



INDONESIA

INDONESIA
**LEGAL
GUIDE**

FOOD DONATION
LAW AND POLICY

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About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit www.atlas.foodbanking.org.

About the Harvard Law School Food Law and Policy Clinic

The Harvard Law School Food Law and Policy Clinic (FLPC) serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods; supporting sustainable food production and food systems; and reducing waste of healthy, wholesome food. For more information, visit www.chlpi.org/food-law-and-policy.



About The Global FoodBanking Network

The Global FoodBanking Network (GFN) supports community-driven solutions to alleviate hunger in more than 40 countries. While millions struggle to access enough safe and nutritious food, nearly a third of all food produced is lost or wasted. GFN is changing that. GFN believes food banks directed by local leaders are key to achieving Zero Hunger and building resilient food systems. For more information, visit www.foodbanking.org.



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INTRODUCTION

PURPOSE OF THIS GUIDE

Food loss and waste (FLW) is one of the greatest food system challenges that we face today. An estimated one-third of food produced globally is ultimately lost or wasted along the supply chain.¹ This amounts to approximately 1.3 billion tons of food each year that ends up in landfills.² At the same time, current data indicate that between 720 and 811 million people were hungry in 2020³ and that more than 2 billion people were unable to regularly access safe, nutritious food in 2019.⁴ Thoughtful public policies can help address these troubling trends and augment food system resilience, aiding in food recovery for social benefit and mitigating the environmental costs of excess production and loss.

FLW occurs at every stage of the supply chain and generates significant social, environmental, and economic costs: food that is ultimately lost or wasted has a huge carbon footprint of 3.3 gigatons,⁵ using roughly 28% of agricultural land⁶ and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.⁷ Collectively, this damage costs approximately 13.6 quadrillion Indonesian rupiah (Rp), or US\$940 billion, per year.⁸ Meanwhile, between 720 and 811 million people are undernourished, and one in nine is food insecure.⁹ The international community has sought to address this paradox and mobilize the reduction of food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.¹⁰

In many countries, food donation has emerged as a popular and logical solution to redirect safe, surplus food destined for landfills into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, nongovernmental organizations that recover surplus, wholesome food and redirect it to local beneficiary agencies (such as soup kitchens, shelters, and community pantries) to feed low-income, food-insecure persons. As food insecurity and FLW continue to rise, new, innovative models of food recovery have emerged around the world.

However, there is some uncertainty surrounding the laws and regulations most relevant to food donation. To help address the most pressing questions, the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) have partnered to create The Global Food Donation Policy Atlas.¹¹ This innovative partnership maps the laws and policies affecting donations in several countries around the world. The project aims to identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation, and share best practices and recommendations for overcoming these barriers.

THE PROJECT AIMS TO IDENTIFY AND EXPLAIN NATIONAL LAWS RELATING TO FOOD DONATION, ANALYZE THE MOST COMMON LEGAL BARRIERS TO PROMOTING GREATER FOOD DONATION AND SHARE BEST PRACTICES AND RECOMMENDATIONS FOR OVERCOMING THESE BARRIERS.

This Legal Guide focuses on Indonesia, where as much as 48 million tons of food is wasted each year, causing an estimated Rp213 to Rp551 trillion (US\$15 to US\$39 billion) in economic loss (equivalent to 4% to 5% of Indonesia's gross domestic product) and widespread food insecurity undermines the health and safety of the population.¹² In collaboration with partners in Indonesia,¹³ FLPC and GFN have developed this resource to help food banks, charitable food redistributors, and other intermediaries (hereinafter collectively referred to as "food recovery organizations") and food donors understand the relevant legal frameworks that impact food waste and donation efforts in Indonesia. This Legal Guide also serves as a resource for individuals and institutions in other countries that are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in Indonesia, this Legal Guide provides an overview of the legal frameworks most relevant to food donation at the national and local levels. The subsequent sections look more closely at the laws generally applicable to food donation: food safety laws and regulations, food date labeling laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and/or tax policy disincentives, waste diversion laws that penalize food waste or require donation or recovery, national food waste policies or strategies, government grants and incentives for donation, and other miscellaneous laws relevant to food waste mitigation and food donation. The extent to which Indonesia has developed and subsequently implemented these legal frameworks compared to other countries may vary.

