

Protection of the Economic Rights of Geographical Indication Holders in the Indonesian Trademark and Geographical Indication Law

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Abstract

The research aimed at describing the legal protection concept geographical indication in supporting the economic right of geographical indication holders, the contribution of geographical indication in improving the prosperity of geographical indication holders, and the legal protection of the economic rights of geographical indication about the use of a sign that is similar to a registered geographical indication. This research encompasses the normative legal analysis and empirical research methods. The first problem statement used the normative legal research method, which analyses how the legal protection concept of geographical indication supports the economic rights of geographical indication holders. The empirical research method was used for the second problem statement, which analyses how registered geographical indication contributed to improving the prosperity of geographical indication holders and was also used for the third problem, which analyses the legal protection of the economic rights of geographical indication holders about the use of a sign that is similar a registered geographical indication. The research results indicate the following: (1) the legal protection concept of geographical indication that is integrated into the law of trademark and geographical indication has not supported the economic rights of geographical indication holders, either from the substance aspect or with regards to the stipulated legal sanction; (2) the economic rights of geographical indication holder relation to production monopoly right, sign use, and product marketing has not contributed to the improvement of their prosperity; (3) the legal protection of the economic rights of geographical indication holders about the use of a sign that is similar to a registered geographical indication is still weak, both in the private and public legal enforcement aspects.

Keywords: Economic rights, geographical indication, Indonesia, legal protection.

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A. INTRODUCTION

Indonesia is a country that is rich in knowledge, tradition and culture, and it has a tropical climate that supports the production of various kinds of goods that have considerable economic potential. People know or name an item or area of origin in everyday life. A geographical indication is a sign that has long existed and can indirectly indicate the specificity of an article produced from a particular site. The intended character is then used to indicate the origin of the article, which may be in the form of agricultural products, food, stuff, handicrafts, and other goods, including raw materials and processed products derived from agricultural and mining products [1].

In Indonesia, legal protection based on geographical indication has been given 40 local and six foreign products through a registration system and issuance of certificates of geographical indications by the Minister (ex-Directorate General of IPR). Regarding Arabica coffee, 16 certificates have been issued, 2 out of about 300 types in Indonesia: e.g., Kalosi Enrekang Arabica Coffee with geographical indication certificate number ID G 000 000 018 and Toraja Arabica Coffee with geographical indication certificate number ID G 000 000 025 and. "The quality and reputation of Arabica coffee have been known shavee the 17th century... and it is recognised that one of the best coffees in the world is from South Sulawesi which is

¹Explanation of Government Regulation of the Republic of Indonesia Number 51 Year 2007 concerning

Geographical Indications, Supplement to the State Gazette of the Republic of Indonesia Number 4763, p.1

cultivated in the highland area of Enrekang. . . [2]" and, Toraja. South Sulawesi Province is one of the centres for developing Arabica coffee in Indonesia, with an Arabica coffee plantation area of 12.5 per cent of the total Arabica coffee plantation area set in other regions of Indonesia, including Lampung, North Sumatra, West, South [3] and Aceh. However, in trade practice, the sign of geographical indication can be registered as a trademark: e.g. the Toarco-Toraja Brand owned by Key Coffee, Inc. Japan Corporation, and Sulatco-Kalosi-Toraja Coffee Brand image of Toraja's house owned by IFES Inc. California Corporation United States [4]. Based on the above explanation, the problems to be discussed in this paper are: (1) Does the concept of legal protection for geographical indications support the economic rights of holders of geographical indications? (2) What is the contribution of geographical indication in improving the welfare of geographical indication holders? (3) Is the legal protection of the economic rights of geographical indication holders about the use of signs that have similarities with registered geographical indications adequate?

The following research approaches were used: statute, comparative, historical, and conceptual. The purposes of this study are to understand the legal protection concept of geographical indication from the perspective of Indonesia's intellectual property law to support the economic rights of geographical indication holders, to understand the financial contribution of registered geographical indications in improving the welfare of geographical indication holders, and to understand the legal protection of the economic rights of geographical indication holders relation to the use of signs that have similarities with registered geographical indications.

This research encompasses the normative legal analysis [5] and empirical research methods. The first problem statement used the normative legal research method, which analyses how the legal protection concept of geographical indication supports the economic rights of geographical indication holders. The empirical research method was used for the second problem statement, which analyses how registered geographical indication contributed to improving the prosperity of geographical indication holders and was also used for the third problem, which analyses the legal protection of the economic rights of geographical

indication holders about the use of a sign that is similar a registered geographical indication.

