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Indonesia for Global Justice

## IGJ's View: Condition of the Right to Food in Indonesia

Rahmat Maulana Sidik

Coordinator of Research on Food and Digital Economic Issues

Email. [rmaulanasidik55@gmail.com](mailto:rmaulanasidik55@gmail.com)

On April 9-18, 2018 Hilal Elver, as the UN Special Rapporteur on the Right to Food, visited Indonesia to see the conditions of the right to food in Indonesia. In his mission to visit Indonesia, Hilal Elver intends to hear and see firsthand food policy in Indonesia from relevant stakeholders (Government, National Commission on Human Rights, and Civil Society Organizations).<sup>1</sup> It is utilized by Indonesia for Global Justice and other civil society organizations, to convey the right to food conditions in Indonesia. Several points have been submitted by Indonesia for Global Justice in its meeting with Hilal Elver (Special Rapporteur UN on The Right to Food) at the National Commission on Human Rights (KOMNAS HAM).

## International Trade Agreement Threatens Food Sovereignty

Presidential Cabinet President Joko Widodo has announced the importance of realizing the development of national trade capacity in the era of globalization through enhancing the competitiveness of national products and the development of infrastructure industry, national economic independence through human resources development, food sovereignty development, energy sovereignty, financial sector, strengthening domestic investment, strengthening fiscal capacity, infrastructure, and maritime economic development.

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<sup>1</sup> Untuk melihat misi Hilal elver (Special Raporteur UN on The Right to Food) ke Indonesia dapat menyimak rilis pada link : <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22919&LangID=E>

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In an effort to support the achievement of national economic independence, the Minister of Foreign Affairs has emphasized the importance of economic diplomacy directed to empowering the domestic market, increasing market access of Indonesian export products abroad, encouraging foreign investment in Indonesia and building national resource capacity. In a multilateral context, Indonesian diplomacy is implemented by optimizing the membership of Indonesia in various international organizations engaged in economic and trade to promote the interests of national development, especially related to the opening of market access of national products, safeguarding the domestic market from unfair trade practices and building the quality of human resources.<sup>2</sup>

That now Indonesia is conducting some negotiations on international trade and investment agreements with other countries, including: Regional Comprehensive Economic Partnership, IEU CEPA (Indonesia European Comprehensive Economic Partnership Agreement), G20 Negotiation, Bilateral Meeting Indonesia-Australia.

RCEP (Regional Comprehensive Economic Partnership) negotiations will threaten the sovereignty of farmers and the food sector through the protection of intellectual property rights, especially on seeds. The reason, RCEP will require member states to ratify UPOV 1991 (International Union for the Protection of New Variety of Plant 1991). UPOV 1991 will require the government to protect patent owners (or other types of certificates) for 20 to 25 years including those in the realm of seeds, ecosystems and biodiversity. Thus, farmers will have difficulty planting because the seed has been monopolized company. Meanwhile, if farmers use their local knowledge to glorify the seeds will be criminalized in the name of protection of Intellectual Property Rights (IPR).

## **Trading Agreement Create Food Import Addiction**

The international trade policy adopted by the Indonesian government creates more Trade Creation. Trade Creation on trade liberalization in Indonesia creates a high dependence on imported products. This then affects the increasingly uncompetitive local food industry facing the onslaught of imported products. For the non-oil sector alone, in 2016 Indonesia opens import taps up to 86.19%.<sup>3</sup> And recorded trade policy in Indonesia is always answered with imports. It does not increase domestic competitiveness and productivity.

Indonesia's trade data of 2017 shows that the use of imported raw materials continues to show improvement. 2018 BPS data show that throughout 2017 the contribution of imported raw material raw material by 74.56%, which compared to 2016 was an increase of 16.56%. Although in the 5 year period since 2013 import contribution in this sector has decreased, but imports of raw materials remain dominant, and very much compared to imports in other sectors.

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<sup>2</sup>Diambil dari Database Kebijakan Perdagangan (DKP) atau dapat dilihat pada link dibawah ini [http://dkp.kemlu.go.id/pages/view/Tentang\\_DKP](http://dkp.kemlu.go.id/pages/view/Tentang_DKP)

<sup>3</sup>Sumber data impor berdasarkan sektor pada tahun 2016 diambil dari Kementerian Perindustrian Republik Indonesia.

Free trade agreement rules that adopt the principle of non-discrimination against the use of imported and local products would be one of the factors. However, this does not provide an incentive for the strengthening of the domestic industry. The policy on the obligation to use domestic content or TKDN should be able to encourage the increasing role of domestic industry in taking more role. However, this policy continues to face challenges where the FTA calls it a "haram" rule.

