



Enhancing Geographical Indications Product Protection: A Comparative Study of Indonesia and India

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Abstract

Indonesia boasts abundant natural resources, yet its registered Geographical Indication products remain limited compared to India. Despite its strategic geographical location and diverse offerings, many Indonesian Geographical Indication products lack registration and protection. This research conducts a legal comparison of Geographical Indication product protection between Indonesia and India. Utilizing a normative juridical approach and qualitative analysis of secondary legal materials, the study examines Law Number 20 of 2016 concerning Trademarks and Geographical Indications in Indonesia and The Geographical Indications of Goods (Registration and Protection) Act, 1999 in India. The findings reveal that Indonesia lacks a time limit for protection, unlike India, which grants ten renewable years of protection with more stringent sanctions. Considering India's approach, Indonesia should tailor its protection timeframe and penalties to its unique context for optimal results.



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A. INTRODUCTION

Geographical Indications represent one form of intellectual property that receives protection from the state (Kusuma and Roisah 2022). Numerous examples of Geographical Indication products have already obtained legal protection in Indonesia, such as Bali Kintamani Arabica Coffee (Jampur, Yudiari, and Pratiwi 2019), Sumedang Black Tobacco (Nurohma 2020), Aceh Patchouli Oil (Sinaga, Wardhana, and Mustafa 2022), Carica Dieng (Sahindra 2022), and Muntok White Pepper (Darwance, Haryadi, and Yokotani 2020). These products hail from specific regions within Indonesia and have garnered a positive reputation. Each of these Geographical Indication products possesses unique and distinctive qualities that are closely tied to their respective areas of origin, making their protection imperative. By safeguarding these products, Indonesia can reap significant economic benefits, particularly within the producing regions. The uniqueness and specific qualities of these Geographical Indication products enable them to generate substantial economic gains (Putranti and Indriyani 2021). These benefits include preventing the unauthorized use of product specificity by third parties, maximizing the value added to the products for the local communities, creating

more job opportunities, and ultimately improving the welfare of the community as a whole (Apriansyah 2018).

Besides stimulating economic growth, Geographical Indication products also serve as crucial instruments for preserving culture, which in turn has a significant impact on the development of agro-tourism (Munawaroh 2019). The protection of Geographical Indication products is vital to prevent counterfeiting and unauthorized usage by third parties (Masrur 2018). This protection is warranted because Geographical Indications offer not only economic benefits but also non-economic advantages, including safeguarding environmental and cultural values and reinforcing social institutions (Neilson, Wright, and Aklimawati 2018). In the context of developing countries, the protection of Geographical Indications plays a pivotal role in promoting broader rural development and eradicating poverty (Neilson et al. 2018).

Geographical Indications in Indonesia were initially regulated under Article 56 to Article 58 of Law Number 15 of 2001 concerning Trademarks (Trade Law). However, this regulation was later replaced by Law Number 20 of 2016 concerning Trademarks and Geographical Indications (UU MIG), which remains in force to this day (Nurohma 2020). Geographical Indications are defined as signs attached to goods originating from specific places, regions, or geographical locations, indicating certain qualities, reputations, or characteristics (Munawaroh 2019). Within the scope of Geographical Indications, there are two terms used: "Protected Geographical Indications" and "Protected Designation of Origins" (Isnani 2019). The distinction lies in the production stages, where all aspects of an Indication of Origin must take place within the geographical origin, while certain stages of Geographical Indications can occur outside the region of origin (Bicen 2021). Geographical Indications represent a special and exclusive right protected by the state for rights holders. Such protection is granted to Geographical Indications that possess specific qualities, characteristics, and reputation (Lukito, 2018). There are two main aspects associated with Geographical Indications: first, the sign indicating the origin of an item and/or product due to geographical location and environmental factors, and second, the name of the goods and/or products produced that possess certain characteristics (Sitepu 2018).

Despite the implementation of the MIG Law in Indonesia, which aims to provide legal protection for Geographical Indications, several challenges persist in safeguarding these intellectual properties. The foremost issue is weak supervision and law enforcement by the authorities, as pointed out by (Ibnu Rizal 2021). Many products exploit Geographical Indication names without authorization, and piracy of intellectual property rights occurs without facing strict sanctions, as noted by (Kalma 2018). Moreover, there is a concerning lack of public awareness regarding the importance of legal protection for Geographical Indications, as highlighted by Lukito, 2018). Numerous producers and entrepreneurs remain

unaware of the need to respect intellectual property rights and the rights of other parties when creating their products, as emphasized by (Disemadi and Kang 2021). Consequently, the number of registered Geographical Indications in Indonesia remains relatively small despite the country's abundant resource wealth, as indicated by (Zahida, Putri, and Wicaksono 2021). Adding to the challenges are frequent disputes between producers who claim ownership of Geographical Indications and other manufacturers who use these indications without permission, as reported by Yusuf and Hadi (2019). Such disputes can significantly complicate the process of effectively protecting Geographical Indications in Indonesia. Addressing these issues necessitates a collective effort from the government, relevant authorities, producers, and the public. Strengthening supervision and law enforcement, enhancing public awareness campaigns, and promoting understanding of intellectual property rights are crucial steps towards preserving and capitalizing on Indonesia's unique cultural heritage and natural resources.

Indonesia boasts a wealth of potential natural resources (Putranti & Indriyani, 2021). However, in comparison to other countries, the number of registered Geographical Indication products in Indonesia remains relatively low, especially when compared to India, which had 478 registered products by the year 2023 (Controller General of Patents, Designs, and Trademarks 2023). Meanwhile in Indonesia, the total existing Geographical Indication products only reached 128 in the same year. This disparity indicates that a considerable number of Indonesian Geographical Indication products have yet to be registered and granted the necessary protection, despite their strategic geographical location and diverse characteristics (Sopiyani et al., 2021).

