

The Role of Local Governments in the Defense of Leading Products

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Abstract

This study aims to explain and show the role and influence of local government policy and political law in protecting and developing Geographical Indications as a regional superior product. This article is the writing of normative law using the legislative approach method. The results of the study indicate that the policy and political law of the local government greatly affect the protection and development of Geographical Indications as a regional superior product, this is clearly seen in two ways, namely: a. The Regional Government of Sleman Regency provided assistance, with assistance from the Regional Government and after being officially requested by the Pondoh Salak Farmers Community of Sleman District, finally the pondoh salak variety succeeded in obtaining a geographical indication certificate in August 2013, b. Protection and development of Muntok White Pepper Geographical Indication products are inseparable from the role of the Regional Government of Bangka Belitung Province. H Eko Maulana Ali through the Governor Regulation of Bangka Belitung Province.

Keywords: Political Law, Local Government, Geographical Indications.

Abstrak

Penelitian ini bertujuan untuk menjelaskan dan menunjukan peranan serta pengaruh kebijakan dan politik hukum pemerintah daerah dalam melindungi dan mengembangkan Indikasi Geografis sebagai produk unggulan daerah. Artikel ini merupakan penulisan hukum normatif dengan metode pendekatan perundang-undangan. Hasil kajian menunjukkan bahwa kebijakan dan politik hukum pemerintah daerah sangat mempengaruhi perlindungan dan pengembangan Indikasi Geografis sebagai produk unggulan daerah, hal tersebut jelas terlihat dalam dua hal, yakni: a. Pemerintah Daerah Kabupaten Sleman memberikan pendampingan, dengan pendampingan oleh Pemerintah Daerah dan setelah dimohonkan secara resmi oleh Komunitas Petani Salak Pondoh dari Kabupaten Sleman, akhirnya varietas salak pondoh berhasil memperoleh sertifikat indikasi geografis pada bulan Agustus tahun 2013, b. Perlindungan dan pengembangan produk Indikasi Geografis Lada Putih Muntok tidak terlepas dari peran Pemerintah Daerah Provinsi Bangka Belitung diketahui bahwasanya sertifikat kepemilikan Indikasi Geografis Lada Putih Muntok di bawah kepemilikan Badan Pengelola, Pengembangan dan Pemasaran Lada Pendirian BP3L sendiri diketahui karena permintaan Gubernur Babel kala itu H Eko Maulana Ali melalui Peraturan Gubernur Provinsi Bangka Belitung.

Kata Kunci: Politik Hukum, Pemerintah Daerah, Indikasi Geografis.

Introduction

Indonesia is an incredibly rich country with natural resources and local culture. (TAP MPR No. 11, 1998) It is clear from the variety of plant types held by nearly every region in Indonesia. Like, Cilembu sweet potatoes, Ponggoh barking, Arabica Coffee Kintamani Bali and so on. Additionally, there are many items which are manufactured on the basis of local culture, whether in the form of goods or local art objects. Including, Bali Gringsing Weaving, Mandar Silk Weaving, Jepara Carving Furniture and so on. Diversity will potentially become the economic strength of Indonesia, if it can be handled correctly and wisely. (Rahmatullah indra, 2014)

Among the many products of goods that become commodities in international trade, there are also different commodity products of goods that have very distinctive characteristics for both products in the form of natural products such as germplasm or products that are processed products. These products are typically found and recognized only as a characteristic of a specific market, region, or country. Commodity products such as this are known as exclusive products. (Hendra Djaja, 2013) Goods of this kind received special attention and care during the period of free trade, known as Geographical Indications. This can be seen in Article 23 of the TRIPs Agreement, which explicitly agreed to provide protection by a Geographical Indication Protection Scheme or Trademark of Origin for all kinds of goods, both raw and their manufactured. (Apriansiya Nizar, 2018)

