


## The Necessity of Legal Protection for Geographical Indications within a Sui Generis Framework

Rohmat<sup>1\*</sup>, David Chuah Cee Wei<sup>2</sup>

<sup>1</sup> Master of Law Student, Faculty of Law, Universitas Brawijaya, Malang, Indonesia.

<sup>2</sup> Faculty of Law, Universiti Kebangsaan Malaysia, Selangor, Malaysia

 : rohmat@student.ub.ac.id

Corresponding Author\*



### Abstract

**Introduction:** Legal and political activities are inherently interconnected in the pursuit of creating fair and just products for society. This relationship exists because the process of lawmaking, as reflected in statutory regulations, is inseparable from political activity. From an intellectual property perspective, geographical elements can serve both as trademarks and as indicators of a product's regional origin. This dual function creates regulatory overlap between trademark laws and geographical indication protections.

**Purposes of the Research:** This research was conducted to assess the urgency of establishing a sui generis law for geographical indications.

**Methods of the Research:** This research is normatively juridical with a statutory approach and a conceptual approach.

**Results Main Findings of the Research:** The TRIPs Agreement emphasizes that Geographical Indications (GIs) constitute a distinct intellectual property regime, separate from trademarks. The legal policy established in Law Number 20 of 2016 aims to protect both moral and economic rights while preventing violations of communally owned GIs. Substantively, sui generis protection streamlines the registration process for GIs and enhances public participation in their registration and protection, aligning with Indonesia's legal and political direction on GI regulation.

**Keywords:** Geographical Indications; Legal Politics; Sui Generis.

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## INTRODUCTION

The state utilizes law as a tool to achieve its strategic objectives, which are established through policy directives. Law, as a concept materialized through statutes (positive law),<sup>1</sup> is inherently linked to societal development. Roscoe Pound emphasized this by viewing law as a tool for social engineering, designed to address societal needs and interests in alignment with social progress. This perspective cultivates the expectation that law will ultimately uphold social justice.

Legal and political activities are inherently interconnected in achieving just outcomes for society, as previously discussed. This connection exists because the process of law formation, as manifested in statutory regulations, is inseparable from political activities such as lobbying and legislation, which are carried out by political institutions like

<sup>1</sup> I Wayan Budha Yasa, "Penalaran Hukum Dan Konsep Hukum HLA Hart Sebagai Solusi Untuk Meredakan Gejala Antinomi Dalam Penegakan Hukum Di Indonesia," *Jurnal Komunikasi Hukum (JKH)* 9, no. 1 (2023): 766-81, <https://doi.org/10.23887/jkh.v9i1.57115>.

legislatures and parliaments.<sup>2</sup> Politics serves as a compass, shaped by shared values, choices, and agreements, guiding society in coexisting and establishing an ideal social order. Additionally, it acts as a bridge to address common issues, formulating policies that align with collective goals while respecting societal values and preferences. Politics serves as a compass, shaped by shared values, choices, and agreements, guiding society in coexistence and the establishment of an ideal social order. It also acts as a bridge to address common issues, formulating policies that align with collective goals while respecting societal values and preferences.

The closely interconnected roles of politics and law often create a harmonious synergy in achieving society's goals and aspirations. Professor Soedarto<sup>3</sup> emphasizes that law serves as a tool for state policymaking, which is carried out through official state institutions and results in concrete legal provisions that reflect society's values of justice. Isbar, on the other hand, argues that politics bridges the gap between leaders and the people, aiming to strengthen power and realize societal ideals and moral values. Political values provide a foundation for integrating religious principles into social life. These values are inseparable from ideology, which serves as the source of aspirations realized through political institutions or specific organizations. This concept is believed to effectively convey society's ideological goals. The close relationship between law and politics is shaped by two main perspectives. One perspective prioritizes politics over law, viewing law as a reflection of the collective will of political elites. The other sees politics as a means of formulating state strategies within the framework of existing laws and regulations.<sup>4</sup> Law is recognized as a common good that belongs to the community, nation, and state, and it should not be manipulated for the benefit of individuals or specific groups. In the realm of legal politics, law plays a crucial role in achieving societal ideals through policies grounded in legal principles.

The development of statutory regulations, as a concrete outcome of legal politics, involves multiple complex stages. Initially, an ideal vision is translated into a legal framework, which is then debated and examined within the political sphere. The outcome of this process is subsequently refined into a technical framework that ultimately takes the form of statutory regulations. According to A. Hamid S. Attamimi,<sup>5</sup> three fundamental principles guide law formation in Indonesia. First, Pancasila serves as the foundation of the state and embodies the nation's legal ideals. Second, the principle of a legal state ensures a constitutionally based government. Third, additional principles encompass both formal and substantive aspects of law.

