

# COMPARATIVE STUDY OF STATE JURISDICTION: THE PROTECTION TOWARDS GEOGRAPHICAL INDICATION AT INDONESIA, THE EU AND US

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Rianda Dirkareshza<sup>1\*</sup>, Anni Alvionita Simanjuntak<sup>2</sup>

<sup>1\*,2</sup> Faculty of Law. Universitas Pembangunan Nasional “Veteran” Jakarta, Indonesia,  
riandadirkareshza@upnvj.ac.id (corresponding)

**Abstract :** Geographical Indication (GI) is one of the Intellectual Property Rights features. In this instance, one component that needs to be highlighted is its registration. Unfortunately, there are several infringements of Indonesian GI exist, such as Indonesian product registration being claimed by foreigners or outsiders. This article examines the legal protection of Geographical Indications based on Indonesian Legal Instruments and the law of outsiders parties and the international’s rule in Geographical Indication dispute settlement among countries. This article uses normative juridical research methods with a descriptive-analytical approach using national and international laws and relevant regulations to its issues. The findings revealed that protecting Geographical Indications in the International domain often causes polemics due to the need for firmness regarding the International Agreements’ substance. The arrangement of Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) merely requires legal provisions for each country in protecting Geographical Indications. Consequently, each country has fundamental different legal for protecting GI, and the legal uncertainty in International Agreement raises new issues.

Keywords: Geographical Indication; Registration; Intellectual Property.

