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Legal Protection Towards Geographical Indication of Meranti Liberika Coffee According to Law Number 20 of 2016 on Trademarks and Geographical Indications

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1

Abstract--Government of the Republic of Indonesia has declared that 2018 is the year of Geographical Indication (GI). Riau Province has its registered GI product; Rangsang Meranti Liberika Coffee originating from West Kedabu Village, Rangsang Pesisir Subdistrict, Kepulauan Meranti Regency, Riau Province. This paper will analyze on how is the legal protection towards registered GI of Rangsang Meranti Liberika Coffee according to Law No. 20 of 2016 concerning Trademark and Geographical Indication and what are the constraints in legal protection towards GI on coffee according to Law No. 20 of 2016. The researchers used direct observation and interviews with local public and private actors and supported secondary data sourced from primary legal materials in the form of regulations related to Trademark and GI as well as secondary legal material. From the study can be concluded that the program of Indonesian Government related to the registration and protection of GI, especially in Riau Province, can be said to be not optimal because there is no registration of GI from each district in Riau Province, also the GI Managing Group of Rangsang Meranti Liberika Coffee (MPKLRM) thinks that legal protection by the government to the product is lacking because it was not following Article 70 of Law No. 20 of 2016 as well as incomplete regulatory instruments. Further, lack of information regarding Rangsang Meranti Liberika Coffee to local people also lead to lack of knowledge of the coffee.

1

Keywords- Coffee; Geographical Indication; Intellectual Property Right; Liberika Meranti

I. INTRODUCTION

Intellectual property rights (IPR) are system that is currently attached to the modern system of life. Intellectual property law continues to evolve, along with the development of science and technology. Intellectual property rights have become a global issue that must be faced by both developed and developing countries. Developed countries have played an active role in the utilization of IP intending to increase the national economic development of these countries. In order to avoid misuse, legal protection of intellectual property rights has

become an international basis because it involves the interests of various respective countries. Therefore, intellectual property has become a substance in international treaties which are the source of international law.[1] The international treaty mentioned before is Declaration of Human Rights by the United Nations, which was ratified on December 10 1948. In article 27, paragraph 2. Therefore, an international organization was formed under the United Nations, which covers intellectual property globally called World Intellectual Property Organization (WIPO) on July 14, 1967.

Intellectual property consists of two main groups, namely copyright and industrial property rights.[2] Copyright refers to copyright works in science, art, and literature. Meanwhile, industrial property rights consist of patents, trademarks and geographical indications, protection of plant varieties, trade secrets, industrial designs, and integrated layout designs. The grouping of intellectual property rights into copyright and industrial property rights is needed because of the differences between the work and inventions. On copyright, protection is automatically given by the State since the copyrighted work was created even though it has not been registered. Whereas in industrial property rights, protection will be given based on who registered first to the authority.

Geographical Indication (GI), as one of industrial property rights, have a fundamental difference when compared to other types of industrial property rights in which the subject of property rights is not private or individual, but communal, which means it belongs to a community. A GI is a field of IPRs that protects a product whose quality, local geographical conditions influence reputation or other characteristics. [3]

The owner of a GI is the applicant and the community group in the area where specific goods were produced who are competent to maintain, preserve and use the GI to their business. Legal protection for GIs can be provided if the

registration has been done. The purpose of registering GIs is to secure its legal certainty.

As an archipelago country that is rich in knowledge, traditions and culture, as well as a tropical climate that produces various kinds of goods with huge economic potential, Indonesia should have an adequate GIs protection system. Through the optimal protection of GIs, it is not only expected that environmental sustainability can be maintained, but it is also hoped that the empowerment of natural and human resources around can be maximized. GI also hoped to prevent potential labor migration to an urban area by creating opportunities and employment to produce certain goods that are protected with GIs and are expected to have significant economic value in that area.[4]

Based on article 22 of the TRIPs Agreement which states that "Geographical Indications are, for the purposes of this Agreement, indications which identify 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 characteristic of the good is essentially attributable to its geographical origin."

