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Protection and Characteristics of Geographical Indications in Indonesia

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ABSTRACT

Geographical Indications are product identification associated with a specific geographic location. Indonesia has a Geographical Indication protection system to protect local products and promote unique products that can only be found in certain areas through Law No. 20 of 2016 concerning Trademarks and Geographical Indications. The main characteristics of Geographical Indications in Indonesia include the relationship between the product and the geographical environment, the quality and reputation attached to the product, as well as the traditions and local wisdom associated with the product. The protection of Geographical Indications in Indonesia aims to ensure that only products that comply with the specified criteria may use the Geographical Indications mark. Characteristics of Geographical Indications include links with regions and traditions, as well as the reputation of products originating from the area. This protection helps promote and sustain local culture and economy. The research methodology used in this study uses a type of normative research with various approaches, which consist of statutory approach (statute approach) and conceptual approach (conceptual approach). The sources of legal materials used in this study are in the form of primary law (primary source) and secondary law (secondary source) and non-legal material. The results of the research and the main findings are that the characteristics of geographical indications are different from other IPRsgeographic indication has unique characteristics caused by natural factors, thus giving effect to the goods or products produced by a certain region.

INTRODUCTION

Humans are living beings with an intellectual level that can develop and experience improvement according to what they have done and learned. This academic ability can create valuable work for humans and benefit the wider community. The results of human intellectual thought can come from science, literature, and art or technology. (Riswandi, Budi Agus, & Syamsudin, 2004).

Intellectual Property Rights are one of the rights regulated in the laws and regulations in Indonesia. This is a juridical consequence of ratifying the agreement trade Related Aspects of Intellectual Property Rights (TRIPs) signed in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) so that the government must make statutory regulations regarding all matters related to Intellectual Property Rights. (Bastin, Anne., & Matteucci, Nicola, 2007). Intellectual Property Rights consist of two types, namely Copyright in the fields of science, literature, and art, as well as Industrial Rights originating from the scope of technology and design. (Iswi Hariyani, Cita Yustisia Serfiyani, R. Serfiyanto DP, 2020). The focus of the discussion in this paper is Intellectual Property Rights which are within the scope of Industrial Rights, namely Geographical Indications, which are defined as a sign indicating a place or area of origin of goods and products due to geographical and environmental factors, including natural elements,

Protecting Geographical Indications is one of the most important things to do so that no party arbitrarily claims ownership or can falsify products produced by

the area's people. Protecting Geographical Indications can also benefit consumers because the safety of Geographical Indications can guarantee the product's quality. (Sasongko, W. 2012). From this background, the authors compile two problem formulations that will be studied in the discussion chapter: (1) How is the legal protection of Geographical Indications in Indonesia by Indonesian laws and regulations? Moreover, (2) What are the characteristics of Geographical Indications in Indonesia that differentiate it from other Intellectual Property Rights regimes?

METHODOLOGY

The method used in this study is a normative juridical research method using a statutory approach (Peter Mahmud Marzuki, 2019). This research uses this approach because what is studied are various legal regulations relating to the issue of the legal protection of Geographical Indications according to Law Number 20 of 2016 concerning Marks and Geographical Indications, then associated with other relevant laws and regulations. This analytical descriptive research aims to describe a rule in the context of theory and its implementation in a precise and comprehensive manner.

RESULT AND DISCUSSION

Compatibility of Legal Protection of Geographical Indications in Indonesia with the laws and regulations in Indonesia

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The diversity potential of these biological and vegetable natural resources has distinctive characteristics, flavors, and processing techniques that cannot be found elsewhere, which is a unique advantage for the people of a region. (Hananto, Pulung WH, 2014). The combination of natural resources and their distinctive processing will make a product only be produced in that area, and this becomes an intellectual property called a Geographical Indication. Geographical Indications are defined as trade names placed on a product packaging and are used to indicate the place of origin of a product. The source of this place has a distinctive feature in processing which can only be done in that place, and also guarantees product quality because it is only in that place that this product can be produced. (Tashiro,

