

# Legal Protection of Geographical Indications of Natural Products Native to the Bali Region Based on Law Number 20 Year 2016 about Trademark and Geographical Indications

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**Abstract.** Intellectual property provides benefits to the rights holders. First, the commercial use of intellectual property can be carried out directly by the owner of the property. Thus, the owner can directly obtain financial compensation due to transactions involving the use of such intellectual property. Second, the owner can sell or obtain financial compensation by allowing the use of the intellectual property rights to other parties. Third, the owner of the right to the property can prevent other parties from obtaining and using it. The number of geographical indications in Indonesia is still large, but they are not monitored. Geographical indications are only protected and protected after being registered as our intellectual property rights adhere to the first to file principle. Products from natural products as well as products made by humans, especially natural products and handicrafts from the Balinese people, have been registered and received approval from geographical indications, which from an economic point of view can also increase the competitiveness and economic value of the product itself compared to similar products produced by the community. have not yet obtained a geographical indication certification.

**Keywords:** Legal Protection; Geographical Indications; Bali Natural Products

## 1 Introduction

Indonesia is one of the largest archipelagic countries in the world. Indonesia has varied geographical conditions, diverse customs, and cultural resources, including traditional knowledge and rich traditional cultural expressions. Geographical conditions and the diversity of customs and cultures play an important role in the process of creating products with unique characters. Until now, Indonesia is still struggling to form an ideal system for optimizing the economic values of local products (Fadilah H. Arief, 2016, Indonesian Crafts: The Overlooked Potential For Geographical Indication, International Journal of Culture and History, Volume 2 No. 3).

Protection of Indonesia's geographical indications is given a deeper portion in Law Number 20 of 2016. In a number of products that cannot be separated from the area of origin,

geographical factors play a major role in creating the uniqueness of these products. When combined with creativity in production, distribution and marketing methods, the uniqueness that comes from geographical factors plays a major role in creating the uniqueness of the product. When combined with creativity in production, distribution, and marketing methods, the uniqueness that comes from these geographical factors can significantly increase the added value and selling value of the product.

On the other hand, the quality of a product that is selling well by elevating the uniqueness of the region can add value to the area. The mutualistic symbolic process between a product and the area of origin is what forms city branding or regional imaging (F) (Ahmad Ramli and Miranda Risang, 2019: 68). Geographical indication products have great potential to act as a catalyst for urban imaging. In addition, geographic indications can trigger. Regional economic growth. As a concept, geographic indication product protection has been practiced on a global scale to prevent misleading information about the origin of a product. Geographical indications are also used to protect the rights of product producers who live in the geographical indication product area through the use of geographical indications or names that indicate the origin of the product (Nicolas Guyot, 2016: 2). These things make geographical indications very valuable for a city or region.

Intellectual property is a material right, which comes from the work of the brain, not muscles and is the result of human thinking and reasoning. The work of the brain by thinking and reasoning coupled with taste and intention is still abstract so it must be poured or realized into a work called intellectual work which is "intangible things". Intellectual property among local entrepreneurs on the work/products that utilize local wisdom is one of the intellectual property issues.

In essence, geographical indications are the same as other intellectual property rights which are part of an exclusive right of intellectual property rights holders. In geographical indications, prospective buyers can find out where the product comes from, because each product produced will show a certain place by showing special characteristics and characteristics that can only be found in a certain area.

Geographical indications are a way that can be used strategically to advance regional or national industries. Because in geographical indications there are special features of an area. Consumers can see the privileges of an area if there is a group of an area that has exclusive rights to use certain geographical indications. Geographical indications can also increase the marketing of a dynamic product. This is because geographical indications are owned simultaneously or collectively in an area. Communities in the area can take advantage of it by making geographical indications as a very good tool for their area, and also for community-based economic development and local wisdom as well as local products native to Bali, especially natural products native to Bali.

## **2 Research Methods**

Research on the Legal Protection of Geographical Indications of Natural Products Original from the Bali Region (Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications) is normative juridical research. Normative legal research is often referred to as qualitative research. Normative legal research should not be identified with qualitative research. Because the science of law as a science *sui generis*. Normative legal researchers do not only limit themselves to one law, nor does normative research recognize population and sampling.

### 3 Results and Discussion

Prior to the enactment of Law Number 20 of 2016 concerning Marks and Geographical Indications, the regulation regarding Geographical Indications was regulated in Law Number 15 of 2001 concerning Marks and Government Regulation Number 51 of 2007 concerning Geographical Indications. In Article 1 point 1 Government Regulation Number 51 of 2007 it is explained:

"Geographical indication is a sign indicating the area of origin of an item, which due to geographical environmental factors including natural factors, human factors, or a combination of these two factors, gives certain characteristics and qualities to the goods produced."

