

POLICY DIRECTIONS FOR ANIMAL, FISH AND PLANT QUARANTINE INSTITUTIONS IN THE ADMINISTRATIVE STRUCTURE

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Abstract

This research analyses how the Animal, Fish, and Plant Quarantine Law currently regulates quarantine and its institutions in positive law, the form and position of government institutions referred to in the Indonesian constitutional structure, and the direction of the government's institutional arrangements is linked to Article 8 of the Quarantine Law. Animals, Fish and Plants in the Indonesian constitutional structure. Therefore, the form of government institution in the quarantine sector based on Article 8 of the Animal, Fish, and Plant Quarantine Law which is in accordance with the Indonesian legal system and constitutional structure is a Government Institution at the Ministry Level, considering the biosecurity function carried out in the implementation of quarantine. This normative legal research is supported by secondary data and analyzed qualitatively. From the results of the research, the government still needs to follow up on the regulation of animal, fish and plant quarantine and its institutions in the Animal, Fish and Plant Quarantine Law by drafting a Government Regulation Draft.

Key words: *Constitutional Structure; Options; Quarantine*

Abstrak

Penelitian ini menganalisa bagaimana Undang-Undang Karantina Hewan, Ikan, dan Tumbuhan saat ini mengatur perkarantinaan serta kelembagaannya dalam hukum positif, bentuk dan kedudukan lembaga pemerintah dimaksud dalam struktur ketatanegaraan Indonesia, serta arah pengaturan kelembagaan pemerintah dimaksud dikaitkan dengan Pasal 8 Undang-Undang Karantina Hewan, Ikan, dan Tumbuhan dalam struktur ketatanegaraan Indonesia. Oleh karena itu, bentuk kelembagaan pemerintah di bidang perkarantinaan berdasarkan Pasal 8 Undang-Undang Karantina Hewan, Ikan, dan Tumbuhan yang sesuai dengan tata hukum dan struktur ketatanegaraan Indonesia adalah Lembaga Pemerintah Setingkat Kementerian, dengan mempertimbangkan fungsi biosekuriti yang diemban dalam penyelenggaraan perkarantinaan. Penelitian hukum normatif ini didukung data sekunder dan dianalisis secara kualitatif. Hasilnya bahwa pengaturan karantina hewan, ikan, dan tumbuhan serta kelembagaannya dalam Undang-Undang Karantina Hewan, Ikan dan Tumbuhan masih perlu ditindaklanjuti oleh pemerintah dengan penyusunan Rancangan Peraturan Pemerintah.

Kata kunci : Karantina; Opsi; Struktur Ketatanegaraan

Introduction

With the enactment of Law Number 21 of 2019 concerning Animal, Fish and Plant Quarantine (*Undang-Undang Karantina Hewan, Ikan, dan Tumbuhan* - UU KHIT), Article 8 of the Act, it has constitutional implications for adding new institutions. In Article 8 paragraph (1) of the Act, it is stated "The implementation of the quarantine as referred to in Article 7 is integrated and coordinated in the form of one body." Furthermore, it is stated in Article 8 paragraph (1) of the Law in question, "Provisions regarding integration and coordination in the form of one body as referred to in paragraph (1), including their duties and functions, are regulated by or based on a Government Regulation."¹

The law above is an initiative of the Indonesian House of Representatives (DPR RI). The dynamics of discussing articles related to central government institutions in the field of animal, fish and plant quarantine lasted quite a long time, since the appointment of a government representative for the discussion of the said bill on May 25, 2016,² until an agreement was reached in the Working Meeting between Commission IV DPR RI and the Minister of Agriculture, Minister of Maritime Affairs and Fisheries, Minister

of Environment and Forestry, Minister of Administrative Reform and Bureaucratic Reform, and Minister of Law and Human Rights.³ The position of the Government during the discussion with Commission IV of the DPR RI explicitly conveyed the direction of the President of the Republic of Indonesia at a limited meeting so that the Bill would not lead to the formation of a new institution.⁴

The implementation of animal, fish, and plant quarantine has undergone significant development over the last 27 (twenty-seven) years. The lag behind Law Number 16 of 1992 concerning Animal, Fish, and Plant Quarantine is due to the limited attributive authority granted by the Act only to the duties, functions, and authorities related to the prevention of entry, exit, and/or spread of Quarantine Animal Pests and Diseases (*Hama dan Penyakit Hewan Karantina* - HPHK), Quarantined Fish Pests and Diseases (*Hama dan Penyakit Ikan Karantina* - HPIK), and Quarantined Plant Destruction Organisms (*Organisme Pengganggu Tumbuhan Karantina* - OPTK). Quarantine institutions in the context of a state of law (*rechtsstaat*/rule of law) must carry out all government actions in the field of animal, fish and plant quarantine based on or preceded by the existence of

1 Indonesia, Law of the Republic of Indonesia concerning Quarantine of Animals, Fish and Plants, Law no. 21 L.N. No. 200 of 2019, T.L.N. No. 6411, Article 8.

2 Letter of the President of the Republic of Indonesia to the Chairman of the DPR RI No. R-35/Pres/05/2016, Subject: Appointment of Government representative to discuss the Bill on Animal, Fish, and Plant Quarantine, May 25, 2016

3 Brief Report of Commission IV DPR RI (Agriculture, Environment and Forestry, Maritime Affairs and Fisheries, and Food), Session IV Period, 10th Meeting, 21 March 2018.

