

## The Role of Local Government in Registration Agricultural Products as Geographical Indications in Humbahas District

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### ABSTRACT

*Geographical indication is the national economic potential which gives commercial value-added on products due to their originality and limitations which cannot be produced in other places. Humbahas Regency which potentially has geographical indication products should register them so that they will not be illegally used by other people and will get legal protection.*

**Keywords:** *Legal Protection, Geographical Indication.*

### INTRODUCTION

The potential for natural wealth in Indonesia is a boon for the Indonesian nation for economic growth, if this potential can be exploited and used as a trading asset. In this context, if this potential is included in the category of business or trading assets, the rule of law must be able to guarantee that the rights of those who take advantage of this potential can be protected. Especially if this potential has been traded internationally (export and import). Legal protection for various kinds of products that characterize Geographical Indications (GI) in Indonesia must be able to respond to global challenges (international trade), namely by providing adequate legal rules so as to provide legal certainty for original Indonesian products abroad.<sup>1</sup> This legal certainty relates to the substance of the regulation of Geographical Indications which guarantees legal protection for rights holders so that they are responsive to violations by other parties.

The role of brands and geographical indications is very important, especially in maintaining fair and just business competition, protecting consumers and protecting micro, small and medium enterprises as well as domestic industries. The importance of brands and geographical indications is due to the influence of globalization in all areas of people's lives, both in the social, economic and cultural fields which are increasingly driving the pace of community economic development.<sup>2</sup>

Based on the potential in various regions, GI has high economic value so that it becomes a means for local economic development, but requires commitment from stakeholders in its management and support from the Regional and Central Governments. This is in line with the Public Benefit theory, that GI Intellectual Property is a tool to achieve and develop the economy.<sup>3</sup>

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<sup>1</sup>Indra Rahmatullah, Protection of Geographical Indications in Intellectual Property Rights (IPR), Through Ratification of the Lisbon Agreement, Cita Hukum Journal Vol. II No. 2 December 2014, Jakarta, 2014, p. 306. See also Mas Rahmah, Industrial Property Rights to Protect Geographical Indications for Agricultural Products: Scenarios to Support Food Security, in the International Conference "Symponizing Intellectual Property and Potential Resources for Public Welfare," Faculty of Law, University of Mataram, Lombok, 2017, p. 82.

<sup>2</sup>I Wayan Wiryawan and I Made Dedy Priyanto, Geographical Indications as Regional Assets in Efforts to Improve Community Welfare, in the International Conference "Symponizing Intellectual Property and Potential Resources for Public Welfare," Faculty of Law, University of Mataram, Lombok, 2017, h. 121.

<sup>3</sup>Ranti Fauza Mayana, Protection of Industrial Design in Indonesia in the Era of Free Trade, Grasindo, Jakarta, 2004, h. 89-90.

The essence of this theory recognizes that the protection of intellectual property is a tool of economic development, namely the overall goal of building a system of protection for an effective intellectual property protection system.<sup>4</sup>

In line with this, it is very important to recognize and protect geographical indication products from the government. In this case the government will not be able to protect a product if it has not been registered. So far, his recognition has only been limited to Law No. 20 of 2016 concerning Trademarks and Geographical Indications. The importance of State recognition of Geographical Indications aims to protect the product, the quality of the product, the added value of a product and also as rural development. Because Geographical Indications are an important component of Intellectual Property Rights (IPR) in trading activities, in particular providing protection for trading commodities that are closely related to the name of the area or place of origin of the product.

## METHODS

This study uses an empirical juridical approach, namely an approach from the point of view of the rules and implementation of regulations that apply in society, which is carried out by examining secondary data first, then followed by conducting research on primary data in the field.

