

## Geographical Indications Protection Under The New Regulation In Indonesia

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### Abstract

Since geographical indications are set out in the TRIPs Agreement, Indonesia, as a member of the WTO, has established a regulation on geographical indications in its national law. The geographical indications regulation was first stipulated in the Law of the Republic of Indonesia No. 14 of 1997 concerning Trademarks. After several changes, the Law of the Republic of Indonesia No. 20 of 2016 concerning Trademarks and Geographical Indications superseded the previous trademark law. The title of this statute separates the terms trademark and geographical indications; however, is this division correct? This paper examines the normative provisions on geographical indications in that statute and examines the practice of registering geographical indications products originating from Lampung Province. The results show the new Indonesian trademark law has few changes, geographical indications are still associated with trademark registrations and registering geographical indications is a long and complicated process.

**Keywords:** *Geographical indications, trademark, legal protection*

### Introduction

The existence of geographical indications (GIs) in accordance with international law occurred with the ratification of the Agreement on Trade-Related Aspects of Intellectual Property Rights, called the TRIPs Agreement. The TRIPs Agreement stipulates the standards regarding the availability, scope and use of intellectual property rights, specifically GIs.<sup>2</sup> Once regulated in national law, in this context Indonesian national law, GIs provisions change into positive law.

The TRIPs Agreement was ratified on 15 April 1994 in conjunction with the agreement establishing the World Trade Organization, called the WTO Agreement. The TRIPs Agreement is valid for a relatively long time, and its implementation has created some legal issues (Evans & Blakeney, 2006). The provisions in the TRIPs Agreement have the potential to create inter-norm (Seregig, Suryanto, Hartono, & Rivai, 2018) conflicts regarding the protection of GIs from each WTO member state. According to Article 1 of the TRIPs Agreement:

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<sup>2</sup> See, Part II and Section 3 of TRIPs Agreement.

Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

That provision provides protection with minimum standards. While member states shall comply with the provisions set forth in the TRIPs Agreement, they are given the freedom to apply stronger protections. This provision is called TRIPs-plus (Unctad-Ictsd, for Trade, Development, on IPRs, & Development, 2005).

These provisions have caused controversy, as each WTO member state is granted the freedom to make national laws according to their own legal system and practice. The difference in the regulation affects the rules regarding GIs, and the different rules have caused legal controversy (Evans & Blakeney, 2006). While some regulations base GIs protection on the principle of first to file, others base GIs protection on the principle of first to use.

For example, GIs goods from the European Union (EU), such as Champagne wine from France, are not only used for wine brands in the United States (US) but also for cookies and crackers (Babcock & Clemens, 2004). GIs protection in EU is based on registration,<sup>3</sup> while in the US, GIs protection is based on use, such as a trademark (Moschini, Menapace, & Pick, 2008).

When the Government of Indonesia implemented the TRIPs Agreement into national law, it seemed to apply a minimum standard of provisions concerning GIs in the TRIPs Agreement, in accordance with the national legal system and applicable legal practice. The established rules on GIs are only applied in three articles, and they are added to the Indonesian Trademark Law (TM Law). However, GIs regulation in Indonesia applies the TRIPs-plus standard because the definitions and elements of GIs in the TM Law refer to the Appellation of Origin (AO), which has stronger legal protection than the GIs rules in the TRIPs Agreement.

GIs protection in Indonesia was stipulated for the first time in Law No. 14 of 1997 concerning the Amendment to Law No. 19 of 1992 regarding Trademarks (TM Law 14/1997). As the name

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<sup>3</sup> Dora de Teresa. (2003). *Regional Protection of GIs in Europe*. Paper of EU-ASEAN Workshop on Geographical Indications: A Way into the Market, Hanoi, 7-8 October, p.3.

implies, TM Law 14/1997 is a change from the previous Indonesian Trademark Law in 1992. The change was made by adding a special chapter between Chapter IX and Chapter X, namely Chapter IXA on Geographical Indications and Indication of Source, which consisted of three articles: Article 79A, Article 79B and Article 79C.

The first Indonesian Trademark Law lasted only five years before it was changed. Five years is a relatively short existence for a law that has been enacted nationally. One of the main reasons why the Government of Indonesia issued TM Law 14/1997 was its participation in the TRIPs Agreement, which had been passed into national law; therefore, the adjustment was mandatory.

