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## SOCIO-LEGAL REVIEW ON THE LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS IN INDONESIA

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### ABSTRACT

This research discusses aspects of protecting the Potential of Geographical Indications as part of communal intellectual property rights and its influence on the economic and socio-cultural aspects of local communities and/or the origin communities of the products. It employs an interdisciplinary socio-legal approach that combines legal study and analysis with social perspectives. The research also emphasizes statutes approach and conceptual approach. The problems raised in this research include two main issues: How is the protection of the potential of Geographical Indications based on the review of Indonesia's positive law?; What is the influence of the protection of the potential of Geographical Indications from a socio-legal perspective on the dynamics of local community life? From a qualitative descriptive analysis, it shows that the legal protection aspects of the Potential of Geographical Indications can bridge the complexities of registering Geographical Indications, which often hinder legal protection. The urgency of legal protection is based on preventive efforts to prevent various violations of exclusive rights to the Potential of Geographical Indications and/or Geographical Indications. The influence of protecting the potential of Geographical Indications to become Geographical Indications from a socio-legal perspective indicates its implications for economic aspects such as increasing the market value of products and the economy of local communities, as well as for socio-cultural aspects as a manifestation of respect for communal rights and a representation of local cultural identity.

**Keywords:** *Potential of Geographical Indications, Law, Socio-legal.*

### 1. Introduction

Indonesia is an archipelagic country consisting of more than 17,508 islands, with a wealth of agricultural resources and unique characteristics in every corner of its territory. These uniquenesses lead each region to have its own distinct features that can enhance the economic value of the products in those areas and also increase the potential of the regions.<sup>2</sup> The unique

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<sup>2</sup> Rezky Vrizaputra Novrianto, "Urgensi Pelindungan Indikasi Geografis Mangga Gedong Gincu Indramayu Untuk Meningkatkan Kesejahteraan Masyarakat Lokal Berdasarkan Undang-undang No. 20 Tahun 2016 tentang Merek dan Indikasi Geografis", *Skripsi FH Unpad*, 2023.

potential of these areas is part of the intellectual wealth that is also an aspect of legal protection in Indonesia. Intellectual property rights (IPR) in the midst of the current wave of globalization are a fundamental pillar of a country's economic development.<sup>3</sup> Therefore, the existence of unique local products needs to be protected legally to ensure legal certainty, maintain their existence, and enhance their development as superior products of each region.

In Indonesian positive law, regional products that possess distinctive advantages and uniqueness are essentially protected under intellectual property law within the Geographical Indications regime as stipulated in Law Number 20 of 2016 concerning Marks and Geographical Indications. This law protects Geographical Indications which include any products and/or goods that have qualities, characteristics, and reputations influenced by natural factors, human factors, or a combination of both. Additionally, the framework of Indonesian positive law also recognizes and protects the potential of Geographical Indications, which are products and/or goods that meet the qualifications to be protected under the Geographical Indications regime but have not yet been registered as Geographical Indications, as regulated in Government Regulation Number 56 of 2022 concerning Communal Intellectual Property.

The presence of protection for Geographical Indication Potential is partly driven by the complexity of the registration processes and procedures for Geographical Indications. It is this complexity in the content of the Geographical Indication requirement book that is believed to result in thousands of potential Geographical Indication products from all corners of the country not being reflected at all in the registered Geographical Indication performance numbers.<sup>4</sup> Thus, the protection of Geographical Indication Potential can serve as a consideration for local communities and/or regional

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<sup>3</sup> Asma Karim dan Dayanto, "Perlindungan Hukum dan Pengembangan Potensi Indikasi Geografis Minyak Kayu Putih Pulau Buru", *Jurnal Rechtsvinding*, Vol. 5 No. 3, 2016, 382.

