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LEGAL MECHANISM: FOREIGN BRAND CLAIMS AGAINST POTENTIALLY GEOGRAPHICAL INDICATIONS OF INDONESIA

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Abstract

International community has recognized the superiority and quality of original Indonesian products, as a result, some native Indonesian products are claimed by foreigners as their trademarks, for example Gayo Arabica Coffee and Toraja Coffee. Indonesia in providing protection is a bit behind in seeing the potential of its own region. The research problem is to examine the juridical claims of foreign companies against products with potential Indonesian Geographical Indications, and the settlement mechanism based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Research method used is normative juridical with a statute approach. Claim of foreign companies against products with the potential for Indonesian Geographical Indications is the use of Intellectual Property Rights without rights, based on the MUI Fatwa decision, this is an injustice that is unlawful. The legal settlement mechanism for foreign brand claims against products with potential Indonesian Geographical Indications based on Law Number 20 of 2016 concerning Marks and Geographical Indications is dependent on the violation of the claim, whether the party making the claim is in good faith or not. If at the time a sign is applied for registration as a Geographical Indication, a sign is used in good faith, the party can still use it for a period of two years, but if there is no good faith, it can take the mechanism of filing a lawsuit in the form of an application for compensation against the User of the Geographical Indication without rights..

Keywords: Settlement Mechanisms, Brand Claims, Geographic Indications.

INTRODUCTION

Protection of Intellectual Property Rights (IPR) is important in the social life between nations. This is because IPR does not only contain moral rights but also contains economic rights. Moral rights are based on the concept of natural rights or natural rights, which means that naturally the creator or the person who gave birth to the intellectual work has ownership rights to the creation or intellectual work. Economic rights are based on marketplace theory, according to this theory, the basis for IPR protection is the provision of rewards to creators who have sacrificed energy, time, thoughts and costs to produce a work.

Legal protection for intellectual property rights has experienced rapid development, starting with the agreement of an international agreement regarding the Trade Related Aspects of Intellectual Property Right or known as the TRIPs Agreement (Aspects of Intellectual Property Rights in Trade) which is an integral part of the agreement on the establishment of the World Trade Organization (WTO) which has been ratified by more than 150 countries in the world. This agreement establishes stricter law enforcement and expands the scope of IPR protection from previous international agreements initiated by the World Intellectual Property Organization (WIPO) such as the Bern Convention, Paris Convention, Rome Convention and Washington Treaty.¹

Indonesia has ratified many international treaties in the field of intellectual property rights and has made several revisions to the laws and regulations in the field of intellectual property rights to adapt to the needs and developments of the times. The following are the applicable IPR laws and regulations in Indonesia:

No.	IPR	Regulation
1	Copyright	The Law No. 28 of 2014
2	Brand	The Law No. 20 of 2016
3	Geographical Indication	The Law No. 20 of 2016
4	Patent	The Law No. 13 of 2016
5	Trade Secret	The Law No. 30 of 2000
6	Industrial Design	The Law No. 31 of 2000
7	Integrated Circuit Layout Design	The Law No. 32 of 2000
8	Plant Variety Protection	The Law No. 29 of 2000

Marks and Geographical Indications are types of Intellectual Property Rights that are jointly regulated in one law, namely The Law Number 20 of 2006 concerning Marks and Geographical Indications. Although the arrangements are the same, the two types of IPR are different from each other. A mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) dimensions.) or more of these elements to distinguish goods and/or services produced by persons or legal entities in the activities of trading goods and/or services. While Geographical Indication is 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 certain reputation, quality and characteristics to the goods

¹ Kholis Roisah, *Konsep Hukum Hak Kekayaan Intelektual (HKI)*, (Malang: Setara Press, 2015), hlm. 3

and/or products produced.²The basic difference between the two is that a brand is an individual intellectual property while a geographical indication is communal intellectual property.

Cases of foreign claims against products with potential geographical indications of Indonesia as their trademark have occurred to Gayo Arabica Coffee. Holland Coffee B.V. which is a Dutch company officially registering and claiming Gayo coffee as a trademark of their company. A similar case was also experienced by Toraja coffee, Key Coffee Co. which is a Japanese company that registered the “Toraja” coffee brand in Japan in 1976. These cases show that Indonesia has superior products typical of each region whose quality is recognized both nationally and internationally. This potential causes these superior products to be vulnerable to foreign claims as to their trademark. Therefore, there is a need for legal protection for this regional superior product by registering it as a Geographical Indication with the Ministry of Law and Human Rights.

