

LEGAL OVERVIEW OF TRADEMARKS AND GEOGRAPHICAL INDICATIONS

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Abstract

This article discusses the importance of trademarks and geographical indications in the business world, especially in the context of marketing, consumer protection, and producer reputation building. Trademarks serve as a marker that distinguishes one producer's goods or services from another, while geographical indications indicate the geographical origin of a good that has a special quality or reputation due to environmental factors. Legal protection of geographical indications aims to prevent misuse of geographical names by unauthorized parties, protect original producers, and preserve culture and traditional knowledge. This research uses normative legal methods to examine the legal principles underlying the importance of regulating trademarks and geographical indications. This research uses a study of primary legal materials from legislation and secondary legal materials from related literature. The results show that legal protection of geographical indications provides significant benefits, including product identification, protection from fraudulent competition, quality assurance, increased production, and preservation of culture and natural beauty. It also plays a role in enhancing the reputation of products and regions, which has a positive impact on local economic development. In addition, this protection not only provides economic benefits to the region, but also provides assurance to consumers about the quality of the product. Therefore, legal protection of geographical indications is a crucial step in maintaining the quality, reputation and sustainability of superior products from various regions in Indonesia.

Keywords: trademark, geographical indication, intellectual property rights protection.

INTRODUCTION

The development of the global economy and increased international trade demand strong legal protection for various aspects of intellectual property, including trademarks and geographical indications. Trademarks are marks used by producers or service providers to distinguish their goods or services from similar goods or services owned by other parties. Meanwhile, geographical indication is a

marker that identifies a product originating from a certain region that has a quality or reputation caused by geographical factors (Apriansyah, 2018).

The importance of brands and geographical indications in the business world cannot be underestimated. They play an important role in marketing strategies, provide assurance to consumers regarding the origin and quality of products, and assist producers in building reputation and consumer trust. However, to function effectively, brands and geographical indications require adequate legal protection (Prasada, 2016).

Geographical indications have unique characteristics that distinguish them from other forms of intellectual property. Products with geographical indications often have special qualities that cannot be replicated by products from other regions. For example, wine from the Bordeaux region in France, tea from Darjeeling in India, or coffee from Kintamani in Bali. The quality and reputation of these products are strongly influenced by geographical factors such as climate, soil, and traditional practices developed in the region.

The legal protection of geographical indications aims to prevent the misuse of geographical names by unauthorized parties and to protect the original producers. Without adequate protection, well-known geographical names can be freely used by other producers who have no connection to the region, which can ultimately damage the reputation and quality of the original product. In addition, geographical indications also play an important role in the preservation of culture and traditional knowledge. Many products with geographical indications are the result of practices and traditions that have been passed down for generations. Protecting geographical indications also means protecting cultural heritage and knowledge that has existed for centuries (Irawan, 2017; Sulaiman, 2023).

The importance of legal protection of geographical indications is not only felt by producers but also by consumers. This protection provides assurance to consumers that the products they buy really come from the mentioned region and are of the expected quality. This increases consumer confidence and encourages brand loyalty. Furthermore, strong legal protection of geographical indications can provide economic benefits to the region. Products with protected geographical indications can command a premium price in the market, which in turn increases the income of producers and boosts local economic development (Khotimah & Apriani, 2023).

Therefore, in the era of rapid globalization, legal protection of trademarks and geographical indications is becoming increasingly important. Through this article, we will theoretically elaborate on the meaning of trademarks and

geographical indications, geographical indications, and the importance of legal protection of geographical indications that can make a positive contribution to the economy and culture.

RESEARCH METHOD

The type of research used in this study is normative legal research on legal principles. Normative legal research on the principles of law is a legal research that is done with the aim of finding the applicable principles or doctrines, namely to find the philosophical basis of the importance of regulation of trademarks and geographical indications. This legal research uses primary legal materials legislation related to trademarks and geographical indications, as well as secondary legal materials in the form of business law books, journals, and other references related to the research theme. The conclusion in this research is done deductively.

