

Comparison of the Law of Geographical Indications between Indonesia and India

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Comparison of the Law of Geographical Indications between Indonesia and India

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Abstract: Indonesia has a strategic and favorable geographical condition to boost the economy. Likewise, India has diverse geographical conditions. Geographical indications are part of Intellectual Property Rights that are born from the work of human thought. The purpose of this study is to compare the legal arrangements of Geographical Indications between Indonesia and India and to examine the registration of Geographical Indications between Indonesia and India. This research is a type of library research. The approach used is normative, using secondary data and qualitative analysis. The results of this study indicate that the Regulation on Geographical Indications in Indonesia is the Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications and the regulation of the registration mechanism uses the Regulation of the Minister of Law and Human Rights Number 12 of 2019. While the Regulation on Geographical Indications in India and Regulation of the mechanism registration using The Geographical Indications of Goods (Registration and Protection Act, 1999).

Keywords: Comparative Law, Geographical Indications, Indonesia, India.

1. INTRODUCTION

Indonesia has a strategic and favorable geographical condition due to its geographical location. The influence of this geographical location creates a diversity of types of animals, plants, and other natural resources (Restu, 2021). This geographical location is also influenced by astronomical, geological, physiographical, to socio-cultural aspects. For example, it has 2 (two) seasons, namely the rainy season and dry season, and has a strategic area so that it is suitable for international trade traffic, abundant natural resources such as having fertile soil to produce various types of plant and marine varieties so that fish and abundant marine life (Ministry of



Foreign Affairs of the Republic of Indonesia, 2021). This can help and improve the economic level of the Indonesian people.

Geographically, India covers an area of 32,87,263 sq km which has 4 (four) seasons. India also has a strategic geographical condition where various natural resources grow. By being the 7th largest country in the world, India is set apart from other Asian countries, characterized by mountains and seas, which gives the country a distinct geographical entity (Ministry of Foreign Affairs of the Republic of Indonesia, 2021). India has geographical conditions similar to Indonesia, such as natural resources, wide area, cultural diversity, language, especially typical food. By having socio-cultural similarities, namely typical food, Indonesia and India have almost the same characteristics due to factors such as trade. For example, the famous biryani and samosas in Indonesia. These foods can be made in Indonesia because they have the same plant varieties as the spices that are owned between Indonesia and India.

Plant variety products in Indonesia and India have many similarities. India has many products produced by registering it as a Geographical Indication. When compared to Geographical Indication products between Indonesia and India, there are still more in India. With a very strategic geographical condition, there is a need for many Geographical Indication products in Indonesia to be registered on Geographical Indications. Indonesia because it has a distinctive. However, there is a lack of attention so the number of products is still far from Indian products. One of the factors that cause Geographical Indications to be paid less attention to, especially in terms of product registration, is the participation of the central and regional governments who are more familiar with the term Intellectual Property Rights than Geographical Indications (Izat, 2020).

The number of Geographical Indication products, Indonesia has 67 registered Geographical Indication Products and India has 417 registered Geographical Indication products. Nevertheless, the regulation of Intellectual Property Rights is experiencing rapid development and is also increasingly complete through the arrangement of the object of protection of Intellectual Property Rights which continues to develop rapidly (Elvira, 2019). The regulation of Geographical Indications in Indonesia uses Law Number 20 of 2016 concerning Marks and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 12 of 2019 concerning Geographical Indications.

India has a diversity of types of Intellectual Property, especially in Geographical Indications. Effectiveness in the protection of Geographical Indications is an important trait in India. As in the natural and agricultural products produced which already have names that are well-known for their geographical names in the world, for example, 'Darjeeling' in tea products and 'Basmati' in rice products which have their peculiarities in these products (Hirwade, 2021). The regulation in India uses The Geographical Indications of Goods (Registration and Protection) Act, 1999 and The Geographical Indications of Goods (Registration and Protection) Rules, 2002.

Intellectual Property Rights are the realm of civil law due to the substance of Intellectual Property Rights which have an intangible relationship and protect intellectual works born from the work of human thought (Rahayu, 2020). Intellectual Property Rights in Indonesia have a relationship with various kinds of laws and regulations, one of which is the Civil Code (Saidin, 2015). Meanwhile, Law Number 20 of 2016 concerning Marks and



Geographical Indications in 2016 was ratified by the Government of Indonesia replacing Law Number 15 of 2001 concerning Marks (Sudjana, 2018)³

Indonesia has a mechanism for registering a product that has the potential as a Geographical Indication which is regulated in the Law on Marks and Geographical Indications. In the Geographical Indication registration mechanism, some settings have been set as above. If there is a data discrepancy or errors and errors occur in the product, it will be canceled and further, inspection will be carried out (Dewi, 2015).³

Based on the description of the background of the problem above, the main problem in this study is the comparison of the legal arrangements of Geographical Indications between Indonesia and India and the comparison of registration of Geographical Indications between Indonesia and India.

