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Comunal Branding of the Registered Brand of Javeast Coffee Reviewed from its Utilization and Legal Implications

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Abstract

Communal Intellectual Property (Communal Intellectual Property), geographical indications and collective brands look like the same. All three provide protection for intellectual property objects of a group or community whose ownership is collective or joint. Communal Intellectual Property is regulated in Article 1 point 1 of Government Regulation Number 56 of 2022 concerning Communal Intellectual Property. The purpose of this collective use of marks is basically to simplify the completion of registration requests. If several entrepreneurs produce and trade goods or services with the same characteristics, it is possible to use just one brand. Problem formulation: What are the characteristics of Communal Branding of the registered mark Javeast Coffee in terms of Trademark and Geographical Indications law? What are the legal

implications of Communal Branding of the registered mark Javeast Coffee which is used collectively? And what is the future concept for using Community Branding Javeast Coffee that will provide benefits to the community? Research methodology; normative juridical research, with legal, conceptual and comparative approaches. Research results Implications: Communal intellectual property compared to Collective Brands provides legal protection for the brand in question, whereas in the situation of Javeast Coffee as a communal branding which is registered as a trademark and not a collective brand, this has implications for the less than optimal use of the brand. Communal Branding arrangements are equated with collective brands at the regulatory level, giving rise to legal uncertainty which is correlated with less than optimal utilization.

Keywords: Communal Branding, Javeast Coffee Brand, Legal Implications

Introduction

Communal Intellectual Property (Communal Intellectual Property) is regulated in Article 1 point 1 of Government Regulation Number 56 of 2022 concerning Communal Intellectual Property (PP Communal Intellectual Property) which is referred to as Communal Intellectual Property, hereinafter abbreviated to KIK, is intellectual property whose ownership is communal and has economic value while still upholding moral, social and cultural values.¹ Meanwhile, Article 1 number 1 of the Minister of Law and Human Rights Regulation Number 13 of 2017 concerning Communal Intellectual Property Data (Permenkumham Communal Intellectual Property Data), states that Communal Intellectual Property, hereinafter referred to as KIK, is intellectual property in the form of traditional knowledge, traditional cultural expressions, resources. Genetics and potential geographical indications.²

The purpose of this collective use of marks is basically to simplify the completion of registration requests. If several entrepreneurs produce and trade goods or services with the same characteristics, it is possible to use just one brand. Collective mark registration is intended to provide a basis for effective legal protection to prevent various violations that harm various parties such as plagiarism, piracy or brand imitation.³

Communal IP, geographical indications and collective brands appear to be the same. All three provide protection for intellectual property objects of a group or community whose ownership is collective or shared. However, Communal IP,

¹ Peraturan Pemerintah Nomor 56 Tahun 2022 tentang Kekayaan Intelektual Komunal.

² Peraturan Menteri Hukum dan Hak Asasi Manusia (Permenkumham) Nomor 13 Tahun 2017 tentang Data Kekayaan Intelektual Komunal.

³ Naili Farida dan Nanik Trihastuti, *Strategi Communal Branding*, (Yogyakarta: Istana Publishing, 2021), h. 31.

geographical indications and collective marks have different meanings, elements, characteristics, registration processes and legal implications. Communal IP was strengthened by the birth of the PP on Communal Intellectual Property. Brands and geographical indications are regulated in Law Number 20 of 2016 concerning Marks and Geographical Indications (UU on Trademarks and Geographical Indications).

The Trademark and Geographical Indications Law Number 20 of 2016 recognizes that there are 3 (three) types of marks, namely Trademarks, Service Marks and Collective Marks. All three have different meanings, elements and characteristics. Article 1 paragraph 2 of the Trademark and Geographical Indications Law provides an understanding of trademarks, namely brands used on goods traded by a person or several people together or legal entities to differentiate them from other similar goods, while paragraph 3 provides an understanding of service marks, namely a mark used on services traded by a person or several people together or a legal entity to differentiate them from other similar services.

Based on Article 1 point 4 of the Trademark and Geographical Indications Law, a Collective Mark is a mark used on goods/services with the same characteristics regarding the nature, general characteristics and quality of the goods or services as well as their control which will be traded by several people or legal entities jointly. The same to differentiate it from other similar goods/services. As stated in Article 46 paragraph (4) of the Trademark and Geographical Indications Law, it is stated that: To empower Micro, Small and Medium Enterprises, the government can register Collective Marks intended for the development of the business in question and/or public services. The term of use of the brand is 10 years and can be extended. In the process of registering a collective mark, it can only be accepted if the application clearly states that the mark will be used as a collective mark, and there is a requirement to attach a copy of the use of the collective mark.

Meanwhile, what is meant by Geographical Indication (IG) according to Article 1 point 6 of the Trademark and Geographical Indication Law, is a sign that indicates the area of origin of a product and/or service due to geographical environmental factors including natural factors, human factors or a combination of These two factors provide the reputation, quality and characteristics that are the basis for providing protection for these geographical indications. The focus of GI protection is registered goods. GI is protected as long as the reputation, quality and characteristics are maintained which are the basis for granting GI protection to an item.

