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Legal Protection of Geographical Indications in Jayapura City

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Abstract

This study aims to determine, analyze and explain the mapping of geographical indications in Jayapura City and legal protection of Papuan Geographical Indications in Jayapura City. The type of research used is empirical legal research because it is based on the idea that law is inseparable from the lives of its people in the form of values and attitudes/behaviors carried out so that in the view of empirical science, a normative approach to studying problems related to the protection of geographical indications in Jayapura City Papua is how the law is in reality in people's lives. The results of this study reveal that efforts to map geographical indications are carried out to determine the limits of cases of violation of geographical indications so that holders of geographical indication rights can file lawsuits against users of geographical indications without rights, in the form of compensation payments and termination. Use and destruction of geographical indication labels used without rights through registration and publication. Geographical indications are protected as long as the reputation, quality and characteristics that are the basis for granting geographical indication protection to an item are maintained. And protection will be removed if these provisions are not met, and/or are contrary to state ideology, legislation, morality, religion, decency and public order. While legal protection of geographical indications can be carried out in preventive and repressive forms. Preventive means preventive measures through refusal of registration and repressive payment of compensation.

Keywords: Legal Protection, Geographical Indications, Jayapura City.

Introduction

Indonesia has abundant natural wealth including natural resources and Indonesia as an archipelagic country rich in traditional knowledge, traditions, and culture, as well as a tropical climate produces various kinds of products that have considerable economic potential. Geographical Indications (GI) as one of the potential Intellectual Property (IP) owned by Indonesia. Therefore, it should be protected and utilized optimally. Since the enactment of Government Regulation (PP) Number 51 of 2007 concerning Geographical Indications dated September 4, 2007, which is the starting point for IP protection in Indonesia, finally with gratitude to God Almighty for His blessings and gifts, the Directorate General of Intellectual Property (DJKI) can play a role in efforts to protect Geographical Indications in Indonesia.

Indonesia as an archipelagic country rich in traditional knowledge, traditions, and culture, as well as a tropical climate produces various kinds of products that have considerable economic potential. Geographical Indications (GI) as one of the potential Intellectual Property (IP) owned

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by Indonesia. Therefore, it should be protected and utilized optimally. Geographical Indication, which is a sign that indicates the area of origin of an item due to geographical environmental factors, including natural factors, human factors, or a combination of both factors, provides certain characteristics and qualities to the goods produced.

As a follower of TRIPs, Indonesia re-arranges this international regulation into National Law Number 15 of 2001 concerning Trademarks and has been replaced by Law Number 20 of 2016 concerning Trademarks and Geographical Indications. In Article 56 of Law No. 15/2001, it is explained about Geographical Indications, that Geographical Indications are protected as a sign that indicates the area of origin of an item, which due to geographical environmental factors including natural factors, human factors, or a combination of both factors, provides certain characteristics and qualities to the goods produced.

The sign that is protected as a Geographical Indication is an identity that shows that an item comes from a certain place or area. And that place or area shows the quality and characteristics of a product.

The existence of geographical indication regulations in Trademark Law 15/2001 has given a signal that geographical indications will receive protection if they have been registered by parties that are considered to be able to represent the region, in this case an 'institution'. The existence of an 'institution' in the region has an important role in the sustainability of the protection of regional products that have the potential to be registered in the geographical indication regime.

The legal basis for Geographical Indications is contained in Article 56 paragraph (1) of Law Number 15 of 2001 concerning Trademarks, to be further regulated by its implementing instructions, namely Government Regulation (PP) No. 51 of 2007 concerning Geographical Indications. In addition, the operational devices that support the implementation of the PP are stated in the form of a Memorandum of Understanding (MoU) of three Ministers in 2011, namely the Minister of Law and Human Rights, the Minister of Home Affairs, and the Minister of Agriculture.

Definition of Geographical Indications in Article 56 of Law No. 15 of 2001 concerning Trademarks states that Geographical Indication is a sign that indicates the area of origin of an item, which due to geographical environmental factors including natural factors, human factors, or a combination of both factors, provides certain characteristics and quality to the goods produced.

