

**LEGAL ANALYSIS OF THE TRADEMARK REGISTRATION GAYO  
COFFEE MOUNTAIN AS A GEOGRAPHICAL INDICATION PRODUCTS  
IN INDONESIA**

**A BACHELOR DEGREE THESIS**

Presented as the Partial Fulfillment of the Requirements  
To Obtain the Bachelor Degree at the Faculty of Law  
Universitas Islam Indonesia  
Yogyakarta



By:

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INTERNATIONAL PROGRAM  
DEPARTMENT OF LAW  
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UNIVERSITAS ISLAM INDONESIA

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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Handwritten signature in Arabic script

(Nandang Sutrisno, S.H., LL.M, M.Hum., Ph.D.)

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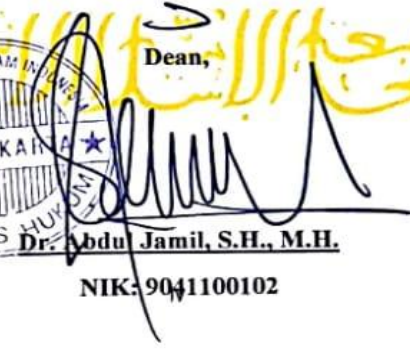
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Universitas Islam Indonesia

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## **SURAT PERNYATAAN**

### **ORISINALITAS KARYA TULIS ILMIAH/ TUGAS AKHIR MAHASISWA FAKULTAS HUKUM UNIVERSITAS ISLAM INDONESIA**

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Adalah benar-benar mahasiswa Fakultas Hukum Universitas Islam Indonesia Yogyakarta yang telah melakukan penulisan karya Tulis Ilmiah (Tugas Akhir) berupa skripsi dengan judul :

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## **MOTTO**

My success can only come from ALLAH

**(Quran Surah Hud 11:8)**

Be happy. Do the best you can. Be good and kind.

**(unknown)**

Prayer can change our destiny and goodness can extend our age.

**(unknown)**

Fabi ayyi ala i rabbikuma tukazziban

*Then which of the favours of your Lord will you deny?*

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## **DEDICATION**

This thesis is dedicated to:

Both of my parent who always pray and support me in all aspect, my inspiration and motivation, the person that i love so much in this world

*(Alm) Prayitno Hadi, SE and Rahmaniah*

My brother who always pray and support me, *Kelvin Briantama Wibowo*

*All of My Big Family*

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## **ABSTRACT**

*The objectives of this research are to analyze how TRIPs Agreement regulates on the legal protection of Geographical Indications, to analyze the regulations regarding the legal protection of Geographical Indications in Indonesia and to analyze some legal efforts that Indonesia's government can try to cancel the registration of Gayo Coffee by Holland Coffee Company (Netherlands Company). This research employs the type of judicial normative research or library research. The characteristic of this research is descriptive analytical, that analyzes legislations related to legal theories of the research's object .*

*This research concludes that the TRIPs agreement regulates on the legal protection of Geographical Indications in Article 22-24 and obliges the Members to provide the legal means. In Indonesia, Geographical Indications is still a part of Act Number 20 of 2016 on Marks and Geographical Indications. The best alternative to cancel the registration of Gayo Coffee by Holland Coffee is by suing Netherlands before WTO's Dispute Settlement Body (DSB) because, through DSB, Indonesia can directly face Netherlands, that has full authority to cancel the registration of Gayo Coffee as a Trademark under the name of Gayo Coffee Mountain.*

**Key word : Geographical Indication, Trademark, Gayo Coffee**

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## CHAPTER I

### INTRODUCTION

#### A. Context of Study

In the modern era such as today, the variety of inventions in the field of science and technology keeps on progressing. Not only in developed countries for research, but in developing countries also. From these studies, it has found variety of inventions such as software and electronic devices like never before.<sup>1</sup>

Indonesia is an archipelago with many islands and most of its territory is landlocked and has many active volcanoes which resulted Indonesia to have fertile soil and suitable for a wide range of plant varieties. A wide variety of plants that grows in Indonesia have their trademarks. The hallmark of which is owned by the plants are influenced by geographical factors such as soil conditions, rainfall and climate typical of the area. In addition to geographical factors, the diversity of plants in Indonesia is also influenced by the local culture. The presence of characteristic that makes a lot of excellent products regions in Indonesia, especially from plants have a place in the international market.<sup>2</sup>

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<sup>1</sup> <http://repository.fhunla.ac.id/?q=node/34> access on July 29, 2017 at 21.07 WIB

<sup>2</sup> <http://imamhariyanto.com/indikasi-geografis-pelindung-kekayaan-indonesia/> access on August 30, 2017 at 09.46 PM

A geographical indication refers to the geographical area of the country, region or place in order to indicate the origin of a product, produced by a specific quality determined by natural and human factors.<sup>3</sup> It also discusses ‘reputation’, which is similar to the language used in marketing known as ‘Mark’ and can be considered an ‘intangible value. The use of ‘reputation’ in the definition of ‘geographical indication’ refers to a characteristic of the good “essentially attributable to its geographical origin”.<sup>4</sup>

Protection of geographical indications include goods produced by nature, goods of agriculture, handicrafts or certain other industrial products. In Indonesia, the geographical indications is still unfamiliar to most people. The Indonesian society mostly only knows about Copyright, Trademark and Patent, whereas if viewed from the function, the role of Geographical Indications also important with factions other IPR. Geographical indications has a function that can protect producers of the actions undertaken by the foreign party to the detriment of the producers themselves as well as to protect the interests of consumers by avoiding them from counterfeit product activities.<sup>5</sup>

Geographical Indications will help protect Indonesian products from various threats originating from foreign parties. There are many foreign parties outside of

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<sup>3</sup> Ridwan Khairandy, *Pokok-Pokok Hukum Dagang Indonesia*, FH UII Press, Yogyakarta, 2013, p. 450.

<sup>4</sup> Schüßler Lennart, "Protecting 'Single-Origin Coffee' within the Global Coffee Mark et: The Role of Geographical Indications and Trademarks", 2009, p.52

<sup>5</sup> *Ibid*

Indonesia who wishes to spread the potentialities of Geographical Indications in Indonesia in a way that is not allowed. The existence of this is certainly detrimental to the Indonesian people, especially farmers and ultimately foreign parties are benefited. This is proven by the presence of some Indonesian products which are recognized as foreign owned and even becoming a registered trademark of foreign parties. One example is the Gayo Coffee.<sup>6</sup>

Arabica Gayo coffee is coffee that has different characteristics with other coffees in general, which has a hard coffee beans and fragrant, giving rise to a distinctive taste. In addition Gayo is the flagship product of Gayo Highland region, the Province of Aceh and is one of the export commodities that are seeded by Indonesia. Based on the results of the taste test conducted by Christopher Davidson one international cupper, confirmed that Gayo has unique characteristics that are not replaced by other types of coffee. The uniqueness of Gayo coffee is known as "heavy body and light acidity".<sup>7</sup>

Gayo community also has its own way in the process Gayo that cannot be found in any area that is semi-washed processing method (not how wet and dry) and full washed.<sup>8</sup> Both are done for generations. Due to the different characteristic of Gayo from other types of coffees, many foreigners claim to admit Gayo as their company-

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<sup>6</sup> *Ibid*

<sup>7</sup> <http://repository.fhunla.ac.id/?q=node/34> access on August 18, 2017 at 07.43 PM

<sup>8</sup> <http://ekonomi.kompasiana.com/agrobisnis/2012/09/20/kenapa-kopi-gayo-spesial-494598.html> access on August 18, 2017 at 07.48 PM

owned coffee including foreign companies from the Netherlands, namely Holland Coffee.<sup>9</sup>

Holland Coffee Gayo has registered it as a trademark of that company with the registration number CTM No.001242965 which is registered in the Officer for Harmonization in the Internal Market (OHIM).<sup>10</sup> If there are companies or other parties who wishes to market these products, they must first obtain prior permission from the Holland Coffee which is included in terms of whether or not allowed to use the name Gayo including CV Arvis Sanada.<sup>11</sup>

CV Arvis Sanada is one of exporters of Aceh Gayo Arabica coffee that is prohibited from exporting to mainland Europe by using the word of Gayo in its packaging, where in fact the beans are indeed derived from Gayo Aceh. Given this makes CV Arvis Sanada subject to subpoena by the Holland Coffee.

Every products which are produced by a region or area definately have certain advantages which is different one one to another. The more different the product, the more unique and higher of the creativity of a product will be more enticing the buyer and stronger to compete in Nasional and even International.

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<sup>9</sup> Hendra Djaja, “*Perlindungan Indikasi Geografis pada Produk Lokal dalam Sistem Perdagangan Internasional*”, artikel pada Jurnal Cakrawala Hukum, Vol.18, No.2, 2013 p. 141.

<sup>10</sup> *Ibid*

<sup>11</sup><http://imamhariyanto.com/indikasi-geografis-pelindung-kekayaan-indonesia/#more-473> access on August 18, 2017 at 06.58 PM

In addition the specificity of a product can also be the identity of the area, for example the area of Gayo is known as producer of Gayo Arabica coffee which has already reached the international markets. The value of the privilege of an area can be enhanced in the eyes of its customers when a group of area and its members have the exclusive right to use a particular geographical indication.

The geographical factor in a region or a specific area of a country is determining element in shaping the quality, reputation, or certain of the characteristics of the goods to be the protection of geographical indications.<sup>12</sup> As for the sign used as a geographical indication can be either put etiquette or labels on goods produced. The sign referred to can be either a name, place, area or region, words, pictures, or letters. The sense of place name may be derived from the name due to continuous usage so it is known as the name of the place of origin of the goods in question.<sup>13</sup>

A sign protected as a geographical indication is an identity that shows an item comes from a place or a specific area. Therefore, the ownership of the geographical indication is not purely an individualistic. Geographical indications are more communalism owned jointly by the people of a particular region.<sup>14</sup> Like trademarks, geographical indications may add dynamic marketing power and because of

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<sup>12</sup> Muhammad, Djumhana, R Djubaedilah, Hak Milik Intelektual, Sejarah, Teori, dan Praktiknya di Indonesia, Fourt edition, PT Citra Aditya Bakti, Bandung, 2014, p. 244.

<sup>13</sup> Rachmadi, Usman, Hukum Atas hak kekayaan Intelektual: Perlindungan dan Dimensi Hukumnya di Indonesia, PT Alumni, Bandung, 2003, p. 357.

<sup>14</sup> Adrian, Sutedi, Hak Atas Kekayaan Intelektual, Sinar Grafika, 2013, p. 152.

geographical indications jointly owned then they can become a very good tool for regions or for economic development based the community.<sup>15</sup>

When associated with the legal regime of the brand, the function of geographical indications can be interpreted as similar to the collective brand. The difference, in the presence of the treaty presupposed collective brand that makes the rules of oversight (and requirements). In practice, manufacturers often over his own name area origin products in its label. The practices like this are take place in the absence of the rule of informing. To be sure, more of a manufacturer's pride against origins, in other words just based on motives of pride in the area and the image attached.<sup>16</sup>

Protection of geographical indications include agricultural products and food products that are closely related to certain geographical areas. At least one stage of production, processing, or cooking in progress come within geographically. Such notions contained in the EC Council Regulation Number 2081/92, 14 July 1992 on The Protection of Geographical Indication and Designations of Origin for Agricultural Products and Foodstuffs.<sup>17</sup> Protection of geographical indications include goods

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<sup>15</sup> O'Connor Bernard, *The Law of Geographical Indication*, Cameron May Ltd., 2004, p. 28.

<sup>16</sup> Henry, Soelistyo, *Hak Kekayaan Intelektual Konsepsi, Opini, dan Aktualisasi*, Penaku, Jakarta, 2014, p. 102.

<sup>17</sup> European Council Regulation (EEC) Number 2081/92 of July 1992 on the Protection of Geographical Indications of Origin for Agricultural Products and Foodstuffs.

produced by nature, agricultural goods, handicrafts, or other industry results, those things that can be registered and the protection of geographical indications.<sup>18</sup>

In General, courts in Australia try to ensure that one or more people do not monopolize the name of an area or region that can harm other trademark abusers who come from the same area with them. This is due to the geographical name is a real example of brands that do not have the power criterion.<sup>19</sup> In the agreement of TRIPs, it is prohibited to manufacturers to put on the label or mark (or brand) of goods in production, which does not correspond to the geographical indication. Example labelling "Gayo Coffee" for coffee that is not produced in Gayo Highlands.

The prohibition is reaffirmed in Article 22 (2) of the TRIPs agreement which mentioned:<sup>20</sup>

*"Geographical indication are for the purpose of this agreement, indication which identify a good as originating in the territory of the member, or a region or locality in that territory, where a given quality, reputation or other last of the good is essentially attributable to its geographical origin."*

Member State is obligated to provide the legal means for interested parties to prohibit the use in any way for the granting of the mark against goods that give hints

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<sup>18</sup> Muhammad, Djumhana, R Djubaedilah, Hak Milik Intelektual, Sejarah, Teori, dan Praktiknya di Indonesia, Fourt edition, PT Citra Aditya Bakti, Bandung, 2014, p. 243-244

<sup>19</sup> Tim Lisdey BA, Hak Kekayaan dan Intelektual Suatu Pengantar, PT Alumni, Bandung, p. 140

<sup>20</sup> Article 22 (2) TRIPs Agreement



or misleading the public impression that the goods concerned originate from other regions apart from the region of origin of the goods.<sup>21</sup>

The above provisions are intended to prevent actions that may mislead consumers which resulted in more unfair competition.<sup>22</sup> According to article 10 bis of the Paris Convention<sup>23</sup>, namely involve all acts that create Confusion, false dallegation to discredits its competitors, as well as an indication or statement that any act or practice to the contrary with practice in trading activity that honestly considered unfair competition (dishonest practice).<sup>24</sup>

Provisions against the prohibition on the use of a particular geographical indication for use as brand also apply to goods that are produced or come within a certain area or completely in the region of origin of the goods produced, but misleading gives an overview to the public that the goods originate in another territory. For example certain areas outside of America named USA or us, then the regions that produced shoes with U.S. brands. This may mislead consumers as if goods production comes from the United States, even though the meaning is probably "Ari Satya" (without the undermine the role of community groups is to promote small industries).<sup>25</sup>

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<sup>21</sup> OK, Sadikin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Right)*, PT Rajdjagrafindo Persada, Jakarta, p. 386-387

<sup>22</sup> *Ibid.*

<sup>23</sup> Article 10 bis about Unfair Competition, Paris Convention for the Protection of Industrial Property

<sup>24</sup> O'Connor Bernard, *The Law of Geographical Indication*, Cameron May Ltd., 2004, p. 68.

<sup>25</sup> OK, Sadikin, *Aspek Hukum .... op.cit*, p. 388

However, unlike the case when a particular region or regions is producing a product with materials imported from another region or district, but the process of processing performed by the local community. The work raises a uniqueness for those products, or in other words to fulfil terms both of geographical indications, namely because of the human factor. As the understanding of WIPO in particular TRIPs Article 22 paragraph (1), that the geographical indication is an indication which identifies an item that comes from an area where a quality, reputation or other basic properties of an item is the core element of which is the nature of its geographical origin.

