

UN SYNCHRONIZED REGISTRATION REGULATION OF GEOGRAPHIC INDICATIONS IN INDONESIA ON PRODUCTS TRADITIONAL ALCOHOLIC DRINK

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ABSTRACT

This study aims to describe the reasons alcoholic beverage products belonging to foreign countries can be registered in the Geographical Indications protection regime in Indonesia. Then it outlines the legal implications of protecting foreign alcoholic beverage products in the Geographical Indication protection regime. This research is a normative legal research which is strengthened by interviews. The results of the study show that the protection of foreign alcoholic beverages in the national GI regime is caused by 2 factors including: a. Disharmony between Law 20/2016 and Permenkumham Number 12 Year 2019, and b. The GI regime gives each member country the freedom to apply the GI provisions in accordance with their national interests. Furthermore, the implications for the protection of foreign alcoholic beverage products in the GI protection regime in Indonesia, besides showing the inconsistency of GI protection arrangements for alcoholic beverage products, also injure the sense of justice for traditional alcoholic beverage activists who want their traditional knowledge products to be protected through the GI regime.

Keywords: Geographical Indications, Alcoholic Drinks, Traditional Knowledge

INTRODUCTION

The writing of this paper is a form of the author's endeavor to participate in contributing to the repertoire of thoughts in an effort to achieve this goal, not without reason, the author conveys that considering in various literatures it is said that proper legal protection of Intellectual Property (hereinafter referred to as IP) can stimulate intellectual property rights. economic development of the people of a region or country (Alfons, 2017). IP itself has various definitions, including "The concept of IP is based on the thought of intellectual works produced by humans that require the sacrifice of energy, time, and money. The existence of these sacrifices makes the work produced has economic value because of the benefits it enjoys. Based on this concept, it encourages the need for an award for the work in the form of legal protection for intellectual property rights. Substantively, the definition of IP can be described as wealth that arises or is born due to human intellectual abilities (Kesowo, 1995). IP is categorized as property rights which eventually produce intellectual works in the form of knowledge, art, literature, technology.

Initially the IP system was a private right, which meant an exclusive right granted by the state to an individual who was nothing but an appreciation for his work or creativity and so that others were stimulated to further develop it. However, in its development there are also IPs whose ownership is communal (Sui Generis), including: a. Geographical Indications and b. Expression of Traditional Knowledge. For the record, there are several traditional cultural expressions that also have the character of Geographical Indications (hereinafter referred to as GI).

Talking about GI until now, the discussion about GI protection is still an interesting issue in the global Intellectual Property (IP) discourse (Sasongko, 2012). This is not without reason considering the scope and benefits of GI protection are very broad, even to the protection of traditional knowledge and culture which is certainly very beneficial for countries with cultural diversity such as Indonesia. The scope and benefits of GI protection include: (Antons, 2019)

1. Protection against Geographical Indications can help promote rural and regional development.
2. Support emerging creative industries.
3. Help protect traditional cultural expressions
4. Ensure that the exploitation of traditional knowledge will give recognition to the sacred beliefs and practices of traditional communities
5. Protecting cultural heritage
6. Promote environmentally friendly sustainable development
7. And indirectly contribute to the improvement of tourism.

Seeing the large scope and benefits of GI protection, the model and concept of protection should also be able to accommodate the big interests as mentioned above. Given the large potentials of GI owned by the Indonesian people as well as to show the existence and sovereignty of the state in protecting the diversity of national products, the traditional knowledge possessed has implications for improving the community's economy. Some examples of Geographical Indication products include: Sweet Potato Cilembu, Salak Pondoh, Arabica Coffee Kintamani Bali, and so on. In addition, there are also many GI products that are produced based on local culture and traditional knowledge, either in the form of goods or local arts. Such as, Balinese Gringsing Weaving, Jepara Carved Furniture, Mandar Silk Weaving and so on. In the national legal system the protection of GI is regulated in Law Number 20 of 2016 concerning Marks and Geographical Indications (hereinafter referred to as Law 16/2016), in Article 1 Paragraph 6 of Law 20/2016 GI is defined as follows:

Geographical Indication is a sign indicating the area of origin of an item and/or product which due to geographical environmental factors including natural factors, human factors or a combination of these two factors gives a certain reputation, quality, and characteristics to the goods and/or products produced.

