

Geographical Indications, Heritage, and Decentralization Policies: The Case of Indonesia

Christoph Antons*

1 INTRODUCTION: GEOGRAPHICAL INDICATIONS, DEVELOPMENT, AND HERITAGE

Over the years, enthusiasts of geographical indication (GI) protection have often asserted its benefits for developing countries. It has been said that GIs can assist with the promotion of rural and regional development;¹ support the emerging creative industries; help to protect traditional cultural expressions;² ensure that the exploitation of traditional knowledge would recognize sacred beliefs and practices of traditional peoples;³ safeguard cultural heritage;⁴ promote environmentally sustainable

* Professor of Law, Newcastle Law School, Faculty of Business and Law, University of Newcastle, Australia; Affiliated Fellow, Max Planck Institute for Innovation and Competition, Munich; Senior Fellow, Center for Development Research, University of Bonn. This research was supported under the Australian Research Council's Discovery Projects funding scheme (Project No. DP130100213).

¹ Graham Dutfield, *Geographical Indications and Agricultural Community Development: Is the European Model Appropriate for Developing Countries?*, in *THE INTELLECTUAL PROPERTY AND FOOD PROJECT: FROM REWARDING INNOVATION AND CREATION TO FEEDING THE WORLD* 175, 176 (Charles Lawson and Jay Sanderson eds., 2013); Sarah Bowen, *Development from Within? The Potential for Geographical Indications in the Global South*, 13 *J. WORLD INTELL. PROP.* 231, 233–35 (2010).

² Tzen Wong & Claudia Fernandini, *Traditional Cultural Expressions: Preservation and Innovation*, in *INTELLECTUAL PROPERTY AND HUMAN DEVELOPMENT: CURRENT TRENDS AND FUTURE SCENARIOS* 175, 193–96 (Tzen Wong & Graham Dutfield eds., 2010).

³ Michael Blakeney, *Protection of Traditional Knowledge by Geographical Indications*, in *TRADITIONAL KNOWLEDGE, TRADITIONAL CULTURAL EXPRESSIONS AND INTELLECTUAL PROPERTY LAW IN THE ASIA-PACIFIC REGION* 87, 87–108 (Christoph Antons ed., 2009).

⁴ Dev S. Gangjee, *Geographical Indications and Cultural Heritage*, 4 *WIPO J.* 92, 92–102 (2012).

development;⁵ and indirectly contribute to an increase in tourism.⁶ Such laudable goals have also been mentioned in the Preamble of the Official Government Explanation introducing the relevant Government Regulation in Indonesia in 2007.⁷ The Preamble speaks about using GIs for conserving the environment, empowering natural and human resources in the regions, and preventing migration to the cities by creating opportunities for work in these regions.⁸

Indonesia introduced a completely new Law on Trade Marks and Geographical Indications in November 2016.⁹ The new Law No. 20 of 2016 invalidates the former Trade Marks Act of 2001, including its provisions on GI (Article 107 of Law No.20/2016). However, as happens frequently with new legislation in Indonesia,¹⁰ Article 106 of the new law leaves all implementing regulations issued for the previous law in force as long as they are not in conflict with the new Law No.20/2016. As Government Regulation No. 51 of 2007 was issued to implement the GI provisions of the previous law (Article 56(9) of Law No. 15 of 2001 on Trade Marks),¹¹ this regulation remains in force. The new law of 2016 is similarly upbeat about GI protection in Indonesia. The official government explanation accompanying the draft of the Preamble¹² stresses the national potential for GIs to become superior commodities in domestic and international trade. The Government explains further that the increasing relevance of

⁵ Rosemary J. Coombe, Sarah Ives & Daniel Huizenga, *Geographical Indications: The Promise, Perils and Politics of Protecting Place-Based Products*, in SAGE HANDBOOK ON INTELLECTUAL PROPERTY, 207, 207–23 (Deborah Halbert & Matthew David eds., 2014).

⁶ Surip Mawardi, *Advantages, Constraints and Key Success Factors in Establishing Origin- and Tradition-Linked Quality Signs: The Case of Kintamani Bali Arabica Coffee Geographical Indication, Indonesia, Case Study on Quality Products Linked to Geographical Origin in Asia Carried Out for FAO* (May 25, 2009), <http://ciado.prevision.com.au/supplementary-reports/annotated-bibliography/advantages-constraints-and-key-success-factors>; Kasturi Das, *Prospects and Challenges of Geographical Indications in India*, 13 J. WORLD INTELL. PROP. 148, 180 (2010).

⁷ *Penjelasan Atas Peraturan Pemerintah Republik Indonesia Nomor 51 Tahun 2007 Tentang Indikasi-Geografis*.

⁸ For a specific example from the Krayan region in Kalimantan, see *Beras Adan Resmi Dipatenkan*, KOMPAS (January 15, 2012), <http://regional.kompas.com/read/2012/01/15/18453496/Beras.Adan.Resmi.Dipatenkan>.

⁹ Undang-Undang Republik Indonesia Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis

¹⁰ Christoph Antons, *Indonesia*, in INTELLECTUAL PROPERTY IN ASIA; LAW, ECONOMICS, HISTORY AND POLITICS (Paul Goldstein and Joseph Straus eds., 2009), 101–102.

¹¹ Undang-Undang Republik Indonesia Nomor 15 Tahun 2001 tentang Merek.

¹² *Penjelasan Rancangan Undang-Undang Republik Indonesia Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis*.

GIs is also visible from the fact that they are now included in the title of the law.

Although many developing countries introduced GI protection initially because of TRIPS pressures,¹³ or because they were influenced by EU technical assistance programs,¹⁴ reports of carefully selected pilot projects sponsored by the United Nations Food and Agriculture Organization (FAO) relating to newly registered GIs have suggested positive results.¹⁵ Nevertheless, critical observers have pointed out that such positive results cannot be taken for granted. Using the case study of tequila in Mexico, Sarah Bowen finds that “influential actors have manipulated production standards and certification policies in ways that contradict the theoretical concept of a GI and negatively affect the overall quality of tequila.”¹⁶ Graham Dutfield, discussing the same example, has pointed to the potentially negative impact on biodiversity if production standards require the growing of only one variety at the expense of others.¹⁷ Using the example of Pisco, a GI claimed by both Peru and Chile and registered by either in various countries, Dutfield also shows the cross-boundary issues that arise if two or more countries claim the same indication on the basis of the same or similar traditions.¹⁸ Amit Basole, commenting on GIs used for weaving in Banaras, sees a preservationist paradigm at work that “freezes culture.” Instead of adopting a preservationist view centered on the content of knowledge, he proposes a political economy perspective focused on the processes that create and sustain knowledge.¹⁹ Rosemary Coombe et al. find that the “social imaginary” of GI protection for Rooibos tea in South Africa, for instance, obscures complex historical relationships in an environment

¹³ See Das, *supra* note 6, at 148 (discussing India as an example of a country introducing GI protection because of TRIPS).

¹⁴ Dutfield, *supra* note 1; Michael Blakeney, *The Pacific Solution: The European Union's Intellectual Property Rights Activism in Australia's and New Zealand's Sphere of Influence*, in INDIGENOUS PEOPLES' INNOVATION: INTELLECTUAL PROPERTY PATHWAYS TO DEVELOPMENT 165–88 (Peter Drahos & Susy Frankel eds., 2012).

¹⁵ Mawardi, *supra* note 6 (discussing the “Quality Linked to Geographical Origin” program of FAO); see also Bowen, *supra* note 1, at 232.

¹⁶ Bowen, *supra* note 1, at 235. ¹⁷ Dutfield, *supra* note 1, at 188.