The main purpose of the protection of geographical indications is due to a factor in the economic interests of a particular region or regions that produce a product the goods because the characteristic and the quality has been widely known. If the geographical indication is used by the other party is not entitled, economically can harm the producers who are entitled to wear the geographical indication. Different case with the brand, where the rights to the collective nature of geographical indications, the meaning cannot be owned by individuals. Protection of geographical indications will only be beneficial economically if there is indeed a huge market potential in a product item that is closely related to the area or region where the product item is coming from.<sup>26</sup>

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<sup>26</sup> Imam Sjahputra Tunggal, Heri Herjandono, and Parijo, *Hukum Merek Indonesia*, Harvarindo, 2005, p. 9

Legal protection becomes the point of points that are crucial for the continuation of the development of the product. In the absence of adequate legal protection, not only gives a negative meaning against legal certainty. Further, it will turn off the creativity and innovation that society should continue to be escorted in to create and develop new products. This is where the role of Government as a form of responsibility in carrying out the mandate of welfare could be addressed. A very important sector and new product development is on the local community. Based on these conditions the author encouraged to analyze the law of geographical indications regarding the case involving the Dutch company Holland Coffee and coffee companies or regional origin, Gayo coffee.

## **B. Problem Formulation**

By considering the background written above the author have formulated the problems as follows:

1. Has the registration of Holland Coffee Gayo violated the provisions of Law Number 20 of 2016 about Marks and Geographical Indications and TRIPs Agreement?
2. What kind of legal protection provided by the Indonesian Government to the Gayo coffee registered by Holland Coffee?

## **C. Research Objectives**

1. To determine whether or not the registration of Gayo by Holland Coffee violated the provisions of Law Number 20 of 2016 about Marks and Geographical Indications and TRIPs Agreement.

2. To find out the forms of legal protection granted by the Government of Indonesia to the Gayo Coffee case filed by Holland Coffee.<sup>27</sup>

#### **D. Benefits of Research**

This study is expected to benefit both from the theoretical and practical:

1. From the theoretical side, this study is expected broaden Legal study materials especially the important matters on geographical indication in Indonesia.

2. From the practical side, this study is expected to be an input for the community and employers in running the business, particularly those associated with the mark.

#### **E. Definition of Terms**

In the literature review, researchers will explain the definition of keywords from the title of research and theories related to the title of the study, in order to understand the case.

**Intellectual property rights** is a right possessed by every human being on a product of their thinking either individually or in groups. Intellectual property right refers to the creations of the human mind like inventions, literary and artistic works,

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<sup>27</sup> *Ibid*

and symbols, names, images and designs used in commerce.<sup>28</sup> IPR has a wide variety of translations that have a different understanding among experts. The team will include experts from:

1. Ahmad M. Ramli, according to him IPR is a translation of Intellectual Property Rights which means Intellectual Property Rights as the word indicates the sense of ownership over the right when compared with the word or term wealth. The term holdings more in line with the concept of Indonesian civil law which apply the word belongs on an object that is owned by someone.<sup>29</sup>

2. Ranti Fauza Mayana, according to her IPR is a translation of the Dutch language, namely *Intelectuelle Eigendom* or Intellectual Property Rights derived from English which of two words meaning as a special right of every human being on the fruit thoughts.<sup>30</sup>

IPR can also be interpreted as the right to ownership of the various kinds of works that were born and raised because of an ability of the human intellect in the field of science and technology generated through human reason and intellect.<sup>31</sup>

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<sup>28</sup> The Insitute of company secretaries, Intellectual and Property Rights-Law and Practice, New Delhi, 2014, p. 2

<sup>29</sup> Ahmad M. Ramli, *HAKI (Hak Atas Kepemilikan Intelektual), Teori Dasar Perlindungan Rahasia Dagang, Cetakan Pertama*, Mandar Maju, Bandung, 2000, p. 23.

<sup>30</sup> Ranti Fauza Mayana, *Perlindungan Des B ain Industri Di Indonesia Dalam Era Perdagangan Bebas, Cetakan Pertama*, Grasindo, Jakarta, 2004, p. 11.

<sup>31</sup> Rahmadi Usman, *Hukum Hak Atas Kekayaan Intelektual (Perlindungan dan Dimensi Hukumnya Di Indonesia)*, Alumni, Bandung, 2003, p. 2.

The provisions concerning IPR or by the International Intellectual Property Rights begins with the approval of the Paris Convention in 1883 which has the purpose to protect the rights of inventors over copyrighted works in the industry belongs.<sup>32</sup> After the Paris Convention appeared several conventions such as the Berne Convention behind the approval of an agreement that the TRIPS agreement which the TRIPS agreement was ratified by Indonesia into Act No. 7 of 1994.<sup>33</sup>

IPR or Intellectual Property Rights is divided into seven (7) types.<sup>34</sup> The seventh kind of IPRs, among others:

1. Copyright;
2. Mark;
3. Patents;
4. Layout Designs of Integrated Circuits;
5. Industrial Design;
6. Trade Secret and;
7. Plant Variety Protection.

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<sup>32</sup> *Ibid*, p.9

<sup>33</sup> *Ibid*, p. 17

<sup>34</sup> Muhamad Djumhana dan R. Djubaedillah, *Hak Milik Intelektual: Sejarah, Teori dan Praktiknya di Indonesia, Cetakan Keempat*, Alumni, Bandung, 2014, p. 24

**Copyright** is an exclusive right for the author and the recipient the right to publish or reproduce the creation or giving permission for it to not reduce the restrictions according to the legislation in force.<sup>35</sup> Object creation, while copyright is the subject of copyright is the creator and copyright holder.<sup>36</sup> Holder or owner of the copyright can be the creator or the person who is given the authority or power to be the copyright holder. Besides the heirs of the deceased copyright holder can also be classified as the owner or holder of the copyright.

**Mark** is a sign in the form of images, names, words, letters, numbers, colour composition, or a combination of these elements, having distinguishing features and used in the trading of goods or services.<sup>37</sup> Mark classified into two (2) types, service marks, and trademarks.<sup>38</sup> Mark service marks are used for services traded by one or more persons jointly or used by a legal entity to differentiate between services of one with the other services. Trademark is a Mark used on goods traded by one or more persons jointly or a legal entity to differentiate with other similar items.

**Patent** is an exclusive right granted by the State to the inventor for invention results in the field of technology for a given period to the invention alone or to give permission to others to implement them.<sup>39</sup> The object of the invention or the patent is

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<sup>35</sup> Article 1 Paragraph 1 Law Number 28 of 2014 about Copyright

<sup>36</sup> Rahmadi Usman, *Hukum ... Op.Cit.*, hlm. 114.

<sup>37</sup> Article 1 Paragraph 1 Law Number 20 of 2016 about Marks and Geographical Indications

<sup>38</sup> Ahmadi Miru, *Hukum Merek : Cara Mudah Mempelajari Undang-Undang Merek*, Raja Grafindo Persada, Jakarta, 2005, p. 11.

<sup>39</sup> Article 1 Paragraph 1 Law Number 13 of 2016 about Patent

the subject of the invention while the patent is the inventor or who receive rights from the inventor concerned.<sup>40</sup>

**Layout Designs of Integrated Circuits** is a human form of intellectual work plan which has the form of three dimensions of the various components that interconnect in an integrated circuit.<sup>41</sup> The object of Integrated Circuit Layout Design is the design of integrated circuit layout original (native), while the subject of Integrated Circuit Layout Design is the one that produces the design of Integrated Circuit Layout Design or also called designer.<sup>42</sup>

**Industrial Design** is a creation of shape, configuration or composition of lines or colours, or lines and colours, or a combination thereof in the form of three (3) dimensional or two (2) dimensions that provide aesthetic impression and can be realized in a pattern of three (3) or 2 (two) dimensions and can be used to produce a product, goods, industrial commodity or handicraft.<sup>43</sup> Subject of the industrial design is the designer or the holder of industrial design rights.<sup>44</sup> The object of Industrial Design is a new industrial design and has been registered.<sup>45</sup>

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<sup>40</sup> Rahmadi Usman, *Hukum ... Op.Cit.*, p. 221.

<sup>41</sup> *Ibid*, p. 475

<sup>42</sup> *Ibid*, p. 479

<sup>43</sup> Article 1 Paragraph 1 Law Number 31 of 2000 about Industrial Design.

<sup>44</sup> Muhamad Djumhana dan R. Djubaedillah, *Hak Milik... Op.Cit.*, p. 299.

<sup>45</sup> Rahmadi Usman, *Hukum ... Op.Cit.*, p. 428.



**Trade secret** is information that is not publicly known in the field of technology and / or business and have economic value because it is useful in business activity and kept secret by the owner of Trade Secret itself.<sup>46</sup>

**Plant Variety Protection (PVP)** is a special protection given by the state in this case is represented by the government and implemented by the Plant Variety Protection Office, on plant varieties produced by plant beginner through crop recovery activities.<sup>47</sup>

In addition to the things mentioned above, there is still one more thing related to Intellectual Property Rights or IPR, namely the Geographical Indications. **Geographical indication** is the name of the geographic area of the country, region or place in order to indicate the origin of a product which is produced by the quality and special nature because of natural factors and human factors.<sup>48</sup>

Definition of Geographical Indications Act Number 20 of 2016 Article 1 verse (1) on Marks and Geographical Indications, namely:<sup>49</sup>

*"A sign that shows the area of origin of goods, which is due to the geographical environment including natural factors, human factors, or a combination of both factors, provide specific characteristics and quality of the goods produced."*

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<sup>46</sup> *Ibid*, p. 395-399

<sup>47</sup> Muhamad Djumhana dan R. Djubaedillah, *Hak Milik.... Op.Cit.*, p. 382.

<sup>48</sup> Ridwan Khairandy, *Pokok-Pokok... Loc.Cit.*, p. 450.

<sup>49</sup> Act Number 20 of 2016 Article 1 paragraph (1) on Marks and Geographical Indications

Characteristic or signs and qualities contained in an item to be dominated by signs that are formed due to natural factors. If an item has a sign that is not derived nature then the goods cannot be classified as a geographical indication. Sign in Geographical Indications can be the name of a place , area, region, words, pictures, letters or a combination of these elements and can also be a label or a label attached to the goods produced.<sup>50</sup>

#### **F. Theoretical Review**

The legal basis in the International Geographical Indications is contained in the TRIPS agreement Article 22 to Article 24, whereas the legal basis of Geographical Indications in Indonesia is in Article 56 to Article 57 of Law Number 20 of of 2016 on Marks and Geographical Indications.<sup>51</sup>

The legal protection of Geographical Indications can be granted if the product geographical indication has been registered to the Director General of Intellectual Property Rights. The existence of this registration is important because registration can guarantee the legal certainty of a Geographical Indication products. The term of protection to the product Geographical Indications can take is not limited as long as the quality and / or characteristics on which the protection given there.<sup>52</sup>

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<sup>50</sup> Fandy, “*Aspek Hukum Perlindungan Indikasi Geografis di Indonesia*”, artikel pada Law Review, Fakultas Hukum Universitas Pelita Harapan, Vol. III, No.2, November 2003, p. 32, in *space.library.uph.edu* downloaded on August 23, 2017 at 07.33 PM.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

Geographical Indications terms are still foreign to most people of Indonesia. Not a few people who do not know the scope concerning Geographical Indications.<sup>53</sup> The existence of which is still low knowledge possessed by the community lead to violations of product Geographical Indications Indonesia.<sup>54</sup>

A violation occurs when the Geographical Indications used by certain parties who may be individual or legal entity using the Geographical Indications that have been submitted to the Directorate General of IPR without permission from rights holders registered geographical indication. If at the time before or after the geographical indication has been used by others who are not entitled to register the party may use it for 2 (two) years since a mark that is used is registered as Geographical Indications.<sup>55</sup>

If the offender uses the sign more than 2 years without the consent of the party which holds the rights to the geographical indication, the party holding these rights can solve it through two (2) ways of settlement, i.e. a settlement out of court and settlement through the courts.<sup>56</sup>

Out of court settlement can be made through arbitration or mediation with the help of a mediator, as contained in Article 84 of Law No. 15 of 2001 on Marks. Completion through this pathway has the advantage, which is more effective and

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<sup>53</sup>World Intellectual Property Organizations. Treaties. Geographical Indications. [http://www.wipo.int/geo.indications/en/ip/paris/summary\\_paris.html](http://www.wipo.int/geo.indications/en/ip/paris/summary_paris.html). Access on October 16th, 2017

<sup>54</sup> *Ibid.*

<sup>55</sup> Ahmadi Miru, *Hukum Merek.... Op.Cit.*, p. 76.

<sup>56</sup> <http://www.pn-kotabumi.go.id> access on October 01, 2017 at 10.15 PM

efficient because of time and cost is not so long and not expensive as well depending on the ability of the parties to the dispute.<sup>57</sup>

Settlement through the court there are two (2), namely:<sup>58</sup> civil and criminal. Civil dispute resolution in principle based on tort or breach of contract, in tort claim may include compensation and / or demand so no longer using Geographical Indications. While the lawsuit on the basis of breach of contract claim in the form of fulfilment of achievement.

In Article 69 paragraph (1) of Law No. 15 of 2001 on Marks expressed holders of Geographical Indications can file a lawsuit against the wearer Geographical Indications without rights, in the form of claim for damages and the discontinuation of the use and disposal of labels geographical indication is used unlawfully.<sup>59</sup>

Geographical Indications lawsuit against infringement may be brought by any producer who is entitled to use Geographical Indications, an institution that represents the people and institutions.

## **G. Research Method**

### 1. Focus Research

In preparation of this paper the authors conducted the study with a normative approach method in which the authors to study literature and study documents. In

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<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

addition, researchers also analysed the legal materials with descriptive qualitative method. In this paper the authors focus on the study as stated in the formulation of the problem. The focus of the research include:

a. Registration violation Gayo by Holland Coffee under the provisions of Act Number 20 of 2016 on Marks and Geographical Indications.

b. Forms of legal protection granted by the Government of Indonesia to the Gayo were registered by Holland Coffee.

## 2. Legal Materials

a. Primary law materials, such as materials that have a legally binding force as legislation, such as:

1. Law Number 20 of 2016 on Marks and Geographical Indications;

2. Indonesian Civil Code;

b. Secondary law materials, i.e. materials that have no legally binding force, such as draft legislation, literature, journals, internet, as well as the results of previous studies.

c. Tertiary laws material, in the form of the Great Dictionary of Black's Law Dictionary.

## 3. Data Collection Methods

a. In the form of literature by reviewing the literature related to the research, journals, and the results of legal research.

b. Studies document, which examines the various laws and regulations related to the research.

#### 4. Approach

The approach used is a normative approach, the approach from the perspective of the relevant legal form of the legislation which the researchers find answers to the problems that exist researchers used the above approach the researchers used a technique literature and document research.

#### 5. Legal Analysis

Researchers used descriptive qualitative method, i.e. the data that is be gathered, described and linked to the problems examined then analyse and describe the situation in research in order to obtain answers to the problems examined.

### **H. Systematic of Writing**

To better understand the writing system of this thesis, the frame of this thesis is divided into four (4) chapters in which chapter consists of sub-chapters. The chapters are as follows:

#### **Chapter I Introduction**

In this chapter the experts explain about the background of the problem, the formulation of the problem, the purpose of research, literature, research methods, and systematics.

## **Chapter II** Theoretical Framework about Trademark Geographical Indication

In this chapter the researchers describe the general overview of Trademark and Geographical Indication.

**Chapter III** Legal Analysis of Trademark Registration Gayo Coffee Mountain as Geographical Indication Product in Indonesia

In this chapter discusses the graduation of Gayo Coffee registration by Holland Coffee based on Law Number 20 Year 2016 regarding the Marks and Geographical Indications and to know the form of regulations granted by the Government of Indonesia to Gayo Coffee which is registered by Holland Coffee.