The right to GI itself is said to be an exclusive right granted by the state to the holder of the registered Geographical Indications, as long as the reputation, quality, and characteristics that are the basis for providing protection for the Geographical Indications still exist. Due to the nature of GI as a communal intellectual property, applications for registration of rights to GI can only be made by community groups or institutions that represent or have an interest in the product concerned. Geographical indications are protected after they are registered with the Minister of Law and Human Rights and can also be registered under international agreements. In contrast to brand protection, geographical indications do not know the time limit of protection as long as the characteristics that become superior can still be maintained.

Several lists of Geographical Indications in Indonesia that have been recorded in the data of the Directorate General of Intellectual Property (hereinafter abbreviated as DJKI), the Ministry of Law and Human Rights are as follows: (Saputra, 2020).

| No | GI registered in Indonesia | Origin |
|----|---------------------------------------|--------------------|
| 1 | Kintamani Bali Arabica Coffee | Bali |
| 2 | Champagne | Perancis |
| 3 | Jepara Carved Furniture | Central Java |
| 4 | Muntok White Pepper | Bangka Belitung |
| 5 | Gayo Arabica Coffee | Aceh |
| 6 | Pisco | Peru |
| 7 | Sumedang Black Tobacco | West Java |
| 8 | Mole tobacco sumedang | West Java |
| 9 | Parmigiano Reggiano | Italia |
| 10 | Sumbawa Horse Milk | West Nusa Tenggara |
| 11 | Lombok Kangkung | West Nusa Tenggara |
| 12 | Sumbawa Forest Honey | West Nusa Tenggara |
| 13 | Rice And Krayan | North Kalimantan |
| 14 | Flores Bajawa Arabica Coffee | East Nusa Tenggara |
| 15 | Purwaceng Dieng | Central Java |
| 16 | Carica Dieng | Central Java |
| 17 | Alor Islands Vanilla | East Nusa Tenggara |
| 18 | Enrekang Kalosi Arabica Coffee | South Sulawesi |
| 19 | Sweet Potato Cilembu Sumedang | West Java |
| 20 | Salak Pondoh Sleman | Yogyakarta |
| 21 | Aceh Patchouli Oil | Aceh |
| 22 | Java Preanger Arabica Coffee | West Java |
| 23 | Ijen-Raung Java Arabica Coffee | East Java |
| 24 | Sidoarjo Smoked Milkfish | East Java |
| 25 | Toraja Arabica Coffee | South Sulawesi |
| 26 | Lampung Robusta Coffee | Lampung |
| 27 | Srintil Temanggung Tobacco | Central Java |
| 28 | Cashew Kubu Bali | Bali |
| 29 | Coconut Sugar Kulonprogo Jogja | Yogyakarta |
| 30 | Sindoro Java Arabica Coffee – Sumbing | Central Java |
| 31 | Simalungun Sumatran Arabica Coffee | North Sumatra |
| 32 | Jambi Single Liberica Coffee | Jambi |
| 33 | Minahasa Cloves | North Sulawesi |
| 34 | Pandanwangi Rice Cianjur | West Java |
| 35 | Semendo Robusta Coffee | South Sumatra |

