

**THE LEGAL ASPECTS OF IMPORTING RICE TO FOOD SOVEREIGNTY  
IN INDONESIA BASED ON LAW NUMBER 18 OF 2012 CONCERNING  
FOOD AND MASLAHAH MURSALAH**

**THESIS**

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**MALANG**

**2020**

**THE STATEMENT OF AUTENTICITY**

In the name of Allah,

With consciousness and responsibility toward the development of science,  
the writer declares that thesis entitled:

**THE LEGAL ASPECTS OF IMPORTING RICE TO FOOD  
SOVEREIGNTY IN INDONESIA BASEN ON LAW NUMBER 18 OF  
2012 CONCERNING FOOD AND MASLAHAH MURSALAH**

Is truly writer's original work which be legally justified. If this thesis is  
proven result of duplication or plagiarism from another scientific work, it as  
precondition of degree will be stated legally invalid.

Malang, 30 May 2020



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**LEGITIMATION SHEET**

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Has been certified to pass the examination in front of examiners on Friday, 19<sup>th</sup> of June 2020.

Malang, 6<sup>th</sup> of August 2020  
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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillahirabbil'alamiin, have given His rahmat and servant, so we can finish this thesis entitled **“THE LEGAL ASPECTS OF IMPORTING RICE TO FOOD SOVEREIGNTY IN INDONESIA BASED ON LAW NUMBER 18 OF 2012 CONCERNING FOOD AND MASLAHAH MURSALAH”**. Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (*uswatun hasanah*) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. Amien.

From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will expresses the gratitude which is unequaled to:

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2. Dr. Saifullah, S. H., M. Hum, as the Dean of Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim Malang.
3. Dr, Fakhruddin, M. H.I., as the Head of Economic Sharia Law Department of The State Islamic University of Maulana Malik Ibrahim Malang.

4. Akhmad farroh Hasan., S. H., M. SI., as my thesis supervisor. The writer thanks for his spending time to guide, direct, and motivate to finish this thesis. The writer hopes that he and his family will be blessed by Allah.
5. All lecturers at Sharia Faculty of the State Islamic University of Maulana Malik Ibrahim Malang whose have learned us. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.
6. All staffs of Sharia Faculty of the State Islamic University of Maulana Malik Ibrahim Malang.

With the completion of this thesis report, we hope the knowledge that we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism and suggestions from all parties for future improvement efforts.

Malang, May 2020

Writer,



## TRANSLITERATION GUIDELINES

### A. General

Transliteration is the transfer of Arabic script into Indonesian (Latin) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic names from other nations besides Arabic are written as the spelling of the national language, or as written in the reference book. Writing the title of the book in the footnote and bibliography still uses the provisions of this transliteration.

There are many transliteration options and provisions that can be used in writing scientific papers, both of which have national, international standards, and specific provisions used by certain publishers. Transliteration used by the Sharia Faculty of the State Islamic University (UIN) Maulana Malik Ibrahim Malang uses EYD plus, namely transliteration based on the Minister of Religion Decree (SKB) and the Minister of Education and Culture of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543.b / U / 1987, as stated in the Arabic Transliteration Guidelines (A Guide Arabic Transliteration), INIS Fellow 1992.

### B. Consonants

ا = Not symbolized	ض = dl
ب = b	ط = th

ت = t	ظ = dh
ث = ts	ع = ‘ (comma facing up)
ج = j	غ = gh
ح = h	ف = f
خ = kh	ق = q
د = d	ك = k
ذ = dz	ل = l
ر = r	م = m
ز = z	ن = n
س = s	و = w
ش = sy	ه = h

ص = sh	ي = y
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Hamzah (ء) which is often symbolized by alif, if it is located at the beginning of a word then in transliteration it follows the vowel, not symbolized, but if it is located in the middle or end of a word, then it is symbolized by a comma above (‘), turning around with a comma (‘) for a replacement (ع).

### C. Vocal, Length dan Diftong

Every Arabic writing in Latin vocal fathah is written with "a" kasrah with "i", dhammah with "u", while each long reading is written in the following way:

Vocal (a) length = a for example قال becomes qala

Vocal (i) length = i for example قيل becomes qila

Vocal (u) length = u for example دون becomes duna

Specifically for reading yes' nisbat, it should not be replaced by "i", but it should still be written with "iy" in order to describe the yes' nisbat at the



end. Likewise for the diphthong, wawu and yes' after fathah is written with "aw" and "ay". Consider the following example:

Diftong (aw) = *قوله* for example *قول* becomes *qawla*

Diftong (ay) = *خير* for example *خير* becomes *khayrun*

#### D. Ta' marbutah (ة)

*Ta' marbutah* is transliterated with "t" if it is in the middle of a sentence, but if *ta' marbutah* is at the end of a sentence, it is transliterated using "h" for example *الرسالة للمدرسة* *al- risalat li al-mudarrisah*, , or if it is in the middle of a sentence consisting of "h" composition of *mudlaf* or *mudlaf ilayh*, then transliterated using t which is connected with the next sentence, for example *في رحمة الله* becomes *fi rahmatillah*.

#### E. Kata Sandang dan Lafdh al-Jalalah

The word clothing in the form of "al" (ال) is written in lowercase letters, unless it is located at the beginning of the sentence, while "al" in lafadh jalalah is in the middle of the sentence being propped up (idhafah) then eliminated. Consider the following examples:

1. Al-Iman al-Bukhariy said ...

2. Al-Bukhariy in the muqaddimah the book explains ...
3. *Masya 'Allah kay wa ma lam yasya' lam yakun.*
4. *Billah zza azza wa jalla.*

#### **F. Indonesianized Names and Words**

In principle, every word that comes from Arabic must be written using a transliteration system. If the word is an Arabic name from an Indonesian or an Indonesianized Arabic language, it does not need to be written using a transliteration system. Consider the following example:

"... Abdurrahman Wahid, the fourth former Indonesian President, and Amin Rais, the former chairman of the MPR at the same time had made an agreement to eliminate corruption, collusion and nepotism from the face of the Indonesian earth ..."

Note the writing of the name "Abdurrahman Wahid", "Amin Rais" written using Indonesian language writing procedures that are adjusted to the writing of his name. Even though these words come from Arabic, they are Indonesian and Indonesian names, therefore they were not written by "Abd al-Rahman Wahid" and "Amin Rais".

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## ABSTRAK

Nurul Nadia, NIM 16220156, 2016. *Aspek Hukum Impor Beras Terhadap Kedaulatan Pangan di Indonesia Berdasarkan Undang-Undang Nomor 18 Tahun 2012 tentang Pangan dan Masalah Mursalah*. Skripsi. Program Studi Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Akhmad Farroh Hasan, S. HI., M. SI.

*Kata Kunci: Impor beras; Kedaulatan Pangan; Masalah*

Kebijakan impor beras yang dikeluarkan oleh Menteri Perdagangan dengan pertimbangan kurangnya pasokan beras menjadi polemik karena kebijakan tersebut dikeluarkan sesaat sebelum musim panen tiba. Hal ini menimbulkan gejolak bagi masyarakat petani yang dirugikan atas kebijakan impor beras tersebut. Penelitian ini bertujuan untuk mengetahui bagaimana impor beras seharusnya dilakukan berdasarkan Undang-undang Nomor 18 Tahun 2012 tentang Pangan dan Masalah Mursalah terhadap pelaksanaan kedaulatan pangan di Indonesia.

Penelitian ini dilakukan menggunakan metode penelitian normative menggunakan studi kasus normative berupa produk perilaku hukum. Penelitian dilakukan dengan menggunakan pendekatan konseptual dan pendekatan peraturan perundang-undangan. Dalam penelitian ada 3 bahan hukum yang di gunakan yaitu: 1) Bahan hukum primer yaitu Undang-Undang Nomor 18 Tahun 2012 tentang Pangan, bahan hukum sekunde, 2) Bahan hukum sekunder yaitu literature yang mendukung berupa kaidah fihiyyah, masalah, kebijakan pemerintah dan peraturan ekspor impor beras, 3) Bahan hukum tersier yaitu berupa ensiklopedia. Teknik pengumpulan data yang digunakan dalam penelitian ini adalah studi kepustakaan.

Kebijakan impor beras yang dilakukan oleh pemerintah dinilai tidak sesuai dengan cita-cita kedaulatan pangan dan konsep masalah mursalah. Hal ini terjadi karena dalam pengambilan kebijakan tidak melihat pada keberlanjutan usaha petani dan mengabaikan kesejahteraannya. Impor beras menyebabkan kerugian bagi petani dan masyarakat pada umumnya. Selain itu impor beras yang dilakukan juga berdampak buruk bagi perekonomian negara.



## ABSTRACT

Nurul Nadia, NIM 16220156, 2016. *The Legal Aspects of Importing Rice to Food Sovereignty in Indonesia Based on Law Number 18 of 2012 concerning Food and Maslahah Mursalah*. Thesis. Sharia Economic Law Study Program, Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang. Advisor: Akhmad Farroh Hasan, S. HI., M. SI.

Keywords: Rice import; Food Sovereignty; Maslahah

The rice import policy that issued by the mininter of trade with the consideration of the lack of rice supply became polemic because the policy was issued just before the harvest season arrived. This caused turmoil for the farmers who were disadvantaged by the rice import policy. This study aims to determine how rice imports should be carried out based on Law Number 18 of 2012 concerning Food and *Maslahah Mursalah* to the implementation of food sovereignty in Indonesia.

This research was conducted using normative research methods using normative case studies in the form of legal behavior products. The study was conducted using a conceptual approach and the regulatory approach. In the study there are 3 legal materials used, namely: 1) Primary legal materials namely Law Number 18 of 2012 concerning Food, secondary legal materials, 2) Secondary legal materials namely literature that supports fiqhiyyah rules, maslahah, government policies and regulations rice import export, 3) Tertiary legal material in the form of encyclopedia. The data collection technique used in this research is literature study.

The rice import policy that carried out by the government is deemed incompatible with the ideals of food sovereignty and the concept of maslahah mursalah. This happened because the policy makers do not look at the sustainability of farmers' business and ignore their welfare. Rice imports cause losses for farmers and society in general. In addition, rice imports also have a negative impact on the country's economy.



## متخلص البحث

نورالنادية ، نمرة دفتر القيد : 162201566 ، 2016. الجوانب القانونية لاستيراد الأرز من السيادة الغذائية في إندونيسيا بناءً على القانون رقم 18 لعام 2012 بشأن الغذاء ومسلحة مرسله. البحث الجامعي . قسم القانون الاقتصادي الشرعي ، كلية الشريعة ، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف أحمد فروح حسن ، الماجستير .

الكلمات الرئيسية: استيراد الأرز، السيادة الغذائية ، المصلحة

تهدف هذا البحث العلم إلى تحديد سياسة في استيراد الأرز بناءً على القانون رقم 18 لسنة 2012 بشأن الغذاء و مصلحة المرسله بشأن تنفيذ السيادة الغذائية في إندونيسيا.

تم إجراء هذا البحث باستخدام طرق البحث المعياري دراسات الحالة المعيارية في شكل منتجات السلوك القانوني. ميسور هذا البحث العلم تستخدم النهج المفاهيمي والنهج التنظيمي. وهذا البحث هناك 3 مواد قانونية مستخدمة وهي: (1) المواد القانونية الأولية وهي القانون رقم 18 سنة 2012 بشأن الغذاء والمواد القانونية الثانوية (2) المواد القانونية الثانوية وهي المؤلفات التي تدعم قواعد الفقهية والمصلحة والسياسة الحكومة واللوائح الحكومية عن استيراد الأرز ، (3) المادة القانونية الثالثة في شكل الموسوعة. تقنية جمع البيانات المستخدمة في هذا البحث هي دراسة قائمة المرجع.

إن سياسة استيراد الأرز التي تتبعها الحكومة تعتبر غير متوافقة مع مُثل السيادة الغذائية ومفهوم مصلحة المرسله. هذا الحدث بسبب الإهمال في صنع السياسات التي تسبب في خسائر للمزارعين والمجتمع بشكل عام. بالإضافة إلى ذلك ، فإن استيراد الأرز تأثر تأثيراً سلبياً على اقتصاد هذا البلاد.