## **Chapter IV** Closing

In this chapter the researchers conclude the results of his research and provide problem-related suggestions.

**Bibliography** is a list of references used by the author to support the writing of this material. References used inter alia in the form of books of law, legislation, and news or articles are taken from the internet.





## **CHAPTER II**

### **THEORITICAL FRAMEWORK OF TRADEMARK AND GEOGRAPHICAL INDICATION**

#### **A. OVERVIEW OF TRADEMARK**

##### **1. History of Trademark**

In the middle ages before the industrial revolution, mark has been known in various forms or terms as an identifier to distinguish one's possession from another's. It was preceded by the role of the Gilda who gave the identification of his handicrafts in order to supervise the work of members of Gilda's colleagues, which ultimately led to findings or easy ways to market goods.<sup>60</sup> In the United Kingdom, Trademarks are becoming known from the hallmark form as an official sign system of goldsmiths, silversmiths and cutting tools that continue to be used effectively to differentiate from other producers of similar goods.<sup>61</sup>

Trademark issues are not new to Indonesia. In the history of the Trademark legislation, it can be seen that in the Dutch colonial period the Industrial Eele Regulation Eigendom (RIE) contained in Staatblad 1912 Number 545 jo Staatblad

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<sup>60</sup> Adisumarto, Harsono. 1990, *Hak Milik Intelektual, Khususnya Hak Cipta*, Jakarta: Akademika Pressindo, p. 44-45

<sup>61</sup> Djumhana. Muhammad dan, R. Djubaedillah, *Hak Kekayaan Intelektual , Sejarah, Teori dan Prakteknya di Indonesia* Jakarta, Citra Aditya Abadi, 1997, p. 117.

1913 Number 214. During the Japanese occupation, issued a regulation of the Trademark, called Osamu Seire Number 30 Registration of the trade mark which came into force on the 1st of the 9th month of Syowa (Japanese year 2603). After the Independence of Indonesia (17 August 1945), the regulation is still enforced under Article II of the Transitional Rules of the 1945 Constitution. Furthermore, since the era of open economic policy in 1961 the enactment of Law Number 21 of 1961 concerning Company Marks and Trade Marks replacing the inadequate Dutch colonial legacy rules, although the Act basically has many similarities to the Dutch colonial law products.<sup>62</sup>

Subsequent developments, the Trademark Law has changed, either replaced or revised because its value is not in accordance with the development of circumstances and needs. In the end, in 2001 promulgated Law No. 15 of 2001 on Marks. This Trademark Act is a law governing Trademark protection in Indonesia. The Act is the latest legal product in the field of the Trademark in response to adjusting Trademark protection in Indonesia to the international standards contained in Article 15 of the TRIPs Agreement in lieu of the previous Law namely Law Number 14 of 1997 on Amendment to Law Number 19 years 1992 on Trademarks.

The use of the mark as distinguishing between goods and/ or services produced by someone with the goods or services produced by others that we commonly call as

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<sup>62</sup> Saidin, 1995, *Aspek Hak Kekayaan Intelektual* (Intellectual Property Right). PT RajaGrafindo, Jakarta, p. 249-250.

mark, may be traced perhaps even centuries before Christ. Since ancient times, such as the Minoan period, people had given a sign to his belongings, animals and even humans. In the same era, the Egyptians already applying his name to the bricks that were made at the behest raj. Legislation on the mark starts from the Statute of Parma who had started functioning as mark differentiator for products such as knives, swords, or goods from other copper products.<sup>63</sup> The use of the trademark in the sense that we know it today began to be known shortly after the Industrial Revolution in the mid-eighteenth century. At that time production system of medieval origin that prefers handwork skills, changed radically as a result of using machines with high production capacity. As a result, Plank production in large units and require a new distribution system for the distribution of these items in the community.

Along with the development of industry, also developing the use of advertising to introduce the product. In line with the mark in its modern function, as an identification of the origin or source will be the manufacturer of the goods concerned.<sup>64</sup>

At that time people began to recognize trade, the mark becomes an important thing, because to distinguish itself and the products of its competitors. In this case the mark becomes a vital role in imaging and marketing strategy of the company, giving a contribution to the image and reputation of the product from a company in the eyes of

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<sup>63</sup>Rahmi Jened, *Hukum Merek (Trademark Law) dalam era global dan integrasi Ekonomi*, Prenadamedia Group, Jakarta, 2015, p. 1-2

<sup>64</sup> *Ibid.* P.3

consumers. The image and reputation of the company to create trust is the foundation to get loyal consumers and increase the company's name.

In 1961, the Colonial Trademark Law of 1912 remained in effect as a result of the application of transitional articles of the 1945 Constitution and the 1949 RIS Law and the 1950 Interim Law. The 1961 Trademark law was a replacement of the Colonial Trademark law.

In 1992 the new Trademark Law was enacted and enacted dated April 1, 1993, replacing the Trademark Act of 1961. With the existence of the new law, the relevant administrative decree with Mark registration procedures being made. Regarding the reform interests of the Mark law, Indonesia participates in ratifying the WIPO International Mark Agreement.

In 1997 Act no. 19 of 1992 on Trademarks is amended by considering the articles of the international treaties on aspects related to the trade of Intellectual Property Rights (GIPT)/ GATT. The articles contain protection on indications of origin and geography. Previous law where the first Mark user in Indonesia has the right to register the Mark as a mark.

In 2001 the new Trademark Act was successfully enacted by the government. The law contains many matters which have been largely regulated in the former Law. Some of the important changes listed in Law No. 15 of 2001 concerning Trademarks are temporary provisions of courts, ordinary offenses being the offense of complaints, the role of commercial courts in resolving Mark disputes, the possibility of resorting to dispute resolution alternatives and aggravated criminal provisions.

Although Trademark Law No. 15 of 2001 is considered adequate to provide legal certainty for producers and consumers protection, but the Indonesian government made another revision with the stipulation of Trademark Law No. 20 of 2016.

## **2. Definition of Trademark**

Today almost all that is used both goods and services can not be separated from the Mark name. Mark is very important for the world of commerce industry, because with the mark can distinguish between one item with other goods. In addition, with the mark can show the origin of the goods, and the Mark can show the quality of the goods, so that consumers are not trapped or misled.

According to Molengraaf, the Mark is “make private” a particular item, to show the origin of goods, and quality assurance , so it can be compared with similar goods made, and traded by other people or companies.<sup>65</sup>

The current sense of the mark basically has many similarities among the participating countries of the Paris Union, this is because they refer to the provisions of the Paris Convention. This is also the case in developing countries, they adopt a lot of mark recognition from the model of developing countries, and they adopt a lot of mark understanding of the legal model for developing countries issued by BIRPI 1967. In that model mentioned the definition of the Mark listed in Article 1 paragraph (1) sub

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<sup>65</sup> Muhammad Djumhana, *op.cit*, p. 121.

a as follows: "trademark means any visible sign serving to distinguish the good of one enterprise from those of other enterprises".<sup>66</sup>

The legal definition of Mark can be understood from the law. Article 1 paragraph (1) Trademark Law No. 20 of 2016 stipulates as follows:<sup>67</sup>

*“Mark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, colour composition, in the form of two (2) dimensions and / or 3 (three) dimensions, sound, hologram, or a combination of the two (2) or more of these elements to distinguish the goods and / or services produced by the person or legal entity in the trading of goods and / or services”.*

The basic rules of the mark are contained in Article 5 (2) of the Paris Convention and Article 15 (1) and Article 16 (1) of the TRIPs agreement as follows:

Article 5 (2) Paris Convention

*“Use of trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was*

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<sup>66</sup> *Ibid*, p. 122.

<sup>67</sup> Trademark Law No. 20 of 2016, Op.cit, article 1 paragraph 1

*registered in one of the countries of the union shall not entail invalidation of registration and shall not diminish the protection granted to the mark.”<sup>68</sup>*

#### Article 15 (1) TRIPs

*“Any sign, or any combination of signs, capable of distinguishing the goods or service of one undertaking from those of undertakings shall be capable of constituting of trademark. Such signs, in particular words including names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs shall be eligible for registration of trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, registration may be refused. Member may make registration of trademarks dependent on distinctiveness acquired through use. Member may require as a condition of registration that signs be visually perceptible.”<sup>69</sup>*

#### Article 16 (1) TRIPs

*“The owner of registered trademark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs for goods and services which are identical or similar to those in respect of which the trademark is registered.”*

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<sup>68</sup> Paris Convention, Article 5 Paragraph 2

<sup>69</sup> Trips Agreement , Article 15 Paragraph

*which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of identical signs for identical goods or services, (a likelihood) of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.*"<sup>70</sup>

According to Ramadi Usman gives the mark definition as follows:<sup>71</sup>

*"Mark is an identifier in the activity of trading of goods or services of a kind or as well as a guarantee of quality when compared with products of similar goods or services made by other parties. By seeing, reading and hearing a mark, a person can already know precisely the form and quality of a good or service that will be traded by the manufacturer. "*

In addition to the above definitions, some other legal scholars also gave his opinion about the definition of the mark that is:

a. H. M. N. Poerwo Sutjipto, gives the definition that the mark is a sign by which a particular object is personalized, so it can be distinguished from other similar objects.

b. R. Sukardono, gives the understanding that the mark is a sign whereby it is personalized to a particular good, whereby it is also desirable to derive goods or to

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<sup>70</sup> Trips Agreement, Article 16 paragraph 1

<sup>71</sup> Rachmadi Usman, *Hukum Hak Kekayaan Intelektual Perlindungan dan Dimensi Hukumnya di Indonesia*, Alumni, Bandung, 2003, p. 321.



guarantee the quality of goods in comparison with similar goods made or traded by persons or other corporate entities.<sup>72</sup>

From the opinions of the scholars, it can be concluded that what is meant by a mark is a sign to distinguish goods or services of a kind that are produced or traded by a person or group of persons or legal entities with Similar goods or services produced by others having differentiating power or as a guarantee of quality and used in the trading of goods or services.

### **3. Scope of Trademark**

The scope of the mark includes trademarks and service marks. Trademarks are more directed to trade products in the form of goods, whereas service Marks are more related to trade products in the form of services. Besides trademarks and service marks, it is also known as a collective Mark. Trademarks are trademarks used on goods traded by a person or persons jointly or by a legal entity to distinguish with other similar items.<sup>73</sup>

A service mark is a mark used on services traded by a person or persons jointly or a legal entity to distinguish from other similar services.<sup>74</sup>

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<sup>72</sup> 50 O.K. Sadikin, *Aspek Hukum Hak Kekayaan Intelektual*, PT. Raja Grafindo Persada, Jakarta, 2006, p. 343.

<sup>73</sup> *Iswi Hariyani dan R. Serfianto D.P.*, *Prosedur Mengurus HAKI yang Benar*, 2010, Pustaka Yustisia, Yogyakarta, p.87.

<sup>74</sup> *Ibid*, p. 87.

A collective mark is a mark used on goods and or services with the same characteristics that are traded by several persons or legal entities jointly to differentiate with other goods and / or services.<sup>75</sup>

Collective marks can come from two or more business entities that work together to have the same mark. Collective marks may also come from a particular entity that has trade products in the form of goods and services.<sup>76</sup>

#### **4. Function of Mark**

Marks are made of course with clear usability. The existence of a mark must make a difference in one product, be it product or service. That's why every product or service is always trying to create a memorable mark.

The most noticeable functions of mark are identity. For example, when you will buy packaging food products, of course you will find a particular mark. Especially if you buy it in the store, of course you have to mention the product mark which is easy to search. Then it is clear that the mark is the identity for the food packaging products. And that is the reason every packaging of the product as food, drinks, clothing, even electronic products always include in mark.

The function of the mark can be seen from the point of view of producers, traders, and consumers:<sup>77</sup>

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<sup>75</sup> *Ibid*, p. 88.

<sup>76</sup> *Ibid*, p. 88.

<sup>77</sup> Margono. Suyud, *Aspek Hukum Komersial Aset Intelektual*, Bandung, Nuansa Aulia, 2010, p. 20

a. From the producers mark is used to guarantee the value of its production, especially regarding the quality, and its use.

b. From the trader's side, the mark is used for the promotion of its merchandise in search of and expanding the market.

c. From the consumer mark is used to hold a selection of goods purchased.

So when viewed from these three aspects it can be concluded that the mark is not only useful for producers itself but also provide protection to traders and consumers. In addition, the mark also serves as a means of promotion or advertising for producers or traders or entrepreneurs who trade goods or services.

## **5. Registration of Trademark**

In accordance with the provisions of the law, that the legal protection of the mark is given to the ones which has been registered. In the trademark registration procedure there is substantive requirements and formal requirements. This requirement refers to Article 15 (3), (4) and (5) of the TRIPs Agreement and Indonesia Trademark Law.<sup>78</sup>

### **1. Formal Requirement**

According to TRIPs Agreement article 15 (3), (4), and (5) stated as follow:

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<sup>78</sup> Rahmi Jened, Op.Cit., p. 139

*3) Members may make registration depending on the use. However, actual use of trademark shall not be a condition for filling application for registration. An application shall not be refused solely on the ground that intended that intended use has not taken place before the expire of period of three years from the date application;*

*4) The nature of goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of trademark;*

*5) Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford reasonable opportunity for petitions to cancel the registration. In addition Members may afford an opportunity for the registration of trademark to be opposed.<sup>79</sup>*

The principle of first to file, adopted in the system of trademark registration in Indonesia, both individuals and legal entities, and the first register of a mark for the class and type of goods and / or services, is considered as the owner of the rights to the mark in question. This is supported also by the existence of a written statement to be made by the applicant's trademark registration and filed concurrently with the filing of the petition, in which it stated that he is the rightful owner of the rights to the trademark, and therefore entitled to apply for registration of the mark in question.<sup>80</sup>

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<sup>79</sup> Trips Agreement Article 15 Paragraph 3-5

<sup>80</sup> Rahmi Jened, Op.cit, p. 138

## 2. Substantive Requirements

Substantive requirements for trademark registration in Indonesia is that the requirements under the provisions of Article 20 and Article 21 of the Trademark Law No. 20 2016 that the mark can be registered or rejected if it does not conform with the provisions of those chapters. Substantive requirements in the application for registration of the mark, namely:

1. Goodwill, Article 21 paragraph (3) of the Mark Law stipulates that:

*"Marks cannot be registered on the basis of the application submitted by the applicant are not well intentioned."*<sup>81</sup>

Mark protection principles in Indonesia provides protection for a registered trademark in good faith. The principle of good faith is not only in the current application for trademark registration, but also emerged as a good faith basis of the lawsuit concerning the validity of a registered mark.<sup>82</sup>

R. Wirjono Prodjodikoro explained that good faith consist of two kinds, namely:

*a. good faith at the time of entry into force of a legal relationship, which is usually a person's estimate or assumption that the terms of the commencement of the legal relationship has been fulfilled. The law gives protection to parties of good will, while for those who are not well intentioned must be responsible and bear the risk. This bad faith contained in Article 1977 Burgerlijk Wetboek (BW)*

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<sup>81</sup> Trade Mark Law, Op.cit, Article 21 paragraph 3

<sup>82</sup> Rahmi Jened, Op.cit, p. 94

*and Article 1963 BW, which specifies the conditions for obtaining property through expired goods. This good faith is subjective and static.*

*b. good faith at the time of exercise of the rights and liability-obligation in relation to that law, as represented under Article 1338 paragraph (3) BW, which is objective and dynamic following the situation surrounding the legal Law as well as the emphasis is on Law ions to be taken by both sides, Laws as the implementation of something.*

In civil law, there is no clear definition of good faith. Good faith is generally known in Article 1338 paragraph (3) civil code that "The Parties shall mutually feasible and worth doing", no further details regarding the definition of good faith. Therefore, in order to understand the meaning of good faith to be seen more clearly in good faith interpretation in the court trial. It's because the dispute regarding good faith in practice always be settled in court. Thus, the development of the doctrine of good faith is more of a trial than legislative work which develops on case by case basis. Judges play an important role in interpreting the doctrine of good faith.<sup>83</sup>

The jurisprudence of the Supreme Court dated December 16, 1986 N0. 220 / PK / 1986 regarding the case of Nike giving due consideration to the good faith as follows:<sup>84</sup>

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<sup>83</sup> Ridwan Khairandy, Iktikad Baik Dalam Kebebasan Berkontrak, p. 7

<sup>84</sup> Rahmi Jened, Op. Cit., hlm. 96.

