



Legal Protection of Indonesian Traditional Foods from the Perspective of Geographical Indications

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Abstract

Culture in society produces creations that become the identity of each region in the country. However, with the development of the times and the ease of accessing information, one of them is traditional food, authentic food which continues to be preserved by indigenous peoples or indigenous cultures such as traditional food which is easily exploited not only by the indigenous people who preserve it but also other parties. This paper examines how traditional food can be recognized as an intellectual work and its legal protection so that its identity can be recognized. This research uses the type of normative juridical research. This normative legal research is based on primary and secondary legal materials, namely the research approach using a conceptual approach and statutory approach. The results of this study are that traditional food is said to be traditional knowledge having several elements 1. Traditional food recipes are obtained from generation to generation, 2. Traditional food has been consumed gradually by the community for a long time, 3. Traditional food was born and developed in certain areas and can be the identity of the area, 4. Process of food processing which still tends to use traditional methods, 5. Not infrequently traditional food has a meaning or meaning and becomes one and 6. It is unclear the ownership of food recipes, but the ownership is communal.

Keywords: *Geographical Indications; Intellectual Property Rights; Legal Protection; Traditional Foods*

A. Introduction

Traditional food as a regional specialty is a legacy of art and technology from our ancestors that needs to be known, preserved and developed so that the priceless culture does not disappear due to the development of foreign culture in Indonesia. Food does not only serve to maintain health, but also has a socio-cultural function that can be sold and promoted for foreign exchange. The variety of food produced by a nation can be used as a measure of the high culture of a nation.

Food can be said to be traditional food if the food is inherited and is a characteristic of an area. Basically, food is influenced by the availability of raw materials from the area where they live so that each region has its own food characteristics. For example, food in mountainous areas with food in coastal areas. Mountainous areas have the availability of food ingredients in the form of a variety of dominant plant species such as tubers, rice, beans, and so on. In contrast, in coastal areas, the availability of many food ingredients comes from the sea, such as fish, shrimp, squid, and so on.

The processing techniques and tastes of traditional food recipes are often inherited, and there is limited product innovation. According to Sosroningrat, traditional food has the following characteristics: (Marwanti, 2000)

- a) Food recipes that are passed down from generation to generation,
- b) The use of certain traditional tools in the processing of these dishes (for example, dishes must be prepared with tools made of clay),
- c) Cooking technique is a way of processing that must be done to get a distinctive taste and appearance of a dish.

Now traditional food or regional food is one of the main attractions for both local and foreign tourists. Regional food is one of the country's assets to improve the economy, one of which is tourism. Based on data from the Ministry of Tourism and Creative Economy, culinary is the sub-sector that contributes the largest GDP to the creative economy. The average every year is around 43% of the total Creative Economy GDP (Pink, 2021). The importance of the existence of regional food to attract tourists, there are many "cases of claims of traditional food" from other countries. One of the most common cases is the claim of traditional Rendang food from West Sumatra. Not only in Indonesia, cases of traditional food claims also often occur in various countries such as England and India over Chicken Tikka Massala. This food claim case eventually led to conflict or other polemics such as attacking each other between citizens who felt they owned each other's traditional food. Everyone knows that food is a form of Intellectual Property Rights (IPR).

However, the IPR protection laws do not clearly regulate the protection of traditional food. Like for example Law Number 28 of 2014 concerning Copyright in article 40 on types of works that are protected by copyright, traditional food is not mentioned. Furthermore, protection with Law number 30 of 2000 concerning Trade Secrets, is a law that cannot cover protection because it is not in accordance with the elements of the traditional food itself because the recipe can be found anywhere. Then in Law Number 13 of 2016 concerning patents, traditional food is hindered by novelty arrangements that must be carried out on works that want to be protected by patents, and of course this collides with elements of traditional food. Departing from this legal vacuum, the researcher intends to look for traditional food protection solutions from the perspective of intellectual property rights.