The Directorate General of Intellectual Property is a Directorate under the auspices of the Ministry of Law and Human Rights (Kemenkumham) which has the task of carrying out the formulation and implementation of policies in the field of intellectual property in accordance with the provisions of statutory regulations as well as differentiating the regulation of registration requirements and procedures, fees and payment methods, systems classification and others regarding Intellectual Property Rights (IPR) (Copyright, Brands, Patents, Industrial Designs, Integrated Circuit Layout Designs, Geographical Indications, Trade Secrets,

Communal IP). In the DJKI, each IPR has a definition and elements that differentiate it from one another.⁴

From several explanations of the Law and regulations, Intellectual Property can be registered by individuals, associations, associations, communities or business groups or legal entities. Regional Apparatus Organizations (OPD) or Departments which can be referred to as government can be classified as legal entities, because the Government has programs and activities which must relate to relevant stakeholders, the relationship with these stakeholders makes the Government a legal subject in civil law. This means that OPD also has rights and obligations and is able to take responsibility and be held accountable for the legal actions taken.⁵ According to Apeldoorn, countries, provinces, municipalities and so on are legal entities, but their establishment was not carried out specifically but rather grew historically.⁶

The Small and Medium Enterprise Cooperative Service (Dinas K-UKM), which is one of the OPDs in the East Java Provincial Government, has an activity program, namely Communal Branding. The result of this program was the birth of the "Javeast Coffee" brand. This Communal Branding Program was launched on October 27 2022. Prior to the declaration, the East Java Provincial Government had entered into a Cooperation Agreement with Brawijaya University regarding Collaboration in Education, Research, Assistance and Development of Small and Medium Enterprises Cooperatives (K-UKM) in East Java Province. In article 1 point 1 of the cooperation agreement, it provides an understanding of communal branding, namely that a brand, from development, marketing, promotion to market opening, can be assisted by the government, but is utilized by many business actors because the brand is communally owned.

Article 1 point 1 of the agreement states that in essence one brand is used by many business actors and is communally owned. From this agreement, at a glance, Javeast Coffee is included in the Communal IP category. However, it can also be interpreted as a collective brand because the agreement states a brand that can be utilized by many business actors. In fact, "Javeast Coffee" which was registered with the DJKI with registration number IDM001110993 on 22 August 2023 was registered in the Trademark Classification, which means "Javeast Coffee" was not registered in the classification of collective marks, Geographical Indications or Communal IP. This fact raises many questions about how to regulate Communal IP, Trademarks and Collective Marks in Intellectual Property laws and regulations so that the concept of the Communal Branding program with the registered mark Javeast Coffee, which was initiated by the Department of Cooperatives and SMEs, provides utilization linked to its legal implications.

⁴ Anak Agung Istri Diah Laksmi, *Kewenangan Direktorat Jenderal Hak Kekayaan Intelektual dalam Pendaftaran dan Pelanggaran Hukum Hak Merek di Indonesia*, Kertha Wicaksana, Vol. 1 No. 2, 2017.

⁵ Rahyunir Rauf, *Hakekat Organisasi Perangkat Daerah (Suatu Tinjauan Teoritis dan Yuridis)*, Wedana: Jurnal Kajian Pemerintahan Politik dan Birokrasi, Vol. 3 No. 2, 2017, h. 349.

⁶ L. J van Apeldoorn, *Pengantar Ilmu Hukum*, (Jakarta: Noor Komala, 1982), h. 164.

The legal implications of trademarks and collective brands are different, if a trademark is used by a third party (or not the registered trademark owner) then the registered trademark owner and the third party must enter into a license agreement, which license agreement must be recorded by the Minister and announced in the gazette This official mark is mentioned in Article 42 Paragraph 3 of the Trademark and Geographical Indications Law. In contrast to collective brands, third parties who will use collective brands do not need to enter into a licensing agreement. Third parties who are interested in using the brand simply need to join the community or be registered as members of the community.

Based on the explanation above, the author views that the concept of intellectual property regulated in Intellectual Property legislation is still subject to multiple interpretations and in its implementation there are inconsistencies, of course this results in the program not being able to be utilized optimally. As stated by Awan Abdoellah and Yudi Rusfiana, government policies should be created with the idea of providing benefits related to the welfare of society.⁷ Based on the description of the background and problems above, the author tries to identify several problems, including the following: 1). What are the characteristics of Communal Branding of the registered brand Javeast Coffee in terms of the Trademark and Geographical Indications law?, 2). What are the legal implications of Communal Branding registered trademark Javeast Coffee used collectively? and 3). What is the future concept for using Community Branding Javeast Coffee that will provide benefits to the community?

Research methods

Research is an effort to collect and look for relationships that exist between the facts that are the object of research.⁸ Research uses methods in analyzing problem objects, determining research methods is carried out using certain plans, steps in research. Normative juridical research, the research approach used in this research is a statutory approach, which is carried out by examining all laws and regulations related to the legal issues raised.⁹ The problem approach used in preparing this thesis uses 3 (three) forms of approach, namely the statutory approach, the conceptual approach, and the comparative approach. Legal Aspects of Communal Branding of Javeast Coffee Registered Brands in an Effort for Legal Benefits, in this case the author uses the Brazil Nut Association as a comparison in the author's writing where the collective brand is used jointly by peanut sellers in Brazil and members of the Sport Club, who both use the brand the collective.¹⁰

⁷ Awan Abdoellah, & Yudi Rusfiana, *Teori dan Analisis Kebijakan Publik*, (Bandung: Alfabeta, 2016).

⁸ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Edisi Revisi, (Malang: Banyumedia Publishing, 2006), h. 294.

⁹ Dyah Ochtorina Susanti dan A'an Efendi, *Penelitian Hukum (Legal Research)*, (Jakarta: Sinar Grafika, 2015), h. 7.

