are cheaper and of better quality compared to domestic agricultural food products. This is what farmers fear.

The Job Creation Law has had a long journey, since 2020, the first Job Creation Law regulation has been challenged at the Constitutional Court because the Job Creation Law has violated constitutional rights because it is considered formally flawed. According to the decision of the Constitutional Court, the Law was declared to be contrary to the 1945 Constitution and declared the Job Creation Law Conditionally Unconstitutional. In consideration of this decision, the Job Creation Law does not follow the

procedures for forming applicable legislation, namely referring to Law Number 12 of 2011 concerning the Formation of Legislative Regulations. The Constitutional Court set a condition for the government to complete the improvements within a time limit of 2 (two) years. If the government cannot complete it, the Job Creation Law will be declared no longer valid.³ Then, in early 2022, the government formed a Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as a replacement for Law Number 11 of 2020 concerning Job Creation. The government used the excuse of urgency to force the formation of this regulation known as Perpu. The government is guided by Article 22 paragraph (1) of the 1945 Constitution regarding this coercive emergency. The article states that: "In the event of a compelling emergency, the President has the right to enact Government Regulations in Lieu of Laws." Article 1 number 4 of Law Number 12 of 2011, as amended by Law Number 15 of 2019 and last amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, also mentions the urgency of forcing. "Government Regulations in Lieu of Laws are Legislative Regulations stipulated by the President in cases of exigency," according to the article.

Until finally, after the formation of Government Regulations in Lieu of Laws, in 2023 Law Number 6 of 2023 was approved and enacted concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter abbreviated as Law Job Creation). Even though the new Job Creation Law has been established in accordance with the mandate of the Constitutional Court decision, the substantive content of the regulations is not much different from the previous regulations. Returning to the discussion regarding food import provisions. Several articles in the Food Law and the Farmers Protection and Empowerment Law have been amended by the Job Creation Law specifically relating to food import regulations. The amended articles are:

- a) Article 1 point 7 of the Food Law states that basically food availability includes domestic production, national food reserves and imports if the two main sources cannot be met. However, article 64 number 1 of the Job Creation Law now states that the essence of food availability.
- b) Article 14 of the Food Law, According to the changes made to article 64 point 2 of the Job Creation Law, the point is that the source of food supply comes from domestic food production, national food reserves and imports, and its implementation takes into account the interests of farmers.
- c) Article 36 of the Food Law, essentially states that in cases where domestic production is insufficient or cannot be produced, food imports can be carried out. In this case, article 64 number 4 of the Job Creation Law is changed to state that imports of staple food are carried out to meet national food needs and reserves.
- d) Article 39 of the Food Law, essentially states that the Government establishes food import policies and

² Mahkamah Konstitusi Republik Indonesia. 2014. *Ahli Pemohon: UU Pangan Tidak Berpihak pada Petani Kecil* <https://www.mkri.id/index.php?page=web.Berita&id=9576&menu=2>

³ Mahkamah Konstitusi Republik Indonesia. 2021. *MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki dalam Jangka Waktu Dua Tahun* www.mkri.id/index.php?page=web.Berita&id=17816&menu=2

regulations that promote the sustainability of farming businesses, increased production and the welfare of farmers. This was done after Article 64 point 5 of the Job Creation Law was changed by the central government.

- e) Pasal 15 Undang-Undang Perlindungan dan Pemberdayaan Petani, dalam hal ini, pemerintah harus memprioritaskan produksi pertanian domestik. Impor komoditas pertanian disesuaikan dengan musim panen dan/atau kebutuhan konsumsi untuk memenuhi kewajiban tersebut. Tanggung jawab terhadap prioritas produksi pertanian domestik diserahkan kepada Pemerintah pusat dan pemerintah daerah dengan Pasal 32 angka 1 Undang-Undang Cipta Kerja. Strategi untuk melindungi petani memungkinkan pelaksanaan tanggung jawab tersebut..
- f) Lastly, Article 30 paragraph (1) of the Law on the Protection and Empowerment of Farmers, essentially states that when domestic agricultural production is sufficient for consumption needs and/or government food reserves, imports of agricultural commodities are prohibited. This was done after Article 32 point 2 of the Job Creation Law changed Article 30 to domestic production and imports of agricultural commodities, while still protecting the interests of farmers.

In general, these changes show that the new policies adopted by the Job Creation Law regarding food imports tend to be detrimental to farmers, especially small farmers. The formulation of farmer protection contained in Article 1 number 1 of the Law on Farmer Protection and Empowerment includes formulating farmer protection, one of which includes all efforts to assist farmers in dealing with problems of business certainty and price risk. With increasingly relaxed imports, farmers' efforts to sell their agricultural products tend to be difficult to sell, especially if the imported food products in circulation are cheaper but of better quality than local products. So farmers are pessimistic about continuing their agricultural business and it cannot be denied that more and more small farmers will switch jobs that are more certain to generate income to survive.

