



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 29, 2022

A new decade for social changes

www.techniumscience.com

ISSN 2668-7798



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Legis Ratio of Legal Protection of Local Food

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Abstract. This study aimed to analyze and find the legal protection ratio of local food. This research uses normative legal research methods, namely legal analysis based on positive legal studies or norms of legislation. The conclusions in this study are (1) The existence of local food is regulated in the formulation of article 12 paragraph (3) of Law number 18 of 2012 concerning food. Still, there is no formulation of articles that specifically regulate the protection of food law in the food law. local, or there is still a void in legal norms. (2) The concept of legal protection for local food is based on justice, namely: (a) Producers (business actors) and local food farmers are protected by their rights and feel safe, both physically and mentally. (b) Legal protection for consumers and producers in buying and selling local food and local food products and the freedom to enjoy their rights, as long as they do not conflict with the laws and regulations. (c) Guarantee of legal protections to prevent abuse of local food or local food products, (d) create order in developing local food and prevent arbitrary acts by local government officials, (e) Realize the responsibility of producers (business actors) to food distribution local and local food products based on distribution permits, (f) Creating compliance of producers (business actors), consumers and local food farmers to the provisions of the legislation.

Keywords. Legis ratio, local food, legal protection

Introduction

Food is an essential and strategic commodity for the state because food is a basic/basic need that must be met to ensure the survival of the people. Local governments must prepare several rules to regulate provisions regarding the legal protection of local food and local food production and the distribution process. The concept of food security covers three topics, namely; (1) food sufficiency, (2) food independence, and (3) food sovereignty. Food sovereignty is a determination made by a country on food for its own country. (Ikbal 2009) Muhammad Ikbal further stated that the fundamental problems faced by autonomous regional governments for food security include: (a) food security policies, (b) structuring and utilization of agricultural land, (c) food storage, and (d) utilization of local food. as described below: (1) Food Security Policy About the management and maintenance aspects of government food reserves, Government Regulation (PP) No. 68 of 2002 concerning food security, explicitly states the importance of the role of provincial governments, district governments, and village governments in dealing with the food problem. (Ikbal 2009)

About food administration, Article 1 number 14 of Law Number 18 of 2012 concerning food (after this referred to as the Food Law) states: "Food administration is an activity of planning, implementing, and controlling in the provision, affordability, fulfillment of food consumption and nutrition. As well as food security by involving coordinated and integrated community participation". Local food is traditionally processed food that is continuously maintained and inherited so that it is guaranteed to consume healthy because it does not use harmful chemicals. Local food itself has good nutritional content to meet the body's dietary needs. (R.H 2008) Local governments in the context of legal protection arrangements expect the community to fight actively in maintaining the existence of local food so that there is legal guarantee and certainty. Besides that, local communities can develop local food as traditional food commodities in maintaining sovereignty and independence. Local food and self-cultivation to meet their own food needs.

Weak legal protection also occurs in locally processed foods. In each region in Indonesia, there are types of local food that have unique characters that characterize the area concerned. Not infrequently, these local foods become regional icons, such as Lay and Langsat Air Putih fruit, Bekisar Chicken, Abon Cempedak from Samarinda), and so on, which are local foods in Samarinda, Betutu Chicken from Bali, Lontong Balap, and Rujak Cingur Surabaya, Soto Madura meat, Bakpia, Suwar-swir Yogyakarta, and so on. Weak legal protection for local food shows the government's lack of attention and lack of public understanding of the importance of taking care of Patents, Intellectual Property Rights, and Brands for local food products. As we know, a food product is either food that can be consumed directly without being processed. Such as fruits or food that can be consumed by processing it first, then the rights of the previous owner are legally transferred to the owner of the Patent, Intellectual Property Rights, and Marks who have registered the product.