¹⁰ Soedjono Dirdjosisworo, *Pengantar Ilmu Hukum*, (Jakarta: PT. Raja Grafindo Persada. 2001). h. 128.

Discussion

1. Characteristics of Communal Branding of the Registered Javeast Coffee Brand in terms of Trademark and Geographical Indication Laws

Geographical indications are indications or signs attached to goods originating from a certain place, region or geography that indicate certain "quality", "reputation" or "characteristics", including natural or human factors that are used as "attributes" to the goods produced. Signs used as geographical indications can be in the form of "place names", "regions", "regions", "words", "images" or "combinations thereof". Protection of goods produced in connection with geographical indications includes various types of products obtained from nature, agricultural products, crafts or handicrafts and so on. An indication of origin is a sign that meets the requirements for geographical indication signs that are not registered or merely indicate the origin of a good or service.¹¹

Article 1 point (6) of the Law on Trademarks and Geographical Indications states that a Geographical Indication is a sign that indicates the area of origin of a good and/or product which, due to geographical environmental factors including natural factors, human factors or a combination of these two factors, provides reputation and quality., and certain characteristics of the goods and/or products produced. The term Geographical Indication is a term used in various negotiations carried out by the World Intellectual Property Organization (WIPO) in the mid-1970s. Before the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS) agreement was agreed, there were several types of terms used for Geographical Indications. The geographic origin of goods (geographical origin of goods) is based on the passing-off doctrine applied in Common Law countries. In the United States and the United Kingdom, geographic origin is protected by collective marks and certification marks. Meanwhile, in Civil Law countries, the term used is the appellation of origin. To overcome various unresolved difficulties in protecting product names related to places, the term geographical indication is included in TRIPS.¹²

TRIP's Agreement is part of the agreement at the WTO which was the result of the Uruguay round of negotiations. The TRIP's Agreement is structured into 7 chapters consisting of 73 articles. Where the protection of Geographical Indications is one of the parts regulated in the TRIP's Agreement. Regulations regarding Geographical Indications are regulated in articles 22, 23 and 24. The provisions of the TRIP's Agreement cover the concept of 'indication of source' which is known in the Paris Convention, Madrid Agreement, as well as 'appellation of origin' which is regulated in the Lisbon Agreement.

In the provisions contained in the TRIP's Agreement, the protection arrangements regarding 'ownership' related to Geographical Indications are not clearly stated, except for referring to the existence of interested parties as parties who

¹¹ Hendra Djaja, *Perlindungan Indikasi Geografis Pada Produk Lokal Dalam Sistem Perdagangan Internasional*, Jurnal Cakrawala Hukum, Vol.18, No.2 Desember 2013, h. 139

¹² Lina Monten, Geographical Indication of Origin: Should They Be Protect and Why? An analysis of the issue from the US. And EU Perspective, Santa Clara Computer and High – Technology Law Journal, January 2006, h. 315.

have the right to prohibit misuse of the Geographical Indication itself. The term 'interested parties' in the TRIP's Agreement itself is not clearly defined. For this reason, the term 'interested parties' in the TRIP's Agreement can be interpreted in accordance with the provisions of Article 10 (2) of the Paris Convention or in the Madrid Agreement Article 2 (1) which refers to: a). *Any producer, manufacturer, or merchant (Paris Convention); and b). An individual person, a legal entity (Madrid Agreement)*

The parties referred to in the Paris Convention and Madrid Agreement relating to Interested Parties are parties located in areas/territories where Geographical Indication goods/products can potentially be protected, as well as parties involved in the production or engaged in trade in goods/products that referred to, and is a party with an interest in preventing misuse of Geographical Indications against unauthorized parties. The word "indication" in the word Geographical Indication does not only have to refer to a place, but also includes the name of a product associated with a place, according to Tomi Suryo Utomo.¹³ Through the definition of Geographical Indication provided by the TRIP's Agreement, namely as a sign that identifies a territory of a member country, or a region or region located within that territory as the origin of goods, where the reputation, quality and characteristics of the goods in question are largely determined by geographical factors. Thus, the origin of a particular item which is attached to the reputation, characteristics and quality of an item associated with a particular region can be protected legally.

In the TRIP's Agreement, Geographical Indications are given protection at 2 levels, namely:¹⁴

- a. Based on Article 22 (2) points a and b of the TRIP's Agreement, which requires each member country to prevent the use of Geographical Indications that are false and have the potential to mislead the public. At this level, it is also known in the TRIP's Agreement regarding the regulation of unfair competition.
- b. Based on Article 23 (1), (2), (3) and (4) of the TRIP's Agreement relating to additional protection for Geographical Indications. And at this level there is a very strict prohibition on the use of Geographical Indications, products other than those produced by the rights holder. This is still prohibited even though it has been done in an honest manner and states the origin of the product, by inserting the words "style", "shape", "type" and so on.

In this case, not only consumers receive protection, but producers also feel the protection given to them. The protection that producers can experience includes avoiding other parties who will use their reputation for the benefit of other parties. Geographical indications have their own characteristics, namely in terms of collective protection, namely the protection given to a product produced in a certain area. The collective nature that appears in geographical indications cannot be separated from the

sociology of Indonesian society who live in a community way.

Meanwhile, nationally, geographical indications are protected in Law no. 15 of 2001 concerning Trademarks in Articles 56-60, Government Regulation No. 51 of 2007 concerning Geographical Indications, and most recently Law no. 20 of 2016 concerning Brands and Geographical Indications. The substance of PP No. 51 of 2007 further regulates the articles governing geographical indications in Law no. 15 of 2001 concerning Brands. This latest regulation is not yet able to provide maximum legal protection for geographical indications in Indonesia. This needs further attention considering that the definition of geographical indication as mentioned above states that it is important for a country to protect every item created in its territory.

