

Legal Protection of Geographical Indication as Sui Generis and Trademark System in ASEAN Country

¹Fenny Wulandari, ²Hyung Koo Kang, ³Kartono.

e-mail: dosen01493@unpam.ac.id, kanghyungkoo@yahoo.com,
dosen01490@unpam.ac.id

¹Lecturer of Law Faculty of Pamulang University, South Tangerang City, Indonesia

²Director of International Korean Chamber, Seoul, South Korea

³Lecturer of Law Magister of Pamulang University, South Tangerang City, Indonesia

ABSTRACT

Protecting geographic indications starts with protection against misleading use. In general, government positions fluctuate by adopting a system of (collective) marks or protected Geographical Indications (GI) as a sui generis system. In recent years, stimulated by the TRIPS, the debate has reached new players, especially in ASEAN. Therefore, the focus of the problem in this research relates to how the protection of geographic indications is implemented in ASEAN member countries through the trademark registration system and the sui generis system. The research approach used is a comparative approach and several case studies on geographical indications in various ASEAN countries. Almost all ASEAN countries having a long traditional relationship with the EU have followed the sui generis approaches for geographical indication and a registration system. Only the Philippines, Myanmar, and Brunei provide protection of geographical indication through the trademark system.

Keywords : Geographical, Indication, Sui Generis, Trademark

ABSTRAK

Perlindungan indikasi geografis dimulai dengan perlindungan terhadap penggunaan yang menyesatkan. Posisi pemerintah pada umumnya berfluktuasi dengan mengadopsi sistem tanda (kolektif) atau Indikasi Geografis (IG) yang dilindungi sebagai sistem sui generis. Dalam beberapa tahun terakhir, dirangsang oleh TRIPS, perdebatan tersebut telah menjangkau para pemain baru, khususnya di ASEAN. Oleh karena itu, fokus masalah dalam penelitian ini berkaitan dengan bagaimana penerapan perlindungan indikasi geografis di negara-negara anggota ASEAN melalui sistem pendaftaran merek dan sistem sui generis. Pendekatan penelitian yang digunakan adalah pendekatan komparatif dan beberapa studi kasus indikasi geografis di berbagai negara ASEAN. Hampir semua negara ASEAN yang memiliki hubungan tradisional yang lama dengan UE telah mengikuti pendekatan sui generis untuk indikasi geografis dan sistem pendaftaran. Hanya Filipina, Myanmar, dan Brunei yang memberikan perlindungan indikasi geografis melalui sistem merek dagang.

Kata kunci: *Perlindungan Hukum, IG, ASEAN.*

A. INTRODUCTION

Geographical indications are recognized by TRIPS (Trade-Related Aspects of Intellectual Property). Property Rights) Part of the Marrakesh Accords (1994) Within GATT/WTO, they are still subject to various interpretations. In general, government positions fluctuate by adopting a system of (collective) marks or protected Geographical Indications (GI) as a sui generis system. In recent years,

stimulated by the TRIPS, the debate has reached new players, especially in Asia.¹ The new interest of Asian countries in GIs is not unexpected, as they play an important role in the international agro-food business. Nevertheless, since GIs are relatively new in Asia, the respective positions of individual economies towards them are not always fully established.

Protecting geographic indications starts with protection against misleading use. To determine what exactly is misleading, the principles under trademark law can serve as a useful guide. However, some differences should be noted. First, trademark protection for geographical indications is denied not only in cases of misdirection but also in cases of descriptive use.² This is understandable because descriptive trademarks cannot provide an origin. On the other hand, the use (not registration) of descriptive indications does not confuse nor is it misleading.

The concept of preventing misconceptions in trade was adopted by the Paris Convention and the Madrid Arrangement. The Paris Convention, already in its original version of 1883, listed geographical indications as one form of industrial property to be protected. This at least ensured that the principle of national treatment specified in Art. 2 Paris Convention would apply. A definition of a geographical indication was not provided, although Art. 1 refers to “indications of source or appellations of origin”, thereby indicating a broad definition of the subject matter. The protection provided for in Art. 10 is rather odd.

