

THE EFFECTIVENESS OF LAW ENFORCEMENT IN COMBATING FOOD HOARDING CRIMES IN INDONESIA

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Abstract

Indonesia already has legal instruments related to storing and hoarding staple food: Law No. 18 of 2012 on Food and Law No. 7 of 2014 on Trade. Repressive and preventive efforts have been carried out to combat this problem. However, it is far from what expected resulted in the frequent occurrences of food hoarding to date. The condition raises questions on how to make an effective law enforcement in preventing recurring food hoarding in Indonesia. To know the effectiveness of law enforcement as an effort to overcome the stockpiling of the basic commodity, the theory of legal system is used. From the study conducted, it is proven that the law enforcement of food hoarding is still ineffective. In addition, the Trade Minister Regulation (Permendag), as mandated by Article 53 of Law No.18 of 2001., has yet to issue the technical regulations which contribute to the failing in the substance of Food Law. Moreover, it is necessary to limit the prohibited number/quantity of staple food to store or hoard through government stipulation. From the structural side, there exists a sectoral ego within institutions having authority on food security. Therefore, to establish a strong national food institution which has a cross-sectoral authority is urgently required. The lack of control from the society in the form of community participation in combating food hoarding crime has more or less contributed to the ineffectiveness of law enforcement.

Keywords: law enforcement, crime prevention, food security.

BACKGROUND

The increasing food prices do not only occur as a result of limited supply but are also influenced by several factors such as low food availability. This is mainly due to crop failure caused by a prolonged drought or erratic seasons, ineffective distribution channels and even the intentional food hoarding by certain parties for personal profits that eventually result in the surging up food prices.

The common cases of hoarding staple commodities, in conjunction with the holy month of Ramadan and Eid al-Fitr, have become a recurring problem for the society and government. Food hoarding significantly raises the price of the basic commodities which are difficult to control over time. Some findings of food hoarding, among others, are the findings of alleged rice hoarding and mixing from Banyuwangi which are obtained in large quantities with cheaper price, said the owner. Entering the warehouse, the cheap rice sacks are disassembled and mixed with certain rice from selling brands in the market. Minister of Agriculture, Andi Amran Sulaiman along with the Deputy Commander, Komjen Syafruddin R have raided the hoarders of garlic, dried red peppers, and onions located in Marunda-Cilincing area, North Jakarta.

To overcome this problem, Indonesia already has legal instruments related to food storage and hoarding, that is Law No. 18 of 2012 on Food and Law No. 7 of 2014 on Trade. In

addition, the Chief of Police has issued MAK / 01 / VIII / 2015 of the Prohibition of Hoarding or Storage of Food and Staple Commodities. The notes contain two main things traders are forbidden to:

1. Business communities are prohibited from hoarding or storing exceeding the maximum amount allowed or beyond the limits of reasonableness, with the intent to gain profits resulting in the rising staple food price; and
2. Business communities are also prohibited from storing staple goods or important commodities within a certain period of time during the goods scarcity, price fluctuations, or trade traffic barriers.

Despite various regulations mentioned above and preventive actions taken by relevant agencies, including the law enforcers, the hoarding always finds its way to slip in up to now. Therefore, the effectiveness of law enforcement against food hoarding in Indonesia is highly required to review.

RESULT AND DISCUSSION

Law enforcement has never been in a sterile territory since many things can possibly affect it. According to Soerjono Soekanto,³ the core and meaning of law enforcement lie in harmonizing relationships that span the hierarchy of values in the good norms and aligning with the acts as a series of translation of values to create, maintain and sustain social peace alive.

Law enforcement in concrete terms is the enactment of the positive law in practice as it is supposed to be obeyed. Therefore, to provide justice in a case means to decide *in concreto* law in maintaining and ensuring that the law is subjected to lawful matters by means of procedures established by formal law.⁴

Talking about the effectiveness of criminal law enforcement cannot be separated from its limited ability. Barda Nawawi Arief further explains the causes of criminal law limitations as follows:⁵

1. The very complex criminal laws and are beyond the scope.
2. Criminal law is only a small part (subsystem) of the social control medium which is impossible to overcome the crime as a complex humanitarian and societal issue (e.g. as a socio-psychological, sociopolitical, socioeconomic, sociocultural, etc.).
3. The use of criminal law in tackling crime is merely a "*kurieren am symptom*" (prevention/symptom treatment). Therefore, it simply represents as "symptomatic treatment" rather than "causative treatment".
4. Criminal penalty sanctions are merely contradictory/paradoxical "*remedium*" ones containing negative factors and side effects.
5. The penalty system is fragmentary and individual/private, not structural/functional.
6. The limited types of criminal penalties and formulating types are inflexible and imperative.
7. The operating/functioning criminal law requires more varied supporting means and tend to demand "higher cost".

