

Legal Protection of Geographical Indications and the Realization of Community Welfare

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Abstract

Indonesia has a strategic geographical location, namely located between 2 (two) continents and 2 (two) oceans. The implication of Indonesia's strategic location geographically is that Indonesia has natural riches that are characterized by unique biodiversity, which is not found in any other country in the world. The advantages of Indonesia's natural wealth must be protected, in order to provide benefits, especially for the welfare of society. This article will discuss the protection of geographical indications as part of intellectual property rights to natural resources which should be utilized as much as possible for the welfare of society. This article was written using a type of normative legal research with a conceptual approach. The results of this research are that protection of geographical indications is protection of the economic rights of local communities in order to achieve community welfare.

Keywords: legal protection, geographical indications, community welfare.



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INTRODUCTION

Indonesia's geographical location between two continents and two oceans makes it an agricultural country rich in agricultural and plantation products. This sector is one of the main pillars of the Indonesian economy because many of its products are exported to increase national income. Indonesia has great capabilities in producing various types of export commodity crops such as rice, corn, soybeans, vegetables, various types of chilies, sweet potatoes and cassava. Apart from that, Indonesia is also famous for its plantation products such as rubber, palm oil, tobacco, cotton, coffee and sugar cane. Currently, in international trade competition, Indonesia needs to protect its agricultural and plantation products from claims or recognition from outside parties. One strategy to keep Indonesia's superior products relevant in the era of globalization is to use the concept of Intellectual Property. Agricultural and food products are often associated with unique characteristics related to their origin or traditions (Nur, 2017). Intellectual Property Rights refer to rights that protect works arising from human intellectual abilities in the fields of science and technology. This includes works that are abstract and are the result of a person's intellectual abilities through a process of creation, innovation and expression that have moral, practical and economic value (Rahmatullah, 2014).

Intellectual Property or what could also be called Intellectual Property Rights was originally a right that originates from the creation of a human thinking ability that is expressed to the general public in various forms, which has benefits and supports human life, and also has economic value. The real form of human intellectual work ability can be in the form of technology, science, or art and literature (Karim & Lubis, 2016). Intellectual Property is a right that arises from human intellectual abilities in various fields, which produce processes or products useful for humans. Intellectual Property has two main aspects. First, it covers processes and products in various broad fields, from art and literature to technological innovation, as well as all other forms that are the result of human creativity through creation, taste and work. Second, the creative work or innovation gives ownership rights to the creator

or inventor. Intellectual property rights are exclusive (special) rights owned by creators/inventors as a result of intellectual and creative activities which is unique and new (Darnia et al., 2023). Its nature is a property right, therefore the rights of a creator or inventor over his creative work must be protected (Simatupang, 2021). One aspect of special rights in Intellectual Property is Economic Rights, namely the right to obtain economic benefits from intellectual property. These economic rights are in the form of profits in the amount of money obtained due to one's own use of Intellectual Property, or due to the use of Intellectual Property by another party based on a license. The fact that there is economic value above shows that Intellectual Property is an object of trade (Nugroho, 2017).

The fact that there is economic value above shows that Intellectual Property is an object of trade. In the Geographical Indication system, it is reflected that there is a guarantee of maintaining the quality of an item (Article 16 of the Trademark and Geographical Indication Law). Geographical Indications provide legal protection for every commodity or product, as well as a marketing strategy for Geographical Indication products in trade transactions, both inside and outside country. This protection also provides added value to Geographical Indication products to encourage regional economic capabilities. Good cooperation between the Directorate General of Intellectual Property, Regional Offices and Regional Governments is expected to speed up the registration process for products with potential Geographical Indications in Indonesia from an economic interest perspective (Rahayu Eka Pratiwi Neoe & Saleh, 2023). Law Number 20 of 2016 concerning Marks and Geographical Indications in article 1 number 6 states that a Geographical Indication is a sign that indicates the area of origin of a good and/or product due to geographical environmental factors including natural factors, human factors or a combination of both factors. This gives reputation, quality and certain characteristics to the goods and/or products produced. Geographical indications are one part of Intellectual Property Rights which is felt to be very important to obtain legal protection. Geographical Indications are an intellectual mechanism that applies to goods and services marked by the place where they originate (collected, produced or produced), involving environmental, historical, social and cultural specificities, and according to Brazilian regulations, geographical indications are divided into two types: indications of origin or name of origin (Nurohma, 2020).

