

THE PUBLIC POLICY OF LOCAL GOVERNMENT IN PROTECTING GEOGRAPHIC INDICATION AS A LEADING REGIONAL PRODUCT

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Abstract

This study aims to explain and demonstrate the role and influence of local government policy and political law in protecting and developing Geographical Indications as regional superior products. This article is the writing of normative law using the legislative approach method. The results of the study show 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. The protection and development of the Muntok White Pepper Geographical Indication product is 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— Public Policy, Local Government, Geographical Indications.

I. Introduction

Indonesia is a country that is very rich in natural products and local culture. That we can see from the diversity of types of plants that are owned by almost every region in Indonesia. Like, Cilembu yams, Ponggoh salak, Kintamani Bali Arabica Coffee, and so forth. In addition there are also many products that are produced based on local culture, both in the form of goods or local art products. Like, Bali Gringsing Weaving, Jepara Carved Furniture, Mandar Silk Weaving and so forth. The diversity if it can be managed properly and wisely can actually become Indonesia's economic potential. In international trade, among the many products of goods that become commodities, there are also various commodity products which have very distinctive characteristics both for products in the form of natural products such as germplasm or products which are processed products. Such products are usually only found and known as a characteristic of a particular region and region or country. Commodity products like this are called exclusive products. During the free trade era, products like these received special attention and treatment, known as Geographical Indications. This can be seen in Article 23 TRIPs Agreement which specifically has agreed to provide protection for all kinds of products both raw products and their processed products through a Geographical Indication protection system or mark of origin.[1]

Certainly the Indonesian people have some bitter experience regarding the claiming of Geographical Indications by outsiders, including Gayo coffee which on 15/07/1999 the word "Gayo Mountain Coffee" has been registered by European Coffee BV with the address Zwarteweg 6 B NL-1412 GD Naarden Paises Bajos through CTM register 001242965, class 30 with the types of goods Coffee, tea, cocoa, sugar and artificial coffee. Based on the European BV brand certificate. Then toraja coffee which by Key Coffee Co. a Japanese company in 1976 registered the "Toraja" coffee brand in Japan. The registrants feel they have contributed to the technology (transfer of knowledge) in processing Toraja coffee beans so that it has become famous in Japan and several countries. The consequence of registering the Toraja brand is to close the possibility of other parties including Indonesia to sell coffee products with the same brand name to Japan and other countries. Then after

consuming a long enough time both of these Geographical Indications were re-recognized internationally as Indonesia's Geographical Indications.[2]

One of the objectives of TRIPs is to protect and enforce Intellectual Property Rights law for the emergence of innovation, transfer, dissemination of technology, as well as obtaining mutual benefits between the makers and users of technological knowledge, by creating social and economic welfare and balance between rights and obligations as stated in Article 7 TRIPs. The birth of the protection of Intellectual Property Rights spearheaded by developed countries gives its own influence for developing countries like Indonesia. The character of Indonesian society that is mutual cooperation, upholds the values of togetherness, then considered not in line with the objectives of the concept of protection of Intellectual Property Rights that were born from individual countries. Intellectual Property Rights are born on the basis of business monopoly interests, individual protection in order to make the most of their creations, and forbid other parties to use their works without their permission. For this reason, protection of the Geographical Indications is necessary to prevent the use by foreign parties of the Geographical Indications.[3]

The regulation on Geographical Indications in Indonesia is currently regulated in the Law of the Republic of Indonesia Number 20 Year 2016 Regarding Geographical Indications and Indications (hereinafter referred to as Law No. 20/2016). As for Wahyu Sasongko, geographical indications are regime of intellectual property rights with elements or characteristics (*sui generis*). In the Trade Related Aspect of Intellectual Property Right Agreement (hereinafter referred to as TRIPs) it is stated: for the purpose of this agreement. That is, the elements in the definition of geographical indications are distinct characteristics and can be distinguished from other intellectual property rights regimes. 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.[4]

