

FOOD ESTATE POLICY REVIEWED FROM ENVIRONMENTAL CRIMINAL LAW

Faradila Umaya Nasution, Alvi Syahrin, Suhaidi
Universitas Sumatera Utara
Email: faradilaumaya@students.usu.ac.id

ABSTRACT

The conditions during the Covid-19 pandemic have made the issue of food security a hot topic of discussion because the government is worried about a food deficit in Indonesia. Not only because of the pandemic, the issue of food security has become a national and even international issue. In an effort to overcome and prevent the food crisis, the government issued a food estate policy as a solution to overcome the food crisis. However, in its implementation, the food estate program was carried out on land such as production forest areas and debt protection. Thus, land acquisition for the program creates new problems for the environment. This study uses a normative legal research method with a regulatory approach. The results of the study show that the food estate program often does not produce results according to expectations. Even in the context of environmental criminal law, the food estate program often violates the neglect of administrative obligations such as violations of permits. So that this program needs to be evaluated and planned carefully before the program is implemented.

Keywords: Policy, Food Estate, Environmental Crime.

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INTRODUCTION

Indonesia experienced quite significant social changes during the Covid-19 era. The *new normal era* requires every individual to adapt to *social distancing conditions* due to high transmission, the spread of the corona virus is so fast and difficult to control. The implementation of *lockdowns* in each region has caused a significant decline in economic impact and is a challenge for business people in Indonesia. Thus, all forms of community activities and activities carried out in the pre-pandemic era must be forced to be adjusted to the health protocols set by the government.

The government's response to the handling of Covid-19 in the food sector is by building *food estate projects* in several regions in Indonesia. *Food Estate* is a

concept for developing integrated food production and consists of agriculture, plantations, and even livestock on large areas of land. The *food estate* project is one of the national strategy programs (PSN) listed in Presidential Regulation Number 109 of 2020 concerning Amendments to Presidential Regulation Number 3 of 2016 concerning the Acceleration of National Strategic Projects.

Food Estate is not the first food program built in Indonesia. Previously, Indonesia had built the MIFEE (*Marauke Integrated Food and Energy Estate*) Program in Papua. MIFEE did not run as well because of many factors of incompatibility between policies, social conditions of the community, community farming culture, costs, time, and energy, so the goals and implementation to be able to provide welfare to the community were not achieved.

The purpose of *the food estate* is to strengthen national food reserves from upstream to downstream, in line with the concept of establishing cooperatives initiated by Mohammad Hatta or known as the Father of Indonesian Cooperatives. The forerunner of cooperatives in Indonesia began in a small town, Purwokerto, Banyumas residency when *Hulp-en Spaarbank* (Bank Bantu and Simpanan) was established to help civil servants to be free from usury debts. So that *Hulp-en Spaarbank* was basically changed to *Poerwokertosche Hulp-Spaar-en Landbouw-credit bank* .

In line with this, throughout Banyumas 250 village granaries were established, which provided credit in the form of rice. Next to the village granaries, a Village Bank was established which provided credit in the form of money. This bank later became an example for the establishment of People's Credit Banks throughout Java and Madura under government ownership. In 1934 these banks were united into *the Alegemeene Volkscreditbank* .¹

In the New Order Era in 1959, the Sentra Rice Program emerged with the aim of achieving rice self-sufficiency in Indonesia by 1963. However, the program was unsuccessful because of the lack of government stability at that time, so that the effort did not run according to the planned program. In 1969 the New Order government prepared the Five-Year Development Plan (Repelita). Repelita I (1969-1974) was the initial basis for building the goals to be achieved, namely economic growth of 5 percent per year with the objectives of food and clothing sufficiency, as well as improvements in agricultural development facilities and infrastructure.