This study aims to conduct a comparative analysis of the protection of Geographical Indication (GI) products between Indonesia and India. It builds upon related research conducted by (Sopiyani et al. 2021), which focused on studying the regulation and registration procedures for GI products in both countries. Additionally, (Dewi and Landra 2019) explored the criteria and mechanisms for registering GI products, while (Apriansyah 2018) delved into the protection of GI products in Indonesia, particularly within various local governments, and highlighted the economic benefits for producers. Moreover, (Nurohma 2020) examined Government Regulation Number 51 of 2017 in Indonesia, which pertains to the protection and registration procedures of GI products, described in distinct stages. This research endeavors to provide readers with comprehensive knowledge and insights into the regulations governing the protection of GI products in Indonesia and India. By conducting this analysis, the study seeks to offer valuable information for the Indonesian government and law enforcement, serving as a basis for enhancing and fortifying domestic regulations pertaining to the safeguarding of GI products. Based on the provided explanation,

the research problems were succinctly formulated as follows: 1) To what extent do the protection arrangements for Geographical Indication products differ between Indonesia and India?; 2) How does the legal comparison for the protection of Geographical Indication products of the two countries?

B. RESEARCH METHOD

This research employed a normative legal research (doctrinal research) approach with a qualitative methodology to compare Geographical Indications between Indonesia and India. The qualitative approach facilitated an in-depth exploration of the legal characteristics concerning Geographical Indications in both countries, primarily analyzing relevant regulations and legal documents. The research aimed to comprehend the distinctions and commonalities in the protection of Geographical Indications. The normative legal research method was chosen due to the research's focus on legal comparisons, with an emphasis on elaborating norms within the legal systems (Tan 2021). The study adopted a statutory, conceptual, and comparative approach (Disemadi 2022), examining laws such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications and The Geographical Indications of Goods (Registration and Protection) Act, 1999. Secondary data was utilized in the form of legal materials, and literature studies (library research) were employed as the data collection technique, while descriptive analysis served as the secondary data analysis technique.

C. RESULTS AND DISCUSSIONS

The Existence and Dilemma Related to Geographical Indications Protection in Indonesia

As explained by Ahmad M. Ramli, Intellectual property, as defined by John Locke, refers to the ownership of intangible rights by individuals, irrespective of whether they are tangible or not, and these rights are automatically inherent to the individual (Ramli et al. 2021). This concept stems from Locke's belief that all humans are born equal under natural law, which prohibits anyone from destroying or depriving others of their property (Mahardhita and Sukro 2018). Intellectual property can be categorized into two groups: Copyright and Industrial Property Rights, which encompass Patents, Industrial Designs, Trademarks, Layout Designs of Integrated Circuits, Trade Secrets, and Plant Varieties (Setyoningsih 2021). The key distinction between the two lies in the basis of protection; copyright protection arises automatically, while Industrial Property Rights require registration or confirmation (D. Darwance, Yokotani, and Anggita 2020). Furthermore, Geographical Indications represent another form of intellectual property. As specified in Law Number 20 of 2016 concerning Trademarks and Geographical Indications (UU MIG), a Geographical Indication is a sign or label

used to indicate that a product originates from a specific geographical area and possesses unique characteristics, quality, or reputation closely linked to its geographic origin. Geographical Indications safeguard the exclusive rights of producers from that particular area to utilize geographic names associated with their products, thereby preventing unauthorized use or misuse by other parties (Nurohma 2020).

Geographical Indications are often represented by labels attached to products originating from specific geographical areas. These signs may take the form of letters, pictures, words, areas, or combinations of these elements (Pratiti, Rehulina, and Sitorus 2021). As a business strategy, Geographical Indication products possess unique qualities and restrictions that cannot be replicated in other regions, thus adding significant economic and commercial value to the associated product (Yessiningrum 2015).

Geographical Indications form a significant part of intellectual property and encompass products that possess distinctive qualities and characteristics significantly influenced by the specific area of their production. Therefore, a Geographical Indication product can only be manufactured and produced in specific designated areas (Apriansyah 2018). In addition to Geographical Indications, there is also the concept of Indication of Origin. The key distinction between the two lies in the basis for their protection. According to Article 64 of the MIG Law, an Indication of Origin denotes the characteristic origin of goods and/or services that is not directly related to natural factors, and its protection is declarative in nature, meaning registration is not mandatory. This stands in contrast to Geographical Indications, for which registration is compulsory.

The presence and significance of Geographical Indications in Indonesia are evident through the legal protection granted to these products. The Indonesian government has taken measures to safeguard goods with unique value originating from specific geographic areas. This legal protection for Geographical Indications serves to acknowledge and provide exclusive rights to producers in the area of origin, allowing them to use the associated geographical names for their products. Such protection is crucial in maintaining the reputation and quality of these products and ensures that consumers can have confidence in the authenticity and distinctiveness of the products they purchase from the designated regions. As of the information available on the website www.dgip.go.id, it is indicated that Indonesia has already registered 128 Geographical Indications with the Directorate General of Intellectual Property (DJKI).

In every country, it is mandatory to grant protection for new works or inventions, providing exclusive rights to the creators or inventors. However, this protection is contingent on the registration of the work or invention with the Directorate General of Intellectual Property. Such protection serves crucial purposes, including preventing violations of intellectual property rights, fostering

fair business competition in free trade, and supporting research activities (Disemadi and Kang 2021). Distinct from other intellectual property products that have individualistic protection, Geographical Indications enjoy a collective nature. This means that the rights to a Geographical Indication product are held by a group of individuals (Anasis and Sari 2015).

