

GEOGRAPHICAL INDICATION

(Government Regulation Number 51 Year 2007 dated September 4, 2007)

BY GRACE OF THE ALMIGHTY GOD
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

That in order to implement the provision of Article 56 paragraph (9) of Law Number 15/2001 on Mark, it is necessary to stipulate a government regulation on geographic indications;

In view of:

1. Article 5 paragraph (2) of the Constitution of 1945;
2. Law No. 15/2001 (*BN No. 6661 pages 9A-18A and so forth*) on Mark (Statute Book of 2001 No. 110, Supplement to Statute Book No. 4131);

D E C I D E S:

To stipulate:

THE GOVERNMENT REGULATION ON GEOGRAPHIC INDICATION

CHAPTER I

GENERAL PROVISION

Article 1

Referred to in this regulation as:

1. Geographic indication shall be a symbol showing region of origin of goods giving certain characteristic or quality to the produced goods because of geographical environmental factors, including natural factors, human factors or combination of both factors.
2. Application shall be a request for registering geographical indication submitted in writing to the Directorate General.
3. Applicant shall be a party submitting application.
4. Producer shall be a party producing goods.

5. Consultant of Intellectual Property Right shall be someone having expertise in the field of intellectual property right and specifically providing service in the field of submission and settlement of application for patent, mark, industrial design as well as other fields of intellectual property right, including geographical indications and registered as consultant of intellectual property right in the Directorate General.
6. Proxy shall be consultant of intellectual property right.
7. Date of Receipt shall be the date of receipt of application already fulfilling administrative requirements.
8. Day shall be working day.
9. Requirement Book shall be a document containing information about the specific quality and characteristic of goods, which can be used for differentiating a product from another product having the same category.
10. User of Geographical Indication shall be a producer producing goods in accordance with the related requirement book and registered at the Directorate General.
11. Directorate General shall be the Directorate General of Intellectual Property Right within the ministry led by a minister.
12. Minister shall be the minister overseeing the ministry in charge of, among others, intellectual property right, including geographical indications.

CHAPTER II

SCOPE OF GEOGRAPHICAL INDICATION

Part One

General

Article 2

- (1) The mark as meant in Article 1 point 1 shall constitute a name of place or region or other specified mark indicating place of origin of the produced goods, which is protected by geographical indication.
- (2) The goods as meant in paragraph (1) can be in the form of agricultural produces, processed products, handicraft, or other goods as meant in Article 1 point 1.
- (3) The mark as meant in paragraph (1) shall be protected as a geographical indication if the market has been registered in the general list of geographical indications in the Directorate General.
- (4) The registered geographical indications shall not be changeable into public property.
- (5) The mark as meant in paragraph (1) only can be used for goods fulfilling the requirements as regulated in the requirement book.

Part Two

Geographical Indications Which Cannot Be Registered

Article 3

Geographical indications cannot be registered in the case of the market requested for registration:

- a. contravening legislation, religious morality and public order;
- b. misleading or deceiving the public with regards to characteristic, nature, quality, source, production of goods, and/or the use;
- c. being local geographical name already used as name of variety of plant, and used for variety of plant of the same kind; or
- d. already becoming generic.

Part Three

Protection Period of Geographical Indication

Article 4

Geographical indications shall be protected as long as the specific characteristics and quality underlying the granting of the protection of the geographical indications remain existent.

CHAPTER III

REQUIREMENTS AND PROCEDURES

FOR APPLICATION

Article 5

- (1) Any application shall be submitted in writing in Indonesian language by applicant or proxy by completing form in triplicate to the Directorate General.
- (2) The model and content of the form as meant in paragraph (1) shall be stipulated by the Directorate General.
- (3) The applicant as meant in paragraph (1) shall consist of:
- a. Institutions representing communities in region producing the goods, composed of:
 1. parties exploiting goods resulting from natural resources or natural resources;
 2. producers of agricultural products;
 3. producers of handicraft or industrial products; or
 4. traders selling the goods;
 - b. institutions authorized to do it; or
 - c. groups of consumers of the said goods.

Article 6

- (1) The application as meant in Article 5 shall mention the administrative requirements as follows:
- a. date, month and year;
 - b. full name, citizenship and address of applicant; and
 - c. full name and address of proxy, if the application is submitted through proxy.