Based on the background described above, this study aims to examine how traditional food can be recognized as an intellectual work and its legal protection so that its identity can be recognized.

B. Research Methods

This research uses the type of normative juridical research. According to Jaman et al. (2021), "The type of legal research that is carried out in a normative juridical manner is where law is conceptualized as what is written in laws and regulations (law in books) or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate". This normative legal research was based on primary and secondary legal materials, namely the research approach using a conceptual approach and statutory approach.

C. Results and Discussion

1. Indigenous Knowledge and Traditional Food

According to Koentjaraningrat (1990), there are three forms of culture, namely: (1) ideas, ideas, values, or norms, (2) activities or patterns of human action in society, and (3) objects made by humans. Ideas, concepts, values or norms as the first form of culture are abstract. Ideas, concepts, values or norms as a "people's mind" develop interrelated with one another as a cultural system called "customs". Meanwhile, the second form of culture is a social system, namely human activities or actions that form patterns of community behavior based on customs. This social system has a concrete form so that it can be observed in the daily activities of the community. The third form of culture is physical objects that are concrete in nature in the form of objects from all human creations, works, actions, activities or actions in society. Hence, the three types of culture are intertwined and cannot be considered independently.

Based on Koentjaraningrat's ideas, we can conclude that behind food as a cultural product, there is a social system in the form of activities that shape patterns of behavior in society as well as a cultural system in the form of ideas, ideas or values that animate people's lives. Food as a concrete work in culture cannot be separated from eating activities and the underlying philosophical values in society. Georg Simmel, a German sociologist, stated that eating has both individual and communal dimensions. On the one hand, eating is an individual matter, meaning that the process of eating is a one-time process, so that certain foods that are eaten exclusively by someone into their body cannot be eaten again by other people. Eating is egoistic because every human being eats his own food, and cannot eat food that is in other people's bodies (Setiawan, 2016; Simmel, 1997). If we understand traditional food (food inherited from our ancestors) in the archipelago, we find that food is often associated with certain social and spiritual rituals. Traditional food is a complement to social and religious ceremonies, especially regarding major events in life: birth, marriage or death. In the Sundanese or Javanese traditions, for example, it is known as tumpeng rice as a special dish at the salvation ceremony (Dewi, 2011). Nasi tumpeng is a food that is loaded with local wisdom in the form of human responsibility to respect the Creator, the universe, and fellow human beings. According to Mohammad Rondhi, besides being served for the purposes of offerings, namely an expression of respect to the Creator, Nasi Tumpeng is also served for the purposes of *sadaqah* (alms) and *arbor* (*bulubekti*). *Sadaqah* (alms) and *arbor* (*bulubekti*) are expressions of respect for fellow human beings. *Sadaqah* is the giving of food from the rich (upper social strata) to the poor (lower social strata) as a sign of solidarity, and vice versa *Punjung/ Bulubekti* is the giving of food from people with low social strata to people with high social strata as a sign of loyalty and devotion (Rondhi, 2007).

Traditional food of the archipelago as a form of culture is important to be preserved. Traditional Indonesian food not only serves appetizing tastes, but also holds a wealth of local wisdom as a valuable source and way of life for the people of Indonesia. Likewise, the values behind traditional Indonesian food need to be reinterpreted in the present context so that they are relevant to the lives of Indonesian people. However, this effort is not easy to do. Various ethical issues surrounding traditional Indonesian cuisine emerge as challenges that need to be faced, one of which is the issue related to Intellectual Property Rights.

The issue of unclear information has become one of the focuses of traditional Indonesian culinary issues. On the one hand, oral traditions do not leave witnesses or traces of history that can be proven objectively. Information about traditional food is generally not known completely and clearly: it is unknown who invented it, or when exactly it was discovered. Who invented pempek is still a mystery (Rondhi, 2007).

