

Preventing Land Conversion by Using Geographical Indication Regime to Realize Food Sovereignty

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Abstract— Food supply is government's responsibility as well as the right of citizen. Inability to supply food will result in threat for country's food sovereignty. Land is closely related to food supply. The lesser number of land due to land conversion, the higher its impact of low supply of food. Therefore, there should be new strategy to prevent land conversion. Geographical Indication regime might be used as the alternative to bring food sovereignty into reality for its ability to improve the selling value of product and prosperity on the part of farmers. This study employs normative method by using primary and secondary law materials to analyse the research problems.

Keywords— Land Conversion, Geographical Indication, Food Sovereignty.

I. INTRODUCTION

Land plays crucial role for human life for its ability to supply our basic need of food and shelter. It is also the place of various land resources which are interrelated to each other to form a structural and functional system¹. Almost all development of physical sector need the availability of land such as farming, plantation, housing, industry, mining, transportation sector and other sectors. Concerning farming and plantation sector, land is also crucial natural resources either for relevant farmer or for farming development program. It is based on the fact that farming activities in Indonesia are still land-based agricultural activities.²

Based on its scope, it includes the land on mainland up to that along rivers/lakes or beaches. It also has unique characteristics as part of unremoveable and unaddable natural resources. Therefore, in line with the increasing number of people who need land for shelter and other economic activities, land conversion efforts of farm and plantation are also increasing. As part of people's life, land should be well-managed by taking people's prosperity, environmental friendly point of view, independency, and maintaining balance between development and national economic unity as stated in verse 33 of Indonesian Legislation of 1945 into account.

Land in certain area is related to people and development need. However, there are conflicting interest caused by increasing need of land for people use and for development due to increasing number of people while land width remains the same.³ Development activities and increasing number of people influence the existing natural resources and decrease environmental quality resulting in land conversion either for farming or plantation activities to fulfil the need of industry,

housing complex, infrastructure development and others. If they are not anticipated properly, the aforementioned condition might threaten the food stability.

Farming land conversion to non-farming use raises debate among environmental experts in which some of them believes that it is a consequence of municipalisation process that should not be worried about as long as it refers to General Spatial Plan. Some others believes that land conversion threaten multifunction of farm land. Farming land conversion might endangered the supply stability of national food considering that farm land is biggest supplier of food. In addition, farm land conversion might also degrade the environmental quality and eliminate the benefit of irrigation investment. Farm land conversion to non-farming sector might raise negative impact on various aspect of development because land plays important role in economic, social and environmental aspects. The most striking negative impact is the disruption of food security, reduction of job vacancy in farming sector, and marginalization of farming sector. Furthermore, farming land conversion might also create environmental issues. National food security, improvement of farmers' prosperity, poverty alleviation and farming-based economics development should be the focus of all relevant stakeholders especially government by composing strategic and useful policy for people.⁴

Food security as central issue in farming development framework and national development is one of the focus of national policy in farming development. Improving food security should be main priority of national development program because food is basic need playing crucial role in development of national economy. Food security is defined as availability of adequate number and high quality of food with reasonable price and it is safe to be consumed by people. The causes of inadequate number of food influencing food security are stock of food, available jobs and people's income. The number of food stock influences food price. For unemployed families, increasing price of food make will not be affordable

¹ Notohadiprawiro T, "Kemampuan dan Kesesuaian Lahan: Pengertian dan Penetapannya". Paper presented on Workshop of National Natural Resources Balance. DRN. Group II. Bogor. Bakosurtanal, 1991

² Susi Wuri Ani, "Faktor-Faktor yang Mempengaruhi Alih Fungsi Lahan Pertanian ke Sektor Non Pertanian di Daerah Istimewa Yogyakarta", Jurnal Sosial Ekonomi Pertanian dan Agribisnis (SEPA), Volume 6 No 1 September 2009, Solo. University of 11 Maret, p 12.