B. THEORETICAL FRAMEWORK

According to Locke [6], If someone works productively with great efforts and sacrifices, they will have more products than others who are less productive. However, in doing so, a person is not permitted by his rights to harm the human rights of others or impede their access to society [7]. Thus, each individual has natural rights for every effort. Property ownership is a natural right, thus preceding political and legal institutions, which are justified as long as they protect and do not threaten this natural right. Happiness and stability are always in line with property protection [8]. According to Hegel, ownership is the freedom of a person to show his personality not only because of his wealth but also because of his intellectual creations. Intellectual creation is the embodiment of character and is an abstract right, which is why human beings exist [9].

According to Hughes, labour or property theory is a solid basis for recognising the existence of Intellectual Property Rights (IPR); 9which are meant for intangible objects derived from human intellectual abilities in science and technology through creativity, taste, intention and work [10]. Property in intellectual creation arises from the way individuals shape their thinking; it is influenced by the material environment

⁶ Fisher, W. *Theories of Intellectual Property*, in Munzer, S. (Ed.). *New Essays in the Legal and Political Theory of Property*, Cambridge University Press, Cambridge, 2001, p.170-172 quoted by Basuki Antariksa in Scientific Work, *Landasan Filosofis Dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual Relevansinya Bagi Kepentingan Pembangunan di Indonesia*, 2013. p.6 <http://www.kemenpar.go.id/asp/> (Online) accessed on July 9, 2015

⁷ *Ibid.* p. 17

⁸ Ian Ward, 1998. *An Introduction to Critical Legal Theory*. London: Cavendish Publishing Limited, 1998, translated by Narulita Yusron and M. Khozim, 2014, Pengantar Teori Hukum Kritis, Nusa Media, Bandung, p. 187

⁹ Property is, among other things, the means by which an individual could objectively express a personal, singular will. In property, a person exists for the first time as reason. J.W. Harris, *Property and Justice*, Oxford University Press, London, 2001, p. 32-38, quoted by Rahmi Jened, *Op.Cit.*, p. 26-27, compare it with Justin Hughes' explanation which states that Hegel's concept of IPR emphasises the freedom of each individual to express his ideas into something real as property rights, so that thoughts, wills, talents, etc. are owned by a free mind, *Op.,Cit.*, p.33

¹⁰ Rachmadi Usman, *Hukum Hak Atas Kekayaan Intelektual*, Alumni, Bandung, 2003, p. 2

² Ahmad M. Ramli, Director General of Intellectual Property Rights Ministry of Law and Human Rights, Harian Fajar, February 20, 2013.

³ Siswoputranto, D.W. *Kopi Internasional dan Indonesia*, Kanisius, Jakarta, 1993.

⁴ MPIG-Kopi Arabika Toraja. *Buku Persyaratan Indikasi Geografis Sertifikat Indikasi Geografis Kopi Arabika Toraja*, Makale, 2013, p. 6

⁵ Kadarudin, *Penelitian Di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Formaci, Semarang, 2021, p. 223

and can be transferred through the transfer of material or academic transition as an abstract right to create new ideas.

Abstract right is not from a natural human entity but from the free will. Naturally, it is an abstract conception of wealth and an expression of intention as part of the personality, it creates requirements for further action [11]. However, natural rights; are obtained from the fundamental nature of tangible wealth. It should be noted that both tangible and intangible wealth does not directly provide the conception of IPR. This means that by referring to Locke's labour theory, the general concept and justification of IPR has been dominated by tangible (physical property) wealth as human efforts to utilise natural goods to fulfil their needs; unlike Hegel's concept, considers IPR to be associated with personality or personality theory [12]; and will exist if human intellectual ability forms something that can be seen, heard, read, and has economic value.

In the Black's Law Dictionary, right is a claim that someone can legally enforce against another party, which means that the other party may or may not act (according to the applicable law).

Rights that give perfect enjoyment to the owner are called ownership rights, and in various laws, they are known as property rights [13]. Intellectual Property Rights in the civil law system are classified as material rights, i.e. it is recognized in a civilized society that the creator may master each creation of intellectual ability for the purpose that benefits him. Creation as a property based on the postulate of property rights in the broadest sense includes the property of intangibles [14].

Intellectual property rights are very abstract compared to the ownership rights of objects that are seen, but these rights are close to the rights of things and are absolute. There is an analogy that; after an intangible thing comes out of the human mind, it transforms into a creation; in the form of art, literature and science knowledge or the form of opinions. It can be exploited and reproduced, just like tangible objects (*lichamelijzaak*) can be a source of profit for money. This is what justifies the addition of IPR into property law [15].