In this case, traditional food must get recognition that traditional food is also the result of human thought that has the right to use it both morally and economically. If drawn from the elements of traditional food itself:

- a. Traditional food recipes are passed down from generation to generation
- b. Traditional food has long been consumed gradually by the community
- c. Traditional food was born and developed in certain areas and can become the identity of that area
- d. Process of food processing that is still traditional
- e. Not infrequently traditional food has a meaning or significance and becomes one
- f. Unclear ownership of food recipes, but ownership is communal in certain areas

It can be said that traditional food is part of traditional knowledge. WIPO explained Traditional Knowledge (TK) is “knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity” (WIPO, 2016).

Meanwhile, The Director General of the United Nations Educational, Scientific and Cultural Organization explained “The indigenous people of the world possess an immense knowledge of their environment, based on centuries of living close to nature. Living in and from the richness and variety of complex ecosystems, they have an understanding of the properties of plants and animals, the functioning of ecosystems and the techniques for using and managing them that are particular and often detailed. In rural communities in developing countries, locally occurring species are relied on for many - sometimes all - foods, medicines, fuel, building materials and other products. Equally, people's knowledge and perceptions of the environment, and their relationships with it, are often important elements of cultural identity”.

Besides the definitions formulated by international organizations, we can also refer to the definitions formulated by scholars and experts. Among them as mentioned by Peter Jaszi (2009). By referring to the previous definitions of traditional knowledge, Peter Jaszi generally defines traditional knowledge as knowledge resulting from intellectual activity that is developed based on past experiences and observations, which has a dynamic nature and character that is always changing based on the needs and changes of society (Avilia et al., n.d.). In line with Peter Jaszi, J. Janewa Oseitutu defines traditional knowledge as the result of intellectual activity that is passed down between generations, and relates to certain groups of people (Oseitutu, 2009). This knowledge emphasizes the accumulation and transmission of knowledge between generations (Wekundah, 2012). Based on some of the definitions above, as knowledge that is inherited, in general it must be remembered that traditional knowledge is not limited to one particular field. This knowledge is related to all aspects of life, and the environment (Andriantsiferana, 2003). In the international context, it has been agreed that traditional knowledge includes agriculture, science, engineering, ecology, and medical knowledge (Rohaini, 2015), as well as knowledge related to genetic resources (Jaszi, 2009).

According to the explanation in article 5 letter e of the Law of the Republic of Indonesia Number 5 of 2017 concerning the Advancement of Culture explains that "Traditional knowledge is all ideas and ideas in society, which contain local values as a result of real experience in interacting with the environment, developed continuously and passed on to the next generation.

Traditional knowledge includes:

- 1) Craft;
- 2) Fashion;
- 3) Healing Method;
- 4) *Jamu* (Herbal medicine);

- 5) Traditional food and drink; and
- 6) Knowledge and behavioral habits regarding nature and the universe.

From this explanation that traditional food is a form of creation of traditional knowledge. Traditional knowledge is included in the scope of intellectual works originating from ideas, ideas, or inventions of a group of people in a country. The scope of traditional knowledge itself refers to tradition-based literature, artistic or scientific works, performances, inventions, scientific discoveries, designs, brands, names and symbols, undisclosed information, and all other tradition-based innovations and creations caused by intellectual activity in industrial, scientific, literary or artistic fields. Tradition-based ideas refer to systems of knowledge, creation, innovation and cultural expression that have generally been passed on from generation to generation (Rongiyati, 2016).

Recognition of traditional food as traditional knowledge is important, but apart from recognition, legal protection is also needed to cover the moral protection and economic rights of indigenous peoples. In most traditional knowledge works, simple patents and copyrights can be protected. However, the protection of traditional food cannot use patents or copyrights because they are not in harmony with the elements of traditional food, such as renewal requirements and the subject of private ownership.