Efforts to protect intellectual property products, with a specific focus on Geographical Indications, gained significant emphasis following the adoption of the TRIPs Agreement as an integral part of the WTO (Agreement Establishing the World Trade Organization) ratification, which has been ratified by various countries, including Indonesia (Mahardhita and Sukro 2018). Intellectual property is one of the key areas addressed within the TRIPS Agreement, particularly highlighted in Article 22 paragraph (2), which stipulates that each member country must recognize and provide legal protection for Geographical Indications within their territory (Mishra, 2022). By becoming parties to this agreement, states are obligated to enact national legislation in accordance with the provisions outlined in the TRIPS Agreement (Setyoningsih 2021). Subsequently, after ratifying the TRIPS Agreement, Indonesia introduced several regulations pertaining to the protection of intellectual property, including the framework for safeguarding Geographical Indications. These efforts were put forth to comply with the international obligations set forth in the TRIPS Agreement and to ensure adequate protection for Geographical Indications within the country.

In countries like Indonesia, India, and Vietnam, Geographical Indications can be registered by various entities, including the government, groups of people, producers, or organizations, as mandated by the respective national laws (Marie-Vivien et al. 2019). In Indonesia, the registration of Geographical Indications is managed by an organization representing the community in the production area or the local government at the provincial, district, or city level. To benefit from the protection of registered Geographical Indications, individuals must first become members of a collective organization (Marie-Vivien et al. 2019). In Indonesia, the protection provided for Geographical Indications is indefinite, lasting as long as the quality, reputation, and characteristics of the product are maintained. However, in countries like Bangladesh, the protection for Geographical Indications has a limited duration of five years, with the possibility of extension for an additional three years upon renewal (Chowdhury and Fahim 2023).

The dilemma of protecting Geographical Indications in Indonesia revolves around striking a balance between economic interests and socio-cultural interests. Geographical Indications serve as a sign or identity that indicates a product's origin from a specific geographical area, known for its unique reputation or special characteristics related to that region. Providing legal protection for Geographical Indications can yield significant economic benefits for producers hailing from such areas renowned for their distinctive products. This protection helps prevent

counterfeiting and misuse, enabling manufacturers to capitalize on the reputation they have cultivated for producing goods with exceptional qualities and characteristics. However, amidst the economic benefits, several dilemmas need consideration.

The dilemma surrounding the protection of Geographical Indications lies in the potential limitations or barriers it may pose for producers in other regions who aim to produce similar products with the same distinctive characteristics. This can result in economic inequality between protected areas and other regions that possess the potential to create similar goods. The principle behind Geographical Indication protection often implies that the uniqueness of a Geographical Indication product cannot be replicated or claimed by other regions (Kusuma and Roisah 2022). In Indonesia, the requirement for registration to obtain exclusive rights for Geographical Indications may further compound this issue. It is probable that a Geographical Indication with the same characteristics, which has not been registered, cannot be registered later on. Article 56 paragraph (2) letter b of the relevant regulations stipulates that an application for a Geographical Indication may be rejected if it bears similarities, either in whole or in part, with an already registered Geographical Indication (Masrur 2018).

In Indonesia, where cultural diversity and culinary heritage are abundant, the protection of Geographical Indications can have significant socio-cultural impacts. Geographical Indications offer an opportunity to strengthen relations between concerned parties and work together to safeguard and preserve the local traditions and customs of the respective communities (Ningsih, Waspiyah, and Salsabilla 2019). However, it is important to recognize that strict protection of Geographical Indications may pose challenges for certain products that hold significant cultural value for a community. The stringent protection could potentially limit their production and distribution, hindering market expansion and restricting the dissemination of traditional knowledge. Consequently, this may impede the ability of communities to derive economic benefits from their cultural heritage. To address these potential challenges, governments and stakeholders need to strike a balance between the protection of Geographical Indications to support local economic development and the preservation of cultural heritage. It is essential to consider the social and economic implications associated with such protection measures. An inclusive and sustainable approach involves actively involving all relevant parties, including local communities, producers, governments, and non-governmental organizations, in the decision-making process regarding the protection of Geographical Indications.

The Management of Geographical Indications Product Protection in Indonesia

Indonesia ratified the TRIPs Agreement with the aim of accommodating arrangements for the protection of Intellectual Property, particularly Geographical Indications, in alignment with its national laws and principles (Alfons 2020). It is essential to emphasize that Indonesia operates as a nation based on the rule of law (*rechtsstaat*) rather than one based on power (*machtsstaat*) (Wijaya et al. 2022). To achieve this, Indonesia must establish an ideal legal framework for its citizens. As a member country of the World Trade Organization (WTO), Indonesia is obligated to ratify the TRIPS Agreement. Geographical Indication protection is underscored in this agreement, notably in Article 22 paragraph (2), defining Geographical Indications as indications identifying goods originating from a member's territory, region, or locality, where a specific quality, reputation, or other characteristics of the good are essentially linked to its geographic origin (Irawan 2017). This means that Geographical Indications represent products with distinct qualities influenced by their geographic area of origin. With the ratification of the TRIPS Agreement, several arrangements were introduced to regulate Intellectual Property, including Trademarks, Patents, Copyrights, Trade Secrets, and more. This broadens the scope of products eligible for registration under Geographical Indications, although Article 23 of the TRIPS Agreement appears to provide more specific protection for wine and alcoholic beverage products (Nurul 2017).