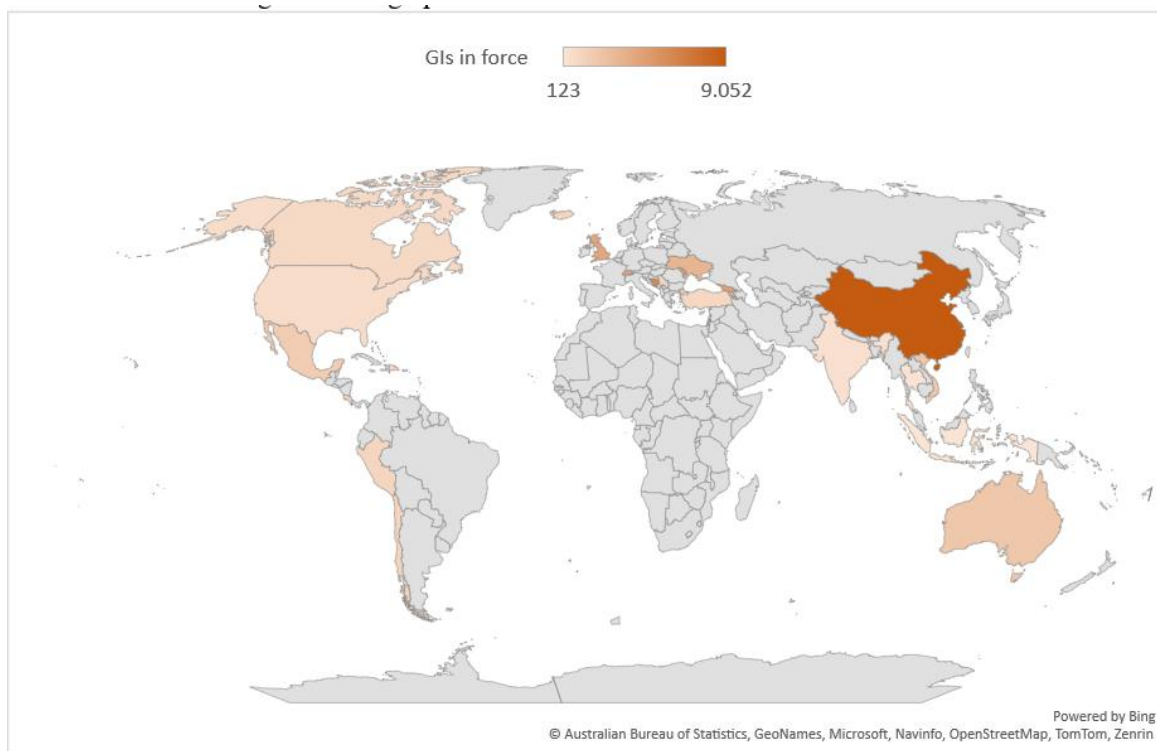
## I. INTRODUCTION

Geographical Indication is one of the Intellectual Property Rights (IPR) types. In Article 1, section 6, based on Law Number 20 of 2016 on Trademarks and GI or Geographical Indications (hereinafter referred Undang-Undang Merek dan Indikasi Geografis, MIG Law), the definition of Geographical Indication itself is indicating a region of origin of a goods and/or products due to territory, environmental circumstance including natural, human or a combination of both that gives a particular reputation, quality, and characteristics to the goods and/or products produced. Geographical Indication is an identifier of a product related to the product's origin by mentioning the geographical area of the place, region, or origin country. The indications identifies the form of a label or etiquette related to the name of the origin of the region, location, or area, pictures, words, or character, and a combination of these elements (Direktorat Jenderal Kekayaan Intelektual, 2022).

Indonesia belongs to a country with abundant natural resources. These natural resources produce various benefits for people, especially in supporting the economy. It observes the community's creativity in processing biological and vegetable natural products into products with

economic value. These products are initiated or started from regions in Indonesia which will later become a characteristic. Therefore, there is a need for legal protection related to the results of human creativity on a product to maintain the originality or attributes of the product. Protection, in this case, concerns Geographical Indications as part of Intellectual Property Rights.

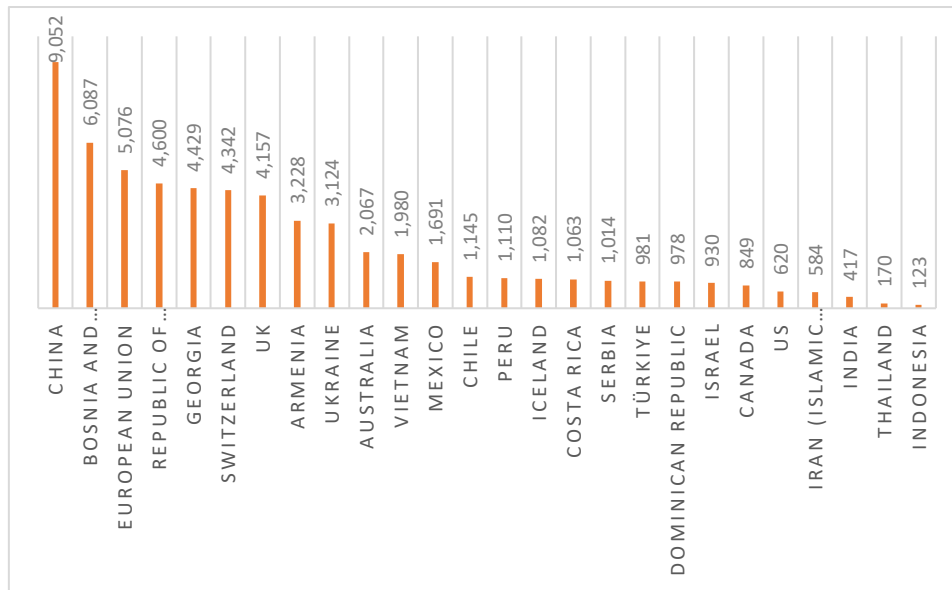
Legal protection related to Geographical Indications itself has several benefits. Primarily, a product identifies distinctly if there is legal protection related to its Geographical Indication. Next, ignoring unfair competition practices and consumers get protection from misuse of Geographical Indication reputation. Then, it provides certainty of the original quality product; therefore, the consumers spare from doubts and give trust. Furthermore, it promotes local producers and develops the right owners to provide, produce, and improve the good name and prestige of the product. In addition, it increases production due to the product's character, distinctiveness, and uniqueness. After all, it may raise the reputation of the region from which the product originates, thus affecting the preservation of natural beauty, traditionalism, and natural resources. It will also increase agro-tourism in an area that has Geographical Indications (Direktorat Jenderal Kekayaan Intelektual, 2022)



**Figure 1.** Geographical Indications in force for selected national

Source: (World Intellectual Property Organization, 2022) (Direktorat Jenderal Kekayaan Intelektual, 2023) processed by the author.

