

Protection of Local Products Through the Law of Geographical Indication

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ABSTRACT

Indonesia's potentiality currently enhances significantly of its local products. Those are necessary to be protected due to their attachment to their locals, man, and natural resources. By geographical indication (GI), local products should be protected from counterfeit or infringement from other illegal parties of other countries. *Gayo* or *Toraja* coffee have been registered by Japanese and the Netherlands companies, which responded by Indonesia through the prohibition of words *Gayo* and *Toraja* to use. This lesson learned from these cases, Indonesia sees the importance of geographical indication protection. It is not easy to protect Indonesia's GI. It was shown by the facts that are, unfortunately, many obstacles to register 1000 GI. By early 2021, Indonesia only has below 100 registered GI. In the meantime, Indonesia had enacted Law No. 14 of 1997 of Trademark, which has been revoked by Law No. 16 of 2020 of Trademark and GI. It could be said that the failure is due to the lack of the importance of GI protection of Indonesian people and government. Moreover, the registration system of GI contributes to the Indonesian failure. By learning of other countries' experiences, GI is usefully to protect local products and improve the quality of life of local people's economy. The critical success of GI protection lies in the cooperation between the government and local people. The cooperation will accelerate the realization of GI' protection.

Keywords: Protection of local products, geographical indication.

1. INTRODUCTION

Local products made by people in the country currently have an essential role in supporting the economy. With a considerable potentiality of the whole land, Indonesia has many products of every province or municipality. The potential supply of local product markets reaches 140 million transactions every month. [\[i\]](#)

Local products generally explore and rely on the peculiarities of the area concerned. Indonesia's various natural resources, ranging from forests, sea, natural gas, petroleum, coal, and regional handicrafts, can significantly form national and international market shares. Some local products have been known globally, such as Gayo coffee (Aceh), Toraja coffee from North Sulawesi, Luwak coffee, Batik, woven fabrics, and many more.

Marketing products abroad has proven that Indonesian products can compete and not be inferior to other foreign products. Therefore, it is time for the citizens of Indonesia to be proud of using Indonesian products. Moreover, starting in 2021, the government, through Communications and Information Technology.

They have set the date of May 5 as *Bangga Buatan Indonesia* [Indonesia's Proudly Made Day]. [\[ii\]](#)

The National Movement for Proud Made in Indonesia aims to make Indonesian people love and use the work of the nation's children, especially local products produced by SMEs. These SMEs are the backbone of the nation's economy that needs to be appreciated and saved to succeed, especially during difficult Covid-19 pandemic times the like today. The stipulation of this BBI Day will encourage to be the primary consumption of Indonesian manufactured goods. During the time, the use of local products is expected to reduce the impact of the pandemic and then create consumption as layoffs of labor termination. [\[iii\]](#)

Technological developments require the market to be managed virtually through the internet. Various marketplaces are already available to be used. In addition, there also social media are available to offer products. These various online ways of marketing can make it easier for exporters to meet the need of foreign buyers. This facility is expected to encourage an enhancement of Indonesian exports and help SMEs reach the global market. [\[iv\]](#)(4) By worldwide online marketing, a product can be absorbed without being

restrained by time and place. However, this condition requires the owners of local products to be careful, especially in anticipating infringement of these local products by foreigners, as happened to Gayo coffee and Toraja coffee.

Violations of GI of Gayo and Toraja coffee by The Netherlands and Japanese farmers are discouragedly prohibited from using the Gayo and Toraja names because these names had already been registered as trademarks of foreign companies. This can happen because the names of Gayo and Toraja coffee have not been protected in their own country (Indonesia).

Local products characterized by nature or local skills or both of them, such as Gayo and Toraja coffee, can be protected by the term of GI. GI indicates the area of origin of product due to geographical, environmental factors including natural and human factors or both of these, gives a particular reputation, quality and characteristics. The regulation of GI is stipulated in Law No. 20 of 2016 concerning Brands and Geographical Indications. Through IG, the products made and owned by the local community will be well protected.

Considering that Indonesia has a lot of potential products, the Directorate General of Intellectual Property Rights target 1000 registered GIs in 2020. In fact, until June 2021, the registered GIs are still less than 100. This failure shows that there are still obstacles to the protection of GIs in Indonesia. Therefore, this paper will explore the obstacles to protecting GIs in Indonesia and what efforts have been made to overcome these obstacles.