## RESULTS AND DISCUSSION

### Legal Protection of Geographical Indication Products

Protection of GI in Indonesia is regulated in Law no. 20 of 2016 concerning Marks and Geographical Indications. Article 1 (6) regulates the meaning of GI, namely:

*"Geographical indication is a sign indicating the origin of an item, which due to geographical environmental factors including natural factors, human factors, or a combination of the two factors, gives certain characteristics and quality to the goods produced."*

The definition of GI referred to above refers to the definition of GI as stated in the TRIPS Article 22 (1) agreement. According to Tomi Suryo Utomo, the word "indication" does not only refer to a place, but also includes product names associated with a place.<sup>5</sup> The definition of GI is also regulated in Government Regulation Number 51 of 2007 concerning Geographical Indications. This Government Regulation was born to implement the provisions of Article 56 paragraph (9) of Law Number 15 of 2001 concerning Marks. In his explanation, he explains the meaning of IG as follows:

*"A geographical indication is a sign that has existed unknowingly for a long time and can indirectly indicate the specificity of an item produced from a certain area. The sign referred to hereinafter can be used to indicate the origin of an item, whether in the form of agricultural products, food ingredients, handicraft products, or other goods, including raw materials and/or processed products, both originating from agricultural products and those originating from mining products. "*

<sup>4</sup> <http://digilib.unila.ac.id/10350/10/BAB%20II.pdf>, accessed September 22, 2022.

<sup>5</sup> Tomi Suryo Utomo, Intellectual Property Rights (IPR) in the Global Era A Contemporary Study, Graha Ilmu, Yogyakarta, 2010, p.219.

This IG is used in conjunction with:

- a) the specificity of an item (goods product) from a certain area,
- b) existence of a quality, reputation and characteristics of goods,
- c) existence of geographical conditions and conditions (skills) of the community where/region/area of origin of the goods.

Based on the above understanding, GI is clearly not the same as a brand, even though it is regulated in the same law, namely Law Number 20 of 2016. Article 1 of the Law on Marks states:

*"A brand is a sign in the form of an image, name, word, letters, numbers, color arrangement, or a combination of these elements which has distinguishing features and is used in the trade of goods and services."*

Article 68 paragraph (1) of Law no. 20 of 2016, it has been regulated regarding the use of GI signs, in terms of before or at the time of application for registration as a Geographical Indication, a sign is used in good faith by another party who is not entitled to register according to the provisions referred to in Article 53 paragraph (3), the party with good faith can still use the sign for a period of 2 (two) years from the date the sign is registered as a Geographical Indication.

In Article 27 paragraph (1) PP No. 51 of 2007 stipulates that if at the time the GI is registered, the same sign as the registered GI is used by another party who is not entitled, then the use of said mark must be discontinued after 2 (two) years since the mark in question is registered as a GI. Furthermore, in Article 27 paragraph (2) of the PP it states that if the mark has been registered as a mark previously, it is still possible to use the IG mark in good faith by other parties who are not entitled to use a Geographical Indication with the condition that the mark user it states the truth regarding the place of origin of the goods and guarantees that the use of the mark in question will not mislead the registered Geographical Indication.

Regarding the use of this IG mark, the Trademark Law only regulates one paragraph, namely Article 68 paragraph (1) which only concerns the use of the mark before or when an applicant entitled to apply for registration as a geographical indication, a sign is used in good faith by the party other parties who are not entitled to register, the party in good faith can still use the mark for a period of 2 (two) years from the date the mark is registered as a geographical indication.<sup>6</sup> As a part of Intellectual Property Rights, the principles of Intellectual Property Rights generally apply to Geographical Indications. The principles contained in Intellectual Property Rights are as follows:<sup>7</sup>

1. The Principle of Natural Justice

With regard to Geographical Indications, the event which is the reason for attaching said right is based on geographical conditions, natural resources and human factors and becomes one element where the combination of these three elements produces an item called a geographical indication. The geographical indication becomes the right of the community where the geographical indication is found. The principle of justice regulates fair relations between one person and another or between one citizen and another citizen

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<sup>6</sup>I Gede Agus Kurniawan, Arrangements for Termination of Use of Geographical Indications on Registered Marks by Other Unauthorized Parties (Comparative Study of Several Countries), Journal, Master's Program in Legal Science Study Program, Udayana University Postgraduate Program, Denpasar, 2013, h. 13

