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Geographical indication protection for pepper: its environmental implications for Bangka Belitung Islands

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Abstract. Products with geographical indication have massive potential to be a nation's flagship commodities in local and international trades. It could be caused for specific reputation, superior quality, specific characters due to geographical environment factors (nature, humans, and combination both of them). Therefore, it is a great importance to provide special protection for goods or products that fall into the GI category. A flagship' commodity from Bangka Belitung Islands, white pepper is a registered geographical indication with the name of *Lada Putih Muntok* (Muntok White Pepper). This brand name was created by Bangka Belitung Islands Province's Pepper Management, Development, and Marketing Agency (BP3L). A legal protection by using a flagship commodity has a flagship commodity, this protection effort has a tremendous role in environmental preservation. Through this normative paper, this study attempts to convey the nature of geographical indication, the substance of the existing regulations, and their relation to environmental preservation, especially the relation between the geographical indication of pepper and the environment of Bangka Belitung Islands Province. This qualitative study employed literature review for data collection, with statutory rules and regulations as the primary data. Two approaches used were statute approach and conceptual approach. From the result of the research found that there is a relationship between geographical indications and environmental factor, including Lada Putih Muntok. With the approval of a geographical indication, there is obligation that must be carried out by the government and the community, namely maintaining reputation. One way to maintain reputation is to maintain the quality of the environment in the area.

1. Introduction

In the non-material world, we use the concept of "intellectual capital", of which the rights to IP objects are an integral part [1]. The development of science and technology and the recent cases confirm the growing importance of Intellectual Property Rights (IPR). An idea possessed by someone with special expertise, not owned by another party, will become exclusive if realized in a real work. It is because normative protection must be provided for the realization of the idea in a real form. In addition to the juridical purpose, the protection has an impact on the use of the idea by another party, both morally and economically.

IPR in general is related to the protection of the application of ideas and information that have commercial value [2]. The definition of IPR generally contains more exposure to types of IPR, such as copyright, patent, trademark, industrial design, integrated circuit layout design, trade secret, and new variety of plant [3]. It is difficult to find experts or authors in a number of literatures who convey the



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meaning of the IPR through sentence or editorial definition. This is due to a number of factors, including the difficulty of providing a single definition of IPR. The IPR is more easily explained by its direct examples in everyday life.

IPR development takes place quickly and dynamically, including protected object and branch. History of intellectual property legal system in Indonesia is relatively very young with only 25 years of application [4]. The IPR, which was initially limited to a few branches, such as brand, copyright and patent, then increased one by one. One of the relatively new branches is the protection of geographical indication. The benefit of geographical indication protection is to give law protection on every commodity or product, and also as marketing strategy of commodity or product of geographical indication in trading transaction, both domestically and abroad [5]. Providing protection to the geographical indication still leaves the question of whether it is included as one of the types of IPR branches or not. In fact, some countries, including Indonesia, have made the geographical indication one of the objects of IPR protection in their regulations.

The geographical indication in Indonesia starts to write properly, market by almost every year there is an increase in registration of geographical indications at the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of Republic of Indonesia [6]. The protection to the geographical indication is apparently based on the fact that the existence of goods and/or products is because of a combination of natural factor and human capacity for creation. It is indeed controversial, as it is not entirely the result of human creation. On the contrary, there are certain sides that rely on human intellectual ability.

Based on the result of study, there is an assessment that the geographical indications of Indonesia have had positive results since they were registered, including stakeholders from geographical indication groups have realized the importance of having a control system to monitor product quality and increasingly understand the importance of product sustainability and protection [7]. If viewed from geographical indication receiving protection, especially in Indonesia, the protection is given to the goods and/or products which are mostly affected by the environment. One example is *Lada Putih Muntok* (Muntok White Pepper). It is the product of the plantation of Bangka people in the Bangka Belitung Islands Province which is protected because it differs from the pepper of other regions, and the difference or peculiarity is due to the environmental factors in Bangka Island.

In this context, the interesting subject to study is how the environment that initially influenced a geographical indication, then changes because of human activities that could have altered the environment itself. Either when or before the geographical indication is submitted, the original environment will certainly make the geographical indication good or have its own characteristic. Problems will arise if the influencing environment is deteriorating, and this naturally affects the quality of the geographical indication, or the quality will become nothing special. Normatively, protection will be removed by itself. Therefore, protecting the environment to maintain the quality of the geographical indication becomes crucial, which means the protection to the geographical indication affects the environment.

2. Methodology

This research is normative juridical, the discussion is based on legislation and applicable legal principles [8], carried out by examining library materials [9] or mere secondary data [10]. This study uses a statute approach. The law approach is carried out by examining all laws and regulations relating to the legal issues being addressed [11]. The main data source in normative legal research is library data.

