

LEGAL INSTRUMENT FOR PROTECTION OF GEOGRAPHICAL INDICATION PRODUCT IN INDONESIA

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Abstract

As an archipelago country, Indonesia comprises of a large territory where every region is capable of producing distinctive and characterized products due to its geographical, social, and cultural factors, in addition to its higher quality compared to imported products. In the market, goods with distinct characterization as a result of various geographical locations of production regions is known as Geographical Indication Products. Geographical Indication defines as a characterization that indicates the origin of a product, which includes several influencing factors such as geographical factor, natural factor, human factor or the combination of both factors which eventually contribute to establish a certain distinction and quality upon a product. Several geographical indicated products in Indonesia are widely known to have excellent reputation on the market, namely Delinese tobacco, Temanggung tobacco, Ciancur rice, Muntok white pepper, Lampung black pepper, Kerinci cinnamon, Cilembu cassava, Bandanese nutmeg, Proboliggo sweet mango, Balinese Kintamani coffee, Kalosi coffee, Papuan matoa, etc. Those are several richness of goods from certain regions in Indonesia widely known for their characterization. Characterization of goods are resulted by variation of geographic locations of producing regions in Indonesia. These goods possess high quality and high economic value. Consequently, certain instruments are required to provide protection upon the regions producing those goods against the act of counterfeiting.

Keyword: Law –Geographical Indication

I. Introduction

Globalization and global trade has shattered regulation bulkheads which was perceived as a constraint in distributing these products from one country to another. Ready or not, every state member of World Trade Organization (WTO) is obliged to open access of other states' products, including Indonesia as a WTO member.

Opening of access upon similar products from other states will potentially cause disadvantage to manufacturer because the offered price will be more convenient compared to local products, such as agricultural products, which are currently are overflowing markets in Indonesia.

Indonesia as an archipelago country has a wide territory, where every region is capable of producing distinctive and characterized goods due to geographical, social and cultural factors with a better quality compared to imported goods. Several specific products to be known with good reputation in the market are namely Delinese tobacco, Kerinci cinnamon, Cilembu cassava, Bandanese nutmeg, Proboliggo sweet mango, Balinese Kintamani coffee, Kalosi coffee, Papuan matoa, etc. Those are parts of the richness of products from certain regions in Indonesia, widely known to their characterization.

In global market, a good possesses a high economic value when its character, quality and consistency is properly maintained by the producing region as a differentiation from other similar goods. Goods with distinctive characterization produced by a certain region is defined as Geographical Indication (GI).

Geographic Indication Product actually has the potential to be developed in Asian countries such as Indonesia. Indonesian region is widely known as the region to produce

tropical products in the sectors of forestry, plantation, and agriculture, with distinct characters and taste, influenced by the factor of Geographic Indication. In several developed countries, Geographical Indication has contributed significantly in increasing the standard of producing community's livelihood, whose economic situation is threatened of becoming poor, due to a far distance from the core of urban area.

Geographical Indication Product as one of high quality good with excellent reputation on the market and possesses high economic value is however prone to counterfeiting infringement by several enterprises or the community in other regions. Consequently, certain instrument is required to provide protection upon Geographical indicated products.

Instrument of Geographical Indication product is aimed to protect the characterization of products produced by certain regions from counterfeiting infringement or improper utilization, in addition providing opportunity and protection towards the community who produced the characterized products to gain maximum benefits and to provide warranty of product's quality for the consumer.

II. Definition of Geographical Indication Product (GI)

Geographical Indication is a geografic term used in regards upon a product which emphasizes:

1. Origin
2. Quality or characters of product
3. Quality or characters influenced by geographic character or the people of its origin.

Miranda Risang Ayu (2006:1) states, Geographical Indication constitutes a brand that is related, utilized or adhered upon the wrapping of a product and aims to emphasize the origin where the product is produced. The origin of good suggests the quality of the good's unique value in the minds of its community, especially to the consumer, who knows the region producing the product has its own sepecial capability to produce a distinct product.

In Article 1 clause (l) of Government Regulation No. 51 Year 2007 (PP No. 51/2007) concerning Geographic Indication, states Geographic Indication is a marker that emphasizes the origin of a product, which caused by geographical factor including natural factor, human factor or combination of those two factors result in providing certain characters and quality upon the resulted product.

