

GEOGRAPHICAL INDICATION: ITS CONTRIBUTION AND LEGAL PROTECTION IN MALAYSIA AND INDONESIA

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Abstract

Geographical indication is one of the intellectual property law regimes. It is known as “the Sleeping Beauty” of the intellectual property world. It is so as although they have been around for a time in memorial, the widespread awakening as to their business value and economic contribution only occurred in recent years. Therefore, this paper seeks to establish the legal protection under geographical indication in Malaysia and Indonesia with special reference on its contribution to the economic growth.

Keywords; *Intellectual property law, geographical indication, Malaysia, Indonesia, economic growth*

Introduction

Geographical indication is one of the intellectual properties regimes apart of copyright, trademarks, industrial design, integrated circuit layout design and trade secret. Although the subject matter of protection is of course different for each and every category of intellectual property, the fundamental right conferred by protection is essentially the same for all of them:

“One characteristic shared by all types of intellectual property to date is that rights granted are essentially negative: they are rights to stop others doing certain things – rights in other words to stop pirates, counterfeiters, imitators and even in some cases third parties who have independently reached the same ideas, from exploiting them without the licence of the right owner.”¹

Geographical indications are global issue, regulated in international law by the WTO and attracting increasing attention world-wide. Indeed, geographical indications have been said to be “the Sleeping Beauty of the intellectual property world as although they have been around for a long time, there has been a widespread awakening in recent years, as to their business value.”² In particular, many developing countries have recently jumped on the wagon of the geographical indication culture, by associating products with their places of origin and developing external markets for some of these local products.³

¹ R, C. W. (1999). *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, (4 ed.). London: Sweet & Maxwell, p. 6.

² Geographical Indications: From Darjeeling to Doha .WIPO Magazines. (2007, 23 March 2010). *WIPO Magazines*.

³ Zografos, D. (2008). *Geographical Indications & Socio-Economic Development* (Publication. Retrieved 23 March 2010,.: <http://www.iqsensato.org/wp-content/uploads/2009/02/iqsensato-wp-3-zografos-dec-2008.pdf>)

There are views claiming that geographical indication hold similar characteristic with trademarks. In general both regimes are different to each other in respect to their roles in trade in assisting consumers in differentiating products. Trademark is actually a mark to which distinguishes the goods and services of one trader from those of another.⁴ Whereas, geographical indication is used to indicate the place where the goods are produced and has characteristics that are attributable to the place of the geographical origin. In other words, trademarks are exclusively owned by the registered proprietor while geographical indication will be represented by products produced by the community within the same territories.⁵

The matchless characteristic of geographical indication is the quality and characteristics which are attributable to the place of origin where the goods are manufactured. Product protected by geographical indication (GI) must have qualities linked to their territory of origin. The character and strength of the quality/geographical link varies according to the natural, cultural history of the resources, their transformation processes, and the legal framework in which the geographical indication develops. Examples of the well known geographical indication products in the market nowadays are *Darjeeling Tea*, *Washington State Apple*, *Florida Orange*, *Idaho Potato* and *Champagne*⁶. Geographical indications are usually geographical names but they can also be just symbols or icons, as long as they convey geographical information.⁷

Geographical indication protection involves recognizing a collective, exclusive right to the use in trade of a geographical name or symbol on an item or product. The GI-labeled product represents a public good because its intrinsic characteristics have patrimonial values that belong to no one in particular as its reputation is built collectively over generations. This is why geographical indication management is delegated by the State and their patrimonial character justifies public intervention against misuse.⁸

Geographical Indication: The definition

Generally, geographical indication is a sign used on goods which have a specific geographical origin and possess particular qualities or a reputation due to that place of origin. Most commonly, it includes the name of the place of origin of the goods. The definition is complicated, however, by the differing terminology used in the relevant international treaties.⁹

⁴ Khadijah, M., & Ahmad Shamsul, A.A.(2005). *Undang-undang harta intelek di Malaysia*. Penerbit UUM:Sintok

⁵ Wadehra, B. L. (2004). *Law relating to patents, trade marks, copyright, design and geographical indications*. New Delhi: Universal Law Publishing.