<sup>4</sup> Ahmad M. Ramli (*et. al*), *Kekayaan Intelektual: Pengantar Indikasi Geografis*, (Bandung: Institute Pandya Astagina bekerjasama dengan Penerbit PT Alumni, 2018), 145.

governments to strive for legal protection of various superior products in their regions. The existence of Geographical Indication Potential Certificates and/or Geographical Indication Certificates can serve as a guarantee of quality and reputation, adding value and appeal to consumers regarding these products. This, of course, will lead to a positive trend that enhances the quality of global business competition. The positive role of the product name on other characteristics, which can directly increase the economic benefits of trading these products, must be present.<sup>5</sup>

Comprehensive legal protection for Geographical Indication products is a preventive step to prevent various legal violations such as misleading product names, misappropriation, misuse, or even exploitation by foreign parties, as seen in the case of Toarco Toraja coffee, which was registered as a trademark by a Japanese company, Key Coffee INC, in 1976, long before Toarco Toraja coffee was protected as a Geographical Indication product. This inevitably has negative impacts on local communities or the originating communities of the product, which cannot fully manage the product. Therefore, efforts for legal protection are important to attract the attention of both local communities and regional governments, as they have implications for various sectors in people's lives, such as law and the economy.

Based on the explanation above, the author is interested in further discussing the following: (1). How is the protection of Geographic Indication Potential viewed from the perspective of positive law in Indonesia? (2). What is the impact of the protection of Geographic Indication Potential in a socio-legal review on the dynamics of local community life?

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<sup>5</sup> Balqis Siagian, "Pelindungan Hukum Atas Potensi Indikasi Geografis Di Kabupaten Tapanuli Utara", *Juris Studia: Jurnal Kajian Hukum*, Vol. 2 No. 3, 2021, 656.

## **2. Reseach Method**

The type of research is sociological legal research, which conceptualizes law as a social institution that is realistically linked to other social variables that influence and have consequences on various aspects of social life (socio-legal research)<sup>6</sup>, the aim is to integrate all aspects of perspectives from social science and legal science into a single approach.<sup>7</sup> This research also employs a legislative approach by delving deeper into regulations related to legal protection for Geographic Indications, as well as a conceptual approach. The analytical method used is qualitative descriptive, which involves elaborating data and legal sources obtained in the form of systematic narrative patterns. The data used in this writing is obtained through library research, both by reviewing existing positive legal materials in Indonesia and studying various literature related to theories and discussions regarding Geographic Indications and Intellectual Property Rights. This research aims to explore the study of aspects of protecting Geographic Indications and its influence on the dynamics of community life within a socio-legal framework.

## **3. Results and Discussion**

### **3.1. Legal Protection of Geographical Indications Potential in Indonesia**

The importance of legal protection for intellectual property, especially Geographical Indications, is based on the obligation of each country to provide a minimum standard protection principle or a standard that must be equivalent to the quality of legal protection regulated in the TRIPs regarding the protection of Geographical Indications, as stipulated in the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement, which Indonesia has ratified through Law No. 7 of 1994 concerning the Ratification of the Agreement on the World Trade

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<sup>6</sup> Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2013). 133.

<sup>7</sup> Herlambang P. Wiratraman, *Penelitian Socio-Legal dan Konsekuensi Metodologisnya*, *Center of Human Right Law Studies (HRLS), Fakultas Hukum Universitas Airlangga*, 2008,. 2.

Organization, which includes TRIPs in its annex. In Article 22, paragraph (2) of the TRIPs Agreement regarding the general implementation basis for the protection of Geographical Indications, it states that "...in respect of Geographical Indications, members shall provide the legal means for interested parties..." This means that in order to provide protection for Geographical Indications, all member countries (of the TRIPs Agreement) must provide legal means or forms of legal recourse for interested parties. Member countries of the TRIPs Agreement, including Indonesia, are given the flexibility to modify the basic regulations regarding geographical indications in national legal provisions based on the interests of the member countries.<sup>8</sup>

Indonesia, as a country that is part of the TRIPs Agreement, has also implemented legal means of protecting Geographical Indications through various positive legal provisions. This is done by enforcing the TRIPs Agreement ratified by the enactment of Law Number 7 of 1994, Law Number 20 of 2016 concerning Trademarks and Geographical Indications, along with several implementing regulations such as the Regulation of the Minister of Law and Human Rights Number 10 of 2022 concerning Amendments to the Regulation of the Minister of Law and Human Rights Number 12 of 2019 on Geographical Indications, Government Regulation Number 90 of 2019 on Procedures for Application, Examination, and Resolution of Appeals at the Trademark Appeal Commission, and Government Regulation Number 56 of 2022 on Communal Intellectual Property, which also highlights the potential of Geographical Indications before moving into the realm of Geographical Indications.

