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## **Regulation of registration application for potential geographical indications of coffee and its relevance to reputation factor**

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### **Abstract**

This study aims to examine the regulation of registration applications for potential geographical indications of coffee in relation to reputation factors. The study employs a normative legal research method with a legislative approach. The study's findings indicate that the assessment of the potential of coffee is highly subjective, as it is based on individual tastes. However, in this context, the assessment of the potential of coffee from a particular region can be conducted by experts in the field. Additionally, the registered natural products within the geographical indication serve as a marker that these products originate from a specific area, serving as the basis for the registration of the uniqueness of coffee within that specific region. This aligns with Law no. 20 of 2016 concerning Trademarks and Geographical Indications, which defines geographical indications in Article 1, number 6, stating that it refers to a sign indicating the origin of a product due to geographical environmental factors, including natural elements, human factors, or a combination of both, providing reputation, quality, and specific characteristics to the goods or products produced.

**Keywords:** Regulation, registration, geographical indications, coffee, reputation

### **1. Introduction**

Indonesia is an archipelagic country rich in abundant natural resources. Thanks to its plentiful natural resources and numerous islands, various unique features emerge from the extraordinary geographical characteristics (Ridla, 2019) <sup>[21]</sup>. The potential of these resources, each with its characteristics, can be utilized as trade assets, expected to drive the economic growth of the regions where these products are made and potentially become Geographical Indications (GIs). Registration under GIs protects products from fraud and enhances their competitiveness in both domestic and international trade in Indonesia, leading to financial benefits for the regions producing those products (AR, Rahendra, & Sabilia, 2022) <sup>[2]</sup>.

Following the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement established in 1994, the protection system for GIs has developed internationally as a legal tool, especially in Asia. The Association of Southeast Asian Nations (ASEAN) actively uses identification and registration of GIs as a strategy to enter domestic and international markets (Siagian, 2021) <sup>[23]</sup>. The ASEAN Economic Community (AEC), formed in 2020, aims to enhance economic growth and competitiveness among its member states. Economic integration within ASEAN aims to create a stable, prosperous, and highly competitive economic region. Competition policy, consumer protection, intellectual property rights, infrastructure development, taxation, and e-commerce are the six main components of this competitive economic sector (Siagian, 2021) <sup>[23]</sup>.

Coffee currently presents significant business opportunities globally due to its widespread popularity. Indonesia, with its soil structure and climate, provides an ideal environment for coffee cultivation. Despite the geographical potential, there is a lack of complete understanding among the population regarding the importance of registering geographical indications (Kurniawan, 2013) <sup>[13]</sup>. Currently, only 135 Geographical Indications are registered in Indonesia. Some of the registered GI products include Jepara Carved Furniture (registered on April 28, 2010), Muntok White Pepper (registered on April 28, 2010), Sumedang Black Tobacco (registered on April 25, 2011), Lingga Sago (registered on January 21, 2020), and Kutai Kartanegara Malonan Pepper East Kalimantan (registered on January 21, 2020) (Sari & Syaiful Anwar, 2022) <sup>[22]</sup>. Additionally, Bali is known for its flagship GI product, Kintamani Arabica Coffee, registered on December 5, 2008.

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Coffee, as a natural resource, has become one of Indonesia's essential commodities (Masrur, 2018) <sup>[15]</sup>. The coffee industry's growth in Indonesia has surged alongside the global and national coffee consumption trends. However, Indonesian coffee farmers face three significant issues: product quality, funding, and market access, despite the global demand for coffee (Sari & Syaiful Anwar, 2022) <sup>[22]</sup>. In the realm of international business potential, Indonesia faces three essential challenges for its coffee farmers: product quality, funding, and market access (Masrur, 2018) <sup>[15]</sup>. As global coffee consumption increases, these commodity issues should be a government priority to ensure the well-being of coffee farmers. Processing and packaging technology in small and medium-scale industries are still rudimentary, contributing to low coffee quality as a raw material (Ellyanti, Karim, & Basri, 2012) <sup>[7]</sup>. The lack of knowledge about post-harvest handling has hindered consistency in quality. Indonesia holds significant geographical indication potential, especially in coffee. However, there is still a lack of understanding among the public regarding the importance of registering geographical indications.