¹⁸ *Id.* at 189–90. See generally Christoph Antons, *Epistemic Communities and the “People without History”: The Contribution of Intellectual Property Law to the “Safeguarding” of Intangible Cultural Heritage*, in DIVERSITY IN INTELLECTUAL PROPERTY: IDENTITIES, INTERESTS AND INTERSECTIONS 453, 467–69 (Irene Calboli & Srividhya Ragavan eds., 2015) (highlighting that this is an increasingly widespread issue in the registration of heritage).

¹⁹ Amit Basole, *Authenticity, Innovation and the Geographical Indication in an Artisanal Industry: The Case of the Banarasi Sari*, 18 J. WORLD INTELL. PROP. 127, 143 (2015).

“characterized by histories of racialized dispossession under apartheid rule, ongoing contestations over land, and shifting identity politics.”²⁰

In this chapter, I build upon these existing critiques and examine GIs in a “contested environment,” with particular focus on Indonesia, i.e., in an environment characterized by Indonesia’s extremely complex decentralization policies. Notably, I will show that decentralization in Indonesia leads to sometimes difficult bargaining processes among the central government, regional governments, and producer communities about the nature and use of intellectual property (IP) laws relating to tradition and heritage, including GIs. I will then examine the GI registration process and show that it is ultimately central government-controlled with relatively limited roles for regional players. The important questions in a country that has encouraged large-scale transmigration for many decades are who will be allowed to operate in the “cultural spaces” that GIs demarcate for purposes of development and to enjoy increased profits from local products as well as how the social and economic benefits will be defined. Decision-makers at the national, regional, and local levels may well have different ideas in this regard. Finally, I will examine in detail two examples of registered GIs and ask to what extent they will be able to fulfill some of the high hopes that the government has with regard to their economic and social benefits.

2 THE CONTEXT OF INDONESIA’S DECENTRALIZATION POLICIES

I would like to begin with a basic explanation of the context of Indonesian decentralization policies in which regional development and use of GIs have to be viewed.

The Indonesian coat of arms bears the Sanskrit motto *Bhinneka Tunggal Ika*, which means “unity in diversity.” For much of the country’s history, successive governments have had different views of how to find the right balance between the two. During centuries of Dutch colonial rule, the Netherlands East Indies were formed around the main island of Java and already during colonial times it was common to refer to the rest of the Indonesian archipelago as the “outer islands.” After independence, Indonesia recognized *Bahasa Indonesia*, which originated in Sumatra, as

²⁰ Rosemary J. Coombe, Sarah Ives & Daniel Huizenga, *The Social Imaginary of Geographical Indicators in Contested Environments: The Politicized Heritage and the Racialized Landscapes of South African Rooibos Tea*, in SAGE HANDBOOK ON INTELLECTUAL PROPERTY 224–37 (Deborah Halbert & Matthew David eds., 2014).

its national language, but politics and administration were centered in Java and the capital Jakarta. This led to tensions and even armed uprisings on some of the “outer islands” during the 1950s. Centralization reached its highpoint during the many years of rule of the autocratic and military-backed Suharto government. During the widespread unrest following the end of Suharto’s rule in 1998, Suharto’s successor Habibie introduced laws on local autonomy that gave the districts substantial powers in administrative and financial matters.²¹ This initiated a move toward decentralization, which coincided with the promotion of decentralization policies and community-based natural resource management in developing countries more generally by many donor agencies and non-governmental organizations (NGOs).²² Although there are generally high expectations with regard to democratization and local empowerment, Vandergeest and Wittayapak have pointed out that it is important to distinguish between administrative and political decentralization. Administrative decentralization shifts power to regional or local bureaucracies that remain upwardly accountable to central headquarters, whereas political decentralization transfers power to authorities who are downwardly accountable to local people.²³ They point to research on Southeast Asian countries that “decentralization had the effect of increasing state presence, power, and control at the local level, often through making local institutions responsible for monitoring and enforcing regulations in places where states previously had little influence over the everyday use of resources.”²⁴

The Indonesian laws on local autonomy were revised in 2004 and completely new legislation was introduced in 2014.²⁵ Decentralization was also incorporated into the revised Indonesian Constitution in Chapter VI on Regional Government.²⁶ Interestingly and unusually by international standards, Indonesia undertook its efforts at decentralization as a unitary and not as a

²¹ TAUFIK ABDULLAH, *INDONESIA: TOWARDS DEMOCRACY* 536 (2009).

²² See THE POLITICS OF DECENTRALIZATION: NATURAL RESOURCE MANAGEMENT IN ASIA (Chusak Wittayapak & Peter Vandergeest eds., 2010); COMMUNITIES AND CONSERVATION: HISTORIES AND POLITICS OF COMMUNITY-BASED NATURAL RESOURCE MANAGEMENT (J. Peter Brosius, Anna Lowenhaupt Tsing & Charles Zerner eds., 2005).

²³ Peter Vandergeest & Chusak Wittayapak, *Decentralization and Politics*, in THE POLITICS OF DECENTRALIZATION: NATURAL RESOURCE MANAGEMENT IN ASIA 1, 4 (Chusak Wittayapak & Peter Vandergeest eds., 2010).

²⁴ *Id.* at 11.

²⁵ Law No. 23 of 2014 on Regional Government Administration (Undang-Undang No. 23 Tahun 2014 tentang Pemerintahan Daerah).

²⁶ INDON. CONST. arts. 18-18B, 1945.

federated state.²⁷ The reasons for this approach are to be found in history. A struggle for independence against the returning Dutch after the end of Japanese occupation in World War II ended with the formal recognition of a federated “United States of Indonesia” by the Netherlands. However, Dutch influence and interference in the affairs of some of the states brought a swift end to this federated structure barely nine months later.²⁸ The Indonesian political elite has been deeply distrustful of federalism ever since.²⁹

As a consequence of decentralization, Article 18 of the Constitution provides for local government at the respective levels of a province, *Kabupaten* (regency), and city in accordance with the principles of autonomy and with the task to provide assistance. Again unusual for such constitutional arrangements, but not unusual for Indonesia, Article 18A refers to further laws for details on how administrative competences, finance, services, natural resources, and other resources are to be divided between the central government and the various regional governments. Article 18B recognizes local governments, but also and importantly the unity of *masyarakat hukum adat* (customary law communities) and these communities’ traditional rights “as long as they are still in existence and in accordance with the development of society and the principles of the unitary Republic of Indonesia regulated by law.” Although heavily qualified, Article 18B(2) recognizes in principle many traditionally living communities, including forest dwellers that would be referred to as “indigenous peoples” elsewhere.³⁰ A similarly qualified recognition is to be found in Article 28I(3) in a newly introduced part on human rights. Accordingly, the cultural identity and rights of traditional communities are respected “in accordance with the development of the times and civilization.”³¹

Obviously, the text of these constitutional provisions leaves much room for discretion and debate. However, it has encouraged the representatives of forest-dwelling “customary law communities,” commonly referred to in Indonesia as

²⁷ INDON. CONST. art. 1(1) (stating that “[t]he State of Indonesia is a unitary state in the form of a republic”).

²⁸ ABDULLAH, *supra* note 21, at 191–99.

²⁹ VEDI R. HADIZ, LOCALISING POWER IN POST-AUTHORITARIAN INDONESIA: A SOUTHEAST ASIA PERSPECTIVE (2010).

³⁰ On the difficulties with the use of this term in countries like Indonesia, see Anna Lowenhaupt Tsing, *Adat/Indigenous: Indigeneity in Motion*, in WORDS IN MOTION: TOWARDS A GLOBAL LEXICON 40–64 (Carol Gluck & Anna Lowenhaupt Tsing eds., 2009); Gerard Persoon, “Being Indigenous” in Indonesia and the Philippines, in TRADITIONAL KNOWLEDGE, TRADITIONAL CULTURAL EXPRESSIONS AND INTELLECTUAL PROPERTY LAW IN THE ASIA-PACIFIC REGION 195–216 (Christoph Antons ed., 2009).