Discussing the law enforcement requires us to pay close attention to the contributing factors of the effectiveness of a law implementation. Soejono Soekanto⁶ affirms that law

³ Soerjono Soekanto, 2008, *Faktor Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta: Rajawali Pers, p. 5.

⁴ Dellyana, Shant. 1988, *Konsep Penegakan Hukum*. Yogyakarta: Liberty, p. 32

⁵ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Bandung: Citra Aditya Bakti, 1996), p. 87-88

⁶ Soerjono Soekanto, 2008, *Op.Cit.*, p. 42

enforcement is strongly influenced by several factors, which basically have a neutral meaning, that the positive or negative impact lies in the substance of these factors themselves. The factors are as follows:

1. The factor of law its own, the new legislation;
2. The factor of law enforcement, the relevant parties that form and implement the law;
3. The factor of means or facilities to support law enforcement;
4. Community factors, the environment in which the law is valid and defined;
5. Cultural factors, as a result of the work, creation, and senses based on human initiatives in social life.

In line with the theory above, the legal system theory put forward by Lawrence Friedman will be implemented to analyze the effectiveness of law enforcement in the prevention of commodity hoarding. In his theory, Lawrence Friedman argues that the effectiveness and success of law enforcement depend on three elements of the legal system: the structure of law, the substance of law, and the legal culture. The legal structure includes law enforcement officers, legal substances includes legislation and legal culture is a living law practiced in a society. The three components of the legal system are inter-related.

Legal structure is like a machine, the substance is something produced or worked by that machine, whereas the legal culture of a society is anything or anyone who controls the engine on or off and decides how the machine is used. The three elements of the law should go together to so as to make law enforcement run effectively and justice can be perceived by the public. In connection with the working law to determine the effectiveness of enforcement, the description is as follows:

1. Legal Structure (*The Structure of Law*)

The first component of law system is the structure of law. Lawrence M. Friedman explains that:

"... its skeleton or framework, the durable part, which gives a kind of shape and definition to the whole ... The structure of a legal system consists of elements of this kind: the number and size of courts; their jurisdiction (that is, what kind of cases they hear, and how and why); and modes of appeal from one court to another. The structure also means how the legislature is organized, how many members., what a president can (legally) do or not do, what procedures the police department follows, and so on. Structure, in a way, is a kind of cross section of the legal system? A kind of still photograph, which freezes the action".⁷

In a simple term, the legal structure is related to institutional arrangement and performance along with its apparatus in implementing and enforcing the law. This includes the pattern of how the law is implemented and enforced in accordance with its formal rules (concerning legal performance).

The legal structure in this paper is not limited to the law enforcers only, specifically the Police of Indonesia acting as the first gate of the criminal justice system, but is also defined as the government that includes local government, agriculture, and trade ministries. To handle the act of food hoarding, various institutions such as the Ministry of Agriculture, Ministry of Commerce and Regional Government are bound to join forces, followed by the law enforcement officers like the Police and the Prosecutors. Its effectiveness depends greatly on the coordination and synergy among the agencies. In addition to the above endeavors, the Minister of Trade has also issued a presidential regulation draft governing the types of commodities, mechanisms, procedures, and the maximum amount of basic commodities and needs storage, and essential goods by business communities as mandated by laws. The presidential regulation will later become a controlling instrument to suppress and curb the price of staple goods.

⁷ Lawrence M. Friedman. 1984. *American Law: An Introduction*. New York: W.W. Norton and Co. p. 5

The efforts made by the government together with law enforcement are repressive, pre-emptive and preventive. The repressive effort is made by the enforcement of criminal law, the pre-emptive effort is done by appealing to Business Communities to avoid food storing or hoarding. While the preventive effort is performed through supervision on the availability and/or sufficiency of staple food. The Government (the Ministry of Agriculture and the Ministry of Trade) and the Regional Government shall continue to periodically monitor, evaluate and supervise the production activities or processes, storage, transport and/or distribution of food by the Business Communities.

