

Protection of Geographical Indications: Role of local governments and communities

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Abstract—The complexity of the protection of Geographical Indications (GIs) requires the involvement of many parties, not only those who propose rights protection, but also the participation and active role of the Central and/or Regional Governments as mandated in the Trademark Law and Geographical Indications Number 20 of 2016. Based on the results of the first year research, a protection model of GIs is offered as a strategy s effort. The model needs to be known for its implementation in the aim of preparing the registration procedure for GIs in both research areas. Using an empirical juridical method, obtained an overview of the constraints of IG protection, including the mindset of the community, priorities and strategic plans of local government, and legal policies. The protection of GIs is influenced by the readiness to change people's perspectives and the readiness of local governments.

Keywords—*protection; local government; community*

I. INTRODUCTION

Compared to other forms of intellectual property protection, GIs are the most complex protection. Complexity not only because it relates to other aspects of legal protection, namely consumer protection and unfair competition, but also because it involves many parties and needs a strategic-integrative planning [1].

Based on the first research, protection GIs can only be implemented if all related parties are involved and organized institutionally there must be clear rules, especially regarding the economic benefits obtained. On the other hand, the Government must be actively involved as instructed and mandated in the Law.

Protection of GIs in Trademark Law and Geographical Indications Number 20 of 2016, showing explicit will of Act former to provide equivalent protection to GIs and managing brand stronger than ever. This shows that there is a systemic effort to provide protection for Indonesia's GIs which is certainly based on a need and condition that GIs cannot be ignored in the current era of global competition. So far, only 63 GIs from Indonesia have been registered [2]. only two GIs from East Java have been registered so far. The GIs are Ijen Raung Java Arabica Coffee and Sidoarjo Smoke Milkfish. Compared to the overall superior potential of the region in East Java, the number of registered GIs obtained is still very minimal.

II. RESEARCH METHODS

This research applying empirical juridical method. The research strategy used is a combination of qualitative and normative research strategies. The method used is in-depth interviews and focus group discussions. The data include primary data, secondary data, and normative data. Primary data is obtained directly as a result of field research on leaders and regional officials. Data collection is done through semi-structured in-depth interviews. Data is also taken from institutions that represent regional communities as referred to in Article 56 paragraph (2) Trademark Law and GIs, including: parties that seek goods which are natural or natural resources; producers of agricultural products; maker of handicrafts or industrial products; merchant who sells the item. The method to be used is by conducting Focus Group Discussions, each group represented by 10 people. Secondary data is obtained through other documented documents and materials, including legal materials, such as data from the Legal Department, Agriculture Service, Industry and Trade Office, Tourism Office, and other supporting literature.

III. RESULTS AND DISCUSSION

GIs protection is very necessary, some benefits can be taken, namely: the protection adds value to a product; consumers deserve a guarantee for receiving genuine goods; the product reputation can be elevated in international trade [3]; developing agro-tourism, driving the economy of the region of origin of GIs products; and as a tool to avoid cheating competition. According to Christophe Bellmann and Graham Dutfeld, there are many challenges that must be faced by developing countries to undertake *designing* and implement IPR policies at national and international levels [4]. Of the 167 WTO countries that protect GIs as a form of intellectual property, 111 countries including 27 EU countries have certain legal systems. There are 56 countries that use the brand system. these countries make use of certification marks, collective brands or trademarks to protect GIs [5]. According to Frank Z. Hellwig, this is related to the principle of "first in time, first in right" which refers to the principle of "priority and exclusivity" [6].

In Article 1 number 6 of the Trademark Law and Geographical Indications, GIs are determined is a sign that indicates the area of origin of an item and / or product due to

geographical environmental factors including natural factors, human factors or a combination of these two factors giving certain reputation, quality, and characteristics to the goods and / or products produced. Signs that GIs are used as GIs can be in the form of tags or labels attached to the goods and / or products produced. In general, Geographical Indications consists of the name of the product followed by the name of the region or place of origin of the product. Protection of GIs includes goods produced by nature, agricultural goods, handicrafts or other certain industrial products.

Registration of GIs adheres to a constitutive system, meaning that new protection is given if registration has been done. Registration applies the *first to file* principle (the party who registered first who obtained the right). This implies that only GIs the first is registered with the Directorate General of Intellectual Property that obtains exclusive rights, namely the right to commercialize GIs so that rights holders can enjoy economic benefits. The Concept of GIs is communal protection, therefore in the protection process the GIs of its implementation can be done by empowering it from NGOs, from government agencies, the local community to make the description / description of the products are registered as GIs [7]. GIs very unique compared to other forms of intellectual property. Requires the involvement of many parties, many related aspects. GIs only protected if registration has been received (Article 53 paragraph (1)). GIs can be registered by: (1) institutions that represent communities in certain geographical areas, namely among other producer associations, cooperatives, and the Society for the Protection of GIs. The institution seeks goods and / or products in the form of: natural resources; handicraft items; and industrial products, namely the results of human processing in the form of raw materials into finished goods; (2) Provincial or District / City Regional Governments. Right to GIs as exclusive rights of the Geographical Indication rights holder given by the State to those registered, as long as the reputation, quality, and characteristics that are the basis for the protection of GIs it still exists (Article 61 paragraph (1)). It can be said, the long period of protection of GIs unlimited, depending on the extent to which consistency of "specificity" can be sought in GIs registered it.