4 Cabinet Secretariat Letter Number: B. 543/Setkab/Polhukam/09/2016, September 29, 2016.

statutory regulations or due process of law.⁵ The rigidity of the legality principle is the reason why an ideal quarantine has not yet been implemented. The role of quarantine institutions so far as the front guard or first line of the Republic of Indonesia of defense to protect the health of animals, plants, humans, and biological natural resources is only limited to aspects of disease, while the aspects of Food Safety and Quality, Feed Safety and Quality, Genetically Engineered Products (GMO), Genetic Resources (*Sumber Daya Genetik* - SDG), Biological Agents, Invasive Foreign Species, Wild Plants and Animals, and Endangered Plants and Animals are not tasks, functions, and the authority of the quarantine institution based on the old KHIT Law.

The writing method in this paper uses a normative legal writing type, namely writing that is carried out to collect and analyze secondary data. In normative legal writing, secondary data sources are usually only used, namely books, diaries, statutory regulations, court decisions, legal theories, and opinions of leading legal scholars.⁶

In relation to the writing of this normative law, the author uses a statutory approach which prioritizes legal materials in the form

of statutory regulations as a basic reference material in conducting research. The writing of this journal is library research, namely legal research conducted by examining library materials or secondary data.

Talking about animal, fish, and plant quarantine cannot be separated from: (1) Approval on the Application of the Application of Sanitary and Phytosanitary Measures⁷ or better known as the SPS Agreement; and (2) Standards set by 3 (three) international standard setting organizations, the existence of which is mentioned in Article 12.3 and Annex A Paragraph 3 of the SPS Agreement. Sanitation relates to animal and human health, while phytosanitary relates to plant health.⁸ What is meant by “animals” includes fish and wild animals, while “plants” include wild plants (forest).

The SPS Agreement above is one of the multilateral agreements in Annex 1A: Agreement on Trade in Goods in Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization. Every WTO member country that has ratified the WTO Agreement automatically becomes a party to a multilateral agreement based on the principle of “single

5 Jimly Asshiddiqie, Indonesian Constitution and Constitutionalism, Jakarta: Secretariat General and Registrar of the Constitutional Court, 2006, p. 124-125.

6 Peter Mahmud Marzuki, *Penelitian Hukum*. Jakarta: Kencana, 2005, p. 13.

7 Indonesia, Law on Ratification of Agreement Establishing the World Trade Organization, Op. Cit., the translation of the SPS Agreement in the General Explanation states “Agreement on the Application of Sanitary and Phytosanitary Measures (Agreement on the Protection of Human, Animal, and Plant Health)”, the author considers this translation inaccurate, first, incomplete as the original text the agreement (legal text), namely removing the word “application” https://www.wto.org/english/docs_e/legal_e/15sps_01_e.htm, accessed on December 15, 2021, secondly, the SPS policy can be said to be identical to the policy/regulation in the field of quarantine, the word “plant” is generally used for plant quarantine.

8 Institute for Training and Technical Cooperation-WTO, Sanitary and Phytosanitary: Module 3 The Agreement on the Application of Sanitary and Phytosanitary Measures, Geneva: WTO-OMC, 2017, p. 8.

undertaking” negotiation or acceptance in its entirety in the Uruguay Round.

Government agencies/institutions in the field of animal, fish, and plant quarantine are the implementing organs of the SPS Approval. Since 2016, a single central government authority has been announced in Indonesia, namely the Agricultural Quarantine Agency, the Ministry of Agriculture as the National Notification Body and the National SPS Information Exchange Center (National Inquiry Point).⁹

There are also the three international organizations mentioned above, including:

- a. Codex Alimentarius Commission (CAC), which establishes and develops Standards, Guidelines, and Recommendations (SGR) on food and feed safety;
- b. International Office of Epizootics (OIE) or World Animal Health Organization (WOAH), which establishes and develops: (1) Terrestrial Animal Health Code; and (2) the Aquatic Animal Health Code; and
- c. Secretariat of the International Plant Protection Convention (IPPC), which establishes and develops International Standards for Phytosanitary Measures (ISPMs).

1. International and National Law on Animal, Fish and Plant Quarantine

SGR's position in the perspective of international law can be classified as “Soft Law”. As for the term Soft Law, international law scholars classify it as: (i) hortatory¹⁰ – compare the similarities with the substance of Article 12.2 of the SPS Agreement: “...The Committee shall encourage the use of international standards, guidelines or recommendations by all Members...”; or (ii) non-binding rules/standards issued by international organizations in the context of International Common Law (ICL)¹¹ theory – compare with the conception of Codex Text “Codex standards and related texts are voluntary in nature. They need to be translated into national legislation or regulations to be enforceable.”¹²

The KHIT Law as a general norm established through legislation, according to Hans Kelsen's teachings, has 2 (two) major functions, namely: (1) determination of law-implementing organs (quarantine institutions) and procedures to be followed; and (2) determine the judicial and administrative actions of the implementing organ.¹³ Apart from being the legal implementing organ of the KHIT Law, the quarantine institution also carries out the functions of various laws and

Research result/Discussion

9 Institute for Training and Technical Cooperation-WTO, Sanitary and Phytosanitary: Module 1 Introduction to the World Trade Organization, Geneva: WTO-OMC, 2017, p. 16.

10 Andrew T. Guzman and Timothy L. Meyer, International Soft Law, Journal of Legal Analysis – Oxford University Press, Vol. 2 No. 1, Spring 2010, p. 172.