³¹ INDON. CONST. art. 28I(3), 1945.

adat communities, to fight for their rights to their traditional forest environment under the national Forestry Law and these rights have been recognized in a landmark decision by the Indonesian Constitutional Court in 2012.³² To understand GIs in the context of decentralization policies in Indonesia is important because many of them originate from such *adat* communities, from ethnic communities on the “outer islands,” and from regions that experienced ethnic unrest in the tumultuous years following the end of Suharto’s rule.³³ Examples of such GIs include Gayo coffee and patchouli oil from Aceh, Kalosi and Toraja coffee from Sulawesi, and Adan Krayan rice from Kalimantan. The long struggle of Aceh against incorporation into the Netherlands East Indies and the string of rebellions since then have been well documented, with Anthony Reid noting that there were only “relatively short periods of the twentieth century during which Aceh was not disturbed by rebellion against Jakarta.”³⁴ Coffee plantations were established by the Dutch after they had incorporated Aceh into their colonial empire. Coffee is a relatively recent addition to the livelihood of some of the Gayo people in the highlands of Aceh, which live in communities that have seen a strong influx of transmigrants from Java. Around 2000, there was interethnic violence in the Aceh region involving the *Gerakan Merdeka Aceh* (Free Aceh Movement) and what John Bowen describes as militias of unclear origins and composition, with some of them being allegedly linked to the Indonesian army.³⁵ In Kalimantan, there was widespread violence between local Dayak groups and transmigrants from the island of Madura off the north shore of Java between 1996 and 2001.³⁶ As for the Toraja region of Sulawesi, Kathleen Adams reports disputes between locals and the central authorities about the

³² Noer Fauzi Rachman & Mia Siscawati, *Forestry Law, Masyarakat Adat, and Struggles for Inclusive Citizenship in Indonesia*, in *THE ROUTLEDGE HANDBOOK OF ASIAN LAW* 224–249 (Christoph Antons ed., 2017).

³³ See the GI Registration List, DIRECTORATE GENERAL OF INTELLECTUAL PROPERTY RIGHTS, laman.dgip.go.id/layanan-kekayaan-intelektual/indikasi-geografis/berita-resmi-ig (last visited February 7, 2017) (showing twenty-one of the thirty-nine registered GIs in Indonesia (including three from foreign countries) are from the islands outside of Java).

³⁴ Anthony Reid, *Indonesia, Aceh and the Modern Nation State*, in *THE POLITICS OF THE PERIPHERY IN INDONESIA: SOCIAL AND GEOGRAPHICAL PERSPECTIVES* 84, 94 (Minako Sakai, Glenn Banks & J.H. Walker eds., 2009).

³⁵ JOHN R. BOWEN, *ISLAM, LAW AND EQUALITY IN INDONESIA: AN ANTHROPOLOGY OF PUBLIC REASONING* 24 (2003); Edward Aspinall, *Modernity, History and Ethnicity: Indonesian and Acehnese Nationalism in Conflict*, in *AUTONOMY AND DISINTEGRATION IN INDONESIA* 128, 141 (Damien Kingsbury & Harry Aveling eds., 2003).

³⁶ Mary Hawkins, *Violence and the Construction of Identity: Conflict between the Dayak and Madurese in Kalimantan, Indonesia*, in *THE POLITICS OF THE PERIPHERY IN INDONESIA: SOCIAL AND GEOGRAPHICAL PERSPECTIVES* 153–172 (Minako Sakai, Glenn Banks & J.H. Walker eds., 2009).

diversion of income from tourism and the question on whether jobs as tour guides should go to locals or to people from elsewhere in Indonesia.³⁷ The last mentioned example of a national development initiative using local culture shows that disputes can arise if locals take a more exclusive view of who should benefit from their culture than the government and development planners in Jakarta. GIs, as another national initiative for the marketing of local culture, could raise similar concerns.

Legal academics and social scientists have long been showing the increasing role of governments in discourses about heritage and tradition that are linked to IP rights.³⁸ It was only a matter of time before claims to centralized and national control of such rights and the benefits flowing from licensing and royalty collections would encounter counterclaims from local communities, indigenous communities, and regional governments. In Indonesia, this is now becoming visible with the emergence of regional IP laws, which put local governments rather than the central government in charge of granting licenses and collecting royalties. Unsurprisingly, the first set of such local regulations was proclaimed in 2008 in the province of Papua to protect the IP rights of indigenous Papuans.³⁹ Papua had remained under Dutch administration until 1962 and was incorporated into Indonesia after a controversial referendum in 1969, a move resisted by the *Organisasi Papua Merdeka* (Free Papua Organisation) ever since.⁴⁰ Apart from Aceh, it was the only province granted “special autonomy” in 2001.⁴¹ Richard Chauvel, in his analysis of the

³⁷ Kathleen M. Adams, *Touting Touristic “Primadonas”: Tourism, Ethnicity, and National Integration in Sulawesi, Indonesia*, in *TOURISM, ETHNICITY AND THE STATE IN ASIAN AND PACIFIC SOCIETIES* 160–72 (Michel Picard & Robert E. Wood eds., 1997).

³⁸ See, e.g., Christoph Antons, *Traditional Knowledge and Intellectual Property Rights in Australia and Southeast Asia*, in *NEW FRONTIERS OF INTELLECTUAL PROPERTY LAW: IP AND CULTURAL HERITAGE, GEOGRAPHICAL INDICATIONS, ENFORCEMENT AND OVERPROTECTION* 37–51 (Christopher Heath & Anselm Kamperman Sanders eds., 2005); Christoph Antons, *What Is “Traditional Cultural Expression”? International Definitions and Their Application in Developing Asia*, 1 *WIPO J.* 103 (2009); Rosemary Coombe, *The Expanding Purview of Cultural Properties and Their Politics*, 5 *ANN. REV. L. & SOC. SCI.* 393 (2009); Lorraine V. Aragon & James Leach, *Arts and Owners: Intellectual Property Law and the Politics of Scale in Indonesian Arts*, 35 *AM. ETHNOLOGIST* 607 (2008); Jinn Winn Chong, “Mine, Yours or Ours?": *The Indonesia-Malaysia Disputes over Shared Cultural Heritage*, 27 *SOJOURN: J. SOC. ISSUES SE. ASIA* 1–53 (2012).

³⁹ Peraturan Daerah Khusus Provinsi Papua Nomor 19 Tahun 2008 Tentang Perlindungan Hak Kekayaan Intelektual Orang Asli Papua.

⁴⁰ M.C. RICKLEFS, *A HISTORY OF MODERN INDONESIA SINCE C. 1200* 328, 358–59 (3rd edn. 2001).

⁴¹ Richard Chauvel, *Papua and Indonesia: Where Contending Nationalisms Meet*, in *AUTONOMY AND DISINTEGRATION IN INDONESIA* 115, 122 (Damien Kingsbury & Harry Aveling eds., 2003) (quoting Decrees of the People’s Advisory Assembly (MPR) No. IV/MPR/1999, No. VIII/MPR/2000, Appendix 1.1.a).

negotiations for the special autonomy law, describes the negotiations as a bargaining process between the provincial government and a committee from the central parliament in Jakarta.⁴² The autonomy law makes a distinction between indigenous Papuans and other residents of the province. It defines “indigenous Papuans” as “*rumpun ras Melanesia*” (i.e., “descending from Melanesian racial stock”), who are members of indigenous tribes or people recognized as indigenous by the Papuan *adat* communities.⁴³ The same definition is also used in the Special Regional Regulation of the Province Papua No. 19 of 2008 on the Protection of Intellectual Property Rights of Indigenous Papuans.⁴⁴ The Regulation extends to “indigenous Papuan GIs” focusing on the “specific indigenous Papuan circumstances” and the specific Papuan character and quality of such GIs.⁴⁵ What this Regulation means in practice for the administration and registration of Papuan GIs is not clear at this stage as none have been successfully registered so far.