<sup>7</sup>Winda Risna Yessiningrum, Legal Protection of Geographical Indications as Part of Intellectual Property Rights, Journal, Master of Law, Matram University, Number 7, Volume III, 2015, p. 4

with a horizontal order. A fair relationship in IPR is that a person or group who creates something has the right to receive compensation for their invention or creation. These rewards can be material or immaterial such as awards or recognition for their work as well as a sense of security because they are protected. As part of intellectual property rights, new geographical indications will get protection if they are registered. This system is called the first to file principle. This principle is used in Mark protection. This also applies to Geographical Indications, where arrangements regarding Geographical Indications are contained in Law Number 15 of 2001 Concerning Marks. In this principle, the party that makes the first registration is deemed to have the right to a finding. In principle, the right to a Geographical Indication is obtained through registration, meaning that the exclusive right to a Geographical Indication is granted because of registration, so that it can be said that the registration of Geographical Indications is absolute, because Geographical Indications that are not registered will not receive legal protection. The First to File principle itself can be further elaborated in practice on how it is legally implemented, this principle is implemented through registration with the Director General of Intellectual Property Rights in Jakarta or through the Intellectual Property Centers in the regions. Registration itself is submitted by submitting a registration application letter that already has a standard format from the Director General of Intellectual Property Rights. This principle is carried out through registration with the Director General of Intellectual Property Rights in Jakarta or through the Intellectual Property Centers in the regions. Registration itself is submitted by submitting a registration application letter that already has a standard format from the Director General of Intellectual Property Rights. This principle is carried out through registration with the Director General of Intellectual Property Rights in Jakarta or through the Intellectual Property Centers in the regions. Registration itself is submitted by submitting a registration application letter that already has a standard format from the Director General of Intellectual Property Rights.<sup>8</sup>

This legal protection effort was carried out because it was based on a case that had previously occurred in 2000, namely the Toraja Coffee case where the potential geographical indication of Sulawesi had been registered by Key Coffee Japan as a brand of one of the leading coffee brands in Japan, this is clearly detrimental to the Indonesian people, especially the people Toraja Sulawesi. Toraja coffee produced in Indonesia cannot enter Japan without approval from Key Coffee, and the Key Coffee Company also prohibits other companies from using the Toraja brand for fear that the image of their products will be bad.

If there are other coffee companies that will use coffee beans from Toraja, they must go through Key Coffee's approval. In Japan, this type of coffee is a luxury item, 40 percent of the coffee consumed in Japan comes from Toraja. This is something that becomes a lesson for the government and also for the community, so that cases like Toraja Coffee do not recur, bearing in mind that Indonesia has a lot of Potential Geographical Indications, but their management has received little attention from various parties. This is where the function of the justice system in Geographical Indications is that it can help confirm some

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<sup>8</sup>*Ibid*, h. 5

of the rules that have been set by the government to uphold justice that a person or group creates, discovers, produces,<sup>9</sup>

2. Economic Principles (*Economic Principles*)

In relation to Geographical Indications, the economic principle is defined as people who live in an area or area where there is potential for geographical indications and process and produce it into goods that have economic value where the goods have quality and reputation that cannot be owned by production or goods from Other region. So that a process called registration is needed for the goods produced and natural resources. As previously discussed in the principle of justice, namely through regulations that have been made by the State guarantee protection for the production of existing goods and natural resources so that they can be used wisely so that social justice can be created.

The protection of Geographical Indications aims to protect the product, the quality of the product, the added value of a product and also for rural development. Because Geographical Indications are an important component of Intellectual Property Rights (IPR) in trading activities, in particular providing protection for trading commodities that are closely related to the name of the area or place of origin of the product. So you can imagine how great the economic value of this Geographical Indication wealth is, for example from one example of a product with a geographical indication of Sumatran Lintong Arabica Coffee, of course the economic potential is enormous for the community of Humbahas Regency where the coffee is produced. Indirectly, registration of Geographical Indications will spur rural economic growth.<sup>10</sup>

With GI products, the reputation of an GI area will automatically be lifted, on the other hand GI can also preserve natural beauty, traditional knowledge, and biological resources, and this will have an impact on the development of agro-tourism, with GI will also stimulate the emergence of other activities. related processes such as further processing of a product. All economic activities as a result of the Geographical Indication will automatically contribute to the economic growth of the IG protected area itself. The activity of indicating geographical superior products in each region in Indonesia is very important to do because there are so many superior products in Indonesia, so they do not get geographical arrangements because it allows foreign parties to play the potential of Indonesia at will.