Most of the poor people in rural areas work as farmers. The supply of agricultural products, especially food crops, to urban communities depends on the distribution of these products from villages. When urban communities are flooded with imported food stocks due to the minimal supply of food crop products from villages, farmers in villages will become increasingly poor. Urban communities need food that is affordable both in price and supply. Meanwhile, farmers need prosperity. Farmers need to protect the prices of their agricultural products from remaining high, while urban communities, the majority of consumers, clearly do not want to be harmed by high prices for food crop products. These are two things that the government must balance through its policies. The government may have a food policy oriented towards food affordability, both price and agricultural production, but the government must also balance the fate of farmers as food producers. It is clear that the government in particular must also pay attention to the welfare of farmers, because it is related to efforts to fulfill national food needs and the sustainability of farmers.

The changes in the Job Creation Law are at odds with the vision of the Food Law, namely being able to fulfill food

needs in a sovereign and independent manner. Sovereign and independent food fulfillment is formed through the concept of food sovereignty, according to article 1 number 2 of the Food Law. The concept of food sovereignty was promoted and introduced by the La Via Campesina organization in 1996 to oppose the concept of food security developed by the WTO or World Trade Organization. According to Article 1 paragraph 2 concerning the meaning of food sovereignty, formulating the meaning of food sovereignty is the right of the state and nation to independently determine food policies that guarantee the right to food for their people and give the community the right to create a food system that is in accordance with the resources available in the region. Based on these resources, they are local. The explanation is in fulfilling the rights of citizens by using their own family-based agricultural and food independence. Local resources also mean the ability of local farmers to utilize natural resources to produce domestic food crops by managing, controlling and controlling food production tools.

If a country can achieve food sovereignty, then that country can meet the food needs of every citizen. The occurrence of export trade in food commodities is an advantage over the fulfillment of domestic food. It is very possible for a country that is food sovereign to be able to meet the world's food needs. This is different from the concept of food security introduced by the WTO document in the previous discussion. The concept of food security as outlined in article 1 point 4 of the Food Law is only limited to the availability of food for the country and individuals, which is demonstrated by the availability of food that is sufficient in quantity and quality, safe, equitable and cheap. The concept of food security is that it can be obtained from anywhere, regardless of where the food supply is produced and obtained. There is a possibility that a country can only depend on fulfilling its food from other countries through imports, such as Singapore. However, if it only provides benefits for the purpose of food security for the consumer community, the fate of farmers will suffer. Most farmers only think about how to work, how to produce food from the harvest, and how to sustain their next farming business. The fate of farmers, especially small farmers, is simply resigned to being regulated by a market-oriented system.

Indonesia aspires to become a developed, sovereign and sustainable country by 2045. One of the Government's development priorities under the leadership of President Ir. Joko Widodo is a *nawacita* who aims to realize economic independence through the development of strategic domestic economic sectors. Apart from that, there is a noble vision: in 2045, during the hundred years of Indonesia's independence, Indonesia will become the world's food basket. Indonesia should have prepared itself to realize these ideals now. The Minister of Agriculture of the Republic of Indonesia, Andi Amran Sulaiman, who served from 2014 to 2019 and then served again in 2023, published a book entitled *Indonesia's Self-Sufficiency Success in Becoming a World Food Storage in 2045*, formulated an operational strategy as a permanent solution to improve the welfare of farmers in tabular form, saying that the stage of food self-sufficiency is that 100% of food needs are met domestically and there are no food imports. This is estimated in the 2018 to 2021 time frame.

Furthermore, it is also said that the stage of food sovereignty is when the amount and type of food is produced

independently on an economic scale, 100% of food needs are met domestically, no food imports, 10% or more exports, and 100% seed independence. It is estimated that this will be realized in the period 2022 to 2023. The final stage, the welfare of farming families is formulated, namely that each farming household produces commodity sources of carbohydrates, proteins and vitamins independently; and the commodities of vegetables, fish, chicken and various tubers are developed by households. However, the long-term plans towards a Golden Indonesia 2045 and Indonesia Lumbung Dunia 2045 seem to be getting longer with the existence of the Job Creation Law which amends the Food Law and the Farmers Protection and Empowerment Law, especially regarding food imports, because the majority of Indonesian farmers are farmers. small, only a handful of corporations whose business is in the agricultural sector. Therefore, based on the background of the problem above, the author is further interested and will discuss and study it in a scientific work in the form of a thesis with the title Legal Protection for Food Commodity Farmers Against Food Import Regulations in Facing the Global Market, with the main focus being the food crop sector.

From the background description above, it can be understood that the important and fundamental issues in this research can be formulated as follows: 1). Can changes in regulations related to food imports by the Job Creation Law provide legal protection to food commodity farmers in facing the global market? 2). What are the strengths, obstacles, opportunities and threats for farmers regarding the development of food commodities in Indonesia in facing the global market? and 3). What is the future legal construction regarding legal protection for food commodity farmers in facing the global market, especially regarding food imports?

Metodepenelitian

This research is a type of normative juridical research which prioritizes legal norms in studying legal issues regarding the protection of farmers for their harvests. This research will use a statutory approach and a conceptual approach by means of descriptive analysis of materials - analysis obtained from secondary legal materials and supported by primary legal materials.