## CHAPTER I

### INTRODUCTION

#### A. Research Background

Indonesia is an agricultural country. This is seen from the vast agricultural land that available in Indonesia. It is undeniable that with the vast agricultural land that available in Indonesia, the majority of population of the Indonesian state works as farmers. Fertile land makes agricultural land in Indonesia can be planted with a variety of plants. There is even the term “*Gemah ripah loh jinawi*” which in Indonesia means “Abundant natural wealth”. This is a support to get the food needs of Indonesian people. The vast area of Indonesia with thousands islands makes this an internal problem in Indonesia. This is become a problem for the government and the Indonesian people because of the distance and the certain areas that need to be reached for food distribution.

Agricultural development to build food sovereignty becomes very important to be realized. This has become an important issue with developments that have taken place in this modern era. The development of food sovereignty is part of national development concept.<sup>1</sup>The development of food sovereignty is not marelly to get the food needs of the Indonesian

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<sup>1</sup> Triwibowo Yuwonodkk, *Pembangunan Pertanian Membangun Kedaulatan Pangan* (Yogyakarta: GadjahMada University Press, 2011), 3

people so that there is no hunger, malnutrition, and so on. This is the way how the Indonesia builds its identity and maintains its dignity. In addition, the Law Number 18 of 2012 concerning Food becomes the benchmark for the developments of food sovereignty. Laws on exports, imports, and trade have a close relationship in building food sovereignty. This can be used as a basis for the government to make policies as a form of improving the standard of living and the economy of the community.

Indonesia is a producer of abundant food. With this abundant food product, it is necessary to create legislation to ensure that the food product can be managed and used properly. This concerns the benefits and standard of living of the Indonesian people. With the recent phenomena of the community regarding abundant yields and food import policies, Indonesian farmers are loss. This needs to be reviewed in terms how the laws of exports and imports should be done. If these exports and imports activities are carried out improperly, it will be detrimental to many parties. Not only losses for farmers, but companies and even countries can suffer losses due to lack of supervision and lack of calculation in carrying out exports and imports activities.

In 2012 a new law concerning food was passed, namely Law Number 18 of 2012 concerning Food. The Law is a Law that has been revised from Law Number 7 of 1996 concerning Food. According to the Deputy Chairman of the Commission IV of the Republic of Indonesia House of Representatives,

Herman Khaeron, the revision of Law Number 7 of 1996 concerning Food was carried out because it was felt that the concept of food security was no longer in accordance with the needs of the community.<sup>2</sup> With the new concept of food sovereignty, this will be a challenge for the country to be able to implement the ideals of food sovereignty. In its implementation, Indonesia must be able to increase food productivity and manage it well so that the ideals of food sovereignty can be implemented properly.

Food sovereignty is very closely related to economic development. There will be no hunger or lack of food if the economy is good. To establish food sovereignty, the first thing to consider is agriculture. Because agriculture activities are the main activities that are very influential on food production. In this case to community and the government must work together in achieving a high productivity for better food yields.

Provisions on the export and import of rice are regulated in Minister of Trade Regulation Number 19/M-DAG/PER/3/2014.<sup>3</sup> In recent years, Indonesia has imported rice to meet the basic food needs. This becomes a polemic especially when the Ministry of Trade Decree on the addition of 500 thousand tons of rice imports in the Coordination Meeting at the Office of the

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<sup>2</sup> Kemenkumham, "DPR RI Akan Revisi UU Tentang Pangan", *Kemenkumham*, accessed on February, 28 2020, <http://ditjenpp.kemenkumham.go.id/berita-hukum-dan-perundang-undangan/1938-dpr-ri-akan-revisi-uu-tentang-pangan.html>

<sup>3</sup> Kementerian Perdagangan Republik Indonesia. "Hukum", *Kemendagri*, accessed on February, 28 2020 [http://inatrade.kemendag.go.id/index.php/perijinan/get\\_perijinan\\_detail/010023](http://inatrade.kemendag.go.id/index.php/perijinan/get_perijinan_detail/010023)

Coordinating Minister for the Economy in 2018.<sup>4</sup> The decision was considered not in line with Law Number 18 of 2012 concerning Food because in Article 36 paragraph 1 of the Law Number 18 of 2012 concerning Food states that “Importing food can only be carried out if domestic food production is inadequate and/or can not be produced domestically”.<sup>5</sup> Especially with abundant harvest and with a ministerial decree on the addition of rice imports resulting in losses of farmers. This was stated by agricultural observer of Institute for Development of Economics and Finance (INDEF) Bustanul Arifin that rice imports can have a negative impact on farmers by falling rice prices.<sup>6</sup> Rice imports that occur also become polemic when the Minister of Trade (Enggartiaso Lukita) in February 2018 decided to import rice because the price of rice continued to surge and the supply of rice began to decrease due to the rainy season which affected crop yields. While the Minister of Agricultural (Amran Nasution) stressed that there was no need to import rice because in February-April it was harvest time.<sup>7</sup> That was the polemic about importing food that happen in Indonesia because it will be impact to the economic of Indonesia.

<sup>4</sup> Inilahcom, “Impor Beras Melanggar UU Pangan, Buntutnya Panjang”, *Inilahcom*, May, 23 2018, accessed on February, 28 2020, <https://inilah.com/news/2457581/imp-or-beras-melanggar-uu-pangan-buntutnya-panjang>

<sup>5</sup> Article 26 Paragraph 1 Law Number 18 of 2012 concerning Food

<sup>6</sup> Shintaloka Pradita Sicca, “Dampak Impor Beras Terhadap Petani Lokal”, *Tirto.id*, January, 16 2018, accessed on April, 12 2020, <https://tirto.id/dampak-imp-or-beras-terhadap-petani-lokal-cDiW>

<sup>7</sup> Puti Aini Yasmin, “Mendag, Mentan dan Buwas Terlibat Polemik Impor Beras,” *detikFinance*, October, 22 2018, accessed on April, 12 2020 <https://m.detik.com/finance/berita-ekonomi-bisnis/d-4268053/mendag-mentan-dan-buwas-terlibat-polemik-imp-or-beras>



In connection with food sovereignty which is very influential on the economy, one of the principles of Islamic economics is *al-hurriyyah* which means freedom, in which a person is given freedom by God to seek wealth and meet his needs.<sup>8</sup> Islamic law itself is formed from several sources. The source of legal laws in Islam comes from the commands and prohibitions of Allah SWT. This does not need to be a debate because only God is able to control what he wants. The principles and legal principles are sourced from the Quran which was later revealed to the Prophet Muhammad.<sup>9</sup> Al-Quran guarantees for human freedom that contains benefit, glory and human interests as well as guard against arbitrariness and arrogance towards others.<sup>10</sup> Al-Quran and other sources of law become human limitations in behavior.

The system of government that is commonly known as the *khalifah* explores the laws that are applied from *Illahi* sources. This basically explores the best law to implement in running the government. Good government policy if it has reached the level of the problem *masalahah mursalah*. According to Arabic linguists, *masalahah mursalah* is every action that can

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<sup>8</sup> Muhammad Sharif Chaudry, *Fundamental of Islamic Economic System*, terj. Suherman Rosyidi, (Jakarta: Kencana, 2012), 44

<sup>9</sup> Mustofadan Abdul Wahid, *Hukum Islam Kontemporer* (Jakarta: SinarGrafika, 2009), 9

<sup>10</sup> WahbahAz-Zuhaili, *Fiqih Islam waAdillatuhu* (Jakarta: GemaInsani, 2011), 267



bring benefits to humans.<sup>11</sup> This includes the whole, not only for certain individuals or groups.

The law was inherent in man before he was born.<sup>12</sup> When humans live in society, their lives are controlled by the laws inherent in themselves so that they can live well as social beings. When viewed from the side of Indonesia as the majority country is Muslim, Islam as a perfect religion has a concept and vision in realizing food sovereignty.

In Article 39 of Law Number 18 Year 2012 concerning Food, it is stated that "The government sets policies and regulations on food imports that do not have a negative impact on the sustainability of farming, increased production, welfare of farmers, fishermen, fish breeders, and micro and small food businesses".<sup>13</sup> With the problems regarding the policy of importing rice, the author needs to examine the "The Legal Aspects of Importing Food to Food Sovereignty in Indonesia Based on Law Number 18 of 2012 concerning Food and Masalah Mursalah".

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<sup>11</sup> Amin Farih, *Kemaslahatan dan Pembaharuan Hukum Islam* (Semarang: WaliSongo Press, 2008), 17

<sup>12</sup> Amin. *Islamic Law and Its Implications for Modern World* (London: Billing & Sons Ltd, 1989), 12

<sup>13</sup> Article 39 Law Number 18 of 2012 Concerning Food

## **B. Statements of Problem**

Based on the background described above, the statements of problem can be made to address the issues regarding food sovereignty in Indonesia as follows:

- a. What is the legal aspects of importing food regarding the implementation of food sovereignty in Indonesia based on Law Number 18 of 2012 concerning Food and Maslahah Mursalah?
- b. What is the impact of importing food policy on the implementation of food sovereignty in Indonesia?

## **C. Objective of Research**

- a. To find out the legal aspects of importing food in food sovereignty in Indonesia based on existing laws in Indonesia. This relates to the implementation of the goal of food sovereignty towards a more advanced Indonesia with sufficient food needs for the people of Indonesia.
- b. To find out the implementation of food sovereignty in Indonesia according to Islamic law, namely *maslahah mursalah*.

## **D. Benefits of Research**

The results obtained from this research are expected to provide benefits for many parties. The author hopes the results of this study can

contribute to the development of science in the field of law. The benefits of this research are as follows:

### **1. The Theoretical Benefits**

Theoretically, this research is useful in adding insight to food issues in Indonesia. With the implementation of food sovereignty which becomes the country's ideals and legislation that has been formulated, can provide benefits in the development and improvement of legal science as follows:

- a. As a preliminary research material for further research with scientific developments in the same field.
- b. As a contribution to the development of science in the field of law that focuses on food sovereignty in Indonesia based on laws and Islamic law.
- c. Can be used as a reference for legal analysis related to food sovereignty in Indonesia.
- d. Adding and expanding insights on the legal aspects of rice import in the implementation of food sovereignty and its legislation.
- e. Knowing how importing food policies are regulated in Islamic law.

### **2. The Practical Benefits**

In addition to theoretical benefits, practical benefits are expected to provide benefits to related parties, including:

- a. For the society

1. Providing the knowledge to the farming community regarding the legal aspects of rice import in the implementation of food sovereignty that should be carried out in Indonesia in accordance with regulations and legislation.
  2. Providing the understanding for the community related to food sovereignty.
  3. Providing the understanding for the farming community that is directly related to provide food sources for the community.
  4. Providing the insight for the community to manage food availability in accordance with existing natural resources.
  5. Providing the understanding for the community about the importance of food management which is basic need.
- b. For the government
1. Providing an overview of the government's limitations in making rice import policies relating to the community's food needs.
  2. Providing an overview of issues related to rice imports in the implementation of food sovereignty in Indonesia.
  3. It is hoped that the government will be able to pay more attention to food problems in Indonesia and their management.

## E. Operational Definition

To facilitate understanding in this research, it is necessary to explain some definitions and the purpose of the words that will be discussed in this study, namely as follows:

1. Food is anything originating from biological sources of agricultural products, plantations, forestry, fisheries, livestock, waters, and water, whether processed or not processed that is not intended as food or drink for human consumption, including food additives, materials food standards, and other materials used in the preparation, processing and / or manufacturing of food or beverages.<sup>14</sup>
2. Food sovereignty is the right of the state and nation to independently determine food policies that guarantee food rights for the people and that provide the right for the community to determine food systems that are in line with local resource potential.<sup>15</sup>
3. Food import is the activity of entering food from the customs territory of the Republic of Indonesia which includes land, water and air space above it, certain places in the Exclusive Economic Zone, and continental shelf.<sup>16</sup>

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<sup>14</sup> Article 1 Paragraph 1 Law Number 18 of 2012 Concerning Food

<sup>15</sup> Article 1 number 2 Law Number 18 of 2012 Concerning Food

<sup>16</sup> Article 1 number 25 Law Number 18 of 2012 Concerning Food



4. Legislation is a written regulation that contains generally binding legal norms and is established or established by a state institution or authorized official through the procedures set out in a statutory regulation.<sup>17</sup>
5. MaslahahMursalah is establishing the law in matters that are not mentioned in the Qur'an or the Sunnah with consideration for the benefit or interest of human life based on the principle of attracting benefits and avoiding damage.<sup>18</sup>

#### **F. Method of Research**

In research, principally can not be separated from how to study, research and carry out an activity systematically. A research requires procedures for working well and systematically so that the data obtained and collected in accordance with research objectives and how to work scientifically called the Reserch Method.<sup>19</sup> The research method consists of:

##### **1. Type of Research**

Normative law research uses normative case studies in the form of legal behavior products, for example studying the law. The subject of the study is the law which is conceptualized as a norm or rule that applies in society and serves as a reference for everyone's behavior. So that

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<sup>17</sup> Article 1 number 2 Law on Amendments to Law Number 12 of 2011 Concerning the Formation of Legislation

<sup>18</sup> Amin Farih. *Kemaslahatan dan Pembaharuan Hukum Islam*, 17.