TM Law 14/1997 did not last long. After just four years, TM Law 14/1997 was replaced by TM Law 15/2001. In TM Law 14/1997, a government regulation was required to implement regulations. However, the government regulation had not yet been published, meaning TM Law 14/1997 had to be replaced.

In TM Law 15/2001, the provisions on GIs are regulated in Chapter VII on Geographical Indications and Indications of Source and set forth in Articles 56, 57 and 58. These provisions regarding GIs are not vastly different from those set out in TM Law 14/1997, and there are similarities in the elucidation of both laws' articles. This indicates that the urgent change of TM Law was made to accommodate changes in the substance of the trademark law rather than in GIs protection.

The provisions in TM Law 15/2001 also require the existence of a government regulation for implementation. The government regulation was issued six years later. In 2007, the Government of Indonesia issued Government Regulation No. 51 of 2007 on Geographical Indication, hereinafter referred to as GR 51/2007.

The provisions regarding GIs protection in GR 51/2007 are more complete and comprehensive than in TM Law 15/2001. The main rules in GR 51/2007 consist of 11 chapters and 28 articles. The set rules include a definition, duration of protection, terms and procedure of application, examination by an expert team and lawsuits.

Although GR 51/2007 is technically considered lower judicially than TM Law 15/2001, the rules in GR 51/2007 extend beyond TM Law 15/2001. There are also several provisions not regulated

in TM Law 15/2001 that are regulated in GR 51/2007, such as the provisions of GIs that do not have to be registered and the requirement to make the Book of Requirements.

The extra provisions in GR 51/2007 exist despite the Indonesian legal system applying the principle of *lex superior derogate legi inferior*, which states a regulation should not conflict with higher-level regulations (Kusumaatmadja & Sidharta, 2009). This principle becomes a reference in Law No. 12 of 2011 on the Establishment of Laws and Regulations, which set that the legal force of the legislation is in accordance with the hierarchy. In the legislation hierarchy, a statute is higher than a government regulation.<sup>4</sup> Thus, it is not surprising that the GR's legal power causes controversy (Sasongko, 2012a, 2012b).

TM Law 15/2001 and GR 51/2007 contain provisions for the definition of GIs and their elements that are more similar to the Lisbon Agreement for the Protection of Appellation of Origin and their International Registration than the TRIPs Agreement. The Lisbon Agreement provides extremely strong protection to Appellation of Origin (AO) (Zylberg, 2002). Thus, the GIs protection regime in Indonesia falls into the TRIPs-plus category because it has a stronger GIs protection standard than the GIs protection provisions in the TRIPs Agreement.

After applying for approximately nine years, TM Law 15/2001 was replaced by Law No. 20 of 2016 on Trademark and Geographical Indications (TM Law and GIs 20/2016). The GIs name is paired with the trademark term to reinforce the recognition of the existence of GIs as an intellectual property rights regime in the national legal system. The reasons the Government of Indonesia replaced TM Law 15/2001 once again concerned the demands of facing global competition and providing legal certainty for the interests of industry, trade and investment.

Regarding the enactment of TM Law and GIs 20/2016, the protection of GIs in the new regulation becomes a major legal issue. This paper aims to analyse and discuss the issue of GIs protection under the new regulation. Similar to the previous revisions, the law change does not result in significant alterations to the provisions concerning GIs protection.

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<sup>4</sup> See, Art. 7 of Law No. 12 of 2011 regarding the Establishment of Legislation.

### Research Method

This paper was based on the results of normative legal research methods, which were performed by conducting research and tracking the concepts, theories, doctrines, international treaties and national legal regulations concerning GIs protection in references such as books and journal articles. The research also included reviewing legal documents, such as international treaties, national legal regulations and registered GIs certificates.

This study performed a legal comparison between the GIs protections of several countries through a purposive sampling method. A comparison was also conducted regarding the legal provisions for the protection of GIs with the implementation of the TRIPs Agreement.

### Protection for Geographical Indications Under the New Regulations

GIs protection in TM Law 15/2001 technically has no legal power because it was replaced with TM Law and GIs 20/2016. The provisions for GIs in TM Law 15/2001 can be categorised as guidelines for GIs protection because the substances are regulated slightly and only contain a provision that has a general character, while specific natures are referred to the trademark provisions, such as the provisions for GIs registrations and that appeals shall apply the provisions for trademarks *mutatis mutandis*.<sup>5</sup> Is such a GIs regulatory pattern also used in the new TM Law and GIs rules?