(2) The application as meant in paragraph (1) shall be enclosed by:

- a. special power of attorney, in the case of application being submitted through proxy;
- b. payment form of cost.

(3) The application as meant in paragraph (1) shall be completed by the requirement book, consisting of:

- a. name of geographical indication requested for registration;
- b. name of goods protected by geographical indication;
- c. description of characteristic and quality differentiating certain goods from other goods of the same category, and explaining their relations with region where the goods are produced;
- d. description of geographical environmental as well as natural factors and human factors being a totality in influencing the quality or characteristic of the produced goods;
- e. description of borders of regions and/or map of region covered by geographical indication;
- f. description of history and tradition related to the use of geographical indication for marking the goods produced in the region, including recognition from communities with regards to the geographical indication;
- g. description explaining production, processing and manufacturing processes which are used so as to enable every producer in the region to produce, process or make the related goods;
- h. description of methods used for analyzing the quality of the produced goods; and
- i. label used in goods and containing geographical indication.

(4) The description of borders and map of region covered by the geographical indication as meant in paragraph (1) letter c shall secure recommendation from the authorized institution.

CHAPTER IV
PROCEDURES FOR EXAMINING
Part One
Administrative Examination
Article 7

(1) The Directorate general shall examine administratively the completeness of requirements for the application as meant in Articles 5 and 6 in not later than 14 (fourteen) days as from the date of receipt of application.

(2) In the case of the application already fulfilling the requirements as meant in Article 5, Article 6 paragraph (1), Article 6 paragraph (2) letter b and Article 6 paragraph (3), the Directorate General shall give the date of receipt.

(3) In the case of the requirements as meant in paragraph (2) being less complete, the Directorate General shall notify in writing the applicant or proxy to complete the shortcomings in not later than 3 (three) days as from the date of receipt of the notification.

(4) In the case of the shortcomings being not completed in the period as meant in paragraph (3), the Directorate General shall notify in writing the applicant or through the proxy that the application is deemed taken back and the issue is announced in Gazette of Geographical Indications.

(5) In the case of the application being deemed taken back as meant in paragraph (4), the cost already paid to the Directorate General shall not be reimbursable.

Part Two
Substantial Examination

(1) In not later than one month as from the date of the fulfillment of the requirements as meant in Article 7 paragraph (2), the Directorate General shall pass on the application to a team of geographical indication specialists.

(2) The team of geographical indication specialists shall examine substantially the application in not later 2 (two) years as from the date of receipt of the application as meant in paragraph (1).

(3) The substantial examination as meant in paragraph (1) shall be implemented on the basis of the provision of Article 1 point 1, Article 3 and Article 6 paragraph (3).

(4) In the case of the team of geographical indication specialists considering that the application met the provision on registration as meant in paragraph (3), the team of geographical indication specialists shall convey a recommendation to the Directorate General so that the geographical indication is registered in the general list of geographical indications.

(5) The substantial examination as meant in paragraph (1) shall be subject to cost.

(6) The cost of the substantial examination as meant in paragraph (5) shall be paid before the expiration of the announcement period of application.

(7) In the case of the cost of substantial examination being not paid in the period as meant in paragraph (6), the application shall be deemed taken back.

Article 9

(1) In the case of the team of geographical indication specialist approving that a geographical indication can be registered as meant in Article 8 paragraph (4), the team shall recommend the Directorate General to announce information related to the geographical indication, including the requirement book in Gazette of geographical indications in not later than 30 (thirty) days as from the date of receipt of recommendation from the team.

(2) In the case of the team of geographical indication specialist approving that a geographical indication is

denied, in not later than 30 (thirty) days as from the date of receipt of recommendation from the team, the Directorate General shall notify in writing the applicant or through the proxy by mentioning the reason.

(3) In the case of the applicant or proxy not conveying response to the denial in the period as meant in paragraph (3), the Directorate General shall stipulate decision on denial of the application and notify it to the applicant or through the proxy.

(4) In the case of the applicant or proxy conveying response to the denial as meant in paragraph (3), in not later than 30 (thirty) days as from the date of receipt of response to the denial, the Directorate General shall convey the rejection response to the team of geographical indication specialists.

