

## **ENCOURAGING THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS TO "OIL MANDAR" IN THE GEOGRAPHICAL INDICATIONS REGIM**

*Hasbir Paserangi*

*Lecturer of Law Faculty of Hasanuddin University, Makassar-Indonesia*

*Email: hasbir\_paserangi@yahoo.co.id*

Received 20 Jun 2018 • Revised 5 Oct 2018 • Accepted 10 Nov 2018

### **Abstract**

Oil mandar or "lomoq mandar" is one of the processed products of coconut that has a fragrant and distinctive aroma. In addition to the distinctive aroma, this oil also has a longlasting resistance that can be stored for more than a year, even without the use of synthetic chemical preservatives. Although this oil is traditionally processed, but this oil is not less competitive with the production of palm oil manufacturers. On the Polewali-Majene axis road we will find a cluster of palm trees waving palm, a familiar scene in the eyes of locals who are the main producers of coconut cooking oil. The geographical and socio-cultural conditions that support make this plant very strategic to be developed. So naturally if this area is held as a coconut producing center in West Sulawesi. Polewali Mandar area as an area that has huge natural resources, one of them is coconut fruit with "Mandar Oil" product, of course have big importance to this problem especially in strengthening people economy so that local government must take an active role to realize legal protection effort in the Geographical Indication regime as stipulated in Government Regulation no. 51 of 2007 About Geographical Indications. The diversity of natural resources in Polewali Mandar is a great God's gift to the Mandar people, most of whom are Mandar Craftsmen other than Fishermen, Silk Woven craftsmen, and Chocolate producers (cocoa). The existing condition has the potential to gain enormous economic benefits when developed and managed commercial and planned. Protecting the potential of existing resources can also increase the source of community income. The form of effort that can be done by local government with Mandar society in protecting Mandar Oil product is by applying Intellectual Property Right registration in Geographical Indication regime to Directorate General of Intellectual Property Rights in Jakarta.

**Keywords:** intellectual property rights, geographical indications, mandar oil

## INTRODUCTION

Since the signing of the Agreement Establishing the World Trade Organization in 1994, there has been a growing importance on the meaning and role of Intellectual Property Rights in the world of global commerce. As already known, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), a part of the approval of the WTO establishment, has triggered a phenomenal shift in the development of the IPR protection system around the world, including in Indonesia.

The laws and regulations on Intellectual Property Rights in Indonesia within the scope of intellectual property rights are not fully regulated in individual laws, some of which are incorporated in a single law. One of them is the arrangement of Neighbouring Rights regulated in the Copyright Act, utility models (Indonesian law does not recognize this term but use simple patent terms) are regulated in the Patent Law, as well as the regulation of geographical indications set forth in Articles 56 to with Article 58 of the Trademark Law.<sup>1</sup>

As with the brand, geographical indications are one form of intellectual property that should be sought for protection for the member countries of the World Trade Organization. The provisions concerning such matter are contained in the Trade Related Intellectual Property Rights (TRIPs), especially Articles 22 through 24. Based on Article 56 paragraph (9) of Law No.15 of 2001 on Trademarks which regulate the provisions on the procedure of registration of Geographical Indication shall be further regulated in government regulations. Based on these considerations, the Government Regulation No.51 / 2007 on Geographical Indication is intended to regulate thoroughly the provisions of the implementation of Law No.15 of 2001 on Brands regarding Geographical Indications.

Geographical Indication is a sign that unwittingly has been around for a long time and can indirectly indicate the existence of a specificity in an item produced from a certain area. The mark may then be used to indicate the origin of an item, whether in the form of agricultural products, foodstuffs, handicrafts, or other goods, including raw and / or processed products, whether derived from agricultural products or derived from mining products. The designation of the origin of a good is important, because the influence of geographical factors including natural factors, human factors, or a combination of these two factors in a particular area where the goods are produced can provide the characteristics and quality of the goods maintained and can be maintained within a certain period of time will give birth reputation (fidelity) of the goods, which further allows the goods to have high economic value.<sup>2</sup>

Indonesia is a megadiversity country, a country with a diversity of cultures and resources, both natural resources and human resources in terms of culture. Many regional superior products that have been produced by Indonesia and potentially get a place in the international market.<sup>3</sup> Gayo Arabica Coffee from Aceh Province Central Aceh Regency, Arabica Coffee Lintong / Mandaliling from North Sumatera Province Lintongnihuta Regency, Kayu Manis Kerinci from Jambi Province Kerinci Regency, Robusta Lampung Coffee from Lampung Province Lampung Regency, and Egg Brebes Egg from Central Java Province Brebes Regency are some examples of regional superior products that have the potential to gain a place in the international market.<sup>4</sup>

Apart from these products, there is also "Mandar Oil" origin of West Sulawesi Province. Mandar oil which is a handicraft developed by the people of West Sulawesi (Sulbar) has different characteristics and qualities with similar products in other areas so it has the potential to penetrate the export market.