In the Food Law Article 110 paragraph (1), the Ministry of Agriculture has a supervisor authorized to monitor and evaluate all places and activities or processes of production, storage, transportation, and food trade. On the other hand, in Article 100 paragraph (3), paragraph (4), and paragraph (5) of the Trade Law) the Ministry of Trade also has a supervisory officer who can recommend the withdrawal of goods, suspension of business activities and revocation of licenses if the first crime evidence is allegedly committed by Business Actors. The existence of these prevailing laws and regulations are expected to be able to overcome the practice of staple food stockpiling or hoarding and normalize the price.

In spite of that, a variety of regulations and policies related to illegal activities in food case are tightly attached to various sectors, thus the supervision and handling are sectorally restricted. To that end, the relevant authoritative governmental institutions should really improve synergies to control the prices of various commodities essential to society interest.

Unfortunately, many law enforcers and government officials can be bribed and result in the obstructed law enforcement. The bribery does not only give hoarders ease of access to their activities, but even many of them are also provided law protection. Therefore, improving the integrity of supervisors and law enforcers in eradicating food stockpiling are greatly necessary.

As the gate of criminal justice, National Chief of Police (Kapolri) make a preventive effort to combat the hoarding of food commodity by issuing an announcement No. MAK / 01 / VIII / 2015 on Prohibition of Hoarding or Stockpiling Food and Staple Goods, signed on Monday, August 24, 2015. The announcement is to ensure the availability of food as the basis of the most important human needs and stabilize the food supply and price for the community. The announcement is as follows:

1. The Government is obliged to the availability, affordability, and fulfillment of food consumption for people who are quite safe, with good quality and nutritionally balanced.
2. In practice, the public is frequently worried due to the scarcity or surging up food prices.
3. Business Communities are prohibited to:
 - a. Deliberately hoard or store food exceeding the maximum amount allowed or beyond the limits of reasonableness. This means with the intention of making self-profit so as to cause the price of staple food costly or soaring,
 - b. Storing essential staple or goods in a certain amount or time at the time of goods scarcity, price fluctuations and or trade barriers.

When there are business actors as described in number 3, a firm action will be taken because it is considered as a criminal act and shall be punished by Article 133 of Law number 18 of 2012 on Food with 7 years imprisonment or a fine of not more than Rp 100 billion and Article 104 of Law Number 7 of 2014 on Trade with a maximum imprisonment of five years or a fine of Rp 50 billion.

As a criminal defense against food hoarding, the National Police Chief has established a Food Task Force which its main task is to eradicate the mafia on the food distribution chain during the fasting month of Ramadan. The National Police, Ministry of Home Affairs, Ministry of Agriculture, Ministry of Trade, Business Competition Supervisory Commission, and Agency for Logistics Affairs, have coordinated to ensure safe food stocks during Ramadan. Thus, food

prices are expected to remain stable. However, the Chief of Police predicts that there will be problems remaining in the distribution chain. This is the government's main concern. The Food Task Force involves officials of the Ministry of Home Affairs, the Ministry of Agriculture, the Ministry of Trade, the Business Competition Supervisory Commission, and the Official of the Logistics Affairs Agency. Meanwhile, at the Polda (Regional Police) level the Polda Food Task Force is established and to join with the Department of Agriculture, the Department of Commerce, Markets, and take preventive efforts to legal effort. The task force will monitor food prices in markets to evaluate the results every two weeks. In addition to price supervision and staple foods availability, the task force is also obliged to enforcing the law against cartels and food mafia. Moreover, a task force is also formed at a local level, along with a number of relevant offices, the Department of Agriculture and the Department of Trade. Polda Food Task Force, headed by the Director of Polda Special Crime Detective, is a preventive and repressive step. Any indication of food hoarding found will then be acted with the repressive step.

2. Legal Substance (*The Substance of Law*)

Legal substance, the second component of the legal system, is the actual rules, norms, and behavior patterns of people inside the system. The substance of this law includes principles and ethics, as well as court decisions. The Component of the substance of the law, therefore, comprises the whole legal laws, both written (*law books*) and unwritten (*living law*), and court decisions followed by the society and government. In relation to the food hoarding, the legal substance is a legislation made by authorized institutions or entities, both written and unwritten principles, regarding the regulation of food and trade.

