
HUMAN RIGHTS AND THE LEGAL FRAMEWORK FOR COMMUNAL GEOGRAPHICAL INDICATIONS

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Abstract

Geographical indications (GIs) identify a product as originating from a specific territory, region, or locality, where its quality, reputation, or other characteristics are essentially attributable to that geographical origin. As a form of intellectual property, GIs require legal protection, particularly for member countries of the World Trade Organization (WTO), as provided under the Trade-Related Aspects of Intellectual Property Rights (TRIPS), specifically Articles 22–24. Indonesia, a WTO member, is rich in knowledge, traditions, and culture, and possesses a tropical climate that enables the production of high-value goods cultivated by community groups in specific areas to enhance their welfare. These products warrant adequate legal protection as communal property rights. Constitutionally, Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that “Earth, water, and natural resources contained in it are controlled by the state and used for the greatest prosperity of the people.” This provision positions the state as the regulator in the utilization of natural resources, including products with geographical indications, which are considered communal property rights and are strongly linked to human rights.

Keywords: *Protection, Communal Rights, Geographical Indications, Human Rights*

1. Introduction

Indonesia is an archipelago country that is rich in knowledge, tradition, and culture, as well as a tropical climate that produces various kinds of goods that have no small economic potential. In everyday life, people know or name the name of an item followed by the name of the place or area of origin of the item as a Geographical Indication.

Geographical indications are a sign that has long been unconsciously existing and can indirectly indicate the specificity of an item produced from a particular area. The intended sign is then used to indicate the origin of an item in the form of agricultural products, food, handicrafts, or other goods, including raw materials and processed products derived from agricultural 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.¹ The characteristics and quality of goods that are maintained and can be maintained within a certain period of time will give rise to the 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.

2. Problem Statement

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 still continues. 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 on a problem, namely the relevance of the concept of communal property rights and monopoly on Geographical Indications with Human Rights.

3. Methods

This research is normative legal research and empirical legal research using the legislation approach, conceptual approach, and case approach. There are two types of data in this study, namely (1) primary data, i.e. data derived from the results of the Constitution of the Republic of Indonesia, Trademark and IG Law Law and Convention, and (2) secondary data, i.e. data obtained from library search, documents. The data was collected through the stages of editing, then coding and analyzed using descriptive techniques.

4. Discussion

4.1. 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 specificity in an item produced from a particular area. The intended sign can then be used to indicate the origin of an item, whether in the form of agricultural products, foodstuffs, handicrafts, or other goods, including raw materials and/or processed products, both from agricultural products and from mining products. As with the Trademark, Geographical Indication is one form of intellectual property that must be sought for protection for member countries of the World Trade Organization.

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 an 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... In the international order, legal protection for IG is contained in the norms of approval of Trade-Related Aspects of Intellectual Property Rights (TRIPs, especially Article 22 through Article 24.

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.

In the approval of TRIPs, GIs are ... indications which identify a good as originating in the territory of a Member, or a region or locally in that territory . . . 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 and 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.

4.2. 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 the 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, and industrial products. 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. In the approval of TRIPs, industrial results are not strictly regulated as Geographical Indications because the IG in question is, ... of the goods is essentially attributable to its geographical origin. 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 that 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. So, in the Lisbon Agreement, IG covers... environment, including natural and human factors.

The foregoing explanation shows that the scope of the Geographical Indications object determined by the Trademark Law and Geographical Indications including biotic and abiotic products and industrial products processed by traditional methods, is the result of the adoption of international provisions related to IG by looking at the potential of Indonesian IG products. In fact, there are no less important than brands, namely Geographical Indications.

4.3 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. In the Paris Convention 1883, Article 1 Sec. 2 determined that 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" 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. 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.¹⁹ Whereas IG is a sign in the form of a name, logo, image, or 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 Agreement²⁰, 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.²¹ 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.²² 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.²³ 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).²⁴ The concept places IG as collective-communal property rights and is two different things. The legal protection for geographical indications through the registration system to the Minister to support the economic rights of the holders of geographical indications also applies *mutatis mutandis* to some legal provisions on trademarks.²⁵

According to Rob Edger, collective rights are rights held by groups or sets rather than by individuals. A group generally connotes a set of individuals with strong racial, state, religious, or linguistic ties.²⁶ Whereas communal rights²⁷ are the rights 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.²⁸ This definition indicates that intellectual property rights as intangible objects are no longer source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party. Article 10bis: (1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition. (2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. (3) The following in particular shall be prohibited: 1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor; 2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; 3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

Geographical Indication Law limited to individual and collective property rights but have become communal and monopolistic property rights and are closely related to human rights.

The essence of communal property rights and monopoly is 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.

4.4 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. The existence of these human rights is the main task of the state in providing basic services to the community for their needs.

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, and natural wealth, the state is a regulator to regulate and manage these natural resources for the prosperity of its people. 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 Declaration of Human Rights shows the same thing in the legal protection of intellectual property determined in Article 27 Paragraph (1) as follows: everyone has the right freely to participate in the culture life of the community, to enjoy the arts and to share in scientific advancement and its benefit. Everyone has the right to the protection of the moral and material interest resulting from any scientific, literary, or artistic production of which he is the author. Paragraph (2): Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. According to Sharon E. Foster, the language of Article 27 Section (2) grants the author's moral and material interests the status of human rights. 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 of the subject matter of his property rights. No one can take, use, or otherwise interfere with the property without permission from the right holder.

Furthermore, the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 15 Section 4 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.

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, by regulating IG in the 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*.

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.

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).

Furthermore, Article 15 of the ICESCR is determined: States parties to the present covenant recognize the right of everyone: (c) to benefit from the protection of moral and material interests arising from scientific, literary or artistic work that has been created. Acknowledgment of intellectual property rights in the concept of human rights protection, it is assumed that every citizen has the right to work and a decent livelihood through fulfilling his basic needs to improve the quality of life that is individually, collectively and communally appropriate for his welfare. The state must provide fair legal recognition, guarantee, protection, certainty and equal treatment before the law, including in the case of the use of the earth, water and natural wealth contained therein being scrapped by the state and used for the greatest prosperity of the people, based on the family principle, in the form of communal and monopoly rights. As such, everyone has the right to recognition, guarantee, protection, fair legal certainty and equal treatment before the law.⁴² The obligation of the state is to respect the human rights of its people (to 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, the exploitation of IG by unauthorized parties must be considered a human rights violation because, economically, it will marginalize local communities as IG holders.

5. Conclusion

The current study aimed to identify an item originating from the territory of a member country or a region or locality within the region and to know that Geographical Indication products are collective property

rights and are closely related to Human Rights. The results of the study revealed that each member country is obliged to implement WTO provisions in their respective countries in accordance with national law, but these norms are less adhered to by member countries and the community as GI holders do not yet know the concept of communal property rights and GI monopoly. This study can provide input to property regarding the meaning of a control system that must be carried out by the holder of control rights, namely the subject of control over the property rights they own. No one may take, use or otherwise interfere with the property without permission from the right holder. Therefore, future research will focus more on fair legal recognition, guarantees, protection and certainty, as well as equal treatment of intellectual property rights in the concept of human rights protection.

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