



THE RATIFICATION OF GENEVA ACT 2015 AS GEOGRAPHICAL INDICATION PROTECTION: THE IMPACT FOR INDONESIA

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ABSTRACT

Geographical indications are one of the most important forms of intellectual wealth in the era of free trade, which is an important economic in various countries today. The goods produced by business actors in a country will always affect the representation of the brand and the country of origin. For a country with diverse cultural and natural resources like Indonesia, geographical indications are a crucial factor in protecting Indonesia's identity and uniqueness. The increasing urgency of the entry of Indonesian products into the international market has prompted the Indonesian government to seek legal remedies to protect local products that can help strengthen the country's economy. This research analyzes Indonesia's interest in ratifying the Geneva Act 2015 through a doctrinal legal research method combined with a statutory approach. The normative analysis of this study finds that ratifying the Geneva Act 2015 is indeed a step in the right direction, considering the many found weaknesses and normative restrictions within the legal framework of geographical indication protection in Indonesia.

A. INTRODUCTION

The conceptualization of intellectual property and intellectual property law stems from long-developed ideas established through international treaties and conventions,¹ with regulation overseen by the World Intellectual Property Organization (WIPO) and governed by twenty-six (26) international agreements.² These international legal frameworks are important not only in governing the basic legal norms regarding IPR that are accepted by the international community but also in shaping the future of IPR as scientific and

¹ Dara Quthni Effida, Ety Susilowati, and Kholis Roisah. "Upaya Perlindungan Hukum Indikasi Geografis Terhadap Salak Sidimpuan Sebagai Kekayaan Alam Tapanuli Selatan." *LAW REFORM* 11, no. 2 (September 2015): 188.

² Jack Lerner. "Intellectual Property and Development at WHO and WIPO." *American Journal of Law & Medicine* 34, no. 2–3 (June 2008): 257.

technological advances open more possibilities in the process of creation and invention. Crucial among these are the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 1958 (Lisbon Agreement 1958) and the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications 2015 (Geneva Act 2015), particularly focusing on the protection of appellations of origin and geographical indications. The ratification process of the Geneva Act 2015 as an international law product that updates the Lisbon Agreement to make it more compatible with international agreements such as the TRIPs Agreement,³ presents key challenges such as harmonization and implementation within the national legal system, requiring adjustment of the domestic intellectual property laws to ensure compliance with the expanded protections for geographical indications and appellations of origin. As a culturally diverse country, Indonesia is compelled to enhance its intellectual property laws, given its economic scale and the richness of its cultural and traditional heritage, including significant geographical indications.⁴ Consequently, ratifying the Geneva Act 2015 becomes imperative for Indonesia, ensuring the alignment of national laws with international standards to safeguard local geographical indications both domestically and globally, to ultimately strengthen the country's unique position in the international community.

The subsequent analysis explores Indonesia's unique challenges and efforts to ratify the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications 2015. This study uses doctrinal law research methods to analyze these problems because it will focus on normative analysis problems in ratifying an international legal product into Indonesian national law. Some secondary data will support this normative analysis. They are Law Number 20 of 2016 on Marks and Geographical Indications, Minister of Law and Human Rights Regulation Number 12 of 2019 Geographical Indications, Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 1958 (Lisbon Agreement, 1958), and Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications 2015 (Geneva Act 2015). Based on the description above, this legal study is limited to several studies. The first, study of the politics of intellectual property law and regulations and issues regarding geographical indications in the Indonesian legal system. The second, study of the 1958 Lisbon Agreement

³ Anselm Kamperman Sanders. "Geographical Indications of Origin: When GIs Become Commodities, All Gloves Come Off." *IIC - International Review of Intellectual Property and Competition Law* 46, no. 7 (2015): 755.

⁴ Anna G. Micara. "The Geneva Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration: An Assessment of a Controversial Agreement." *IIC - International Review of Intellectual Property and Competition Law* 47, no. 6 (September 2016): 673.

and the background of its revision through the Geneva Act 2015. Finally, in the last part, the study of the different definitions and constituent elements of conceptualizing geographical indications between Indonesian national law and the Geneva Act 2015.