3. Result and Discussion

3.1. Starting from Natural Factors

Geographical indications (GIs) are a remarkable instrument of intellectual property protection when compared with other intellectual property rights (IPRs), namely patents, copyrights and trademarks [12]. In the TRIPs Agreement, geographical indications were regulated in article 22 (1). The geographical indications based on this agreement were signs that identify a territory of a member country or area or

region within the territory as the origin of the goods, where the reputation, quality and characteristic of the goods were largely determined by the geographical factor. Therefore, the TRIPs Agreement prohibited producers from using label or mark (or brand) for goods they produced, which were not appropriate with the geographical indication, for instance by labeling "Kopi Toraja" (Toraja Coffee) or "Kopi Sidikalang" (Sidikalang Coffee) which were not produced in Toraja and Sidikalang [13]. This prohibition was emphasized in Article 22 (2);

In respect of geographical indications, member shall provide the legal means for interested parties to prevent: the use of many means in the designations or presentation of a good that indicates or suggest that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the goods.

This global regulation of geographical indication confirmed the protection provided for the geographical indication which moves away from natural factors affecting an item. The natural factors could be the weather, climate, type and quality of soil, quality and quantity of water, type and quality of plant, as well as species and quality of animals [14].

Some of the provisions regarding the geographical indication contained in the TRIPs Agreement simply creates an illustration that environmental factors become the most essential. This is increasingly important when there is a ban on the use of the geographical name of a particular area for goods that are not grown or produced in that area. Environmental factors in this matter are not only the most decisive factors to know whether an item and/or product is given protection as a geographical indication. Moreover, there are necessities done by certain parties, especially the applicant and also the government, to protect the environment in order that the geographical indication remains maintaining its identity as goods and/or services originating from particular regions.

The relation between geographical indication and environment could also be found in the regulation of Geographical Indications in Indonesia. This could be seen in Law No. 15 of 2001 on Marks which regulated geographical indications [15]. At that time, the regulation of geographical indications was still inserted in several articles in this law. More detailed arrangement was then regulated in Government Regulation No. 51 of 2007 on Geographical Indications [16]. In that regulation, the geographical indications were interpreted as a sign that indicated the origin of goods due to geographical environmental factors, including natural factors, human factors, or a combination of the two factors; gave certain characteristic and quality to the goods produced. The environmental factors are explicitly mentioned as factors that determine certain characteristic and quality of particular goods.

The environment was again used as the most essential factor after the regulation on geographical indications was revised to Law No. 20 of 2016 on Marks and Geographical Indications [17]. Article 1 Number 6 defined geographical indications as a sign that indicated the origin of goods and/or products due to geographical environmental factors, including natural factors, human factors or a combination of the two factors; provided reputation, quality and specific characteristic of the goods and/or products produced. The inclusion of the environment as an important prerequisite demonstrates that there is a connection and goal to be achieved relating to environmental management and preservation.

3.2. From Government Regulation to Law

Geographical indications were regulated in the TRIPs Agreement (Trade-Related Aspect of Intellectual Property Rights), namely in Article 22 (1). In Indonesia, the geographical indications were originally regulated in Law No. 15 of 2001 on Marks. Furthermore, the government issued Government Regulation No. 51 of 2007 on Geographical Indications as the implementing regulation. The geographical indications were then regulated in Law No. 20 of 2016 on Marks and Geographical Indications. The first registered national geographical indication was *Kopi Arabika Kintamani Bali* (Bali Kintamani Arabica Coffee) in 2008 proposed by Masyarakat Perindustrian Indikasi Geografis (MPIG) [18].

Protection to the geographical indications in Indonesia must be able to answer global challenges (an international trade) by providing sufficient legal rules so that the legal certainty for Indonesian original products abroad will exist [19]. Although it was not stipulated in a separate law, the stipulation of

geographical indications in more detail was regulated in Law No. 20 of 2016 on Marks and Geographical Indications, which was in the beginning only regulated at a glance in laws. Then, the technicalities were further stipulated in government regulation, indicating the existence of serious efforts by the government in providing protection to the geographical indications.

Article 1 No. 6 of Law No. 20 of 2016 on Marks and Geographical Indications defined geographical indications as a sign indicating the origin of goods and/or products due to geographical environmental factors, including natural factors, human factors or a combination of the two factors; gave reputation, quality, and certain characteristic of goods and/or products produced. The geographical indication is thus closely related to the environment as a factor that affects the reputation, quality and certain characteristic of the goods and/or products produced. The example of the geographical indication is *Lada Putih Muntok* (Muntok White Pepper) that has been registered as a geographical indication in the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights.