According to Article 1, Paragraph 6 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, a Geographical Indication is a sign indicating the origin of a product caused by geographical environmental factors, such as natural or human factors, which give a specific reputation, quality, and characteristics to the produced goods. As stipulated in Article 1, Paragraph 6 of the Minister of Law and Human Rights Regulation of the Republic of Indonesia No. 13 of 2017 concerning Communal Intellectual Property Data, the Potential Geographical Indication is a sign indicating the origin of a product caused by geographical environmental factors, including natural and human factors, or a combination of both factors. The ambiguity in the norm exists in the terms "reputation" and "product." The meaning of "reputation" lacks explicit explanation, leading to confusion about whether there are specific standards that must be met for this "reputation" and what impression it should give. The meaning of "product" is also not explicitly defined, and there are no provisions regulating the "product" produced, such as the quantity of businesses involved, the number of processors, whether the label must be branded, and the number of producers and the manufacturing process for the goods and/or "products." Therefore, Article 1 presents a normative ambiguity that requires discussion in this article.

Based on a research journal by I Gede Agus Kurniawan titled "Regulation of Cessation of Geographical Indication Usage on Trademarks Registered by Unauthorized Parties (Comparative Study of Several Countries)" and another research journal by Muhammad Ali Ridla titled "Protection of Geographical Indications for Unregistered Coffee According to the First-To-Use-System," there are differences in the research objectives, problem formulations, and results compared to the author's journal. In the context of I Gede Agus Kurniawan's research, the focus is on the cessation of geographical indication usage, while this research concentrates on assessing the potential of geographical indications. This journal is written with an analysis that focuses on the Regulation of Registration Application for Potential Geographical Indications of Coffee in Relation to Reputation Factors. The regulation related to geographical indications is based on the fact that

Article 1, Number 5 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications does not clearly explain the meaning of the product or reputation from the specific geographical indication of coffee (Kurniawan, 2013) <sup>[13]</sup>. This lack of clarity in the norm regarding the definition of products and the reputation that indicates the specific geographical indication of coffee becomes the main concern.

Based on the background provided above, there are two problem formulations that will be discussed how is the regulation of registration applications for potential geographical indications of coffee and its relevance to reputation? And what are the factors hindering the registration of geographical indication products in Indonesia?

In line with the background and problem formulations mentioned above, the objectives of this writing are to examine and understand the regulation of registration applications for potential geographical indications of coffee as a natural resource in relation to reputation. Another objective is to comprehend and identify the factors hindering the registration of geographical indication products in Indonesia.

## 2. Research Methodology

This writing utilizes the normative legal research method, as it requires an analysis of a situation through the lens of relevant legal regulations. Normative legal research involves examining the law as a guide using a statute approach. The journal writing relies on primary legal sources, such as principles and legal norms related to geographical indications, and secondary sources like legal literature and scholarly articles related to geographical indications (Diantha, 2016) <sup>[4]</sup>.

## 3. Results and Discussion

### 3.1 Regulation of Registration Applications for Potential Geographical Indications of Coffee and its Relevance to Reputation

Coffee, as part of the Geographical Indication Potential, is protected under Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Coffee, also known as *Coffea* in Latin, is described by Merriam Webster as a beverage made by percolation, infusion, or boiling of roasted and ground coffee beans (Merriam Webster Dictionary, 2017) <sup>[16]</sup>.

Geographical indications in TRIPs are regulated in Section 3, Articles 22-24. In Article 22, Paragraph (1) of the TRIPs agreement, it states:

"Geographical indications are, for the purposes of this agreement, indications that identify goods as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin."

The Cambridge Dictionary defines "Reputation" in as:

"The opinion that people in general have about someone or something, or how much respect or admiration someone or something receives, based on past behavior or character." (Dictionary, 2023) <sup>[5]</sup>.

Coffee is known to have many types, such as espresso, latte, black coffee, mocha, Americano, cappuccino, flat white, café au lait, macchiato, cold brew, Irish coffee, frappe, Vietnamese coffee, affogato, red eye. Each type of coffee

has different characteristics and flavors (Fokky Fuad, 2017)<sup>[8]</sup>. Evaluating a specific potential product like coffee is subjective, as everyone has their own taste preferences. Assessing the quality of coffee can be experienced through one's senses, recognizing its superior quality. Nurohma, "Perlindungan Indikasi Geografis Untuk Melindungi Produk-Produk Masyarakat Lokal," *Jatiswara* 35, no. 2 (2020): 110-28,