| | | |
|----|-------------------------------------|--------------------|
| 36 | Siau Nutmeg | North Sulawesi |
| 37 | Java Preanger Tea | West Java |
| 38 | Amed Bali Salt | Bali |
| 39 | Lamphun Brocade Thai Silk | Thailand |
| 40 | Aceh Gayo Tangerines | Aceh |
| 41 | Liberica Coffee Stimulates Meranti | Riau |
| 42 | Lampung black pepper | Lampung |
| 43 | Koerintji Cinnamon | Jambi |
| 44 | Tequila | Mexico |
| 45 | Grand Padano | Italia |
| 46 | Balinese Grinsing Woven Fabric | Bali |
| 47 | Mandar Silk Weaving | West Sulawesi |
| 48 | Mandailing Sumatran Arabica Coffee | North Sumatra |
| 49 | Pala Tomandin Fakfak | West Papua |
| 50 | Orange SoE Mollo | East Nusa Tenggara |
| 51 | Clove Moloku Kie Raha | North Maluku |
| 52 | Muna Cashew | Southeast Sulawesi |
| 53 | Temanggung Robusta Coffee | Central Java |
| 54 | Sawo Sukatali Sumedang | West Java |
| 55 | Four Lawang Robusta Coffee | South Sumatra |
| 56 | Sikka Ikat Weaving | East Nusa Tenggara |
| 57 | Duku Komerling | South Sumatra |
| 58 | Koerintji Sumatran Arabica Coffee | Jambi |
| 59 | Rubusta Pinogu Coffee | Gorontalo |
| 60 | Bali Pupuan Robusta Coffee | Bali |
| 61 | Tanimbar tie weaving | Maluku |
| 62 | Tambora Robusta Coffee | West Nusa Tenggara |
| 63 | Sumatran Lintong Arabica Coffee | North Sumatra |
| 64 | Rice King Uncak Kapuas Hulu | Central Kalimantan |
| 65 | Flores Manggarai Arabica Coffee | East Nusa Tenggara |
| 66 | Sipirok Arabica Coffee | North Sumatra |
| 67 | Pulo Samosir Arabica Coffee | North Sumatra |
| 68 | Scotch Whisky | Skotlandia |
| 69 | Modena/Di Modena | Italia |
| 70 | Bareh Solok | West Sumatra |
| 71 | North Halmahera Dukono Nutmeg | North Maluku |
| 72 | Kepahiang robusta coffee | Bengkulu |
| 73 | Watermelon Fish | Central Java |
| 74 | Celuk Silver Crafts in Gianyar Bali | Bali |
| 75 | Marmorata Poso . eel | Central Sulawesi |
| 76 | Alor Ikat Weaving | East Nusa Tenggara |
| 77 | Weaving Songket Alor | East Nusa Tenggara |

| | | |
|----|--|--------------------|
| 78 | Sidikalang Robusta Coffee | North Sumatra |
| 79 | Rolled Sugar | East Nusa Tenggara |
| 80 | Bogor Java Robusta Coffee | West Java |
| 81 | Doyo Weaving Benuaq Tanjung Isuy Jempang Kutai Barat | East Kalimantan |
| 82 | Silungkang Songket | West Sumatra |
| 83 | Baliem Wamena Arabica Coffee | Papua |
| 84 | Pasuruan Robusta Coffee | East Java |
| 85 | Sago Linga | Riau islands |
| 86 | Tanah Karo Arabica Coffee | North Sumatra |
| 87 | Robsuta Rejang Lebong Bengkulu Coffee | Bengkulu |
| 88 | Malonan white pepper from Kutai Kartanegara, East Kalimantan | East Kalimantan |
| 89 | COGNAC | Perancis |
| 90 | East luwu pepper | South Sulawesi |
| 91 | Nitik Yogyakarta's hand-drawn batik | Yogyakarta |

Source: Directorate General of Intellectual Property of Indonesia, 2020

For the record, not all products that have met the requirements as a GI in Indonesia can be registered as a GI and obtain the rights as the author previously described. Law 20/2016 through Article 56 Paragraph (1) provides restrictions regarding products that cannot be registered as a GI with parameters as follows, including:

1. contrary to state ideology, laws and regulations, morality, religion, decency, and public order;
2. mislead or deceive the public regarding reputation, quality, characteristics, origin, source, process of making goods, and/or their use; and
3. is a name that has been used as a plant variety and is used for a similar plant variety, unless there is an addition of equivalent words that indicate a similar geographical indication factor.