Law is present during society to integrate and coordinate all aspects of interests so as not to cause legal conflicts or conflicts with each other. The coordination of these legal interests is carried out by limiting and providing legal protection for all the people's interests to run by the applicable legal corridors. (Rahardjo 2000) The role of law as a means of protection for every human activity. It includes local policies that should also function as social engineering tools for local food development efforts. Based on this need, the researchers conducted a more in-depth study to find a concept of legal protection for local Indonesian food.

Method

The type of dissertation research is normative legal research, namely legal research based on positive legal studies or norms of legislation. (Apeldoorn 1985) At the level of legal dogmatics, identification of laws and regulations that contain favorable legal rules or standards, especially those related to the protection of local food laws, is carried out. Furthermore, at the legal philosophy level, the study focuses on the relevance of values in legislation relating to local food, related to achieving the importance of justice reflected through food laws and regulations, especially those related to local food products.

Result and Discussion

Legis Ratio of Legal Protection of Local Food

Legal protection protects human rights that others have harmed. The protection of such protection is given to the community so that they can enjoy all the rights granted by law or in other words, and legal protection is various legal remedies that law enforcement officials must provide to provide a sense of security both mentally and physically from interference and

multiple threats from any party. . (Rahardjo 2000) The existence of local food in each region varies according to local wisdom. Thus, the Government or Regional Government is obliged and responsible for providing legal protection for local food or products. The legal protections referred to include, among others, the following:

1. Legal protection against a sense of security for consumers and local food producers, both physically and mentally.
2. Legal protection from interference and threats from anyone. The government provides security guarantees to producers and consumers from disturbances and threats in owning or consuming local food as they wish.
3. The government or local government guarantees the freedom of the community to enjoy their rights, in this case, buying or consuming and selling local food, as long as it does not violate the rights of others.

According to Setiono, legal protection is an action or effort to protect the community from arbitrary actions by the authorities that are not by the rule of law to create order and peace to allow humans to enjoy their dignity as human beings. (Setiono 2004) Legal protection is the protection of the dignity and worth and the recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another. (Hadjon 1998). The reasons for the need for the establishment of law regarding the protection of local food, namely:

1. To ensure legal certainty regarding local food
2. To avoid misuse of local food or local food products by other parties irresponsibly.
3. To preserve local food culture as the primary consumption for the region concerned according to the needs of each area.
4. To increase original regional income sourced from local food and local food management.
5. To provide lessons to the community for each Regional Government regarding the need for regulation on local food as a form of legal protection.

The legal protection ratio for local food will realize, namely:

1. Regulations regarding the legal protection of local food will have economic value, where the monetary value can increase local government revenues.
2. Provide benefits to the community. One of the benefits felt by the community (consumers and producers) is the regulation regarding the legal protection of local food.
3. Arrangements regarding the legal protection of local food can prevent conflicts of interest related to local food.

Strengthening the presence of local food

One of the essential factors in strengthening local food is its influence on food availability in an area. Food availability at the regional level is food production at the local level. (Suryana 2003) Strengthening local food is very dependent on the level of food production in the region concerned. Maintaining the presence of local food in the area has a fundamental development perspective. It directly affects the success of developing the quality of Human Resources at the local level.

Strengthening the existence of local food and strengthening the availability of local food is the responsibility of the government and local governments. It is in line with the provisions of Article 12 of Law number 18 of 2012 concerning food, stating, paragraph (1) the Government and Regional Governments are responsible for Food Availability, paragraph (2) Government and Regional Governments are responsible for Food Availability in the regions and Production development Local Food in the area. Paragraph (3) In realizing Food Availability through the

development of Local Food, the Regional Government determines the type of local food. (4) Food supply is realized to meet the needs and consumption of food for the community, households, and individuals sustainably. Paragraph (5) To realize Food Availability through domestic Food Production, it is carried out by:

- a. Develop Food Production that relies on local resources, institutions, and culture;
- b. Developing the efficiency of the Food business system;
- c. Develop facilities, infrastructure, and technology for the production, postharvest handling, processing, and storage of food;
- d. Build, rehabilitate, and develop Food Production infrastructure;
- e. Maintaining and developing productive land; and
- f. Build a food production center area.