B. RESEARCH METHODS

This study analyzes various problems in Indonesia's efforts to ratify the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications 2015 (Geneva Act 2015). For this purpose, the study employs the doctrinal legal research method to analyze these problems by focusing on normative analysis and its challenges in ratifying the Geneva Act 2015. The choice of the normative legal research method allows for a comprehensive examination of legal frameworks and their alignment with international standards, which is critical for understanding the potential and challenges in ratifying the Geneva Act 2015 into Indonesia's legal framework. Doctrinal legal research method is an approach to legal research that primarily involves the analysis and interpretation of legal rules, doctrines, principles, and precedents. This method relies on the examination of existing legal literature, statutes, regulations, court decisions, and other legal sources to derive legal principles and identify patterns within the law.⁵ Furthermore, this study utilizes the statutory approach by using secondary law in the form of primary law sources. They are Law Number 20 of 2016 on Marks and Geographical Indications, Minister of Law and Human Rights Regulation Number 12 of 2019 on Geographical Indications, Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 1958 (Lisbon Agreement, 1958), and Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications 2015 (Geneva Act 2015).

C. RESULTS AND DISCUSSION

1. Intellectual Property Law Politics and Regulations and Issues on Geographical Indications in the Indonesian Legal System

Intellectual property is crucial for fostering economic growth in Indonesia⁶, a country renowned for its vast geographical expanse and cultural diversity.⁷ Rooted in Pancasila, Indonesia's legal framework emphasizes fairness and justice, manifesting in intellectual property laws tailored to the

⁵ Hari Sutra Disemadi. "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies." *Journal of Judicial Review* 24, no. 2 (November 2022): 289.

⁶ Rohmat Rohmat, Waspiah Waspiah, and David Chuah Cee Wei. "Simple Patent Protection: A Case of Sarung Tenun Goyor Indonesia and The Comparison to Malaysia Utility Innovation Protection." *Journal of Indonesian Legal Studies* 7, no. 1 (June 2022): 299.

⁷ Hari Sutra Disemadi. "Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia," *LAW REFORM* 18, no. 1 (2022): 89.

nation's unique cultural tapestry.⁸ Despite its inherently monopolistic nature, intellectual property law aligns with Pancasila's principles, aiming to safeguard creators' exclusive rights while promoting originality and innovation.⁹ Pancasila stands as the cornerstone of values that govern the lives of Indonesians and the Indonesian legal system. Values such as social justice and nationalism are important in making sure that the protection of IPR is fair and doesn't harm public interest to ensure the development of Indonesia as a nation.¹⁰ This legal doctrine underscores the importance of individual rights within Indonesia's intellectual property landscape, ensuring a conducive environment for economic prosperity and creativity.

Indonesia has long grappled with piracy across various forms of intellectual property, posing not only a threat to the rights of local creators but also to those abroad.¹¹ These violations, spanning diverse fields, represent a breach of private rights as they encroach upon exclusive rights without legal sanction. The legal framework governing intellectual property seeks to safeguard these exclusive rights granted by the state, recognizing, and honoring the creative processes and ideas behind creations.¹² However, enforcement remains a significant challenge, with many holders failing to register their intellectual property and even registered ones facing difficulties in protection due to the limited efficacy of enforcement measures. A qualitative study showed that IPR violations affected the legal culture in Indonesia, particularly among buyers with low to middle income, taking up about 90% of the data collected, which ultimately showed serious concerns regarding the rule of law in Indonesia in the context of IPR protection.¹³ Moreover, violations extend beyond mere reproduction to encompass geographical indications, which are deeply intertwined with specific regions' unique culture and

⁸ Effida, Susilowati, and Roisah. "Upaya Perlindungan Hukum." 189.

⁹ Kholis Roisah. "Prismatika Hukum Sebagai Dasar Pembangunan Hukum Di Indonesia Berdasarkan Pancasila (kajian Terhadap Hukum Kekayaan Intelektual)." *Masalah-Masalah Hukum* 41, no. 4 (2012): 622.

¹⁰ Erisa Ardika Prasada. "Dasar Filosofis Fungsi Sosial Paten (Kajian Perbandingan Filsafat Pancasila Dan Filsafat Barat)." *Jurnal Hukum Uniski* 5, no. 1 (2016): 36.

¹¹ Purnama Hadi Kusuma and Kholis Roisah. "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal." *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (January 2022): 107; Muhammad Fahmi Rois and Kholis Roisah. "Perlindungan Hukum Kekayaan Intelektual Kerajinan Kuningan Tumang." *Kanun Jurnal Ilmu Hukum* 20, no. 3 (December 2018): 401.