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<sup>8</sup> Purnama Hadi Kusuma dan Kholis Roisah, "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal", Jurnal Pembangunan Hukum Indonesia, Vol. 4 No. 1, 2022, 114.

The provisions of Article 1 number (6) of Government Regulation Number 56 of 2022 provide a definition that "Geographical Indication Potential is a good and/or product that, due to geographical environmental factors including natural factors, human factors, or a combination of both, gives a certain reputation to the good and/or product produced, which has the potential to be protected as a geographical indication and has not yet been registered as a geographical indication." Geographical Indication Potential is included in the form of Communal Intellectual Property (Kekayaan Intelektual Komunal), which is owned by the state and has characteristics of communal ownership, along with economic value in addition to moral, social, and cultural values. The Geographical Indication Potential, as stated in Article 11 of Government Regulation Number 56 of 2022, includes goods and/or products in the form of natural resource products, handicrafts, and/or industrial products. An example of Geographical Indication Potential is Arabica Coffee Sapuangin from Klaten, Central Java, which has obtained a Geographical Indication Potential Certificate and is continuously encouraged in its management and efforts for its registration as a Geographical Indication.

The potential for Geographic Indications is closely related to Geographic Indications themselves. According to the provisions of Article 1 number (6) of the Trademark and Geographic Indications Law, a Geographic Indication is a sign that indicates the origin of a good and/or product that, due to geographic environmental factors, including natural factors, human factors, or a combination of both, gives a certain reputation, quality, and characteristics to the goods and/or products produced. This is because both have the same scope, which is to protect products and/or goods that have a reputation influenced by geographic environmental factors, whether due to natural factors, human factors, or a combination of both. The potential for Geographic Indications serves as a

bridge for local products characteristic of certain areas that meet these qualifications but have not yet been legally registered as Geographic Indications. The difference in the protection of potential Geographic Indication products, as mentioned in Article 5 paragraph (2) of Government Regulation Number 56 of 2022, is limited to the granting of inclusive moral rights held and/or borne by the Community where the products are located or produced. This inclusivity of the moral rights means that in terms of caring for, maintaining, preserving, developing, and utilizing the potential Geographic Indications, it can reflect parties that have a commitment in this regard. Meanwhile, to obtain legal protection in an exclusive manner, products with potential Geographic Indications must submit an application for registration as Geographic Indications in accordance with the provisions of Law Number 20 of 2016 on Trademarks and Geographic Indications in conjunction with the Regulation of the Minister of Law and Human Rights Number 10 of 2022 concerning Amendments to the Regulation of the Minister of Law and Human Rights Number 12 of 2019 regarding Geographic Indications.

The registration of Geographic Indications adheres to the constitutive principle as explained in the Explanation of Article 64 of the Trademark and Geographic Indications Law, where a product can be legally protected after a registration application is submitted to the Minister. The constitutive registration system is one where exclusive rights are granted to the first applicant (first to file principle), and subsequent applicants will not receive legal protection.<sup>9</sup> The importance of registration as an effort to protect Geographic Indications, which are part of the intellectual property regime, aligns with the risk theory proposed by Robert M. Sherwood, as cited by Ranti Fauza Mayana. This theory

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<sup>9</sup> Sri Lestari Rahayu, "Optimalisasi Perlindungan Hukum Hak Indikasi Geografis Produk Masyarakat Adat Sebagai Upaya Meningkatkan Kesejahteraan Masyarakat", *Jurnal Hukum dan Pembangunan Ekonomi*, Vol. 11 No. 2, 2023, 323.

explains that intellectual property is a result of creativity that carries risks, meaning that intellectual property resulting from research also contains risks that may allow others to discover that method first. Therefore, it is reasonable to provide legal protection for efforts that involve such risks.<sup>10</sup> According to Article 53 paragraph (3) of the Trademark and Geographic Indications Law, the protection of Geographic Indications is carried out by applying for the registration of Geographic Indications by:

3.1.1. Institutions representing the community in certain geographic areas that produce goods and/or products such as:

- a. Natural resources;
- b. Handicrafts; or
- c. Industrial products.