⁶ For illustration Champagne is a well known geographical indication goods among those who drink wine. It originated from a territory in France called Champagne which has wine with good quality and taste which are different from other types of wine.

⁷ Larson, J. (2007). Relevance of geographical indications and designations of origin for the sustainable use of genetic resources (Publication. Retrieved 25 March 2010, from Global Facilitation Unit for Underutilized Species: www.underutilized-species.org/.../gi_gfu_gtz.pdf)

⁸ Rangnekar D.(2004). *The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe*. ICTSD UNCTAD Issue Paper No. 8. Geneva. Retrieved online from www.iprsonline.org on 23 March 2010

⁹ At an international level, the protection of Geographical indication is covered under a number of treaties administered by the World Intellectual Property Organization (WIPO) – most notably the Paris Convention for the Protection of Industrial Property of 1883, and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

Both the Paris Convention for the Protection of Industrial Property and the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods use the term indications of source. Neither gives a definition, but the language used in the latter Agreement makes clear that an indication of source refers simply to a country, or place in that country, as being the place of origin of a product, e.g. Swiss chocolate or Thai rice.¹⁰

The definition of “geographical indication” is given in section 3, Part II Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994 (TRIPS Agreement) which deal with the protection of geographical indications. Article 22.1 of the TRIPS Agreement provides the following definition:

“Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member [of the World Trade Organization], or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

Apart of that, there is another types of geographical indications which known as “appellations of origin”¹¹. However the term “appellation” is understood as narrower than “indication.” The TRIPS definition of geographical indications was derived from this language. The terms are pointed out in the Paris Convention since 1925, and are defined in the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration as the geographical name of a country, region, or locality, which designates a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

Protection of Geographical Indication: Malaysian Experience

In Malaysia, the legal frameworks within which the protections of geographical indications are provided¹² can be found in the Geographical Indication Act 2000¹³ and Geographical Indications Regulation 2001. Both of them are made in accordance with the resolution made by World Trade Organization through TRIP’S agreement (Agreement on Trade Related Aspects of Intellectual Property Rights 1995).¹⁴ Prior to this Act, there were no legal rights provided to protect

¹⁰ Geographical Indications: From Darjeeling to Doha .WIPO Magazines. (2007, 23 March 2010). *WIPO Magazines*

¹¹ The primary legal reference for the protection of geographical indications and they are protected, without being defined, in multilateral agreements since the late 19th century, in the Paris Convention for the Protection of Industrial Property.

¹² Section 2 Geographical Indications Act 2000 defines “geographical indication” to means an indication which identifies any goods as originating in a country or territory, or a region or locality in that country or territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to their geographical origin

¹³ This Act had received royal assent on 30 May 2000 and had been published in gazette on 15 June 2000. It provides protection upon registration to goods following the name of the place where the goods are produced. This protection is applicable to goods such as wine and spirit, or natural or agricultural products or any product or handicraft or industry. Geographical indications which are contrary to public order or morality shall not be protected under the Act.

¹⁴ Malaysia is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Paris Convention and Berne Convention which govern the intellectual property rights. In addition, Malaysia is also a

geographical indication in Malaysia. The only protection was provided by the law of passing off.¹⁵ In the case of *Scotch Whisky Association & Anor v Ewein Winery (M) Sdn. Bhd* [1994] 3 CLJ 509, the court held that the defendant had been guilty for passing off. The defendant had manufactured and sold wine using the name of ‘Scotch Whisky’ which in reality was not made in Scotland as it had been produced in Malaysia.

According to section 3 of Geographical Indication Act 2000, it has been stated that the Act shall give protection to a geographical indication regardless whether or not the geographical indication is registered under this Act; and as against another geographical indication which, although literally true as to the country, territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another country, territory, region or locality. However the Act will not provide protection to;

- (a) geographical indications that do not correspond to the meaning of “geographical indication” as defined in section 2;
- (b) geographical indications which are contrary to public order or morality;
- (c) geographical indications which are not or have ceased to be protected in their country or territory of origin; or
- (d) Geographical indications which have fallen into disuse in their country or territory of origin.¹⁶

In Malaysia, the registration of product which has the geographical indication quality is not made compulsory. However it is highly recommendable to do so as it provides the exclusive rights to exploit it in order to gain domestic and international recognition. In the case of registered geographical indications, only producers carrying on their activity in the geographical area specified in the Register shall have the right to use a registered geographical indication in the course of trade. The right of use be in respect of the products is in accordance to the qualify, reputation or characteristic specified in the Register.¹⁷

Intellectual Property Corporation of Malaysia (MyIPO)¹⁸ reported that from 2003 until 2010, they have received 22 applications for geographical indication protection including 2 foreign products (see Table 1). However, by the end of 2009 only 9 products fulfilled the statutory requirements and been registered under Geographical Indication Act 2000 (see Table 2).