Meanwhile, the definition of Geographical Indication according to Law No. 20 of 2016 concerning Trademarks and Geographical Indications, that Geographical Indication is a sign that indicates 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 both factors provides a certain reputation, quality, and characteristics to the goods and/or products produced. Meanwhile, the definition of the Right to Geographical Indication is an exclusive right granted by the state to the holder of a registered Geographical Indication right, as long as the reputation, quality, and characteristics that are the basis for granting protection to the Geographical Indication still exist.

Geographical Indication is a sign used on goods that have specific geographical authenticity and have quality or reputation based on their place of origin. In general, Geographical Indication is the name of the place of origin of the goods. Agricultural products usually have qualities that are formed from the place of production and are influenced by specific local factors, such as climate and soil. The function of a sign as a geographical indication is a matter of national law and consumer perception. Geographical indication is a sign that shows the area of origin of goods that is associated with quality, reputation or other characteristics that are in accordance with the geographical origin of the goods. In order to be protected by law, geographical indications must first be registered at the Indonesian Intellectual Property Rights (HKI) office.

Geographical Indication signs can be in the form of names and logos, namely the name of a place or geographical area or other specific signs that indicate the place of origin of the goods protected by Geographical Indication.

Geographical Indications provide protection for signs that identify a country's territory, or a region or area within that territory as the origin of goods, where the reputation, quality and characteristics of the goods are largely determined by the geographical factors concerned. Geographical indications are protected as a sign that indicates the area of origin of a good, which due to geographical environmental factors including natural factors, human factors, or a combination of both factors, gives certain characteristics and qualities to the goods produced. However, the characteristics of a Geographical Indication product are not always influenced by natural factors. Human intervention can also determine the uniqueness of a product. For example, Papuan Batik crafts. Like the holder of Trademark Rights, the holder of Geographical Indication Rights can prohibit other parties from using the same Geographical Indication. Violation of this rule causes the holder of Geographical Indication Rights to be able to sue other parties for compensation.

Unlike Trademark Rights that can be owned individually, ownership of Geographical Indications is not purely individualistic. Geographical Indications are more communal, owned jointly by the people of a particular region. However, for the registration process, it is represented by an institution that is given the authority to do so. The registration is submitted to the Directorate General of Intellectual Property Rights of the Ministry of Justice and Human Rights. In Papua Province, there are many natural resources, including Papuan Geographical Indications that need the attention of the Regional Government because they are potential that can be commercialized and also need to be protected. Papuan Geographical Indications are also a national potential that can be a superior commodity, both in domestic and international trade. Therefore, Papuan Geographical Indications need to receive attention from the Regional Government to be registered and protected.

Literature Review

Geographical Indications of Indonesia, A sign is protected as a Geographical Indication if it has been registered in the General List of Geographical Indications at the Directorate General.

Goods can be agricultural products, forest products, fishery products, processed products, handicrafts, or other goods. Geographical Indication signs can only be used on goods that meet the requirements as stated in the Requirements Book.

In the Trademark and Geographical Indication Law, the definition of Geographical Indication is explained, which is a sign indicating the area of origin of goods and/or products which due to geographical environmental factors including natural factors, human factors or a combination of both factors give a certain reputation, quality, and characteristics to the goods and/or products produced. The right to a Geographical Indication is an exclusive right granted by the state to the holder of a registered Geographical Indication right, as long as the reputation, quality, and characteristics that are the basis for granting protection to the Geographical Indication still exist. In addition to the definition of Geographical Indication and the Right to a Geographical Indication, it is also discussed that the Indication of Origin is protected without going through the obligation of registration or declaratively as a sign indicating the origin of goods and/or services that are true and used in trade. And the Indication of Origin is a characteristic of the origin of goods and/or services that is not directly related to natural factors

The issue of IPR as one of the issues in the context of 'a highly competitive economic region' which is closely related to business competition policies and consumer protection efforts. In order to prepare 'a highly competitive economic region', the existence of policies related to IPR can affect (a) culture, intellectual and artistic creativity and their commercialization; (b) efficient adoption and adaptation of more advanced technology; and (c) continuous learning to meet the ever-increasing threshold of performance expectations, and (d) being able to give birth to creative culture and inventions and ensure fairer access and benefits for all stakeholders. The ability to be creative in works that have IPR potential is 'a determinant of added value for the region' which is expected to be able to compete with the outside world. Increasing regional capacity to protect IPR as a basis for helping regions achieve economic integration in the future.