Article 10

(1) The Team of Geographical indication specialists shall re-examine and recommend decision in a period not later than 3 (three) months as from the date of receipt of response as meant in Article 9 paragraph (5).

(2) In the case of the team approving the response as meant in Article 9 paragraph (3), the Directorate General shall announce geographical indication and requirement book on the basis of the decision as meant in paragraph (1) in Gazette of Geographical Indications.

(3) In the case of the team disapproving the response as meant in Article 9 paragraph (3), the Directorate General shall stipulate decision to deny the application.

(4) In not later than 30 (thirty) days, the Directorate General shall notify in writing the decision on rejection as meant in Article 9 paragraph (4) and Article 10 paragraph (3) to applicant or through proxy by mentioning the reason.

(5) In

(5) In the case of the application being denied, all costs already paid to the Directorate General shall not be reimbursable.

(6) In not later than 3 (three) months as from the date of receipt of notification about the rejection decision as meant in paragraph (4), applicant or proxy can submit appeal to the Mark Appeal Commission.

(7) The cost of submission of appeal to the Mark Appeal Commission shall be paid upon submitting the application for appeal.

Part Three Announcement

Article 11

(1) In not later than 10 (ten) days as from the date of approval of geographical indication for registration or denial, the Directorate General shall announce the decision in Gazette of Geographical Indications.

(2) In the case of geographical indication being approved for registration as meant in paragraph (1), the announcement in Gazette of Geographical Indications shall contain number of application, full name and address of applicant, name and address of proxy, date of receipt of the geographical indication and abstract of the requirement book.

(3) In the case of the geographical indication being denied as meant in paragraph (1), the announcement in Gazette of Geographical Indications shall contain name of application, full name and address of applicant, name and address of proxy and name of geographical indication requested for registration.

(4) The announcement as meant in paragraph (2) shall be realized in 3 (three) months.

Part Four Objection and Rejoinder

Article 12

(1) During the announcement period as meant in Article 11 paragraph (4), anybody can raise objection in writing to the announced geographical indication as meant in Article 11 paragraph (2) on the basis of application for the Directorate General in triplicate by paying cost.

(2) The objection as meant in paragraph (1) shall contain reasons, accompanied by sufficient evidence that the application should not be registered or should be denied on the basis of this government regulation.

(3) The objection as meant in paragraph (1) also can be submitted in connection with borders of the region covered by geographical indication requested for registration.

(4) In the case of the objection as meant in paragraph (2) and/or paragraph (3) coming, the Directorate General in not later than 14 (fourteen) days as from the date of receipt of the objection shall send copy of the objection to applicant or proxy.

(5) Applicants or proxies shall entitle to convey rejoinder to the objection as meant in paragraph (4) to the Directorate General in not later than 2 (two) months as from the date of receipt of copy of the objection.

Part Five Re-Substantial Examination

Article 13

(1) In the case of the rejoinder as meant in Article 12 paragraph (5) coming, the team of geographical indication specialists shall undertake re-substantial examination of geographical indication by observing the rejoinder.

(2) The re-substantial examination as meant in paragraph (1) shall be settled in not later than 6 (six) months as from the expiration of the submission period of rejoinder as meant in Article 12 paragraph (5).

- 3) In the case of the objection as meant in Article 12 paragraph (1) not coming, the Directorate General shall register geographical indication in the general list of geographical indications.
- (4) In the case of result of the re-substantial examination as meant in paragraphs (1) and (2) showing that the objection is acceptable, the Directorate General shall notify in writing the applicant or proxy that the geographical indication is denied.
- (5) In not later than 3 (three) months as from the date of receipt of the rejection decision as meant in paragraph (4), applicant or proxy can submit appeal to the Mark Appeal Commission.
- (6) In the case of result of the re-substantial examination as meant in paragraphs (1) and (2) showing that the objection is not acceptable, the Directorate General shall register the geographical indication in the general list of geographical indications.
- (7) In not later than 30 (thirty) days as from the date when result of re-substantial examination is decided, the Directorate General shall announce the decision in Gazette of Geographical Indications.
- b. representatives of ministries in charge of agricultural, industrial, trading affairs and/or other related ministries;
- c. representatives of institutions or agencies authorized to supervise and/or verify the quality of goods; and/or
- d. other competent specialists.
- (3) The members of the team as meant in paragraph (2) shall be appointed and dismissed by the Minister for a five-year term of service.
- (4) The team shall be led by a chairman elected from and by members of the team of geographical indication specialists.
- (5) In executing its tasks and function as meant in paragraph (1), the team of geographical indication specialists shall be assisted by a technical evaluation team whose members are based on expertise.
- (6) The technical evaluation team as meant in paragraph (5) shall be established by the Directorate General on the basis of recommendation from the team of geographical indication specialists.

