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Legal Protection of Geographical Indication of Salak Sidimpuan in South Tapanuli District North Sumatera

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p-ISSN: 2721-8392**e-ISSN:** 2655-8297**Abstract**

This research aims to know and understand the permission to use Geographical Indications of Salak Sidimpuan for salak farmers when registering with the South Tapanuli Regional Government and the legal remedies taken if salak farmers in other regions want to register Geographical Indications of Salak Sidimpuan. The type of research used is normative legal research. The efforts made by the South Tapanuli Regency government are only limited to maintaining the reputation of Salak Sidimpuan as protection for cooperatives in the field of salak fruit processing. Even though Salak Sidempuan qualifies as a Geographical Indication product as stated in article 6 of PP No. 51 of 2007. In the form of preventive protection, Salak Sidimpuan must first be registered with the DJKI in order to obtain legal protection. Repressive forms of protection are carried out by non-litigation channels that can be carried out through arbitration or alternative dispute resolution.

Keywords: Geographical Indications; Legal Protection; Salak Sidimpuan.

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Introduction

Geographical Indication is one of the regimes of Intellectual Property Rights (IPR) that regulates a mark on a product that indicates the region of origin of a good and/or product. Geographical Indication is also a national potential that can be a superior commodity, both in domestic trade and international trade.

One product that has the potential to get Geographical Indication protection is Salak Sidimpuan from South Tapanuli Regency, North Sumatra. Salak Sidimpuan needs to get Geographical Indication Protection because it qualifies as a Geographical Indication product with special characteristics influenced by the dominance of natural factors in South Tapanuli.

South Tapanuli Regency has a sloping topography that is generally suitable for salak plants because it has good drainage due to the relatively shallow rooting zone of salak plants and their roots are not resistant to waterlogging and drought.¹ The soil condition in South Tapanuli is what determines the characteristics of Salak Sidimpuan, the texture of the soil is good for salak plants, the altitude of the land and the level of soil fertility which causes salak sidimpuan can only thrive in the South Tapanuli area especially in the areas of West Angkola, South Angkola, East Angkola, Padang Sidimpuan, and Marancar.²

There are 5 sub-districts that are the largest salak producers in South Tapanuli, namely Batang Angkola (7,601.03 tons of production), West Angkola (496,593.25 tons), South Angkola (2,215.23 tons), Batang Toru (2,610.00 tons), and Marancar (45,501.20 tons). The livelihoods of the people in the South Tapanuli area are mostly salak farmers. So that the income of the people of South Tapanuli is very dependent on the results of Salak Sidimpuan produced. Salak is one of the leading commodities of South Tapanuli district, when viewed from the production figures, salak fruit is the fruit that produces the most compared to other fruits. Salak production in 2012 increased by 55.55% from the previous year. The characteristics of Salak Sidimpuan are found in its dark yellow flesh and red tinge. The taste of the fruit is sweet mixed with sour, the shape is ovoid, the skin of this salak fruit is brownish black and has large scales due to natural factors that make Salak Sidimpuan different from salak in other areas.

Until now, the Tapanuli Regency government has not registered Salak Sidimpuan at the DJKI. Whereas the development of agro-tourism in the South Tapanuli region which is one part of the tourism sector by utilizing agricultural (agro) businesses as tourism objects, namely from the processing of this Salak Sidimpuan fruit. Registration of Geographical Indications for Salak Sidimpuan,

¹Ahmad M. Ramli et.al, *Hukum Kekayaan Intelektual: Indikasi Geografis dan Kekayaan Tradisi dalam Teori dan Praktek* (Refika Aditama 2019).[53].

²Awaluddin Siregar, 'Lima Pesan Masyarakat Tapanuli Selatan', (PNPM Mandiri Perkotaan, 2014) <www.kotaku.pu.go.id: /wartaprint> dikunjungi pada 08-07-2021.

not only provides legal recognition and protection of exclusive rights ownership, but also provides assurance on the product. With this product guarantee, it will be trusted by consumers both at the local level and at the international trade level. From the description above, it can be seen that a Geographical Indication product is closely related to the life of the local community or the surrounding community so that to increase community empowerment, legal protection is needed. So in this research is formulated with the title 'Legal Protection of Geographical Indications of Salak Sidimpuan in South Tapanuli Regency'. From the background described above, the legal issues that arise and will be discussed in this research include permission to use Geographical Indications if the one who registers Geographical Indications is the Regional Government of South Tapanuli, as well as legal efforts that can be made if the registration of Sidimpuan salak is carried out by salak farmers in other areas.³

