

Research Article

Legal Implications for the Protection of Indonesian Geographical Indication Products

Almusawir Almusawir* , Abdul Rifai , Zulkifli Zulkifli , Siti Subaedah 

Faculty of Law, University of Bosowa, Makassar, Indonesia

Abstract

Indonesia ratified the establishment of the World Trade Organization on November 2, 1994, through Law Number 7 of 1994 concerning the Agreement Establishing the World Trade Organization, in which the Trade-Related Aspects of Intellectual Property Rights Agreement was included as part of the ratification. This ratification has juridical implications for the harmonization of intellectual property laws, including geographical indications, which are registered signs or labels used for characteristic products with distinctive qualities that are directly linked to the environment of their origin. This article aims to analyze the legal framework governing geographical indications and the implementation of legal protection for potential geographical indication products in Indonesia. This research employs both normative legal research and empirical legal research methods, utilizing a legislative approach, a conceptual approach, and a case-based approach. The findings of the study indicate that: The legal framework for geographical indications has supported the protection of potential geographical indication products in Indonesia at both national and international levels. The implementation of legal protection for potential geographical indications in Indonesia in 2023 covered a total of 138 registered geographical indications, consisting of 123 local products from 34 provinces and 15 foreign products. However, this figure is not comparable to Thailand's registered geographical indications in 2023, which amounted to 189 geographical indication, comprising 171 local products from 77 provinces and 18 foreign indications from 9 countries.

Keywords

Law Product, Contribution Protection, Geographical Indications

1. Introduction

Geographical Indications (GIs), as stated in Article 1, paragraphs (6) and (7) of the Trademark and Geographical Indications Law and explained in Government Regulation No. 51 of 2007 on Geographical Indications, is a sign (label) that has long existed, often unconsciously, and indirectly indicates the uniqueness of a product. It is used to show the origin of a product from a specific region, where geographical factors including natural factors, human factors, or a combination of

both contribute to the reputation, quality, and distinctive characteristics of the produced goods or products. These may include natural resources, handicrafts, and industrial products.

Natural resources encompass all elements derived from nature that can be utilized to meet human needs. These include biotic components such as animals, plants, and microorganisms, as well as abiotic components such as petroleum, natural gas, various types of metals, water, and soil.

*Corresponding author: almusawir@universitasbosowa.ac.id (Almusawir Almusawir)

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Industrial products are the result of human processing, transforming raw materials into finished goods. Examples include Gringsing woven fabric, Sikka woven fabric, and Wajo silk woven fabric. A geographical indications is a distinctive mark with economic value that serves as an identity for high-quality products with local reputation and specific characteristics, distinguishing them from similar traded products.

According to Article 53, paragraph (3) of the Trademark and Geographical Indications Law, industrial products are defined as human-processed goods that transform raw materials into finished products, such as Gringsing woven fabric, Sikka woven fabric, and Wajo silk woven fabric. A geographical indications will be effective only when it is properly registered and utilized in accordance with its intended purpose.

In the trade of locally specified products, geographical indications labels or signs are superior to regular commercial product labels because products with indications labels provide clear information about the product's region of origin, along with its quality and reputation. Additionally, they can enhance the value of natural resources and local craftsmanship, reflecting the connection between the product and its region. When protected by law, geographical indications labeling helps prevent misuse or imitation of registered indication labeling [1, 2]. Furthermore, the use of registered geographical indications labels with a strong reputation can increase the economic value of products, as they serve as a guarantee of quality and authenticity. This is expected to contribute to the economic improvement of local communities where the products originate [Kurnianingrum, 2016]. Examples of registered geographical indications products with a well-established reputation, quality, and distinctive taste allow geographical indications users to set premium prices in both domestic and international markets [3]. A recent study by the European Commission found that products protected by geographical indications have, on average, double the sales value compared to non geographical indications [4].

2. Research Methods

This research is normative legal research and empirical legal research using the legislation approach, conceptual approach, and case approach [5, 6]. There are two types of data in this study, namely (1) primary data, i.e. data derived from the results of the Convention's and Constitution of the Republic of Indonesia, Trademark and Geographical Indications Law, and (2) secondary data, i.e. data obtained from library search, documents. The data was collected through the stages of editing, then coding and analyzed using descriptive techniques.

3. Discussion

3.1. Law of Geographical Indications

3.1.1. International Conventions and Agreements

Articles 1 (2) and 1 (3) of the Paris Convention for the Protection of Industrial Property, established in 1883 and later supplemented by the Madrid Protocol of 1891, introduce the term Indication of Source to designate location-specific products whose characteristics and quality are directly linked to their place of origin. This provision aims to prevent unfair competition in the industrial, agricultural, and extractive sectors for all naturally derived products, including wine, wheat, tobacco leaves, fruits, livestock, minerals, mineral water, seeds, flowers, and flour in trade.