In connection with the writing of this paper, the author will focus on Article 56 Paragraph (1) letter a of Law 20/2016, where the parameters of an unacceptable GI registration application are "contrary to state ideology, laws and regulations, morality, religion, decency and public order". According to Agung Indiryanto and Irnie Mela Yusnita, what is meant by Article 56 Paragraph (1) letter a of Law 20/2016 is if a sign is in the form of words, symbols, paintings, or anything that can offend the feelings and peace of certain religious people so that can lead to chaos or unrest in the community. The formulation of the provisions of the definition is carried out in order to prevent the occurrence of turmoil among religious people (Indiryanto & Yusnita, 2017).

The definition of the word religion is indeed difficult when given an understanding according to universal truth, because it relates to the individual and the supernatural. However, it is not impossible that "religion" can be defined according to various perspectives (Kusuma, 2015). Morality and religion have a close relationship, namely morality through conscience guides humans to the right path when the individual lives life in society. While religion is more than morals, because it is not only accountable in the world but when carrying out activities in society, all good

and bad deeds will be recorded and accounted for later in the afterlife. A person who adheres to a religious teaching is definitely a moral person. This is based on a reality that in any religious teachings there is nothing that teaches about how to do bad or evil to others. It is undeniable that religion has a close relationship with morality (Indiryanto & Yusnita, 2017).

By DJKI Article 56 Paragraph (1) letter a of Law 20/2016, in its application, one of them is that GI products of various types and based on intoxicating alcohol cannot be registered as GI. (Saputra, 2020) This has implications for a variety of Indonesian traditional drinks made from alcohol that cannot be protected through the GI regime (Serfiyani et al., 2020). Studying traditional alcoholic beverages is a sensitive issue and tends to be controversial considering that alcoholic beverages, regardless of traditional or non-traditional, are included in the category of haram products where Indonesia is a country with a majority Muslim population. In fact, a person's assessment of traditional alcoholic beverages actually depends on the chosen point of view. If the legal study is carried out from the point of view of consumer protection law, for example, the circulation of traditional alcohol is allowed to meet the needs of non-Muslim consumers, except for traditional alcohol products that do not yet have legality. Likewise, when a legal study is carried out from the point of view of Islamic jurisprudence, it is clear that traditional alcohol is considered a haram product for Muslims. The study will be different when viewed from the point of view of legal culture and intellectual property (Lestari, 2016). However, as a record, the IP protection regime in Indonesia has not separated the categorization of IP protection and religious morality in its protection arrangements.

The results of the author's inventory of 91 (ninety one) GI products registered with the DJKI are several types of foreign owned alcoholic beverages that have been registered through the GI regime which are registered through the international GI registration mechanism, as long as the search for authors of foreign owned GI registrations falls into the category Alcoholic drinks include: a. Tequila (Mexico), b. Cognac (France), c. Scotch Whiskey (Scotland). Then the question that arises is how the 3 (three) alcoholic beverage products can be registered and get protection under the GI regime in Indonesia, while Article 56 Paragraph (1) letter a of Law 20/2016 is interpreted that one of the products that cannot be protected through The GI regime in Indonesia is alcoholic beverages (both traditional and non-traditional). Therefore, the problem in this study is "Why can foreign alcoholic beverage products are registered in the Geographical Indication protection regime in Indonesia?"

RESEARCH METHODS

This research is a normative legal research, where the concept used is "the law of positive norms in the statutory system" (Setiono, 2005). This research confirmed that "the appropriate approach used in this legal research is the statute approach, comparative law approach and conceptual approach" (Setiono, 2005). The data collection technique used in this research is a document study which is strengthened by interviews.

DISCUSSION

It is undeniable that Intellectual Property as a right generated by human intellectual ability is very important to obtain adequate legal protection in accordance with the TRIPs Agreement. This

needs attention, especially since Indonesia has become a free and open market for products or works both domestically and abroad. Therefore, it is appropriate for these products to require more effective legal protection against all acts and violations that are not in accordance with the provisions as stipulated in the TRIPs/WTO Agreement and international conventions that have been agreed upon. Robert M. Sheerwood, in the journal law and technology, said that economic development is the overall goal of building an effective IP protection system (Sheerwood, 1997). The same thing was also expressed by Tatty Aryani Ramli, et al., who said that property rights attached to the term IP cannot be separated from the economic value of a property as part of material rights. The economic right is in the form of a monetary benefit obtained due to the use of IP itself, or because of the use by other parties based on a license. The fact that there is economic value shows that IP is one of the objects of trade (Ramly et al., 2010).

