

Legal Protection of the Communal Rights to Geographical Indications in the Perspectives of Human Rights in Indonesia

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Abstract. Geographical indications are for which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin. Geographical Indication is one form of Intellectual Property which must be strived to legal protection for member countries of World Trade Organization (WTO). The provision is set forth in Trade Related Intellectual Property Rights, especially in Article 22 through Article 24. Indonesia is a member of the WTO that is rich in knowledge, tradition, and culture, with a tropical climate and produces products with high economic potential and cultivated by community groups in certain areas to improve their welfare, should obtain adequate legal protection as communal property rights. Constitutionally in Article 33 Paragraph (3) of 1945 Constitution of the Republic of Indonesia determined that “Earth, water and natural resources contained in it are controlled by the state and used for the greatest prosperity of the people”. The provision is interpreted that the state is a regulator in the utilization of natural resources, including products Geographical Indication as communal property rights and strongly related to Human Rights.

Keywords: Geographical indications; World Trade Organization (WTO); Human Rights.

1 Introduction

Indonesia has a lot of economic potential. As an archipelago country that has many traditions, knowledge and culture as well as a tropical climate, Indonesia can produce goods of economic value. Everyday, we often encounter the name of an item accompanied by the name of the area of origin of the item for the geographical of the item.

Indication shows the specificity of an item produced from a certain area. This sign indicates the initials or origin of a product, whether it is food, agricultural or handicraft products, including raw materials or processed products from agriculture and mining products.

The Geographical Indication Rights are exclusive rights granted by the state to registered Geographical Indications Holders, as long as the reputation, quality, and characteristics that are the basis for providing legal protection for the Geographical Indications are still available. The characteristics and quality of goods that are maintained and can be maintained within a certain period of time will give rise to reputation (fame) of goods and high economic value. Because of this, the goods should have adequate legal protection

Regulation on the Protection of Geographical Indications (RPGIs) through registration to the Minister, is expected to provide legal certainty to Holders of Geographical Indications so that Geographical Indications products that are developed for generations by local communities can provide sufficient economic benefits fairly to improve their welfare.¹

Legal protection for Geographical Indications has been carried out for 40 (forty) types of local products, through a system of registration and issuance of certificates of Geographical Indications by the Minister (ex-Directorate General of IPR). The aim is to provide legal certainty to local communities who have been endeavoring products for specific location specifications, with traditional methods in order to obtain sufficient economic benefits fairly in improving their welfare. However, in trade practices, the use of signs that have similarities with registered Geographical Indications is still continue. Example: Toraja and Kalosi names are Geographical Indications of the Toraja and Enrekang communities, which are used as Trademarks for arabica coffee products from the Toraja and Kalosi Enrekang regions by Key Coffee, Inc. Corporation of Japan under the names Toarco Toraja and Arabica Kalosi with images of Toraja owned houses registered in Japan and America and Sulatco Kalosi Toraja Coffee Brand and Sulatco Kalosi Toraja Coffee owned by IFES Inc. California Corporation United States. Such a park will marginalize the local community from the origin of the product as a Geographical Indication Holder, because it cannot obtain sufficient economic benefits from products protected by Geographical Indications.

Based on the background of the above thoughts can be drawn a problem, namely how the relevance of the concept of communal property rights and monopoly on Geographical Indications with Human Rights.

2 Research Method

This type of research is normative legal research² and empirical legal research using legislation approach, conceptual approach, and case approach.³ There are two types of data in this study, namely (1) primary data, i.e. data derived from the results of interviews and observations, (2) secondary data i.e. data obtained from library research and documents. The data collected through the stages of editing, then coding and analyzed using descriptive-qualitative techniques.

3 Results and Discussion

3.1. Geographical Indications in the Intellectual Property Legal Framework

Geographical Indications (GIs) is a sign that has unwittingly existed for a long time and can indirectly show the existence of a specificity in an item produced from a particular area. This sign can be used to show the authenticity of an item. These goods can be in the form of food, agriculture, handicrafts, including raw materials or processed products from agriculture

and mining products. For member countries of the World Trade Organization, geographic indication is one of the intellectual property that must be protected..