Legal politics plays a crucial role in shaping fundamental legal principles, foundations, systems, and objectives. These principles must align with society's actual needs, which can be analyzed through sociological jurisprudence. Before formulating legal ideals, legislators must first understand society's legal expectations, or *rechtsidee*.<sup>6</sup> This understanding can be

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<sup>2</sup> Anita, "Politik Hukum Dalam Penegakan Hukum Di Indonesia," *Dharmasiswa: Jurnal Program Magister Hukum FHUI* 2, no. 1 (2022): 321-34, <https://scholarhub.ui.ac.id/dharmasiswa/vol2/iss1/25/>.

<sup>3</sup> Islamiyati and Dewi Hendrawati, "Analisis Politik Hukum Dan Implementasinya," *Law, Development and Justice Review* 2, no. 1 (2019): 104-17, <https://doi.org/10.14710/ldjr.v2i1.5139>.

<sup>4</sup> Abdul Rahman, "Determinasi Politik Pada Proses Pembentukan Dan Penegakan Hukum Di Indonesia," *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 9, no. 2 (2020): 127-37, <https://doi.org/10.24252/ad.v9i2.16085>.

<sup>5</sup> Rokilah, "The Role of the Regulations in Indonesia State System," *Ajudikasi: Jurnal Ilmu Hukum* 4, no. 1 (2020): 29-38, <https://doi.org/10.30656/ajudikasi.v4i1.2216>.

<sup>6</sup> A Ahsin Thohari, "The Manifestation of the Rechtsidee of Pancasila in Regulating The Constitutional Rights in Indonesia," *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 4, no. 2 (2019): 176-88, <https://doi.org/10.22373/petita.v4i2.23>.

achieved by examining the characteristics of the relevant community. Legislative measures, including provisions on geographical indications as a form of intellectual property, must uphold the rights of communities to safeguard their collective wealth.

The legal framework for geographical indications (GIs) is established under Law Number 20 of 2016 on Marks and Geographical Indications, which amends the previous Law Number 15 of 2001 on Trademarks. Notably, the earlier law did not provide a clear definition of GIs, resulting in ambiguity. To address this issue, Law Number 20 of 2016 defines a GI as a marker indicating the regional origin of a product. The distinctive characteristics and qualities of these products are attributed to their geographical environment, including natural factors, human influence, or a combination of both.

Geographical terms have a long history in trade, serving as markers to indicate a product's origin. According to Blakeney,<sup>7</sup> geographical indications existed even before the concept of brands. In commerce, consumers often associate geographical names with product quality. Consequently, geographical elements can function both as a brand and as an indicator of a product's regional origin, leading to overlaps in intellectual property regulations.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) addresses these regulatory differences by recognizing geographical indications (GIs) as a distinct intellectual property regime with unique characteristics (*sui generis*). It mandates that all WTO members, including Indonesia, implement provisions related to GIs.<sup>8</sup> However, the TRIPS Agreement provides member states with flexibility in regulating GIs, allowing them to tailor their approach based on national legal systems, practices, and objectives. According to the academic text that informed Law Number 20 of 2016 on Marks and Geographical Indications, geographical indications require legal protection. This protection aims to preserve their function as indicators of origin, recognizing the unique characteristics shaped by natural factors, human involvement, or a combination of both.

Lina Monten<sup>9</sup> outlined several justifications for the protection of Geographical Indications (GIs). First, GIs are essential as they precisely indicate the origin or source of a product. Second, they serve as indicators of product quality by informing consumers that a product originates from a specific place or region known for its quality, reputation, or other distinguishing characteristics. Third, because geographical markers ensure the authenticity of products unique to a particular location, they also function as representations of commercial interests.

According to Frederick Abbott et al.,<sup>10</sup> geographical considerations serve two primary purposes. First, they certify goods that possess qualities benefiting their region of production or sale. Second, by identifying Geographical Indications (GIs), buyers gain valuable insights into a product's origin, reputation, and quality. Geographical protection

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<sup>7</sup> Rianda Dirkareshza and Anni Alvionita Simanjuntak, "Comparative Study of State Jurisdiction: The Protection Towards Geographical Indication at Indonesia, the Eu, and Us," *Audito Comparative Law Journal (ACLJ)* 4, no. 2 (2023): 96-107, <https://doi.org/10.22219/aclj.v4i2.26434>.