Based on the description in the introductory section, the formulation of the problem in this study is how the legal mechanism of foreign claims on products with potential geographical indications of Indonesia..

METHODOLOGY

This study uses a normative juridical research method, with a statutory approach and a conceptual approach related to the Legal Settlement Mechanism: Foreign Brand Claims Against Products with Potential Geographical Indications of Indonesia. Legal research with normative juridical methods is carried out by examining library materials or secondary data. This study will examine secondary data by examining the laws and regulations, concepts of legal theory and then describing the answers to the problems raised. The method of analysis starts from data collection, data reduction, data presentation and drawing conclusions.

RESULT AND DISCUSSION

Geographical indications are an important asset in growing the Indonesian economy, this is because regional superior products can become the country's mainstay products whose quality is recognized both in the domestic and international markets. Although geographical indications have high economic value, this is not in line with public awareness of the importance of registering products with potential geographical indications, this is indicated by the lack of registered geographical indications. The data shows that up to October 2021 the geographical indications registered with the Directorate General of Intellectual Property of the Ministry of Law and Human Rights amounted to 92 products (see table below), this number is very small compared to the diversity of typical regional products and the number of regencies/cities. in Indonesia. Whereas in order to get legal protection, products that have the potential to get geographical indications must be registered.

Table of Number of Registered Geographical Indications

No	Year	Number of Registered Geographical Indications
1	2008	1
2	2009	1

² Lebih lanjut lihat Pasal 1 Undang-undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.

3	2010	4
4	2011	6
5	2012	5
6	2013	9
7	2014	5
8	2015	7
9	2016	16
10	2017	9
11	2018	2
12	2019	-
13	2020	27
14	2021	-
Total		92

Source: <https://ig.dgip.go.id/>

The requirement for registration as the basis for obtaining legal protection is because Indonesia adheres to a constitutive system by applying the first to file principle in its IPR protection system. The constitutive system contains meaning:

1. Only those who are registered can give birth to special rights or exclusive rights (*exclusive right*);
2. The use alone has not created exclusive rights or have not received legal protection;
3. The constitutive system is established on the principle of “prior in tempore, melior in jure”. Whoever registers first is entitled to legal protection. This constitutive principle is also called "the first to file principle”;
4. Thus, the constitutive system contains a compulsion to register (*compulsory to registered*).³

The non-registration of superior regional products as geographical indications of Indonesia has resulted in foreign and domestic parties claiming without rights and obtaining economic benefits from the unregistered geographical indications for individual interests, and this will harm the interests of the people who have been making and trading products. The World Intellectual Property Organization (WIPO) reveals that basically the protection of geographical indications has economic importance, because::

1. Protection of geographical indications will create a market characteristic/identity and if advertised correctly with good intentions it will lead to high prices for a product.;
2. Protection of geographical indications will pave the way for local producers to develop their brands and to trade under their own market identities; and
3. Protection of geographical indications related to property or economic rights (is the most important meaning).⁴

³M Yahya Harahap, *Tinjauan Merek Secara Umum dan Hukum Merek di Indonesia Berdasarkan Undang-undang No.19 Tahun 1992*, (Bandung : PT Citra Aditya Bakti, 1996), Halaman 69.

⁴ Djulaeka, *Konsep Perlindungan Hak Kekayaan Intelektual*, hlm. 139.

Foreign claims against products with potential geographic indications of Indonesia occurred in 1976. The Toraja coffee brand was registered as a trademark of the Japanese company Key Coffee Co. This claim resulted in Indonesia not being able to directly export coffee to Japan except through Key Coffee Co. Furthermore, a similar case occurred in 1999, the Dutch Company European Coffee BV with its address Zwarteweg 6 B NL-1412 GD Naarden Paises Bajos through CTM register 001242965, registered Gayo Coffee as a class 30 brand with the types of goods Coffee, tea, cocoa, sugar and artificial coffee. Even though the Gayo Highlands is a highland located in the province of Aceh, it has been known for decades as the world's best Arabica coffee producer and the development of coffee plantations has been carried out since 1926.