In contrast to TM Law 15/2001, which only had three articles for regulations, the provisions for GIs in TM Law and GIs 20/2016 are more quantitative, as described below.

#### Provisions of Law No. 20 of 2016 on Trademark and GIs

Provisions	Articles
Part VIII Geographical Indications	Article 53 - Article 55
Part IX Registration of Geographical Indications	
Section 1 Geographical Indications that Cannot Be Registered and Refused	Article 56 - Article 57
Section 2 Substantive Examination of Geographical Indications	Article 58 - Article 60
Section 3 Duration of Protection and Removal of Geographical Indications	Article 61 - Article 62
Section 4 Indications of Source	Article 63 - Article 65
Part X Violation and Lawsuit	
Section 1 Violation of Geographical Indications	Article 66
Section 2 Lawsuit	Article 67 - Article 69
Part XI Founding and Supervision of Geographical Indications	
Section 1 Founding	Article 70
Section 2 Supervision	Article 71

<sup>5</sup> See, Art. 56 (3) and (6) of TM Law and GIs 20/2016.

### Definition of Geographical Indications

In the general provisions of TM Law and GIs 20/2016, GIs are defined as: ‘a sign indicating the origin of goods and/or products that, due to geographic environmental factors including natural factors, human factors or a combination of both factors provide a reputation, quality, and certain characteristics on the goods and/or products produced’.

According to this definition, the first element of GIs is a sign indicating the origin. The geographical name is often used as a sign indicating the place where the item originated. Furthermore, the geographical name was used as a trademark long before GIs, such as the trademark for *Dodol Garut and Rendang Padang*<sup>6</sup> (Rekarti & Doktoralina, 2017). The possibility of overlapping between trademark protection and GIs protection is extremely likely (Stern, 2001). This element also has similarities with elements in the Indication of Source to identify an item’s origin.<sup>7</sup>

The second element is that the GIs object is in the form of goods and/or products. This element differentiates between the GIs definition under TM Law and GIs 20/2016, as well as the GIs definition under TM Law 15/2001 and the definition of GIs under the TRIPs Agreement. According to Article 56 Paragraph (1) of TM Law 15/2001, GIs is defined as: ‘a sign indicating the origin of a good, which due to geographical environmental factors including natural factors, human factors, or a combination of these two factors, gives certain characteristics and qualities to the goods resulting from’.

The GIs definitions in TM Law, GIs 20/2016 and TM Law 15/2001 are similar; the difference is only in the words of goods and/or products. In fact, the term ‘product’ in business includes goods and services.<sup>8</sup> This means GIs are like a trademark that can be used on goods and services. Thus, the coverage of GIs protection is becoming increasingly extended.

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<sup>6</sup> Dodol is the name of traditional food from the Province of West Java. Garut is the name of the city is located at the Province of West Java. As for *Rendang* meat cow simmered in spices & coco (rendang), originated from one of the tribes in the West Sumatra region.

<sup>7</sup> See, Official Explanation of Art. 64 of TM Law and GIs 20/2016.

<sup>8</sup> Pursuant to Business Dictionary, product type is a grouping of similar kinds of manufactured goods or services. Available at <http://www.businessdictionary.com/definition/product-type.html> (last visited July 7, 2017).

The definition of GIs under Article 22.1 of the TRIPs Agreement states: ‘Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin’. This definition mentions only goods and not products, like the GIs definitions in TM Law and GIs 20/2016.

Meanwhile, the term product is also used in AO (Birkbeck, 2016; Calboli & Ng-Loy, 2017). According to the Lisbon Agreement: ‘appellation of origin means the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors’.<sup>9</sup>

The third element is geographical or environmental factors, including natural factors, human factors or a combination of these two factors. These factors are formulated alternatively and cumulatively at the same time. In the TRIPs Agreement, there are no such factors. Therefore, the GIs definition in the TRIPs Agreement is broader than in TM Law and GIs 20/2016.