2. THE PROBLEM OF PROTECTING GEOGRAPHICAL INDICATIONS IN INDONESIA BENEFITS OF GI PROTECTION FOR LOCAL PRODUCTS

Protection of Geographical Indications, commonly abbreviated as GI, as other Intellectual Property Rights, aims to protect rights owners from third parties who violate their rights and the protection of GI. The definition of GI is stated in Article 22 paragraph (1) of TRIPs which reads: *For this Agreement, Geographical indications identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation, or other good characteristics are essentially attributable to its geographical origin.*

The GI concept adopted by Indonesia adopts the TRIPs agreement on the minimum standards regulated in Article 22 TRIPs. The scope of GI includes:

- 1) Natural resources,
- 2) Handicrafts and
- 3) Industrial products.

GI, according to the Law on Marks and Geographical Indications Article 1 number (7) is defined as:

“A sign indicating the area of origin of an item and/or product due to geographical, environmental factors

including natural factors and human factors or a combination of these two factors gives a particular reputation, quality and characteristics to the goods and/or products produced.

Based on this definition, there are 3 (three) essential elements in GI, namely: [v] (5)

- 1) Identification of goods originating from the region, region, or localization within the territory of a country.
- 2) the area shows the quality, reputation, or other characteristics of the goods
- 3) Essentially gives the attribute of geographic origin. The geographical area determines the quality, reputation, or specific characteristics of an item that will receive GI protection.

IG ownership cannot be owned individually. Based on Article 53 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, the applicants for GI are:

- 1) An institution that represents the community in a particular geographical area that operates an item and/or product in the form of:
 - a) Natural resources;
 - b) Handicraft items; or
 - c) Industrial products;
- 2) Provincial or district/city government.

Thus, the owner of GI is not an individual but the local community represented by an institution that represents the community in a specific geographical area, among others;

- 1) manufacturers association,
- 2) Cooperative, and
- 3) Geographical indication protection society (MPIG).

Geographical, environmental signs, and factors are determinants of GI ownership. The meaning of 'sign' is the same as a brand as a distinguishing force. For trademarks that distinguished goods and/or services of the same kind, GI must refer to the area/region of origin of goods and/or products. The said goods and/or products show specific characteristics and qualities due to geographical [vi] environmental factors consisting of natural or human factors or a combination of these two factors. [vii]

Below are some examples of products that are influenced by geographical, environmental factors:

- 1) Natural factor
What is meant by natural factors, the characteristics of which lie in their geographical location and influence? For example, Java Sindoro Sumbing Arabica coffee has a characteristic tobacco aroma because it is planted near tobacco plants on Sindoro Sumbing, Temanggung.
- 2) Human factor

What is meant by human factors are technical factors, namely, examples of silk weaving techniques and Jepara furniture carving techniques.

- 3) Combination of Natural and Human Factors
- 4) Gayo Arabica coffee from Aceh is a quality IG product and has a characteristic taste and aroma. The influence of the geographical environment, Gayo coffee only grows and thrives in Bener Meriah and Central Aceh districts with an altitude of 1200 meters above sea level, so it is very supportive of coffee growth. In addition, the manufacture of Gayo Arabica coffee with a distinctive taste must use specific techniques. the espresso machine method can be used because the bitter taste will dominate and eliminate the original taste. (8)

Law No. 20 of 2016 concerning Trademarks and Geographical Indications stipulates that protection of must have the following elements:

- 1) Signor name indicating the place of origin of an item and/or product.
- 2) Goods and or products.
- 3) Influence of geographical, environmental factors, including natural factors, human-human factors, or a combination of both.
- 4) A particular reputation, quality, and characteristics on the goods and/or products produced.

Based on Article 56 of Law No. 20 of 2016 concerning Marks and Geographical Indications, applications for Geographical Indications cannot be registered if:

- 1) Contrary to state ideology, laws and regulations, morality, religion, decency, and public order;
- 2) Mislead or deceive the public regarding reputation, quality, characteristics, origin, source, the process of making goods, and/or their use.
- 3) similar. It is a name that has been used as a plant variety and is used for a similar plant variety unless there is an addition of equivalent words that indicate a geographical indication factor.

Application for Geographical Indications is also rejected if:

- 1) Documents Description of Geographical Indications cannot be verified; and/or
- 2) Have similarities in overall with the Geographical Indications that have been registered.

