

The Implications of Protecting Geographic Indications of the Cultural Rights of the Asmat Indigenous People

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ABSTRACT

Diversity of product potential Geographical indication does not only consist of biological products, agriculture, and plantations that stretch from the west to the east Indonesia. However, there are also potential Geographical Indication products that come from culture in the form of handicrafts, for example batik, carving, weaving and so on. There has been no effort from the government or the Asmat indigenous people to register it. So that it has been taken by those who don't even have it relationship with the Asmat indigenous people who are entitled to economic rights as well as rights culture, then it becomes fraudulent competition for the product. Policy protection of Geographical Indications that has been implemented by the government is not in line with implementation in society. This research entitled The Implications of Protecting Geographic Indications of The Cultural Rights of The Asmat Indigenous People. This research aims to determine the extent Asmat engraving products are categorized into Geographical Indication regime and how essence the cultural rights of indigenous peoples in the protection of the Geographical Indications of the Asmat Carving products. From the results of this study found that Asmat carvings based on different criteria contained in law number 20 of 2016 concerning brands and geographic indications states that the mark possessed by the Asmat carving shows its geographical location as well the characteristics of the Asmat carving are strongly influenced by environmental factors, namely natural factors and the human factor. Then the research results show that the concept of cultural rights is in line with the provisions of law number 20 of 2016. Then the following conclusions can be drawn; The Asmat carving has fulfilled characteristics to be given protection in a Geographical Indication regime. Asmat carving as a result the product has a mark that represents the geographical conditions on Asmat district. A combination of the results of Asmat's human observations on natural conditions surroundings and the use of basic carving materials from the natural surroundings, contained in the product carving that has a worldwide reputation as well as beautiful quality, and the concept of cultural rights owned by the indigenous people of Asmat in the protection of geographic indications of Asmat carvings is aligned with the purposes and benefits of Geographical Indication protection. Protection geographic indication explicitly guarantees the Asmat indigenous people to continue to be able have, use, develop and inherit the knowledge of Asmat carving to the next generation.

Keywords: *Cultural Rights, Geographical Indications, Asmat Carving.*

1. INTRODUCTION

Protection of Intellectual Property Rights, it has received more attention from the Indonesian government. Especially protection of intellectual property in the field of Geographical Indications. The form of attention from the Indonesian government is to revise the Law concerning rights intellectual property. One example is Law Number 15 of 2001 concerning Trademarks, which was later revised into Law Number 20 of 2016 about Trademarks and Geographical Indications. In Law Number 15 of 2001, Geographical Indication regulations

are not very specific, this can be seen in the numbers Article that regulates Geographic Indications is only 3 (three) articles in Law Number 15 of 2001, compared with Law Number 20 of 2016 which has been into 10 (ten) articles. In Law Number 20 of 2016 there are already more detailed discussing and regulating the Geographical Indication, of the product terms Geographical Indications, registration process to criminal provisions of Product misuse Registered Geographical Indication. Consideration of the Government of Indonesia to revise Law Number 15 of 2001 concerning Marks into Law Number 20 of 2016 concerning Marks and Indications

Geographical is because Indonesia has a variety of potential Indication products Geographical worth protecting. Diversity of product potential Geographical indication is not only consisting of biological products, agriculture, and plantations that stretch from the western corner to the corners of eastern Indonesia.

However, there are also potential Geographical Indication products which comes from the culture in the form of handicrafts, for example batik, carvings, woven and so on. Another consideration is the importance of revising Law Number 152001 concerning Trademarks, became Law Number 20 of 2016 concerning Trademarks and Geographical Indication are various cases of Indonesian products that are registered outside country. For example, one coffee product originating from Toraja has been registered by overseas companies in Japan and America, without the public's knowledge Toraja. With the revision of Law Number 15 Of 2001 regarding Trademarks, it becomes Law Number 20 of 2016, it is hoped that the Indonesian people will become the rightful owner of a Geographical Indication product may benefit from an existing product registered. Based on Law Number 20 of 2016, the benefits that will be obtained is the protection of Geographical Indication product property rights from misuse of other parties.