Food import data from 2014 to 2017 shows a high figure, for the rice imports only 2.74 Million Tons of Rice worth Rp15.7 Trillion. Moreover, when the government import food when domestic availability is still sufficient. And, there is a mistake in the import of its main food because the issuance of its approval is not according to domestic needs and production. It is also disclosed by the Financial Supervisory Agency (BPK) through Summary of Semester Examination Results (IHPS) II 2017 BPK<sup>4</sup>. BPK discloses there are eleven mistakes in food imports in Indonesia.

**First**, the issuance of Import Approval (PI) of sugar in order to keep the availability and price stability of White Crystal Sugar (GKP) of 1.69 million tons. Import approval is not provided by the Coordinating Minister for Economic Affairs, but only on the Letter of the Minister of Trade.

**Second**, the issuance of PI of raw sugar (GKM) is 108 thousand tons with value Rp783.28 billion to PT. Adikarya Gemilang in the framework of testing of industrial activities is not supported data analysis needs and sources of clear recommendations.

**Third**, the issuance of PI of rice as much as 70,195 tons with the realization of 36,347 tons did not meet the requirements document, exceeded the limit, and double number. This PI clearly indicates that the Ministry of Commerce is negligent in providing PIs.

**Fourth**, the implementation of imports of steamed rice as much as 200 tons with a value of Rp 1.65 billion by the Public Corporation Logistics Agency (Perum Bulog) conducted without recommendation from the Ministry of Agriculture (Kementan).

**Fifth**, the issuance of PI of 9,370 head of beef and 86,567.01 tons of beef in 2016 does not meet the requirements document. This is exacerbated by the swelling import realization of a given PI.

**Sixth**, the issuance of PI of cows to Bulog of 50 thousand head in 2015 in order to maintain the availability and price stability not through the approval of coordination meeting.

**Seventh**, the issuance of beef PI of 97,100 tons in 2016 did not get recommendation from Kementan and did not get approval from coordination meeting. However, BPK notes that the final realization is only 18 thousand tons with the value reached Rp737, 65 billion. It's just that, giving the PI at the beginning still not according to the provisions.

**Eighth**, issuance of PI of beef as much as 70,100 tons did not get recommendation from

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<sup>4</sup> Laporan IHPS II BPK tahun 2017

Kementan and did not get approval from coordination meeting. As for the PI, the realization of imports is only 2,338.53 tons worth Rp118.88 billion.

**Ninth**, the issuance of PI of beef as much as 17 thousand tons with the realization of 5,642.43 tons and worth Rp155.15 billion to PT Impexindo Pratama without recommendation from Kementan and not get approval from coordination meeting.

**Tenth**, the issuance of PI of beef as much as 10 thousand tons with the realization of 10,031.96 tons worth Rp463,6 billion to Bulog without recommendation from Kementan.

Eleventh, the issuance of PI of salt of 3.35 million tons with the realization of only 2.78 million tons worth Rp1.42 trillion in the period of 2015-semester I 2017 did not meet the requirements documents.

## Harmonization of National Food Policy with WTO Provisions

Since Indonesia joined the WTO (World Trade Organization), national food policy becomes hostage with WTO provisions. Its principal, Agreement on Agriculture, which came into force on 1 January 1995 simultaneously with the establishment of WTO. AoA is one of the free trade agreements set forth in the WTO binding on all its members and must be adopted into national regulations, such as General Agreement on Tarrif and Trade (GATT), General on Trade in Services (GATS), Trade Related Intellectual Property Rights TRIPs), and Trade Related Investment Measures (TRIMs).

The purpose of the WTO agriculture agreement is nothing but to liberalize the entire agricultural sector of its members. Liberalization is carried out by encouraging market opening through the elimination of various forms of trade barriers, both tariff and non-tariff. Market opening aims to reduce the role of the state in regulating trade and development, thus opening the door for entry of the role of multinational corporation.<sup>5</sup>

The widespread acceptance of the national food policy can be witnessed directly when Indonesia imposes restrictions on imports of horticultural products and animal products and is then challenged by the United States and New Zealand, as it is considered protectionist and market restrictions on products from the United States and New Zealand.