The provisions of Article 12 of Law number 18 of 2012 concerning food mentioned above to strengthening local food can be explained as follows:

1. The Government and Regional Governments are responsible for the availability of local food product development in the regions. The existence and availability of local food in the area is the responsibility of the Government, where the story of local food has the potential to increase local revenue. Thus, the regulation regarding the existence of local food in the area is very much needed by each region.
2. Realizing Food Availability through the development of Local Food.
3. Food supply is realized to meet the needs and consumption of food for the community, households, and individuals sustainably.

The role of local governments to strengthen regional presence can be done, as follows:

1. Individual food barns. There is support, acknowledgment, and assistance from the local government in supporting the existence of food barns carried out individually.
2. Collective barns. The Government can establish and provide sufficient financial assistance to farmer groups formed by the Government.
3. Village food barns. Local governments can take advantage of the potential of existing village granaries to increase local food production.

The government has the power and authority to determine legal procedures to regulate the strengthening of local food availability. Regarding power and control, Prajudi Atmosudirdjo stated that authority is formal power, which comes from Legislative Power (given by law) or from Executive/Administrative Power. Authority is power over a specific group of people or control over a particular area of government (or field of affairs) that is round, while authority only concerns certain parts. Within authority, there are powers. Authority is the power to carry out a public legal act. (Admosudirdjo 1998)

Strengthening the existence of local food is an authority owned by the Government or Regional Government; the rules referred to include, among others:

1. The Regional Government has the authority to regulate and determine a procedure for local food and strengthen its existence.
2. The local government has the authority to determine whether or not local food is appropriate to be circulated in the market for consumption by the public (consumers) or sold by producers (market players).
3. The Regional Government may grant authority to the Food and Drug Supervisory Agency to determine and specifically establish a section or section that handles the presence of local food in each region.

Prevention of other party's claims

Regulations regarding claims of other parties to the existence of local food are contrary to the legal objectives as described above, where the law aims, among others, to:

1. Create order. The law can prevent claims from other parties who are not responsible for local food.
2. Tranquility. In developing business ventures, the law can guarantee public peace, especially the consumer and producer communities.

The unilateral claim by anyone, without any basis on local food or local products which are the cultural heritage of each region based on local wisdom, violates Law Number 15 of 2001 concerning Marks, as referred to in the provisions of Article 90, which states that Whoever intentionally and without the right to use a Mark that is entirely the same as a registered Mark belonging to another party for similar goods and services produced and traded, shall be subject to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 1.000.000.000,00 (one billion rupiah).

Furthermore, the provisions of Article 91 state that any person who intentionally and without rights uses a Mark, which is essentially the same as a registered Mark belonging to another party for similar goods and services produced and traded, shall be sentenced to a maximum imprisonment of 4 (four) years. and a maximum fine of Rp. 800,000,000.00 (eight hundred million rupiah). Law Number 15 of 2001 concerning Marks is the result of the ratification of the convention to establish the World Trade Organization (WTO). This law replaces Law Number 19 of 1992 concerning Marks as amended by Law Number 14 of 1997 concerning Amendments to Law - Law number 19 of 1992 concerning Marks.

Regions are obliged to provide legal protection for the existence of local food from claims from irresponsible parties in the following ways:

1. Protect the interests of consumers and local food producers.
2. Maintain honor, independence, life, property, and so on against things that harm him.