³ Vink, G.J, "Dasar-Dasar Usaha Tani di Indonesia" (Jakarta : Yayasan Obor, 1984)

⁴ Bambang Irawan, "Meningkatkan Efektifitas Kebijakan Konversi Lahan", Forum Penelitian Agro Ekonomi, volume 26 no 2 December, 2008, page 120.

for them to fulfil their nutrient need and it threatens their food security.⁵

Essentially, the scope of food security is narrower than food sovereignty which is the requirement of self-fulfilled food. It will be able to realize if food sovereignty has been achieved. Thus, each government and its people is required to have right and determine their needed food, to have applicable farming policy, and to have adequate production of local food as well as fairness of trade at local level. Food sovereignty is required for food security. All nation should have right to determine food they consume and applicable farming policies.⁶ The achievement of food sovereignty is closely related to land availability for food production. Limited number of land causes limited number of food. Therefore, land conversion resulting in inability to realize food security should be anticipated.

Geographical Indication is one of the intellectual right regimes in the form of symbol showing the origin of certain good and/or product influenced by geographical factors such as natural, human factor or combination of both. The factors results in reputation, unique quality and characteristics of good and/or product. The regime is related to food sovereignty because one of the object is natural resources such as rice, cassava or other food plant protected by using Geographical Indication. Based on the afore-mentioned introduction, research problem of this paper is that how Geographical Indication regime might be used to prevent land conversion in order to realize food sovereignty.

II. RESEACRH METHOD

This paper employs normative law research method focusing on intellectual right especially Geographical Indication regime which is related to land affair and food sovereignty. The writer tries to fiend “connection” between the three in order to find solution of existing problem of law.

Study on application of law is based on relevant theories and concept of law exploring the gap between theoretical review and the application of positive law. The gap between the expectation (*das solen*) and the fact (*das sein*) raises question on normative law problem.⁷ Therefore, problem on land conversion should be analysed by using communal-based approach of intellectual rights.

Normative law research takes law issues as norm system used to give prescriptive justification of law phenomenon. The object of this study is norm or rule of law as system which is related to certain law phenomenon.⁸ Thus, this study is based on Geographical Indication regime used to prevent land conversion. Then, norm systems of reference are obtained such as legislation, law norm, or doctrine to find construction

⁵ Achmad Suryana, (Ed), “*Kemandirian Pangan Menuju Ketahanan Pangan Berkelanjutan*”, Shobar Wiganda, “*Dinamika Konsep Ketahanan Pangan*” Jakarta: Kerjasama Departemen Pertanian dengan Harian Umum “Suara Pembaruan”, 2004, Page 7

⁶ Gator Irianto, “*Lahan dan Kedauletan Pangan*”. (Jakarta : PT. Gramedia Pustaka Utama, 2016), page 119.

⁷ Johny Ibrahim, “*Teori dan Metodologi Penelitian Hukum Normatif*”, (Malang: Bayumedia Publishing, 2007), page 279.

⁸ Mukti Fajar and Yulianto Achmad (2015). “*Dualisme Penelitian Hukum Normatif dan Empiris*”, (Yogyakarta:Pustaka Pelajar) , page 36.

or law relation between land conversion, land security and Geographical Indication.

III. RESULT AND DISCUSSION

Geographical Indication is based on concept of *indications of source* or *appellation of origin* which has existed since the 14th century in France. First product obtained Geographical Indication is *Roquefort* cheese. At that time, King Charles VI granted Royal Charter to *Roquefort* citizen for being the only place that was allowed to produce *Roquefort* cheese. Although French are well known for wine product, the first object which obtained geographical protection was *Roquefort* cheese.⁹

Based on the first concept of Geographical Indication as *indication of source* and *appellation of origin*, we are able to find out its scope. *Indication of sources* refers to sign or marking showing the origin of product from certain geographical area. *Appellation of origin* refers to sign showing that a product is from certain geographical area which is influenced by geographical environment including natural and human factors. Geographical Indication covers the two concepts. The use of Geographical Indication is controlled by producer association from relevant area to prevent its misuse or distribution of product of Geographical Indication. Concerning the scope of Geographical Indication, the right demise could not be given to other freely. Person to grant the right should be related to relevant geographical area and obey prevailing production practice in the area.¹⁰

Geographical Indications are stated in international law such as Paris Convention, Madrid Agreement, Lisbon Agreement, Stresa Convention, and TRIP’s agreement. Paris Convention is multilateral agreement on industrial intellectual right though there are several requirements on aspects related to marking representing the product origin by using *indication of source* term and *appellation of origin* stated in Article 1,7,10, 10bis and 10ter. Essentially, the protection of industrial right includes indication of source and appellation of origin, and its use should represent the geographical area of product.¹¹ Madrid Agreement in 1891 on The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods is multilateral agreement on economics benefit obtained from certain product origin which requires each party signing the agreement to hold all trade activities with false source of indication for misleading consumers on jurisdiction area.