Part Six

Team of Geographical Indication Specialist

Article 14

- (1) The Team of Geographical Indication Specialist shall be a non-structural institution evaluating the requirement book and providing consideration/recommendation for the Directorate General in connection with the registration, change, nullification and/or supervision over national geographical indications.
- (2) Members of the team as meant in paragraph (1) shall consist of specialists having capability in the field of geographical indications, coming from:
- a. representatives of the Directorate General;
- (1) Producers interesting in using geographical indications shall register as users of geographical indications to the Directorate General by paying cost in accordance with the provision in force.
- (2) The producers as meant in paragraph (1) shall fill the form of statement as stipulated by the Directorate General, accompanied by recommendation from the authorized technical institution.

CHAPTER V

THE USE AND SUPERVISION OVER GEOGRAPHICAL INDICATION

Part One

The Use of Geographical Indications

Article 15

(3) In not later than 30 (thirty) days after completing the requirements as meant in paragraph (2), the Directorate General shall register producers using geographical indications in general list of users of geographical indications and announce names as well as information in Gazette of Geographical Indications.

Part Two

Supervision over Users of Geographical Indications

Article 16

(1) Anybody can convey result of supervision over users of geographical indications to the authorized agency with a copy made available to the Directorate General that information covered in the requirement book regarding the goods protected by geographical indications is not fulfilled.

(2) Result of the supervision as meant in paragraph (1) shall contain evidence along with the reason.

(3) In not later than 7 (seven) days as from the date of receipt of result of the supervision as meant in paragraph (1), the Directorate General shall convey the result of the supervision to the team of geographical indication specialists.

(4) In not later than 6 (six) months as from the date of receipt of the supervision result as meant in paragraph (3), the team of geographical indication specialists shall examine the supervision result and convey result of the examination to the Directorate General, including actions that the Directorate General needs to take.

Article 17

(1) In not later than 30 (thirty) days as from the date of receipt of the examination result as meant in Article 16 paragraph (4), the Directorate General shall decide actions, which must be taken, including nullification of registered geographical indication users.

(2) In the case of the Directorate General deciding to nullify the registered geographical indication users, the users shall be abolished from the general list of geographical indication users and subsequently declared unrighteous to use geographical indications.

(3) The objection to the nullification of the registered geographical indication users as meant in paragraph (2) can be submitted through the Court of Commerce in not later than 3 (three) months as from the date of receipt of decision on the nullification.

(4) In not later than 30 (thirty) days as from the date when the nullification as meant in paragraph (2) is decided, the Directorate General shall announce the decision in Gazette of Geographical Indications.

Article 18

(1) Abolition of the use of registered geographical indications can be submitted on the basis of initiatives of users of the said geographical indications.

(2) In the case of the abolition as meant in paragraph (1), users of registered geographical indications shall be abolished from the general list of geographical indication users and later declared unrighteous to use geographical indications.

(3) In not later than 30 (thirty) days as from the date when the abolition as meant in paragraph (2) is decided, the Directorate General shall announce the decision in Gazette of Geographical Indications.

Part Three

Supervision over the Use of Geographical Indications

Article 19

(1) The team of geographical indication specialists shall organize and monitor supervision over the use of geographical indications in the territory of the Republic of Indonesia.