This claim of brand ownership has resulted in European BV through Holland Coffee based on ownership of the brand certificate having sent a subpoena to PT. Arvis Sanada, a national coffee exporter owned by a son from Gayo, based in Medan, North Sumatra, did not want to export coffee to the Netherlands using the word Gayo Coffee because the word has similarities with his trademark certificate. This caused the coffee export contract to the Netherlands to be terminated and all contracts that had been agreed upon were canceled. Then European BV also banned all coffee companies around the world from distributing gayo coffee in the Netherlands. As well as PT. Arvis Sanada, European BV has no objection to the circulation of coffee in the Netherlands as long as it doesn't use the word Gayo.⁵

The occurrence of foreign claims against products with potential geographical indications in Indonesia is related to low legal awareness, when compared to other countries, such as Europe, protection against potential geographical indications has a very high level of legal awareness. The European community is already aware of the importance of registering geographical indications. Even EU consumers highly value products labeled with geographic indications. This is then used by them, by registering to other countries, including Indonesia. In 2009, France has registered geographical indications in Indonesia. The country registered the drink (wine) sparkling wine "champagne". Even champagne sales in France rose about 230% from sales to other countries. This clearly provides great benefits for the country's economy. Further examples of alcoholic beverages (hard) brandy (spirit/eux-de-vie) Pisco from Peru which was also registered in 2010 and Parmigiano Reggiano cheese from Italy in 2011.⁶

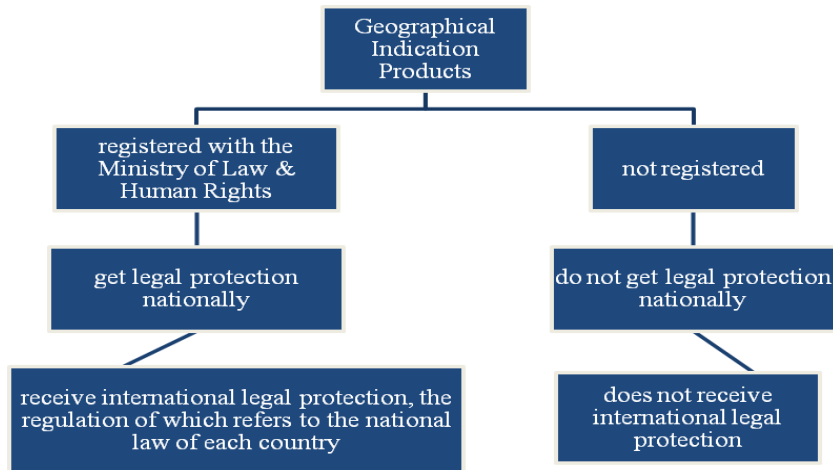
The claim of foreign parties to natural resources that have the potential to be protected by Geographical Indications is motivated by:

1. There are economic benefits derived from these claims. For example, in the case of claims for Toraja Coffee and Gayo Coffee.
2. Products that have the potential to get geographic indication legal protection have not been registered.
3. Non-registration of Indonesian geographical indication products.
4. The level of legal awareness of stakeholders, including local governments, non-governmental organizations (NGOs) in the environmental sector and the community is still low on the importance of registering geographical indications.

⁵ Candra Irawan, *Pendaftaran Indikasi Geografis Sebagai Instrumen Perlindungan Hukum Dan Peningkatan Daya Saing Produk Daerah Di Indonesia*, Prosiding Seminar Nasional Multi Disiplin Ilmu & Call For Paper Unisbank ke-3, hlm. 359.

⁶ Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM RI, *Buku Saku Indikasi Geografis Indonesia*, (Jakarta: Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM RI, 2015), hlm. 12-13.

Legal protection against Geographical Indications internationally can be provided when the geographical indication has been registered in the country of origin of the product. Following the provisions of Article 24 paragraph (9) of the TRIPs Agreement, there is no obligation to provide legal protection for geographical indications for geographical indications that are not protected in the country of origin. Furthermore, Article 54 Paragraph 2 of Law Number 20 of 2016 concerning Marks and Geographical Indications states that the Application as referred to in paragraph (1) can only be registered if the Geographical Indication has obtained recognition from the government of the country and/or is registered under the provisions in force in the country. country of origin. This means that international legal protection will only exist when the geographical indication has been registered and received legal protection in its country of origin. It can be simply described by the following chart.