No sooner had the Paris Convention come into force, than attempts were made to strengthen the protection of geographical indications. Amendments of Art. 10 at the Rome Conference in 1886 were never ratified by the member states and only concerned minor clarifications. Further reaching were the proposals made at the Madrid Conference in 1890. The number of countries was determined to conclude a separate arrangement for protecting indications of origin beyond what was stipulated in Art. 10 Paris Convention. Varying proposals were tabled. One of these sought to clarify that indications that had become generic or descriptive should be excluded from protection. Portugal wanted the opposite: in cases where the

¹ Blakeney, Michael. *The protection of geographical indications: law and practice*. Edward Elgar Publishing, 2019. p. 118.

² Gangjee, Dev. *Relocating the law of geographical indications*. Vol. 15. Cambridge university press, 2012. p. 17

reputation of an indication was based on the special conditions of soil and climate, any imitation should be prohibited, even though the indication had become generic.³

Furthermore, trademark law is not only related to actual but also to potential conflicts. Registration may be refused not only if the listing is not currently associated with a particular good or service, but also if this could occur in the future. Finally, the public interest may require a disclaimer of property rights protection by registration for a single company, where (non-misleading) use in commerce is strictly permissible. The argument that the registration of a geographical indication must be rejected because another company may have a legitimate interest in using this indication already presupposes that the use by the other company is legal.

GIs, therefore, not only reflect the interests of producers but also target domestic (and overseas) consumers who have high purchasing power. In developing countries, implementing a GI mechanism may be seen as a tool to boost development in numerous regions, even though most potential consumers are overseas.⁴ In both cases, GIs should be sustainable and pose the question of visibility and recognition.

These debates are usually developed through a top-down approach with insufficient attention being paid to case studies and the relationships between actors. GIs in Asia, like elsewhere, depend not only on the legal framework, but also on the actions of producers, consumers, local authorities, and so on. This is not to deny the central position of the legal framework, but to emphasize that this framework (which is, by no means restricted to the legislation on GIs and is only a small part of the institutional context) and its implementation are shaped by actions at the local level.

³ In the context of geographical indications, generic terms are names which, although they denote the place from where a product originates, have become the term customary for such a product. An example of a GI that has become a generic term is Camembert for cheese. This name can now be used to designate any camembert-type cheese. Basic Frequently Asked Question: GI from https://www.wipo.int/geo_indications/en/faq_geographicalindications.html

⁴ Van Caenegem, William, and Jen Cleary, eds. *The importance of place: Geographical indications as a tool for local and regional development*. Springer International Publishing, 2017.

B. FOCUS OF PROBLEM

The five case studies demonstrate the difficulties in adapting to a given system, whether it is American or European. While China has adopted both systems, in Japan, there are negotiations and testing to see which one is best suited to the country. It is a matter not only of institutional prerogatives (in other words, the result of a debate between the Ministry of Agriculture and the Ministry of Finance) but also of cultural conditions. In the Philippines, the implementation of a GI system is also under discussion, but the example of Tinawon rice indicates that the final system will have to consider existing culture, values and the relationships between local actors, the product, and their traditions.

With these considerations in mind, the results of international negotiations at the WTO may not be the choice of the American or the European system of protection, but rather the invention of a new one, based on the historical experiences of Asian countries – and their economic interests. This opens the way for the arbitrary treatment of many products, a good example being the case of cheeses. As previously mentioned, local (or international) producers can freely use the term ‘parmesan cheese’ under their own trademarks while the exclusive rights of ‘Parmigiano Reggiano’ have been judicially recognized. On the other hand, there are no US producers of ‘Roquefort’ cheese, and the name is protected by a USPTO certification mark, the device available under the United States system⁵ to register the regional origin of specific products. Certification marks can also be used to register, in addition to place of origin⁶, other characteristics of goods or services, such as, for instance, specific features of the process of production, or the fact that labor for the production was performed by members of a specific union or guild. Certification marks differ from trademarks in that their owners cannot themselves engage in the production of the good or service carrying the mark and that they do not identify its particular producer but instead the nature and qualities that defined the mark in the first place.

⁵ Saavedra-Rivano, Neantro. "Geographical Indications and International Trade." *Geographical Indications and International Agricultural Trade*. Palgrave Macmillan, London, 2012. 19-33.

⁶ Ayu, Miranda Risang. "How does Australia regulate the use of geographical indication for products other than wines and spirits?." *Macquarie Journal of Business Law* 3 (2006): 1-21.