2. Legal Protection of Indonesian Traditional Foods from the Perspective of Geographical Indications

John Locke said that humans have the right to control nature and its results, especially because humans have worked to cultivate nature and for this reason humans have the right to obtain or own the processed products of this nature. The results of human work belong to that human. Further, Locke also says, when humans have mixed their work with natural products (mixed his labor), then these results are his, because humans have sweated over the results of hard work and also mixed with human work (something annexed), then humans have the right to own those results. This is what is called the theory of work (labor theory) by John Locke (Murray, 2022).

This theory is the background to the protection of intellectual property rights. Legal protection from the perspective of intellectual property rights can provide benefits both in terms of moral protection and economic benefits for collectives related to works of creation (Harwanto, 2022). The question that arises is whether traditional food is an invention that can be called a form of creation from the results of Intellectual Property Rights.

In this case, we try to categorize elements that are closely related to traditional food:

- a. Traditional food recipes are passed down from generation to generation
- b. Traditional food has long been consumed gradually by the community
- c. Traditional food was born and developed in certain areas and can become the identity of that area
- d. Process of food processing that is still traditional
- e. Not infrequently traditional food has a meaning or significance and becomes one
- f. Unclear ownership of food recipes, but ownership is communal in certain areas.

From these traditional food elements, traditional food can be regarded as a group of traditional knowledge. WIPO explains Traditional Knowledge (TK) as “a knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity” (WIPO, 2016). Meanwhile, The Director General of the United Nations Educational, Scientific and Cultural Organization explains traditional knowledge in general as: Indigenous peoples of the world have extensive knowledge about their environment, based on centuries of living close to nature. Living in and of the richness and diversity of complex ecosystems,

they possess a specific and often detailed understanding of the properties of plants and animals, the functioning of ecosystems and the techniques for using and managing them. In rural communities in developing countries, local species are relied upon for much – sometimes all – of their food, medicines, fuel, building materials and other products. Likewise, people's knowledge and perceptions of the environment, and their relationship to it, are often important elements of cultural identity.

According to the explanation in article 5 letter e of Law Number 5 of 2017 concerning the Advancement of Culture explains that “Traditional knowledge is all ideas and ideas in society, which contain local values as a result of real experiences in interacting with the environment, developed continuously and passed on to the next generation”.

Traditional knowledge includes:

- 1) Craft;
- 2) Fashion;
- 3) Healing Method;
- 4) *Jamu* (Herbal medicine);
- 5) Traditional food and drink; and
- 6) Knowledge and behavioral habits regarding nature and the universe.

According to this viewpoint, traditional food is a form of traditional knowledge creation. Traditional knowledge is included in the definition of intellectual work that originates from the concepts, ideas, or innovations of a country's population. The scope of traditional knowledge includes literature, artistic or scientific works, performances, inventions, scientific discoveries, designs, brands, names and symbols, confidential information, and all other tradition-based innovations and creations resulting from intellectual activity in industrial, scientific, literary, or artistic fields. The term "tradition-based ideas" is used to describe bodies of information, works of art, and cultural practices that have been passed down from one generation to the next, are typically associated with a specific geographical area, and have evolved organically and in response to a dynamic environment (Rongiyati, 2016).

Currently, the regulations regarding the protection of traditional knowledge are only in the articles in the law as follows: Law Number 28 of 2014 concerning Copyright. In Article 38, that and Law Number 29 of 2000 concerning Plant Variety Protection, in Article 7. Still, the law still cannot cover protection for traditional food.

Of the various branches of IPR, the most applicable protection system for traditional food protection is Geographical Indications. According to law number 20 of 2016 concerning Trademarks and Geographical Indications (hereinafter abbreviated as the MIG Law in this study) Geographical Indications, are signs indicating the origin of goods and/or products due to geographical environmental factors including natural factors, human factors or a combination of these two factors gives reputation, quality and certain characteristics to the goods and/or products produced.