Known history of recognition of Geographical Indications was first regulated in the Paris Convention of 1883, at this convention introduced protective measures on the Border of Measures and protection of unfair competition. It is also regulated in the 1891 Madrid False Indication and Border of Measures Agreement. Furthermore, the Lisbon Treaty as a protection for the Origin Indication of 1958 governing international registration of the Origin Indication. The IG in the Trade Related Aspects of Intellectual Property Rights (hereinafter referred to as TRIPs) signed in the 1994 General Round of Agreement on Tariffs and Trade (GATT) in 1994 offered a very broad opportunity for international protection for IGs. Based on this historical background, it can be concluded that the motive for protecting Geographical Indications is the economic expectation that if a Geographical Indication is given protection, an economic advantage will arise from such protection. Of course, for Indonesia, which is known for its natural resources (whether cultural or biological), this is a potential that can support the country's economy if managed properly. As for obtaining such protection, a geographical indication must be registered.[5]

Therefore, now it is just how the Government and a part of the Indonesian people can capture an opportunity in the trade sector by actively implementing the geographical indication protection system, then inventorying and maximizing various potentials that have not been or have been managed by the community, such as natural resource wealth) both raw products and processed products. 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 carry out an inventory and facilitate the community to register various local products that are "typical" (potential) in the area is protected by geographical indications, what if all these products have been routinely exported (traditionally) and received a permanent market. Therefore this article will describe the basis of the authority of the Regional

Government in the Development and Supervision of Geographical Indications. Furthermore, this paper will try to outline the importance of the legal politics of local governments in order to protect and develop Geographical Indications.[6]

II. Discussion

1. *Geographical Indication Protection System According to Law Number 20 Year 2016 concerning Geographical Indications and Indications*

Geographical Indications are protected after being registered by first having to submit an application to the Minister. The applicant is: a. an institution that represents the community in a particular geographical area that commercializes an item and / or product in the form of: 1. natural resources; 2. handicraft items; or 3. industrial output. b. provincial or district/city regional government. Law Number 20 Year 2016 expands applicants for protection of Geographical Indications, namely provincial or district/city Regional Governments that are not regulated in Law Number 15 Year 2001 but Law Number 20 Year 2016 does not include consumer groups who submit applications as regulated in the Act Law No. 15 of 2001. The provision of a Regional Government may submit an application is an appropriate step considering the IG refers to the area of origin of the goods which due to geographical factors including natural, human or a combination of the two factors, give certain characteristics and qualities to the goods produced. Law Number 20 Year 2016 also regulates Applications submitted by applicants residing or permanently domiciled outside the territory of the Republic of Indonesia must be submitted through their Proxies in Indonesia. Such application can only be registered if the IG has obtained recognition from the government of his country and / or is registered in accordance with the provisions in force in his home country. These provisions are not regulated in Law Number 15 of 2001, whereas IG requests may be filed by applicants outside of Indonesian territory but to ensure that the proposed IG has legality of ownership, it must obtain recognition from the government of the country of origin.[7]

Law Number 20 Year 2016 regulates IG which can be registered based on international agreements. This provision will be more practical and technically facilitate administration of applications for IG protection in other countries. These provisions are not regulated in Law Number 15 of 2001, so that if the applicant submits registration in other countries is done through priority rights. Priority rights are also regulated in Law Number 20 Year 2016, so that economic development through IG is more open because for applicants who will submit IG requests in other countries have a choice or alternative. Law Number 15 Year 2001 does not regulate guidance and supervision, but Law Number 20 Year 2016 explains: Development of Geographical Indications is carried out by the central government and / or regional governments in accordance with their authority. IG supervision is carried out by the central government and regional governments in accordance with their authority but supervision can also be carried out by the community. [8]

Supervision is carried out for: a. guarantee the reputation, quality, and characteristics which form the basis of the issuance of IG; and b. prevent unauthorized use of IG. Results are submitted to IG rights holders and / or Ministers. Arrangements regarding guidance and supervision are important in terms of IG protection management because coaching is an effort, action, and activity in the form of education and training carried out efficiently and effectively to obtain better results. The provision of GI guidance and supervision is important to improve the competitiveness of business actors, because First, the IG identifies the source or origin of the product. Second, IG indicates the quality of the product by informing consumers that a product originates from a region or region that provides essential quality, reputation or other characteristics that can be related to its geographical origin. Third, IG can present business interests because it guarantees the authenticity of goods characterized by certain regions. [9]