11 *Ibid*, p. 201.

12 Codex Alimentarius: International Food Standards, Codex Texts, <https://www.fao.org/fao-who-codexalimentarius/codex-texts/en/> accessed on 15 December 2021.

13 Jimly Asshiddiqie and M. Ali Syafa'at, Hans Kelsen's Theory of Law, Jakarta: Secretariat General and Registrar of the Constitutional Court, 2006, p. 114-115.

regulations. This function is derived from the dualism-legal transformation,¹⁴ and also the implementation of international law into national law, either through the ratification of several international agreements or approvals or conventions related to animal health (sanitary) and plant health (phytosanitary), as well as the adoption of a number of voluntary international standards that are mandatory based on regulations. legislation.

National-international legal sources that provide strategic positions and functions for animal, fish and plant quarantine institutions include:

Law Number 7 of 1994 concerning Ratification of Agreement Establishing the World Trade Organization, Appendix IA: Agreement on Sanitary and Phytosanitary (Agreement on Protection of Human, Animal and Plant Health)

The Agreement on Sanitary and Phytosanitary Agreement has asked WTO member countries to appoint a single central government authority¹⁵ at the national level who is responsible for implementing notification procedures for all Indonesian SPS policies. The competent authority functions

are carried out by the Agricultural Quarantine Agency as the National Notification Body and the National SPS Information Exchange Center or National Enquiry Point.¹⁶

Law Number 17 of 2017 concerning Ratification of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization, has a strategic position and function in trade facilitation (Trade Facilitation Agreement/TFA), in Part One Number 5 of TFA it is stated:¹⁷ "Other Policies to Strengthen Neutrality, Non-Discrimination and Transparency: Obligation of supervision or inspection at borders related to food, beverage or animal feed in order to protect the health and safety of humans, animals, or plants, if imported goods are detained, the detention must be immediately notified to the importer and the right of the importer to obtain a second test is guaranteed."

Provisions related to quarantining animals, fish, and plants in the TFA, are classified as "SPS-Plus Provisions" if they are not specifically regulated in the agreement.¹⁸ The Regulations on animal quarantine (sanitary) and plant quarantine (phytosanitary) are essentially SPS (Sanitary and Phytosanitary Measures) policies, as stated in Appendix A:

14 Miftakhul Nur Arista and Ach. Fajruddin Fatwa, International Law Relations and National Law, Journal of Sharia and Law Laboratory, Vol. 1, No. 4, August 2020, p. 371-372

15 Indonesia, Law on Ratification of Agreement Establishing the World Trade Organization, Law no. 7 L.N. No. 57 of 1994, T.L.N. 3564, in the SPS Agreement: Annex B.3 inquiry point and Annex B.10 a single central government authority.

16 Indonesia, Regulation of the Minister of Agriculture on the Implementation of the Transparency of Sanitary and Phytosanitary Agreements (Agreement on Application of Sanitary and Phytosanitary Measures)- World Trade Organization, Ministry of Agriculture No. 11/PERMENTAN/KR.100/3/2016, B.N. 468 of 2016, Article 1 number 6 and number 7

17 Indonesia, Law on Ratification of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization 17 L.N. No. 240 Year 2017, T.L.N. 6140, General Description.

18 World Customs Organization (WCO), WTO Agreement on Trade Facilitation – Analysis of Technical Measures, Belgium: WCOMD.Org, Revision 3, 2016, p. 25

Definition, SPS Approval:

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labeling requirements directly related to food safety.

The functions of quarantine institutions based on Law Number 21 of 2019 concerning Animal, Fish and Plant Quarantine (UU KHIT), according to the author, can be grouped into 3 (three) policy implementation functions, namely:

1. SPS Policy

The core business activities of government agencies/institutions that handle animal, fish, and plant quarantine continue to focus on policies for protecting animal, human (sanitary) and plant health (phytosanitary) health. It's just that talking about quarantine is currently not limited to the disease aspect (HPHK, HPIK, and OPTK), but also carries out various functions that are attributable to the KHIT Law to animal, fish, and plant quarantine officials for quarantine and surveillance and/or control measures to follow. development

of international trade, progress of science and technology, as well as national law.

2. SPS Plus (Trade Facilitation) Policy

The less harmonious relationship between international trade facilitation and the SPS Agreement is due to the implementation of SPS policies by WTO countries, which often have an impact on increasing trade costs with justification for protecting human, animal, and plant health, while the Trade Facilitation Agreement (TFA) seeks to reduce trade costs. reduce trade-related transactions costs.¹⁹ An illustration of the role of the SPS Plus policy in reducing global trade costs, as shown at Figure 1.

