

LEGAL PROTECTION OF INDICATION OF THE ORIGIN OF TRADITIONAL FOOD PRODUCTS FROM SMALL AND MEDIUM MICRO ENTERPRISES AS A MEANS OF MAKING LOCAL ECONOMY

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LEGAL PROTECTION OF INDICATION OF THE ORIGIN OF TRADITIONAL FOOD PRODUCTS FROM SMALL AND MEDIUM MICRO ENTERPRISES AS A MEANS OF MAKING LOCAL ECONOMY

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The State of Indonesia is a country that has abundant natural wealth, among which are related to the traditional culture of Indonesia society. Traditional culture among others in the popular traditional food that is the result of creations and characteristics of traditional societies in Indonesia. Traditional food can be used as a means of business to improve the economy of the Region, namely by providing protection against Intellectual Property Rights. Intellectual Property Rights which are divided into 7 regimes, Patents, Trademark Rights, Copyright, Trade Secret, Industrial Design, Layout Design of Integrated Circuit and Plant Variet. One regime about the only 3 articles. The three articles are Article 63, Article 64, and Article 65 of Law no. 20 of 2016, on Trademark and Geographical Indication as well as Government Regulation no. 50 Year 2007 on Geographical Indications. Both regulations can be used as a model to provide protection to business actors who produce traditional food products that have the taste and characteristics of origin from the producing regions. Legal protection for traditional food products resulting from Micro Small and Medium Enterprises seen from Intellectual Property Rights material can be protected one of them with Origin Indication, as regulated in Law no. 20 of the Year 2016 About the Brand even though only 3 articles specifically set the Origin Indication. Article 64: Origin is a hallmark of goods and / or services not directly related to natural factors, and the Indication of the origin is also directly protected without registration as provided for in Article 63 otherwise: The origin indication is protected without the obligation of registration or declarative as a sign indicating the origin of goods and / or services used in trading. From these two articles, it is easy for UMKM actors to get their protection based on the characteristics of the origin of the traditional food products concerned, so as to empower the economy of the traditional food producers in general and the regional government in particular. The responsibility of the government to empower traditional food of UMKM results can be seen from the release of legislation both at the central and Geographical Indications. Law n0. 7 of 1996 on Food, and Law no. 23 of 2009 on Health. At the regional level, the issuance of Provincial Regulation No Provincial Regulation No. 5 of 2012 on Intellectual Property Protection.

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Keywords: Origin Indication, Traditional Food Micro Medium Enterprises, Regional Economy.

A. Preliminary

Intellectual Property Rights in the State of Indonesia are in fact a very problematic matter. This is based on the background of the legal history that regulates it also reflects a transitional period which is described as the face of the law resting on two walking legs, where one foot is tread on a modern legal style, while the other foot is still treading a traditional legal style. This results in the thought that if they work and their work is beneficial to many people, they will feel proud and not really bother if it turns out that other people imitate them, even feel that they have benefited because their work has been spread even known to many people.

The existence of such an opinion raises a problem in Intellectual Property Rights, including for Micro, Small and Medium Enterprises (MSMEs) in

traditional food products that are characteristic of a certain area, even though with the characteristics of traditional food products it is hoped that it can make one of the potential improvements. community economy as a form of improvement in the national economy, namely by means of other parties who will produce traditional food must obtain permission from the owner or owner of the traditional food product.

The development of the Intellectual Property Rights Regulation is adjusted to the progress of the economy not only in the State of Indonesia but also following the development of the international economy, so that the regime or part of the law regulating Intellectual Property Rights is divided into 7 parts, namely (1) Law No. 29 of 2000 concerning Plant Varieties. (2) Law no. 30 on Trade Secrets. (3) Law no. 31 of 2000 concerning Industrial Design. (4)

Law no. 32 concerning Layout Design of Integrated Circuits, (5) Law no. 28 of 2014 concerning Copyright, (6) UU no. 13 of 2016 concerning Patents, and (7) Law no. 20 of 2016 concerning Brand.

Observe Law no. 20 of 2016 concerning Marks and Geographical Indications, there are articles that regulate Indication of Origin, namely Article 63 and Article 64 where Article 63 states, that the indication of origin is protected without going through the obligation of registration or declaratively as a sign indicating the origin of a free and used item service, in trade. Article 64 states that the indication of origin is a characteristic of the origin of goods and or services that are not directly related to natural factors. These provisions have been regulated in Government Regulation Number 51 of 2007 concerning Geographical Indications and Indications of Origin

In connection with the regulation of the indication of origin, it can actually provide protection to the party producing the invention, including in the form of traditional food products that have regional characteristics by following the mechanisms that have been determined in accordance with the regulations. The findings that come from the creation of traditional food products that have the characteristics of the origin of the region, need to be respected and get protection, considering that the creation is a job using intellectual abilities, so the person who produces it needs to get ownership in the form of natural rights (natural).

