



Legal Protection of Brands and Geographical Indications in the Framework of Strengthening Market Size, Market Place and Optimizing Economical Rights for Msme Products from Karawang, Indonesia

Rahmi Zubaedah^(✉), Asep Saripudin, and Kholida Atiyatul Maula

Faculty of Law, Universitas Singaperbangsa Karawang, Karawang, Indonesia
rahmizubaedah@yahoo.com, kholida.maula@fe.unsika.ac.id

Abstract. The unique MSME products from Karawang are an economic potential that can be maximized. Maximizing the economic potential of MSME products from Karawang is an active effort to improve the economic quality of the regions producing these products. Improving the quality of the economy can be conducted by expanding the market size and optimizing the economic rights. A number of well-known and reputable good quality traditional foods from Karawang require legal protection as geographically-indicated products. The study subject to analyze the legal protection of Geographical Indications (Law Number 20 of 2016 concerning Brands and Geographical Indications) and to have the implications for strengthening and empowerment of reputable and quality MSME products from Karawang.

The approach of this research is normative juridical, namely the approach to legislation, in the field for implementing regulations and obtaining facts related to the issue. A multidisciplinary approach (Law and Economics) is the instrument to understand a positive formulation of the legal and economic impact of the legal protection of Geographical Indications on the strengthening and developing the market size of MSME products from Karawang with a good reputation and good quality.

Protection of Brands and Geographical Indications for MSME Products will provide space for MSME sellers in Karawang to develop innovations in strengthening products so to be more competitive. The advantages related to the quality will be coupled with a modern product marketing pattern by utilizing advances in information technology as an effective facility in developing the Market Size and Market Place of the Karawang MSME Products.

Keywords: Legal Protection · Geographical Indications · Market Size · Economic Rights · MSME

1 Introduction

1.1 Background

Based on the description above, the following problem formulation is Efforts to save cooperatives during the Covid-19 pandemic to support the transformation of cooperatives for a sustainable economy?

The development of information technology results various regions in Indonesia to be interconnected, even between countries in the world and it is a favorable condition to be able to close the distance between producers and consumers, between sellers and buyers around the world. Unhindered interaction makes it easier for a product to be introduced or delivered to farther destinations. Due to the availability of communication infrastructure that is connected via a digital technology-based communication network (Internet) and is balanced by the availability of an increasingly integrated network of logistics service providers, there will be a greater opportunity to expand the market of a product.

Karawang with a variety of distinctive, reputable and good quality products, such as green surabi, bontot crackers and kawista honey drinks, are original and superior food products from Karawang. There is a strategic and effective way to raise the reputation of the product, through legal protection for products that have been well-known for their uniqueness, reputation and quality as Geographically Indicated Products. In order to understand precisely what Geographical Indications are, the Law on Marks and Geographical Indications (Law Number 20 of 2016), in article 1 paragraph 6 defines the Geographical Indications as a sign indicating the area of origin of an item and/or product which due to Geographical environmental factors including natural factors, human factors or a combination of the two factors give a certain reputation, quality, and characteristics to the goods and/ or products produced.

The enactment of the Law on Trademarks and Geographical Indications cannot be separated from the process that Indonesia has taken to become a member of the World Trade Organization (WTO) which created the TRIPs (Trade Related Aspects of Intellectual Property Rights). Through the ratification of TRIPs with the implementation of the minimum standard of Protection and Full Compliance principles, everything that has been implemented in TRIPs must be regulated in the national law that regulates (Laws and Regulations) and regards the Intellectual Property Rights, specifically in this context is the Trademark Law and Geographical Indications.

Michael Blakeney in the University of Western Australia-Faculty of Law Research Paper defines Geographical Indication as a protection concept which is a combination of Indication of Source and Appellation of Origin, indicating that a product originates from a particular geographic area. While Appellation of Origin refers to a sign indicating that a product comes from a certain geographical area only if the characteristic quality of the product is caused by the geographical environment, including natural and human factors. [1]

Various studies have calculated the premium price associated with certain geographically indicated products. A consumer survey conducted in the European Union in 1999, for example, found that 40 percent of consumers would pay a 10 percent higher price for a product with guaranteed authenticity. [2]

The potential for higher prices for international markets for products protected by geographical indications is an opportunity to increase market size and market place which has an impact on the ability to optimize economic rights for entities holding Geographical Indications. The MSME in Karawang as producers of typical Karawang products still have not yet received protection of product authenticity through Geographical Indications which is an effective step for maximizing the economic potential within the framework of empowering MSME products from Karawang to expand the national market in order to be able to compete in the global market using an Integrated Marketing Patterns through technology-based media digital (Internet).