¹² Megawati Barthos and Rineke Sara. "Dysfunctional IP Infringements and Ineffectiveness of Enforcement Mechanisms under Indonesian Law." *Journal of Legal, Ethical and Regulatory Issues* 22, no. 1 (2019): 1.

¹³ Muhammad Deovan Reondy Putra and Hari Sutra Disemadi. "Counterfeit Culture Dalam Perkembangan UMKM: Suatu Kajian Kekayaan Intelektual." *KRTHA BHAYANGKARA* 16, no. 2 (2022): 297.

materials.¹⁴ These violations not only exploit the reputation of the region but also impact indigenous communities intimately linked to the geographical indications, highlighting the multifaceted nature of intellectual property infringement in Indonesia.¹⁵

Geographical indications in Indonesia are explicitly regulated by Law No. 20 of 2016 on Trademarks and Geographical Indications (Trademark and GI Law). While not explicitly addressed in the Trademark and GI Law, geographical indications are considered collective or communal rights, meaning they cannot be owned by individuals.¹⁶ This specific regulation provides detailed guidelines for the enforcement of geographical indications, distinguishing them from other forms of intellectual property. The definition of geographical indication, as stated in Article 1, number 6 of the Trademark and GI Law, emphasizes the importance of indicating the origin of a product due to geographical and environmental factors, contributing to its reputation, quality, and unique characteristics. The registration process for geographical indications follows trademark regulations outlined in Articles 14 to 19 of the Trademark and GI Law, with the flexibility to adapt to urgent conditions. Given the significant impact on local businesses and consumers' perceptions of product quality, proper registration of geographical indication rights is crucial to prevent misinformation and uphold the integrity of region-specific products.¹⁷

The protection of geographical indication rights in Indonesia is not without problems. One such problem is the assignment of authority for the purpose of fostering and supervising geographical indications. Article 70 of the Trademark and GI Law assigns authority for fostering and supervising geographical indications to the central and/or regional governments, yet it lacks clarity on the specific authority referenced. The Article states that the cultivation of Geographical Indications is carried out by the central government and/or regional governments in accordance with their authority. Unfortunately, there's no further explanation on how the authority is shared between the central and local government, along with the specific bodies involved. The article's explanation. There's no similar explanation in regard article's explanation does mention the "ministry and relevant bodies" in referring to the central government, which in itself is not subsequently clear. There's no similar explanation regarding the local government.

¹⁴ Ranggalawe Suryasaladin Sugiri. "Utilization of Geographical Indication Protection System for Traditional Handicrafts in Indonesia." *Indonesia Law Review* 10, no. 3 (December 2020): 252.

¹⁵ Sugiri. "Utilization of Geographical." 256.

¹⁶ Kusuma and Roisah. "Perlindungan Ekspresi Budaya." 208.

¹⁷ Anak Agung Ngurah Tresna Adnyana. "Perlindungan Hukum Terhadap Produk Indikasi Geografis Dari Tindakan Peniruan." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 1 (2019): 49.

This ambiguity creates potential conflicts of interest, particularly as local governments can both develop and apply for registration of geographical indication rights, leading to potential loopholes and inconsistencies. Furthermore, the absence of regulations defining the limit of similarity or uniqueness exacerbates these issues, ultimately resulting in confusion and discontinuity in enforcing laws protecting geographical indications in Indonesia.¹⁸ Addressing these challenges requires better implementation and enforcement of existing laws, alongside increased awareness of the significance of geographical indications and a more responsive government approach to violations of geographical indication rights.