3. Principles of Culture (*The Culture Principles*)

Basically, human work aims to make life possible. Furthermore, from that work, a movement of life will arise which must produce even more works. With such a conception, the growth and development of science, art, literature is of great importance for the standard of living, civilization and human dignity. In this case, some of the values and forms of local wisdom, including customary law, cultural values and beliefs that exist in part are even very relevant to be applied to the process of community welfare development. The culture of an area is expected to be able to attract the attention of local and foreign communities to

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<sup>9</sup>*Ibid*

<sup>10</sup>*Ibid*



get to know the various cultures of each province in Indonesia which have different characteristics.<sup>11</sup>

4. Social Principles (*The Social Arguments*)

With regard to Geographical Indications on the protection system of natural products and human works which have the characteristics of communally protected areas. Geographical indications aside from being a regime of Intellectual Property Rights whose protection is still most open to the influence of the cultural diversity of nations in the world, geographical indications also highly value the historical relationship between a product and its place of origin. The character of ownership is communal and collective. In addition, geographical indications also have the potential to ensure that the highest economic benefits from a product can still be enjoyed by producers from the area of origin of the product itself. Even, In several developed countries, geographical indications have significantly increased the welfare of producers in a certain locality which is remote and has very few alternative livelihoods. Aspects of protecting intellectual property rights are most needed by the majority of Asian countries, which are known for their cultural diversity, strong product historical roots, collective ownership culture, the interest to continue to control the products of their own nation, and the problem of poverty.

**Geographical Indications as a Source of PAD in Humbahas District**

Benefits from the potential that is owned, can occur if areas that have GI can protect their unique products with GI protection systems. From this point on, international GI protection is indispensable. In Humbahas Regency itself, this Geographical Indication has not been seen to bring in a direct source of regional budget revenue, however, this source of regional budget revenue is obtained indirectly from the existence of Geographical Indications.

So far the Humbahas Regency Government has not obtained a source of regional budget revenue directly from the Sumatra Lintong Arabica Coffee IG, but with the income of coffee farmers, the public can buy motorbikes, cars and eat at restaurants where this can indirectly increase regional budget revenue. Coal District. In the future the Mapekal Association has planned to create Bumdes in 6 sub-districts which are Sumatra Lintong Arabica Coffee producing areas, where these Bumdes will accommodate coffee production from farmers, where the price of coffee will be increased by Rp. 500 (five hundred rupiah) per kilogram and the money will be allocated for the Regional Budget Revenue of Humbahas Regency in the amount of Rp. 200 (two hundred rupiah) and Rp.<sup>12</sup>

**The Role of the Humbahas District Government in Encouraging Efforts to Protect Geographical Indications for Lintong Coffee**

At present the legal awareness of the protection of Geographical Indications is not yet focused, not serious and has not been synergized with programs carried out by the local government (provincial government and district/city government). Almost no programs are in place to protect Geographical Indications. Normatively, the rules for Geographical Indications are good enough, as stipulated in Article 70 of Law No. 20 of 2016 concerning Marks and

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<sup>11</sup>*ibid*

<sup>12</sup>Interview with Mr. Harapan Munthe, Secretary for Chief of Staff at Dolok Sanggul on 1 May 2022.

Geographical Indications which requires the central government and/or local governments to carry out activities to protect geographical indications, such as:

- a. preparation for fulfilling the requirements for an Application for Geographical Indications;
- b. Application for registration of Geographical Indications;
- c. utilization and commercialization of Geographical Indications;
- d. socialization and understanding of the protection of Geographical Indications;
- e. mapping and inventory of potential Geographical Indication products;
- f. training and mentoring;
- g. monitoring, evaluation, and coaching;
- h. legal protection; And
- i. facilitating the development, processing and marketing of goods and/or Geographical Indication products.