STATE OF FOOD INSECURITY, FOOD LOSS, WASTE, AND RECOVERY IN INDONESIA

Policies to prevent food loss and waste and to promote food donation gain new importance when a country’s socioeconomic conditions perpetuate food insecurity, especially among the most vulnerable. This is the case in Indonesia, where high food prices and unequal access to food have created conditions in which almost 20 million people (or 8% of the population) are unable to meet their basic nutritional requirements.¹⁴

Food insecurity is widespread in Indonesia. More than 9% of the country’s population deals with chronic hunger,¹⁵ and stunting affects more than one-third of children under age 5.¹⁶ Food insecurity is unevenly distributed across the country, with higher rates in rural regions in the eastern portion of the archipelago, far from the nation’s primary urban center and capital city of Jakarta.¹⁷

Indonesia’s widespread and disparate food insecurity stems from a variety of geographic and economic factors. The country’s sizable population is spread out over more than 17,000 islands, with many living in rural communities with limited infrastructure.¹⁸ Additionally, though Indonesia is a net agricultural exporter, its agricultural economy is centered on exports such as coffee, rubber, coconut, and palm oil. It remains heavily reliant on imports to supply many staple foods.¹⁹ For example, nearly one-quarter of rural districts were unable to produce sufficient levels of staple crops such as rice and tubers as of 2015.²⁰ Reliance on imports results in unusually high food prices, forcing households to pay upwards of 50% more for staple crops than residents of comparable, neighboring nations.²¹ Such high food prices contribute to ongoing poverty and food insecurity, particularly in rural regions.²²

Despite these challenges, Indonesia has a strong commitment to food security. The Constitution of Indonesia implicitly recognizes the right to food and nutrition through its affirmation of the rights to life and basic needs in Chapter XA.²³ Law No. 18 of 2012 on Food as amended by Law No. 11 of 2020 regarding Job Creation (“Food Law”) further codifies this right by holding central and regional governments responsible for the provision and distribution of staple foods and other foods in line with the needs of the poor, those vulnerable to food scarcity, and those in emergency situations.²⁴ Additionally, Indonesia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2006, which requires it to realize the right to food for all Indonesians.²⁵ The government of Indonesia has also taken steps to combat food insecurity and promote agricultural self-sufficiency. In June 2020, President Joko Widodo announced a new agricultural estate plan aimed at producing additional strategic crops on fertile land currently used for nonagricultural purposes.²⁶ Indonesia also recently received an award from the International Rice Research Institute for achieving rice self-sufficiency and improving its food security system.²⁷

Along with food access challenges, the country also experiences high levels of food loss and waste. Estimates of food waste range from 115 to 300 kilograms of waste per person per year.²⁸ 60-65% of waste disposed in landfills is organic waste.²⁹ This disposed food strains Indonesia’s waste disposal infrastructure. Jakarta alone produces 7,700 tons of trash each day, overloading landfills and resulting in a “waste emergency.”³⁰ While there is minimal data on food waste at various points of the supply chain, one recent report from the Ministry of National Development Planning (*Kementerian Perencanaan Pembangunan Nasional Republik*

Indonesia, Bappenas) identified five major drivers, including poor agricultural handling practices, suboptimal storage space, market quality standards, lack of education, and consumer behavior.³¹ The report also identifies households as the largest contributor of food waste.³² A nongovernmental report estimates that significant waste occurs in the postharvest, preretail stage due to poor infrastructure such as substandard roads and limited refrigeration capacity.³³ The Bappenas report outlines potential opportunities to reduce food loss and waste, including consumer education, improved farming infrastructure, national and regional regulations, food distribution platforms, and strengthened data on food loss and waste.³⁴

While Indonesia currently has no published governmental plan or strategy to address food loss and waste, the Bappenas report referenced above calculated baseline data and outlined the impact of food loss and waste.³⁵ Though Indonesia does not yet have a strategy specifically addressing food loss and waste, it has committed itself to the issue by including the United Nations Sustainable Development Goals in its most recent development plan, including Target 12.3 (halving per capita global food loss and waste).³⁶

In addition to government research, private-sector actors, including food banks, are actively promoting the rescue and donation of surplus food to mitigate hunger and food insecurity. For example, FoodCycle Indonesia, a food bank located in Jakarta, worked with donors and nonprofits to distribute nearly 180,000 kilograms of food in 2021, serving 21,500 beneficiaries through 82 partner organizations.³⁷ Similarly, Bali Scholars of Sustenance (SOS), a food bank located in Bali, collects surplus food from hotels, restaurants, manufacturers, and other businesses and provides 34,000 meals each month to orphanages, communal housing, refugees, and other low-income people.³⁸ On the corporate side, the Indonesia Business Council for Sustainable Development (IBSCD), a CEO-led business association, leads GRASP 2030 (*Gotong Royong Atasi Susut & Limbah Pangan di 2030*), a voluntary agreement where businesses commit to food loss and waste reduction targets, measure their waste, and take action to reduce their waste and hit their targets.³⁹ There are currently six core business signatories.⁴⁰ Additionally, the Indonesia Postharvest Loss Alliance for Nutrition (I-PLAN) led by the Global Alliance for Improved Nutrition (GAIN) is working with the Ministry of Health and the Ministry of Marine Affairs and Fisheries to reduce loss and waste in the fishing industry.⁴¹