(2) In

- (2) In executing the tasks and function as meant in paragraph (1), the team of geographical indication specialists can be assisted by a technical supervisory team consisting of technical specialists in certain goods to provide considerations or execute supervisory tasks.
- (3) The technical supervisory team as meant in paragraph (1) can come from:
- competent supervisory institutions in the central and regional levels; and/or
 - private institutions or non-ministerial government institutions recognized as competent institutions in executing inspection/supervision related to goods protected by geographical indications.
- (4) The list of the recognized institutions and agencies as meant in paragraph (1) shall be renewed and monitored continuously by the team of geographical indication specialists.
- (5) The list of the recognized institutions and agencies as meant in paragraph (1) shall be accessible by the public and used as reference for users of geographical indications.
- (6) The technical supervisory team as meant in paragraph (1) shall be established by the Directorate General on the basis of recommendation from the team of geographical indication specialists.
- (2) The application as meant in paragraph (1) only can be registered if the geographical indications have secured recognition and/or been registered in accordance with the provision in force in the country of origin.
- (3) The provision on examination of the completeness of administrative requirements for the application as meant in Article 7 shall also apply to application from other countries.
- (4) In the case of the application from other countries already fulfilling the provision as meant in paragraphs (1), (2) and (3), the Directorate General shall stipulate a decision that the application can be approved for the registration and undertake the announcement as meant in Article 11.
- (5) The Directorate General shall deny application from other countries in the case of the requirements as meant in paragraphs (1), (2) and (3) being not fulfilled.
- (6) The rejection as meant in paragraph (5) shall be notified to applicant through proxy or diplomatic representative in Indonesia in not later than 30 (thirty) days as from the date of the rejection decision.
- (7) Provisions on procedures for announcing, raising objection and rejoinder as well as application for appeal in this government regulation shall apply mutatis mutandis to applications from other countries.
- (8) Applications from other countries which are registered shall be protected in accordance with the provisions in this government regulation.

CHAPTER VI

GEOGRAPHICAL INDICATIONS FROM OTHER COUNTRIES

Article 20

- (1) Any application submitted by applicant domiciled or living outside the territory of the Republic of Indonesia shall be submitted through a proxy in Indonesia or diplomatic representative of the country of origin of geographical indications in Indonesia.

CHAPTER VII

CHANGE AND EXPIRATION OF PROTECTION

Part One

Change and Withdrawal of Application

Article 21

Article 21

- (1) Any change in the application as meant in Articles 6 and 20 only can be submitted as long as the application has not been announced in the Gazette of geographical indications as meant in Article 11.
- (2) The withdrawal of the application as meant in Articles 6 and 20 only can be done before the Directorate General decides the registration of geographical indications.
- (3) In the case of the application being taken back as meant in paragraph (2), all costs already paid to the Directorate General shall not be reimbursable.

Part Two

Change in Requirement Book Following the Registration

Article 22

- (1) Applicant can submit application for changing the requirement book in accordance with developments in the scientific and technological fields or change in geographical borders.
- (2) The application for changing the requirement book as meant in paragraph (1) shall be submitted in writing to the Directorate General by conveying reason and change.
- (3) In the case of the application for changing the requirement book as meant in paragraph (1) being acceptable, the Directorate General shall announce the change in geographical indication in Gazette of geographical indications.
- (4) The provision on the announcement as meant in Article 11 as well as objection and rejoinder as meant in Article 12 shall apply to the change in the requirement book.
- (5) In the case of the Directorate General denying the application for changing the requirement book, the applicant or proxy can file appeal to the Mark Appeal Commission.

- (6) The appeal as meant in paragraph (5) can be submitted in not later than 3 (three) months as from the date of receipt of the rejection decision.

Part Three

Expiration of Geographical-Indication Protection

Article 23

- (1) Anybody, including the team of geographical indication specialists can convey to the Directorate General results of observation that specific characteristic and/or quality underlying the granting of protection to geographical indication has not existed.
- (2) In the case of the observation result as meant in paragraph (1) not coming from the team of geographical indication specialists, the Directorate General shall pass onto the observation result to the team of geographical indication specialists in not later than 30 (thirty) days as from the date of receipt of the observation results.
- (3) In 6 (six) months as from the date of receipt of the observation result as meant paragraph (2), the team of geographical indication specialists shall examine and notify result of its decision as well as measures which must be taken to the Directorate General.
- (4) In 30 (thirty) days as from the date of receipt of result of the decision as meant in paragraph (3), the Directorate General shall consider result of decision of the team of geographical indication specialists and measures which must be taken, including nullification of geographical indications.
- (5) In the case of the Directorate General deciding the nullification of geographical indications, the Directorate General shall notify in writing the applicant or proxy and all users of geographical indications as meant in Article 15 paragraph (3) or through proxy in not later than 14 (fourteen) days as from the date of receipt of the decision.

