

PROTECTION OF GEOGRAPHICAL INDICATIONS OF ANDALIMAN HUMBANG HASUNDUTAN SPICES IS REVIEWED FROM LAW NO. 20 OF 2016 CONCERNING BRANDS AND GEOGRAPHICAL INDICATIONS

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ABSTRACT

Keywords: intellectual property; geographical indications; andaliman kab; humbang hasundutan.

Indonesia is known for its richness of spices, including andaliman. Andaliman is a spice similar to pepper but has a bitter, spicy taste and distinctive aroma. Andaliman only grows in several North Sumatra districts, including the Humbang Hasundutan District. Andaliman Humbang Hasundutan Regency has excellent potential in both national and international markets, and it can be said that andaliman is an Intellectual Property owned by Humbang Hasundutan Regency and Indonesia, which must be given legal protection, namely Geographical Indications. However, until now, no legal protection has been given to Andaliman Humbang Hasundutan. So, this research aims to see whether Geographical Indication protection can be given to Andaliman Humbang Hasundutan Regency based on Law No. 20 of 2016 concerning Brands and Geographical Indications. This research was conducted using qualitative research methods with a normative juridical approach. This research shows that Andaliman Humbang Hasundutan can be given Geographical Indication protection. However, several elements must be improved and fulfilled so that Andaliman Humbang Hasundutan and legal action can be taken by the Government and the people of Humbang Hasundutan Regency to fulfil the elements of Geographical Indication that Andaliman Humbang Hasundutan has not fulfilled.



Introduction

Indonesia is an archipelagic country rich in biodiversity, one of which is spices (Jo, 2016). The wealth of Indonesian spices is influenced by Indonesian nature, and each region can give its characteristics to a spice, where the characteristics of a spice originating from a particular region make the potential of spices even more incredible, with the regional specialties offered (Pane et al., 2022). The primary role of a potential regional spice is for the regional economy, especially helping MSMEs; if a region's typical spices are given legal protection, this protects and expands the potential of spices, which will affect the community or MSMEs in the area (Rhaswika, 2023). Regional spices also include intellectual property owned by the region whose rights must be protected. The field of Intellectual Property that can be used in providing rights protection is a distinctive spice owned by the region is the protection of Geographical Indications (Yessiningrum, 2015).

Geographical Indication is a sign that indicates the area of origin of an item and product which, due to geographical, environmental factors, including natural factors,

human factors, or a combination of these two factors, gives reputation, quality, and specific characteristics to the goods and products produced (Triana, 2018). In Indonesia, the regulation regarding Geographical Indications does not yet have its own Law, and the regulation is still integrated with Law Number 20 of 2006 concerning Brands and Geographical Indications (Fuad & Latjeme, 2021). Unlike other Intellectual Property, one person cannot own the right to Geographical Indications because geographical indications concern one area and not just certain parties; the nature of Geographical Indications is communal. Therefore, Geographical Indications are included as Communal Intellectual Property (Apriansyah, 2018).

Indonesia has one of the typical regional spices, namely Andaliman. Andaliman itself is a spice that resembles pepper but has a different taste from the pepper. Andaliman has a bitter and spicy taste accompanied by a distinctive citrus aroma (Putranti & Indriyani, 2021). Andaliman is usually used in various typical foods of the Batak tribe, such as Arsik Fish and Pinadar Chicken. Andaliman does not grow anywhere in Indonesia; Andaliman only grows in several districts in North Sumatra Province, namely Toba Regency, Samosir Regency, Humbang Hasundutan Regency, and North Tapanuli Regency, where although similar, there are differences in Andaliman produced in each region (Gardjito, Putri, & Dewi, 2018). This study will focus on Andaliman from Humbang Hasundutan Regency, which has different characteristics from Andaliman produced by several other districts.