Intellectual property rights are divided into several parts, including copyright, trade secrets, patents, brands, geographical indications, and others. Geographical indication is basically a trade name used on the packaging of a product to indicate the origin of the product. Protection of geographical indications as signs that indicate the origin and specificity of a product resulting from natural, geographical, human and other factors. This shows the identity of an item that originates from a particular place, region or territory which shows the quality, reputation and characteristics including natural and human factors which are used as attributes of the item.¹⁵ Geographical indication is a sign that indicates the area of origin of goods and/or products which, due to geographical environmental factors including natural factors, human factors or a combination of these two factors, gives a certain reputation, quality and characteristics to the goods and/or products produced, p. This is in accordance with Article 1 Number 6 of Law 20 of 2016 concerning Marks and Geographical Indications. A geographical indication product must meet several requirements to be said to be a geographical indication product, namely the existence of a goods producing area that has its own quality, character and reputation which is influenced by environmental conditions and/or human conditions.¹⁶

The legal protection of a geographical indication product has a distinctive character, namely a collective or communal character. This character means that the legal protection of geographical indication products is the common property of the community where the geographical indication product is located. For a geographical indication product that has been registered and has received legal protection, the people in the geographical indication product area have the right to buy and sell that product, so that other people who are not included in the registered geographical indication product area are not permitted to use the same product name on their product. Protection of various kinds of geographical indication products in Indonesia must basically provide legal certainty for these products, namely by making legal regulations that protect these geographical indication products. The importance of legal protection for

¹³ Tomi Suryo Utomo, Hak Kekayaan Intelektual (HKI) di Era Global Sebuah Kajian Kontemporer, Graha Ilmu, Yogyakarta, h.219

¹⁴ Miranda Risang Ayu, 2006, Memperbincangkan Hak Kekayaan Intelektual Indikasi Geografis, Alumni Bandung, h.32

¹⁵ Astar, A. (2018). Mengenal lebih dekat hukum hak kekayaan intelektual, Yogyakarta: CV Budi Utama, h.70

¹⁶ Santoso, B., & Njatrijani, R. (2018). Perlindungan Indikasi Geografis terhadap Kopi Arabika di Dusun Jumprit, Desa Tegalrejo, Kecamatan Ngadirejo, Kabupaten Temanggung Provinsi Jawa Tengah. Diponegoro Law Journal, 6(2), h. 9.

geographical indication products in IPR is basically to protect Indonesian products in national and international trade. Legal protection through Geographical Indications will provide legal clarity regarding the relationship between goods and the producer as the owner, so that promotions can be carried out openly without fear of the possibility of unauthorized use by other parties.¹⁷

Indonesia has abundant resources spread across every island, these resources include various natural resources and human resources. In terms of natural resources, Indonesian regional products which have their own quality have become one of the commodities in trade and have high economic value. The well-known Indonesian products in trade commodities should also be accompanied by protection for these commodities from fraudulent practices in trade. Geographical Indications in TRIPs are regulated in Section 3 Article 22-24. In article 22 paragraph (1) of the TRIPs agreement it is stated:

“Geographical indications are, for the purposes of this agreement, indications which identify a goods as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin”.

Based on these provisions, it is explained that a geographical indication is a sign that identifies a territory of a member country, or a region or area within that territory as the origin of goods, where the reputation, quality and characteristics of the goods concerned are largely determined by these geographical factors. From the definition of geographical indication, it can be observed that the origin of goods and services which are related to the reputation, characteristics and quality of goods in a particular area must be protected legally.¹⁸ Each country that is part of TRIP's membership is required to ensure legal protection for geographical indications in its country by preparing legal instruments in accordance with its national law.

One of the characteristics that indicates a geographical indication in a product is a sign used in the product packaging which has its own quality and authenticity. The place of origin of the product is often used to indicate the origin of the geographical indication product. For example, agricultural products in Indonesia have their own characteristics and qualities in each region. These characteristics can be in the form of a distinctive shape, distinctive color, or distinctive taste compared to other agricultural products. These characteristics are usually used as signs included in a geographical indication product label. These characteristics are used so that people know that a product has its own characteristics from similar products.

The concept of IP ownership was born from the thoughts of John Locke, a 16th century English philosopher regarding the idea of property rights. According to Locke, property

rights are one of three things that cannot be separated from humans. Humans are born 'tabula rasa', meaning in a state of freedom and equality under natural law. Natural law prohibits anyone from destroying or eliminating life, liberty and property rights. According to Locke, these three things cannot be separated from humans because they come from the Almighty. Every human being has himself as his own and no one has the right to another person's person except the owner himself, including the results of his body's work and the works of his hands and his five senses. This means that every person naturally has the right to own all the potential inherent in his or her individual self and all the work he or she produces. KI is classified as an intangible individual property right.

In accordance with its essence, KI is grouped as ownership rights over intangible assets. The concept of expanding property rights from initially only tangible to intangible, is intended so that IP can be justified as the object of criminal acts of theft or counterfeiting. Initially in Indonesia IP violations could not be punished, even in the United States, the country which has been the pioneer in IP enforcement throughout the world, before the enactment of the Trademark Counterfeiting Act of 1984, the American Congress still believed that forms of trademark ownership rights could not be constructed as criminal acts. Which fulfills the elements of a crime of theft or forgery. WIPO defines owners/holders of traditional knowledge as: All people who create, develop and practice traditional knowledge within traditional rules and concepts. Indigenous people, residents and the state are the owners of traditional knowledge, but not all traditional knowledge is original. Thus, in protecting traditional knowledge, communal interests are prioritized rather than individual interests.