Method research

The type used in this research is normative legal research (Legal Research) which examines and analyzes legal materials and legal issues related to solving a legal problem based on written regulations or other legal materials, namely by examining library materials or secondary data consisting of primary legal materials and secondary legal materials.⁴

Geographical Indication of Salak Sidempuan Registered by South Tapanuli Regional Government

Salak Sidimpuan has been recognized in many markets in Indonesia, especially in the western part of Indonesia. In order to maintain the good reputation of Salak Sidimpuan, there is a need for legal protection in the form of Geographical Indications. Good reputation is also shown from farmer groups and cooperatives that produce

³ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (Raja Grafindo Persada 2004). [16].

⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana 2009).[136].

processed salak fruit, for example the Agro Rimba Nusantara Cooperative (AGRINA) in several exhibitions both at the local and national levels received awards including the runner-up at the MSME product exhibition of the Ministry of Industry and the first winner of the culinary product Bank Sumut Award in 2009, and U.D Salacca which received an award from the Ministry of Agriculture as the first national champion in the field of innovation of competitive superior products in October 2014.

The reputation of Salak Sidimpuan is more clearly shown from the processed products of Salak Sidimpuan in South Tapanuli Regency, among others: NAJAGO, NAGOGO, NATABO, NAMORA, NAROBI, Geographical indications legally force producers to maintain product quality and quality in accordance with the requirements book, so that from the consumer's point of view, it certainly gives its own satisfaction to products that have a reputation and quality that is guaranteed to meet the standards even though the selling price is more expensive but consumers can enjoy products with the same quality from time to time.

Geographical Indications of Sidimpuan salak need legal protection, because it is not only of economic value but also of cultural value, regional and state pride. Another reason is that the Geographical Indication is an identifier of goods originating from a particular region or the name of the goods produced from a particular region and cannot be used for similar products produced from other regions. Then the Geographical Indication is an indicator of quality. Geographical Indications also inform consumers that goods/products are produced from a certain location that is influenced by the surrounding nature so as to produce quality goods with certain characteristics that continue to maintain their reputation. Geographical Indications are also a business strategy that adds commercial value to products due to their authenticity and limitations that cannot be produced in other regions. Geographical Indications are designated as part of IPR whose ownership rights can be defended against any unlawful acts and fraudulent competition. A product/good that can be said to be a potential Geographical Indication product must meet 2 (two) requirements, namely objective and subjective requirements. The objective requirement is used as a benchmark for a product that can be said to be successful

and feasible as a Geographical Indication product or not. The benchmarks required in the legal protection of a product that has the potential as a Geographical Indication product in Indonesia are that the owner of Geographical Indications must have a strong and effective management system, product quality that is maintained with good consistency, a strong marketing system, able to supply market needs in sufficient quantities on an ongoing basis and a willingness to enforce legal provisions related to Geographical Indications.

The protection of Geographical Indications has been proven to increase the value added to the natural wealth, skills, innovation, and creativity of the local community in the area concerned. The value added is what strengthens the differentiating power of the products produced. This value addition is also a secondary significance of Geographical Indications which previously was a descriptive value indication turned into an indication that has a special impression in the minds of consumers so that it has a strong differentiating power.⁵

Until now, Salak Sidimpuan has not received any attention from the local government. The government's concern for the South Tapanuli Regency Agriculture Office for typical regional products of South Tapanuli Regency is only limited to conducting socialization of IPR extension related to Geographical Indications to the association of farmer groups producing Salak Sidimpuan. This socialization program is intended so that the community has a new and correct understanding of IPR so that there is change and awareness in the community. Without this socialization, neither the community nor the salak farmers will understand the actions that will be taken next.⁶

The role of the government is the best solution because the community is more concerned about developing its potential. South Tapanuli Regency is an area that has products that have the potential to receive IPR protection, namely

⁵ Ardianti Koentjoro, 'Perlindungan Indikasi Geografis Aset Nasional dari Pendaftaran oleh Negara Lain' (Hukumonline, 2012) <<https://www.hukumonline.com/klinik/a/indikasi-geografis-lt4fd1bd073c3a6>> dikunjungi pada 23-06-2021.

⁶ Kementerian Pertanian Republik Indonesia. 'Pentingnya Indikasi Geografis Produk Pertanian' (Kementerian Pertanian) <<https://www.pertanian.go.id/>> dikunjungi pada 20-09-2021.

through Geographical Indications. The obstacles in the registration of Geographical Indications of Sidimpuan salak include the lack of information from the government which makes this obstacle occur because the role of local and provincial governments has not considered the importance of the protection of geographical indications owned by their respective regions. Real action should be taken to protect Indonesia's geographical indications.

