



Geographical Indication Rights of Coffee Arabica Korintji Sumatera: Benefit Sharing Pattern Based on the Principle of Justice in the Context of Intellectual Property Law

Dwi Suryahartati^(✉), Firyta Oktaviarni, and Windarto

Faculty of Law, Universitas Jambi, Jambi, Indonesia

dwisurya@unja.ac.id

Abstract. The potential of Indonesian coffee as a commodity is becoming a world trend. Coffee products produced in each region contain specific characteristics. Geographical Indication Right is one of the rights to protect coffee in Indonesia in a global context. As one of the Communal Intellectual Property, the Right of Geographical Indication can provide access to profit sharing for coffee farmers with a profit sharing system. This article discusses how the construction of a benefit sharing agreement as legal protection for the Right of Geographical Indication of Coffee Arabica Korintji Sumatra in the perspective of Intellectual Property and Contract Law and how the role of government make use right of Geographical Indication which fulfills the principle of justice. The method in this research is juridical empirical. By combining all legal norms regarding IP, GI with data and behavior of legal subjects in society. This type of research is qualitative with analytical descriptive.

Keywords: Benefit Sharing Contract · Coffee Arabica Korintji · Geographical Indication

1 Introduction

Geographical Indication (GI) is an intellectual property system that regulates the use of regional name as the origin of goods or services produced because linkages between environmental natural, human factor or their combination that gives characteristics. Law Number 20 of 2016 concerning Marks and Geographical Indications (UUMerk and GI) provides protection for geographically indicated products to be able to compete fairly. The exclusive rights owned by communal communities have not received serious attention by the government and stake holders as evidence of culture of respect for both the community itself and other parties. There is a tendency that profit sharing is not in accordance with the principles of IPR.

Arabica coffee in the highlands of Mounts Kerinci is a potentially significant GI. Indonesia is the fourth largest coffee producing country in the world in 2015, after Brazil, Vietnam and Columbia (Baso, Rialestarsi, 2018, p. 2). Based on the status of the business,

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it consist of community farm, state land, and private. People's land reached 1,194,081 hectares in 2013. The largest coffee growing areas are the provinces of South Sumatera, Aceh, Lampung, East Jawa and Sout Sulawesi. There are several types of coffee in its varieties, namely Arabica, Robusta and Liberica coffee. Arabica coffee plants bear optimal fruit at an altitude above 1,000 m above sea level, Robusta coffee at an altitude of 400–800 m above sea level. And Liberica coffee can be grown in the lowlands to peat.

Jambi Province is one of the best coffe producers in the world. Productivity until 2019 reached 997 kg/Ha, dominated by Arabica coffe fro the Kerinci and Sungai Penuh areas palnated a tan altitude of up to 1600 m above sea level. Coffee farm management is carried out individually by groups, private, plantations and cooperatives and in general for export needs [5]. The characteristics of coffee are very dependent on nature, the environment and humans. The characteristics of coffee are part of the IP protection system, namely in the industrial sector property rights, one of which is GI. GI protection is implemented through a constitutive system with first to file. The means that legal protection is given to the first to regoster it. Because it communal, it is not ownwd individually but collectively by the community producing protected goods/services. Based on the Intellectual Property Database of the Indonesian Directorate General of Intellectual Property, currently 92 IG products have been registered. GI products registered are more dominant in coffee products, namely two liberica coffees, 17 types of arabica, 12 types of robusta. In Jambi Province the coffees listed as IG are Korintji Sumatran Arabica Coffee, Sungai Penuh Arabica Coffee and Tungal Liberika Coffee. This research focuses on IG Kopi in Kerinci and Sungai Penuh. Sumatra Kerinci Arabica Coffee was registered in 2015 with application number G002015000020 and Sungai Penuh Arabica coffee was registered in 2019 with application number G002019000002. Both are owned collectively by the Society for Geographical Indications (in Indonesia known as MPIG).

