

Strengthening of State Company on Strategic Commodities in Indonesia for Food Security Interest under WTO Rules

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Abstract: Food sufficiency is a global matter which is being debated among global leaders. Unstable food prices result in people suffering obstacle to access on the commodity with affordable price. Some developing countries attempt to secure stockpile through procurement duty of state trading company. Meanwhile, the WTO provision prohibits domination of state-owned enterprise which lead to trade distortion. This article would like to observe pertaining to the role of state-owned enterprise to secure supply of food security. It aims to analyze improvements of state company to dominate in terms of protection of national security. This article uses doctrinal legal research methodology with primary sources originate from the rules of law, including library data as secondary sources. Principally, Article XVII of the GATT does not allow the members state to favor state-owned company to trade among the members, except for necessary circumstances. However, the MC13 concludes to overlook Art. XVII and Agreement on Agriculture (AoA) provisions to monopolize procurement and distribution as public stockholding. This measures may grant special privilege for state company to dominate in holding some commodities under national program. It has been carried out by Food Corporation of India (FCI) which secure national food security.

Keywords: Food Security; WTO Agreements; National Security

1. INTRODUCTION

Food security is a crucial issue that is commonly discussed by global leaders as it threatens the lives of human beings. It becomes pivotal concern for ensuring source of energy for workers which require sufficient nutrition.¹ Those include rice, corn, sugar, vegetable oil and other seeds which constitute raw materials for producing essential diets. Disruption of food supply would generate rise of food prices which finally affect consumption. For instance, current Ukraine war since last three years has resulted in food crises suffering global population particularly least develop and developing countries by accelerating hike

¹ Dov Jaron and Osman Galal, "Food Security and Population Health and Well Being," *Asia Pac J Clin Nutr* 18, no. 4 (2009): 684-7.

of wheat prices.² Currently, India also imposes export restrictions on rice for domestic stockpile amidst long drought season hits the country.³ The measures lead rice price to spike because of high global demand. Mismanagement food supply causes 783 million people is suffering hunger globally. Africans are the worst suffering malnutrition compared with other continent such as Asia and Latin America which feel downturn prevalence of undernourishment (PoU).⁴

Currently, the cost of agriculture raw materials has been consistently rising since the pandemic and the war lead scarcity of stockpile to consumers.⁵ At the same time, climate change brings in reduction of rice harvest due to El Nino in some Asia countries. This situation even makes some grains producers such as India to prioritize its productions national stockholding.

Meanwhile, in Indonesia, food commodity prices consistently soar for years which cover rice, white sugar, and cooking oil. The three-commodity distribution adopts floating mechanisms which cause the price to be out of government control, otherwise determined by the private sector. Indonesia Statistic Bureau reveals that rice price was gradually increase recorded IDR 9,500/kg-11,500/kg from 2014-2016 before the pandemic. Unfortunately, the cost remains high in 2018-2020 at IDR 12,000 although declining price was enjoyed at roughly IDR 10,000/kg-10,500/kg within 2021-2022. However, crop failure in 2023 result in inflation of rice nearly IDR 12,500/kg.

Similar conditions with sugar price and palm cooking oil also consistently surge for few years. For instance, the Indonesia Statistic Bureau recorded the sugar price always raised since 2014 until 2016. The agency showed the sweetener price suffer discrepancies price during the period which create price differences until IDR 2,000/kg between 2014 and 2016. Meanwhile, cooking oil was rarely found in markets causing price was uncontrolled, foremost during the pandemic hit Indonesia.

Unstable Indonesia food prices might lead political domestic stability to be threaten which people uprising potentially emerge and chaos social crisis that could collapse political institutions. This situation might take place with reminding historical journey that Indonesia experiences for the situation at the edge of the old order regime faced scarcity of food which push President Soekarno to step down.⁶ Hence, under the new older regime, the government emphasized food crisis as primary issues with establishment of state agency known as "BULOG". While political domestic situation was still under chaotic situation, the regime decided through Decree of Cabinet Presidium of Ampera No. 114/1967 provided that BULOG was to safeguard domestic stockpile and stabilize price of rice for the existence of new government. Furthermore, BULOG posed broader authority

² Khondoker Abdul Mottaleb, Gideon Kruseman, and Sieglinde Snapp, "Potential Impacts of Ukraine-Russia Armed Conflict on Global Wheat Food Security: A Quantitative Exploration," *Global Food Security* 35 (December 1, 2022): 100659. <https://doi.org/10.1016/j.gfs.2022.100659>.

³ Mohd Akhter Ali, M Kamraju, and Devkar Bhausaheb Sonaji, "Navigating Rice Export Restrictions: The Impact of India's Policy on Domestic and International Markets," *ASEAN Food Journal* 3, no. 1 (2023): 9-22, <https://www.researchgate.net/publication/373046999>.

⁴ Talha Burki, "Food Security and Nutrition in the World," *The Lancet Diabetes and Endocrinology* (Elsevier Ltd, September 1, 2022): 22, [https://doi.org/10.1016/S2213-8587\(22\)](https://doi.org/10.1016/S2213-8587(22)).

⁵ Asean Deploment Bank, "Food Inflation and Food and Nutrition Security Situation in Developing," 2021.

⁶ Website : Macrofoodpolicy Wwww and Com, "Indonesian Food Policy Program Food Security in an Era of Decentralization: Historical Lessons and Policy Implications for Indonesia," 2002, www.macrofoodpolicy.com.

concerning food security by Presidential Decree No. 11/1967. The provision enacted that the agency held mandatory function to stabilize nine kinds of basic food. In this term, BULOG constitutes buffer stock body to stabilize food prices for household demand and avoid price spike. It also purposed to erode middleman which distort the market prices. Thus, the existence of the body constituted a strategic agency that directly guidance under supervision of President in 1978.⁷

However, International Monetary Fund (IMF) requested degradation of the agency authority as requirement to receive financial assistance during economic crisis in 1998.⁸ The requirement resulted in dissolution of the food monopoly agency which previously played double functions as national agency and public corporation converted as state-owned enterprise. The measures contrasted with the previous role designated BULOG as regulator and operator regarding food safety, including meat which could fully control from upstream to downstream level in accordance with Presidential Decree No. 39/1978 and Presidential Decree No. 103/1993. Unfortunately, promulgation of Government Regulation No. 7/2003 was beginning reformation into public corporations which have a role for distribution of rice and become retailer in the market.