The problem is that until now the Geographical Indications that have been registered in Humbahas Regency are still focused on Sumatran Lintong Arabica Coffee, while other geographically indicated agricultural products in Humbahas Regency have not received attention from the Regional Government.

The government's concern for the typical regional products of Humbahas Regency, in this case the Agriculture Office of Humbahas Regency, only conducts outreach on Intellectual Property Rights related to Geographical Indications to the combined association of coffee-producing farmer groups in Humbahas Regency. This socialization program is intended so that the community has a new and correct understanding of IPR so that changes and awareness occur in the community. This socialization serves as a bridge to the success of the IPR system, without socialization there will be no action that will be taken by the community because they will not understand. The Regional Government of Humbahas Regency must also provide understanding to farmers. Thus farmers can understand the importance of registering the products they cultivate in order to obtain legal protection. However, in this case the socialization of Geographical Indications, the government itself admits that it still lacks capable human resources to provide counseling on Geographical Indications.<sup>13</sup>

Humbahas Regency itself is the area where the mother tree of Sigararutang Arabica coffee is located. But it's a shame that the mother tree is now gone. Even more worrying is that the area where the Sigararutang Arabica coffee was found does not currently have its mother plantation. In order to meet the need for seeds, the district actually imported them from outside the region. That is now the dilemma, because the farmers in Humbahas Regency are traditional farmers whose insights are not developed so we are really sorry because if they get good seeds, they will definitely produce more. But because they continue to use traditional methods, the results do not increase. For example, they get their seeds from fruit that falls under the coffee tree and that is what they make into seeds, even though these are not necessarily of good quality. So it's a pity because the production results will be low if the seeds are not of good quality.<sup>14</sup>

To meet the demand for Arabica coffee seeds of the Sigararutang variety in Humbang

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<sup>13</sup>[http://www.medanbisnisdaily.com/news/online/read/2018/02/12/24865/hore\\_kopi\\_lintong\\_arabika\\_sumatera\\_already\\_dipatenkan](http://www.medanbisnisdaily.com/news/online/read/2018/02/12/24865/hore_kopi_lintong_arabika_sumatera_already_dipatenkan)/accessed on 24 September 2022.

<sup>14</sup>Interview with Mr. Harapan Munthe, Secretary for Chief of Staff at Dolok Sanggul on 1 May 2022.

Hasundutan Regency, the regional government plans to designate one of the coffee farmer's gardens as a candidate for a coffee seed source garden. Based on the request of the head of the Humbang Hasundutan district agriculture service, on 17-19 October 2018, the Research Center for Industrial and Freshening Plants (Balittri), the Directorate General of Agriculture, UPT Seeds of the North Sumatra Provincial Plantation Service, PBT Medan Plantation Seed and Protection Agency, and the The Humbang Hasundutan Regency Plantation came together to inspect the prospective Arabica coffee plantation which had been submitted for evaluation.

The coffee main garden assessment started with 4 main gardens located in Batu Gajah Village, Warinan District, Sipitu Huta Village, Pollung District, Hutajulu Village, Pollung District, Sosortolong Sihite III Village, Doloksanggul District. Based on the 4 main gardens assessed, 1 main garden was found which could be followed up to be established in 2019. The dominating problem is the absence of shade trees. This is homework for policy makers in Humbang Hasundutan district, because almost all coffee plantations in this area do not use shade plants. Apart from assessing the prospective main plantations, the team also conducted visits to several plantations owned by coffee farmers.<sup>15</sup>

This is because the public and the government (central government and district/city government) have not yet raised awareness of the importance of protecting Geographical Indications, both in terms of economic, cultural and pride aspects as the owner of Geographical Indications. So far, this awareness has arisen because of a feeling of being treated unfairly by developing countries because their Geographical Indications are recognized and used economically by foreign parties (developed countries) without any benefit sharing.<sup>16</sup> On the other hand local Indonesian people do not understand protection through the Intellectual Property (IP) system. The value system adopted by society does not support the idea of legal protection for IP. The orientation of local community members is not entirely on material or commercial happiness, but more on spiritual happiness.<sup>17</sup>

Based on this, it can be concluded that the Regional Government of Humbahas Regency is in its obligation to carry out the provisions of Article 70 Law No. 20 of 2016 concerning Marks and Geographical Indications which obliges the central government and/or local governments to carry out activities to protect geographical indications only conducting socialization and understanding of the protection of Geographical Indications as well as mapping and inventory of potential Geographical Indication products that have been carried out but even then they have not been maximized.