Article 42 paragraph 1 of the Trademark and GI Law regulates the right of the GI owner to grant licenses to other parties for some or all types of protected goods/services. According to Article 61 of the Trademark and GI Law, the period of protection is not specified, as long as the reputation, quality and characteristics that are the basis for providing protection for Geographical Indications are maintained. This means that the community and government as well as related stakeholders play a very important role in maintaining and preserving it. Such as the obligations in Article 70 regarding guidance and supervision carried out by the Central Government and or Regional Governments in accordance with their autonomous authority. Article 70 paragraph (2) regulates the planning, preparation and application of GI; utilization and commercialization of GI; to socialization and understanding of GI protection, as well as mapping and inventory of potential GI products; training and mentoring; monitoring, evaluation, and coaching; legal protection; and facilitation of development, processing, and marketing of goods and/or products of Geographical Indications. It is clear in the regulation that there is a concept regarding the commercialization and utilization of GI which can also be done with benefit sharing.

The concept of profit sharing on GI is a good means of protecting the potential of GI. In realizing legal protection for the GI of the Sumatran Arabica Coffee of Koerinjti and the Sungai Penuh Arabica Coffee, there are exclusive rights in the form of economic rights and moral rights that must be maintained. Because this GI system protects the

producing community, there is a right to profit sharing that needs to be considered. So that the communities and product producers in Kerinci and Sungai Penuh have a sense of ownership and get significant economic benefits from the rights to the Coffee GI. Not used individually or by irresponsible persons on behalf of the community.

An autonomous government, giving flexibility to the responsibility to determine policies that guarantee the protection of geographical indication rights in Kerinci and Sungai Penuh as a form of concern for the wealth of the area. Including how the community producing products take advantage of the economic rights of the GI rights that have been obtained. Benefit sharing must be stated in a good agreement. The contents of the agreement must comply with legal norms related to GI internationally, in addition to being guided by contract law in general. It is better if an authentic deed is made.

This paper will discuss two issues, namely how the form of government policy in order to take advantage of the indication rights of Arabica Sumatran Koerintji coffee and Arabica Kopi Sungai Penuh and how to construct a benefit sharing agreement as a form of legal protection for potential geographical indications that meet the principles of justice in the perspective of intellectual property law and law contract.

2 Method

This research has four stages starting from the preparation stage, preliminary research and implementation and the data processing and data analysis stage. The research location is in Jambi Province. The object of the research is the profit-sharing agreement on the rights of the Korintji Sumatra Arabica Coffee and the Full River.

Arabica Coffee. The type of research is Juridical Empirical by looking at how the law is applied in action. Using a conceptual approach, a statutory approach, and a comparative approach. Primary data can be obtained from Inquiry/interviews, field observations. Secondary data is obtained from various legal materials consisting of primary, secondary and tertiary legal materials. The population in this study are all units related to GI that have been granted rights.

Techniques Data collection and data analysis is carried out by taking an inventory of legal materials by means of documentary techniques, literature and literature studies and agreements. Data processing is done by inductive technique. Both those collected in document studies or the results of interviews through field studies. Meanwhile, data analysis was carried out using qualitative techniques in the form of data reduction, data presentation, inference and verification. The analysis is carried out by interpreting the analytical descriptive method by clearly describing the content and structure of positive law that applies to a certain jurisdiction and time. (Nasution Bahder, 2008, p. 91).

3 Results and Discussion

3.1 Legal Instruments Related to Geographical Indications in Indonesia

The Internasional world The international world is very concerned about IG. One of them is the TRIPs Agreement article 22 which regulates GI, that is "Geographical indications are for the purposes of this agreement, indications which indentify a good as originating

in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin". Perjanjian Lisabon tahun 1958 menggunakan istilah Appellation of Origin (AO) yang menyebutkan bahwa: 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 [1].

The communalistic nature of GI gives a lot of influence on the concept of protection both nationally and internationally. Law Number 7 of 1994 concerning the ratification of the Agreement Establishing the world Trade organization requires Indonesia to complete legal protection in the GI sector. The GI regime is recognized in TRIPs and is regulated nationally in the Trademark and GI Law. The purpose of the national regulation is to further improve services and provide legal certainty for the world of industry, trade, and investment in the face of local, national, regional and international economic developments as well as the development of information and communication technology both nationally and internationally.