The Madrid Agreement Concerning the International Registration of Marks (1891) includes legal protection measures against misleading information regarding the origin of goods. However, it does not explicitly regulate the concept of geographical indications but requires member states to seize goods that are falsely or misleadingly labeled. On September 30, 2017, Indonesia ratified the Madrid Protocol (1989) through Presidential Regulation No. 92 of 2017 concerning International Trademark Registration. This was subsequently followed by Government Regulation No. 22 of 2018, which governs international trademark registration under the Madrid Protocol (1989). These regulations provide a streamlined and efficient mechanism for trademark and geographical indications owners to register their marks internationally through the Directorate General of Intellectual Property, facilitating a simplified and cost-effective process [7, 8].

Location-Specific Products in Articles 2 (1) and 2 (2) of the Lisbon Agreement (1958) uses the term Appellations of Origin (AO), which refers to the geographical name of a region or locality used to indicate the place of origin of a product whose quality and characteristics are exclusively and essentially linked to the geographical environment, including natural and human factors, of the country of origin, which grants the product its reputation. The Lisbon Agreement (1958) was later revised in Stockholm in 1967, incorporating provisions on the protection of Appellations of Origin through a registration system administered by the World Intellectual Property Organization [9].

The Paris Convention (1883), the Madrid Agreement, and the Lisbon Agreement did not use the term geographical indications. However, the term geographical indications was officially introduced in the Trade-Related Aspects of Intellectual Property Rights (TRIPs), as part of the 1994 Uruguay Round of the General Agreement on Tariffs and Trade (GATT). The objective was to prevent the misuse of geographical indications and misleading practices that could deceive consumers. The Indonesian government ratified the agreement on April 15, 1994, through Law No. 7 of 1994 on the Ratification of the Agreement Establishing the World

Trade Organization. Consequently, Indonesia is obligated to provide legal protection for Intellectual Property Rights (IPR), including legal protection for geographical indications, as mandated by the Trade-Related Aspects of Intellectual Property Rights Agreement [10, 11].

Geographical Indications, as defined in Article 22 (1) of the TRIPs Agreement, are signs used to identify the origin of goods from a member's territory, or a region or locality within that territory, where the quality, reputation, and characteristics of the goods are essentially linked to their place of origin. This provision of TRIPs explicitly recognizes and establishes the concept of geographical indications as products that have a strong connection between their place of origin and their quality and reputation [12, 13]. In the Articles 22, 23, and 24 of the TRIPs Agreement provide global recognition and legal protection for geographical indications by defining them, establishing minimum protection standards, prohibiting misleading or incorrect use of geographical indications, and ensuring the proper identification of goods that originate from a geographical area different from their actual place of origin. Legal protection for geographical indications under the TRIPs framework grants WTO members the flexibility to determine, within their national legal systems, whether to implement protection through trademark law or a sui generis system.

3.1.2. National Law

Law Number 7 of 1994 on the Ratification of the Agreement Establishing the World Trade Organization, including Trade-Related Aspects of Intellectual Property Rights, became part of Indonesia's national law. This demonstrates that Indonesia has accepted World Trade Organization regulations and its annexes and will align them with its national laws according to the level of legal protection for intellectual property rights, including geographical indications. One step in fulfilling this commitment was integrating geographical indication legal protection into Law Number 15 of 2001 on Trademarks, which was later replaced by Law Number 20 of 2016 on Trademarks and Geographical Indications. This law further strengthens the legal status of geographical indications within Indonesia's legal system, aiming to establish a sui generis legal protection scheme for potential geographical indication in Indonesia [14].

Geographical Indications are signs or labels indicating the origin of a product with specific characteristics and quality directly linked to its geographical environment, including natural factors, human factors, or a combination of both. The concept of geographical indications was not explicitly regulated in Law Number 15 of 2001 on Trademarks but only set criteria for geographical indication as protected signs that indicate the origin of a product, where geographical environmental factors, including natural and human factors or their combination, contribute to the product's distinct characteristics and quality [15]. Meanwhile, the protection of geographical indication territory is regulated under Law Number 18 of 2004 on Plantations. The objective is to en-