As the author explained at the beginning of writing, KI in its development is classified into 2 (two) types, namely: a, individual KI, and b. Communal IP, one type of communal IP is known as Geographical Indication. The problem of protecting goods products through the Geographical Indication registration system is not only related to the concept of Intellectual Property protection, especially Mark protection which refers to The Related Aspects of Intellectual Property Rights (TRIPs Agreement), but also has to do with the concept of germplasm protection (bio diversity) as a genetic resources and protection of the farmer's rights and traditional knowledge as regulated in the Rio Conventions, Cartagena Conventions and the Union for the protection of New Varieties of Plants (UPOV) Conventions for Plant Varieties. From the substantive aspect, the material closest to geographical indications in terms of Intellectual Property is the concept of plant variety protection and the concept of traditional knowledge protection, many of the listed GIs are products of local plant species or products of traditional knowledge (Saputra et al., 2019).

In addition, to borrow Christop Anton's view that 3 (three) of the 7 (seven) benefits from the protection of Geographical Indications are: a. help protect traditional cultural expressions, b. Ensure that the exploitation of traditional knowledge will give recognition to the sacred beliefs and practices of traditional communities, c. Protect cultural heritage (Antons, 2019). So it can be said that the provisions regarding the protection of Geographical Indications are actually very close to the protection of traditional knowledge.

Traditional knowledge itself is an understanding or skill that is developed and preserved by members of an indigenous group, both actual and potential social benefits from the use of natural resources (such as plants, animals, or their components) or cultural practices (such as rituals, narratives), poetry, drawing, design, clothing, fabric, music, or dance). The definition is a picture that the author took from William Fisher, namely: (Fisher, 2018).

“traditional knowledge is defined as understanding or skill developed and preserved by the members of an indigenous group concerning either actual or potential socially beneficial uses of natural resources (such as plants, animals, or components thereof) or cultural practices (such as rituals, narratives, poems, images, designs, clothing, fabrics, music, or dances). More expansive definitions of traditional knowledge can be readily imagined, but they would encompass territory outside the zone of plausible legal intervention”.

Then the claim and use of traditional knowledge without rights creates controversy or problems about the legal status of traditional knowledge. Such incidents usually arise when companies or individuals in developed countries utilize such knowledge, without permission, in a manner that either results in profits that are not shared with relevant members of the original group

or offends group members (Fisher, 2018). One type of traditional knowledge in society is traditional alcoholic beverages (Tudor, 2012). Traditional alcoholic beverages have been part of the lives of some Indonesians in various parts of the archipelago since time immemorial. Traditional Indonesian alcoholic drinks such as Balinese wine, ballo, moke, and others historically are not just drinks containing a certain alcohol content but have a role and value in the life of indigenous peoples since time immemorial, starting from religious rituals, traditional rituals, and symbols in daily life activities. This drink is used properly with restrictions by the indigenous peoples concerned. (Serfiyani et al., 2020) Examples of distilled beverage products are palm wine, arak, anding, sopi, and moke. Generally, Indonesian alcoholic beverages are produced from various fermented fruits or plants that live in Indonesia.

The second characteristic is in terms of the existence of a knowledge inheritance that has been passed down from generation to generation in certain regional groups or communities. This is certainly a clear distinction between these traditional alcoholic drinks and domestically adulterated alcoholic beverages. For example, ballo from South Sulawesi Province is made from the sap of the palm tree by a fermentation process and must be served in a bamboo cup to maintain its sweet taste and relatively low alcohol level. Likewise with moke from East Nusa Tenggara (NTT). The method of making moke is applied standardly according to the heritage of traditional knowledge that has been handed down from generation to generation only among people who were born and live permanently in Flores. Swansrai from Papua has also been served for generations by indigenous Papuans, although the alcohol level is high (Taquyuddin, 2019).