Geographical Indications are starting to be noticed by the world as one of the Intellectual Property that needs to be protected by withdrawing from its holding. The Paris Convention for the Protection of Industrial Property, 1883, which regulates Geographical Indications or Appellation of Origin (AO), which is the geographical name of a country or region that produces the product to designate the product originating from the area along with its characteristics and the quality of the product. Geographical indications are also regulated in The Madrid Agreement of False or Deceptive Indication of Source on Goods 1891; this regulation aligns its contents with the provisions of the Paris convention but also expands the rules on Geographical Indications that mislead consumers. The Lisbon Treaty also regulates Geographical Indications as international protection regarding Appellation of Origin (AO) registration. (Rotstein, F.A, 2009). Not only that, in the Lisbon agreement, the safety of Geographical Indications not only regulates the origin of the goods but also against information such as type, type, imitation,

International protection regarding Geographical Indications was also strengthened by the existence of Trade-Related Aspects of Intellectual Property Rights, signed in the Uruguay Round of the General Agreement on Tariffs and Trade in 1994. This agreement was formulated in 1974 and 1975 by the World Intellectual Property Organization as an international intellectual property organization. Has the initiative to convene a session for forming an international treaty that revises the provisions of Geographical Indications in the Paris Convention into a new international treaty, namely the TRIPs Agreement. (Document SCT/6/3 Rev.)

The journey of Geographical Indications to become known in Indonesia began when the Trade-Related Aspects of Intellectual Property (TRIPs) were signed on April 15, 1994, which was subsequently legalized in the form of Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization. (Ayu, Miranda R , 2006). The next step from ratifying the TRIPs agreement makes Indonesia obliged to make all regulations regarding intellectual property, including Geographical Indications. The

statement declares that member countries must make regulations regarding Geographical Indications and their implementation in protecting Geographical Indications from acts of using Geographical Indications in unfair competition. (Article 22 TRIPS)

Of course, policy-making regarding Geographical Indications must comply with the main elements of geographical indications contained in the TRIPS Agreement, namely, first, the part of a geographical name to identify, secondly, the aspect of the production area adjusted to factual conditions, thirdly, the element of ownership of Geographical Indications is communal ownership, not individual, and the four elements of quality, reputation, or other characteristics that are alternative, then an item can be said to be sufficient to fulfill one of these elements. (Revelation of Sasongko, 2012)

Guided by the TRIPs Agreement and Law Number 7 of 1994 concerning the Ratification Agreement Establishing the World Trade Organization, the Government made further regulations regarding Geographical Indications in Law No. 15 of 2001 concerning Marks, which now have been revoked and amended in Law number 20 of 2016 concerning Marks and Geographical Indications. Not only that but regulations on Geographical Indications are also regulated in implementing rules, namely Government Regulation Number 51 of 2007 concerning Geographical Indications.

Amendments to these laws and regulations are made to adapt to the conditions of economic globalization that are integrated with various countries, such as borderless or without being limited by state sovereignty (Sudjana, 2016). The most visible characteristic of economic globalization is its fast-moving nature in the flow of goods or capital. This makes laws and regulations in the field of business must be able to adapt to the current conditions of economic globalization. (Syprianus Aristeu, 2014)

Law Number 20 of 2016 concerning Trademarks and Geographical Indications has completely regulated Geographical Indications from the substance of who can apply to the guidance and supervision of Geographical Indications. However, accommodating an arrangement does not prove that protecting Geographical Indications has succeeded. This is proven by 2022, only 115 registered domestic Geographical Indications, among 41 Coffee Geographical Indications and 74 other Geographical Indications spread throughout Indonesia. (E-Geographical Indication Data, 2021). Some examples include:

1. Indonesian Batik as a geographical indication of traditional textile products. (Walker, L, 2009)
 2. Toraja coffee is a geographical indication of high-value coffee products from South Sulawesi (Hananto, Pulung WH, 2014).
 3. Tempe and Tofu as geographical indications of traditional vegetarian food from Java. (Kishore, K., 2018)
- The insufficient data on Geographical Indications is

undoubtedly not balanced with Indonesia's wealth and potential for natural resources. If examined further, Geographical Indications in Indonesia have the potential to increase tourist attractiveness and the economic value of local products while promoting the culture and traditions of Indonesia to the world. (Rustiala, Kal., & Munzer, Stephen R., 2007)

Distinguishing Characteristics between Geographical Indications in Indonesia and Other Intellectual Property Rights Regimes

Geographical Indications are one of the Industrial Property Rights which are different from other Intellectual Property Rights which can be owned individually. This is because the owner is communalistic, jointly by specific regional communities whose registration is represented by an institution given authority and submitted to the Directorate General of Intellectual Property. (Rohani, 2015). Not only that, in the process of proving ownership, it must be accompanied by accompanying evidence. In addition, the Government also has obligations in terms of protection and guarantees. It is responsible for ensuring the rights to Communal Geographical Indications by facilitating their registration and development not to harm the owners of Communal Geographical Indications. (See Article 53 Law on Trademarks and Geographical Indications)