<sup>19</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 2006), 34



normative legal research focuses on positive law, principles, legal doctrine, legal discovery in concreto, systematic law, the degree of synchronization, legal comparison, and legal history.<sup>20</sup> Based on the explanation above, the author decides to use the normative legal research method to examine and write this thesis material as a legal research method. The use of normative research methods in the effort to research the title and thesis writing is based on the suitability of the theory with the research methods needed by the author.

In this research, the author uses qualitative methods that produce descriptive data in the form of written words that are not stated in variables or hypotheses.<sup>21</sup> The author takes the main data from legal sources that are used as research objects, texts, expert views and other literacies. From the legal materials used, the authors analyze and compare with the problems that are used as research objects.

## 2. Research Approach

In legal research there are several approaches, with these approaches researchers will get information from various aspects of the issue being tried to find the answer. The method of approach in this

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<sup>20</sup> Abdul kadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: PT. Citra AdityaBakti, 2004), 52

<sup>21</sup> Johany Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2010), 65

research is the conceptual approach (conceptual approach) and the regulatory approach (statue approach).<sup>22</sup> In a conceptual approach, the writer must move on from the views and doctrines that have developed in law and religious studies.<sup>23</sup>

This study uses a statutory approach (statue approach). This approach examines all laws and regulations relating to the legal issues being studied.<sup>24</sup> In addition, the authors use the approach of Islamic law to compare a law with Islamic law itself. A normative research of course must use a legislation approach, because what will be examined is a variety of legal rules that are the focus as well as the central theme of a study.

### 3. Law Material

In this study, data than can be used is data that obtained information that has been written and in the from of documents.<sup>25</sup> This normative research uses primary, secondary and tertiary legal materials.

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<sup>22</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2008), 29

<sup>23</sup> Tim Penyusun Pedoman Penulisan Karya Ilmiah Fakultas Syariah, *Pedoman Penulisan Karya Ilmiah Fakultas Syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang*, 2015, 40

<sup>24</sup> *Pedoman Penulisan Karya Ilmiah Fakultas Syariah Universitas Islam NegeriMaulana Malik Ibrahim Malang*, 2015, 20

<sup>25</sup> *Pedoman Penulisan Karya Ilmiah Fakultas Syariah Universitas Islam NegeriMaulana Malik Ibrahim Malang*, 2015, 40-41

- a. Primary legal material, all legal material have a legal binding position. Primary legal material consists of legislation that related to the research. That is the Law Number 18 of 2012 concerning Food.
- b. Secondary legal material, which is the form of material or material that related and explains the probes of primary legal material consisting of books and literature that related to legal aspects of importing food and food sovereignty in particular. Among other things, the literature on *qaidah fihiyyah* rules, problems, government policies, and food export and import regulations.
- c. Tertiary legal materials, namely legal material that provide guidance and clarity primary and secondary legal materials. Tertiary legal materials can be obtained from dictionaries, encyclopedias, and indexes.<sup>26</sup>

#### 4. Law Material Collection

Legal materials are collected through inventory procedures and identification of laws and regulations, as well as classification and systematization of legal materials in accordance with the research problem. Therefore, the data collection technique used in this research is literature study. Literature study is carried out by reading, studying,

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<sup>26</sup> Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: SinarGrafika, 2008), 24

recording, and making reviews of library materials that are related to the legal aspects of food import and food sovereignty.

## 5. Analysis of Law

- a. Examining of data (editing), which is to re-examine the data obtained to find out whether the data is good enough or not enough to continue research.<sup>27</sup> This data checking is the initial stage carried out to process data. Researchers corrected data relating to food sovereignty by correlating according to Islamic law.
- b. Classification (Classifying), which is grouping data that has been obtained to facilitate processing data. Data grouping is done by grouping data regarding the legal aspects of food sovereignty with related laws and regulations. This classification is important to facilitate researchers in formulating the discussion. Moreover, it can facilitate the reader in understanding the contents of the discussion.
- c. Verification, namely reviewing all data obtained from various sources. Among the results of official documents such as Islamic law books, Law Number 18 of 2012 concerning Food, books, and the internet.

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<sup>27</sup> Koentjaraningrat, *Metode-Metode Penelitian Masyarakat*, (Jakarta: Gramedia, 1994), 270

- d. Analysis, namely the process of compiling data so that the data can be interpreted. Data is worked out and utilized in such a way that the truths are concluded to answer the problems raised in the study.<sup>28</sup>
- e. Conclusion, after doing some of the processes and stages above, the final step taken is to draw conclusions. Taking conclusions from the data that has been obtained is intended to get a clear and easy to understand answer so that the reader will get an answer to the problem presented in the problem formulation.<sup>29</sup>

#### **G. Previous Researches**

Previous research is research that has been done before. Previous research is very important to be used as a reference for research that is currently done by looking at the differences and similarities of research objects. Differences and similarities can be seen in terms of the theory used, the concepts used in solving problems and the results of research. So far a title similar to this research has not been found either at the State Islamic University of Maulana Malik Ibrahim Malang or in other Universities. However, it can be found similarities from previous studies with research that is currently carried out which is only about the object of research regarding

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<sup>28</sup> Koentjaraningrat, *Metode-Metode Penelitian Masyarakat*, 269

<sup>29</sup> *Pedoman Penulisan Karya Ilmiah Fakultas Syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang*, 2015, 29



the legal aspects of rice import in the implementation of food sovereignty in Indonesia.

Previous research is important to be used to make it easier for readers and subsequent researchers to compare and assess similarities and differences from research conducted with the same scope of objects. Previous studies relating to the research object are:

1. The first research was written by Muhammad Fikri Alan, Master of Law, Gadjah Mada University. The study was conducted in 2019 with the title "Import Rice Policy in Indonesia". In this study, researchers conducted empirical juridical research with the aim of finding facts that were passed on by finding problems to identify problems and finally by finding solutions to problems. This research focuses on the problem of importing rice policy conducted by the Indonesian government.

The results of this research are that there are many factors that cause importing rice policies which violate national laws and regulations on Indonesian food and there is an asymmetric information on the results of rice production in Indonesia.<sup>30</sup> This caused the rice import policy undertaken by the Indonesian government to have a negative impact on society.

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<sup>30</sup> Muhammad Fikri Alan, "Kebijakan Impor Beras di Indonesia," *Jurnal Yuridis*, 1 (Juni, 2019), 42-43.



2. The second research was written by Muhammad Jundi Fauzan from the Sharia Economics Study Program, Faculty of Economics and Islamic Business, Sunan Kalijaga State Islamic University, Yogyakarta in 2017, with the title of his thesis "Analysis of Factors Affecting Rice Food Security in West Java Province". In his research, researchers used empirical legal research (Field Research), namely research carried out intensively by exploring the problems in detail about the problems that become a factor of rice food security in West Java. Research conducted is empirical / sociological, namely analyzing social factors that apply.

The results obtained from the study include:<sup>31</sup>

1. The population does not significantly influence rice food security.
2. Total population poverty affects rice food security.
3. The number of industries that rise will affect the increase in rice food security and vice versa.
4. Local Own Revenue (PAD) affects the increase and decrease in rice food security, although not significantly.

The equation contained in this research is about the object of research on food where food security will greatly affect food sovereignty. The differences is in the type of research that is empirical research which uses an empirical / sociological approach with only a focus on the problems in

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<sup>31</sup> Muhammad Jundi Fauzan, *Analisis Faktor-Faktor yang Mempengaruhi Ketahanan Pangan Padi di Provinsi Jawa Barat*, Skripsi, (Yogyakarta, UIN Yogyakarta, 2017)

West Java regarding rice food security. This research only discusses the factors of rice food security by analyzing the prevailing events in West Java by gathering existing data.

3. The third research was conducted by Syahyuti, Sunarsih, Sri Wahyuni, Wahyuning K, Sejati, and Miftahul Aziz. The research team from the Center for Socio Economic and Agricultural Policy, Bogor, with the title "Food Sovereignty as a Base for Achieving National Food Security". Research in the form of an approved journal was published in 2015. Research conducted using normative research, the law was identified as a norm of regulation or law. This research focuses on the development of food sovereignty starting from history until its development after the reform by discussing food sovereignty related to government policy. The law that is used as a reference in this study is the Law of the Republic of Indonesia Number 18 of 2012 concerning Food.

The conclusions of this study are:<sup>32</sup>

1. Food sovereignty is a national development goal as the main strategy.
2. The concept of international food sovereignty, and the Food Law have the same alignment.

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<sup>32</sup> Syahyuti, dkk, "Kedaulatan Pangan Sebagai Basis Untuk Mewujudkan Ketahanan Pangan Nasional," *Forum Penelitian Agro Ekonomi*, 2 (Desember, 2015), 1.

3. It is necessary to update the idea of the concept of food sovereignty because scientific developments are increasingly developing in the current era.
4. Sovereignty can be measured at different levels, namely, individual, community, regional and national territory.

The equations of this research is about the type of research that is normative. In addition, the object under study also has in common namely regarding food sovereignty. The law used as a reference for this research also has in common the Law of the Republic of Indonesia Number 18 of 2012 concerning Food.

The differences from this research is that the research focuses on the development of food sovereignty from time to time. In addition, the differences regarding agricultural development are the focus of research. In this study, government policies regarding rice or food imports were not discussed.

4. The fourth research, conducted by Achmad Suryana and Munawar Khalil from the Center for Socio Economic and Agricultural Policy, Bogor and the Food Security Agency, Ministry of Agriculture, South Jakarta, which was approved was published in 2017. The research was in the form of a journal entitled "Process and Dynamics of Law Drafting Law Number 18

Year 2012 Regarding Food ". This type of research is normative research with the Act Approach (Statue Approach). This research focuses on the process and the development in the preparation of the food law because the previous existing law is considered to be unable to sustain the development and problems of food in Indonesia.

The conclusions of this research is:

Law Number 18 of 2012 concerning Food is a document governing the direction and policies of national food operations. To achieve sustainable national food security, food development must be carried out on the basis of food sovereignty and food independence.<sup>33</sup>

The equation of this study is found in the type of research, namely normative research. The law used in this study is also the same as the research to be conducted, namely Law Number 18 of 2012 concerning Food.

The difference from this research is to focus on the object of research. This research focuses on the process and dynamics of the establishment of the Food Law which has undergone development and revision of the Law that was before it was passed.