Geographical indication is a sign that indicates the area of origin of an item, which due to geographical environmental factors including natural factors, human factors, or a combination of both factors gives certain characteristics and qualities to the goods produced (Saputra et al., 2019). Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia, until 2023, there were only 63 (sixty-three) registered Geographical Indications. This shows the lack of attention of the government and the community in protecting potential Geographical Indication products in their regions (Tresna Adnyana, 2019). Geographical indications provide protection for goods or products that identify a region, or region, or area within the region as a sign of the origin of the goods, where the reputation, quality and characteristics of the goods are largely determined by the geographical factors concerned. The characteristics and quality of goods that are maintained and can be maintained for a certain period of time will give rise to a reputation for the goods which will then enable the goods to have high economic value. This high economic opportunity must be able to be exploited, proper utilization will have a positive impact, especially for local communities and for the country's economy in general.

RESEARCH METHODS

This article was written using a normative research method with a conceptual approach. The legal materials used in writing this article are primary legal materials and secondary legal

materials. The technique for collecting legal materials in writing this article uses library research. The legal material analysis technique uses deductive analysis.

RESULTS OF RESEARCH AND DISCUSSION

Definition of geographical indication contained in Article 1 number 6 of the Law Number 20 of 2016 concerning Brands and Geographical Indications states that "Geographical Indications are a sign that indicates the area of origin of a good and/or product which, due to geographical environmental factors including natural factors, human factors or a combination of these two factors, provides reputation, quality, and certain characteristics of the goods and/or products produced". The legal basis for the protection of geographical indications is regulated in Law Number 20 of 2016 concerning Marks and Geographical Indications in Articles 53 to Article 71. Geographical indication is a term used to denote a specific geographical origin of goods or products, such as handicrafts or agricultural and plantation products. This indication is given based on environmental factors of that geographical area, which include natural and human elements or a combination thereof. These factors contribute to the reputation, quality, and distinctive characteristics of the particular item, distinguishing it from similar goods from other regions. Indonesia benefits significantly from its strategic geographical position between two continents and two oceans, which has endowed it with numerous geographical indications (Tavinayati et al., 2016).

The Directorate General of Intellectual Property (DJKI) has registered 63 geographical indications, highlighting Indonesia's wealth of unique regional products. These products have substantial potential for regional development, as they are exclusive to their specific locales. Effective management by the government is crucial to harnessing the economic value of these products. Regional administrations can support the registration of local specialty products as Geographical Indications, as this legal recognition protects a wide range of natural products, foods, handicrafts, and other items derived from indigenous knowledge that embody the distinctive qualities of their region (Sastrawan et al., 2022). From this number, it can already be explained how abundant Indonesia's natural resources are. Not to mention the Geographical Indication Potential possessed. That means the potential is geographical indications that have not been officially registered with the Directorate General of Intellectual Property. The protection of Geographical Indications has tremendous benefits. Among them are avoiding clashes of recognition from other regions that have similar products, providing branding or a unique trademark for the products produced, and the most visible is the economic value gained by communities that participate in managing or processing these geographical indication products. Clearly, geographical indications provide high economic value for the government in general, and specifically for local communities.

Regarding Geographical Indications or Geographical Indication Potential, essentially both are similar or alike. The difference lies in the official recognition by the Directorate General of Intellectual Property as the authority to recognize Geographical Indications. However, in terms of economic benefits for the local community, both have the same impact, namely providing prosperity for the local community. In general, geographical indication refers to a sign that indicates the area where a plant grows and becomes a superior product due to geographic factors and human influence, and has characteristics that differentiate the product from products originating from other areas. Geographical indication protection is granted after registration based on an application submitted by an institution representing the community in the producing area, or an institution authorized to do so, together with the regional government (Apriansyah, 2018). Geographical indications also function as product differentiators on the market, by enabling consumers to differentiate between products with

geographically based characteristics and others without such characteristics (Kusuma & Roisah, 2022). Geographical indications are fundamentally crucial due to their intricate nature. Whether it's a natural product or a human-made craft, each product inherently possesses distinct characteristics influenced by both geographical and human factors unique to its region. Registering and acknowledging a product as a geographical indication serves to prevent misrepresentation by other entities. For instance, it safeguards against claims from other regions asserting ownership of the product or its geographical indication.