It is very clear that the problem of ownership is a fundamental difference in this case. Below we explain the differences in the principles of ownership in IP and in Traditional Knowledge.¹⁹ Ownership Principles in IP The term "property" in intellectual property rights is a "wealth" that is protected by law. Principle of Ownership in Traditional Knowledge In contrast to the principle of IP which is Private Rights, the characteristic of "Ownership" of traditional knowledge is "Common Property", where ownership rights are owned by a group or together which can prohibit other parties (outside the Group) from utilizing the "property" in question, and conversely other parties must respect the "rights" of the group, thus traditional knowledge contains collective-communal principles.

2. Legal Implications of Communal Branding of the Registered Javeast Coffee Brand Used Collectively

Communal Branding in East Java Province as a form of implementation of the Cooperation Agreement between the East Java Provincial Government and Brawijaya University concerning Collaboration in Education, Research, Assistance and Development of Small and Medium Enterprise Cooperatives (K-UKM) in East Java Province Number 120.23/204/PKS/ 011.3/2022 and Number 5449/UN10.F04 / PN/2022, on 27 July 2022. Starting with

¹⁷ KRISNA, M. N. O. S. (2015). Upaya Perlindungan Hukum Indikasi Geografis terhadap Apel Batu (Studi di Dinas Koperasi, UKM, Perindustrian dan Perdagangan Kota Batu). Kumpulan Jurnal Mahasiswa Fakultas Hukum, h.9

¹⁸ Kurnianingrum, T. P. (2017). Pelindungan Hak Ekonomi Atas Indikasi Geografis (The Economic Rights Protection for Geographical Indication). Negara Hukum, 7(1), h. 24.

¹⁹ Suyud Margono, 2015, *Hukum Hak Kekayaan Intelektual (KI) mencari Konstruksi Hukum Kepemilikan Terhadap Pengetahuan dan seni Tradisional Dalam Sistem Hak kekayaan Intelektual (KI) di Indonesia*, Pustaka Reka Cipta, Bandung, h. 101.

the Business Restructuring Workshop for Cooperatives on 23 s.d. 24 May 2022 at the Platinum Hotel Surabaya as an initial milestone for communal branding with resource persons from Mr. Prof. Mangku Purnomo Phd from the Faculty of Agriculture, Brawijaya University, Mr. Drs Setyohadi M.Si from Rumah Curasi, Mr. R Gerald G Grisanto from LPEI and Mrs. Dra Susanti Widyastuti MT, Head of Production and Restructuring of UKM Discop Business for East Java Province. And presentations from the Ketakasi Jember Multi-Fruit Business Cooperative, the Wonosalam Jombang Coffee Producers Cooperative and the Mugi Lestari Kare Madiun Cooperative regarding their respective cooperative institutions and the potential and development of coffee commodities in each region.²⁰

The East Java Provincial Government's Communal Branding Program officially started on October 27 2022 with the Launching of Communal Branding at the PPG Durian Cluster Agrotourism, Sidomulyo Village, Silo District, Jember Regency, to introduce and encourage regional superior products in order to increase the competitiveness of Cooperative and SME products in the market global. Communal Branding is an activity to improve product quality, institutional capacity, and increase human resource capacity as well as to develop promotion and marketing under one brand that can be utilized by the community together.

Coffee products packaged through Communal Branding have the brand "JAVEAST COFFEE" and are members of a cooperative consisting of several areas, including Sidomulyo Village, Silo District, Jember Regency, Wonosalam Village, Wonosalam District, Jombang Regency, and Kare Village, Kare District, Madiun Regency. This Communal Branding Launching activity was coupled with the symbolic release of the first joint export of 18 tons of coffee products to Egypt in collaboration with the Aggregator.

Javeast Coffee as one of the products resulting from communal branding is in line with the objectives of the Cooperation Agreement between the East Java Provincial Government and Brawijaya University concerning Collaboration in Education, Research, Assistance and Development of Small and Medium Enterprises Cooperatives (K-UKM) in East Java Province Number 120.23/204/ PKS/011.3/2022 dated 27 July 2022, namely realizing the welfare of UKM by providing collaborative activities in the fields of Education, Mentoring and Mentoring K-UKM as an effort in formulating policies for the community in East Java Province. In the PKS General Provisions, it is found that the definition of Communal Branding is a brand whose development, marketing, promotion and market opening processes will be supported by the government but can be utilized by many business actors because the brand has a communal nature.

