



Legal Protection Of Brand Rights And Geographical Indications For Toraja Coffee

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ABSTRACT

Geographical Indication is one of the Intellectual Property Rights that protects things that have features, attributes, or reputations related to the location from which they originated. Arabica coffee, which is native to Toraja South Sulawesi, has distinct attributes that distinguish it from other types of coffee, earning it a reputation as one of the world's best. The "TORAJA" brand, on the other hand, misleads customers about its uniqueness. Arabica coffee's reputation will be jeopardized if it is not from Toraja and its quality differs from that of Toraja coffee. To preserve Torajan arabica's reputation and coffee farmers, geographical indication registration on this Torajan arabica coffee is required. Geographical Indications must be legally protected in order to identify whether individuals are communal or collective. Belonging to the community in the registered Geographical Indication region is what the communal community character entails.

Keywords: *Geographical Indication, Tana Toraja Coffe, Trademark, Protection*

1. Introduction

With the development of the times and advances in technology, each individual can adjust to the existing circumstances. So that it encourages people to find something new in people's lives so that the dynamics of growth are realized in various aspects, both technological, scientific, economic, socio-cultural, and most importantly the legal aspect as a protector of the interests of legal subjects.

Along with these developments, the creation of a free trade that requires a set of legal regulations that apply regionally and even internationally resulted in several international agreements resulting from the Uruguay round including TRIPs (Trade-Related Aspects of Intellectual Property Rights). TRIPs include international agreements that have been ratified by many countries including Indonesia.

Starting in 1986, the establishment of the World Trade Organization (Agreement Establishing World Trade Organization / WTO) was then tasked with administering, supervising, and providing legal certainty for the implementers of a general agreement on tariffs and trade (General Agreement on Tariffs and Trade) as well as the results other conventions in the field of Intellectual Property Rights (IPR) which is one of the attachments to the approval for the establishment of the World Trade Organization.

Indonesia's policies and readiness in the field of Intellectual Property Rights in the last decade, it has become increasingly clear that development must rely on industries that generate high-added value. Indonesia's agreement to realize the idea of the ASEAN Free Trade Area (AFTA) as well as Indonesia's participation as a member of the World Trade Organization (WTO) and Asia Pacific Economic Cooperation (APEC), has shown the seriousness of the Government in supporting a free/open economic system, and indirectly encourage companies in Indonesia to further increase their competitiveness.

The rapid flow of free trade, which demands higher product quality, has proven to spur the development of technology that supports these needs. Along with this, the importance of the role of Intellectual Property Rights in

supporting technological developments is increasingly recognized. This is reflected in the high number of applications for Copyrights, Patents, Marks, and Geographical Indications, as well as the large number of applications for Industrial Designs submitted to the Directorate General of Intellectual Property Rights, Ministry of Justice and Human Rights.

The government is very aware that the implementation of the Intellectual Property Rights system is a big task. Moreover, Indonesia's participation as a member of the WTO with the consequences of implementing the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), under Law No. 7 of 1994 concerning ratification of the Agreement Establishing the World Trade Organization (Agreement on the Formation of the World Trade Organization).

Indonesia as a country related to the agreement must try to uphold the main principles contained in the TRIPS, which essentially regulates the provisions in the field of IPR that must be obeyed and implemented by its member countries and that means Indonesia is positioned as a country that is ready to compete. in the global era (Riswandi & Syamsudin, 2005). As a member of TRIPs, it is obligatory to adjust the Intellectual Property Rights Laws and Regulations, so that within a period of 5 (five) years it has accommodated the provisions referred to in the Laws and Regulations in the field of Intellectual Property Rights in Indonesia. The efforts made by Indonesia are to amend several provisions of the Legislative Regulations regarding Copyright, Patents, and Trademarks and establish Trade Secret Laws, Industrial Designs, and Layout Designs of Integrated Circuits.

Article 1.2 The TRIPs Agreement states that IPR consists of Copyrights and related rights, Trademarks, Geographical Indications, Industrial Designs, Integrated Circuit Layout Patents, protection of confidential information, and control of unfair business competition practices in license agreements (Tim, 2006).