As international intervention against national food security body, the issues of domestic food safety is serious issues for developing countries. Bali 9th Ministerial Conference of the WTO allows developing countries to shield food stockholding for public demand without fearing to WTO DSB.⁹ This could justify developing countries to prioritize access and confer subsidy for meeting food security purposes to its people under national program as required within the agreement concern. Then, the decision is also in favor for those countries which poor farmers need more support from the government in terms of seed prices and subsidy. At the same time, the member consensus confers chance to support vulnerable economic groups which earn low income.

This article will examine the opportunities to improve the Indonesian state-owned company role as buffer stock for food security regarding Article XVII of the GATT 1994. The provision allows the members to resort state company involvement to commit special privilege. The privilege could grant special authority for the company to purchase and selling for safeguard of food sufficient with affordable price. However, the provision prohibits discriminatory treatment affecting private traders. On the other side, the Annex II of Agreement on Agriculture (AoA) permits public stockholding under national program for food security. It relates to the objective of the WTO is to raise and safeguard standard of living for the members. Then, the WTO's member confirms their commitment to take optimal use of resources for sustainable development. Hence, institutionalized of food security is an endeavor for easy access on food for the people with affordable price. It

⁷ Hitoshi Yonekura, "Institutional Reform in Indonesia's Food Security Sector: The Transformation of BULOG into a Public Corporation," *Developing Economies* 43, no. 1 (2005): 121-48, <https://doi.org/10.1111/j.1746-1049.2005.tb00255.x>.

⁸ News Brief: Statement by the Managing Director on the IMF Program with Indonesia Statement by the Managing Director on the IMF Program Statement by the Managing Director on the IMF Program Statement by the Managing Director on the IMF Program Statement by the Managing Director on the IMF Program with Indonesia with Indonesia with Indonesia with Indonesia. International Monetary Fund, International Monetary Fund, 1998, <https://www.imf.org/en/News/Articles/2015/09/29/18/03/nb9802>.

⁹ World Trade Organization (WTO), "Ninth WTO Ministerial Conference, 3-6 December 2013", (WTO: Bali, 2013).

will study the WTO's rules which allow member countries to upgrade state company's role as public agency for safeguarding strategic commodity for food safety net. It would discuss justification of it to involve directly in pivotal measures. Furthermore, it also would discuss the Indonesian provisions which govern domestic mandatory sufficiency on food safety. It would observe that the existing rules might enhance state agency position to support vulnerable groups from wide variety of agriculture issues.

2. RESEARCH METHODS

This article uses doctrinal legal research methodology which is sourced from rules of law as primary sources. Doctrinal legal research requires researchers to follow the principle and legal concept of the laws.¹⁰ Thus, it would analysis various rules which cover the WTO agreements and national laws, including relevant regulations from other countries. Library sources are also referred as secondary sources to enrich the analysis which give explanations clearly. It might originate from journals and other relevant sources.

3. RESULTS AND DISCUSSION

3.1 Mandatory Obligation to Adequate Food Safety for Public Interest

Nutrition is generated from healthy food which is easily accessed by people in domestic markets with affordable price. Expensive food prices result in food insecurity for vulnerable group or poor people which is difficult to access cheaper diets. This situation was being suffered by some of the American recorded amount 15.6 million US household suffers food insecurity during 2016. The US Government initiated pantry food program to provide healthy food to prevent starvation and malnutrition surround its people.¹¹

Effort to guarantee public stockpile has been applied by some developing countries such as India and Brazil. Both countries implement divergent method in settling fulfillment of deficiency nutrition. The first applies Public Distribution System (PDS) aiming for subsidizing for farmers and consumers.¹² The policy grants supply subsidized grains for the farmers and then purchase their yield production beyond market price. Otherwise, the government sell with lower normal price for the consumers. The measures is carried out with considering that agriculture products are public goods which should be provided with affordable prices. Meanwhile, the latter country adopts institutionalized approach by establishment of Brazilian National Food and Nutritional Security System (SISAN). The agency has function to scrutinize and make mapping problem of food safety faced by states, federal districts, and municipalities.¹³ However, it carries out distinguish system

¹⁰ Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia-Social and Behavioral Sciences* 219 (2016): 201-7, <https://doi.org/http://dx.doi.org/10.1016/j.sbspro.2016.05.006>.

¹¹ Zoë A. Ginsburg et al., "Unreliable and Difficult-to-Access Food for Those in Need: A Qualitative and Quantitative Study of Urban Food Pantries," *Journal of Community Health* 44, no. 1 (February 15, 2019): 16-31, <https://doi.org/10.1007/s10900-018-0549-2>.

¹² Neetu Abey George and Fiona H. McKay, "The Public Distribution System and Food Security in India," *International Journal of Environmental Research and Public Health* 1 (2019), <https://doi.org/10.3390/ijerph16173221>.

¹³ Milena Corrêa Martins et al., "Brazilian National Food and Nutritional Security System: What Are the Similarities in the Decentralization Process?," *Cadernos de Saude Publica* 39, no. 3 (2023), <https://doi.org/10.1590/0102-311XEN131022>.

compared with India. Otherwise, the SISAN adopts autonomy system in which states and municipalities hold its owns authority to implement food safety measures with sources from the SISAN. In this context, the central agency purposes to identify the exact problem on the ground in cooperation with the state or municipalities. Moreover, the states or municipalities may design their programs to reduce food insecurity.