Establishing a brand or patent on local food is one of the responsibilities of the Government. It is in line with what was stated by Wiratmo Dianggoro, who indicated that brand infringement is often carried out because it is related to the function of the brand as an identity or product or service that has a reputation and is also related to the role of the brand as a guarantee of the quality of goods. (Dianggoro 1997) it is because in brands inherent economic benefits, especially well-known brands. The function of the brand is the identity of a particular product or company so that consumers can distinguish between one product and another for the same type of product. (Sembiring 2002)

Violations of trademarks or patent rights against other people's patent rights often occur and even become a threat that can damage the cultural preservation of each region that has existed for generations. According to Wiratmo Dianggoro, there are 3 (three) forms of brand infringement that need to be known, namely:

1. Trademark Piracy
2. Counterfeiting
3. Imitation of labels and packaging of a product (Imitation of labels and packaging). (Dianggoro 1997) Brand infringement or counterfeiting can occur when a counterfeit or lower-quality product is affixed with a well-known brand.

The potential for abuse of patent rights or local food trademarks has a great chance if the local government does not immediately take strategic steps to save local food in each region from the threat of brand adoption. Local governments must anticipate the following:

1. Brand piracy (Trademark Piracy). Local governments must be firm against perpetrators who violate the law.
2. Counterfeiting. Counterfeiting of local food patents (trademarks) is a criminal offense, and the consequences for such acts are illegal (jail).
3. Imitation of labels and packaging of a product (Imitation of brands and). The potential to imitate titles can also occur in local food or local food products.

According to Philipus M. Hadjon, the legal protection for registered trademark owners is that there are 3 (three) legal protections. (Rahardjo 2000) given by the state, namely preventive legal protection. (Hadjon 1998) Repressive legal protection and provisional determination of commercial courts. In terms of preventive legal protection to prevent disputes from occurring, the legal instrument to overcome them is Law Number 15 of 2001 concerning Marks which has several preventive actions to overcome in the event of claims against local food brands, which include:

1. Article 68 confirms that paragraph (1) an interested party can file a lawsuit for cancellation of a Mark registration, paragraph (2) an unregistered Mark Owner can file a lawsuit, paragraph (3) a lawsuit is filed with the Commercial Court in Jakarta.
2. Article 69 confirms that paragraph (1) A lawsuit for the cancellation of a Mark registration can only be filed within 5 (five) years from the date of registration of a Mark. Paragraph (2) A lawsuit for cancellation may be filed indefinitely if the Mark concerned is contrary to religious morality, decency, or public order.
3. Lawsuits for impersonation of brands. Acts such as forgery, imitation, and others can be prosecuted according to civil law provisions. It can be seen in the provisions of Article 1365 of the Civil Code. It is also in line with Law Number 15 of 2001 concerning Marks, as referred to in the provisions of Article 76 paragraph (1), which states that a lawsuit concerning losses is submitted to the Commercial Court (Article 76 section (2)). This compensation claim can be material or immaterial. In terms of receiving a license, either individually or with the owner, they can file a lawsuit under Article 77 of Law Number 15 of 2001 concerning Marks. Thus, the Civil Code is a generalist Lex while Law Number 15 of 2001 concerning Marks functions as a Lex specialist.
4. Settlement of criminal law. Settlement of crimes in local food brands is regulated in the provisions of Article 1339 of the Criminal Code. In addition, Article 90 to Article 95 of Law Number 15 of 2001 concerning Marks also holds criminal requirements for trademark infringement in the form of fines, as well as imprisonment and confinement.

Protection of Local Food Producers

Producers (business actors) in carrying out local food business activities need legal protection. According to CST Kansil, the legal guardian must be reflected in the passage of the law, the legal process, and the consequences of implementing or enforcing the law. (Kansil 2009) Legal protection for local food producers can realize security, in the form of:

1. Protection of dignity and worth. Local producers (business actors) of local food have the same rights as other communities to be given legal protection.
2. Recognition of human rights. Local governments must provide legal recognition through the provisions of Regional Regulations. The regulation regulates the glory of the rights of producers (business actors) to local food and the strengthening of said local food.