The TRIPs Agreement does not require geographical or environmental factors, including natural factors and human factors, as GIs elements, and it only mentions ‘the good is essentially attributable to its geographical origin’. In contrast, TM Law and GIs 20/2016 includes those factors as GIs elements. These factors, in fact, become the elements of AO. Thus, although TM Law and GIs 20/2016 uses the term GIs, it also contains the elements of the AO definition.

The fourth element is providing a reputation, quality and certain characteristics of the goods and/or products produced. This element is similar to the GIs element in TM Law 15/2001; there is little difference in the use of this term. The GIs elements in TM Law 15/2001 use the term ‘to give certain characteristics and qualities to the goods produced’, and there is no mention of reputation. The formulation of elements in TM Law and GIs 20/2016 is a cumulative formula because it uses the word ‘and’. Consequently, all those elements must exist on GIs goods and/or products.

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<sup>9</sup> See, Art. 2.1 of Lisbon Agreement.

Meanwhile, the GIs elements in TM Law and GIs 20/2016 are incorporated in the TRIPs Agreement. However, the definition features an alternative formula because it uses the word ‘or’; therefore, it does not require all the elements to be on the goods.

Basically, the elements contained in the definition are inherent features for the GIs legal entity; thus, they must be maintained and defended in the requirements for the registration of rights.

### **Registration of Geographical Indications**

Like a trademark, GIs protection is also based on a constitutive system. Under this system, GIs rights come from registration. Article 53 Paragraph (1) of TM Law and GIs 20/2016 stated that GIs are protected after registration. The provisions are similar to those established in TM Law 15/2001.<sup>10</sup> The constitutive system is aimed to ensure greater legal certainty, not only for rights holders but also for others, such as consumers who buy GIs products. Constitutive systems are also used for trademark protection.

### **What Products Can Be Registered as Geographical Indications?**

As previously mentioned, a GIs object can be registered as a product.<sup>11</sup> There are differences in terms of GIs objects that can be registered under TM Law 15/2001 and TM Law and GIs 20/2016. In the GIs definition according to TM Law 15/2001, only goods are mentioned; no further description is provided regarding what kinds of goods can be registered as GIs. However, Article 56 Paragraph (1) of TM Law 15/2001 stated that the protection of GIs includes goods produced by nature, agricultural goods, handicrafts or other industrial products.

Meanwhile, TM Law and GIs 20/2016 does not elaborate in detail regarding the products that can be registered as GIs. Article 53 Paragraph (3) mentioned only: (a) natural resources, (b) handicraft goods or (c) industrial products. The only elucidation provided is that their natures must be ‘sufficiently clear’. Unfortunately, the use of the term ‘goods’ instead of ‘products’, which is used in TM Law and GIs 20/2016, is not given a more detailed description. In fact, the issue of GIs in the form of products remains debatable as to whether the GIs objects include goods and/or products.<sup>12</sup>

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<sup>10</sup> See, Art. 56 (1) of TM Law 15/2001.

<sup>11</sup> Supra note 520.

<sup>12</sup> UNCTAD-ICTSD, *op. cit.*, p. 289-290.

### **What Sign Cannot Be Registered as Geographical Indications?**

Article 56 Paragraph (4) of TM Law 15/2001 regulates what sign cannot be registered, and it is similar to the provisions of Article 56 Paragraph (1) of TM Law and GIs 20/2016. However, in Article 3 GR 51/2007, it is stated that the generic sign cannot be registered. The TRIPs Agreement does not use the term ‘generic’ but uses the term ‘common name’;<sup>13</sup> the term ‘generic’ or ‘non-generic’ has become a technical term or specialised in trademark law.<sup>14</sup>

The provision on a generic name does not exist in TM Law and GIs 20/2016; however, does this mean that generic names are now allowed to be registered as GIs? This cannot be ascertained because TM Law and GIs 20/2016 delegates to the Minister of Law and Human Rights, who makes ministerial regulations and who also influences certain sections required to make government regulations. However, if consistent with the established hierarchy of rules, implementing regulations should not extend a prohibition norm that is missing from the relevant statute.

Due to the prohibition on registering generic names, the ‘Jeruk Bali’ (Bali Orange) products from Indonesia cannot be registered as GIs. In Malaysia, the products can be registered as ‘Limau Bali’.<sup>15</sup> In fact, there is no difference in meaning between ‘jeruk’ and ‘limau’. The term ‘limau’ in the Indonesian language comes from the Malay language, and it also means ‘oranges’ or ‘jeruk’.