The legal protection system for GIs was first introduced by France in the early 20th century, by providing legal protection for local products that have certain geographical criteria and other specific criteria with *Appellation d'Origine Contrôlée* (AOC). At the Paris Convention in 1883, the term used was indication of source or appellation of origin. The same thing was used in the Madrid Agreement of 1891, with the term Indication of Source (AO) for trade names that are identical or exactly the same as the area of origin of the product. The term differs from the one used in the Lisbon Agreement which expressly defines GIs ... the geographical name of a country, region, or locality, ...⁴ In the international order, legal protection for IG is contained in the norms of approval of Trade-Related Aspects of Intellectual Property Rights (TRIPs,

Indonesia has ratified the TRIPs agreement, with Law of the Republic of Indonesia Number 7 Year 1994 on Approval on the Establishment of the World Trade Organization (WTO) on November 2, 1994. By ratifying the agreement, each member country must implement it in its national law. To carry out these obligations, GIs is then integrated into Law Law of the Republic of Indonesia Number 20 Year 2016 on Trademarks and Geographical Indications (Trademark Law and Geographical Indications) with a view to regulating the overall legal protection of GIs.⁵

In the approval of TRIPs, GIs are ... indication which identify a good as originating in the territory of a Member, or a region or locally in that territory, . . .⁶ These provisions do not specifically regulate certain norms that must be followed by member countries, but only set minimum standards for legal means of IG. Therefore, the procedure for legal protection for IG is left to the policy of each member country, whether it is regulated integrated into or outside the rules of the Brand. Although the approval of TRIPs recognizes IG and Trademarks as independent regimes with different product characteristics.

3.2 Scope of Objects Geographical Indications (GIs)

GIs in the intellectual property legal regime is a sign that is associated with a region or community group, which strives for products with certain characteristics and characteristics due to the geographical environment of the origin of the product. Legal protection for GIs in national law, is integrated into Law of the Republic of Indonesia Number 20 Year 2016 on Trademarks and Geographical Indications (Trademark and IG Law).

The scope of IG objects in the Trademark Law and IG covers goods or products in the form of: natural resources, handicraft items, industrial products.⁷ Natural resources are all things based on nature that can be used to meet the needs of human life which includes not only biotic components such as animals, plants, and microorganisms but also abiotic components such as petroleum, natural gas, various types of metals, water, and soil. While industrial products are the results of human processing in the form of raw materials into finished goods, among others, Tunun Gringsing, Tenun Sikka.⁸ In the approval of TRIPs, industrial results are not strictly regulated as Geographical Indications, because the IG in

question is, the goods is essentially attributable to its geographical origin.⁹ Thus, goods whose characteristics and quality are not directly related to the geographical area of origin of the product are not categorized as IG. Remaining at the 1883 Paris Convention was determined, Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.¹⁰ Whereas in the Lisbon Agreement IG covers, ... environment, including natural and human factor.¹¹

The foregoing explanation shows that the scope of the Geographical Indications object determined by the Trademark Law and Geographical Indications includes biotic and abiotic products and industrial products processed by traditional methods is the result of adoption of international provisions related to IG, by looking at the potential of Indonesian IG products.

3.3 Protection of Geographical Indications (PGIs)

We can find the Conception for Protection of Geographical Indications (PGIs) in the 1883 Paris Convention for the Protection of Industrial Property and the 1891 Madrid Agreement. Both agreements mention "Indication of Source as an indication referring to a country or a place in that country, as being the country or place of origin of a product."¹² In Paris Convention 1883 Article 1 Sec. 2 determined, The Protection of Industrial Property has as its object patents, utility models, industrial design, trademarks, service marks, trade names, indication of source or appellation of origin, and the repression of unfair competition"¹³ In principle, the convention has been regulated on the concept of Geographical Indication as Indication of Source, for legal protection of indications of origin by prohibiting the product from entering a member country, if the product is not properly from the country concerned.¹⁴ In contrast to the 1958 Lisbon Agreement which used the Appellation of Origin (AO) term for Indication of Source, it was included in the trade name rules that used the place name for the traded product. The name of the place in question functions as a sign of differentiating similar products from other regions. Therefore, the product that uses the term AO must be exactly the same as the mark of the origin of the product. Example: Petronas Tower, Sydney Opera House. The sign is not related to the characteristics of the product, but only identifies the area of origin of the product.¹⁵ Whereas IG is a sign, in the form of name, logo, image, symbol, in addition to functioning to identify the area of origin of the product, these signs become characteristic representations and quality of certain regional products due to geographical factors.