Moreover, geographical indications enhance consumer confidence in the product's quality and maintain long-term competitive advantages. Most significantly, they contribute to the economic welfare of communities directly involved with these products. Recognition as a geographical indication opens avenues for economic benefits that can ultimately uplift community well-being. Geographical indications have great significance for the economic rights of the community, especially in the context of protection and recognition of typical products from a particular area. The following are several things that explain the importance of geographical indications for people's economic rights: (Sinaga & Priyanto, 2020)

1. **Protection of Identity and Quality:** Geographical indications help protect the identity of typical products from a particular region. This avoids the possibility of counterfeit or inauthentic products, thereby maintaining the quality and reputation of the actual product.
2. **Increased Added Value:** With legally recognized geographical indication status, the product gains added value and trust from consumers. This can increase the selling price of the product, thereby providing direct economic benefits for the producers and local communities involved.
3. **Wider Market:** Recognition as a geographical indication opens up greater access to domestic and international markets. Products with geographical indication labels tend to be more easily recognized and in demand on the global market, increasing sales and export potential.
4. **Local Economic Empowerment:** Geographical indications encourage local economic development by strengthening the agricultural, plantation, handicraft or other industry sectors related to these products. This creates local jobs and increases the income and welfare of local communities.
5. **Sustainability and Cultural Conservation:** Through geographical indications, traditional practices and local knowledge in product management and production can be maintained and developed sustainably. This contributes to the preservation of the cultural and environmental heritage of the area.

Overall, geographical indications not only provide legal recognition of the identity of products from a region, but are also an important instrument in improving the local economy, maintaining local culture, and providing fair protection for producers and local communities involved in the production of their superior products. Geographical indication is a sign that shows the area of origin of goods which is associated with quality, reputation or other characteristics that are in accordance with the geographical origin. In order to be protected by law, Geographical Indications must first be registered with the Directorate General of Intellectual Property of the Republic of Indonesia (Nia Rahmayanti & Sudiarta, 2022). When a product, be it handicraft or agricultural product, has distinctive characteristics and characteristics that differentiate it from products from other regions which are influenced by geographical and human factors, it can be registered as a Geographical Indication product of a region. The geographic indication protection mechanism can be utilized to avoid fraudulent acts by irresponsible parties. It can also be used as a sign of confidence for consumers in product quality and geographical indication products can become proud products of a region which can

ultimately make their region known to people in other regions. Protection of intellectual property rights (IPR) within the framework of the welfare state is important because IPR protects the results of intellectual creativity such as patents, copyrights, trademarks and trade secrets. This protection supports innovation, creativity, and investment in research and development, which in turn can contribute to economic growth and the social well-being of society. The following are several aspects of IPR protection in the context of the welfare state such as: (Adawiyah & Rumawi, 2021)

1. **Innovation and Economic Development:** IPR drives innovation and the development of new technologies, products, and services. In the welfare state, this innovation can open up new job opportunities, increase productivity and expand the country's economic base.
2. **Income and Welfare:** IPR protection allows creators and rights holders to receive economic rewards for their work or inventions. This income can improve the welfare of individuals and society as a whole, which is in accordance with the principle of wealth distribution in the welfare state.
3. **Support for Creative and Cultural Industries:** IPR supports creative industries such as art, literature, music and film, which are important aspects of cultural life in modern society. The welfare state can provide support to industry players to protect their work and promote the sustainability of the sector.
4. **Increased Access and Inclusivity:** While IPR protection primarily focuses on rights holders, wise policies also address the importance of ensuring adequate public access to information, technology, and creative works. In the context of the welfare state, it is important to balance commercial interests and public interests in terms of access to intellectual property.
5. **Capacity Building:** IPR also plays a role in capacity building and education, by facilitating technology transfer, international collaboration, and cross-sector learning. This can encourage the development of more skilled and educated human resources, which is consistent with the goals of education within the welfare state framework.