Indeed, initially, Andaliman was only a spice used by the Batak tribe community in North Sumatra, but now Andaliman marketing has been increasingly widespread and successfully marketed outside the North Sumatra area; even Andaliman sales have also been widely through online platforms such as a shop (Rahmatullah, 2014). Andaliman Humbang Hasundutan Regency has also been marketed out of the region and even exported to Germany, but still on a small scale. Like other regional spices, Andaliman Humbang Hasundutan Regency has excellent potential in national and international markets. To protect and develop this potential, it is essential for the legal protection of Andaliman Humbang Hasundutan Regency. As stated in the previous paragraph, the protection that can be given to species typical of a region is the protection of Geographical Indications.

However, until now, Andaliman Humbang Hasundutan Regency has not had any legal protection, including not yet protected by Geographical Indications. This raises the urgency that Andaliman Humbang Hasundutan Regency has been generally marketed and exported. The absence of legal protection for Andaliman Humbang Hasundutan Regency can cause unfair competition in the market (Sasongko, 2012). One example is not infrequently in local markets in North Sumatra, some traders commit forgery against Andaliman Humbang Hasundutan Regency, where the Andaliman sold by the trader is not Andaliman Humbang Hasundutan Regency, but the trader sells it by mentioning that his Andaliman is indeed from Humbang Hasundutan Regency. The trader explained a slight difference in the andaliman sold because the andaliman was the final harvest, so it was not as good as the initial harvest. The andaliman he sold did not come from Humbang

Hasundutan Regency. This is rife, especially in certain months such as December when demand for Andaliman increases.

In addition to avoiding unfair competition, Geographical Indication protection can also increase Andaliman's potential in the market; for example, if an increase in prices for products protected by Geographical Indication, then this protection can also increase the popularity of Andaliman Humbang Hasundutan Regency by highlighting regional distinctiveness. So, with the benefits and urgency that arise, it is essential to provide Geographical Indication protection for Andaliman Humbang Hasundutan, where the paramount urgency is to avoid unhealthy competition that harms the people of Humbang Hasundutan Regency who are traders or producers of Andaliman Humbang Hasundutan. Therefore, in this study, the author will examine the protection of Geographical Indications against Andaliman Humbang Hasundutan based on Law No. 20 of 2016 concerning Brands and Geographical Indications.

Research Methods

The author uses qualitative research methods with a normative juridical approach, namely legal research by examining library materials or secondary data as a basis by making positive law and various legal literature as a reference. The writing of this literature is dominated by using secondary data sourced from primary legal materials, secondary legal materials, and tertiary legal materials.

Results and Discussion

Andaman is one of the typical spices originating from North Sumatra Province. Andaliman is a spice plant with a shape resembling pepper that can only grow well if planted in highland areas with an altitude of 1200-1500 meters above sea level and at temperatures of 15-18 degrees Celsius. In Indonesia, Andaman grows well in North Sumatra, especially in several districts, namely Toba Samosir Regency, North Tapanuli Regency, Humbang Hasundutan Regency, and Samosir Regency. In this study, the author focuses on andaliman produced by one of the districts in North Sumatra named Humbang Hasundutan, where Humbang Hasundutan Regency is one of the large andaliman-producing areas. Andaliman grew well at several points/districts in Humbang Hasundutan, namely in Doloksanggul, Lintong Nihuta, Pollung, and Paranginan districts.

Most of the people of Humbang Hasundutan Regency make agriculture and plantations the primary source of the economy. The people of Humbang Hasundutan Regency are trying to raise the name and develop the potential of Andaliman in their area. Humbang Hasundutan Regency is also one of the districts that export andaliman to Germany. Also, the Andaliman community or farmers in Humbang Hasundutan Regency have sold andaliman online, both in the form of andaliman and processed products.

Various MSMEs in Kabupetan Humbang Hasundutan, under the guidance of the Humbang Hasundutan Cooperative Office, develop andaliman into various processed products, namely in the form of andaliman chips, andaliman chilli sauce, andaliman bank, andaliman coffee, and andaliman chilli bon.