Madrid agreement requires contracting parties to detain and prevent all product containing deceptive indication of source from being traded freely. In addition, the agreement requires relevant government to seize all goods having direct or indirect deceptive indication of source. Lisbon Agreement focuses on marking showing place of origin known as Appellation of Origin. This system is more protective than

⁹ Miranda Risang Ayu, “*Memperbincangkan Hak Kekayaan Intelektual : Indikasi Geografis*”, (Bandung, PT Alumni, 2006), page 3.

¹⁰ Michael Blakeney (eds), “*Extending The Protection of Geographical Indications, Case Studies of Agricultural Products in Africa*”, (New York : Earthscan, 2012), page. 9.

¹¹ Benard O’Connor, “*The Law of Geographical Indications*”, (London : Cameron May Ltd, 2006), p. 30.

indication of source or Geographical Indications. Furthermore, Stresa convention is an international convention which is crucial for cheese producer from Europe. The agreement gives exclusive right for high quality producer of cheese from French, Italy, Denmark, Switzerland and Duchth.¹² Trip's attached as document of WTO elaborates the requirements on comprehensive HKI to standardize KI protection in the world. The goals are stated in *Annex 1C* containing standard of existence, Scope and the Use of HKI; law enforcement, procedure to obtain and maintain HKI; prevention and conflict settlement. KI regime stated in TRIP's Agreement includes copyright, Brand, Geographical Indications, industrial product design, patent right, layout design of integrated electronic circuit and trade secret.

The settlement of Geographical Indications in Indonesia is logical consequence of WTO establishment and its attachment namely *Agreement on Trade Related Aspects of Intellectual Property Right* which was ratified in Indonesian Law No 7 of 1994 on The Approval of Agreement Establishing the World Trade Organization. Based on the law, Geographical Indications is organized in 1997. However, it is not *sui generis* part of Law on Brand. Up to now, Law on Brand has been revised five times since 1961 up to 2016. On November 25th, Law no 20 of 2016 on Brand and Geographical Indications was approved and came into force since then. On new law, Geographical Indications has more comprehensive scope for its law protection.

Law foundation on Geographical Indications in Indonesia is stated in Law no 20 of 2016 on Brand and Geographical Indications, Law no 39 of 2014 on Plantation and Government Legislation no 31 of 2009 on Protection of Geographical Area Producing Product of Specified Location. Geographical Indications is also implied in law no 39 of 2014 on Plantation, which is different from previous law (Law no 18 of 2004 in which Geographical Indications phrase is stated clearly in Chapter 24). On law no 39 of 2014 at article 63 verse (1) states that "central government ensures the sustainability of certain geographical area producing specific plantation product". The requirement doesn't state textually the phrase of Geographical Indications. However, the meaning and essence of protection of Geographical Indications is reflected from its norm of law. On the elaboration section, the article adopt the definition of Geographical Indications used to protect certain geographical area producing specific plantation product.

Regarding norm of law on article 63 no 39 of 2014 on Plantation, it is implied that law politics of the law should take KI protection especially IG regime for specific plantation product. In Geographical Indications, one of the criteria for certain product to be eligible for protection is that geographical factor. Land is one of the important component of IG product. Plantation product is closely related to land characteristics as growth media. Thus, plantation product should be protected by Geographical Indications mechanism.

