

Geographical Indications in the Protection of Intellectual Property Rights for Agricultural Products in Indonesia

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Abstract

Indonesia has diverse geographical conditions, diverse customs, and rich cultural resources. This diversity naturally gives rise to a variety of products, including agricultural products. Due to this diversity, the protection of Geographical Indications for agricultural products is crucial to prevent violations. This research employs normative legal research with a perspective approach, utilizing data sources such as Law Number 20 of 2016 on Trademarks and Geographical Indications, books, journals, and other relevant materials. Data collection is conducted through a literature study with qualitative analysis. The research findings indicate that legal protection against violations of geographical indications can be implemented in two ways: preventive measures through registration and repressive measures through litigation in the Commercial Court. Legal remedies that can be pursued include both litigation and non-litigation methods such as consultation, negotiation, mediation, and arbitration.

Keywords: *Agricultural Products, Geographical Indications, Intellectual Property Protection.*

INTRODUCTION

Indonesia is a vast country with extraordinary natural resources, including abundant resources in fisheries and agriculture, as well as its culture, which is a valuable asset for enhancing its economy. Often, these resources have unique characteristics that distinguish the country from others or differentiate its resources from those of other countries. Due to this comparative advantage, these resources can be legally protected to prevent unauthorized claims or misuse by those who do not actually own them (Kusuma & Roisah, 2022: 108).

Intellectual property is intangible wealth resulting from human thought or creativity that produces creations or inventions in the fields of art, literature, science, and technology, which have economic benefits (Imanijayati, et al., 2024: 5). Geographical Indications are a part of Intellectual Property Rights that have been developed in several countries worldwide. Geographical Indications are signs that indicate a specific geographical origin of a product and are used to identify the product's origin and its quality or reputation associated with that origin (Zahida, et al. 2021: 310; Calabrese, 2024).

The Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement is considered an international standard that includes protection standards for intellectual creations and the enforcement of intellectual property laws. The purpose of the TRIPs agreement is to protect and enforce intellectual property rights to encourage the emergence of intellectual property rights. Member countries are required to comply with the TRIPs agreement but are given the freedom to determine how TRIPs are implemented according to their legal practices and systems. As a form of participation and agreement, Indonesia ratified several intellectual property regulations contained in the TRIPs agreement, including the protection of geographical indications. The protection of geographical indications is regulated by Law Number 20 of 2016 on Trademarks and Geographical Indications, commonly referred to as the Trademark and Geographical Indications Law (Lakalet, 2022: 104-105).

Indonesia has diverse geographical conditions, customs, and rich cultural resources, including traditional knowledge and cultural expressions, as one of the largest archipelagic countries in the world. The distinctive

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production process can be significantly influenced by the diversity of customs and culture as well as geographical location (Simanjuntak, 2023: 59).

According to 2024 data from the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia, there are 147 registered Geographical Indications, including Kintamani Arabica Coffee from Bali, Jepara Carved Furniture from Central Java, Muntok White Pepper from the Bangka Belitung Islands, Gayo Arabica Coffee from Aceh, Sumedang Black Tobacco from West Java, Sumbawa Horse Milk and Lombok Water Spinach from West Nusa Tenggara, Tanah Karo Arabica Coffee and Sidikalang Robusta Coffee from North Sumatra, among others (DJKI, 2024).

Article 1, paragraph 6 of Law Number 20 of 2016 on Trademarks and Geographical Indications (hereinafter referred to as the Trademark and Geographical Indications Law) defines Geographical Indications as a sign indicating the area of origin of a product which, due to geographical factors including natural factors, human factors, or a combination of both, provides a certain reputation, quality, and characteristics to the products produced. When the community or businesses transform natural resources into products or services, they seek to protect Geographical Indications. This occurs when they use geographical names to indicate the origin of the goods or services they offer to others (Simanjuntak, 2023: 59-60).

It is crucial to legally protect geographical indications because it will prevent the misuse of names and products with geographical indications. Several cases in this country include Toraja Coffee, registered by Japan as the Toarco Toraja brand, and Gayo Coffee, registered as the Gayo Mountain Coffee brand by a company in the Netherlands. Considering these two cases, it is reasonable for government policies to protect all geographical potential (Lakalet, 2022: 105).

The diversity of agricultural products from Indonesia naturally requires protection. The protection of Geographical Indications aims to protect these unique characteristics from counterfeiting or improper use while providing opportunities and protection for the communities producing these unique products to gain maximum benefits. Additionally, the protection of Geographical Indications is beneficial for consumers by ensuring product quality.

Based on the background above, the following problems can be identified: 1) How is the protection of geographical indications for agricultural products implemented? 2) What legal measures are taken against violations of Geographical Indications? The objectives of this research are to understand the protection of geographical indications for agricultural products and to identify legal measures against violations of Geographical Indications.