<sup>8</sup> Anak Agung Ngurah Tresna Adnyana, "Perlindungan Hukum Terhadap Produk Indikasi Geografis Dari Tindakan Peniruan," *Jurnal Magister Hukum Udayana* 8, no. 1 (2019): 49-60, <https://doi.org/10.24843/JMHU.2019.v08.i01.p04>.

<sup>9</sup> Yudha Agung Nugraha and Imam Haryanto, "Hambatan Pendaftaran Indikasi Geografis Tahu Sumedang Sebagai Aset Potensial Daerah," *Al Education And Development* 9, no. 1 (2021): 119-30, <https://doi.org/10.37081/ed.v9i1.2306>.

<sup>10</sup> Badan Pembinaan Hukum Nasional, "Hasil Penyelarasan Naskah Akademik RUU Tentang Merek" (Jakarta, 2015), [https://bphn.go.id/data/documents/penyelarasan\\_na\\_ruu\\_ttg\\_merek.pdf](https://bphn.go.id/data/documents/penyelarasan_na_ruu_ttg_merek.pdf).

plays a crucial role in safeguarding the public and consumers from misleading use of these indicators, which could cause confusion regarding the origin and quality of goods in the marketplace.

The inclusion of Geographical Indications within Law Number 20 of 2016 concerning Marks suggests that Indonesia's regulatory framework is not *sui generis* (unique). This approach underscores the overlap between these two forms of intellectual property.<sup>11</sup> However, they possess distinct characteristics: trademarks provide individual protection, whereas Geographical Indications ensure communal protection.

This paper examines the challenges in regulating Geographical Indications (GIs) to ensure they maintain their *sui generis* nature, distinct from trademarks. It also explores the future direction of legal policies for protecting GIs in a *sui generis* manner. The study is titled "Examining the Sui Generis Movement in Law Number 20 of 2016: A Political Analysis of the Geographical Indication Protection Law." This paper investigates the following research questions: a) what characteristics of Geographical Indications (GIs) distinguish them as *sui generis* within Law Number 20 of 2016 concerning Marks and Geographical Indications? and b) what is the political and legal analysis of the protection of Geographical Indications in Law Number 20 of 2016.

## METHODS OF THE RESEARCH

Soerjono Soekanto<sup>12</sup> defines legal research as a planned and systematic scientific activity that utilizes specific methodologies and reasoning to examine and analyze legal phenomena. This study adopts a normative legal research approach, as described by Prof. Peter Marzuki.<sup>13</sup> Normative legal research aims to identify relevant legal foundation - including rules, principles, and doctrines - to address legal issues. Its objective is to develop new arguments, theories, or concepts that can contribute to resolving existing legal problems. In this context, this research will focus on a legal-political analysis of geographical indication protection under Law Number 20 of 2016. This research employs a dual approach: statutory and conceptual.<sup>14</sup> The statutory approach involves analyzing Law Number 20 of 2016 concerning Marks and Geographical Indications, with a specific focus on policy directions that distinguish trademarks from geographical indications. To gain a deeper understanding of the concept of geographical indications, the research also utilizes a conceptual approach, referencing the definition provided in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

## RESULTS AND DISCUSSION

### A. Examining the Sui Generis Characteristics of Geographical Indications in Law Number 20 of 2016

Strong intellectual property protection regimes are essential for safeguarding the outcomes of human creativity and innovation. This legal framework plays a crucial role in

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<sup>11</sup> Rinda Fitria Tamara Puteri and Budi Santoso, "Urgensi Pemisahan Peraturan Perundangan Indikasi Geografis Dengan Peraturan Perundangan Merek Di Indonesia," *NOTARIUS* 16, no. 1 (2023): 48-65, <https://doi.org/10.14710/nts.v16i1.38219>.

<sup>12</sup> Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20-33, <https://doi.org/10.14710/gk.2020.7504>.

<sup>13</sup> Yati Nurhayati, Ifrani, and M Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1-20.

<sup>14</sup> Benuf and Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." p. 23

addressing trade-related issues by ensuring robust protection for intellectual property rights and establishing effective enforcement mechanisms. These measures are vital for fostering a fair trade environment, where violations of intellectual property rights, as defined by the TRIPS Agreement, are effectively prevented. Law Number 20 of 2016 provides protection for geographical indications, treating them similarly to trademarks but specifically for products associated with a particular geographic region. This protection acknowledges the unique characteristics of products originating from these specific regions.

Law Number 20 of 2016 enforces geographical indication protection to achieve several objectives: enhancing service quality, strengthening legal certainty, and safeguarding regional specialties particularly craft and agricultural products from MSMEs.<sup>15</sup> Recognizing the significance of local ownership, the government seeks to streamline the registration process, making it more accessible for communities to register the unique geographical attributes of their products and secure legal protection.