hance public prosperity and welfare, including through the sustainable management of natural resources and the designation of Geographical Territory for Specific Plantation Products. To qualify, plantation products must meet the following criteria: Unique quality, including specific taste, reputation, or well-known status at local, national, and international levels. Distinctiveness from similar products in other regions and proper cultivation practices by plantation business operators. Article 24 [1] and [2] of Law Number 18 of 2004 on Plantations stipulates that a geographical area is a region that produces location-specific plantation products and is protected under geographical indications to ensure its preservation. The conversion of such areas for other purposes, such as changing the type of commodity or repurposing the land for residential or industrial use, is strictly prohibited. Violations are subject to sanctions, including the obligation to revoke the conversion and restore the geographical area to its original function. The Plantation Law regulates geographical indications as an integral part of plantation business areas, applying a territorial [spatial] approach within a land use planning concept for plantation enterprises. In contrast, Government Regulations on Geographical Indications define geographical indications as a component of Trademarks, adopting a property-based approach, whereby geographical indications are considered intangible assets protected under Intellectual Property Rights.

3.2. Legal Protection of Geographical Indications

The legal protection of potential products that characterize geographical indications is inseparable from the economic value attached to these products after registration. The use of geographical indications labels or markings on marketed products enhances their reputation among consumers and provides legal certainty for geographical indications holders to enjoy and exploit their products within a specified period [16]. The geographical indications system ensures that only producers within a specific geographical area benefit from the commercial exploitation of the geographical indications heritage. A potential geographical indications obtains legal protection once it is registered with the Directorate General of Intellectual Property Rights (Ditjen HKI) upon the application of an institution representing the local community and the provincial, regency, or municipal government of the relevant geographical area. The protected products may include natural resources, handicrafts, and industrial goods.

The institution representing the community, as explained in Article 53 Paragraph [3] of the Trademark and Geographical Indications Law, refers to a group of people engaged in the production of geographical indications products from a specific region. These products may include natural resources, handicrafts, and industrial goods, and the producers may be organized into associations of producers, cooperatives, or the Geographical Indication Protection Society. Meanwhile,

government institutions may consist of the provincial, regency, or municipal governments of the region where the potential geographical indications products originate. Before registration, the first step for the relevant stakeholders is to determine the geographical boundaries, accompanied by a specific description explaining the relationship between the product and its geographical environment, including climate, soil, and cultural factors that provide distinctive characteristics. This distinction is documented in the Geographical Indication Specification Book to differentiate it from similar products. Thus, the urgency of registering potential geographical indications lies in providing legal protection over the geographical name of the product's origin, guaranteeing the authenticity of the product's origin, and ensuring the quality of the products marketed by the geographical indications owner. This effort aims to protect regional flagship products from misuse or counterfeiting while serving as a means of promoting these products as part of Indonesia's cultural and natural identity. The requirements for geographical indications registration are regulated in Articles 4 to 6 of the Trademark and GIs Law, which stipulate that an application for geographical indications registration must be submitted by the relevant party or its representative to the Minister, either electronically or non-electronically, in the Indonesian language. The application must include:

- 1) The date, month, and year of the Application;
- 2) The full name, nationality, and address of the Applicant;
- 3) The full name and address of the Attorney if the Application is submitted through an Attorney;
- 4) The color if the Trademark applied for registration contains color elements;
- 5) The name of the country and the date of the first Trademark application in the case of an Application submitted with Priority Rights;
- 6) The class of goods and/or class of services, along with a description of the type of goods and/or type of services.

A registered geographical indications owner is entitled to receive a certificate as proof of ownership, which guarantees the authenticity, quality, characteristics, and reputation of the product for the purpose of commercial exploitation. This certification is intrinsically linked to the geographical origin of the marketed product. Products bearing a geographical indications certificate are granted strong legal protection concerning the use of logos, labels, or tags affixed to goods. These identifiers may include place names, regions, or territories, as well as words, images, letters, or any combination thereof. A registered geographical indications will not become public property as long as geographical indications products continue to be produced in compliance with quality standards and are subject to supervision aligned with technological advancements [17, 18].

The legal protection of geographical indications constitutes recognition of Intellectual Property Rights and local products with unique characteristics, thereby enhancing the status of Indonesian traditional products in regional and international

trade. This protection is particularly significant following the implementation of the ASEAN Free Trade Agreement (AFTA) and the ASEAN-China Free Trade Agreement (ACFTA), which took effect on January 1, 2010 [19]. The objective is to improve the welfare of local communities in the region of origin of the geographical indications product.