Geographical Indications in Indonesia were initially regulated under Article 56 to Article 58 of Law Number 15 of 2001 concerning Trademarks (Trademark Law), with the technical implementation specified in Government Regulation Number 51 of 2007 concerning Geographical Indications. Subsequently, the Mark Law was replaced by Law Number 20 of 2016 concerning Trademarks and Geographical Indications (UU MIG), which is currently in effect. Geographical Indications are now governed under Chapter 8 of Articles 53 to 71 in the MIG Law (Pratitis et al. 2021). The UU MIG led to the creation of a derivative regulation, namely Regulation of the Minister of Law and Human Rights Number 10 of 2022, which pertains to amendments in Regulation of the Minister of Law and Human Rights Number 12 of 2019 concerning Geographical Indications, and Government Regulation Number 90 of 2019 concerning Procedures for Applications, Examinations, and Settlement of Appeals on the Mark Appeal Commission. For Geographical Indications to be protected in Indonesia, they must be registered or applied to the Directorate General of Intellectual Property (DJKI) (Lubis 2022).

When submitting Geographical Indications in Indonesia, a crucial document to be provided is the Description Document, as stated in Article 56 paragraph (2) of the MIG Law. Based on Article 1 point 11 of the MIG Law, the Description Document contains essential information such as the characteristics, quality, and reputation of the Geographical Indication product being applied for (Nugraha and Haryanto 2021). This comprehensive document must include the following key elements: (1) Applicant's Data, (2) Name of the Geographical Indication being

sought, (3) Name of the product linked to the Geographical Indication, (4) Description of the specific characteristics and qualities distinguishing the goods from others in the same category, (5) Details of the geographical environment influencing the reputation and quality of the Geographical Indication products, (6) Description of the area boundaries or maps covering the Geographical Indication products, (7) A brief account of the historical and traditional background of the product, along with public recognition of the Geographical Indications, (8) Description of the production, processing, and manufacturing processes employed, (9) Methods used to test the quality of Geographical Indication products, and (10) The labels intended to be used for the Geographical Indication products (Fuadi et al. 2022).

In Indonesia, the protection of Geographical Indications follows a first-to-file system, granting protection exclusively to products that have been successfully submitted for registration with the Directorate General of Intellectual Property (DJKI) (Nasrianti and Muhibuddin 2022). Interested parties, such as community representative institutions within the geographical area of product production or Regional Governments at the Regency/City or Provincial level, may submit applications for the registration of Geographical Indications (Nasrianti and Muhibuddin 2022). Notably, there is no specified time limit for the protection of Geographical Indications in Indonesia. As outlined in Article 61 paragraph (1) of the MIG Law, protection will be granted for as long as the quality, characteristics, and reputation of the product linked to the Geographical Indication can be maintained (Nurohma 2020).

The supervision and guidance on Geographical Indications are stipulated in Article 70 paragraph (1) and 71 paragraph (1) of the MIG Law, wherein the central or regional governments are responsible for conducting these activities within their respective authorities. Additionally, Article 71 paragraph (2) of the MIG Law allows for the involvement of the Community in the supervision process. The main objectives of this supervision and guidance are to ensure the quality and reputation of Geographical Indication products and prevent unauthorized usage. However, there is a notable weakness in the current MIG Law, as it lacks clarity regarding the specific roles of the central government and regional governments in practical terms (Apriansyah 2018). This ambiguity may impede the registration process and hinder dispute resolution related to successfully registered Geographical Indications. As a result, the current law may not adequately address the challenges and complexities in the development and supervision of Geographical Indication products. The supervision of Geographical Indications can also be carried out by a designated Team of Experts on Geographical Indications, as referred to in Article 59 paragraph 1 of the MIG Law.

Under the MIG Law, Article 66 outlines the various types of violations that can occur concerning Geographical Indications. If such disputes arise, Article 67

paragraph (1) allows for the filing of a lawsuit to address the matter. Producers entitled to use Geographical Indications or community organizations representing specific geographical areas, as specified in Article 67 paragraph (2) of the MIG Law, have the authority to initiate such legal proceedings. Furthermore, Article 101 of the MIG Law sets forth criminal provisions for unauthorized use of another party's Geographical Indications. Engaging in wholly or primarily unauthorized use of Geographical Indications may lead to imprisonment for up to four years or a fine of up to two billion Rupiah. Additionally, parties involved in trading the proceeds of crime, as described in Article 101, may face imprisonment for one year or a maximum fine of two hundred million Rupiah.

The resolution of disputes related to Geographical Indications in Indonesia involves resorting to litigation, where parties can initiate a lawsuit by filing a case in the Commercial Court, as outlined in Article 85 paragraph (1) of the MIG Law. However, it is crucial to note that Article 103 of the MIG Law designates the matters addressed in Articles 101 and 102 as complaint offenses. This means that before pursuing a criminal lawsuit, the aggrieved party must first lodge a complaint with the relevant authorities. Nevertheless, a significant challenge lies in the low level of public awareness regarding the legal protection of Geographical Indications in Indonesia (Lukito 2018).

Regulation of Geographical Indications Product Protection in India

The Geographical Indications of Goods (Registration and Protection) Act, 1999 in India outlines the criteria for products eligible for registration as Geographical Indications. In reference to Article 2 paragraph (1) letter e, agricultural products, natural products, or manufactured products are eligible for Geographical Indication registration. Prior to the enactment of this law, India utilized the Certification Trademarks (CTM) system, and one notable example of a Geographical Indication protected under this system was Darjeeling Tea. Even with the introduction of the Geographical Indications Act in 1999, India continues to use both the CTM system and the Sui Generis system to protect Geographical Indication products (Chaudhary, Yadav, and Kumar 2017).