3. Biosecurity Policy

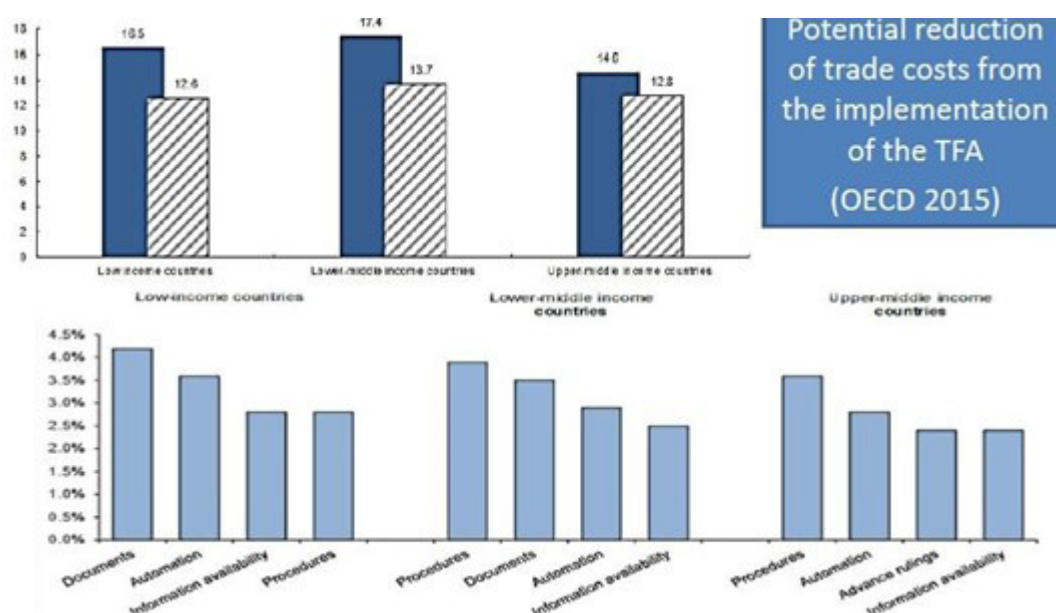
Indonesia is following developments in the global law (legal framework) related to biosecurity through the ratification of several international agreements as follows:

- a. Law Number 5 of 1994 concerning Ratification of the United Nations Convention on Biological Diversity
- b. Law Number 21 of 2004 concerning Ratification of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity;
- c. Law Number 4 of 2006 concerning Ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture;
- d. Law Number 11 of 2013 concerning Ratification of the Nagoya Protocol on Access to Genetic Resources and the

¹⁹ Serra Ayral, Linkages between SPS Measures and Trade Facilitation, World Customs Organization Knowledge Academy, July 2014, p. 13.

- Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity arising from its use of the Convention on Biological Diversity);
- e. Presidential Decree Number 2 of 1977 concerning Ratification of the International Plant Protection Convention, in conjunction with Presidential Decree Number 45 of 1990 concerning Ratification of Revised Text of the International Plant Protection Convention; and
- f. Presidential Decree Number 43 of 1978 concerning Ratification of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, in conjunction with Presidential Decree Number 1 of 1987 concerning Ratification of the 1979 Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Figure 1. Trade Facilitation Reform: Cutting Trading and Business Costs



(Data source: Market Access Division, WTO²⁰)

The six legal umbrellas of international agreements mentioned above, together with the SPS Agreement and Trade Facilitation Agreement which the authors have stated previously, form a safe global trade in terms of protecting the health of humans, animals, fish, and plants while remaining oriented towards

preserving the environment in a sustainable manner. The eight international agreements are interrelated, the quarantine position as a border agency carries out functions both related to SPS policies, SPS Plus policies, and at the same time biosecurity policies.

The Food and Agriculture Organization

²⁰ Darlan F. Marti, the WTO Trade Facilitation Agreement, p. 9, submitted at the WTO SPS Committee Thematic Workshop on Control, Inspection and approval procedures (annex c), Geneva, 2018.

(FAO) and the World Health Organization (WHO), the two organizations under the United Nations jointly fund the program of the food safety standard setting organization, namely the Codex Alimentarius Commission (Codex), providing a view of what is meant by “biosecurity” namely:²¹

“...Biosecurity has direct relevance to food safety, the conservation of the environment (including biodiversity), and sustainability of agriculture. Biosecurity includes all policy and regulatory frameworks (including instruments and activities) to manage risks associated with food and agriculture (including relevant environmental risks), including fisheries and forestry. Biosecurity is composed of three sectors, namely food safety, plant life and health, and animal life and health. These sectors include food production in relation to food safety, the introduction of plant pests, animal pests and diseases, and zoonoses, the introduction and release of Genetically Modified Organisms (GMOs) and their products, and the introduction and safe management of invasive alien species and genotypes.”

2. Animal Quarantine Institutional Policy Direction Options

The Deputy for Biological Sciences at the Institute of Biological Sciences (LIPI), Enny Sudarmonowati, views that Indonesia has so far been more focused on biodiversity and biosafety so that it ignores biosecurity.

1992 concerning Animal, Fish, and Plant Quarantine does not yet contain biosecurity, as a result there is no special biosecurity institution, several quarantine institutions that implement it have not been integrated with each other.”²²

In response to the above statement, the author agrees that even after the enactment of Law Number 21 of 2019 concerning Animal, Fish and Plant Quarantine (UU KHIT), this discussion regarding the function of biosecurity has not become the main concern of the Government in understanding the actual function of quarantine in the future. Even though there is no literal word “biosecurity” in the new KHIT Law, the implementation of quarantine and surveillance and/or control measures on Genetically Engineered Products (GM), Genetic Resources (SDG), invasive alien species (Invasive Alien Species/IAS) including food safety and feed (food and feed safety), as well as wild animals and plants are components that describe the function of quarantine in the implementation of biosecurity policies.