One part of the IPR regime that is currently being mapped out by many regions is the effort to protect superior products in regions that have the potential to be protected by geographical indications. This strategic objective focuses on the registration, protection, and enforcement of IPR in this case will enable regions to improve the quality and accessibility of IPR services. The conditions of each region are often unable to optimally carry out product mapping activities based on geographical indications, this is because the obstacles faced by the regions are almost the same, namely (1) local 'institutions' that have 'legal standing' are often inactive, (2) the ability of human resources and financial sources does not support providing maximum protection for superior regional products with the geographical indication regime, (3) the level of understanding of the importance of IPR protection, especially geographical indications, has not been felt by regional officials.

The implications for the protection of geographical indications as part of IPR indirectly re-examine the existence of geographical indication regulations in providing a significant contribution to improving the welfare of the community which is considered to provide justice for all parties, especially the community that has the potential for geographical indication-based products, as mandated in the provisions of Article 33 of the 1945 Constitution, especially

Paragraphs (3) and (4), that: (3) The land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people; (4) The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, independence, and by maintaining the balance of progress and unity of the national economy. Geographical indications as part of the IPR regime have greatly influenced government policies in the economic sector, especially in providing extra attention to the possibility of misuse by other parties who are not entitled. The government's interest in the protection of geographical indications is an integral part of public authority, so that the regulation and need for the protection of geographical indications is a reflection that Indonesia as a developing country has tried to meet the demands of one of the WTO-TRIPs agendas. Taking sides with the interests of the community is an inseparable part of 'ownership' reflected in the regulation of the geographical indication regime. 'Communal' ownership, which is clearly different from other IPR regimes, positions the State to play a more active role in providing protection to local communities that have the potential for products/goods based on geographical indications.

According to Satijipto Raharjo, legal protection is: "Providing protection for human rights (HAM) that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law" (Satijipto Raharjo, 2000). Maria Theresia Geme stated that: "Related to the state's actions to do something by (enforcing state law exclusively) with the aim of providing a guarantee of certainty of the rights of a person or group of people (Maria Theresia Geme, 2012).

Legal protection is also an effort regulated by law to prevent violations of IPR by unauthorized persons. Meanwhile, the purpose of legal protection of IPR is intended to provide legal clarity regarding the relationship between creations or inventions that are the result of human intellectual work with the creator or inventor or rights holder with the user who uses the intellectual work. The existence of legal clarity and the owner of intellectual property rights is a legal recognition and the provision of compensation given to people for the efforts and creative work of humans that have been created. Therefore, the law must provide protection to all parties in accordance with their legal status because everyone has the same position before the law.

Every law enforcement officer is clearly obliged to enforce the law and with the functioning of the rule of law, the law will indirectly provide protection for every legal relationship or all aspects of community life that are regulated by the law itself. According to Anthony D'Amato and Doris Estelle Long, that legal protection is often limited and that appreciation of intellectual property is left to the power of rights and community appreciation, and depends on the ability of thinkers and community tolerance to prevent imitation (Rahmi Jened Parinduri Nasution, 2013). Legal protection is a description of the functioning of the legal function to realize the objectives of the law, namely justice, benefit and legal certainty. Legal protection is a protection given to legal subjects in accordance with legal regulations, both preventive (prevention) and repressive (coercive) forms, both written and unwritten in order to enforce legal regulations.

Method

The type of research used is empirical legal research because it is based on the idea that law is inseparable from the lives of its people in the form of values and attitudes/behaviors carried out (law is not autonomous), so that in the view of empirical science, a normative approach to studying problems related to the protection of geographical indications in Jayapura City, Papua, how the law is in reality in people's lives. In addition, using Primary Data and Secondary Data. Primary data is data obtained directly from the field in the form of observation records and Secondary data is data obtained from literature, the Trademark and Geographical Indications Law, and the opinions of scholars related to Geographical Indications.

Result and Discussion

Geographical Indication Mapping Efforts

Geographical indication mapping efforts can be identified from the registration of geographical indications, as regulated in Articles 56 to 63 of Law Number 20 of 2016.