Nevertheless, food security obtains serious attention in the international level, including the European Union. It began international concern on food shortages as population growth so that food safety appeared new perspective from the international community in 1974 which worried against global starvation.¹⁴ The 1974 World Food Conference adopted the Universal Declaration on the Eradication of Hunger and Malnutrition defined food security is the inherent right of every human being to be free from hunger and malnutrition. Then, the Food Agriculture Organization added element coverage of food security including security access to supplies on all those who need them.¹⁵ Moreover, the definition of food security attained broader perspective at the 1996 World Food Summit which express that the concept of food security is adequate access on food for individual, household, national, regional, and international level with economically access and safely consumed.

The concept was also adopted by the EU that food security constituted a measure which ensure sufficient access on affordable food and nutrition. The Union initiated to establish food agricultural system which known as Common Agricultural Policy (CAP). This policy constituted the EU's endeavor to improve agriculture production through economic assistance for the farmers, ensuring stable supply, and cheap price in the market.¹⁶ It relates to creation of EC Regulation No. 178/2002 concerning general principles and requirements of food law. The regulation provided general principle toward standard of food distribution in the region. It governed about protection on human life and health, and also protection of consumers such as fair trade, resort scientific evidence to determine risk assessment, and application precautionary principle to avoid harmful effect against human health.¹⁷

In addition, the guideline of the EU was derived from the 1966 International Covenant on Economic Social, and Cultural Rights. Article 11 of the Covenant stipulated there is no food security without affordable access on it. Then, the state parties recognized the rights to standard of living for himself, including adequate food. Hence, the article requested the parties to improve production method and food distribution, technological and scientific knowledge usages, sharing knowledge, and reformation of agrarian system. These efforts need to be committed to reach elimination of food insecurity.¹⁸ However, the EU is

¹⁴ A Toma-Bianov and O Ûaramet, "The Concepts Of Food Security And The Right To Safe Food From The International And European Perspective," *Bulletin of the Transilvania University of Braúov* 5 (2012).

¹⁵ Giulio Fusco, Benedetta Coluccia, and Federica De Leo, "Effect of Trade Openness on Food Security in the EU: A Dynamic Panel Analysis," *International Journal of Environmental Research and Public Health* 17, no. 12 (June 2, 2020): 1-13, <https://doi.org/10.3390/ijerph17124311>.

¹⁶ Fusco, Coluccia, and De Leo, "Effect of Trade Openness on Food Security in the EU: A Dynamic Panel Analysis," *Int. J. Environ. Res. Public Health* 17, no. 12 (2020):4311. <https://doi.org/10.3390/ijerph17124311>.

¹⁷ Toma-Bianov and Ûaramet, "The Concepts Of Food Security And The Right To Safe Food From The International And European Perspective," *Bulletin of the Transilvania University of Brasov* 5, no. 1 (2012): 54.

¹⁸ Jemma Gornall et al., "Implications of Climate Change for Agricultural Productivity in the Early Twenty-First Century," *Philosophical Transactions of the Royal Society B: Biological Sciences* *Philosophical Transactions* 365, no. 1554 (2010): 2973-89. <https://doi.org/10.1098/rstb.2010.0158>.

recorded as net importer of few products that related to food industry such as energy, animal feed, and fertilizer which originate from Russia. Meanwhile, the current political challenge in the region makes obstacles in terms of transportation and storage facilities which are essential for food availability.¹⁹ It affects cost of logistic until four times higher than normal price because of military barrier in the route. For the EU countries, the conflict leads animal feed and fertilizer to affect hike of price for the essential food industry in spite of having self-sufficient well production.²⁰ This situation causes farmers are facing productivity challenges to access raw materials and other essential item which worsen food availability within the region. Those issues took serious attention of the Parliament of the EU to resolve potential food crisis faced within the Union. The EU's Parliament responded with issuance of a resolution of 14 June 2023 pertaining ensuring food security. It instructed the EU's Commission to create strategy which focus on domestic production to reduce food dependency on import from third countries aggravating balance of payment.

Meanwhile, the United Nations also pays attention on food security with stipulating various instruments and guidelines to address the issue of recognizing food security and the right to food. Those are reflected under Article 25 of the Human Rights Declaration regarding the right of person to food access, Article 12(2) of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women pertaining to the right to nutrition for pregnant women. Furthermore, the person with disabilities receives equal protection under Article 28(1) of the Convention on the Rights of Persons with Disabilities. Then, FAO also provided guidelines to support the progressive realization of adequate food security in the context of national food security. It reveals technical provisions dealing with food security issues at the domestic level.²¹

3.2 Food Security As National Defense Systems

Nutrition sufficiency constitutes the compulsory obligations for state authority to fulfill the people with adequate food supplied. Even, the European Union has early determined it as Common Agricultural Policy (CAP) which describes agriculture is an essential matter not only covering on the products, but also farmers. It deems food agriculture and food security within a chain production which is mutually related for safeguard domestic market. For this reason, affordable food price policy is an absolute measure for the government to ensure political stability and economic growth. Nonetheless, vulnerable food access may influence public health which also weaken against national defense system. In this terms, throughout citizens are considered as a civil defense directly involving in development of nations. Thus, food security is a requirement to safeguard continuity of human development impacting a country's defense.

National defense system should cover the protection of human health from starvation and malnutrition. It requires food safeguards to maintain the stability of fertilizer and seed supply for the farmers. Those are the important elements to guarantee public stockholding

¹⁹ Fabio G. Santeramo and Munsu Kang, "Food Security Threats and Policy Responses in EU and Africa," *Sustainable Horizons* (Elsevier B.V., October 1, 2022), <https://doi.org/10.1016/j.horiz.2022.100044>.

²⁰ Mohammad Fazle Rabbi et al., "Food Security Challenges in Europe in the Context of the Prolonged Russian-Ukrainian Conflict," *Sustainability (Switzerland)* (Multidisciplinary Digital Publishing Institute (MDPI), March 1, 2023), <https://doi.org/10.3390/su15064745>.