2. Lisbon Agreement 1958 and The Background of its Amendment through The Geneva Act 2015

The international conventions and treaties listed by WIPO on their website are a collection of rules approved by various countries, which regulate various forms of intellectual property. These regulations are specific to meet technical and semantic clarity in regulating the various forms of intellectual property that exist, are valuable, and are recognized by the various countries involved in these regulations. It goes back to the nature of intellectual property, which is very technical because it regulates the final form of creation and its process. As one of the international agreements regulated and supervised in their implementation, the 1958 Lisbon Agreement is an international agreement that plays a vital role in protecting intellectual property, especially indications of origin.¹⁹ The Lisbon Agreement of 1958 is a legal instrument for protecting intellectual property rights indications of origin in the international scope.²⁰ In addition to the Lisbon Agreement of 1958, the legal instrument for protecting intellectual property rights indications of origin is also found in the Paris Convention for the Protection of Industrial Property 1883. The difference between the Lisbon Agreement, the Paris Convention of 1955, and the Paris Convention of 1883 is quite significant, considering the ratification of the two, which are 75 years apart. The main difference lies in the basic structure of the two products of international law. The Paris Agreement of 1883 is a product of international law that regulates intellectual property, which includes the entire concept of intellectual property with specifications but not in detail.²¹ The Lisbon Agreement of 1958 was a

¹⁸ Devica Rully Masrur. "Perlindungan Hukum Indikasi Geografis Yang Telah Didaftarkan Sebagai Merek Berdasarkan Instrumen Hukum Nasional Dan Hukum Internasional." *Lex Journalica* 15, no. 2 (2018): 194.

¹⁹ Micara, "The Geneva Act." 674.

²⁰ Micara, "The Geneva Act." 674.

²¹ Margrit Seckelmann. "From the Paris Convention (1883) to the TRIPS Agreement (1994): The History of the International Patent Agreements as a History of Propertisation?." *Jahrbuch Der Juristischen Zeitgeschichte* 14, no. 1 (December 2013): 38.

replacement for the regulations on indications of origin contained in the Paris Convention of 1883. It did not annul the regulations governing other forms of intellectual property regulated in the Paris Convention of 1883, even though various kinds of legal products have been replaced by other international regulations related to intellectual property.

The Lisbon Agreement of 1958 aims to answer legal needs on an international scale and to facilitate efforts to protect the rights of origin indications with a separate registration system, a single registration system at the WIPO International Bureau.²² The primary purpose of the registration is as a rationale or reason for making an international registration system. The 1958 Lisbon Agreement provided better protection and was the first treaty to define the term 'indication of origin' under Article 1 of the Treaty. Once registered, the 'indication of origin' is also protected by other member countries. Article 2 paragraph (1) of the 1958 Lisbon Agreement defines the term of origin as "the geographical name of a country, region, or locality, which designate a product originating from it, the quality, and characteristics that are exclusively or caused by geographical location, environment, including natural and human factors." Accordingly, the Agreement applies to an indication of origin only in the form of a geographical name and its qualities and characteristics with the geographical environment.²³ This system is a development of the Madrid Agreement Concerning the International Registration of Marks in 1881 but focuses more on the application of origin and geographic indications.

The development of intellectual property rights around the world has also, in fact, made the 1958 Lisbon Agreement even more lagging and now has specific weaknesses. The Lisbon Agreement of 1958 does not protect non-geographical names, which have acquired secondary meaning as geographical indications. The Lisbon Agreement of 1958 did not explain indications of origin that only had a particular reputation but did not have certain qualities and characteristics which were related to the geographical area. Furthermore, the international protection granted under Article 1 of the 1958 Lisbon Agreement only applies if the geographical indication is protected in the country of origin 'as such', that is, as an 'indication of origin.'

One of the other problems is countries' low interest in ratifying this legal product due to flexibility problems, especially for countries that do not recognize the law on the protection of geographical indications and indications of origin as a sui generis system.²⁴ Although it was revised in Stockholm in 1967 and amended in 1979, the existing efforts to protect the rights of

²² Indra Rahmatullah. "Perlindungan Indikasi Geografis Dalam Hak Kekayaan Intelektual (HKI) Melalui Ratifikasi Perjanjian Lisabon." *JURNAL CITA HUKUM* 2, no. 2 (December 2014): 305.

²³ C. Rajashekhar. "Protection of Geographical Indication of Goods," *DESIDOC Journal of Library & Information Technology* 27, no. 4 (2007): 37.

²⁴ Micara, "The Geneva Act." 675.

geographical indications are still not considered sufficient and must be reformed. The Geneva Act 2015 of the Lisbon Agreement on Appellations of Origin and Geographical Indications was passed as one of these reforms. The Geneva Act 2015 is a renewal and conceptual development of the existing international registration system that protects names that identify the geographic origin of a product, namely the 1958 Lisbon Agreement on Appellations of Origin and Geographical Indications.