As Indonesia scales up its public- and private-sector efforts to reduce food loss and waste and mitigate food insecurity, food donation offers a mitigating solution for food access issues. An understanding of the laws that apply to food donation is critical to promote coordination between government and other stakeholders. The remaining sections of the Guide will provide an overview of Indonesia’s food donation legal framework and address the issues most likely to arise for food donors, food recovery organizations, policymakers, and other interested stakeholders.

Indonesia by the numbers

Population 273,523,621⁴²	Prevalence of Moderate to Severe Food Insecurity 4 to 13%	World Bank Classification Lower middle income⁴³
Median Age 29.7⁴⁴	Food Security Index 59.2⁴⁵	Human Development Index 0.5⁴⁶
GDP (US\$) \$15.7 quadrillion Indonesian Rupiah (US\$1.06 trillion)⁴⁷	GINI Index (Income Inequality) 37.3⁴⁸	Food Loss and Waste (FLW) Estimates 48 million tons⁴⁹
Poverty Rate 9.8%⁵⁰	Food Sustainability Index 59.1⁵¹	

OVERVIEW OF INDONESIA'S RELEVANT LEGAL FRAMEWORK

Indonesia consists of 37 provinces spanning more than 17,000 islands. As the third largest democracy in the world,⁵² it boasts a population of approximately 270 million. The government of Indonesia is based on the country's constitution, which was adopted in 1945 and last amended in 2002.⁵³

Under the constitution, governmental power is shared among three branches—executive, legislative, and judicial—with an elected president and legislature. The legislature consists of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*, MPR), which is itself broken down into two bodies: the People's Representative Council (*Dewan Perwakilan Rakyat*, DPR)—a group of 550 elected representatives—and the Regional Representative Council (*Dewan Perwakilan Daerah*, DPD), which has four elected representatives from each province (128 in total⁵⁴) with authority limited to regional issues.⁵⁵ The legislative branch can pass laws and amend the constitution.⁵⁶ In addition to laws passed by the legislative branch, Indonesian law also includes unwritten *adat law* (customary law) and *Sharia law* (religious law) on certain matters, the latter being governed by Islamic courts.⁵⁷ The executive branch includes the president and vice president, which can create additional requirements via presidential instructions and ministerial/agency/institutional decree.⁵⁸ Additionally, government ministries play a role in the food system, most prominently the Indonesian Food and Drug Authority (*Badan Pengawas Obat dan Makanan* (BPOM), previously referred to as the National Agency of Drug and Food Control); the Ministries of Trade, Industry, Health, Agriculture, Fisheries and Marine Affairs; and local governments.⁵⁹

In addition to the central government, there is an array of regional governments (provinces, regencies/cities) and subregency/city local administrators (districts and subdistricts). While the central government controls absolute government affairs (foreign affairs, defense, security, the justice system, national fiscal and monetary affairs, and religion), it shares authority with regional governments over concurrent affairs, including those related to food and agriculture.⁶⁰ If a food issue involves cross-provincial matters, has cross-provincial impacts, or implicates the broader national interest, the central government will manage it.⁶¹ For example, the planning and development of policy (including for food security) that involves or impacts various provinces falls within the central government's authority, whereas more local issues will fall to regional governments.

LAW NO. 18 OF 2012 ON FOOD (“FOOD LAW”)

Indonesia first enacted an omnibus Food Law in 1996 (Law No. 07/1996), which was amended and updated in 2006 (Law No. 07/2006),⁶² in 2012 (Law No. 18/2012), and once again in 2020 through Law No. 11 of 2020 regarding Job Creation (also called the “omnibus law”). The Food Law outlines governing principles for the Indonesian food system, such as establishing food as a basic right (as noted above),⁶³ and goals for the food system, including food independence and resilience.⁶⁴ It regulates all food and food products, requiring that food be sufficient, safe, nutritious, affordable, and in-line with religious beliefs.⁶⁵ The law prioritizes domestic food for food consumption needs but allows for imports if domestic food is insufficient.⁶⁶

The Food Law governs key elements of the food system, including food planning, availability and affordability, food distribution, nutrition, food importing, food safety, food labeling and advertising, and food research and

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development. The law contains provisions that prohibit the distribution of contaminated food, outline labeling requirements, prohibit misleading or untrue labeling or advertising, and require imported food to meet the same standards as domestic food.

