



WIPO-WTO COLLOQUIUM PAPERS

RESEARCH PAPERS FROM THE WIPO-WTO COLLOQUIUM
FOR TEACHERS OF INTELLECTUAL PROPERTY LAW 2016



WTO OMC





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RESEARCH PAPERS FROM THE 2016 WIPO-WTO COLLOQUIUM FOR TEACHERS OF INTELLECTUAL PROPERTY LAW

Compiled by the WIPO Academy and

the WTO Intellectual Property, Government Procurement and Competition Division

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FOREWORD



Mr Francis Gurry



Mr Roberto Azevêdo

This volume is the seventh in a series of annual publications from the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). Prepared by the WIPO-WTO Colloquium for Teachers of Intellectual Property, this collection of academic papers represents an important contribution to international scholarship in the field of intellectual property (IP). Today we witness ever increasing, more diverse forms of international interaction on IP, yet equally we see growing attention to differing national policy needs and social and developmental priorities in this field. The *Colloquium Papers* series highlights the importance of fostering scholarship in emerging IP jurisdictions, harvesting the insights from policy and academic debates from across the globe, and promoting mutual learning through the sharing of research and scholarship on a broader geographical base.

For over a decade, the annual WIPO-WTO Colloquium itself has played a central role in the joint capacity building programmes of WIPO and the WTO. This cooperation seeks to enrich dialogue on IP issues and to address the developmental and wider policy considerations that form an integral part of IP law and policy today. The Colloquium responds to the recognition that developmental benefits from the IP system can only be reaped through skilled adaptation to national circumstances and judicious use by informed practitioners. Equally, effective policy development at the national level needs increasingly to draw upon skilled, informed and sophisticated policy analysis. The Colloquium bolsters the capacity of those best placed to ensure truly sustainable, long-term benefits from the adept use of the IP system – those who teach the IP practitioners of the future, and those who conduct research on IP law and policy.

The programme has produced more than 320 alumni. This is a diverse and active network of highly engaged teachers and researchers, which reaches across the developing world. Whilst this network is the principal focus of the programme, it also includes a number of developed countries. It is heartening to see the contributions of these scholars in many avenues – through their academic publications, through their active participation in national and international policy debates, through their own teaching and through their contribution to capacity building in the developing world.

We see the *Colloquium Papers* – an edited, peer-reviewed academic journal – as epitomizing the trend towards more diverse and yet more rigorous capacity building in IP law and policy. The publications issued since 2010 draw together the participants' original insights into current IP issues in their countries, and give greater substance to the network of mutual learning and intellectual exchanges that characterize the Colloquium programme.

The latest publication, a selection of papers from the 2016 Colloquium, covers an impressive range of IP subject matter, including patents, copyright and trademarks. The papers discuss policy issues, including access to medicine, employee patents, protection of traditional knowledge, protection of geographical indications and fair use, all of

which are vital to the development of IP systems in developing countries. This publication series may now be presented as a significant academic journal with unique coverage of IP law and policy focussed on emerging IP jurisdictions.

In today's changing global economy, IP significantly influences the everyday lives of all citizens around the world. An international IP system that can adjust to the shifting global economic landscape, while also stimulating innovation and furthering development, demands the understanding, participation and cooperation of all peoples across the societal spectrum. Initiatives such as the Colloquium play an important role in building capacity, raising awareness, and engaging all societies that are affected by the evolution of the international IP system.

We congratulate the contributing scholars for their first rate research, and we thank the Editorial Board – a highly distinguished group of senior IP scholars – for their invaluable support and engagement, which has helped establish the *Colloquium Papers* as a credible academic publication. We should also record our appreciation for the work of our colleagues in the WIPO Academy and the WTO IP Division in organizing the Colloquium and facilitating the publication. Finally, we commend the *Colloquium Papers* as an important source for academic research to what we trust will be a wide and ever more diverse readership.



Francis Gurry
Director General
World Intellectual Property Organization



Roberto Azevêdo
Director-General
World Trade Organization

PREFACE

This volume is the seventh in the series of academic papers resulting from the WIPO-WTO Colloquium: it serves as a tangible reminder of the vitality and richness of collaboration between the two organizations since the conclusion of a bilateral agreement in 1995, shortly after the WTO was established. The content of this journal, representing emerging scholarship from across the developing world, encapsulates much that is challenging, significant and fascinating in the field of intellectual property (IP) today, and underscores why this bilateral cooperation is as valuable as ever.

Always with a strong international dimension, the IP system is undergoing an unprecedented phase of globalization and a building of international institutions, bringing with it a deepened understanding of the centrality of a balanced and effective IP system in economic and social development. Yet this same period has precipitated an intensive, wide-ranging process of inquiry about how to adapt and apply IP principles to ensure economic growth, sound public policy, and sustainable development in diverse settings across the globe, recognizing the diversity of economic, social and technological settings, national developmental priorities, and legal and commercial systems.

Intellectual property is seemingly ubiquitous in contemporary life, but its role and impact are both highly diverse and in need of careful analysis and informed debate. An IP dimension is present in many challenging public policy issues today. For instance, we see growing attention to its role in promoting public health, addressing climate change, and achieving food security, as well as its interaction with human rights and social and economic development. Intellectual property has been the subject of complex, multifaceted debates at the multilateral, regional and national levels over the rights of indigenous people, the conservation of biodiversity, the ethics and use of genetic resources, Internet governance, climate change technology, and access to education and medicine. And behind these debates lies an essential question: how to come to grips with the significant responsibility of IP systems in the current world economy, in international trade, and in national policy environment: how should IP systems be designed or adapted to promote economic development, stimulate innovation, and disseminate knowledge in a manner that balances the rights of all stakeholders?