*"That the citizens of Indonesia who produce goods made in Indonesia is obliged to use the mark names that clearly reveal the identity of Indonesia and as far as possible avoid using a trademark that is similar, moreover trace foreign marks, that registration of the mark have similarities in principle with the mark of others more formerly clearly a bad intentioned Laws with the purpose of hitchhike on a commercial name and trademark names that are already well known."*

Elements of bad intention according to the explanation of Article 21 paragraph (3) of the Trademark Law No. 20 year 2016 is a mark registered applicants are:

*Have the intention to imitate or plagiarizing the mark fame of other parties;*

*1) For the sake of its business;*

*2) Resulting in a loss to the other party or give rise to conditions of unfair competition, deceptive or misleading consumers.*

Bad faith which means when the innovation is plagiarism innovations of others and there is no element of novelty of the innovation that already exists. Bad faith on the mark is the mark registered applicants unfairly and intends to imitate, and plagiarized the mark fame from others and a desire to take advantage of the trademark registration. If the trademark applicant found to violate the rights of others, the mark

used in bad faith, should be removed from the Directorate General of trademark and the state will not provide legal protection for the mark based on the grounds of bad faith.<sup>85</sup>

Marks that can not be registered. In Article 20 of the Mark Law No. 20 of 2016, stipulated that:

*"Marks that can not be registered if it contains one of the following elements:*

*1. Contrary to the legislation in force, religious morality, decency or public order;*

*2. No distinguishing features;*

*3. It has become common property;*

*4. Is a description of or relating to goods or services which registration is requested.*<sup>86</sup>

The provisions of Article 20, which is universal and the reason is objective should be known and understood by every mark inspection. Article 20 have the alternative nature which means that if one element is violated, is sufficient to provide a reason for stating that the proposed trademark can not be registered.<sup>87</sup>

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<sup>85</sup> Imam Sjahputra Tunggal, Heri Herjandono, dan Parjio, *Hukum Merek Indonesia*. Harvarindo, 2005, p.9

<sup>86</sup> Trademark Law, Op.Cit, Article 20

<sup>87</sup> Anne Gunawati, *Perlindungan Merek Terkenal Barang Dan Jasa Tidak Sejenis Terhadap Persaingan Usaha Tidak Sehat*, PT. Alumni, Bandung, 2015, p. 108.



Mark should be rejected. Provided for in Article 21 paragraph (1) and (2) of the Mark law No. 20 2016 stipulated that:<sup>88</sup>

*1) Application is rejected if the trademark has a similarity in principle or in its entirety by:*

*a. A registered trademark of another party or filed earlier by another party for goods and / or services.*

*b. Well known marks belonging to other parties for goods and / or services.*

*c. Well known marks belonging to other parties for goods and / or services are not similar that meet certain requirements; or*

*d. Geographical Indications registered.*

*2) Request also rejected if the marks:*

*a. is or resembles the name or abbreviation of a well-known person's name, photograph, or the name of the agency;*

*b. an imitation or resembles the name or abbreviation of the name, flag, emblem or symbol or emblem of a country, or a national or international institution, except with the written consent of the competent authority; or*

*c. imitate or resemble the mark or seal or official stamp used by the state or government agencies, unless a written consent of the authorities<sup>89</sup>*

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<sup>88</sup> Trademark law No. 20 of 2016, Op.cit, Article 21 paragraph 1 and 2

<sup>89</sup> Trademark Law, Op.Cit, article 21

There are two basic reasons for Directorate General of IPR to reject any application for registration of the mark, namely the absolute rejection and relative rejection. Absolute rejection is because it is universal and for reasons which are objective in the case should be known and understood by each mark examiner, and could also be due to the provisions contained in the legislation of each mark in many countries although arranged in a different order. While the reason of relative rejection that can occur due to reasons which are subjective or are dependent on the capabilities and knowledge of the mark inspectors and also because not all countries include such provisions.<sup>90</sup>

Meanwhile, the formal requirements of the registration of the mark adjusted from Article 4 to Article 10 of the Trademark Law No. 20 Year 2016. Basically formal requirements concerning the administrative documents that must be met and attached to the petition.

Article 4 sets out the terms and procedures for the application for registration of the mark:<sup>91</sup>

1) Trademark registration application filed by the applicant or his proxy to the Minister electronically or non-electronically in Indonesian.

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<sup>90</sup> Iswi Hariyani, *Prosedur Mengurus HAKI (Hak Kekayaan Intelektual) Yang Benar*, Pustaka Yustisia, Yogyakarta, 2005, p. 93

<sup>91</sup> Trademark law No. 20 of 2016, Op.cit, article 4

2) In the application referred to in paragraph (1) shall include:

a. date, month and year of application;

b. the full name, nationality and address of the Applicant;

c. attorney full name and address if the application is filed by an attorney;

d. colour if the mark applied for registration using the colour elements;

e. the country's name and date of the first Filing the application is filed with a priority right; and;

f. class of goods and / or class of services and a description of the type of goods and / or types of services.

3) An application signed by the applicant or his proxy.

4) The application referred to in paragraph (1) shall be accompanied by a label marks and proof of payment of the fee.

5) Trademark registration application fee is determined per class of goods and / or services.

6) In the case of Marks referred to in paragraph (4) take the form of 3 (three) dimensions, mark label attached in the form of the characteristics of the mark.

7) In the case of Marks referred to in paragraph (4) in the form of voice, mark label that is attached in the form of notation and sound recordings.

8) The application referred to in paragraph (1) shall be accompanied by a statement of ownership of marks that applied for registration.

9) Further provisions on the application fee as referred to in paragraph (5) is regulated by the Government.

Furthermore, Article 5 Trademark Law regulates the petition filed by more than one applicant who is jointly entitled to the mark. Article 6 Trademark Law regulates the registration application to more than one class of goods and / or services or more in a single request. Article 7 Trademark Law regulates the petition filed by the power of the applicant residing or domiciled outside of Indonesia. Then Article 8 Trademark Law provides that the provisions on the requirements and application procedures will be further regulated by the Regulation. Whereas Article 9 and Article 10 of the Trademark Law governs trademark registration application with priority rights. An application with a priority right must be accompanied by evidence of receipt of application for registration of the first mark that raises the priority right.<sup>92</sup>

Fulfilment of the formal requirements and the fulfilment of the substantive requirements, given in a first to file system, state which holds the registration authority. State before declaring the new law (constitutive), should examine the completeness and

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<sup>92</sup> *Ibid*, article 5-10

correctness of the formal requirements before checking material substantive requirements. Thus, when the formal and substantive requirements have been met, will be issued a certificate of mark by the state. A certificate is proof of the validity of the ownership of the mark was a final decision from the state.<sup>93</sup>

TRIPs and the Paris Convention makes clear that the initial registration and each renewal of trademark registration can be done for a period of not less than seven years. Registration of a trademark shall be renewable indefinitely. But not in the case of any extension of the registration of the mark in the country of origin involve an obligation to renew the registration in other countries participating in the Convention where the mark has been registered. Legal protection and exploitation of the mark effect during the term of protection of a registered trademark in question. Registered trademark term of protection granted in accordance with the principles of justice that a decent minimum usage is seven (7) years. While Trademark Law establishes higher than the minimum standards of the TRIPs which is 10 (ten) years of exploitation of the mark for commercial purposes and not to be affected by the cancellation of the 'non-use' 3 (three) years in a row.<sup>94</sup>

Based on TRIPs, the owner of a registered trademark has the exclusive right to prevent all third parties not having the owner's permission, to use in trading activities, a sign that are similar to goods or services identical or similar goods or services on behalf of mark has been registered, which should have been predicted in advance that

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<sup>93</sup> Rahmi Jened, Op.cit, p. 141.

<sup>94</sup> *Ibid*, p.188

such use could cause confusion. The rights described above does not diminish existing rights, and will not affect the possibility of Member States to provide protection of trademark rights on the basis of use.<sup>95</sup>

## **6. Abolition and Cancellation of Registration of Trademark**

Abolition and cancellation of trademark registration is stated under Article 72 to Article 79 of Trademark Law No. 20 year 2016.

### **a. Abolition of Registered Trademark**

Mark has been registered in the Directorate of mark can be removed from the general list of marks. The consequences of a mark that has been registered at the Directorate of marks is to be used in accordance with the registration request. Trademark Law requires mark owners to be honest in the use of its mark, which means registered trademark used according to the class of goods and services registered must also be the same shape with a mark that is used. If a mark that has been registered is not used in accordance with the provisions stipulated in the law, will result in registration of the mark in question was abolished.<sup>96</sup>

The basic rule of the abolition is on Article 19 of the TRIPs Agreement as follows:<sup>97</sup>

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<sup>95</sup> *Ibid*, p. 193

<sup>96</sup> Iswi Hariyani, *Op. Cit.*, Hlm. 112.

<sup>97</sup> Trips Agreement, *Op.cit*, article 19

*1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstance arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.*

*2. When subject to the control of its owner, use of trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.*

From Article 19 of the TRIPs Agreement explains that if the use is required to maintain a registration, the registration may be cancelled only after the mark was not used at all for at least three (3) years, unless the reason for non-use of a mark can be shown by the trademark owner. The situation arising from the trademark owner will be used mark barriers, such as import restrictions or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons the mark is not used (non-use). When the use of mark subject to the control of the mark

owner, the use of such marks by others must be considered for the purpose of maintaining the registration.<sup>98</sup>

Abolition of the current registered Trademark stipulated in Chapter XII of the abolition and cancellation of the Registration of Marks of Article 72 to Article 79 of Trademark Law. Pursuant to Article 72 paragraph (7) of the Law of Trademarks, mark abolition reasons are:<sup>99</sup>

*a. has similarity in principle and / or in its entirety with Geographical Indication;*

*b. contrary to the ideology of the state, laws, morality, religion, morality and public order; or*

*c. have in common on the whole with the traditional cultural expressions, intangible cultural heritage, or the name or logo that is already a tradition passed down from generation to generation.*

#### b. Cancellation of Registered Trademark

Cancellation mark is a process that is taken by one of the parties to find and eliminate the existence of the registration of a trademark of the General Register of Trademarks or cancel the validity of the rights under the trademark certificate. Generally, a party believed he had been harmed by the application, such that he would

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<sup>98</sup> Rahmi Jened, *Op.cit*, p. 299

<sup>99</sup> Trademark Law No. 20 of 2016, *Op.cit*, article 72 paragraph 7



be allowed to petition for cancellation. Some jurisdictions refer to the cancellation of a registered trademark by the invalidity lawsuit, nullity or ratification / Revocation action. The registered mark can still be unregistered, if based on sufficient evidence that the mark does not meet the reasons listed by absolute grounds or relative grounds. The cancellation of a trademark registration is stipulated under Article 76 to Article 79 of Law Trademark No. 20 2016.

The provisions of Article 76 of the Trademark Law provides that:<sup>100</sup>

*1. Registered Trademark lawsuit for cancellation may be filed by an interested party on the grounds referred to in Article 20 and / or Article 21.*

*2. The owner of the mark that is not registered may file a lawsuit as referred to in paragraph (1) after submitting the application to the Minister.*

*3. The cancellation lawsuit filed to the Commercial Court against the owners of registered marks.*

From the article above can be explained that the trademark registration may be filed by an party on the grounds referred to in Article 20 and / or Article 21 that where interested parties that include attorneys, foundations or institutions in the field of consumer and assemblies or religious institutions.<sup>101</sup>

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<sup>100</sup> *Ibid*, article 76

<sup>101</sup> Rahmi Jened, *Op.cit*, p. 292.

A lawsuit for cancellation of trademark registration may be filed within a period of five years from the date of registration of the mark. But there are exceptions to the time limit because of the lawsuit can be filed without a time limit if the mark in question is contrary to religious morality, decency, or public order. Understanding contrary to religious morality, decency or public order is the use of these markers may offend, modesty, peace, or religious from the public or from certain segments of society. Included also in the sense that contrary to public order is contain bad intentions.<sup>102</sup>

Similarly with the abolition of the mark, the cancellation of trademark registration is done by the Directorate General of IPR by cancelling the mark concerned on the General Register of Marks with notes about the reasons and the date of cancellation. Cancellation of the registration of a mark on the General Register of Marks was also published in the Official Gazette of Marks.<sup>103</sup>

## **7. Time period of Mark Protection**

According to Article 35 of the Trademark law No. 20 year 2016, the registered trademark will be granted legal protection for a period of 10 years from date of receipt of the application for registration of the mark concerned.<sup>104</sup>

Mark owners can apply for an extension of the period of protection for the same period. Usually, the directorate generals no longer conduct a research (examination) on

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<sup>102</sup> Ahmadi Miru, *Hukum Merek: Cara Mudah Mempelajari Undang-Undang Merek*. PT. Raja Grafindo Persada: Jakarta, 2005, p. 86.

<sup>103</sup> *Ibid*, p. 87

<sup>104</sup> Trademark Law No.20 of 2016, *Op.cit*, article 35

the mark when the mark owners proposed an extension of protection. Procedure of time extension request is made in writing by the mark owner, or their proxies within a period of not more than twelve (12) months prior to the expiration of the period of protection for the registered mark.

Application for extension of the term of protection may be approved if the mark concerned is still used on goods or services produced and traded by mark owners or their proxies.

An extension of time of registered mark protection can also be rejected, by a written notice to the owner or attorney stating the reasons. The reason for rejection, among others, because it has passed or less than a set time period for filing return, not to pay the filing fee extension, the mark is not used on the goods or services as stated in the trademark certificate or for goods or services is not produced and traded again.

## **8. Transfer of Trademark Rights**

In Trademark Law No. 20 year 2016, the issue of transfer of rights of the mark is regulated in Chapter V Part One governing the transfer of rights to the registered mark. Article 41 sets out the ways to transfer the rights to a registered mark, namely through:<sup>105</sup>

- a. Inheritance;

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<sup>105</sup> Trademark Law No. 20 of 2016, *Op.cit*, article 41

- b. Will;
- c. Benefaction
- d. Grant;
- e. Agreement; or
- f. Other causes are justified by the legislation.

The transfer of rights to the mark required the notation of the Directorate General to be noted in the General Register of Marks with accompanying documents to prove it. The transfer of the right to be legally enforceable against third parties only when it has been recorded in the General Register of Trademarks. Transfer of the mark can be accompanied by the transfer of goodwill or reputation or other things associated with the mark.

The transfer of rights of the mark can be done by licensed of the marks. The owner of a registered trademark has the right to license to others to use a trademark agreement is good for some or all types of goods or services included in one class to obtain economic benefits.