²¹ Muhamad Sayuti Hassan, "A Legal Analysis Of A Human Rights-Based Approach To Food Security For Orang Asli," *KnE Social Sciences*, January 5, 2024, <https://doi.org/10.18502/kss.v8i21.14822>.

for a whole period. At the same time, food supply should be stocked in any circumstances, including during of war. On the other hand, restrictions on food could become measures carried out by several countries with the objective to distort food distribution and finally force a country in a situation that consequently impacts political control.

In addition, economic sanctions may cause a country to suffer in accessing certain products within unlimited time periods. It could take place by imposing on importing agricultural products which would endanger food security. However, the common international practice commonly carries out economic sanction in term of embargo of trade with exception for food and health product. The exception measures are conducted with taking into account human rights issues which may lead malnourish disaster.²² The practice had been practiced by the US Government imposing export restriction on Cuba by allowing export of food and medicines under quantitative level. Nonetheless, the sanctions prohibit improving capacity of the state to develop its own food security system. This unilateral sanction desperately suffers the targeted country to access on food to feed its people with inexpensive diets.

As part of the defense system, the government intervenes to provide sufficient food with an expenditure policy to ensure harvest yield. It subsidizes farmers with incentives for fertilizers and high-quality seeds to increase production. Another outstanding policy is the military's involvement in ensuring food availability for the nation's demand such as in Indonesia. The measures consider that food safeguarding constitutes the national endeavor to protect the country's existence.²³ For this reason, the military poses its main function as the guardian of state sovereignty which has duty to shield national security as well.²⁴ It is provided under the Indonesian Defense Act No. 3/2002 which describes coverage of Indonesia's national defense system including protection of citizen and natural resources. Moreover, the Indonesian government perceives food safety as a pivotal issue amidst food shortages as a result of export restrictions from the main producer countries. Otherwise, lack of food stockholding may affect economic development which depends on food security.²⁵

As the military's role at the plant level, state intervention also involves state-owned enterprises that have functions to penetrate into the market. The state company distributes the food in an effort to stabilize the food price. Furthermore, the state company's assignment may facilitate food security fulfillment. It is not only working to purchase the harvest from the farmers, but it could also import the food solely for sufficient nutrition with price affordability.

In this case, Indonesia applies intervention measures through state-company as reflected under Government Regulation No. 13/2016 concerning the National Logistic Board. Article 3 of the regulation enacts the agency may be designated to import food commodities to safeguard food security. However, the reformation of government led

²² Ronjini Ray and Jamshed Ahmad Siddiqui, "Unilateral Economic Sanctions and Food Security," *Journal of International Trade Law and Policy* 22, no. 3 (December 8, 2023): 229–46, <https://doi.org/10.1108/JITLP-07-2023-0039>.

²³ Aris Sarjito, "The Role of The Ministry of Defense in Ensuring Food Security for State Defense," *Journal of Governance* 7, no. 3 (September 25, 2022), <https://doi.org/10.31506/jog.v7i3.14607>.

²⁴ Heri Napitupulu et al., "Food Securitization In Indonesia: The Involvement Of Indonesian Military In Food Security Program," *SPECIALUSIS UGDYMAS / SPECIAL EDUCATION*, vol. 2022, n.d.

²⁵ Adesoji Adelaja and Justin George, "Food and Agricultural Security: An Introduction to the Special Issue," *Sustainability (Switzerland)* (MDPI, November 1, 2021), <https://doi.org/10.3390/su132112129>.

degradation of the agency to lose authority which caused it to become a private company. Hence, the situation could threaten access to food with affordable prices, except in necessary circumstances faced by the people. The current food crisis sparks many countries attempt to secure domestic supply from threatening disruption. For this reason, food has strategic position to maintain social-economic development, including national security. Unfortunately, food insecurity leads unstable food price to many countries which is also food scarcity foremost developing countries struggling with poverty, minimum wages, and unemployment. Thus, public stockholding is a measure to ensure adequacy availability of food with affordable price and access. It could deem food sufficiency contains human rights value which should be compulsory fulfilled.

In addition, strategic commodities policy constitutes a measures to consistently safeguard availability of the commodity concern to domestic stockpile. It could be attempted with reasons to secure national sufficiency for people's nutrition from food shortages. The effort could be applied as regarding the WTO provisions allow public stockholding under certain circumstances. Meanwhile, the public stockholding has been discussed by the member countries particularly for developing countries. Then, the discussion was brought into the Ministerial Conference deciding to grant flexibility in terms of food security under MC13th decision of the WTO. The MC13 realized that developing countries need an outstanding measures in securing food security purposes through public stockholding. Then, the decision considered that public stockholding constitutes special program for developing country members for tackling stability of food price and to support objective to provide food for urban and rural poor.

Under the MC13th, the ministers concluded public stockholding is justified for safeguard domestic supply on food security under national program with administered price. It emphasizes that the measure is carried out for domestic demand, except for certain circumstances under humanitarian reasons to export the food. In this terms, implementation of public stockpile requires to be provided under government program to avoid food distortion around the country. The current ministerial decision might provide food commodities as strategic commodities under national program. The strategic measures is an effort to secure food availability in domestic level in handling potential food inflation. Furthermore, stipulation as strategic commodities constitute supporting endeavor toward national program to guarantee public stockpile as required under the decision. It means that strategic commodities purposes to fix price of food which could be easily access toward the domestic consumers.

However, strategic commodities also relate to the stockpile during emergency. The situation describes that emergency food reserve is under coverage of food security requiring early preparedness prior catastrophe. Conversely, the emergency food reserve might be an alternative stock while facing crisis causing food distortion.²⁶ In this case, application of the MC13 justifies the members to secure buffer stockpile originating from outside countries to fill insufficient gaps from domestic sources. It has been commonly practiced in Asia countries which prescribe emergency food reserves means a risk management strategy and contingency planning in terms of unprecedented situation such

²⁶ Jonatan A. Lassa et al., "Revisiting Emergency Food Reserve Policy and Practice under Disaster and Extreme Climate Events," *International Journal of Disaster Risk Science* 10, no. 1 (March 1, 2019): 1-13, <https://doi.org/10.1007/s13753-018-0200-y>.

as drought, catastrophe, war, and conflict. Hence, the measures attempt to anticipate future uncertainties in the markets causing price volatility as a consequence of food stuck.