The expansion of the functions of government agencies/institutions in the field of animal, fish, and plant quarantine has an impact on the choice of the most suitable form of “agency” to carry out government duties, or in other words “the function of determining the form and position of the body.” According to HAS Natabaya, the terms body, organ

²¹ Committee on Sanitary and Phytosanitary Measures, Biosecurity in Food and Agriculture: Submission by the FAO, G/SPS/GEN/239, 14 March 2001, p. 2.

²² Indonesian Institute of Sciences (LIPI), National Biosecurity System Needs to be Strengthened, <http://lipi.go.id/berita/single/LIPI-Sistem-Biosekuriti-Nasional-Perlu-Strengthened/21291>, accessed on 18 May 2022.

and institution have more or less the same meaning.²³ Then regarding the relationship between functions and agencies or organs or institutions, Jimly Asshiddiqie argues that: "In every discussion about state organizations, there are two main interrelated elements, namely *organ* and *functie*. Organ is its form or container, while *functie* is its content; organ is the state of its shape (English: form, German: *vorm*), while *functie* is the movement of the container in accordance with the purpose of its formation.²⁴ Furthermore, C.S.T Kansil and Christine S.T. Kansil argued that the function determines the position of a body.²⁵

Literally, Article 8 paragraph (1) of Law Number 21 of 2019 concerning Animal, Fish and Plant Quarantine only mentions "a single agency was formed" and another mention of this "agency" as a "government institution" in Article 93 paragraph (1) Law, which reads: "At the time this Law comes into force, existing government agencies that handle the quarantine sector will continue to carry out their duties until the formation of a government

agency that handles the quarantine sector based on the provisions of this law."²⁶

Other provisions or articles in the KHIT Law do not describe the form/position of government agencies/institutions in the quarantine sector, the clarity of the status of the agency in question will later determine the pattern of accountability to the President of the Republic of Indonesia, or in other words, there is no authority without accountability (*deen bevoegdheid zonder verantwoordelijkheid*).²⁷ The only guidance based on Article 93 of the KHIT Law is that the agency to be formed is a central of government agency²⁸ under branch/cluster of executive power (derivative of executive organ). As an illustration of the said central government institution, the writer can describe it as shown at Figure 2.

Based on Figure 2 and the expansion of duties, functions, and authorities as described above, raises problems in the preparation of the Draft Government Regulation (RPP) as a follow-up to Article 8 paragraph (2) of Law Number 21 of 2019 concerning Quarantine of

23 Refly Harun, Zainal A.M. Husein, and Bisariyadi (ed.), Keeping the Pulse of the Constitution, One Year Reflection on the Constitutional Court, Jakarta: Constitution Press, 2004, p. 63.

24 Jimly Asshiddiqie, Development and Consolidation of Post-Reform State Institutions, Jakarta: Secretariat General and Registrar of the Constitutional Court, 2006, p. 98.

25 Novianto M. Hantoro, Classification of Positions in State Institutions: Problems in the Category of State Officials, Journal of State Law Vol. 7. No. 2, November 2016, p. 147.

26 Indonesia, Law of the Republic of Indonesia concerning Animal, Fish and Plant Quarantine, Op. Cit., Article 93 paragraph (1).

27 Suffriadi, Position Responsibilities and Personal Responsibilities in Government Administration in Indonesia, Juridical Journal Vol. 1 No. 1, June 2014, p. 68.

28 Ibid, Article 9 paragraph (1) states: The implementation of the Quarantine as referred to in Article 7 is the authority of the Central Government. The use of the term "central government agency" to emphasize that quarantine is a matter for the central government either according to Law Number 21 of 2019 concerning Animal, Fish, and Plant Quarantine as well as Law Number 23 of 2014 concerning Regional Government, Attachment to the Division of Concurrent Government Affairs between Governments Central and Regional Provinces and Regency/Municipal Regions, number I. Matrix for the Division of Concurrent Government Affairs between the Central and Provincial Governments and Regency/Municipal Regions, letter AA. Division of Government Affairs in the Agricultural Sector, item 6 Sub-Agricultural Quarantine Affairs.

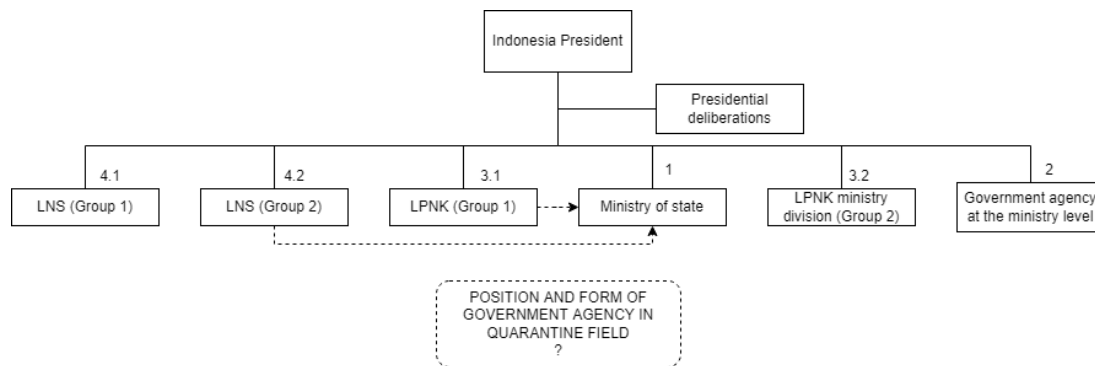
Animals, Fish, and Plants, whether the agency or institution in the field of quarantine can take the form of:

1. Ministry;
2. Non-Ministerial Government Institutions (*Lembaga Pemerintah Non-Kementerian* - LPNK): a) at Echelon I level; or b) at the Ministry level;
3. Government Institutions at the Ministry level (*Lembaga Pemerintah setingkat Kementerian*); or
4. Non-Structural Institutions (*Lembaga Non-Struktural* - LNS).