The contemporary field of IP is therefore characterized by profound and searching debates on questions of essential public policy; an approach to policy-making that emphasizes empirical research, theoretical clarity, and achieves coherence with other areas of law; and the harvesting of practical experience from an ever widening base of national IP systems and participants in the policy and practice of IP. It is, therefore, a field in need of a deeper and wider research effort; sophisticated, informed and carefully tailored approaches to education and practical capacity building; and, above all, dialogue and debate founded on a richer base of information, theoretical understanding, practical experience, and knowledge of its implications in other areas of law and policy.

Both WIPO and the WTO have been called upon to play a role in strengthening capacity to deal with the intellectual challenges of these policy debates. This increasing diversity of demand for capacity-building support has had a profound impact on programme design and delivery. The WIPO Academy has developed a wide range of specialist courses and training activities to respond to this evolving pattern of demand, and to reach out to and support an ever widening range of stakeholders.

The WTO Intellectual Property, Government Procurement and Competition Division (IPD) continues to broaden and tailor its technical cooperation and policy support activities, developing a wider engagement with current international issues and with a broader base of stakeholders, exemplified by work on public health issues. But none of these outcomes can be possible without partnerships – the sharing of ideas, pooling of resources, and coordination of practical activities – so that the necessary wide range of experience and expertise can be drawn on to meet diverse needs.

Both the WIPO Academy and the WTO IPD therefore enjoy many valuable partnerships as a central strategy in ensuring programme delivery. The Colloquium has exemplified and promoted current trends in technical assistance and capacity building: it builds upon and extends an existing partnership between WIPO and the WTO; it responds to the need for stronger, broader dialogue and a greater involvement of voices from all perspectives in contemporary debates; it recognizes the central role of indigenous capacity building and of the key contribution of IP teachers and researchers as the mainstay of sustainable development of the necessary IP expertise in developing countries; it transcends traditional boundaries between regions and between 'north' and 'south' to allow fruitful

discourse on the future of IP systems. Most importantly, it recognizes the importance of extending beyond an educational function to one of bringing together a diverse group with the aim of reviving and refreshing dialogues on IP and its cognate fields.

The Colloquium has, in particular, laid emphasis on the role of participants as active players, as informed, stimulating teachers and researchers who bring to the two-week dialogue as much as they take away from it. Past feedback from participants stressed the need to capture, in more permanent form, the many insights gleaned from these few days of intensive, vigorous discussion. Participating teachers and researchers expressed important new ideas and insights to global debates that could enrich and inform the exchange among policymakers, the academic community, and the public at large.

These thoughts, guided very much by the participating teachers and researchers themselves, are what gave rise to the present publication, which is in a way a tribute to the intellectual energy and curiosity of the many alumni of the past Colloquia, with whom we continue to enjoy a range of partnerships and dialogue.

WIPO and the WTO both host numerous meetings every year, in Geneva and in many locations elsewhere, and under numerous headings: committees, seminars, workshops, roundtables, symposia, and so on. But amidst all this activity, the idea of a 'colloquium' has a special ring to it – for the WIPO-WTO Colloquium, it connotes a spirit of academic enquiry, a search for new ideas and new ways of analysing IP and related fields, through open debate, rigorous research, and new ways of communicating the complexities of IP law, practice and policy. We trust that this publication will bring to a wider community of researchers, policymakers and teachers some of the colloquium spirit that we have valued so much in this unique programme.

All of us who have participated in the Colloquium have benefited from the hard work and dedication of many colleagues within WIPO and the WTO Secretariat – notably, the WIPO Academy and the WTO IPD. All have contributed valuably to the design and delivery of this programme, and their spirit of collegiality makes a demanding programme also a pleasurable one.

We owe a particular debt of gratitude to the Editorial Board and the editors of the *Colloquium Papers*: they have been indispensable in ensuring that the Papers can be used as a trusted, academically sound and readable source of cutting edge IP scholarship from an impressive group of emerging scholars from across the developing world. Finally, we record our deep appreciation for the contributions made by individual scholars to this, and the preceding, volumes – we have come to know and respect their contributions to policy and legal scholarship, and we are sure that this active, informed and thoughtful participation in many of the key public policy debates of today will continue, exemplifying the important public service role performed by the scholarly community today.



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4. THE PROTECTION OF “BATIK” CRAFT UNDER GEOGRAPHICAL INDICATION: THE STRATEGY FOR DEVELOPING CREATIVE INDUSTRY IN INDONESIA

Mas Rahmah^{*}

ABSTRACT

This paper proposes that the techniques, symbolisms, philosophies and cultures surrounding hand-dyed cotton and silk garments, known as Indonesian should be protected as a Geographical Indication (GI). GIs are an effective way to promote products having unique characteristics which are influenced by their geographical origin. To support this proposition, this paper starts to describe *Batik* with its exotic characteristics, the inclusion of the craft as a GI and outlines the benefits of GI protection to the creative industry in Indonesia. However, this paper assumes that *Batik* protection under GI may present challenges since the process can be time-consuming, costly, require complicated procedures, multiform infrastructure and a diverse range of stakeholder's involvement. The main obstacles to protecting *Batik* as a GI will likely be (a) registration; (b) maintaining the quality or characteristic; (c) promotion and marketing. Finally, the paper offers strategies to overcome these challenges in order to provide certain best practices for protecting *Batik* as a GI.

Keywords : Geographical Indication, *Batik*, protection, creative industry, handcraft, Indonesia

1. INTRODUCTION

Indonesian *Batik* was inaugurated as a part of the world's intangible cultural heritage from Indonesia by UNESCO in 2009¹. It has gained prominence with a high reputation because of its specific characteristics and unique quality. Indonesian *Batik* is often famous for the regions in which it is produced since *Batik* has a unique quality and special characteristic associated with geographical factors like

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¹UNESCO, 'Indonesian *Batik*', <http://www.unesco.org/culture/ich/en/RL/indonesian-batik-00170>, viewed on 3 January 2016.

local value, culture, tradition, local wisdom and other traditional knowledge.