The government made reforms by issuing Law No. 20 of 2016 concerning Marks and Geographical Indications is the latest arrangement regarding Marks and Geographical Indications currently in effect. Where the issuance of this new regulation is due to juridical considerations contained in Law No. 20 of 2016 preamble section c which states that in Law No. 15 of 2001 regarding marks, there are still deficiencies and have not been able to accommodate the development of community needs in the field of Marks and Geographical Indications, and have not been sufficient to guarantee the protection of local and national economic potential, so they need to be replaced.

Several improvements to the Trademark Law as contained in the general elucidation of Law Number 20 of 2016 concerning Marks and Geographical Indications in improving services to the community of trademark applicants are in the form of simplifying the process and procedure for registration of Marks by setting the minimum application requirements. Changes to the flow of the mark registration process in this Law are intended to accelerate the completion of the mark registration process. In addition, to provide more legal protection for registered trademark owners from trademark infringement by other parties, criminal sanctions for trademark infringement are intensified, especially those that threaten human health, and the environment, and can result in death. Considering that trademark issues are closely related to economic factors, in this law criminal sanctions are exacerbated.

With strict juridical arrangements in the laws and regulations regarding the trademark, brand owners who are aware of the law and care about the importance of developing brand equity will try to register their trademarks to get legal protection. On the other hand, certain parties with bad intentions take shortcuts by acting on registered brands (Cassavera, 2009). Violation of brand rights will be detrimental to consumers because consumers will obtain goods or services that are usually of lower quality than the original, well-known brand (Saidin, 2004).

Marks according to Law 20 of 2016 concerning Trademarks and Geographical Indications are signs that can be displayed graphically in the form of images, logos, names, words, letters, numbers, and color arrangements, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by persons or legal entities in trading activities of goods and/or services.

Based on the IPR legislation, it can be divided into 2 (two) categories: Copyright (Article 1 (1) Law No. 19 of 2022). And Industrial Property Rights which include Patents (Article 1 (1) of Law Number 14 of 2001), Industrial

Design (article 1 (1) of Law No. 31 of 2001), Layout Design of Integrated Circuits (Article 1 (1) of Law -Law No. 30 of 2000) and Plant Varieties (Article 1 (1) of Law No. 29 of 2000).

Indonesia must be ready to face free trade in the era of globalization, one of which is by socializing IPR to the wider community so that people can fully understand the intellectual property it owns. Concerning Geographical Indications, the problem that occurs is the use of Geographical Indications for Toraja Coffee by the Japanese state which is registered as a brand, resulting in difficulties for these coffee producers to export abroad.

Based on Law No. 20 of 2016 Geographical indications are protected as a sign indicating the origin of an item which due to geographical environmental factors including natural factors, human factors, or a combination of these two factors gives certain characteristics and quality to the goods produced. This formula has not been fully implemented, because the legal instruments governing Geographical Indications have not been implemented optimally and have experienced difficulties in protecting Geographical Indications in Indonesia.

In the context of protecting Geographical Indications, the problem that occurs is the acknowledgment of ownership of product names by other parties without rights. Geographical indications are an IPR regime that is quite foreign to most Indonesian people because the provisions for geographical indications are regulated in Law No. 20 of 2016, resulting in a lack of public understanding in protecting their Geographical Indications, for example, Toraja Coffee which is well known for its distinctive characteristics and good reputation. Toraja coffee belongs to the people in Tana Toraja which has been known for generations, because according to Geographical Indications, Toraja Coffee is planted and grows well in the area of South Sulawesi, namely in Tana Toraja, but its Geographical Indications cannot be protected due to a lack of knowledge of the Tana Toraja people. resulted in Toraja Coffee being registered as a brand of the Japanese State.

It is very important to pay attention to the importance of legal protection for a Geographical Indication product considering that a Geographical Indication product that is sold in the community has economic value that can increase economic growth in the area where the Geographical Indication product is produced. Geographical indications, which are a part of IPR, are becoming increasingly interesting for further discussion because of the current role of IPR in determining the rate of acceleration of national development, especially in the current era of globalization.