The four options for establishing government agencies/institutions in the field

of animal, fish, and plant quarantine, according to the author, need to be seriously observed. Government institutions in the quarantine sector are currently undergoing institutional experimentation,²⁹ faced with determining the choice of the most effective and efficient institutional form in integrating as well as streamlining (slimming down bureaucracies) from initially two agencies in two ministries into one form of agency to increase providing quarantine services (public services) and achieving the objectives of implementing quarantine.

Figure 2. Option of Institutional Quarantine in the Branch of Executive Power



Explanation:

- > Functional relationship or coordination between 1) LPNK and the State Ministry as referred to in Article 25 paragraph (2) of Law no. 39 of 2008 concerning State Ministries;²⁸ or 2) LNS with the State Ministry as stipulated in the laws and regulations that formed it, to provide accountability to the President.

(Data source: processed by the author from various sources.)

Ratio Legis Article 8 of Law Number 21 of 2019 concerning

Quarantine Animals, Fish, and Plants and Their Elements

According to Kordela Marzena as quoted

by Firmanto Taufik, “in the perspective of a legislator’s axiological system, the ratio legis can be qualified as a value and also something that is legally binding.”³⁰ Therefore, from the perspective of the axiological system,

²⁹ Jimly Asshiddiqie, Op. Cit, p. 336.

³⁰ Firmanto Taufik, Ratio Legis Regulation of the Establishment of a Judicial Agency Specific Election of Regional Head in Indonesia, Russian Journal of Agricultural and Socio-Economic Sciences (RJOAS), Vol. 3(111), March

the norms for the formation of “one body” are values and ties that have been mutually agreed between the DPR RI and the President of the Republic of Indonesia, as stated in the following formulation:

Article 8

1. The implementation of the Quarantine as referred to in Article 7 is integrated and coordinated in the form of a single body.
2. Provisions regarding integration and coordination in the form of one agency as referred to in paragraph (1), including their duties and functions, are regulated by, or based on a Government Regulation.

Finding the *ratio legis* means finding the original intent of the makers of the KHIT Law. The method of interpretation of originalism with an original intent approach and including the historical approach³¹ was practiced by the Indonesian Constitutional Court to find the text, context, purpose, and structure of a law. An interpretive method is indeed needed when the formulation of a statutory regulation “not entirely” can be prepared in a clear form and “does not open to interpretation anymore.” Compare this with the Elucidation of Article

8 of the KHIT Law which states it is only “sufficiently clear”.

Historically, in the dynamics of the discussion of the KHIT Bill, the Government conveyed to Commission IV of the DPR RI that the Bill would not lead to the formation of a new institution in accordance with the direction of the President of the Republic of Indonesia at a limited meeting. It was this difference of opinion between the government and the DPR RI which then became the background for the formulation of Article 8 of the KHIT Law which was “quite clear” and was left entirely to the delegation regulations, the RPP and the RPerpres, to elaborate on its elements, namely: (a) integration and coordination in the form of a single body; and (b) duties and functions.

Whether or not the formulation of an article in the law is clear, according to the author, can be subjective. Referring to the background of the discussion of the bill above and the axiological system of legislators that the author put forward at the beginning, Kordela Marzena describes the axiologist’s way of thinking as follows Table 1.³²

Table 1. Application of Axiology in Decisions for Establishing Quarantine Institutions

2021, p. 124, citing Kordela, Marzena. (2018). *Ratio Legis as a Binding Legal Value*, in Verena Klappstein, Maciej Dybowski (Eds), *Ratio Legis: Philosophical and Theoretical Perspectives*, Poland: Springer International Publishing

31 Team for Drafting the Procedural Law of the Constitutional Court, *Procedural Law of the Constitutional Court*, Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, First Printing, 2010, p. 74-75.

32 Verena Klappstein & Maciej Dybowski (eds.), *Ratio Legis: Philosophical and Theoretical Perspectives*, Poland: Springer International Publishing, 2018, p. 20.

No.	Reasoning Preference	Legislator Reasoning - Government
1.	Assimmetry	<p>“.. the legislator has a preference for state of affairs V1 to V2, which means that they do not prefer state of affairs V2 to V1..”</p> <p>DPR: (better) <u>Government Institutions</u> > <u>Ministries (status quo)</u></p> <p>V1 V2</p> <p>Government: status quo (located in the Ministry of Agriculture and KKP)</p>
2.	Transitivity	<p>“.. the legislator has a preference for state of affairs V1 to V2 and V2 to V3, thereby they prefer V1 to V3 ..”</p> <p>DPR: (better) <u>Government Institutions</u> > <u>Ministries (status quo)</u></p> <p>V1 V2</p> <p>or</p> <p>(better) <u>LNS</u> > <u>Ministry (status quo)</u></p> <p>V2 V3</p> <p>Government: status quo (located in the Ministry of Agriculture and KKP)</p>
Positive Law		<p>Article 8 as “Order” and Article 93 paragraph (1) as “Legal Certainty (formation of a new Government Institution)” based on Law no. 21 of 2019 concerning Animal, Fish, and Plant Quarantine.</p>