A community is interpreted as an organization where all members have the same goal, there is the same sense of responsibility among its members, as expressed by Rothaermel and Sugiyama. The term brand community was first introduced by Muniz and O'Guinn at the Consumer Research Association Annual Conference in Minneapolis, which was subsequently published in the consumer research journal. The meaning of brand community is associated with a special community, a community that is not only tied to geographic existence but is based on the structure of social

relationships among several specific brand enthusiasts. Kotler stated that among joint brands there are co-number communities which are a vital part of brand development. The presence of consumers certainly indicates consumer loyalty to the brand that is being built. Resnick further explained the benefits of having a joint brand, namely that it makes it easier for consumers to find out information related to the product they are purchasing and for producers, namely that it improves relations between the company and the buyer, through the existence of a joint brand it will create a long-term impact related to consumer loyalty.²¹

The communal nature of communal branding when linked to Government Regulation Number 56 of 2022 concerning Communal Intellectual Property correlates with forms of expression of traditional culture with the form of creative works in the form of objects or intangibles, as well as a combination of the two which is a manifestation of the existence of a traditional culture that is held firmly in place. Communal and intergenerational. Thus, Javeast Coffee as a superior product that focuses on local research results in the East Java Province area is an expression of traditional culture related to coffee. The existence of historical roots for coffee farmers is the main capital in creating a collective brand that can be utilized by farmers who do not yet have a brand, apart from that, the existence of emotional attraction will be an advantage in maintaining the Communal Brand in the market.

A brand as in Article 1 Point 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications is defined as a sign displayed in the form of an image, logo, name, word, letter, number, arrangement, color in both two-dimensional and three-dimensional form, as well as sound, holograms or a combination of the elements that have been put forward in order to differentiate goods and/or services produced by individuals or legal entities in trading activities. This definition is in line with the definition of a Mark as contained in Article 15 of Trade Related Intellectual Property Rights.

A brand has several benefits, namely, it is an identification mark that provides differentiation from production results produced by an individual or several people together, and also as a promotional tool so that if you want to promote your product you can mention the brand, as a guarantee of the quality of the goods., as a guarantee of the origin of the product being produced, and shows the ownership rights of a brand. Brands have vitality with their existence as an identity for the products created by producers. Thus, the brand is registered so that it cannot be recognized or taken over by other producers, because if a brand already has a good reputation, there will be many ways to achieve it. Thus, to obtain legal certainty, it is appropriate to register a trademark.²²

Law Number 15 of 2001 concerning Marks in Article 1 classifies marks into three, namely trademarks, service marks and collective marks. Collective Marks in Article 1

²¹ Miya Dewi Suprihandari, *The Influence Of Brand Community Identification To Brand Loyalty And By Word Of Mouth On Brands And Communities At Djarum Black Car Community In Surabaya*, The Fourth International Conference on Entrepreneurship, h. 43.

²² Suyud Margono dan Logginus Hadi, *Pembaharuan Perlindungan Hukum Merek*, (Jakarta: Novindo Pustaka Mandiri, 2002), h. 27.

number 4 are defined as marks used on goods and/or services with the same characteristics which are then traded by several people or legal entities together to differentiate them from other similar goods and/or services. Furthermore, it is understood that a collective brand is a marker that provides differences in geographic origin, materials, manufacturing methods or other characteristics of different brands or goods using a collective brand. In relation to goods and services, collective brands indicate the existence of makers and providers of goods/services who are members of a community which is represented by the existence of a collective brand. This use indicates that the goods or services are produced by the owner collectively or are representatives of products adapted to those available by the brand owner.²³

Being part of the intellectual property legal framework, a brand should be part of industrial property rights. In the Indonesian civil law system, intellectual property rights are included in the classification of material rights which give direct control over the existence of an object. Property rights are absolute rights over an object which are given authority and can be defended against anyone. The characteristics of material rights are that they are absolute rights, have *zaaksevolg* or rights that follow, the principle applies where what happens first then has a higher level than before, has rights first, the *veruchtgebruik* can be treated against anyone, then if the lawsuit filed relate to problems related to reinstatement, lawsuits to eliminate interference with one's rights, lawsuits for restoration to the original state, as well as lawsuits demanding damages, also in line with lawsuits related to property rights, and the last characteristic is the transfer of property rights. Carried out completely.²⁴

Intellectual property is used as an object of ownership, constructed as an intangible object as a manifestation of human thought, or the object of ownership is realized in movable objects that can be easily transferred. Article 570 of the Commercial Code provides a definition of property rights as the right to use and enjoy an object, thus having the absolute nature of ownership which becomes the property of the person concerned. Viewed from the perspective of natural law developed by John Locke, discovery and creation are the result of a person's mental efforts. The implication is that this wealth naturally becomes an invention or creation that becomes the right of its owner. This means that a creator has the freedom to use or not use his rights, and has no obligation to disclose his findings or creations to anyone else.²⁵

In relation to the Theory of Works which is a development of the Theory of Natural Rights, it is understood that a person's wealth consists of all the works created by his body and thoughts. Thus, a person does not have the right to own works from other people's bodies or brains that are not his own property. Then, correlated with intellectual property, an inventor of ideas has the most rights to the results of his findings, just as the creator has the rights to his creations. Inventions and creations have a vital position in economic development and prosperity, thus, if a good or service is to

be used optimally, protection of intellectual property is needed. The existence of intellectual property rights will provide space for inventors or creators to optimize profits from their findings or creations. However, exclusive rights which have a monopolistic nature are not in accordance with the idea of a free market which requires perfect competition. Collective brands as part of intellectual property rights are subject to legal enforcement regarding intellectual property rights, namely the entirety of provisions regarding property that has an intellectual nature. Broadly speaking, there are two regulations related to intellectual property. First, the substantive section is intended to describe the intellectual property that is protected, actions that are considered to violate rights, and the protection that can be given to an intellectual property right. This includes regulations related to benchmarks for intellectual property that is entitled to protection, requirements for the acquisition of intellectual property rights and sanctions for violations of intellectual property.