The licensing agreement shall be registered with the Directorate General or noted in the General Register of Marks and announced in official news of their Mark. The

licensing of mark by an agreement in essence merely granting the right to enjoy the economic benefits of a mark within a period and under certain conditions as well.<sup>106</sup>

## 9. Islamic Review on the Right of Mark

In Islamic law, there is no actual reference to the issues of international property rights. Marks are part of Intellectual Property Rights. Intellectual property issues are constantly arise with the development of Science and technology.

Nowadays intellectual property issues are more complex, because they do not merely provide protection to Individuals but have been part of political and economic problems. The problem of intellectual property rights is no longer in the field of intellectual property rights alone, because many interests related to intellectual property rights, economic and political fields have become an integral element in intellectual property issues.<sup>107</sup>

In the issue of Intellectual Property Rights, the Indonesian Council of Ulama (MUI) also responded to it. According to MUI, the protection of Intellectual Property Rights does not conflict with Islamic law, the right must be protected by *yara* (Islamic law), based on *qaidah* because violation of property rights is an act of crime and violation of property rights.<sup>108</sup>

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<sup>106</sup> Abdulkadir Muhamad, *Hukum Harta Kekayaan, Citra Aditya Bakti*, Bandung, 1994, p. 133

<sup>107</sup> Neni Sri Imaniyati, *Hukum Ekonomi dan Ekonomi Islam Dalam Perkembangan, Mandar Maju*, Bandung, 2002, p. 123

<sup>108</sup> Decision of Indonesian Council of Ulama (MUI), No. I/MUNAS VII/MUI/5/2005, on Protection of Intellectual Property Right (IPR)

In Islamic law Trademarks are part of private property, not a public property. Private property is the property of *syara* (Islamic law) to the individual to exploit something, either in the form of objects or services. There are five reasons for private ownership:

1. *Ashabul al-tamalluk*, that is the result of work.

2. *Al-,,amal*, because of inheritance.

3. *Al-irts*, because of the necessity of property to sustain life from the giving of the State.

4. *I'thau al-daulah*, that is needed for the welfare of the people in the form of agricultural products, taxes, and capital money.

5. As well as the acquired possessions of individuals without effort or reward from compensation.<sup>109</sup>

Islam respects private property. Therefore Islam provides severe legal sanctions against anyone who violates private property or take the rights of others. Islam forbids a person to claim a word, effort and the work of others as his own or as the property of another person who is not the original owner with the intention of removing the rights of the owner. Islam categorized this act as a fraud whose the perpetrators are entitled to punishment.

Besides, mark violations that occur today in the form of impersonation and piracy are prohibited by Islam because it can harm fellow Muslims, Allah SWT prohibits the

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<sup>109</sup> Luluk Atirozu Zahroh, *Ahkam Jurnal Hukum Islam*, volume 8, 2006, p. 80.

wealth obtained in a way that is not true and harmful, in the Surah An-Nisa verse 29

Allah SWT said : <sup>110</sup>

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ  
تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ

رَحِيمًا ﴿٢٩﴾

Meaning: *O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.*

Allah SWT also says in Surah Al-Baqarah verse 186 which reads:<sup>111</sup>

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ  
لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ ﴿١٨٨﴾

<sup>110</sup> Al-Quran, Surah An-Nisa verse 29

<sup>111</sup> Al-Quran, Surah Al-Baqarah, verse 186

Meaning: *And do not consume one another wealth unjustly or send it (in bribery) to the rulers in order that (the might aid) you (to) consume of portion of the wealth of the people in sin, while you know (it is unlawful).*

## **B. Overview of Geographical Indication**

### **1.1 Definiton of Geographical Indication**

Definition of Geographical Indication according to Article 1 paragraph (6) Law Number 20 of 2016 on Marks and Geographical Indication mentioned:<sup>112113</sup>

*"Geographical Indication is a sign indicating the origin of an item and / or a product that due to geographical environmental factors including n atural factors, human factors or a combination of both factors provide a reputation, quality, and certain characteristics of the goods and / or products produced."*

Geographical Indication can be means as a sign which showing the origin area a good and has related with quality, reputation, or characteristic which is suitable with the origin of Geographical Indication of that good.<sup>114</sup>

And according to WIPO (World International Property Organization) give the definition about Geographical Indication:

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<sup>112</sup> Article 1 paragraph (6) Law Number 20 of 2016 on Marks and Geographical Indication

<sup>113</sup> Ahmad Miru, *Hukum Merek... Op Cit.*, P. 147

<sup>114</sup> Tim Lindsey, Eddy Damian, Simon Bun and Tomi Suryo Utomo, *Hak Kekayaan Intelektual: Suatu Pengantar*, p. 140



*“A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.”*

The use of the term Geographical Indications in countries in the world is very diverse. Although using a different term of meaning and meaning of the term used has the intent to measure against Indication. The scope that is protected on terms that have a meaning as a definition of Geographical Indication is almost the same, that is, the originality of the image element of a place.

Approach related to the notion of Geographical Indication of the language in the world of international law. It can be said, of course, this Geographical Indication has grown in the foreign countries before Indonesia. This means that there has been a lot of unlawful acts that harm the consumer or producer related to the use of Geographical Indication brand.

## **1.2 Geographical Indication in Paris Convention, TRIPs, and Madrid Agreement**

Approaches related to the notion of Geographical Indication can first be found in the International Convention that has emerged beginning in the 18th century. The first convention that emerged had competence with Geographical Indication is the Paris Convention which was first signed in 1883 and has been revised several times for the last change in 1979. It can be said that the Paris Convention is the first regulation governing Geographical Indication in the international world. In the Paris Convention not directly concerning the definition of Geographical Indications, there are several provisions in this Convention which generally contain elements of Geographical Indications, namely some basic principles relating to the repair of the wrong or wrong indications, including false signs or false indications to the source. Can call it if the Paris Convention makes Geographical Indication as a place of right origin so as not to mislead the public relate to the origin of a good. Can be drawn red thread. Geographical Indications of the Paris Convention have already been adopted as part of the Protection of Wealth.

The first international legal framework that protected GIs was the Paris Convention.<sup>115</sup> Until then, GIs had only been protected by way of national legislation, with France setting the standards. Already in 1824, France enacted an appellation law that gave “producers their first proprietary interest in geographic indicators.”<sup>116</sup>

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<sup>115</sup> The official name of this convention is the *Paris Convention for the Protection of Industrial Property of March 20, 1883* (the Paris Convention). It has been revised and amended on several occasions since its coming into force.

<sup>116</sup> See, Lindquist, 1999, at 312, and Murphy, 2004, at 1190. The first IGO to be legally protected in France by domestic legislation was, not surprisingly, Champagne. See Guy, 2003, p 8.

However, laws with equivalent effects had existed already several centuries earlier.<sup>117</sup> Nevertheless, as “commerce expanded in the 19th century”, it became evident that protection for GIs afforded merely on a national basis was insufficient, which set the stage for the Paris Convention.<sup>118</sup>

The Paris Convention refers to other IPRs than GIs as well. In the field of GIs, however, it was a tremendous leap forward. The convention introduced new terminology, by the two expressions indications of source and appellations of origin.<sup>119</sup> These idioms are not synonymous, and they apply to different types of indications. Indications of source merely convey a certain geographical origin of the good. No further aspects of the good, such as quality etc. are required, and hence, indications such as “made in...” are covered by the definition.<sup>120</sup> The latter phrase, appellations of origin, has stricter prerequisites regarding the nature of the good, stipulating that it must have certain features resulting from natural or human involvement.<sup>121</sup> Thus, whereas

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<sup>117</sup> Hughes, Justin, *Champagne, Feta, and Bourbon - the Spirited Debate About Geographical Indications*, Hastings Law Journal, Vol. 58, p. 299, 2006; Cardozo Legal Studies Research Paper No. 168., p 306.

<sup>118</sup> European Commission, *Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members*, O'Connor and Company, 2007, p.2.

<sup>119</sup> The Paris Convention, Art 1 (2) reads as follows:

“The protection of industrial property has as its object [...] indications of source or appellations of origin, and the repression of unfair competition.”

<sup>120</sup> Addor and Grazioli define *indications of source*:

“Any expression or sign used to indicate that a product or a service originates in a country, region or a specific place, without any element of quality or reputation.” (Emphasis in original). See Addor, Felix, and Alexandra Grazioli, *Geographical Indications beyond Wines and Spirits: A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPs Agreement*, The Journal of World Intellectual Property, Vol. 5 No. 6, p 865 – 898, 2002, p 867.

<sup>121</sup> The Paris Convention, Art 1(2), enumerates the “objects” to which the protection it grants shall apply; *indications of source* and *appellations of origin* are listed therein, along with other IPRs. See, Lindquist, Lindquist, Leigh Ann, *Champagne or Champagne? An Examination of U.S. Failure to Comply with the Geographical Provisions of the TRIPs Agreement*, Georgia Journal of International and Comparative Law Association, Inc, Vol. 27, at 309, 1999, (Lindquist, 1999), at 312.

every valid *appellation of origin* also is an *indication of source*, the opposite is not true. Article 10 is the most important stipulation in the Paris Convention for international protection of GIs. By signing the convention, Member States agree to stop “importation” of any goods bearing a “false indication of [...] source“, or to seize the goods in question.<sup>122</sup> However, this rule applies only to situations where the indication is indeed “false”, in the meaning that a producer has wrongfully labelled his or her products with the contested indication. Such labelling is “false”, in that it potentially misleads consumers. Hence, when products carry a specific indication, which incorrectly communicates a certain origin, consumers risk being misled. The Paris Convention categorises this use as “false”.<sup>123</sup>

The Paris Convention entails yet another possibility to prevent wrongful use of indications. Art 10bis bans any conduct that constitutes unfair competition. Although it is uncertain, this ban might also encompass situations when there is no real risk that the use of a “false” indication misleads consumers. If so, the proscription of unfair competition includes also use, which is in itself “fair”, in that it does not mislead consumers, but which is nevertheless prohibited, since it is not truthful.

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<sup>122</sup> The Paris Convention, Art 10 (1), refers to Art 9, in which seizure upon importation is stipulated. If the law in the country of importation does not allow seizure at the border, importation shall instead be prevented all together, or be substituted by a seizure of the goods, “inside the country”. See the Paris Convention, Art 9 (1), and (5).

<sup>123</sup> The Paris Convention, Art 10 (1), does not refer to *appellations of origin* at all, but it is understood that such labels also fall under its scope. See, European Commission, *Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members*, O’Connor and Company, 2007, p 3.

The large number of signatories of the Paris Convention makes it a successfully enacted international legal document. Most importantly, the U.S. has signed it.<sup>124</sup> However, it is claimed that one important reason for it to have many signatories is that the Paris Convention stipulates only weak protection for IPRs, and an especially limited protection for GIs.<sup>125</sup> Even though the obligations stipulated by the Paris Convention seem adequate at first, it has been argued that they are, in fact, quite lax and insufficient.<sup>126</sup>

International Agreement for the License Agreement for Their Origin of Origin and International Treaties / Treaties of Lisbon in accordance with Geographical Indications, the Original Appellations or Appellations of Origin (AO), which are mentioned: In this Agreement, the term "origin" means a geographical denomination of a country, territory or territory, which serves to designate a product originating.

In it, qualities or characteristics that are exclusively or fundamentally reside in the geographical environment, including natural and human factors.<sup>127</sup>

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<sup>124</sup> Torsen, Molly, *Apples and Oranges (and Wine): Why the International Conversation Regarding Geographic Indications is at a Standstill*, Journal of the Patent and Trademark Office Society, Vol. 87, at 31, 2005, at 34.

<sup>125</sup> Rose, Brian, *No More Whining About Geographical Indications: Assessing the 2005 Agreement Between the United States and the European Community on the Trade in Wine*, Houston Journal of International Law, Vol. 29, at 731, 2007, at 747. *See also*, Goldberg, Stacy D, *Who Will Raise the White Flag? The Battle Between the United States and the European Union Over Protection of Geographical Indications*, University of Pennsylvania Journal of International Economic Law, at 107, 2001, at 112.

<sup>126</sup> For further discussion, *see* Hughes, 2006, p 311.

<sup>127</sup> *Lisbon Agreement for the Protection of Appellations of Origin and their International Registrations of October 31, 1958, as revised at Stockholm on July 14, 1967, and as amended on September 28, 1979* quoted by the paper of Indra Rahmatullah. "Perlindungan Indikasi Geografis dalam Hak Kekayaan Intelektual (HKI) melalui ratifikasi perjanjian Lisabon"

Appellations of Origin (AO) as the name of a country, region, or locality change that signifies a product derived from it and provides a quality and character that is exclusively and essentially caused by its environment, including natural and human factors. This definition provides a special order, not only to the use of a place name without rights, also to all kinds, types, manufacture, and imitations that are derived products from other regions.

The Definition of Original Appendix is almost identical to Geographical Indication. There are several things that can differentiate between the two. What can be said between the notion of Original Appellation and Geographical Indications:

1) If an Original Appendix must be a place, country or locality name, such as Tequila, Porto, or Jerez. Geographical Indications may be in the name of accounting or other signs as long as they can clearly identify the origin of the product. Therefore, the Eifel Tower is not an Original Appendage, it could be as a Geographical Indication.

2) The Original Appellation must also be a distinguishing mark of a product, whereas Geographical Indication signifies the origin of the item. That is, the Original App must be exactly the same as the product name. Meanwhile, Geographic Indication has a broader meaning than where the place name is stored, so it could be a symbol.

3) Original Appellation only relates to the quality and character of a product, while Geographical Indications also point to.<sup>128</sup>

In addition to the use of the Geographical Indication, there is also the Indication of Origin, which is in fact a Geographical Indication, unregistered or marking merely indicating the origin of goods or services.<sup>129</sup> The Regulation of Origin Indications is in the Madrid Agreement which appeared on 14 April 1891 Repression of the Misleading or Misleading Indication of Goods or the Madrid Agreement for the Promulgation of Misleading Indications or Deceptions of the Sources of Goods 1981. In the process of Madrid not used the term Geographical Indication using the term Origin indication or Indication of the Source of the goods product.<sup>130</sup>

This 1981 Madrid Agreement cannot be corroborated. The goal, however, is to regulate and avoid what may or may be confusing about the goods of origin, as well as including brands that may cause misunderstandings among buyers or deceive the masses.

The use of the Geographical Indication term is also used in the legislation in the European Union. Council Regulation (EEC) No. 2081/92 dated July 14, 1992 with a brand of Geographical Indication or Geographical Indication or Originator of the

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<sup>128</sup> Sergio Escudero *International Protection of Geographical Indications and Developing Countries Trade-Related Agenda, Development and Equity* working paper South Centre July 2001, hlm. 5 quoted by Adrian Sutedi, *Hak Atas Kekayaan Intelektual* (Jakarta: Sinar Grafika, 2009), p. 168

<sup>129</sup> Rahmi Jened, *Hak Kekayaan Intelektual Penyalahgunaan Hak Eksklusif* (Surabaya : Airlangga University Press, 2007), p. 194

<sup>130</sup> *Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1981* quoted from Adrian Sutedi, *Hak Atas Kekayaan Intelektual* (Jakarta: Sinar Grafika, 2009), p. 162

Origin. Same with the Madrid treaty, in the legislation in the European Union also not explicitly. Geographical Indication.

As time goes by and the need for certainty of regulation that can regulate Geographical Indication, Geographical Indication is internationally agreed in the Trade Agreement on Aspect of Intellectual Property Rights (TRIPs) in 1994.