For Indonesia, Toraja Arabica Coffee claimed by Japanese companies is very detrimental to Indonesia, especially in the export sector. Farmers and entrepreneurs of Toraja Arabica Coffee can no longer trade the coffee to Japan because the Japanese company Key Coffee Inc. has already registered the Toraja Arabica coffee brand as the largest branding in Japan (Fuad & Latjeme, 2017). Arabica Coffee from Toraja and Gayo are the 2 most violated types of Indonesian coffee, namely Toraja Arabica Coffee registered under the brand "Toarco Toraja Coffee" in Japan; Gayo Arabica coffee under the brand "Wild Gayo Luwak" in the United States; "Gayo Mountain Coffee", and "Amaro Gayo Coffee" by British citizens; and the brand "Equador: Sumatra Gayo Mountain" (Mangajaya, 2018). Another case is Adan Krayan rice. All of them are not only violations of Geographical Indication rights. However, it also provides losses for consumers

2. Research Method

According to Soerjono Soekanto, legal research is a scientific activity based on certain methods, systematics, and thoughts that aim to study something or certain legal phenomena by analyzing them (Ali, 2021). The method used in writing this law is normative juridical research because this research refers to legal norms contained in laws and regulations and court decisions as well as legal norms that exist in society (Ali, 2021). The juridical approach means an approach that refers to the applicable laws and regulations (Soemitro, 1990). The normative approach includes legal principles, legal history, and comparative law. The normative juridical law research method or library law research method is a method or method used in legal research conducted by examining existing library materials.

3. Result and Discussion

3.1. Rusult

3.1.1 Legal Protection Against Toraja Coffee Used by the Japanese State Without Permission

Toraja coffee is one of the most popular coffee variants and has the best quality in Indonesia. Apart from Gayo and Luwak coffee, coffee which has the Latin name Celeber Kalosi is also known by coffee lovers from all over the world. Besides having a distinctive taste, this coffee also has unique characteristics. Starting from the place of origin, and characteristics, to the price of Toraja coffee. This coffee comes from Tana Toraja in South Sulawesi Province.

This coffee is located in the Tana Toraja location which is above the mountains with an average altitude between 1,000 – 1,500 meters above sea level. Tana Toraja has a wet tropical climate and moderate to high rainfall, so these conditions are very good for coffee plants. The people of Gowa sailed with coffee to the port of Suppa (now Parepare), then walked over the mountains of Enkrang to Toraja. Coffee plants were brought for the first time by Arab merchants who visited Makassar. Introduced as a drink of strength and vitality enhancer, keeps the eyes awake and even sleepless. Quickly, news about the benefits of coffee spread. To breed it requires high altitudes and cool temperatures, and the Toraja meet those criteria.

Toraja coffee has been used abroad, namely in Japan, and registered as the Toarco Toraja brand. Indonesia was late in registering the Toraja Kioi brand and this awareness arose after experiencing a loss. This coffee has been registered under the Toarco Toraja Coffe brand with registration number 358424 which has an expiration date of February 24, 2005, then extended under the name Toarco Toraja Coffe with registration number 15922 and an expiration date of February 24, 2025. Meanwhile, the Society for the Protection of Geographical Indications (MPIG) Toraja Coffee registering Toraja arabica coffee as a registered Geographical Indication. Toraja Arabica Coffee was registered as a Geographical Indication on October 9, 2013, with GI number 00.2012.000007 (Faniyah, 2019).

A geographical indication is one of the Intellectual Property Rights that protects products with quality, characteristics, or reputation related to the region of origin of the product (Rhaswika et al., 2022). Arabica coffee originating from Toraja has a different quality from other types of coffee, so it has a reputation as one of the best coffees in the world. The coffee brand "TORAJA" causes confusion among consumers about the origin of the coffee. The reputation of Toraja arabica coffee is threatened if the coffee does not come from Toraja and the quality is different from Toraja arabica coffee. To protect the reputation of the Toraja arabica coffee-producing community and it is necessary to register geographical indications for Toraja arabica coffee (Ratih).