The reputation and prominent qualities of *Batik* should be protected by GI status. This paper argues that GIs will be an effective mechanism because GIs function as an identifier for *Batik* products. By protecting *Batik* under a GI scheme, *Batik* crafters will gain benefit by earning premiums for their *Batik* products because of their exotic images. It will also help them obtain competitive advantages through market recognition and product differentiation.

However, it seems difficult to protect *Batik* as a GI because of some practical challenges. The process of gaining GI status involves complicated procedures that are very time-consuming, expensive and multiform infrastructure. It also involves a wide range of stakeholders who would be involved in its preparation, monitoring, management, promotion and marketing.

This paper will build on the ideas expressed above. In Part I, the paper will describe the exotic nature of Indonesian *Batik*. In Part II, the definition of GIs and the inclusion of crafts will be addressed. In Part III, the benefits of using GI status for protecting *Batik* will be analyzed. Finally, in the last part, strategies to overcome the challenges identified will be proposed, providing certain best practices for the protection of *Batik*.

2. INDONESIAN BATIK HANDCRAFT

The origin of *Batik* began in South Asia, the earliest samples of *Batik* found in Egypt have been dated to the 5th or 6th century A.D. *Batik* reached its zenith in Java (Indonesia) in the 7th century AD. Therefore, most agree that Indonesia is one of the most important regions for the development and popularity of *Batik*.²

Indonesia has been known for its *Batik* for decades and in 2009 UNESCO inaugurated *Batik* as a part of the world's intangible cultural heritage from Indonesia. *Batik* is a masterpiece of Indonesian cultural heritage with dye techniques and designs that are as numerous as the Indonesian islands and their diverse cultures. Recently, *Batik* has become popular in both formal and informal settings in Indonesia. *Batik* clothes with contemporary designs are also worn regularly in business and academic settings. Even in government institutions and private companies, employees are required to wear *Batik* on certain days, generally Tuesday or Friday. While special *Batik* decorations are commonly incorporated into ceremonies for marriages, pregnancies and even funerals, it is also seeing growing use in puppet theatre, decoration, fashion design and other art forms. In addition, *Batik* fabrics play a central role in these rituals.

²Genevieve Marie Lawrence, "Digital Printing and Traditional Surface Design Techniques", *Tesis*, Master of Science of North Carolina State University, 2002, 6.

The word *Batik* is derived from the Javanese words: (a) 'amba' meaning 'to write', and (b) the suffix 'titik' meaning little dot or to make dots.³ A manuscript written on a Lontar leaf dating to 1520 AD found in Galuh, Southern Cirebon (west Java) revealed that *Batik* also means 'seratan' ('writing' in Javanese).⁴ *Batik* was originally reserved for Javanese royalty and particular patterns like the "parang" were reserved for royalty in the Sultan's palace (in Yogyakarta, Surakarta, and other central Javanese royal courts), but over time those sumptuary laws have fallen away.⁵

The traditional method of making *Batik* is of two types: *Batik 'canting'* and *Batik 'chop'*. These two types of making *Batik* are of traditional, ancient tools and are still used widely in the modern times. *Batik "chop"* or block printed *Batik* is produced using metal blocks made of several strips of metal which are welded together to create a particular pattern. While *Batik "canting"* (known as writing *Batik*) is, labour intensive and, requires significant skill and creativity from the *Batik* artisan to create high quality patterns of written *Batik*. The process can take up to weeks or months depending on the complexity of the colours and the pattern to be drawn, which is why canting *Batik* is highly valued (Fine *Batik*).⁶

Fine *Batik* is a handicraft product, which is labour-intensive and involves multiple processes⁷. It starts with preparing the 'mori' (fabric), drawing the pattern or writing using 'canting'⁸ and 'malam' (wax) on both sides. It is then coloured using synthetic or natural dyes, peeling of the

'malam' (called 'Ngorot'), washing the product, and drying it in shade as the last step. Motifs are drawn, waxed, and dyed, first on one and then the other side of the fabric. As the wax is the key substance in *Batik* process, thus *Batik* is also called 'wax writing'. It involves decorating cloth by covering a part of it with a coat of wax and then dyeing the cloth. The waxed areas keep their original colour and when the wax is removed, the contrast between the dyed and undyed areas form the pattern.⁹ The crafters, usually woman, hold the "canting" with its bamboo handle, scoop up the heated wax and blow through the tip of the pipe to keep the wax fluid. Then, using the canting's pipe as a pen, she draws the design on the fabric, outlining with wax instead of ink.¹⁰ For instance, if the desired design is a green leaf on a yellow background, wax is drawn to make the green leaf. Then the white cloth is dipped in yellow dye and dried. Since the wax resisted the yellow dye, a white leaf on yellow background appears when the wax covering the leaf pattern is peeled off the cloth. Then, for creating the green leaf, the yellow background is covered with wax and the entire cloth is immersed in green dye and dried. After drying, the wax is peeled from the cloth and a green leaf emerges on a yellow background. This process is repeated as more desired colours are created. Since some of the greatest *Batik* products are multi-coloured, it is not surprising that designers, waxers, dyers, and finishers take twelve months or more to complete a single piece, a yard long.¹¹ This long and intricate process creates the scarcity and exoticness of *Batik*.