There is an urgent need for a comprehensive arrangement concerning Geographical Indications, driven by two crucial factors: Firstly, a contentious dispute over ownership rights to Basmati rice has emerged involving the US company Rice Tec. Additionally, multiple Passing-Off cases have been documented in foreign countries concerning Darjeeling Tea. These conflicts underscore the critical importance of establishing robust measures to protect Geographical Indication products and safeguard their distinct identities and reputations on the global stage. Secondly, international agreements, including the TRIPs Agreement, the Paris Convention, the Lisbon Agreement, and the Madrid Agreement, mandate that each country must establish national regulations to govern Geographical

Indications (Jena and Grote 2010). This compliance requirement emphasizes the significance of providing adequate protection to Geographical Indication products to prevent unauthorized use and misappropriation in the realm of international trade.

India, being a member of the World Trade Organization (WTO) and ratifying the TRIPS Agreement, recognized the need to expand the protection of Geographical Indication products beyond just wine and spirits. They acknowledged that Article 22 of the TRIPS Agreement (Irawan 2017) was insufficient to fully address the legal protection required for other Geographical Indication products. Consequently, India developed a dedicated regulation to address this issue, known as the Geographical Indications of Goods (Registration and Protection) Act, 1999, along with the Geographical Indications of Goods (Registration and Protection) Rules, 2002.

In its regulation, India has adopted the *Sui Generis* system, which means the development of specific laws outside the conventional intellectual property regime. *Sui Generis*, derived from the Latin term for “special,” refers to a form of unique and distinct protection that falls outside the previously established protection framework (Rohaini 2016). By implementing this system, India aims to provide special and tailored protection for Geographical Indications, recognizing their cultural and regional significance. India introduced the Geographical Indications Act to fulfill its obligations under the TRIPs Agreement, which became effective on September 15, 2003. As part of the implementation, the central government established the Geographical Indication Registry in Chennai, overseen by the Controller General of Patents, Designs, and Trademarks of India (Ravindran and Mathew 2009). This registry serves as the designated platform for the registration of Geographical Indications, allowing for their formal recognition and protection (Ravindran & Mathew, 2009). India also employs the CTM (Certification Trademarks) system. Both *Sui Generis* and CTM share the feature that a registered Geographical Indication can be collectively used according to specific criteria set forth in the regulations (Chaudhary et al. 2017). This collective nature indicates that the holder of the Geographical Indication right is a group of people, representing a community or association associated with the production of the distinctive product (Anasis and Sari 2015).

Geographical Indications (GIs) regulations in India extend beyond wine and liquor, as the central government holds complete authority in determining eligible products for GI registration. The primary objective is to ensure optimum legal protection and certainty, in alignment with the TRIPs Agreement provisions for GIs in India. These regulations are established under the Geographical Indications of Goods (Registration and Protection) Act, 1999, and further detailed in the Geographical Indications of Goods (Registration and Protection) Rules, 2002 (Ravindran and Mathew 2009).

In the supplementary explanation section of the Geographical Indications of Goods (Registration and Protection) Act, 1999, it is stipulated that names which do not explicitly represent regions can still be classified as Geographical Indication products, given that the name fulfills certain requirements, specifically its association with a particular geographic area. This provision allows for the safeguarding of products beyond traditional geographical names, such as examples like "Basmati" (rice) and "Alphonso" (mango) (Das 2010). Under the Geographical Indications protection scheme in India, the registered products are granted protection for an initial period of 10 years, which can be further extended for an equivalent duration.

Protection of Geographical Indication products is explained in Chapter VIII of Articles 37 to The protection of Geographical Indication products is outlined in Chapter VIII, specifically in Articles 37 to 54, of the Geographical Indications of Goods (Registration and Protection) Act, 1999. Article 38, paragraph (1), defines the act of falsification of Geographical Indications, which occurs when a person utilizes a Geographical Indication product without permission from the rightful owner or manufactures products that closely resemble existing Geographical Indications, either wholly or partly. As per Article 39, those found guilty of counterfeiting may face imprisonment for a period of no less than six months, with the possibility of extending the sentence up to three years, in addition to a fine ranging from five hundred Rupees to two lakh Rupees. Furthermore, Article 40 states that engaging in the trade of counterfeit Geographical Indications shall also be subject to punishment. Offenders may be liable to imprisonment for not less than six months, with the potential to extend the sentence for up to three years, alongside a fine ranging from five hundred Rupees to two lakh Rupees.

The Comparison of Geographical Indications Product Protection in Indonesia with India

Comparison Aspect	Indonesia	India
Regulations	Main: Law Number 20 of 2016 concerning Trademarks and Geographical Indications (MIG Law) Complimentary: Regulation of the Minister of Law and Human Rights Number 10 of 2022, which amends Regulation Number 12 of 2019	Main: Geographical Indications of Goods (Registration and Protection) Act, 1999 Complimentary: Geographical Indications of Goods (Registration and Protection) Rules, 2002