RESEARCH METHOD

This study employs normative legal research (Amiruddin & Asikin, 2006: 118) with a perspective approach, systematically examining and analyzing secondary data supported by primary data (Soekanto, 2005: 10) regarding issues related to the concept of geographical indications in the protection of intellectual property rights for agricultural products. The legal sources used in this research include Law Number 20 of 2016 on Trademarks and Geographical Indications along with all its organic regulations.

Additionally, the research involves books, dictionaries, legal journals, and commentaries on court decisions related to the discussed topic of geographical indications. Data collection is conducted through library research and analyzed using qualitative methods by expressing and analyzing all data narratively in clear and comprehensible language. Conclusions are drawn using both deductive and inductive reasoning.

RESEARCH AND DISCUSSION

Registration of Geographical Indications

Geographical Indications are signs indicating a region, area, or locality within a member country's territory where a product originates, and where its reputation, quality, and characteristics are significantly influenced by geographical factors. In other words, Geographical Indications are tied to the origin of goods (including

services) that carry specific reputations, characteristics, and qualities associated with a protected area. Therefore, Geographical Indications encompass the following:

Identification of goods originating from regions, areas, or localities within the member country's territory;

Quality, reputation, or other characteristics attributed to the geographical origin; and

Factors significantly attributed to the geographical origin (Nasrianti & Muhibuddin, 2022: 181).

The registration mechanism for Geographical Indications is governed by Articles 56-69 of the Trademark and Geographical Indications Law, including the following steps:

Applications must be submitted in writing in Indonesian by the applicant or through their representative to the Directorate General by completing the form in triplicate. All administrative requirements must be stated: date, month, and year; full name, nationality, and address of the applicant; and if the application is submitted through a representative, a specific power of attorney must be attached. Additionally, proof of payment must be included.

Applications must be accompanied by requirements including:

The name of the Geographical Indication being registered;

The name of the goods protected by the Geographical Indication;

A description of the characteristics and quality distinguishing the goods from other goods in the same category and their relationship to the area where the goods are produced; and

A description of the geographical environment and the natural and human factors contributing to the quality or characteristics of the goods produced; e. A description of the boundaries and/or map of the area covered by the Geographical Indication based on recommendations from the relevant authorities;

A description of the history and tradition associated with the Geographical Indication product produced in the area, including community recognition;

A description of the production process, processing, and manufacturing methods used, enabling each producer to produce and process the related products;

A description of the methods used to test the quality of the products produced;

The label used, including the Geographical Indication of the products produced.

Administrative examination: The Directorate General conducts an administrative examination of the completeness of the application requirements within 14 days from the date the application is received and provides a receipt date if the application is complete. If the application is incomplete, the Directorate General notifies the applicant or their representative in writing to complete the requirements within 14 days from the date the application is received;

Substantive examination: The application must be sent to the Geographical Indications expert team within one month from the date the requirements are complete, and a substantive examination must be conducted within two years from the date the application is received. If the Geographical Indications expert team finds the requirements fulfilled, they submit a proposal to the Directorate General to register the Geographical Indication in the general register of Geographical Indications. Before the announcement period ends, the substantive examination fee must be paid. The application is deemed withdrawn if the fee is not paid. Within 30 days from the date the Geographical Indications expert team receives the registration proposal, they propose to the Directorate General to announce the information related to the Geographical Indication, including the requirements, in the official Geographical Indications bulletin. Within 30 days from the date the Geographical Indications expert team receives the proposal, the Directorate General notifies the applicant or their representative in writing with reasons. Within three months from the date of receipt of the rejection notice, the applicant or their representative can respond to the rejection. Within 30 days from the date the applicant or their representative sends the response to the rejection, the Directorate General submits the response to the

Geographical Indications expert team. Within three months from the date the response is received, the Geographical Indications expert team re-examines and proposes a decision;

The decision on registration or rejection of Geographical Indications must be announced in the official bulletin by the Directorate General within 10 days. The announcement includes the application number, full name, and address of the applicant, name and address of the representative, receipt date, Geographical Indication in question, and an abstract of the requirements book. Information is provided for three months;

Objections and rebuttals: During the announcement period, any party can file a written objection to the application with the Directorate General in triplicate with fees. The objection must clearly explain and provide sufficient evidence that the application cannot be registered or should be rejected under this government regulation. Additionally, objections can be raised regarding the boundaries included in the requested Geographical Indication registration. If the Directorate General responds to the objection within 14 days from the date of receipt, a copy of the objection must be sent to the applicant or their representative. Within two months from the date of receipt of the objection copy, the applicant or their representative has the right to file a rebuttal to the objection with the Directorate General;

Re-substantive examination: If there is a rebuttal, the Geographical Indications expert team re-examines the Geographical Indication substantively. This must be completed within six months from the end of the rebuttal period. If the re-substantive examination results indicate that the objection is accepted, the Directorate General notifies the applicant or their representative in writing that the Geographical Indication is rejected. Within three months from the receipt of the rejection decision, the applicant or their representative can appeal to the trademark appeal commission. The Directorate General announces the decision in the official Geographical Indications bulletin within 30 days from the date the re-substantive examination results are decided (Noviyanti & Yetniwati, 2021: 449-453).