The third characteristic is in terms of the presence of certain cultural values and benefits which are also passed down from generation to generation. For example, as mentioned above regarding the use of swansrai as a symbol of welcoming guests. For example, moke as a traditional alcoholic drink from Flores, NTT. Moke has been a social symbol for hundreds of years in Flores. Moke raw materials are obtained directly from the bunches and left for days through the fermentation process. For the people of NTT, Moke is a symbol of family and respect. However, they never force the guests to drink it because they will ask the guest first whether they are willing or not to consume the moke. The presence of a moke is a sign that the host really appreciates the guest. Likewise with ballo, swansrai, Balinese wine and many more.

However, traditional alcoholic beverages as a derivative of traditional knowledge belonging to the Indonesian people cannot be protected through the GI regime, due to restrictions on products that can be registered to be protected under the GI regime by Article 56 Paragraph (1) of Law 20/2016, including:

1. contrary to state ideology, laws and regulations, morality, religion, decency, and public order;
2. mislead or deceive the public regarding reputation, quality, characteristics, origin, source, process of making goods, and/or their use; and
3. is a name that has been used as a plant variety and is used for a similar plant variety, unless there is an addition of equivalent words that indicate a similar geographical indication factor.

However, this limitation can be said to be inconsistent, because based on the results of the author's inventory of 91 (ninety one) GI products registered with the DJKI, there are several types of foreign-owned alcoholic beverages that have been registered through the GI regime which are registered through the international GI registration mechanism, as long as the authors search registration of foreign owned GIs that are included in the category of alcoholic beverages include: a. Tequila (Mexico), b. Cognac (France), c. Scotch Whiskey (Scotland). So the question is, why did this happen? Here the author will explain why foreign alcoholic beverage products can be protected through the GI regime in Indonesia:

Un Synchronized Between Law 20/2016 and Permenkumham Number 12 Year 2019.

The disharmony of laws and regulations has the meaning of legal uncertainty in its implementation. This is certainly contrary to the principles of the rule of law both materially and formally. Materially related to the disorder in a society due to laws and regulations that do not guarantee legal uncertainty, this has been regulated in the 1945 Constitution article 28 D paragraph (1) which reads: "everyone has the right to recognition, guarantee of protection, and fair legal certainty and equal treatment before the law".

In other words, disharmony is said to be a condition of uncertainty caused by ambiguity in interpretation, namely the uncertainty of using the rule of law in solving problems due to the existence of different rules. Ambiguity is also caused by legal disharmony in several laws and regulations (Alwi, 2002). According to Oka Mahendra, as quoted by Ali Sadiqin, it is said that there are six factors that cause disharmony, namely: (1) the formation of laws and regulations is carried out by different institutions at different times, (2) the change of authorized officials due to the end of the term of office, (3) the sectoral approach is stronger than the systems approach, (4) weak coordination between agencies or legal disciplines, (5) limited public access to participate in the process of forming legislation, and (6) the absence of a method that definite, standard, and binding standards for all authorized institutions (Sodiqin, 2021).

The logical consequence of disharmony of a statutory regulation has a negative impact on law enforcement, namely the emergence of different interpretations by law enforcers, ineffective law enforcement, the emergence of legal uncertainty, the occurrence of legal dysfunction, as well as disorder and a sense of unprotected society (Sodiqin, 2021). Legal dysfunction results in the inability of the law to function in providing behavioral guidelines to the community, being a social controller, resolving disputes, and as a means of carrying out social change. Disharmony in laws and regulations can be overcome in several ways, such as revoking/amending the disharmony rules, submitting a judicial review, the process of forming laws must comply with the principles, and harmonizing the drafting of laws and regulations (Prasetya & Hafidz, 2017). However, an effective way to overcome this problem is to make efforts to harmonize existing and interrelated laws and regulations or referred to as synchronization.