### **Who Can Apply for Registration?**

Generally, the intellectual property rights applicant is the owner of the intellectual work’s rights, such as the creator or inventor. This concept is the conventional thinking in intellectual property law. However, the individual ownership concept does not apply to GIs. Ownership in GIs is a collective ownership, which is called collective rights, or public ownership, which is called public rights (Rangnekar, 2003). In fact, the right of GIs is more appropriately called the right of control rather than the right of ownership because it is generally controlled by society; thus, it is called communal rights.<sup>16</sup>

Based on the law, it is appropriate if TM Law and GIs 20/2016 states that only certain parties can register GIs. Alternatively, a certain party may act as an applicant to register the GIs to the Minister

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<sup>13</sup> See, Art. 24.6 of TRIPs Agreement.

<sup>14</sup> UNCTAD-ICTSD, *op. cit.*, p. 305.

<sup>15</sup> Intellectual Property Corporation of Malaysia, *Geographical Indications*. Available at <http://www.myipo.gov.my> (last visited July 7, 2017).

<sup>16</sup> Sasongko, *op. cit.*, p. 42.

of Law and Human Rights. The TRIPs Agreement uses the term ‘interested parties’ instead of ‘applicant’.

The interested parties may include: (a) an institution representing a community in a certain geographical region that seeks goods and/or products; (b) a provincial or district or city government.<sup>17</sup> According to the elucidation of that article, the institutions representing communities in the geographical region include producer associations, cooperatives and the GIs community.

This provision is slightly different than TM Law 15/2001, which states the applicant for the right of GIs is: (a) the institution representing the community in the region producing the goods concerned; (b) the institution authorised for it; or (c) the consumer group of the goods. This provision is somewhat confusing because there is no significant difference between ‘representative institutions’ and ‘authorised institutions’. According to legal theory in Indonesia, both terms mean ‘giving of command’ (*lastgeving* in Dutch) or ‘giving of authorisation’ (*volmacht* in Dutch) (Subekti, 1987). The party may act for, and on behalf of, the assignor or authoriser.

### **Classification of Application for Registration**

Not all GIs rights registration applications are acceptable. TM Law and GIs 20/2016 distinguishes between unacceptable registration applications and rejected applications, with an unacceptable application of registration being a request containing elements prohibited by TM Law and GIs 20/2016.

Unacceptable applications include: (1) an application that is contrary to the state ideology, legislation, morality, religion, morality and public order; (2) a request that misleads or deceives the public about the reputation, quality, characteristics, source origin, the process of making the goods and/or their use; (3) the application is a name that has been used as a plant variety and is currently used for a variety of similar plants, unless there is an addition to the equivalent word indicating a similar geographical indication.<sup>18</sup>

A rejected application is a registration application that does not fulfil the requirements under Article 56 Paragraph (2) of TM Law and GIs 20/2016: (a) the GIs Document of Description

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<sup>17</sup> See, Art. 53 of TM Law and GIs 20/2016.

<sup>18</sup> See, Art. 56 (1) of TM Law and GIs 20/2016.

cannot be verified; and/or (b) has similarities with registered GIs. TM Law 15/2001 did not distinguish between unacceptable registration applications and rejected applications.

Applicants who have been denied their application may file an appeal. In this situation, TM Law and GIs 20/2016 refers to the provisions of Article 28-Article 32 concerning trademark appeals; the appeal may be filed with the Trademark Appeal Commission. TM Law 15/2001 also refers to the terms of the trademark appeal procedure.

### **Examination of Registration Application**

TM Law and GIs 20/2016 does not set administrative checks; it simply mentions the Document of Description without further explanation. TM Law 15/2001 also does not regulate such documents; however, GR 51/2007 regulates the application of GIs registration, the Book of Requirements and the inspection procedures.

The application for registering GIs shall be filed by the applicant or by an authorised assignee by filling out a form that requests personal information like the applicant's name and address. In addition, the application must be submitted with a completed Book of Requirements, which is a set of documents containing information about the quality and characteristics that can distinguish one good from another within the same category.