Article 22 TRIPs states:

*"Geographical Indications are... An indication that identifies goods originating from a member region, or territory or territory of the territory, where the quality, reputation or characteristic of the goods derives essentially from their geographic origin. "*

TRIPs provide a definition of Geographical Indication as a sign identifying a territory of a member country, or a region or region in this case as an origin, where reputation, quality and goods are strongly determined by factors. Thus, the origin of a particular good is attached to the reputation, characteristic and quality of a good which is full of certain territories juridical.<sup>131</sup>

Can be interpreted, in the context of Geographical Indication, there must be special aspects that must be fulfilled, can be tangible elements of nature, other environments, or unique objects that show a unique connection between the name of

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<sup>131</sup> Indra Rahmatullah, "Perlindungan Indikasi Geografis Dalam Hak Kekayaan Intelektual (HKI) melalui Ratifikasi Perjanjian Lisabon" <http://indrarahmatullah.wordpress.com/>, access on November 19, 2017



the place with the goods. These aspects must be able to significantly affect the quality of the goods and the trade reputation of the goods.

So far, Geographical indications are commonly known as the rule that protects many agricultural products, such as Basmati rice produced in certain regions named Basmati in India and Gayo coffee produced in certain areas called Gayo in Nanggroe Aceh Darussalam Province, Indonesia. Thus, Geographical Indication is more often associated with natural factors that provide the most dominant influence between the products with the character of the soil producing the product.

In TRIPs it has been argued that the aspects affecting the character of an item which is also derived from the natural environment in the form of land is not merely the only element of the land, but the natural factor which is considered as a natural unity that cannot be separated from one another. Therefore, what is usually referred to as the natural environment can also mean the indigenous people from the origin of an item.<sup>132</sup>

From the above description, the definition of Geographical Indications which in each rule has different terms but has the same meaning and purpose. The arrangements contained in the Paris Convention and the Madrid Treaty of 1891, and the notion used in the 1958 Lisbon Treaty on the Origin of Appellation can be said to be the basis of

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<sup>132</sup> See Chapter VII Law Indonesian Trade Mark Law No. 15/2001 Unofficial Translation, quoted from Adrian Sutedi *Op. Cit.*, p. 167

the Geographical Indication. And this basis is then used as a reference that became the base for the establishment of rules of Geographical Indication in TRIPs.

Indications of Origin in the Paris Convention and the Madrid Agreement of 1891 clarified TRIPs in the definition of Geographical Indications. Although Origin Indication is not explicitly explained but may also include a substantive meaning of the Origin Indication. This means that Geographical Indication has a broader meaning than the Origin Indication.

### **1.3 The Requirements of Geographical Indication Registration**

A good that is produce from a region can be registered as Geographical Indication if the good is not fulfill this requirements.<sup>133</sup>

1. contrary to state ideology, legislation, morality, religion, morality, and public order;
2. misleading or deceiving the public about the reputation, quality, characteristics, source origin, process of manufacture of goods, and / or their use; and
3. it is a name that has been used as a plant variety and is used for similar plant varieties, unless there is addition of a word equivalent showing similar geographical indication factors.

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<sup>133</sup> [www.dgip.go.id](http://www.dgip.go.id) access on November 29, 2017 at 22.45 PM

## **1.4 Benefits of Geographical Indication**

The protection of Geographical Indication has benefit to society, that is:<sup>134</sup>

- a. clarify product identification and set production and process standards.
- b. Avoid the practice of competition among fraudulent stakeholders, providing protection for consumers against misuse of Geographical Indication reputation.
- c. Ensure the quality of the product is geographical indication as the original product so as to give the consumer confidence.
- d. Fostering local producers, supporting coordination, and strengthening fellow rights-holder organizations in order to create, provide and strengthen the image of product names and reputation.
- e. Increased production due to in the geographical indication is explained in detail about the product characteristic and unique.
- f. The reputation of an area of Geographical Indication will be lifted. In addition Geographical Indications can also preserve the natural beauty, traditional knowledge, and biological resources, it will certainly have an impact on the development of agro.

## **1.5 Registration Process of Geographical Indication**

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<sup>134</sup> *Ibid.*

If the goods produced by a region have fulfill the requirements as the protected goods by Geographical Indication, so the next step is register the good(s) to Directorate General of IPR. The ordinance of an item to be protected with Geographical Indication are:<sup>135</sup>

a. The application shall be submitted in writing in the Indonesian language by the applicant or by its proxy by filling out the form in 3 (three) copies to the Directorate General. Must include the administrative requirements (date, month and year, full name, nationality, and address of the applicant) and full name and power of attorney if the application is filed by a power of attorney) application attaches a special power of attorney if the application is filed by proxy and payment receipt.

b. The application must be completed with a book of requirements consisting of:

1) Name of geographical indication applied for registration;

2) Name of goods protected by geographical indication;

3) A description of the characteristics and qualities that differentiate certain goods from other goods of the same category, and describes their relationship to the area in which they are produced;

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<sup>135</sup> *Ibid.*

4) A description of the geographical environment as well as the natural and human factors which constitute a unity in influencing the quality or characteristics of the goods produced;

5) A description of regional boundaries and / or district maps covered by geographical indications based on recommendations from authorized agencies;

6) A description of history and tradition relating to the use of geographical indications for marking the goods produced in the area, including the public's acknowledgment of such geographical indications;

7) A description describing the process of production, processing, and manufacturing processes used to enable each producer in the area to produce, process or manufacture related goods;

8) description of the methods used to test the quality of the goods produced;  
and

9) the label used on the goods and contains the Geographical Indication.

Application for registration of Geographical Indication shall be conducted by an agency authorized to apply for Geographical Indication registration and to represent the origin of the Goods. the institution in this case becomes the representative of a community group that protects a typical product of a region entitled to Geographical Indication.

The process of examination of Geographical Indications in Indonesia is different from the examination abroad. In the examination of Geographical Indication registration in Indonesia, the examining team conducts an examination to the place where the applicant is located while abroad, the examining team does not need to conduct examination in the area where the applicant is located but with only administrative completeness as well as evidence of recommendation and proof of registration in several countries.

Geographical Indication Protection is not limited by time. As long as the Geographical Indication product still has the distinctive characteristics and quality under which the product is protected by Geographical Indication protection, the product is still protected by Geographical Indication.

**CHAPTER III**

**LEGAL ANALYSIS ON THE TRADEMARK REGISTRATION OF  
GAYO COFFEE MOUNTAIN AS A GEOGRAPHICAL INDICATION  
PRODUCTS IN INDONESIA**

**A. Violation of Gayo Coffee Registration by Holland Coffee based on Law Number 20 of 2016 on Marks and Geographical Indications and TRIPs Agreement**

Geographical indication is a sign showing the origin of Gayo Coffee which is due to the product of the geographical environment factor gives the characteristics and the quality of the resulting product.<sup>136</sup>

Gayo coffee has characteristics that distinguishes it from other types of *arabica* coffee. Gayo coffee has a mild characteristic and leaves no bitter taste in the mouth. Testing of Gayo Coffee is done by a cupper or the best coffee tasting testers in the world named Christopher Davidson. Christopher mentions that Gayo Coffee has its own uniqueness that is not owned by other types of coffee that is heavy body and light acidity, the sensation of hard taste of coffee sipping and arousing aroma.<sup>137</sup>

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<sup>136</sup> Ellyanti, Abubakar Karim and Hairul Basri, “*Analisis Indikasi Geografis, Kopi Arabika Gayo Ditinjau dari Rencana Tata Ruang Wilayah Kabupaten*”, article on Agrista journal No.2 Edition Vol. 16, 2012, P. 46

<sup>137</sup> <http://www.kopiaceh.com/asal-usul-kopi-aceh/> access on November 25, 2017 at 17.25 PM

In order to be categorized as Geographical Indications, Gayo Coffee must have special characteristic and quality as it exist in the meaning of Geographical Indication Article 1 verse (6) Law Number 20 of 2016 about Marks and Geographical Indications which is mentioned that:<sup>138</sup>

*"A sign that shows the area of origin of goods, which is due to the geographical environment including natural factors, human factors, or a combination of both factors, provide specific characteristics and quality of the goods produced."*

Referring to the definition above, a sign which is used as Geographical Indication can be in the form as name, place, area, region, word, picture or combination both of all of them.

Gayo Coffee is included in a matter which can be protected by Geographical Indication because Gayo Coffee consists of Coffee and Gayo. Gayo is the name of the place in the province of *Nanggroe Aceh Darussalam*. In addition, Gayo Coffee has certain characteristics and qualities that are not owned by other types of coffee, namely heavy body and light acid which means that Gayo Coffee has a hard sensation when coffee is gulped and the aroma that uploads the spirit and has a mild viscosity, a balanced acidity and has a taste of chocolate, tobacco, smoke, land and even wood that is not owned by other types of coffee in Indonesia simultaneously.

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<sup>138</sup> Article 1 verse (6) Law Number 20 of 2016 about Marks and Geographical Indication



This can be seen in the different characteristics of other Indonesian coffee as mentioned above, including:<sup>139</sup>

1. Mandheling Coffee

Sumatra Mandheling coffee is one of the common four types of Sumatra Arabica coffee. While most coffee is named after the growing region, or the country, Mandheling coffee is named after the Mandailing people that traditionally farmed and processed the coffee beans in the Tapanuli region. Later, the word spread to Japan, and then the name stuck as merchants began inquiring about the purchase of Mandheling coffee from Sumatra.

Coffee trees were brought to the island in the early 19th century in an attempt to break the near monopoly on coffee beans from other parts of the world. Mandheling coffee is grown in altitudes of 2,500 to 5,000 feet.

2. Lintong Coffee

Lintong coffee is grown in the District of Lintongnihuta, to the south-west Lake Toba. This large lake is one of the deepest in the world, at 505 meters. The coffee production area is a high plateau, known for its diversity of tree fern species. This area

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<sup>139</sup><http://www.tempo.co/read/news/2012/11/18/108442396/Inilah-11-Kopi-Premium-ala-Indonesia>  
Access on December 5, 2017

produces 15,000 to 18,000 tons of Arabica per year. A neighbouring region, called Sidikalang, also produces Arabica coffee.

Unlike many of Indonesia's islands, Sulawesi is geologically ancient, dating back more than 100 million years. The long history has resulted in soils with a high iron content – thought to affect coffee flavour.

### 3. Java Coffee

West Java is the earliest plantation area acquired by VOC in East Indies back in 18th century. Coffee was planted in Pranging area, such as in Sumedang. Java's Arabica coffee production is centered on the Ijen Plateau, at the eastern end of Java, at an altitude more than 1,400 meters. The coffee is primarily grown on large estates that were built by the Dutch in the 18th century. The five largest estates are Blawan (also spelled Belawan or Blauan), Jampit (or Djampit), Pancoer (or Pancur), Kayumas and Tugosari, and they cover more than 4,000 hectares.

These estates transport ripe cherries quickly to their mills after harvest. The pulp is then fermented and washed off, using the wet process, with rigorous quality control. This results in coffee with good, heavy body and a sweet overall impression. They are sometimes rustic in their flavour profiles, but display a lasting finish. At their best, they are smooth and supple and sometimes have a subtle herbaceous note in aftertaste.

This coffee is prized as one component in the traditional “Mocha Java” blend, which pairs coffee from Yemen and Java. Certain estates age a portion of their coffee for up to five years, normally in large burlap sacks, which are regularly aired, dusted and flipped. As they age, the beans turn from green to light brown, and their flavours gains strength while losing acidity. Aged coffees can display flavours ranging from cedar to spices such as cinnamon or clove, and often develop a thick, almost syrupy body. These aged coffees called Old Government, Old Brown or Old Java.

#### 4. Sulawesi Coffee

In South Sulawesi province, the primary region for high altitude Arabica production is in mountainous area called Tana Toraja, at the central highlands of province. To the south of Toraja is the region of Enrekang. The capital of this region is Kalosi, which is well-known brand of specialty coffee. The regions of Mamasa (to the west of Toraja) and Gowa (to the south of Kalosi), also produce Arabica, although they are less well known.

Sulawesi coffees are clean and sound in the cup. They generally display nutty of warm spices notes, like cinnamon or cardamom. Hints of black pepper are sometimes found. Their sweetness, as with most Indonesian coffees, is closely related to the body of the coffee. The after taste coats the palate on the finish and is smooth and soft,

Most of Sulawesi's coffee is grown by small-holders, with about 5% coming from seven larger estates. The people of Tana Toraja build distinctively shaped houses and maintain ancient and complex rituals related to death and afterlife. This respect for tradition is also found in way that small-holders process their coffee Sulawesi farmers use a unique process called "Giling Basah" (wet hulling).

#### 5. Java's Coffee

The name Java is almost synonymous with quality coffee. It is the site of the first coffee plantation, a century-old coffee research institute, and one of a few places where the *Coffea arabica*, *C. canephora* and *C. liberica* are still planted.

#### 6. Bali's Coffee

The highland plateau of Kintamani, between the volcanoes of Batukaru and Agung, is the main coffee growing area. Generally, Balinese coffee is carefully processed under tight control, using the wet method. This results in a sweet, soft coffee with good consistency. Typically flavours include lemon and other citrus notes.

#### 7. Flores Coffee

Flores Island is 360 miles long, and is located 200 miles to the east of Bali. The terrain of Flores is rugged, with numerous active and inactive volcanoes. Ashes from these volcanoes have created especially fertile andosols, ideal for organic coffee

production. Arabica Coffee is grown at 1,200 to 1,800 meters on hillsides and plateaus. Most of the production is grown under shade trees and wet processed at farm level. Coffee from Flores is known for sweet chocolate, floral and woody flavor.

#### 8. Papua Coffee

There are two main coffee growing areas in Papua. The first is the Baliem Valley, in the central highlands of the Jayawijaya region, surrounding the town of Wamena. The second is the Kamu Valley in the Nabire Region, at the eastern edge of the central highland, surrounding the town of Moanemani. Both areas lie at altitudes between 1,400 and 2,000 meters, creating ideal conditions for Arabica production.

Together, these areas currently produce about 230 tons of coffee per year. All coffee is shade grown under Calliandra, Erithrina and Albizia trees. Farmers in Papua use wet hulled processs. Chemical fertilizer pesticide and herbicide are unknown in this origin, which makes this coffee both rare and valuable.

Ever since its initial introduction, Indonesians have been attached to coffee. Drinking coffee has become a tradition and part of everyday life of Indonesian people that cannot be skipped.

Characteristic or characteristic and quality of Gayo Coffee is influenced by soil factor and geographical factor from Gayo Coffee plantation that is Gayo Mountain,

Nanggroe Ache Darussalam.<sup>140</sup> In addition, the cultural factors of society also affect, in the way of processing and how roasting also affect characteristics and quality Gayo Coffee.<sup>141</sup> Way of processing gayo coffee made by the community still very traditional, that is by dry processed semi washed. Varietas Gayo Coffee is the most widely planted varieties Hibrido de Timor. This variety is also known as Tim Tim.<sup>142</sup>

This type of coffee variety varies between February and April. Each stem of this varietal coffee plant is able to accommodate 10-15 cherries. Used cherries are red. After the cherries were collected, the farmers sold them to the cherries of coffee cherries.