<https://doi.org/10.29303/jatiswara.v35i2.250>. Excellent coffee is usually dense and distinctly felt in the mouth, allowing one to enjoy all the complex flavors harmoniously. On the other hand, lower-quality coffee may taste burnt and bland, lacking a memorable experience. Excellent coffee, when consumed, is not diluted and has a noticeable thickness in the mouth, allowing one to fully appreciate its intricate flavors, harmoniously blending with the taste buds. Over time, with careful observation, one can truly understand the essence of the coffee (Nurohma, 2020)<sup>[17]</sup>. The analogy can be drawn between a glass of water, a milkshake, and a can of soda - at first glance, these beverages may seem indistinguishable, but upon closer inspection, their contents are entirely different (Hidayat, 2014)<sup>[11]</sup>.

Law No. 20 of 2016 concerning Trademarks and Geographical Indications, Article 53, Paragraph (1), explains the protection of geographical indications, stating that geographical indications will be protected only after being registered by the minister. It is clear that geographical indications will be protected only after being registered by the minister, and before registration, the geographical indication product does not receive legal protection. This is different from copyright, which, in this context, receives immediate protection after the creation of the copyrighted work without being registered by the minister.

Copyright, trade secrets, patents, trademarks, geographical indications, and others are examples of intellectual property rights. Geographical indications are essentially a trade name used in the packaging of a product to indicate its origin during the production process (Fokky Fuad, 2017)<sup>[8]</sup>. Legal protection of geographical indications as a sign indicating the origin and uniqueness of a product caused by natural, geographical, and human factors is crucial. It indicates the identity of a product originating from a specific place, region, or area, reflecting its quality, reputation, and characteristics, including natural and human factors as its attributes (Ganindha & Sukarmi, 2020)<sup>[9]</sup>. A geographical indication is a sign indicating the origin of a product caused by geographical environmental factors, which can consist of natural and human factors, or a combination of both, as stated in Article 1, Number 6, regarding the definition of Geographical Indications in Law No. 20 of 2016 concerning Trademarks and Geographical Indications (Hediati, 2020)<sup>[10]</sup>. A product with a geographical indication must meet several requirements to be considered a geographical indication, including having a producing area that has its own unique quality, character, and reputation influenced by environmental and/or human conditions (Isnani, 2019)<sup>[12]</sup>.

The legal protection of geographical indication products has a collective or communal nature, meaning that legal protection becomes a joint ownership of the community in the region of the geographical indication product (Nurohma, 2020)<sup>[17]</sup>. If the geographical indication product is registered and receives legal protection, the community in that region has the right to sell the registered geographical

indication product to others (Elfany Shavira & Adhi Nugroho, 2021)<sup>[6]</sup>. In other words, other communities not part of the geographical indication region are not entitled to sell the registered product (Ardito Ramadhan, 2021)<sup>[3]</sup>. The importance of legal protection for geographical indication products in Intellectual Property Rights is fundamentally to provide legal certainty to these products by establishing laws that protect them. This aims to protect Indonesian products in domestic and international trade (Sari & Syaiful Anwar, 2022)<sup>[22]</sup>. Legal clarity regarding the relationship between producers and owners of goods will be provided by geographical protection. This allows free promotion without worrying about unauthorized use by others (Apriansyah, 2018)<sup>[1]</sup>.

Indonesia's abundant resources are scattered across each island, including diverse natural and human resources. Indonesian regional products with unique qualities derived from natural resources have become high-value commodities in trade, holding significant economic value. Additionally, the renown of Indonesian products in the trading commodity must be accompanied by protection against fraudulent practices in trade. In Section 3, Articles 22-24, the TRIPs Geographical Indications are discussed. In Article 22, Paragraph (1) of the TRIPs agreement, it states:

"Geographical indications are, for the purposes of this agreement, indications that identify goods as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin."

Based on this provision, it is explained that geographical indications are signs indicating a member country, or a region or area within it, as the place of origin of goods, where the reputation, quality, and characteristics of the goods are significantly determined by geographical factors (Elfany Shavira & Adhi Nugroho, 2021)<sup>[6]</sup>. From the definition of geographical indications, it can be seen that the origin of goods and services is related to reputation, characteristics, and the quality of each TRIPs member country must ensure legal protection for its geographical indications by creating legal instruments in accordance with its national laws (Putri, Putri, & Pandjaitan, 2023)<sup>[20]</sup>. One of the signs used in the packaging of products with unique quality and authenticity is the characteristic that indicates geographical indications in the product (Puteri & Santoso, 2023)<sup>[19]</sup>. The place of origin of the product is often used to indicate its geographical origin, such as Indonesian agricultural products with unique characteristics and quality in each region. These characteristics can include different shapes, colors, or flavors from other agricultural products. These features are typically used as signs on product labels with geographical indications. To inform people that a product has distinctiveness that sets it apart from similar ones, these characteristics are used (Suhargon, 2019)<sup>[25]</sup>.