The 1958 Lisbon Agreement specifically only applies to indications of origin (a particular type of geographical indication for products that strongly relate to the place of origin). The Geneva Act 2015 extends the protection of geographical indications in addition to indications of origin to consider better the existing national or regional systems for the protection of products that are not solely related to a particular geographic location, which is still tied to the effect of the quality of the product. In addition, the Geneva Act 2015 is more flexible in regulating how geographic indication protection standards can be applied, for example, through a specific system of sui generis origin indications, a geographical indication system, or a trademark regulation system.²⁵ Furthermore, the Geneva Act 2015 also allows arrangements through certain intergovernmental agreements to join, make the international protection system more inclusive, and strengthen and clarify the protection of geographical indication rights. The 1958 Lisbon Agreement and the Geneva Act 2015 form the Lisbon System, which offers more comprehensive and effective international protection for quality product names relating to and originating in specific geographic locations.

Not only has a positive impact on the field of law enforcement, but the flexibility offered by the Geneva Act 2015 can also positively impact economic and trade development. In trade, the classic problem experienced by business actors when protection against geographic indicators is growing is the increase in operational and production costs. Although it dramatically benefits consumers by increasing market competition and providing more detailed information about products, protection against geographical indications will make selection and processes related to areas indicated in geographical indications more specific and complicated, both in the production process and in the application process for registration of geographical indications.²⁶ It happens because the protections are too strict and only rely on normative elements. This problem will be even more complicated in a legal system that

²⁵ Micara, "The Geneva Act." 675.

²⁶ Harry J. Bremmers. "Trade Effects of Geographical Indications." *Journal Für Verbraucherschutz Und Lebensmittelsicherheit* 10 (2015): 53.

includes geographical indications and indications of origin as sui generis law, whose regulatory nature will be more specific and specialized.²⁷

The multilateral definition contained in Article 2 of the Geneva Act 2015 is much broader than the definition for appellations of origins in the Lisbon Treaty. The definition given by the Geneva Act 2015 seems to be less strict and more balanced. The product is not required to have certain qualities or characteristics that indicate the geographic area of origin but is also based on the reputation originating from the region, without any reference to specific elements from geographic areas such as "natural and human factors."²⁸ "(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the goods are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as (ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin."

In Article 2, the first paragraph, the generalization efforts carried out by the Geneva Act 2015 using the word "exclusively or essentially" are associated with "reputation arising from it." Although this understanding is more complex than the concept behind using the phrase "exclusive or essential" contained in the 1958 Lisbon Agreement, this explanation closes the monopoly gap that a particular geographical area can carry out. As a requirement, the competition must prove the uniqueness of its products through the unique elements associated with its geographic location and the reputation gained from using the element. It strengthens the term "exclusive or essential" because it expands the space for new interpretations of the word "essential," which can cover the misuse of the word "exclusive."²⁹

In the second paragraph, this kind of meaning development lies in elaborating elements that support the construction of the unique identity of a product, such as "quality, reputation, and other characteristics that are essentially related to the place of origin." The development of meaning for the sake of balancing arrangements like this makes the Geneva Act 2015 a product

²⁷ Mohammad Yusuf Ali. "Protection of Geographical Indications of Goods of Bangladesh." *Bangladesh Journal of Public Administration* 12 (2013): 63.

²⁸ Sugiri. "Utilization of Geographical." 256.

²⁹ Dev S. Gangjee. "From Geography to History: Geographical Indications and the Reputational Link." In *Geographical Indications at the Crossroads of Trade, Development, and Culture in the Asia-Pacific*, ed. I Calboli and WL Ng-Loy (Cambridge: Cambridge University Press, 2017), 36.

of international law that can help protect the rights of geographical indications and the development of intellectual property law in general without having to sacrifice existing economic developments. Ultimately, these provisions expand the protection for geographical indications and appellations of origin, promoting global trade by ensuring product authenticity.³⁰ It fosters economic and cultural heritage preservation by enabling wider market access for unique products from specific regions.