Meanwhile, strategic commodities have important role in preventing people from starvation which could suffer undernourishment. It probably takes place in developing countries with mostly people in low-income groups. The situation makes the groups of the most vulnerable economically are affected to access in terms of affordable food. Whereas the international commitment to SDG confirms that zero hunger is an important component of achieving sustainable development. The SDG targets starvation could be eliminated by 2030 through free access for all people to safe, nutritious, and sufficient food throughout the year. Unfortunately, the number of undernourishment has increased since the pandemic hit worldwide due to dependency on food.²⁷ According to FAO, the Covid-19 strike additional malnutrition at 83-132 million people in the world due to the disruption of export restrictions in some countries. The pandemic outbreak proves that food stockpile is a strategic issue disturbing supply chains in agricultural trade among countries.

Strategic commodities may create a system to increase the resilience of national food safety against uncertain geopolitics and emerging protectionism. The system may protect the country from arbitrary measures from other countries threatening the food supply. For instance, the Russian aggression on Ukraine targets wheat infrastructure production. The target purposes to influence trade of the commodity as it is essential for global consumption, particularly the US. Although the US is recorded in second place of global grain producer, the country consumes more wheat than any other grain products. In this case, the US's farmers produce more soybean and corn than wheat production.²⁸ It raises concern over wheat shortages which spike the food prices due to Russia and China export restrictions. The idea to provide buffer stock appeared under national strategic reserves to mitigate the shortages. Although the US's wheat produces 1,646 million bushels, while domestic consumption is at 1,117 million, the figures are doubtedly fragile for the country's consumption for more than a year. Hence, the US government initiates to enact national food security through increasing fertilizer production and investing in climate resilience agriculture.

3.3 The WTO Rules on Public Stockholding

Discussion on food reserve has long been negotiating in some series of the WTO summit which not only agriculture products, but also including fisheries products. Those aim to decline government intervention in ensuring the stockpile in any circumstances. However, Bali Package and MC13 of the WTO justify implementation of tighten regulation on food supply for domestic interest.

Initiative demand of public stockholding firstly appeared during the Nine WTO Ministerial Conference held in Bali in 2013. Then, the MC13 upholds the measures for temporary period while permanent solution would be agreed among the member countries at further negotiation. For that reason, public stockholding is commonly carried

²⁷ Marta Marson, Donatella Saccone, and Elena Vallino, "Total Trade, Cereals Trade and Undernourishment: New Empirical Evidence for Developing Countries," *Review of World Economics* 159, no. 2 (May 1, 2023): 299-332, <https://doi.org/10.1007/s10290-022-00468-z>.

²⁸ Karl A Scheuerman, "Weaponizing Wheat How Strategic Competition With Russia Could Threaten American Food Security," *34 Essay Competitions / Weaponizing Wheat JFQ*, vol. 111, 2023.

out to restrict price volatility and smooth supply. The government logically apply the measures with some objectives, *inter alia* emergency stock, buffer stock, and stock for food aid. It also covers trade connection protecting farmers from predatory prices imposed through liberalizing trade. It means the stockholding measures shield farmers with fixed prices or administered prices which become price floor under government procurement. Hence, the farmers would receive income support and are prevented from volatility price which may reduce risk for them.

Originally, the WTO took concern on agricultural issues enshrined under the Agreement of Agriculture. The AoA adopts common principle of the global trade in which free market need to be acquired by the members. There are three main pillar in implementation of the agreement consisting of market access, domestic support, and export competition.²⁹ The second pillar sets public stockholding could be designated for food security purposes. Article 6 of the AoA provides justification to override domestic support reduction commitment to prefer support on domestic producers. The provision gives pathway for stockholding following the Annex 2 requirements. Furthermore, Annex 2 of the AoA exempts government support may be take into effect within criterias, *inter alia* that the specific policy should be clearly stipulated under legislation of national program and the government fully funded the program, including prohibition subsidize producers. Then, Paragraph 3 of the Annex 2 stresses that the government purchases follow current market prices. However, the footnote 5 of the Annex concerned allows the developing members to procure the foodstuff with administered prices for food security program. It may take more advantages for farmers with higher purchasing price than current market prices.

Even though the AoA confirms discretionary of food stockholding, there are requirement provisions hassle to carry out the food reserve in conformity with the Annex of the agreement. This contrasts with the case *EC- Seal Products* allowing the member to apply the General Exception of the GATT's Article XX without taking into account conditions of the GATT agreement in implementing food security. The measures concerned may be promulgated in term of public moral to protect human welfare. The Panel decision emphasizes prioritization of public interest regarding access on food is basic rights of human being. However, the agreement of agriculture deploys the AoA as *lex specialist* against the WTO rule enshrined under Article 21.1 of the AoA. The provision concerned stipulates the GATT provisions and other related WTO agreements are subject to the provision of the agriculture agreement. The provision implicitly regulates the agriculture agreement uphold rather than the provisions of the WTO agreement, including GATT, except nothing specific provisions are provided under the AoA.

Hence, the initiative of the Bali Package commenced to ease imposition of public stockholding raised by developing members. Under the package, adoption of peace clause was introduced to brough extra time for developing countries to solve permanent solution on PSH. Then, Meeting the WTO General Council issued decision that the members agree to override obligation under Articles 6.3, 7.2, and provision of the Annex 2 of the AoA which bring obstacle for the policy. For this reason, the council decision allows the

²⁹ Shinya Ito, "Re-Evaluating a Conflict between WTO Law and the Right to Food: The Case of Public Food Stockholding," *Manchester Journal of International Economic Law*, 17 (2020).

members to directly apply PSH without prior notification for the Committee on Agriculture.³⁰

Additional effort should be endeavor through general council meeting in 2014 because the Bali Package remains contain ambiguity for the members as the AoA provision still become reference in applicable PSH. It apparently shows under point 2 of package decision enacted that the members should consider its obligation under Article 6.3 and 7.2 (b) of the AoA prior carrying out PSH. Unfortunately, both provisions regulate prohibition on stockholding measures to support domestic agriculture producers in procuring their products through administered prices. Consequently, the members applying measures with opposite manner might be considered violation of the agreement.