The terms of protection for Geographical Indications are as follows:

- a) A sign indicating the area of origin of an item or product
- b) Known for its geographic environmental factors including natural factors and human factors

Unlike other branches of IPR protection. Geographical indications focus on protecting the identity of the work of ones wish to protect. As it is known that protection such as recipes, cooking methods, processing methods, or cooking forms (design) cannot fulfill the elements of traditional food that you want to protect. Like the theory put forward by Nico Kansil contained in the book *Kholis Roisah* ((Sumiyati et al., 2008) in (Adhi et al., 2019)), the purpose of registering Geographical Indications is to

give awards to the community, both those with direct interest and the public general. The theory of protecting intellectual property rights put forward by Nico Kansil is actually interrelated with each of his theories. Basically, the protection that will be obtained will be used to improve people's welfare. Starting from being recognized and given protection in the form of geographical indications, a sense of pride over the success of obtaining recognition for the protection of geographical indications to bonuses in the form of material value as an increase in the welfare of the geographical indications owned. The use of trademark as geographical indications can be in the form of tags or labels placed on the goods produced. The trademark can be in the form of the name of the area, the area of the image, and letters and a combination of these. The protection of geographical indications includes natural, agricultural, handicraft or industrial products.

Researchers think that there are several conditions or factors from Geographical Indications that can be correlated with Traditional Food, which are described as follows:

a. Terms of 'Region of Origin of Goods and/or Products'

Provisions related to 'origin area' are the main feature of the protection of Geographical Indications. This is also mentioned in Article 1 paragraph (6) of the MIG Law. The area of origin is the most important part in the protection of geographic indications because it is an identity for the product or goods produced from the area of origin. In the concept of IPR, identity is the most important part, because IPR is closely related to 'ownership'. Claims of ownership certainly require the identity of the creator or inventor who will certainly get monopoly rights. Indeed, for geographical indications, the protection is not based on the identity of the specific owner, such as copyrights or patents. Ownership is based on communal ownership. Communal ownership is based on discoveries that develop and cultivate from a certain area so that it becomes an identity in that area, then the creator/inventor cannot be identified individually. Everyone in the area is considered entitled to use and has an obligation to preserve.

In the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 in Article 1 paragraph 1 it explains that Communal Intellectual Property is wealth in the form of traditional knowledge, traditional cultural expressions, genetic resources, and potential geographical indications.

Traditional food as true traditional knowledge is also a communal intellectual property which should be protected. The requirements for the identity of the area of origin for the protection of geographical indications are also very close to the characteristics of traditional food. An example of the traditional food is Rendang. Rendang is a traditional food that has long been developed in West Sumatra. Likewise, like Pempek which is a typical food from the area of West Sumatra.

b. Natural Factors and/or Human Factors

In geographical indications, there are elements that must be met to obtain protection, namely products that must be protected from natural factors or human factors or a mixture of the two, which give reputation, quality and certain characteristics to the goods and/or products produced.

The natural factors in question are factors originating from nature that are only found in that one area. An example is Bali Kintamani Arabica Coffee. Bali Kintamani Coffee is Arabica coffee grown in the Kintamani highlands with an altitude above 900 m above sea level, on the slopes of the Batur volcano where the soil and climate are very favorable for coffee plants. The taste of Arabica coffee with fruit flavors, especially oranges, is caused by coffee plantations adjoining grapefruit plantations and the taste of oranges eventually contaminates the taste of the coffee. This identical coffee taste can only be found in Bali Kintamani coffee (DGIP, 2008).

Moreover, the geographical indication that comes from the human factor. This human factor is meant to be the result of the human hand itself without the interference of natural factors, the result of the fruit of the human hand is part of a culture or habit that continues to develop in a certain area. An example is, Handicraft Weaving. One of the woven crafts whose geographical indications are registered is Sikka Ikat Weaving from East Nusa Tenggara. Initially there was no definite historical record of the Ikat Sikka Woven fabric. Weaving skills have been passed down from generation to generation. From an old Sikka poem which reads: *“Lair beli eung ulit, Ulit lusi lopa biha wikir Tangar beli eung lorang Lorang lopa boga ligur lobe beli sa”e beli. Mitak naha sida wa”ing Sapu beli sae beli. Merat naha hawing palik Wiwir loa lupa guring, Odi ata to ho”ot ita, Watang loa lopa bekang. Odi ata hiri ta kengong ita”* (DGIP, 2017). It can be translated that “the woven cloth was already made by the natives of Sikka before the arrival of foreign nations. From this explanation, it can be concluded that the identity of a creation does not only originate from nature in an area, but also from the results of human hands as well.”