Government legislation no 31 of 2009 on Protection of Geographical Area Producing Product of Specific Location is

¹²Miranda Risang Ayu, "Geographical Indication Protection In Indonesia Based On Cultural Right Approach", Jakarta: Nagara, 2009), page 68.

the implementation of Law no 18 of 2004 on Plantation.¹³ Article 2 in that legislation states the goals of Geographical Indications establishment which are to ensure the sustainability of area, to conserve high quality cultural product, unique features, and positive reputation in order to improve their added value and product's competitive side as well as to increase income and optimize the management of natural resources. The goals are in line with the protection of Geographical Indications aiming at reputation, quality and characteristics of material and/or product. Therefore, the establishment of Protection of Geographical Area Producing Product of Specific Location might be used as recommendation to obtain Geographical Indications protection especially for plantation product. Relevant Minister grant the protection upon receiving its application stated in the form of Book of Border Map and Specification composed by relevant local government. The Protection of Geographical Area Producing Product of Specific Location cannot be converted to other business practice or to other plant type. It is to ensure the use of right holder and community producing product of specific location.¹⁴

There are several factors for land conversion such as increasing number of people and living standard. Other factors are farm land which is intended for non-farming activities, small income ratio of non-farming activities to total income, fragmentation of farm, environmental degradation, ineffective law, and unclear land right and right of narrow farm land.¹⁵ Internal and external factors also influence land conversion. The external factor is dynamics of urban development and the internal ones are socio economic condition of family driving them to sell the land¹⁶. Excessive land conversion may rise serious problem such as threatening food supply capacity if it is not handled properly.¹⁷

Land conversion for other usage is complex problem. There should be holistic and comprehensive strategy for land conversion. All stakeholders should take part in establishing the strategy. There are three steps to establish the strategy. The first is that *entry point* of controlling strategy by encouraging active participation of stakeholders involving directly with the process of land conversion. The second is focus of controlling strategy on the prevailing policies such as law instruments (legislations), economics instrument (incentive, disincentive, compensation) and zonation (limitation of land conversion). The third is the goal of controlling strategy which is harmonious and sustainable land conversion.¹⁸ Regarding the policy of controlling strategy of land conversion, Indonesia has government legislation no 31 of 2009 on Protection of Geographical Area Producing Plantation Product of Specific

¹³ Previous Law on Plantation before Law no 39 of 2014.

¹⁴ Government legislation no 31 of 2009 on Protection of Geographical Area Producing Product of Specific Location

¹⁵ Gatot Irianto, Op. Cit. Page 47.

¹⁶ Iwan Kustiawan, "Konversi Lahan Pertanian di Pantai Utara Jawa", Prisma Magazine No 1. XXVI. 1997

¹⁷ Iqbal M and Sumaryanto. "Strategi Pengendalian Alih Fungsi Lahan Pertanian Bertumpu Pada Partisipasi Masyarakat". (Bogor : Pusat Analisis Sosial Ekonomi dan Kebijakan Pertanian, 2007), page 97.

¹⁸ Iswan Kaputra, "Strategi Pengendalian Alih Fungsi Lahan Pertanian Bertumpu Pada Partisipasi Masyarakat". Vol 1 no 1, 2013, page 25-39.

Location, Law no 41 of 2009 on Protection of Sustainable Farming, and Government Legislation no 1 of 2011 on The Declaration and Land Conversion of Sustainable Farming Land Conversion. The scope of legislation no 31 of 2009 is more specific forbidding conversion of area producing plantation product. Furthermore, government legislation no 1 of 2011 is the instrument to implement Law no 41 of 2009.

Food sovereignty is fundamental right of nations; therefore they need to formulate the policy to ensure food security. It is concerned to how nations formulate their politics policies to ensure the fulfilment of food for their citizen. Food is crucial for the success of failure of countries, therefore it turns into strategic economic commodity. Food is basic need that is also fundamental right of citizen. Therefore, governments are required to ensure the supply of food which are adequate, high quality and nutritious to all areas in Indonesia. Goal of nation to fulfil the need of food independently will be the political drive to realize food sovereignty.¹⁹