Andaliman Humbang Hasundutan Regency has excellent potential to enter national and international trade commodities. Andaliman Humbang Hasundutan Regency has a close reputation attachment to its origin, namely Humbang Hasundutan Regency, because Andaliman can only grow in areas with specific criteria, and Humbang Hasundutan Regency is one of the areas that produce Andaliman. Regional differences also affect the Andaliman produced; Andaliman, produced in Humbang Hasundutan Regency, has a smaller shape but a more fragrant smell.

Andaliman Humbang Hasundutan Regency can be categorised as Intellectual Property belonging to Humbang Hasundutan Regency. In Intellectual Property Law, there is legal protection that can be given to products and services that attach characteristics and quality to the area of origin of the product, namely the protection of Geographical Indications. In Law No. 20 of 2016 concerning Brands and Geographical Indications, it is explained that a Geographical Indication is a sign that indicates the area of origin of an item and product due to geographical or environmental factors, including natural factors, human factors, or a combination of these two factors provides reputation, quality, and characteristics that are the basis for protecting Geographical Indications. Article 22 of TRIP's Agreement defines Geographical Indications as "Geographical indications are, for 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 another characteristic of the good is essentially attributable to its geographical origin."

Geographical Indication is a trade name that is associated, used, or attached to the packaging of a product that serves to indicate the origin of the place of the product, where the origin of the place used indicates that the quality or reputation of the product is influenced by the place of origin so that the product is of unique value in the eyes of consumers. Slightly different from some other Intellectual Property, Geographical Indications are categorised as Communal Intellectual Property, namely Intellectual Property whose ownership is communal; in this context, communal ownership is masked that Geographical Indications cannot only be owned by one person, but the ownership is mass or owned by one registered group. Because it is communal, registration and application for protection of Geographical Indications are carried out by being represented, namely by state institutions representing people in some geographical regions or provincial or city district local governments.

Geographical Indications tie the geographical area to the reputation of a product, where a product protected by Geographical Indications has an infinite period as long as the product still maintains its reputation, quality, and initial characteristics that make the product included in the Geographical Indication product, that if the reputation is no longer relevant or no longer fulfilled by the product, then the Geographical Indication Protection can be revoked, not only that, the protection of Geographical Indications can also be revoked if it violates the provisions of Article 56 of the Geographic Trademark and Indication Law.

Suppose it is related to the object in this study, namely the Andaliman Humbang Hasundutan Regency. In that case, it can be said that Geographical Indication protection can be given to Andaliman Humbang Hasundutan Regency. That Andaliman Humbang Hasundutan Regency is a plantation product whose characteristics are influenced by geographical factors; this is in line with Geographical Indications. Andaliman can only grow in a few places with certain natural conditions, such as low temperatures and altitude. In Indonesia, Andaliman that grows in different districts can produce Andaliman with different characteristics.

Each district that produces Andaliman has a slight difference because it is influenced by natural factors, including Humbang Hasundutan Regency, which is also one of the districts that can produce Andaliman with good quality, with the characteristic that the andaliman produced bears smaller fruit but with a more fragrant fragrance and more robust taste. It can be said that Andaliman Humbang Hasundutan is a product influenced by nature and factors of geographical origin.

To be protected by Geographical Indications, a product must meet several main elements; in addition to the influence of geographical factors, a product must have characteristics, quality, and reputation. Andaliman characteristics are shaped like pepper, have a distinctive citrus aroma, and have a spicy and bitter taste. The Andaliman produced in Humbang Hasundutan Regency has slightly different characteristics from the Andaliman produced by other districts, which has a smaller fruit but with a more potent fragrance and taste. So, it can be said that Andaliman Humbang Hasundutan already has the same characteristics to be protected by Geographical indication.