The skin of the cherries was peeled using a traditional tool that was rotated by hand. The shelled cherries will be put into the sack for the fermentation process of coffee beans for 1 (one) day according to market demand. For Team Teams coffee, fermentation is done in a dry way and not in a wet way that should be soaked with water. This process is called dry processed because it does not require water in the fermentation process.<sup>143</sup>

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<sup>140</sup> Ellyanti, Abubakar Karim and Hairul Basr, “Analisis ... *Op.Cit.*, P. 50

<sup>141</sup> *Ibid.*

<sup>142</sup> <http://zonakopi.com/mengintip-proses-pengolahan-kopi-gayo/> access on December 6, 2017 at 8.30 AM

<sup>143</sup> *Ibid.*



*Picture 1*

*Gayo Coffe in the shape of cherry before peeled*

The fermentation process aims to remove the remaining layer of mucus on the skin surface of the coffee bean horn after the stripping process. After passing through the process of fermentation, coffee beans will be washed once and then dried under the sun.<sup>144</sup> Drying through the drying process is only done until the water content drops to 30-35%.<sup>145</sup>

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<sup>144</sup> <http://zonakopi.com/mengintip-proses-pengolahan-kopi-gayo/> access on December 6, 2017 at 8.30 AM

<sup>145</sup> <http://bincangkopi.com/natura-washed-honey-processed/> access on December 10, 2017 at 11.00 AM



*Picture 2*

*Drying of Coffee Bean Processed after allowed Fermentation process*

A brief fermentation process and a one-time washing resulted in a semi-washed coffee which meant that the beans were still covered with mucus. Coffee beans that have been dried, ground to peel the skin of the horn, and then dried again a second time until the water content drops to 10-12%. This specific process produces a profile of typical flavor of Sumatra coffee, especially Gayo coffee.<sup>146</sup>

The dried coffee beans are then put into the Sorting machine, which is a machine that has the function of separating the beans based on the size of the seeds. The seeds of coffee will be put into Conveyor machine to distinguish which coffee beans with good quality and where coffee beans with poor quality.<sup>147</sup>

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<sup>146</sup> *Ibid.*

<sup>147</sup> <http://zonakopi.com/mengintip-proses-pengolahan-kopi-gayo/> access on December 9. 2017 at 21.30 PM



This separation of coffee beans requires manpower because there is no coffee machine that can distinguish the best quality coffee beans and which are the worst quality beans that the market cannot accept. After the separation, the green bean coffee beans are brought to the Cupping Laboratory to test the taste of coffee and know the character of coffee. It aims to determine the selling price of coffee in the market.<sup>148</sup>

This coffee processing is what distinguishes gayo coffee and with other coffees in Indonesia. The way of coffee processing will affect the taste and quality of the coffee itself in addition to genetic factors of coffee.<sup>149</sup> Other coffees in Indonesia are processed using wet process full washed technique, for example is Bajawa coffee from Flores and natural pulp, and for example is Tanggamus coffee from Lampung.<sup>150</sup>

Wet processed full washed means that the coffee beans are processed by fermentation using water and the skin of red ripe coffee peeled with pulper then in fermentation by soaking in water between 8-48 hours until the mucus in the coffee beans decompose organism, washed and then dried in the sun to dry and peeled its skin.<sup>151</sup>

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<sup>148</sup> <http://zonakopi.com/mengintip-proses-pengolahan-kopi-gayo/> access on December 10, 2017 at 15.05 PM

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> <http://bincangkopi.com/natura-washed-honey-processed/> access on December 10, 2017 at 11.00 AM



*Picture 3*

*Gayo Coffee Bean was already be Green Bean*

Based on the description above, the things that cause Gayo Coffee into Geographical Indication products include:

1. Gayo coffee has certain characteristics and qualities in the resulting goods that occur due to geographical environmental factors either because of natural factors, human factors or a combination of natural and human factors. The characteristics and qualities attached to Gayo Coffee is a combination of natural and human factors.

Natural factors that affect the characteristics and quality of Gayo coffee, among others:<sup>152</sup>

a. Altitude and place of coffee Gayo

Gayo coffee grows at an altitude of 1400 meters above sea level. The height of the place affects the air temperature, humidity and wind speed.<sup>153</sup>

b. Soil state

The soil where the growth of coffee plants has a level of acidity or pH of 5.5 until 6.7 with the type of soil andosol and latosol because this type of land has the ability to bind good water and nitrogen content is sufficient for the growth of Gayo coffee plants.<sup>154</sup>

c. Climate

The Gayo coffee plant is an Arabica type that has to be in a cool climate with temperatures from 19°C to 25°C (nineteen degrees Celsius to twenty-five degrees Celsius) and has a rainfall of 2,000 to 3,000 millimetres per year. If the temperature and rainfall are too low or too high then the coffee plant can not produce coffee beans with good quality and can result in the death of coffee plants.<sup>155</sup>

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<sup>152</sup> Ellyanti, Abubakar Karim and Hairul Basr, "Analisis ... *Loc.Cit.*

<sup>153</sup> <http://bincangkopi.com/natural-washed-honey-processed/> access on December 10, 2017 at 16.40 PM

<sup>154</sup> <http://ngasih.com/2014-08-02-bertanam-kopi-arabika-ala-petani-tanah-gayo/access> on December 10, 2017 at 17.31 PM

<sup>155</sup> <http://ngasih.com/2014-08-02-bertanam-kopi-arabika-ala-petani-tanah-gayo/access> on December 10, 2017 at 17.47 PM

2. The characteristics and quality of Gayo coffee in addition influenced by geographical factors, also influenced by human factors. The meaning of human here is the way of Coffee process which is still using dry processed semi washed technic.

3. Gayo coffee using the Gayo name where Gayo word is the name of the place of origin of Gayo arabica coffee in accordance with the meaning of the sign in Article 1 paragraph (1) and paragraph (6) of Law No. 20 of 2016 on Brands and Geographical Indications.

Therefore, the fulfilment of the elements of the Geographical Indication contained in Article 1 paragraph (1) and paragraph (6) of Law No. 20 of 2016 on Brands and Geographical Indications by which Gayo Coffee can be classified into products that are protected with Geographical Indication.

The existence of certain traits and qualities contained in Gayo coffee that causes this coffee has a high selling price on the market starting from the price of Rp50.000,- per kilogram. The high selling price in the market is what causes Holland Coffee to register Gayo Coffee as the company's trademark.<sup>156</sup>

Holland Coffee is a Dutch multinational company (MNC) established by George Willekes which is engaged in coffee trade.<sup>157</sup> The Dutch company, European Coffee

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<sup>156</sup> <http://www.specialitycoffee.co.id/daftar-harga/> access on December 11, 2017 at 17.31 PM

<sup>157</sup> <http://travel.kompas.com/read/2012/04/13/09010372/Secangkir.Kopi.Aceh.dan.Pertarungan.Identitas> access on December 15, 2017 at 20.08 PM

Bv through Holland Coffee, has registered this Gayo word as a trademark owned by the company on July 15, 1999 under the name **Gayo Coffee Mountain**.<sup>158</sup>

The Holland Coffee party registered the trademark with registration number CTM no. 001242965 which is registered with the Officer for Harmonization in the Internal Market (OHIM).<sup>159</sup> If any company or other party wishing to market this product must obtain prior permission from the Holland Coffee party, including in terms of whether or not to use the name Gayo including CV Arvis Sanada.<sup>160</sup>

CV Arvis Sanada is an exporter of Gayo coffee to mainland Europe. This CV was founded in 2001 by a man named Sadarsah. Sadarsah through CV Arvis Sanada produces and exports genuine gayo ground coffee to mainland Europe. Coffee export activities conducted by CV Arvis Sanada make Holland Coffee submit a letter of objection to CV Arvis Sanada because CV Arvis Sanada use Gayo word for coffee products exported to the Netherlands. Holland Coffee stated that they have listed the name Gayay be a trademark of their coffee. Holland Coffee considers that CV Arvis Sanada violates the rules of sale in the Netherlands because the brand by using the name Gayo already existed first on behalf of Holland Coffee.<sup>161</sup>

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<sup>158</sup> <http://www.imamhariyanto.com/indikasi-geografis-pelindung-kekayaan-indonesia/> access on December 17, 2017 at 21.45 PM

<sup>159</sup> Hendra Djaja, “*Perlindungan Indikasi Geografis pada Produk Lokal dalam Sistem Perdagangan Internasional*”, artikel pada Jurnal Cakrawala Hukum, Vol.18, No.2, 2013 p. 141.

<sup>160</sup> <http://www.imamhariyanto.com/indikasi-geografis-pelindung-kekayaan-indonesia/> access on December 17, 2017 at 21.45 PM

<sup>161</sup> *Ibid.*

Gayo word is the name of the area in the Province of *Nanggroe Aceh Darussalam* which is the name of the *arabica* coffee Gayo grown. Arabica coffee of this type when planted in place other than the Gayo Highlands will not have the same taste and quality with coffee grown in the Gayo Highlands.<sup>162</sup> The use of the word Gayo is prohibited to be used by parties other than those who hold the rights to the Gayo Coffee Geographical Indication because the Gayo word indicates the origin of Gayo Coffee place is planted.

Based on the explanation of the case, when viewed in accordance with Act No. 20 of 2016 on Trademark and Geographical Indication Article 1 paragraph (6), the Holland Coffee Gayo may be subject to the provisions of the Indonesian Legislation Regulations, especially article 69 paragraph (1) of Law Number 20 of 2016 on Marks and Geographical Indications which reads:<sup>163</sup>

*"Rightsholder of Geographical Indication may file a lawsuit against an unauthorized Geographical Individual User in the form of a request for redress and termination of use and destruction of a Geographical Indication label used unauthorizedly."*

In the case of CV Arvis Sanada with a Dutch-owned Multinational Company named Holland Coffee, the CV Arvis Sanada with the Gayo Highlands may request compensation to Holland Coffee for the use of the word Gayo as a trademark of the

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<sup>162</sup> Ellyanti, Abubakar Karim and Hairul Basr, "Analisis ... *Op.Cit.*, P. 50

<sup>163</sup> Article 69 paragraph (1) of Law Number 20 of 2016 on Marks and Geographical Indications

company without permission of CV Arvis Sanada together with the Gayo Highlands community.

Gayo Highlanders who are members of MPKG (Gayo Coffe Protection Society) are also entitled to compensation because the Gayo word in coffee products produced by Holland Coffee is a sign contained in the sense of Geographical Indication under article 66 Law Number 20 of 2016 on Marks and Geographical Indications.

The sign referred to herein is the name of the place or area or any other sign specifying the origin of the goods produced by the Geographical Indication. Based on the meaning of the sign it can be concluded that the word Gayo is registered as a trademark by Holland Coffee Holland is a sign because Gayo is the name of the province of *Nangroe Aceh Darussalam*, Indonesia which produces *arabica* coffee where the coffee is protected by Geographical Indication with number IG.00.2009.000003.<sup>164</sup> Therefore, the Holland Coffee Party should not use the Gayo word for their coffee product, Gayo Coffee Mountain. A brand is denied or cancelled if the word in the mark has been used as a sign of Geographical Indication.<sup>165</sup>

The Holland Coffee Party may be subject to Article 101 paragraph (2) of Law No. 20 of 2016 on Marks and Geographical Indications, which reads:<sup>166</sup>

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<sup>164</sup> <http://www.dgip.go.id/filemanager/download/89> access on December 20, 2017 at 10.57 AM

<sup>165</sup> Irawan Harahap, *Teknik melindungi dan Mendaftarkan Merek*, dalam modul pelatihan hak kekayaan Intelektual, Yogyakarta, 13 Januari 2015, P. 4

<sup>166</sup> Article 101 paragraph (2) of Law No. 20 of 2016 on Marks and Geographical Indications

*"Any person who without any right to use a mark having similarity in essence to Geographical Indication belonging to another party for goods and / or products of the same or similar kind as registered goods and / or products shall be subject to imprisonment for a maximum of 4 (four) years and / or a fine of up to Rp2,000,000,000.00 (two billion rupiah). "*

The Holland Coffe party violates the provisions contained in Article 101 paragraph (2) of Law No. 20 of 2016 on Trademark and Geographical Indication because the Holland Coffee uses Gayo only as their coffee production brand, Gayo Coffee Mountain so they are only considered to use the sign which is essentially the Geographical Indication owned by the Indonesian Parties, especially the Gayo Highlands.

Dutch-owned multinational company called *Holland Coffee* which is proven to produce Gayo Coffee may also be subject to Article 102 of Law No. 20 of 2016 on Marks and Geographical Indications which reads:<sup>167</sup>

*"Any Person who trades goods and / or services and / or products that are known or reasonably suspected to know that the goods and / or services and / or products are the proceeds of criminal acts as referred to in original 100 and Article 101 shall be sentenced to a maximum imprisonment of 1 (one) year or a fine of a maximum of Rp200,000,000,00 (two hundred million rupiah). "*

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<sup>167</sup> Article 102 of Law No. 20 of 2016 on Marks and Geographical Indications



The Holland Coffee Company is proven to trade its production of coffee by the name Gayo as the name of the traded coffee product, i.e. *Gayo Coffee Mountain* in Gayo's word is not allowed to be used in any case without permission or approval from the party registering and obtaining Geographical Indication protection on the matter registered in this case is Gayo word because Gayo word has got protection or in other words protected by Geographical Indication of other country, that is Indonesia especially Gayo Highland society as mentioned in article 101 of Act Number 20 of 2016 about Trademark and Geographical Indication.

In Article 101 of Law No. 15 of 2016 on Trademarks and Geographical Indications, there is the word "without rights". This sentence may mean that parties who are not licensed or approved by rights holders on Geographical Indications are not allowed to use marks protected by Geographical Indications. It is similar to Holland Coffee not getting permission from the rights holder on behalf of Gayo as being protected by Geographical Indication where the right holder is Gayo Coffee Protection Society domiciled in *Takengon*, Central Aceh, Indonesia to use Gayo word as Gayo Coffee trademark which was produced by them.<sup>168</sup>

*Holland Coffee* as on of the party violated Article 66 letter b of Law No. 20 of 2016 regarding Marks and Geographical Indications, which reads:<sup>169</sup>

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<sup>168</sup> <http://www.gayobieskopi.com/index.php/id/kopiarabikagayo> access on December 15, 2017 at 20.44 PM

<sup>169</sup> Article 66 letter b of Law No. 20 of 2016 regarding Marks and Geographical Indications

*"The use of a Geographical Indication mark, either directly or indirectly of protected or unprotected goods and / or products with a view to:*

*1. indicates that the goods and / or products are of comparable quality to goods and / or products protected by Geographical Indication;*

*2. Benefit from such use; or*

*3. Benefit the reputation of Geographical Indication. "*

Gayo Coffee Party uses the word "Gayo" which is a sign of Geographical Indication in accordance with the provisions of Article 1 paragraph (1) of Law No. 20 of 2016 on Trademark and Geographical Indication in order to benefit from the use of Gayo's name because Gayo coffee consumers will surely argue that coffee produced by Holland Coffee has the same quality and characteristics as the Gayo arabica coffee originating from the Gayo Highlands.