2. RESEARCH METHODS

¹² The type of research used in this research is the library research method. The library material used is secondary data whose data source is obtained through searching documents related to legal arrangements and registration of Geographical Indications between Indonesia and India.

The research approach used by the author is a normative juridical approach. The documents used are of course related to the form of research on written legal norms, which include the Lisbon Agreement, Madrid Agreement, TRIPs Agreement, The Geographical Indications of Goods (Registration and Protection) Act, 1999, Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 12 of 2019 concerning Geographical Indications.

The sources of data obtained in this study are secondary data sources. In this study, the authors use secondary data sources including the Lisbon Agreement, Madrid Agreement, TRIPs Agreement, The Geographical Indications of Goods (Registration and Protection) Act, 1999, Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications, Regulation of the Minister of Law And the Human Rights of the Republic of Indonesia Number 12 of 2019 concerning Geographical Indications.

The method of collecting data is a literature study, namely by researching various reading sources such as books, opinions of scholars, newspapers, articles, dictionaries, and also data that the authors get from the internet. The method of data analysis was carried out qualitatively. The results of the analysis are then presented descriptively, to be compiled as conclusions in comparing civil law in Indonesia and India.

3. DISCUSSION

1. Comparison of Geographical Indication Settings between Indonesia and India ¹³

The regulation of Geographical Indications in this study for Indonesia uses Law Number 20 of 2016 concerning Marks and Geographical Indications and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 12 of 2019 concerning Geographical Indications, for India, the regulation is The Geographical Indications of Goods. (Registration and Protection) Act, 1999 or the Law on Geographical Indications of Goods (Registration and Protection), 1999. This study describes the comparison through the



differences and similarities in the arrangement of Geographical Indications between Indonesia and India.

Indonesia has 2 (two) Geographical Indications Regulations, namely: Law Number 20 of 2016 concerning Marks and Geographical Indications and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 12 of 2019 concerning Geographical Indications while in India using one regulation, namely The Geographical Indications of Goods (Registration and Protection) Act, 1999 or the Geographical Indications of Goods (Registration and Protection) Act, 1999.

Systematics of Writing from the arrangement of Geographical Indications in Indonesia is still in the form of long sentences so that people who will read the arrangement, at first will feel confused because it is full of theoretical and also readers need to pay attention carefully because it is filled with long sentences. Meanwhile, the arrangement of Geographical Indications in India has been neatly arranged, starting with the essence or subject of discussion in the Act from the beginning of the chapter to the end of the chapter, then proceeding with a more detailed explanation. The regulation from India makes it easier for people to read the regulations.

The substance or content of the regulation of Geographical Indications in Indonesia, namely in Law Number 20 of 2016 concerning Marks and Geographical Indications because it is still in the form of 2 (two) types of regulations that make up 1 (one), so the substance is still not neat. Sometimes in 1 Chapter, the discussion of Marks and Geographical Indications is combined into one. Then in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 12 of 2019 concerning Geographical Indications, the substance of the Regulation is not mixed up as Law Number 20 of 2016 concerning Marks and Geographical Indications is more focused on regulations concerning Geographical Indications themselves.

Readers are directed indirectly to interpret separately from the essence or subject of reading from the arrangement, where every community has different patterns of thinking and understanding, it is possible if you want to understand more clearly it is necessary to have more discussion or learning to understand the substance of the regulation. Meanwhile, the regulation of Geographical Indications in India, which is still using The Geographical Indications of Goods (Registration and Protection) Act, 1999 or the Law on Geographical Indications of Goods (Registration and Protection), 1999 is clear enough for the reader. In the substance of the Arrangement in India, from the first page until the third page is presented the essence or important points of the contents of the Arrangement, it is very easy for the reader to examine the substance of the Arrangement of India. Then, the contents of the Settings are in focus, which means that the substance of the Settings is not mixed with other types of Settings.

Regulations in Indonesia generally use Considering and Remembering before the substance of a Law, especially in the setting of Geographical Indications, but in India, there is no Considering and Remembering in the regulation, especially in the setting of Geographical Indications.