Meanwhile, according to the latest Trademark and Geographical Indications Law; Law No. 20 of 2016 concerning Trademark and Geographical Indication (Trademark and GI Law), GI is any indication which identifies goods and/or a product as originating from a particular region of which its geographical environment factors including nature, labour, or combination of both factors are attributable to a given reputation, quality, and characteristics of the produced goods and/or product. Several countries have made and implemented special regulations regarding GIs. Such as CHAMPAGNE wine (which is specially processed and indicated from Northeastern French), PARMA pork in Italy, Florida Orange from America, French Roquefort cheese protected by EU Regulation No.20181 / 92, Aguardente Bagaceira Bairrada wine from Portugal which is protected by EU Regulation No.2016 / 1067, and the Darjeeling Tea in India which is protected by US registration No.1,632,726.[5]

In Southeast Asia, several countries have also established legal provisions regarding GIs. Malaysia regulates GI in the Geographical Indication Act of Year 2000, one of which is Sabah Seaweed and Thailand in the Act on Protection of Geographical Indication B.E. 2546 (2003), one of whose products is Mali Khao Hom Thung Kula Rong-Hai Rice (Jasmine Rice). It shows that the countries in Southeast Asia have seriously considered the use of GIs.[5]

Some examples of registered GIs in Indonesia include Arabica Coffee Kintamani Bali, Cilembu Sumedang Sweet Potatoes, Salak Pondoh Sleman Yogyakarta, Aceh Patchouli Oil, which of course can improve the economic level of local communities in the region and the country's economy in general.

From several examples of GIs above, there is a fact that in Riau Province, there is a registered GI, namely Rangsang Meranti Liberika Coffee with Serial number - A No. 01 / IG / I / A / 2016, announced on 29 January 2016 - 29 April 2016, with Agenda No. IG.00.2014.00014 with the name Rangsang Meranti Liberika Coffee from Kedabu Barat Village, Rangsang Pesisir District, Kepulauan Meranti Regency, Riau Province.

The registration of the Rangsang Meranti Liberika Coffee is due to the efforts of the Masyarakat Peduli Kopi Liberika Rangsang Meranti (MPKLRM), a GI managing group chaired by Mr Al-Hakim, who want to protect a specific coffee which is locally originated, from being claimed by foreign parties or outsiders. This effort, of course, makes this Meranti specialty coffee has been marketed both on a national and international scale.

As the only registered GI in Riau Province, Rangsang Meranti Liberika Coffee has many problems. Some of the data related to the phenomenon that occurred in the protection of Rangsang Meranti Liberika Coffee got from the results of the pre-survey are as follows:

The main problem relates to the people of Meranti Regency who still do not care about a label or a brand. The fact that there are still many people in Meranti Regency who sell this coffee by not including the GI code on the coffee they market. It is become a severe obstacle and also becomes an opportunity for other parties, both by neighboring countries and parties from other regions who will claim that Rangsang Meranti Liberika coffee to be their brand.

The author then surveyed Rangsang Pesisir sub-district, Meranti Regency, an area where the coffee production and crops are cultivated. The MPKLRM secretary, Mr Amin, stated that there is a black market that sells Rangsang Meranti Liberika Coffee to Malaysian ports by boat. The coffee that is sold is the beans, not powder, which is very profitable for the Malaysian side to claim through different tastes.

The second phenomenon is the lack of the role of the government in the trade sector which causes the Community to have difficulty in marketing coffee products to the country widely, so they are unable to develop these products. Thus, what makes people prefer to sell Rangsang Meranti Liberika coffee to Malaysia through the black

market. This condition will be very detrimental to the state in terms of taxes, there is no transparency in selling their products, and there is no report to the government.

II. PROBLEMS

The problems arise are, First, how is the legal protection towards registered GI of Rangsang Meranti Liberika Coffee according to Trademark and GI Law? And Second, what is the constraint in legal protection towards GI on coffee according to Trademark and GI Law?

III. RESEARCH METHOD

This research will focus on how Rangsang Meranti Liberika Coffee as registered GI can be protected optimizely both from the side of the Government and the GI Managing Group. The researchers used direct observation and interviews with local public and private actors, such as DGIPR Regional Office of Riau in Riau, MPKLR members, also the farmers of Liberika Coffee Meranti, and supported secondary data sourced from primary legal materials in the form of regulations related to Trademark and GI as well as secondary legal material in the form of research results, textbooks, scientific journals, doctrine, and internet relevant to this study.[6] Data collection techniques used are field and literature studies. Data obtained will be analyzed qualitatively then presented descriptively.