Table 1: Application and Registration of Geographical Indications in Malaysia

YEAR	APPLICATION			REGISTRATION		
	Malaysia	Foreign	Total	Malaysia	Foreign	Total
2003	1	0	1	0	0	0
2004	0	0	0	1	0	1
2005	0	0	0	0	0	0

signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) signed under the auspices of the World Trade Organization (WTO)

¹⁵ Ida Madiha Abdul Ghani Azmi. (2005). *Trademarks law in Malaysia: Cases and commentary*. Thompson Sweet Maxwell Asia: Kuala Lumpur

¹⁶ Section 4 of Geographical Indications Act 2000

¹⁷ Section 21 of Geographical Indications Act 2000

¹⁸ An agency under the Ministry of Domestic Trade, Cooperative and Consumerism which is responsible to regulate and supervise issues or matters relating to intellectual properties in Malaysia.

2006	5	0	5	0	0	0
2007	5	0	5	4	0	4
2008	3	1	4	1	0	1
2009	6	1	7	1	2	3
2010	0	0	0	0	0	0
TOTAL	20	2	22	7	2	9

(Source: Intellectual Property Corporation of Malaysia, 2010)

Table 2: List of Registered Geographical Indication in Malaysia

No.	Product	State	Year of Registration
1.	Sarawak Pepper	Sarawak	November 2003
2.	Sabah Tea	Sabah	Oktober 2006
3.	Borneo Virgin Coconut Oil	Sabah	Oktober 2006
4.	Tenom Coffee	Sabah	November 2006
5.	Sabah Seaweed	Sabah	April 2007
6.	Bario Rice	Sarawak	April 2008
7.	Limau Bali Sungai Gedung	Perak	Mei 2009
8.	Pisco Wine	Peru	2009
9.	Scotch Whisky	Scotland	2009

(Source: Intellectual Property Corporation of Malaysia 2010)

Intellectual Property Corporation of Malaysia had estimated that Malaysian have several goods which have potential to be registered as geographical indication in future. Among of the potential products according to the states are as follows;

Table 3: Potential Product to be protected under Geographical Indications in Malaysia

No.	States	Products
1.	Sabah	<ul style="list-style-type: none"> • Tambunan Ginger • Tawau Cocoa • Babagon Pineapple • Matungung Honey • Kota Belud Shrimp Paste
2.	Terengganu	<ul style="list-style-type: none"> • Ladang Copper • Pulau Duyong – “Sampan” • Woven Songket • Batik • “Keropok Losong”
3.	Pahang	<ul style="list-style-type: none"> • Sampalit Grounded • Bentong Ginger
4.	Perak	<ul style="list-style-type: none"> • “Labu Sayong” • Tekat Gold Thread
5.	Melaka	<ul style="list-style-type: none"> • Ahrimp Paste

		<ul style="list-style-type: none"> • “Cencaluk” • “Dodol” • “Inang-Inang”
6.	Sarawak	<ul style="list-style-type: none"> • Pua Kumbu (cloth, cushion) • “Kek Lapis Sarawak” • Miri Prawn Paste • Bintulu Prawn Paste
7.	Kelantan	<ul style="list-style-type: none"> • “Batik” • “Songket” • “Buduh”
7.	Kedah	<ul style="list-style-type: none"> • Langkawi Mozzarella Cheese • “Gamat Langkawi” • Tobiar mango • “Nira Yan” • Kedah Rice
8.	Perlis	<ul style="list-style-type: none"> • Perlis Grape • “Mempelam Harum Manis”
9	Pulau Pinang	<ul style="list-style-type: none"> • “Durian Balik Pulau” • “Buah Pala Pulau Pinang”