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<sup>33</sup> Achmad Suryana, Munawar Khalil, "Proses dan Dinamika Penyusunan Undang-Undang Nomor 18 Tahun 2012 Tentang Pangan," *Forum Penelitian Agro Ekonomi*, 1 (Juli, 2017), 1

Number	Name, Institution, Year of Research	The Equations	The Differences	The Researches Results
1	-Muhammad Fikri Alan -The Master of Law in GadjahMada University -The Importing Rice Policy in Indonesia -2019	-The kind of research -The object of research (importing rice) -Law Number 18 of 2012 concerning Food became a reference in conducting research.	-The research didn't discuss about Islamic law.	-There are many factors that cause rice import policies which violate national laws and regulations on Indonesian food. -There is an asymmetric information on the results of rice production in Indonesia.
2	-Muhammad JundiFauzan -State Islamic University of Yogyakarta -The Analysis of Factors Affecting Rice Food Security in West Java -2017	-The object of research on food security is related to food sovereignty.	-The kind of research is empirical research and focus on the factors that influence the food security.	-The population does not significantly influence rice food security. -Total population poverty affects rice food security. -The number of industries that rise will affect the increase in rice food security and vice versa. -Local Own Revenue (PAD) affects the increase and decrease in rice food security,



				although not significantly.
3	<p>-Syahyuti, Sunarsih, Sri Wahyuni, Wahyuning K, Sejati, and Miftahul Aziz</p> <p>-Social Economic Center and Agriculture Policy, Bogor</p> <p>-Food Sovereignty As a Basis For Realizing National Food Security -2015</p>	<p>-The kind of research that used is normative.</p> <p>-The object of research is about food sovereignty.</p>	<p>-The research focus on food sovereignty development and agriculture development.</p>	<p>-Food sovereignty is a national development goal as the main strategy.</p> <p>-The concept of international food sovereignty, and the Food Law have the same alignment.</p> <p>-It is necessary to update the idea of the concept of food sovereignty because scientific developments are increasingly developing in the current era.</p> <p>-Sovereignty can be measured at different levels, namely, individual, community, regional and national territory.</p>
4	<p>-Achmad Suryana and Munawar Khalil</p> <p>-Social Economic</p>	<p>-The kind of research is normative.</p>	<p>-The research focus on the process and dynamics of food law</p>	<p>-Law Number 18 of 2012 concerning Food is a document governing the</p>

	Center and Agriculture Policy, Bogor and Food Security Agency, Ministry of Agriculture, South Jakarta -The Process and Dynamics of Drafting the Law Number 18 of 2012 concerning Food -2017		formation.	direction and policies of national food operations. To achieve sustainable national food security, food development must be carried out on the basis of food sovereignty and food independence.
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## H. Structure of Discussion

To facilitate the reader in understanding the contents of the research, the authors compose a systematic writing as follows:

CHAPTER I: Introduction, this chapter is the main point in research that includes research background, statements of problem, objectives of research, benefits of research, operational definitions, research methods, previous research, and structure of discussion.

CHAPTER II: Literature Review, this chapter explains a number of things related to the title of the research which will be used as a study or reference of theories and concepts for analyzing problems. In the literature review

discusses the laws and Islamic laws relating to the legal aspects of food sovereignty.

CHAPTER III: Discussion of Research Findings, this chapter will present the results and discussion with an explanation that is easy to understand for researchers and readers.

CHAPTER IV: Concluding remarks, this chapter presents conclusions and recommendations. Closing consists of conclusions as a whole and suggestions in this study. The conclusions presented include a brief summary of important points in the study. This suggestion is a suggestion or constructive criticism for related parties who have similarities in the theme of research objects for scientific benefit and support.

## CHAPTER II

### LITERATURE REVIEW

#### A. Food Sovereignty

The basic problem for the Indonesian people and other nations of the world is food. This will determine the fate of a nation. The independence of the nation and people who are bound by a group makes food dependence on the group. This has an impact on the economy of a nation. The World Food Summit (WFS) held in Rome, Italy in November 1996 introduced all humanity about the concept of food sovereignty.<sup>34</sup> During the meeting, the concept of food sovereignty was put forward by La ViaCampesina (an international peasant struggle organization) as an Indonesian Peasant Union (SPI) organization at the international level.

Food sovereignty is a concept of fulfilling food through local production. The concept that can be applied is fulfilling the right to food with good nutrition that is culturally appropriate and produced with an environmentally friendly and sustainable agricultural system. In a sense, food sovereignty upholds the principles of culture in fulfilling food for the community. Food sovereignty is also giving people the right to determine

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<sup>34</sup> Serikat Petani Indonesia, “Kedaulatan Pangan”, *Serikat Petani Indonesia (SPI)*, accessed on January, 27 2020, <https://spi.or.id/isu-utama/kedaulatan-pangan/>

and run their own farming systems and food systems. In determining the system, it is based on solidarity and kinship.

Food sovereignty is the right of every nation and every people to produce food independently and the right to establish a system of agriculture, animal husbandry, and fisheries without the subordination of international market forces. The prerequisites for upholding food sovereignty include:<sup>35</sup>

1. Agrarian reform.
2. The right of the people to access food.
3. The use of natural resources is carried out sustainably.
4. The food is used properly, not only as an object of trade.
5. Corporations are given restrictions in controlling food.
6. Prohibition to use food as a weapon.
7. Small farmers are given access to formulate agricultural policies.

Indonesia has many concepts and strategies to reach food sovereignty. There are several references that can be used as references as knowledge in interpreting food sovereignty. Existing references compiled by year are issued to determine the dynamics and development of food sovereignty.

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<sup>35</sup> Serikat Petani Indonesia, “Kedaulatan Pangan”, *Serikat Petani Indonesia (SPI)*, accessed on January, 27 2020, <https://spi.or.id/isu-utama/kedaulatan-pangan/>



The first reference is the Republic of Indonesia Law Number 18 of 2012 concerning Food. Article one explains that food sovereignty is the right of the state and nation that independently determines food policies that guarantee the right to food for the people and which gives the community the right to determine the food system in accordance with local resources.<sup>36</sup> In this article, it is seen that there are two interrelated parties, namely, a state that independently determines food policies for the people and guarantees them, second, that is, the people who are also entitled to determine the food system in accordance with local resources. If seen from line by line of the article in the food law, eight words "food sovereignty" will be found in the Body and three times in the Explanation Section. Of all the words "food sovereignty" always appears together with the words "food security" and "food independence". This can be interpreted that in achieving food security, food sovereignty must be implemented first.

The second reference is the document "Nawacita" which is a vision, mission and action program with the title "Path of Change for a Sovereign, Independent and Personality" presented by President JokoWidodo during the May 2014 presidential election campaign. The Nawacita document outlines the concept and food sovereignty strategies

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<sup>36</sup> Article 1 Law Number 18 of 2012 Concerning Food

with thinking developed at the international level. The concepts and strategies in implementing food sovereignty include:<sup>37</sup>

1. Building food sovereignty based on community agribusiness.
2. Stop importing food specifically for rice, corn and beef.
3. Stop importing food specifically for soybean, shallot and red chili commodities.
4. Agrarian reform.
5. Poverty alleviation and farmer regeneration.

The third reference is the 2015-2019 Medium Term Development Work Plan document. This document contains a strategy for food security components written in Nawacita especially in the chapter on Strengthening Food Sovereignty. The increase in key commodities is the development target mentioned in food sovereignty. Strategies for realizing food that are written in the 2015-2019 Medium-term Development Work Plan document are:<sup>38</sup>

1. The rice production surplus will be increased by directing rice production.
2. Corn is focused on local food and food diversity.

<sup>37</sup> Jokowi, Jusuf Kalla, *Jalan Perubahan Untuk Indonesia yang Berdaulat, Mandiri dan Berkepribadian*, (Jakarta: 2014) 33.

<sup>38</sup> Syahyuti, dkk, "Kedaulatan Pangan Sebagai Basis Untuk Mewujudkan Ketahanan Pangan Nasional," *Forum Penelitian Agro Ekonomi*, 2 (Desember, 2015), 7.

3. Soybean is focused on securing the needs of craftsmen, tofu and tempeh production needs.
4. Sugar, salt and beef are focused on meeting household household needs.

The fourth reference is the 2015-2045 Agricultural Development Master Strategy document in the form of sustainable Agriculture-Bioindustry. The development targets in this document mention targets to realize national food self-sufficiency no later than 2020, national food sovereignty no later than 2025, and community food sovereignty no later than 2045.<sup>39</sup> In this document the meaning of food sovereignty is in line with food security. Can be seen from the sentence characteristic of the manifestation of independence and food sovereignty, namely the realization of independent agriculture. Food self-reliant countries and nations are countries and nations that are capable of producing domestic food diversity and can guarantee the fulfillment of food needs through the use of potential natural resources, the economy, social and local wisdom with dignity. Independent farmers can be seen from the ability to develop their agriculture with the ability of the farmers themselves.

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<sup>39</sup> Kementerian Pertanian, *Pertanian-Bioindustri Berkelanjutan Solusi Pembangunan Indonesia Masa Depan* (Jakarta: Biro Perencanaan, 2014), 96-97

The fifth reference is the Ministry of Agriculture Work Plan document. During the Agricultural Development Planning Conference held in Jakarta on May 13, 2014 the agricultural development documents and policies and programs for 2015-2019 were submitted that there were a number of records for food security, but there were no records for food independence and food sovereignty.<sup>40</sup> The strategic target in agricultural development in 2015-2019 states that increasing food security by providing staples and increasing staple food and improving farmers' welfare and providing protection and empowerment of farmers. In this case food sovereignty has not received attention and the explanation has not been clearly explained.

From some of the concepts and strategies of food sovereignty, there are several strategies for implementing food sovereignty by stopping doing food import activities and increasing the production of staple food. In this case the welfare of the farming community which has a large share in producing food depends on government policy. Government policy is a decision made systematically by the government with specific aims and objectives concerning the public interest.<sup>41</sup> The government has the authority to form a policy including a food import policy. The food import

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<sup>40</sup> Syahyuti, dkk, "Kedaulatan Pangan Sebagai Basis Untuk Mewujudkan Ketahanan Pangan Nasional," *Forum Penelitian Agro Ekonomi*, 2 (Desember, 2015), 8.

<sup>41</sup> Duniapcoid, "Tujuan Kebijakan Pemerintah," *duniapendidikan*, accessed on February, 15 2020, <https://duniapendidikan.co.id/tujuan-kebijakan/>

policy implemented by the government will have a major impact on community agricultural activities. Because this will affect the price of the harvest and the distribution of the harvest from farmers.

God has created everything in the world and the universe. Everything that has been created by Allah is solely for the benefit of His servants. All human needs have been provided by God and only how humans manage what is given by God. Animals, plants, water, minerals, air, rivers, mountains, seas, land and everything in this world are all created solely to serve human needs. Many benefits lie within the components of God's creation, one of which is economic benefits to meet needs. Allah says in the Qur'an Surah an-Nahl verses 10-16 as follows.<sup>42</sup>

هُوَ الَّذِي أَنْزَلَ مِنَ السَّمَاءِ مَاءً لَكُمْ مِنْهُ شَرَابٌ وَمِنْهُ شَجَرٌ فِيهِ تُسِيمُونَ - يُنبِتُ لَكُمْ بِهِ الزَّرْعَ وَالزَّيْتُونَ وَالنَّخِيلَ وَالْأَعْنَابَ وَمِنْ كُلِّ الثَّمَرَاتِ , إِنَّ فِي ذَلِكَ لَآيَةً لِقَوْمٍ يَتَفَكَّرُونَ- وَسَخَّرَ لَكُمْ الَّيْلَ وَالنَّهَارَ وَالشَّمْسَ وَالْقَمَرَ, وَالتُّجُومَ مُسَخَّرَاتٍ بِأَمْرِهِ , إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَعْقِلُونَ- وَمَادَرَا لَكُمْ فِي الْأَرْضِ مُخْتَلِفًا أَلْوَانُهُ, إِنَّ فِي ذَلِكَ لَآيَةً لِقَوْمٍ يَذَّكَّرُونَ- وَهُوَ الَّذِي سَخَّرَ الْبَحْرَ لِتَأْكُلُوا مِنْهُ لَحْمًا طَرِيًّا وَتَسْتَخْرِجُوا مِنْهُ حَبْلَةً تَلْبَسُونَهَا وَتَرَى الْفُلْكَ مَوَاحِرَ فِيهِ وَلِتَبْتَغُوا مِنْ فَضْلِهِ وَلِعَلَّكُمْ تَشْكُرُونَ- وَالْقَى فِي الْأَرْضِ

<sup>42</sup> Q. S an-Nahl (16): 10-16



رَوَّاسِيَ أَنْ تَمِيدَ بِكُمْ وَأَنْهَارًا وَ سُبُلًا لَعَلَّكُمْ تَهْتَدُونَ - وَعَلَامَاتٍ وَ بِالنَّجْمِ هُمْ يَهْتَدُونَ -

**Meaning:**

*He is the one who has brought down rain from the sky for you, part of it is a drink and partly (fertilizes) plants, in which (where you grow) you feed your cattle. He brings forth rain for you with olive plants, dates. Grapes and all kinds of fruit. Verily in that there truly is a sign (the power of God) for those who think. And He subdues night and day, sun and moon for you. And the stars are subdued (for you) by His command. Surely in that there really are signs (the power of God) for people who understand (Him). And He (subdued too) what He created for you on this Earth with different kinds. Surely in that there really is sign (the power of God) for people who take lessons. And (He) Allah has subdued the sea (for you), so that you may eat from it fresh meat (fish). And you bring out of that sea the jewelery that you wearing and you see the ark sailing on it, and that you seek (profit) from the gift Him, and that you may be grateful. He planted mountains in the earth so that the earth does not shake with you, (and He created) rivers and roads so that you can be guided, and (He created) signs. And with those stars they got a clue. (an-Nahl: 10-16).<sup>43</sup>*

Food sovereignty is related to the country's economic development. In Islam also teaches how to develop the economy with existing principles. The principle of freedom, in Arabic, freedom is referred to as *al-Hurriyah*, namely that a person is given freedom by God to seek wealth and meet his needs.<sup>44</sup> Freedom includes the right for a servant to carry out his life. However, this freedom has restrictions so that the actions carried out do not violate Islamic law. Freedom given by God will result in a person having responsibilities within himself. Allah will love His servants who strive in the path of Allah with all their abilities.