IV. DISCUSSION

1. Legal Protection of Geographical Indications Rangsang Meranti Liberika Coffee according to Trademark and GI Law.

According to Phillipus M. Hadjon, legal protection is a government action which both preventive and comprehensive. Preventive legal protection aims to prevent disputes, which directs government actions to be careful in making decisions based on discretion and comprehensive protection aimed at preventing disputes, including their handling in the judiciary.[7] Legal protection is to protect human rights from being harmed by others, and this protection is given to the society in order to enjoy all the rights provided by law.[8]

In its function as protection of human interests, the law has a purpose. The main purpose of the law is to create an orderly society, to create order and balance. By achieving order in society, it is hoped that human interests will be protected. In achieving its objectives, the law has to divide rights and obligations among individuals in society,

share authority and regulate ways to solve legal problems and maintain legal certainty.[9]

In Article 1 point 1 Trademark and GI Law, stated that a Mark means any sign capable of being represented graphically in the form of drawings, logos, names, words, letters, numerals, colours arrangement, in 2 (two) and/or 3 (three) dimensional shape, sounds, holograms, or combination of 2 (two) or more of those elements to distinguish goods and/or services produced by a person or legal entity in trading goods and/or services.

Apart from being a differentiator, certain marks in everyday life are often seen as a guarantee of the quality of a good or service. Marks/brand describes the guarantee of personality (individuality) and the reputation of a product and service when traded. It is very useful for producers in business competition and at the same time provides protection to consumers. No less critical than trademark regulations in Indonesia, protection of geographical indications is also very important to obtain legal protection for a product, considering that geographical indications are a national potential that can become a leading commodity in both domestic and international trade.

GI is a part of IP that is deemed important to obtain legal protection. GI is a sign indicating the area of origin of an item, which due to geographical environmental factors including natural factors, human factors, or a combination of these two factors gives specific characteristics and qualities to the goods produced.

GI will only receive protection if it has been registered by the minister. The purpose of this registration is to assure legal protection certainty. The protection period can also last indefinitely as long as the characteristics and / or quality of the product still exists. In order to obtain the protection as referred to in paragraph (1), an applicant for GI must submit an application to the Minister.

Protection of GIs as part of IP cannot be separated from the consideration of the economic value attached to a property. This is because the use of labels or geographic indications describes the quality of the products or goods produced by a particular region or region. It is what will indirectly add economic value to the products or goods produced by the region or region.

Unlike other types of intellectual works which are the result of one's thoughts, GI is obtained based on the dominance of geographical environment factors that have unique characteristics on goods produced from an area. The protection provided is in the form of common property and is not part of private property.[10] Common property is a concept that prioritizes the rights owned by a group of

people or the community as rights owned by a registered GI.

Rangsang Meranti LiberikaCoffee is the only registered GI of Riau Province. It is evidenced by the registration of coffee originating from RangsangPesisir District, Kepulauan Meranti Regency to the Directorate of Trademarks, Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia, with the Official Gazette of Geographical Indications Series - A No. 01 / IG / I / A / 2016, announced on 29 January 2016 - 29 April 2016, with Agenda No. IG.00.2014.00014 with the name Rangsang Meranti LiberikaCoffee which is registered by the Masyarakat Peduli Kopi LiberikaRangsang Meranti (MPKLRM).

It shows that Rangsang Meranti Liberika Coffee is a common property owned by people who are members of the MPKLRM. They have "owner" rights which of course are different from "right to use" rights. Regarding the "right to use" rights can be given to other parties who wish to use and make further use of the coffee. The other party can be a private company that will process it later. With the registration of Rangsang Meranti Liberika Coffee to the Directorate General of Intellectual Property, shows that the Rangsang Meranti Liberika Coffee will get legal protection as what has been stated both in international and national instruments. Internationally, it has been regulated in the TRIPs Agreement in Article 22 to Article 24 of the agreement.

Article 22 paragraph 1 has regulated the meaning of GI which means that legal protection for goods/products is given to goods/products that have a certain reputation, characteristics, and quality due to the of factors from the region origin. Liberika Coffee Rangsang Meranti has a good reputation both national and international, and the characteristics and quality that are different from other regions make this coffee given legal protection as GI.

The characteristics and / or quality on which the protection is given is stated in the BoR, which also contains information on the influence of the geographical environment, natural factors, and human factors that affect the quality or characteristics of the goods. It also includes information about: maps, regions, history, and traditions, processing, quality testing methods, and labels used. The compilation of this book of requirements is carried out by the community group where the goods are produced.[11]

Legal protection is intended so that later Rangsang Meranti Liberika Coffee can be avoided from things that cause misunderstandings or mistakes against the community and avoid unfair business competition as contained in Article 22 (2) points (a) and (b) which states

² that: In Respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

- a) The use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as the geographical origin of the good
- b) Any use which constitutes an act of unfair competition within the meaning of Article 10 bi of the Paris Convention (1967)

There are various benefits obtained from the protection of GI internationally, which will later be useful for Rangsang Meranti Liberika Coffee:

1. GI can be used as a product marketing strategy in domestic and foreign trade;
2. Provide added value to the product and increase the welfare of its maker;
3. Improve the reputation of geographic indication products in international trade;
4. Equal treatment as a result of promotion from abroad, and;
5. Protection of GIs as a means of avoiding fraudulent competition.