(Data source: extracted from Axiology – Kordela Marzena)

Then, if analyzed from the technique of drafting laws and regulations, the institutional article of the KHIT Law, clearly does not conflict with the content that must be regulated by law according to Article 10 of Law no. 12 of 2011 concerning the Establishment of Legislation. Maria Farida underlined the importance of distinguishing between substance and content material, the institutional article referred to is solely the substance of the KHIT Law, not content material that must be regulated at the law level. This means that it can be regulated

at the PP or Perpres level.³³ According to the author, the DPR RI’s insistence on regulating institutional articles can be viewed from 2 (two) aspects, namely:

1. The form of checks and balances of the DPR RI on the President’s prerogative in the formation of government institutions. In essence, in the era of democracy, there are no unrestricted prerogatives, the Law on State Ministries is a form of checks and balances, as well as the UU KHIT. The DPR RI assesses the importance of

³³ Maria Farida Indrati Soeprapto, “Legislation in the Legal System in Indonesia”. The presentation was delivered at the Training for Functional Positions for Drafting Legislation at the Ministry of Agriculture of the Republic of Indonesia in Bogor, 4 September 2015.

government agencies/institutions in the field of quarantine, animals, fish, and plants so that their existence needs to be guaranteed, in other words “prerogative rights end when a law begins”.³⁴

2. The implication of the regulation of quarantine institutions/agencies at the law level, is considered “stronger” compared to LPNK or LNS which are formed purely as a policy of the President (*beleid*/ presidential policy), because in essence the two forms of government institutions are both in existence and disbandment.

completely dependent on the President.³⁵

Similar to George Jellinek’s concept in classifying state equipment, in essence the existence of LPNK and LNS is a *mittelbare* organ which can be dissolved at any time or is highly dependent on the President as the state apparatus (*unmittelbare* organ).³⁶

3. The following is the author’s interpretation of the article on the implementation of quarantine and the article on transition using the concept of the area (sphere) of norm validity from Hans Kelsen as shown at Table 2.³⁷

Table 2. Application of Norm Validity Area – Hans Kelsen

ARTICLE 93 SECTION (1)	AREAS OF NORMAL VALIDITY				
At the time this Law comes into force, 1) existing government institutions that handle the quarantine sector, 2) continue to carry out their duties until the formation of 3) Government institutions that handle the quarantine sector based on the provisions of this Law. (numbering elements by author)	<p>Element 1) and element 3) are personal validity that determines who is authorized or not authorized to carry out the task, namely:</p> <table> <tr> <th>Personal Validity</th><th>Material Validity – Article 7</th></tr> <tr> <td>4. Existing Government Institutions</td><td> <p>a. prevent the entry of HPHK, HPIK, and OPTK from abroad into the territory of the Unitary State of the Republic of Indonesia;</p> <p>b. prevent the spread of HPHK, HPIK, and OPTK from one area to another within the territory of the Unitary State of the Republic of Indonesia;</p> <p>c. prevent the release of HPHK, HPIK, and plant-disturbing organisms from the territory of the Unitary State of the</p> </td></tr> </table>	Personal Validity	Material Validity – Article 7	4. Existing Government Institutions	<p>a. prevent the entry of HPHK, HPIK, and OPTK from abroad into the territory of the Unitary State of the Republic of Indonesia;</p> <p>b. prevent the spread of HPHK, HPIK, and OPTK from one area to another within the territory of the Unitary State of the Republic of Indonesia;</p> <p>c. prevent the release of HPHK, HPIK, and plant-disturbing organisms from the territory of the Unitary State of the</p>
Personal Validity	Material Validity – Article 7				
4. Existing Government Institutions	<p>a. prevent the entry of HPHK, HPIK, and OPTK from abroad into the territory of the Unitary State of the Republic of Indonesia;</p> <p>b. prevent the spread of HPHK, HPIK, and OPTK from one area to another within the territory of the Unitary State of the Republic of Indonesia;</p> <p>c. prevent the release of HPHK, HPIK, and plant-disturbing organisms from the territory of the Unitary State of the</p>				

(Data source: Application of Norm Validity Area – Hans Kelsen)

Aspects of Duties, Functions, and Authorities

³⁴ DPR RI, Academic Paper on the Draft Law on State Ministries, p. 29.

³⁵ Jimly Asshiddiqie, Development and Consolidation of Post-Reform State Institutions, Op. Cit, p. 51, 108.

³⁶ Lukman Hakim, Institutionalization of State Commissions in the State Administration System of the Republic of Indonesia, Journal of the Constitutional Court: Puskasi Faculty of Law, University of Widyagama Malang Vol. II No. 2, November 2009, p. 8.

³⁷ Jimly Asshiddiqie and M. Ali Syafa’at, Hans Kelsen’s Theory of Law, Op.Cit., p. 44-45.

The integration and transfer of tasks, functions and authorities is intended to combine them into one agency and at the same time transfer them from the Ministry of Agriculture and the Ministry of Maritime Affairs and Fisheries to government agencies/institutions dealing with animal, fish, and plant quarantine that will be established. A literal search regarding the duties, functions,

and authorities of the “body” in the KHIT Law will not be obtained, because the KHIT Law is intended as a substance that will be elaborated at the PP and/or Presidential Regulation level.