While the law provides goals and frameworks relevant to aspects of the food system, implementation of many of the law's aims occurs via regulation, including provisions around food sanitation, regulation of additives, among others.⁶⁷ Consequently, the specific provisions of the law rely on implementation and additional regulation by administrative agencies, in particular BPOM, which regulates food and drug labels and oversees various aspects of food safety.⁶⁸ The central government and BPOM have enacted regulations controlling imports, food safety, labels, and marketing in accordance with the policy outlined by the legislature in the Food Law and prior legislative mandates. Government Regulation No. 86/2019 on Food Safety in particular details safety, hygiene, and quality standards for foods produced and distributed within Indonesia.⁶⁹ Additional controlling regulations regarding the food system may come through a presidential or ministerial decree.⁷⁰

ADDITIONAL RELEVANT LAWS

Indonesia requires that all food and beverage receive halal certification under Law No. 33/2014 on Halal Assurance as amended by Law No. 11/2020 regarding Job Creation.⁷¹ The law requires all food products distributed and traded in Indonesia to be halal certified (with specific procedures for micro- and small-business enterprises). Business actors found operating without halal certification may face a fine of up to Rp2 billion or imprisonment of up to five years.⁷² Government Regulation No. 39/2021 further clarifies the law's requirements by setting costs for halal certification and establishing compliance timeframes that vary depending on the product.⁷³

Other important central legislation includes the Indonesian Penal Code (*Kitab Undang-undang Hukum Pidana*), which houses Indonesia's substantive criminal law,⁷⁴ Indonesia's income tax law,⁷⁵ and a recent update to its value-added tax law.⁷⁶

LEGAL ISSUES RELEVANT TO FOOD DONATION

FOOD SAFETY FOR DONATIONS

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could have been redirected to populations in need is instead destined for landfills.

As explained above, Indonesia's food safety requirements are predominantly contained in the Food Law (Law No. 18/2012 as amended by Law No. 11 of 2020 regarding Job Creation) and Government Regulation No. 86/2019, which address issues such as food sanitation, food additives, and food labeling. Both are silent on the issue of food donation.

While food donation is not specifically mentioned, Government Regulation No. 86/2019 clearly defines "distribution" to include nonmonetary transactions, thereby likely implicating food donors and food recovery organizations in the regulation's broad food safety requirements.⁷⁷ The regulation addresses agriculture, manufacturing, processing, storage, transportation, and importation of foods, covering all elements of food production through consumption.⁷⁸ The definition of distribution specifically calls out nonmonetary

transactions, covering food distribution activities for nontrade purposes.⁷⁹ Therefore, the provisions of the regulation presumably apply to food donors and food recovery organizations. The regulation requires that all distributed food meet sanitary requirements and not pose a risk to human health.⁸⁰ Some requirements, like those around irradiation, apply only to food businesses and food production and not to food distribution more broadly.⁸¹ However, the definition of food production includes repackaging and changing the form of food,⁸² which could cover food donors and food recovery organizations that repackage or cook food prior to donation.

Neither the Food Law nor Government Regulation No. 86/2019 include separate procedures or sections for food donation. Because distributing food for free is covered under the law, and no provisions specifically address food donation, food donors and food recovery organizations should assume that all food safety rules apply, which may serve as a deterrent to donating food.

DATE LABELING

Date labels affixed to food products are a major driver of food waste and obstacle to food donation. As explained in the previous section, most food donors and food recovery organizations are appropriately cautious about donating food that meets safety standards, but it is not always clear which standards relate to food safety. While fresh products like fruits and vegetables will appear visibly spoiled when they are no longer safe to consume, it can be more difficult to gauge when this is the case for packaged foods. Many donors interpret date labels affixed to such food products as indicators of safety and will therefore throw away food once the “expiration date” has passed, and intermediaries may refuse to accept donated food after this date, deeming the food product unfit for human consumption.

Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than food safety. Manufacturers use a variety of quality-based methods to determine the timeframe for label dates, all of which are intended to reflect when the food will be at its “peak quality.”⁸³ Nevertheless, global trends indicate that consumers generally confuse date labels as indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discarded about 22% of food that they could have eaten due to confusion over date labeling.⁸⁴ Similarly, 84% of Americans report that they throw away food after the expiration date passes due to safety concerns, even if there is a minimal risk of foodborne illness at that time.⁸⁵

In Indonesia, almost all foods are required to bear a producer-determined expiration date under the Food Law.⁸⁶ Under BPOM Regulation No. 31 of 2018 as amended by BPOM Regulation No. 20 of 2021, foods with a shelf life of less than three months must display the date, month, and year of expiration, while more durable processed foods (as determined by the manufacturer) need only display the month and year of expiration.⁸⁷ The regulations also include a narrow exemption from date labeling for alcoholic drinks (minimum 7%), vinegar, and breads or cakes with a shelf life of 24 hours or less.⁸⁸ The expiration statement is defined in the regulations as the “the last date when the quality of food is guaranteed, as long as they are stored in accordance with the directions provided by the producer.”⁸⁹ To denote this expiration date, labels must use the phrase “*baik digunakan sebelum,*” which translates to “best before.”⁹⁰ Processed foods must also display a date of manufacture.⁹¹ Processed, imported foods must have at least two-thirds of their shelf life remaining at the time of entry into the country.⁹²

UNDER BPOM REGULATION NO. 31 OF 2018 AS AMENDED BY BPOM REGULATION NO. 20 OF 2021, FOODS WITH A SHELF LIFE OF LESS THAN THREE MONTHS MUST DISPLAY THE DATE, MONTH, AND YEAR OF EXPIRATION.

Although laws and regulations around date labeling do not directly address food donation, they prohibit the distribution of food past its quality-based expiration date. The Food Law prohibits the distribution of

contaminated food, including food past the quality date label.⁹³ Violations can result in administrative penalties such as fines, suspension of activities, compensation to the recipient of the expired food, or a revocation of a distributor's license.⁹⁴ Additionally, the law imposes administrative and criminal penalties, like jail time of up to two years, for the deliberate removal, replacement, or alteration of date labels.⁹⁵ While not explicitly outlined in the laws or regulations, at least one stakeholder mentioned being fined for even having food past the expiration date in their possession.⁹⁶ Other research found that enforcement of these provisions may be unpredictable given BPOM's limited resources, small workforce, and lack of adequate facilities.⁹⁷

In summary, almost all foods in Indonesia must have a quality-based expiration date label, with some very narrow exceptions. Indonesia does not have separate labels for quality and safety (all labels refer to quality), and laws prohibit the distribution of any food past the quality-based label.

LIABILITY PROTECTIONS FOR FOOD DONATION

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. Some countries, including the United States and Argentina, have established protections for both food donors and food recovery organizations (often referred to as "Good Samaritan" laws) to limit the likelihood that these actors will be held responsible for harm, provided they did not act with intent to harm or gross negligence. Indonesia does not currently have a Good Samaritan law protecting food donors or food recovery organizations from civil or criminal liability resulting from food donation. Given this lack of protection, donors could face civil or criminal consequences should donated food cause harm to a recipient. Either tort or contract law could form the basis of civil liability. However, this outcome is incredibly unlikely. As of this writing, there has not been much food-injury-related litigation in Indonesia,⁹⁸ and stakeholders noted that high incidences of foodborne illness in Indonesia would make it difficult to show causality.⁹⁹

A SIGNIFICANT BARRIER TO FOOD DONATION IS THE FEAR AMONG DONORS THAT THEY WILL BE FOUND LIABLE IF SOMEONE BECOMES SICK AFTER CONSUMING DONATED FOOD.

CIVIL LIABILITY - TORT

There have been very few civil suits related to consumption of expired food and other food-related consumer protection issues, and no reported cases found involving food donation.¹⁰⁰ The lack of civil cases is likely a result of costs and time burdens, particularly because litigants in Indonesia typically fund their own cases.¹⁰¹ Other factors that may dissuade litigation for food-related injuries resulting from food donation could include barriers to the courthouse faced by recipients as well as negative cultural attitudes regarding conflict resolution through the courts.¹⁰² However, given that there is no formal immunity for food donation, it is still important to understand the requirements a plaintiff has to meet for a court to find a donor or distributor liable so that donors can ensure they are limiting their potential liability.

