

Legal Protection Against Geographical Indications of Registered Brands by Others Who Have No Rights

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Milah Sarmilah

Universitas Negeri Semarang, Indonesia

sarmillarosa@gmail.com

Abstract

Geographical Indication is one form of Intellectual Property Rights that must be protected. In the Trademark Law, Law Number 20 Year 2016 and Government Regulation Number 51 Year 2007 on Geographical Indication have been explained in general the legal protection of Geographical Indication can be given if the subject matter have legal standing. To obtain legal standing can be done by registering Geographical Indication to ensure legal certainty. And the duration of protection may take place

indefinitely as long as the characteristics and / or qualities underlying the protection are provided. Indonesia as an archipelagic country is very famous for its natural wealth. Unfortunately, there are still many Geographical Indications of Indonesia that are registered by the Foreign Marks that cause Indonesia to suffer economic losses, therefore it is necessary to take a recovery effort so that Geographical Indication that should be owned by the Indonesian nation can be re-owned by Indonesia.

Keywords: Geographical Indication, Legal Protection, Brand

A. Introduction

Intellectual Property Rights abbreviated as IPR which is a translation of Intellectual Property Rights or abbreviated with IPR we can interpret as the right to wealth arising from human intellectual abilities.¹ Intellectual Property Rights (IPRs) are exclusive rights granted to a person or a group of persons for his or her works. When viewed in more detail Intellectual Property Rights (IPR) is part of the object, that is intangible objects (immaterial objects).² The protection of intellectual property rights in Indonesia which is subject to regulatory provisions in particular from Copyright, Patents, Trademarks, Industrial Designs, Trade secrets, Layout Designs of Integrated Circuits, and

¹ Miftakhul Huda, "Konsep Dan Kedudukan Hak Kekayaan Intelektual Dalam Hukum Islam," *Salimiya: Jurnal Studi Ilmu Keagamaan Islam* 1, no. 1 (2020).

² Muh. Ali Masnun, Eny Sulistyowati, and Irfa Ronaboyd, "PELINDUNGAN HUKUM ATAS VAKSIN COVID-19 DAN TANGGUNG JAWAB NEGARA PEMENUHAN VAKSIN DALAM MEWUJUDKAN NEGARA KESEJAHTERAAN," *DiH: Jurnal Ilmu Hukum* 17, no. 1 (2021), <https://doi.org/10.30996/dih.v17i1.4325>.

Vareitas Protection of Plants. In addition to the above intellectual property rights there is a protection of intellectual property rights known as the protection of Geographical Indications whose arrangements are contained in the laws of the brand namely the Law of the Republic of Indonesia Number 15 Year 2001 on Marks. Article 56 paragraph (1) of the Trademark Law provides a definition of "Geographical indication is protected as a sign showing the origin of a good, which due to geographical environmental factors including natural factors, human factors, or a combination of these two factors, gives certain characteristics and qualities on the goods produced".³ In response to the article Geographical Intification in the Trademark Act, the Government issued Government Regulation (PP) Number 51 Year 2007 which regulates technically about Geographical Indication, article 1 paragraph 1 defines Geographical Indication is a sign that indicates the origin of a good, which due to geographical environmental factors including natural factors, human factors, or a combination of these two factors, gives certain characteristics and quality on the goods produced.⁴ Geographical identification is part of IPR sourced from local natural resources potential of a region, which basically contains four things: the determination of product producing area, production method specification, product quality specification, as well as specific names and specifications that distinguish from similar products.⁵

Indonesia is a country rich and abundant natural resources. The land which is famous for its hundreds of thousands of islands is one of the maritime countries in the world. The richness of these natural resources cultivates many unique varieties of both biological and vegetable so as to provide a great variety of potential natural endowments so extraordinary that from such potentials

³ Pemerintah Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis," 53 Pemerintah Republik Indonesia § (2016).

⁴ Dayanto and Asma Karim, "PERLINDUNGAN HUKUM DAN PENGEMBANGAN POTENSI INDIKASI GEOGRAFIS MINYAK KAYU PUTIH PULAU BURU (Legal Protection and Development of Eucalyptus Oil as Potential Geographical Indicaions in Buru Island)," *Jurnal RECHTSVINDING Media Pembinaan Hukum Nasional* 5, no. 3 (2016).