Although Papua is a rather special case, other provinces are beginning to draft their own rules and regulations on IP rights. In 2012, West Java issued a Regional Regulation of the Province of West Java No. 5 of 2012 on the Protection of Intellectual Property.⁴⁶ The province of Bangka Belitung is currently drafting a regional regulation on intellectual property. A spokesperson for the regional law and human rights office there has made it clear that the regulation is meant to raise income and to channel royalties, which are currently going to the central government, to the regional government.⁴⁷ Discussions about a regional regulation have also started in East Java, where the Governor has identified 253 potential GIs and 154 indications of origin as “communal intellectual property” owned by the “East Java community.”⁴⁸ Needless to say, the proliferation of local IP regulations could well create inconsistencies among local and national IP laws. In the West Java IP protection regulation, GIs are included, rather confusingly, in a category called *hak*

⁴² *Id.*, 122–27.

⁴³ Art. 1 t. of Law No. 21 of 2001 on Special Autonomy for the Papua Province.

⁴⁴ Art. 1 No. 8 of the Special Regional Regulation of the Province Papua No. 19 of 2008 on the Protection of Intellectual Property Rights of Indigenous Papuans.

⁴⁵ Art. 1 No. 16 of Special Regulation No. 19/2008.

⁴⁶ Peraturan Daerah Provinsi Jawa Barat Nomor 5 Tahun 2012 Tentang Perlindungan Kekayaan Intelektual.

⁴⁷ BE, *Kanwilcumham Babel Ajukan Perda HAKI*, BELITONG EKSPRES (December 13, 2014), <http://belitongekspres.co.id/2014/12/13/kanwilcumham-babel-ajukan-perda-haki/>.

⁴⁸ *Pemprov Diminta Terbitkan Perda HKI*, UBAYA (June 11, 2015), www.ubaya.ac.id/2014/content/news_detail/1548/Pemprov-Diminta-Terbitkan-Perda-HKI.html.

terkait (neighboring rights),⁴⁹ a term otherwise and elsewhere in this regulation used for neighboring rights in copyright.⁵⁰ Also, the object of GI protection as defined in Article 16 of Regional Regulation No. 5 of 2012 (i.e., the “specification of a production method, the specification of the quality of a product, the name, reputation or other characteristic, which distinguishes [it] from a product of the same kind”) differs from the definition of a GI in the new Trade Marks Act.⁵¹

Whether local governments are authorized to enact such wide-ranging regulations may be found in Article 70 of the new Trade Marks and Geographical Indications Act and in Law No. 23 of 2014 on Regional Government Administration, which implements the general framework outlined in the Constitution. Article 70 leaves the matter undecided and states merely that guidance, including legal protection, with regards to GIs is the responsibility of the central and/or regional government, depending on their respective authority. Law No. 23 of 2014 reserves a few areas to the national government and includes an Annex stating fields in which both national and regional governments have powers to act. Here, the central government is put in charge of community IP rights in the field of culture⁵² and of the development of the national creative industries sector using IP rights.⁵³ All government levels are responsible, depending on their locations, for the empowerment of *adat* communities.⁵⁴ The recognition of *adat* communities, their traditional knowledge, and their related rights are discussed in the section on the environment and is the responsibility of local authorities unless the communities inhabit several provinces, in which case the central government would be responsible.⁵⁵ As will be explained in the following, the associations representing GI users are not normally identical with *adat* communities, so that the authority of the central government will probably prevail in most cases. In any case, Law No. 10 of 2004 on the Forming of Legislative Provisions envisages a hierarchy of laws in which regional regulations stand at a lower level than national laws and are not valid in so far as they contradict national laws.⁵⁶

⁴⁹ Art. 7(2) Regional Regulation of the Province of West Java on the Protection of Intellectual Property.

⁵⁰ In art. 8(3), (4), the term is used to cover performances, recordings, and broadcasting rights.

⁵¹ Art. 1 No. 6 Trade Marks and Geographical Indications Act (defining a GI as “a sign, which indicates the geographical origin of a good and/or product, with this origin giving a certain reputation, quality and characteristic to the good because of the geographical environment, the human factor or a combination of the two.”).

⁵² Annex to Law No. 23 of 2014 under V. ⁵³ Annex to Law No. 23 of 2014 under Z.

⁵⁴ Annex to Law No. 23 of 2014 under M. ⁵⁵ Annex to Law No. 23 of 2014 under K.

⁵⁶ Simon Butt, *Regional Autonomy and Legal Disorder: The Proliferation of Local Laws in Indonesia*, 32 SYDNEY L. REV. 177–97 (2010); Simon Butt, *National Control Over Local*

How much of the regional regulation of IP will survive such scrutiny remains, therefore, to be seen. What the regulations enacted thus far indicate, however, is that the various levels of government may not always have the same interests when it comes to IP relating to heritage and tradition. Clearly, some regional governments see local culture as a source of income that should benefit their provinces rather than the central government. Also, it is equally clear that some provinces would like to ensure that benefits go first and foremost to locals rather than to, for example, transmigrants. While the central government may be interested in initiating regional development projects, it may also encourage controlled migration into an area and, consistent with the concept of a unitary state, cannot allow for distinctions among different sections of the population. Conversely, regional governments may not share such goals and concerns.

Finally, there are the customary law or *adat* communities. In spite of the aforementioned landmark decision in their favor, their position in the Indonesian political structure remains weak. Following the reinterpretation of the relevant provision of the Forestry Act by the Constitutional Court, these communities and their rights are recognized “as long as they are still in existence and in accordance with the development of society and the principles of the unitary Republic of Indonesia regulated by law.”⁵⁷ However, these communities are not part of the regional government as defined in Law No. 23 on Regional Government Administration. Instead, they depend on the regional government’s recognition of their rights, which are only mentioned in the context of the protection and management of the environment. If this implies a role of custodians only, communities dissatisfied with this role can take the matter to the courts, as some have done recently in the Constitutional Court Case mentioned above regarding recognition of their traditional rights under the Forestry Act.⁵⁸ However, the large discretionary powers that laws grant the authorities and courts in relation to *adat* communities provide a strong incentive to work with regional authorities in getting local culture and traditions recognized and promoted.

In the end, much will depend in every single case on the relationship between *adat* communities and the government and how far locals regard their interests as well represented, their traditions as respected, and benefits from commercialization as fairly distributed. As for GIs, appropriate

Lawmaking in Indonesia, in THE ROUTLEDGE HANDBOOK OF ASIAN LAW, 203–223 (Christoph Antons ed., 2017).

⁵⁷ See the Constitutional Court’s re-interpretation of Article 4(3) of Law No. 41 of 1999 on Forestry, Decision of the Constitutional Court No. 35/PUU-X/2012 of May 16, 2013, 185–86.

⁵⁸ *Id.* at 1–188.

representation of the various stakeholder interests in the associations managing them will be decisive. Madhavi Sunder fears that within such associations, “traditional leaders may impose their will on members, reifying traditional hierarchies.”⁵⁹ At least in the case of Indonesia, however, associations formed for the protection of GIs are not “traditional.” They are government constructs with varying degrees of involvement of “traditional leaders.” If one examines the registrations of GIs so far, the majority of registering associations simply call themselves “Association for” (*Asosiasi*) or “Community for the Protection of” (*Masyarakat Perlindungan*) a particular GI. There is only a single registration referring to an *adat* community and this is the GI for Adan Krayan rice registered by the Adat Community Association for the Protection of Adan Krayan Rice. This example will be discussed further below. Prior to examining individual case studies, however, it is necessary to look at the structure of the legal framework for GI protection in Indonesia.