If the characteristic is maintained and maintained consistency of high quality then the product will still get a good market, on the contrary if the characteristic and quality of the product is not consistent then its value will decline. A typical quality product is certainly imitated so many people need to seek adequate legal protection for these products. Some cases have proved that Indonesian product names such as Mandailing or Mandheling Coffee are used for other products or filled with coffee originating from other regions and even other countries.

Not only limited to the use of signs that have been abused by other countries in which the product shows originated from Indonesia, one other example that can be used as a reflection of products from Indonesia, Toraja-South Sulawesi, Toraja coffee that has switched ownership by the

<sup>1</sup> OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*. Jakarta: RajaGrafindo Persada..., hlm. 16

<sup>2</sup> Direktorat Jenderal Hak Kekayaan Intelektual Departement Kehakiman dan Hak Asasi Manusia Republik Indonesia, *Kompilasi Undang-Undang Republik Indonesia di Bidang Hak Kekayaan Intelektual*, Japan Internasional Co-operating Agency.

<sup>3</sup> Direktorat Kerjasama dan Perdagangan Internasional, 2004, *Peningkatan Nilai Tambah Komoditas Indonesia dengan pengembangan Indikasi Geografis*.

<sup>4</sup> See [www.dgip.go.id/ebhtml/hki/filecontent.php?fid=14871](http://www.dgip.go.id/ebhtml/hki/filecontent.php?fid=14871)

Company Key Coffe from the State Japan. Japan has been registering Toraja coffee as the country's Intellectual Property Rights in 2000.<sup>5</sup>

Mandar Oil that embeds the geographical area or geographical area in which it is produced, has the potential to be protected as a Geographical Indication if it has been listed in the general list of Geographical Indications at the Directorate General of Intellectual Property Rights (hereinafter referred to as the Directorate General). Such registration may prevent superior products made in Indonesia, including Mandar Oil, used and taken over by other countries.

Mandar oil or lomoq mandar is one of the processed products of coconut fruit that has a fragrant and distinctive aroma. In addition to the distinctive aroma, this oil also has a long-lasting resistance that can be stored for more than a year, even without the use of synthetic chemical preservatives. Although this oil is traditionally processed, but this oil is not less competitive with the production of palm oil manufacturers. On the Polewali-Majene axis road we will find a cluster of palm trees waving palm, a familiar scene in the eyes of locals who are the main producers of coconut cooking oil. The geographical and socio-cultural conditions that support this plant are very strategic to be developed. It is only natural that this area is being established as a coconut producing center in South Sulawesi (now West Sulawesi). History has noted that in 1998 the value of the production of the Mandar oil industry reached Rp.4.96 billion. The development of this industry is increasingly successful after the establishment of Joint Business Cooperation (KUB) as pengoordinir marketing. Like the KUB Melati who is in Majene who has successfully marketed the Mayang Coconut brand, which managed to penetrate the national market up to the capital.

Looking at the existing phenomenon it is seen that yet there is a certainty of legal protection against Mandar Oil Products if used by other parties.

## **DISCUSSION**

### **a. History of Coconut Oil**

Many coconut plants grow in the tropics so oil is also called tropical oil (Tropical oil). Coconut oil is one of the processed products of coconut (*Cocos nucifera*). It used to be coconut oil known as kelentik oil commonly used in kitchen by grandmother to polish her hair so that black is sparkling and fertile. Ever since, the tradition of consuming coconut oil has been known by the people of Indonesia. For example, the mother who will give birth is always recommended to consume half a glass of coconut milk before childbirth so that the delivery process becomes easier and smooth. Not only that milk becomes more fluent.

Since ancient times, coconut oil is often used. But in the decade of 90's coconut oil was lost from circulation. This is due to a trade war between vegetable producers consisting of corn oil, soybean oil, canola oil from western countries with coconut oil producers coming from tropical countries. By spreading the negative issue that coconut oil as a source of disease. Many nutrition experts are unable to dispute the issue so that coconut oil is feared and shunned by many people.