A Geographical Indication Application cannot be registered if:

a) is contrary to state ideology, laws and regulations, morality, religion, decency, and public involvement;
b) misleads or deceives the public regarding reputation, quality, characteristics, source of origin, manufacturing process of goods, and/or their uses; and
c) is a name that has been used as a similar plant variety, unless there is an additional equivalent word that indicates a similar geographical indication factor.

A Geographical Indication Application is rejected if:

a) The Geographical Indication Description Document cannot be proven to be true; and/or
b) has similarities in its entirety with a registered Geographical Indication.

Rejection as referred to in Article 56 paragraph (2) can be appealed to the Trademark Appeal Commission. The provisions regarding appeals as referred to in Article 28 to Article 32 shall apply mutatis mutandis to appeal requests as referred to in paragraph (1). The substantive examination of Geographical Indications shall be conducted by the Geographical Indication Expert Team. The provisions regarding the substantive examination of Trademarks as referred to in Article 23 to Article 26 shall apply mutatis mutandis to substantive examinations as referred to in paragraph (1).

The Geographical Indication Expert Team as referred to in Article 58 paragraph (I) shall be an independent team to conduct an assessment of the Geographical Indication Description Document and provide considerations/recommendations to the Minister in connection with the registration, amendment, cancellation, and/or supervision of national Geographical Indications. The members of the Geographical Indication Expert Team as referred to in paragraph (1) shall be a maximum of 15 (fifteen) people consisting of experts who have expertise in the field of Geographical Indications originating from:

a) representatives of the Minister;

b) representatives of the ministry in charge of agriculture, industry, trade, and/or other related ministries;
c) representatives of agencies or institutions authorized to supervise and/or test the quality of goods; and/or
d) other competent experts.

Members of the Geographical Indication Expert Team as referred to in paragraph (2) are appointed and dismissed by the Minister for a term of office of 5 (five) years. The Geographical Indication Expert Team is led by a chairperson who is selected from and by the members of the Geographical Indication Expert Team. In carrying out its duties and functions as referred to in paragraph (1), the Geographical Indication Expert Team is assisted by a technical assessment team whose membership is based on expertise.

Further provisions regarding the requirements and procedures for registering Geographical Indications and the appointment of members, organizational structure, duties, and functions of the Geographical Indication Expert Team as referred to in Articles 56 to 59 are regulated by a Ministerial Regulation.

Geographical Indications are protected as long as the reputation, quality, and characteristics that form the basis for granting Geographical Indication protection to an item are maintained. Geographical Indications can be removed if:

a) the provisions as referred to in paragraph (1) are not met; and/or
b) the provisions as referred to in Article 56 paragraph (1) letter a are violated.

The Geographical Indication Expert Team, on its own initiative or based on public reports, conducts research on the reputation, quality, and characteristics of registered Geographical Indications and reports it to the Minister. In the event that the Minister receives a report as referred to in paragraph (1) that does not originate from the Geographical Indication Expert Team, the Minister forwards the report to the Geographical Indication Expert Team no later than 30 (thirty) days from the date of receipt of the report.

Within a maximum of 6 (six) months from the date of receipt of the report as referred to in paragraph (2), the Geographical Indication Expert Team conducts an examination and notifies the Minister of the results of its decision and the steps that must be taken. In the event that the decision states that the Geographical Indication meets the requirements for deletion as referred to in Article 61 paragraph (2), within a maximum of 30 (thirty) days from the receipt of the decision as referred to in paragraph (3) the Minister shall carry out the deletion.

In the event that the Minister issues a decision to delete a Geographical Indication, the Minister shall notify the Applicant or his/her Attorney in writing and all Users of the Geographical Indication, or through his/her Attorney no later than 14 (fourteen) days from the receipt of the decision. Within a maximum of 30 (thirty) days from the decision on the deletion as referred to in paragraph (5), the decision shall be announced in the Official Gazette of Geographical Indications. (7) The announcement as referred to in paragraph (6) must state the deletion of the Geographical Indication and the termination of the right to use the Geographical Indication by the Users of the Geographical Indication.

Objections to the deletion of the Geographical Indication as referred to in paragraph (5) may be submitted to the Commercial Court no later than 3 (three) months from the receipt of the deletion decision.