The Indonesian citizens, of course, have some bitter history of alleging geographical signs by outsiders, like Gayo coffee, which was registered by European Coffee BV on 15/07/1999 with the address Zwarteweg 6 B NL-1412 GD Naarden Paises Bajos via CTM register 001242965, class 30 with coffee, tea, cocoa, sugar and artificial products Based on the Certificate of the European BV label. Then toraja coffee which was licensed as "Toraja" coffee brand in Japan by Key Coffee Co. a Japanese company in 1976. In processing Toraja coffee beans, the registrant feels they have contributed to the technology (transfer of knowledge) to make it popular in Japan and several countries. The result of registering the Toraja mark is to close the possibility of exporting coffee products with the same brand name to Japan and other countries through other parties like Indonesia. Then both of these geographical signs were globally re-recognized as Indonesian Geographical Indications for a long enough period. (Saputra Riana, Et.all, 2019)

One of the purposes of TRIPs is to protect and enforce the law on intellectual property rights for the development of innovation, transition, technology diffusion, as well as to obtain reciprocal benefits between manufacturers and users of technological information, by creating social and economic welfare, and by balancing rights and obligations as specified in Article 7 TRIPs.

The birth of Intellectual Property Rights initiated by developed countries is bringing developing countries such as Indonesia its own impact. The character of Indonesian society which is cooperative cooperation, upholds the ideals of solidarity, then considered not in line with the aims of the principle of defense of

intellectual property rights born from individual countries. Intellectual property rights are founded on the basis of company monopoly interests, private freedom to make the most of their inventions, and all parties are prohibited to use their work without their permission. External party to the Geographical Indications (Devica Rully Masrur, 2018) (Saputra Riana, Et.all, 2019)

The Geographical Indications Regulation in Indonesia is currently regulated in the Republic of Indonesia Law No. 20 Year 2016 concerning geographical indications and indications (hereinafter referred to as Law No. 20/2016). In this Rule, the meaning of geographical indications is as follows: "a sign indicating the origin of goods and/or products due to geographical environmental factors including weather, human weather or the combination of the two factors give the goods and/or products produced a certain reputation, quality and characteristics."

Geographical signs, according to Wahyu Sasongko, are systems of intellectual property rights with different elements or characteristics (*sui generis*). The Trade Related Aspect of the Agreement on Intellectual Property Right (hereinafter referred to as TRIPs) states: for the purpose of this Agreement. This is, the elements in identifying geographical signs are distinct features and can be differentiated from other regimes of intellectual property rights.

At least, there are four main elements of geographical indication in the TRIPs Agreement, namely, first, the element of geographical names to identify, is not absolute but relative because it can use non-geographical names; second, the regional element in the country as a place of production is not identical with the administrative region but is adjusted to the factual conditions; third, the element of ownership in geographical indications is not an individual right (private right) but a communal right (communal right), then the Geographical Indication is the right to use (right to use); and fourth, elements of quality, reputation, or other characteristics that are alternative, then an item is sufficient to meet one of these elements (Wahyu Sasongko, 2012)

Known history of geographical indication recognition was first governed in the 1883 Paris Convention, which introduced security measures on the boundaries of measures and prevention of unfair competition. This is also governed by the False Indication and Border of Measures Agreement of 1891 in Madrid. In addition, the Lisbon Treaty provides for the security of the 1958 origin indication regulating the international registration of the origin indication. The IG in the Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as TRIPs) agreed at the 1994 General Round of the Tariffs and Trade Agreement (GATT) gave a very large incentive for IGs to defend internationally. (Asfiyah Siti, 2015)

Based on this historical context, it can be inferred that the reason for protecting Geographical Indications is economic, and it is assumed that, if a Geographical Indication is covered, such protections will yield economic benefits. For Indonesia, of course, which is known for its natural resources (whether cultural or biological), this is a resource that can help the economy of the country, if properly handled. A geographical identification has to be registered as to receive such protection.

The government and some Indonesians can seize a trade opportunity by aggressively enforcing the geographic indication security program, then inventorying and exploiting various potentialities that have not been or have been handled by the state, such as natural resource wealth) both raw and processed goods. It seems that the role of this government, especially the Regional Government is important, where the Regional Government must have a policy in the form of local legal politics that aims to socialize, guide the community and conduct an inventory and facilitate the community to register various local products that are "typical" (potential) in the area is protected by geographical indications, especially if all this time the products have been routinely (traditional) been exported outside and obtained a fixed market. The article will therefore outline the role of Local Government in protecting Leading Products on the basis of Leading Indications.