In Indonesia, tort law (or *perbuatan melawan hukum* interpreted as "unlawful action") stems from Art. 1365 of the Indonesian Civil Code, which states "a party who commits an illegal act which causes damage to another party shall be obliged to compensate therefor."¹⁰³ To succeed with a claim, a plaintiff must prove the following elements: (1) the defendant acted unlawfully, (2) the defendant acted with fault, negligence, or carelessness, (3) the plaintiff suffered a loss, and (4) there was causality between the defendant's action and the plaintiff's loss.¹⁰⁴ For the first element, "unlawful acts" include violations of both written law and "unwritten law" such as norms, morality, and standard practices.¹⁰⁵

To succeed in a tort action related to food donation, a recipient would need to prove that a food donor or

distributor acted unlawfully due to their fault or negligence, and this unlawful action resulted in the plaintiff's loss or damage. In the case of donation of expired food, the written law expressly forbids the distribution of "contaminated" foods, including foods past their quality-based expiration date.¹⁰⁶ As explained above, distribution is broadly defined in this statute and likely includes food donation.¹⁰⁷ Thus, if expired food is donated and recipients are harmed as a result, a food donor or distributor could be civilly liable. Beyond written law, a food donor could be found to have violated unwritten law, like norms, by donating unsafe food. However, the plaintiff would still need to prove the donor's or distributor's action led to the plaintiff's injuries, which could be difficult given high baseline rates of foodborne illness in Indonesia and the lack of well-resourced public health data tracking systems that accurately assess the sources of foodborne outbreaks.¹⁰⁸

CIVIL LIABILITY – CONTRACT

Contract law could also form a potential basis for liability. Indonesian contract law is outlined in the Civil Code, which specifies four conditions necessary for the formation of a valid contract: (1) consent of the parties entering into the agreement, (2) legal capacity to enter into an agreement, (3) a specific subject matter, and (4) a permitted cause.¹⁰⁹ Binding agreements, meaning legally enforceable agreements or contracts, under Indonesian law may be gratuitous or involve charge.¹¹⁰ "Gratuitous" agreements occur when one party agrees to confer a benefit to another without receiving any benefit or consideration.¹¹¹ Such agreements must be executed in "good faith."¹¹² Given that contracts do not need consideration, food donation would be considered a gratuitous contract. Therefore, the requirement that agreements be made in good faith could create liability for food donors who knowingly donate unsafe foods, but if the food is donated in good faith, it would likely not cause liability.

CRIMINAL LIABILITY

Criminal liability in Indonesia is established in the Indonesian Penal Code.¹¹³ Although food donation is not addressed specifically by Indonesia's criminal laws, several provisions could result in criminal liability for food donors, including causing death via negligence¹¹⁴ and distributing harmful¹¹⁵ or falsified goods.¹¹⁶ For example, the Indonesian Penal Code prohibits selling or delivering falsified food or beverages while concealing such falsification.¹¹⁷ Nevertheless, it is highly unlikely that a donor would be criminally prosecuted unless they donated food they *knew* to be unsafe. Food donors and food recovery organizations that exercise ordinary care and do not falsify foods would likely not be subject to criminal liability.

TAXES

Reducing food loss and waste results in sizable economic benefits to society, as it minimizes the costs associated with producing and discarding food that is ultimately not consumed. Food donation also helps mitigate the costs of hunger and stimulates the economy: food recovery organizations provide jobs or foster community development, and recipients of donated food are able to spend limited financial resources on other basic goods and services.

Yet food donation can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded at no cost. As a result, it is often easier and less expensive for farmers, businesses, and individuals to throw away food instead of donating it. Some countries have sought to address this issue by offering tax incentives and removing financial barriers to food donation.

INCENTIVES

Tax incentives can provide significant support for food donation efforts and for the reduction of food loss and waste. For example, corporate donors may be more likely to donate surplus food to food recovery organizations if they receive a charitable deduction to offset the cost of transportation and logistics.

Indonesia does not provide a tax incentive specific to food donation. However, it does offer an income tax deduction for charitable contributions related to natural disasters, research and development activities, the development of social infrastructure (i.e., providing facilities and infrastructure for the public interest, including the health sector and nonprofit organizations), education facilities, and sports, including in-kind donations.¹¹⁸ Under the prevailing regulation, the value of the in-kind donation is determined through either: (1) the acquisition value of the donated goods (if the goods have not depreciated), (2) the fiscal book value of the goods (if the goods are depreciated), or (3) the sale value (for own-produced goods).¹¹⁹

The implementing regulation stipulates that the donation value that can be deducted from gross income in a year may not be more than 5% of the net income of the previous year.¹²⁰ While food donation is not explicitly mentioned in this regulation, monetary or food donations responding to natural disasters or donations that fund social infrastructure for food donation may be covered under this deduction.