3.1.2. Regional governments, whether provincial or municipal.

Regarding the administrative provisions for the registration of Geographical Indications, these are further regulated in the Minister of Law and Human Rights Regulation No. 10 of 2022 concerning the Amendment to the Minister of Law and Human Rights Regulation No. 12 of 2019 on Geographical Indications. This includes application requirements (Article 3), procedures for applications that can be done both electronically and non-electronically (Articles 4 to 11), and substantive examination (Articles 12 to 17). Regulation No. 10 of 2022 also provides a legal framework for the registration of Geographical Indications from abroad, which is further regulated in Chapter III.

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<sup>10</sup> Robert M. Sherwood as cited at Ranti Fauza Mayana, *Perlindungan Desain Industri di Indonesia dalam Era Perdagangan Bebas*, (Jakarta: Grasindo, 2004). 89-93.



Meanwhile, efforts to register Geographical Indication Potential into the list of Communal Intellectual Property (Kekayaan Intelektual Komunal) based on Article 14 of Government Regulation Number 56 of 2022 can be submitted either electronically or non-electronically by:

- 3.1.1. The Origin Community to the Minister, ministers/head of non-ministerial government agencies, or Local Government; or
- 3.1.2. The Local Government to the Minister or ministers/head of non-ministerial government agencies.

To be registered as part of Communal Intellectual Property, Geographical Indication Potential must meet the administrative requirements as stated in Article 20 of Government Regulation Number 56 of 2022. Following this, the verification of the application documents will be conducted (Articles 22 to 25), leading to the data integration process for Communal Intellectual Property (Article 27). The Geographical Indication Potential that has been registered as Communal Intellectual Property will be protected and maintained as part of Communal Intellectual Property by the minister, ministers/head of non-ministerial government agencies, and/or local government. The Origin Community can also take action to prevent the exploitation of Communal Intellectual Property that does not align with the values, meanings, identity of the Communal Intellectual Property, and/or the social norms existing within the Origin Community (Article 28). Provisions in Article 35 of Government Regulation Number 56 of 2022 also state that the state will continue to protect Communal Intellectual Property that has not been registered or Communal Intellectual Property that has not been recorded in accordance with the prevailing laws and regulations.<sup>11</sup>

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<sup>11</sup> Pasal 35 Peraturan Pemerintah Nomor 56 Tahun 2022 tentang Kekayaan Intelektual Komunal.

The effect of the registration system is the protection of Geographical Indications for products Geographical Indications Potential products is more assured in terms of legal certainty, because registered and approved potential geographical indication products affirm that these products are an identity of a region, and other parties must respect it.<sup>12</sup> The existence of Geographical Indication protection, as part of the implementation of the principle of legal certainty, is also aimed at ensuring that only the local community or the originating community of the development of Geographical Indications has the exclusive rights to manage and utilize those Geographical Indications.

Efforts to protect the potential of Geographical Indications are fundamentally preventive actions to prevent various legal violations, such as misleading and imitating names and origins of products, misappropriation, misuse, and exploitation by irresponsible foreign parties, as exemplified in the case of Toarco Toraja Coffee, which is essentially a natural resource product typical of South Sulawesi Province that was registered as a trademark by Key Coffee INC from Japan long before Toarco Toraja Coffee was registered and protected as Indonesia's Geographical Indication. In addition, the protection of the potential of Geographical Indications and/or Geographical Indications can also have a positive impact on improving the economic status of the local community that manages these products. This is because Geographical Indications are an industrial property rights regime that is most likely to protect traditional intellectual property, provided that such traditional knowledge originates clearly and optimally develops in its place of origin.<sup>13</sup>

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<sup>12</sup> Fitri Hidayat, "Penerapan Perlindungan Hukum Terhadap Produk Potensi Indikasi Geografis di Indonesia", *Risalah HUKUM Fakultas Hukum Unmul*, Vo. 10 No. 1, 2014, hlm. 76.

<sup>13</sup> Ahmad M. Ramli (*et. al*), *Op. Cit*, 32.