Luthfi Widagdo Eddyono put forward the explanation regarding the duties, functions, and authorities of state institutions as follows Table 3.³⁸

Table 3. Linkage of Functions with Form, Position, Duties, and Authorities of State Institutions

No.	Opinion	The Concept of Functions and Their Relationships
1.	Maria Farida Indrati	According to Montesquieu, a function is the same or identical to an organ, so the understanding and mention of a function is also the meaning or mention of the organ concerned.
2.	J i m l y Asshiddiqie	Organ is the state of its shape (German: vorm), while functie is the movement of the container according to the purpose of its formation.
3.	C.S.T Kansil and Christine S.T. Kansil	Function is a work environment in relation to the whole and cannot be separated from each other as parts to achieve goals. Thus, the function determines the position of a body.
4.	Firmansyah Arifin	According to Harjono, function has a broader meaning than task. The combination of tasks is the operationalization of an internal function, while the outgoing aspect of the task is authority.
5.	Hasan Zaini	Function can be defined as a work environment to achieve certain goals. The position of a state institution is determined by its function. To be able to carry out its functions in order to achieve certain goals, state institutions must be equipped with authority (power).

(Data source: processed by the author of Luthfi Widagdo Eddyono)

The description of Table 5 above provides a clear understanding of how central the understanding of function is. Determining the choice of government institutions in the

quarantine sector without being equipped with a thorough analysis of quarantine functions can have an impact on the inaccuracy of the form and position of this institution in the

³⁸ Luthfi Widagdo Eddyono, Settlement of Disputes on the Authority of State Institutions by the Constitutional Court, *Journal of the Constitution*, Vol. 7, No. 3, June 2010, p. 13-14.

future. The issue of “lack” of deepening and elaboration of quarantine functions in the KHIT Law, cannot be separated from the Government and DPR RI’s insistence on the institutional article during the discussion of the bill.

Introduction should be clear and provide the issue to be discussed in the manuscript. Before the objective, authors should provide an adequate background, and very short literature survey in order to record the existing solutions, to show which is the best of previous researches, to show the main limitation of the previous researches, to show what do you hope to achieve (to solve the limitation), and to show the scientific merit or novelties of the paper.³⁹

At the end of the paragraph, the author/s should end with a comment on the significance concerning identification of the issue and objective of the research.⁴⁰ This article analyses the comparative competition law related to abuse of a dominant market position using strategy of predatory pricing by undertakings in the European Union (hereinafter ‘EU’). For this purpose, a precise case study of the Valio case has been made.⁴¹ Antti Aine, Adjunct Professor of general competition law at the University of Turku as expert in

field of European Competition Law, has been interviewed for this article.⁴² Also, EU law on predatory pricing has been compared to the United States’ predatory pricing law.

Therefore, this article explores the following research questions; whether EU Competition law policy is already excessively restrictive, and if so, what is the effect on the business development of undertakings with only one nationally dominant market position and, whether the products, which are legally classified as belonging to different product markets, belong de facto to the same product market in case of being fully interchangeable with each other?

Conclusions

Regulations in the field of animal, fish, and plant quarantine and their institutions are currently regulated in Law Number 21 of 2019 concerning Animal, Fish and Plant Quarantine (UU KHIT). There are 21 (twenty-one) delegations of authority of the KHIT Law which instructs the Government to compile a Draft Government Regulation (RPP). Article 8 paragraph (2) of the KHIT Law is one of the delegations of authority that directly determines whether the implementation of

39 Our references uses the Chicago Manual of Style. The citation quick guide can be found at: http://www.chicagomanualofstyle.org/tools_citationguide/citation-guide-1.html Example for Books references: Werner Menski, *Comparative Law in a Global Context, The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006), 16.

40 Journal Articles: Dhiana Puspitawati, “Indonesian Salvage Law Within the Framework of Contemporary Maritime Law”, *Brawijaya Law Journal : Journal of Legal Studies* 2 no. 2 (2015): 20-38, <http://dx.doi.org/10.21776/ub.blj.2015.002.02.02>

41 Finnish Administrative Supreme Court 12/2014, “*Appeal statistics*”, accessed January 13, 2016, <http://www.kho.fi/material/attachments/kho/aineistoa/tilastoja/d1DGRBo1H/KHO.fi.pdf>.

42 Vinod Dhall, ed. *Competition law today: Concepts, issues, and the law in practice*. (Oxford: Oxford University Press, 2007), 83.

quarantine based on the KHIT Law. As Hans Kelsen argued, the state acts only through its organs, without the establishment of this institution it is impossible for the state to act to achieve the objectives of implementing quarantine in Article 7 of the KHIT Law.

The existing form and position of government agencies that handle the quarantine sector are in 2 (two) state ministries, namely the Agricultural Quarantine Agency at the Ministry of Agriculture and the Fish Quarantine, Quality Control and Fishery Product Safety Agency at the Ministry of Marine Affairs and Fisheries. The two bodies are in form a supporting element in the administration of government affairs by the State Ministry, which is under and

responsible to the Minister. There is also the form and position of the government agency that handles the quarantine sector that will be established based on the KHIT Law, it needs to be analyzed further in accordance with the legal system that regulates central government institutions.

Draft Government Regulation concerning Implementing Regulations of Law Number 21 of 2019 concerning Animal, Fish, and Plant Quarantine which is currently being drafted by the Government, particularly related to the follow-up to Article 8 paragraph (2) of the Animal, Fish and Plant Quarantine Law, may regulate at least the naming, form, position, and functional relationship at the Government Regulation level.

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