Staple stockpiling or hoarding which exceeds the maximum amount is considered a criminal act as stipulated in the Food Law and Trade Law. Unfortunately, the law enforcement has yet to run effectively due to the weaknesses in the substance of technical arrangements that could potentially hinder the implementation of law enforcement.

In the realm of law, hoarding is a new crime. There is no exact definition of hoarding either in Food Law No. 18 of 2012 or Trade Law No. 7 of 2014. Stockpiling has been newly regulated in Presidential Regulation No. 71 of 2015 on the establishment and storage of staple and essential goods (*bapokting*). In Article 11, paragraph 2, it is mentioned that the "hoard" is storing in an amount beyond the limit of fairness that exceeds the stock of running goods to meet the market with a maximum period of three months based on the monthly average sales record under normal conditions. Business actors are exempt from the hoarding if the stored *bapokting* is used as raw or supporting materials in the production process or as a stock of goods to distribute. This makes clear offense that the law enforcement officers should not hesitate to drag the hoarders to the court. Regarding the prohibition, food stockpiling is arranged in Article 52-53 of the Food Law regulating the mechanism, procedure, and the maximum amount of staple storage by food business communities. This article also explains the prohibition for business actors to stockpile or store the staple food that exceeds the maximum amount. Another regulation, Article 29 of the Trade Law, also prohibits business actors from storing staple and essential goods in a certain amount and period of time during the scarcity of goods, price fluctuations, and/or trade barriers, which is described as follows:

- 1) The arrangements related to the prohibition of hoarding or stockpiling in the Food Law
 - a. **Article 52** (1) on Food Trade, the Government stipulate the mechanism, procedure, and maximum amount of Staple Food storage by the Food Business Actors. (2) The stipulation regarding the mechanism, procedure and maximum amount as referred in paragraph (1) shall be regulated by or based on Government Regulation.
 - b. **Article 53** Food Business Actors are prohibited from hoarding or storing Staple Food that exceeds the maximum amount as referred in Article 52.
 - c. **Article 54** (1) Food Business Operators violating the stipulations as referred in Article 53 are liable to administrative sanctions. (2) The administrative sanctions as referred

in paragraph (1) shall be in the form of: a. fine; b. Suspension of activity, production, and/or distribution; And/or c. Revocation of permission. (3) The further stipulation on the type, fine amount, procedures and mechanisms for administrative sanctions as referred in paragraphs (1) and (2) are regulated by a Government Regulation.

As for criminal sanctions against the offense is regulated in Article 133 states that:

Food Business Actor who intentionally stockpile or store food exceeding the maximum amount as referred in Article 53 to gain profit resulting in upsurging or rocketing price of Staple shall be punished by imprisonment of not more than 7 (seven) years or a fine of not more than Rp100,000,000,00 (one hundred billion rupiahs).

If the perpetrator of the offense is a corporation, it is subject to the stipulation of Article 148 (1) stating that: In the acts as referred in Article 133 to Article 145 committed by a corporation, in addition to imprisonment and criminal fines against the offender, the criminal punishment toward the corporation can be in the form of a fine penalty with a liability of 3 (three) times of a fine penalty against an individual. (2) In addition to the fine as referred in paragraph (1), the corporation may be subject to additional crimes in the form of: a. Revocation of certain rights; or b. An announcement of judge's verdict.

(2) The regulation regarding the prohibition of hoarding or stockpiling in the Trade Law is as follows:

Article 29 (1) Business communities are prohibited from storing goods basic needs and/or essential goods in a certain amount of time and in the event of scarcity of goods, price volatility, and/or traffic barriers for Trade in Goods. (2) business communities can perform basic needs goods storage and/or essential goods in a certain amount of time and if it is used as raw materials or auxiliary materials in the production process or as a supply of goods to be distributed. (3) Further provisions on the storage of basic needs goods and/or essential goods regulated by or pursuant to Presidential Decree.

Regarding the criminal sanction on the prohibition stipulated in Article 29 paragraph (1), the regulation is referred in Article 107 stating that business communities storing staples and / or essential goods in a certain amount of time and in the event of scarcity of goods, price volatility, and / or traffic barriers for Trade in Goods referred in Article 29 paragraph (1) shall be punished with imprisonment of 5 (five) years and / or a fine of up Rp50.000.000.000,00 (fifty billion rupiah).