In addition, by registering a Geographical Indication product, it can increase economy of the parties who own the Geographical Indication Product rights as already required in Law Number 20 of 2016. The parties regulated in article 53 paragraph 3 is an institution that represents the community in certain areas cultivating Geographical Indication products and local government. Other than that based on Law Number 20 of 2016 requires quality quality standards both from the quality of the product material based on agricultural, forestry and Geographical Indications plantation, as well as production quality standards for products of Geographical Indication handicrafts. So that the existence of quality standards can improve the economics of the Geographical Indication product rights holders. The basic principle of Geographical Indication is very simple, however, when linked with legal protection based on Law Number 20 of 2016 will be very complex especially regarding handicraft products from custom Society. Geographical Indication protection approach of each region very different, when viewed from the perspective of business competition. Because of a quality Geographical Indication products with known quality, characteristics and characteristics then ignored by the customary community or local government. As for example, carving Asmat is one of the Geographical Indication products with quality, distinctive features and characteristics have been known by the Indonesian community and even internationally, not yet there is an effort from the government and the Asmat indigenous people to register it. So that it has been taken by parties that do not even have a relationship with Asmat

indigenous people who have the right to economic rights and cultural rights, then be fraudulent competition for the product. Geographical Indication protection policy what the government has implemented is not in line with the implementation in society. The Asmat indigenous people and the local government are still running on their own for developing Asmat Carving products, because the influence of economic factors is a temptation which is so promising compared to when developed together between indigenous people of Asmat and local government whose proceeds will be shared. And the policies taken by the local government in terms of protecting the Asmat Carving have not fulfill the basic rights of indigenous peoples as owners of Asmat Carving products. Based on the above understanding, the following problems can be formulated: first, the extent to which Asmat engraved products are categorized into the Geographical Indication regime and; second, what is the essence of indigenous peoples' cultural rights in the protection of Geographical Indications Asmat Engraving products.

2. RESEARCH METHOD

In connection with this research using the empirical juridical method, namely a legal research methods that seek the truth in a society based on law as a measuring tool. This research was conducted in Asmat district. And the reason for choosing Asmat district because the Asmat carving products are products that come from district and not found in other areas.

3. RESULTS AND DISCUSSION

3.1 Asmat Carving in Geographical Indications

Based on Law Number 20 of 2016, Geographical Indication is a sign indicating the area of origin of an item and / or product due to a factor geographic environment including natural factors, human factors or a combination of the two these factors give certain reputation, quality and characteristics to the goods and / or products produced. The essence that underlies Geographical Indication is signs area of origin, environmental factors that give quality and reputation. Quality and reputation of the geographic indication products are derived from the characteristics as well as the specifics and characteristics of these products.

Asmat carving as a cultural product that deserves to be registered in Geographical indication protection has had its reputation, quality and characteristics has been recognized by the world. Identify the character of a Geographical Indication product used as a production standard that will be used as a reference. The reference of each Geographical Indication products will be published by the Director General of Intellectual Property as books Geographical Indication Product requirements. The

characteristics contained in the Asmat carving can be seen from several things, namely:[1]

- 1) *Motifs*, the use of motifs in Asmat carvings based on observations from carver to the natural surroundings. So that based on the results of observations from engraver the carvings there are animal motifs that only exist in the natural surroundings of engraver. For example, the Asmat carving uses the Pana wow motif, carving fangs or seashells, Ufir akon wow, a bird beak motif, Waoratsonan wow, seagull elbow, Amer wow, Snake, Asuk vasi wow, Caterpillar and Tare wow, bat bird. In addition to animal motifs, the Asmat carvings use humans as the motifs, namely, Manamok wow (Eyes), Janmak wow (ears), Bua wow (Mouth) and others.
- 2) *Carving material*, the Asmat carvings use wood that grows on natural surroundings. The use of wood as a basis for carving is divided into two phases namely: the Fumirian phase, in the view of the Asmat community, this phase is a phase of ancestors which at that time wood working tools were still using materials derived from animal bones. So that wood is used is wood that is soft. In this phase, the community uses Juamos (beach wood), To os (forest nutmeg), Jiran os (ketapang wood), Sur / Toaper os(milk wood), and Ci os (wooden boat). The selection of this type of wood is supported by traditional knowledge from the carver that the type of wood these have high water content and wood fibers that are softer than wood other. And the following phase is the Post Fumirian Phase. In this phase, technology carpentry has become increasingly modern. The Asmat indigenous people are familiar with metalso that carpentry tools already use tools made ofmetal. In line with this, the choice of wood as a carving material is already done more varied. At this time, the Asmat people have dared to use wood-wood that has harder fibres than during the fumirian phase. In this phase,The wood used is Pas wood (iron or merbau wood), Pit wood ,Gempol wood, matoa wood and lingua wood.
- 3) *Staining and preserving techniques*. Unlike most of the other carvings on Indonesia, the coloring and preservation techniques on Asmat carvings are very different and still traditional, even used today. Use The colors on the Asmat carvings only use 3 (three) colors, namely black, white andred. The use of red in Asmat carvings comes from the saga tree (*Adenantha pavonina*), the white color comes from the shells that have been dried, while the black color is obtained from the process of preserving the carving where every piece of wood that was carved would be buried in the mud for a week. The results of the preservation process will make the carvings black. Other than that, by being buried in the mud