Chapter 1 General Provisions, Article 1 numbers 1 and 2 in Government Regulation Number 56 of 2022 concerning Communal Intellectual Property states that the communal nature of communal branding is correlated with forms of expression from traditional culture with creative works in the form of objects or not, or a combination of the two which constitute a manifestation of the existence of a traditional culture that is held firmly communally and across generations. Thus, Javeast Coffee as a superior product that focuses on local research results in the East Java Province area is an expression of traditional culture related to coffee. The existence of historical roots for coffee farmers is the main capital in creating a collective brand that can be utilized by farmers who do not yet have a brand, apart from that, the existence of emotional attraction will be an advantage in maintaining the Communal Brand in the market.

3. Future Concept for Using Javast Coffee Communal Branding Which Provides Benefits for the Community

Fundamentally, brands have several important roles. First, a brand functions as a product identity that differentiates one company's products from other companies' products. Second, the brand acts as a trade promotion tool (means of trade promotion). Third, the brand provides a quality guarantee for the goods or services offered. Fourth, the brand shows the origin of the goods or services (source of origin). With the right to a brand, the function of the brand expands to a legal aspect that protects goods or services from imitation. The types of marks that can be registered are trademarks and service marks.²⁶

Brands attached to physical products are generally known as trademarks, used by individuals, groups, or legal entities to differentiate their products from other similar products. Meanwhile, service marks are used to identify services offered by individuals, groups or legal entities. In addition, there are collective marks that are used to differentiate goods or services with similar characteristics that are traded by several parties together. These three types of brands have

²³ Ety Susilowati, *Hak Kekayaan Intelektual dan Lisensi Pasa HKI*, (Semarang: Undip Press, 2013), h. 109-109.

²⁴ Sri Soedewi Maschjoen Sifwan, *Hukum Perdata: Hukum Benda*, (Yogyakarta: Liberty, 1981), h. 24-27.

²⁵ Ontoeng Soeropati, *Hukum Kekayaan Intelektual dan Ahli Teknologi*, (Salatiga: FH UKSW, 1999), h. 12.

²⁶ Adrian Sutedi, *Hak atas Kekayaan Intelektual*, (Jakarta: Sinar Grafika, 2013), h. 91.

the same right to obtain legal protection through trademark rights.²⁷

The concept of communal branding from the perspective of legal benefit theory emphasizes the importance of paying attention to the needs and interests of the community as parties directly affected by the establishment of a communal brand. This ensures that the communal brand provides real benefits for the community, in line with the principles of justice and welfare that constitute the essence of the theory of legal benefits. Thus, the application of the communal branding concept must consider the resulting social, economic and cultural impacts, so that it can make a positive contribution to improving the quality of people's lives. In its application, the communal branding concept must also uphold the principles of participation and transparency, by actively involving the community in the brand development and management process.

Apart from that, the concept of communal branding from the perspective of legal benefit theory must also ensure that the communal brand can provide a sustainable positive impact on society. This can be achieved through careful strategic planning, as well as effective and efficient management. It is also important to ensure that the communal brand can adapt to changing community needs and preferences, so that it can continue to provide relevant benefits in the long term. The concept of communal branding from the perspective of legal benefit theory must also consider aspects of sustainability and competitiveness. This means that communal brands must be able to survive and develop in the long term, and be able to compete with other brands in the market. To achieve this, an effective marketing strategy, continuous product innovation and optimal resource management are needed. Apart from that, the communal branding concept must also pay attention to aspects of intellectual property rights protection, to ensure that the communal brand is protected from misuse or plagiarism.

In implementing the communal branding concept, it is also important to consider aspects of sustainability and competitiveness. Communal brands must be able to survive and develop in the long term, and be able to compete with other brands in the market. To achieve this, an effective marketing strategy, continuous product innovation and optimal resource management are needed. Apart from that, the communal branding concept must also pay attention to aspects of intellectual property rights protection, to ensure that the communal brand is protected from misuse or plagiarism. The theory of legal utility, pioneered by the English philosopher Jeremy Bentham and later developed by John Stuart Mill, is an important basis for designing a just and beneficial legal system. The main tenet of this theory is that laws should be directed towards achieving "the greatest happiness for the greatest number". This means that every law and public policy must be evaluated based on its impact on the welfare of society as a whole, not just the interests of a few individuals or groups.

In the context of communal branding, this legal benefit theory has significant relevance. Communal branding is a strategy that focuses on developing and managing a brand

that is owned and managed by a particular community. This brand reflects the identity, values and uniqueness of the community, so it has great potential to improve the economic, social and cultural welfare of the community.²⁸ The application of legal benefit theory in communal branding means that the protection and promotion of community brands must be directed at producing maximum benefits for all members of the community. Legal protection of community brands can prevent misuse or exploitation by outside parties, thereby ensuring that the economic benefits of the brand return to the community that owns it.²⁹

Meanwhile, community brand promotion must be carried out in an inclusive and participatory manner, involving all community members in the decision-making process. Thus, community brand promotion will not only increase awareness and appreciation of the products or services produced by the community, but also strengthen social and cultural ties among community members. In order to achieve this goal, it is important for the government and other stakeholders to create a framework laws that support the development and management of community brands. This legal framework must include protection of the community's intellectual property rights, fair and transparent regulations, and effective dispute resolution mechanisms. Thus, communal branding can be a powerful instrument for improving the welfare and empowerment of communities in Indonesia.