⁵ Ahmad Moelyono Anasis and Mieke Yustia Ayu Ratna Sari, "PERLINDUNGAN INDIKASI GEOGRAFIS TERHADAP DAMAR MATA KUCING (SHOREA JAVANICA) SEBAGAI UPAYA PELESTARIAN HUTAN (STUDI DI KABUPATEN PESISIR BARAT PROPINSI LAMPUNG)," *JURNAL HUKUM IUS QUIA IUSTUM* 22, no. 4 (2015), <https://doi.org/10.20885/iustum.vol22.iss4.art3>.

produce biological and geological cultivation results where the potential is located. Currently, Indonesia is a country rich in potential geographical indication products such as Ubi Cilembu, Gayo Coffee, Kintamani Bali Coffee, Black Lada Lampung, Muntok White Pepper, Toraja Coffee, Malang Stone Apples, Dinoyo Ceramics, and others. The natural potential becomes a boon for the Indonesian nation for economic growth, if the potential can be utilized and used as a trading asset. Efforts made by someone to create and devote the work of his mind, energy and funds and has benefits for life human beings result in a compensation in the form of rights that can be commercialized by the owner of the intellectual property and can give him a financial benefit.⁶ In this context, if the potential falls into the category of business or trade asset, then the rule of law must be able to ensure that the rights of those utilizing the potential can be protected.

Legal protection of various products that characterize the geographical indication in Indonesia must be able to answer the global challenge (international trade) that is by providing adequate legal regulation so as to provide legal certainty to the original products of Indonesia abroad. Because the protection of Indonesia's geographical products is still far from expectations despite Indonesia has ratified various international agreements such as the TRIPs Agreement through Presidential Decree no. 7 of 1994 and The Paris Convention for the Protection of Industrial Property 1883 (Paris Convention 1883).

This is evidenced by the existence of two examples of cases of violations of geographical indications that can be a lesson, namely cases of violations of Kopi Toraja and Kopi Gayo. Case of registration of Coffee marks by Toraja name by Key Coffee Co. begins when the "Toarco Toraja" brand owner applies for the protection of the popular coffee brand in Japan. The threat of a competitor using a trademark with the same name became the basis of his brand protection request in 1974 and then its registration was granted in 1976. The second case was Gayo Coffee where the trademark was claimed by a Dutch trading

⁶ Lepi T. Tarmidi, "WTO Dan Prinsip-Prinsip Perdagangan Dunia," *Jurnal Ekonomi Dan Pembangunan Indonesia* 2, no. 2 (2002), <https://doi.org/10.21002/jepi.v2i2.623>.

company as the right holder Gayo coffee is typical of Nanggroe Aceh Darussalam. The Dutch company (Holland Coffe B.V) claims that the company is the owner of the coffee trademark and registered internationally under the name Gayo Mountain Coffee.

From the experience of the above cases, it has given an example that the Indonesian rule of law standards are still very poor against the protection of geographical indications that can protect Indonesian products internationally, even though Indonesia has ratified several International Agreements on intellectual property rights and the existence of national laws through Law no. 15 of 2001 on Trademark and Government Regulation no. 51 of 2007 on Geographical Indications.

B. Research Mehtod

The research methodology is a scientific process or way to obtain data to be used for research purposes.⁷ The nature of research can be understood by studying the various aspects that encourage research to conduct research. Each person has a different motivation, among them influenced by the goals and professions of each. Motivation and research objectives are generally basically the same, that is, research is a reflection of the human desire that always try to know something.⁸

In this case the method that writers use to discuss this paper is the normative method of legal research methods conducted by simply researching library materials or secondary data. This study was conducted to identify concepts and principles and legal principles. The method of thinking used is the method of deductive thinking that is the way of thinking in the withdrawal of inferences drawn from something that has been proved that true and the conclusion is intended for something that is special.⁹

⁷ Irwansyah Irwansyah, "Penelitian Hukum: Pilihan Metode \& Praktik Penulisan Artikel," *Yogyakarta: Mirra Buana Media*, 2020.

⁸ Lexy J. Moleong, *Metodologi Penelitian Kualitatif, Cet. XI. Bandung: PT Remaja Rosdakarya*, 2018.

⁹ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020), <https://doi.org/10.14710/gk.2020.7504>.