(Source: Intellectual Property Corporation of Malaysia 2009)

Protection of Geographical Indications: Indonesian Experience

Indonesia is one of the World Trade Organization (WTO) members, which has already ratified the agreement on Trade Related Aspects on Intellectual Property Rights (TRIPS). Through Law No. 7 of 1994 the country has fully adopted the Agreements Establishing the WTO. Therefore, the country recognizes Geographical Indications as a part of Intellectual Property Rights (IPR). In Indonesia GI protection is regulated under the Law No. 15 of 2001 about Trademark Chapter VII, which provides the Protection of GI and Source of Origin. In implementing geographical indications protection system the Law has been followed up by Government Regulation No. 51 of 2007 about geographical indication.¹⁹

Article 56 (1) of Law No. 15 of 2001 has defines geographical indication as a sign which indicates the place of origin of goods, which due to its geographical environment factors, including the factor of the nature, the people or the combination of the two factors, gives a specific characteristics and quality on the goods produced therein. Furthermore, the term of protection for geographical indication in Indonesia is unlimited and persists as long as the specific characteristics and quality continue to exist²⁰. Local and foreign applicants can file for

¹⁹ Surip Mawardi. (2005). *Geographical Indication Application in Indonesia: Opportunities and Challenges*. Presented at the “Seminar on Geographical Indications: A Land of Opportunities”, Hanoi (Vietnam), 15 – 16 November 2005 and Jakarta (Indonesia), 6 – 7 December 2005. Retrieved from http://www.ecap-project.org/fileadmin/ecapII/pdf/en/activities/national/indonesia/gi_dec05_2/Suri_Mawardi_GI_PROMOTING_.pdf on 23 March 2010

²⁰ Refer Article 4 of Law No. 15 of 2001

geographical indication in Indonesia. However for foreigners, only foreign geographical indication that has been registered in their country of origin can be registered in Indonesia and the applications can only be filed through an Indonesia IPR consultant or their domestic representative in Indonesia.²¹

At present, the implementation of geographical indication protection in Indonesia is moving forward gradually. According to Surip Mawardi (2009), till June 2009 the Directorate General of Intellectual Property Rights of Indonesia (DGIP) had received 6 applications from domestic origin products and 2 foreign products.²² The application for foreign geographical indication consisted of *Champagne sparkling wine* from France and *Pisco wine* from Peru whereas the local application includes the followings:

Table 4: Application for Geographical Indication in Indonesia

No	Products	Application No.
1	Kintamani Bali Coffee (Kopi Kintamani Bali)	IG.002007.000001
2	Kaligesing Goat (Kambing Kaligesing)	IG.002007.000002
3	Jepara Oven Peanut (Kacang Open Jepara)	IG.002007.000003
4	Blenyek Ngemplak (traditional food from Jepara, made of anchovy)	IG.002007.000004
5	Jepara Carved Furniture (Mebel Ukir Jepara)	IG.002007.000005
6	Jepara Spanish Mackerel Chips (Kerupuk Tengiri Jepara)	IG.002007.000006

(Sources: Denise Mirandah, 2008)

It has been asserted that Kintamani Bali Arabica coffee had been registered as the first geographical indication protected product in Indonesia.²³ Directorate General for Intellectual Property Rights, Ministry of Law and Human Rights of Indonesia had issued the certificate of geographical indication protection on 5 December 2008.²⁴

Besides the above product, Indonesia as the biggest archipelago consists of about 17.000 islands having different land condition and traditional knowledge had a lot of potential products to be protected under geographical indication. Soedarmanto (2005) from the Department of Industry and Trade Indonesia had suggested three preliminary identification on various products before can be proposed to be registered under geographical indication. The first criterion is the product

²¹ Refer Article 20 of Law No. 15 of 2001

²² Surip Mawardi, (2009). *Establishment Of Geographical Indication Protection System In Indonesia, Case In Coffee* . Paper presented at Worldwide Symposium On Geographical Indications in Sofia, on June 10 to 12, 2009. Retrieved from http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_sof_09/wipo_geo_sof_09_www_124275.pdf on 24 March 2010.