Geographical Indication in Article 22 clause (1) of TRIP agreement states that, *Geographical indications are, for the purpose of this Agreement, indications which identify a goods as originating in the territory of a Member, or a region or locality in that territory , where a given quality, reputation or the characteristic of the good is essentially attributable to its geographical origin*".

"...Geographical indication marks a product is originated from a territorial region of member states or from a certain region or local area within the territory of the country provide a quality, reputation and other specific characters of those goods and essentially attributes to its geographical origin.

Saidin (2003:286) states on the provision of Article 22 clause (1), TRIPs Agreement is defined as the origin of a good (which also includes services) which also attributed with reputation, character and quality in relations with the area and is juridically protected. For instance, the quality of Malang apple is attributed to geographical region of Malang (as a region with mild temperature and is suitable for apple plantation).

Geographical indication product refers to the good produced based on geographical factor which includes natural factor, human factor or combination of those two factors which

provide certain characterization and quality upon the produced good in a differentiation with similar good produced by other region with a high economic value.

Coverage of Geographical Indication:

Coverage of Geographical Indication based on Article 2 clause (2) of Government Regulation No. 41 Year 2007 (PP No. 51/2008) concerning Geographical Indication includes:

1. Agricultural products
2. Refined products
3. Handicraft goods
4. Other goods

Other goods refer to raw materials and/or refined goods result from agricultural goods or mining materials.

III. Legal Instrument for Protection of Geographical Indication in Indonesia

Exclusive right of GI protection upon a good is provided to the community as opposed to a certain individual or enterprises. Goods with excellent reputation has the potential to be granted with Geographical Indication protection.

Requests of legal protection upon GI by parties who are not from the originating region indicated should be rejected by the state. This is specifically defined in Article 22 clause (3) of TRIPs agreement, "*A Members shall, ex officio if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of the trade mark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if us of indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin*".

The purpose for protection of Geographical Indication according to Abdul R. Saliman.et.al (2005:153) is to protect goods as an marker of the originated region due to several distinctive factors only possessed by the specific region. This factor may caused by natural condition, human, or combination of both with certain characterization and quality upon the produced goods.

The purpose of protection upon Geographical Indication according to Abdul R. Saliman.et.al (2005:153) is to conserve goods as an attribute to its originated region due to several distinctive factors only accustomed to a specific region. These factors are derived from natural condition, human factor, or combination of both with certain quality and characters attributed to the produced goods.

In a national scale, Geographical Indication is regulated in several following regulations:

1. Article 56 of Law No. 2001 concerning Branding (Law of Branding) which states:
 - a. Clause (1) Geographical Indication is conserved as an attribute that indicates the originated region of goods, due to geographical factors which include natural factor, human factor or combination of both factors which provide certain characterization and quality upon the resulted goods.
 - b. Clause (2) of Geographical Indication is to be granted with protection after its requests being registered by:
 1. Organization representing the region which produces the concerned goods, namely:
 - a. Party to produce natural goods;
 - b. Producer of agricultural goods;

- c. Handicraft makers or industrial products;
- d. Merchants who sell those goods.
2. Authorized organization,
3. Consumer of the concerned goods.

Organization representing the community of the region where the goods are originated from refers to the authorized organization to register the geographical indication and the organization constitutes Government organization or other official organization such as cooperative or association.

2. Article 24 of Law No. 2004 concerning Plantation (Law of Plantation) states:
 - a. Clause (1) of geographical region to produce specific plantation products are protected with Geographical Indication.
 - b. Clause (2) of Geographical indication region that has been granted with protection is not allowed to be converted.

It is generally said that Law of Branding is regulating the procedure of branding registration and provision of Geographical Indication, whereas Law of Geographical in its relations with specific taste is produced by plantation products.

The difference between protection of Geographical Indication and branding is that protection of Geographical Indication constitutes a communal rights and to be granted to community groups, whereas branding constitute individual rights provided to a person or enterprises.