These creations can be produced either individually or in groups, and in practice they can be realized in the form of a large or small scale business. To all business actors in general and especially Micro, Small and Medium Enterprises (UMKM), so that it will spur and increase creativity or innovation in general, in order to develop their business. In addition, it is hoped that as an effort to increase income and employment for the community where the traditional food products originate.

When examined from the background of the problem, the problem can be formulated as follows:

1. How Important is the Importance of Legal Protection for traditional food products produced by Micro, Small and Medium Enterprises (MSMEs) in realizing the Regional Economy
2. What is the responsibility of the Regional Government in providing legal protection to Micro, Small and Medium Enterprises actors based on indications of origin which are part of IPR as a means of realizing the Regional Economy.

B. Discussion

1. The Importance of IPR Legal Protection for Traditional Food Products Produced by Micro, Small and Medium Enterprises (MSMEs) in Realizing the Regional Economy

With regard to the legal protection of IPR protection for traditional food products based on indications of origin produced by Micro, Small and Medium Enterprises (MSMEs), based on the philosophy of legal protection contained in the Preamble to the 1945 Constitution of the Republic of Indonesia, mandating that the purpose of establishing an Indonesian Government is as follows:

"... to protect the entire Indonesian nation, and all spilled areas of Indonesia, promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice."

This mandate is followed up in the formulation of articles contained in the Body of the 1945 Constitution, in an effort to create general welfare and social justice Article 33 paragraph (4) of the 1945 Constitution. The fourth amendment gives the direction that the national economy is carried out based on the principle of economic democracy with the principle of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining a balance between progress and national economic unity.

From an economic perspective, law has duties including regulating and empowering business actors to produce well by meeting predetermined quality standards, protecting small entrepreneurs, and maintaining healthy business competition. One of the government's duties in regulating the empowerment of the community through legal protection in the economic sector, among others, is the issuance of Law No. 20 of 2016 concerning Trademarks, in which there are 3 Articles regulating Indication of Origin, can be used to provide legal protection for traditional food products for Micro, Small and Medium Enterprises (MSMEs) as one of the potential supports for the economy of the Indonesian people.

Regarding business actors, especially MSMEs, they must understand the products they use, especially traditional food products that require legal protection. In the Indonesian national law, the protection of Origin Indications at this time has not been regulated separately in the form of statutory regulations, but is still part of the law that regulates Marks and Geographical Indications which only consists of three articles, namely Article 63, Article 64, and Art 65.

Article 63 determines that an Indication of Origin is protected without going through the

obligation of registration or declaratively as a sign indicating the true origin of a good / service and used in trade. If it is related to the concept of the objectives of Community Development in a company that focuses on the surrounding environment, namely

- 1) support the efforts made by LGs, especially at the village and community levels to improve socio-economic and cultural conditions around the company's area;
- 2) provide employment and business opportunities for the community;
- 3) assist local governments in the context of poverty alleviation and regional economic development.

Furthermore, looking at Article 63, the government is provided opportunities for local governments to provide protection to MSMEs that produce traditional food that is in accordance with the characteristics and characteristics of the region of origin, this is intended to obtain economic value without having to register with the Director General of IPR. This article is in line with the above concept of Community Development goals from Budimanta, namely relating to the first objective of supporting the efforts made by the local government, especially at the village and community levels to improve better socio-economic and cultural conditions around the company's area. This means that Micro, Small and Medium Enterprises actors who produce traditional food products are generally found in regions, especially in villages, so that MSMEs that produce traditional food are in accordance with the characteristics and characteristics of the region of origin. That is what is meant by an indication of origin.

Likewise, the content of Article 64 states that Indication of Origin is a characteristic of the origin of goods and / or services that are not directly related to natural factors, namely, among others, traditional food products produced by MSMEs that have their own characteristics and characteristics.

The content of Article 65 of Law No. 20/2016 on Marks and Geographical Indications determines that geographical indications and indications of origin will be further regulated by a Ministerial Regulation. Based on the mandate of this article, the Ministerial Regulation does not yet exist. Meanwhile, what is used a legal basis for indication of origin other than Law Number 20 of 2016 concerning Trademarks and Geographical Indications is still being used Government Regulation Number 50 of 2007 concerning Geographical Indications and Indications of Origin. However, after observing the contents of the Government regulation, the content tends to be

more geographic than indicative of Origin, even though the geographical indication and the result are very different.