On the other hand, under the MC13 in Abu Dhabi deemed food security was one of pivotal issues raised among the members. It was consequently resulted from permanent solution did not reach conclusion in term of public stockholding application. Meanwhile, the developing members hesitated to impose PSH because of provision ambiguity under the Ninth WTO Ministerial Conference. This situation resulted in a new discussion to justify the members foremost developing countries to commit discretionary measures pertaining with public stockholding. It followed on demand of revision against the AoA provision which hassle PSH once the ministers gathered in the MC13 in Abu Dhabi. The developing countries purpose the new proposal represented by African Group, the ACP, and G33 coordinated by Indonesia. The proposal suggested that PSH applied by developing members for food security shall be deemed compliance with Article 3.2, 6.3, and 7.2(b) of the AoA. It aims to allow exceptional measures from domestic support limit. This effort means that there is no clearance procedure should be passed through which potentially emerge dispute of the DSB. Moreover, the proposal has objectives that domestic support may exceed its spending limit beyond the AoA provision as exemption support for purpose of public stockpile especially for developing members. Finally, all members agreed to not preclude public stockholding applied by developing members without considering Article 3.2, 6.3, and 7.2(b) of the agricultural agreement as provided under paragraph 2 of the MC13 decision.

Under the MC13, paragraph 5.1 of the decision required the food stockpile acquired under food security program should not substantially distort or adversely affect the supply for other members. Consequently, exceeding domestic support which disturb other members might be supposed that the PSH program would be deemed as government subsidizing the food products. It may be disputed under the Agreement on Subsidies and Countervailing Measures as stipulated under paragraph 5.2 of the decision. However, notification condition required by the MC13 decision may result in affected members request consultation with imposing member to avoid dispute.

Furthermore, the MC13 seemed to replace the AoA provisions particularly for developing and least developed countries in introducing public food reserves. It describes some provisions concerning application matter of PSH which put aside existed provisions of the agreement. Though, the MC13 considers that excessive subsidies support may distort or affect other member's food security, the subsidies support was deemed as violation of the decision. Through the decision, the members agree to revise Article 6:1 of the AoA which

³⁰ Ahamed Ashiq Shajahan, "Promoting Food Security through Public Stockholding – Indian Perspective and Challenges at the WTO," *Journal of International Trade Law and Policy* 22, no. 3 (December 8, 2023): 150-66, <https://doi.org/10.1108/JITLP-06-2023-0034>.

previously mandated reduction domestic support. Then, it inserted revision that developing members were exempted to apply domestic support measures which was determined under specific provisions. Thus, the MC13 decision specified a measure categorized domestic support for PSH with the insertion of a new Annex 6 which amend the AoA pertaining developing country measures for supporting food security.

In addition, Annex 6 obviously provide that developing members are justified for introduction of PSH with the objective to support low income or poor farmers as well as for urban and rural people. The provision enacts that the acquisition of PSH primarily allocates to a dequate foodstuff availability which could stabilize prices through administered prices. However, the Annex 6 emphasizes the measure should be navigated to solve domestic matter regarding food scarcity instead of export purposes, except certain circumstances. For this reason, the members may export the stockpile in accordance with following circumstances that demand for international aid, for non-commercial humanitarian purposes, and requested by Net Food-Importing Developing Countries or least developed countries.

3.4 Indonesia's Policy on Safeguarding Food Security

Indonesia's current food reserve adopts lack of government intervention against supply disruption. This situation has resulted in unstable food prices which consistently surge since commencement of reformation. Furthermore, it demanded reshaping the administration system which is also impact toward Indonesia buffer stock agency (BULOG) to accelerate economic recovery post crisis. Regarding international advice, domination position of BULOG may affect to reduction of market confident as consequence from government intervention against procurement and distribution of staple food. Then, the existent of BULOG was supposed threatening proliferation of trade flow, whereas it shielded farmers and consumer with floor price and ceiling prices. Thus, dissolution of BULOG may decline government role which transform into a state company purposing for only selling of food following market prices.

In addition, degradation of the authority was begun since promulgation of the Government Regulation No. 7/2003 on Establishment of BULOG as Public Company. Finally, the government decided to fully end the role of the agency concerning buffer stock on food as provided under the Government Regulation No. 13/2016 concerning Public Company of BULOG. Nonetheless, Article 3.1 of the current regulation is probable for the agency to reserve stockpile in term of the government orders it, meanwhile, the provision stipulates that the company would safeguard and stabilize prices at the level of producers and consumers as government request as well. Consequently, the provision does not justify the agency to independently intervene from upstream until downstream levels.

Meanwhile, transformation of BULOG to be fully privatized as a state-owned enterprise had led the government to replace its previous role to a new public institution called Bapanas. The latter institution holds duty as the food regulator, whereas BULOG should compete with other private companies in terms of purchasing and selling of the food stock. It is obviously proven regarding the Food Act No. 18/2012 allowing any private entities to import the food, instead of solely under single government entity. This regulation may constantly restrain the state company to access import licensing as limitation of importing quota. On the other side, Article 128 of the Act mandates Bapanas has function to supervise BULOG pertaining procurement and distribution of food

following consumer's necessity. However, it does not prevent private sectors to access on food sources which is able to raise food prices. The provision describes the state company allocates its stockpile while rice prices are hiking requiring intervention to stabilize the prices. Hence, the current regulations desire the state company to directly compete with private entities with equal positions in selling rice following market prices.