<sup>43</sup> Departemen Agama RI, Mushaf *al-Qur'an dan Terjemahnya*, (Jakarta: Al- Huda, 2002), 269-270.

<sup>44</sup> Muhammad Sharif Chaudhry, *Fundamental of Islamic Economic System*, terj.Suherman Rosyidi, 44

## B. *Maslahah*

According to the language, the word *Maslahah* comes from Arabic which means to bring good or bring benefit and / or reject damage.<sup>45</sup> While the word *mursalah* according to its meaning is free, not bound by the propositions of the religion of al-quran and al-hadith which allow or forbid it.<sup>46</sup> From the meaning of the problem and the problem, it can be concluded that the meaning of the problem is to establish a law that is not regulated in the *Qur'an* and *Sunnah* by considering everything to achieve the interests and benefits of human life by avoiding damage.

*Al-Maslahah* as the legal proposition implies that *al-maslahah* is the basis and yardstick for determining a law.<sup>47</sup> In other words a law of a problem determined must be considered in such a way as to achieve a benefit.

The foundation of the law of the *maslahah* is found in several verses of the *Qur'an* and the *Hadith* as follows:<sup>48</sup>

يَا أَيُّهَا النَّاسُ قَدْ جَاءَكُمْ مَوْعِظَةٌ مِنْ رَبِّكُمْ وَ شِفَاءٌ لِمَا فِي الصُّدُورِ وَ هُدًى وَ  
رَحْمَةٌ لِّلْمُؤْمِنِينَ

<sup>45</sup> Wahbah al-Zuhayli, *Ushul al-Fiqh al-IslamiJuz II*, (Damaskus: Dar al-Fikr, 1996), 1037-1038

<sup>46</sup> Badr al-Din Muhammad Bahadir bin ‘Abd Allah al-Zarkasyi, *Al-Bahr al-Muhith fi Ushul al-FiqhJuz IV*, (Beirut: Dar al-Kutub al-Ilmiyah, 2000), 488

<sup>47</sup> Abd. Rahman Dahlan, *UshulFiqh*, (Jakarta: Amzah, 2010), 206

<sup>48</sup> Q. S Yunus (10): 57

Meaning:

"O people, verily have come to you a lesson from your Lord and healer of diseases that are in the chest and guidance and mercy for those who believe".<sup>49</sup>

حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ ، أَنْبَأَنَا عَنْ جَابِرِ الْجُعْفِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا ضَرَرَ وَلَا ضِرَارَ (ابن ماجه)

Meaning:

"Muhammad Ibn Yahya has told us, that Abdur Razzaq told us, from Jabir al-Juffiyyi from Ikrimah, from Ibn Abbas: Rasullullah peace be upon him said:" It is not permissible to make mudharat (danger) to him and may not make mudharat to other". (Narrated by Ibnu Majah).

On the basis of *Quran* and *Sunnah* above, according to Shaykh Izuddin bin Abdu al-Salam in his book *Qawa'id al-Ahkam fi Mashalih al-Anam* said that the problem of *maslahah mursalah* returned to the two main rules namely:<sup>50</sup>

1. دَرْءُ الْمَفَاسِدِ

Meaning: Rejecting everything that is broken

2. جَلْبُ الْمَصَالِحِ

Meaning: Attracting everything that is good

<sup>49</sup> Departemen Agama RI, *Mushaf al-Quran dan Terjemahnya*, 216.

<sup>50</sup> Djazuli, *Kaidah-Kaidah Fikih*, (Jakarta: Kencana, 2006), 27

What humans do in the world contains *maslahah* and *mafsadah*. However, Islamic law forbids acts of *mafsadah* or damage in any form and ordered benefit for life. Because every benefit has its own level of usefulness and reward level. Likewise, the interpretations that have a degree of evil right each according to human actions themselves.

*Maslahah Mursalah* is a general beneficiary that is can be benefit and reject the harm, and that is realize by Islamic law in general form. Basic texts (*nash*) in Islam stipulated the obligation to maintain the benefit and pay attention when managing various aspects of life. Allah SWT and His Messengger as the maker of *syara'* do not determine the forms and types of benefits, so that benefits like those are called *mursalah*, which is absolutely unlimited.

If *maslahah* is supported by texts (*nash*), such as writing on the *Qur'an* so that is not lost, teaching and writing or or there are texts (*nash*) that support it, such as obligation to teach and distribute knowledge, the command to teach all the goodness that is ordered by the *Sharia* and the prohibition of doing all kinds of prohibitions by *syara'*, then this kind of problem is called *maslahah mansus* (*maslahah* that has a text (*nash*)), this type of *maslahah* is not include as a *maslahah* problem because the law of *maslahah mansus* is determined by the text (*nash*) not the *istislah* method.

*Istislah* is a method or *istinbath* method that disputed by Imam Mujtahid, some of them agree and some of them refuse.

#### Various Kinds of *Maslahah*

It is not explained above that *Sharia* is oriented to the benefit and emphasizes the harmony of the law to advance the benefit. Its basic premise that law must serve the interests of society. Benefits or interests can be categorized into three categories, namely:

a. *Maslahah* based on the terms of change *maslahah*

According to Mustafa Asy-Syalabi (professor of *fiqh* of al-Azhar University, Cairo), there are two forms of *maslahah* based on aspects of *maslahah* change. First, *al-maslahah as-sabitah*, that is permanent benefit, does not change until the end of time. For example, various religious obligations such as prayer, zakat, fasting and pilgrimage. Second, *al-maslahah al-mutagayyirah*, which is the benefit that changes according to changes in place, time and subject of law. Benefits like this relate to *muamalah* problems and customs, as in the problem of food that varies from one region to another. The need for this division, according to



Mustafa asy-Syalabi, is intended to provide benefits that can change and not change.<sup>51</sup>

b. *Maslahah* based on the existence of *maslahah* according to *syara* '

This *maslahah* according to Mustafa asy-Syalabi divided into three types, namely:

a. *Al-Maslahah al-Mu'tabarah*

*Al-Maslahah al-Mu'tabarah* is benefit which is supported by both types and forms of *syara*'. There is a special argument that forms the basis of the form and type of benefit. For example about the punishment for people who drink alcohol. The form of punishment for people who drink liquor contained in the hadith of the Allah's Messenger be understood differently by *fiqh* scholars. This is caused by the bat used by the Prophet when carrying out the punishment for those who drink alcohol. There is a hadith which shows that the instrument used by the Prophet was sandals or footwear 40 times (HR. Ahmad bin Hanbal and al-Baihaqi), while another hadith explained that the bat was a palm frond with a blow 40 times (HR. Bukhari and Muslim). Therefore, after Umar bin Khattab consulted with other friends, set a penalty for the person who drank the liquor as much as

<sup>51</sup> Abdul Aziz Dahlan, *Ensiklopedia Hukum Islam* (Cet III: Jakarta: Ichtiar Baru Van Hoeve, 1999), 1145.

80 times. He exceeded people who drink liquor to people who accuse others of committing adultery. The logic is someone who drinks when drunk, then speaking out of control and allegedly will accuse others of adultery. The punishment of someone who accuses someone else of adultery is 80 times whipping which is contained in the QS. An-Nuur (4):<sup>52</sup>

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا, وَأُولَئِكَ هُمُ الْفَاسِقُونَ

*Meaning:*

*And those who accuse women who are good (fornication) and they have not brought four witnesses, so they (who accuse them) are whipped eight times, and don't accept their testimonies forever. And these are the wicked.*<sup>53</sup>

The benefit that has the support of *syara'*, both types and forms, is called *al-maslahah al-mu'tabarah*. According to the *ulama'* agreement, such benefit can be used as a legal basis.

b. *Al Maslahah al-Mulghah*

*Al-Maslahah al-Mulghah* is the benefit which is rejected because it is against the rules of *syara'*. For example, *syara'* determines that people who have sexual intercourse during the day of Ramadan are subject to freeing slaves or fasting for two consecutive months or feeding 60

<sup>52</sup> Q. S. an-Nuur (18): 4

<sup>53</sup> Departemen Agama RI, Mushaf *al-Qur'an dan Terjemahnya*, 351.

poor people (HR. Bukhari and Muslim). Al-Lais bin Sa'ad, a *ulama'* *fiqh* of the Maliki *madzhab* in Spain, set a fasting of two months in a row for someone (the Spanish ruler) who engages in sexual relations with his wife during the day of Ramadhan. *Ulama'* indeed this punishment is contrary to the hadith of the Prophet above because these forms of punishment must be applied successively if they are not able to free the slaves, only subject to fasting two months in a row. Therefore *ulama ushul fiqh* views prioritizing the fasting sentence for two consecutive months of freeing slaves is a benefit that is contrary to the will of *sharia* so that the law is nullified (rejected) *sharia*. Benefits like this according to the agreement of *ulama'* are called *al-maslahah al-mulghah*.<sup>54</sup>

c. *Al-Maslahah Mursalah*

*Al-Maslahah Mursalah* is benefit which is supported by a collection of texts (verses or hadith), not by detailed texts (*nash*). Benefit whose existence is not supported by *syara'* and is not canceled (rejected) by detailed propositions. The benefit in this form is divided into two, namely the benefit which is not at all supported by *syara'* either in detail or in general, and benefit that is not supported by the proposition of *syara'* in detail, but it is supported by the meaning of a number of

<sup>54</sup> Abdul Aziz Dahlan, *Ensiklopedia Hukum Islam*, 1146.

texts (*nash*). The first benefit is called *al-maslahah al-gharibah* (foreign benefit), but the *ulama'* can not give a definite example even Imam al-Syatibi said this benefit was not found in practice, even in theory. Whereas the benefit in the second form is *al-maslahah al-mursalah*. This benefit is supported by a set of meanings of texts (verses or hadith), not detailed texts.<sup>55</sup>

The *ulama* of *ushul fiqh* agreed to state that *al-maslahah al-mu'tabarah* can be used as evidence in establishing Islamic law. Benefit like this are include in the class method. They also agreed to state that *al-maslahah al-mulghah* can not be used as a basic for establishing Islamic law, as well as *al-maslahah al-gharibah*. As for the *al-maslahah al-mursalah* in principle the *jumhur ulama' madzhab* accept it as one of the reason in establishing *sharia* law even though in determining the terms, application and placement they are in different in opinion.

c. *Maslahah* based on the quality and importance of the benefit

The experts of *ushul fiqh* put forward a number of sections based on the quality and importance of benefit into three forms as follows:

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<sup>55</sup> Abdul Aziz Dahlan, *Ensiklopedia Hukum Islam*, 1146.