In this context, there is disharmony between Law 20/2016 and Permenkumham 12/2019. Indeed, Law 20/2016 provides an obligation to regulate the implementation of registration of geographical indications through a Ministerial Regulation (in this case the Minister of Law and Human Rights). However, regarding the conditions accommodated in Article 56 Paragraph (1) of Law 20/2016, it is not regulated in the Permenkumham 12/2019. In the context of Article 56 Paragraph (1) of the 2016 Law, it is only regulated in the context of GI registration through an international agreement mechanism, not in the mechanism for applying for GI protection from abroad.

Applications for GI protection from abroad in plain language will be immediately or automatically granted protection if "the Geographical Indication has obtained recognition from the government of its country and/or is registered in accordance with the provisions in force in its country of origin". Therefore, it can be said that the parameters for GI registration applications from abroad use the GI protection parameters from the country of origin, and if you want to be registered to obtain GI protection in Indonesia, it will be automatically accepted without any verification under the provisions of Article 56 Paragraph 1 of Law 20/2016.

Therefore, in this case the author feels the need to synchronize the implementing regulations for GI registration, namely Permenkumham 12/2019 with Law 20/2016 for certainty in providing legal protection for GIs in Indonesia, especially so far DJKI has provided an interpretation in Article 56 Paragraph (1) Law 20/2016, one of which is alcoholic beverages. This is also useful in an effort to provide a sense of justice between traditional alcoholic drink activists in Indonesia where traditional alcoholic beverage products cannot be protected through the GI regime due to restrictions by Article 56 Paragraph (1) of Law 20/2016 while beverage products foreign alcoholic beverages can be protected through the GI regime in Indonesia.

The GI Regime Provides Freedom for each Member Country to Apply the Provisions of the GI in Accordance with its National Interest.

As it is known that the existence of GI in the TRIPs Agreement is the result of a long negotiation process. The inclusion of GI provisions in the TRIPs Agreement has created a fierce debate among developed countries (Sasongko, 2012). By Almeida it says: ...the issue of geographical indications was not a "North-South" quarrel but a "North-North" dispute. (Almeida & Riberio, 2005) In fact, until now there is still debate about the regulation of the multilateral system of notification and registration of GIs (multilateral system of notification and registration) and also about the extension of objects that are given protection (Addor, 2003). The European Community (EC) proposed that GI be included in the agenda for negotiating the TRIPs Agreement. (UNCTAD, 2005) In this regard, the European Community has experience and has a long tradition of producing and marketing quality goods using geographic names. For example, cheese and wine from several European countries, including Roquefort Cheese from France, Feta Cheese from Greece, Champagne Wine from France, and Port Wine from Portugal.

Viewed from the aspect of international trade, the use of geographic names as an indication or indication of the origin of an item has a comparative advantage that is able to increase the competitiveness of the commodity in question (Sasongko, 2012). This is felt to be very helpful in increasing the marketing of goods, so that traders encourage their government to provide legal protection for such products, by making multilateral international agreements. In this regard, international agreements have been made, namely the Paris Convention for the Protection of Industrial Property in 1883, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods in 1891, the Lisbon Agreement for the Protection of Appellation of Origin and the their International Registration in 1958, and finally the TRIPs Agreement in 1994. The international agreement essentially regulates the use of geographic names as names or signs to indicate the origin of an item. Thus, the use of geographic names, including legal arrangements, was carried out long before the TRIPs Agreement was made.

The GI provisions in the TRIPs Agreement are binding on member countries of the WTO (the World Trade Organization). However, in Article 1 Paragraph (1) of the TRIPs Agreement it is stipulated: Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice. This means that every WTO member country, including Indonesia, is given the freedom to determine the appropriate method to apply the provisions of the TRIPs Agreement, including the provisions on GI, according to its legal system and practice. In other words, each member country can apply the GI provisions in accordance with its national interest.

Related to national interest, for example South Korea and France. Soju, sul, munbaeju, gyeongju and gwasilju are traditional Korean alcoholic drinks that have been proclaimed as intangible cultural heritage. The "Cultural Heritage Administration" institution in South Korea (Cultural Heritage Administration) as a state institution in charge of maintaining and promoting South Korean cultural heritage even places it in an important position or important intangible cultural heritage in South Korea (Tudor, 2012).