1.2 Problems Identification

How the Function of Brand Protection and Geographical Indication of the Competitive Value of MSME Products in Karawang Regency is related to the Strengthening of Market Size and Market Place?

2 Methodology

This study uses a juridical normative approach, which is a normative juridical approach, namely legal research carried out by researching library materials or secondary data as the basis for research and conducting a search on regulations and literature related to the problems studied. The specification of descriptive analysis research is to describe the applicable laws and regulations related to legal theory and their implementation regarding the problem for this study.

3 Literature review

Intellectual Property Rights have a very large role in the positive movement of a country's economic achievement. Economic growth is related to the growth of knowledge in a country. The development of science in a country increases the curiosity of its people, a high level of innovation creates the various inventions. Inventions include technology can encourage the achievement of economic development of the country.

Philosophical thinking which is the basis for laying the foundation of thought becomes very important. Because the strong thinking foundation built from the construction of thinking based on philosophical thinking will give birth to a clear flow of thinking that will guide the research process that is practical. The philosophical thought of Josef Kohler, a professor at the University of Berlin in 1888, according to Josef Kohler, humans have the task of creating and developing culture, so that permanent cultural values are born which encourage the birth of various new forms which then give birth to various creations that follow. which further complements the various masterpieces of the Creator. [3]

According to Kohler, culture is the mental guarantee of the nation, which is a big goal that must be fought for, Kohler divides culture into aesthetic culture and culture that controls and explores nature (in a productive context), which in the end of the day,

the humans are able to master, cultivate, build by maintaining natural sustainability. [4] Humans with the ability to create various inventions that help the production process and control exploitation of nature. Kamil Idris, as Director General of the World Intellectual Property Organization, expressed his thoughts: [5]

“The bricks-and-mortar economy is, thus, being replaced with the economy of ideas in which IP has become one of the major currencies. In the new economy, wealth is generated through creating and capturing the value of knowledge. Throughout the history of human civilization, wealth was based on the possession of physical assets.

Today, however, the paradigm has changed, and knowledge has become the new wealth.”

Intellectual Property Rights, including Geographical Indication, is a form of utilization of economic rights which can contribute to the growth of economic development through market expansion and increasing market size.

If a common thread is drawn from the Philosophical Thought of Josef Kohler which views humans as a capable-beings of producing cultural values that encourage them to explore nature in a controlled manner, study the nature, explore the economic potential of nature, then the nature from the Creator in the form of natural wealth of the natural resources from each region, combined with the human ability to invent, in order to produce products that have the uniqueness, reputation and quality, and in this case the Karawang area as the object of research. This is the meaning of new wealth, the potential for expansion and increasing income for the products of Karawang MSME. An increase in income which will have an impact on improving the economic structure which will lead to better development achievements.

Law Number 20 of 2016 concerning Marks and Geographical Indications in Article 1 paragraph 6 defines Geographical Indications as a sign indicating the area of origin of an item and/ or product that related to the geographical environmental factors including the natural factors, human factors or a combination of the two factors and provide reputation, quality and certain characteristics on the produced goods and/ or products. It appears that TRIPs regulation becomes a part that is fully regulated in the Law on Marks and Geographical Indications.

Furthermore, Article 7 of Law Number 20 of 2016 explains about Geographical Indication Rights, exclusive rights granted by the state to registered Geographical Indication rights holders, as long as the reputation, quality, and characteristics which are the basis for providing protection for the Geographical Indications still exist. Geographical Indication Rights as exclusive rights granted by the state are attached along with the inherent reputation, quality and characteristics of the requested Geographical Indications. Reputation, quality and characteristics that collaborate from natural factors or human factors are instruments that will create competitive advantages and values from geographical indication objects.

Kamil Idris, better known as the *Theory of Intellectual Property Law is A Power Tool for Economic Growth*, Intellectual Property Rights are instruments with a very large influence on economic growth. Geographical Indications are part of Intellectual Property Rights including the Geographical Indications that can be used to increase the economic growth. How to clarify the relationship between Intellectual Property Rights Protection and economic growth, Kamil Idris explains: [6]

“Business in the new economy depends largely on stable and long-term relationships based on trust and win-win partnerships and the careful balancing of new knowledge creation and creation of benefits for civil society. An IP-minded management approach provides the bargaining power to exchange intellectual assets and to develop more advanced strategic partnerships.”