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement recognizes geographical indications as a distinct category of intellectual property (IP) due to their unique characteristics.<sup>16</sup> Unlike other forms of IP, geographical indications are defined by specific elements, including geographical origin, reputation, and product quality. These criteria must be met for a product to qualify as a geographical indication, reinforcing its status as a *sui generis* (unique) category within the IP framework. The recognition of geographical indications as a distinct intellectual property right under TRIPS carries significant implications. Producers with registered geographical indications benefit from legal protection, preventing the imitation or misuse of their products by others.

The TRIPS Agreement, specifically Article 22 (1), defines a geographical indication:<sup>17</sup> “Geographical indications, as defined in this Agreement, refer to indicators that identify a product as originating from a Member's territory, or a specific region or locality within that territory, where a particular quality, reputation, or other characteristic of the product is inherently linked to its geographical origin.”

The definition provided in Article 22 (1) of the TRIPS Agreement establishes clear parameters for geographical indications throughout the agreement. It defines a geographical indication as an identifier that signifies a product's geographical origin, such as a specific place, region, or locality. Notably, the definition emphasizes that a product's quality, reputation, or distinctive characteristics must be directly attributable to its geographical origin. In essence, the product's unique qualities are intrinsically tied to its place of production.

The TRIPS Agreement defines a geographical indication by identifying four key characteristics, using the term "or" to indicate that a product may possess one or more of these qualities: 1) Indicative Elements to Identify: The initial definition of a geographical indication as "an indication that identifies the origin of a good" highlights its flexibility. It is not limited to geographical names or places of origin; various markers such as symbols, logos, or images can also serve as geographical indications, provided they clearly identify the product's source. This broad approach ensures that products with non-geographical

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<sup>15</sup> Gusti Ayu Putu Eka Agustina and Taufik Yahya, “Perlindungan Hukum Terhadap Produk Indikasi Geografis Dalam Perspektif Peraturan Perundang-Undangan,” *Hangoluan Law Review* 1, no. 2 (2022): 204–13.

<sup>16</sup> Adnyana, “Perlindungan Hukum Terhadap Produk Indikasi Geografis Dari Tindakan Peniruan.”

<sup>17</sup> Adnyana. p. 55.

designations can still receive protection, even if the designation itself is not a geographical name or location.

The definition of geographical indications in the TRIPS Agreement uses the term "goods," which may legally distinguish them from "services." As a result, under the TRIPS Agreement, geographical indications are generally applied only to products rather than services. However, some countries, including Switzerland, Canada, Mexico, and Japan, have expanded their geographical indication protections to include services. These nations have incorporated service sectors such as healthcare, spas, and traditional healing practices within their geographical indication frameworks. This expansion takes advantage of the flexibility provided by the TRIPS Agreement, which allows member countries to broaden the definition of geographical indications by including new elements, such as services, as long as these additions do not contradict the core principles of the Agreement. 2) Regional Elements in a Country: Geographical Indication (GI) areas are designated based on the location where a product is produced. The determination of these areas is flexible and adapted to the specific characteristics of the product. For example, in the case of grape processing for certain GIs, production may involve local communities spanning multiple areas, from vineyards to processing facilities. Unlike administrative divisions, which are typically defined by political considerations, GI boundaries and names are based on geographical and production-related factors.

Due to their strong link to a specific geographical area, geographical indications can only be used by producers operating within the designated boundaries. However, experts acknowledge that certain raw materials may be sourced from outside the GI area, provided they maintain consistent quality and do not compromise the unique characteristics of the final GI product. 3) Elements of Ownership: The TRIPS Agreement does not explicitly define the ownership of geographical indications. Unlike copyrights and patents, where ownership is clearly assigned to the creator (copyright) or inventor (patent), the TRIPS Agreement refers to "interested parties" who are entitled to legal protection (Articles 22 and 23). This distinction underscores the communal nature of geographical indications, where ownership may rest with producer associations, local communities, or even government entities, depending on the specific case.

Unlike copyrights and patents, which grant ownership to individuals, geographical indications are not privately owned. Instead, they are considered communal assets, meaning ownership is collectively shared among the community or group of producers responsible for the product. Rather than conferring traditional ownership rights, geographical indications provide a "right to use" for designated producers or community groups. This right enables them to commercially benefit from the geographical indication while preventing unauthorized use by others.