Research Methods

The approach employed is normative (doctrinal) rule, based on the subject of this paper. Although focused on nature and intent, this paper uses descriptive legal research (descriptive legal research), since in this paper the author must describe the circumstances and problems associated with "The Role of Local Governments in Protecting Superior Products Regional Based Indicated Flagship" in order to realize customer empowerment, describe preliminary data related to the current problem and then search for theories or hypotheses to solve existing problems. In this paper two types of approach methods are used, namely the main approach method and the method of supporting approach. The key forms of approach are: the formal approach, the comparative approach and the case approach. Although the strategy used by the supporters is the legal sociology approach, since this technique would examine how the responses and experiences arise as the group culture functions. Both materials obtained and collected will be analyzed using qualitative analysis by defining or comparing existing hypotheses with material obtained from interviews, data and literature studies from various sources, followed by data coding and editing, then interpreting to give meaning to the meaning study, explaining trends or categories seeking relationships between different co-workers. (I Gusti Ayu Ketut Rachmi Handayani, Lego Karjoko, Abdul Kadir Jaelani, 2019)

Discussion

Geographical indications are covered by first having to submit an application to the Minister after being registered. The requester is: a. An organization serving a group in a given geographical region that markets an object and/or a commodity in the form of: 1. Natural Heritage; 2. Artisanal items; or 3. Industrial growth. b. Regional government of province or district / city. Law Number 20 Year 2016 extends applicants for the defense of Geographical Indications, including provincial or district / city Local Governments that are not governed by Law Number 15 Year 2001 but Law Number 20 Year 2016 does not include user groups that apply applications as provided for in Law Number 15 of

2001. Considering that the IG refers to the area of origin of goods which, due to geographical environmental factors including natural, human or a combination of the two factors, give the goods generated certain characteristics and qualities, a Regional Government may submit an application is an appropriate move.

Law Number 20 Year 2016 also governs applications submitted by applicants living or permanently living outside the Republic of Indonesia must be filed by their Indonesian lawyers. Such an application can be recognized only if the IG has received approval from its country's government and/or is recognized in compliance with the laws in effect in its home country. Such requirements are not governed in Law No. 15 of 2001, while IG applications may be submitted by applicants outside Indonesian territory but in order to ensure that the proposed IG has ownership legitimacy, it must seek approval from the country of origin government.

Law number 20 Year 2016 governs IG that can be registered on the basis of international conventions. Such clause will be more realistic and will effectively promote the management of IG security applications in other countries. Such requirements are not limited in Law No. 15 of 2001, so that, if the applicant submits registration in other countries, priority rights are exercised. Priority rights are also governed in Law No. 20 Year 2016, so that economic growth by GIs is more available as there is a option or alternative for applicants who can apply GI applications in other countries. Law No. 15 of 2001 does not govern the removal of GIs, as opposed to Law No. 20 of 2016 as laid down in Article 61 which reads: 1. The IG is protected so long as the basis for which GI security is given is prestige, efficiency and characteristics. On a point. 2. IG is reversible if: a. The rules laid down in paragraph (1) shall not be complied with; and/or b. Violates the guidelines laid down in point (1) of Article 56 letter a.

Law Number 15 Year 2001 does not prescribe guidelines and supervision, but Law Number 20 Year 2016 explains: the central government and/or regional governments undertake the creation of geographical indications according to their authority. The central government and regional governments carry out IG surveillance in compliance with their jurisdiction, but Group monitoring may also be carried out. Oversight is executed for: a. Guarantee the integrity, price, and characteristics for which IG is issued; and b. Prevent illegal use of IG. Results shall be submitted to holders of IG rights and/or to Ministers. Guidance and supervision arrangements are important in terms of IG security management because coaching is an initiative, practice, and operation in the form of education and training conducted efficiently and effectively in order to produce better results.