The legal protection of potential geographical indications in Indonesia is facilitated through registration and the issuance of certificates by the Directorate General of Intellectual Property Rights. In 2023, a total of 138 geographical indications certificates were issued, comprising 123 certificates for local products and 15 certificates for foreign products. Local geographical indications products in Indonesia are predominantly coffee, with a total of 48 registered products, consisting of 26 Arabica coffee, 19 Robusta coffee, and 3 Liberica coffee. However, this number remains disproportionate to Indonesia's vast coffee diversity, which includes over 300 varieties of Arabica and Robusta coffee, making it one of the most diverse coffee-producing countries in the world. In comparison, as of 2023, Thailand had registered 189 geographical indications, comprising 171 local products from 77 provinces and 18 foreign geographical indications from 9 countries. Thailand's local geographical indications products include rice, fruits and vegetables, silk and cotton, as well as wine and alcoholic beverages [20].

3.3. Ownership of Geographical Indications

The right to a geographical indications is an exclusive right granted by the state to an institution representing the community from the region of origin of a product. This right is derived from geographical environmental factors, including natural factors, human factors, or a combination of both, which contribute to the reputation, quality, and distinct characteristics of the goods or products produced. Ownership rights over a geographical indications do not become public property for an indefinite period, provided that the geographical indications certified products continue to be produced in accordance with the geographical indications specification book. The concept of geographical indications ownership constitutes a form of communal property rights, necessitating recognition and collective, sustainable management by the local community over a registered geographical indications product from a specific region. This ensures the protection of regional identity with legal certainty. Geographical indications holders are also required to continuously monitor production and marketing processes to maintain and ensure the specific characteristics and quality standards of registered geographical indication products, thereby preserving their exclusive rights. Furthermore, geographical indications serve as an effective collective marketing tool by representing national, regional, or local identity and enhancing the value of natural resources and traditional expertise associated with the products place of origin [21, 22].

The holder of a Geographical Indication, as stipulated in

Article 7 of the Trademark and Geographical Indications Law, is the user, specifically a community group within a defined region that cultivates products with location-specific characteristics. These users enjoy exclusive rights through registration, provided that the reputation, quality, and characteristics that form the basis of the GIs protection are maintained. Any third party wishing to use a registered GIs must obtain authorization from the registered GIs holder to process and market products that meet the established criteria and have passed quality assessments in accordance with the required production standards. Thus, products marketed under a Geographical Indication serve as a guarantee that each product not only meets the highest quality standards but also preserves the cultural identity of the local community of origin. This, in turn, enhances the economic value of the product in the market [23].

4. Conclusion

The legal framework for geographical indications in Indonesia is governed by various national and international regulations, including the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 12 of 2019 on geographical indications and sectoral regulations such as those related to plantations. Internationally, Indonesia adheres to Law No. 7 of 1994 on the Ratification of the Agreement Establishing the World Trade Organization, which includes the Trade-Related Aspects of Intellectual Property Rights Agreement. Additionally, Indonesia has implemented Presidential Regulation No. 92 of 2017 on the Ratification of the Madrid Protocol and Government Regulation No. 22 of 2018 on the Registration of International Trademarks under the Madrid Protocol.

Despite the legal protection available through registration and certification by the Directorate General of Intellectual Property Rights, the protection of potential geographical indication products remains suboptimal compared to the extensive geographical indication potential across various regions in Indonesia. According to data from the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights of the Republic of Indonesia, as of 2023, 138 geographical indication certificates had been registered, consisting of 123 certificates for local products across 34 provinces and 15 certificates for foreign products. By comparison, Thailand had registered 189 geographical indication products in 2023, comprising 171 local products from 77 provinces and 18 foreign geographical indications from 9 countries.

Abbreviations

AO	Appellations of Origin
Ditjen HKI	Directorate General of Intellectual Property Rights
GATT	General Agreement on Tariffs and Trade

GIs	Geographical Indications
IPR	Intellectual Property Rights
MPIG	Geographical Indication Protection Society
TRIPs	Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organization

Author Contributions

Almusawir Almusawir: Conceptualization, Data curation, Funding acquisition, Investigation, Methodology, Supervision, Visualization, Writing – original draft, Writing – review & editing

Abdul Rifai: Conceptualization, Investigation, Methodology, Resources, Software, Supervision, Validation, Writing – review & editing

Zulkifli Zulkifli: Conceptualization, Investigation, Methodology, Project administration, Resources, Software, Supervision, Visualization, Writing – original draft, Writing – review & editing

Siti Subaedah: Conceptualization, Data curation, Investigation, Project administration, Resources, Supervision, Validation, Writing – review & editing

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Conflicts of Interest

The authors declare no conflicts of interest.

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