**Table 1.** Geographical Indications in Force



Source: (World Intellectual Property Organization, 2022) (Direktorat Jenderal Kekayaan Intelektual, 2023) processed by the author.

As part of Intellectual property rights, geographical indications will only get protection if registered (First to File) (Abdurahman, 2020; Anggraini, 2013; Dirkareshza, 2022). Geographical Indications in Indonesia register through the Directorate General of Intellectual Property Rights (DJKI). Several Geographical Indications have been registered with the DJKI, including Kopi Kintamani Pulau Bali, Kopi Arabika Flores Bajawa, Lada Muntok, Tembakau Hitam Sumedang, and considerably more (Yessiningrum et al., 2015). Within the domestic scope, the registration of geographical indications still needs to be higher than the potential. At the same time, several infringements of Indonesian Geographical Indications exist in the foreign features.

Figure 1 and Table 1 illustrate a deficient number of Geographical Indications from the Republic of Indonesia. It results from the lengthy bureaucracy of registering Geographical Indications as stipulated in the MIG Law. In addition, the protection of Geographical Indications protects the product and the consumer (PRASETYO ADHI et al., 2019). However, in its implementation, there are still some areas for improvement, such as the lack of explicit mention of the role of each party, both central and district in the development and supervision of Geographical Indications. This lack of clarity impacts the many obstacles to the regions' pre- and post-registration of Geographical Indications. (Apriansyah, 2018). The problem of system used in Indonesia still has a gap of problems, and the law also has some areas for improvement that cause the trademark disputes settlement to be less than optimal (Perdana & , 2017). Some of these weaknesses lead to several infringements and disputes, both nationally and internationally, that are not easy to resolve.

Such infringements include registering Kopi Toraja as the "Toarco Toraja" trademark by Key Coffee Inc Corporation Japan and the registration of Kopi Gayo trademark by a Dutch company (Hamidi & Faniyah, 2019). These registrations mean inhabitants who create these products cannot export their creations. It creates a loss and injustice for the local communities that produce the Geographical Indications. These communities should introduce their products to countries worldwide, not foreigners of other countries.

The case illustrates the legal issues of regulating Geographical Indications nationally and internationally. International disagreements on geographical indications reflect an apparent conflict of economic interests based on profound cultural differences. Thus, for instance, civilizations with traditional agrarian roots are pitted against new product-producing countries with wine goods produced by Australia or the United States, which for historical reasons, do not have such a history (Ilbert & Petit, 2009). Legal protection related to Geographical Indications should be present in the national feature and internationally. Due to these problems, the author will conduct research entitled *State Jurisdiction Related to the Protection of Geographical Indications in the International Sphere*. Then, the author formulates the issues to figure out, namely related to the legal protection of Geographical Indications based on National legal instruments and laws of other countries, as well as the role of International Law in Geographical Indication disputes settlement among countries.

## **II. RESEARCH METHOD**

The data collection of the above issues performs based on settings from various sources and in multiple ways (Sugiyono, 2010, p. 143). Descriptive research aims to describe an object in a particular area, and Analytical is an approach that relates legislation and legal theory to an object being discussed (Sukmadinata, 2005, p. 72). The object of discussion is complemented by regulations that apply in other countries and the presentation of a problem that is later expected to provide comprehensive knowledge. Legal materials are the basis for making this writing, namely primary and secondary legal materials.