(6) In not later than 30 (thirty) days as from the date when the result of nullification as meant in paragraph (5) is decided, the Directorate General shall announce the decision in Gazette of Geographical Indications.

(7) The announcement as meant in paragraph (6) shall certify the nullification of the geographical indications and expiration of the use of geographical indications by users of geographical indications.

(8) The objection to the nullification of geographical indications as meant in paragraph (5) can be submitted to the Court of Commerce in not later than 3 (three) months as from the date of receipt of decision on the nullification.

CHAPTER VIII

APPEAL OF GEOGRAPHICAL INDICATION

Article 24

(1) Application for appeal can be submitted to the Mark Appeal Commission by applicant or proxy against the rejection of application as meant in Article 9 paragraph (4), Article 10 paragraph (3), Article 13 paragraph (4) and Article 22 paragraph (5).

(2) The application for appeal as meant in paragraph (1) shall be submitted in writing to the Mark Appeal Commission in the period as meant in Article 10 paragraph (6), Article 13 paragraph (5), and Article 22 paragraph (6) ~~by paying cost.~~

(3) The provisions in Articles 29, 30, 31, 32, 33 and 34 of Law Number 15/2001 on Mark as well as technical rules shall apply *mutatis mutandis* to the application for appeal.

CHAPTER IX

VIOLATION AND LAWSUIT

Part One

Violation of Geographical Indication

Article 25

Violation of geographical indication shall cover:

- a. commercial use of geographical indications, either directly or indirectly for the goods failing to meet the requirement book;
- b. commercial use of a symbol of geographical indication, either directly or indirectly for protected or not protected goods with a view of:
 1. showing that the quality of the goods is compatible to the goods protected by geographical indication;
 2. earning profit from the use; or
 3. earning profit from reputation of geographical indication;
- c. the use of geographical indications which can mislead communities in connection with geographical origin of the goods;
- d. unrighteous use of geographical indication even though the place of origin of the goods is declared;
- e. imitation or other kind of misuse potential to mislead in connection with the place of origin of goods or quality of goods reflected from the statement contained in:
 1. wrapper or package;
 2. information in advertisement;
 3. information in document of the goods;
 4. information potential to mislead origin (in the case of the packing of goods in a package); or
- f. other actions potential to mislead the public at large with regards to the truth of origin of the goods.

Part Two

Lawsuit

Article 26

- (1) The submission of lawsuit against the violation as meant in Article 25 shall be done in accordance with the provision of Article 57 paragraph (1) and Article 58 of Law No. 15/2001 on Mark.

(2) The lawsuit as meant in paragraph (1) can be filed by:

- a. every producer righteous to use geographical indication;
- b. institutions representing communities; or
- c. institutions authorized to do it.

(3) The provision of Article 80 of Law No. 15/2001 on Mark shall apply mutatis-mutandis to procedures for submitting lawsuit against geographical indication.

CHAPTER X

PREVIOUS USER OF GEOGRAPHICAL INDICATION

Article 27

(1) In the case of the symbol as meant in Article 56 paragraph (8) of Law No. 15/2001 on Mark being used, and the symbol being already used with goodwill by other parties not righteous to use geographical indication before and upon the submission of application for registration as geographical indications of the similar or same goods, the other parties can use the symbol for a period of 2 (two) years as from the symbol is registered as geographical indication with the provision that the other parties certify the truth of place of origin of the goods and guarantee that the use of the symbol won't mislead the registered geographical indications.

(2) In the case of any of the symbols as meant in Article 56 paragraph (8) of Law No. 15/2001 on Mark being already registered or used as mark before or upon the submission of application for an geographical indication of the similar or same goods and the symbol being later declared registered as geographical indication, the use of the symbol as mark with goodwill by other parties not righteous to use the geographical indication shall remain possible with the provision that the users of the mark certify the truth of place of origin of the goods and guarantee that the use of the symbol won't mislead the registered geographical indications.

CHAPTER XI

CONCLUSION

Article 28

The government regulation shall come into force as from the date of promulgation.