Intellectual property in the law of objects; includes the rights specified in Article 499 of the Civil Code (KUH Perdata), which defines material as every item and every right that property rights can control. According to Mahadi, property rights include goods and rights. Goods are material objects, while rights are immaterial objects [16]. Intellectual property rights have the rights stipulated in Article 499 of the Civil Code [17]. Furthermore, Article 503 of the Civil Code stipulates that "Materials are intangible and non-tangible forms. "In this regard, goods are tangible or material objects that have form, because they can be seen and touched (tangible good), e.g., house, land, etc". However, objects that are not tangible or immaterial have no form because they cannot be seen and touched (intangible good), e.g., securities and IPR.

C. Legal Protection Concept of Geographical Indications in National Law

The legal protection of geographical indications in national law is integrated into the Law of the Republic of Indonesia Number 20 Year 2016 concerning Trademarks and Geographical Indications (Trademark and Geographical Indication Law). The protection offered by the law is substantially indicated in Chapter VIII to Chapter XI of Article 53 up to Article 71. It replaces the legal provisions of geographical indications stipulated in Article 56 to Article 59 of the Trademark Law, which was revoked and declared invalid on November 25, 2016. The substitution substantially changed some legal materials and the article structure, as well as added several articles on geographical indications and origin indications, including those that have been alluded to and those that have not been mentioned in the Trademark Law, including the following:

Article 53 Paragraphs (1) and (2) on Trademarks and Geographical Indications: The party that is entitled to register geographical indications to the Minister, is the institution that represents the community in a particular geographical area and the provincial, district and city-regional governments.

1. The scope and object of geographical indications products can be in the form of natural resources, handicrafts and industrial products. Natural resources are all things that come from nature and can be used to meet the needs of human life, including not only biotic components, such as animals, plants, and microorganisms, but also abiotic components, such as petroleum, natural gas, various types of metals, water, and soil [18]. The

¹¹*Ibid.* p. 30-31

¹²Rahmi Jened, *Op.Cit.*, p. 29

¹³*Ibid.*, p.33

¹⁴ Roscoe Pound, *Pengantar Filsafat-Hukum*, translated by Mohamad Rajab, Jakarta, Batara Karya Aksara, 1982, p. 118

¹⁵ Van Apeldoorn, L.J. *Penganfar Ilmu Hukum*, translated by Oetarid Sadino, Pradnya Paramita, Jakarta, 1985, p.173

¹⁶Mahadi, *Hak Milik Immateriil*, Binacipta, Bandung, 1985, p. 65

¹⁷*Ibid.*

¹⁸ Explanation of Article 53 Paragraph (3) Letter a Numbers 1 and 3 of the Trademark Law and Geographical Indications

words “biotic” and “abiotic” were not mentioned in Article 56 Paragraph (2) of the Trademark Law.

2. According to Article 58 of the Trademark and Geographical Indications Law, substantive examination of geographical indications is carried out with the following processes: application, formal analysis, announcement, substantive examination, and issuance of a certificate of geographical indications. However, in the Trademark Law, the methods were in accordance with the following pattern: application formal, examination substantive, examination announcement issuance of a certificate of geographical indication and Geographical Indications Law explain origin indications.
3. Articles 63 and 64 of the T Trademark and Geographical Indications Law explain origin indications. Article 63 stipulates that “Indications of origin are protected without going through a registration obligation or declaratively as a sign indicating the origin of the right goods and services and used in trade”. However, Article 64 stipulates that “Indications of origin are characteristics of the origin of goods and services that are not directly related to natural factors”. These provisions replace Article 59 Letter a in the Trademark Law, which states that origin indications protected as a sign that indicates the area of origin of an item, which due to geographical and environmental factors, including natural factors, human factors, or a combination of these two factors, gives specific characteristics and qualities on the goods produced.
4. Article 101 of the Trademark and Geographical Indications Law with imprisonment sanctions and fines. It indicates that for each person who without the right to use a sign that has the same equality or in principle with a geographical indication of another party for similar goods or products registered, such a person shall be convicted sentenced to a maximum of 4 (four) years imprisonment or a maximum fine of Rp.2,000,000,000.00 (two billion rupiahs). The provisions for criminal sanctions are the same for different crimes, namely imprisonment of a maximum of 4 (four) years and a maximum fine of Rp.2,000,000,000.00 (two billion rupiah). However, in Article 92 of the Trademarks Law, different sanctions of imprisonment and additional fines against parties who commit other crimes related to infringements on registered geographical indications.