2. *The Public Policy of Local Government in Protecting Geographic Indication as a Leading Regional Product*

Basically, the State aims to provide public welfare. The state is obliged to realize the overall conditions of social life, which allow both individual groups and individuals as members of the community. This is contained in the 4th alenia (Fourth) Opening of the 1945 Constitution of the Unitary State of the Republic of Indonesia which reads: "... protect all Indonesians and the whole of Indonesia's blood and to promote public welfare ...", so that the welfare state (welfarestate) is a state policy model that leads to social protection or public welfare. Paul Spicker, explained that the welfare state does not only include a description of how to organize welfare or social services, but also a normative concept that every person must obtain social services as his right. Lack of attention from the Regional Government is one of the factors that causes the Geographical Indications to be poorly understood by the local community in general. They are more likely to recognize IPR terms such as patents and brands. This Geographical Indication is an asset that can be used as a means to prosper the community in a particular country, if the government has more initiative to develop the natural potential of an area appropriately and wisely, this can be realized if supported by adequate human resources. Thus in order for this Geographical Indication to be truly beneficial for an area and or community that is entitled, there needs to be legal protection. [10]

Legal protection that can be done by the Regional Government can be done by giving special attention to the development of laws that have economic value, where the value will be based on the value of human rights based on the concept of compassion in the local community, because they feel that they enjoy the rights together communal, or enjoy income from the results of local products. In fact, the Regional Government has an important role in the guidance and supervision of Geographical Indications. With the existence of Articles 70 and 71 of Law Number 20 Year 2016 concerning Trademarks and Geographical Indications. Regional Government must maximize the authority that has been given. Not only the registration of a product. Furthermore, in the implementation of the guidance and supervision of Geographical Indications, the Regional Government must pay attention to good governance. The Regional Government in terms of its authority, if not exercised, may result in the elimination of Geographical Indications which have been registered in accordance with Article 61 of Law Number 20 Year 2016 concerning Trademarks and Geographical Indications. [11]

The policy of the local government to protect and develop Geographical Indications products is certainly a most basic requirement, it is because Basically that many local community products are taken by outsiders and commercialized for profit, therefore, local products really need to be protected by IG to prevent outsiders from taking them. For example, when registering Pondoh Salak as a Geographical Indication product, the Regional Government of Sleman Regency provided assistance, with assistance from the Regional Government and after being officially requested by the Salak Pondoh Farming Community of Sleman Regency, finally the Pondoh Salak variety succeeded in obtaining a geographical indication certificate in the month of August 2013. Then, the protection and development of the Muntok White Pepper Geographical Indication product is inseparable from the role of the Regional Government (in this case the Bangka Belitung Provincial Government). itself is known because of the request of the Governor of Babel at the time H Eko Maulana Ali because the price of pepper began to fall, then the Bangka Belitung Provincial Government invited Zainal Arifin along with his fellow pepper exporters to overcome the collapse of leading commodity estates through the Governor Regulation of the Bangka Belitung Province. [12]

This shows how important the role of regional governments is in providing protection and development for products of geographical indications owned by their regions. This is contrary to the fact that the authors see from several studies that many regions have the potential for Geographical Indications, but are not accompanied by the attitude of the local government that does not pay attention to this matter can be seen from the lack of local legal products oriented to product protection and development Geographical Indications and Regional Superior Products owned. Therefore, all regional governments in Indonesia should have thought to make Geographical Indications Regional Leading Products a top priority with the aim of strengthening the regional economy and an independent community by utilizing these methods.

III. Conclusion

Based on the explanation above, it can be concluded that the 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 political law of local governments that lead to the protection and development of products or the potential of Geographical Indications in their respective regions.

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