The food policy policy that encourages food self-sufficiency is also a manifestation or form of food standardization politics and its commodity is rice. Rice-based politics occurs and even other food sources are considered as complements. Poverty indicators are also seen whether families consume rice or not. This food standardization policy ignores the fact that the Indonesian nation has

¹Mohammad Hatta, *Gerakan Koperasi dan Perekonomian Rakyat*, (Depok: LP3ES, 2018)

abundant food diversity. Rice, sago, corn, cassava, sorghum, all of which are spread throughout the country.²

the Food Estate project is realized with the support of several regulations aimed at accelerating this project. Some of these regulations are Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 23 of 2023 concerning Forestry Implementation, Presidential Regulation Number 109 of 2020 concerning National Strategy Projects and Ministerial Regulation of the Environment and Forestry Number 7 of 2021. These regulations provide a place of operation for the food estate project in production forest areas and protected forests through the forest area scheme for food security (KHKP).³

METHOD

The method used in this study is the normative legal research method. Normative legal research that uses a statute approach *by* examining various legal rules.⁴ The data sources used are primary data with primary, secondary, and tertiary legal materials. The analysis used is qualitative analysis, adhering to the characteristics of legal science as an applied science. Therefore, the results of legal research, even if they are not new legal principles or new theories, are at least new arguments.

DISCUSSION

Regulations On Food Estate Programs In Indonesia

Increased food consumption will lead to increased food security in Indonesia. Unfortunately, this increase is not directly proportional to the productivity of agricultural land. In fact, agricultural land productivity tends to decline. The causes are declining irrigation quality, soil quality degradation, and extreme weather that causes flooding and drought. In addition, there are those caused by human intervention, including population changes, population marginalization, population poverty, land ownership problems, political instability and mismanagement, social and economic conditions, health problems, and inappropriate agricultural development.⁵

Productivity problems are not the only ones that threaten Indonesia's agricultural sector, but there are also socio-political problems such as the decreasing workforce in the agricultural sector but at the same time there is also an increase in

² WALHI Kalimantan Tengah. *Food Estate Menakar Politik Pangan Indonesia*, Laporan Kajian WALHI Kalimantan Tengah 2021, page 13.

³³ M. Ali Mahrus, *Desain Hukum Pembangunan Food Estate Skala Luas dalam Kawasan Hutan*, (Jakarta: Pusaka, 2022), page 2

⁴ Eka NAM Sihombing, Cynthia Hadita, *Legal Research* (Malang: Setara Press, 2022).

⁵ I Masfia and Rahmadi, A., 2019 "Pengaruh menurunnya kualitas lahan pertanian terhadap aktivitas Pertanian bernuansa organik di wilayah Bandung dan sekitarnya". *Digita Library UIN SGD*: 2-3.

imports of food ingredients that can actually be produced domestically, such as rice, garlic, and soybeans, because domestic production is more expensive.⁶ Therefore, the government is trying a food barn program or food estate as an effort to realize food security in Indonesia.

Previously, the food security policy had started in 2012, in the provisions of Article 1 Number 4 of Law Number 18 of 2012 concerning Food (hereinafter referred to as the Food Law), stating that food security is a condition of fulfilling food for the State up to individuals, which is reflected in the availability of sufficient food, both in quantity and quality, safe, diverse, nutritious, evenly distributed, and affordable and does not conflict with religion, beliefs, and culture of the community, to be able to live healthily, actively, and productively in a sustainable manner. So that the food estate is one alternative to creating food security for the country of Indonesia.

Food estate is a concept of developing food production that is carried out in an integrated manner and consists of agriculture, plantations, and even livestock on large areas of land.⁷ The food estate project itself is included in one of the national strategic programs (PSN) listed in Presidential Regulation Number 109 of 2020 concerning Amendments to Presidential Regulation Number 3 of 2016 concerning the Acceleration of National Strategic Projects. However, this project is not new. Previously, the plan had been stated in the 2014-2019 RPJMN. But at that time there was no clarity on the location that would be developed as a modern and integrated agricultural complex. Then in 2020 in response to the warning of the crisis during the pandemic, President Joko Widodo also brought up the discourse on the development of a food estate again in the hope of strengthening food security in Indonesia.