Geographical indication protection differs from other forms of intellectual property in that it safeguards communal ownership. Unlike private ownership, communal ownership ensures that each member has the right to use and benefit from the protected geographical indication. 4) Quality Elements: The TRIPS Agreement's definition of a geographical indication allows for flexibility in protection. A product does not need to fulfill all the specified elements, such as reputation, quality, or other characteristics, entirely attributable to its origin to qualify for protection. The use of the term "or" in the definition indicates that

meeting just one of these criteria is sufficient for a product to be recognized as a geographical indication.

This flexibility within the TRIPS definition creates opportunities for products with unique characteristics to qualify for geographical indication (GI) protection, even if these characteristics are not solely attributable to their place of origin. The use of "or" in the definition allows for this. For example, West Java Arabica coffee, known for its distinct quality, may be eligible for GI protection. While its reputation or other features may not be entirely exclusive to West Java, its inherent qualities linked to its geographical origin are sufficient for GI consideration. Because the definition of geographical indications does not impose rigid quality requirements, producers have greater flexibility in defining their own quality standards. However, to obtain protection, they must provide clear data and information regarding the raw materials and processing methods that contribute to the product's unique characteristics.

Similar to the concept of quality, the term "reputation" in geographical indications does not necessarily imply widespread fame. Instead, it emphasizes public recognition and trust in the quality and distinctive characteristics associated with a product's geographical origin.<sup>18</sup> This recognition and trust can be established through various factors, such as long-standing traditions, local knowledge, or the unique sensory attributes of the product.

The "other characteristics" element in the definition has a broad scope, encompassing natural, human, and physical factors that influence a product's quality and distinctiveness. First, natural factors such as climate and soil conditions unique to a geographical area play a crucial role. For instance, coffee grown at high altitudes in fertile volcanic soil often develops a distinct flavor profile. Second, human factors, particularly traditional production methods passed down and preserved by producers within a specific region, contribute significantly. These traditions may include unique manufacturing techniques, the use of local raw materials, or even specific rituals associated with the product. Third, the physical properties of the product itself, such as color, texture, or pattern, help differentiate geographical indication (GI) products from those produced elsewhere. Importantly, these interpretations are not mutually exclusive but often complement one another. In many cases, a combination of natural conditions, cultural traditions, and inherent physical attributes collectively define the "other characteristics" of GI products. The TRIPS Agreement, in Article 22(1), outlines the characteristics of Geographical Indications (GIs). However, Indonesia's Law Number 20 of 2016 on Marks and Geographical Indications adopts a more restrictive definition in Article 1(6). This law defines GIs specifically as signs that indicate a product's geographical origin and grant legal protection.

The unique quality of Geographical Indication (GI) products originates from the geographical environment of their place of origin. This environment is shaped by natural factors, human factors, or a combination of both. The key difference between the TRIPS Agreement and Indonesia's Law Number 20/2016 lies in how they define the elements contributing to a GI's characteristics. The TRIPS Agreement uses "or" to connect quality, reputation, and other characteristics, meaning a product only needs to meet one of these

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<sup>18</sup> Nasrianti and Muhibuddin, "Perlindungan Hukum Terhadap Indikasi Geografis Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis," *Jurnal Geuthëë: Penelitian Multidisiplin* 5, no. 2 (2022): 177-87, <https://doi.org/10.52626/jg.v5i2.157>.

elements to qualify for GI protection. In contrast, Indonesia's law appears to require at least one of the following due to its use of "or": natural factors or human factors.<sup>19</sup>

## **B. Political and Legal Analysis of Geographical Indication Protection in Law Number 20 of 2016**

Various factors shape the legal framework governing Geographical Indications (GIs), including a country's political ideology, the influence of special interest groups, and societal demands. For instance, a socialist country may prioritize state-controlled production methods within GI regulations, whereas a capitalist country may emphasize free-market principles and competition among GI producers. The level of democracy in a country also plays a role. Democratic processes typically involve public participation in shaping legal policies, including those related to GIs, allowing input from producers, consumers, and other stakeholders. Conversely, authoritarian regimes often limit public participation, potentially leading to GI policies that prioritize state control over producer or consumer interests.<sup>20</sup> Soedarto views legal politics as a framework established by authorized bodies to create regulations that align with societal values, aspirations, and specific goals. In contrast, Satjipto Raharjo<sup>21</sup> defines legal politics, within a social context, as a mechanism for selecting and implementing strategies to formulate and achieve social and legal objectives.