²³ The name of the product is 'Kintamani Bali kopi arabika'. This name is renowned as Bali coffee for a long time, as this coffee has been identified as good quality since the beginning of the 19th century.

²⁴ Surip Mawardi, (2009). *Establishment Of Geographical Indication Protection System In Indonesia, Case In Coffee* . Paper presented at Worldwide Symposium On Geographical Indications in Sofia, on June 10 to 12, 2009. Retrieved from http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_sof_09/wipo_geo_sof_09_www_124275.pdf on 24 March 2010.

at least has been recognized by the Indonesian. Secondly, the product must be already traded in the domestic market commercially and lastly the product is having potential to be promoted to increase market share. He further claimed that by using the criteria it was expected a protected geographical indication product can provide a significant economic benefit. The following is the potential product to be protected under geographical indication.

Table 5: Potential Product to be protected under Geographical Indication in Indonesia

Group of product	Name of Product	Geographical Origin
Agriculture	Cilembu sweet potato	Cilembu village, West Java
	Malang apple	Malang District, East Java
	Mandheling coffee (Arabica)	North Sumatra province
	Toraja coffee (Arabica)	Tana Toraja District, South Sulawesi
	Gayo Mountain Coffee (Arabica)	Gayo Highland, Central Aceh District, Aceh (Sumatra)
	Kintamani coffee (Arabica)	Kintamani highland, Bali
	Dampit coffee (Robusta)	Malang District, East Java
	Java cocoa	Central and East Java Province
	Lampung black Pepper	Lampung province
	Muntok white Pepper	Bangka island, Bangka & Belitung Province
Textile	Trusmi batik	Cirebon District, West Java
	Pekalongan batik	Pekalongan District, Central Java
	Solo batik	Solo District, Central Java
	Yogyakarta batik	Yogyakarta Province, Central Java
	Palembang songket	Palembang District, South Sumatra
	Sumba cloth	Samarinda District, East Kalimantan Province
	Samarinda sarong	Samarinda District, East Kalimantan Province
Handicraft	Toraja wood carving	Tana Toraja District, South Sulawesi
	Jepara wood carving	Jepara District, Central Java
	Bali wood carving	Gianyar District, Bali Province
	Asmat wood carving	Papua Province
	Java kris	Central Java Province
	Kasongan clay Products	Yogyakarta Province, Central Java
	Food and Beverages	<i>Jenang</i> Kudus
Bali wine		Buleleng and Jembrana Districts, Bali Province
Dendeng Aceh		Banda Aceh District, Aceh Province
Art Products	Bali-Kamasan Painting	Kamasan village, District Klungkung, Bali Province

(Sources: Soedarmanto, 2005)

Geographical Indication: Registration requirement

Registration of geographical indications plays an important role to protect the interest of producer and consumer. The registered proprietor of geographical indications enjoys the exclusive rights to exploit the geographical indication and gains recognitions at domestic and international level.

In Malaysia, it has been statutory provided that there are three categories of person who may apply for registration of a geographical indication They are person who is carrying on an activity as a producer in the geographical area specified in the application with respect to the goods specified in the application (and it includes a group or groups of such person), competent authority or trade organization or association.²⁵ Application for registration can be made in accordance with section 12 of Geographical Indication Act 2000 which states that an application for the registration of a geographical indication shall be filed with the Registrar in the prescribed manner and shall specify—

- (a) the name, address and nationality of the natural person or legal entity filing the application, and the capacity in which the applicant is applying for registration;
- (b) the geographical indication for which registration is sought;
- (c) the geographical area to which the geographical indication applies;
- (d) the goods for which the geographical indication applies;
- (e) the quality, reputation or other characteristic of the goods for which the geographical indication is used; and
- (f) Any other particulars as may be prescribed.