The legal protection arrangements for Marks and Geographical Indications are regulated in more detail and strictly in Law Number 20 of 2016 concerning Marks and Geographical Indications, in 4 chapters, namely in chapters VIII-XI and 16 articles. Geographical Indication is a sign indicating the area of origin of goods and/or products that give reputation, quality, and certain characteristics to the goods and/or products produced due to geographic environmental factors including natural factors, human factors, or a combination of the two. (Undang-Undang (UU) Tentang Merek Dan Indikasi Geografis, 2016). Natural resources, handcraft goods, and industrial produce are all examples of Geographical Indication Products. So, Geographical Indications are defined in Law Number 20 of 2016 respecting Marks and Geographical Indications as follows: 1. A symbol denoting the origin area 2. a thing/and/or a product 3. Because of geographical and environmental variables 4. Including natural, human, or a mix of these two components Give the items and/or products created a reputation, quality, and specific qualities (Masrur, 2018).

Each TRIPS member country is obliged to ratify the agreement into the laws and regulations and legal instruments in force in their country to protect these geographical indications and prevent legal violations against the geographical indications themselves. This is following article 22 paragraph (2) of the 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 designation or presentation of a good that indicates or suggesting 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 good; b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967) (Adnyana, 2019).

3.1.2 Legal Actions Taken by The Local Government In Toraja Regency Against The Use Of Toraja Coffee Brands Without Permits Associated With The Trademark Law And Geographical Indications

Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications, efforts to protect Geographical Indications in Indonesia can be carried out through registration which can be submitted by an

institution representing the public in a certain geographical area that cultivates goods and/or products, in addition to registration of Geographical Indications can also be carried out by provincial or district/city regional governments. The application of a constitutive system (first to file) in Geographical Indications is not supported by public awareness to register their Geographical Indication products. This creates loopholes for certain parties to take advantage of geographical indication names and products that have not been registered to become products that are registered as trademarks. which take advantage economically of Geographical Indication products.

Geographical indications have priority protection over marks in Law Number 20 of 2016 concerning Marks and Geographical Indications. If the registered Mark is similar in principle and/or in its entirety to a Geographical Indication, the Minister cancels and crosses out the registered mark for all or part of the same type of goods after a period of 2 (two) years since the mark has been registered as a Geographical Indication. But in terms of implementation, this needs attention and evaluation. It does not stipulate what if the Minister does not or has not deleted the Mark registered as a Geographical Indication and what are the consequences for the Mark Rights Holder if they continue to use the mark when the mark has not been removed by the minister even though the 2 (two) year limit has passed. The implication of not deleting registered marks that have similarities with Geographical Indications is to create legal uncertainty and injustice.

In terms of Geographical Indications registered as Marks Overseas. The protection instruments used include various international treaties. One of them is by utilizing the international registration system contained in the Lisbon Agreement initiated by WIPO. Indonesia is a country that rich in products of Geographical Indications and by looking at several examples of cases of the use of Geographical Indications in Indonesia as registered marks in other countries, it is natural for Indonesia to participate in ratifying the Lisbon Agreement and making use of the international registration system of Geographical Indications. (Masrur, 2018)

Efforts to register Toraja coffee as GI in Indonesia are needed as a first step in recognizing rights. Indonesia's participation in international conventions such as the 1958 Lisbon Agreement needs to be explored to strengthen GI ownership in international forums. In addition, the 1958 Lisbon Agreement uses the term Appellation of Origin (AO), with a different nomenclature stating that: In this Agreement, "appellation of origin" means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors. This agreement also contains rules that prioritize the power of GI registration so that Mark ownership can be given second priority, even if it has been registered first based on good faith (Wesna et al., 2021). However, legal efforts also need to remember the territorial principle of IPR. Local legal regulations need to be a reference for consideration and study related to forms of protection for GIs including Trademarks and Unfair Competition in Japan (Fuad & Latjeme, 2017).

The level of anticipation of Toraja coffee producers in protecting their potential products has caused Toraja coffee to be registered as a brand by PT. Key Coffee Inc Corporation in Japan. The impact of this lack of anticipation is the difficulty in exporting Toraja Coffee to Japan because it has been registered by PT. Key Coffe Inc Corporation with the TOARCO TORAJA brand with registration number 75884722. Things like this should not have happened, if local entrepreneurs could anticipate problems like this. In this case, the government is considered to have lacked anticipation to prevent violations of Geographical Indications and lacked understanding of domestic needs which have abundant Natural Resources (SDA) potential and require legal protection, as an obvious example, Toraja Coffee which is registered as a trademark by PT. Key Coffee Inc Corporation.