Discussion

1. Legal Protection for Food Commodity Farmers Against Food Import Regulations in Facing the Global Market

Agreement on Agriculture (abbreviated as AoA), an international agreement, part of the World Trade Organization (abbreviated as WTO) or World Trade Organization, has three main pillars in the agricultural sector, namely domestic assistance/support, market access, and subsidies for exports. On the official WTO website⁴, AoA contains 13 sections and 21 articles, as well as 5 special mechanisms or 5 annexes. In this research, of the 13 sections and 21 articles in the AoA, only a small part was taken regarding legal protection for farmers in destination countries with the implementation of trade barriers to food imports and fair competition. The WTO was founded as a replacement for the global trade organization GATT, which

was founded in 1947 to help member countries negotiate trade in goods and services.

After being decided by member countries participating in the Uruguay Round in 1994, this international organization was officially established on January 1, 1995, according to the official WTO website. This organization was founded by its member countries with the common goal of creating trade relations and economic activities among member countries to improve living standards, expand production and trade in goods and services. WTO is an evolution of GATT. In achieving this goal, mutually beneficial arrangements must be made to significantly reduce tariffs and eliminate non-tariff barriers and discrimination in international trade relations. Send feedback Side panels History Saved.

During the Uruguay round (1986–1994), the international trade system underwent changes. One of the issues discussed by the WTO in the Uruguay round was agreements on trade in goods, and agriculture was one of the most prominent.⁵ This agreement is further known as AoA. This is not the first time AoA has been discussed. The GATT in 1947 initially intended to apply trade rules to agriculture, but these rules were deemed incomplete and the signing countries (or contracting parties) excluded this sector. Because trade regulations on agriculture had not yet come into force, in the 1947-1994 period, GATT members at that time were allowed to use export subsidies on agricultural products and apply import restrictions under certain conditions.

Then with the birth of the WTO in 1995, which replaced GATT, the agricultural sector was included in the multilateral trade framework through the AoA. The aim of the AoA is to increase trade liberalization in agriculture and gradually reduce trade distortions caused by GATT rules. One of the trade distortions in question is that quantitative protection must not be used and must be applied in a non-discriminatory manner in accordance with the most favored nations principle⁶. Due to the frequent implementation of domestic and export subsidies, import quotas, and trade distortions in agricultural products, agricultural trade policy is now a major concern in trade negotiations. The AoA trade framework originates from poor countries, developing countries, and developing countries. So far, developed countries dominate the export trade of goods such as agricultural products, technology, textiles, and others. In contrast, the only developing countries and developing countries that managed to enter the WTO mechanism were agriculture and textiles.

Developed countries provide strict protection for agricultural products, provide significant subsidies to farmers, and provide export subsidies. This is detrimental to destination countries that export agricultural products to developing and developing countries that have limited resources. The advantage of the Third World (which is intended for poor countries and developing countries) is the export of agricultural products in the form of raw materials or raw materials. This is called a "third world advantage" for developing and poor countries. One of the benefits of AoA is the inclusion of the agricultural sector in multilateral trade

⁴ World Trade Organization, *Agreement on Agriculture* <https://www.wto.org>

⁵ World Trade Organization, *The GATT years: from Havana to Marrakesh* <https://www.wto.org>

⁶ World Trade Organization. *Clash of the GATT negotiators*, <https://www.wto.org>

regulations. Developed countries that have provided subsidies for agricultural production and exports must comply with regulations that eliminate all trade distortions, including reducing subsidies.

In principle, the most favored nation (MFN) provides conditions for WTO members to provide equal benefit treatment to all WTO members. A country may not differentiate between trading partners from any country. Apart from MFN, non-discriminatory treatment is also mandatory for WTO members to respect national treatment obligations. Application in trade is based on the principle of equal treatment of foreign products entering the domestic market. Both types of products, imported products and local products, must be treated equally favorably. For example, the same treatment applies to taxation. The commitment of WTO member countries in the AoA seeks to implement an agricultural policy reform agenda that establishes binding commitments in the three main areas mentioned above, namely market access, domestic support, export subsidies.⁷

To ensure market access for agricultural products, each country must reduce tariffs and convert non-tariffs into tariffs. Overall tariffs, including those resulting from the conversion of non-tariff barriers, must be reduced by 36% for developed countries and 24% for developing countries.⁸ In the field of export subsidies, namely reducing export subsidies. Thus, export subsidies for developed countries must be reduced by 21% of the export volume and 36% of the subsidy value, while subsidies for developing countries must be reduced by 14% of the export volume and 24% of the subsidy value.⁹ In the area of domestic support, especially reducing agricultural subsidies, the government must reduce domestic subsidies broadly, with an Aggregate Measure of Support (AMS) of 20% for developed countries and 14% for developing countries. To differentiate types of subsidies, AoA organizes them into Amber Box, Blue Box and Green Box. In addition, there are special and different measures (Special and Differential Measures) which include investment subsidies for developing countries, input subsidies for resource-poor countries and incentives to shift away from growing narcotic plants.¹⁰

The relationship between the AoA agreement and other WTO agreements, namely all WTO agreements and understandings regarding trade in goods, also applies to the agricultural sector, such as customs assessments, import licensing procedures, subsidies and technical barriers to trade. From that relationship, if there is a conflict between the WTO agreement and the AoA agreement, the provisions of the AoA agreement apply.¹¹ The main issue in international trade is related to tariffs. The meaning of tariff is a tax imposed on products from abroad that are sold domestically. The main aim is to protect the industrial sector that produces domestic products. The government usually gets revenue from tariffs as a tax used to import goods. The

reason why tariffs must be reduced is because tariffs are considered to slow down the flow of trade traffic and make imported products more expensive than local products.

