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Geographical Indication Law Problems to Protect Local Knowledge of Food Products in Thailand*

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Abstract

The current Thai Geographical Indication Law does not come from the spirit of Thai people. It is only the implementation of international law based on Western ideas into Thailand. As a result, the existing legal provisions are inconsistent with the tradition of using the names of Thai geographical sources and the traditions of producing Thai food products. Therefore, Thai food products are only public domain. In addition, the interpretation of the law in the disqualification of Thai government agencies affects the protection of Traditional Knowledge

Keywords

Geographical Indication Law, Traditional Knowledge, food products, the spirit of Thai people, Thailand

1. Introduction

The Thai government has intended to take advantage of the Geographical Indication Protection Act 2003 to raise standards and prices of Thai food and other community products along with the conservation of traditional knowledge of Thai food products. At the same time, Thai society is culturally complex and thought differently from Westerners, causing the provisions of the Thai Geographical Indication Law influenced or legally influenced by the TRIPS Agreement obligations [1] to encounter problems in interpreting the law to protect Thai food products. For

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example, Thai food products such as Tom Yum Goong, which is a food product that does not have a name related to geography but people around the world know that it is a food product from Thailand, etc. Some Thai food products can be geographically named, such as Kanom Sali Suphan, Kanom Mo Kaeng Mueang Phetchaburi, but many other food products cannot be geographically named, such as Chicken Massaman Curry, Basil Fried Rice, Stewed pork leg on rice, etc. However, Thai food products often use symbols or place names as important to indicate the place of sale, but such a place may not actually be the source of the product, and the symbol indicating the place may not be in a format that Westerners can understand, such as a market, a neighborhood, an alley or other similar place names that only Thai people can understand. The current Thai Geographical Indication Law therefore does not conform to the tradition of using the names of geographical sources of Thai people and the traditions of producing Thai food products, resulting in no legal effect to be directly protected for the conservation of local wisdom [2] because Thai food products are only a public domain (Dieko, 2020; Favier & Fontana, 2020; Hajjar, 2020).

2. Results

The Geographical Indication Protection Act 2003 has indirect benefits to Conservation of local wisdom, but such preserved local wisdom must create a unique identity for the product, and the community has used the name of geographical indication with the product for a long time until consumers accepted it in accordance with Section 3 of the Geographical Indication Protection Act 2003.

From the study, the following problems were found:

1. Problems with the limitation of terminology under Section 3 of the Geographical Indication Act 2003 such as the term "geographical indication" which defines that only goods originating from a geographic source that are of quality, reputation or that are directly attributed to a geographic source are protected by law, and the term "geographic source" which defines an area of a country, region, region and locality, including only seas, lakes, rivers, rivers, islands, mountains or similar areas; to be protected by law

Due to the narrowness of these definitions, the Geographical Indication Law cannot be applied to all types of Thai food products. This situation is reflected from the results of the study on 4 Thai food products, namely:

- (1) Tom Yum Goong
- (2) Massaman
- (3) Kanom Sali Suphan
- (4) Kanom Mo Kaeng Mueang Phet

From the study, it was found that Thailand provides protection of geographical indications to Khanom Mo Kaeng Muang Phet only because Kanom Mo Kaeng Muang Phet is a traditional knowledge product with quality, reputation, and specific characteristics under Section 3 of the Geographical Indication Protection Act 2003 because the Phetchaburi community has used palm sugar in their province

to produce the products of Khanom Mo Kaeng Muang Phet until consumers accept the quality, reputation. However, 3 other Thai food items are Tom Yum Goong, Kanom Sali Suphan, Massaman curry do not benefit from the use of the Geographical Indication Protection Act 2003. This is because Massaman curry is a Thai traditional knowledge but is not linked to any geographical indication in Thailand; While Tom Yum Goong is a traditional knowledge, Tom Yum Goong is linked to the name of Thailand, but the geographical origin of Thailand does not indicate that the raw materials or production processes come from any community in Thailand. These geographical sources have given rise to the quality and reputation of Tom Yum Goong, as a result, Tom Yum Goong is unable to register a Geographical Indication. As for the Kanom Sali Suphan of Suphan Buri, it is a product that is linked to the geographical source of Suphan Buri province, but its quality does not come from the use of raw materials in Suphan Buri causing Kanom Sali Suphan to be disqualified as a product according to Section 3 of the Geographical Indication Act 2003. The results of this study are consistent with the 2010 United Nations Industrial Development Organization report on the adding value to traditional products of regional origin, which examined the relationship between traditional knowledge and geographical indications [3]. In such cases, it is an interpretation of the law that disqualifies itself.

2. Problems with laws regarding the culture or customs of using the names of geographical sources of Thai people and/or the culture or customs of producing Thai food products that are only public works cause Thai government agencies to strict interpretation, resulting in not being registered for protection of geographical indication.

3. The problem of registration of food product protection in ASEAN Economic Community countries before other countries because of the culinary culture or consumption of food products, especially in Southeast Asia, there are similar cultures, such as chicken rice, layer cake cakes, jasmine rice, etc., which makes any country registered first has an advantage over the country that will register later. This whole process model lacks integration between countries in order to create a registration database or request for joint registration.

3. Suggestions

Thailand's Geographical Indication Law is used to protect commercial interests in conjunction with the conservation of traditional knowledge and in compliance with Article 22.1 of the WTO TRIPS Agreement [4]. However, the TRIPS Agreement is not a strict regulation but Thai government agencies have chosen the Geographical Indication Protection Act 2003 as a specific law (*sui generis*) for the purpose of protecting geographical indications and enhancing the quality and price of community products, as well as having indirect benefits in preserving traditional knowledge[5]. Therefore, in the current situation, Thailand should continue to use the Geographical Indication Protection Act 2003, but some content should be amended to allow government officials to interpret the law to expand more protection as follows:

1. The definition of "geographical indication" should be amended in Section 3 of the Geographical Indication Protection Act 2003 by adding the text at the end of Section 3 of the Geographical Indication Protection Act 2003 that: "Geographical indications are goods that are produced only at a certain stage in the area or goods that are produced at some stage in the area, or goods that are prepared in the area in which the area conducts such activities, for which the area is a territory, region or other locality as specified by the registrar" This is to allow the Registrar of the Department of Intellectual Property, Ministry of Commerce to have the power to use discretion to interpret the extension of protection for new Thai food products.

2 The definition of the term "Geographic Sources" in Section 3 of the Geographical Indication Protection Act 2003 should be edited to support the use of geographical indication names by Thai people because the definition of a geographic source under this section is based on Western cartography concepts, Geographical sources are therefore like mapping in which the maker has to draw a continuous line through various landscapes, whether mountains, rivers, to show the boundaries, area of the community, but this condition is not consistent with Thai geographical sources [6] by adding text to the end of the definition "Geographic source" as "symbol or anything else used to refer to or represent a local area" in accordance with the tradition of using geographical sources of Thai people.

3. The local culture or customs should be used to consider the common name of the product. The name to be registered must not be a common name in the country applying for registration, and require that countries with local cultures or customs can apply for registration of a common name of the product in their country, but must present the information on becoming a common name to the person considering the registration application under the TRIPS Agreement in accordance with the timeframe agreed upon by the Contracting Parties;

4. There should be a registration in the form of a database, whereby Member States agree on the preparation of domestic laws in accordance with multilateral registration that provides comprehensive and mutually beneficial protection of geographical indications thoroughly.

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