Then, related to quality, until now, Andaliman Humbang Hasundutan Regency in its production does not have a certain quality standard; each farmer can produce andaliman with different quality, and this is what needs to be considered by the Humbang Hasundutan Regency Government, as well as the community, that to be protected by Geographical Indications, Andaliman Humbang Hasundutan must have a fixed quality. For a product to compete, quality assurance is needed by consumers, where this quality shows the authenticity of a product, and this quality distinguishes Andaliman Humbang Hasundutan Regency from other similar products.

The Government of Humbang Hasundutan Regency and its community need to set quality standards and apply them to Andaliman Humbang Hasundutan to be protected by Geographical Indications; along with that, quality control is needed so that the products produced will continue to have quality as agreed. It is necessary to guarantee and control that Andaliman Humbang Hasundutan Regency meets the quality for sale. Therefore, a certain association, or the Geographical Indication Protection Society, is needed, which will play a role in implementing quality standards to Andaliman, Humbang Hasundutan Regency, and controlling the fulfilment of quality of these products.

Then, to be protected by Geographical Indications, a product must also have a reputation in the community or market where Andaliman Humbang Hasundutan itself is well known in the national market. Andaliman itself is still attached to the culture of the Batak people in Indonesia, and most Andaliman enthusiasts are still in the Batak

community group. However, Andaliman marketing from year to year is increasingly widespread, and now Andaliman can be found in markets outside North Sumatra Province. The name Andaliman is also famous for selling various Andaliman processed products on the market; one of the most marketed examples is Andaliman chilli sauce, where it can be said that there are quite a lot of enthusiasts in Indonesia.

One of the products from the Nutrifood company is "Lokalate" in the form of packaged instant coffee making andaliman as one of the flavour variants of its coffee, where the Andaliman Coffee Localate product has been sold in various markets. Not only that, there is an Andaliman derivative product, namely Bandrek Andaliman, with the brand "BANDAL," which has been traded and has received brand protection for the product, where this product also comes from Humbang Hasundutan Regency. It can be said that Andaliman's reputation in Indonesia is already quite strong.

However, as the author has said, in Indonesia itself, Andaliman is still very attached to the Batak community, where indeed the interest is still dominated by the Batak tribal community, even though there have been many product collaborations using Andaliman and attracting much attention from Indonesian consumers. The author sees that it is still necessary to expand Andaliman's reputation in Indonesia so that there are more and more enthusiasts and the interest is not only dominated by the Batak community but the broader community in Indonesia, which to be protected by Geographical Indications a product must be well known by consumers.

Internationally, Andaliman's reputation is not very well known, as there are not many international enthusiasts from Andaliman; it can be said that until now, the popularity of Szechuan Pepper in the international world is more famous than Andaliman, and there are still many countries that do not know Andaliman. However, Indonesia has successfully exported Andaliman to Germany, making Andaliman a substitute for tobacco. So, in the international world, Andaliman is not yet widespread enough, but Andaliman has managed to penetrate several countries. Andaliman's reputation can continue to be improved internationally by improving and maintaining the quality of Andaliman exported by Indonesia.

Andaliman's reputation nationally can be said to be quite famous. However, the author sees that there needs to be an increase in Andaliman marketing in Indonesia to strengthen its reputation. Then, internationally, it can be said that Andaliman does not yet have a strong reputation, so to be protected by Geographical Indikasi, it is necessary to expand Andaliman's reputation to be more famous nationally and internationally.

So, Andaliman Humbang Hasundutan Regency can be said to have the potential to be protected by Geographical Indications that Andaliman Humbang Hasundutan has characteristics that are influenced by natural factors. That Andaliman Humbang Hasundutan also has a national reputation but does require improvement. Some elements must first be fulfilled by Andaliman Humbang Hasundutan to be registered as a Geographical Indication product.