One of these two Denominations of Origin was given to Pisco, a grape brandy produced in selected areas along the South coast of Peru.⁷ A very similar spirit, carrying the same name, is also produced in winemaking areas of Chile⁸, and both countries have been claiming the origin of the product for many years, a dispute that so far has prevented either of them from seeking international recognition and protection for that GI. Despite these difficulties, the fact remains that Latin American countries, as well as developing countries elsewhere, possess a large potential stock of geographical indications based either on their biodiversity or on their traditional products.

As this potential is progressively realized the issue of market access for GIs from developing countries becomes more pressing. In this specific case, access includes equal treatment to the mechanisms of protection and registry of GIs in developed countries. There are encouraging signs that the European Union is moving towards a friendlier position towards access to their markets for GIs from developing countries, possibly sensing that both groups of countries can work together in the World Trade Organization to design a more comprehensive global system of protection and registry for GIs.

Therefore, the focus of the problem in this research relates to how the protection of geographic indications is implemented in ASEAN member countries through the trademark registration system and the sui generis system.

C. RESEARCH METHODOLOGY

This research uses document studies or literature studies that use various documents on geographical indications in the ASEAN region in particular and internationally in general. The research approach used is a comparative approach and several case studies on geographical indications in various ASEAN countries.

⁷ Gutiérrez, Gonzalo. "The Misleading Name of Pisco-Elqui." (2019).

⁸ Lacoste, Pablo, et al. "A bi-national appellation of origin: Pisco in Chile and Peru." *Chilean journal of agricultural research* 73.4 (2013): 424-429.

D. FINDING AND DISCUSSION

ASEAN has been at various stages of negotiating and concluding free trade area (FTA) or “comprehensive economic partnership” (CEP) arrangements⁹ with China, South Korea, India, Japan, Australia, and New Zealand. These arrangements are expressly intended to reduce or remove obstacles to trade and investments and facilitate them. In some cases, they include technical assistance for the ASEAN parties that need them. Just as or even more importantly, the FTA or CEP arrangements are politically considered hallmarks of close relations with ASEAN.

Trans-Pacific Partnership (TPP) is a proposed free trade agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States.¹⁰ The agreement was signed on 4th February 2016. However, the agreement did not come into effect since it was not ratified later on. In an interesting turnaround, the US withdrew its signature in January 2017. Even after the US withdrawal, the rest of the contracting parties continued the negotiation process. They eventually came up with a new agreement, namely, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).¹¹ The CPTPP incorporated most of the provisions of the TPP, and the same entered into force on 30 December 2018.

In the proposed agreement, Chapter 18 provided for Intellectual property. Section E under Chapter 18 deals with GIs. Article 18.1 defines GI in the following words;

Geographical Indication means an indication that identifies a good as originating in the territory of a party, or a region or locality in that territory, where a given quality, reputation, or another characteristic of the good is essentially attributable to its geographical origin.

⁹ Wu, Chien-Huei. "ASEAN at the Crossroads: Trap and Track between CPTPP and RCEP." *Journal of International Economic Law* 23.1 (2020): 97-117.

¹⁰ Cimino-Isaacs, Cathleen, and Jeffrey J. Schott, eds. *Trans-Pacific Partnership: An Assessment*. Vol. 104. Peterson Institute for International Economics, 2016. p. 24.

¹¹ Ha, Son Tung, Thi Hong Hanh Pham, and Thi Nguyet Anh Nguyen. "Stock Market Reactions to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership's Approval." *Journal of Economic Integration* 36.3 (2021): 462-490.

This definition is very much similar to the TRIPS definition. As per this Chapter, sui generis protection of GIs is not mandatory. It is open for the member states to protect GIs through trademarks, sui generis system, or other legal means.

1. Sui Generis for GIs

Sui generis in legal terms means that the science of law is a science of its own kind. In a closed system, all fields or branches of knowledge can also claim to have a sui generis character, that is, in terms of a distinctive way of working and different scientific systems due to different objects of attention. So in fact it is not only the science of law that has this sui generis character. It's just that in the science of law, the character of sui generis is used to show that in the science of law, its normative character should never be forgotten or set aside, that is, on the one hand, the science of law has an empirical-analytical nature, but on the other hand it is a normative practical science. With all the scientific attributes attached to it, the science of law directs its reflection on solving concrete and potential problems in society. Different from the nature of empirical law as part of social science which is studied to predict and control social processes. With this character, it is indeed rather difficult to include the science of law in one branch of the tree of knowledge.