- a. *Al-Maslahah al-Dharuriyyah* is the benefit associated with the basic needs of humanity in the world and the hereafter. In other words *al-Maslahah al-Dharuriyyah* (primary needs) is a basic need that involves realizing and protecting the existence of five points, namely: preserving religion, preserving souls, preserving intellect, preserving offspring, and preserving wealth. According to *ushul fiqh* experts, these five benefits are called *al-masalih al-khamsah*. If this benefit is lost, human life will be destroyed because of it, and will not be safe either in this world or the hereafter. According to al-Syatibiy, of these five things is religion and the world can run in balance and if maintained will be able to provide happiness for the community and the person.<sup>56</sup>
- b. *Al-Maslahah al-Hajiyyah* is the benefit needed in perfecting basic benefits in the form of relief to maintain the basic human needs. In other words, *al-Hajiyyah* need (secondary need) is something that is needed for human life but does not reach the level of *dharuriy*. If this need is not fulfilled in human life, it will not negate or destroy life itself, but its existence is needed to provide convenience in life.<sup>57</sup>

The objectives of the *al-hajiyyah* in terms of determining the law are grouped into three, namely:

<sup>56</sup> Abdul Azis Dahlan, *Ensiklopedia Hukum Islam* (Cet I; Jakarta: Ikhtiar Baru Van Hoeve, 1984), 1109.

<sup>57</sup> Amir Syarifuddin, *Ushul Fiqh* (Cet I; Jakarta: Logos Wacana Ilmu, 1999), 213.



- a. Things told by *syara'* such as establishing schools in relation to studying, improving the quality of reason. Establishing a school is indeed important, but if a school is not established, it does not mean that there is no attempt to gain knowledge because studying can be carried out outside of school.
- b. It is forbidden by the *sharia* to do so, indirectly avoiding violations of one of the *dharury* elements. For example, the act of adultery is at the *dharury* level but all actions leading to adultery are also prohibited.
- c. All forms of convenience which include the *rukhsah* (convenience) which gives spaciousness in human life. Actually there is no *rukhsah* will not disappear one of the elements of the *dharury*, but humans will be in difficulty. This *rukhsah* applies in the laws of worship such as the prayer of the traveler, in *muamalah* buying and selling (*salam*), in *jinayat* such as an apology for canceling *qishas* for the killer, either replaced by paying *diyat* (fines) or without *diyat* at all.<sup>58</sup>
- c. *Al-Maslahah al-Tahsiniyyah* is complementary benefit in the form of freedom that can complement the previous benefit. In other words it is according to the needs of life which are complementary in nature and further improve the welfare of human life. If the benefit of *tahsiniyyah*

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<sup>58</sup> Syarifuddin, *Ushul Fiqh*, 213-214.

is not fulfilled, then the benefit of human life will feel less beautiful and less enjoyable even if it does not cause poverty and destruction of life.<sup>59</sup> Its existence is desired for the glory of morals and good social order.

From the description above it can be understood that the main objective of *sharia* is the benefit of mankind in its life which includes five main elements namely, preserve religion, preserve the soul, preserve the mind, preserve the offspring and preserve property. These five main things must be maintained and realized in order to obtain the happiness of life in this world and the hereafter.

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<sup>59</sup> Hamka Haq, *Falsafat Ushul Fiqh* (Makassar: Yayasan al-Ahkam, 1998), 1.

## CHAPTER III

### DISCUSSION AND RESEARCH FINDINGS

#### A. The Legal Aspects of Importing Food to the Implementation of Food Sovereignty Based on Law Number 18 of 2012 concerning Food and *Maslahah Mursalah*

Since 2012, Indonesia has proclaimed food sovereignty, which was previously attached to the term food security. At that time, food security was no longer in accordance with the development of external and internal conditions, democratization, decentralization, globalization, law enforcement, and several other laws and regulations in Indonesia so that it was deemed necessary to reform for a more advanced Indonesia. The renewal was marked by a revision of Law Number 7 of 1996 concerning Food to become Law Number 18 of 2012 concerning Food.

Food sovereignty in Article 1 paragraph 2 of Law Number 18 of 2012 concerning Food is the right of the state and nation to independently determine the Food policy that guarantees the right to Food for the people and which gives the right for the community to determine the Food system in accordance with potential natural resources.<sup>60</sup> With a focus on the article in Law Number 18 of 2012 concerning Food there are things that need to be considered so that the purpose of food sovereignty can be realized properly. This is a good start that the government begins to pay

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<sup>60</sup> Article 1 paragraph 2 Law Number 18 of 2012 concerning Food

attention to Indonesia's agricultural potential. With the revision of Food law, Indonesia has the courage to say that Indonesia is a sovereign country.

In this Article there are two important points, there are: 1) the right of the state and nation to independently determine the food policy that guarantees the right to food for the people and 2) provides the right for the community to determine the food system in accordance with the potential of natural resources. The editor of the words in these two sentences, the party that should be at the forefront is the government. Because the government has the authority to make food policies and the government must provide the right for the community to determine the food system in accordance with the potential of natural resources. The sustainability of food sovereignty in Indonesia is inseparable from the cooperation of the government and the farmers community. As an independent democracy, Indonesia already has the right and freedom to determine food policies for its people. Just only about these policies whether they are in accordance with the condition, facts and procedures in force.

To achieve food sovereignty, there are principles that must be used as the basis for its implementation. This is a government benchmark to make policies related to food and to anticipate failures in food procurement. The principle of food sovereignty is as shown in the diagram below:<sup>61</sup>

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<sup>61</sup> Serikat Petani Indonesia, "Konsep Serikat Petani Indonesia (SPI) Tentang Kedaulatan Pangan," *Serikat Petani Indonesia*, accessed May, 18 2020, <https://spi.or.id/isu-utama/kedaulatan-pangan/>

Production Equipment, Land and Water	Land reform, Land for the people, Water- Managed by the people and BUMN
AP; Seed	Local seed-People's seed bank
Production Model	Ecological Agro-Replacement for the Green Revolution
Production Scale	Small- Medium and not monoculture
Distribution Target	Local-National Market
Food Transportation Level	Short and medium range
Market Orientation	Domestic needs
International trade	-Consideration of the fate of fellow farmers in the destination country (export)  -Domestic for domestic farmers
Energy—Fuel	-Control for fuel by continuing to prepare and use alternative energy sources from non-food crops  -Minimizes carbon emissions/Air pollution
Subject/Business actors	-People—Cooperatives and UKM and small industries  -BUMN, Private as a supporting force



In the table above it can be explored that in order to achieve food sovereignty, all components which are the basic principles of food sovereignty must be properly ordered. Food is identical to agriculture where land acquisition is the most important thing that must be provided first, after that the seeds of the production process and then distribution. The information that contained in the diagram can be seen that the government and the people are an inseparable component in the implementation of food sovereignty. Between the government and the farmers are the people that have a big role in the implementation of food sovereignty.

According to the Head of the Agricultural Human Resource Extension and Development Agency (BPPSDMP) of the Ministry of Agriculture, Winny Dian Wibawa in improving agricultural productivity and farmers' welfare is the main requirement for realizing food sovereignty, namely:<sup>62</sup>

1. Import control policies.
2. Development of irrigation, dams, road facilities, transportation, markets, and market institutions equally.
3. Rehabilitation of damaged irrigation networks of three million hectares of agriculture and 25 dams until 2019.
4. Declaration of 1,000 sovereign seed villages until 2019.
5. Food subsidies and farmer subsidies.

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<sup>62</sup> Ilham, "Lima Langkah Untuk Kedaulatan Pangan," *Republika*, April, 8 2015, accessed May, 3 2020, <https://www.google.com/amp/s/m.republika.co.id/amp/nmhizr>

These five efforts were put forward at the HKTI Farmers and Rakernas Congress at Balai Kartini in Jakarta on April 8, 2015.

Focusing on the first point is controlling import policies. In this case, what has become a polemic is rice imports carried out on a large scale until its peak in 2018 which reached 2.25 tons.

The polemic that occurred between the Minister of Trade and the Minister of Agriculture regarding rice import policy needs to be examined to see whether the import policy is carried out in accordance with applicable procedures.

Following are the data from the Central Statistics Agency on rice imports during 2015-2018:<sup>63</sup>

<b>Year</b>	<b>Volume</b>	<b>Expenditure</b>
2015	861,60 thousand tons	US\$351,60 million
2016	1,2 million tons	US\$ 531,84 million
2017	311,52 thousand tons	US\$ 143,21 million
2018	2,25 million tons	US\$ 1.03 billion

<sup>63</sup> Badan Pusat Statistik, accessed May, 8 2020, <https://www.bps.go.id/staticable/2014/09/08/1043/impor-beras-menurut-negara-asal-utama-2000-2019.html>

Judging from the rice import data above, 2018 will be the year in which Indonesia imports large quantities of 2.25 million tons. This needs to be taken into consideration in the application of rice imports by looking at the surplus and estimated harvest amount of the community before importing rice.

The following rice surplus data available for 2015-2018:<sup>64</sup>

Year	Volume
2015	18,7 million tons
2016	20,1 million tons
2017	17,3 million tons
2018	2,9 million tons

After close observation, every year Indonesia has a rice surplus. That means, rice imports do not need to be carried out while they are in surplus. Because the most important thing is to guarantee the needs of the people. The Ministry of Agriculture is considered capable of carrying out the vision of the mission of food sovereignty in which Indonesia is able to produce rice to meet the needs of the people. But at that time, with a surplus of 2.9 million tons, Indonesia continued to import 2.25 million tons of rice on the grounds that there were not enough stocks to meet people's needs.

<sup>64</sup> Taufan Adharsyah, "Sederet Alasan Kenapa Indonesia Masih Doyan Impor Beras," *CNBC Indonesia*, January, 10 2019, accessed April, 25 2020, <https://www.cnbcindonesia.com/news/20190110130733-4-50025/sederet-alasan-kenapa-indonesia-masih-doyan-impor-beras>

Regarding rice imports, the Ministry of Agriculture and the Ministry of Trade have a big role in implementing food sovereignty. Both must work together so that the recorded data does not occur in error and there is no misunderstanding so as to make both of them disagree about rice import policies.

Vice president of 2014-2019. Jusuf Kalla stressed that national rice production data for the past 20 years had been erroneous.<sup>65</sup> Errors are not only from the data of Minister of Agriculture, but also from BPS, the Ministry of Agriculture and the head district. Errors do not occur due to miscalculations but data inequality from all parties resulting in misunderstanding. However according to Agricultural Political Economy Observers, Prima Gandhi considers sourced from the Central Statistics Agency (BPS) because since the New Order era until now the one-door data is in the Central Statistics Agency and all Ministry of Agriculture data release are from Central Statistics Agency (BPS).<sup>66</sup> Data errors and misunderstanding between related parties are very vulnerable so that it can make a polemic. Differences of opinion will continue to occur and all parties will defend their opinions. Especially if there is an error in taking a decision will be fatal where there will be many parties who

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<sup>65</sup> Mikhael Gewati, "Data Produksi Beras BPS dan Kementan Berbeda, Ini Penjelasannya," *Kompas*, 24 October 2018, accessed May, 18 2020, <https://ekonomi.kompas.com/read/2018/10/24/153000826/data-produksi-beras-bps-dan-kementan-berbeda-ini-penjelasannya-?page=all#page2>

<sup>66</sup> Mikhael Gewati, "Data Produksi Beras BPS dan Kementan Berbeda, Ini Penjelasannya," *Kompas*, 24 October 2018, accessed May, 18 2020, <https://ekonomi.kompas.com/read/2018/10/24/153000826/data-produksi-beras-bps-dan-kementan-berbeda-ini-penjelasannya-?page=all#page2>

are disadvantaged, namely the farming community. In this case the government must make good cooperation in processing rice data. Cooperation is carried out with the aim of benefit for the people. Because with valid data policy making will also be appropriate in accordance with the data is already available.