The South Korean government to start developing traditional alcoholic beverages began in the 1970s, the regulation at that time already considered traditional Korean alcoholic beverages to be under the realm of origin and geographical indications, because they were considered part of local identity (Choi, et al., 2013). Legal protection is aimed at protecting local farmers and local producers, one of which is by requiring the market to distribute soju produced by local farmers and producers with an alcohol content of less than 30% for safe consumption (Ho et al., 1996). This alcohol level was later relaxed since the issuance of the Liquor Tax Act of South Korea, although the alcohol content of the circulating products remained below 35%, for example kwahaju and samhaeju at 3.1-13.9 % or sokokju, both haju and hosanchun at 10.9-23%.20 A special forum called the Korean Alcohol and Liquor Industry Association (KALIA) also plays a role in monitoring the quality and authenticity of traditional alcohol in circulation. Then continued with munbaeju which was declared to be included in the list of important intangible cultural heritages since 1986. Sul in ancient times was used in religious rituals as a drink offering to the gods to answer prayers and give good fortune, sul was also used during harvest celebrations in the life of an agrarian society in South Korea. Meanwhile, soju has been part of the local wisdom of South Korean society since the Joseon Dynasty. Soju developed in several versions namely takju (southern region) and yakju (central region) as traditional medicine (Ho et al., 1996).

France is also a country that protects their traditional alcoholic beverages as an indication of the origin and intangible cultural heritage that has been recorded on the UNESCO Representative List of the Intangible Cultural Heritage of Humanity. Wine and its vineecosystem are regulated as part of a protected designation of origin (Noronha Vaz & Nijkamp, 2009). Geographical indications in France are regulated in the Paris Convention for the Protection of Industrial Property of 1883. In subsequent developments, wine has been regulated as a cultural heritage product since the issuance of Act no. 2014-1170 of 2014 concerning Farming, Forest and Alimentation Framework (de l'agriculture, de l'alimentation, de la peche maritime et de la foret) which complements the rules in chapter V, Part VI of Book VI of the Rural and Maritime Fishing Code by Section L. 665-6 which states that wine, vine-ecosystem and viticultural products including ciders (apple extract) and perries (pear extract), as well as beverages and beers derived from local traditions are part of the cultural heritage and gastronomy protected by French law.

Meanwhile, since 2015, champagne from France has been recognized as an intangible cultural heritage by France and has also been recognized globally by UNESCO as a heritage since the 17th century and has been industrialized since the 19th century (Thuriot, 2019). Champagne from France is one of the products of the country's flagship for export. Before being officially protected as an intangible cultural heritage, champagne was protected using the concept of geographical indication. The manufacture of champagne is required to follow a method called the Champenoise Method and in accordance with the standards of the Committee Interprofessionnel du Vin de Champagne (CIVC) so that the product quality and legality of the original French champagne label can be accounted for by consumers. Therefore, the provisions of Article 1 Paragraph (1) of the TRIPs Agreement ultimately provide freedom for WTO member countries to form legal rules related to GIs that are in accordance with national interests, this ultimately leads to the absence of legal unity for global GI protection related to alcoholic beverages as the object of IG. In the context of the National Legal System, of course, restrictions on traditional alcoholic beverages that are protected under the GI regime are certainly very common, but they are different from countries outside Indonesia (especially Europe) which have cultural differences with Indonesia.

CONCLUSION

Based on the author's search, it is known that the protection of foreign alcoholic beverages in the national GI regime is caused by 2 (two) factors including: a. Disharmony between Law 20/2016 and Permenkumham Number 12 Year 2019, and b. The GI regime provides freedom for each member country to apply the provisions of the GI in accordance with its national interest. Furthermore, the implications for the protection of foreign alcoholic beverage products in the GI protection regime in Indonesia, besides showing the inconsistency of GI protection arrangements for alcoholic beverage products, also injure the sense of justice for traditional alcoholic beverage activists who want their traditional knowledge products to be protected through the GI regime.

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