That is, the science of law has a distinctive character that is reflected in its normative nature.¹² As a normative science, legal science has a way of working that is typical of sui generis¹³ in helping solve legal problems faced by society. Legal science in its position as a practical science is a field where various sciences meet and interact (converge), the end product of which can be accounted for in the form of scientific and rational problem-solving. Therefore, the science of law has a unique characteristic that is different from other sciences (sui generis).¹⁴

¹² Ibrahim, Johnny. "Teori dan metodologi penelitian hukum normatif." *Malang: Bayumedia Publishing* 57 (2006): 295.

¹³ D.H.M. Meuwissen in an article entitled "Rechtswettenschap" in LJ van (Lambertus Johannes) Apeldoorn, Pieter van Dijk, and Pieter van Dijk. *Van Apeldoorn's Inleiding tot de studie van het Nederlandse recht*. WEJ Tjeenk Willink, 1985. p. 447-448.

¹⁴ Ibrahim, Johnny. *Op.cit.* p. 154.

The elements which are the characteristics of Geographical Indications so that they can be protected through a sui generis system are First, elements of indications to identify. This element can be known from the initial formulation of the definition of Geographical Indication, namely an indication that identifies the origin of a good.¹⁵ Second, the territorial element within the state. The determination of protected areas for geographical indications refers to areas or areas such as the place or place of production or the production of a good.¹⁶ The criteria used are flexible, that is adjusted to the goods produced. For example, coffee is produced by certain communities who live in an area that is integrated between the plantation and the processing factory. The area and name of the region do not have to be identical to the name and area of the administrative area which is based more on political considerations. Determination of the boundaries of this area is an important element for determining the place of production because Geographical Indications are related to geographical areas so Geographical Indications are not permitted to be given to parties outside the geographical area.¹⁷

Third, is the element of ownership. The TRIPS Agreement does not mention who the owner or rights holder is. The TRIPs Agreement only mentions interested parties as parties who must be given legal protection (see, Article 22 Paragraph (1) and Paragraph (3), Article 23 Paragraph (1) and Paragraph (2) of the TRIPs Agreement). Geographical indications differ from general intellectual property rights regimes which refer to the subject of the rights as owners, such as creators in copyright and inventors in patent law. Indeed, geographical indications do not recognize individual, individual, or private property rights. Therefore, geographical indications only provide usufructuary rights to producers or groups of people who produce the goods. In this case, Geographical Indications are the rights of the community.

¹⁵ Sasongko, Wahyu. "Indikasi Geografis: Rezim Hki Yang Bersifat Sui Generis." *Jurnal Media Hukum* 19.1 (2012).

¹⁶ Adnyana, AA Ngurah Tresna. "Perlindungan Hukum Terhadap Produk Indikasi Geografis dari Tindakan Peniruan." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8.1 (2019): 49-60.

¹⁷ Wahyu Sasongko, Wahyu. "Pengaturan Indikasi Geografis di Indonesia." *Praevia* 2.1 (2008): 53-60.

Fourth, the element of quality, reputation, or other characteristics. In the formulation of the definition of Geographical Indications certain quality elements, reputation, or other characteristics are related to or caused by their geographical origin. The definition formulation is alternative because it uses the word "or." Therefore, the TRIPS Agreement does not require all elements to be fulfilled, but only one element must be protected. Qualitative factors in the wording of definitions of Geographical Indications¹⁸ do not explicitly specify certain conditions. That is, the quality factor can be determined subjectively by the producer concerned by providing data and information about the materials used and their processing. Likewise with the reputation factor.

2. Trademark System for GIs

Besides being able to be protected through the sui generis system, Geographical Indications can also be protected through various other means of protection such as the trademark system, the regional regulation system, national law, international agreements, and other recognized legislation. In addition, the protection of Geographical Indications at the national level is often divided among several agencies.