Article 1 paragraph (6) of the Trademark and GI Law provides an understanding that GI is a sign indicating the name of the territory in relation to the origin of an item and/or product. Geographic environmental factors such as nature, humans or a combination of these two factors confer reputation, quality, which are due exclusively to the geographical environment, including natural and human factors. The implementing regulation that regulates it is PP No. 57 of 2007 IG (PP IG). Protection against IG is obtained by submitting an application. Regulations regarding applications are regulated in PermenkumHAM Number 12 of 2019 concerning Geographical Indications. The application for rights is given after the expert team has studied the IG requirements book. The description of the GI requirements book is regulated in Article 6 letter (d) that the description of the environment as well as natural and human factors is an integral part in giving effect to the quality and characteristics of the GI product being applied for.

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Article 6 letter (f) also provides regulations on how history and tradition are related to the use of GI. Also explained about the process of production, processing and manufacture of its products. This allows every producer to produce, process and or manufacture goods related to GI. So the community and their local wisdom have the right to be protected. From the observations in the study of Korintji's Sumatran Arabica Coffee and Sungai Full Arabica Coffee, local people tend to be unaware and don't care about their potential. They even ignore the economic benefits of their GI rights. On the other

hand, legally collective rights provide space for local communities to exercise their rights jointly or through legal entities.

3.2 The Government's Role in the Utilization of Geographical Indication Rights for Korintji Sumateran Arabica Coffee and Sungai Penuh Arabica Coffee

Applications for GI rights to the State are carried out collectively. Protection is obtained if it has been registered and accepted. The parties that can apply are regulated in Article 53 of the UUM and IG are; (1) an institution that represents the community in a certain geographical area that operates an item/product in the form of natural resources, handicrafts or industrial products, (2) the provincial or district/city government. The IG application for Korintji Sumatra Arabica Coffee and Sungai Full Arabica Coffee are collective brands. The regulation of collective marks shall contain regulations concerning the nature, and general characteristics, quality of goods and goods or services produced or traded, the existence of supervision over the use of collective marks, and the existence of sanctions for violations of the provisions on the use of collective marks.

The government has a very important role in the ownership and use of GI in an area. The role of the Sungai Penuh and Kerincia Regional Governments starts from designing a GI guidebook to forming the Community Concern for Geographical Indications (MPIG) as the front line in producing coffee with GI rights. Starting from the initiation and application involving the local government. The concept of government responsibility is part of the responsibility for the wealth that is in the area of "its power". The role of the government here, can be seen at the beginning. After that, it will be seen how the stakeholder connectivity is in the use of their rights and improving welfare as well as the sustainability of the use of rights in the context of IPR law and contract law.

Law Number 32 of 2004 concerning Regional Government provides direction for the authority in this regard. Article 13 Paragraph (2) stipulates that "Elective provincial government affairs include government affairs that actually exist and have the potential to improve the welfare of the community in accordance with the unique conditions and superior potential of the region concerned". Article 17 of the Regional Government Law explains that the utilization of natural resources is an authority that is owned normatively. This authority is also related to the utilization, maintenance, impact control, cultivation and preservation of a product or natural resource in the area under its control.

Profit sharing in viewing IG as a right is an intangible asset. The treatment does not meet the concept of fairness in intellectual property rights. The patterns still use a profit-sharing pattern such as plasma plantations. As for the harmonization of the environment from spatial planning, it does cause some problems, related to land landscapes, ownership and working patterns. There are no ways that are significantly profitable based on the principle of justice.

It can be seen from observations that cooperative units have been formed to gather 320 coffee farmers to sell coffee to cooperatives. However, it is also seen that farmers sell directly to collectors without a mechanism for utilizing GI rights. This is very detrimental. Both from the context of marketing nationally and internationally. So there are many coffee brands produced in the GI area that do not use registered GI brands. Here it can be seen that the government's role is still lacking in terms of supervision and development.

The role of local government is shown in how the community can take advantage of the impact of GI for all supporting sectors. Supporting sectors can be in the form of economic, tourism, social and even political sectors. Local governments initiate various agreements that can provide communal collective benefits. The role of the Government should be seen in Article 70 of the Trademark and GI Law which states that; (1) The development of Geographical Indications is carried out by the central government and/or regional governments in accordance with their respective authorities. (2) The guidance as referred to in paragraph (1) includes: a. preparation for fulfillment of requirements for 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 indications; Geographical; e. mapping and inventory of potential Geographical Indications products; f. training and mentoring; g. monitoring, evaluation, and coaching; h. legal protection; and i. facilitation of development, processing, and marketing of goods and/or products of Geographical Indications. From these provisions, the continuity of GI is largely determined by how the local government collaborates in product management.