Regular socialization needs to be done by the government because Geographical Indication is a new thing for the community. In addition, it provides an understanding to the public of the importance of legal protection through Geographical Indications. The socialization program is like an effort aimed at the community to have a new and correct understanding of Intellectual Property Rights so that there is change and awareness in the community.⁷

The government needs to continuously provide counseling, training to salak farmers on how to take good care of the plants, what farmers should do during the fruit track period, and how to keep the price of salak commodities in the market stable. The government should also provide assistance to farmers, such as in nurseries, fertilizer procurement and others. Attention from the local government to Sidimpuan salak farmers is needed, so that salak farmers do not convert their salak plantations. This is because most of the salak farmers have converted their salak plantations to oil palm, coffee and other commodities. Currently, the area of salak plantations in the Parsalakan area and its surroundings has been greatly reduced because many salak farmers have converted their salak plantation areas to other types of plants.⁸ If things like this continue without any attention from the local government, the well-known and legendary Sidimpuan salak commodity in South Tapanuli will only remain a name. Then the salak commodity, which is the leading product of

⁷ Djulaeka, *Konsep Perlindungan Hak Kekayaan Intelektual: Perspektif kajian Filosofis HaKi Kolektif-Komunal* (Setara Press 2014).[33].

⁸ Baskoro Wicaksono, 'Peran Pemerintah Dalam Meningkatkan Kesejahteraan Petani Salak Di Desa Tinjoman Lama Kecamatan Padang Sidimpuan Hutaimbaru Kota Padang Sidimpuan Tahun 2014' (2014), 15 *Jurnal Ilmu Pemerintahan Nakhoda*. [35].

this region, will increasingly disappear in the fruit market in North Sumatra and Indonesia.⁹

Consideration of the Eligibility Characteristics, Quality, Geographical Environment, and History of Salak Sidimpuan as Requirements for Geographical Indication Submission

Products that have the potential for Geographical Indications will receive legal protection after being registered at the Directorate General of Intellectual Property (DJKI) by the Minister and the applicant for Geographical Indications must submit an application to the Minister.¹⁰ In its registration system in Indonesia, Geographical Indications uses a constitutive registration system. The constitutive registration system is a registration system in which exclusive rights are obtained by the first registrant (first to file principle) and subsequent registrants will not get legal protection.¹¹ The purpose of registering potential Geographical Indications is to improve the economy of the community of origin. The economic value arises due to the use of signs/labels on Geographical Indication products that provide a clear picture of the quality and quality and have a good reputation in the community. Indirectly, this will add to the economic value of registered geographical indication products and ensure legal certainty over Geographical Indication products if later claimed by other parties.¹²

Efforts to protect geographical indication law based on the explanation above can be done to salak sidempuan, by considering the following points:

a) Characteristics and qualities that distinguish Salak Sidempuan from other Salak

It is still rare to know, if there is a salak fruit whose flesh has a reddish color.

⁹ Rahmad Syukur Harahap, 'Petani Salak Sidempuan, dari Dampak Corona Hingga Masalah Budidaya' (2020) <<https://asaberita.com/petani-salak-sidempuan-dari-dampak-corona-hingga-masalah-budidaya/>> , dikunjungi pada 22-03-2022.

¹⁰ Pasal 53 ayat 1-2 Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis (Lembaran Negara Republik Indonesia Tahun 2016 Nomor 252).

¹¹ Sudjana, 'Implikasi Perlindungan Indikasi Geografis Berdasarkan Undang-Undang Nomor 20 Tahun 2016 Terhadap Pengembangan Ekonomi Lokal' (2018), 4 *Veritas et Justitia*. [40-41].

¹² Trias Palupi Kurnianingrum, 'Perlindungan Hak Ekonomi Atas Indikasi Geografis' (2016) 7 *Negara Hukum*. [20].