Then the relation with traditional food is that in accordance with the characteristics of traditional food itself that traditional food is the result of human hands that were born due to cultural factors that exist in an area and gradually make it the identity of a region.

Hence, from the explanation of the elements of the Geographical Indications it can be concluded that traditional food can be categorized as a product that can be protected by Geographical Indications. In essence, geographic indications have a very complex urgency. When a natural product or human handicraft must have different characteristics and characteristics between each region which is influenced by geographical factors and of course human factors. When a product is registered and has been recognized as registered as a geographical indication, this is able to avoid fraud committed by other parties. For example, claimed or recognized by other regions as their products or geographical indications from their regions. In addition, geographical indications are better able to convince consumers of the quality of the products where the products originate, maintain competitive advantages that have been obtained for the long term, and the most obvious thing that will be seen is the increase in people's welfare which directly intersects with geographical indication products. Where having the recognition of geographic indications provides an opportunity to be able to obtain economic benefits which will improve people's welfare. Geographical indications which are part of intellectual property need to get legal protection. In order for an item to be protected as a geographical indication, apart from meeting elements such as reputation, quality and special characteristics, it must also be registered with the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia. This is in accordance with the provisions of Article 53 paragraph (2) of the Law on Trademarks and Geographical Indications which stipulates that in order to obtain protection, an applicant for a geographical indication must submit an application to the minister.

In the case of traditional food where ownership cannot be identified individually or as a group, the protection of traditional food should be submitted by the provincial or district/city regional government. From the explanation above, protection with intellectual property rights on traditional food as a form of traditional knowledge can be protected with the domain of registration of Geographical Indications, with the following criteria:

- a) The identity of the area of origin can be proven in these traditional foods
- b) Traditional food is closely related to the human factor in terms of geographic indications
- c) Traditional food can be traced to historical traces and the meaning of traditional food can be narrated
- d) Traditional food can be determined by the boundaries of its distribution area in one area
- e) Traditional food is also a product that is certainly traded

The protection of traditional food which is a cultural identity in regions in Indonesia is very important. With the presence of law in social life, it is useful to integrate and coordinate interests that are usually in conflict with one another. Therefore, the law must be able to integrate them so that conflicts of interest can be minimized. The definition of legal terminology in Indonesian dictionary according to KBBI is regulations or customs that are officially considered binding, which are confirmed by the authorities or the government, laws, regulations, and so on to regulate community life, standards or rules regarding certain natural events, decisions or considerations determined by the judge in court, or the verdict. In other words, legal protection is an illustration of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace.

Conclusion and Future Directions

Traditional food has several elements 1. Traditional food recipes are obtained from generation to generation, 2. Traditional food has been consumed gradually by the community for a long time, 3. Traditional food was born and developed in certain areas and can become the identity of the area, 4. Process of food processing which still tends to use traditional methods, 5. Not infrequently traditional food has a meaning or significance and becomes one of and 6. It is unclear the ownership of the food recipe, but the ownership is communal. From these elements, this relates to traditional food, which can be said to be Traditional Knowledge. Traditional food, which is a form of traditional knowledge, requires protection not only in terms of recognition but legal protection that can protect against disputes. Legal protection for this traditional food can be done by registering intellectual property rights in the geographical indication branch.

In addition to the importance of protecting traditional food with geographical indications, traditional food must also be protected preventively by carrying out an inventory by the state. The State, along with local governments and indigenous peoples, continuously conducts inventory as well as makes culture maps, documentation, archives and publications on both a national and international scale.

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