This prescriptive approach to Geographical Indications reflects protection based on legal process registration, a prerequisite for obtaining the protection it benefits from and regarding product recognition. (Belletti, Giovanni et.a, 2011). Preserving unique elements and special characteristics that only exist at the location of product production requires solid legal instruments to provide protection and accommodate the distribution of economic benefits for the environment surrounding the community. Considering this, Geographical Indications, included in one of the components of Intellectual Property Rights (IPR), play an essential role in protecting superior products. (Article 53 Law on Trademarks and Geographical Indications).

Provisions regarding procedures for administrative registration of Geographical Indications are first regulated in Government Regulation No. 51 of 2007 concerning Geographical Indications. From the point of view of object ownership, one thing that differentiates this Geographical Indication is the ownership rights that cannot be owned by one person but are owned jointly or collectively. Collective ownership means that everyone in the area can use a Geographical Indication sign if the goods are produced according to the criteria required by the Marks and Geographical Indications Law. (Rustiala, Kal., & Munzer, Stephen R, 2007).

Based on the process for submitting applications for geographical indications above, it can be stated that the protection of geographical indications in Indonesia adheres to a constitutive system with the principle of first to file, which has the understanding that there is legal

protection for those who have successfully registered Geographical Indications first. This principle tends to benefit from the rights of geographic owners because there are aspects of legal certainty related to the ownership of Intellectual Property Rights. Then the strength of the evidence-based registration process is the main strength. The protection of Geographical Indications, which also empowers NGOs, government agencies, and residents, is intended to protect potential intellectual property areas because any economic use of the rights to Geographical Indications will apply to members of the collaborative community concerned. Protecting Geographical Indications is essential in building business and the economy because: (Rahmawati Debrina, 2016).

- a. Consumer rights to product authenticity must be protected;
- b. Producers are required to guarantee that there are no fraudulent practices that occur in trading practices;
- c. Product authenticity and quality assurance are the keys to success in international trade;
- d. Developing agro tourism; And
- e. Increase regional income.

The protection of Geographical Indications can only be carried out when the registration process has been received. This differs from the previous arrangement in Law Number 15 of 2001 concerning Trademarks that consumer groups are not served as parties who can apply for registration for Geographical Indications. However, in the latest regulations, Geographical Indications can be registered through the following process:

- a. An institution representing the public in a particular geographic area, such as a manufacturers' association, cooperative, or the Society for the Protection of Geographical Indications. The agency then looks for goods and products of the following types:

1. Natural resources, which can be used to meet human life's needs, include biotic components, such as animals, plants, and microorganisms, and abiotic components, such as petroleum, natural gas, and various types of metals, water, and soil.
2. Handicrafts;
3. Industrial product: processing raw materials into finished products.

In the relevant law, the applicant category consists of local communities, community organizations, or associations that closely relate to the product in question. The applicant must show evidence of history, tradition, and the use of related products supported by the local community. (Purwaningsih, E., 2014).

The legal principles in protecting Geographical Indications are protection against misleading use of protected indications - actions aimed primarily at consumers. Then secondly, protection against indication-measurement dilution is aimed primarily at the manufacturer. (Candra Irawan, 2017).

CONCLUSION

Geographical indications are communal rights; therefore,

understanding the community's mindset is very important as capital for the government to formulate appropriate strategic steps and policies. So Geographical Indication protection is obtained, which can provide benefits to improve people's welfare. The people's mindset that prioritizes economic benefits is a challenge for local governments to find the right solution according to local cultural conditions. The government's strategic efforts must continue to demonstrate measurable benefits to encourage the public to voluntarily develop the potential of Geographical Indications.

Geographical Indications are deemed capable of guaranteeing the protection of economic rights (exclusive rights) for the community producing Geographical Indication products that describe the local community's identity. Indirectly it also means that it can protect the cultural heritage owned by the community. Also, there is an urgency to separate the regulation of Geographical Indications (Sui Generis) in this national law due to the characteristics of the protection provided in Law no. 20 of 2016 having differences with brands. In addition, it is also necessary to establish solid regulations and technical mechanisms to work together in protecting the interests of the rights of the communities producing Geographical Indication products.

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