Article 4 paragraph (2) of the AoA Agreement prohibits the use of agricultural-specific non-tariff measures, namely quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing processes, voluntary export restriction agreements, and managed non-tariff measures. by state trading companies. All similar border measures other than "normal import duties" are also no longer permitted. However, this article does not prevent the use of non-tariff import restrictions consistent with the provisions of the GATT or other WTO agreements applicable to generally traded goods (industrial or agricultural). such as the implementation of sanitary and phytosanitary measures. According to the AoA agreement, developed countries agreed to reduce tariffs on their agricultural products by 36% within six years and developing countries by 24% within ten years.

Based on this description, usually the country importing goods will provide export subsidies for the goods before they enter another country, so that the price of imported goods is cheaper before they enter another country and when the goods enter another country, they are then subject to tariffs from the country of import destination, the price of the goods Imports can compete with local goods of the same type. Therefore, there is an AoA agreement regarding reducing export subsidies and reducing domestic support. Article 6 of the AoA regulates the commitment to assist domestic farmers, known as subsidies. Because it is considered to cause distortions in international trade, export subsidies and domestic support for the agricultural sector must be reduced.

By increasing the quantity and quality of local agricultural products, domestic subsidies help and protect the domestic agricultural sector, so that local products can meet domestic demand, while demand for imports of similar products from abroad will decrease. Excessive domestic production will be exported abroad because these export commodities have been subsidized. If there is too much supply or supply level production in the global market, the price of the product will fall. Products from other countries that cannot provide subsidies will become more expensive, so they will not sell on the global market. In addition, when local buyers buy food imports, for example, that are cheaper than local agricultural products, local production is not absorbed by the market, and farmers, as agricultural producers as a whole, will lose out. This happens for domestic products.

AoA is the gateway to a liberalization framework that demands a global market through a mechanism for implementing free trade in agricultural products in a liberalistic agricultural system. The global market is part of globalization, namely international relations across the borders of countries in the world. The global market demands free trade through more open trade agreements because it considers open trade to be more efficient than protectionist trade. So that open trade opens up opportunities for free competition that is profitable for the country based on the principles of effectiveness and efficiency. Free competition that is profitable is relative, it could be that the competition is mutually beneficial, it could also be that the competition only benefits one party.

Due to its market orientation, it is clear that the government's role in supporting local agricultural products is

⁷ European Union, *WTO Agreement on Agriculture*, Fact Sheets on the European Union, 2023. www.europarl.europa.eu

⁸ Kementerian Pertanian, *Materi Perundingan Perdagangan Internasional Sektor Pertanian*, Biro Kerja Sama Luar Negeri Kementerian Pertanian, 2020, h. 16

⁹ *Ibid.*

¹⁰ *Ibid.*, h. 16-17

¹¹ World Trade Organization. *Agriculture: Explanation* <https://www.wto.org>

expected to be reduced so that imported products are more competitive. Indonesia has been a member of the WTO since 1994. By implication, Indonesia's trade flows, especially those related to exports and imports of agricultural food commodities, will be involved in this liberalistic agricultural system. As a consequence of profitable free competition, as explained previously, globalization has led to a reduction in the principle of state sovereignty, which has implications for reduced government intervention in economic policy, especially trade policy, and this is all left to the influence of intergovernmental organizations. The concern is not only about reduced government intervention in matters of regulation, but another concern is that the government is becoming an accomplice to the free market.

In a relatively short time, imports of food commodities can meet domestic needs and stabilize commodity prices. On the other hand, imports of food commodities will have an impact on the level of farmer welfare. As previously mentioned, increasing food imports into the domestic market will have an impact on increasing domestic food supply. If domestic demand increases, excess food supply will not result in lower prices. On the other hand, excess supply exceeding market demand will have an impact on lowering prices and decreasing farmers' income. If the government continues to encourage farmers to continue producing food when market prices fall and there is no looser market destination to send the excess supply, in the end, this decrease in income will have an impact on reducing the level of welfare of farmers.

GATT generally did not prohibit domestic protection, but if it did, it would have to be through tariffs because the scope of protection was clear. In Article XI paragraph 1 of GATT which reads "*No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation.*",¹² It is very clear from Article Only tariffs are permitted to limit exports and imports and prohibit non-tariff barriers such as quotas, export licenses or imports. The first paragraph in Article XI shows trade liberalization.