Meanwhile, in PermenLHK No. 7 of 2021, it is explained that a food estate is a large-scale food business which is a series of activities carried out to utilize natural resources through human efforts by utilizing capital, technology, and other resources to produce food products to meet human needs in an integrated manner including food crops, horticulture, plantations, livestock, and fisheries in a Forest Area.

This means that the food security program (food estate) is part of the national strategic program set by the government to deal with the issue of the food crisis in the world. Legally, Presidential Regulation Number 109 of 2020 concerning Amendments to Presidential Regulation Number 3 of 2016 concerning

⁶ Mafira, Tiza. 2021. *Pertumbuhan Ekonomi, Ketahanan Pangan, dan Keseimbangan Ekosistem*, accessed Oktober 12, 2021, <https://Madaniberkelanjutan.Id/2021/02/03/Pertumbuhan-Ekonomi-Ketahanan-Pangan-Dan-Keseimbangan-Ekosistem>

⁷ Setyo, P. And Elly, J. 2018. "Problems Analysis on Increasing Rice Production Through Food Estate Program in Bulungan Regency, North Kalimantan". *Iop Conference Series: Earth And Environmental Science* 147 (1): 2.

the Acceleration of National Strategic Projects is the basis for the existence of the food estate project. So that in order to run the program, it requires involvement from various sectors and across ministries. So that in the implementation of this program, the Ministry of Environment and Forestry plays a role in running the national strategic program.

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of food estates in protected forest areas and production forests with the determination of KHKP areas on the condition that the protected forest areas that will be converted into KHKP areas are protected forest areas that no longer have tree stands.⁸⁹

The Ministry of Environment and Forestry (KLHK) issued Regulation Number P.24/MENLHK/SETJEN/KUM.1.10/2020 concerning Provision of Forest Areas for Food Estate Development as a follow-up, then replaced by Regulation of the Minister of Environment and Forestry No. 7 of 2021 concerning Forestry Planning, Forestry, Changes in Forest Area Designation, and Changes in Forest Area Functions and Forest Area Development. Changes to the clauses in the two Regulations of the Minister of Environment and Forestry only experienced a few changes, namely in Regulation of the Minister of Environment and Forestry No. 24 of 2020 regulating two procedures that will be carried out in the context of providing areas for *food estates*, namely through changes in the designation of forest areas or through the determination of Forest Areas for Food Security (KHKP). However, after being revoked, the development of food estates can only be carried out through the KHKP determination mechanism. The mechanism for changing the designation of Forest Areas is no longer used as stated in the previous Ministerial Regulation of the Environment and Forestry.

The regulation of KHKP management regarding forest utilization is stated in Article 30 of PermenLHK Number 24 of 2020 which stipulates that the Ministerial Decree on KHKP Management only applies as a Timber Utilization Permit (IPK) in forests. This explains that trees located in protected forests can be cut down and their wood utilized as the basis for KHKP using IPK. This is contrary to Law Number 41 of 2009 concerning Sustainable Food Crop Land Protection which states that in protected forest areas only non-timber products can be utilized in limited quantities. KLHK responded to this negligence by revising Article 30 of PermenLHK Number 24 of 2020 with Article 496 of PermenLHK Number 7 of 2021, namely by limiting wood utilization to an agreement for the utilization of non-forest wood activities.

⁹ Andreas B. Rahutomo, et all. *Tinjauan Kebijakan Penyedia Kawasan Hutan untuk Pembangunan Food Estate*. Volume 1, Issue 1, JBKL 2023,, page 34

Pancasila and *food estate* have a fairly strong dependence, such as each of the Pancasila principles that inspire each other. The first principle has seven points, the fourth point states that "Fostering harmony in life among fellow religious communities and belief in God Almighty" this point shows a very strong connection with the *food estate policy*, which in an area must have diversity, especially diversity of beliefs. However, this does not become a giant wall for the community to make the food estate program something that can change the lives of local people in the food sector. The second principle has ten points, the ninth point reads "The Indonesian nation feels itself as part of all humanity" in relation to the food estate is that with the policy of developing food land, all *stakeholders should* be able to touch all levels of society in making food policies. The third principle has seven points, the third point reads "Developing a sense of love for the homeland and nation" in relation to the food estate is when Indonesia is hit by a pandemic or other threats of epidemics, it is mandatory for all Indonesian people to continue to work together shoulder to shoulder in dealing with the phenomenon of food inflation due to the *social distancing program*.