There are four main ways in WIPO provisions to protect geographic indications, namely through:

- a. sui generis systems (ie special protection systems);
- b. use a collective mark or brand certification;
- c. methods that focus on business practices, including administrative product approval schemes; and
- d. unfair competition laws.¹⁹

In the context of public confusion and unfair competition, TRIPS envisages safeguard mechanisms in Articles 22(4) and 24(8). Consequently,

¹⁸ Mieke Namira Fuadi, Miranda Risang Ayu Palar, and Helitha Novianthy Muchtar. "Pelindungan Hukum Indikasi Geografis di Indonesia Melalui Standardisasi Dokumen Deskripsi Indikasi Geografis." *Jurnal Sains Sosio Humaniora* 6.1 (2022): 551-567.

¹⁹ O'Connor, Bernard. *The Law of Geographical Indications*. (Cameron May: London), 2004. p. 26

the use of homonymous GIs is prohibited even “though literally true as to the territory, region or locality in which the goods originate, they falsely represent to the public that the goods originate in another territory”. Similarly, Article 24 (8) applies where a person’s name is like a geographical indication in a manner, which has the effect of misleading the public.

This approach involves differences with respect to important questions, such as the conditions of protection or the scope of protection. On the other hand, the two modes of protection i.e. the sui generis system and the collective mark or mark certification system share several features in common, such as the fact that they establish rights for collective use by those who comply with set standards.

Broadly speaking, geographical indications are protected in various countries and regional systems through various approaches and often using a combination of two or more of the approaches described above. This approach has been developed according to different legal traditions and within the framework of individual historical and economic conditions.

WIPO has made great efforts to collect data from all sources, but in many cases, it is not possible to obtain data from every source. For example, many countries cannot identify Geographical Indications and so are protected through a trademark system.²⁰ The legal protection coverage for Geographical Indications in the trademark system and/or collective marks is private or personal, the right holder is a legal subject or legal entity. Only the trademark owner has the right to a registered Geographical Indication as a trademark. Thus, law enforcement for protection depends on the brand owner. If there is a violation, the brand owner can file a lawsuit through the Court or in a non-litigation manner.

There is no harmonization in specifically regulating how to manage Geographical Indications registered as trademarks. Unlike legal protection in the sui generis system which includes provisions to maintain the characteristics, quality, and reputation of said Geographical Indication

²⁰ World IP Indicators, *World Intellectual Property Indicators 2021*. Geneva, Switzerland: World Intellectual Property Organization (WIPO). p. 191

products in the Specification Book or Description Document which must be attached by law.

3. Implementation of GIs in ASEAN

The Association of Southeast Asian Nations (ASEAN) was established in 1967 and became the ASEAN countries presently make up ASEAN: Brunei, Cambodia, Indonesia, Lao, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Timor-Leste is an observer country.

Singapore was one of the first Asian countries to have enacted a *sui generis* regime in compliance with its commitment under the TRIPS Agreement. The first GI law enacted in Singapore was the Geographical Indications Act 1999 (GI Act 1999). However, during the negotiation phase of the EUSFTA, Singapore Government realized the inadequacies of the 1999 Act as this domestic legal framework posed many practical difficulties in the implementation of the FTA.²¹ As a result, Singapore has amended the 1999 Act and enacted a new *sui generis* law. Thus, the Geographical Indications Act of 2014 was passed by the Singapore parliament on 14th April 2014. Therefore, Singapore can establish its GI registration mechanism, which will look into the submitted list of EU GIs on merit. This gives the domestic GI Registry the power to allow or deny registration on merit. This can be seen as a middle path or a compromise formula for contracting parties' various GI interests.

Malaysia is one of the first countries in Asia that enacted a *Sui generis* law for GI protection. Malaysia passed its domestic law, namely the *Geographical Indications Act* (GIA), in 2000 following the country's obligations under the TRIPS Agreement of the WTO. After enacting the GIA 2000, it was accepted that GI is an essential tool for international marketing of the product and revenue generation for the producers. One of the significant achievements of the GIA was the establishment of an advanced GI registration system with a Central Geographical Indications Office. The Act entrusted the office of the GI Registrar for the effective management and administration of GI products.

²¹<https://www.twobirds.com/-/media/pdfs/singapore/singapores-new-registry-of-geographical-indications.pdf>

However, thereafter; not many changes were made in the domestic law due to Malaysia's lack of international obligations.