Protection of GIs aimed at protecting intellectual property potential and communal welfare. According to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 concerning Data on Communal Intellectual Property (hereinafter referred to as Permenkumham Data), the so-called communal intellectual property is intellectual property in the form of traditional knowledge, traditional cultural expressions, resources genetic, and potential GIs (Article 1 number 1 Permenkumham Data). This communal property rights protection is one of the principles of intellectual property protection, which is the principle of social (*social principal*) which states that the granting of intellectual property rights do not embed a-eye for the benefit of individuals / individual but must serve the interests of society as well. Every utilization of economic rights from GIs will provide additional benefits for all members of the community.

Registration of GIs adheres to constitutive standards, meaning that new protection is given if registration has been done. Registration applies the *first to file* principle (the party who registered first who obtained the right). This implies that only the first geographical indication is registered with the Directorate General of Intellectual Property that obtains exclusive rights, namely the right to commercialize GIs so that the right holders can enjoy economic benefits. According to Emawati Junus, protection of GIs provide benefits to farmers as follows [8]: increase the professionalism of farmers; improve and maintain GIs products and strengthen the competitiveness of farmers; strengthening the rights of farmers through the Geographical Indication product association; and encouraging improved economic equity for farmers. In reality the existence of this provision is not necessarily able to provide legal protection for GIs. One of the fundamental reasons is because there are still many regulatory problems for GIs, not only at the level of legal forms of GIs, but includes the substance of the rules [9].

A. *Protection of GIs*

There are a number of things that become the constraints of the Government to strive for protection of GIs, namely: knowledge of GIs; understanding the task of coaching and monitoring GIs; mapping region potential of GIs; the mechanism for carrying out the task of fostering and supervising GIs; main duty, function and regional budget planning for the protection of GIs; coordination between Device Organizations; support for legal policies; and as concepts and strategies for the protection of GIs.

Not only on the Local Government side, the community also has its own constraints, namely: lack of knowledge and lack of awarness of the benefits of protecting GIs; developing only economically profitable ones rather than preserve what profitable for the region; and not yet well organized.

Considering the protection aspect of GIs not only regarding the protection of Intellectual Property but also another aspect, such as consumer protection and the potential for increasing Regional Original Income, it requires far more complex and comprehensive preparation compared to preparing protection non-communal intellectual property. These complexities include:

1) *Readiness to change people's perspective*: communities generally assume that what will be planted is solely based on the decisions and needs of the community itself. Thus, which plants will have higher economic value that will be chosen. Not all have the awareness to plant and produce according to regional needs for preservation and development of superior products.

2) *Local government readiness*: Local Government's interest in the benefits of the protection of GIs must be followed immediately by a comprehensive strategic plan, including among others:

- This is important to ensure which Local Government Organization is handling, because it is related to budgeting and technical proceedings. There are sections in the government that are fluent in budgeting but do

not understand technical details, on the contrary, technical fields (such as the Trade Industry Office, the Fisheries Service, the Agriculture Service) may have difficulties in preparing budgeting and obtaining funding for coaching and supervision activities.

- The strategic plan that covers the entire scope of the development of GIs in a certain measured period of time. It contains synergy between fields: development in agriculture, industry and trade, tourism, and others. This plan must prioritize the importance of ensuring the welfare of the community so that superior products from the region are not just icons but really contribute to bring economic benefits to the region.

Appropriate regional legal policies also needed to ensure land use that is in accordance with regional development plans regarding GIs, Regional Regulations concerning the protection of GIs can take the form of general regulations regarding the protection of Intellectual Property Rights or specifically only on GIs. It can contain things about: registration facilitation; utilization; coaching; incentives and disincentives; enforcement; and sanctions.

IV. CONCLUSION

The protection of GIs is influenced by the readiness to change people's perspectives and the readiness of local governments. Regional Regulations concerning GIs can be issued based on the proposed DPOs or based on the initiation of the Regional Representative Council with the contents according to the development needs and legal protection of GIs in the area. To accelerate the protection of GIs in East Java, it

requires support from related parties from all elements in it, including both government and universities. Regional regulations must be prepared based on the specific needs of the region.

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