All levels of society from various professions must put aside personal interests above the interests of the nation. The Fourth Principle consists of ten points, the tenth point reads "Giving trust to representatives who are trusted to carry out deliberations" the connection between this point and the food estate is that when people's representatives make policies, the Indonesian people must give them trust to make food policies that are based on legal ideals and provide benefits to all Indonesian people. The Fifth Principle consists of eleven points, the eleventh point reads "Like to carry out activities in order to realize equitable progress and social justice" the connection with this point is the food estate policy in providing equitable progress in the food sector and providing justice to all Indonesian people in food management along with equitable distribution of food products.

The concept of environmental sovereignty is associated with the term Ecocracy. The idea of ecocracy and environmental sovereignty was developed in the context of power constructed in the mechanism of the relationship between God, Nature, and Humans or what is known as *anthropocentrism* which places life centrally in humans. In today's modern era, *anthropocentrism* is rampant, which has unknowingly caused destruction in the universe. Nature and humans must live in balance. For this reason, a perspective is needed that truly improves the pattern of relationships between humans and nature that have been exploitative and unbalanced so far. The secular modern life needs to reconsider the presence of God in the way human thinking in relation to the surrounding nature and even the whole nature. It is proven that this universe is a unified system that is interconnected and interdependent with each other. The natural world is a unified ecosystem.

Therefore, the paradigm of human thinking must change from *anthropocentric thinking* to *theocentric thinking*.

The opening of food estate land will disrupt forest conservation and peat conservation, considering that the rice food estate requires 770,000 hectares of land for development. In general, there will be the opening of peat lands or peat forests to create new rice fields planted with rice. Food estates have great potential to damage peat ecosystems because in reality what has happened has caused a decline in peat function. The development of rice field infrastructure such as canals, supporting forests on peat or clearing peat has resulted in degradation of the peat system itself. In fact, the regulation of the Ministry of Environment (KLHK) stipulates that the function of peat is a hydrological function to regulate water management on slopes so that they are not saturated. Indicators of damage or decline in peat ecosystems are the opening or construction of irrigation and this is very contradictory to the development of food estates on peatlands. Because if one ecosystem is built with one management of regional protection that has great services to the environment, it will damage the main function of the environment when allocated for food development land. WALHI considers this very illogical to carry out agriculture or cultivation on an area that is actually unable to carry out cultural activities on it, if possible only with limited capabilities and the help of other chemicals that can encourage plant growth.

Peat ecosystems in ecological aspects cannot be separated, but the government tries to categorize them in one Peat Hydrological Unit (KHG) based on their protective function, usually classified into peat dome areas. In addition, the cultivation function also has very limited functions to be carried out and it cannot be extensive. Cultivation activities can indeed be carried out, but large-scale and massive land clearing cannot be carried out because there are still treatments that must be fulfilled such as maintaining the height of the groundwater level, ensuring that the land remains wet, etc. This will be difficult to fulfill with the readiness of the existing infrastructure. For example, it is mandatory to maintain the height of the groundwater level (so it is necessary to build infrastructure such as water gates, canals, and drilled wells to carry out wetting activities) this requires very high production costs that need to be prepared for production activities in the peat system itself.