Article XI paragraph 1 is often used as a reference when international trade disputes occur because in general, many countries often take non-tariff measures or non-tariff barriers in their policies. Non-tariff measures are very effective in protecting domestic producers. Direct non-tariff measures can reduce competition for imported goods in addition to not being transparent. In the same way, Indonesia implements restrictions through quotas to protect local farmers. Article 36 and Article 14 of Law Number 18 of 2012 concerning Food (Food Law) mention this. Other countries often sue Indonesia at the WTO because of these articles.

Legal protection for food commodity farmers, especially prioritizing the protection of farmers as food crop producers who produce staple foods such as rice, corn, soybeans, nuts, the majority of whom are classified as underprivileged farmers. So, to protect agricultural production of food crops against food imports, non-tariff barriers in the form of quotas are the most effective. This legal protection can be

found in article 14 paragraph (2) of the Food Law which reads: "In the event that the source of food supply as intended in paragraph (1) is not sufficient, food can be met by importing food according to needs." This policy is prohibited in the provisions of Article XI paragraph 1 GATT because quotas are prohibited in this article. However, there are exceptions to this prohibition by Article XX GATT. In article XX, the WTO allows its member countries to maintain actions that conflict with GATT in several situations, especially those related to food safety in Article XX point (b) which reads: necessary to protect human, animal or plant life or health.

2. Strengths, Barriers, Opportunities and Threats for Agricultural Commodity Farmers in Facing the Global Market

Indonesia is a country with an agricultural background or is an agricultural country. This means that agriculture still plays an important role in the national economy. This is reflected in the majority of Indonesia's population working in the agricultural sector, until now the agricultural sector has become a field developed by the government because of the background agricultural background. This agricultural sector is an agricultural sector that really supports the economy and contributes foreign exchange to the country of Indonesia which is rich in natural resources. It is known that agriculture aims to improve living standards and welfare of the farming community, especially since the majority of Indonesia's population lives in rural areas. Improving the standard of living of farmers and rural communities can be achieved by increasing the productivity of farming businesses.

Apart from being a business for the farmer, agriculture has also become a part of his life so that not only economic aspects but social and cultural aspects, religious and belief aspects as well as traditional aspects all play an important role in the farmer's actions. However, from an agricultural economics perspective, the success or failure of farmers' production and the level of prices received by farmers for their production are factors that greatly influence farmers' behavior and lives. There is no need to doubt the role of the agricultural sector in development in Indonesia. Agricultural development is directed at increasing agricultural production to meet domestic food and industrial needs, increasing exports, increasing agricultural income, expanding employment opportunities and encouraging equal distribution of business opportunities.

This is because the scope of agribusiness is broad and complex, namely covering links from the production process, processing to marketing of agricultural products, including other activities that support agricultural production process activities. Thus, it is hoped that there will be a strong economic or industrial condition supported by a strong agricultural sector. Strengths, obstacles, opportunities and threats or what is usually called SWOT analysis (strengths), weaknesses, opportunities and threats are usually used in business practice. Likewise, trading in agricultural commodities is also an activity. business on a global scale. Indonesia's strength in international trade regarding agricultural commodities has great potential to become the world's food basket.

The vast and fertile lands are supported by extensive volcanic soil, with the potential for a diversity of tropical food crops to grow here. Also supported by the strength of

¹² Article XI General Agreement on Tariffs and Trade 1994 <https://www.wto.org>

human resources with the fourth largest population in the world, this creates opportunities to open up extensive employment opportunities and support the welfare of society as consumers and farmers as agricultural producers. Indonesia's agricultural opportunities are still supported by extensive and fertile agricultural land. This means that natural resources are still supportive. Moreover, farmers' human resources are more available. To maintain these strengths and opportunities, legal protection of agricultural land areas is more important and determined requires firmness. Apart from these strengths, Indonesia's geographic position in a strategic position for shipping traffic and international trade can also be an opportunity to increase trade volume, especially exports, to increase the country's foreign exchange.

However, the conflict between determining sustainable agricultural land and public interest land policies is hampering efforts to boost agricultural production. This means that protection of sustainable agricultural land is not yet optimal because agricultural land is not completely protected from land use change. Because, when faced with land acquisition policies for development in the public interest which are considered to play an important role in development, the availability of sustainable food agricultural land is even put aside. This of course has a bad impact or threatens a decline in productive land followed by a decline in food production. In addition, the threat of the El-Nino climate which has not yet subsided has disrupted the food crop production process.