In addition, the uniqueness of *Batik* can be found in the imperfections that are characteristic of *Batik*, since they are ultimately handmade goods. According to Laurie Shifrin : *In Batiks, you will find many characteristics that may seem like imperfections but are merely the nature of handmade goods. I prefer to think of these imperfections as rustic qualities and choose to celebrate their uniqueness.* (Sic)¹²

Batik has its exoticness because it is a unique composition of art, history, culture, life style and tradition. *Batik* is not only a decorated garment, but it also has a deeper philosophy for Indonesian people, depicting the important life stages right from the cradle to the grave.¹³ The unique values of Indonesian *Batik* permeate Indonesians life from beginning to end. In Javanese culture, *Batik* symbolizes a philosophy of the importance of life, the cycle of birth,

³ "Batik, the Traditional Fabric of Indonesia", <http://www. expat.or.id/info/Batik.html>, viewed on 23 January 2016.

⁴Ministry of Trade of Republic of Indonesia, *Indonesian Batik: the Cultural Beauty*, Balitbangdang/PK/001/IX/2008, 1.

⁵Suleiman Sunkanmi Oparinde, "Batik As A Cultural Identity of The Yoruba: Hand Colouring Techniques And Applications, Possibility of Adaptations", (2012) 2(3) *Journal of Arts, Science & Commerce*, 33.

⁶Mohammad Muaz Bin Nordin, "Design and Developement of Semi Automatic Canting Too (Body Design and Mechanism)", *Tesis*, Faculty of Manufacturing Engineering University Malaysia Pahang, 2012, 1-2.

⁷Leesa Hubbell, "Trading Hands and Trade Secret : A *Batik* Colaboration", *American Quilter*, March 2008, 21.

⁸The "canting" is a modification of the Javanese instrument, which is a little cup-shaped tool with a handle set at right-angles to the base on one side and on the other is a fine spout arrangement. Canting is a pen-like tool use to apply liquid hot wax (Javanese: malam) to be drawn on cloth in the *Batik*-making process, more speciallly for *Batik tulis* ("hand drawn *Batik*"). Traditional canting consists of copper (or bronze, zinc, iron (traditional) or teflon (modern) wax-container with small pipe spout and bamboo or reer handle. See more at Mohammad Muaz Bin Nordin (n 6) 7.

⁹ *Ibid.*

¹⁰Jan Smiley, "About *Batik* Fabric", http://www.Batiks.com/a_Batik.html, accessed on 4 January 2016.

¹¹Inger McCabe Elliott, *Batik Fabled Cloth of Java*, (Periplus Editions (HK) Ltd : Singapore, 2004) 52.

¹²Laurie Shifrin, *Batik Germs : 29 Dazzling Quilt Projects*, (C&T Publishing : California, 2008) 7.

¹³*Ibid*

marriage and death. When a baby is born, the baby is wrapped and carried in *Batik*.¹⁴ During the wedding ceremony, the bride, the groom, their parents and their relatives are attired in *Batik*.¹⁵ At the end of one's life, *Batik* is used to cover the bodies during the funeral. This philosophy also adds to the exoticness of *Batik*.

Indonesia is considered as the birthplace of *Batik* with many designs for different wearers and occasions since there are around three thousand different *Batik* patterns that have been recorded since the 19th century and many are considered to be antique designs.¹⁶ The design of *Batik* has ritualistic significance and the majority of motifs are taken from natural objects like flowers, leaves, trees, birds, twinning plants, buds, mountains, water, clouds, animals and geometric forms that are rich in symbolic meaning. These decorative designs often represent religious or mystical symbols related to the beliefs of the local people in the area. Therefore, the design and colours of *Batik* vary in accordance with the villages and ethnic groups that have spread out in different geographical areas. Since some of the regions have unique *Batik* patterns and designs, there are thousands of different *Batik* decorative designs and some designs have been associated with traditional festivals, specific religious ceremonies and are of ritualistic significance in certain regions.

The colours of *Batik* vary in accordance with different geographical areas using local processing affected by the local culture. Their cultures affect the choice of colouring *Batik*, for example *Batik* Madura tends to have bright and brave colour reflecting the brave type of Maduranese, while in Javanese *Batik*, the colours used to dye the *Batik* consisted primarily of beige, blue, brown and black reflecting the characteristic of Javanese who more calm and humble.

Most *Batik* colours are made from natural dye derived from indigenous plants. Blue, which is the oldest colour used to make traditional *Batik*, is made from the leaves of the Indigo (Nila) plant mixed with molasses, sugar and lime and left to ferment overnight. Sometimes sap from the "Tinggi" tree is added to act as a fixing agent. Another colour that is applied when making traditional *Batik* is *soga* (a brown colour which can range from shades of light yellow to a dark shade of brown), and its dye is made from the bark of the *Soga* tree. The leaves of the *Morinda Citrifolia* is used as *Mengkuda* (a dark red colour).

The intricate *Batik* designs obtained through the resist dyeing technique and process creates the exotic and unique characteristic of *Batik*. Nowadays, *Batik* is not only produced for garments (traditional or modern costumes), but also for a variety of handicrafts and household items. Some geographical areas have also developed *Batik*

designs that are printed and decorated on many kinds of handicrafts like leather crafts, wooden crafts, painting, household ceramics, pottery, gift ornaments, bamboo, silver, and many others.

3. THE INCLUSION OF HANDCRAFTS IN GIs

Article 22 (1) of Trade Related Aspect of Intellectual Property Right (TRIPS) defines GIs as:

indications, which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

This TRIPS definition is incorporated in the new Indonesian Trademark Law (Law No 20/2016)¹⁷ and the Government Regulation on GIs (PP 51/2007).¹⁸ There is a slight difference between GIs definition in Indonesian Trademark Law and the Government Regulation on GIs. Government Regulation on GI defines GI as:

*a sign which indicates the place of origin of goods, which due to its geographical environment factors, including the factor of the nature, the people or the combination of the two factors, gives a specific characteristics and quality on the goods produced there in.*¹⁹

Whereas, the new Indonesian Trademark Law improves the GI definition by adding the product and reputation thereof. Article 1 (6) of Indonesian Trademark Law defines GI as:

a sign which indicates the place of origin of goods and/or products which is due to its geographical environmental factors including the factor of the nature, people or the combination of these two factors, gives reputation, quality, and specific characteristics on the goods and/or products produced there in.