To protect geographical indications and prevent legal violations, every TRIPs member country must ratify the agreement into its national legislation and legal instruments. This aligns with Article 22(2) of the TRIPs agreement, which states:

### **3.1.1 In respect of geographical indications, Members shall provide the legal means for interested parties to prevent**

a) The use of any means in the designation or presentation

of goods that indicates or suggests that the goods originate in a geographical area other than the true place of origin in a manner that misleads the public about the geographical origin of the goods;

- b) Any use that constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).

Based on Article 22, Paragraph 2 of TRIPs, TRIPs members must provide legal protection for products with geographical indications. According to Article 41 of the TRIPs Agreement Part III, which discusses "enforcement," Paragraph (1) states that each country must enact laws for enforcing violations of Intellectual Property Rights to provide legal protection. Paragraph (2) explains how the enforcement of Intellectual Property Rights should be fair, equitable, and not complicated, while Paragraph (3) states that the decision made regarding the enforcement of violations is a necessity. According to Paragraph (4), the parties involved in the trial have the opportunity to be reviewed by judicial authorities and are subject to the regulations of national legal jurisdiction. Paragraph (5) does not stipulate that the legal system handling intellectual property rights is different from the overall law enforcement system. Therefore, the TRIPs Agreement obliges each member country to create legal instruments governing the legal protection of geographical indication products in their respective countries (Thalib, Santoso, & Lestari, 2020) <sup>[27]</sup>.

### 3.2 Factors Hindering the Registration of Geographical Indication Products in Indonesia

Geographical Indication (GI) protection is intended to ensure that local products can compete effectively in both domestic and international markets. In Indonesia, the number of products protected by GI is still relatively small compared to the potential offered by each local product. (Penelitian Badan Keahlian DPR, Mpr, Gedung Nusantara, & Jenderal Gatot Subroto Jakarta, 2016) <sup>[18]</sup>. The limited registration of GI-protected products is due to obstacles in the GI protection registration process. (Mahila, 2019) <sup>[14]</sup>. The factors hindering this registration are as follows:

#### a) Community Factors

Since the community is involved in producing GI products, they play a role in the GI registration process. Due to a lack of knowledge about GI, not all regions are protected, and the potential for GI is limited. The formation of Community GI Protection Organizations (MPIG) is challenging as not all local communities producing GI products participate. This lack of understanding among the community is a significant factor hindering the registration process (Yessiningrum *et al.*, 2015) <sup>[28]</sup>.

#### b) Government Factors

GI legal protection is part of regional autonomy responsibilities. Both the central and regional governments participate in protecting GI potential. Stakeholders such as local governments, industries, universities, and community groups are expected to actively participate in management by applying contemporary management principles while still utilizing local resources, as this is done in specific regions (Sumiyati, 2010) <sup>[26]</sup>. However, the fact that many regional governments are unaware of GI protection leads to assumptions that they are not benefiting from it, adding to

the government's workload (Simanjuntak, 2023) <sup>[24]</sup>. This will undoubtedly impact all products that may contain unregistered GIs, serving as a barrier to GI protection registration in those regions. (Yulia, Rusydi, & Gumilar, 2022) <sup>[29]</sup>.

### 4. Conclusion

Legal protection for geographical indication products in Indonesia is regulated by Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Geographical indications are signs indicating the origin of a product, influenced by geographical environmental factors such as natural or human factors, providing specific reputation, quality, and characteristics to the produced goods or products. When assessing the potential of a particular product like coffee, subjectivity comes into play as everyone has their own taste preferences. However, it is crucial for registered geographical indications to prevent the commercialization of a region's geographical results by irresponsible parties and to maintain specific regional products, especially in the context of coffee. On the other hand, factors contributing to the lack of registration of indications in the Indonesian environment include community and government factors. Therefore, the government should continue to raise awareness about the importance of geographical indication registration so that the community is conscious of it and registers the geographical results of their region as part of our nation's wealth.

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