	concerning Geographical Indications, and Government Regulation Number 90 of 2019	
Registration Authority	Directorate General of Intellectual Property (DJKI), which operates under Ministry of Law and Human Rights.	Geographical Indications Registry, which operates under the supervision of the Controller General of Patents, Designs, and Trademarks of India.
Registration Procedure	Mandatory, its process covered in Articles 56 to 60 of the MIG Law.	Mandatory, its process covered in Articles 9 to 12 of the Geographical Indications of Goods (Registration and Protection) Act, 1999.
Principle	Constitutive Principle	Sui Generis Principle
Validity Period	No specific period, as long as the quality and unique characteristics of the Geographical Indication products can be maintained.	10 years renewable in 10-year intervals.
Scope of Protection	Extends to geographical names used to indicate agricultural products, industrial products, and handicraft products (Article 53 paragraph (3) letter a of the MIG Law).	Allows registration of Geographical Indications for various products, including agricultural products, handicrafts, natural products, and manufactured goods (Article 2 letter e of Geographical Indications of Goods (Registration and Protection) Act, 1999).
Law Enforcement	Explicitly covered in Articles 66 to 69, of the MIG Law.	Explicitly covered in Articles 37 to 54, of the Geographical Indications of Goods (Registration and Protection) Act, 1999.
Types of Sanctions	Fines, removal or destruction of unauthorized Geographical	Fines and imprisonment, for parties found guilty of

	Indication labels, cessation of activities, and the requirement to provide compensation to the aggrieved party.	falsifying or registering forged Geographical Indication products.
Supervisory Authority	Done by central or regional governments and the community itself as stated in Article 70 paragraph (1), Article 71 paragraph (1), and Article 71 paragraph (2) of the MIG Law. Could also be carried out by a designated Team of Experts on Geographical Indications, as referred to in Article 59 paragraph (1) of the MIG Law.	Do not specify the authority responsible for providing guidance and supervision of Geographical Indication products protection.
Related Case	In this instance, the owner of the “Toarco Toraja” brand, Key Coffee Co, applied for the coffee brand in Japan using the name “Toraja”. This incident highlights the potential risks posed by competitors using similar trademarks. The urgency to establish regulations for trademark protection emerged in 1974, which led to their approval in 1976, specifically to address such concerns. As a measure to safeguard their rights to Toraja Coffee, Indonesia pursued registering the coffee as a Geographical Indication.	There are several Passing-Off cases of Darjeeling Tea initiated by other countries such as Kenya, Sri Lanka, and Nepal. To address this, the Indian Tea Council registered the “Darjeeling Tea” logo and the word “Darjeeling” as a brand using the CTM (Certification Trade Mark) system. Subsequently, Darjeeling Tea was registered as a Geographical Indication in 2004, becoming the first Geographical Indication to be registered in India.

Source: MIG Law and Geographical Indications of Good

a. Legal Framework

In Indonesia, the primary regulation governing the protection of Geographical Indications is Law Number 20 of 2016 concerning Trademarks and Geographical Indications (UU MIG). This law offers legal protection to Geographical Indication holders, aiming to prevent unauthorized use or exploitation of registered Geographical Indications. To complement the UU MIG, there are also derivative regulations such as Regulation of the Minister of Law and Human Rights Number 10 of 2022, which amends Regulation Number 12 of 2019 concerning Geographical Indications, and Government Regulation Number 90 of 2019, which outlines the procedures for application, examination, and appeals at the Mark Appeal Commission. Similarly, in India, the main regulations governing Geographical Indications are the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Geographical Indications of Goods (Registration and Protection) Rules, 2002. These regulations serve to protect Geographical Indications, providing legal certainty and safeguarding the rights of Geographical Indication owners.

b. The Scope of the Protection

In Indonesia, Geographical Indications are protected under Article 53 paragraph 3 letter a of the MIG Law. This protection extends to geographical names used to indicate agricultural products, industrial products, and handicraft products. For instance, the Geographical Indication “Gayo Coffee” safeguards coffee grown in the Gayo region of Aceh (Muttaqin 2022), while “Carica Dieng” denotes papaya produced in the Dieng plateau of Central Java (Ningsih et al. 2019). In India, the Geographical Indications of Goods (Registration and Protection) Act, 1999, as described in Article 2 letter e, allows registration of Geographical Indications for various products, including agricultural products, handicrafts, natural products, and manufactured goods. These Geographical Indications must originate or be produced in a specific territory or region. For example, “Aranmula Kannadi” is a Geographical Indication representing a handicraft produced in the Aranmula area of Kerala (Manoj and Sulekha 2023). India's approach to Geographical Indications is flexible, and it can provide protection to marks associated with Geographical Indications. This was evident in the case of Darjeeling Tea, which obtained trademark registration before specific laws for Geographical Indications existed. As stated in Article 26 paragraph (1), the validity of a trademark registration or the right to use that trademark will not be invalidated based on the grounds of its similarity to a Geographical Indication under the current applicable law regarding trademarks. This highlights India's recognition of the importance of protecting Geographical Indications and their associated marks.

c. Registration and Protection

The registration process for Geographical Indication products in Indonesia falls under the jurisdiction of the Directorate General of Intellectual Property (DJKI), which operates under the Ministry of Law and Human Rights (Alghifari 2021). The holder of a Geographical Indication enjoys the exclusive right to use the geographical name and can protect products that align with the Geographical Indication's characteristics (Nugraha and Haryanto 2021). The guidelines and procedures for registering Indonesian Geographical Indications are outlined in Articles 56 to 60 of the MIG Law. Registration is possible through community organizations representing specific geographical areas or local governments within the district/city boundaries, as mentioned in Article 53 paragraph (3) of the MIG Law. In India, applications for Geographical Indications are submitted to the Geographical Indications Registry, which operates under the supervision of the Controller General of Patents, Designs, and Trademarks of India. The criteria and procedures for Geographical Indications registration in India are governed by Articles 9 to 12 of the Geographical Indications of Goods (Registration and Protection) Act, 1999. Eligible applicants for Geographical Indications in India include associations, organizations, manufacturers, authorized authorities, or anyone representing the manufacturer or product under Article 11 paragraph (1) of the Geographical Indications of Goods (Registration and Protection) Act, 1999. Comparatively, India has a broader scope of applicants for Geographical Indications compared to Indonesia.