3.3. Normative Protection, Identity Claim and Their Impact on the Environment

Intellectual property rights protection is an effort to protect Indonesia's natural wealth so as not to be distorted [20]. The term intellectual property rights comes from the English "Intellectual Property", also known as intangible property rights or spiritual property rights, usually refers to the monopoly rights enjoyed by intellectuals and business results of industry and commerce [21].

Lada Putih Muntok was registered with the name Muntok White Pepper by *Badan Pengelola, Pengembangan dan Pemasaran Lada* (BP3L) of Bangka Belitung Islands Province on 28 April 2010 with registration number ID G 000000004 and agenda number G.00.2009.000002. Muntok White Pepper was normatively recognized as a geographical indication after going through the examination and criteria established by law. One of the criteria was related to natural factors. After the examination was conducted, the natural factors of Bangka Island in fact influenced the reputation, quality and certain characteristic of Muntok White Pepper. This distinguishes Muntok White Pepper from the white pepper of other regions. Protection of pepper as a geographical indication is not merely the pepper is legally protected but it is a matter of claim that white pepper is the identity of the region.

The geographical indication is juridically protected after registered by the Minister of Law and Human Rights, the minister who carries out government affairs in the field of law. To obtain protection, a step must be taken by the applicant, namely the applicant must submit an application to the minister. Next, the substantive examination is conducted to the good submitted as a geographical indication. This examination is utilized to determine whether the good can be given protection as the geographical indication or rejected. One of the assessment indicators is the natural factors.

The applicant is a party who submits an application for a geographical indication. It is a request for registration proposed to the minister. The applicant is an institution that represents the people in a certain geographical area, and commercializes an item and/or a product in the form of natural resources, handicraft or industrial output. In addition, provincial or district or regional government can also be the applicants for the geographical indication. The example of the applicant comes from the institution representing people in a particular geographical area, namely *Badan Pengelola, Pengembangan dan Pemasaran Lada* (BP3L) of Bangka Belitung Islands Province, which proposes the *Muntok White Pepper* as a geographical indication.

In the framework of maintaining a geographical indication, it is crucial to conduct surveillance. In the Law of Marks and Geographical Indications, it is stated that the supervision of geographical indications is undertaken by the central and regional government in accordance with their authority. Supervision can also be done by the public. Both government and people supervision ensure the existence of reputation, quality and characteristic that become the basis of the issuance of geographical indication, and prevent the illegal use of it.

The relation between geographical indication and the necessity to protect the environment is getting more visible if associated with the criteria given by the law and the supervision undertaken. Before or when submitted as a registered geographical indication, the goods and/or products must possess certain characteristics affected by the natural factors. This influence does not only exist at the time the

examination is conducted, but also still occurs post-registered. Therefore, the environmental condition affecting an item and/or a product must be maintained. If not, referring to the provision of Article 61 Verse (2) of the Law of Marks and Geographical Indications, the protection of geographical indication will be erased if the reputation, quality and characteristic that become the basis of the geographical indication protection are not maintained anymore.

The same thing applies to Muntok White Pepper. Once registered, there are things that must be conducted by the regional government and the people in this area, namely maintaining the natural factors so that the legal protection remains. If linked with the current condition of the Bangka Belitung Islands, especially the Bangka environment which has been damaged by the massive tin mining and even the clearing of forest and pepper plantation, there is potential of the geographical indication criteria existing on Muntok White Pepper will disappear. Therefore, the criteria for the protection given to Muntok White Pepper by law, on the other hand, also require the government and the public to take care of the environment, particularly related to the environment which so far makes Muntok White Pepper different from the pepper of other regions. If not, the protection can potentially delete itself.

4. Conclusion

The relation between geographical indications and environment could also be found in the regulation of geographical indications in Indonesia. This could be seen in Law No. 15 of 2001 on Marks which regulated geographical indications, which were then revised to Law No. 20 of 2016 on Marks and Geographical Indications. The inclusion of the environment as an important prerequisite showed there is relation and objective to be achieved relating to the management and preservation of the environment. The same thing applied to Muntok White Pepper. Once registered, there were things that must be conducted by the regional government and the people in this area, namely maintaining the natural factors so that the legal protection remains. If linked with the current condition of the Bangka Belitung Islands, especially the Bangka environment damaged by the massive tin mining and even the clearing of forest and pepper plantation, there was potential of the geographical indication criteria existing on Muntok White Pepper would disappear. Therefore, the criteria for the protection given to Muntok White Pepper by law, on the other hand, also required the government and the public to take care of the environment, particularly related to the environment which so far made Muntok White Pepper different from the pepper of other regions. If not, the protection could potentially delete itself.

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