Instead, efforts to resolve this problem include: Registration of Toraja Coffee as a Geographical Indication, the Indonesian side must immediately register Toraja Coffee as a Geographical Indication product to the Directorate General of Intellectual Property Rights, in particular, the Directorate of Marks reminds the Sub-Directorate of Geographical Indications that structurally is under the Directorate of Marks (HKI). Registration carried out by the parties if approved and can be registered as a Geographical Indication is a "repository" ie if it has been registered in the country concerned it is automatically protected in other countries. However, the process of providing protection does not only stop after being registered as a Geographical Indication at the Directorate General of Intellectual Property Rights. About Geographical Indications that can be registered at the Directorate General of Intellectual Property Rights, it is followed by a World Intellectual Property Rights (WIPO) notification so that the Toraja Coffee database is recorded at WIPO as a Geographical Indication.

Cancellation of the Toraja Coffee Brand owned by PT Key Coffe Inc. Corporation, the Indonesian side can file a lawsuit for the cancellation of Toraja Coffee which was registered by PT Key Coffe Inc. Corporation with the brand "TOARCO TORAJA" on the basis that Toraja Coffee is coffee that has been known for generations and belongs to the people of Tana Toraja, most importantly Toraja Coffee must be protected first as a Geographical Indication in Indonesia. So to get international recognition that Indonesia is a party that has more rights to use Toraja Coffee, this can be done by: Lawsuit for Cancellation of Registration of Geographical Indications for Toraja Coffee by the rightful party. Cancellation submitted to the WTO based on article 22 paragraph (3) TRIPs which explains, members are obliged Ex officio if possible in their national law to refuse or cancel the registration of a mark containing Geographical Indications for an item that does not originate from the indicated area, if the use of said indication for the goods within the member's territory in such a way as to mislead the public regarding their original Geographical Indications. After the problem was resolved at the WTO, it was followed by a notification to WIPO. Thus Japan, which is a member of the WTO, will respect Toraja Coffee Geographical Indication products so that parties entitled to use Toraja Coffee can use these products in trade both domestically and internationally. Through Mediation, based on the establishment of an Economic Partnership Agreement (EPA) cooperation relationship between the Republic of Indonesia and Japan, one of the objectives of which is smooth trade mobility between the two countries, the existence of such cooperation according to the Directorate General of Intellectual Property Rights resolves the problem of registration of Toraja Coffee as a Brand by PT. Key Coffee Inc. Corporation will be discussed further at the EPA meeting of the Republic of Indonesia and Japan.

3.2. Discussion

The study explores the significance of Toraja coffee as a renowned coffee variant in Indonesia, along with its unique characteristics and geographical origin in Tana Toraja, South Sulawesi. It delves into the legal protection aspects of Toraja coffee as a geographical indication (GI) and the potential challenges in maintaining its reputation. The research highlights the importance of registering Toraja coffee as a GI to safeguard its authenticity and prevent misuse by other parties. It discusses the legal arrangements for Marks and Geographical Indications in Indonesia, emphasizing the need for better protection and prioritizing GIs over trademarks. The study reveals the implications of delayed registration and lack of anticipation in protecting Toraja coffee, leading to registration by foreign companies, causing difficulties in exporting. The discussion proposes legal actions, such as cancellation of unauthorized trademarks and mediation through economic partnership agreements to resolve the issue and secure international recognition for Toraja coffee. Overall, the study emphasizes the necessity of legal measures to protect the unique identity and reputation of Toraja coffee in the domestic and international market. Future research can further investigate the effectiveness of legal strategies in preserving the heritage and value of other Indonesian geographical indications.

4. Conclusion

Geographical Indication Protection is not only intended to protect the communal rights of community groups that own these rights, but also contains elements of providing protection to consumers who use products with Registered Geographical Indications. The provisions and mechanisms for handling violations of Geographical Indications in the Trademark and Geographical Indications Law are in accordance with what are the rights of consumers and the obligations of business actors as stipulated in the Consumer Protection Law.

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