C. Result & Discussion

1. Protection of Geographical Indications

As a trademark, geographical indications are also property rights that have economic value so as to obtain legal protection that is Firstly, geographical indications are a sign of the goods originating from a particular region or the name of the goods produced from a particular territory and expressly can not be used for similar products produced from other regions. Second, geographical indication is an indicator of quality, geographical indication informs the consumer that the goods are produced from a certain location where the influence of the surrounding nature produces the quality of goods with certain characteristics that continue to be maintained its reputation. Third, geographical indication is a business strategy whereby geographic indications provide commercial value-added to the product due to its keoriginality and product limitation that other regions can not produce. Fourthly, based on TRIPs treatments geographical indications are defined as part of intellectual property rights whose ownership rights can be retained from all unlawful acts and fraudulent competition. Geographical indications, such as trademarks, convey a message, notify potential buyers that a product is produced in a particular place and has the desired special characteristics that are only found there).¹⁰

The protection of geographical indication is basically not limited to agricultural products alone, all products that are related to geographical factors including natural and / or human factors as the dominance of characteristic formation and quality can be protected by geographical indication. Geographical Indications have been proven to promote the product by developing a market profile of goods that have a good reputation.¹¹ For example handicraft can be protected as a geographical indication is Kasongandi pottery of Central Java, from the method of manufacture in ketahuibahwa raw material for making pottery in the form of derived soil from the Bangun jiwo area of Kasihan sub-district, Bantul due to the distinctive characteristics of the

¹⁰ Michael Blackman, "Intellectual Property: A Power Tool for Economic Growth," *World Patent Information* 25, no. 4 (2003), [https://doi.org/10.1016/s0172-2190\(03\)00075-9](https://doi.org/10.1016/s0172-2190(03)00075-9).

¹¹ Lola Elvita, "Aspek Yuridis Hapusnya Hak Indikasi Geografis Dan Indikasi Asal Ditinjau Dari Undang-Undang Merek (Studi Perkebunan Lada)," *Notarius* 8, no. 2 (2015).

clay of the area as the basis for making pottery different from other regions, pottery pottery can be protected as a geographical indication. This is because the dominance of the characteristics and quality of kasongan pottery is in the raw material of the soil. This potential geographical indication can be developed to protect the products of indigenous peoples and local communities that are generally named not by individual names, but with the origin of a product to be protected by geographical indication.¹²

From the provisions set forth in Law Number 15 Year 2001 as well as Government Regulation Number 51 Year 2007, the object of protection of geographical indication shall include:

1. The goods produced by nature;
2. Agricultural goods, including forestry, plantations, livestock, fisheries, and marine;
3. Handicrafts;
4. Other particular industrial outcomes;
5. Other goods shall include, among others, raw materials and / or processed products from agricultural products or derived from mining products.¹³

2. Geographical Indications in National Law

Geographical indications are protected by national law with the concept of broad constraints, such as through, unfair competition provisions, consumer protection laws, brand laws or laws that specifically regulate geographical indications. Government Regulation no. 51 of 2007 on Geographical Indication is a description of Law no. 15 of 2001 on Brands, as geographical indications are contained in the Trademark Law and to date Indonesia has no Geographical Indication Law so that the regulation on sanctions and criminal offenses still refers to the Trademark Law. Not only in our country the problem of

¹² Miranda Risang Ayu Palar et al., "Geographical Indication Protection for Non-Agricultural Products in Indonesia," *Journal of Intellectual Property Law and Practice* 16, no. 4-5 (2021), <https://doi.org/10.1093/jiplp/jpaa214>.

¹³ Lily Karuna Dewi and Putu Tuni Cakabawa Landra, "PERLINDUNGAN PRODUK-PRODUK BERPOTENSI HAK KEKAYAAN INTELEKTUAL MELALUI INDIKASI GEOGRAFIS," *Kertha Semaya : Journal Ilmu Hukum* 7, no. 3 (2019), <https://doi.org/10.24843/km.2019.v07.i03.p02>.

geographical indications can be found, in some countries today geographical indications still raise various legal issues such as in America champagne brand, Australia with champagne which also have the same goods / product. In France champagne should not be used for beverage brands because it has been listed on geographical indications so that this creates a conflict. While in Indonesia Toraja coffee products are listed as a brand is also a product of geographical indication. Geographical indication is still very new, so if there is a dispute, the steps taken can be solved based on the Trademark Act no. 15. The protection of geographical indications may cause the value of the product to be higher, so that geographic indications may move the economy of an area of origin of the product of geographical indication and geographical indication aimed at the producer not to the farmer.¹⁴ The concept of geographical indication is communal protection, therefore in the process of protecting geographical protection the implementation can be done by empowering from among NGOs, from government agencies, local people to make a description of their products that are registered as geographical indications. The number of geographical indications in Indonesia is still much more just not monitored.¹⁵ New geographical indications are protected and protected after registered as HAKI we follow the principle of first to file.