Indication of origin is protected without going through registration obligations or declaratively as a sign that shows the true origin of goods and/or services and is used in trade. Indication of origin is a characteristic of the origin of goods and/or services that is not directly related to natural factors. Further provisions regarding indications of origin as referred to in Article 63 and Article 64 are regulated by the Ministerial Regulation.

Violations of Geographical Indications include:

a) use of Geographical Indications, either directly or indirectly on goods and/or products that do not meet the Geographical Indication Description Document;
b) use of a Geographical Indication sign, either directly or indirectly on goods and/or products that are protected or not protected with the intention to: show that the goods and/or products are comparable in quality to the goods and/or products protected by the Geographical Indication; gain profit from such use; or gain profit from the reputation of the Geographical Indication.
c) use of Geographical Indications that can mislead the public regarding the geographical origin of the goods;
d) use of Geographical Indications by non-registered Geographical Indication Users;
e) imitation or misuse that may be misleading in relation to the origin of goods and/or products or the quality of goods and/or products contained in: packaging or packaging; information in advertisements; information in documents regarding the goods and/or products; or information that may be misleading regarding their origin in a package.
f) other actions that may mislead the general public regarding the truth of the origin of the goods and/or products.

In the event that before or at the time of application for registration as a Geographical Indication, a sign is used in good faith by another party who is not entitled to register according to the provisions as referred to in Article 53 paragraph (3), the party in good faith may still use the sign for a period of 2 (two) years from the date the sign is registered as a Geographical Indication.

In the event that the sign as referred to in paragraph (1) has been registered as a Trademark, the Minister shall cancel and strike out the registration of the Trademark for all or part of the same type of goods after a period of 2 (two) years from the date the sign is registered as a Geographical Indication. The cancellation and striking out of the Trademark registration as referred to in paragraph (2) shall be notified in writing to the Trademark owner or his/her Attorney stating the reasons. The cancellation and striking out of the Trademark registration as referred to in paragraph (2) shall be recorded and announced in the Official Trademark Gazette.

The cancellation and striking out of the Trademark registration as referred to in paragraph (2) shall result in the termination of legal protection for the Trademark for all or part of the same type of goods. Objections to the cancellation and deletion as referred to in paragraph (2) may be submitted to the Commercial Court. A cassation may be filed against the decision of the

Commercial Court as referred to in paragraph (6). The holder of the Rights to Geographical Indications may file a lawsuit against the User of Geographical Indications without rights in the form of a request for compensation and termination of use and destruction of the Geographical Indication label used without rights.

Geographical Indications Development is carried out by the central government and/or regional governments in accordance with their authority. Development as referred to in paragraph (1) includes:

a) Preparation for fulfilling the requirements for Geographical Indication Application;
b) Application for registration of Geographical Indication;
c) Utilization and commercialization of Geographical Indication;
d) Socialization and understanding of the protection of Geographical Indication;
e) Mapping and inventory of potential Geographical Indication products;
f) training and assistance;
g) monitoring, evaluation, and development;
h) legal protection; and
i) facilitation of development, processing, and marketing of Geographical Indication goods and/or products.

Supervision of Geographical Indications is carried out by the central government and regional governments in accordance with their authority. Supervision as referred to in paragraph (1) may also be carried out by the community. Supervision as referred to in paragraph (1) and paragraph (2) is carried out for:

a) ensure the continued existence of the reputation, quality, and characteristics that are the basis for the issuance of Geographical Indications; and
b) prevent the unauthorized use of Geographical Indications.

The results of supervision as referred to in paragraph (2) shall be submitted to the Geographical Indication rights holder and/or the Minister. Further provisions regarding supervision as referred to in paragraph (1) to paragraph (4) shall be regulated in the Ministerial Regulation.

Preventive and Repressive Legal Protection Against Geographical Indications

Theoretically, the form of legal protection is divided into two forms, namely: preventive protection; and repressive protection. Preventive legal protection is legal protection that is preventive in nature. Protection provides an opportunity for the people to file objections (inspraak) on their opinions before a government decision gets a definitive form. Thus, this legal protection aims to prevent disputes and is very important for government actions that are based on freedom of action. And with the existence of this preventive legal protection, it encourages the government to be careful in making decisions related to the principle of freies ermessen, and the people can file objections or be asked for their opinions regarding the planned decision.