This salak plant is a native fruit of Padang Sidempuan. The appearance of the fruit is quite tantalizing, large in size than other salak and black to brass skin and rather difficult to peel. When peeled, the flesh is red with a combination of sour, tart and sweet flavors. The flesh is slightly attached to the seeds, and has a soft, juicy, fine-fibered texture. The size of the fruit is larger than other salak fruit.¹³

Red salak which grows in Parsalakan Village, West Angkola District, South Tapanuli. In terms of health, red salak also contains antioxidants. With these substances, red salak is believed to help reduce bad cholesterol levels in the body and improve cardio function. In addition, it can also overcome digestive and stomach diseases, diabetes, strengthen bone structure, increase endurance, and can eliminate bad breath.

b) Geographical environment, natural factors and human factors

Salak sidempuan is different from salak in general, because the species is also different. Salak Sidempuan belongs to the *Salacca sumatrana* species, while there are two types of salak in general, namely Salak Java with the species *Salacca zalacca* var *salacca* and Salak Bali (*Salacca zalacca* var *amboniensis*).¹⁴

The difference between Salak Sidempuan and other types of salak in Indonesia can be seen based on the characteristics of each type of salak. The characteristics formed are influenced by natural factors in each salak growing area and or human factors including culture in managing salak fruit in each region. Salak Sidempuan is a type of salak originating from South Tapanuli, North Sumatra. This salak is known to have a fresh taste with the right mixture of sweet and sour. With an ovoid shape, large scales, the flesh of Salak Sidempuan is yellow with a red tinge.¹⁵

c) The boundaries of the area and/or a map of the area covered by the

¹³ Yulianto, 'Uniknya Salak Merah Sidempuan' (Sinar Tani, 2021) <<https://tabloidsinartani.com/detail/indeks/horti/15829-Uniknya-Salak-Merah-Padang-Sidempuan>>, dikunjungi pada 10-10-2022.

¹⁴ *Ibid.*

¹⁵ Wilda Ramadani Nasution, 'Peranan Petani Salak Dalam Meningkatkan Pendapatan Masyarakat Padang Sidempuan Daritahun 2001-2012' (Digital Repository UNIMED, 2014) <<http://digilib.unimed.ac.id/18362/>> dikunjungi pada 20-05-2022.

Geographical Indication

Padangsidimpuan City is one of the cities in North Sumatra Province which is known as the City of Salak because in general the residents of Padangsidimpuan City earn a living as farmers with commodities including paddy rice, horticulture and plantations. These salak farmers in South Tapanuli Regency surround Padangsidimpuan City. Geographically, Padangsidimpuan City is located at 010 18',07" - 010 28' 19" North latitude and 990 18' 53" - 990 20' 35" East Longitude with an altitude of approximately 260 m - 1,100 meters above sea level. And based on its topography.¹⁶

Padangsidimpuan City is very diverse, namely flat, hilly, undulating to steep.¹⁷ Padangsidimpuan City has potential land resources for salak commodity development with an area of 212.48 ha. In 2010, Sidimpuan's salak production reached 10,250 tons.¹⁸ The soil texture is suitable for the needs of this salak tree which has an altitude of 100-600 meters above sea level. Therefore, this salak is one of the souvenirs and is a characteristic of Padangsidimpuan City.

d) History and Traditions Relating to the Use of Geographical Indications to Mark Manufactured Goods

Since 1930 Salak Sidimpuan has been cultivated by the people of South Tapanuli. Although Salak Sidimpuan has been cultivated hundreds of years ago, the existence of Salak Sidimpuan is still maintained today, this can be seen from the very large area of salak planting.

The results of a survey conducted in three sub-districts, each sub-district took one village, each village is a common area planted with salak by the community. There is no known type or variety of salak planted by the community in South

¹⁶ Redaksi Agromedia, 'Budidaya Salak Kiat Mengatasi Permasalahan Praktis' (Agromedia Pustaka 2008).[3].

¹⁷ Badan Pusat Statistik Kota Padangsidimpuan, 'Letak dan Batas Wilayah Kota Padangsidimpuan' (BPN Kota Padangsidimpuan, 2016) <<https://padangsidimpuankota.bps.go.id/statictable/2017/12/18/239/letak-dan-batas-wilayah-kota-padan%20gsidimpuan-2016.html%20>>, dikunjungi pada 23-05-2022.

¹⁸ Badan Pusat Statistik Kota Padangsidimpuan, *Padangsidimpuan Dalam Angka 2013* (Katalog BPS 2013). [150].