An important function of both is to serve as a "mark of origin", but the trademark only identifies the manufacturer, not the geographical origin. Article 15 of the TRIPS Agreement specifies an exemplary list of characters that may be used as trademarks, including "words containing personal names, letters, numbers, figurative elements, and color combinations". According to Article 1(2) of the Paris Convention, geographical names of regions may be part of the mark, but "consist only of signs or indications used in the course of trade to designate the place of ... mark". This is to avoid registering geographical names that do not indicate the place of origin or that have no secondary meaning in the minds of consumers. For example, Section 7(2) of the Thai Trademark Act B.E. 2534 stipulates that a mark shall be deemed distinctive if it does not have any direct reference to the character or quality of the goods and it has not been prescribed as a GI by the Minister of Commerce.

In ASEAN, eight out of ten countries chose the sui generis approach to protect GIs and provide for a registration system (see Table 1). Only the Philippines and Brunei protect GIs using their trademark systems, but they too are now in the process of enacting sui generis regimes.

Table 1. Overview of ASEAN country's GIs Protection²²

Sui Generis System	Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, Vietnam
Trademark System	Brunei Darussalam, Philippines
Geneva Act of the Lisbon Agreement	Cambodia

Regarding the scope of protection, as Vietnam already has numerous geographical indications protected domestically, the FTA with the EU includes a list of 169 EU geographical indications and 39 Vietnamese

²² https://www.wipo.int/edocs/mdocs/sct/en/wipo_geo_lis_19/wipo_geo_lis_19_6.pdf

geographical indications. The level of protection to be granted to those particular geographical indications is ruled by the Agreement, with therefore the same protection for Vietnam geographical indications and EU geographical indications, according to a level of protection that is higher than what is provided in the Vietnam law but less than what is provided in the EU Regulation, with the prohibition of the use of geographical indication for goods not originating in the country, even where the true origin of the product is indicated or the geographical indication is used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like; for goods not produced according to the laws of the country of origin applying when the consumption is on the country of origin, in a way that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public or which constitutes an act of unfair competition Article 10bis of the Paris Convention.

The ASEAN countries of Malaysia, Indonesia, and Thailand also stand on a similar footing with other developing countries, and therefore increased levels of protection would be advantageous to their economies. Since natural resources and traditional knowledge form the fundamental elements for the development of grass root economy, GIs can be used as effective marketing of economic value.²³ Similarly, Toraja coffee from Indonesia is one of the best specialty coffees in the world. The coffee belongs to the Arabica group and is mainly grown by small holding farmers in Tana Toraja or Toraja, a region in the Sulawesi island of Indonesia. However, in recent years, the manufacturers of Toraja coffee in Indonesia face stiff competition in the export market with companies from Japan and Holland marketing coffee styled as Toraja.

The remaining three countries (Philippines, Brunei, and Myanmar) protect geographical indications through certifications or collective trademarks under

²³ Suraphol Jaovisidha, Protection of Geographical Indications: Thailand's Perspective, http://www.ecaproject.org/archive/fileadmin/ecapII/pdf/en/activities/regional/gi_2003/gi_thailand_surapol.pdf.

national trademark laws. The Philippines recently drafted Rules and Regulations on geographical indications, whilst Myanmar allows protection through the Trademark Law of Myanmar which was approved in September 2014.²⁴ On the other hand, Brunei plans to develop a specific law on the geographical indication. Although the least developed countries are given an extended transition period to protect intellectual property rights under TRIPS Agreement until July 2021, the setting up of a geographical indication legal framework shows the intention of three LDCs in ASEAN (Myanmar, Cambodia, and Laos) to provide geographical indication protection system. Besides engaging in legislative amendments, ASEAN countries are also involved in upgrading intellectual property offices for geographical indication registration and the promotion of using geographical indication among stakeholders and potential geographical indication beneficiaries as tools for economic development.²⁵

Table. 2. All registered geographical indications in the ASEAN region²⁶

No	Country Registration	GI Registered		Total GI Registered
		Domestic GI	Foreign GI	
1.	Brunei Darussalam	-	-	-
2.	Cambodia	5	1	6
3.	Indonesia	84	8	92
4.	Lao PDR	-	-	-
5.	Malaysia	80	8	88
6.	Myanmar	-	-	-
7.	Philippines	-	1	1
8.	Singapore	-	144	144
9.	Thailand	103	11	114
10.	Vietnam	94	1	95

²⁴ Marie-Vivien, Delphine. "Protection of Geographical Indications in ASEAN countries: Convergences and challenges to awakening sleeping Geographical Indications." *The Journal of World Intellectual Property* 23.3-4 (2020): 328-349.