Based on this explanation, it can be said that brands and Geographical Indications are different things. In Article 1 point 1 of the Trademark Law Number 15 of 2001 it is explained that a mark is a sign in the form of a picture, name, word, letters, numbers, color arrangement or a combination of these elements which has distinguishing power and is used in trading activities. goods or services.

It can be said that from the understanding of these two things, two things can be drawn that the brand is more a symbol of a combination of elements of images, names, words, letters, numbers, color arrangement without regard to the quality of natural resources for the products being marketed. While Geographical Indications emphasize more on natural products produced due to geographical environmental factors which include natural factors, human factors or a combination of these two factors.

There are peculiarities that are highlighted from these two meanings. Brands that emphasize symbols and Geographical Indications that emphasize more on the natural products produced by an area. Geographical indications used in relation to goods are (Sudaryat, 2010: 178)

1. Place and area of origin
2. Product quality and characteristics; and
3. The relationship between the quality or characteristics of the product with the geographical conditions and characteristics of the blood community/place of origin of the goods.

Thus, it can be said that Geographical Indications are more focused on products produced by geographical environmental factors which are a combination of natural factors and human factors. In the era of global trade, in line with international conventions that have been ratified by Indonesia, the role of Trademarks and Geographical Indications is very important, especially in maintaining healthy, fair business competition, protecting consumers, as well as protecting Micro, Small and Medium Enterprises and domestic industries.

Legal protection for Geographical Indications products can be obtained When they have been registered, this has referred to in Article 53 of Law Number 20 of 2016 concerning Marks and Geographical Indications, In Geographical Indications, has a period of protection and elimination of Geographical Indications as stated in Article 61 of the Law -Law Number 20 of 2016 concerning Marks and Geographical Indications. In particular, regulations regarding the registration of Geographical Indications are regulated in Chapter III of the Terms and Procedures for Application for Government Regulation Number 51 of 2007 concerning Geographical Indications.

Based on this, the protection of Geographical Indications in Indonesia is a constitutive system that requires registration to obtain protection from the State such as the Bali cashew fort to get a geographical indication certificate with registration number ID G 000000028 with the name of the Community Owner for the Geographical Indication Protection (MPIG) Cashew

Kubu Bali, Amed salt gets a certificate of geographical indication with registration number ID G 000000038 with the name of MPIG Owner (Society for the Protection of Geographical Indications) Amed Bali Salt, Arabica Kintamani Coffee gets a certificate of geographical indication with registration number ID IG 000000001 with the name of Owner of MPIG (Society for the Protection of Geographical Indications) Coffee Kintamani Bali. This shows that Geographical Indications cannot be owned by one person, but collectively owned by the community producing Geographical Indications.

Preventive legal protection is legal protection for the people, where the people are given the opportunity to submit objections or opinions before a government decision becomes a definitive form. This is intended to prevent disputes from occurring. To obtain Geographical Indication protection. Efforts taken by the Balinese people to obtain legal protection based on Geographical Indications by means of groups or commodities applying for registration of Geographical Indications products at the Directorate General of Intellectual Property in accordance with Law Number 20 of 2016 concerning Marks and Geographical Indications and Government Regulation Number 51 Year 2007 concerning Geographical Indications, which are known to have characteristics, characteristics, reputation, and quality in a product or goods produced in a certain area, became the basis for the enactment of the legal protection of Geographical Indications.

In accordance with the provisions of Article 61 of Law Number 20 of 2016 and Government Regulation Number 51 of 2007 concerning Geographical Indications, which read:

- a. Geographical Indications are protected as long as reputation, quality, and characteristics are the basis for which Geographical Indications are protected for goods.
- b. Geographical Indications can be deleted if:
  - 1) Non-fulfillment of the provisions as referred to in number (1); and/or.
  - 2) Violating the provisions as referred to in Article 56 number (1) letter a.

The Society for the Protection of Geographical Indications (MPIG) still has many shortcomings which are the reason why it has not developed until now, even though there are many benefits of registering Geographical Indications as the basis for the implementation of legal protection for Geographical Indications, most Balinese farmers do not even know about this Geographical Indication protection because they are still lack of socialization carried out by certain institutions related to Geographical Indications.