The GI definition in TRIPs and Indonesian Trademark regulation differs in some aspects. First, the GI definition in Article 1(1) of the Indonesian Trademark Act uses the term 'sign', while TRIPS includes the term 'indication' not necessarily the name of a geographical place.²⁰ It would be effective to include 'indication' in the GI definition rather than 'sign' because indication may be more broader than a sign since the definition of a sign suggests

¹⁴ Ministry of Trade of Republic of Indonesia (n 4),2

¹⁵ *Ibid*

¹⁶ *Ibid*, 11.

¹⁷In order to amend and replace Law No 15/2015 regarding Trademark, Indonesian government has enacted new Indonesian Trademark Law (Law No 20/2016 regarding Trademark and Geographical Indication) on 25th November 2016.

¹⁸The Government Regulation on GI (PP 51/2007) issued on 4th September 2007 is the implementation rules of previous Indonesian trademark law (Law No 15/2015).

¹⁹ Article 1(1) of Government Regulation GI.

²⁰ Mark Davidson, "Geographical Indication", *Paper*, 2007, p. 3.

a more direct connection between the sign and the information conveyed by the sign, whereas an indication may be a suggestion as well as a sign.²¹

Second, the scope of the GI definition in Article 1(6) Indonesian Trademark Law differs from TRIPS because the definition covers all products. The Indonesian GI definition includes within the scope of GI protection for products achieving specific characteristics because of natural and human factors influence as well as the combination of both, thus, it includes crafts. This scope is similar to Article 2 (1) of the Lisbon Agreement:

the geographical name of country, region or locality, which serves to designate a product originating therein the characteristic qualities of which are due exclusively or essentially to geographical environment, including natural and human factor.

Whereas, the TRIPS definition includes within GI protection, products having specific characteristics because of the natural aspects only and excludes the human factor's influence. The exclusion of man-made crafts in TRIPS is in order to prevent overlapping protection under the copyright and design law, which protect human creations.

Inclusion of the human aspect in the GI definition in Indonesia Trademark Law may exceed the definition of GI in TRIPS. However, Indonesia as a member of TRIPS is allowed to provide broader scopes of protection as long as the GI regulation complies with the TRIPS basic standards. Article 1.1. of TRIPS is relevant here:

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

This paper argues that GIs should be broader in their scope. Therefore, since the GI definition covers an indication for identifying goods with a specific characteristic and quality associated with geographical aspects, produced in a given geographical or cultural area - this means that GIs also cover the *Batik* handcrafts as cultural products with a unique and specific quality. GIs will assure the consumer that *Batik* crafts have unique characteristics and a specific quality as a result of their geographical origin. Thus, GIs are not just an indication of origin but are also references for quality. The quality of product may be affected by geographical environment

²¹ *Ibid.*

such as soil composition, climate, biodiversity, local know-how and other human factors, that make them unique.²² The quality can also be determined by the product's nutritional properties, flavour, appearance or the process and raw materials used to produce it.²³ Moreover, the physical, chemical, organoleptic traits²⁴ or relevant attributes such as colour, texture or fragrance can be determined as a product characteristic associated with its geographical origin.²⁵ In addition, geographical factors such as local breeds, plant varieties, traditional equipment and human factors such as know-how, traditional knowledge, tradition, local culture and philosophy play a key role in forming the quality, characteristics and reputation of the concerned products.²⁶ The quality, characteristics and reputation linked to the geographical factor are important in distinguishing the *Batik* product from equal items produced elsewhere.

4. BENEFITS OF GI PROTECTION FOR *BATIK* AND DEVELOPMENT OF CREATIVE INDUSTRY

Batik crafters need GI protection to distinguish their products from their competitors, because GIs are markers of quality and assurances of reputation. The distinctive signs and reputation, which symbolize the consistency and quality, play a key role in identifying a certain standard of product.²⁷

The quality of *Batik* products can be associated with their places of origin. Natural factors, local culture and the human factor are the main contributors to excellence and the reputation of products. According to Laurence Be´rard and Philippe Marchenay, there is a link between the quality, the origin, and the reputation that derive from their place of origin.²⁸ Numerous *Batik* products with their unique qualities are identified by their places of origin (such as *Batik Solo*, *Batik Yogyakarta*, *Batik Pekalongan*, *Batik Madura*, *Batik Bali*, etc.)

²² Monique Ngo Bagal, Massimo Vittori, *Practical Manual on Geographical Indications for ACP Countries*, (CTA and origin, Agridea: Switzerland, 2011) 12.

²³ *Ibid*

²⁴ *Ibid*

²⁵ David Vivas Eugui, Christoph Spennemann, "The Treatment of Geographical Indications in Recent Regional and Bilateral Free Trade Agreement, in Meir Perez Pugatch (eds), *The Intellectual Property Debate, Perspective from Law, Economic and Political Economy* (Edward Elgar, Cheltenham :UK, 2006) 305

²⁶ *Ibid*

²⁷ Mevhibe Albayrak, Melda Ozdemi, "The Role of Geographical Indication in Brand Making of Turkish Handcrafts", *International Journal of Business and Social Research (IJSBR)*, Volume -2, No.-3, June 2012, 100.

²⁸ Laurence Be´rard and Philippe Marchenay, "Local products and geographical indications: taking account of local knowledge and biodiversity", (2006) 187 *International Social Science*, 110.