Geographical Indication (GI) products in Indonesia are granted protection without a specific time limit, as long as the product's quality, reputation, and characteristics are maintained. On the other hand, in India, GI products are protected for ten years initially, with the possibility of extension for another ten years. This approach aims to safeguard against any decline in product quality and reputation over time. However, the requirement for owners or users to reapply for protection after each ten-year period may lead to practical challenges due to the time and cost involved in the registration process.

d. Implementation and Law Enforcement

The implementation and enforcement of Geographical Indications protection law in Indonesia encounter several challenges, including a lack of public awareness about the significance of safeguarding Geographical Indications and the required resources for monitoring and enforcing the law. While the MIG Law explicitly outlines the guidance and supervision of Geographical Indications, particularly in Articles 70 and 71, it does not specify the roles and powers of the central and regional governments. This gap in clarity may impede the process of registering and resolving Geographical Indications disputes. Currently, Geographical Indication dispute resolution in Indonesia relies solely on the MIG Law and its related implementing regulations as the primary reference. A relevant

case, such as the Toraja Coffee dispute, exemplifies the challenges faced. In this instance, the owner of the “Toarco Toraja” brand, Key Coffee Co, applied for the coffee brand in Japan using the name “Toraja” (Fuad and Latjeme 2017). This incident highlights the potential risks posed by competitors using similar trademarks. The urgency to establish regulations for trademark protection emerged in 1974, which led to their approval in 1976, specifically to address such concerns. As a measure to safeguard their rights to Toraja Coffee, Indonesia pursued registering the coffee as a Geographical Indication (Sitepu 2018).

In contrast to Indonesia, India's regulations do not specify the authority responsible for providing guidance and supervision of Geographical Indication product protection. In India, the resolution of Geographical Indications disputes involves not only the Geographical Indications of Goods (Registration and Protection) Act, 1999 as the primary reference but also the application of consumer protection laws (Das 2010). To protect its Geographical Indications, India has implemented various enforcement measures, as exemplified by the protection of Darjeeling Tea. Originally, Darjeeling Tea faced challenges in terms of legal protection, leading to several Passing-Off cases initiated by other countries such as Kenya, Sri Lanka, and Nepal. To address this, the Indian Tea Council registered the “Darjeeling Tea” logo and the word “Darjeeling” as a brand using the CTM (Certification Trade Mark) system (Das 2010). Subsequently, Darjeeling Tea was registered as a Geographical Indication in 2004, becoming the first Geographical Indication to be registered in India (Alam, Chatterjee, and Paul 2022). This significant case played a pivotal role in the establishment of the Geographical Indications of Goods (Registration and Protection) Act, 1999 (Jena and Grote 2010).

e. Law Enforcement and Sanctions

In Indonesia, violations of Geographical Indication rights can lead to both criminal and civil sanctions, as stipulated in the MIG Law. These sanctions encompass fines, the removal or destruction of unauthorized Geographical Indication labels, cessation of activities, and the requirement to provide compensation to the aggrieved party. Article 101 and Article 102 of the MIG Law specify that individuals who use Geographical Indications without authorization from the right holder or engage in trading activities using the Geographical Indications without permission may be fined if a complaint is filed against them. The principle of complaint offenses in such cases ensures that the complaining party must be the one who has incurred a loss (Citrawan and Rasyidi 2019). Only the affected party is entitled to initiate a lawsuit concerning a Geographical Indication violation, as governed by the Criminal Code. Article 103 of the MIG Law explicitly defines complaint offenses related to Geographical Indications violations. The implementation of automatic complaint offenses reinforces the

position of the party that has suffered losses due to violations committed by other parties (Putra and Disemadi 2022). The protection of Geographical Indications in Indonesia is a comprehensive process starting from the administrative stage of registration and extending to the legal enforcement stage (Citrawan and Rasyidi 2019).

Under Article 69 of the MIG Law, if a party is found to have used a Geographical Indication without proper authorization or permit and is sued for such violations, the court may impose various sanctions to address the infringement. These sanctions include the destruction of labels associated with the unauthorized use of the Geographical Indication and demands for compensation to be paid to the rightful legal holders of the Geographical Indication (N. A. Sinaga & Ferdian, 2020). Furthermore, the court also has the authority to order the termination of production or reproduction of Geographical Indications that are being used without proper permission. This measure is aimed at minimizing the losses experienced by the legal rights holders of the Geographical Indication due to unauthorized use (Article 69 paragraph (2) of the MIG Law). The primary objective behind these sanctions and measures is to protect the value of intellectual property, which is the result of significant time, cost, and human effort invested in its creation. Recognizing the value and importance of intellectual property reinforces the need to ensure its proper protection against any infringements (Sinaga and Ferdian 2020).