Trade liberalization colors commodity trade in international markets in the current era of globalization, including food trade. As an open economic country that has participated in ratifying various regional and global economic and trade cooperation agreements, it is not impossible that the pressure for liberalization through various cooperation agreement regulations will ultimately clash with internal policies and threaten national interests.¹³ In relation to economic recessions, recessions are now considered an essentially avoidable phenomenon, similar to airplane crashes, and in contrast to natural disasters resulting from hurricanes which cannot be avoided. But even though the number of accidents can be reduced, airplane accidents cannot be completely eliminated. Likewise, now we still don't know whether we really have knowledge or sufficient ability to eliminate a recession. The danger of a recession has not completely disappeared. The factors that give rise to repeated recessions are still there and it is only a matter of time before they happen again.¹⁴

So the government must quickly respond to situations that will threaten Indonesia due to an economic recession, namely by strengthening the rotation of the economic wheels which can be seen from the size of Gross Domestic Product (GDP). Then raised bond market interest rates, strengthening the value of exports, especially in the agricultural and plantation sectors. Then increase the

absorption of labor in MSMEs in the agricultural sector.¹⁵ When viewed from an economic aspect, Indonesia generally still has natural and comparative advantages, a very large country blessed with an abundance of natural wealth. Indonesia's natural resources are still quite abundant. However, these potentials are currently not able to be utilized optimally and

Indonesia has actually fallen into an economic crisis which has caused increasing poverty.¹⁶

The agricultural sector is one of the decisive sectors national development, therefore empowerment is needed in the Indonesian agricultural sector so that the agricultural products produced can balance imported and export products. The purpose of this article is to determine improvements in agricultural products in the face of free market competition. The implementation of the ASEAN Economic Community (MEA)/ASEAN Economic Community (AEC) has an impact on increasingly high business competition, so it needs to be directed at increasing the productivity of agricultural, plantation and livestock products because agricultural products have competitiveness in the free market. Aspects of attractiveness for investors in the agricultural sector, livestock and plantation sub-sectors, aspects of free trade openness in ASEAN, are considerations for efforts to increase productivity. The strategy to control the free market requires improving the quality and quantity of agricultural products produced, as well as standardizing agricultural commodity results, so that the selling value of products can be competitive. The agricultural products produced are able to balance imported and export products and can penetrate the free market on an ongoing basis. The Indonesian government as a policy maker must be able to pay attention to developments.

3. Future Legal Construction for Legal Protection for Farmers in Facing the Global Market

The advantage of comparing laws on how to protect farmers and improve farmers' welfare, researchers are more inclined towards the policies implemented by China. Even though the government system between Indonesia and China is different in that China is based on communist ideology, it is more interesting to analyze that regarding the economy and trade, China is more open to international trade. In China's efforts to protect farmers while maintaining food security, China continues to implement tariff policies limited to certain commodities.

Apart from that, China tends to increase domestic production. Regarding farmers' welfare, China applies a minimum retail price for purchasing farmers' produce which changes periodically. So with this strength, China can encourage its farmers to enter world trade. When the price of agricultural products on the market is lower than the minimum price set, the government dares to buy farmers' products according to the minimum price. Different from in Indonesia. The highest retail prices for grain, corn and soybeans are still prices that are less updated. If the price of

¹³ Gatoet Sroe Hardono, Handewi Purwati Saliem, dan Tri Hastuti Suhartini, "Liberalisasi Perdagangan: Sisi Teori, Dampak Empiris dan Perspektif Ketahanan Pangan," *Forum Penelitian Agro Ekonomi* 22, no. 2 (2004): 75

¹⁴ Alvin Baharudin Vanani dan Dedi Suselo, "Determinasi Resesi Ekonomi Indonesia Dimasa Pandemi Covid-19," *Jurnal Menara Ekonomi: Penelitian dan Kajian Ilmiah Bidang Ekonomi* 7, no. 2 (Oktober 2021): 3

¹⁵ Yohana Fransiska Aurelia Vivian, "Strategi Efektif Dalam Mengatasi Resesi Dan Pengangguran Tinggi," Website Pajakku, <https://pajakku.com>

¹⁶ Erman Rajagukguk, *Hukum Investasi (Penanaman Modal Asing dan Penanaman Modal Dalam Negeri)* (Jakarta: Rajawali Pers, 2019), 54.

agricultural products in the market is high, the government can only carry out market operations.

The government can also imitate India's implementation of minimum prices. In fact, Indonesia has a Government Purchase Price (HPP) policy for grain and rice. Unlike in India, where the MSP system is carried out twice a year before the harvest season arrives, in Indonesia it is less flexible. The minimum price is not determined annually. Even though annual inflation always rises, the HPP implemented by the government is not as flexible as rising inflation. Or you can look to Brazil with a free school meal program, which Indonesia will soon implement this program in accordance with President-elect Prabowo Subianto's campaign promise. The availability of free food by taking supplies from small farmers' products provides opportunities for small farmers to develop their businesses. Regarding policies for farmer welfare, it is a top priority. So far, policies for agriculture and farmers have tended to have political nuances to seek vote support. The welfare of farmers is the same as the mandate given in the preamble to the 1945 Constitution of the Republic of Indonesia. This means that the welfare of farmers cannot be ignored. Therefore, researchers recommend special norms in the 1945 NRI Constitution, namely the inclusion of the right to food.