Tapanuli Regency, so the community names their salak using the name of the village/place where the salak is grown. Thus, three types of salak were obtained from the research conducted in three different villages in the sub-district, as follows: Sibio-bio Village Salak, Siamporik Village Salak, and Parsalakan Village Salak. The land character in Sibio-bio Village is +1100 m above sea level, Parsalakan Village is +1100 m above sea level, and in Siamporik Village is +900-1100 m above sea level. The age of the salak plants that were researched in Sibio-bio Village salak was +25 years old, in Siamporik Village salak was +25 years old, and in Parsalakan Village salak was +30 years old. Salak plants in each village originated from genetically and vegetatively propagated plants.¹⁹

Legal Efforts of Salak Farmers to Realize the Legal Protection of Geographical Indications of Salak Sidempuan

The form of legal protection efforts in realizing Geographical Indications of Salak Sidempuan based on the theory of legal protection can be done in 2 (ways), namely preventive legal protection and repressive legal protection.²⁰

a) Preventive Legal Protection

Preventive legal protection is legal protection for the people, where people are given the opportunity to submit objections or opinions before a government decision becomes definitive. This is intended to prevent disputes from occurring. will receive protection through Geographical Indications if registered in advance. An application for registration of Geographical Indications shall be submitted in writing using the Indonesian language by the Applicant or may be represented by his/her attorney by filling out a form to the Director General of IPR along with proof of payment. With the granting of Geographical Indication rights, the product has legal certainty in the event of a dispute and will be easier to prove. The characteristics

¹⁹ R Adelina, 'Bimbingan Teknis Upaya Peningkatan Produksi Salak Sidempuan (Salacca sumatrana Becc.) Melalui teknik Produksi di Luar Musim (*Off season*) Di Kabupaten Tapanuli Selatan' (2022) 1 Kalandra.[37].

²⁰ Zairin Harahap, *Hukum Acara Peradilan Tata Usaha Negara* (Raja Grafindo Persada 2001).[31].

and qualities that are the basis for granting Geographical Indication protection are outlined in the Geographical Indication Requirements Book. The mark can only be used on goods that meet the requirements set out in the Book of Requirements.

Based on the Trademark Law and Government Regulation on Geographical Indications, applications for Geographical Indications can not only be made by government agencies or other official institutions such as cooperatives, associations, etc., but also by farmers/producers or a group of consumers.²¹

Things that can be done by farmers include preparing a notarial deed to help establish a business entity as a legal business entity (such as an association, cooperative).

b) Repressive Legal Protection

Repressive legal protection is legal protection that is emphasized after existing legal rules have been violated or if someone feels their rights have been violated in order to resolve the dispute. Dispute resolution against violations committed related to the use of Geographical Indications without rights can be pursued with 2 (two) paths, namely litigation (law) and non-litigation (arbitration and alternative dispute resolution).

Litigation or legal channels can be used if the non-litigation channels, namely arbitration and alternative dispute resolution, cannot resolve the dispute. Currently, if there is a case of legal violation related to the Geographical Indication rights of Salak Sidempuan, it cannot be resolved through litigation, because Salak Sidempuan has not been registered with the Directorate General of IPR as a Geographical Indication. However, if one day Salak Sidempuan has been registered as a Geographical Indication, it can use the litigation route in its settlement. Based on article 26 paragraph (3), a lawsuit can be filed by producers/farmers, institutions representing the community and authorized institutions.

In accordance with Article 56 of the Trademark Law, or producers/farmers can file a lawsuit to the Commercial Court against users of Geographical Indications

²¹ Candra Irawan, 'Pendaftaran Indikasi Geografis Sebagai Instrumen Perlindungan Hukum dan Peningkatan Daya Saing Produk Daerah di Indonesia'(2017), *Prosiding Seminar Nasional Multi Disiplin Ilmu & Call For papers UNISBANK ke-3*. [55].

who are not entitled to use it, either a request for compensation or destruction of the Geographical Indication label without the right.²²

Conclusion

The registration of geographical indications of Salak Sidimpuan by the government of South Tapanuli Regency is only limited to efforts to maintain the reputation of Salak Sidimpuan as a protection for cooperatives in the field of salak fruit processing. Whereas Salak Sidempuan qualifies as a Geographical Indication product as stated in article 6 of PP No. 51 of 2007 concerning Geographical Indications.

Legal efforts made in realizing Geographical Indications of Salak Sidempuan are preventive protection and repressive protection. As a form of preventive protection, to obtain legal protection, Salak Sidimpuan must first be registered with the Director General of IPR. Repressive forms of protection are carried out by non-litigation channels that can be carried out through arbitration or alternative dispute resolution. The applicants of Geographical Indications who can submit the application are expanded in Article 5 paragraph 3 of Government Regulation No. 51/2007 on Geographical Indications, namely institutions representing the community in the area producing the goods/products, institutions authorized for that (local/provincial government agencies) and consumer groups of the Geographical Indication goods/products.

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