Systematics of Writing in the arrangement of Geographical Indications between Indonesia and India has a Title, and there is also a Chapter in each discussion and continued with Articles for more detailed substance from the Chapter then there are Paragraphs which aim to explain more clearly from the Articles. On the substance or content of the arrangement,



the focus is on discussing all kinds of regulations on Geographical Indications in each of these countries, in this case between Indonesia and India.

2. Comparison of Geographical Indication Registration Mechanisms between Indonesia and India

Indonesia uses the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 12 of 2019 concerning Geographical Indications in the regulation of the Geographical Indication Registration Mechanism. Meanwhile, India continues to use its regulation with The Geographical Indications of Goods (Registration and Protection) Act, 1999 or the Law on Geographical Indications of Goods (Registration and Protection), 1999. This type of regulation in Indonesia still uses Ministerial Regulations and Human Rights not by Laws, while in India already using the Official Regulations from India which focus on regulating Geographical Indications.

The arrangement of the Geographical Indication Registration Mechanism between Indonesia and India on the substance or content is already characterized by the TRIPS Agreement, which concerns regional boundaries and/or regional maps covering Geographical Indications.

The substance or content of the arrangement of the Geographical Indication Registration Mechanism between Indonesia and India is in the Procedure for Application for Registration. In Indonesia, it is discussed in Chapter II, Second Part concerning Application Procedures in Articles 4 to 6. In India, it is discussed in Chapter III concerning Procedures and Period of Registration in Article 11 concerning Applications for Registration.

In File Examination, in Indonesia it is discussed in Chapter II, Second Part concerning Application Procedures in Articles 7 to 11, then continued in Third Part Concerning Substantive Examination in Articles 12 to 17 and in India, it is discussed in Chapter III concerning Procedures and Registration Period in Article 15 Concerning Corrections and Amendments.

In the Withdrawal of Receipt of Files, in Indonesia it is discussed in Chapter II, Part Two concerning Application Procedures in Articles 7 to 11, then continued in Part Three Regarding Substantive Examinations in Article 17 paragraph 1. In India, it is discussed in Chapter III concerning Procedures and Term Registration Time in Article 12 Concerning Withdrawal of Receipts.

Rejection of Registration Files, in Indonesia, is discussed in the Third Part Regarding Substantive Examination in Article 17 paragraphs 3 to 8, and in India, it is discussed in Chapter III concerning Procedures and Period of Registration in Article 14 concerning Refusal to Registration.

Announcement of Geographical Indications to be Legalized. In Indonesia, it is discussed in the third part concerning the substantive examination in Article 15. In India, it is discussed in Chapter III concerning the Procedure and Period of Registration in Article 18 concerning the Period, Renewal, Deletion, and Restoration of Registration.

4. CONCLUSION

Based on the discussion above, it can be concluded that the comparison of the regulation of Geographical Indications between Indonesia and India has been regulated in Law



Number 20 of 2016 concerning Marks and Geographical Indications and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 12 of 2019 concerning Geographical Indications. This regulation regulates the Geographical Indication Registration Mechanism in Indonesia. While the regulation of Geographical Indications in India has been regulated in The Geographical Indications of Goods (Registration and Protection) Act, 1999 or the Law on Geographical Indications of Goods (Registration and Protection), 1999. This Act functions as a regulator of the registration and protection of Geographical Indications that relating to products are included in the mechanism of registration of Geographical Indications in India. The similarity of the Geographical Indication Registration Mechanism between Indonesia and India, among others, has been characterized by the TRIPs Agreement which includes regional boundaries and/or regional maps covering Geographical Indications, Procedures for Application for Registration, Examination of Files, Withdrawal of Examination of Files, Refusal of Registration of Files, and Announcement of Geographical Indications to be Legalized. The mechanism for the registration of Geographical Indications in Indonesia is regulated in Chapter II concerning the Terms and Procedures for Registration of Geographical Indications which are divided into 3 (three) parts. Part One concerning Application Requirements, Part Two concerning Application Procedures, Part Three concerning Substantive Examination. The Mechanism of Registration of Geographical Indications in India is regulated in Chapter III concerning Procedures and Period of Registration which consists of 9 (Nine) Articles including Article 11 concerning Application for Registration, Article 12 concerning Withdrawal of Admission, Article 13 concerning Application Advertisements, Article 14 concerning Refusal of Registration, Article 15 concerning Correction and Amendment, Article 16 concerning Registration, Article 17 concerning Application for Registration as an Authorized User, Article 18 concerning Period, Renewal, Deletion and Restoration of Registration, Article 19 concerning Consequences of Deletion from the Register due to Failure to Pay Renewal Fees.

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