Fulfilling food needs is one of the basic human needs that must be met. The indication that food is a basic human need, therefore food is a human right. If an individual's food needs and household food needs are met, survival can be guaranteed. Because food is part or one of human rights, its fulfillment by the government must be guaranteed and regulated by the laws of a country. Likewise in Indonesia, the fulfillment of food has been regulated and guaranteed in the 1945 Constitution of the Republic of Indonesia, the Fourth Amendment (abbreviated to the 1945 Constitution), where the rules of a decent life are protected, especially Article 28 A, which states that everyone has the right to live. and has the right to defend his life, and Article 28 C, paragraph (1), which states that everyone has the right to receive education and benefit from science, technology, arts and culture to improve the quality of life for the sake of general welfare.

Food is a human right, the role of the state in this human right is that the state is given a large responsibility to ensure food security for its people. Food security is a condition that includes the availability of quantity, quality, food safety, diversity, nutrition and affordability of food both anywhere and at affordable prices. The important points related to food security are adopted from the three pillars of food rights from the International Committee on Economic, Social and Cultural Rights (ICESCR) in the form of General Comment Number 12/1999 about on the right to adequate food or if translated General Comment Number 12 of 1999 concerning the Right to Adequate Food. The three pillars in question include:¹⁷

1. Availability, interpreted as food must be available from natural sources such as food production, cultivation of land or livestock, or by obtaining food by fishing. Apart

from being available from nature, food can also be available and sold in markets and shops.

2. Accessibility or affordability, meaning the guarantee of economic and physical access to food. Economic accessibility means that food prices must be affordable for every individual. And physical accessibility in the form of food must be available wherever people are.
3. Feasibility, meaning that food must meet a dietary pattern that is appropriate for age, health, living conditions, occupation, gender, etc.

So, the ultimate goal of food security is to guarantee the right to food for the community. Indonesia adopted the three pillars introduced by ICESCR in the form of ratification into Law Number 11 of 2005 concerning Ratification of ICESCR. This is the right step for the government to ratify as a guide for subsequent laws and regulations. Despite this, the government's efforts to carry out its obligations ensure that people's needs for food are met and that it is more affordable, feasible and available in large quantities, but the government must not ignore the rights of farmers as food producers to prosper.¹⁸

The government ensures that people's food needs are met, and also ensures that farmers' welfare is achieved. As the holder of sovereignty, the government is responsible for establishing policies, which are a way to fulfill one of the state goals stated in the Indonesian constitution, namely advancing general welfare. These two goals must be balanced to uphold social justice for all its people. Food import activities can only be carried out if domestic food production is insufficient and/or impossible produced domestically. Staple food imports can also be carried out if domestic food production and national food reserves are insufficient. Food imports carried out to meet domestic consumption needs are required to meet safety, quality, nutritional and other requirements contrary to the religion, beliefs and culture of society.

Food sovereignty can be positioned as the main strategy for achieving national food development goals, namely food security. Food sovereignty does not replace, but complements or supports, even becomes the basis for achieving true food security. By implementing the spirit of food sovereignty, food security in Indonesia will be more able to be achieved firmly and fairly. Based on the Attachment to Regulation of the Minister of Trade of the Republic of Indonesia Number 46 of 2020 concerning Strategic Plans Ministry of Trade In 2020-2024, import controls will be carried out on consumer goods and goods for industrial needs. For consumer goods, import management is carried out in order to increase food security. National food security is still a strategic issue for Indonesia considering that production adequacy is still not met, which is accompanied by a sub-optimal distribution system and high levels of consumption creating high links with social, economic and political problems.

The realization of food availability based on optimal use of local resources is carried out by diversifying food and prioritizing domestic food production. Realizing food

¹⁷ [Komnasham.go.id](https://sdg.komnasham.go.id), *Menghentikan Kelaparan, Meningkatkan Ketahanan Pangan dan Nutrisi, serta Mempromosikan Pertanian Berkelanjutan*, diambil dari https://sdg.komnasham.go.id/id/tujuan-2/#_ftn1

¹⁸ Sayaka B, Rusastra IW, Sajuti R, Supriyati, Sejati WK, Agustian A, Supriyatna Y, Anugrah IS, Elizabeth R, Ashari, *et al.* 2008. Pengembangan kelembagaan partnership dalam pemasaran komoditas pertanian. Laporan Akhir Penelitian. Bogor (ID): Pusat Sosial Ekonomi dan Kebijakan Pertanian.

affordability from physical and economic aspects is carried out through managing the stabilization of supplies and prices of staple foods, managing staple food reserves, and distributing staple foods. Food utilization or consumption food and nutrition will produce quality human resources as one of the determining factors for success development.¹⁹ Indonesia as a country that has abundant natural resources and an agricultural culture absolutely must be able to fulfill its food needs from their own agriculture. Dependence on food from other countries is a weakness that must be overcome. So far, national food policy is related to five main aspects, including: upstream (production capacity food), downstream (harvest and post-harvest), agricultural infrastructure, budget allocation, and institutions. These five aspects must be carried out comprehensively because they are interrelated, involve all stakeholders, and are cross-sectoral.²⁰