As of 2024, only 148 Geographical Indications are registered with DJKI. This number is certainly very small compared to Indonesia's abundant resources. In addition to the fact that few Geographical Indications are registered, not all potential Geographical Indication products from various regions have received adequate legal protection. Therefore, the implementation of laws protecting Geographical Indications is crucial. Registration brings legal protection to Geographical Indications. Due to the registration, rights to Geographical Indications are granted as part of the constitutive system. Ensuring product quality and originality, providing promotional means, and enhancing the region's reputation, and registered Geographical Indications will be beneficial. Products and goods not registered with Geographical Indications may be economically exploited by other countries besides the producing, trading, or even dependent countries (Fuadi et al., 2022: 553).

Protection of Geographical Indications in Thailand

Thailand's sui generis Geographical Indications Protection Law, enacted in 2003, came into effect in 2004. Since then, the country has registered 171 Geographical Indications from all 77 provinces, achieving its goal of having at least one Geographical Indication for each province. These include 19 Geographical Indications for rice, 82 for fruits and vegetables, 15 for silk and cotton, and 2 for wine and alcoholic beverages (Calboli, 2021). According to DIP, 100 Geographical Indications are in the registration process. Additionally, Thailand has registered 18 Geographical Indications from nine countries, including Europe, China, Japan, Vietnam, Cambodia, India, Malaysia, and India. Geographical Indications are expected to help communities stay in their hometowns and generate economic benefits. Thailand registers Geographical Indications for agricultural, industrial, and handicraft products and assists producers with registration, control systems, marketing, and promotion. Producers who agree to comply with the producer guidelines and control plans of Geographical Indication members will be able to use the Thai logo label. Logo protection is not time-limited but must be renewed every two years. Geographical Indication traders who meet the requirements can also use the Geographical Indication logo (WIPO, 2023).

Protection of Geographical Indications for Agricultural Products

Essentially, Geographical Indications (GIs) cannot be used freely because once registered, they are no longer public property. Therefore, to produce or sell goods with a GI, users must obtain permission from the rights

holder, as stipulated in Article 1 Paragraph 10 of the Trademark and Geographical Indications Law. If the rights holder has registered it, they will have exclusive rights, as stated in Article 1 Paragraph 7, where producers using the GI must seek permission from the rights holder. This is also mentioned in Article 16 Paragraph (2) Letter b of the Minister of Law and Human Rights Regulation No. 12 of 2019. There is no time limitation in protecting GIs, either by the government or the community. It is regulated in Article 61 Paragraph (1) of the Trademark and Geographical Indications Law that the protection of GIs is maintained as long as their reputation, quality, and characteristics are preserved (Zahida et al., 2022: 315).

A GI is a sign indicating the place of origin of an object based on geographical environment, which includes natural, human, or both factors. Although GIs are related to trademarks, GIs emphasize the location where products and goods originate, whereas trademarks are owned by individuals while GIs are owned by the community. Products and services that have potential GIs must be registered with the Directorate General of Intellectual Property to obtain legal protection. This is because Indonesia adopts a constitutive system to manage its geographical features, where registration is a primary requirement for protection. Rights to registered goods and services are only held by the registrant after registration, and others must respect those rights (Atsar et al., 2023: 36). Philip Hadjon states that there are two types of legal protection for the community. First, preventive legal protection protects the community by giving them the opportunity to express their opinions before the government makes a definitive decision that prevents disputes. The second is repressive legal protection, which aims to resolve disputes (Zahida et al., 2022: 315). Legal protection of GIs is divided into two types of protection:

Preventive legal protection is legal protection aimed at preventing violations of GI products. This protection can be achieved by registering agricultural products that meet the registration criteria for GIs with the Directorate General of Intellectual Property, to obtain protection and anticipate violations by irresponsible parties.

Repressive legal protection is legal protection aimed at addressing violations of GI products according to the laws and regulations regarding GI products. This can be done by filing a lawsuit in the Commercial Court for damages caused by irresponsible parties (Calabrese, 2024; Agustina & Yahya, 2022: 209-210).