For public cognizance, the government regulation shall be promulgated by placing it in Statute Book of the Republic of Indonesia.

Stipulated in Jakarta

On September 4, 2008

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Sgd

DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta

On September 4, 2007

THE MINISTER OF LAW AND HUMAN RIGHTS

Sgd

ANDI MATTALATTA

STATUTE BOOK OF THE REPUBLIC OF INDONESIA

YEAR 2007 NUMBER 115

ELUCIDATION

ON

GOVERNMENT REGULATION NUMBER 51 YEAR 2007

CONCERNING

GEOGRAPHICAL INDICATION

I. GENERAL

In daily life, people know or call name of a product followed by name of place or region of origin of the goods. The disclosure is known geographical indication and is something new in Indonesia even though it has long developed in European countries.

Like brand, geographical indication constitutes a model of intellectual property which must be protected by member countries of the World Trade Organization. The provision on the issue is mentioned in Trade-Related Intellectual Property Rights (TRIPs), mainly Article 22 up to

Article 24. In order to implement the obligation, Article 56 paragraph (9) of Law No. 15/2001 on Mark regulated that the provisions on procedures for registration of geographical indications will be regulated further by a government regulation. Based on the consideration, this government regulation is formulated with a view of ruling comprehensively technical provisions of Law No. 15/2005 on Mark with regards to geographical indications.

Geographical indication constitutes a symbol unconsciously already existing and indirectly able to show specialty in a product result from a certain region. The symbol is subsequently used for showing the origin of a product, either agricultural product, foodstuff, handicraft or other goods, including raw materials and/or processed materials coming from agricultural product or mineral.

The appointment of origin of a product is important because of influence from geographical factors, including natural factors, human factors or combination of both factors in specified region where the product is produced can give certain characteristic or quality to the product. The characteristic and quality of goods, which is preserved and can be maintained in a specified period will result in reputation (popularity) to the goods, which subsequently enables the goods to have high economic value. In relation thereto, the goods deserve adequate legal protection.

Legal protection of geographical indication can be granted if the registration has been executed. The registration of geographical indications aims at guaranteeing legal certainty. The protection period can be unlimited as long as the characteristic and/or quality underlying the granting of protection remains existent.

The characteristic and/or quality underlying the granting of protection is mentioned in a requirement book, also containing information about influence of geographical environment, natural factors as well as human factors influencing the quality or characteristic of the goods, besides covering information about map of region, history and tradition, processing, verification method of quality of goods as well as label which is used. The requirement book is formulated by group of communities where the goods are produced.

Owners of geographical indications are applicants or groups of communities in regions where certain goods is produced, competent to maintain, preserve and use geographical indications in connection with the need of their business. A producer able to produce goods in accordance with the provision disclosed in the requirement book and ready for applying the provisions as regulated in the requirement book can use the related geographical indications after registering first themselves as users of geographical indications at the Directorate General.

As an archipelagic state rich in knowledge, tradition and culture as well as tropical climate resulting in various kinds of goods having not-small economic potential, Indonesia should an adequate geographical-indication protection system. Hopefully, the optimal protection of geographical indications can not only preserve the environmental conservation but also further maximize the empowerment of natural and human resources in regions. In addition, migration of potential manpower from region to urban area can be prevented by creating/opening job opportunities and fields for producing certain goods protected by geographical indications and expected to have not-small economic value in the region.

II. ARTICLE BY ARTICLE

Article 1

Sufficiently clear

Article 2

Paragraph (1)

The other certain symbols mean symbols in the form of word, picture or combination of the elements.

Example:

- The word "Mirang" indicates West Sumatra.
- Picture Toraja Traditional House indicates Toraja region in South Sulawesi.

Paragraph (2)

The definition of agriculture also covers forestry, plantation, animal husbandry, fishery and marine.

The definition of other goods covers, among others, raw materials and/or processed products of agricultural products or minerals.

Paragraph (3)

The general list of geographical indications means a book containing geographical indications registered at the Directorate General.

Paragraph (4)

A name, indication or mark already registered as geographical indication cannot be degraded, deemed as a name of goods and subsequently becoming public property.

Paragraph (5)

Sufficiently clear

Article 3

Letters a and b

Sufficiently clear

Letter c

If a geographical indication is used as name of variety of certain plant, the name of the geographical indication only can be used for variety of the plant.