Primary legal sources are the main legal materials that are authoritative and have authority. (Peter Mahmud Marzuki, 2022, p. 66), Primary legal materials include:

1. Law Number 15 of 2001 on Trademarks (Ratification of the provisions of the TRIPs Agreement);
2. The Law Number 20 of 2016 on Trademarks & GI (Geographical Indications).
3. Government Regulation No 51 of 2007 on Geographical Indications;

Secondary sources are law work that support primary legal sources such as books, articles, journals, and others that are relevant to the issues discussed. (Al-Fatih, 2023).

## **III. RESULTS AND DISCUSSION**

### **1. Legal Protection of Geographical Indications Based on Indonesian and Other Countries' Legal Instruments.**

#### **1.1 Legal Protection of Geographical Indications Based on National Legal Instruments.**

Based on the history of Indonesia's geographical indications regulation, its legal basis is set out in Article 56, paragraph 1, Law Number 15 of 2001 on Trademarks. Furthermore, geographical indications principles construct in implementing the Government Regulation of 2007 on Geographical Indications. It continues until the enactment of Law Number. 20 of 2016 on Trademarks and GI (Geographical Indications).

The explanation of Law No. 20/2016 on Trademarks and Geographical Indications states that the Indonesian government emphasizes the importance of protecting geographical

indications as a premium commodity in domestic and international markets (Putranti & Indriyani, 2021, p. 397). Furthermore, the protection of geographical indication products through legal aspects is essential if accompanied by the awareness that a geographical indication product sold in the community has economic benefits that can increase economic growth in the region where the Geographical Indication is found and produced (Tresna Adnyana, 2019, p. 42).

Article 53, paragraph 1 of the MIG Law explains the legal protection of geographical indications: "Geographical Indications are protected after The Minister registers geographical Indications." Furthermore, paragraph 2 describes that to obtain protection for geographical indications, the applicant must apply to the Minister. Based on the provisions of the Article, Geographical Indications only get protection if Geographical Indications are registered through an application to the Minister. In addition, to obtain protection for geographical indications, an identifier is not allowed to include the conventional name of a product, which is an indication of an item that is known to be publicly owned and commonly used in everyday language, so it is not protected, such as batik, ambon banana, grapefruit, and so on (Ramli, 2017, p. 203).

The protection of Geographical Indications contained in Government Regulation No. 51/2007 on Geographical Indications is directed through provisions that include procedures for registration of Geographical Indications formulated through several stages, namely first in the form of application submission, second in the form of administrative examination, third concerning assessment of the substance, fourth in the form of announcement, and lastly regarding the opposition to registration, the sixth stage is registration, the seventh stage is related to supervising the use of geographical indications, an appeal as the last stage.

In the registration of Geographical Indications itself, Article 53 paragraph 3 of the MIG Law states that: "The Applicant as referred to paragraph 21 is; an institution representing the community in a particular geographical area that cultivates a good and/or product in the form of: 1. natural resources; 2. handicraft goods; or 3. industrial products. b. provincial or district/city local governments.". The provisions in the Article distinguish geographical indications from other types of IPR, such as trademarks, patents, copyrights, industrial designs, and trade secrets subject to personal rights. Geographical indication rights cannot control individually. After all, it is a collective right because its ownership is held by the community producing the Geographical Indication product. The application for Geographical Indications in the MIG Law can also be applied for by the Applicant who is domiciled abroad; it submits through his proxy in Indonesia, with a note that the application may register if the laws in the origin country shall govern the Geographical Indication.

## **1.2 Legal Protection of Geographical Indication under the Laws of Other Countries**

### **1.2.1 Protection of Geographical Indication in the European Union**

The European Union attempted to apply to protect agricultural products and foodstuffs originating from a specific place of origin, using the term geographical indication or geographical indication and different origin sign (The Designations of Origin) in the Council Regulation (EEC) Number 2018/92 of 14 July 1992. 1992 (Erlina et al., 2020, p. 85).. In addition, other specific designations refer to the notion of the geographical origin of goods, such as Indirect Geographical Indications and Traditional



Denominations, which shall define as traditional units of measurement (Erlina et al., 2020).