3 THE LEGAL FRAMEWORK FOR GEOGRAPHICAL INDICATIONS

So, who is in charge of GIs in Indonesia and what is the legal framework for them? GIs and indications of origin are regulated in Chapters VIII, IX, X, and XI of the Indonesian Trade Marks and Geographical Indications Act of 2016, with further details stated in an implementing Government Regulation No. 51 of 2007 Regarding Geographical Indications. A GI is defined as “a sign, which indicates the geographical origin of a good and/or a product with this origin giving a certain reputation, quality, and characteristic to the good and/or product because of the geographical environment, the human factor or a combination of the two” under Article 1 No. 6 of the Trade Marks and Geographical Indications Act, which overrides a differently worded definition in Article 1 No. 1 of Government Regulation No. 51/2007. The “sign” can be the name of the place or the region or any other sign that indicates the origins of the goods.⁶⁰ The government’s explanation accompanying Article 2(1) of Government Regulation No. 51/2007 gives the following examples: (a) the word “Minang” indicates that a good’s origin is West Sumatra; and (b) the picture of a Toraja *adat* house indicates that a good comes from the Toraja region in South Sulawesi.

⁵⁹ Madhavi Sunder, *The Invention of Traditional Knowledge*, 70 L. & CONTEMP. PROBS. 97–124 (2007).

⁶⁰ Art. 2(1) Government Regulation No. 51/2007.

GIs can be used for goods obtained from nature, agricultural goods, manufactured products, crafts, or other goods.⁶¹ The 2007 Government Regulation foresees that, once registered, GIs can no longer become generic⁶² and that this protection does not extend to indications that have become generic in the past and prior to registration.⁶³ This reason for not registering a GI has now been left out in Article 56 of the new Trade Marks and Geographical Indications Act and Article 56, therefore, overrides Article 3(d) Government Regulation No. 51/2007.

The frequent use of Indonesian place names abroad could be one of the reasons for this change. The government's explanation to the relevant Article 3(d) of Government Regulation No. 51/2007 gives examples of the names of fruits that have been linked to certain islands and have now become commonly known in Indonesia (e.g., *pisang Ambon* (Ambon banana) and *jeruk Bali* (Bali grapefruit)). Incidentally, *pisang Ambon* is also known outside of Indonesia as a liqueur manufactured in the Netherlands.⁶⁴ However, it is not the only Indonesian place name registered in the Netherlands. Gayo coffee producers from Aceh found to their dismay that the term "Gayo" was trademark-registered by a coffee-trading company in the Netherlands.⁶⁵ If such place names are in the future no longer regarded as generic, bona fide users or owners of trademarks using the name may in the future have to rely on Article 68(1), (2) Trade Marks and Geographical Indications Act, which grants them a 2-year grace period to phase out the infringing use.

Other reasons that prevent registration are listed in Article 56 of the Trade Marks and Geographical Indications Act. Accordingly, GI registration will be refused if it conflicts with the state ideology, legal provisions, morality, religion, ethics, and the public order.⁶⁶ The state ideology of Indonesia is *Pancasila*. It consists of five broad principles, initially pronounced by Indonesia's first President Sukarno, and enshrined in the preamble of the Indonesian Constitution of 1945. The five principles are belief in a supreme

⁶¹ Art. 2(2) Government Regulation No. 51/2007.

⁶² Art. 2(4) Government Regulation No. 51/2007.

⁶³ Art. 3(d) Government Regulation No. 51/2007.

⁶⁴ Wikipedia, *Pisang Ambon*, https://en.wikipedia.org/wiki/Pisang_Ambon (last visited June 10, 2016).

⁶⁵ *Dutch Company Claims Int'l Trade Rights Over Gayo Coffee*, JAKARTA POST (February 11, 2008), <http://imo.thejakartapost.com/news/2008/02/11/dutch-company-claims-into39l-trade-rights-over-gayo-coffee.html>; Mark Forbes, *Aceh Heads for New Conflict – Over the Name of a Coffee*, SYDNEY MORNING HERALD (February 16, 2008), www.smh.com.au/news/world/aceh-heads-for-new-conflict-over-the-name-of-a-coffee/2008/02/15/120276059951.html.

⁶⁶ Art. 56(1)a. Trade Marks and Geographical Indications Act.

god; just and civilized humanity; Indonesian unity; democracy guided by the wisdom of consultation and representation; and social justice for the whole of the Indonesian people.⁶⁷ *Pancasila* also informs the interpretation of “religion” in this context. It prescribes religious tolerance as far as the major religions are concerned, while animist belief systems are not officially recognized.⁶⁸ In accordance with a similar provision in the previous Trade Marks Act and the relevant Government Explanation, “religious morality” would only become of concern in exceptional cases where religious symbolism is used in an insulting and insensitive manner.⁶⁹ The question of disturbance of the “public order” has, in the past, occasionally been used in cases of consumer confusion about trademarks, especially in relation to the geographical origin of a product.⁷⁰ This interpretation is no longer relevant after the introduction of GIs and the prohibition in the Trade Marks Act to register GI-protected signs as trademarks.⁷¹ Consumer confusion relating to the reputation, quality, characteristics, origin, production process, and/or use of the goods also prevents registration of a GI according to Article 56(1)b. Trade Marks and Geographical Indications Act.⁷² A further obstacle to GI registration is if the geographical name is already used as the name for a plant variety as indicated in Article 56(1) c. Trade Marks and Geographical Indications Act, unless there is an addition of comparable words which indicates that there exists a geographical indication of the same kind. Further reasons that lead to an application being declined are when the content of a document describing the GI cannot be verified (Article 56(2)a.) and when the indication to be registered is substantially identical with the registered one (Article 56(2)b.).

The Act and Regulation also mention the applicants and principal right holders under the legislation. According to the Preamble to the Government Explanation on Government Regulation No. 51 of 2007, these parties are the local community groups where the goods originate and who are competent to maintain, defend, and use a GI in connection with their businesses and/or enterprises.⁷³ Article 53(3) of the Trade Marks and Geographical Indications Act narrows this wide scope down to two types of organizations: organizations

⁶⁷ CHRISTOPH ANTONS, *INTELLECTUAL PROPERTY LAW IN INDONESIA 19–20* (2000)

⁶⁸ *Persoon*, *supra* note 30.

⁶⁹ See the Government Explanation to Article 5 a. of the former Trade Marks Act of 2001: “Included in the understanding of conflicting with religious morality, ethics or the public order is where the use of the aforementioned sign may hurt the feeling, politeness, calm or religiousness of the general public or of a certain group in society.”

⁷⁰ ANTONS, *supra* note 67, 221.

⁷¹ Article 56(2)b. Trade Marks and Geographical Indications Act.

⁷² Art. 56 (4) Trade Marks Act; Article 3 b. of Government Regulation No. 51/2007.