Further, since GIs function as indications and guarantees of quality, it enables *Batik* crafters to trade a considerable quantity of products and it becomes a worthwhile marketing tool. GIs help *Batik* crafters to gain market power because if a product is to bear a GI, it must have the special qualities attributable to the good's geographical source.²⁹

Batik crafts with unique characteristics and specific qualities may serve as a basis for the creation of a strong local brand. GIs may be founded on natural, traditional, cultural factors, which make the product unique and distinct. GI status for these products that constitute the local identity³⁰ are a crucial tool in promoting local traditions or cultural products.³¹

GIs will improve the local branding of *Batik* and will become an effective tool in achieving market recognition, gaining a competitive advantage and distinguishing their products from those produced elsewhere. The *Batik* crafters or producers can then earn premiums on their products. Without an ability to distinguish between the products, all products tend to be sold at the same price. Thus, there will be no incentives for producers of high-quality goods to remain in such a market.³² By promoting GIs, *Batik* crafters can also create an image of "exoticness" or scarcity" that enables them to earn additional premiums on their *Batik* products that would otherwise be ascribed regular commodity status. The exoticness comes from unique characteristics that may be attributed to production in a particular geographical area and based on the quality associated with that location.³³ Also, the source of this exoticness may derive from the history and traditions associated with the production processes used in these specific geographical areas from which the products originate.³⁴ The aura of exoticness can be explored by revealing the mystique surrounding, human diligence, heroism, morality and sacrifice³⁵ in producing *Batik* crafts. Most *Batik* crafts are hand-made, prepared over long periods with high quality materials. They are usually not mass produced. It thus results in the scarcity of *Batik* crafts. Thus it will add economic value to the *Batik* crafts and encourage professionalism in producing and improving *Batik* quality. Then, the premium price and added economic value of *Batik* will also attract many crafters to enter the creative industry and potentially

encourage existing *Batik* crafters to develop their small scale enterprises to grow with greater production.

GI protection can also encourage tourism, enhancing rural development and the growth of the creative industry. Since GIs allow the *Batik* producers to create special products whose quality is attributable to its geographical source, numerous tourists will visit the location in order to witness the production process and get original products. Thus, GIs become a promotional advertisement for the country. The increasing tourism will further encourage local development, growth of the creative industry and investments in the *Batik* industry. Since there are various unique *Batik* products in local regions, this will attract investors to these regions and will increase the investment in the *Batik* sector. Such investments may lead to increased employment, local revenue and value add which play an important role in economic growth. They also reduce migration from the rural areas to the city, bridge the income gap between the rural and urban areas and have a positive effect on income distribution at the same time.³⁶

Further, in line with Emilie Vandecandelaere's opinion regarding the benefit of GIs,³⁷ this paper studies the significance of GI protection on the *Batik* industry, such as: (a) increasing local revenues and local employment in creative industry in every stage of the *Batik* production process (production, processing, distribution, marketing and promotion); (b) allowing local people to remain, stay and live in the *Batik* producing areas, thus reducing urbanization; (c) preserving the local wisdom and philosophy (d) maintaining traditional *Batik* processing systems and its intrinsic values; (e) keeping alive local traditions and culture related to *Batik*; (f) providing positive contributions to the traditional plants for *Batik* colouring, biodiversity and soil preservation.

5. CHALLENGES FOR PROTECTING BATIK AS A GI

A. CHALLENGES IN REGISTRATING

Batik as a GI, it is very important to register GIs. Registration is a crucial tool to protect GIs because Article 53 (2) of the Indonesian Trademark Law requires that GIs shall be protected after registration.

However, the registration of GIs requires complicated procedures, which are costly, time consuming and involve a wide range of stakeholders. As a result, the number of GI applications registered at Indonesian Directorate General of Intellectual Property (DGIP) is still

²⁹ Article 22 (1) of TRIPS Agreement.

³⁰Ernes Oliva, et.al, "Agricultural Produce of Istria Used in Regional Branding : Strategic Concept", *Paper*, 22nd Cromar Congress, Marketing Challenges in New Economy, 2011, 3.

³¹ Mevhibe Albayrak and Melda Ozdemi (n 29) 111.

³²Chuthaporn Ngokkuen and Ulrike Grote, "Challenges and Opportunities For Protecting Geographical Indications In Thailand", (2012) 19 *Asia-Pacific Development Journal* 2, 9.

³³ *Ibid*

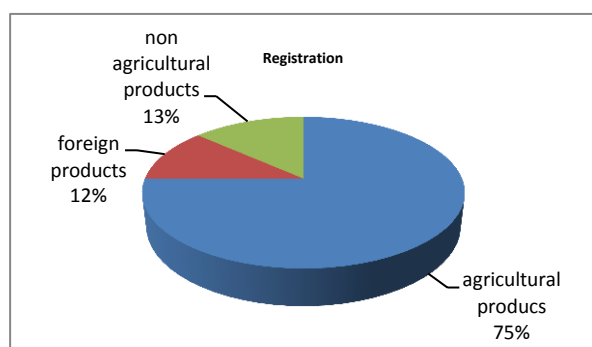
³⁴ *Ibid*

³⁵ *Ibid*, 3.

³⁶ *Ibid*.

³⁷Emilie Vandecandelaere, et.al, "Linking People, Places and Products: a Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications, Food and Agriculture Organization of the United Nations (FAO) and SINER-GI", *Paper*, 2009-2010, 19.

small.³⁸ Based on the GI registration data, the total GI registrations for local products is only 46. Of the 46, 40 were agricultural products, 3 were handicrafts (Jepara wood carving, Gringsing Bali Woven, Mandar Silk Woven Fabric) and 3 processed products (Sumbawa Horse Milk, Sidoarjo Milky Fish and Kulonprogo Palm Sugar). The 6 foreign products such as Parnigiano Reggiano, Champagne, Pisco, Lamphun Brocade Thai Silk, Tequila, and Grana Padano have also been registered in Indonesia. This means that 75% of registrations are dominated by agricultural commodities, 12% by foreign products, and 13 % by non-agricultural products.