The European Union is a bloc of 27 members of the European Economic Community formed in 1957. In 1993, by the Maastricht Treaty, the European Union was established and revised by the Lisbon Treaty in 2009. The EU functions as a supranational institution system through the European Council, the European Commission, the Council of the European Union, the European Parliament, the Court of Justice of the European Union, the European Central Bank, and the European Court of Auditors. In addition to the common market, this supranational system establishes harmonization of monetary, migration, agricultural, and development policies, among others, so that there are standard regulations capable of guiding the policies and legislation of each member state (Fracarolli, 2021).

In relation to the different use of the term Designations of Origin, the term Designations of Origin is usually applied to wines and spirits, as well as agricultural products as object of protection under Geographical Indications. However, in other provision in the European Union, there is no such distinction, so the term Designations of Origin refers to a name of a specific region, or country, which in this case refers to the qualities and characteristics intrinsically acquired through a specific geographical environment.

These distinctive origin sign or Designations of Origin serve to emphasize an agricultural or food product is sourced from a region, the product concerned has qualities or characteristics essentially or exclusively arise due to the influence of a special geographical environment, with natural and human resource (Erlina et al., 2020).

The European Union GI protection is based on the principle that if the distinctive product of the owned by registered GI is protected in the country that signed the bilateral agreement, then the owned by origin group will be regulated in the jurisdiction rules in owned by registered GI (Ayu, 2006, p. 102) In this case, the expansion of geographical indication protection can be done by applying for the protection of Geographical Indication products that have received protection in the origin to outsiders registered GI through bilateral agreements.

### **1.2.2 Geographical Indications in United States**

Geographical Indications protection in the United States is implemented through the application of a non-registered system, which is commonly known as a Certified *Mark*, which in this case is based on the legal system adopted by the country, namely the Anglo-Saxon legal system or A Common Law Certification Mark Based on Common Law System (United States Paten and Trademark Office, 2021). Simmon LC explains that the *unregistered* Geographical Indication is a geographical original in the form of an unregistered geographical sign (Erlina et al., 2020). Geographical Indication products in the United States can be equated with trademarks because, in its regulation, Geographical Indications have the same characteristics as trademarks, such as determining the origin of a good/service, providing product assurance and providing economic benefits as trademarks.

Despite the fact that brand protection benefits any product, especially in the U.S., the protection offered by Geographical Indications is particularly important for one of the most internationally demanded products, wine. Consumers choose wine based on the reputation not simply its manufacture or ingredients as well as wine reputation geographical region in America. (Schamel & Anderson, 2003). Reputable regional areas often generate above-average economic benefits, as in Walla Walla, Washington. Once a dying farming town, the region is now thriving thanks to its wine industry, supported by the ownership of Geographical Indications from the region. (Development Project Walla Walla, 2010). It shows that collective brands, or known as Geographical Indications in Indonesia, greatly influence a product due to the reputation of a particular region with various consideration.

Furthermore, geographical indications in the United States acquire protection as certification marks or collective marks to recognize goods or services with specific characteristics. The geographical environment influences these characteristics underlies geographical indication protection. Based on type, three categories of certification marks consider in further examining a product, namely concerning:

1. Region or place of origin.
2. Materials, manufacturing methods, quality, and characteristics.
3. Work performed by trade union members or an organization. (Fuadi et al., 2022).

The three categories of certification marks utilize to protect Geographical Indications by applying for protection as certification marks to ensure certification of more than one characteristic of goods or services (Fuadi et al., 2022). The principle of certification marks requires that the holder of the certification mark is not allowed to use the mark he owns, hereinafter referred to as the anti-use-by-owner rule.