Government intervention is enforced in legal protection against GIs,[12] which consists of outward protection and inward protection. Outward Protection means that the participation and concern of the State to strive for adequate protection internationally against the potential of products based on GIs that exist throughout Indonesia so that other countries do not easily misuse it.

It is useful for Rangsang Meranti Liberika Coffee which already has an export destination which is a form of international trade such as in Malaysia and Singapore. So that by registering it as a geographical indication, with the supervision of the Regional Government of the Kepulauan Meranti Regency, this Liberika Coffee can avoid unwanted things.

The Head of the Legal and Human Rights Service Division of the Riau Ministry of Law and Human Rights Regional Office stated that Rangsang Meranti Liberika Coffee was registered as a GI in order to maintain originality and avoid fraud in international trade activities. It is hoped that what happened at Gayo Mountain Coffee will not happen again.

Meanwhile, inward protection must be emphasized in an adequate statutory regulation, that the parties entitled to use GI are local communities who are in areas or areas that have the potential for protection of GI, including producers, or designated institutions that were located in

areas that have the potential for such GI. Other parties who are outside the said area or territory are not entitled to use GI labels. So that later it can help in increasing local income or the welfare of local communities.

The existence of Book of Requirements (BoR) requires the participation of the Regional Government as a public authority, as well as local producer associations or groups that have collaborated in determining whether GI can protect goods with distinctive regional characteristics or reputation. So that with the protection of GI can:

1. Increase regional or regional development;
2. Improve the welfare of the community by increasing the selling price of goods that are labelled with geographic indications, so that the income level of the local community will increase significantly;
3. Provide legal certainty on the origin of goods produced from each region;
4. Provide protection for consumers from fraudulent acts of origin of goods.

Protection of GI to Liberika Meranti Coffee as one of the manifestations of the MEA 2011-2015 Action Plan that has been previously established where one of the pillars discusses GIs. Further, it can help the development of the economic sector for people living in the Meranti Islands Regency area.

2. Constraints in Protection towards Geographical Indications of Coffee According to Trademark and GI Law

In realizing its legal protection, the GI of Rangsang Meranti Liberika Coffee has several constraints which the authors will describe:

1. The Role of the Meranti Regency Government.

Based on the author's research, after the author surveyed the RangsangPesisir District, Meranti Regency and also met directly with the Chairperson of the MPKLRM, the Regional Secretary of Meranti Regency and the head of the office section of the Meranti Regency Products and Crafts Promotion Building, the author has managed to collect some data about the role of the government of Meranti Regency and the obstacles that occur.

The chairman of the MPKLRM, stated that the government had not paid much attention to how this Rangsang Meranti Liberika Coffee is to be able to develop its production and make the icon of Meranti Regency.

Then what is most disappointing for the MPKLRM is because the government does not interfere so much to protect and preserve the Rangsang Meranti Liberika Coffee, it causes a bigger problem; the frequent occurrence of a kind of sale and purchase transaction of Rangsang Meranti Liberika Coffee beans which are sold to Malaysia through the black market. So that the claim arises that this Liberika coffee is coffee owned by the State of Malaysia.

There is no firm action from the Meranti Regency government against the sellers of Meranti Liberika Coffee who transact through the black market to be exported to Malaysia so that it will indirectly reduce or harm the Meranti Regency government in terms of taxes.

In 2018 the government launched programs related to GIs throughout Indonesia and stated that 2018 is the year of GIs. The government through the Ministry of Law and Human Rights in the field of intellectual property has made a program for 2018, because according to the mandate of Trademark and GI Law Article 71 Paragraph 1 the government is obliged to carry out guidance and socialization but according to the data obtained by the author, the government failed to make it GIs year.

2. Incomplete legal instruments

The regulations regarding GIs have been further regulated in Trademark and GI Law. The implementing regulations are contained in Government Regulation Number 51 of 2007 concerning GIs which previously complemented Law Number 15 of 2001 concerning Trademarks. Even though the main statutory regulations are no longer used and replaced with new ones, the implementing regulations remain in effect because they do not conflict with new laws and regulations.