Therefore, the Balinese people must maintain and preserve their wealth, because Indonesia is an archipelagic country that is rich in traditional knowledge, traditions and culture as well as a tropical climate that produces various kinds of products that have no small economic potential, which should be protected and utilized optimally and of course, there are still many that have the potential to become Geographical Indications of Indonesia considering the natural wealth owned by Indonesia.

There are still many shortcomings in the Society for the Protection of Geographical Indications (MPIG) which is the reason why it has not developed until now, even though there are many benefits of registering Geographical Indications as the basis for the implementation of legal protection for Geographical Indications, most of the Cashew farmers of Kubu Typical Bali are not aware of the protection of Geographical Indications. This is because there is still a lack of socialization carried out by certain institutions related to Geographical Indications.

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Logically, products containing GI are owned by people who have a direct interest in the relevant GI. However, within the framework of legal protection, the protection of GI requires proactive efforts from interested parties (the owner community) in the form of registration in the context of their ownership. With regard to the Toraja Coffee case, claims can be made by interested parties representing the Toraja (customary) community or local government (see Article 5 paragraph [3] PP 51/2007). Kopi Kintamani Bali, for example, is a pilot project for GI registration in Indonesia. The importance that is taken into consideration for GI protection is the consistency of the quality of the regional characteristics of the product concerned, whether it comes from its natural conditions, human resources or a combination of both.

Efforts to register Toraja coffee as a GI in Indonesia are needed as an initial step to recognize rights. Indonesia's participation in international conventions such as the 1958 Lisbon Treaty needs to be explored to strengthen the ownership of GI in international forums. In addition, this Agreement also contains rules that prioritize the strength of GI registration so that it can place Mark ownership in second priority, even though it has been registered first on the basis of good faith (vide Article 5 paragraph [6] of the Lisbon Agreement 1958). However, legal remedies also need to remember the territorial principle of IPR. Local laws and regulations need to be a reference for considerations and studies related to the form of protection for GI and Trademarks and regarding Unfair Competition in Japan. The potential economic value of Toraja coffee has been realized and glimpsed by Japanese entrepreneurs. This case surfaced after the GI norm was introduced by the TRIPs Agreement. Therefore, it is necessary to improve the documentation of national assets.

A protected sign as a geographical indication is an identity that shows an item comes from a certain place or area and that place or area shows the quality and characteristics of a product. For example, the "Toraja" coffee brand which shows the quality and characteristics of the Toraja land area as a producer of coffee that has a harmonious sour and bitter taste.

However, the characteristics of a Geographical Indication product are not only influenced by natural factors. Human factors can also determine the uniqueness of a product. For example, Javanese batik. Like the holder of the right to the mark, the holder of the right to the geographical indication may prohibit other parties from using the same geographical indication. Violation of this rule causes Geographical Indication Rights holders to claim compensation from other parties.

Unlike the Mark Rights which can be owned individually, ownership of Geographical Indications is not solely individualistic. Geographical Indications are more communalistic, owned jointly by certain regional communities. However, the registration process is basically attributable to its geographical origin. Like exclusive rights to other intellectual property, geographical indications also have a limited period of protection, although the period of time is not clearly stated in the Law on Marks and Geographical Indications. Article 61 paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical Indications, stipulates that Geographical Indications are protected as long as reputation, quality, and characteristics are the basis for providing protection for Geographical Indications on an item. Furthermore, in Article 61 paragraph (2) of Law Number 20 of 2016 concerning Marks and Geographical Indications.

## **4 Conclusion**

Protection of GI in Indonesia is a constitutive system that requires registration to obtain protection from the State, such as the Bali cashew nut to get a geographical indication certificate

with registration number ID G 000000028 with the name of the Geographical Indication Protection Community Owner (MPIG) for the Bali Cashew Kubu, Amed salt to get an indication certificate. Geographical Indications with registration number ID G 000000038 with the name of the Owner of MPIG (Society for the Protection of Geographical Indications) Amed Bali Salt, Kintamani Arabica Coffee obtained a certificate of geographical indication with registration number ID 000000001 with the name of the Owner of MPIG (Society for the Protection of Geographical Indications) Bali Kintamani Coffee. This shows that Geographical Indications cannot be owned by one person, but collectively owned by the community producing Geographical Indications.

To obtain GI protection, efforts taken by the Balinese people to obtain legal protection based on Geographical Indications by means of groups or commodities applying for registration of Geographical Indications products at the Directorate General of Intellectual Property in accordance with Law Number 20 of 2016 concerning Marks and Geographical Indications which are known to have characteristics, reputation, and quality in a product or goods produced in a certain area, became the basis for the enactment of the legal protection of Geographical Indications .

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