Apart from government and community efforts, the role of the private sector is also important in supporting communal branding which is based on legal benefit theory. Companies can act as strategic partners for communities in developing and marketing community brand-based products or services. Collaboration between the private sector and communities can create mutually beneficial synergies, where companies gain access to unique markets and communities gain financial and technical support. However, cooperation between the private sector and communities must be based on the principles of justice and equality. Companies should not exploit or monopolize community brands for their own purposes. Instead, companies must respect community rights, provide fair compensation, and involve communities in strategic decision-making.

In the context of globalization, communal branding can also be an instrument for introducing Indonesian products and culture to international markets. A strong, authentic community brand can attract global consumers looking for unique and differentiated experiences. Thus, communal branding can be an important pillar in increasing exports of Indonesian creative products and strengthening Indonesia's positive image in the eyes of the world.

Finding balance in communal branding is the key to achieving successful and sustainable community branding. By involving all stakeholders, promoting open communication, building consensus, and monitoring and evaluating branding effectiveness, communities can build strong brands that reflect their identity, values, and aspirations. Communal branding, as a strategy involving community identity and values, requires clear and firm

²⁷ Herlina Ratna SN, Analisis Perlindungan Hukum atas Merek Terdaftar sebagai Hak atas Kekayaan Intelektual (Studi pada Kantor Wilayah Kementerian Hukum dan HAM Provinsi Lampung), *Jurnal Keadilan Progresif* Vol.7 No.2, September 2016, h.154

²⁸ Sarah Besky, *The Darjeeling Distinction: Labor and Justice on Fair Trade Tea Plantations in India*, (California: University of California Press, 2015), h. 310.

²⁹ Paul R. Munoz, "Communal Branding Initiatives in the Andes", *Journal of Macromarketing*, 29(2), (2009), h. 158.

regulations from the government. This is important to ensure legal certainty and benefits for all parties involved, both the community itself and external parties who interact with the community brand. In the context of the use of Javeast Coffee's Communal Branding which does not yet provide legal certainty, it seems that in the future it will have to cover several aspects as follows:

First, regulations that have legal certainty and legal benefits will provide protection for the community's rights to their brands. This includes protection against misuse, counterfeiting or exploitation of the mark by unauthorized parties. In this way, the community can feel safe and confident in developing and marketing their products or services. Regulations that provide legal benefits will ensure that the economic and social benefits of communal branding are truly felt by the community. This could take the form of fair profit sharing, access to a wider market, or increasing the community's capacity to manage their brand.

Second, clear, transparent and comprehensive regulations will create a business climate that is conducive to the development of communal branding. Investors and business partners will be more interested in working with communities if they are confident that their rights are protected and that there are effective dispute resolution mechanisms. Comprehensive regulations will cover various aspects of communal branding, starting from brand registration, protection of intellectual property rights, to product quality standards. This will help build reputation and trust in the community brand, both nationally and internationally.³⁰

Third, participatory and adaptive regulations will involve the community in the process of drafting and implementing regulations. In this way, regulations will be more in line with the needs and aspirations of the community, and will be easier for them to accept and implement. Adaptive regulations will be able to adapt to current developments and market dynamics. Communal branding is a concept that continues to develop, so rigid and inflexible regulations will hinder community innovation and creativity.

Fourth, sustainable and inclusive regulations will pay attention to environmental and social aspects in developing communal branding. This means ensuring that economic activities associated with community brands do not damage the environment or violate human rights. Inclusive regulations will provide equal opportunities for all communities to develop their brands, without discrimination based on ethnicity, religion, race or class. This is important to realize social and economic justice for all Indonesian people.³¹

Fifth, effective and futuristic regulations will be supported by firm and consistent law enforcement. Without strong law enforcement, even good regulations will not mean much. Therefore, the government needs to increase the capacity of law enforcement officials in handling cases of community brand violations. Futuristic regulations will see communal branding as part of a broader national development strategy. Communal branding is not only about economics, but also

about national identity, culture and sovereignty. Therefore, regulations must be directed to support the development of the creative economy, sustainable tourism and the preservation of Indonesian culture.

Conclusion

Geographical Indications in Indonesia adhere to the first to file principle system, the state will provide legal protection for those who first register a Geographical Indication. Legal protection for Geographical Indications is provided as long as the superior characteristics are still present and can be maintained. Ownership of communal intellectual property is also Common Property, which means that communal intellectual property is owned collectively by a group of traditional communities collectively and inseparably from generation to generation, and is not owned by individuals. Communal intellectual property is controlled by the community where the communal intellectual property was born and developed into an economy for traditional society, which means that the regulation of communal intellectual property is carried out by the owners or users of the communal intellectual property.

The implications of communal intellectual property coupled with a Collective Brand provide legal protection for the brand in question, whereas in the situation of Javeast Coffee as a communal branding which is registered as a trademark and not a collective brand, this has implications for the less-than-optimal use of the brand. Communal Branding arrangements are equated with collective brands at the regulatory level, giving rise to legal uncertainty which is correlated with less than optimal utilization.

In the future, the concept of communal branding must provide real benefits for society, in line with the principles of justice and welfare which are at the core of legal benefit theory. Thus, the application of the communal branding concept must consider the resulting social, economic and cultural impacts, so that it can make a positive contribution to improving the quality of people's lives. In its application, the communal branding concept must also uphold the principles of participation and transparency, by actively involving the community in the brand development and management process.

³⁰ OECD Guidelines for Protecting and Promoting the Collective Interests of Indigenous Peoples in Communal Branding. OECD Publishing.

³¹ UNCTAD (2016). Creative Economy Outlook 2016: Trends in International Trade in Creative Industries. UNCTAD Publication.