RESULTS AND DISCUSSION

Definition of Trademarks and Geographical Indications

Based on Article 1 point 6 of Law Number 20 Year 2016 on Trademark and Geographical Indication (Trademark and Geographical Indication Law) Geographical Indication is a sign indicating the region of origin of a good and/or product which due to geographical environmental factors including natural factors, human factors or a combination of both factors gives a certain reputation, quality, and characteristics to the goods and/or products produced. Communities and companies often use geographical names to indicate the origin of the goods or services they offer to the public (Yulia, 2015). A geographical indication is a mark indicating the region of origin of goods associated with the quality, reputation or other characteristics appropriate to the geographical origin of the goods. The legal subject of geographical indications is called the producer or user of geographical indications, which is the party that produces goods or producers who produce goods in accordance with the relevant Requirements Book and registered at the Directorate General, while the legal objects of geographical indications are as follows:

1. The name of the place or region or other particular mark indicating the origin of the place where the goods protected by the Geographical Indication are produced.
2. Agricultural products, processed products, handicrafts, or other goods (Handoko, 2015).

The right to geographical indication is an exclusive right granted by the state to the right holder of a registered geographical indication, as long as the reputation, quality, and characteristics that are the basis for the protection of the geographical indication still exist. To obtain the protection of geographical indications, the applicant must submit an application to the Minister as mentioned in Law Number 20 of 2016 concerning Trademarks and Geographical Indications Article 1 point 6. the applicant as referred to in Paragraph (2) is an institution representing the community in a particular geographical area that cultivates a good and/or product in the form of natural resources, handicrafts and industrial products and provincial or district / city local governments. The applicant can directly register its product through the Directorate General of Intellectual Property (DJKI) or through the Regional Office of the Ministry of Law and Human Rights (Kanwil Kemenkumham) where the geographical indication product is located. As mentioned in the Government Regulation of the Republic of Indonesia No. 51/2007 on Geographical Indications Article 15 states that Producers who are interested in using Geographical Indications must register as Users of Geographical Indications to the Directorate General for a fee in accordance with applicable regulations (Apriansyah, 2018).

The Geographical Indication

In the legal process, geographical indications can be filed by:

1. An organization representing the community in a certain geographical area that cultivates a good and/or product in the form of: (1) natural resources; (2) handicrafts; or (3) industrial products.
2. Provincial or regency/city government (Ditjen Kekayaan Intelektual, 2023).

A Geographical Indication user is a party that obtains permission from the holder of the right to a registered Geographical Indication to process and/or market Geographical Indication goods and/or products. Geographical Indication Description Document is a document containing information, including the reputation, quality, and characteristics of the goods and/or products related to the geographical factors of the goods and/or products for which the Geographical Indication is applied for.

In relation to the above description, the benefits of Geographical Indication protection are:

1. Clarify product identification and establish production and process standards among Geographical Indication stakeholders;
2. Avoiding fraudulent competition practices, providing consumer protection from misuse of Geographical Indication reputation;

3. Guaranteeing the quality of Geographical Indication products as genuine products so as to provide confidence to consumers;
4. Fostering local producers, supporting coordination, and strengthening the organization of fellow rights holders in order to create, provide, and strengthen the name image and reputation of the product;
5. Increased production because Geographical Indications describe in detail the product's distinctive and unique characteristics;
6. The reputation of a Geographical Indication area will be raised, besides that Geographical Indications can also preserve natural beauty, traditional knowledge, and biological resources, this will certainly have an impact on the development of agro-tourism (Ditjen Kekayaan Intelektual, 2023).

Geographical Indications are protected as long as the reputation, quality, and characteristics that are the basis for granting Geographical Indication protection to an item are maintained. The method for a producer to register as a Geographical Indication User is as follows: (1) submit an application for registration to the Directorate General of Intellectual Property using the form provided, accompanied by a recommendation from the authorized technical agency; (2) after the requirements as referred to above are completed, the Directorate General of Intellectual Property registers the producer of Geographical Indication User in the General Register of Geographical Indication Users and publishes the name and information in the Official Gazette of Geographical Indications (Ditjen Kekayaan Intelektual, 2023).

The Importance of Legal Protection of Geographical Indications

1. Part of Intellectual Property Rights

Based on the TRIPs agreement, geographical indications are designated as part of Intellectual Property Rights (IPR) whose ownership rights can be defended against any unlawful acts and fraudulent competition. The TRIPs Agreement is the Agreement on Trade Related Aspects of Intellectual Property Rights/TRIPs (Trade Aspects of IPR) as ratified by Law No. 7 of 1994 on the Agreement on the Establishment of the World Trade Organization. The TRIPs Agreement is a comprehensive international agreement, with substantive provisions from international agreements for the protection of IPR (Usman, 2003).