In other countries in Asia there have been geographical indications of registration such as Thailand and India for a long time, while Indonesia can only be because there are some things that are not contained in government regulations on geographical indications that the newly formed team of experts in the field of geographical indication and the cost that must revised in Government Regulation no. 51 of 2007 relating to the substantive examination of geographical indications not yet.¹⁶ The role of the Directorate General of

¹⁴ Indra Rahmatullah, "Perlindungan Indikasi Geografis Dalam Hak Kekayaan Intelektual (HKI) Melalui Ratifikasi Perjanjian Lisabon," *JURNAL CITA HUKUM* 2, no. 2 (2014), <https://doi.org/10.15408/jch.v1i2.1470>.

¹⁵ Zakiyah, "Urgensi Perlindungan Hak Kekayaan Intelektual Indikasi Geografis Bagi Konsumen," *Legitimas*, 2011.

¹⁶ Dayanto and Karim, "PERLINDUNGAN HUKUM DAN PENGEMBANGAN POTENSI INDIKASI GEOGRAFIS MINYAK KAYU PUTIH PULAU BURU (Legal Protection and Development of Eucalyptus Oil as Potential Geographical Indicaions in Buru Island)."

Intellectual Property Rights especially the Sub-Directorate of Geographical Indication in protecting the products which are included in the geographical indication, namely:

1. Socialization of geographical indication to regions having geographical indication products;
2. To announce products that have geographical indication value in cooperation with the Regional Office of Law and Human Rights Department and related institutions;
3. Administration of registration application of geographical indication.

The issue of intellectual property rights will touch various aspects such as technological, industrial, social, cultural, and various other aspects. The technological aspect is also a very dominant factor in the development and protection of intellectual property rights. The development of information technology is very fast nowadays has caused the world feels more narrow, information can easily and quickly spread to all corners of the world. In these circumstances intellectual property rights are becoming increasingly important. This is because intellectual property rights are a monopoly right that can be used to protect investments and can be transferred their rights. But the most important aspect if associated with the protection of intellectual work is the legal aspect. The law is expected to overcome various problems that arise in relation to the intellectual property rights. The law should be able to provide protection for intellectual work, so as to develop the creation of society which ultimately leads to the goal of successful intellectual property protection. geographical indications legally force producers to maintain the quality and quality of products in accordance with the requirements book, so that from the point of consumers, of course give satisfaction to products that have a reputation and quality guaranteed to meet the standards even though the selling price is more expensive but consumers can enjoy products with same from time to time.¹⁷

¹⁷ Dewi and Landra, "PERLINDUNGAN PRODUK-PRODUK BERPOTENSI HAK KEKAYAAN INTELEKTUAL MELALUI INDIKASI GEOGRAFIS."

The form of protection against geographical indications of sanctions for perpetrators of criminal acts concerning geographical indication and indication-origin there is a Trademark Act namely in the article:

92. (1) A maximum imprisonment of 5 (five) years and / or a maximum fine of Rp.1.000.000.000,00 (one billion rupiah) for anyone who intentionally and without right to use the same mark on the whole with a geographical indication of property the other party for the same or similar goods listed goods,

92. (2) A maximum imprisonment of 4 (four) years and / or a maximum fine of Rp 800,000,000.00 (eight hundred million rupiah) for whoever deliberately and without right uses the same mark in essence with indication geographical property of the other party for the same or similar goods with the goods listed;

93. (1) A maximum imprisonment of 4 (four) years and / or a maximum fine of Rp 800,000,000.00 (eight hundred million rupiah) for any person who knowingly and unauthorized use of the right to use a protected mark based on indication of origin on goods or services so as to deceive or mislead the public about the origin of the goods or services.

3. Geographical Indications in International Law

TRIPs is one of the main agreements produced in the Uruguay round aimed at reducing the disruption and obstacles to international trade, promoting effective and expedient protection of intellectual property rights and to ensure that the procedures and the extent of the IP law enforcement measures themselves are not a barrier to legitimate trade .

TRIPs is actually a new issue in the General Agreement on tariffs and Trade (GATT) which is assumed to pass the Uruguay Round that runs from 1986 to 1994. beforehand the issue of IPR was under the arrangement of a number of multilateral agreements administered by other forums, such as World Intellectual Property Organisation (WIPO), UNESCO and UNCED.