3. Differences in Definitions and Compiling Elements of The Conceptualization of Geographical Indications: Indonesian National Law and The Geneva Act 2015

Legal policies regarding intellectual property must always be continuous with various other legal products to prevent problems applying intellectual property law.³¹ For this reason, it is necessary to have a law-making process that follows the objective of intellectual property law itself. Regardless of the existing legal politics, the regulation regarding intellectual property must be precise in its classification and formulation. In Indonesia, these matters are regulated in Article 5 letters c and f of Law Number 12 of 2011 on the Establishment of Legislation, namely the principle of conformity between types, hierarchy, and content and the principle of clarity of formulation. These two principles are fundamental, especially in the structure of intellectual property law, because of the technical nature of the concept of intellectual property itself. All forms of creation are essentially the result of various unique technical processes. It is what underlies the understanding of the importance of semantic clarity in various legal products regulating intellectual property. This legal product later became a centralized regulation for various processes related to intellectual property in Indonesia.³²

Ratification has various meanings that conceptually have the same goal, but different motives often influence the initial process until the implementation.³³ The structure of the state is one of the main factors that influence the tendency of the state to ratify.³⁴ This factor is crucial considering

³⁰ Danny Friedmann. "Grafting the old and new world: Towards a universal trademark register that cancels generic IGO terms." In *Wine Law and Policy*, ed. Julien Chaisse, Fernando Dias Simões, and Danny Friedmann (Leiden: Brill Nijhoff, 2020), 312.

³¹ Kholis Roisah. "Employee-Inventor's Right to Compensation in Patent Law System in Indonesia and Some Countries." *Journal of Advanced Research in Law and Economics* 9, no. 7 (2018): 2415.

³² Tri Setiady. "Harmonisasi prinsip-prinsip trips agreement dalam hak kekayaan intelektual dengan kepentingan nasional." *Fiat Justisia: Jurnal Ilmu Hukum* 8, no. 4 (2015): 595.

³³ Erika Vivin Setyoningsih. "Implementasi Ratifikasi Agreement on Trade Related Aspects of Intellectual Property Right (Trips Agreement) Terhadap Politik Hukum Di Indonesia." *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 2 (November 2021): 117.

³⁴ Christopher Marcoux and Johannes Urpelainen. "Profitable Participation: Technology Innovation as an Influence on the Ratification of Regulatory Treaties." *British Journal of Political Science* 44, no. 4 (October 2014): 903.

that the structure of the state is the primary influence in the legal politics of the country itself. Developments in various fields are generally considered pressure to carry out ratifications from outside, either directly or indirectly. From the point of view of law and international relations, ratification is a sign of a country's readiness and commitment to cooperate with other countries. The position of legal products, which are the result of formal ratification, does not merely show the strength of the country's sovereignty and authority in the eyes of other countries. This position is one of the validation efforts toward the implementation of the state's goals and ideals, which must always refer to the constitution as the highest legal basis. It is different from the external sovereignty case, which is the result of a country's efforts to be independent in various matters relating to its foreign policy without having to follow external influences that threaten the country's stability and the people's prosperity.³⁵

The Indonesian government has shown a desire to become a member of the Lisbon System as part of the 1958 Lisbon Agreement and its successor regulations, the Geneva Act 2015.³⁶ To develop competitiveness and benefits for producers and accelerate the development of the local community and economy, the Indonesian government plans to strengthen the protection and development of products with geographical indications of specific areas. The government took this step to provide legal protection for products with geographical indications from Indonesia as the answer to facing global challenges, especially in trade at the international level. Legal protection through adequate legal rules is considered necessary to ensure the development and marketing of Indonesian products at the international level, given Indonesia's large economic ambitions.

Indonesia has regulated geographical indications in Trademark and GI Law and Regulation of the Minister of Law and Human Rights No. 12 of 2019 on Geographical Indications (*Permenkumham on GI*) as an effort to protect products with geographical indications at the national level.³⁷ In ratifying the Geneva Act 2015, national legal regulations on geographical indications must be able to support the ratification process. However, in the Trademark and GI Law, many regulations have different meanings and concepts from the Geneva

³⁵ Yosua Yohanes Robot Simbawa Ume. "Implikasi Proses Ratifikasi Perjanjian Internasional Terhadap Hukum Nasional." *LEX ET SOCIETATIS* 8, no. 1 (2020): 24.

³⁶ Direktorat Jenderal Kekayaan Intelektual, Kementerian Hukum dan HAM RI. *Rencanakan Gabung Keanggotaan Lisbon Agreement, Indikasi Geografis Indonesia Akan Dapat Keuntungan* (Jakarta: Kementerian Hukum dan HAM RI, 2021).