During the initial days of the COVID-19 pandemic, additional regulations allowed donations of money, goods, and services to governmental or charitable organizations related to COVID-19 relief to be deducted from gross income.¹²¹ The in-kind deduction was valued at the cost of acquisition if the donated goods had not depreciated, as with food. Donors had to choose whether to claim this deduction or the other charitable deduction described above. The regulation did not state whether a similar 5% deduction cap applied with this deduction. The deduction was in effect only through September 30, 2020 and is no longer available.¹²²

Lastly, while Indonesian not-for-profit, nongovernmental organizations (NPOs) are generally subject to income tax, donations received by an NPO are not taxed if the donor and recipient are unaffiliated.¹²³

Taxpayers in Indonesia may only deduct charitable donations if they are related to specific causes such as natural disasters and social infrastructure. They may deduct in-kind donations like food.

BARRIERS

While certain tax schemes may encourage food donations, they may also stand as potential deterrents. In many countries, the value-added tax (VAT) or goods and services tax (GST) presents a financial barrier to donating food. Typically, this type of tax is levied on a good at each stage of the supply chain, from production to the point of sale, whenever value is added. This tax is usually levied through a system of debits (an output VAT) and credits (an input VAT). The VAT debit is the amount that a VAT-registered business will charge on its own sale of the good, whereas the VAT credit is the amount invoiced to the VAT-registered business upon the good's purchase.

Indonesia imposes a VAT. It recently updated its regime via legislation passed in the fall of 2021, major provisions of which took effect April 1, 2022.¹²⁴ The VAT applies to both goods and services. It applies to goods at every stage of the supply chain, from the production to the point of sale, whenever they are transferred to another individual or entity.¹²⁵ Businesses can claim input VAT credits for the amount of VAT paid to acquire a good or service to the extent the good or service is necessary for the business.¹²⁶ As of April 1, 2022, the applicable rates are 11% on most goods and services (increasing to 12% by 2025),¹²⁷ and between 10% and 95% for goods and services covered by the luxury goods sales tax (LST), though statutorily rates may go as high as 200%.¹²⁸

Many countries adjust tax rates to accomplish policy objectives, for instance, reducing rates on basic essentials such as pharmaceuticals, health care services, food, and education.¹²⁹ Similarly, in Indonesia different VAT rates apply to different types of products. Prior to the most recent VAT update, Indonesia exempted “staple foods” such as rice, salt, eggs, meat, fruits, vegetables, and others from VAT altogether.¹³⁰ However, the law's latest update in October 2021 eliminated many exemptions from VAT, including for staple foods.¹³¹ As of April 1, 2022, these foods are subject to 11% VAT.¹³² The updated law maintains exemptions for food and beverages sold in restaurants, hotels, and food stalls.¹³³

Without the exemption for staple foods, the current VAT scheme creates a financial burden on food donors and food recovery organizations because it applies to food donation. VAT is due whenever there are “deliveries of taxable goods,” which includes providing goods for free.¹³⁴ The charitable donation of food constitutes a “delivery of taxable goods” and is therefore subject to VAT. Additionally, NPOs are not exempt from VAT and thus must comply with it.¹³⁵ VAT applies when food is donated, and food donors and donation-receiving entities are required to pay the input and output VAT consistent with the law. This means that either the NPO or the business must pay that VAT, and because businesses cannot get a credit for the input VAT they paid when they acquired the ingredients, they may face a double burden when donating food.

THE CURRENT VAT SCHEME CREATES A FINANCIAL BURDEN ON FOOD DONORS AND FOOD RECOVERY ORGANIZATIONS BECAUSE IT APPLIES TO FOOD DONATION.

Currently, it appears that this update to the VAT will pose a barrier to food donation. However, given the newness of the updated VAT scheme and government statements regarding the possibility of reenacting exemptions for staple foods via regulation, it is unclear what the long-term effects will be.

Lastly, Indonesia imposes a tax on imports, including food. All imported taxable goods are subject to a 7.5% import duty in addition to the 11% VAT.¹³⁶ Stakeholders mentioned that this heavy tax burden makes it financially impossible to import food for donation.¹³⁷

DONATION REQUIREMENTS OR FOOD WASTE PENALTIES

Some countries have created food donation requirements or impose monetary penalties for food that is sent to the landfill (often known as organic waste bans or waste taxes) to influence business behavior and promote sustainable food systems.