The period of registration of a geographical indication shall be for ten years²⁶ and the registration is renewable upon an application made to the Registrar where he/she shall renew the registration of the geographical indication for a period which shall not exceed ten years at each renewal.²⁷

The law in Indonesia is quite similar to Malaysian Geographical Indication Act 2000. The slight difference can be found is on the person who may apply for the protection. Indonesian law had given a wider scope than Malaysia. According to Article 56 (2) Law No. 15 of 2001, applicant for geographical indication protection can be as follows: (1) an institution that represents the people in the area, which produces the goods concerned (consists of parties who undertakes business on goods of natural products or natural resources, producers of agricultural products and people who make handicrafts or industrial products), (2) an institution that is given the authority to do so, and (3) group of consumers of the mentioned origin products. In other words, a group of consumer in Indonesia may apply for geographical indication protection to a product if they wish to do so.

Geographical indication: Its Contribution

²⁵ Section 11 of Geographical Indication Act 2000.

²⁶ Section 19 of Geographical Indication Act 2000.

²⁷ Section 19A of Geographical Indication Act 2000.

Over the past few decades, geographical indications have become major intellectual assets in relation to a range of goods. It acted not only as a means for protecting consumer's interests and reinforcing confidence in high-quality and local products, but also as a legal and economic tool for the development of rural areas and the preservation of cultural heritage.

Kamil (2003) acknowledged that intellectual property is a 'power tool' for economic development and wealth creation that is not yet being used to optimal effect in all countries, particularly in developing world.²⁸

An indispensable rationale to protect geographical indications is to provide producers with legal protection against "free riders" and give them the means through which to differentiate their product on the market. The harm is inflicted by someone who is "free riding" on the reputation of someone else and the 'victim' of such harm being either the producer of the authentic product or the consumer who is misled into believing in its authenticity.²⁹

Surip Mawardi (2009) affirmed that the application for a legal protection on geographical indication products is justified to put up with several benefits such as:

- (i) geographical indication can be used as product marketing strategy in both domestic and international trade,
- (ii) Adding more value for the potential geographical indication product and to improve livelihood of the producers,
- (iii) A tool to develop rural areas having good reputation product quality,
- (iv) Improving the reputation of geographical indication product in the global trade,
- (v) Equal treatment on geographical indication protection and tool for promotion abroad,
- (vi) Geographical indication as an action to avoid unfair competition, or misrepresentation in trade, or misleading and deceptive conduct.³⁰

The economic connotation of protecting geographical indications is enormous. Marsha A. Echols³¹ (2003) stressed that the protection under geographical indication provides a lot of benefits to the rural community and those who involved in small medium enterprise (SMEs) industries. While both on a national and international level, calls for protection initiated amongst wine-growing industries in southern Europe, interest in the commercial use of geographical indications now goes far beyond this group. While on an international and regional level, rules

²⁸ Kamil Idris.(2003). Intellectual Property a power tool for economic growth. Geneva: WIPO Publications

²⁹ Rangnekar D. (2003). Geographical Indications: A Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits. (Publication no. Issue Paper No. 4. Geneva). Retrieved 24 March 2010, from ICTSD UNCTAD: www.iprsonline.org

³⁰ Surip Mawardi, (2009). *Establishment Of Geographical Indication Protection System In Indonesia, Case In Coffee* . Paper presented at Worldwide Symposium On Geographical Indications in Sofia, on June 10 to 12, 2009. Retrieved from http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_sof_09/wipo_geo_sof_09_www_124275.pdf on 24 March 2010.

³¹ Marsha A. Echols . (2003). *Geographical Indications for Foods, Trips and the Doha Development Agenda, Journal of African Law*, Vol. 47, No. 2 (2003), pp. 199-220 ,Published by: [Cambridge University Press](http://www.cambridge.org) on behalf of the [School of Oriental and African Studies](http://www.jstor.org.eserv.uum.edu.my/). Retrieved online from: <http://www.jstor.org.eserv.uum.edu.my/> on

for protection geographical indications still affix most importance to wines and spirits, developing countries show a growing interest in gaining market access for their products by using geographical indications such as *Basmati Rice*, *Jasmin Rice*, *Sabah Tea*, *Sarawak Pepper* or the like.³²

It is beyond doubt that the century-long promotion of quality teas from Darjeeling, Assam and Ceylon has been economically beneficial to these regions, and has contributed to the development of tea. Malaysia also experience similar economical growth through geographical indication product registered as Sarawak Pepper. It has been estimated that in 2007, the export values of Sarawak pepper had run as high as RM140 to RM160 million.³³ In 2009, the export values had increased to RM 172 million.³⁴ Furthermore, the fisheries sector has contributed significantly to Sabah economy. Real Gross Domestic Product (GDP) for Sabah in 2002 was recorded at RM10.2 billion, for which the fisheries sector including seaweed contributed about 2.8%.³⁵