³⁷ Ahmad Moelyono Anasis and Mieke Yustia Ayu Ratna Sari. "Perlindungan Indikasi Geografis Terhadap Damar Mata Kucing (*Shorea Javanica*) Sebagai Upaya Pelestarian Hutan (Studi Di Kabupaten Pesisir Barat Propinsi Lampung)." *JURNAL HUKUM IUS QUIA IUSTUM* 22, no. 4 (October 2015): 566; Siti Asyfiyah. "Perlindungan Hukum Potensi Indikasi Geografis Di Kabupaten Brebes Guna Pengembangan Ekonomi Masyarakat Lokal." *Jurnal Idea Hukum* 1, no. 2 (October 2015), 2.

Act 2015, which will later become an obstacle in the harmonization process of the Geneva Act 2015 ratification.

Ratification cannot be separated from the conformity of various definitions regulated in national law and international law products to be ratified. The first problem lies in how Indonesia's legal framework governs reputation within the conceptualization of geographical indications. Article 1 number 6 of the Trademark and GI Law (same norm governed by *Permenkumham* on GI) puts a strong emphasis on reputation as one of the inseparable elements of geographical indications. However, this legal norm is not further supported by the infringement through an indication regarding the reputation of geographical indications. Unlike the Trademark and IG Law, the Geneva Act 2015 places a broader emphasis on preventing misuse that could impair or take unfair advantage of the appellation of origin or geographical indication's reputation, thus suggesting a more protective stance towards maintaining the integrity and value of GIs on an international scale. The broader protective emphasis of the 2015 Geneva Law, especially on preventing misuse that could impair the reputation of geographical indications, underscores the need for clearer legal frameworks in national laws to ensure comprehensive protection and prevent disputes over the conceptualization and application of geographical indications.

An example of how reputation contributes to the conceptualization of GI in Indonesia is the recognition of "Bali Coffee," where the unique environmental conditions of Bali, combined with traditional cultivation practices, contribute to the coffee's distinct reputation and quality, differentiating it from other coffee varieties.³⁸ The Geneva Act 2015's emphasis on protecting the reputation integral to geographical indications underscores the potential for enhanced international safeguards for products like Bali Coffee. This focus highlights how reputation, shaped by Bali's unique environmental and traditional cultivation practices, could receive direct protection, ensuring the distinct qualities and characteristics attributed to this reputation are recognized and safeguarded globally.

The mention of the elements that make up the conceptualization of geographical indications in this definition does not explain how essential these elements are. Geneva Act 2015 put greater emphasis on this by mentioning "exclusively" or "essentially." The diversity of many regions in Indonesia does not necessarily guarantee that an area in Indonesia is unique with little or no similarities with other regions. If this is not regulated, disputes between various elements of society or even local governments who have an interest

³⁸ Winda Risna Yessiningrum. "Perlindungan Hukum Indikasi Geografis Sebagai Bagian Dari Hak Kekayaan Intelektual Legal Protection On Geographical Indication As A Part Of Intellectual Protection Rights." *Kajian Hukum Dan Keadilan Jurnal IUS* 3, no. 1 (2015): 42.

in geographical indications in their area are very prone to occur. The concept of exclusivity explains that the existing elements only come from one area and cannot be found in other areas. In contrast, the concept of essentiality explains that one or several elements of a geographical indication are inseparable elements of the identity of the geographical indication. The limited integration of exclusivity in Indonesia's geographical indications regulation risks undermining the protection of GIs by allowing for potential overlaps and ambiguities with similar regions, possibly leading to legal disputes and diluting the unique identity of GIs.

Furthermore, without explicit regulations emphasizing the uniqueness value of each element, the assessment of geographical indications by experts and authorities may lack a consistent standard, complicating the evaluation process and potentially hindering the accurate identification and protection of genuine geographical indications. This is also a problem of its own, as the Trademark and GI Law does not set any standard regarding the assessment of geographical indications, be it in.