The provisions on rice imports are regulated in the Regulation of the Minister of Trade of the Republic of Indonesia Number 01 of 2018 concerning Provisions on the Export and Import of Rice. The export and import policies regulated in the Regulation of the Minister of Trade of the Republic of Indonesia Number 01 of 2018 concerning Provisions on the Export and Import of Rice are amendments to the Regulation of the Minister of Trade Number 103 / M-DAG / PER / 12/2015 concerning Provisions on the Export and Import of Rice as amended by Regulation of the Minister of Trade Number 74 / M / DAG / PER / 9/2017 concerning Amendments to Regulation of the Minister of Trade Number 103 / M-DAG / PER / 12/2015 concerning Provisions on Rice Export and Import. Regulations regarding export and import provisions have been changed because they are considered to be no longer relevant. This regulation was made keeping in mind the existence of Law Number 18 of 2012 concerning Food. In Article 1 Number 4 of the Regulation of the Minister of Trade of the Republic of Indonesia Number 01 of 2018 concerning Provisions on the Export and Import of Rice Imported



Rice for public purposes is the import of rice as a reserve which can be used at any time by the Government for purposes such as price stabilization, emergency response, the public poor, food insecurity, and certain conditions determined by the government.<sup>67</sup> The substance of the article is a confusion in which the state of the sentence specified by the government is not specifically explained so as to cause thoughts that exist outside the line. Which will be used as a weapon for governments who want to make policies where the policy is made to benefit individuals or certain parties.

To be able to import rice, a permit must be obtained from the Minister engaged in the field of trade services. This is stated in Article 16 paragraph 1 of the Regulation of the Minister of Trade of the Republic Indonesia Number 01 of 2018 concerning Provisions on the Export and Import of Rice which reads “Importing of rice for public purposes as referred to in Article 15 letter a can only be done by the Public Corporation BULOG”.<sup>68</sup>

Public Corporation Logistics Agency or abbreviated as BULOG is a food institution in Indonesia which deals with rice trading. The Bulog was formed on May 10, 1967 based on Presidential Decree of the Cabinet Number

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<sup>67</sup> Article 1 Number 4 Regulation of the Minister of Trade of the Republic of Indonesia Number 01 of 2018 concerning Rice Export and Import Provisions

<sup>68</sup> Article 16 Paragraph 1 Regulation of the Minister of Trade of the Republic of Indonesia Number 01 of 2018 concerning Rice Export and Import Provisions

114 / Kep / 1967 and since 2003 the status of BULOG has been a State-Owned Enterprise (BUMN).<sup>69</sup>

BULOG contributes to the state by carrying out tasks concerning the rice trade system. BULOG's motto synergizes in accordance with the ideals of the nation and country namely food sovereignty. BULOG's motto is Together to Achieve Food Sovereignty.

The tasks of BULOG are to carry out governance and development in the field of logistics management by carrying out inventory management, distributing and controlling rice prices, as well as conducting logistical service business in accordance with applicable laws and regulations.<sup>70</sup>

Whereas BULOG's functions are:<sup>71</sup>

1. Establish policies in the field of logistics management to comply with applicable laws and regulations and general government policies.
2. As the organizer of activities in the field of logistics services.
3. As the organizer of activities in the field of operations.
4. Planning in the following areas, including finance, human resources, and logistics services.

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<sup>69</sup> Bulog, accessed May, 10 2020, <http://www.bulog.co.id/pp.php>

<sup>70</sup> Article 2 Decision of the President of the Republic of Indonesia Number 29 of 2000 concerning Logistical Affairs Agency

<sup>71</sup> Article 3 letter a-f Decision of the President of the Republic of Indonesia Number 29 of 2000 concerning Logistical Affairs Agency

5. Manage resources that will carry out the tasks of the National Logistics Agency in order to be successful and have efficacy.
6. Supervise all kinds of tasks carried out in the Bulog environment.
7. Managing human and financial resources.

In accordance with its duties and functions, BULOG has a big hand in the implementation of food sovereignty in Indonesia. What needs to be underlined is whether the BUMN BULOG has the authority to reject rice import policies or not. rice alone in its administration is adjusted to the needs of the country for benefit.

The rice import policy issued by the ministry of trade only reasoned the lack of supplies for the people. Consideration of lack of supply for the community is considered less relevant because in making policy is not just a consideration from one side only. The government does not see the social aspects of the issuance of the rice import policy, which will cause turmoil for the farming community. Many regions expressly reject the rice import policy that was issued suddenly by the Minister of Trade Enggartiasto Lukita that at the end of January 2018 rice imports will be carried out by 500 tons with the reason to overcome the scarcity of rice supply which has an impact on rising

rice prices at retail level.<sup>72</sup> Meanwhile in February the harvest season will come and will result in local rice disorder.

Looking back at the food law which is a reference in the implementation of food sovereignty in Indonesia, rice import is a legal act by fulfilling licensing procedures that are in accordance with Minister of Trade Regulation No. 01 of 2018 concerning Rice Export and Import. This can be seen from the legality of licensing procedures in fulfilling rice import requirements without looking at the political aspects. It's just that rice import has a bad effect because it is not in accordance with the principle of food administration in Article 2 of Law Number 18 of 2012 concerning Food letter h, namely the principle of justice. In addition, the import of rice which is considered part of the procurement of food so that adequate food availability turns out to be contrary to the conditions of the disadvantaged farming community. And this is prohibited because in Article 39 of Law Number 18 Year 2012 concerning Food, it is explained that "The government sets a Food import policy that does not have a negative impact on the sustainability of farming, increasing production, welfare of farmers, fishermen, fish growers, and Micro and small food businesses."<sup>73</sup> With the import of rice, farmers become the most disadvantaged parties, directly impacting the sustainability

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<sup>72</sup> Budi Raharjo, "Mengapa Daerah dan Petani Kompak Tolak Beras Impor?," *Republika*, January, 13 1, 2018 accessed on July, 16 2020, <https://m.republika.co.id/berita/ekonomi/makro/18/01/2013/p2h1cm415-mengapa-daerah-dan-petani-kompak-tolak-beras-impor>

<sup>73</sup> Article 39 Law Number 18 of 2012 concerning Food

of farmers' efforts in increasing production, farmers will not be prosperous and afraid to farm again because with imported rice can kill farmers' production.

Maslahah Mursalah is something that is good according to reason with the consideration that it can realize benefit or avoid harm to humans.

Returning to some references and concepts of food sovereignty listed in Nawacita and the 2012-2019 Medium-term Development Work Plan, the government is very concerned about food import activities. The government is indirectly aware that food sovereignty will be carried out properly if food import activities are limited or even stopped. One effort to realize food sovereignty is to stop food import activities and increase agricultural production. If the program can be implemented well and truly realized in its implementation, the ideals of food sovereignty are not just ideas.

In the Quran there are several verses that explain about *maslahah*. One of them is surah an-Naml verse 48 which tells the story of nine people who always do damage in the city of al-Hijr, the city of Thamud.

كَانَ فِي الْمَدِينَةِ تِسْعَةُ رَهْطٍ يُفْسِدُونَ فِي الْأَرْضِ وَلَا يُصْلِحُونَ

Meaning:



"And it is in that city nine men who make mischief on earth, and they do not do good". (Surat an-Naml: 48)

The nine men who always do damage in the city of al-Hijr are leaders of the people who always invites his people to disobey the teachings of the Prophet Salih as by way of rejecting and denying the treatises that he brought to his people by making fun of the camel of the Prophet Salih as and even want to kill him.<sup>74</sup> These acts can cause damage to the conditions of the al-Hijr community and are contrary to the benefit.

In another verse Allah says:

وَلَا تُفْسِدُوا فِي الْأَرْضِ بَعْدَ إِصْلَاحِهَا

Meaning:

"And do not do mischief on earth, after (Allah) has repaired it." (Surat al-A'raf: 56)

The word *ishlahiha* found in the above verse also indicates the meaning of benefit. This can be seen from the prohibition of Allah which asserts that no damage should be done on earth. God gives human reason to the best form so that humans can live life in the world well. Human thoughts

<sup>74</sup> Al Imam al-Jalil al-Hafidz 'Imaduddin Abu al-Fida' Isma'il bin Katsir al-Dimasyqy, *Tafsir Ibnu al-Katir*, (Giza:Muassasah al-Qurthubah, tt), Jilid 10, hlm. 415

and deeds which are not used in accordance with what Allah commands with their limitations will lead to damage.

*Malikiyah* scholars accept the problem of *mursalah* as the argument for establishing the law. According to them *maslahah mursalah* is an induction from the logic of a collection of texts not from detailed texts such as *qiyas*. For example the Prophet said about the problem of rising prices of goods on the market. He as the ruler at that time had no right to intervene regarding price increases because the act of interference was an act of wrongdoing.

عَنْ أَنَسٍ قَالَ قَالَ النَّاسُ : يَا رَسُولَ اللَّهِ غَلَا السَّعْرُ فَسَعِّرْ لَنَا فَقَالَ رَسُولُ اللَّهِ ﷺ إِنَّ اللَّهَ هُوَ  
 الْمُسَعِّرُ الْقَابِضُ الْبَاسِطُ الرَّازِقُ وَ إِنِّي أَرْجُو أَنْ أَلْقَى اللَّهَ وَ لَيْسَ أَحَدٌ مِنْكُمْ يُطَالِبُنِي بِمُظْلَمَةٍ  
 فِي دَمٍ وَلَا مَالٍ

Meaning:

“One time people cried out to the Messenger of Allah regarding the price fixing, “O Messenger of Allah! Prices go up, set prices for us.” Rasulullah then answered: “Allah is the real Determinant of the price, the holder, the

spreader and the Provider of portune. I hope tht meeting with God no one will ask me about the tyranny in matters of blood and wealth". (HR. Abu Daud).<sup>75</sup>

According to Malikiyah scholars the hadith of the Prophet was valid when there was little supply while demand was large, so it was natural for a price increase. However, if the increase is not caused by number of requests but because of the act the merchant itself, the Malikiyah ulama' allow the government to interfere in setting prices with consideration of consumer benefit. To make *maslahah mursalah* as a proposition for law enforcement, Hanafiyah scholars set the following conditions:<sup>76</sup>

1. The benefit is in accordance with the will of the Shariah 'and is included in the benefit which is supported by the text in general.
2. The benefit is rational and certain, not just an estimate so that the law determined through the problem masses really provides benefits and avoid harm.
3. The benefit concerns the people, not personal interests or certain small groups.

As one example of the *maslahah* problem, the rice import policy carried out by the government. Rice import policy issued by the government is a method. In addition, there was a morning depravity of Indonesian farmers.

Because farmers were the losers of this import policy.

<sup>75</sup> Abu Daud, *Shahih Sunan Abu Dawud*, (Riyad: Maktabah al- Ma'arif, 1998), 362

<sup>76</sup> Desy Rahmawati Putri, Amrullah Hayatudin dan Mohamad Andri Ibrahim, "Tinjauan Penerapan Konsep *Maslahah Mursalah* terhadap Kebijakan Impor Beras di Indonesia," *Prosiding Keuangan dan Perbankan Syariah*, No. 1 (2019): 37

In determining the law and issuing policies need to pay attention to the aspects of benefit. Even though according to the provisions of the law, it is not written clearly regarding the conditions of benefit and there is no necessity regarding the benefit, but the aspect of the benefit must still be considered to avoid harm to the certain parties. If seen from the rice import policies issued by the government with the reason to increase stock and avoid rising prices, this policy is not wrong. The government's decision is considered appropriate because it aims to stabilize the food needs of the Indonesia people. However, it creates misfortune for farmers because at the time of harvest their crops will be valued cheaply by the government on the grounds that the government still has an abundant supply of rice from the import policy.

Based on the explanation and hadith and opinion of the ulama regarding the problem of mursalah on the policy of importing rice in Indonesia, it can be said that the import of rice at that time was not right. Because according to the rules it is the same as fathu dzariah, which when taking benefits instead opens the way to damage.

The solution to overcome this is referring to the opinion of the cleric Imam 'Izzudin bin Abd al-Salam, that:<sup>77</sup>

دَرُّهُ الْمَفَاسِدِ أَوْلَى مِنْ جَلْبِ الْمَصَالِحِ

<sup>77</sup> Djazuli, *Kaidah-Kaidah Fikih*, 27

**Meaning:**

“Rejecting bad things is more important than achieving benefits”.

Namely one of them by refusing imports that can cause bad things. It would be better for the government to pay attention to the potential of Indonesia's natural resources to increase local food production. This will have a major impact on the people of Indonesia in meeting the food needs of the community. The government must sovereign food by means of sufficient food production independently, providing regulations on the control and supervision of food availability. In the future, the government must pay more attention to existing data before issuing a rice import policy and pay attention to the concept of *maslahah*. This aims to ensure that no party is harmed. And the government should not need to issue a policy of importing rice because Indonesia is experiencing a rice surplus. The rice import policy is considered inappropriate because in the short time there will be a big harvest in Indonesia.