In Article 22 (1) of the TRIPs agreement, what is meant by geographical indication under this agreement is a sign that identifies a member state region, or region, or area within the region as the origin of goods, where the reputation, quality, and characteristics of the goods concerned are largely

determined by these geographical factors. The TRIPs agreement regulates geographical indications related to usage based on these provisions, it can be understood that the origin of a good (of course actually including services) attached to the reputation, characteristics, and quality of a good associated with a particular region is juridically protected (Saidin, 2010). There are still many people who do not understand the importance of the protection of geographical indications in Indonesia and even the government's attention to geographical indications is not as big as to the field of intellectual property such as patents and trademarks (Yesiningrum, 2015). The existence of TRIPs has a role in protecting geographical indications, especially for Indonesia. But before TRIPs, geographical indications have also been recognized in several conventions (Djulaeka, 2014). Indonesia then harmonized TRIPs into positive law starting from 2000 the government has enacted several new laws in the field of intellectual property, one of which is the Law on Trademarks and Geographical Indications which is the latest Law on Intellectual Property.

The central government and/or local government must conduct guidance and supervision of geographical indications based on Article 70 paragraph (1) and (2) of the Trademark and Geographical Indications Law, namely: (1) the guidance of geographical indications is carried out by the central government and / or local governments in accordance with their authority. (2) guidance as referred to in paragraph (1) includes:

- a. Preparation for the fulfillment of geographical indication application requirements;
- b. Application for registration of geographical indications;
- c. Utilization and commercialization of geographical indications;
- d. Socialization and understanding of the protection of geographical indications;
- e. Mapping and inventory of potential geographical indication products;
- f. Training and mentoring;
- g. Monitoring, evaluation, and coaching;
- h. Legal protection; and
- i. Facilitation of development, processing, and marketing of geographical indication goods and/or products.

When referring to the definition of geographical indication contained in the provisions of Article 1 paragraph (6) of the Trademark and Geographical Indication Law, it can be said that a work if it wants to get intellectual property protection in the field of geographical indication must be attached to an item. In

other words, there must be a product of goods produced from a particular geographical area that has certain characteristics and peculiarities that are different from other geographical areas (Djulaeka, 2014).

2. Geographical Indications of Economic Value

Goods produced from a certain geographical area that has certain characteristics and peculiarities that are different from other geographical areas, in addition to distinguishing signs, the special aspects of the name of origin of the goods must also have economic value, meaning that the name of origin does not only function as a differentiator between one good and another, but it must also be clear that this place of origin has a great influence on improving the quality or quality of the goods, so that later it will increase the selling price of the product (Dharmawan, et al., 2018).

Geographical indication is a national economic potential that can be a superior commodity, both in domestic and international trade. Therefore, normative and empirical legal protection efforts must be made. The efforts of other parties (foreign/domestic) that utilize geographical indications of regions in Indonesia for economic purposes show that the economic potential is very large. The economy that currently relies on science makes geographical indications that are currently not registered will be the target of economic actors and potentially utilized individually, and it will harm the interests of the people who have been making and trading the product. The central and local governments must immediately seek registration of geographical indications with economic potential to be commercialized, provide legal protection, and utilize them for the benefit of the owner community (Irawan, 2017).

3. Geographical Indications of Cultural Value are the Pride of the Region and the Country

A Geographical Indication is a mark indicating the origin of an item from a particular region that has a distinctive quality or reputation. Geographical Indications reflect the attachment between the product and its region of origin, both in terms of environment, traditions, and production methods. In Indonesia, Geographical Indications with cultural value are a symbol of regional and national pride as they reflect the uniqueness and richness of the culture in every corner of the archipelago. Each product with Geographical Indication not only offers superior quality but also contains high historical and cultural values, thus enriching the national identity (Kusuma & Roisah, 2022).