The head of the Geographical Indication Experts Team, Surip Mawardi, acknowledged that the toughest challenge was strengthening community organizations as producers of goods protected by the Geographical Indication regime. This is because the registration process for Geographical Indication products does not depend on the individual, but on the community. For example, the registration of Lintong Arabica Coffee is carried out by the Lintong Arabica Coffee Observer Society (Maspekal), Kintamani Coffee is carried out by the Geographical Indication Protection Society (MPIG), Aceh Patchouli Oil by the Aceh Patchouli Protection Society Forum (FMPNA), Geographical Indication Protection, needs support not only from producers, but also

<sup>15</sup> <http://balittri.litbang.pertanian.go.id/index.php/berita/berita-lain/792-pejuangan-calon-kebun-induk-di-kabupaten-humbang-hasundutan-area-penghasil-kopi-arabika-sumatra-lintong> accessed on 23 September 2022.

<sup>16</sup> Agus Sardjono, *Grounding Intellectual Property Rights in Indonesia*, CV Nuansa Aulia, Bandung, 2009, p. 174.

<sup>17</sup> *Ibid.*, h. 176.



from the Government. Minimal political support from the government can be an obstacle. If political protection and support is not maximized, Indonesia will be left behind. At least, left behind from India and Thailand.<sup>18</sup>

Legal awareness for the protection of Geographical Indications must begin by taking strategic actions, namely providing education on legal awareness of Geographical Indications for the public as well as for central and regional government apparatus related to issues of Geographical Indications. Central and Regional Governments must begin to make careful planning in development programs and provide sufficient budgets in APBN/APBD and implemented in accordance with the potential of Geographical Indications in their respective regions. Of course, the first time is to provide an understanding of Law Number 20 of 2016 concerning Marks and Geographical Indications, the urgency, benefits and challenges on a national and international scale through training/workshops, mentoring, seminars, Focus Group Discussions (FGD), comparative studies, monitoring, evaluation and coaching.

Next identify Potential Geographical Indications in each local government (province/regency/city). Activities that can be carried out include: mapping and inventory of potential Geographical Indication products. Finally, by registering Geographical Indications, introduction to the public (national and international), production and commercialization of Geographical Indications where this can be done through an application that can be submitted by an Institution that represents the community in a certain geographical area that cultivates a good and/or product as well as the Government province or district/city area.

## CONCLUSION

The role of the Regional Government in registering agricultural products that have the potential to be geographical indications in Humbahas District is still not focused and not serious enough. This can be seen from the existence of the obligations of the Regional Government as regulated in the provisions of Article 70 Law No. 20 of 2016 concerning Trademarks and Geographical Indications Local Government of Humbahas Regency only conducting socialization and understanding of the protection of Geographical Indications as well as mapping and inventory of potential Geographical Indication products and even then it is not maximized because the government, in this case the Agriculture Service of Humbahas District, although it has socialized Intellectual Property Rights related to Geographical Indications to the Mapekal association in Humbahas District, but there is still a shortage of capable human resources to provide counseling on Geographical Indications in the Humbahas District.

Therefore It is hoped that the Regional Government can play an active role in socializing the importance of protecting Intellectual Property Rights, especially Geographical Indications to the public so that they can increase public awareness about the importance of protecting Intellectual Property Rights so that the community as GI producers can maximize their work to develop GI potential as local economic development. Central and regional governments must make integral planning, identify and develop GI potential according to local wisdom, and allocate APBN/APBD according to GI potential in each region.

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<sup>18</sup><http://www.hukumonline.com>, protection\_indication\_geographical\_indonesia\_still\_left\_behind, accessed on 22 September 2022.

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