Article 1 verse (2)²⁰ of Law no 18 of 2012 on Food states clearly the goal of food sovereignty for optimizing local natural resources. Indonesia has abundant natural resources to support food supply that are not well-managed. So far, the price of natural resources on food such as rice, cassava, corn and others are low due to low quality. It drives farmers to sell their land to fulfil their need. It turns into one of the cause of massive land conversion for food security. The problems might be anticipated by implementing intellectual right regime namely geographical indication. Product or materials protected by Geographical Indications must have quality standard which is in line with the describing documents of registration. high quality product will result in high price and high demand. In turn, it will improve the prosperity of farmer. Therefore, General Directorate of Intellectual Right proclaim that 2018 as Year of Geographical Indications. Each office of Ministry of Law and Human Right should have one specific product to be registered for Geographical Indications and they are required to invent the communal right on their area.²¹

Indonesian has enormous potentials as producer of natural commodity with Geographical Indications. However, the number of certified product is still limited. Geographical Indications registered in Directorate of Intellectual Right (DIR) up to July, 2018 are 67 products consisting of 61 domestic and 6 international product. Majority of the products is coffee. There are 24 kinds of coffee such as Kintamani Bali, Arabika Gayo, Robusta Lampung, Robusta Semendo and others. Other registered product is spice such as moluccan clove of Kie Raha, Nutmeg of Tomandin Fak Fak, cinnamon of Koerintji, Nutmeg of Siau and others. Craft and industrial product (woven cloth of Gringsing Bali, Silk woven of

Mandar, Tied woven of Sikka and Tanimar) are also registered. Food material registered for Geographical Indications are rice adan of Kayan, Pandanwangi Rice of Cianjur and Cassava of Cilembu.²²

Rise Adan of Kayan is commodity from Krayan Birder in North Kalimantan. It is organic product of unique characteristic, reputation and quality which are soft-texture, sweet and soft taste, and aromatic smell influenced by natural factor. It is planted at 1000m feet above sea level. It is also influenced by human factor that it is submerged fortnightly, taken up, seeded and planted. After harvest, caribou is unleashed to planting area to consume the straw. Caribou step on the land, mud and straw and turn them into fertilizer. Characteristic and quality of Adan Rice makes it popular for Malay and Brunei, even it is favourite of King of Brunei Darussalam. In order to protect local commodity, in 2012, Adan Rice was granted Geographical Indications certificate no ID G 00000013 from Directorate of Intellectual Right as local Product of Kayan. The price of rice increases after obtaining Geographical Indications certificate. Geographical Indications also aims at protecting genetic natural resources, biological natural resources resulting in food security of nation.²³ Farm land of Adan rice will be protected by Law no 41 of 2009 on Protection of Sustainable Farming land and Government rule no 41 of 2009 on Declaration and Sustainable Land Farming Conversion. Therefore, the land must not be converted into other practice to achieve food sovereignty. It shows the relation between prevention of land conversion by using Geographical Indications scheme to support food sovereignty.

IV. CONCLUSION

Land conversion threatens the food sovereignty of nation because it limits the production of converted land. In turns, it result in less supply of food. Indonesia has regulation aiming at protecting land. They are government regulation no 31 of 2009 on Protection of Geographical Area producing Plantation Product of Specific Location, Law no 41 of 2009 on Protection of Sustainable Farming land and Government rule no 1 of 2011 on Declaration and Sustainable Farming Land Conversion. The existing policies should be integrated by using Geographical Indications scheme for products or materials with specific characteristics, qualities and reputations influenced by geographical factor. Geographical Indications might improve selling price of product to improve farmers' prosperity. Thus, farmers will not sell their land.

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¹⁹ Lembaga Pengkajian Independen Kebijakan Publik. "*Kedaulatan Pangan Indonesia : Meningkatkan Daya Saing Petani Indonesia di Tengah-Tengah Pengaruh Globalisasi Abad 21*", (Jakarta. PT Berita Nusantara, 2014), page 57.

²⁰ Article 1 paragraph (2) Law no 18 of 2012 on food "food sovereignty is nation right to establish the food policy independently ensuing the right of Food for Indonesian Citizen and grants right for people to determine food system which is in line with local potentials".

²¹ <http://dgip.go.id/dirjen-ki-canangkan-program-tahun-indikasi-geografis-di-indonesia> accessed on 23 Mei 2019

²² <http://laman.dgip.go.id/>, accessed on. 3 Maret 2017

²³ <https://food.detik.com>, <https://jawapos.com>, <https://rmlol.id>, accessed on 24 Mei 2019

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