## **2. The Role of International Law in the Geographical Indications Interstate Settlement Dispute**

International legal regulations related to Geographical Indications set out in Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). The domestic implementation of the TRIPs agreement often differs based on a country's legal culture. For example, the European Union vigorously protects Geographical Indications to preserve its traditional brands and its "rich history of local and specialized agricultural production and many well-known products closely linked to their place of origin" (Zanzig, 2013, p. 727). TRIPs is an agreement that binds all members of the World Trade Organisation, which minimizes challenges or obstacles that arise in international trade. In addition, TRIPs also protect Intellectual Property Rights and ensure that the enforcement process does not hinder international trade activities.

Designations of origin are technically a subset of Geographical Indications and are generally understood more narrowly internationally (March, 2007). Geographical Indications are a form of intellectual property rights in international trade (Aridhayandi, 2018; Saputra et al., 2019). The regulation of legal protection of Geographical Indications shall be in TRIPs. The concept and basic rules of Geographical Indications set out in Articles 22, 23, and 24 of TRIPs. Article 22 of TRIPs explains the meaning and purpose of geographical indications. The purpose of geographical indication itself is to identify as best as possible related to the origin of the product where the geographical origin of a product causes its characteristics, reputation, and quality. In geographical

indications, interested parties must be provided with legal means by member countries that agree to this TRIPs agreement (Blakeney, 2012; Echols, 2003). It is to avoid misleading the public regarding the geographical origin of a product. Then, regarding the state's authority, if permitted by law or requested by interested parties, member countries can refuse and cancel trademarks where a product or goods registered does not match its geographical origin so that public misdirection occurs. In addition, articles 23 and 24 of TRIPs explain Geographical Indications related to wine and spirits. Meanwhile, the Paris Convention Article 1 Paragraph (2) and Article 10 explain the protection of geographical indications from unfair competition. The regulation explains what is prohibited to prevent unfair competition. These are generally actions that create confusion from competitors regarding a product, false accusations to bring down a product, and charges that mislead the public. Member states/unions are also obligated to provide guarantees to citizens to prevent the actions mentioned above.

Indonesia is among various countries in the World Trade Organisation (WTO). The TRIPs Agreement is one of the agreements concluded by WTO member nations. The function of the TRIPs agreement is, as a rule, related to the limitations of each WTO member in forming laws and regulations for its country regarding IPR protection. Therefore, Indonesia adjusts this TRIPs agreement by ratifying it into Law No. 15 of 2001, which discusses the protection of Trademarks and Geographical Indications. In addition, it is also regulated in Indonesia, especially listed in Law No. 20 of 2016 concerning Trademarks and Geographical Indications. The legal protection of Geographical Indications can be obtained with the condition that it must be registered first, as stipulated in Article 53 of Law No. 20 of 2016.

An inventor must apply to the Directorate General of Intellectual Property (DJKI), which, if registered in Indonesia, does not receive protection in other countries, so in this case, it does not rule out the possibility of disputes or problems regarding trademarks and geographical indications such as the case of gayo coffee which is known to be registered by Dutch entrepreneurs, so Gayo coffee exporters cannot export the commodity using the name Gayo (Ariandika Herviandi, Ety Susilowati, 2017). In contrast, Gayo coffee comes from Indonesia's nature, namely the Province of Nanggroe Aceh Darussalam, especially the Aceh area, which takes its name from the Gayo mountains. Gayo coffee has distinctive features and characteristics that are different from coffee in general and is potentially registered as a geographical indication product. However, a Dutch company (Holland Coffee) has legally registered the Gayo Coffee brand in its country, which means that the position of Gayo Coffee brand rights by the Indonesian company (CV. Arvis Sanada) was taken over by the Dutch coffee company. Holland Coffee prohibited Arvis Ananda from using "Gayo" in exporting because it was considered plagiarising the company's brand. The name "Gayo" as geographical indication that has been registered by the Gayo community and protected by the Gayo Coffee Consumer Protection Agency (LPK2G).