In the context of this research, namely Arabica coffee farmers and business entities or parties who market and other parties related to the use of rights. Arabica coffee farmers with IGs in Kerinci and Sungai Penuh sell their products to cooperatives formed by MPIG. Profit sharing is carried out using cooperative provisions. Profits are distributed once a year with the calculation of the remaining results of the cooperative's business. Even though in the first year the farmers did not get anything and even suffered losses.

Construction of profit sharing agreements on geographical indication rights for Arabica Coffee in the perspective of contract law to see how the rights and obligations of the parties in the profit-sharing agreement on the products of IG Arabica Korintjo Sumatra Coffee and Sungai Full Arabica Coffee, the legal basis that can be referred to is Article 66 of the Trademark Law and Geographical Indications. The article regulates actions that are considered a violation of rights, namely the use of GI either directly or indirectly that does not meet the GI document. With such use, it can be shown that: (1) the goods/products are comparable to the quality protected by GI; (2) benefit from the use of the name of its territory; (3) benefit from the reputation of GI so that it can mislead the public regarding the origin of an item. This situation can be seen from the appearance of the identity of the goods/products on the packaging, information on advertisements and other marketing activities. This is in the concept of IPR related to unfair competition in trade.

The purpose of the regulation on GI is in principle to maintain healthy, fair business competition, protect consumers, as well as protect Micro, Small, and Medium Enterprises and domestic industries that have the potential for free trade and markets. The purpose of the regulation on GI is in principle to maintain healthy, fair business competition, protect consumers, as well as protect Micro, Small, and Medium Enterprises and domestic industries that have the potential for free trade and markets. The existing concept is closely related to the fair distribution of benefits, although it is an important debate in the conservation and development of biological resources (Nur Ghena, 2017, 17).

How to share profits, an agreement that refers to contract law is needed. Contracts or agreements generally originate from an engagement (1233 BW) with freedom as

regulated in Article 1338 of the Civil Code (KUHperdata). The contractual principle is used as the basis for the protection of know-how before the contract is closed, the contract runs, and at the end of the contract (Riandhani, 2019, p. 18).

With the existence of a contract for the utilization of geographical indication rights, the balance between the parties concerned can be seen as a form of legal protection. Legal protection in this case is that the government is obliged to provide a portion so that IP owners, whether individuals, groups or business entities, can use their rights and exploit them comfortably. So that it can provide a good economic climate for the nation and state [4].

The idea of benefit sharing in GI needs to be paid attention to considering that the regulation on profit sharing or profit sharing is private but with unique characteristics. In UUM and geographical indications, special provisions relating to the sharing of collective benefits follow the concepts on trademark protection which refer to various international conventions. Legal protection for GI has been specifically regulated by the Government of Indonesia as communal collective ownership. Means of profit sharing or profit sharing is a very appropriate effort to utilize GI rights. In the understanding of contract law, the concept of profit sharing provides an understanding that the benefits obtained by the parties involved in the agreement must be in accordance with what is the goal and mutual agreement. The issue of benefit sharing so far is still only a discourse when it comes to the linkage to the use of genetic resources (Djulaeka, 2014, p. 10). The Nagoya Protocol regulates access to genetic resources and the concept of fair and equitable sharing is developed. There are main principles, namely fairness and justice there. The convention aims to provide guidelines in sharing the benefits arising from the existence of genetic resources fairly and equitably [3]. To become a bridge for the prospector relationship and the local community, it is necessary to concretize the concept of providing access and benefit sharing (ABS). The concept guarantees the interests of individuals and society. So that the balance of the individual's personal role with the interests of the community is achieved, using several principles, namely justice, economy, culture, and social [2].