### **3.2. The Influence of the Protection of Geographical Indication Potential on the Dynamics of Local Community Life from a Socio-Legal Perspective**

In a socio-legal perspective, the protection of intellectual property (IP) such as Potential Geographical Indications and/or Geographical Indications essentially has implications for several sectors in people's lives. IP is divided into two types, namely copyright and industrial property. Furthermore, IP functions not only as an incentive for its owners but also as a market monopoly tool and a means to build "entry barriers" for competitors<sup>14</sup>, as products protected by IP will have a competitive advantage over ordinary products.<sup>15</sup> Thus, the influence of IP protection, including Potential Geographical Indications and/or Geographical Indications, becomes a form of implementation of the principles of legal certainty and justice that ensure the fulfillment of both moral and economic rights of local communities and/or communities managing the IP in question.

The protection of Geographical Indications (GIs) through the issuance of protection certificates by the minister not only provides legal protection but also serves as a guarantee of quality, characteristics, and uniqueness of the products by the government. This not only enhances the reputation of the products and their regions of origin but also increases the attractiveness and purchasing power of consumers, which can have a positive impact on the economic value of these products. This aligns with the economic growth stimulus theory put forth by Robert M. Sherwood. This theory recognizes that protection of industrial property rights is a tool for economic development, and what is meant by economic development is the overall goal of establishing an effective

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<sup>14</sup> Helianti Hilman, *Optimalisasi Pemanfaatan Sistem KI dalam Menyusun Strategi Usaha Menghadapi Kompetisi Global*, (Kantor Manajemen KI Institut Teknologi Bandung). 3.

<sup>15</sup> Sudjana, *Hak Desain Tata Letak Sirkuit Terpadu*, (Banfung: CV Keni Media, 2017). 77.

system of protection for industrial property rights.<sup>16</sup> Based on this theory, it can be concluded that in the context of legal protection, the potential of Geographical Indications becoming official GIs can stimulate the improvement of the economic condition of local communities or the originating community.

The protection of Geographic Indications (GI) has the potential to improve the welfare of local communities and/or local communities involved. Increasing consumer purchasing power for certified GI products contributes to better economic conditions for the local community and/or the community of origin, and encourages the development and economic growth of the region. Therefore, legal protection efforts require cooperation from various relevant stakeholders, especially from the government. This aligns with the aims of the Indonesian state as stated in the fourth paragraph of the preamble UUD 1945, which states that "The Government of the Republic of Indonesia protects all Indonesian people, advances the general welfare, and educates the life of the nation." The utilization of Geographic Indications as a means to promote general welfare is in line with the provisions of Article 33 paragraph (3) UUD 1945, which emphasizes that "The earth and water and the natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people."

Communal intellectual property, which consists of traditional knowledge, traditional cultural expressions, genetic resources, and the potential of geographical indications, is a right of traditional communities where this communal intellectual property grows and develops as part of their identity.<sup>17</sup> Within the framework of Communal Intellectual Property Rights, the state holds copyright over the cultural and historical heritage

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<sup>16</sup> Naskah Akademik Rancangan Undang-undang tentang Hak Kekayaan Industri, <[https://bphn.go.id/data/documents/naskah\\_akademik\\_ruu\\_tentang\\_hak\\_kekayaan\\_industri.pdf](https://bphn.go.id/data/documents/naskah_akademik_ruu_tentang_hak_kekayaan_industri.pdf)>

<sup>17</sup> Yulia Nizwana, "Kekayaan Intelektual Komunal dalam Perspektif Hak Milik", *Judakum: Jurnal Dedikasi Hukum*, Vol. 1 No. 2, 2022, hlm 84.

that is owned collectively by the nation and the indigenous or local communities from which the heritage originates.<sup>18</sup> The protection of the potential of geographical indications and/or geographical indications also impacts the social aspects of local communities and/or their originating communities, which can be studied using a rights-based approach to social and cultural rights as stipulated in the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Externally, the protection of the Intellectual Property Rights of Geographical Indications, built on a cultural rights-based approach, will secure the basic rights of these communities to enjoy their culture and derive maximum benefits from their intellectual endeavors.<sup>19</sup> This aligns with the provisions of Article 18B, which recognizes the rights of traditional communities, as emphasized by the statement that "The state recognizes and respects the unity of customary law communities and their traditional rights as long as they exist and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law."