Legal politics is a field of study that examines the interplay between law and politics, particularly how state policies are translated into regulations by authorized bodies. These regulations aim to reflect societal values and aspirations while achieving predetermined goals. In addition to understanding the fundamentals of legal policy, the study of legal politics explores:<sup>22</sup> a) Foundations of Positive Law: Legal politics examines the philosophical, juridical, and sociological foundations that underpin existing laws. This analysis is crucial for understanding how laws are created, interpreted, and applied within society; b) Government Legal Policy: This study examines government-enacted legal policies, focusing on their objectives, the strategies used to achieve them, and their effectiveness in fulfilling state legal goals. Additionally, it assesses the alignment of these policies with principles of justice, human rights, and democracy; c) Legal Evaluation and Improvement: Legal politics goes beyond merely studying existing laws; it actively analyzes and evaluates their effectiveness in adapting to societal developments. When discrepancies emerge between the law and evolving social needs, legal politics advocates for amendments or revisions to ensure the law remains relevant and continues to meet societal demands; d) Formation of New Laws, legal politics plays a crucial role in the formation of laws, ensuring that new legislation remains relevant to societal developments, addresses pressing needs, and aligns with international relations. This process involves identifying legal issues, formulating effective solutions, and drafting well-structured legislation; e) Authority of State Institutions.

Legal politics often emphasizes the role and authority of state institutions in the lawmaking and implementation process. This focus on state authority is essential for

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<sup>19</sup> Riana Wulandari Ananto, Erna Amalia, and Mohammad Wira Utama, "Politik Hukum Dalam Undang-Undang Number 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 10, no. 5 (2023): 1605-16.

<sup>20</sup> Arif Hidayat and Zaenal Arifin, "Politik Hukum Legislasi Sebagai Socio-Equilibrium Di Indonesia," *Jurnal Ius Constituendum* 4, no. 2 (2019): 147-59, <https://doi.org/10.26623/jic.v4i2.1654>.

<sup>21</sup> Islamiyati, Dewi Hendrawati, Analisis Politik Hukum dan Implementasinya, *Law, Development & Justice Review*, Volume 2, Number 1, 2019, pp. 104-117.

<sup>22</sup> Anita, "Politik Hukum Dalam Penegakan Hukum Di Indonesia."



maintaining a clear division of power, ensuring accountability, and promoting transparency within the legal system. Given its broad and in-depth approach, legal politics significantly contributes to developing law that aligns with societal needs. This, in turn, fosters both justice and legal certainty, ultimately supporting national development. Law Number 20 of 2016 on Trademarks and Geographical Indications (GIs) goes beyond simply regulating these concepts. It also embodies legal principles that inform the policies behind the regulations. This legal framework aims to achieve the goals outlined in the law, such as protecting trademark and GI rights, fostering creativity and innovation, enhancing the competitiveness of Indonesian products globally, and propelling the national economy.

Legal politics can be seen as a compass guiding the government in formulating and enforcing regulations within its jurisdiction. This compass not only considers the direction of existing law (positive law) but also steers the government toward an ideal future legal framework (*ius constituendum*):<sup>23</sup> a) from a legal-political perspective, maintaining fair business competition ensures a level playing field for all market participants. No business entity should be disadvantaged by unethical practices such as brand imitation; legal politics enhances justice by protecting the rights of brand and geographical indication holders, ensuring they receive fair compensation for their creativity and innovation; c) rotecting Consumers – Legal frameworks established through legal politics, such as Law Number 20 of 2016, play a crucial role in consumer protection. This law helps safeguard consumers from counterfeit and misleading products by prohibiting the unauthorized use of brands and geographical indications; and d) Supporting MSMEs and Domestic Industry – Legal politics fosters the growth of micro, small, and medium enterprises (MSMEs) by ensuring a fair legal environment that protects locally produced goods and enhances their market value.

Law Number 20 of 2016, guided by legal political principles, promotes the development of strong brands and geographical indications (GIs) by MSMEs and domestic industries, enhancing their competitiveness in both domestic and international markets. Legal politics extends beyond merely enacting laws; it also involves strategizing how brands and GIs can contribute to national objectives. This includes formulating and implementing relevant regulations, such as Law Number 20 of 2016 on Trademarks and Geographical Indications. The legal framework established by this law aims to achieve the various objectives outlined earlier.

Article 1(6) of Law Number 20 of 2016 defines geographical indications as signs that indicate a product's regional origin. The reputation, quality, and distinctive attributes of GIs are shaped by regional environmental factors, encompassing natural and human elements or a combination of both. Protection for GIs is obtained through an application process, which can cover natural resources, handicrafts, and industrial products. However, the application process outlined in Articles 56 to 65 of Law Number 20 of 2016 may pose bureaucratic challenges for potential applicants. This complexity could discourage community participation in registering GIs, particularly given their communal nature. Such obstacles contradict the legal-political intent of the law, which seeks to establish a structured and accessible system for GI protection.