will make the carving last longer and hard to weather. The characteristics described above provide the differences and specificities of Asmat carvings compared to other carvings in Indonesia. The hallmark of this Asmat carving has given it a reputation that is recognized by the outside world, so it deserves to be protected to in the protection of Geographical Indications

3.2 Concepts and Principles of Human Rights

Human Rights are the embodiment of legal and normative concepts defines that the inherent rights of humans are because they are a person human.[2] These rights cannot be revoked (inalienable). That means, no matter how bad treatment that someone has experienced or no matter how cruel someone's treatment is,will not stop being human and still have those rights.[3] The idea above, sourced from natural rights theory which originated from legal theory kodrat (natural law theory), St. Thomas Aquinas, which was further developed by Hugo de Groot (Grotius) by cutting off his theistic origins and making them the product of rational secular thought. Post-renaissance, John Locke, proposed thinking about natural rights, which underlies the emergence of the revolution for internal rights revolutions in Britain, the United States (US) and France in the 17th and 18th centuries.[4] According to the opinion expressed by Sri Soemantri Martosoewignjo, [5] "HumanRights Classification" (classification of human rights) consists of:

First, Respect for the integrity or the person and this includes the following freedoms, namely:

- a) freedom from political and other extrajudicial killing;
- b) Freedom from disappearance
- c) Freedom from torture and other cruel, in human, or degrading treatment or punishment;
- d) Freedom from arrest, detention or exile;
- e) Freedom from denial of fair public trial

Second Respect for civil liberties, the parts of which are:

- a) Freedom of speech and press;
- b) Freedom of peaceful assembly and association;
- c) Freedom of religion;
- d) Freedom of movement within the country, foreign travel, emigration, and repatriation.

Third, Respect for political rights: the right of citizens to change their government.

Fourth, Governmental attitude regarding international and non-governmental investigation of alleged violations of human rights.

Fifth, Discrimination based on race, sex, religion or sixth social status, Worker rights, which consists of:

- a) The right of association;
- b) The rights to organize and bargain collectively
- c) Prohibition for forced and compulsory labour;
- d) Minimum age of employment of children;
- e) Acceptable conditions of work.

In its development, the translation of human rights can be divided into Personal rights, political rights, legal rights, economic rights, judicial rights and social and cultural rights. Further explanation, social and cultural rights can separate into social rights, namely, rights that give full freedom to someone interacts with other humans; and cultural rights, namely rights give complete freedom to someone to be able to determine, choose, and get education and teaching and also develop knowledge acquired and passed on to the next generation.[6]

3.3 Cultural Rights in Geographical Indications

Constitutionally, Article 33 paragraph (3) of the 1945 Constitution states: "Earth and water and the natural wealth contained therein shall be controlled by the state and used for the greatest prosperity of the people ". This can mean that the people are given opportunities to manage and utilize natural resources in this managing the produce of the land, water, natural resources which then the state is given the power to regulate and manage these natural resources which are allocated to prosperity of its people. Developed countries have been reluctant to admit this collective right of local communities in developing countries for local wisdom them, and this is evidenced by the refusal of the developed countries to sign" The Draft United Nation Declaration on the right of Indigenous Peoples ". The draft which in its articles give recognition that society as a collectively can be the bearer of its rights.[7] Anticipating this, the application of Article 33 paragraph (3) of the 1945 Constitution is stated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications Thing. This can be seen in the attachment to Law number 20 of 2016 which states the reasons for the making of these laws, namely the effect of globalization in all fields community life, both in the social, economic, and cultural fields, is increasingly encouraging the rate of development of the people's economy. Government anticipation in protecting the products of geographical indication is compatible with the definition of cultural rights the principle is to protect the property rights of Geographical Indication products as well as to knowledge about the culture continues to grow and develop. The concept of cultural rights that

wants to preserve handicraft knowledge The culture of indigenous peoples is regulated in Article 61 paragraph (1) of Law Number 20 Of 2016, namely Geographical Indications are protected as long as their reputation, quality and reputation are maintained characteristics which become the basis for granting protection of Geographical Indications at a goods. So that it can be concluded to maintain a geographic indication product registered then the community who owns the rights to the geographic indication product must remain keep knowledge and culture from being lost.