GI is based on a constitutive system that only protects registered geographical indications, products. In other meaning, unregistered GI will certainly not be protected even if the GI has been known and used for a long time. This system does show more legal certainty. Because GI adheres to the constitutive system, proof of the protection of its rights is in the form of a certificate, in this case, a GI certificate.

The protection period of IG is different from other Intellectual Property scopes, which have a certain period, such as brands, industrial designs, integrated circuit layout designs, and simple patents, which have a

protection period of 10 years, for ordinary patents 20 years. While the protection of registered GI ownership has no time limit, as long as the reputation, quality and characteristics are maintained, the protection of the GI will continue. [\[viii\]](#)

Thus, Geographical Indications protect a sign indicating the area of origin of an item and/or product which due to geographical, environmental factors including natural factors, human factors, or a combination of these two factors gives a particular reputation, quality, and characteristics to the goods and/or products produced. Protected geographical indication products include natural resources, handicrafts, and industrial products.

The definition of *natural resources* here is everything that is based on nature that can be used to meet the needs of human life, which includes not only biotic components such as animals, plants, and microorganisms but also abiotic components such as petroleum, natural gas, various types of metals, water, and land.

In addition to protecting local products, geographical indications can also be a quality indicator that informs consumers that the goods are produced from a particular location. The influence of the surrounding environment produces quality goods with specific characteristics, which will continue to maintain its reputation. Geographical indications can also be a business strategy that can add commercial value to products because of their originality and product limitations that cannot be produced in other regions. On the other hand, GI is a culture that must be preserved and cultural heritage. For example, handicrafts. In addition, the GI protection of local products, showing uniqueness, is influenced by the nature of expertise and the traditional processes of the community for generations. GI protection of local products increases the selling value. In turn, it affects the welfare of the community; below are examples of well-known GI products: [\[ix\]](#)

- a) *Roquefort cheese* is made in the Roquefort-Sur-Soulzon area of France, where most cheese producers live. Roquefort cheese is famous for its quality and uniqueness because of its distinctive taste from other cheeses. The cheese is made in a very dark cave with a darkness level of up to 90 percent, stored in it for 6 to 8 weeks after being molded. After that, the cheese is ready to be sold or consumed. This traditional method has been practiced since the 2nd century. Since the beginning of the 20th century, it has been protected by the Appellation d'Origine Contrôlée (AOC). Roquefort became the first cheese of AOC certification in 1925. [\[x\]](#)
- b) Gayo coffee, planted at an altitude of 1,000 to 1,200 meters, comes from the Gayo, Central Aceh. It locates in Takengon and closes to Lake Tawar, and this is why Gayo coffee tastes distinctive. Most of the tribes living in this area are coffee farmers. Gayo coffee is very well-known, especially in the United States and

Europe, due to its strong flavor and low acidity with spice. Gayo Arabica Coffee tends to have an inconsistent taste. This is because of the different heights of coffee plantations, as well as various cultivation methods. If coffee is grown in different areas, with different heights and varieties, the physical quality and taste characteristics may also differ. Kopi Gayo is registered of IG ID G 000000005 and with Protected Geographical Indications (PGI) of the European Union. Bilateral cooperation promotes and enhances the Gayo Coffee branding through the ARISE+Indonesia program worth EUR 15 million (2019-2023). [xi]

3. SEVERAL OBSTACLES IN REALIZING IG PROTECTION

It is time to elaborate on the potential and create added value for underestimated products. It is time to not just focus on the advanced technology or magnificent infrastructure that tends to be elitist and lack attention to the need of the people as a whole. Many potentials are often ignored, even though this can be a solution if appropriately processed and correctly. IG potential, for example. However, there are several obstacles in protecting GIs in Indonesia that cause the lack of GIs. This is extensive homework for Indonesia. Considering the bulk of potential GI, Indonesia has many regions with the potential for GI. The latest data still show that the number of IG is below 100. It is dangerous for Indonesia due to repeated infringement of GI by foreigners, such as Gayo and Toraja coffee. It will ultimately harm the local people of the GI.