The concept of the legal protection of geographical indication holders, as outlined in the articles of the Trademark and Geographical Indication Law, is carried out in a preventive and repressive manner. Preventive legal protection is the effort made by the party responsible for submitting geographical indication applications to the Minister (ex-IPR Director-General) before a legal violation of geographical

indications occurs as a condition for obtaining legal protection from the state. In this regard, it is highly dependent on the Community Geographical Indication Protection Agency (MPIG) and the provincial, district and city-regional government for submitting registration requests for Geographical Indication products (natural resources, handicrafts and industrial products) to the Minister [19], so that legal protection can be obtained (constitutive system) from the state [20], in the intellectual property legal regime. At the highest level of ownership, relations is a guarantee of justice, legal benefit and certainty of IPR to the holder of geographical indication to adequately exploit the economic benefits of his geographical indication with the help of the state. The description shows that the right to geographical indications is given in communal property rights and monopoly over IPRs by promoting the interests of the people in certain areas who have sought products based on the Geographical Indication Requirements Book as legal subjects registered geographical indication owners. This assertion becomes important because in the explanation of Article 53 Paragraph (3) Letter a, the trademark and Geographical Indication Law referred to institutions that represent the community in some geographical regions; among others, they include the following: producer associations, cooperatives, and Geographical Indications Protection Agency (MPIG). This concept does not place ownership of geographical indications registered as communal and monopoly property rights. Geographical indications are given to a community working on a specific location and product as long as the reputation, quality, and characteristics that are the basis for the provision of legal protection exist [21] and the processes are based on the Geographical Indication Requirements Book. Monopoly rights over geographical indications are not prohibited as stipulated in Law of the Republic of Indonesia Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition [22] but the rights are unique in order to reward specific communities who have sought geographical indications products for generations by traditional methods to improve their welfare. Therefore, the application for registration of a mark/sign is rejected if it has similarities in principle or

¹⁹Article 1 Number 8 of Trademark and Geographical Indications Law. Application is a request for registration of geographical indication submitted to the Minister.

²⁰Article 53 Paragraphs (1), (2), and (3) of Trademark and Geographical Indications Law.

²¹Article 1 Number 7 of Trademark and Geographical Indications Law.

²²State Gazette of the Republic of Indonesia Number 33 Year 1999, Supplement to the State Gazette of the Republic of Indonesia Number 3817

its entirety with a registered geographical indication [23].

For marks that have been used as trademarks in good faith by parties who are not entitled to register for geographical indications, the party with good intentions can still use the mark for 2 years from the time the mark is registered as a geographical indication. After 2 years, the Minister cancels the registration of the mark for all or part of the same type of goods as the registered geographical indication [24]. The applicant with good intentions is the applicant who registers his trademark properly without any intent to piggyback, or imitate the reputation (fame) of a registered geographical indication for the benefit of his business, which can cause harm to the holder of the geographical indications.

Furthermore, repressive legal protection refers to law enforcement efforts that geographical indication holders can carry out if their registered geographical indications are used without rights by other parties. The Trademark and Geographical Indications Law provides an opportunity for geographical indication holders to enforce private and public law. Private law enforcement, in the form of a civil claim through a commercial court, is conducted when there is a violation of a registered geographical indication [25],

²³ Article 21 Letter d Trademark and Geographical Indications Law

²⁴ Article 68 paragraphs (1) and (2), Trademark and Geographical Indication Law

²⁵ Article 66 Trademark and Geographical Indications Law. Violations of geographical indications include the following:

- a. The use of geographical indications, either directly or indirectly, on goods and/or products that do not meet the conditions of Geographical Indications and Requirement Book;
- b. The use of a sign of geographical indication, both directly and indirectly, on goods and/or products that are protected or not protected with a view to:
 1. shows that the goods and/or products are of comparable quality with goods and/or products protected by geographical indications;
 2. benefit from the usage; or
 3. get a profit on the reputation of geographical indications.
- c. The use of geographical indications that can mislead the public regarding the geographical origin of the item;
- d. The use of geographical indications by non-registered geographical indication users;
- e. Imitation or misuse that can be misleading in relation to the origin of the goods and/or products or the quality of the goods and/or products contained in:
 1. packaging;
 2. information in advertisements;

and it targets compensation claims, termination of use and destruction of the geographical indication label used by other parties who are not authorised to do so. To prevent geographical indication holders from experiencing greater losses, the judge may order law violators on geographical indications to stop production activities, and destroy the geographical indication label [26]. Furthermore, public law enforcement is carried out administratively through the following processes: First; cancellation of a registered mark by the Minister; if at the mark has been used in good faith by another party who is not entitled to register a geographical indication provided that the owner of the mark would till be allowed to use the mark for a period of 2 years from the date the mark is registered as a geographical indication. After the period of use of the mark expires, the Minister cancels the registration of the mark for all or part of the same type of product as the geographical indication product. Second; abolition of trademarks is done under the Minister's initiative if the registered trademark has similarities in principle or in its entirety with registered geographical indications [27]. However, with regard to criminal charges and sanctions against perpetrators who violates registered geographical indications, the police, civil servant investigators (PPNS), prosecutors and judicial institutions work together; with a maximum imprisonment of 4 (four) years or a maximum fine of Rp.2,000,000,000.00 is prescribed (two billion rupiah) [28].