National regulations that violate WTO provisions and harm the United States and New Zealand are Article 36B of the Animal Husbandry Law, Article 88 of the Horticulture Law, Articles 14 and 36 of the Food Law and Article 30 of the Farmers Protection Act. In addition, Indonesia has also been sued by Brazil for limiting imports of chicken and meat products. Brazil is concerned about Indonesian regulations one of which is the provision of halal labeling in the import of chicken and meat products, thus harming Brazil in supplying its products to Indonesia. **(Read more about Indonesia's food policy lawsuit in WTO, please see box 1).**

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<sup>5</sup> Rachmi Hertanti, Rika Febriani, *Jalan Menuju Kedaulatan Pangan Indonesia: Antara Proposal G33 WTO dan Kebijakan Pangan Nasional* (Jakarta: IGJ, 2014), Hal. 14.

## Box 1

### National Food Policy Case Sued in WTO

#### A. Import Cases of Horticultural Product, Animals and Animal Products (DS477 and 478)<sup>6</sup>

On 9 November 2017 the WTO again announced the defeat of Indonesia over the appeals filed by New Zealand and the United States on imports of Horticultural products, imports of animals and animal products. The WTO further strengthens the previous decision which in December 2016 Indonesia sued by the US and SB was judged to have made a regulation that provides restrictions on imported products from the US and SB. WTO assessed there are 18 articles that are considered to violate the rules and if grouped into 3 major sections, namely 1). The import licensing regime for horticultural products; 2). Animal import licensing regime and Animal products, where Indonesia has a prohibition to import beef, offal and carcasses in addition to time restriction rules; 3). Sufficiency requirements, whereby Indonesia applies a policy of determining the adequacy of domestic supply to meet domestic market requirements as set forth in Article 36B of the Animal Husbandry Law, Article 88 of the Horticulture Law, Articles 14 and 36 of the Food Law and Article 30 of the Farmers Protection Act.

#### Case Import of Chicken and Meat Products (DS484)

The lawsuit was filed by Brazil to Indonesia which was considered to ban the import of chicken meat by applying the provisions that were considered to violate the rules of article GATT 1994. There are two categories proposed by Brazil:

- An unspoken general ban imposed by the joint operation of several different trade restriction measures otherwise known as constitutive elements.
- There are six trade restriction measures that include:
  - a. The exclusion of certain chicken products into the list of importable products.
  - b. Limitation on imports of chicken and chicken products for certain purposes.
  - c. Alleged delay in approval of certification of animal health for chicken products from Brazil.
  - d. Certain aspects of Indonesia's import licensing regime.
  - e. The existence of halal persyaratan in slaughtering and halal labeling applied by the Indonesian government regulations.
  - f. Limitation on the transport of imported products by requiring direct transportation from home country to entry point in Indonesia.

On the lawsuit, Indonesia claims that there has been an improvement over several rules so that it is considered as an expired case. Of the 9 cases alleged by Brazil to Indonesia in the WTO, Indonesia has only succeeded in proving 5 cases while 4 other cases have

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<sup>6</sup> Catatan Awal Tahun 2018 Indonesia for Global Justice, Mengukur Daya Saing Indonesia Dalam Perdagangan Global.

become homework for the Indonesian government.

Cases of the lawsuit at the WTO, in fact, have simulated the policy space of the state to manage and promote national food independently. Due to, there is a necessity of adjustment of state policy with the policy set by WTO. If it is not in line with WTO provisions, other countries may sue Indonesia to the WTO Dispute Settlement Agency (DSB). And, ask Indonesia to align its policies with the provisions in the WTO.

## **The Importance of Country Conducting HRIA During Negotiations and or Before FTA Ratified**

The food and agricultural sectors have a broad impact on the fulfillment of human rights. Human rights aspects involved in the sector ranging from economic, social and cultural rights to civil and political rights even to gross human rights violations when it comes to torture, trafficking and slavery.<sup>7</sup> Therefore, it is important that the role of the state as the main actor for Human Right Impact Assessment (HRIA) conducted during trade and investment negotiations and or before the Free Trade Agreement is enacted into national law.

*Office :*

*Komplek PLN Duren Tiga, Jalan Laboratorium No. 7*

*Jakarta Selatan. 12760*

*Website. [www.igj.or.id](http://www.igj.or.id)*

*Email. [keadilan.global@gmail.com](mailto:keadilan.global@gmail.com)*

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<sup>7</sup> Iman Prihandono, Rully Shandra, *Kertas Kebijakan Menuju Implementasi Prinsip-Prinsip Panduan PBB tentang Bisnis dan HAM di Indonesia* (INFID, Jakarta: 2018), Hal. 43.

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