To improve the competitiveness of business actors, the provision of guidance and supervision by IG is essential, since First, the IG determines the source or origin of the product. Second, GIs indicate product quality by reminding customers that a product originates from an area or region providing critical quality, credibility or other characteristics that may be related to its geographical origin. Second, as they guarantee the quality of products identified by certain areas, GIs will pose business interests. (Sasongko, Wahyu, 2010)

The State essentially seeks to provide healthcare for the people. The state is obligated to recognize the general conditions of social life, which makes individual groups as well as individuals as community members. (Koerniatmanto Soetoprawiro., 2007) It is found in the 4th alenia (Fourth) Opening of the Constitution of the Unitary State of the Republic of Indonesia of 1945, which reads: '... protecting all Indonesians and all Indonesian blood and fostering public welfare ...' so that the welfare state (welfare state) is a type of state policy leading to social security or public welfare. Paul Spicker, clarified that the welfare state requires not only a definition of how to structure welfare or social services, but also a moral principle that everyone as their right must access social services. (Ahmad Dahlan & Irfan Santosa., 2014)

Lack of consideration from the Local Government is one of the reasons leading local communities in general to misinterpret the Geographical Indications. You are more likely to accept IPR concepts like trademarks and brands. (Rian Saputra., 2020) This Geographical Indication is an asset that can be used as a means for the welfare of the people of a country, particularly regions, if the government has more initiative to correctly and wisely develop the natural potential of an area, this can be realized if it is supported by adequate human resources. Therefore, in order for this Geographical Indication to offer legitimate benefits to an entitled region and/or society, legal safeguards must be given. (Yessiningrum, Winda Risna, 2015)

Legal protection that can be achieved by the National Government can be accomplished by paying particular attention to the creation of laws of economic value, where the value would be focused on the importance of human rights based on the principle of justice in the local community, since they believe that they share mutual rights together, or share profit from local product performance. (M. Rendi Aridhayandi., 2018) The Regional Government, in addition, has an important role to play in directing and supervising geographical indications. With Articles 70 and 71 of Law Number 20 Year 2016 relating to Geographical Marks and Indications. The Regional Government must optimize the granted authority. Not only drug registration. In addition, the Regional Government must pay attention to good governance while enforcing the guidelines and oversight of Geographical Indications. If not exercised, the Regional Government may result in the deletion of Geographical Indications that have been registered in compliance with Article 61 of Law No. 20 Year 2016 on Trademarks and Geographical Indications, in terms of its authority.

Local government policy to protect and grow Geogafis Indications products is definitely one of the most important criteria, as many local community products are taken by outsiders and sold for profit, so local goods need to be covered with IG to discourage outsiders from taking them. (Djajah Hendra, 2010) For example, when the Regional Government of Sleman Regency registered Pondoh Salak as a Geographical Indication commodity, assisted by the Regional Government and after being officially requested by the Salak Pondoh Farming Community of Sleman Regency, the Pondoh Salak variety finally managed to obtain a geographical indication certificate in the month of Augu (Jogja Daily.,

2013) The protection and production of Muntok White Pepper Geographical Indication products is then inseparable from the position of the Regional Government (in this case the Provincial Government of Bangka Belitung) and it is understood that the Muntok White Pepper Geographical Indication ownership certificate is held by the Management, Development and Marketing Agency of Muntok White Pepper Geographical Indication. (2019, Wowbabel.com)

This demonstrates how critical the role of local governments is in providing protection and development for goods held by their regions of geographical indications. This is contrary to the fact that the authors see from many studies that several regions have the capacity for geographical indications but are not followed by the attitude of local governments that do not pay attention to this issue, as can be seen from the lack of local legal products owned for product safety and growth. (Dayanto & Asma Karim, 2016) All regional governments in Indonesia should therefore have considered making Geographical Indications Regional Leading Products a top priority with the goal of improving regional economies and autonomous communities through the use of these methods.

Conclusion

Local government policies greatly affect the protection and development of Geographical Indications products which are actually superior products owned by producing regions, but many local governments are not yet aware of the importance of such protection and development policies. This is known from the lack of policies and legal politics of local governments that lead to the protection and development of products or the potential for Geographical Indications in their respective regions.

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