To achieve food security you can do by doing increasing the productivity of agricultural products, namely by introducing types superior varieties so that later farmers gain increased income. Through this increase in income, Farmers are expected to be able to buy necessities their food, apart from other efforts. The government does this in a way importing rice to make ends meet national food stock.²¹ This kind of view is not wrong, but a constructive effort impacting food security against eliminating local food systems and dependence on imported rice in the long term it can result in the occurrence of food insecurity. The principle of food sovereignty is different from food security which does not care about the origin of food production. Food sovereignty tends to uphold the rights of every citizen and local community as a unit of production, distribution and fulfillment of food needs above all other interests. However, the concept of food sovereignty does not conflict with the principle of food security. Efforts to build food security are not followed. Efforts to uphold food sovereignty will give rise to new social problems, such as dependence on rice imports and low farmer productivity. Some principles of food sovereignty are:

- a. respect and strengthen traditional wisdom and local knowledge in producing agricultural food local as the basis of a sustainable food production system;
- b. recognition and respect for unique cultures in selecting and consuming food as well as the right to determine for oneself in sufficient, nutritious and safe quantities;
- c. Village people are sovereign in determining their own policies and strategies for food production, distribution and consumption, especially to prioritize increasing food production in order to provide food for all village residents; And

¹⁹ Hanani, Nuhfil. "Strategi Pencapaian Ketahanan Pangan Keluarga". *Jurnal Ekonomi Pertanian*, 1(1), 2012

²⁰ Lukman Adam, Kinerja Ekonomi Pangan Nasional: Dinamika Dan Reformulasi Kebijakan, 2014. *Jurnal Ekonomi & Kebijakan Publik*, Vol. 5 No. 2, Desember 2014 173 –192. Jakarta: P3DI Bidang Ekonomi & Kebijakan Publik

²¹ Syahyuti. "Paradigma Kedaulatan Pangan dan Keterlibatan Swasta: Ancaman Terhadap Pendekatan Ketahanan Pangan (?)". *Analisis Kebijakan Pertanian*, 9(1), 2011

- d. Poor and food-deficient families in villages receive priority in accessing various productive sources.²²

As regulated in the Law, food commodities come from agricultural, plantation, forestry and fishery products, both processed and unprocessed, which are intended as food or drink for humans. The development of food commodities is influenced by land factors and production inputs, such as the number of livestock, fertilizer, seeds, and financing factors. This study is limited to food commodities that come from agricultural products, including livestock and plantations.²³ Strategy towards sustainable Indonesian food security by 2025 grouped according to subsystems in the food security system as regulated in the Food Law, namely food availability, food affordability and food utilization. Currently, food security, independence and sovereignty are experiencing vulnerability because they are easily affected by turmoil price fluctuations in international markets and climate change.

Conclusion

Legal protection for food commodity farmers in facing the global market in the form of a policy of imposing trade barriers on agricultural products so that food producers, in this case farmers, can be protected from the large number of imported products or removing trade barriers which many people consider the policy of eliminating import barriers to be considered not pro-farmers, actually the fate of farmers is equally unhappy. Does not provide justice and happiness. The government's task is to increase people's happiness through the Job Creation Law which aligns the position of food imports with domestic food production and national food reserves in the context of food security efforts. However, according to Peter Mahmud Marzuki, this collective prosperity has created an economic gap between society as food consumers and farmers as producers of agricultural products. On the other hand, if the government implements a policy of food import barriers, both tariffs and non-tariffs, as an effort to protect domestic farmers and protect their agricultural commodities from competition from imported products, it will damage the happiness of society as consumers.

The strength and opportunities for the development of agriculture in Indonesia because it is supported by abundant natural resources and human resources. The obstacle is that the determination of sustainable agricultural land clashes with land policies for the public interest which hampers efforts to boost agricultural production. And the population is increasing. Protection of sustainable agricultural land is not optimal because agricultural land is not completely protected from land use change. The real threat to the sustainability of farmers' lives is the El-Nino climate.

Regarding policies for farmer welfare, it is a top priority. So far, policies for agriculture and farmers have tended to have

²² Achmad Suryana, Menuju ketahanan pangan indonesia berkelanjutan 2025: tantangan dan penanganannya, Forum penelitian agro ekonomi, Vol. 32 No. 2, Desember 2014: 123 – 135.

²³ Syahyuti, Sunarsih, Sri wahyuni, Wahyuning k. Sejati, dan Miftahul azis, Kedaulatan pangan sebagai basis untuk mewujudkan ketahanan pangan nasional, Bogor: Forum Penelitian Agro Ekonomi, Vol. 33 No. 2, Desember 2015: 95-109, 2015

political nuances to seek vote support. The welfare of farmers is the same as the mandate given in the preamble to the 1945 Constitution of the Republic of Indonesia. This means that the welfare of farmers cannot be ignored. The policy implemented by China is legal protection in the form of subsidies for minimum retail prices for agricultural products and setting minimum retail prices as often as possible following market dynamics. Therefore, recommendations for future legal construction are expected to make the right to food a legal norm in the 1945 Constitution of the Republic of Indonesia., so that it can be applied to lower laws and regulations.

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