Example:

The name/word "Cianjur" has been known as name of a variety of paddy. Therefore, the word "Cianjur" cannot be used as geographical indication of other variety of paddy even though the variety is cultivated in Cianjur.

It is intended to avoid the possibility of misleading.

Nonetheless, the word "Cianjur" can be used as geographical indication of variety of other plants or goods, such as zalacca fruit, marquisa, tauco etc.

Letter d

Generic indication is an indication of goods already becoming public property because it's often used in daily language and therefore, is not protected.

Example : tofu, tempe, batik, jeruk bali, pisang ambon etc.

Article 4

Sufficiently clear

Article 5

Paragraphs (1) and (2)

Sufficiently clear

Paragraph (3)

Letter a

Institutions are, among others, cooperatives, associations or foundations whose members are local producers.

Letter b

The institutions authorized to do it are government institution in regions, which oversee the goods submitted for application, such as regional governments in the provincial and/or regental/municipal levels.

Letter c

Sufficiently clear

Article 6

Paragraphs (1) and (2)

Sufficiently clear

Paragraph (3)

Letters a and b

Sufficiently clear

Letter c

Differentiating certain goods from other goods of the same category is comparing a product from other similar product.

For example, certain rice is compared to other rice.

Letter d

Description of local geographical environment can cover, among others, description of, highest, lowest, average temperature; rain fall, humidity, intensity of sun ray, height and/or kind/condition of soil.

Letter e

Sufficiently clear

Letter f

The description of tradition and history related to the use of geographical condition covers, among others, description of community tradition already lasting for a long time in connection with the production of goods resulting from the region.

Letter g up to letter i

Sufficiently clear

Paragraph (4)

Recommendation is a certificate issued by the institution overseeing goods submitted for application.

Article 7 up to article 10

Sufficiently clear

Article 11

Paragraph (1)

Sufficiently clear

Paragraph (2)

Abstract of the requirement book is brief information describing important points of the goods which will be protected by geographical indications.

The whole content of the requirement book can be obtained at the Directorate General.

Paragraphs (3) and (4)

Sufficiently clear

Articles 12 and 13

Sufficiently clear

Article 14

Paragraph (1)

National geographical indication means domestic geographical indication.

Evaluating the requirement book means substantial examination of recommendation about the requirement book submitted by applicant.

Paragraph (2)

Specialist having capability in geographic indication field is anybody having expertise in fields, among others, agriculture, geology, meteorology, marine, forestry, food, beverage and/or other fields related to geographical indications.

Paragraphs (3) and (4)

Sufficiently clear

Paragraph (5)

The technical evaluation team can number more than one technical team.

Paragraph (6)

Sufficiently clear

Article 15

Sufficiently clear

Article 16

Paragraph (1)

Agencies authorized to supervise mean government and non-government institutions competent to evaluate and supervise the quality of a product.

Example:

- The Food and Drug Supervisory Board (BPOM), competent to evaluate, verify and/or supervise goods in the form of food and medicines.
- Sucofindo, competent to analyze the quality of a product.

Paragraph (2) up to paragraph (4)

Sufficiently clear

Articles 17 and 18
Sufficiently clear

Article 19
Paragraph (1)
Supervision can be executed along the production and distribution chain of goods.

Paragraph (2)
The specialists appointed and responsible for the supervision may not have conflict of interest in connection with geographical indications, which will be supervised.

Paragraph (3) up to paragraph (6)
Sufficiently clear

Article 20 up to article 24
Sufficiently clear

Article 25
Letter a up to letter c
Sufficiently clear

Letter d
Unrighteous use of geographical indication covers, among others, misuse, imitation and negative image building of certain geographical indications, such as the use of word "-style, model the same as, similar, made by the same method, sharing of the same characteristic, resembling, like, or transliteration or similar/compatible to the words.

Letters e and f
Sufficiently clear

Article 26
Sufficiently clear

Article 27
Paragraph (1)
"Symbol already used is a symbol not registered.

Paragraph (2)
Sufficiently clear

Article 28
Sufficiently clear

SUPPLEMENT TO STATUTE BOOK OF THE REPUBLIC OF INDONESIA NUMBER 4763

====(R)====