In the Trademark and Geographical Indication Law, the legal protection for geographical indications through the registration system to the Minister to support the economic rights of the holders of geographical indications; applies also, *mutatis mutandis*, to some legal provisions on trademarks, The provisions regarding announcements, objections, and withdrawals of the application for registration of marks apply, *mutatis mutandis*, to the provisions of Article 14 to Article 19. The conditions concerning the substantive examination of the application for registration of geographical indications apply, by *mutatis mutandis*, apply to the provisions of Article 23 to Article 26. The conditions concerning an appeal against the refusal of a registration application for geographical indications apply, *mutatis mutandis*, to the provisions of Article 28

3. information in the document concerning the goods and/or products; or
4. information that can be misleading about its origin in a package.
- f. Other actions that may mislead the public about the truth of the origin of the goods and/or products.

²⁶ Articles 67 and 69 of Trademark and Geographical Indications Law

²⁷ Article 68 Paragraphs (1), and (2) and Article 72 Paragraph (7) Letter a of Trademark and Geographical Indications Law

²⁸ Article 101 of Trademark and Geographical Indications Law

to Article 32 [29]. Legal arrangements such as this are possible because the approval of TRIPs does not regulate further the geographical indications with certain legal norms that member countries must follow to carry out legal protection for their geographical indications. The legal arrangements give the form of legal protection for geographical indications to the policies of each member country. Although in the approval of TRIPs, geographical indications and trademarks are independent IPR regimes [30]. TRIPs is an international agreement that underlies the protection of intellectual rights [31].

It should be recognized that the presence of the Trademark and Geographical Indications Law is an effort of the government to improve legal protection. Holders of geographical indications are registered nationally and internationally, but there are still provisions that are substantive legal norms, and they require more detailed regulation to become substantially, normatively, and empirically established in society. These provisions are as follows: Article 21 Paragraph (1) Letter d, Article 56 to Article 59 concerning registration of geographical indications, Articles 63 and 64 geographical indications. This is important, considering that only a law whose substance is well established both normatively and empirically can provide the desired style and color of social engineering in accordance with planning [32], respect to carrying out legal protection for geographical indications.

According to Reto Meili, applications for registration and certification of geographical indications in Indonesia still face obstacles and challenges, and the following could help tackle such obstacles: First; community organizations as producers of protected goods in the geographical indications regime, should be strengthened because geographical indications product certification process depends on the Geographical Indication Protection Agency (MPIG). Second, Geographical Indication Requirements Book should be compiled, where MPIG has difficulty defining its geographical indication products. Third, the scale of production of geographical indications products for export should be increased using many variables that must be considered in the production process [33].

²⁹Article 57 Paragraph (2) and Article 58 Paragraph (2) of Trademark and Geographical Indications Law

³⁰<http://www.hukumonline.com/>, (online) accessed on October 16, 2016

³¹ Kadarudin, *Antologi Hukum Internasional*, Deepublish, Yogyakarta, 2020, p. 442

³²Hasbir Paserangi and Ibrahim Ahmad. *Op.Cit.*, p. 116

³³ Reto Meili, Project Coordinator Indonesia-Swiss Intellectual Property (ISIP) in Geographical Indications National Seminar "Best Practice of Geographical Indication", _____, Jakarta, _____, 2016,

These obstacles occur because of the knowledge and understanding of geographical indication by MPIG administrators and related parties in the area are not sufficient.

Furthermore, according to Yahya Harahap, there are two principles regarding the existence of legal protection for geographical indications and registered trademarks: (1) The first to file principle or doctrine, where the first registrant has superior and more important rights than other trademark and geographical indications owners; (2) Enforced prior user doctrine (first to use the system), where someone is considered to have the most superior right if can prove that he is the first user. The general explanation shows that the first user has better rights than the first registrant [34]. Legal protection for geographical indications in the declarative system is temporary because registration of a geographical indication can still be sued and cancelled if the plaintiff can prove that he is the first owner (user) of a registered geographical indication. This is different from the constitutive system (first to file principle), where the registration of geographical indications conducted in good faith provides more secure legal protection to the holders of geographical indications.