3.5 Do the WTO's Rules Justify Domination of State Enterprise for Strategic Materials?

State intervention on public demand has commonly been proven in some circumstances. Those are carried out once the Covid-19 diseases hit the global pandemic which sparked the government to control the procurement and distribution of the vaccines. The measures was considered that certain government deemed protection of human health constituted a mandatory obligation.³¹ Hence, the vaccine must be stipulated as public good provided which should be easy to access.

Under the World Trade Organization regime, the domination of a state-owned enterprise remains debatable among the members, foremost the developed members. It opposes the WTO principle aiming for elimination of unfair and inequitable treatment.³² The members argued that the existence of it may affect anti-competition which distorts trade.³³ Nonetheless, Article XVII GATT recognizes the establishment of a state entity with special or exclusive privileges. Art. XVII provides special or exclusive privileges of the enterprise does not jeopardize nondiscriminatory treatment prescribed by the GATT Rules. Unfortunately, Art. XVII(b) contains vague certainty as the provision requires any trade activities either purchases or sales should be in accordance with commercial considerations. It requests adequate opportunity is ensured for other members such as price, quality, availability, marketability, transportation, and other conditions. Meanwhile, the report of a Sub-Committee supposed that the terms of special or exclusive privileges do not grant exemptional treatment for the state company.³⁴

On the other hand, Art. XVII (2) of the GATT allows the members to put aside the application of Art. XVII (1) GATT purposing for immediate or ultimate government consumption. For this reason, the state enterprise may import products for public consumption as proven by the members. The provision concern reflects a special treatment for state trading enterprise that might be carried out to procure goods under special circumstances. The provision asserts that it imposes conditional requirements that the members request to supply things for immediate consumption.

In addition, Art. XVII (1)(a) GATT firmly expresses that the existence of the state trading enterprise should not affect imports and exports conducted by private traders. It still shields private traders without exclusive rights accorded to state trading company. The provision concern emphasizes fairness treatment, including privileges policy covering

³¹ Nivedita Saksena, "Global Justice and the COVID-19 Vaccine: Limitations of the Public Goods Framework," *Global Public Health* 16, no. 8-9 (2021): 1512-21, <https://doi.org/10.1080/17441692.2021.1906926>.

³² Ana Peres, "World Trade Organization : Challenges and Opportunities," *House of Commons Library* 2, no. 9942 (2024): 5-49.

³³ Yingying Wu, "Reforming WTO Rules on State-Owned Enterprises: In the Context of SOEs Receiving Various Advantages," *Reforming WTO Rules on State-Owned Enterprises: In the Context of SOEs Receiving Various Advantages* 39, no. 3 (2019): 1-255, <https://doi.org/10.1007/978-981-13-3561-7>.

³⁴ WTO, "Text Of Article XVII, Interpretative Note Ad Article Xvii And Uruguay Round Understanding On Interpretation Of Article XVII," n.d.

non-discriminatory measures. Otherwise, Art. XVII (2) prescribes special or exclusive privileges for the enterprise cover products required for immediate or ultimate demand of governmental use or consumption. Certain products may influx with special treatment due to necessary circumstances. Those products might cover food products which become essential goods for daily human necessity. The situation may result in the state enterprise to monopolize procurement of such products. Nonetheless, Art XVII of the GATT is a special provision for state trading enterprise in the context of special treatment to export and import in certain circumstances. It does not hamper market access, distorting fair competition among other members. Moreover, the provision prohibits domination position of state enterprise to receive subsidies. The domination position might be described that specific law designates only a state enterprise enjoying subsidies. This may affect equal opportunity as prescribed under the Agreement on Subsidies (SCM).

In addition, it needs to stipulate that several agricultural products are categorized as pivotal commodities. It relates to the conclusion of the members which deem the number of farm products determined as necessary foods for food security. Meanwhile, the World Food Summit Plan of Action 1996 adopted food security definition as various food which could be easily accessed by all people containing safety and nutritious for healthy life.³⁵ The Summit 1996 broadly defines on coverage of foods consumed by whole people in any hemisphere. Thus, it seeks to determine variable food considered as a critical food commodity according to each member parties.

The 13th Summit of the WTO Ministerial Conference, actually, gives access for the members to implement public stockholding for food security program. The Summit accords a chance to create national policy concerning food security protection, instead of the AoA application. The MC13 has decided that the developing members could determine which commodity is acquired under the program with blanket prices. This decision may lead authorities to dominate in controlling toward distribution of the important foodstuff.

This consensus brings opportunities to modify the institutionalization form of state enterprise, unlike common private company. It focuses on fulfilments of public stockholding for the national security. Moreover, the government needs to enact pertaining to some agricultural products such as rice, sugar, and palm oil under public stockholding categories. This measure may show that the state company is implemented mandatory obligations to safeguard sustainable food stockpiles. For this reason, a role of statutory body for the company results in monopoly authority in conducting the distribution of most of strategic food commodities. Thus, the huge authority may take control to throughout distribution of chains system from regulating on standard of manufacture, storage, distribution, sales, and import. The measures has been applied by India to protect its sufficient food from shortages of the domestic stockpiles. Under the India National Food Security Act 2013 (NFSA), Indian government takes into force an adequate food policy for people consumption. The Act governs the state mandatory obligation for ensuring access to quantity of food and nutritional quality. It covers rice, wheat, and coarse grains which should be sold at an affordable price.

³⁵ Joseph A. McMahon, "Negotiations on Food Security at the WTO: A Never-Ending Story?," *Journal of International Trade Law and Policy* 23, no. 2 (2024): 101-16, <https://doi.org/10.1108/JITLP-03-2024-0018>.