In Indonesia the buildup of waste in landfills, and in particular plastic waste, is a significant problem. In Jakarta the situation has been described as a “time bomb” or a “waste emergency.”¹³⁸ At the same time, many stakeholders noted that waste scavenging was an important income source for some struggling Indonesians.¹³⁹

To date, Indonesia has no laws or regulations addressing food waste, like a food donation requirement or an organic waste ban.¹⁴⁰ Indonesia does have general waste management laws and policies. For example, Presidential Regulation (Perpres 97/2017) charts a path to zero waste through greater reduction and processing of waste. Decree No. P.75 (10/2019) creates a road map for plastic packaging waste reduction by business actors.¹⁴¹ Additionally, the Minister of Environment issued a regulation on waste banks (Permen LHK No. 14 of 2021), which are local cooperatives where waste is collected, sorted, and sold.¹⁴² However, none of these explicitly address or mention food waste.

A few local efforts address waste, including food waste. For example, in Jakarta a regional regulation mandates that residents sort their waste and decrease use of nondegradable materials, though there is no enforcement at the household level and no directive specifically targeting organic waste.¹⁴³ Additionally, Surabaya implemented a composting program to reduce household food waste, including the mandatory separation of organic waste, the establishment of composting centers, and the distribution of compost baskets to residents.¹⁴⁴ The city reduced its municipal solid waste by more than 20% through this program.¹⁴⁵ Lastly, North Lombok requires commercial generators to separate out organic waste.¹⁴⁶

GOVERNMENT GRANTS AND INCENTIVES

Grants and incentive programs funded at the national or local level offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives to be

insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts. For example, government grants can help food donors and food recovery organizations acquire equipment and resources necessary for recovering, storing, processing, and transporting food for donation. Government funding can also support new innovations and emerging technologies that will make food donation more efficient and sustainable. To date, Indonesia does not offer national grants for food donation. However, such investments may be made in the future.

MISCELLANEOUS

In addition to the relevant laws addressed in the above sections, there may be other national or local laws and policies that impact food donation efforts in Indonesia.

For example, the laws governing nonprofit organizations in Indonesia, including food banks, are complex. A World Bank study from 2010 found that NPOs were regulated based on “15 laws, 4 government regulations, and 7 Ministerial Decree[s]” by 10 separate government entities.¹⁴⁷ These laws govern the legal form that charities can take, which include foundations, community organizations, and social welfare institutions, each of which has separate requirements.¹⁴⁸ In particular, social welfare institutions are the simplest organizations to form and have the fewest requirements for legal structure, but they may not be formed by foreign legal entities. Many nonprofits are registered as foundations. However, under Law No. 17/2013, foundations started by foreign entities are required to have assets of at least Rp1 billion¹⁴⁹ and must meet other administrative requirements,¹⁵⁰ all of which pose barriers. The complex rules can be difficult for smaller NPOs, such as new food recovery organizations, to navigate.¹⁵¹

CONCLUSION

This Legal Guide is intended to identify Indonesia’s current laws, policies and programs that relate to food waste or food donation. While the federal government is primarily responsible for guaranteeing food security and sustainable food systems, food recovery organizations acting in a private capacity can provide an additional social safety net. Food banks and NPOs play a particularly crucial role in combatting hunger due to Indonesia’s unique structure and the specific challenges faced by local and regional communities.

This Legal Guide provides a starting point from which policymakers, private-sector actors, and civil society may better understand the current laws and policies relevant to food donation. It also offers a foundation for a dialogue about food loss and waste prevention and the value of food recovery to Indonesia’s food security, economic stability, and environmental sustainability. A separate document produced under The Global Food Donation Policy Atlas sets forth policy recommendations specific to Indonesia to contribute to this discussion. In the meantime, food donors and food recovery organizations should take into account the laws, policies and legal issues discussed in this Legal Guide when donating food or facilitating the distribution of donated food to those in need. To better understand the regulation of food donation in Indonesia donors, intermediaries, and policymakers should investigate the laws identified in this Legal Guide and seek additional legal counsel, if necessary.

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130 Law No. 42 of 2009, art. 4a.

131 Law No. 7 of 2021 on Harmonization of Taxation Regulations, art 4A.

132 *Id.* at art 7, § 1(a).

133 *Id.* at art 4a, § 2(c).

134 Law No. 42 of 2009, art 1A, § 1(d); PWC INDONESIA, *supra* note 124 at 48–49.

135 *The tax treatment of philanthropic entities*, OECD I LIBRARY, <https://www.oecd-ilibrary.org/sites/f0f3c37b-en/index.html?itemId=/content/component/f0f3c37b-en> [https://perma.cc/297W-KYVQ].

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- ¹⁵¹ Interview with stakeholders. Notes on file with authors.

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