The Paris Convention for the Protection of Industrial Property, signed in Paris on March 20, 1883 and has been amended several times with revisions

and refinements governing industrial property. As of January 1, 1988, 97 countries have become members of this Convention, including Indonesia which has ratified by Presidential Decree no. 24 of 1979 and also based on this Presidential Decree has been ratified, Convention Establishing the World Intellectual Property Organization (WIPO). The objects of industrial property protection under this Convention are patent, utility models, industrial design, trade marks, trade names, indication of source of appellation of origin (indication and original designation). WIPO, headquartered in Geneva, administrated as many as 25 multilateral agreements on intellectual property rights consisting of 8 rights in the rights field in the field of copyright, the rights field of Industrial Property of 17 units. In addition WIPO also administers the convention of WIPO (1967) formation itself. UNESCO manages the Univesal Copyright Convention, and UNCED manages an agreement that does not specifically govern intellectual property rights, but HAKI is one of the aspects it regulates, namely Geographical Indication.

If carefully observed, it can be seen that the standard of protection of various areas of intellectual property in TRIPs refers to the minimum standards that exist in pre-existing conventions, especially those already administered by WIPO such as The Paris Convention, The Berne Convention, The Rome Convention, The Treaty on Intellectual Property in Respect of Integrated Circuits (Washington Treaty). TRIPs determine the minimum substantive norms and standards regarding the extent to which protection is provided and how such protection is applied. As long as it does not arrive with TRIPs, Member States may apply substantive norms and standards that are more than those required by TRIPs in their national law.

Indonesia as part of GATT / WTO membership and has ratified the Agreement Establishing World Trade Organization through Law no. 7 of 1994, where in the Agreement of Establishment of the World Trade Organization there is an agreement concerning intellectual property rights. There are 56 countries that use the brand system. these countries utilize certification marks, collective trademarks or trademarks to protect Geographical Indications.¹⁸

¹⁸ Keelen Snyders, "Sugar Tax: A Bitter Pill to Swallow?," *South African Food Review*, 2016.

The agreement is known as the Trade Related Aspects of Intellectual Property Right (TRIPs). Geographical Indications are an integral part of TRIPs. Therefore, geographical indications are also material that should be included in national law arrangements. In the case of a minimum arrangement there are two ways by a country that has ratified TRIPs, namely; First, make the issue of geographical indication in other legal provisions, such as a brand. In this connection the geographical indication is only a part; Second, setting geographical indications may be done independently of a country's national law. This means that the rules are independent. A good rule without being followed by good law enforcement anyway, will be in vain. According to Thomas Jefferson, "ignorance of the law is no excuse in any country, if it where, the law would lose their effect, because it can always be pretended". Without effective law enforcement the intellectual property system will fall apart. Zein Umar Purba Former Director General of Intellectual Property Rights has also said that if law enforcement is weak, that is part or mirror of the weakness of law enforcement as a whole. If the problem has been found and immediately looked for solution to anticipate other problems that arise, as well as realize the ideals of Indonesia's patent law, which gave birth to a new inventor and able to encourage the nation's economy.

There are several benefits of the International Registration system, including:

1. Other countries will know precisely the goods that have been protected
2. The affiliated States will be requested to respect and protect the product
3. The protection of such products will be protected in the country of origin still protected without any registration updates.
4. For producers, goods that have been protected and registered in the Lisbon system can improve the quality and price of such goods in other countries,

5. For consumers, goods that have been protected and registered can provide assurance of authenticity and quality, so as not to confuse the origin of the goods.

D. Conclusions

The Geographical Indication setting relates to discontinuing the use of registered marks relating to Geographical Indications in TRIPs Agreement Section 3 concerning Geographical Indications Article 22 paragraph (3) on the cancellation of the same mark as Geographical Identification and Article 24 paragraph (5) regulating the registered mark in good faith still exist. The results show that each WTO member country regulates it differently from one another. The use of Geographical Indications in identical or identical registered Marks, Singapore is specifically regulated in the Geographical Indications Act 44 of 1998. Although Indonesia does not regulate its own, but more in detail in order for the Trademark Law article 56 paragraph (8) of Government Regulation no. 51 of 2007, article 27 paragraph (1) and (2) stipulates the use of the mark to be terminated within 2 years after the Geographical Indication is registered.

As a member country of WTO, Indonesia has realized the arrangement of geographical indication which is not contradictory to WTO rules especially TRIPS. Public understanding of the lack of importance of registering geographical indications becomes one of the most difficult factors of law enforcement, as many well-known and unregistered products, while those protected by the legal umbrella are registered products. Inadequate legal instruments where geographical indications do not yet have separate laws, are factors affecting weak law enforcement, as they are still branded while geographical indications are different from brands.

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