Criminal Law in this case as part of public law, covers various aspects of life in order to realize peace and tranquility in society. Criminal law is used as the main support to protect various public interests from disturbances that arise in community, national and state life. One of the aspects that needs to be protected by

criminal law is the environment which is the main component in supporting the life and life of humanity which is increasingly complex today.¹⁰

Criminal law enforcement efforts cannot be separated, where material criminal law regulates the principle of guilt (*guilt in principle*), while formal criminal law regulates the procedure for determining someone as a factual guilty (*guilt in fact*). Material criminal law or what is often called substantive regulates prohibited acts, a person's mental attitude to be said guilty if they commit a prohibited act and the threat of punishment if the act is committed. Meanwhile, to determine someone as a factual guilty, proof is needed. This proof is carried out by law enforcement according to the specified rules, so that there is no arbitrariness . The regulations on how to enforce material criminal law are referred to as formal criminal law.¹¹

The aspect of legal protection in environmental management is based on Article 5 paragraph (1) of the UULH and UUPPLH Article 65 paragraph (1) of the UUPPLH, this right is owned by every person, namely an individual, group of people or legal entity. However, in addition to having rights, according to Article 67 of the UUPPLH, namely "Everyone is obliged to maintain the sustainability of environmental functions and control environmental pollution and/or damage". Individual rights are the most extensive form of protection, as they provide a basis for legal action by individuals in the interests of a good and healthy environment. These rights or claims can be implemented through judicial procedures.¹²

Criminal law recognizes something called criminal policy. According to Barda Nawawi, criminalization is part of criminal policy. Criminalization is a part of criminal policy that uses criminal law advice. In the environment, an act is criminalized because it is detrimental. Criminalization based on environmental losses is closely related to the idea that places the environment as a legal interest as a result of the view that humans must obey nature (the environment) and at the same time as victims of crime (*green victimology*). Acts that harm the environment need to be criminalized because they rob, deny or eliminate the rights of current and future generations to enjoy a clean and healthy environment such as damaging the ecological function and health of the ecosystem in many ways .¹³

Law enforcement in a state of law is like discussing the life of a body that makes it alive, without which a state of law is only an idea and an ideal. Law enforcement is a concrete form of law implementation in society that affects the sense of law, legal satisfaction and the needs or legal justice of society. This *pro-*

¹⁰ Ruslan Renggong. *Hukum Pidana Lingkungan*. (Kencana: Jakarta, 2018), page 23

¹¹ ¹¹ I Ketut Mertha, I Gusti, et al. *Hukum Pidana*. (Universitas Udayana: Bali, 2016), page 43

¹²Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijaksanaan Lingkungan Nasional*, (Surabaya: Airlangga University Press, 2015) p. 287

¹³Mahrus Ali, *Hukum Pidana dan Kebijakan Publik*, (Yogyakarta: Buku Litera, 2024) p. 81

justitia law enforcement does not need to be carried out if *non-pro-justitia* law enforcement has been implemented properly, which guarantees legal certainty and also justice in more repressive environmental law enforcement, namely after a crime in the environmental or forestry sector has occurred, it is resolved through the courts, both from criminal law enforcement and civil law enforcement.¹⁴

CONCLUSION

The issue of food security and food crisis is often heard. Not only in Indonesia, but this issue often occurs in various countries. To anticipate this, the Government of the Republic of Indonesia issued a program known as the food estate. Food estate is included in part of the national strategic project, which means it is a priority program. Presidential Regulation Number 109 of 2020 concerning Amendments to Presidential Regulation Number 3 of 2016 concerning the Acceleration of National Strategic Projects is the basis that the food estate program must be implemented immediately.

In the context of environmental criminal law, violations generally occur due to neglect of administrative obligations, such as violations of permits. This type of violation is a prominent characteristic of environmental crimes. Andi Hamzah explained that to categorize an act as a criminal act, one must first see whether or not there is an administrative violation. Therefore, the formulation of crimes in environmental crimes contains characteristics of a close interconnection between administrative law and criminal law. The formulation of crimes related to administrative violations is substantively contained in many environmental crimes and does not include the requirement for the fulfillment of the fault or mental element (*mens rea*). This means that a person can be punished if the act and its consequences are prohibited by criminal law and have been proven to have been committed, even without first being proven guilty. Such a formulation is in line with the principle of *strict liability*.

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¹⁴¹⁴ Rachmad Safa’at, et all. *Hukum Pidana Lingkungan*. (Malang: Intelegensia Media 2023), page 21.

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