In the international order, legal protection for IG is generally contained in the norms of TRIPs Agreement¹⁶, Article 22 paragraph (1): ... indication which identify a good as originating in the territory of a Member, or a region or locally in that territory, where a given quality, representation or other characteristic of the goods is essentially attributable to its

geographical origin.¹⁷ This article is not very specific as to the substantive conditions that can justify legal protection in the Member States of the Agreement. However, the minimum standard that must be carried out by each member country is to carry out legal protection measures for IG, including its contact with unfair competition.¹⁸ Although the TRIPs Agreement adopted the *Appellation d'Origine Contrôlée* (AOC) rule in the Paris Convention 1883 and independently regulated IG and Trademarks.

Indonesia has ratified the TRIPs agreement with Law of the Republic of Indonesia Number 7 Year 1994 on the approval of the establishment of the World Trade Organization (WTO) dated November 2, 1994, and its contents regulate legal protection for Geographical Indications in general in Articles 22 to 24, and specifically regulated in Article 10 Paris Convention 1883 concerning the prohibition on the trading of goods using Origin Indications for goods from certain territorial territories, which shows the quality, reputation or special character of the item is essentially related to the geographical location of the goods produced (False Indications: Seizure, on Importation, etc., of Goods Bearing False Indications as to their Source or the Identity of the Producer).

The legal protection policy for geographical indications which in the Trademark Law and Geographical Indications is carried out after the Geographical Indication is registered by the Minister at the request of an institution representing the community in a particular geographical area and provincial or district/city regional government.¹⁹ It is meant that the institutions that represent the community in certain geographical areas include producer associations, cooperatives, and the Society for the Protection of Geographical Indications (MPIG).²⁰ The concept places IG as collective-communal property rights and is two different things.

According to Rob Edger, collective rights are rights held by group or sets, rather by individual. A group generally connotes a set of individuals with strong racial, state, religious, or linguistic ties.²¹ Whereas communal rights²² is the right born from the participation of community groups in a particular area, to own and utilize an object together. The order of thinking of individuals in communal society always puts the behavior pattern on the group ego, so that the individual ego will be defeated by group superiority. Therefore, the behavior of the individual must be carried out in his position as a member of the alliance within the framework of unity and fellowship.²³ This definition indicates that intellectual property rights as intangible objects are no longer limited to individual and collective property rights, but have become communal and monopolistic property rights and are closely related to human rights.²⁴

The essence of communal property rights and monopoly related to the legal protection of local communities, which have sought regional products with certain distinctive characteristics that are not possessed by other regions, in order to obtain the economic benefits of these products in an adequate intellectual property regime to improve their welfare. Such a concept places the role of the Government as a regulator to be important, to establish legal regulations

that can support communal property rights and local monopolies, as a form of protection of human rights law related to the economic rights of local communities.

3.4 Relevance of Legal Protection of Communal Rights of Geographical Indications with Human Rights

Legal protection of communal rights and monopoly on Geographical Indications is in line with the constitutional mandate that economic development is carried out based on the principle of kinship. Therefore, the Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.²⁵

The above provisions are meant that, economic activities are carried out by promoting common interests in the concept of communal property rights and monopolies to manage and utilize natural resources that have been cultivated by local communities for generations in a particular area. In this case, managing crops, water, natural wealth, the state is a regulator to regulate and manage these natural resources for the prosperity of its people.²⁶ This function must be able to be carried out as the executor of the constitutional mandate to fight for respect, protection and fulfillment of the rights of local communities related to the use of natural resources in the form of communal property rights and monopoly on IG as intellectual property.