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<sup>23</sup> Zico Junius Fernando, "Legal Politics Formation of Legislation in the Indonesia National Legal System," *Jurnal Hukum Progresif* 10, no. 1 (2022): 25–36, <https://doi.org/10.14710/jhp.10.1.25-36>.

A review of academic literature on Law Number 20 of 2016 reveals a predominant focus on brand protection, while the concept of GIs as a form of communal intellectual property and a national asset appears to receive less attention. GIs possess unique characteristics that differentiate them from other forms of intellectual property. Unlike patents or trademarks, which are individually owned, GIs have a regulatory nature, requiring specific policy considerations to protect products based on their regional origin and to ensure their distinct characteristics. Effective GI protection offers numerous advantages, fostering regional development by promoting local products and safeguarding their unique attributes from misappropriation. Considering the importance of effective law enforcement, establishing *sui generis* regulations through legislation is essential.<sup>24</sup> This approach plays a crucial role in ongoing efforts to strengthen Indonesia's legal framework for protecting communal intellectual property. Indonesia's rich natural resources and diverse regional identities further emphasize the need for robust GI protection.

Partisanship and efforts to protect intellectual property rights, according to Robert M. Sherwood,<sup>25</sup> are based on several theories, including the "reward," "recovery," and "incentive" theories. The "reward" theory supports intellectual property protection by emphasizing the importance of compensating creators or inventors for their contributions. The "recovery" theory focuses on the right of inventors or creators to receive compensation for the time, effort, and costs invested in developing their inventions. Meanwhile, the "incentive" theory proposed by Sherwood highlights the role of incentives in encouraging effort, investment, and creativity, ultimately leading to the development of new products or processes.

Legal provisions protecting geographical indications are based on the international framework established by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The TRIPS Agreement defines and recognizes geographical indications as a distinct category of intellectual property. These unique characteristics can be considered by the government when formulating structured protection measures to safeguard local producers, support MSME development, and prevent the misappropriation of regional assets. In contrast, the history of intellectual property protection dates back to the 15th century, initially emphasizing the moral rights of creators. Over time, this protection expanded to include economic rights, granting creators exclusive control over the commercial use of their works.

There are two main theories underlying the protection of Intellectual Property Rights: the personality theory proposed by Georg Wilhelm Friedrich Hegel and the utilitarian theory advocated by Jeremy Bentham. In his utilitarian theory, Bentham presents the following perspective:<sup>26</sup> "The primary objective of all laws should be to enhance the overall well-being of society. Therefore, they must first seek to eliminate, as much as possible, any factors that diminish that well-being, in other words, to prevent harm. However, all forms of punishment are inherently harmful; punishment, by its nature, is a necessary evil. According to the principle of utility, punishment should only be accepted to the extent that it prevents a greater harm."

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<sup>24</sup> Anita, "Politik Hukum Dalam Penegakan Hukum Di Indonesia." p. 328.

<sup>25</sup> Agil Febriansyah Santoso and Budi Santoso, "Implementasi Hukum Kekayaan Intelektual Dalam Meningkatkan Kesejahteraan Masyarakat Dalam Perspektif Negara Hukum," *NOTARIUS* 15, no. 2 (2022): 818-32, <https://doi.org/10.14710/nts.v15i2.33566>.

<sup>26</sup> Ritu Paul, "Intellectual Property Rights: A Utilitarian Perspective," *Available at SSRN*, May 9, 2021, <https://doi.org/10.2139/ssrn.3842429>.

Utilitarian theory argues that laws should aim to maximize societal benefits and overall happiness. This contrasts with personality theory, which prioritizes the creator's rights. Consequently, utilitarianism supports transitioning an individual's exclusive rights to discoveries or inventions into the public domain after a certain period. While legal protection based on utilitarianism remains important, its justification differs, it emphasizes rationality and practicality by providing temporary guarantees for economic rights. This approach ensures broader societal benefits while still incentivizing individual intellectual effort and innovation.