In essence, the regulations governing GIs are indeed only one instrument. However, the substance in the instrument has stated that there will be instruments in the form of implementing regulations that will accompany the basic regulations regarding these GIs. Article 60 states "Further provisions regarding the requirements and procedures for registering GIs and the appointment of members, organizational structure, duties and functions of the GI Expert Team as referred to in Article 56 to Article 59 are regulated by a Ministerial Regulation." As well as Article 65 states "Further provisions regarding indication of origin as referred to in Article 63 and Article 64 are regulated by a Ministerial Regulation.". There is the word "regulated by a Ministerial Regulation" which of course indicates a further regulation. However, based on the search for data sources that the researchers have conducted, there are no further regulations in the form of Ministerial

Regulations related to GIs itself. Therefore, this indicates that the Geographical Indication instrument in Indonesia is incomplete and may create confusion in interpreting existing regulations.

With no details on the laws governing GI in Indonesia, it will certainly have an impact on the application of the legal system itself where the substance is essential to create the application of law (law enforcement). According to Lawrence M. Friedman, the substance of the law is an instrument or regulation that has been made by the authorities or the government so that the application of the law in the GI sector cannot run well.

3. Lack of Infrastructure support

From direct observation conducted by the authors, from Selatpanjang City to RangsangPesisir Village, takes about 35 minutes by using a *pompon* or boat to cross to RangsangPesisir Village. Furthermore, upon arrival at the port of the RangsangPesisir village must use motorcycle for about 2 hours to the place where the LiberikaRangsang Meranti Coffee is produced. The condition of the road is very bad, only one motorbike can pass at the same time. Thus, the biggest problem that occurs to farmers when they want to sell coffee out of the area. It took a lot of time and money just to sell the coffee.

Further, article 70 of Trademark and GI Law, contains a legal basis for the government to provide guidance and supervision to Coffee Farmers. More precisely, Article 70 paragraph 2 letter i: Facilitating the development, processing and marketing of geographically indicated goods and / or products.

However, the government never give guidance to the Community of LiberikaRangsang Meranti coffee, which has taken great pains to protect, preserve, even registered Liberika Meranti Coffee to be protected as GI. GI Managing Group had repeatedly asked the government to build a coffee warehouse and bean filtering machine, which so far has only been available one and still uses its services or human resources, the government has not fulfilled the request. Furthermore, there is no support from government in terms of production and marketing. Eventhough the LiberikaRangsang Meranti had been registered as GI, the government never promote it.

4. The threat of natural resource

Trademark and GI Law states that the period of protection to GI product is unlimited as long as the characteristics and qualities still exist. The part that has a significant impact on a Geographical Indication is natural factors. Natural factors experienced by Rangsang Meranti

Liberika Coffee can threaten the potential reputation and quality of the coffee itself. Liberika Coffee commodity is planted on the coast and begins to erode abrasion due to seawater. The abrasion or erosion of beaches in the coastal areas of the Meranti Islands has increased by a total of fifteen meters. Even though RangsangIsland is famous as a producer of Liberika coffee, abrasion has caused the intrusion of seawater into the land so that the salinity of underground water in this area is getting higher. In 2014 alone, the decline in production of Liberika Meranti coffee was due to seawater abrasion that killed 135 hectares of coffee from 1,175 hectares, which means as much as 11.5 percent. Therefore, it is necessary to protect existing natural resources.

V. CONCLUSION

The objective of legal protection for GI is to avoid consumer misunderstanding of certified goods as GIs and to avoid unfair business competition. Legal protection for GI of LiberikaRangsang Meranti Coffee is also needed to obtain legal certainty so that it can protect the registrant and the owner of the GI. This legal protection is further regulated in national instruments, namely Law Number 20 of 2016 concerning Trademarks and Geographical Indications and Government Regulation Number 51 of 2007 concerning Geographical Indications.

Even though it had been registered for years, the government of Rangsang Meranti Regency seems not put any consideration related to GI of Rangsang Meranti Liberika Coffee. Besides, there have been many sales transactions of Rangsang Meranti Liberika coffee through the black market. Incomplete regulatory instruments which lead to confusion, lack of information about Rangsang Meranti Liberika Coffee for local people, and abrasion of seawater reducing land for coffee plants are constraints that faced by the registered GI which threaten the existence of Rangsang Meranti Liberika Coffee.

It is need to note that the role of both the government and the MPKLRM should synergize regarding the continuity of GI of LiberikaRangsang Meranti Coffee. In one hand, the government could resolve with the problems of supervision and sea abrasion that could affect the product, the other hand, the MPKLRM should be more active in persuading the government to introduce the coffee to the world as well as reporting things that can harm the reputation of Rangsang Meranti LiberikaCoffee.

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