According to Professor of Nutrition Sciences Faculty of Medicine Universitas Indonesia Dr. Walujo S. Soerjodibroto, MSc, SpG (K), coconut oil actually has advantages that is 50% fatty acids in coconut oil is lauric acid and 7% is kapriat acid. Both acids are medium chain saturated fatty acids that are easily metabolized and are antimicrobial (antiviral, antibacterial and antifungal) that can boost immunity. In addition, it turns out the breakdown of saturated fat chain is rarely stored as fat and rarely accumulate in the blood vessels.

Coconut oil has levels of omega-3 polyunsaturated fatty acid EPA and DHA that can lower VLDL cholesterol, blood viscosity, inhibit thromboxane and prevent blood vessel blockage. Fatty acids in coconut oil contain lots of medium chain fatty acids (Medium chain fatty acids) which serves to improve body fatty acids in synergy with essential fatty acids. By consuming MCFA can increase the efficiency of essential fatty acids by 100%. The content of MCFA coconut oil is also the same as breast milk (mother's milk) is to provide nutrition and protect the body from infectious diseases and degenerative diseases.

Exactly in the 60s began to be re-examined by Prof. Jon J Kabara of the University of Michigan. Now that its prestige has been revived by western media, coconut oil has managed to raise its prestige again. But this time coconut oil is no longer used as cooking oil but a nutritious oil medicine.

### **b. Oil Mandar In the Life of Mandar Society**

Indonesia is famous for its cuisine rich in spices and other ingredients. Ethnic Mandar, West Sulawesi as part of Indonesia is certainly also memiliki various recipes that are typical and

<sup>5</sup><http://www.scribd.com/doc/20976488/Perlindungan-Indikasi-Geografis-dan-Potensi-Indikasi-Geografis-Indonesia>

require traditional ingredients, call it head oil. Coconut oil is widely used by Mandar people in daily life. Not just cooking, but sometimes also used as hair oil, lubrication, rubbing oil, etc.

Mandar oil or "Lomoq Mandar" is one of the processed products of coconut fruit that has a sweet and distinctive aroma. In addition to the distinctive aroma, this oil also has a long-lasting resistance that can be stored for more than a year, even without the use of synthetic chemical preservatives. Although this oil is traditionally processed, but this oil is not less competitive with the production of palm oil manufacturers. On the Polewali-Majene pivot shaft we will find a cluster of palm trees waving, a familiar scene in the eyes of the local people who are the main producers of coconut cooking oil. The geographical and socio-cultural conditions that support make this plant very strategic to be developed. So naturally if this area is used as a center of coconut producers in West Sulawesi. History has noted that in 1998 the value of the production of the Mandar oil industry reached Rp.4.96 billion. The development of this industry is increasingly successful after the establishment of Joint Business Cooperation (KUB) as marketing coordinator. Like the KUB Melati who is in Majene who has successfully marketed the Mayang Coconut brand, which managed to penetrate the national market up to the capital. Not only in the mandar, the same thing experienced by the farmers in Selayar. The area is located on one of the islands in South Sulawesi. This village has many coconut trees so dubbed as green gold. Based on historical searches, that Selayar had reached the peak of glory in the 1930s and 1960s to be called the era of "green gold". However, due to the erratic price of copra that farmers no longer have a definite livelihood.

The process of making coconut oil in Mandar society is done traditionally. Usually during the coconut harvest season, the harvested coconut will be peeled using a simple piece called passukean, a stick (usually metal or wood) with a pointed tip and firmly planted. After the coconut coconut separation process is designed, the coconut is then split. Further coconut meat and shell are then separated again with the panisi (a simple tool that functions like a lever to separate the meat with the shell).

Coconut meat that is clean from shell and other dirt that is sticky at the time of separation of meat with tempurug, then grated. the result of grated coconut selanjutya mixed with water then filtered and squeezed. The juice and filter are then boiled. Through the evaporation process, the water content in the oil will evaporate to create pure coconut oil. This ready-made coconut oil will then be used for many things, such as cooking oil, etc.

### **c. Potential of Geographical Indication Protection Against Mandar Oil**

Protection against Geographical Indications is new in the protection of Intellectual Property Rights in Indonesia. The system of protection against geographical indications is set out in the TRIPs Agreement requiring Member States to draft regulations on geographical indications, with the aim of providing legal protection against fraudulent competition practices or acts.