The few articles regulating the indication of origin have resulted in a narrow general interpretation both among legal experts and for the general public. If there is a discussion of an Indication of Origin, what is being discussed is only a kind of trademark whose function is to distinguish one product from another, even though the Origin Indication is the identity of the origin of a product which has specific characteristics and characteristics of origin of the region concerned which clearly has economic value.

Furthermore, the protection of the Indication of Origin does not require originality as well as other intellectual property rights or the date of the invention as a result of the invention of the Patented material. In Indication of Origin, it only needs to be proven that a name that is carried by an item, production, or related material work, has unique characteristics that come from the influence of natural factors and local cultural history. Thus the protection of the Indication of Origin really upholds the local characteristics according to its name, it is intended to protect and respect the actual place of origin of the work.

In relation to the regional economy, one of the characteristics of this Indication of Origin includes traditional food products produced by an area that elevate the local culture of the region concerned, which can be described as follows:

1. Oncom Cirengit is a business product of the Cirengit community that has its own characteristics and taste, where the name Cirengit is the producer of the oncom product.
2. Wajit Cililin, with the mention of this identity is a characteristic of the Cililin area as one of the wajit-producing centers that puts forward the Cililin regional identity which produces traditional food products with different flavors from other regions which actually produce the same wajit product but have a different taste.
3. Rujak Ciherang, generally the people of Bandung know that traditional food in the form of rujak spices which have the characteristics of the basic ingredients, especially the taste that is different from other rujak spices, with the name Ciherang salad is an identity with the distinctive taste of the rujak spices made or produced by business actors. from the Ciherang area.
4. Garut Dodol, Garut area, one of the areas where the people carry out a lot of business activities to produce a product in the form

of dodol, to introduce the product the dodol entrepreneur gives the brand itself as a differentiator for other dodol products, but the Garut area has the characteristics of producing traditional food products which already attached to the name of the area, namely dodol Garut.

5. Galendo, Sale Pisang, and Serundeng Kelapa, are traditional food products produced by UMKM that have characteristics produced by Ciamis Regency. Interestingly, the ownership of the Indication of Origin which is now commonly found and recognized in many countries is collective ownership and not individual ownership, besides that once the protection is protected while its quality is maintained, all that needs to be done is to ensure that the related works can be called goods or products.

In addition, the work or product is still proven to be cared for, developed, and becomes the characteristic identity of the community group living in that area as a regional unit (cluster) because the Origin Indication has the longest coverage. Then the territorial unity can include one city, one village, several adjacent villages so that the economic impact can not only be felt by the community who are traditional food entrepreneurs, but for local governments it can also be used as a source of local revenue where the business actor is part of the region. concerned.

2. Responsibilities of Local Government in Providing Protection to Micro, Small and Medium Enterprises based on Indications of Origin which are Part of Intellectual Property Rights as a means of Improving the Regional Economy.

Indication of origin is a characteristic of the origin of goods and or services which is not directly related to natural factors. Indication of the origin of one of the regimes of IPR that is least regulated.

Indication of Origin as regulated in Articles 63, 64, and 65 of Law no. 20 of 2016 concerning Trademarks and Geographical Indications, although only 3 (three) articles regulate it and Article 65 states that it is further regulated in a Ministerial Decree and in fact there is PP No. 51 of 2007 concerning Geographical Indications, .

Food one of the processed food products, including food is a basic human need whose fulfillment is the human right of every Indonesian people in realizing quality human resources to carry

out national development. Food that is safe and of good quality, nutritious, diverse and efficiently available are the main requirements that must be met in the effort to implement a food system.

The government continues to make efforts to empower these food products, both in the form of traditional food categories so that they can compete with other food products, namely by making an effort to improve, including other laws and regulations, including the relationship with:

1. UU no. 7 of 1996 concerning Food. In it discussed the objectives:
 - a. Availability of food that meets the requirements of safety, quality and nutrition for the benefit of human health.
 - b. The creation of an honest and responsible food trade.
 - c. Adequacy level of food at reasonable and affordable prices in accordance with the needs of the community.
2. Law Number 23 Year 1992 concerning Health regulates and provides protection for consumers in the health sector. This is reflected in the rights owned by the community to obtain an optimal degree of health¹. Health efforts are made to obtain the optimal degree of health, among others, through safeguarding processed food products (food and beverage) as well as healing diseases and restoring health².