As the author has discussed before, Andaliman Humbang Hasundutan Regency has the potential to become a Geographical Indication, but several elements need to be

improved and fulfilled first. So, the main action that the Government must take along with the People of Humbang Hasundutan Regency is to fulfil the elements of Geographical Indications that Andaliman Humbang Hasundutan Regency has not fulfilled. The first is that increasing Andaliman's reputation can be done by enlarging Andaliman's sales coverage, that what must be used as a target market at this time is not only the Batak community but various groups of society. The existence of promotions will also greatly help improve Andaliman's reputation. Product reputation is also greatly influenced by the quality of a product, and Andaliman Humbang Hasundutan does not yet have production standards that are used as a reference.

Production standards aim to guarantee the quality of Andaliman itself, whereas until now, there is no Andaliman production standard, so Andaliman obtained by consumers may have different qualities. So what must be done by the Government and the People of Humbang Hasundutan Regency is to make and agree on Andaliman production standards, which must be maintained and controlled to continue to be met. For this reason, a group or party is needed to make these standards and then guarantee and control that the Andaliman produced is by the quality standards that have been set, which, until now, Humbang Hasundutan Regency has not had. Therefore, the people of the geographical area must unite into an association of producers, cooperatives, or geographical indication protection societies (MPIG).

In the Humbang Hasundutan Regency, Andaliman farmer groups have not been united and are still divided into several groups. So, the legal action that can be taken is to create an association or MPIG consisting of farmer groups in the Humbang Hasundutan Regency and MSMEs that process products from Andaliman. In addition to being the party that determines and controls production standards, the association or MPIG also functions in registering Geographical Indications, where, as previously stated, Geographical Indications have a communal nature, which the community group of origin of the product owns. Later, this MPIG will represent or be represented by an institution or local government to apply for a Geographical Indication of Andaliman Humbang Hasundutan, where the MPIG will hold the rights to the Geographical Indication.

To register Andaliman Humbang Hasundutan Regency as a Geographical Indication, a description document is required, an administrative requirement for registration. The description document consists of the applicant's name, Geographical indication name, product type, product quality and characteristics, regional boundaries, and regional maps, the influence of natural factors, production processes, product history, regional history, logos or geographical indication labels, product offspring systems, procedures for using Geographical indication marks, coaching systems and supervision of production processes and quality, and recommendation letters from the Regional government. So, the following legal action is to make a description document regarding Andaliman Humbang Hasundutan. Then, the MPIG Humbang Hasundutan district representative registered with the Directorate General of Intellectual Property (DJKI) by making an application letter and registering it.

Registration will take a while because it undergoes various examination processes and stages. Later, if all have been approved, the application for Geographical Indications will be approved and issued as a Geographical Indication certificate. If a Geographical Indication certificate has been issued, Andaliman Humbang Hasundutan Regency is officially registered as a Geographical Indication protection product. With the protection of Geographical Indications, it will significantly affect Andaliman, Humbang Hasundutan Regency, and will also significantly affect the Humbang Hasundutan Community. Therefore, registration of Geographical Indications is essential, and the government and people of Humbang Hasundutan district must immediately carry out the Geographical Indication registration process.

Conclusion

Andaliman Humbang Hasundutan has the potential to become a Geographical Indication because Andaliman Humbang Hasundutan has a close relationship with its Geographical factors. However, several elements of Geographical Indications have not been fulfilled by Andaliman Humbang Hasundutan, namely related to reputation and quality, so to be protected by Geographical Indications, the fulfilment of these elements must be carried out by the People of Humbang Hasundutan Regency and the Regional Government. The action that can be done is to create an MPIG or association, load quality standards, and improve product reputation. After that, representatives from Andaliman Humbang Hasundutan can apply for registration of Geographical Indications to the DJKI.

The community and local government of Humbang Hasundutan Regency immediately improve the reputation of Andaliman Humbang Hasundutan nationally and internationally, then create an association or MPIG Andaliman Humbang Hasundutan, and make quality standards for Andaliman Humbang Hasundutan production, then process the registration of Andaliman Humbang Hasundutan Regency as a Geographical Indication to DJKI.

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