Geographical Indications provide protection against marks identifying a territory of a country, or a region or region within the territory as the origin of the goods, in which the reputation, quality and character of the item is determined by the geographical factor concerned.

Indonesia is a megadiversity country, a country with a diversity of cultures and natural resources, many excellent products produced by Indonesia and get a place in the international market, for example: Arabica Coffee Kintamani Bali, Java Coffee, Arabica Mandailing Coffee, White Pepper Muntok, and many more other. These products have long been recognized by consumers in various countries since the past and until now these products are still traded. With increasing competition, trade in a product will still get high demand if the characteristics and quality can be maintained and maintained consistency.

Quality improvement alone is not enough to make a product survive in the market but also can eliminate imitation products in circulation so that the existence of product quality can be maintained. A product of distinctive and well-known quality is certainly imitated by many people so that adequate legal protection is required for these products.

In some cases, it has been proven that Indonesian product names such as White Muntok or Muntok White Pepper have been replaced with similar products from Vietnam, China or other areas traded under the name Muntok White Pepper, another example is Gayo arabica coffee, have been registered as trademarks by foreign parties and consequently exporters from Gayo, Aceh are prohibited from entering their products into Europe under the Gayo name. Similarly, what happened to Toraja coffee where Key Coffee Corporation of Japan registered the "Toarco Toraja" mark with registration number 75884722. The brand besides displaying the word "Toraja" Toraja traditional house as the background of the brand.

Mandar oil that has long existed and has become part of the tradition of the community for generations, is one of the typical products of the community that has the peculiarity and privilege of flavor and aroma in comparison with other types of cooking oil on the market. This is due to the fact that the type of coconut raw material processed for oil is taken from coastal areas along Polewali Mandar beach which have characteristic soil characteristics.

If coconut is taken from the area or area of paddy fields where the growth of coconut trees, then processed to be used for oil then the oil is not as good as the quality of oil taken from the coconut that grow along the coast in Polewali Mandar. This is because the coconut trees that grow in the area of rice fields / wetlands affect the water content contained in oil that has been processed. This also causes the oil can not last long and quickly rancid smell.

## CONCLUSION

Generally, when viewed from the characteristics attached to mandarine oil, this product is really worthy to be registered for Intellectual Property Rights of the community that produces into the Geographical Indication regime. But of course, this is still needed more in-depth research.

In addition to the geographical factors mentioned above, the production of mandar oil is actually also influenced by the process of manufacture that is still traditional and it is maintained in hereditary by the Mandar community, although the people who produce this oil only by some people in Polewali Mandar and with the production still in limited quantities.

## REFERENCES

- Achmad Zen Umar Purba. 2005. *Intellectual Property Rights After TRIPs*. Jakarta: Alumni.
- Agus Sardjono. 2009. *Housing IPR in Indonesia*. Bandung: Aulia Nuance.
- Ahmadi Miru. 2007. *Brand Law*. Jakarta: Raja Grafindo Persada.
- Budi Agus Riswandi et al, *Intellectual Property Rights and Legal Culture*, 2005
- Directorate General of Intellectual Property Rights of the Department of Justice and Human Rights of the Republic of Indonesia, *Compilation of the Law of the Republic of Indonesia in the Field of Intellectual Property Rights*, Japan International Co-operating Agency.
- Directorate of International Cooperation and Trade, 2004, *Increase of Value Added Indonesian Commodity with development of Geographical Indication*.
- Ibrahim Abbas. 1999. *The Mandar Cultural Approach*. Ujung Pandang: Sipattau.
- Miranda Risang Ayu. 2006. *Discussing Intellectual Property Rights-Geographical Indications*. Bandung: Alumni.
- OK. Saidin. 2006. *Aspect of Intellectual Property Rights Law (Intellectual Property Rights)*. Jakarta: RajaGrafindo Persada.
- Rachmadi Usman. 2006. *The Law of Intellectual Property Rights*. Bandung: Alumni.
- Sudargo Gautama and Rizawanto. 2002. *New Brand Law of 2001*. Jakarta: Citra Aditya Bakti.
- Tanawali Shah Azis. 2002. *History of Mandar Volume I*. Ujung Pandang: Al Azis Foundation.
- [www.dgip.go.id/ebhtml/hki/filecontent.php?fid=14871](http://www.dgip.go.id/ebhtml/hki/filecontent.php?fid=14871)