The efforts made by the government in making Legislation must also be supported by business actors, especially MSMEs in implementing the regulatory mechanism, including business actors engaged in traditional food products must maintain the authenticity of these food products in accordance with the characteristics of the food product producing regions. concerned.

In practice, supervision can be divided into two types, namely supervision before the product enters the market, and when the product has been circulating on the market.

1) Supervision Before Products Entering Market.

Made and fulfilling standard requirements and applicable laws and regulations, including SNI institutions (Indonesian National Standard. SNI is indispensable for its existence when the results of a product, whether food products or other products, will be traded on an export-import basis, it is necessary to have a Java Kenanga certificate in Overseas or certificates of original or also known as certificates of the area of origin where the food

product is produced, so that its function is to make the competitiveness of the products of one another.

The Java Kenanga Certificate as the provision of international labeling is a realization of the international provisions contained in the General Labeling Requirement In Reg. 5 Of The 1996 which discusses food product labels, namely:

- a) *Name of the food* (food name)
- b) *Its ingredients* (materials used)
- c) *Minimum durability* (minimum product durability)
- d) *Storage requirements* (storage requirements)
- e) *Intruction as to use* (instructions for use)
- f) *The identity of the manufacture* (producer identity).
- g) *The origin or provenance of the food* (source or origin of the food or product).

2) After Products Circulating in the Market.

The laws and regulations have explicitly stated the various ways and various institutions / institutions that are tasked with monitoring the distribution and quality of products on the market. For example, supervision and monitoring of food quality (food and beverage) is carried out by the Food and Drug Inspection Agency (BPOM), the Ministry of Industry and the Ministry of Trade. Supervision and monitoring are carried out periodically, by taking samples directly from the market or based on public complaints which are then followed by testing the products circulating in the market.

competence in the field of supervision is of course the main motor in carrying out the function of controlling food (Food - Beverage) in Indonesia. For this reason, BPOM is given the authority to conduct safety, quality and nutrition assessments as well as food labels for food products before distribution. If it meets the requirements, it will be given a food product registration number and declared ready for distribution. This provision is mandatory for domestic products as well as imported products.

The mechanism is regulated in the Decree of the Head of BPOM No. HK.00 / 05 / 1.2569 Concerning Criteria and Procedure for Assessment of Food Products. Provisions regarding food labels as required by the provisions of the Food and Drug Supervisory Agency (BPOM), namely:

- a) Labels must use the Indonesian language, using Latin letters in them, especially for imports;
- b) Labels must be affixed or inserted into or integrated with the food packaging;
- c) The label must state the expiration time;
- d) The label must include a description of the product composition and the weight of its contents;

- e) The label must include the item code, or a reference to the adequacy of nutrition values;
- f) The label must include the address of the manufacturer.

Traditional food products produced by MSMEs are also inseparable from the mechanisms determined by the government so that these traditional food products can compete in the market, and become a means of improving the economy of the business community, and local governments that produce food produced by the relevant regional MSMEs, and can be used as one of the means of Regional Original Income

As for the form of the responsibility of the Regional Government in providing legal protection to Micro, Small and Medium Enterprises actors based on indications of origin which are part of IPR as a means of realizing the Regional Economy, if it is linked to the principle of regional autonomy based on Law Number 23 of 2014 concerning Regional Government that government affairs what is regulated the law will be efficient and effective if carried out in order to increase the effectiveness of regional autonomy implementation, it is necessary for the Regional Government to provide a new formula in encouraging regions to increase financial resources, as well as transferring regional financial burdens by means of empowering various existing regional potentials. , which is seen as potential for the welfare of the community. One them is by optimizing the economic rights of geographical indications and indications of origin in an area.

Protection efforts from the government to its citizens with the form of legal protection, especially protection of Indication of Origin in West Java, is contained in the Provincial Regulation Number 5 of 2012 concerning Intellectual Property Protection, that West Java Province has various works of copyright, initiative, and works of both society that are objects or intangibles that must be preserved, protected, fostered and developed.

Regarding indications of origin, Provincial Regulation Number 5 of 2012 concerning Protection of Intellectual Property in Article 4 paragraph (2) letter b number 2 stipulates that the Regional Government can facilitate the registration of IPR and related rights, including geographical indications and indications of origin. As for paragraph (3) letter e states that IPR registration facilities and related rights are granted, among others, to cooperatives, micro, small and medium enterprises.