The protection of local food producers means protecting the rights owned by producers (business actors), including material rights, property rights, and those whose rights are inherent

in humans or human rights. It is in line with what Rona said. K.M. Smith emphasized that human rights are rights bestowed by God Almighty solely because he is human. (Smith 2008)

Protection of local food producers (business actors) is part of protecting human rights. Thus, the Government and the Government have the obligation and responsibility to provide protection. It is in line with the provisions of Article. 71 Law number 39 of 1999 concerning Human Rights states that the Government is obliged and responsible for respecting, protecting, upholding, and promoting human rights as regulated in this law, other laws and regulations, and international law concerning human rights accepted by the Republic of Indonesia.

Protection of producers (business actors) is also regulated and stipulated in Law Number 8 of 1999 concerning Consumer Protection, where the law regulates explicitly consumer protection, business actors, dispute resolution, and consumer supervision, while Law number 18 of 2012 concerning food also regulates explicitly the safety of food products. The provisions of Article 3 of Law Number 8 of 1999 concerning Consumer Protection states that a business actor is any individual or business entity, whether in the form of a legal entity or a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through agreements to carry out business activities in various economic fields.

The provisions of Article 6 of Law 8 of 1999 concerning Consumer Protection regulates the rights of business actors or so-called producers, stating:

- a. The right to receive payments by the agreement regarding the conditions and exchange rates of goods and services traded;
- b. The right to obtain legal protection from consumer actions with bad intentions;
- c. The right to conduct proper self-defense in the legal settlement of consumer disputes;
- d. The right to rehabilitate a reputation if it is legally proven that traded goods and services do not cause consumer losses;
- e. Rights regulated in the provisions of other laws and regulations.

Legal protection for local food producers (business actors) is carried out in the form of protection against, namely:

1. Physical protection. Local food producers (business actors), against physical attacks from irresponsible parties caused by business conflicts, are obligated to provide physical protection for the government and local governments.
2. Psychological protection. The work of producers (business actors) in marketing local food will sometimes create threats and be very psychologically disturbing. Thus, legal protection for local food producers must involve psychiatrists to anticipate threats or terror in carrying out their duties as local food producers (business actors).

Sanctions against consumers in this case, in theory, legal protection is not explained in Law Number 8 concerning consumer protection. However, in this case, consumers who default (break promises) against local food producers can be subject to sanctions for paying losses suffered by business actors (producers), in the form of canceling agreements, transferring risks, and paying court fees if they are brought to court. (Pramono 2003) The state provides legal protection for consumers and local food producers. This protection is in the context of ensuring transactions are by applicable regulations. Suppose there is a violation of the law against the rights of producers (business actors). So, the process of resolving the conflict must involve law enforcement officials because the legal battle is possible for producers (business actors) to take legal action as part of their rights as citizens.

Local Food Legal Assurance

Legal certainty is part of the purpose of the law, where according to R. Suroso, the law is generally aimed at order and peace. (Soeroso 2016). The importance of local food certainty is a demand for justice from local food producers/business actors and consumers in conducting local food buying and selling transactions. Legally, the government has regulated local food issues through the food law, the Consumer Protection Act, and the Government Regulation, which governs it more technically. Still, there is no specific regulation regarding local food legal protection.

At the level of civilization, as it is today, many opinions say that the law is nothing but an instrument of political decisions or desires. (MD 1998) The presence of law during society is a means of controlling and preventing arbitrariness, especially in local food in each region. Strictly speaking, the law is a policy instrument of a particular political body or unit. (Soetjipto 2002) Legislation is a tool for the Government or regional Government for the community's survival and security in carrying out their lives. To provide legal protection for local food, the Government and Regional Government must actively protect producers/business actors and consumers and because it is a state obligation guaranteed by the state constitution (UD 1945), because it will provide peace and legal certainty for producers/actor's local food businesses and local food consumers.

Provide access to justice for Producers.