Ironically, although Indonesia has a lot of *Batik* crafts with unique characteristics and specific qualities, *Batik* has not yet been registered as a GI. One factor responsible for this is the difficult and complicated procedures involved for registration. Applicants have to (a) register the *Batik* product name and GI name; (b) describe in detail the distinguishing characteristics and qualities of the *Batik* product; (c) specify the originating location of *Batik* production; (d) provide an acknowledgement of the *Batik* product from the community of origin; and (e) describe the geographical environment, the natural and human factors affecting *Batik* quality including the production process and quality testing methods.

A further obstacle to GI registration for *Batik* is the need for the applicant to provide a Book of Requirements.³⁹ Preparing the Book of Requirements is a very difficult process because it must describe the qualities and characteristics of *Batik* that distinguish it from other products in the same category. It is also difficult because in the Book of Requirements the applicant must define the description of the geographical factor affecting the *Batik* characteristic, and provide a description of the method used to examine the *Batik* characteristic or quality. Since Indonesia lacks a database of superior products potentially

³⁸Denise Miranda, 'Indonesia GI Protection', available at <http://www.hg.org/article.asp?id=5041>, accessed on 27 December 2015.

³⁹Article 6(3) of Indonesian GI Government Regulation.

protected under GIs,⁴⁰ it is also difficult to describe the history and tradition of GI utilization, including acknowledgements from society relating to its benefits. Another difficulty is to specify the description of the geographical area or border associated to the *Batik* quality as it may create conflict among local authorities in the border areas.

Moreover, there is a double burden of registration since producers or crafters must also register to use and produce GI products.⁴¹ GI registration does not give an automatic exclusive right for *Batik* producers or crafters to use and produce GI products.

B. CHALLENGES IN MAINTAINING BATIK QUALITY

Maintaining and ensuring *Batik* quality and its characteristics are very important because the objective of GI protection is to preserve and maintain the quality and reputation of the products. Thus, protecting the quality is the most vital factor for GI protection to *Batik* products. The obligation to preserve the quality or characteristic is required in Article 61 (1) of the Indonesian Trademark Law: *a registered Geographical Indication enjoys a legal protection, which persists as far as the reputation, the quality or characteristic on which the protection has been conferred still exist* (Sic).

However, maintaining the quality of GI products makes it difficult to proceed. GIs are the only form of Intellectual Property related to territory, thus, GIs represent a type of collective property. As collective property, a single producer in a geographical area cannot own GIs. Therefore, it will be difficult to internally and externally manage the use of GIs by *Batik* producers, especially to maintain the quality of *Batik* products. Once a GI is successful, new entrants will enter the geographical area to take advantage of the GI's brand equity as long as they are able to adhere to the regulations governing the use of the brand. As a consequence of collective ownership, the GI brand is not restricted to a single producer so that it leads to an increase of *Batik* production in the local area, decreasing the scarcity and exoticness of *Batik* and reducing the premium nature of the *Batik* products. In addition, if everyone in that group has same right, they may produce *Batik* products based on their consumers desire and thereby fail to maintain its quality. If one *Batik* crafter provides sub-standard products, it will affect the

⁴⁰Directorate General of International Trade Cooperation, 'The potential improvement of High Quality Export of agricultural product by the protection of geographical Indication', *Paper* at Workshop of 'With Geographical indication Protection, We enhance the Image and Competitiveness of Indonesian Local Specific Products', 12-13 December 2006, Bali, Indonesia.

⁴¹Article 15 (2) of Indonesian GI Government Regulation.

entire group and will dilute the superiority of *Batik* products.⁴²

C. CHALLENGES IN PROMOTING AND MARKETING

GIs promotion is crucial because it will maintain constant communications with both current and potential consumers, providing information about the specific quality and characteristics of the product in order to increase consumer willingness to purchase it.⁴³ The promotion must explain the meaning of a GI in general, its unique features and traditions associated with the territory.

Furthermore, promoting and marketing of GIs are important to create quality perception and improve the reputation⁴⁴ of these products. Retaining market trust and maintaining ongoing sales are important to maintain the longevity of these superior products. However, it is not easy to develop and maintain the market for GI products. The lack of empowerment of producers and improvements in their capacity to incorporate certain technical or managerial innovations for sustainable development of the marketing system can be identified as the one of the main problems in GI promotion and marketing. Moreover, according to Anson C. J, producers of GIs are not able to utilize the value of GIs and effectively adopt marketing techniques to use GIs as assets.⁴⁵ In addition, GI producers usually cannot control the sustainability of their product supply. As a result, it will affect the price strategy since marketing management is highly dependent on supply and demand. If they produce GI items as per their own expectations, this will generate ineffective marketing strategies.

6. STRATEGIES FOR PROTECTING BATIK USING GIs

Establishing GI status for *Batik* requires the involvement and support of different stakeholders such as local producer's organizations, the government, the private sector (exporters and other local entrepreneurs) and other institutions. Local governments have an important role in guiding public policy on GIs, building up physical infrastructure such as equipment, training, assistance and facilitation of access to financial support (soft loans) and

access to the market. External support from foreign institutions and foreign research institutions is also very important in building up the capacity of the local community by initiating intensive technical training courses in order to enhance their knowledge, technological expertise and market expertise.

The main preparatory steps for obtaining GI status include empowering crafter's organizations, defining unique and specific characteristics of the product, improving the quality of products, marketing good quality products, undertaking a remote sensing study (to provide information on the estimated area of production and distribution of growing areas), preparing the Book of Requirements for registration of producers and establishing GI organizations.⁴⁶ GI organizations can be established based on pre-existing traditional or local crafters organizations as representatives of the local community. Pre-existing local crafters organizations have an important role in managing GI registration, controlling and marketing activities. It also helps to avoid social conflicts. The model can be adopted by encouraging the *Batik* crafters to establish or transform *Batik* crafters organizations into 'the Community of GIs Protection for *Batik*.'