D. The Contribution of the Economic Rights Toraja and Kalosi Geographical Indications in Improving the Welfare of the Geographical Indication Holders

D.1. Production Rights

Toraja Arabica coffee is produced by coffee farmers (smallholders' coffee) with a coffee plantation area of 3,675 ha (69.1%), and large plantation companies (estates coffee), namely: PT. Toarco Jaya in North Toraja Regency with a plantation area of 543 ha(10.2%) and PT. Sulatco in Toraja Regency with an area of 1,100 ha(20.7%). The total Arabica coffee plantation area in Toraja is 5,318 ha. Quantitatively, Arabica coffee plantations managed by farmer groups are larger (3,675 ha) compared to those managed by plantation companies (1,643 ha), but their productivity is low, 0.7 tons/ha/year on the average, which is equivalent to 2,507.4 tons of dry seed coffee per year [35]. Kalosi Enrekang Arabica Coffee is cultivated by 186 farmer groups consisting of 4,766 families, incorporated in the Kalosi Enrekang Coffee Protection Society (MPKE), which was formed in 2012 with an area of 7,149 ha of Arabica coffee. The production potential is 2 (two) tons per ha every year or 700 - 800 kg per ha every year. Kalosi Arabica coffee production has not reached 50% (fifty percent) of its potential [36].

<http://www.hukumonline.com/>, (Online), accessed on October 12, 2016

³⁴ M. Yahya Harahap, *Tinjauan Merek Secara Umum dan Hukum Merek di Indonesia Berdasarkan Undang-Undang Merek Nomor 19 tahun 1992*, Bandung, Citra Adityabakti, 1996, p. 335-336

³⁵ MPIG-Toraja Arabica Coffee, *Op.Cit.*, p.11-15

³⁶ MPKE., *Op.Cit.*, p. 26

In general, Arabica coffee cultivation in Enrekang is done traditionally by farmers with limited farm area [37].

According to Elias Pasalli, the process of processing Arabica coffee harvested by coffee farmers in Toraja has not been based on the Geographical Indication Requirements Book. MPIG-Toraja Arabica Coffee has not enlightened farmers about the book's requirements. However, MPIG-Toraja Arabica Coffee continues to promote Toraja Arabica coffee through exhibitions at the provincial and central levels and sends farmer groups to participate in the Arabica coffee contest held by the Indonesian Coffee Export Association (AEKI) [38]. Related to the Geographical Indication Requirements Book, the results of a study that used questionnaire to obtain data from 200 respondents consisting of coffee farmers in Toraja and North Toraja districts showed that the 200 (100%) respondents answered that they did not know the book of requirements. Then, regarding the existence of the MPIG-Kopi Arabika Toraja institution as the holder of geographical indications, the 200 (100%) respondents said that they did not know the institution [39].

Furthermore, regarding the Arabica Coffee Kalosi, the results of a study involving the use of questionnaires to obtain data from respondents (farmer groups) showed that most respondents 83 (83%) answered that they knew the requirements book, while 17 (17%) answered that they did not know the requirements book. However, the Geographical Indication Requirements Book; was not implemented by farmer groups and cooperatives in the process of adopting Arabica coffee [40].

According to Patola, farmers and cooperatives have not processed Arabica coffee based on the standard of the Geographical Indication Requirements Book. They are still constrained by post-harvest Arabica coffee collection equipment. Moreover, coffee is a seasonal plant, so it does not always benefit farmers. Umar Sappe made a similar comment: that the processing of Arabica coffee produced by farmers has not been carried out based on the Geographical Indication Requirements Book because the infrastructure of Arabica coffee processing at the farmer group level or cooperative is not yet adequately available [41].

³⁷Book Requirements for Geographical Indications of Kalosi Enrekang Coffee (MPKE), 2012, p.25

³⁸Interview with the Chairman of the Toraja Arabica Coffee MPIG on December 8, 2016

³⁹Primary Data, 2018

⁴⁰Primary Data, 2018

⁴¹Interview with Chairman of the Kalosi Arabica Coffee MPKE on March 24, 2018

D.2. The Right to Use Signs of Geographical Indications

In the book of requirements for geographical indications of Toraja Arabica Coffee, it was determined that Toraja Arabica coffee is marketed by members of the MPIG-Toraja Arabica Coffee using packaging marked by geographical indications of Toraja Arabica Coffee. The mark is in the form of a label or the name of the Toraja Arabica Coffee, the Toraja Arabica Coffee logo and the Mutual Code. The use of these marks is only indicated by the MPIG Quality Control Team of Toraja Arabica Coffee on the orders of the chairman of the MPIG-Toraja Arabica Coffee based on the request of the members. For products sold without a sign of Toraja Arabica Coffee Geographical Indication or sold in packs marked by the geographical indications of Toraja Arabica Coffee but the packaging is no longer intact, the Toraja Arabica Coffee MPIG is not responsible for its quality. The Toraja Arabica Coffee geographical indication mark can be used on all packages of Toraja Arabica coffee products that meet the physical characteristics and taste quality requirements and are processed according to the standard Book of Geographical Indication Requirements. The name ARABIKA TORAJA COFFEE and logo are only used for pure and original Toraja Arabica coffee with a composition of 100% [42].