In a social perspective, a socio-cultural approach to the protection of Geographic Indication Potentials and/or Geographic Indications not only serves as a form of respect for the traditional rights of local communities and/or origin communities that bear these products, but also facilitates the verification and clarification processes to help identify the interests of parties that should be considered most important or primary as the holders of legal protection rights over them. The socio-cultural approach also influences the administrative procedures related to the registration of Geographic Indication Potentials and Geographic Indication registrations by ensuring a balance of rights among

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<sup>18</sup> Yunita Maya Putri (*et. al*), "Perlindungan Bagi Hak Kekayaan Intelektual Komunal", *Jurnal Hukum De'rechtsstaat*, Vol. 7 No. 2, 2021, 174.

<sup>19</sup> Pasal 15 International Covenant on Economic, Social and Cultural Rights sebagaimana dikutip dalam Ahmad M. Ramli (*at al*), *Op. Cit.* 37.

stakeholders involved with the products. In addition to all this, the use of a rights-based cultural approach certainly enhances the effectiveness of the implementation of Geographic Indications that have been regulated in international intellectual property law instruments at the national level in Indonesia.<sup>20</sup>

Geographical Indications can also serve as a cultural identity for local communities and/or the origin communities of the Geographical Indications products, which can further contribute to the promotion of product diversity from a certain region.<sup>21</sup> This is exemplified by the Geographical Indication of Jepara Carved Furniture, which has received the Geographical Indication Certificate ID G 000000003 since September 6, 2018. Jepara Carved Furniture has a long history, where the skills, talents, and craftsmanship of Jepara carvers are not only acquired through learning processes but also inherited through a tradition of passing down carving expertise from the ancestors of the Jepara community, starting from the reign of Queen Shima in the 7th century, Queen Kalinyamat in the 16th century, and notably flourishing during the era of RA Kartini, experiencing a dynamic blending of art styles up to the present day.<sup>22</sup> Therefore, Jepara Carved Furniture has shown its original identity, closely tied to its lengthy historical values, and has become a symbol of the Jepara region, well-regarded for its reputation.

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<sup>20</sup> Ahmad M. Ramli (*et. al*), *Op. Cit.* 41.

<sup>21</sup> Monarisya Rialin (*et. al*), “Pelaksanaan Indikasi Geografis oleh Masyarakat Perlindungan Indikasi Geografis (Mpig) Pasca Sertifikasi di Kepulauan Meranti dan Solok”, *Unes Law Review*, Vol. 6 No. 1, 2023, 694.

<sup>22</sup> Sutarya dan Fivin Bagus Septiya Pambudi, “Indikasi Geografis sebagai Perlindungan Mebel Ukir Jepara”, *Imajinasi: Jurnal Seni*, Vol. XV No. 2, 2021, 34.

#### **4. Conclusion**

Protection of Potential Geographical Indications is one of the efforts to guarantee legal certainty and the rights of local communities and/or the origin communities of products that qualify as Geographical Indications, but have not yet been registered as Geographical Indications. Legal protection within the framework of Geographical Indications is not only aimed at improving the quality and reputation of the related products, but also as a preventive measure against various forms of violations of these products, such as misleading product names, misappropriation, misuse, or even exploitation by foreign parties. However, because the protection of Geographical Indications is constitutive in nature, registration with the minister is required to obtain exclusive legal protection. Protection of Potential Geographical Indications and/or Geographical Indications in an economic context can serve as a guarantee of quality, characteristics, and uniqueness of a product that can enhance its reputation and added value, influencing consumer attraction and purchasing power, which will in turn impact the economic improvement of local communities and/or the origin communities of the producers. Additionally, from a socio-cultural perspective, legal protection is a form of respect for communal rights and the development of distinctive products that meet the qualifications as Geographical Indications, serving as cultural identity that enhances the reputation and uniqueness of a region. Therefore, the legal protection efforts for Potential Geographical Indications until they become Geographical Indications need to be a shared concern to continuously improve performance and legal awareness.

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