In India, the Geographical Indications of Goods (Registration and Protection) Act, 1999, specifically Chapter 8, addresses violations of Geographical Indications rights. The Act prescribes sanctions, including fines and imprisonment, for parties found guilty of falsifying or registering forged Geographical Indications. Article 38 paragraph 1 of the Act defines the counterfeiting of Geographical Indication products, stating that it occurs when a person creates a Geographical Indication that is identical or substantially similar to another without the right holder's permission or engages in counterfeiting the original Geographical Indication products through additions or similar actions. The Act also outlines that a person is considered to have registered a false Geographical Indication if they use the product name of the concerned Geographical Indication on their own product or utilize a Geographical Indication name for packaging, filling, or wrapping goods without permission, except for the original goods of the valid user of Geographical Indications. The law explicitly places the burden of proof on the party being sued in cases of falsified or false Geographical Indications, which is different from the civil principles under Article 1865 of the Civil Code in Indonesia, where the burden of proof lies with the complainant.

f. International Protection

Indonesia and India have recognized the importance of international agreements in protecting Geographical Indications and have become members of relevant agreements that provide such protection. Indonesia is a member of the TRIPS Agreement, which is managed by the World Trade Organization (WTO). This membership allows products with Indonesian Geographical Indications to be protected in other TRIPS member countries. Similarly, India is a member of the WIPO (World Intellectual Property Organization) Geographical Indications Agreement, which grants protection to various products with Geographical Indication status at the international level. The regulations governing the protection of Geographical Indication products in both countries align with the TRIPs Agreement, as specified in Articles 22 to 24 of the agreement. This demonstrates their commitment to ensuring compliance with international standards for the protection of intellectual property rights. Apart from the TRIPs Agreement, there were previous international agreements that addressed the protection of intellectual property, including the Paris Convention on the Protection of Industrial Property (1883), the Lisbon Agreement (1958), and the Madrid Agreement regarding the Elimination of Indication of Counterfeit Goods or Origin of Goods. These agreements dealt with issues related to the Appellation of Origin and the Indication of Source, which share similarities with Geographical Indications. However, the concept of Geographical Indications, as developed in the TRIPs Agreement, expands beyond just place names and includes signs that refer to the location of origin of the product's producer (Sudjana 2018).

Indonesia and India share similarities in their legal frameworks for Geographical Indications protection, but differences can be observed in the implementation details. In both countries, Geographical Indications must undergo registration to be eligible for protection. In Indonesia, this principle is referred to as the constitutive principle, as stated in Article 53 paragraph (1) and the elucidation section of Article 64 of the MIG Law. Similarly, in India, Geographical Indications also require registration with the authorized Minister for protection. However, the approach to Geographical Indications protection differs between the two countries. India follows the *Sui Generis* principle, which aims to protect both foreign Geographical Indication products within their country and their own Geographical Indication products in other countries (Biénabe and Marie-Vivien 2017).

Indonesia is currently exploring different approaches for the protection of Geographical Indications, taking inspiration from India's existing policies. In India, protection is granted for a period of ten years, with the possibility of extensions. Conversely, Indonesia's approach offers protection without a specific time limit, contingent on maintaining the quality and unique characteristics of the products. Evaluating these different approaches can help Indonesia devise more

suitable long-term policies to safeguard and preserve the distinctiveness of its Geographical Indication products. Furthermore, Indonesia may consider implementing stronger sanctions against violations of Geographical Indications to act as a deterrent and curb illegal practices. Learning from India's example, imposing fines and imprisonment as sanctions could encourage compliance and bolster the protection of Geographical Indications in Indonesia of the country's specific context and needs. Conducting a comprehensive evaluation and engaging in dialogue with relevant stakeholders will be crucial steps in the development and enhancement of the Geographical Indications protection system in Indonesia.

D. CONCLUSION

Geographical Indications are a form of intellectual property protected by the state, and this protection is granted upon registration of the product. Both Indonesia and India have established legal arrangements for the protection of Geographical Indications, as a result of ratifying the TRIPS Agreement. In Indonesia, Geographical Indications are safeguarded under Law Number 20 of 2016 concerning Marks and Geographical Indications, while in India, they are protected under the Geographical Indications of Goods (Registration and Protection) Act, 1999. This protection extends to agricultural, industrial, and handicraft products that originate from specific geographic areas. The registration process for Geographical Indications products is handled by relevant institutions, such as the Directorate General of Intellectual Property (DJKI) in Indonesia and the Geographical Indications Registry in India. Regarding the duration of protection, Geographical Indications in Indonesia do not have a specific time limit, as long as the product's quality, reputation, and characteristics are maintained. In contrast, in India, the protection period is ten years, with the possibility of extension. The consequences for violating the rights of Geographical Indications differ between the two countries. In India, violations can lead to fines, imprisonment, destruction of labels, termination of activities, and demands for compensation, whereas in Indonesia, the sanctions might not be as severe. To enhance the protection of Geographical Indications in Indonesia, the country can learn from India's approach, especially regarding the duration of protection and more stringent sanctions. However, any changes should take into consideration Indonesia's unique context. It is essential to conduct in-depth evaluations and engage in dialogue with relevant stakeholders to improve the overall protection of Geographical Indications in Indonesia.

Indonesia has an opportunity to evaluate its approach to the protection of Geographical Indications and learn from India's policies. While India provides protection for ten years, extendable as needed, Indonesia's protection is indefinite, contingent on maintaining product quality and characteristics. By conducting this evaluation, Indonesia can develop more suitable long-term protection policies that

ensure the preservation of the unique features of Geographical Indication products. Considering the enforcement aspect, Indonesia might consider enhancing the sanctions against violations of Geographical Indications to act as a strong deterrent and discourage illegal practices. Taking inspiration from India's approach, which includes fines and imprisonment, could help promote compliance and reinforce the significance of Geographical Indications. However, it is crucial for Indonesia to adapt any changes to its own distinctive context. The country should carefully analyze how Indian policies could fit within its legal, cultural, and economic framework. Thus, conducting an in-depth evaluation and engaging in meaningful dialogues with relevant stakeholders will be vital in developing and improving the Geographical Indication protection system in Indonesia.

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COMPETING INTEREST

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