For example, Gayo Coffee from Aceh and Sumba Ikat Weaving from East Nusa Tenggara are Geographically Indicated products that have been

recognized internationally. Gayo Coffee is famous for its distinctive flavor, which results from a combination of natural factors and traditional processing techniques passed down through generations. Meanwhile, Sumba Ikat Weaving is a handcrafted product that requires special skills and often contains motifs that have deep philosophical meanings. International recognition of these products not only brings economic benefits to their home regions, but also increases appreciation for Indonesia's cultural heritage (Irawan, 2020).

Geographical Indications of cultural value also play an important role in the preservation of traditions and the environment. With Geographical Indications, local communities are encouraged to maintain traditional practices that are environmentally friendly and sustainable. This means that in addition to preserving culture, Geographical Indications also contribute to the preservation of nature and biodiversity. For example, traditional salt production in Bali using environmentally friendly techniques helps maintain the coastal ecosystem. Thus, Geographical Indications are not just about economics but also about maintaining the balance between people and nature (Dewi & Landra, 2019).

The existence of culturally valuable Geographical Indications as regional and national pride not only provides economic and environmental benefits, but also strengthens national identity in the global arena. In the era of globalization, where products from different countries compete in the international market, products with Geographical Indications that reflect local culture and traditions have their own appeal. They are not only trade commodities, but also cultural ambassadors that introduce Indonesia's richness and uniqueness to the world. Thus, Geographical Indications of cultural value are not only economic assets, but also cultural heritage that must be guarded and preserved by the entire nation.

4. Geographical Indication is an Identification of Goods Originating from a Certain Region

A geographical indication is an identifying mark for goods originating from a particular region, whose quality, reputation, or characteristics are primarily determined by its geographical origin. Geographical indication not only serves as a marker of origin but also as a guarantor of product quality and authenticity. With geographical indications, consumers can know that the product has uniqueness that is closely related to its place of origin, both in

terms of natural conditions, culture, and production methods used (Kusuma & Roisah, 2017; Septiono, 2023).

In addition to providing quality assurance to consumers, geographical indications also serve as a means of legal protection for producers in the area of origin. With the protection of geographical indications, local producers can prevent the use of geographical names by unauthorized parties, which can harm the reputation and economy of the original producers. For example, Gayo coffee farmers can protect their name and coffee quality from copycat products that may try to imitate or utilize the Gayo name without following the same production standards. This protection not only benefits the producer, but also supports the local economy by ensuring that profits from geographically Indicated products remain in the community of origin (Dewi & Landra, 2019).

Geographical indications also play an important role in cultural and environmental preservation. Production processes that often involve traditional methods and local raw materials help maintain long-standing cultural practices. For example, the process of making Tenun Ikat in East Nusa Tenggara not only produces beautiful fabrics but also preserves the skills and cultural heritage passed down from generation to generation. On the other hand, the sustainable use of natural resources in the production of geographical Indications, such as in traditional salt making in Bali, helps maintain the local ecosystem and biodiversity. Thus, geographical indications are not only an identifier of goods from a particular region, but also an important tool in maintaining cultural uniqueness and environmental sustainability.

5. Geographical Indication is an Indicator of Quality

A Geographical Indication is a mark that indicates the origin of a product from a particular region that has unique qualities, reputation, or characteristics associated with its geographical origin. A Geographical Indication is not just a location marker, but also an indicator of quality that underscores the superiority of the product produced. These qualities are generally influenced by natural factors such as soil, climate, and water, as well as human factors such as production techniques and traditions passed down through generations. Thus, Geographical Indications provide assurance that the product has consistent and specific quality standards according to its geographical origin (Kusuma & Roisah, 2017).

Geographical Indications also play an important role in protecting consumers from counterfeit or imitation products that attempt to mimic the quality and reputation of the original product. For example, the use of the name Champagne is only allowed for wines produced in the Champagne region of France, with specific production methods. This protection helps maintain the exclusivity and integrity of the product, and ensures that consumers get a product that matches their quality expectations. Geographical Indications thus serve as a highly effective consumer protection tool, providing assurance that the product they are buying is authentic and of high quality (Fitriani & Sulistiyono, 2024).