The Book of Requirements, according to Article 6 Paragraph (3) of GR 51/2007, contains comprehensive data and information on GIs registration: (a) the identity of goods; (b) the characteristics and qualities that differentiate goods and relate to their region; (c) geographical environment, natural factors and human factors that affect the quality or characteristics of goods; (d) regional boundaries and/or regional maps; (e) history and tradition; and (f) the production process.

Considering the size of the Book of Requirements, it is difficult for the applicant to complete all the various documents. The process takes a long time and incurs a significant financial cost. These factors become obstacles in GIs registration. Therefore, it is not surprising that good products never get registered as GIs.

After all the documents of the Book of Requirements are prepared, the entire application is submitted to verify administrative completeness. If deemed complete, the application will be

examined by the Expert Team, which consists of experts in agriculture, geology, meteorology, marine, forestry, food, beverages and/or other fields that are related to the registered GIs.<sup>19</sup>

The results of the Expert Team's examination may result in approval or rejection of the GIs registration application. If the Expert Team approves, the information will be announced along with the Book of Requirements. Conversely, if the Expert Team rejects the application, the applicant will be notified and given the opportunity to provide a response.

The GIs registration regulations in TM Law and GIs 20/2016 are sufficient. However, regarding regulatory aspects, the provisions stipulated in GR 51/2007 seem to be more concise than the provisions in TM Law and GIs 20/2016. The provisions for GIs in GR 51/2007 are described below.

#### **Provisions of the Government Regulation No. 51 of 2007 on GIs**

<b>Provisions</b>	<b>Articles</b>
Part I General Provision	Article 1
Part II Scope of Geographical Indications	Article 2 - Article 4
Part III Requirement and Application Procedures	Article 5 - Article 6
Part IV Procedures of Examination	Article 7 - Article 14
Part V Using and Supervision of Geographical Indications	Article 15 - Article 20
Part VII Change and Ending of Protection	Article 21 - Article 23
Part VIII Appeal of Geographical Indications	Article 24
Part IX Violation and Lawsuit	Article 25 - Article 26
Part X Prior User of Geographical Indications	Article 27
Part XI Closing Provisions	Article 28

In the national law hierarchy, a statute is higher than a government regulation. If a statute is not in sync with its implementing rules, then as a consequence, the government regulation does not have binding power.

In contrast to TM Law 15/2001, which TM Law and GIs 20/2016 revoked, GR 51/2007 is still maintained. Article 106 of TM Law and GIs 20/2016 states that implementing regulations of TM Law 15/2001 is still valid as long as they are not contradictory to the provisions of TM Law and GIs 20/2016. This provision regulates the transition of regulatory enforcement.

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<sup>19</sup> See, Official Explanation of Article 14.2 of Government Regulation 51/2007.

In the next article, it is stated that the implementation rules of TM Law and GIs 20/2016 shall be stipulated no later than two years after their enactments<sup>20</sup> TM Law and GIs 20/2016 was enacted on 25 November 2016. Thus, GR 51/2007 will be valid until 2018.

### **Lampung Robusta Coffee: GIs Product from Lampung**

Lampung Province has a geographical area of 35,288.35 square kilometres, including the islands. The topography includes hills and mountains, including the Bukit Barisan mountain range with its peaks of Mount Tanggamus, Mount Pesawaran and Mount Rajabasa (Biro Pusat Statistik, 2016).

In the mountains and hills, coffee plantations cover an area of 173,819 ha, including the robusta coffee area (173,670 ha), with a production of 131,501 tons, and the arabica coffee area (149 Ha), with the production of 16 tons. The Pepper Plant covers an area of 60,480 ha with a production of 23,350 tons.<sup>21</sup>

Robusta Coffee Lampung is a superior product from Lampung Province. The community has cultivated robusta coffee from generation to generation, using selected varieties of coffee. Robusta coffee farming is the main source of income for people living in the highlands of West Lampung District, Tanggamus District and Way Kanan Regency. On the plateau, coffee is grown at an altitude between 275 and 1,000 meters above sea level, in volcanic soils of the fertile Andosol type (Direktorat Jendral Kekayaan Intelektual, 2015).