The concept of intellectual property protection reflects human logic in preserving creative endeavors. Law Number 20 of 2016 on Trademarks and Geographical Indications (TGIs) currently serves as the legal foundation for protecting geographical indications in Indonesia. This legislation covers two distinct categories: trademarks and geographical indications. In contrast, a scholarly article analyzing the amendment of Law Number 15 of 2001 on Trademarks primarily focuses on brand protection. The objectives outlined in this earlier legislation are as follows:<sup>27</sup> a) to enhance legal certainty for industry, trade, and investment in response to future global economic challenges by revising legal regulations on trademarks, incorporating insights from the 2001 Trademark Law revision; b) to develop the content of the Draft Law on Trademarks by outlining key revisions to Law No. 15 of 2001 on Trademarks; c) to analyze the philosophical, sociological, and juridical principles underlying the Draft Law on Trademarks; and to define the objectives, scope, coverage, and intended direction of the Draft Law on Trademarks;

Academic discussions on revisions to intellectual property law primarily focus on brand regulation, with limited attention to geographical indications (GIs). These GIs are currently protected by applying trademark regulations on a case-by-case basis ("mutatis mutandis"). Law Number 20 of 2016 reflects a legal policy that aims to strengthen exclusive rights for both brand and GI holders to prevent infringement and imitation. Protect consumers from counterfeit and misleading products using unauthorized brands and GIs. Harmonize Indonesian law with international standards on brands and GIs, like the Paris Agreement and TRIPS Agreement. However, this law falls short of establishing separate regulations specifically tailored to the unique characteristics of geographical indications.

An examination of the TRIPS Agreement reveals that Geographical Indications (GIs) and trademarks serve a similar function: distinguishing goods in the marketplace. However, they differ fundamentally, particularly in terms of ownership. Trademark ownership is individual, although collective trademarks allow for joint ownership. In contrast, GIs are communally owned, granting only the right to use or control them rather than full ownership, as seen with trademarks. Their characteristics also differ. Trademarks are not restricted by origin, whereas GIs must be tied to a specific geographical area. Additionally, trademarks are abstract in nature, while GIs are concrete, directly linked to geographic locations. Registration requirements also vary. Trademarks require registration for legal protection, whereas some countries provide legal protection for GIs even without formal registration.

Second, unlike trademarks, geographical indications are inherently linked to a specific geographic area and cannot be transferred elsewhere. This is because they are closely tied

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<sup>27</sup> Badan Pembinaan Hukum Nasional, "Hasil Penyelarasan Naskah Akademik RUU Tentang Merek."

to community identity and the unique characteristics of products originating from that region. Transferring geographical indications outside their designated area would diminish their authenticity and value while also disadvantaging the communities entitled to their use.

Third, unlike brands, geographical indications require a clear and verifiable link between a specific geographical area and the quality or reputation of the goods produced there. This connection is the foundation of geographical indications, ensuring that consumers receive authentic, high-quality products. Consumers trust that products labeled with a geographical indication possess unique characteristics derived from that specific region. In contrast, brands do not require a direct link between the product's characteristics and its place of origin. Trademarks can be registered for a wide range of goods and services without any geographic connection or specific quality requirements. In fact, the use of geographical names in brands may be prohibited if it misleads consumers, preventing counterfeit products from exploiting well-known geographic names to enhance their image. The characteristics outlined above emphasize the need for the Indonesian government to establish *sui generis* regulations specifically designed to protect geographical indications (GIs). This specialized intellectual property regime can enhance the registration and enforcement processes, ensuring more effective protection against counterfeiting.

## CONCLUSION

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) classifies Geographical Indications (GIs) as a distinct intellectual property regime with characteristics that set them apart from other forms of intellectual property. These characteristics include, first, the identification of a geographical indication, which applies exclusively to goods or products and does not extend to services. Second, the determination of the geographical area, which refers specifically to the place where the goods are produced. Third, the communal nature of geographical indication ownership, which does not recognize individual ownership. Fourth, the reputation and unique quality of the products, which must be demonstrated to obtain legal protection and recognition. Law Number 20 of 2016 on Marks and Geographical Indications reflects a legal and political approach that recognizes the unique characteristics of GIs as a form of intellectual property. Unlike trademarks, which are individually owned, GIs have a communal nature. This requires a distinct regulatory framework that emphasizes product origin and ensures the preservation of characteristics associated with specific regions. The protection of GIs provides several benefits, including the promotion of regional products and the safeguarding of their unique attributes from infringement. The author suggests that Geographical Indications (GIs), distinct from other forms of intellectual property (IP), provide a unique opportunity to showcase regional identity and empower local producers. Based on the analysis of GI characteristics and Law Number 20 of 2016 on Marks and GIs, the author proposes *sui generis* regulations specifically for GIs, separate from trademark law. This approach aligns with the legal and political direction of the current law and aims to accommodate the growing community interest in registering and protecting GIs. Establishing appropriate norms will help optimize this process.

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