Geographical Indications also provide added value to local producers, who can leverage their product's quality reputation to increase competitiveness in the global market (Borman, Dewi, & Kharismawan, 2023). Products with Geographical Indications tend to have a higher economic value, as consumers are willing to pay more for guaranteed quality and authenticity. This provides an incentive for producers to continuously maintain and improve the quality of their products. In addition, Geographical Indications can help promote tourism in the product's region of origin, by attracting tourists who are interested in knowing more about the production process and local culture. Thus, Geographical Indications are not only an indicator of quality but also an important tool for local economic development and cultural promotion (Septiono, 2023).

6. Geographical Indication is a Business Strategy

Geographical indication is a business strategy where geographical indication provides commercial added value to the product due to its originality and limitation of products that cannot be produced in other regions. Local governments need to see the importance of the protection of geographical indications, considerations of the need for protection of geographical indications include:

- a. The number of products that require protection of geographical indications as well as the desire of the community to get legal protection, given the rich natural resources and diverse cultures;
- b. The element of Indonesia's strategic geographical location has a distinctiveness in geographical indication products;
- c. Indonesia's strategic position in international trade in the form of a vast market and has a very large population (\pm 200 million people);

- d. Indonesia is a member of the WTO and TRIPs agreement, in order to fulfill these obligations it is necessary to regulate in the field of geographical indications (Munawaroh, 2019).

Protection of geographical indications of a product has benefits. The benefits of geographical indication protection include:

- a. Provide legal protection to geographical indication products in Indonesia;
- b. Geographical indications can be used as a marketing strategy for geographical indication products in domestic and foreign trade;
- c. Provide added value to potential geographical indication products in the region and increase the economic capacity of the region;
- d. Increase the reputation of geographical indication products in global trade;
- e. Equal treatment of geographical indication protection and promotion of geographical indications abroad;
- f. Geographical indication as one of the tools to avoid fraudulent competition (Munawaroh, 2019).

In that regard, the advantages of legal protection of geographical indications include:

- a. Increasing the professionalism of farmers (because a specification book is required to guarantee quality);
- b. Improve and maintain the quality of geographical indication products and strengthen the competitiveness of farmers;
- c. Strengthening farmers' rights through geographical indication product associations;
- d. Encouraging an increase in better economic equality for farmers;
- e. Increasing and creating jobs for farmers in areas that have the potential of geographical indication products (Munawaroh, 2019).

CONCLUSION

Trademarks and geographical indications are two important concepts in the protection of intellectual property rights. Trademark serves as a marker that distinguishes the goods or services of one producer from another, while geographical indication indicates the geographical origin of an item that has a special quality or reputation due to geographical environmental factors. Based on Article 1 point 6 of Law No. 20/2016 on Trademarks and Geographical Indications, a geographical indication is a sign indicating the region of origin of a good or product caused by natural or human factors in the region.

Geographical indications include place names or certain signs that indicate the origin of goods, agricultural products, processed products, handicrafts, or other goods. The right to geographical indication is an exclusive right granted by the state to the registered right holder as long as the quality, reputation, and characteristics of the goods still exist. To obtain protection, the applicant must submit an application to the Minister through the Directorate General of Intellectual Property or the Regional Office of the Ministry of Law and Human Rights.

Geographical indications can be applied for by an institution representing the community in a particular geographical area or the local government. The benefits of geographical indication protection include product identification, protection from fraudulent competition, quality assurance, increased production, and preservation of culture and natural beauty. This protection also plays a role in enhancing the reputation of the product and region, which has a positive impact on agritourism and local economic development.

Legal protection of geographical indications is part of intellectual property rights regulated in the TRIPs agreement. Indonesia has harmonized TRIPs provisions into national law through Law No. 20/2016. This protection involves guidance and supervision by the central and local governments, including the fulfillment of requirements, registration, commercialization, and mapping of product potential.

Geographical indications have high economic and cultural value. Products produced from a certain geographical area with its distinctive characteristics have added value and can increase the selling price. In addition, geographical indications are the pride of the region and country and serve as an indicator of quality and business strategy. This protection is important to prevent the utilization of geographical indications by unauthorized parties and support local economic growth and cultural preservation.

The benefits of geographical indication protection include increased professionalism of farmers, maintenance of product quality, strengthening of farmers' rights, economic equity, and job creation. This protection provides strategic advantages in international trade, enhances product reputation in the global market, and avoids fraudulent competition. Therefore, legal protection of geographical indications is an important step in maintaining the quality, reputation, and sustainability of superior products from various regions in Indonesia.

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