⁷³ Preamble, Government Regulation No. 51/2007.

representing the communities in production areas; and the local government at provincial, district, or city level. According to the government explanation accompanying Article 53(3)a. typical representative organisations are producer associations, cooperations, and “communities for the protection of geographical indications.” Of the thirty-nine GIs registered in the GI registry so far,⁷⁴ three (Champagne, Pisco, and Parmigiano Reggiano) were registered by foreign organizations and one (Muntok White Pepper) directly by a government agency.⁷⁵

The remaining GIs were registered by various organizations representing the communities in production areas referred to as “communities,” “associations,” “community forums,” or “networks” for GI protection with widely varying membership.⁷⁶ According to Article 5(3) of Government Regulation No. 51/2007, and the accompanying government explanation, membership should include local cultivators of natural resources, producers of agricultural goods, crafts or industrial goods, or traders selling such goods.⁷⁷ Article 53(3) of the Trade Marks and Geographical Indications Act speaks of communities that work with goods and/or products in the form of natural resources, handicrafts or industrial products. According to the government explanation, the latter term includes any raw material transformed into goods and mentions as examples typical textiles from the provinces of Bali (*Tenun Gringsing*) and East Nusa Tenggara (*Tenun Sikka*). “Natural resources” is given a very wide interpretation in the government explanation and includes not just animals, plants, and microorganisms, but also oil, natural gas, certain types of metal, water, and soil.

In practice, it seems that in many cases the initiative to set up such an association comes from the local government, with government leaders at the provincial and regency levels being involved in the leadership of the association or in the roles of *pembina* (senior members), *penasehat* (advisers), or *pengawas* (supervisors). Other members not immediately involved in the production or trading can be lawyers, university experts, or members of institutions for skills training.⁷⁸

⁷⁴ GI Registration List, *supra* note 33. ⁷⁵ *Id.*

⁷⁶ DIRECTORATE GENERAL OF INTELLECTUAL PROPERTY RIGHTS, <http://119.252.174.21/indikasi-geografis/> (last visited March 9, 2016) (providing links to the various *buku persyaratan* (books of rules and regulations), from which details about the membership can be collected).

⁷⁷ Art. 5(3) Government Regulation No. 51/2007.

⁷⁸ For example, the executive committee of the association administering the GI for Jepara furniture, discussed in the following section, includes representatives from artisan centers and craft schools. See DIRECTORATE GENERAL OF INTELLECTUAL PROPERTY RIGHTS, <http://119.252.174.21/indikasi-geografis/> (last visited March 9, 2016).

The executive committee of such associations is usually formed by decree of the local government.⁷⁹ It is usually authorized to draft the *buku persyaratan* (Book of rules and regulations), which accompanies the application for registration.⁸⁰ In the new Trade Marks and Geographical Indications Act it is referred to as a document describing the GI (*Dokumen Deskripsi Indikasi Geografis*).⁸¹ This book specifies all the details about the good, what is special about it, as well as the logo that will be used for it.⁸² It also contains an explanation about the territory that the GI relates to and the territorial borders. This explanation, however, must be endorsed by a government agency in the relevant field of production in a recommendation letter. Other important tasks of committees of the associations at the local level include the standardization of products, supervision of training and education, certification that producers using the GI have the necessary skills, and certification and control of the materials involved in the production process.⁸³

The ultimate decision about the appropriateness of the local regulations rests with a powerful *Tim Ahli Indikasi Geografis* (Expert Team for Geographical Indications) in Jakarta, which is appointed by the Minister of Justice.⁸⁴ When the first Expert Team was appointed in 2008, it included central government officials from various departments, from the Directorate General of Intellectual Property Rights (DGIP), and members of relevant research institutes.⁸⁵ In the future, it will comprise a representative of the Minister, representatives of the Ministries of agriculture, industry, trade and/or other related Ministries, representatives of the supervisory and quality assurance bodies, and other experts.⁸⁶ An Expert Team like this is supported by a Technical Evaluation Team.⁸⁷ What was particularly surprising about the previous regulation was the lengthy period that the Expert Team was allowed to take of up to two years

⁷⁹ See, e.g., Decision of the Regent of Jepara No. 78 of 2010 Regarding the Formation of the Operational Organization of Geographical Indications Products, 55–59, <http://119.252.174.21/indikasi-geografis/filemedia/Buku-Persyaratan-Mebel-Ukir-Jepara-Perubahan1/mobile/index.html> (last visited March 9, 2016) [hereinafter Decision of the Regent of Jepara].

⁸⁰ Art. 6(3) Government Regulation No. 51/2007.

⁸¹ See Arts. 56(2)a., 66a. Trade Marks and Geographical Indications Act.

⁸² Art. 6 (3) Government Regulation No. 51/2007.

⁸³ See, e.g., Decision of the Regent of Jepara, *supra* note 79.

⁸⁴ Arts. 8, 14 58, 59 Trade Marks and Geographical Indications Act.

⁸⁵ *Pemerintah angkat tim ahli indikasi geografis*, KOPI GAYO COFFEE (July 21, 2008), <http://kopigayo.blogspot.com.au/2008/07/pemerintah-angkat-tim-ahli-indikasi.html> (last visited June 3, 2016). For the regulation of membership of the team see Art. 14 (2) Government Regulation No. 51/2007.

⁸⁶ See Art. 59(2) of the Trade Marks and Geographical Indications Act.

⁸⁷ Article 59(5) Trade Marks and Geographical Indications Act.

for a decision on a GI application.⁸⁸ The new Trade Marks and Geographical Indications Act now brings the time table for the substantive examination into accordance with the much tighter framework of 150 days of the trademarks examination process by referring to Arts. 23 to 26 Trade Marks and Geographical Indications Act.⁸⁹ The new law also foresees a new Ministerial Regulation regarding the details of the registration process of GIs and the various expert teams,⁹⁰ which may finally replace Government Regulation No. 51/2007.

The central and regional levels of government also become involved in monitoring the use of the GI,⁹¹ but the wider society, including communities and other interested parties, can also become involved.⁹² Producers and producer organisations can also oppose registrations,⁹³ sue violators in the Commercial Court for damages, ceasing of the infringing activities as well as destruction of relevant labels and apply for an injunction to stop the infringing activities.⁹⁴ Article 18 of Government Regulation No. 51/2007 further offers a claim for deletion of an infringing registration.

4 THE CASE STUDIES OF ADAN KRAYAN RICE AND JEPARA FURNITURE

The significance of *adat* communities was discussed earlier. There are currently thirty-nine registered GIs in Indonesia, with most of them registered for agricultural products. One of these has been registered by the *Asosiasi Masyarakat Adat Perlindungan Beras Krayan* (Customary Community Association for the Protection of Adan Krayan Rice). This rice comes from the Krayan region of the province of North Kalimantan. The customary community in question is one of the many sub-groups of people that outsiders collectively refer to as the Dayak tribes,⁹⁵ who live on the island of Borneo, and are often the majority population in the island's interior. Those living in the Krayan region refer to themselves as Lundayeh, which means "people of the

⁸⁸ Art. 8(2) Government Regulation No. 51/2007.

⁸⁹ See Art. 58(2) Trade Marks and Geographical Indications Act and Article 23(5) for the length of the substantive examination process..

⁹⁰ Art. 60 Trade Marks and Geographical Indications Act.

⁹¹ Art. 71(1) Trade Marks and Geographical Indications Act.

⁹² Article 71(2) Trade Marks and Geographical Indications Act.

⁹³ Articles 53(4), 16 Trade Marks and Geographical Indications Act.

⁹⁴ Article 69 Trade Marks and Geographical Indications Act.