3.4 The Cultural Rights of the Asmat Indigenous Peoples in the protection of Geographical Indications of the Asmat Carving.

Purpose and benefits of protection of Geographical Indications against Asmat engravings intends to clarify the identification of Asmat engraving products and set standards production and processes between the parties concerned, in this case the government the area and the indigenous people of the Asmat who work on carving. A part from maintaining quality Asmat carving products as original products so as to give confidence to Asmat carving consumers. By itself the protection of Asmat carving into the regime geographical indications can preserve natural beauty, traditional knowledge, and sources biological power, this of course will have an impact on the development of agro-tourism.[8]

With the realization of protection of geographical indications from Asmat carvings, it is possible protect the cultural rights of the Asmat indigenous people as the owner of carving knowledge asmat. Definition of cultural rights that give freedom to own, use, develop and pass down cultural knowledge to be in line with that goal expected from the protection of the Asmat Carving into the Geographical Indication regime. Generation Asmat indigenous people in the future will still know and continue the art of carving Asmat.

4. CONCLUSION

Based on the discussion that has been previously described, it can be withdrawn the following conclusions:

- 1) The Asmat carvings meet the characteristics of being given protection in the regime Geographical Indication. Asmat carvings as a result of the product have a marked mark represents the geographical conditions in the Asmat district. Combination of observation results human Asmat for the surrounding natural conditions and the use of the basic material for carving from natural surroundings, contained in engraving products that have a worldwide reputation and quality the beautiful one.

- 2) The concept of cultural rights owned by the Asmat indigenous people in protection of Indications Geographic Asmat carving is aligned with the purpose and protection benefits Indication Geographical. Protection of geographic indications explicitly guarantees indigenous peoples Asmat to still be able to own, use, develop and inherit Asmat carving knowledge to the next generation.

5. SUGESTION

- 1) A description of the characteristics of the Asmat Carving based on the provisions of the Indication Geographical has been fulfilled, so further recommendations from the Government are needed Asmat Regency regarding an institution that is a representative of the carving community Asmat carving. And then together with the local government to carry out the registration process Asmat's carving in the Geographical Indication regime to the Director General of Intellectual Property Rights.
- 2) The process of registering asmat engravings into the protection of Geographical Indications must be do it soon. So that the Asmat carving is not claimed by those who want it take advantage. There needs to be comprehensive coordination between stakeholders, namely local government and the Asmat customary community.

REFERENCES

- [1] Enos Rumansara, et al, (2014) Inventaris dan Verifikasi Karya Budaya Seni Ukir Asmat, Yogyakarta: Kepel Press.
- [2]. Jack Donnely, (2003) Universal Human Rights in Theory and Practice, Cornell University Press, Ithaca and London.
- [3]. Rhona K. M. Smith, dkk., (2010) on Knut D. Asplund, Suparman Marzuki, Eko Riyadi (editor), Hukum Hak Asasi Manusia, Yogyakarta, Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia, Cet. Kedua.
- [4]. Yuli Asmara Triputra. (2017), Implementasi Nilai-Nilai Hak Asasi Manusia Global ke dalam Sistem Hukum Indonesia yang Berlandaskan Pancasila. *Jurnal Hukum Ius Quia Iustum Faculty of Law, Universitas Islam Indonesia*. Volume 24 Issue 2, April 279-300
- [5]. Nursiah M.Yunus.(2010), Sebuah Kontemplasi Tentang Klasifikasi Hak-Hak Asasi Manusia, *INSPIRASI*, No. X Edisi Juli 53-68.
- [6]. Maria Alfons. (2015) Aspek Hukum Perlindungan Indikasi Geografis berbasis Ham. *Jurnal Hukum Jatiswara*. Universitas Mataram, 393-414.
- [7]. Nursiah M.Yunus.(2010) Sebuah Kontemplasi Tentang Klasifikasi Hak-Hak Asasi Manusia, *INSPIRASI*, No. X Edisi Juli 53-68.
- [8]. Iswi Hariyani. (2018) Haki dan Warisan Budaya, Gajah Mada Press, Jogjakarta. Cetakan Kedua.