The concept of exclusivity in the regulation of geographical indications in Indonesia is only contained in the definition of geographical indication rights contained in Article 1 number 2 of the Regulation of the Minister of Law and Human Rights Number 12 of 2019 Geographical Indications, which states, "The right to Geographical Indications is an exclusive right granted by the state to registered Geographical Indications right holder, as long as the reputation, quality, and characteristics that are the basis for providing protection for the Geographical Indications still exist". The exclusivity mentioned here is only embedded in the legal definition of "geographical indication rights," and just like the Trademark and GI Law, the regulated definition of "geographical indication" does not yet explain how vital the uniqueness value of each element is as part of a geographical indication. Not being regulated in the Indonesian legal system gives a team of experts on geographical indications unlimited authority in analyzing the feasibility of ratifying geographical indication rights. This arrangement is fundamental to compare the elements in a geographical indication with those in products from other regions. This concept can link quality and characteristics that have been regulated since the ratification of the 1958 Lisbon Agreement as one of the formulations for setting the indication of origin (appellation of origin).³⁹

In contrast to the Geneva Act 2015, both the Trademark and GI Law and the *Permenkumham* IG solely acknowledge geographic names as the primary component of geographical indications, rendering the definition of "Showing the area of origin of goods" in the Trademark and GI Law rather

³⁹ Wahyu Sasongko. "Indikasi Geografis, Rezim Hki Yang Bersifat Sui Generis." *Jurnal Media Hukum Universitas Muhammadiyah Yogyakarta* 19, no. 1 (2012): 99.

restrictive as it solely encompasses geographic names. This limitation excludes non-geographical names traditionally associated with a particular geographic area.⁴⁰ Additionally, Article 56 paragraph (1) of Law no. 15 of 2001 on Trademarks uses the term "Sign," which is narrower than the term "indication" and contradicts the broader concept of "geographical indication" outlined in the Trademark and GI Law and the 2001 Trademark Law. This discrepancy with international standards, particularly the TRIPs Agreement⁴¹, which allows for both geographical and non-geographical names to identify product origins, has long been an issue in Indonesia's efforts to align its legal system with international standards.

The discrepancy limits the scope of protection for Indonesian GIs, affecting the global recognition and competitiveness of its products. Aligning Indonesian law with international norms could strengthen its intellectual property framework, enhancing the global standing and marketability of Indonesian geographical indications. Recognizing the expanded meaning of geographical indications is crucial, as its failure may complicate the ratification of the Geneva Act 2015 and impede Indonesia's efforts to align with international intellectual property norms.⁴² Therefore, all of the normative issues must first be tackled by revisiting them and possibly revising them to fit the current standard, as introduced by the Geneva Act 2015, to make sure that Indonesia can fully benefit from the system of IPR protection brought by the Geneva Act 2015.

D. CONCLUSION

Based on the analysis of this study, the setting of geographical indications lies in its main element, namely the definition of geographical indications. Indonesia must open itself to the development of conceptualization by expanding the meaning and condensing material regarding geographical indications that exist in the international environment, as long as these developments can be used as a good reference in strengthening the protection of geographical indication rights in Indonesia. The expansion of meaning opens a more expansive regulatory space, particularly to ratify Geneva Act 2015. Indonesia can use this space to strengthen the protection of domestic products' geographical indications so they can be exported safely abroad. The ratification process could enhance

⁴⁰ Mas Rahmah. "Protection of Geographical Indication Under Trademark System: To Fit the Square Into the Triangle?." *Mimbar Hukum* 27, no. 3 (2016): 536.

⁴¹ WIPO, "Worldwide Symposium on Geographical Indications," (2021), https://www.wipo.int/geo_indications/en/symposia/2021/.

⁴² Antony Taubman. "How Post-TRIPS Negotiations Reframe the 'trade-Related Aspects' of Intellectual Property after TRIPS: The Lessons of WTO Accessions." in *Trade Multilateralism in the Twenty-First Century: Building the Upper Floors of the Trading System through WTO Accessions* (Cambridge University Press, 2017), doi:10.1017/9781108367745.015.

Indonesia's diplomatic relations and position it as a committed and reliable partner in international trade and intellectual property rights protection. This kind of openness is essential in Indonesia's ambition to become one of Asia's largest economies. It also aligns with the Indonesian government's ambition to strengthen the protection of various existing intellectual property rights. The main implication of this effort is that broadening the interpretation of geographical indications in Indonesia could significantly enhance the protection and international trade potential of domestically produced goods, aligning with strategic economic and international ambitions, as one of the key players in global trade.

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