The results of the study using questionnaire to obtain data from respondents who are farmer groups in Toraja Regency and North Toraja showed that 200 (100%) of them answered that they had not used the geographical indication mark on the sack or coffee packaging that was marketed [43].

According to Elias Pasalli, the logo of the geographical indications of Toraja Arabica Coffee has not been used by farmers in Arabica coffee sacks or packaging. However, the sign of the geographical indications has been used limitedly by the MPIG-Toraja Arabica Coffee board for powdered coffee products produced as a means of promotion to consumers and the public: e.g. Specialty Toraja Arabica Coffee and Civet Wild Toraja Coffee Arabica produced by Kopi Salu Sopai, even though the product was not processed according to the standard Book Requirements for Geographical Indications of Toraja Arabica Coffee [44]. Similarly, Benyamin Sampe; started that the use of geographical indications on Arabica coffee packaging from Toraja was still limited to the MPIG-Toraja Arabica Coffee board as a promotion of Toraja Arabica Coffee indications to the public and consumers.

⁴²MPIG-Toraja Arabica Coffee, *Op.Cit.*, p. 63

⁴³Primary Data, 2018.

⁴⁴Interview with the Chairman of the Toraja Arabica Coffee MPIG on December 8, 2016

However, at the level of coffee farmers, no one has used the geographical indication sign [45].

Furthermore, in the Book of Requirements for Geographical Indications of Kalosi Arabica Coffee, the name of the geographical indications, is Kalosi Enrekang Arabica Coffee. The geographical indications is only used for pure coffee which is sold with a composition of 100% Kalosi Enrekang Arabica coffee (Kalosi Arabica coffee) and harvested in the area of the geographical indications of Kalosi Enrekang Arabica Coffee by MPKE members [46].

According to Patola, the sign of the geographical indication of Kalosi Arabica Coffee has not been used in Arabica coffee marketed by farmer groups or cooperatives. The use of the mark means increasing the cost of packaging while the price of coffee at the farmer level remains the same. Besides, farmer groups and cooperatives have their own brands [47].

D.3. Marketing Rights

In the Book of Requirements for the Geographical Indications of Toraja Arabica Coffee, the marketing of Toraja Arabica coffee will be conducted through a single channel regulated by MPIG-Toraja Arabica Coffee, and it would conduct promotions through various media [48].

According to Elias Pasalli, the marketing of Toraja Arabica coffee is still the same as before; which it is done by each farmer or cooperative. The marketing pattern entails farmers selling Arabica coffee to buyers directly in traditional markets or farmers selling to cooperatives directly as intermediary traders who then sell to traders and other coffee companies. The price of Toraja Arabica coffee remained the same before and after the geographical indication certifications at the farmer level [49].

Furthermore, according to Haryadi, Arabica coffee from farmers is marketed directly to traders and plantation companies in a partnership pattern, where the Arabica coffee harvests of the farmer's group must be based on the quality standards determined by the company (PT. Sulotco). If it is not processed according

to these standards, the Arabica coffee will be purchased by the company at the same price as the market [50].

Products marketed consist of three types, namely: Coffee Beans (Green bean), Roasted Coffee and Coffee Powder. Green coffee beans [51] is quality Kalosi Arabica coffee I with a physical defect value of less than 8 per 100 grams according to the Indonesian National Standard (SNI) and the standard Specialty Coffee Association of America (SCAA). The maximum coffee bean moisture content is 12%, and it has a greyish green seed colour with a diameter greater than or equal to 6.5 mm or 16 according to SCAA standards.

Roasted coffee beans are quality green coffee 1 beans which are sorted so that they have a uniform size with the roasting maturity level carried out according to the taste and market demand in the form of young, medium and old roasters. The roasting process can be carried out anywhere by MPKE members or other parties with MPKE permission [52].

The goal is to get coffee beans with a physical defect value of less than 8 per 100 grams, with sizes larger or equal to 16/64 inches. The single marketing of Arabica coffee in Enrekang through an auction mechanism cannot be implemented by MPKE. Infrastructure supporting the standardization of Arabica coffee at the farmer and cooperative level based on the Book of Geographical Indication Requirements by MPKE is not yet available [53].

According to Patola, direct buying by companies is carried out from Makassar, Jakarta and Bandung with the quality standards determined by the buyer [54]. Furthermore, according to Amiruddin, the marketing of Arabica coffee in Enrekang by farmers or cooperatives still remains the same as before Kalosi Arabica coffee obtained a certificate of geographical indications,; i.e. direct marketing pattern from farmers or cooperatives directly to traditional markets or to intermediaries.