The same is true of the Declaration of Human Rights. With regard to the legal protection of intellectual property, Article 27 paragraph (1) has been determined as follows: everyone has the right freely to participate in the cultural life of society, enjoy art and to share in the advancement of science and its benefits. Everyone has the right to the protection of the moral and material interests resulting from the artistic, scientific and literary production of which he is the author; Paragraph (2): Everyone has the right freely to participate in the cultural life of society, enjoy arts and participate in scientific advancement and its benefits.

According to Sharon E. Foster, the language of Article 27 Section (2) is very granting author's moral and material interests the status of human rights.²⁷ In line with this, Hector Macqueen said that: A property paradigm implies a system of control to be exercised by the right holder control, that is, control subject matter of his property rights. No one can, take, use otherwise interfere with the property without permission from the right holder.²⁸

Furthermore, in the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 15 Section 4, it is determined the efforts that must be carried out by member states in preserving, developing and disseminating the results of science that are born from human intellectual creativity, to realize rights protection as which is regulated in Article 15 Section 1 of ICESCR.²⁹

The foregoing explanation is the basis for recognizing the economic rights of intellectual property as part of human rights. Even though it does not explicitly state communal rights as intellectual property rights, but by regulating IG in TRIPs agreement, it is argued that intellectual property rights are not only limited to private rights but also include communal rights related to IG. Example: Roquefort, namely sheep milk cheese from the Lacaune,

Manech, and Basco-Bearnaise breeds. Only cheese stored in *Combalou* caves in the *Roqueforty-sur-Soulzon* region alone can be named *Roquefort*.³⁰

According to Duncan Matthews, there are 3 (three) arguments for analyzing the relevance of IPR with human rights, namely: First, IPR is not part of human rights but the full rights are related to law. Second, IPR is part of human rights with an emphasis on property rights and individual rights. And third, aspects of IPR that have the potential to conflict with human rights.³¹

Regarding communal rights and monopoly on IG as intellectual property, in the explanation of the Ratification of the International Covenant on Economic, Social and Cultural Rights that the opening of the 1945 Constitution has mandated recognition, respect and will for the implementation of human rights in carrying out community life, nation and state (letter b). The Indonesian people as part of the world community deserve respect for human rights contained in the United Nations Universal Declaration of Human Rights and other international instruments on human rights (letter c).³²

According to the concept of human rights protection, recognition of Intellectual Property Rights in the concept of human rights protection, assumes that every citizen has the right to decent work and livelihoods through the fulfillment of his basic needs to improve the quality of life that is decent individually, collectively, and communally for his welfare. . . The state must provide fair legal recognition, guarantee, protection and certainty as well as equal treatment before the law, including in terms of the use of land, water and natural resources contained therein, dismantled by the state and used for the greatest prosperity of the people. people based on kinship principles in the form of communal rights and monopoly rights. Thus, everyone has the right to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law. The state's obligation is to respect the human rights of its people (respect), protect the human rights of the people (to protect), and fulfill the human rights of its people (to fulfill) in all aspects of life that are realized in the national legal order to protect the rights of these people . Because of that, exploitation of IG by unauthorized parties must be considered as a human rights violation, because economically it will marginalize local communities as IG holders.

4 Conclusion

TRIP's gives its member countries the authority to prevent others, not violating the rights to registered Geographical Indications. In national law, IG is regulated integrated into the Trademark Law and IG with the aim of clearly and thoroughly regulating the legal protection of IG. However, the local community as the IG holders do not know the concept of communal property rights and the monopoly on the IG. Therefore, the practice of using signs that have similarities with IG registered without rights should be considered human rights violations.

Recommendation

GIs that are integrated into the Trademark Law, need to be clarified and emphasized the right to IG that can only be granted in the form of communal and monopolistic property rights,

to guarantee protection, and legal certainty that equitably utilizes Gis's economic rights in relation to human rights.

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