According to Article 5 of the Regional Regulation it is determined that the certification of IPR registration and related rights as referred to in Article 4, is based on the principles:

- a. justice, with the consideration of a person or persons or legal entity producing a work based on their intellectual ability, must receive a fair reward in the form of economic and moral rights, including a sense of security because of the protection and recognition of their work;
- b. economy, with the consideration of IPR and related rights having benefits and economic value which is a form of wealth for the owner to get royalties;
- c. culture, with the consideration of the growth and development of science, art and literature has a very large meaning for the improvement of the standard of life, civilization and human dignity, so as to generate motivation to give birth to new creations;
- d. social, with the consideration that there are people who produce works and meet the requirements to be granted IPR registration facilitation and related rights, but do not have the financial capacity to register independently; and
- e. selective, with the consideration that only the community or community groups who do not have the financial capacity to register IPRs and related rights independently can be facilitated by the Regional Government.

13 Furthermore, Article 16 determines the protection of Geographical Indications and Indications of Origin as referred to in Article 7 paragraph (2) letter b shall be given to specifications of production methods, product quality specifications, names, and reputation or other characteristics that distinguish similar products.

As for Article 18 of the Regional Regulation, it determines that an Indication of Origin is protected as a sign that:

- a. meets the qualifications as a Geographical Indication but is not registered; and
- b. solely shows the origin of a good or service.

On the other hand, the protection of the Regional Government of West Java Province for traditional food is contained in the West Java Provincial Regulation concerning Protection of Intellectual Property Article 21 paragraph (1) in the Regional Regulation, it is said that "Regional Government provides protection for Regional culture, including traditional food products.

This form of protection at the provincial level in West Java should also be implemented at the District City level. However, after being traced in documents and research results, there is no specific protection of the district / city government for traditional food products produced by MSMEs, especially in the form of regulations. Based on the results of the documentation search, the responsibilities of the regency / municipal

government are still in the form of guidance and marketing.

One form of protection for traditional food products in Ciamis Regency does not specifically regulate it, but it can be seen implicitly from Ciamis Regent Regulation Number 58 of 2016 concerning the Duties, Functions and Work Procedures of the Organizational Elements of the Tourism Office Article 4 paragraph (2) which determines the following:

(2) The Head of the Tourism Office in carrying out the tasks referred to in paragraph (1) carries out functions: formulating policies for the implementation of tourism affairs which include tourism destinations, tourism marketing, developing the creative economy through utilization and protection of intellectual property rights, developing tourism resources and the creative economy in accordance with the scope of his duties. ;

As in Bandung Regency, the efforts of the Regional Government of Bandung Regency are found in the Bandung Regency Regional Regulation Number 7 of 2002 concerning the Authority of Bandung Regency. Based on the search for documents, the authors found that one of the authorities in the field of food security is in the form of promotion of local food and traditional food development promotion.

C. Conclusion

Legal protection for traditional food products produced by Micro, Small and Medium Enterprises, seen from the material of Intellectual Property Rights, can be protected, one of which is an Indication of Origin, as regulated in Law No. 20 of 2016 concerning Trademarks, although only 2 articles specifically regulate Indications of Origin. Article 64 states: Indication of Origin is a characteristic of the origin of goods and / or services that are not directly related to natural factors, and this Indication of Origin is also directly protected without needing to be registered. Article 63 states: Indication of Origin is protected without going through the obligation of registration or by declarative as a sign indicating the origin of the goods and / or services used in trade.

The responsibility of the government to empower the traditional food produced by UMKM can be seen from the issuance of laws and regulations at both the central and regional levels. At the central level, the issuance of Law No. 20/2016 on Trademarks and Geographical Indications, UU no. 7 of 1996 concerning Food, and Law no. 23 of 2009 concerning Health. As for the regional level, the

discharge Provincial Regulation Number 5 of 2012 concerning Intellectual Property Protection.¹¹

As for suggestions: namely the rules that regulate Origin Indication are very narrow, which is regulated in Law no. 20 of 2016 concerning Trademarks consists of 3 Articles, namely Articles 63, 64 and 65. It is hoped that the Government can make specific rules because the Indication of Origin has a unique character that comes from the influence of natural factors and local cultural history, so the protection of the Indication of Origin is true. uphold local characteristics.

The socialization of Intellectual Property Rights material must be able to reach rural communities, because in these rural communities there is a traditional culture, one of which is traditional food, so that people, especially MSMEs, can experience economic benefits both for the mop; for my business or for the Regional Government.

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¹ See the provisions of Article 4 of Law Number 23 Year 1992 concerning Health.

² *Ibid.*. Article 11 paragraph (1) letters c and h.

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