International IPR protection is very dependent on whether or not a product has the potential to be registered as a geographical indication to the Ministry of Law and Human Rights, because basically International IPR is part of International Private Law, where International Private Law is the entire rule and legal principle that regulates civil relations across national borders. . In other words, International Private law is a law that regulates private law relationships between legal actors, each of which is subject to different (national) private law.⁷Based on this understanding, the source of International Private law is national law, the term international does not refer to the source of the law, but to the legal relationship or event that involves parties from different countries. So if there is an international dispute in the form of foreign claims against IPR including Geographical Indications, the national law will be the reference. This means that nationally the object in dispute with IPR has been registered and has received legal protection or not

Registration applications can be made for geographical indication products originating from within the country or originating from abroad. Applications for registration of geographical indications from within the country are submitted to Directorate General of Intellectual Property, which currently can only be done online/electronically through the Legal Services counter at the Regional Office of the Ministry of Law and Human Rights in the Provincial Capital. Domestic applications can be made by the applicant himself or through his proxies, while applications from abroad are carried out by the applicant's proxy. Registration of geographical indications can be requested by:

⁷Mochtar Kusumaatmadja, *Pengantar Hukum Internasional: Buku I Bagian Umum*, (Bandung: Binacipta, 1990), hlm. 1.

1. An institution that represents the community in a certain geographical area that operates an item and or product in the form of:
 - a. Natural resources
 - b. Hand crafted items
 - c. Industrial output
2. Provincial or district/city government.

There are several requirements that must be met by the applicant/proxy in submitting an application for geographical indications, including:

No	Requirements	Applicant	
		Domestic	Overseas
1	Softcopy Document Description	√	√
2	Power of Attorney (mandatory for overseas applicants)	√	√
3	Letter of recommendation	√	-
4	Map of Geographical Indication Areas (for domestic applications, it must be legalized by the local government)	√	√
5	Abstract/Summary	√	√
6	Proof of Registration/Recognition from country of origin	-	√
7	Geographical Indication Label or Logo	√	√
8	Proof of Payment of Fees through Simpaki Rp. 450.000,- in accordance with the applicable PP PNBP (Government Regulation No. 28 of 2019)	√	√

Here are some examples of registered geographic indication signs:



Image 1. Registered Domestic Geographical Indication Logo

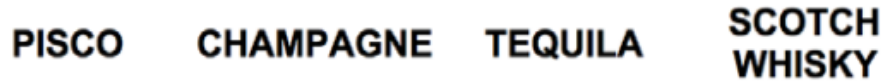


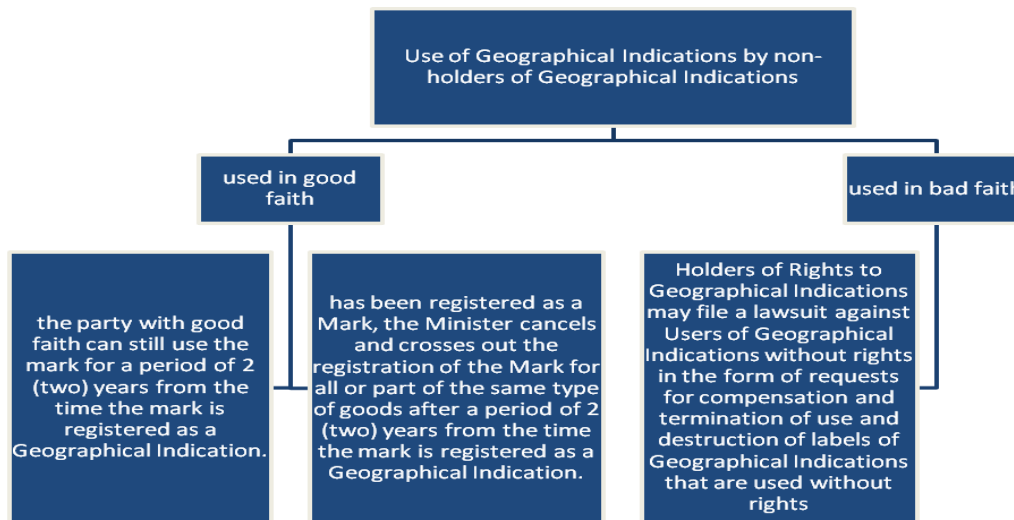
Image 2. Registered Overseas Geographical Indication Logo