John Rawls in his book. "A theory of justice" states that justice is the first virtue of social institutions as the truth of a system of thought. (Rawls 1971) Laws and law enforcement institutions need to be changed/improved if their implementation hurts the people's justice. Likewise, the government or local governments do not provide justice for producers/business actors and local food consumers. Everyone, in this case, both producers/business actors and local food consumers, has inalienable rights based on justice.

John Rawls said that it is necessary to consider the role of the principles of justice because conflicts of interest always occur in society. (Rawls 1971) According to him, conflicts of interest occur because people do not care how the great benefits generated by their cooperation are distributed; they are more pursuing their own goals. It means that a society is well ordered if it is designed to promote the good of its members and is effectively governed by the concept of social justice. That is to say, and it is a society where: (1) Everyone accepts and recognizes that others accept the same principles of justice and (2) The primary social institutions generally fulfill and are generally known to fulfill the principles of justice. (Rawls 1971)

Based on the principle of justice as stated above that providing access to justice for food producers can prevent and avoid, among others, namely:

1. Conflict of interest. Potential conflicts of interest in local food administration are possible because consumers and producers feel unjust or mistreated by the local government.
2. Misuse of local food. Weaknesses in the regulation of local food by the Government and Regional Government can lead to acts of abuse of local food by irresponsible parties.

Providing access to justice for consumers

Law number 8 of 1999 concerning consumer protection, as in its explanation, states that the main factor that causes consumer weakness is the level of consumer awareness of their rights is still low. It is mainly due to the low level of consumer education. Therefore, the Consumer Protection Act is intended to be a solid legal basis for the government and non-

governmental consumer protection institutions to empower consumers through consumer guidance and education.

Article 4 of Law Number 8 of 1999 concerning Consumer Protection explicitly states the rights of consumers, namely:

- a. The right to comfort, security, and safety in consuming goods and services;
- b. The right to choose goods and services and to obtain said goods and services by the exchange rate and the promised conditions and guarantees;
- c. The right to correct, transparent and honest information regarding the conditions and guarantees of goods and services;
- d. The right to have their opinions and complaints heard on the goods and services used;
- e. The right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
- f. The right to receive consumer guidance and education;
- g. The right to be treated or served correctly and honestly and not discriminatory;
- h. The right to obtain compensation, compensation, and replacement if the goods and services received are not by the agreement or not correctly;
- i. Rights regulated in the provisions of other laws and regulations.

The Law on Consumer Protection discusses consumer rights and consumer obligations in buying and selling activities and using the product in question. Regarding consumer obligations, it is regulated in the provisions of Article 5 of the Consumer Protection Act, namely:

- a. Read or follow information instructions and procedures for using or utilizing goods and services for security and safety;
- b. Have good faith in making transactions for the purchase of goods and services;
- c. Pay according to the agreed exchange rate;
- d. Follow legal efforts to settle consumer protection disputes properly.

Conclusion

Based on the description of the results of research and analysis. It can be concluded that the Regional Government is responsible and obliged to provide legal protection for local food or local food products, namely: (1) Legal protection of the existence of local food through Regional Regulations so that consumers, producers (business actors), and local food farmers are protected, and their rights are protected. feel safe, both physically and mentally. (2) Legal protection for consumers and producers in conducting buying and selling transactions of local food and local food products and the freedom to enjoy their rights, as long as they do not conflict with the laws and regulations. (3) Guarantee of legal protection to prevent the misuse of local food or local food products, create order in developing local food and prevent arbitrary acts by local government officials, (4) Realize the responsibility of producers (business actors) to local food circulation and local food products based on distribution permits, (5) Creating compliance of producers (business actors), consumers and local food farmers to the provisions of laws and regulations.

Acknowledgment

I am grateful to Slamet Suhartono, Endang Prasetyawati, and Yovita Arie Mangesti as the promoter and co-promoter who gave input in writing this article. I also thank the university of 17 August Surabaya for providing support and facilities to complete this research.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

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