Evidence of violations committed by the Holland Coffee Party can be seen in the picture below:<sup>170</sup>

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<sup>170</sup> <http://www.lintas.me/news/other/rimanews.com/merek-dagang-perusahaan-belanda-tidak-lagi-dipakai-oleh-kopi-gayo> access on December 25, 2017 at 11.12 AM



**Picture 4**

*The Packaging of Gayo Coffe Mountain which is produced by Holland Coffee*

In the picture above, it can be seen that the Holland Coffee Party proven to violate Article 63 of Law No. 20 of 2016 on Brands and Geographical Indications, Article 66 letter b of Law No. 20 of 2016 on Trademark and Geographical Indication, Article 101 paragraph (2) of Law No. 20 of 2016 on Trademark and Geographical Indication and Article 102 of Law No. 20 of 2016 on Marks and Geographical Indications. Evidence that Gayo Coffee is protected by Geographical Indication is the issuance of a Geographical Indication certificate in the figure below:<sup>171</sup>

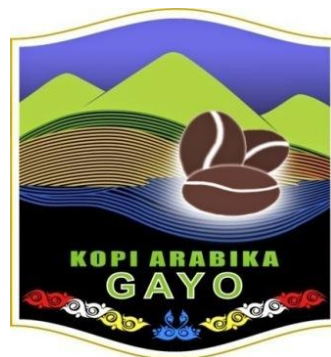
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<sup>171</sup><http://ekonomi.kompasiana.com/agrobisnis/2013/01/01/kopi-arabika-gayo-bangkit-2012-520454.html> access on December 25, 2017 at 12.15 PM



*Picture 5*

*Geographical Indication Gayo Coffee as the evidence protection Gayo Coffe by Geographical Indication.*



*Picture 6*

*Geographical Indication Logo of Gayo Coffee*<sup>172</sup>

When viewed from the point of view of registration the word Gayo became a trademark by Holland Coffee on July 15, 1999 at OHIM or Officer for Harmonization in the Internal Market with the date of registration of the word Gayo, being a sign of Geographical Indication in April 2010 or 11 years after Holland Coffee registers Gayo's word for the trademark of their coffee product called Gayo Coffee Mountain so the Holland Coffee does not violate Law No. 20 of 2016 on Brands and Geographical Indications.

The action of Holland Coffee which still uses Gayo as Gayo Coffee Mountain's coffee trademark after Gayo Coffee is protected by Geographical Indication with Gayo's word as a Geographical Indication sign is an act which is not justified because the Holland Coffee uses the Geographical Indication mark without rights, the OHIM as the place of registration of the word Gayo as a trade mark of Gayo Coffee Mountain by Holland Coffee shall cancel the entry into force of the trademark. The cancellation of the Gayo Coffee Mountain trademark is due to Gayo and Gayo Coffee being protected by Geographical Indication in Indonesia.

The use of the word Gayo by Holland Coffee after the Government of Indonesia has registered Gayo and Gayo Coffee as sign and product of Geographical Indication

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<sup>172</sup> *Ibid.*

is considered to violate article 63 of Act No. 20 of 2016 on Trademark and Geographical Indication, Article 66 letter b of Law Number 20 of 2016 Geographical Marks and Indications, Article 101 paragraph (2) of Law No. 20 of 2016 on Marks and Geographical Indication and Article 102 of Law No. 20 of 2016 on Marks and Geographical Indications.

A sign that is protected as a geographical indication is an identity that shows an item originating from a place or area certain. And that place or area shows quality and characteristics of a product. The sign can be either form or etiquette or the label attached to the item produced. Besides that, you can in the form of a place, region or region, or word, picture, letter or combination of these elements. Like the holder of the rights to the brand, the right holder Geographical indications may prohibit other parties from using indications same geography. Violation of this rule causes the geographical indication rights holder can claim compensation to the party other. However, the Law of Trademark and Geographical Indications determine that the geographical indication gets protection after being registered. This also applies to other countries, this is based on WTO regulations, States parties are obliged provide protection for products that have been protected in their home country (registered), therefore registration of geographical indications becomes an aspect important and even the main requirements in seeking protection against products that are potentially geographic indications.

Indonesia adheres to a constitutional registration system that is applying the principle of first to file (parties who register first who obtained the rights first. This

implies that only the first geographical indication is registered with the Directorate General Intellectual property rights that obtain exclusive rights, namely the right to commercialize geographical indications so that rights holders can enjoy economic benefits. At the same time, this has broader implications in the context of indication protection geographically internationally, considering that in accordance with the provisions Article 24 paragraph (9) TRIPs, there is no obligation to provide protection of geographical indications against geographical indications that do not protected in their home country.

The TRIPs agreement governs the protection of geographical indications on Article 22-24. Article 22 TRIPs regulates protection against Geographical Indication, Article 23 regulates additional protection for wine and alcoholic beverages, and Article 24 regulates exceptions to Geographical Indication. The TRIPs Agreement requires Member States to provide legal facilities / legal remedies to protect Geographical Indications, but TRIPs does not provide details on how the facilities are law / legal remedies that must be provided. This is full submitted to Member States to determine the most corresponding method.

So it is clear that the actions carried out by Holland Coffee are acts that are prohibited by Indonesian law and TRIPs. Because Gayo coffee from Indonesia has the requirements to be registered both nationally and internationally. Indonesia can directly face Netherlands, that has full authority to cancel the registration of Gayo Coffee as a Trademark under the name of Gayo Coffee Mountain.

## **B. Forms of Legal Protection granted by the Government of Indonesia to Gayo Coffee registered by Holland Coffee**

A legal protection is necessary in any case, especially for Indonesian products. Legal protection consists of two words, namely protection and law. Protection according to the Oxford dictionary is the action of protecting, or the state of being protected whereas the law according to the Oxford dictionary is the system of rules which enforces the imposition of penalties.<sup>173</sup>

The meaning of Law according to Black's Law Dictionary is a system of principles and rules of human conduct, being the aggregate of those commandments and principles which are either prescribed or recognized by the governing power in an organized rural society as its will in relation to the conduct of the members of such society, and which it undertakes to maintain and sanction and to use as criteria of the actions of such members.<sup>174</sup>

According to Leon Duquit, law is the rule of conduct of members of society, a rule whose power of use at a certain time is ignored by a society as a guarantee of

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<sup>173</sup> Alan, Elvison. 1983. Oxford Learner's Pocket Dictionary New York : Oxford University Press.

<sup>174</sup> Bryan A. Garner, Black's Law Dictionary, Second Edition, West Publishing CO, United States America, 2009.



common interest and if violated creates a joint reaction to the person committing the offense.<sup>175</sup>

According to Prof. Sudikno Mertokusumo, Law is set of regulations or rules which has general and normative contents, general because apply to everyone and normative because determined what must be doing and also determined how the way to doing the rules.<sup>176</sup>

Based on the above definition, the protection of the law is an act that aims to protect subjects on the applicable legislation and its implementation can be imposed by sanctions.

There are two kinds of means of legal protection, among others:<sup>177</sup>

#### 1. Means of preventive protection

The means of protection of preventive law is a means of protection where the legal subject is given an opportunity to file an objection or opinion before a government decision gets a definitive form in which the aim is to prevent the occurrence of a dispute.

#### 2. Representative Law Protection Facility

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<sup>175</sup> Wasis SP, *Pengantar Ilmu Hukum*, Universitas Muhammadiyah Malang, 2002, P.20

<sup>176</sup> Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta, Liberty, 1991, P. 38

<sup>177</sup> <http://testihukum.com/pengertian-perlindungan-hukum-menurut-para-ahli/> access on December 26, 2017 at 21.02 PM

Representative Law Protection means is a means of protection where the legal subject is given an opportunity to file an objection or opinion after a government decision has a definitive form in which the objective is to resolve the dispute.

Protection in intellectual property is more dominant in the protection of individuals but to balance the interests of individuals with the interests of society, the intellectual system based on the following principles.<sup>178</sup>

1. Principle of Justice
2. Economic Principles
3. The Principle of Culture
4. Social Principles

IPR Protection applies to all matters related to IPR including Geographical Indication. Intellectual Property Protection is not only done by individuals but also by the Government.

Forms of legal protection by the Indonesian government to Gayo coffee and Gayo word as the first step is to protect *arabica* coffee products by registering arabica gayo coffee as a product of Geographical Indication by Gayo name as a sign of Geographical Indication and coffee Arabica gayo which has certain characteristics and certain quality as a condition of a product protected by Geographical Indication as described in Article

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<sup>178</sup> Budi Agus Riswandi and M. Syamsuddin, *Hak Kekayaan Intelektual dan Budaya Hukum*, Jakarta, PT Raja Grafindo Persada, 2004, P. 33-34.

66 of Law Number 20 Year 2016 on Marks and Geographical Indication. In addition to registering Gayo's coffee and Gayo's words as products and marks of Geographical Indications, the Indonesian government must also register both these things to the WTO or World Trade Organization in order to get protection and recognition from the international world that the two things mentioned above belong to the State of Indonesia.

The second step that can be done by the Government of Indonesia is to protect Gayo Coffee and Gayo word which is a form of protection repressive law in which the Government object to Gayo's determination as a trademark of the Dutch state or more precisely the trademark of Holland Coffee.

Appeals to such registration may be submitted through the EU's OHM (Office for Harmonization in the Market) as a place to handle various matters relating to trademark and industrial design.<sup>179</sup> OHIM of The European Union is a site for registration of various trademarks and industries for the European region.<sup>180</sup> OHIM is based in Alicante, Spain having the duty to manage the EU's trademarks and industrial designs as well as to assist courts in European Union countries in providing an assessment of the request for cancellation of registered trademarks of registered

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<sup>179</sup><http://antaranews.com/berita/387275/kopi-gayo-tidak-lagi-merek-dagang-perusahaan-belanda> access on December 26, 2017 at 19.06 PM

<sup>180</sup> The Office for Harmonization in the Market (Trademarks and Designs), or OHIM, is the trademark and industrial designs registry for the internal market of the European Union on <http://www.shwebizonline.com/c/eucall/profiles/105-ohim-office-for-harmonization-in-the-internal-market-trade-marks-and-designs.htm?itemid=58> access December 29, 2017 at 19.15 PM

trademarks and industrial designs whereby trademarks and the design of the registered industry is prohibited for use because it has been used in the territory of another country with the same name or form.

The objection submitted by the Indonesian government to OHIM will cancel the Gayo Coffee Mountain trademark registered by Holland Coffee on the grounds that Holland Coffee does not have the right to use Gayo as its name. The trademark of coffee produced because the name Gayo is the name of an area in Indonesia protected by Indonesian law, as a sign of Geographical Indication. This cancellation makes Holland Coffee unable to sell its coffee to the public. In addition, the Holland Coffee Party can not use the Gayo word despite its use within the 2 (two) year period as described in article 68 paragraph (1) of Law Number 20 Year 2016 on Marks and Geographical Indications which reads as follows:<sup>181</sup>

*"In the case of before or at the time of application for registration as a Geographical Indication, a mark is used in good faith by another party who is not eligible to register under the provision as referred to in Article 53 paragraph (3), such a good person may still use the mark for a period of 2 (two) years after the sign is registered as Geographical Indication."*

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<sup>181</sup> Article 68 paragraph (1) of Law Number 20 Year 2016 on Marks and Geographical Indications

The Holland Coffee Party can not use the Gayo name even if it uses within 2 (two) years because the Holland Coffee Party has acted unfavourably in using Gayo's name, i.e. without permission to the parties who is entitled to Gayo coffee, namely MPKG (Gayo Coffee Protection Society) after registration Gayo word and Gayo Coffee is a sign of Geographical Indication and Geographical Indication products in Indonesia. In addition, the Holland Coffee indicted CV Arvis Sanada with the indictment of committing a violation of the act of selling copies of Europe by using the Gayo name that has been registered as a trademark of Holland Coffee.

## **CHAPTER IV**

### **CLOSURE**

#### **A. Conclusion**

Based on the discussion of breach of Gayo Coffee registration by Holland Coffee in connection with the provisions of Law No. 20 of 2016 on Trademark and Geographical Indication, TRIPs Agreement and the form of legal protection granted by Indonesia to Gayo Coffee registered by Holland Coffee, the following conclusions can be drawn:

1. The Holland Coffee party violates the provisions of Article 63 of Law No. 20 of 2016 on Trademark and Geographical Indication, Article 66 letter b of Law No. 20 of 2016 on Trademark and Geographical Indication, Article 101 paragraph (2) of Law No. 20 of 2016 of Geographical Marks and Indications and Article 102 of Law No. 20 of 2016 on Trademarks and Geographical Indications when viewed from the time of registration and entry into force of the Gayo Coffee Mountain trademark on 15 July 1999 at OHIM (Officer fro Harmonization in the Internal Market) or 11 years earlier when compared to the application of Gayo Coffee stipulation as a product protected by Geographical Indication with Gayo's word as a sign of Geographical Indication.

The action of Holland Coffee which still uses Gayo as Gayo Coffee Mountain's coffee trademark after Gayo Coffee is protected by Geographical Indication by Gayo as a Geographical Indication is an unlawful action because the Holland Coffee uses the Geographical Indication mark without rights, the OHIM as the place of registration of the word Gayo as a trade mark of Gayo Coffee Mountain by Holland Coffee shall cancel the entry into force of the trademark. The cancellation of the Gayo Coffee Mountain trademark is due to Gayo and Gayo Coffee being protected by Geographical Indication in Indonesia.

When viewed by the use of the word Gayo by Holland Coffee after the Government of Indonesia registered Gayo and Gayo Coffee as sign and product of Geographical Indication is considered to violate article 63 of Act No. 20 of 2016 on Trademark and Geographical Indication, Article 66 (b) of Law Number 20 2016 on Trademarks and Geographical Indications, Article 101 paragraph (2) of Law No. 20 of 2016 on Trademark and Geographical Indication and Article 102 of Law No. 20 of 2016 on Brands and Geographical Indications because the Gayo word is still used by the Holland Coffee Party as a trademark and still registered with the World Trade Organization (WTO).

Meanwhile, The TRIPs agreement governs the protection of geographical indications on Article 22-24. Article 22 TRIPS regulates protection against Geographical Indication, Article 23 regulates additional protection for wine and alcoholic beverages, and Article 24 regulates exceptions to Geographical

Indication. The TRIPs Agreement requires Member States to provide legal facilities / legal remedies to protect Geographical Indications, but TRIPs does not provide details on how the facilities are law / legal remedies that must be provided. This is full submitted to Member States to determine the most corresponding method. The best alternative to cancel the registration of Gayo Coffee by Holland Coffee is by suing Netherlands before WTO's Dispute Settlement Body (DSB) because, through DSB, Indonesia can directly face Netherlands, that has full authority to cancel the registration of Gayo Coffee as a Trademark under the name of Gayo Coffee Mountain.

2. There are two steps that can be taken by the Indonesian government to protect Gayo Coffee against registration by Holland Coffee, namely:

a. The first step that can be undertaken by the Government of Indonesia is to protect Gayo *arabica* coffee products as Geographical Indication products under the name Gayo as a sign of Geographical Indication and Gayo *arabica* coffee having certain characteristics and qualities as a condition of a product protected by Geographical Indication as described in Article 63 of the Law No. 20 of 2016 on Marks and Geographical Indications.

b. The second step that the Indonesian government can take is to file an objection to Gayo Coffee Mountain's trademark registration by Holland Coffee which can be submitted through OHIM based in Alicante, Spain, which has the



task of managing trademarks and industrial designs in the EU region. The second step of the Indonesian Government is an effort to protect the repressive law.

## **B. Recommendation**

Based on the conclusions above, it can be submitted suggestions as follows:

1. To anticipate the occurrence of cases similar to Holland Coffee against CV Arvis Sanada, the government should play a more active role and not being negligent in terms of protecting the potential Geographical Indications that exists in Indonesia. In order for the potential of Geographical Indications of Indonesia to no longer be recognized as belonging to other nations and countries, the government should always protect the geographical indications belonging to the state.

2. The Government of Indonesia should also be able to act more firmly on such cases and as a member of the World Trade Organization, Indonesia should collaborate or discuss the Geographical Indication law to accommodate cases of Geographical Indications between different state enterprises to be more effective.

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