In Indonesia, the GI protection system appears to be constitutive, with registration as the first requirement for protection. One advantage of this system is the protection of evidence and certainty. Unfortunately, this protection system often does not meet market needs. The constitutive system differs from the reality on the ground. For instance, the number of coffee products circulating in the community is very high, but those registered with the Directorate General of Intellectual Property are very few. For years, this legal product has been used by various cultures along with European countries that support IP protection. If this assumption is correct, it seems reasonable that Indonesia's national law lacks a second-level protection regulation (Calboli, 2021: 289-290). The main reason seems not to stem from a strong protection concept but from the protected object. Unlike Europeans, especially the French, Indonesians do not consume much liquor and wine. With its humid tropical climate, grapes are difficult to grow in Indonesia. Because the air temperature in Indonesia rarely drops below freezing, the consumption of alcoholic beverages is less popular among the community. Additionally, there are religions and beliefs in Indonesia that prohibit alcoholic beverages (Ridla, 2019: 122-123).

Legal Measures Against Geographical Indications Violations

The Trademark and Geographical Indications Law regulates the forms and ways of legal measures for resolving GI violations that can be taken by GI rights holders, as stipulated in Chapter X Violations and Lawsuits in Articles 66 to 69 of the Trademark and Geographical Indications Law. Forms of GI violations based on Article 66 of the Trademark and Geographical Indications Law include:

The use of GIs, either directly or indirectly, on goods and/or products protected by GIs;

The use of GI signs, either directly or indirectly, on goods and/or products, whether protected or not, with the intention of:

Indicating that the goods and/or products are of the same quality as those protected by GIs;

Gaining advantage from such use; or

Gaining advantage from the reputation of the GI.

The use of GIs that can mislead the public regarding the geographical origin of the goods;

The use of GIs by non-registered GI users;

Imitation or misuse that can mislead the public regarding the origin of the goods and/or products, which includes:

Packaging or labeling;

Information in advertisements;

Information in documents regarding the goods and/or products; or

Information that can mislead regarding the origin within the packaging.

Other actions that can mislead the public about the true origin of the goods and/or products.

Dispute resolution for GI violations can be done outside the court, as stated in Article 93 of the Trademark and Geographical Indications Law, which states that besides resolving disputes in the Commercial Court, parties can also resolve disputes through arbitration or other alternatives. There are several out-of-court dispute resolutions based on Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, including:

Consultation, which is a personal dispute resolution between the parties, where the consultation provides input on the problems faced by the parties;

Negotiation is the second step for parties to reach an agreement, where both parties can negotiate directly. However, negotiation takes a lot of time, so if one party is not serious, it will be difficult to resolve the issue;

Mediation, which is a broader process than negotiation, involves a neutral third party to resolve the dispute between the parties. This third party is responsible for providing substantive, procedural assistance, and suggestions. In this situation, the party responsible for making the decision;

Arbitration is the final step that parties can take if other out-of-court dispute resolution methods fail to reach an agreement. In out-of-court dispute resolution, arbitration is a choice that can be made because it results in a binding decision made by a third party, namely an arbitrator or an arbitration panel (Cadizza & Rizanizarli, 2023: 177).

In addition to out-of-court dispute resolution, disputes arising from GI violations can also be resolved by filing a compensation lawsuit in the Commercial Court (Geme et al., 2023: 1030). This is based on Article 1 Paragraph (6) of the Trademark and Geographical Indications Law, stating that GI rights holders can file a lawsuit against unauthorized parties. Unauthorized users of geographical indications can request compensation and cessation of use as well as destruction of unauthorized GI labels. The lawsuit can be filed in the Commercial Court of the defendant's residence.

The use of GIs can be subject to criminal sanctions as stipulated in Articles 101-102 of the Trademark and Geographical Indications Law, where violations can result in imprisonment and fines. If the criminal act committed against the misuse of GIs is a complaint offense, no criminal action will be taken unless the aggrieved party reports it. Law enforcement against GI violations is hindered because it must wait for the complainant, whether consumers or producers, to report the GI violation. In fact, GI violations are offenses related to the identity of the Indonesian state (Cadizza & Rizanizarli, 2023: 178-179).

CONCLUSION

Legal protection of geographical indications can be implemented in two ways: preventive legal protection and repressive legal protection. Preventive legal protection is aimed at preventing violations of Geographical Indication (GI) products. This protection can be achieved by registering agricultural products that meet the GI

registration criteria with the Directorate General of Intellectual Property. This aims to obtain protection and anticipate violations by irresponsible parties. Repressive legal protection addresses violations of GI products' rights according to the laws and regulations regarding GI products. This can be done by filing a lawsuit in the Commercial Court for damages caused by irresponsible parties.

Legal measures against geographical indication violations can be pursued in two ways: legal actions through dispute resolution in court, specifically the Commercial Court where the defendant resides, or through out-of-court dispute resolution such as consultation, negotiation, mediation, and arbitration, as stipulated in Article 93 of the Trademark and Geographical Indications Law. Additionally, violations can be subject to imprisonment and fines according to Articles 101 and 102 of the Trademark and Geographical Indications Law.

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