In addition, there is mechanism provided by the Indian government to distribute assistance to its people. The assistance would be distributed through scheme focusing on priority household. According to the Act, priority households cover whole eligible persons determined by the government to receive food assistance under the Targeted Public Distribution System (TPDS). For that reason, Section 9 of the Act identifies that eligible persons to receive the assistance is coverage population residing within rural and urban areas. Furthermore, the government would issue guidelines to identify such eligible persons living in the described areas. Finally, the application of TPDS successfully covers 70% of rural population and roughly half of urban population.³⁶

In terms of distribution, the NFSA provides the state-owned enterprise known as Food Corporation of India (FCI) directly involving in distributing of the public food assistance. The FCI is responsible for procurement, storage, movement, distribution, and sales of foodgrains on behalf of India government (GoI). Under the NFSA, the FCI is obliged to deliver foodgrains under the Targeted Public Distribution System (TPDS). It supplies foodgrains with administrative prices regarding to government direction for easing food access toward vulnerable society. The company undertakes the distribution amount at roughly 800 million people for both rural and urban areas.

Promulgation of NFSA results in the FCI acquires solely authority to spread food distribution. Previously, it apparently obvious through the Food Corporation Act 1964 revealing that establishment of the FCI poses three objectives, namely firstly is to create efficient price support operation, secondly to distribute the foodgrains throughout the country under PDS, and the thirdly to maintain stockpile for national food security.³⁷ Furthermore, it purchases crops yields from the farmers every year without limitation quantity as conformity with FAQ standard (Fair Average Quality). Then, the purchasing price follows rate prices set up by the India government known as MSP (Minimum Support Price).

The authority of the FCI is properly suitable with the elements of food security defined by the World Food Summit, *inter alia* availability, access, utilization, and stability.³⁸ Then, the Supreme Court of India rules that right to food constitutes legal entitlement. Then, the verdict orders the government to provide minimum allocation, standard nutrients, and mechanism of implementation concerning the scheme distribution.³⁹

4. CONCLUSION

Improvement of the state-owned enterprise's role constitutes a government endeavor to ease people access on necessary materials. It is possibly conducted regardless status of the country whether developing or developed countries. Article XVII of the GATT allows the

³⁶ Neetu Abey George and Fiona H. McKay, "The Public Distribution System and Food Security in India," *International Journal of Environmental Research and Public Health* 16, no. 17 (2019), <https://doi.org/10.3390/ijerph16173221>.

³⁷ Gurdeep kaur Ghumaan and Dr. Pawan Kumar Dhiman, "Organization and Working of Public Distribution System A Study of Punjab," *Indian Journal of Applied Research* 3, no. 4 (2011): 285–89, <https://doi.org/10.15373/2249555x/apr2013/95>.

³⁸ C.S.C. Sekhar, "Whither Food Policy and Institutions in India?," *Agricultural Economics Research Review* 28, no. 1 (2015): 157, <https://doi.org/10.5958/0974-0279.2015.00013.0>.

³⁹ Lauren Birchfield and Jessica Corsi, "Between Starvation and Globalization: Realizing the Right to Food in India," *Michigan Journal of International Law* 31, no. 4 (2010): 691–764.

members to keep existing state trading enterprise without distortion of fair competition. It should respect nondiscriminatory principle among the members and based on commercial considerations. Furthermore, Article XVII (2) of the GATT justifies domination of state trading enterprises in procurement of certain materials in special circumstances.

In terms of food security, the Ministerial Conference 13 gives flexibilities toward application of Agreement on Agriculture (AoA). The MC13 allows developing countries to impose public stockholding for safeguard domestic stockpiles. Even, the developing member supposes the measures as protection against national security. Thus, strengthening of state company aims to ease public access on food amidst food scarcity threaten. It is adopted by India government through the Food Corporation of India (FCI) which is responsible for procurement and distribution under the Public Distribution System. The existence of the company is the government endeavor to ensure affordable food prices throughout national populations.

BIBLIOGRAPHY

- Alderman, Harold, Ugo Gentilini, and Ruslan Yemtsov. *People Question*, n.d.
- Birchfield, Lauren, and Jessica Corsi. "Between Starvation and Globalization: Realizing the Right to Food in India." *Michigan Journal of International Law* 31, no. 4 (2010): 691–764.
- Christiani, Theresia Anita. "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object." *Procedia-Social and Behavioral Sciences* 219 (2016): 201–7. <https://doi.org/http://dx.doi.org/10.1016/j.sbspro.2016.05.006>.
- George, Neetu Abey, and Fiona H. McKay. "The Public Distribution System and Food Security in India." *International Journal of Environmental Research and Public Health* 16, no. 17 (2019). <https://doi.org/10.3390/ijerph16173221>.
- Ghumaan, Gurdeep kaur, and Dr. Pawan Kumar Dhiman. "Organization and Working of Public Distribution System A Study of Punjab." *Indian Journal of Applied Research* 3, no. 4 (2011): 285–89. <https://doi.org/10.15373/2249555x/apr2013/95>.
- McMahon, Joseph A. "Negotiations on Food Security at the WTO: A Never-Ending Story?" *Journal of International Trade Law and Policy* 23, no. 2 (2024): 101–16. <https://doi.org/10.1108/JITLP-03-2024-0018>.
- Peres, Ana. "World Trade Organization: Challenges and Opportunities." *House of Commons Library* 2, no. 9942 (2024): 5–49.
- Saksena, Nivedita. "Global Justice and the COVID-19 Vaccine: Limitations of the Public Goods Framework." *Global Public Health* 16, no. 8–9 (2021): 1512–21. <https://doi.org/10.1080/17441692.2021.1906926>.
- Sekhar, C.S.C. "Whither Food Policy and Institutions in India?" *Agricultural Economics Research Review* 28, no. 1 (2015): 157. <https://doi.org/10.5958/0974-0279.2015.00013.0>.
- WTO. "Text Of Article XVII, Interpretative Note Ad Article Xvii And Uruguay Round Understanding On Interpretation Of Article XVII," n.d.
- Wu, Yingying. "Reforming WTO Rules on State-Owned Enterprises: In the Context of SOEs Receiving Various Advantages." *Reforming WTO Rules on State-Owned Enterprises: In the Context of SOEs Receiving Various Advantages* 39, no. 3 (2019): 1–255.

<https://doi.org/10.1007/978-981-13-3561-7>.