⁹⁵ Robert L. Winzeler, Introduction to INDIGENOUS PEOPLES AND THE STATE: POLITICS, LAND, AND ETHNICITY IN THE MALAYAN PENINSULA AND BORNEO 1, 3 n. 2 (Robert L. Winzeler ed., 1997).

interior.”⁹⁶ Like many other tribal population groups, they are spread over a fairly large territory and related groups are to be found in the Indonesian provinces of East and North Kalimantan as well as across the border in the states of Sabah and Sarawak in the Malaysian part of Borneo, where they are called Lun Bawang (people of the place).⁹⁷ The Kelabit people are another related group in the north-east of Sarawak who grow the same type of rice.⁹⁸ According to Cristina Eghenter, it is a two-hour motorcycle ride from the village of Long Bawan in Indonesia to the Kelalan Valley in Malaysia and “[f]or centuries this border has done little to divide communities and families on its two sides.”⁹⁹ Ardhana et al. point out that “[t]hese people, while living in two different countries, share a common border and are bound to one another by ties of ethnicity, language, kinship, religion and economics” and are “linguistically and culturally the same.”¹⁰⁰

The people in this region practice a system of wet rice cultivation, which the Lundayeh call Lati’ba. It involves a combination of irrigation techniques, buffalos to soften the land and fertilize the soil with their waste, and bamboo to bind the soil and use as construction material for water pipes and fences.¹⁰¹ The resulting organic rice comes in white, red, and black varieties and is famous for its quality and taste.¹⁰² It is known as “Bario rice” in Malaysia and as “Adan Krayan rice” in Indonesia. However, while communities in Malaysia have road connections to major markets to sell their surplus rice, the Lundayeh on the Indonesian side of the border are well connected to the nearest village in Malaysia but need expensive air transport to reach the nearest provincial capitals in Indonesia.¹⁰³ As a result, surplus Adan Krayan rice is sold mainly in Ba Kelalan, the nearest border town in Malaysia.¹⁰⁴

⁹⁶ I Ketut Ardhana, Jayl Langub & Daniel Chew, *Borders of Kinship and Ethnicity: Cross-Border Relations Between the Kelalan Valley, Sarawak, and the Bawan Valley, East Kalimantan*, 35 BORNEO RESEARCH BULLETIN 144–45 (2004).

⁹⁷ *Id.*

⁹⁸ Dora Jok, *Adan Rice*, in THE HUMAN HEART OF BORNEO 45 (Nancy Ariaini et al., (eds.), not dated), www.wwf.org.au/our_work/saving_the_natural_world/forests/forests_work/heart_of_borneo/the_human_heart/ (last visited June 6, 2016).

⁹⁹ Cristina Eghenter, *Borneo: One Island One Sustainable Future*, in THE HUMAN HEART OF BORNEO, *supra* note 98, at 57.

¹⁰⁰ Ardhana et al., *supra* note 96, at 144–145.

¹⁰¹ Jayl Langub, *Lati’ba: The Process of Wet-Rice Cultivation*, in THE HUMAN HEART OF BORNEO, *supra* note 98, at 44.

¹⁰² Jok, *supra* note 98, at 45; Ardhana et al., *supra* note 96, at 144–145.

¹⁰³ *Beras Adan Resmi Dipatenkan*, KOMPAS: REGIONAL (January 15, 2012), <http://regional.kompas.com/read/2012/01/15/18453496/Beras.Adan> (last visited February 15, 2016)

¹⁰⁴ Ardhana et al., *supra* note 96, at 144–145.

The Malaysian side allows border trade to be free of customs duties only in this border area so that it would not be economically feasible for the Indonesians to circumvent the traders in the town by selling further inland.¹⁰⁵

When a GI for Adan Krayan rice was registered in Indonesia in 2012, the Indonesian press was quick in celebrating the registration as a victory over what they regarded as copycats on the Malaysian side of the border, following several disputes about cultural and IP rights to cultural material in recent years.¹⁰⁶ What was “temporarily claimed by Malaysia,” as stated in one article, “was now the property of Indonesia.”¹⁰⁷ The “claiming by Malaysia” referred to a GI registration for Bario rice in Malaysia in 2008 by the Sarawak Information Technology and Resources Council, a state agency of the government of Sarawak. The same newspaper article also explained that because of their geographical isolation, Adan Krayan people were forced to sell their rice on the Malaysian side of the border. Some local government officials subsequently went as far as to claim in the media that all rice sold on the Malaysian side as “Bario rice” in fact originated in the Krayan region of Indonesia and that the rice could not be grown elsewhere.¹⁰⁸ Studies of the border trade indeed confirm the economic grip of the Malaysian side over the Indonesian communities but also explain that the rice is grown on both sides of the border, on the Malaysian side not only in Sarawak but also in Sabah. The climate and altitude on both sides of the border are similar, as is the “human factor” of irrigation techniques and the other elements described above as part of the Lati’ba system.¹⁰⁹ Quite clearly, these techniques are practiced on both sides of the border by these related communities and, consequently, both GIs continue to be used.

In what commentators regard as a further attempt by the government to stop Malaysian claims, the local government of the regency has also registered Adan Krayan as plant variety.¹¹⁰ According to Article 7(1) of the Plant Varieties Protection Act,¹¹¹ local varieties are “owned by the community, but controlled by the state.” In the implementing

¹⁰⁵ *Id.* at 169, 172. ¹⁰⁶ Antons, *supra* note 18.

¹⁰⁷ Andi Saputra, *Sempat Diklaim Malaysia, Beras Adan Krayan Kini Milik Indonesia*, DETIKNEWS (January 13, 2012), <http://news.detik.com/berita/1815286/sempat-diklaim-malaysia-beras-adan-krayan-kini-milik-indonesia> (last visited February 15, 2016)

¹⁰⁸ *Beras Adan Resmi Dipatenkan*, *supra* note 97; Agus Candra, *Malaysia Klaim Padi Adan Indonesia*, KOMPASIANA (March 14, 2011), www.kompasiana.com/aguscandra/malaysia-klaim-padi-adan-indonesia_5500959da333113e0950fe67 (last visited February 15, 2016)

¹⁰⁹ Ardhana et al., *supra* note 96, at 144–145. ¹¹⁰ Candra, *supra* note 108.

¹¹¹ Undang-Undang Republik Indonesia Nomor 29 Tahun 2000 Tentang Perlindungan Varietas Tanaman.

Government Regulation,¹¹² local government officers are put in charge of registering them and, accordingly, all local varieties registered since 2005 have been registered by governors of provinces, mayors of towns, and regency officers.¹¹³ For instance, the Krayan rice varieties were registered in 2006 by the Head of the local Regency of Nunukan.¹¹⁴ The Trade Marks and Geographical Indications Act seeks to avoid overlaps between plant variety protection and GIs by stipulating in Article 56(1)c. that a local geographical name registered for a plant variety can no longer be used to register a GI for the same plant, unless further words are used that indicate that it concerns a geographical indication. In the case of Krayan rice, only the white variety is registered in the Plant Variety Register using the term *Adan*, but with the additional term *putih* (white).¹¹⁵ Also, the Indonesian language has different words for rice in the field (*padi*) and harvested rice (*beras*). Thus, the GI is registered for harvested rice and not for the plant and this could be an additional reason why the subsequent GI registration has been allowed in this case.

Although the word “*adat*” used here is the same as that recognized in Article 18B(2) of the Constitution, the GI Protection Association formed here for the purposes of administering the GI is an organization in the context of the IP legislation and not necessarily identical with the constitutionally recognized “*adat* law community.” The Heads of the various local *adat* communities are involved as *penasehat* (advisers), while the whole association stands under the *pelindung* (patronage) of the highest local government officials, including the *Bupati* (government officer in charge of the regency).¹¹⁶ In sum, government officials and the population have high hopes for the legal protection of this rice via the registered GI. However, they may be disappointed because the registration in Indonesia does not seem to help much as long as the lack of transportation and market access problems persist. The geographical isolation of the Krayan communities means that these communities have to continue to

¹¹² Peraturan Pemerintah Republik Indonesia Nomor 13 Tahun 2004 Tentang Penamaan Pendaftaran dan Penggunaan Varietas Asal untuk Varietas Turunan Esensial.