The illegal use of IPR, including Geographical Indications, is tyrannical and the law is unlawful (MUI Fatwa Decree No:1/MUNAS VII/MUI/15/2005 concerning the Protection of Intellectual Property Rights). Violations of Geographical Indications include:

1. use of Geographical Indications, either directly or indirectly on goods and/or products that do not meet Geographical Indications Description Documents;
2. the use of a Geographical Indication mark, either directly or indirectly on protected or unprotected goods and/or products with the intent to:
 - a. show that the goods and/or products are comparable in quality to the goods and/or products protected by Geographical Indications;
 - b. benefit from such use; or
 - c. take advantage of the reputation of the Geographical Indication;
3. use of Geographical Indications that can mislead the public regarding the geographical origin of the goods;
4. use of Geographical Indications by non-registered Users of Geographical Indications;
5. imitation or misuse that can be misleading in connection with the place of origin of the goods and/or products or the quality of the goods and/or products contained in:
 - a. wrapping or packaging;
 - b. description in ad;
 - c. information in the document regarding the said goods and/or products; or
 - d. misleading information about its origin in a package.
6. other actions that can mislead the wider community regarding the truth of the origin of the goods and/or products.⁸

Foreign claims against geographical indications of Indonesia constitute a violation in the form of the use of geographical indications that are not by the holder of the right of geographical indications. Then the legal settlement mechanism is:

⁸Article 66 of The Law No. 20 of 2016 concerning Marks and Geographical Indications



If before or at the time of application for registration as a Geographical Indication, a sign/product has already been used by another party who is not entitled to it, the intention to use it becomes the benchmark in determining the legal settlement mechanism. If the use of the sign is carried out in good faith, the party with good intentions may still use the sign for a period of 2 (two) years from the time the mark is registered as a Geographical Indication. Or if Geographical Indication has been registered as a Mark, the Minister may cancel and cross out the registration of the Mark for all or part of the same type of goods after a period of 2 (two) years from the time the mark is registered as a Geographical Indication. Further, regarding the cancellation and deletion of the said Mark registration, it must be notified in writing to the Mark owner or his Proxy by stating the reasons. Furthermore, the cancellation and deletion of the Mark registration are recorded and announced in the Official Gazette of Marks, this results at the end of legal protection for the Mark for all or part of the same type of goods.

Another legal mechanism that can be taken against violations of the use of geographical indications is to file a compensation claim. Holders of Rights to Geographical Indications may file a civil lawsuit to the commercial court against unauthorized Users of Geographical Indications in the form of requests for compensation and termination of use and destruction of Geographical Indications labels that are used without rights. In order to prevent greater harm to the party whose rights have been violated, the judge may order the violator to stop the activities of making, multiplying, and ordering the destruction of the Geographical Indication label that is used without rights.

Violation of the use of geographical indications can be categorized as a criminal offense with a complaint offense, if it meets the elements stipulated in Article 101 of The Law No. 20 of 2016 concerning Marks and Geographical Indications:

- (1) Any person who unlawfully uses a sign that has similarities in its entirety to Geographical Indications belonging to another party for the same or similar goods and/or products with registered goods and/or products, shall be punished with imprisonment for a maximum of 4 (four) years and / or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).
- (2) Any person who unlawfully uses a sign that has similarities in principle to Geographical Indications belonging to another party for the same or similar goods and/or products with

registered goods and/or products, shall be punished with imprisonment for a maximum of 4 (four) years and / or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).

CONCLUSION

The claim of foreign companies against products with the potential for Indonesian Geographical Indications is the use of Intellectual Property Rights without rights, based on the MUI Fatwa decision, this is an injustice that is unlawful. To avoid this, the product must be registered so that it is recognized and has legal protection nationally, as well as international protection. registration is very important because the IPR protection system adheres to a constitutive system by applying the first to file principle. The legal settlement mechanism in the event of a foreign brand claim against a product with potential Indonesian Geographical Indications based on Law Number 20 of 2016 concerning Marks and Geographical Indications is dependent on the intention of using the mark. for 2 (two) years from the time the mark is registered as a Geographical Indication. Or if a Geographical Indication has been registered as a Mark, the Minister may cancel and cross out the registration of the Mark for all or part of the same type of goods after a period of 2 (two) years from the time the mark is registered as a Geographical Indication. However, if the use is based on bad faith, the geographical indication right holder can file a civil or criminal lawsuit in accordance with the provisions of the applicable laws and regulations.

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