Repressive legal protection functions to resolve disputes if there is a dispute. Today there are various bodies that partially handle legal protection for the people, which are grouped into

two bodies, namely: Courts within the scope of the General Court; and Government agencies that are administrative appeal institutions.

Handling of legal protection for the people through government agencies that are administrative appeal institutions is a request for an appeal against a government action by a party who feels aggrieved by the government's action. The government agency that has the authority to change or even cancel the government's actions. The laws and regulations have determined the forms of protection given to the community against arbitrary actions from other parties, be it the authorities, employers, or people who have a better economy than the victim. In principle, legal protection for the weak party is always associated with the protection of the rights of the weak party or victim.

Philosophically, the birth or stipulation of Law Number 13 of 2003 concerning Manpower is to protect workers who are in a weak position. So that with this law, it will provide protection for the same rights and obligations between workers and employers. This law regulates the forms of protection given to workers/laborers, which include protection for:

a) basic rights of workers/laborers to negotiate with employers;
b) occupational safety and health;
c) female workers/laborers, children, and people with disabilities;
d) wages;
e) welfare; and
f) social security for workers.

Basically, the theory of legal protection is a theory related to the provision of services to the community. Law is a tool of social engineering (law as a tool of social engineering). Human interests are a demand that is protected and fulfilled by humans in the legal field. From the history of its formulation and the establishment of the principles in the opening of the 1945 Constitution of the Republic of Indonesia, Pancasila is the basis of the state in the sense of ideology and philosophy of life. In other words, Pancasila is the state ideology or Pancasila is the philosophy of life of the state.

As an ideology or philosophy of life, Pancasila itself becomes a guideline for behavior in state life. The series of 5 (five) principles of Pancasila is a series that is the basic idea of the Republic of Indonesia and reflects the protection of human rights. In terms of time, the formulation and ratification of the 1945 Constitution of the Republic of Indonesia was carried out before the UN Declaration on Human Rights was announced. Thus, if we trace the history of the 1945 Constitution of the Republic of Indonesia, it appears that there was original thinking about Human Rights. What is meant by original thinking is thinking that is based on the background of the traditions of Indonesian society itself.

After going through a long discussion process, on August 18, 1945 the 1945 Constitution of the Republic of Indonesia was ratified and the articles concerning Human Rights were Articles 27 to 34 (before the amendment). The principle of legal protection for the people against government actions is based on and sourced from the concept of recognition and protection of human rights because according to history in the west, the birth of the concept of recognition and protection of human rights was directed at limiting and placing obligations on society and

government. For Indonesia, in an effort to formulate principles of protection for the people based on Pancasila, it began with a description of the concept and declaration of human rights or The Universal Declaration of Human Rights which is a universal standard on human rights. The universal nature of the declaration is evident from the formulation, namely:

a) All articles in the declaration always begin with words that contain universal meanings, namely everyone, no one, men, women;
b) Its validity is not limited to a particular country;
c) The Declaration is not only a call to nations but to every individual and every institution of society;
d) The UN organs in defending human rights in order to create world peace are not only limited to UN countries.

The special position of the government, especially because of the special characteristics inherent in it, which are not possessed by ordinary people, has caused a prolonged difference of opinion in the history of legal thought, namely regarding whether or not the state can be sued before a judge. The government in carrying out its duties requires freedom of action and has a special position compared to ordinary people. Therefore, the issue of suing the government before a judge cannot be equated with suing ordinary people. The issue of suing the government is considered as one of the difficult parts of civil law and State Administrative Law.

Theoretically, Kranenburg chronologically explains the existence of seven concepts regarding the issue of whether the state can be sued before a civil judge, namely: first, the concept of the state as an institution of power associated with the concept of law as a decision of will manifested by power, stating that there is no state liability; second, the concept that distinguishes the state as a ruler and the state as a fiscus. As a ruler, the state cannot be sued and conversely as a fiscus the state can be sued; third, the concept that emphasizes the criteria for the nature of rights, namely whether a right is protected by public law or civil law; fourth, the concept that emphasizes the criteria of violated legal interests; fifth, the concept that bases the unlawful act as the basis for suing the state. This concept does not question whether what is violated is a public law regulation or a civil law regulation; sixth, the concept that separates between function and implementation of function.