Some of the obstacles in the protection of GIs in Indonesia are caused by:

a) Lack of Public Understanding About IG

The classical problem with the development of intellectual property rights in Indonesia is dissemination. The lack of understanding of IPR protection is one of the obstacles, as is the understanding of GI. Many people, especially local communities with GI potential, do not understand the importance of protecting GI for their products. Likewise, with the regional apparatus, many local government officials do not understand GI. For this reason, there is the failure of local government to increase the number of GI in Indonesia as stipulated by law.

b) IG Protection Is Not Important

Even though the law delegates the Guidance of Geographical Indications, the government, especially the regional government, is by its authority. The coaching as intended includes several things:

- 1) preparation for the fulfillment of the requirements for Applying for Geographical Indications;
- 2) Application for registration of Geographical Indications;
- 3) utilization and commercialization of Geographical Indications;
- 4) socialization and understanding of the protection of Geographical Indications;
- 5) mapping and inventory of potential Geographical Indications products;
- 6) training and mentoring;
- 7) monitoring, evaluation, and coaching;
- 8) legal protection; and
- 9) facilitation of development, processing, and marketing of goods and/or products of Geographical Indications.

Looking at data up to early 2021, it is known that there are less than 100 GIs, to be exact 88 GIs from the 1000 GI target. It shows that the obstacles to the development of GI in Indonesia are due to the lack of understanding of GI and a priority scale of local governments. So that the potential local products of GI, in general, are not appropriately managed. A small example in the Kepulauan Riau, the role of the Riau local government so far is still limited to inventorying and submitting product data that has the potential to be registered with the Regional Office of the Ministry of Law and Human Rights. [xii]. There have not been other, more tangible measures to protect GIs in their area.

c) Inappropriate Protection System,

The constitutive system adopted by IG requires registration. Unregistered IG will not be protected. With the condition of the community and the performance of the local government as described above, of course, it is not easy to apply for GI registration. The constitutive system relies on the activeness of the two components above to apply for and carry out GI registration, plus the book or description documents requirements. The GI description document contains information, including the reputation, quality, and characteristics of the goods and/or products related to the GI factor of the goods and/or products for which the requested GI. Documents like this, of course, have to be made by a team of experts as needed according to the requirements of the GI. For example, in determining the existence of a relationship between products and geographical factors, of course, there must be a scientific description, and experts can only make it. Thus, the use of the constitutive system in Indonesia is not by the conditions of society and the current performance of the local government.

4. CONCLUSION

The primary purpose of GI is to protect producers and consumers from counterfeit products. Other goals are:

- a) Maintaining the quality of regional products
- b) Maintaining the sustainability of the area
- c) Preserving the culture and traditional knowledge of the local product producing community
- d) Strengthening community institutions producing regional specialties
- e) Increase the income and welfare of the people who do business with unique regional products.

Some solutions in tackling IG problems include:

- a) Considering Indonesia with natural and human resources with great potential, the protection of products of GI should be prioritized. The government is obliged to socialize the benefits of GI more vigorously, both to local governments and communities.

There must be an adjustment between the GI protection system and the conditions of the community and local government officials, as Liza Mariana suggests a reform of the constitutive system in the GI. The use of the declarative system to replace the constitutive system would solve the current GI problem. As a system that provides GI protection without registration, the declarative system is considered more in line with the conditions in Indonesia. According to Liza, this option is not a setback but a strategy to increase the number of registered IGs.

REFERENCES

- [1] [1] Djulaika, Konsep Perlindungan Hak Kekayaan Intelektual, Perspektif Kajian Filosofis HaKI Kolektif – Komunal, Malang: Setara Press, 2014.
- [2] Jened, Rahmi *Hukum Merek (Trademark Law) dalam Era Global dan Integrasi Ekonomi*. Prenada Media Group, 2015.
- [3] Laucereno, Sylke Febrina. DetikFinance Selasa, 13 Apr 2021 20:15 WIB.
- [4] Mariana, Liza. Reformasi Sistem Konstitutif Pada Indikasi Geografis Sebagai Upaya Meningkatkan Kesejahteraan Masyarakat, 2021.
- [5] <https://finance.detik.com/berita-ekonomi-bisnis> diunduh pada tanggal 26 juni 2021.
- [6] <https://finance.detik.com/berita-ekonomi-bisnis/d-5531263/pemerintah-mau-genjot-produk-lokal>.
- [7] <https://www.dgip.go.id/artikel/detail-artikel/dirjen-ki-canangkan-program-tahun-indikasi-geografis-di-indonesia?kategori=agenda-ki> diunduh tanggal 12 Juli 2021.
- [8] <https://ejournal.balitbangham.go.id/index.php/kebijakan/article/view/529> diunduh Tanggal 14 Juli 2021.