Rice import policies can only be done if it is accordance with needs. The government can still maintain mutually beneficial relations between countries, but rice import must remain controlled so that the goal of food sovereignty as stipulated in Law Number 18 of 2012 concerning Food can be achieved.



## **B. The Impacts of Rice Imports Policies to the Implementation of Food Sovereignty in Indonesia**

Based on the mandate of the constitution in Indonesia which is contained in the fourth sentence of the Preamble of the 1945 Constitution and the fifth precepts of the Pancasila, all laws and regulations in Indonesia must support the realization of a welfare state for all Indonesian people. But in reality, the legal alignments to the welfare of the people and citizens of the poor who are still in the political rhetoric of the political elite.<sup>78</sup> It is very confusing with the Law Number 18 of 2012 concerning Food which makes it as a reference in implementing the ideals of food sovereignty which actually makes the existing rice production neglected and causes a decline in the welfare of farmers.

The existence of Law Number 18 of 2012 concerning Food which is the goal of food sovereignty is the country's benchmark for food development and is a spirit for the nation in implementing the ideals of food sovereignty. The basis of food sovereignty has been very well designed with articles of regulation in it. However, the implementation is often not in accordance with existing regulations. There have been many rice import policies that have

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<sup>78</sup> Yohanes Suhardin, *Peranan Negara dan Hukum dalam Memberantas Kemiskinan dengan Mewujudkan Kesejahteraan Umum*, "Jurnal Hukum dan Pembangunan, No. 3 (July 2010), 394-397.

harmed the farming community and even greatly affected the country's economy.

After the issuance of the rice import policy many adverse effects occurred in Indonesia. This became public discussion after the rice import policy was issued by the Ministry of Trade. According to economic observers from the Indonesian Political Economy Association (AEPI), Salamuddin Daeng there are several impacts from rice imports as follows:<sup>79</sup>

1. Rice imports carried out by the government cause trade deficits and current account deficits. According to Budi Waseso, the President Director of the state owned company BULOG is expected to put the brakes on rice imports when Indonesia's trade balance is still deficit due to higher import values than exports.<sup>80</sup> Even though rice import is only one of the imported foodstuffs, it affects the trade deficit. This happens because the rice imports carried out by the government are greater than the number of imports. Logically, when the government decided to import rice, Indonesia was not able to export rice, and especially at that time Indonesia was in a surplus. This shows that the rice import policy carried out by the government is not well considered, causing mistakes by causing fatal losses.

<sup>79</sup> Gendon Wibisono, "8 Kerugian Akibat Kebijakan Impor Pangan," *Nusantaranews.co*, January, 11 2019, accessed on May, 15 2020, <https://nusantaranews.co/8-kerugian-akibat-kebijakan-impor-pangan/>

<sup>80</sup> Elba Damhuri, "Cadangan dan Produksi Aman, Mengapa Masih Impor Beras?," *Republika*, September, 20 2018, accessed on May, 26 2020, <https://www.google.com/amp/s/m.republika.co.id/amp/pfbyag449>

2. Imported rice is one of the main causes of the decline in the exchange rate of the rupiah against the USD. This is because the rupiah is weakening and high import commodities. This will only worsen the value of the rupiah against the USD. According to one of the Indef researchers (Institute for Development of Economics and Finance), Esa Suryaningrum said that the high dependence on imports could worsen depreciation and overshadow inflation.<sup>81</sup> Depreciation itself is a term in accounting that means depreciation. The greater imports, especially consumer goods in the midst of depreciation, will further weaken the rupiah. The weakening of the rupiah occurs because at the time of importing the country automatically purchases the goods with a US dollar value.
3. Rice imports are the cause of inflation due to the increasingly expensive price of imported food. This relates to the impact of the second rice import policy in which depreciation and inflation are closely related. According to the head of the Central Statistics Agency (BPS), Suhariyanto spending on foodstuff such as rice is very important to maintain because if there is a slight increase, it will have a big effect on the inflation rate.<sup>82</sup> Dependence on imported commodities makes the phenomenon of inflation more real. The impact will be felt on rising prices of consumer goods not durable, food and household fiber fiber prices of fuel oil (BBM). This means that

<sup>81</sup> Yuyu Agustini Rahayu, "Tingginya Impor Makin Bikin Kurs Rupiah Terpuruk," *Merdeka*, July, 3 2018, accessed April, 15 2020, <https://m.merdeka.com/uang/tingginya-impor-makin-bikin-kurs-rupiah-terpuruk.html>

<sup>82</sup> Andri Donnal Putera, "BPS: Waspada Harga Pangan," *Kompas*, September, 3 2018, accessed on May, 26 2020, <https://www.google.com/amp/s/amp.kompas.com/ekonomi/read/2018/09/03/123900126/bps-waspada-harga-pangan>

when the potential for imports is higher the price will increase and there will be a decline in people's purchasing power.

4. Import of rice results in a fall in the price of farmers' harvests. Imports are usually carried out at harvest time which is actually done in order to suppress the prices of agricultural products of farmers. When the harvest comes and there is an import of rice, the farmers' rice production will be neglected because no one can accommodate the farmers' harvest. This has a bad impact because farmers' rice production does not sell well with imported rice. According to the Professor of Sociology at Airlangga University, Bagong Suyanto, the decision to import rice only benefits traders but not farmers.<sup>83</sup> This is very contrary to food sovereignty in which the government should give the right for farmers to manage their own agriculture, but instead these rights are ignored by bringing in rice from abroad.
5. Rice imports are increasingly making Indonesia's agriculture sector deteriorate, less attention to the maximum because the government is spoiled by imports. According to HS. Dillon in his article entitled Agricultural Politics quoted by Dwi Harsono in his journal entitled Agricultural Development in Favor of Farmers said that Indonesia needs paradigmatic reform in agriculture by opening opportunities that can make

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<sup>83</sup> Bagong Suyanto, "Impor Beras dan Nasib Petani," *Tempo*, January, 16 2020, accessed on May, 26 2020, <https://kolom.tempo.co/read/1050840/impor-beras-dan-nasib-petani/full?view=ok>

farmers grow and be independent.<sup>84</sup> With Indonesia's natural resource potential that is no doubt, Indonesia should be able to manage rice production and even export rice abroad. This is what will happen if the government is unable to regulate, manage and oversee the agricultural sector properly, all becomes in vain. The bad impact of Indonesia being unable to implement food sovereignty which is predicted will improve the country's economy. In addition, the farming community does not want to improve their performance as a farmer, who is assigned as a food producer because they feel that the profession of being a farmer is not profitable and is not given space by the government.

6. Imports of rice make Indonesian food very vulnerable to external factors or in other words Indonesia is increasingly sovereign. The high commodity imports of rice that occur in Indonesia will result in Indonesia becoming increasingly dependent on foreign production even though Indonesia itself is capable of producing it. Food sovereignty which is the ideals of the nation and the state will not be realized if Indonesia is still dependent on imports, especially imports of basic foodstuffs. Sovereignty must always be a guideline so that the rights that need to be fought for can still be achieved without any obstacle.

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<sup>84</sup> Dwi Harsono, "Pembangunan Pertanian Yang Berpihak Pada Petani," *Pembangunan Pertanian*, No. 2 (2009): 88



7. Rice import raises the moral hazard of state administrators by playing import permit cards, import quotas and so forth. Moral hazard is English which means moral deviation. One of the deviations of authority according to the President Director of the state owned company BULOG, Budi Waseso said that the mafia seeks opportunities in government programs, one of which is through the Non-Cash Food Aid program.<sup>85</sup> The state administrator is none other than the government which has the authority to regulate and carry out state activities. In the process of importing rice everything needed in the import administration is held by the government or the authorities. This can cause something to happen that is wrong in regulating import policies. Starting from incorrect data, import permits, and import quotas which must be considered so that in making policies and decisions there are no mistakes, these things will be ignored with the aim of satisfying oneself or certain parties. Import activities can be a gap for the authorities to do something that deviates from their authority. Member of the House of Representatives Commission Mindo Sianipar highlighted the implementation of Law Number 18 of 2012 concerning Food which has not been implemented optimally related to imports. The Ministry of Trade, which should only be

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<sup>85</sup> Savira Wardoyo, "Buwas Ungkap Mafia Beras Bersembunyi di Program Pemerintah," *CNBC Indonesia*, February, 19 2020, accessed on May, 26 2020, <https://www.cnbcindonesia.com/news/20200219135345-4-139001/buwas-ungkap-mafia-beras-bersembunyi-di-program-pemerintah>

tasked with administrative matters and granting licenses in export and import matters, feels that it has the right to issue import recommendations. With this, rice imports are often carried out uncontrollably. Mindo Sianipar revealed that there is already a Food Law governing national food supply and that is the responsibility of the ministry of agriculture, if imports occur, there will be import recommendations from the ministry of trade.<sup>86</sup> Regarding the import policy must be guarded seriously and with full responsibility.

8. Importing rice opens up opportunities for crimes of entrepreneurs, food hoarders and plays food prices in order to maximize their profits and harm the people. Food distribution in order to reach the community requires the hands of the government and entrepreneurs. If imports continue, it will open up opportunities for crime for those who have a share in the distribution of rice. If hoarding and price games occur, the community will be greatly disadvantaged by the actions of the rice mafias.

With this impact, state administrators who have the authority related to import policies can work together to develop the country by implementing the ideas of food sovereignty.

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<sup>86</sup> Heru Guntoro, "Penerapan UU No. 18 Tahun 2012 Tentang Pangan Belum Maksimal," *gesuri.id*, May, 13 2019, accessed on July, 18 2020, <https://www.gesuri.id/kerakyatan/penerapan-uu-no-18-tahun-2012-tentang-pangan-belum-maksimal-b1WfQZj7X>

## CHAPTER IV

### CLOSING

#### A. Conclusion

From the discussion and result of the study, the author draw several conclusions below:

The The declaration of food sovereignty in Indonesia was confirmed by the revision of Law Number 7 of 1996 concerning Food to Law Number 18 of 2012 concerning Food. One of the efforts in implementing food sovereignty in Indonesia is to minimize food imports, one of which is rice. The rice import policy that has been issued in recent years is not in accordance with Article 39 which reads "The government has established policies and regulations on Food Import that do not have a negative impact on the sustainability of farming, increased production, welfare of farmers, fishermen, fish breeders, and micro-food businesses and small". The rice import policy which should be aimed at providing food actually harms the community of farmers and reduces their welfare because the import policy was issued shortly before the harvest. In connection with the problem, the import policy of rice may be carried out on condition that it contains benefits and rejects kemudharatan. The rice import policy carried out by the government without looking at the data and

carried out nearing the harvest period is considered inappropriate and not in accordance with the concept of *maslahah*.

The impacts of the rice import policy to the implementation of food sovereignty in Indonesia are:

- a. Rice imports cause trade deficits and current account deficits.
- b. Rice imports is one of the cause of the decline in the exchange rate of the rupiah against the USD.
- c. Rice imports are the cause of inflation.
- d. Rice imports resulted an a fall in farmers' harvest prices.
- e. Rice imports make Indonesia's agriculture sector even worse.
- f. Rice imports make Indonesian food very vulnerable to external factors or in other words Indonesia is decreasingly sovereign.
- g. Rice import raises the moral hazard of state administrators.
- h. Importing rice opens up opportunities for crimes of entrepreneurs, food hoarders and plays food prices.

## **B. Suggestion**

Based on the description of the conclusion that have been described above, the author makes the following suggestions:

1. The government should better understand the goals of food sovereignty that have been declared for the progress of the Indonesian state.

2. The Indonesian government should pay attention to the Indonesian agricultural sector and increase rice production so that it can meet the food needs of the Indonesian people without having to import large amounts of rice.
3. The government must make a policy in importing rice with careful consideration by looking at the result of rice production and the potential of the existing agricultural sector.
4. The rice import policy carried out by government must contain elements of benefits so as not to harm certain parties in accordance with the concept of *maslahah*.
5. The impacts of rice import policies that violate the purpose of food sovereignty must be made a lesson so that the losses and mistakes that have occurred do not occur again.



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