GI got a place at the first international convention was at the Paris convention Paris Convention (1883) which is the first international agreement that provides protection. Article 1 paragraph 2 states that: "The protection of Industrial property has as its objects patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition. Furthermore, the Madrid Convention, which provides an understanding that: "All goods bearings a false or deceptive by wick one of the countries to wick this agreement applies or a place situated therein, is directly indicated as being the country or place of origin shall be sewn in importation into any of the said countries." From an international perspective related to benefit sharing, it can be seen from two aspects, namely universal and specific benefit sharing as expressed by Kadri Simm, that "the universal sharing of benefits-sharing that describes the entire positive potential of the genetic enterprise - and a specific benefit- sharing framework directed towards those who directly participate in research." "universal benefit-sharing has been based on concerns for justice in an international genetic research situation" (Kadri Simm, 2005, p. 8).

In general, contracts in the civil law system are regulated in the *Burgelijk Wetboek* (BW). Article 1320 as the basis for determining the conditions for the validity of the agreement, which includes agreement, skills, certain matters, and lawful causes. In a profit-sharing agreement, the first thing to describe is an agreement between the parties to the agreement. Parties in this agreement can be coffee-producing farmers with cooperatives, or BUMDs with other parties. The usual agreements regarding its use and commercialization. In the utilization of GI rights on the principle of profit sharing, the principles of propriety and fairness are also considered. The subjective element of the agreement is very important in determining the things to be included in the agreement. Where the agreement will be continued with subjective conditions of competence, namely the ability to act legally, both individually and as a legal entity. Subjective conditions that have been fulfilled continue to the main content of the agreement in the form of objective conditions, namely certain objects and legal causes. GI products get rights from countries with exclusive rights that can be used economically. That is the purpose of the agreement. The profit-sharing or profit-sharing agreement on GI rights refers to book III BW on engagements.

Agreement is a tool to measure the implementation of agreements. The agreement made by the parties is valid as law. As for the relationship with the Nagoya Protocol which was ratified in Law Number 11 of 2013 it can be referred to see how access to genetic resources and the fair and balanced distribution of benefits from their use are. Although there are still problems at the empirical level in relation to local communities, the environment and the perpetuation of traditional knowledge that supports GI products. Profit sharing in MPIG cooperatives has not applied the principle that GI is a right to intangible objects. Namely intellectual property rights. Royalties for the use of GI rights have not been seen in the agreements. In fact, it can be seen that there are many brands that are free from coffee that are produced by the community, not using the IG logo, but using the name of the IG area.

4 Conclusion

The results of the study show that the role of local governments in the utilization of GI products for Sumatran Kerinci Arabica coffee and Sungai Full Arabica coffee is still not optimally carried out. From the coffee farmer's perspective, it can be seen that they do not fully understand the meaning and benefits of GI rights. The profit sharing pattern has not been maximized by utilizing IG products. Contracts or agreements that fulfill the concept of IPR have not been found. For the pattern of profit sharing or profit sharing for GI products, the agreement has not referred to related international conventions and GI. The concept of justice in the agreement has not been seen. Still done orally and traditionally. Regarding the research results, there are theoretical and practical suggestions. Nor methodological. Through these three aspects, it is expected to provide an understanding of scientific responsibility in an effort to develop theories regarding intellectual property rights and contract law. Based on the experience experienced in conducting research and from the results of the study, the researcher can provide suggestions to improve further research. Theoretical Suggestions For further research, it is expected to look for other factors and explore concepts related to profit sharing contracts for GI products.

This research is expected to provide an understanding of GI as one of the greatest potentials of Indonesia's natural resources. Academic Suggestions on The object of this study is focused on a potential GI of coffee that emphasizes the dependent variable, so that it has an impact on the generalization of the study which is limited. This provides an opportunity for further studies to develop models in a wider context. However, caution is needed in observing the characteristics inherent in the object of study. Practical suggestions for this research are suggested to indigenous peoples or local communities who have the potential to produce GI products to preserve and uphold the inherent values. So that the sustainability of registered GI products can be maintained their characteristics and quality. Farmers understand the concept of GI so that they can further increase the value of economic welfare from the impact of GI products in their area. For local governments, they should carry out the mandate of the law and PP GI so that the use and commercialization of GI products can feel more real and have a domino effect on other sectors in the product area with GI rights. Provide policies that support the sustainability of their rights.

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