Kamil Idris in his theory views the strategic role of Intellectual Property Rights to create a stable, long-term and mutually beneficial business pattern. The understanding on how the meaning of stability related to the Protection of Geographical Indications of Karawang MSME products, or how relevant the Protection of Geographical Indications of Karawang product, can lead to the creation of mutually beneficial businesses or encourage strategic and more advanced partnerships. Various ideas embodied by the Theory of Intellectual Property Law is A Tool For Economic Growth from Kamil Idris and still very adaptive and strategic to analyse various problems which can be investigated, especially regarding the Legal Protection of Geographical Indications in the Framework of Strengthening Market Size, Market Place and Optimizing Economic Rights for MSME Products from Karawang.

4 Analysis and Discussion

Karawang as a city of industry and trade that is growing rapidly has become a city with a great potential for economic development, especially for MSME. Surabi Hijau Karawang as one of the most well-known MSMEs in Karawang. Authentic Food from Rengasdengklok, Karawang, called H. M. Kasim or better known as “Surabi Kuntilanak”. As the popularity of the food increases, the accessibility to the location of the seller also increases. The business management of Surabi Hijau Rengasdengklok Karawang in maintaining product quality is more about family-management, empowered by the closest family. The good recipes and management of Surabi Hijau H.M. Kasim maintains by Mr. H.M. Kasim himself. In terms of quality, of course, these conditions can be maintained.

However, the development of the number of productions by maximizing market potential, is not only passive with a pattern that has been carried out repeatedly from year to year, of course a breakthrough must be made in the marketing pattern. Brands have a strategic role for the delivery of a product, either goods or services to consumers. The quality of goods or services that provide satisfaction is then identified by consumers as goods or services that are in accordance with the economic needs and psychological needs of consumers. The accessibility of getting the goods or services back will be facilitated by the presence of a brand or geographical indication attached to the product.

Brand protection according to Daniel Devoe has several purposes: [7]

1. *The prevention of consumer confusion*
2. *Allowing trademark owner to develop goodwill for their product*
3. *The reduction of consumer “Search cost”*
4. *The creation of an incentive for business to produce consistently high quality goods and services, because they know that their competitors cannot, by imitating their distinctive marks*

If the Surabi Hijau H. M. Kasim or known as Surabi kuntilanak has been registered by the owner as a brand, it will avoid a condition that confuses consumers about the authenticity of the product. The Surabi Hijau produced by many Karawang MSMEs certainly do not have the same quality. The best quality of taste and good raw materials will get a special place for consumers. Thus, the registered mark becomes an instrument for the customers to identify the best quality.

The next function of a brand is to provide space for the owner to develop the goodwill of a product or service. The establishment of a brand that has gone through the registration process, to protect and provide space for brand owners to develop the quality of their products. The Surabi Hijau H. M. Kasim brand will be protected by law, so the owner of Surabi Hijau H. M. Kasim can continue to improve the taste, and overall quality of the product. With the maintenance of the quality of Surabi Hijau H. M. Kasim products, the goodwill that has been attached to the Surabi Hijau products will continue to be maintained along with the maintenance of the quality of Surabi Hijau H.M. Kasim products.

The next function of brand protection is to reduce search costs for goods or services. The time used to find a product, either goods or services is a cost. The longer the time spent, the greater cost spent when it is calculated as a cost. Because the accumulation of a long time in the process of searching for goods or services is worth it if it is calculated as a cost. The time wasted long enough to find a product or service will be maximized to produce or complete other work.

The brand also serves to provide incentives to produce a product with high and consistent quality standards, because the brand owner knows that his competitors cannot use his brand. The quality of a product is an advantage which compete with other products, the market will determine based on the strength of the quality and the competitive price of the product. The higher the quality of a product, the stronger the product is to dominate the market. Market dominance is based on market law that will produce good quality MSME products, not on local government policies that are protective of MSME products. Providing space for MSME products with all the distinctive flavours to compete in a market also flooded with other products from modern food producers. However, the uniqueness and traditionality of the Karawang MSME products will be a differentiation that will strengthen the competition with other products.