²⁵ Calboli, Irene. "Geographical Indications between Trade, Development, Culture, and Marketing: Framing a Fair (er) System of Protection in the Global Economy?" (2017): 3.

²⁶ <http://asean-gidatabase.org/gidatabase/>

Based on the data (See Table. 2) there are several countries that do not have registration of geographical indications, namely Brunei Darussalam, Lao PDR, and Myanmar. Singapore has 144 registrations of geographical indications which is the most registrations of geographical indications in ASEAN, but unfortunately, these registrations come from foreign products. The second highest ranking is Thailand with 114 registrations of geographical indications including 103 for registration of domestic geographical indications and 11 registrations of foreign geographical indications. Then Vietnam has 95 registered geographical indications including 1 registration of geographical indications from abroad and 94 registrations of geographical indications domestically. Indonesia has 92 registered geographical indications consisting of 8 geographical indications originating from abroad and 84 geographical indications originating from domestically. Malaysia has a total of 88 registered geographical indications, of which 8 are from overseas and 80 are from Malaysia. Cambodia has a total of 6 registrations of registered geographical indications, of which 1 originates from abroad and 5 originates from within the country. The Philippines occupies the lowest registration of geographical indications, namely only one which also only comes from foreign registrations of geographical indications.

For countries of trademark system, the principle “exclusive rights of a trademark registered previously in a good faith” in article 16.1 is applied, so the registration of a geographical indication identical or like an earlier registered trademark for an identical or similar product will be rejected to avoid confusion.²⁷ In this case, the protection of a geographical name can be made by the registration of certification marks, provided that the use of this indication is fair and that such exceptions take into account the legitimate interests of the trademark owner and third parties. This is the case of Binh Thuan for dragon and Phu Quoc for fish sauce (Vietnam) or Thai Hom Mali Rice (Thailand).

²⁷Gangjee, Dev. "Quibbling siblings: Conflicts between trademarks and geographical indications." *Chi.-Kent L. Rev.* 82 (2007): 1253.

The TRIPS Agreement does not provide any specific regulation towards the legal means for geographical indication protection. Three legal systems in three groups of countries are recorded about this matter.²⁸ The EU which has a long tradition of geographical indications protection has a sui generis system, i.e., a register for geographical indications, a substantive examination of the validity of the geographical indication (the existence of the link with the origin), an opposition procedure, the right of use for all those who comply with the geographical indication specification. Countries such as the US, Canada, and New Zealand protect geographical indications through an existing system of collective marks and certification marks, which are governed under trademark law i.e., with the criteria of availability of the term. In addition, geographical indications are also protected under business law and unfair competition law.

E. CONCLUSION

Almost all ASEAN countries having a long traditional relationship with the EU have followed the sui generis approaches for geographical indication and a registration system. Only the Philippines, Myanmar, and Brunei provide protection of geographical indication through the trademark system. Yet they are in the process of enacting sui generis law. Singapore affords protection through either specific geographical indication law or trademark law and passing off but there is no system of registration. In relation to trademarks, the TRIPS obligation on geographical indications is only to provide an effective means for the protection of geographical indications. Members have enough flexibility to design a system of protection in line with TRIPS, this leads to a conflict of rights between geographical indication and trademark protections. The ASEAN sui generis countries apply "first to file" to the protection of trademarks and geographical indications and accept the coexistence of trademarks registered previously in good faith and geographical indications later registered. The ASEAN sui generis countries apply "first to file"

²⁸ Zappalaglio, Andrea, Flavia Guerrieri, and Suelen Carls. "Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task?" *IIC-International Review of Intellectual Property and Competition Law* 51.1 (2020): 31-69.

to the protection of trademarks and geographical indications and accept the coexistence of trademarks registered previously in good faith and geographical indications later registered.

F. RECOMMENDATION

At the national level, ASEAN countries recognize the importance and benefits of protecting Geographical Indications. However, it is necessary to extend a higher level of protection to all Geographical Indication products and to create an international list of Geographical Indications will assist these countries in fully benefiting from the protection of Geographical Indications.

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