In addition, infringements toward Indonesia's Geographical Indications occurred in Toraja coffee products. Key Coffee Inc Corporation Japan registered Toraja Coffee as the brand "Toarco Toraja," complete with a picture of the Toraja house (registration number is 75884722). In addition, IFES Inc. Corporation California has also registered Toraja coffee as the brand "Sulotco Kalosi Toraja Coffee" (registration number 74547036). Then, it also registered the mark "Sulotco Kalosi Toraja Coffee" along with a picture of a Toraja house (registration number is 74547000).



The legal consequence of this infringement is the obstruction export activities of Indonesian coffee products using the Toraja identity, which makes Indonesia suffers losses. It creates injustice for Indonesia itself as the primary producer of Toraja coffee. Indonesia is not free to export Toraja coffee abroad, while Japan is free to trade the product anywhere without authorization. In addition, Indonesia is prohibited from cooperating with foreign parties other than Japan (Hamidi & Faniyah, 2019).

The TRIPs agreement has obliged its member countries to provide legal means or legal procedures in the protection of Geographical Indications so that later there is an opportunity to explain in detail the protection of Geographical Indications in their relevant national laws to the circumstances and situation in the country. The registration of Geographical Indications still needs to be applied by several countries such as Singapore, Latvia, Vietnam, and India because TRIPs itself use a Negative Protection System or can interpret as passive protection. In addition, it refers to The WIPO Model law, which does not require registering Geographical Indication goods. It has become a polemic for some countries that apply a positive protection registration system or interpret it as a requirement that Geographical Indications must be registered first.

Indonesia's Geographical Indications apply the territorial principle whereby rights to Geographical Indications acquired within a single jurisdiction entitled to Geographical Indications protected where region registered, but not the outsider of country. Therefore, Geographical Indications related to Gayo Coffee are protected in Indonesia and may be infringed in other countries where the coffee is exported.

However, TRIPs has legal rules to solve this issue. Based on Article 22 Paragraph (3) of TRIPs, mentioned above, member states authorize to provide legal for interest parties to prohibit local product mark by other parties with a misleading impression of the original product. In both cases of infringement by Japan and the Netherlands, both parties did not disclose the Toraja coffee origin product, originally from Indonesia. If a product seems misleading because it needs to be given correct information on geographical origin, the registered trademark may become void. TRIPs allow the registration of Geographical Indications when the product originates from the original geographical area or region so that there is no misleading.

## **IV. CONCLUSION**

### **1. Conclusion**

Indonesia GI's protection regulation in Law Number 20 of 2016 concerning Trademarks and Geographical Indications emphasized the community to preceded by registration aimed at protecting Geographical Indications with economic benefits in Indonesia. Countries in the European Union apply a system of protection by their country first through the term Designation of Origin. Meanwhile, the United States applies slightly differently; it is not integrated yet protected as a certification mark similar to a trademark.

The protection of geographical indications in the international territory often raises polemics due to the need for assertiveness of the substance-relevant international agreements TRIPS and WIPO agreements. The TRIPS Agreement and The WIPO Models Law do not require registration of Geographical Indications, except for protecting Geographical Indications of wine and alcoholic beverages in the European Union. The arrangement in the TRIPS Agreement only requires the provision of legal means for each country to protect Geographical Indications, where there must

be differences in each country that are not relevant to other countries, and there are no definite rules in international agreements. Such arrangements then lead to problems such as the control of Geographical Indications owned by other countries by one country, such as the Gayo Coffee and Toraja Coffee cases.

## 2. Recommendation

There is a need for further regulation and discussion related to efforts to protect Geographical Indications by countries in the world, especially on protection efforts through the principle of registration to protect Geographical Indications in each country that have economic benefits for the people in the owned region. Application for protection through bilateral agreements as applied by European Union countries can be used as a reference to countries worldwide to create legal certainty and protection of Geographical Indications that are integrated internationally.

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