In the context of law enforcement against hoarding or storing staple food exceeding the maximum number referred to in Article 53 of Food and Article 29 paragraph (1), the Trade Act can not be implemented effectively which is caused by several things:

(1) The Article 52 contains Government's authority to stipulate the mechanism, procedure, and the maximum amount of staple storage by food business actors mandated to be regulated through a Government Regulation. Besides, the Article 53 of the Food Law concerning the prohibition against food business actors prohibited to stock or store staple food beyond the maximum amount is not yet fully executable. The further regulation of Article 52 paragraph (2) of the Food Law is regulated in Article 64, Article 65, Article 66 and Article 67 of Government Regulation Number 17 Year 2015 on Food Security (Food Security Regulation). Its essence regulates mechanism, procedures, and the maximum amount of staple food storage by business actors that shall be regulated by ministerial regulations that administer government affairs in the field of trade. However, the anticipated regulation of the Minister of Trade has not been published yet so that the implementation of Article 53 and Article 133 of the Food Law has been hindered up to now. This is due to the absence of the technical regulations from the minister of commerce regarding further regulations on the mechanism, procedures, and the maximum amount of staple food storage by business actors.

(2) The stipulation of the Law Article 29 (1) and paragraph (3) of the Trade Law concerning the prohibition of business actor storing staple foods and/or essential goods in certain

amount and time in the event of scarcity of goods, price fluctuations and/or traffic barriers in trade, which is mandated to be further regulated in Presidential Regulation, has been implemented in Presidential Regulation No. 71 of 2015 on the Stipulation and Storage of Staple Food and Essential Goods (Presidential Decree of Stipulation and Storage of Staple and Essential Goods). The Article 11 of the Presidential Decree explains that during the scarcity of goods, price fluctuations, and/or trade barriers, staple and/or essential goods are banned to be stored in warehouses within a certain amount and time beyond the limits of fairness; exceeding the stock of running goods in order to meet the market with a maximum period of 3 (three) months, based on the average record of sales per month under normal conditions. The stipulation in Article 11 paragraph (2), which limits a maximum of 3 (three) months to store these staple and/or essential goods, has caused some problems during the law enforcement. This is due to the real condition in the field, storing essential goods and/or important goods "before" 3 (three) months has already been able to cause scarcity of supply of staple food and or important goods. This flaw has resulted in its technical regulations to be unfulfillable while the actual repercussion has been experienced. Consequently, the law enforcers are not able to implement Article 29 paragraph (1) and Article 107 of the Trade Law against the offense.

Having examined from various arrangements as described above, it is feasible to overcome the stockpile of food/staple commodities. However, the articles regulating the prohibition on the food hoarding substantially does not determine the specific prohibited amount/quantity stored or stockpiled. It is very important to provide legal certainty for law enforcers and business actors to prevent storing staple food/commodities that exceed the amount and time set by the government.

3. Legal Culture

Legal culture is the third component of the legal system described as “.. people's attitudes toward law and legal system? Their beliefs, values, ideas, and expectations ... The legal culture, in other words, is the climate of social thought and social force which determines how the law is used, avoided, or abused. Without legal culture, the legal system is inert? A dead fish lying in a basket, not a living fish swimming in its sea.”

The culture of community law is the thinking of man in his attempt to regulate his life. This is also known as written, unwritten and combinative public law. In addition, it is also used to explain why the legal system can not run as it should be or is distorted from its original pattern over time. The legal culture of a society can also be treated with the same limits as legal awareness but is different from the legal feeling. The legal feeling is a spontaneous product of public assessment which is, of course, subjective, whereas legal awareness is more the result of thought, reasoning, and argumentation made by scholars, particularly the jurists. Legal awareness is an abstraction (expert) about the legal feelings of the legal subjects. In the context of the legal system, what is meant by the legal culture of a society is indeed the legal awareness of the community's legal subjects as a whole.

The participation of the private sector and the community in the prevention of food hoarding is crucial. The apparent factors in society; the lack of awareness of the law and the paradigm in the community that view the police who is entitled to work actively enforcing the law against the hoarding surely needs to be changed. The community, therefore, need to take part in supervising price stability. Monitoring does become a government primary task, but the community, as the economic actors, also need to watch closely the practice of food mafia.

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