Function cannot be sued, but its implementation that gives rise to losses can be sued; seventh, the concept that emphasizes a basic assumption that the state and its apparatus are obliged in their actions, whatever the aspect (public law or civil law) to pay attention to normal human behavior. Justice seekers can sue the state and its apparatus so that they behave normally. Any behavior that changes normal behavior and gives rise to losses can be sued. From the various concepts put forward by scholars, there is an assumption that the state as an institution has two legal positions, namely as a public legal entity and as a collection of positions (complex van ambten) or permanent work environment. Both as a legal entity and as a collection of positions, state or position legal acts are carried out through its representative, namely the government.

Regarding the position of the government as a representative of a public legal entity that can carry out legal actions in the civil sector such as buying and selling, renting, making agreements, and so on, it is possible for government actions to arise that are contrary to the law

(onrechtmatige overheidsdaad). Regarding government actions that are contrary to the law, it is stated that "De burgerlijke rechter is-op het gebied van de onrechtmatige overheidsdaad-bevoedg de overheid te veoordelen tot betaling van schadevergoeding. Daarnaast kan hij in veel gevallen de overheid verbieden of gebieden bepaalde gedragingen te verrichten" (a civil judge - regarding unlawful acts by the government - has the authority to punish the government to pay compensation. In addition, a civil judge in various cases can issue prohibitions or orders against the government to carry out certain actions).

The unlawful act committed by the government refers to an article that also applies to individuals, namely Article 1365 of the Civil Code, which reads; "Every unlawful act, which causes loss to another person, requires the person whose fault causes the loss, to compensate for the loss". The provisions of Article 1365 have undergone a shift in interpretation, as seen from several jurisprudence. In general, the emergence of this shift in interpretation is divided into two periods, namely the period before 1919 and after 1919.

In the period before 1919, the provisions of Article 1365 were interpreted narrowly, with the following elements: first, unlawful act; second, the occurrence of loss; third, the causal relationship between the unlawful act and the loss; fourth, the fault of the perpetrator. Based on this interpretation, it appears that an unlawful act means the same as an act that is contrary to the law (onrechtmatigedaad is onwetmatigedaad). The interpretation of an unlawful act as the same as an act that is contrary to the law was caused by the legalism school, which was dominant at that time.

In Indonesia, there are two Supreme Court jurisprudence that show a shift in the criteria for unlawful acts by the authorities; first, the Supreme Court decision in the Kasum case (decision No. 66K/Sip/1952), in which case the Supreme Court took the position that unlawful acts occur when there are arbitrary actions by the government or actions that do not have sufficient elements of public interest; second, the Supreme Court decision in the Josopandojo case (decision No. 838K/Sip/1970), in which case the Supreme Court took the position that the criteria for onrechmatige overheidsdaad are the applicable laws and formal regulations, propriety in society that must be obeyed by the authorities, and government policy actions that are not within the competence of the court.

This Supreme Court decision clearly shows that the criteria for unlawful acts by the authorities are: a) the actions of the authorities violate the applicable laws and formal regulations; b) the actions of the authorities violate the interests of society that they should obey. Legal protection for the people against legal actions by the government, in its capacity as a representative of a public legal entity, is carried out through general courts. The position of the government or state administration in this case is no different from a person or civil legal entity, namely equal, so that the government can be a defendant or a plaintiff. It is in this context that the principle of equal standing before the law (equality before the law) which is one of the elements of the rule of law is implemented. In other words, civil law provides equal protection to both the government and a person or civil legal entity.

Conclusion

Geographical indication mapping efforts are carried out to determine the limits of geographical indication violation cases so that geographical indication rights holders can file lawsuits against users of geographical indications without rights, in the form of compensation payments and termination. Use and destruction of geographical indication labels used without rights through registration and publication. Geographical indications are protected as long as the reputation, quality and characteristics that are the basis for granting geographical indication protection to an item are maintained. And protection will be removed if these provisions are not met, and/or are contrary to state ideology, legislation, morality, religion, decency and public order. The author's suggestion is that the mapping of geographical indications must be arranged in a geographical indication document that can be proven to be true. The procedures for submitting geographical indications and procedures for registering geographical indications are identified. Meanwhile, legal protection for geographical indications can be carried out in preventive and repressive forms. Preventive is a preventive measure through refusal of registration and repressive is paying compensation.

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