3. Government Regulation No. 51 Yar 2007 concerning Geographical Indication, which constitutes implementing regulation of Article 56 clause (9) of Law of Branding. Protection of Geographical Indication is recognized and protected internationally in the Article 22 (clause 2) of TRIPs agreement, which states:

"In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

- (a) *the use of any means in the designations or presentation of a good that indicates or suggests 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".*

"... Members are required to provide legal aspect for the concerned parties to prevent funding solicitation or a claim that states certain goods are originated from a different geographical region which might mislead public as to the geographical origin of the goods."

- (b) *Any use which constitutes an act of unfair competition within the meaning of article 10 bis of the Paris Convention (1967)".*

"... Those provisions are meant to prevent the occurrence of unfair competition in the definition of Article 10 bis Paris Convention (1967).

IV. Benefits of Protection of Geographical Indication

There are several benefits of Protection of Geographical Indication according to Riyaldi (2007:3), which are:

1. For the manufacturer, benefits of Geographical Indication from the economic side are:
 - a. To prevent the conversion of the authorization of utilization rights of goods from local community to other parties,

- b. To maximize additional value of goods to local community,
 - c. To provide protection from counterfeiting infringement,
 - d. To improve the marketing of goods,
 - e. To improve the employment availability,
 - f. To support the development of agro-tourism,
 - g. To ensure the sustainability of enterprises,
 - h. To accelerate regional development,
 - i. To strengthen regional economy,
 - j. To improve public welfare.
2. For the consumer, benefits of Geographical Indication are:
 - a. To ensure the quality of goods meet with consumer's expectation toward Geographical Indication.
 - b. To provide legal warranty for the consumer.
 3. From ecological aspect, benefits of Geographical Indication are:
 - a. To maintain and to preserve the nature,
 - b. To improve regional reputation,
 - c. To maintain the biodiversity.
 4. From the socio-cultural aspect, benefits of Geographical Indication are:
 - a. To accelerate the relations among gardeners,
 - b. To improve the regional dynamics,
 - c. To preserve cultural custom, knowledge and local wisdom of community
 5. From the legal aspect, benefit of Geographical Indication is to provide protection and legal assurance for the manufacturer.

I Wayan Angsriawan (2007:3) state the following benefits of Geographical Indication:

 1. Benefits for the manufacturer are:
 - a. To provide higher additional value,
 - b. Constitutes a collaborative effort to realize a dynamic Subak Abian
 - c. as a mean of promotion,
 - d. To improve the production of characterized goods.
 2. Benefits of Geographical Indication for the consumer are:
 - a. Better quality of food,
 - b. Detailed origin of a product is known (traceable product).
 - c. The originality of traditional goods is indicated by taking its relations with local product into account.
 3. Benefits of Geographical Indication towards local economy:
 - a. To improve regional reputation,
 - b. To maintain preservation, beautification, traditional knowledge and natural resources,
 - c. To support the development of agro-tourism
 - d. To attract other activities related with Geographical Indication,
 - e. To open new employment in local and regional area.

From the legal aspect, the benefit of Geographical Indication protection is provision of legal certainty for goods manufacturers upon the ownership of Geographical Indication goods. For the consumer, legal protection of Geographical Indication goods will ensure the originality and quality of the indicated goods found in the market.

V. Period of Geographical Indication Protection

Period of Geographical Indication Protection in Law of Branding Article 56 clause (7) states a registered Geographical Indication to be permanently granted with legal protection as long as the character and quality of goods for the basis of its protection are still being used.

Furthermore, timeframe of protection of Geographical Indication is regulated in Article 4 of Government Regulation No. 51 Year 2007 (PP No. 51/2007) which states Geographical Indication is protected as long as the character and quality which constitute basis of its protection are still being used.

VI. Conclusion

Free trade has contributed to a tighter competition in regards of the marketing of manufactured industrial products, as well as agricultural goods. A state should provide legal protection upon goods with high quality and high economic value from counterfeiting acts.

Instrument of legal protection of geographical indication in Indonesia is currently sufficient, as the initial step for the authorized party to apply and register for protection of geographical indication goods which are dispersed throughout Indonesia in order to obtain high economic benefits.

Consequently, an intensive socialization for legal instruments in the regions with the potential to produce geographical indication goods is required, in order for them to be able to obtain legal protection upon their own geographical indication products with the purpose to improve the goods' competitiveness and to provide community welfare in the regions where the geographical indication goods are originated from.

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