Furthermore, geographical indications is also said to bear an economic value as the protection of geographical indications generates regional development partly by increasing employment, generates tourism and enhances the conditions of entering the market.³⁶ By providing an assured and continuous source of income through its reputation channel, geographical indication certification reduces vulnerability to poverty of rural poor and thereby reduces migration from rural to urban areas by retaining the rural farmers on their farm lands. Therefore, it gives two significant implications to the society as firstly the local indigenous knowledge does not perish and in fact it grows into a more polished form. Second implication is the reduction in migration rate reduces the burden on urban areas which are often overcrowded in developing countries.

Moreover, geographical indications may spur tourism in the locality. There could be a two-way interaction between geographical indications products and the geographical location. In one way, the geographical indication goods' quality characteristics could be attributed to the environment in which they were developed and at the same time the popularity of the geographical indications goods creates an image for the region that helps the tourism sector to develop. And this development of tourism can be ploughed back to support local businesses and community development.³⁷

Additionally, geographical indication protection also plays an important role in order to offer good image to consumers. Some basic properties of geographical indications are likely to benefit

³² Heath, C. (2003). The Importance of Geographical Indications. Retrieved 25 March 2010 from http://www.ecap-project.org/fileadmin/ecapII/pdf/en/activities/regional/gi_2003/importance_gi_heath.pdf.

³³ MPB sasar penggunaan lada negara naik (Publication (2008). Retrieved 20 February 2010, from Bernama: http://www.utusan.com.my/utusan/info.asp?y=2008&dt=0826&pub=Utusan_Malaysia&sec=Ekonomi&pg=ek_04.htm

³⁴ <http://www.mysarawak.org/2009/07/05/lada-tingkat-ekonomi-masyarakat.html>

³⁵ Refer <http://www.fishdept.sabah.gov.my/download/INVESTMENTOPPORTUNITIES%20.pdf>

³⁶ Lőrincz-Fejes, A. (2003, July 9 To 11, 2003). *Protection Of Geographical Indications: Point Of View Of The Hungarian Government*. Paper presented at the Worldwide Symposium On Geographical Indications, San Francisco, California. (Publication. Retrieved 25 March 2010: www.wipo.int/Edocs/Mdocs/Geoind/.../Wipo_Geo_Sfo_03_6.Doc

³⁷ Pradyot R. Jena, U. G. (2010). Changing Institutions to Protect Regional Heritage: A Case for Geographical Indications in the Indian Agrifood Sector [Electronic Version]. Retrieved 25 March 2010 from <http://www.pegnet.ifw-kiel.de/activities/pradyot.pdf>

the local producers and the regional economy. Firstly, geographical indications are held in perpetuity with no time limit as long as local knowledge is sustained and the indication is prevented from being generic. This means the marketing costs are needed only to reach out to consumers with the message of further innovations in the product. Secondly, the right is granted to a collective body of producers and not to an individual producer. Therefore, the whole community is going to benefit, and this in turn may encourage the regional economy. Thirdly, unlike patents and copyrights, geographical indications are not created but only recognized which means that investments are related only to building a reputation of a product already existing, whereas patents and copyrights relate to creating products in the first place.³⁸

Geographical Indications: The Conclusion

There are strong theoretical justifications for geographical indication protection as it has been proved that the protection provided by registration as geographical indications helped the producers to boost their economic returns significantly. Malaysia and Indonesia therefore, must continue to make efforts to get all products with a geographical indication tag on the register. The experiences of geographical indication products from Malaysia even though is not significant enough but still manage to show that geographical indication status can indeed open access to export markets, boost export earnings and can improve the livelihood of producers who heavily depend on such products. The authority involved must ensure that the small producers and local traders in Malaysian and Indonesia, especially at the agricultural sector, who usually have not had good awareness yet on product quality and its consistency get a correct and sufficient information to educate them on the importance of the geographical indication protection.

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