Gelondong merah coffee is picked manually and carefully selected to maintain at least 95% purity, and the coffee is processed by drying naturally in the sun or by using a machine. Medium-roasted coffee produces the main flavours: the fragrance of ground coffee and the smell of strong-brewed coffee with a sweet scent, spices, chocolate and more.<sup>22</sup>

Lampung coffee obtained GIs protection for Robusta Lampung Coffee and Robusta Luwak Coffee Lampung, with its products consisting of bean, roasted bean and ground coffee. They are registered as GIs with GIs Certificate No. ID G 000 000 026 and with the mark or logo listed below.<sup>23</sup>

This logo has a meaning:

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<sup>20</sup> See, Art. 108 of TM Law and GIs 20/2016.

<sup>21</sup> Ibid., p. 339.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.



- The image of Siger Tower Lampung is typical of Lampung Province.
- Robusta Coffee with the Lampung text shows it is an original product from Lampung.
- Coffee beans with brown colour are the colour of coffee after roasting.
- The green background colour indicates this product is environmentally friendly.

The above data and information are quoted from the Book of Requirements. The content in the Book of Requirements is extremely comprehensive and is even similar to the research reports prepared by experts. The Book of Requirements is outlined below.

### **Substance Book of Requirement Robusta Lampung Coffee**

- A. Nama Indikasi Geografis (Name of GIs)
- B. Jenis Barang dan Bentuk Produk (Type of Goods and Product Form)
- C. Karakteristik dan Kualitas (Characteristics and Quality)
- D. Kopi Biji Beras/Ose (Green Bean or Coffee Bean)
- E. Kopi Sangrai (Roasted Bean)
- F. Kopi Bubuk (Ground Coffee)
- G. Deskripsi Lingkungan Geografis (Faktor Alam dan Faktor Manusia)  
(Description of the Geographical Environment) (Natural Factors and Human Factors)
- H. Faktor Manusia (Human Factors)
- I. Peta Batasan Wilayah Produksi (Boundary Map of Production Area)
- J. Asal Usul Nama Lampung (Origin of Lampung Name)
- K. Sejarah Lampung (History of Lampung)
- L. Sejarah Kopi Lampung (History of Coffee Lampung)
- M. Adat Istiadat (Customs)
- N. Proses Produksi Barang (Production Process of Goods)
- O. Metode Pengujian Mutu Barang (Method of Quality Control of Goods)
- P. Metode Kontrol dan Keteruntutan ((Methods of Control and Traceability)
- Q. Label Indikasi Geografis (Geographical Indications Label)

The coffee farming community finds it difficult to perform the necessary research to prepare such a thorough report. If they ask experts to do it for them, they must pay large sums of money for these services. Thus, the obstacles in registering and in preparing the Book of Requirements are not merely money but also skill and managerial issues. This problem cannot be left to producer associations, cooperatives or GIs protection communities, as they too are farmers.

Not surprisingly, the Plantation Office of Lampung Province initiated the registration of Robusta Lampung Coffee. The government should play a role in solving the problems faced by the people, who in this context are the farmers producing the coffee.

The difficulties coffee farming communities face in registering GIs rights would not occur if the Government of Indonesia changed the GIs paradigm in the rule of law in accordance with the GIs

concept in the TRIPs Agreement, which sets only minimum standards. This is unlike those standards set out in TM Law 15/2001 and GR 51/2007, which are attached to the Lisbon Treaty. In fact, GIs have their own characteristics, or *sui generis*, different from AO and trademarks (Giovannucci, Josling, Kerr, O'Connor, & Yeung, 2009).

### **Conclusion**

Based on the legal analysis of the new rules on GIs protection in Indonesia, there is no change in the GIs concept. The GIs definition is still the same as that contained in TM Law 15/2001 and GR 51/2007, whose elements are similar to the AO in the Lisbon Agreement rather than the GIs in the TRIPs Agreement.

The inclusion of GIs in the title of the law does not bring significant changes in the substance of the regulation. However, it proves that the regulation on GIs protection thus far, according to the Government of Indonesia, is correct; therefore, there is no need for changes in policies and regulations, even though people find it burdensome to register their products as GIs.

The regulatory pattern of GIs in TM Law and GIs 20/2016 is not much different from TM Law 15/2001 and GR 51/2007. The new regulation of GIs protections in Indonesia only transfers the definition of GIs into general terms; however, it does not change the principles and norms of GIs protection in its articles. Furthermore, the existence of GR 51/2007 is still maintained, at least for two years.

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