¹¹³ Rajeswari Kanniah & Christoph Antons, *Plant Variety Protection and Traditional Agricultural Knowledge in Southeast Asia*, 13 AUSTL. J. ASIAN L. 16 (2012).

¹¹⁴ Plant Variety Register, PUSAT PERLINDUNGAN VARIETAS TANAMAN (CENTRE FOR PLANT VARIETY PROTECTION) OF THE MINISTRY OF AGRICULTURE, [http://ppvtpp.setjen.pertanian.go.id/ppvtpp/tinymcepuk/gambar/File/NI-2014\(1\).pdf](http://ppvtpp.setjen.pertanian.go.id/ppvtpp/tinymcepuk/gambar/File/NI-2014(1).pdf) (last visited March 10, 2016).

¹¹⁵ *Id.*

¹¹⁶ For the composition of the management of the association see the “Book of rules and regulations” *Buku Persyaratan Indikasi Geografis – Asosiasi Masyarakat Adat Perlindungan Beras Adan Krayan*, <http://119.252.174.21/indikasi-geografis/?paged=2> (last visited February 15, 2016).

sell their rice to their main competitors in Malaysia,¹¹⁷ and the GI protection cannot allow them to raise prices under such circumstances. With regard to the division of income and responsibilities in the context of decentralization policies, the Krayan region was not affected by the violent clashes between local Dayak groups and transmigrants elsewhere in Kalimantan. Reports indicate in fact that there is outmigration from the area and the relatively small population of non-Lundayeh people is welcome to join the workforce, in particular on the Malaysian side of the border.¹¹⁸ Nevertheless, a discourse regarding indigenous IP rights is forming in the central parts of Borneo. This is visible from the main points that a newly formed “Alliance of Indigenous Peoples of the Highlands of Borneo” regards as its mission, which includes the protection of cultural sites, historical sites, and “the collective intellectual property rights of the Indigenous Peoples of the Highlands.”¹¹⁹

Of the thirty-nine GIs registered so far, all but one relate to agricultural goods. The only registration for traditional crafts on the list is Jepara furniture, a highly valued and popular traditional type of Javanese furniture produced in the Jepara Regency on the north coast of Java.¹²⁰ This GI is registered by an Association called *Jepara Indikasi Geografis Mebel Ukir Jepara* (Jepara Geographical Indication for Carved Jepara Furniture). The Executive Committee of this association consists of many government officers at the regency level and representatives from producer associations, artisan centers, and craft schools.¹²¹ The regency government also forms a committee that evaluates relevant products and recommends producers and artisans that may register as users of the GI. This committee also maintains the quality control of the materials used and checks the qualification of the artisans involved in the production process.¹²²

The low number of registrations of craft-related GIs in comparison to those relating to agriculture is surprising in a culturally rich country like Indonesia.

¹¹⁷ Ardhana et al., *supra* note 96, at 147, 169, 172. ¹¹⁸ *Id.* at 174.

¹¹⁹ THE HUMAN HEART OF BORNEO, *supra* note 98, at 59.

¹²⁰ See the relevant “Book of rules and regulations” *Buku Persyaratan Indikasi Geografis – Indikasi Geografis Mebel Ukir Jepara* 1–2, <http://119.252.174.21/indikasi-geografis/?book=mebel-ukir-jepara> (last visited March 10, 2016).

¹²¹ *Id.* at 57–59.

¹²² *Id.* at 60–62; see also Farisa Adilan, *Hak Indikasi Geografis Mebel Ukir Jepara (IG MUJ) dalam Peningkatan Ekonomi Daerah Kabupaten Jepara*, www.academia.edu/10110570/Hak_Indikasi_Geografis_Mebel_Ukir_Jepara_IG_MUJ_dalam_Peningkatan_Ekonomi_Daerah_Kabupaten_Jepara (last visited February 15, 2016); *HaKI IG Melindungi Mebel Ukir*, KOMPAS (December 27, 2010), <http://edukasi.kompas.com/read/2010/12/27/03545334/HaKI.IG.Melindungi.Mebel.Ukir> (last visited February 15, 2016).

One reason for this relatively low interest in GIs in the craft sector could be that the products of the larger producers of Batik and similar craft products are already protected by trademarks that are well known in Indonesia. Hence, while GIs could provide an additional marketing tool for such producers, they are already well served by other parts of the IP system. Another reason could be that the borders of the region of protection are more difficult to establish for cultural products that rely strongly on the skills of people involved in the production rather than on climatic or soil conditions as in agriculture. In the case of Jepara furniture, the GI is supposed to help in competition with not just international furniture producers from countries like China and Vietnam but also other local producers that have been inspired by the success of Jepara furniture but are producing at lower costs.¹²³

Again, however, the GI offers only a marketing tool in the competition with low-cost producers elsewhere in Indonesia but does not prevent these producers from producing furniture in Jepara style. Ensuring greater exclusivity by relying on copyright or design registration is not possible with regard to traditional motifs in Indonesia. This is because Indonesian design law requires a “new design,”¹²⁴ while the new Indonesian Copyright Act of 2014 establishes the state as the fictional copyright holder over traditional cultural expressions.¹²⁵

5 CONCLUSION

GIs have often been discussed in the context of local and rural development and the safeguarding of cultural heritage. This link to rural and regional developments means that an assessment of the impact of GIs in such fields needs to take into account Indonesia’s efforts at decentralizing the political and administrative power structure since 1999. Discussions in this field could become enmeshed in complicated bargaining processes between central and regional authorities, and between different levels of government and local communities about the scope and direction of development projects and the usefulness of GIs in this context. Differences about such directions have occasionally come to the fore on the fringes of the vast Indonesian archipelago in provinces such as Aceh and Papua and on the island of Sulawesi, for example. The decentralization process is now leading to the emergence of regional IP laws, which, in the example of Papua, create different IP rights for

¹²³ *HaKI IG Melindungi Mebel Ukir*, *supra* note 116; Adilan, *supra* note 116.

¹²⁴ Art. 2(1) of Law No. 31 of 2000 on Industrial Designs.

¹²⁵ Art. 38 of Law No. 28 of 2014 on Copyright.

Papuans. There is also an emerging indigenous peoples' movement in other parts of Indonesia, which in some cases wants to see the indigenous peoples' collective IP rights being protected.

Indonesia's current GI legislation makes the community organizations representing the GI users the principal right holders. Such community organizations are not to be confused with traditional *adat* communities. They are usually set up with substantial involvement of local government agencies to administer the GIs and to maintain the quality of the goods for which they are used. Although they have strong supervisory roles at the local level, the ultimate decision about the registration of the GIs and the appropriateness of rules and regulations relating to them is made by an expert team in Jakarta.

The case studies presented in this chapter show widespread hope with regard to GIs at both the community and government levels. They show, however, that the expectations are often exaggerated. GIs are marketing tools and not instruments to exclude competitors at the national or international level. Their effects on heritage and the environment will only become visible in the longer term. In neighboring Malaysia, for example, the success of highland rice has occasionally led to attempts to raise the output by introducing double cropping and inorganic chemical inputs.¹²⁶ In remote and isolated settings, as in the Krayan in Kalimantan, GIs can be of little help if it is too costly to actually reach the target markets and products have to be sold in the markets of competitors. Nevertheless, there are positive assessments of the effect of GIs established elsewhere, such as in Bali. It is further surprising to see that the registration for Jepara furniture is so far the only GI relating to traditional crafts in a country as rich in traditional culture as Indonesia. Perhaps the reason is that the larger commercial players in industries such as Batik are already well served by other parts of the IP system. Nevertheless, the GI for Jepara furniture could prove advantageous for Jepara producers in differentiating their products from their numerous competitors.

¹²⁶ Ardhana et al., *supra* note 96, at 175.