However, challenges in integrating IPR protection with welfare state principles include gaps in access, high costs for applying for rights, and protection against innovation that can disrupt social equality. Therefore, implementing a balanced and fair IPR policy is the key to maintaining a balance between economic and social interests in modern society. The government has several measures that can be taken to protect geographical indications (GI) from fraud by other countries. Here are some steps you can take: (Aridhayandi, 2018)

1. **Negotiation and Enforcement of International Treaties:** Governments can be actively involved in the negotiation and enforcement of international treaties governing the protection of geographical indications. An example is the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) under the auspices of the WTO which regulates minimum standards of protection for GI.
2. **Registration and Monitoring:** The government can facilitate the GI registration process for products that meet the requirements. This registration not only provides legal protection within the country, but also allows the government to more easily monitor and protect GI from fraudulent practices.
3. **International Collaboration:** Governments can collaborate with other countries' governments and international organizations to strengthen GI protection globally. This includes exchange of information, training, and cooperation in cross-border law enforcement.
4. **Law Enforcement and Sanctions:** It is important for the government to have a strong and effective legal framework to enforce GI rights. This includes taking action against fraudulent practices such as counterfeiting, imitation, or misuse of GI by unauthorized parties.

5. **Education and Awareness:** The government can take steps to increase awareness about the importance of GI among producers, consumers and other related sectors. Education about the value and benefits of GI can help reduce fraudulent practices and increase understanding of product origins.
6. **Economic Diplomacy:** Governments can also use economic diplomacy to encourage other countries to respect and protect the GIs of their own countries, such as in bilateral or multilateral trade agreements.
7. **Market Monitoring:** Conduct market monitoring to identify products that claim GI without permission or without legal rights, so that appropriate enforcement action can be taken immediately.

By taking these steps, governments can play a key role in ensuring that legitimate producers from a region benefit from the reputation and quality of their products, while consumers are protected from counterfeit or unauthorized products. Settlement of disputes related to geographical indications can involve several steps and mechanisms, both at the national and international levels. The following are some common ways to resolve disputes related to geographical indication such as: (Alfarizi & Tien F, 2022)

1. **Negotiation and Mediation:** The first step is usually to try to resolve the dispute informally through direct negotiation between the disputing parties or with the help of a mediator. Mediators can help in reaching an agreement that is acceptable to both parties without going through a formal judicial process.
2. **Arbitration:** If negotiations or mediation are unsuccessful, the parties to the dispute may choose to undergo an arbitration process. Arbitration is a process in which a dispute is decided by one or more independent and neutral arbitrators. Arbitration decisions are usually binding on both parties.
3. **Settlement Under TRIPS:** If a dispute involves a violation of an IG's rights under the WTO TRIPS Agreement, the aggrieved party may submit a complaint to the WTO Dispute Settlement Body. This procedure involves a panel that will examine the dispute and make recommendations on legal compliance.
4. **In front of Court:** If all alternative efforts fail, the parties to the dispute may choose to file a lawsuit in court. The court will consider arguments and evidence from both parties to make a decision that decides the dispute legally.
5. **International Cooperation:** In some cases, resolution of GI-related disputes may include cooperation between countries or between governments to reach a solution that benefits all parties concerned.

These steps must take into account the complexities of the legal and political context involved in the protection and resolution of GI-related disputes. It is important to choose an approach appropriate to the specific situation of the dispute and to ensure that the rights of the parties involved are respected and protected in accordance with applicable law.

CONCLUSION

Geographical Indication is a sign that indicates the area of origin of goods and/or products which, due to geographical environmental factors including natural factors, human factors or a combination of these two factors, gives a certain reputation, quality and characteristics to the goods and/or products produced. It is absolutely necessary to protect geographical indications. Geographical indications provide legal protection for every commodity or product, as well as a marketing strategy for Geographical Indication products in trade transactions, both within and

outside the country. This protection also provides added value to Geographical Indication products to encourage regional economic capabilities. Because this protection has enormous benefits and has high economic value. Even though there are many obstacles that occur, from the community to the government they also experience obstacles. However, the government with the power it has must be able to develop and protect geographical indications for the purpose of building the welfare of local communities using geographical indications.

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