To be able to enter a wider market should not only based on previous patterns and conventional pattern. The MSME sellers tend not to care about registering the brand of their products, or registering it in the form of Geographical Indication protection. Most of the Karawang MSME sellers, based on the data obtained in the field, think that producing good product is enough, hence the brand protection or geographical indications are considered to be less-important. There are even MSME sellers with very well-known products that already feel protected by the brand of their products by displaying a brand photo banner of the product juxtaposed with an image of the head of the Police in their area. In fact, if the MSME actors register their trademarks, of course, it is not only feel psychologically safe but factually safe because the law will protect them from the use of these marks by other manufacturers.

Peter Drahos writes: [8]

“Intellectual property rights are intimately related to the market. They play crucial role in constituting market information.”

The market is so important for producers, especially MSMEs in Karawang. Manufacturers do not just complete the task of producing a product, packaging it, and marketing it. However, marketing certainly requires an instrument that can streamline the process of arriving at a product to consumers. Intellectual Property Rights, especially brands, become a means of identifying products related to quality and prices that have been stored in the consumer’s consideration when deciding to buy the product.

This is where the role of the protection of Brands and Geographical Indications can create innovation, the increase the power of quality, the creation of superiority of a product, as quoted by Nicolas Petit regarding the thoughts of Michael E. Porter or better known as the Porter Hypothesis.: [9]

...” Properly designed (Regulatory) standards can trigger innovation that may partially or more than fully offset the cost complying with them.”

Regulations on Marks and Geographical Indications that have been regulated since Indonesia ratified TRIPs, are regulations designed with the application of the principles of minimum standards of protection and full compliance. The goal is how various products containing intellectual property can be protected from the behaviour of using the brand by other parties in a bad faith. Trademark Registration and Geographical Indications Karawang MSME sellers can protect products that have been produced with all their peculiarities to minimize the opportunity for brands to be used by other Producers with bad intentions. Effective protection of brands and Geographical Indications Karawang MSME sellers continue to produce innovations to produce the excellent products. Innovation in the form of the ability to read competitors tendencies from other products and read gaps to be able to win and to be superior to those competitors.

Stacey L. Dogan and Mark Lemley, provide legal functions with different perspectives: [10]

“Trademark law, in theory, fosters the flow of information in market. By protecting against deceptive uses of trade symbols in commerce, the law enable sellers to create their own reliable shorthand to identify their good, and reduces search cost for consumer. Trademarks thus have the potential to lead to better informed customers and more competitive markets.”

The market, especially the large-scale market with a large number of potential consumers is a potential market which has the purchasing power and the ability to execute to buy MSME products. So theoretically in accordance with the opinion of Stacey L. Dogan and Mark Lemley that the flow of information in the market will be driven by the functioning of the brand, by various instruments of delivering information to consumers, regarding aspects of quality, price aspects, and psychological aspects of a product. This is where the role and function of Brand Protection and Geographical Indications are able to provide identification of a product, and reduce the amount of search costs made by consumers in getting the intended product. Providing the accurate information for the consumers memory bank regarding the qualifications of a product with a Brand or Geographical Indication, consumers will effectively spend the time to get the product. According to Stacey L. Dogan and Mark Lemley, a competitive market will eventually be built.

A competitive market is a market that is able to foster a positive climate for producers to continue to develop their ability to produce superior products. Products from MSMEs with Brands and Geographical Indications are superior products that can be identified by the regular consumers. The advantages of the Karawang MSME products are not created from regulatory protection, but regulations are more efficient and to be easier for MSME sellers to produce, market, and transact their products because MSME products are the goal of consumers who have been informed about the quality of these MSME products. Thus, to carry out a modern marketing strategy for MSMEs and to deliver various positive information regarding product qualifications, the power of Information technology becomes an accelerator for the expansion of Market size and Market Place of MSME Products without any worries of product counterfeiting because they are protected by regulations governing Brands and Geographical Indications.

5 Conclusions

Protection of Brands and Geographical Indications for MSME Products will provide space for MSME sellers in Karawang to develop innovations in strengthening products so that they are more competitive. The advantages related to the quality produced coupled with a more modern product marketing pattern by utilizing advances in information technology will be an effective facility in developing the Market Size and Market Place of the Karawang MSME Products. It is necessary to build awareness of Karawang MSME sellers who already have products to register their product brands in order to accelerate market control and make it easier for consumers to identify these MSME products.

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