Further, before promoting or protecting *Batik* under a GI scheme, it is important to qualify the specific characteristics and qualities linked to the geographical origin that must be sufficiently specific to differentiate it from those produced elsewhere. The characteristics and qualities are not only because of geographical factors or natural factors like the climate, soil, local flora (plants for colouring), but also traditional equipment (such as "canting" pens), its history and human factors (such as know-how, the philosophical background or local traditions). The philosophy or meaning of every *Batik* pattern will contribute to the uniqueness and exoticness of *Batik*. Indonesian *Batik* is so meaningful since it still has traditional practices, rituals and customs behind it. The value of *Batik* is its intangible heritage, how it is made, widely used for rituals, etc. For instance, *Batik* with "Sido Mukti" pattern (showing boxes in diagonal pattern and inside each box there are 'meru' or house, small 'sawat' or half wing and sometimes butterfly) means prosperity (*sido*) and full of happiness (*mukti*) that is only worn by the bride and groom to signify that the bride and groom who wear this *Batik* will get happiness and prosperity. *Batik* with "Kawung" pattern symbolizes justice, power and the hope that human beings will always remember their origins. Whereas *Batik* with the "Parang" pattern symbolizes power and strength.

⁴²Anson C. J, "Marketing flexibilities in Geographical Indications (GI) and trademark: a Comparative Study", (2012) 1 *International Journal of Marketing, Financial Services & Management Research* 11, 105.

⁴³*Ibid*, 121.

⁴⁴Chengyan Yue, et.al, "How to Promote Quality Perception in Wine Markets: Brand Advertising or Geographic Indication?", *Paper at the 3rd International Wine Business & Marketing Conference, Montpellier, July 6-8, 2006*, 1.

⁴⁵Lena Göransson Norrsjö, "Indications of Geographical Origin as part of the Intellectual Property Law", Thesis, Stockholm Universitet, 2007, 55.

⁴⁶Surip Mawardi, et al, "Developing Geographical Indication Protection in Indonesia: Bali Kintamani Arabica Coffee as a Preliminary Case", Paper presented in Seminar on Geographical Indication: A Land of Opportunities", Hanoi (Vietnam), 15 – 16 November 2005, 3-10.

In order to maintain the qualities and characteristics of *Batik*, controlling and monitoring the quality of *Batik* products will be important. This monitoring system can only be developed by establishing internal and external controls in order to ensure: (a) the fulfilment of the Book of Requirements, (b) origin of the products and (c) its quality, specific characteristics, etc. It is proposed that the national GI Expert Team of the DGIP carries out the external control. While internal control is carried out by the 'Community of GI Protection' and local *Batik* producer's organizations. The internal controls could include three monitoring elements: (a) self or automatic control by each producer to ensure the *Batik* production meets the stipulations of the Book of Requirements; (b) control by *Batik* crafter organizations that is carried out annually and reported to Community of GI Protection; (c) surveys by Community of GI Protection carried out each year to ensure the conformity of *Batik* production with the Book of Requirements.

Therefore, *Batik* quality controlling problems can be solved by revitalizing the external control mechanism and by empowering internal control mechanisms of the association of *Batik* crafters or producers and Community of GI Protection. They have an important role in quality control, especially to: (a) define the guarantee system and control plan, by identifying the control points and sanctions related to each requirement, (b) organize the internal control of the GI value chain or when applicable, to be part of a participatory guarantee system, (c) contribute to the controls and keep records of them (traceability system).

For establishing more effective quality control, it is also important to regulate GI use. The regulation will prevent the misuse of the GI sign, which is important to: (a) identify the product and define its production and processing practices; (b) avoid unfair production and commercial practices, preventing abuse or damage to the GI's reputation by products with different and/or lower quality characteristics while bearing the quality sign; (c) guarantee the quality of the product and its geographical origin, fostering consumer confidence; (d) guide the behaviour of local producers and support coordination to create, preserve and improve the GI product's reputation and brand value.⁴⁷

In order to develop marketing processes for *Batik*, *Batik* producers or crafters, crafter organizations and the Community of GI Protection must be given the requisite training to improve their marketing skills and access to the market. This is important to develop knowledge of the market, its demands and the competition. It also helps to educate them about the risk of business failure and increasing their ability to generating income and profit

from the GI product.⁴⁸ The qualitative aspects, territorial, social and cultural issues and related economic sectors (such as tourism, trade exhibition/promotion) can be considered to market GIs. In addition, it is necessary to develop an integrated market by collective (organization of *Batik* crafters) and individual participants (its each member) based on the right balance to ensure coherence to agreed standards. If membership is small with limited production capacity, *Batik* crafters or producer's organizations may enhance the participation of all stakeholders in its marketing activities. Where the members are well organized and have clearly defined their marketing strategies, the *Batik* crafter's organization should not be too involved and may intervene on specific occasions where the need arises.

7. CONCLUSION

The reputation and quality of *Batik* products should be protected under a GI mechanism since the GI status signals to consumers that *Batik* products have specific qualities and unique characteristics. The challenges in this process will be maintaining the qualities or characteristics, promotion and marketing of *Batik* based products. However, the greater benefits of GI protection for the development of creative industries should be emphasized over the associated challenges. Such challenges can be solved by involving local governments and empowering *Batik* crafter's organizations to register and maintain *Batik* qualities and characteristics by developing internal and external control mechanisms and effective promotion of *Batik* products.

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⁴⁷ *Ibid*, 33.

⁴⁸ *Ibid*, 55.

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