In connection with the marketing of Arabica coffee and Kalosi coffee as products of geographical indications in Makassar; 89% of respondents answered that they did not know the geographical indications of

⁴⁵Interview with the Chairperson of the Association of Farmers' Internal Control Systems (ICS) and other Farmers' Groups (GAPOKTAN) Organic Arabica (ATO) North Toraja Regency, March 24, 2018

⁴⁶*Ibid.*, p. 61

⁴⁷Interview with the chairman of the Benteng Alla Cooperative, December 8, 2016

⁴⁸MPIG., *Op. Cit.*, p.63

⁴⁹Interview with the chairman of the Toraja Arabica Coffee MPIG on December 7, 2016

⁵⁰Interview with PPL coordinator in Gandasil Subdistrict, Toraja District Agriculture Office, March 23, 2018

⁵¹Green coffee beans are half-wet skinned coffee grains which are ground to separate green beans from skin using a grinding machine (huller) and dried in the sun.

⁵²MPKE., *Ibid.*, p. 42

⁵³Interview with the Head of the Agricultural Product Division of the Agriculture Office of Enrekang Regency on 7 December 2016

⁵⁴Interview with the chairman of the Benteng Alla Cooperative, December 9, 2016

Toraja and Kalosi Arabica Coffee, while 11% of respondents answered they know the indications of Toraja and Kalosi Arabica Coffee.

According to Benyamin Sampe, the use of geographical indication on Arabica coffee packaging from Toraja is still limited to the MPIG-Toraja Arabica Coffee board, and they use it as a promotion of Toraja Arabica Coffee indications to the public and consumers. However, at the level of coffee farmers, no one has used the geographical indication sign [55]. This opinion is in line with the results of Laode Rudita's study of the representatives of the Geographical Indication Protection Agency (MPIG) of Kopi Kintamani Bali, the results indicate that: since being registered as a geographical indication in 2008, the production control up to the sales of Bali Kintamani coffee did not go very well, so the control mechanism of production up to labeling and relative sales do not meet the standard of the requirements book [56].

E. Legal protection of the economic rights of geographical indication holders related to the use of signs that have similarities with registered geographical indications.

The name of the geographical indication that was sent for registration to the Directorate General of Intellectual Property Rights by MPIG-Toraja Arabica Coffee is Toraja Arabica Coffee; it covers the following products: semi-dried coffee beans (wet HS Coffee), dry coffee beans (dry HS Coffee), dry skinned coffee beans (Coffee Pumpkin), roasted coffee beans, and ground coffee [57]. Similarly, the name of the geographical indications that was filed for registration by MPKE to the Directorate General of Intellectual Property Rights is Kalosi Enrekang Arabica Coffee, and it covers the following products: coffee beans (Green bean), roasted coffee and powder coffee [58]. However, in trade practice, the names/reputations of Toraja and Kalosi are also used as signs for Arabica coffee from Toraja and Kalosi Enrekang that is marketed in Indonesia and exported [59], by; Key Coffee, Inc. Corporation Japan under the Toarco Toraja Brand. The trademark registration does not include the word Toraja and the Toraja house image, which is a symbol of the Toraja region as an exclusive right. This means that the name Toraja and the image of the Toraja house are not claimed as geographical indications of Toraja Arabica Coffee from Indonesia [60]. In Indonesia, on September

14, 2004, PT. Toarco Jaya registered the Toarco Toraja Coffee Brand and a picture of Toraja. The application was approved by the Directorate General of IPR and registered on February 24 2015 [61]. Then, IFES Inc. California Corporation registered Sulotco Kalosis Toraja Coffee Brand and Toraja house picture.

The author is of opinion that; the registration of trademarks using the name Toraja by Key Coffe Inc. of Japan Corporation and the name Kalosi by IFES Inc. Corporation of California; should not have been done because of the following reasons: First, the names Toraja and Kalosi point to the reputation of Arabica coffee that has been cultivated for generations by traditional methods by people in the Toraja and Kalosi Enrekang areas who were dealing with Arab traders in the 14th century (lontarara Enrekang) [62]. Second, the registration led to the prohibition of coffee entrepreneurs in South Sulawesi from using the names Toraja and Kalosi in the packaging of Arabica coffee products that were exported to Japan, America and Europa from Toraja and Kalosi [63]. Third, the use of the names Toraja and Kalosi is a legal violation of the geographical indications of Toraja Arabica and Kalosi Coffee as communal and monopoly property rights, and the law enforcement can be done privately or publicly as follows:

E.1. Private Law Enforcement

Private law enforcement through civil claims in the form of compensation claims, termination of use and destruction of the geographical indication label that is used without such rights. And to prevent a greater loss that will be experienced by the geographical indication holder, the judge could order that the user of geographical indication without right stop the activities of making such geographical indication_label; and destroy those already made [64]. Civil lawsuits are meant for the types of violations of geographical indication specified in Article 66 of the Trademark and Geographical Indications Law [65].

⁶¹ <http://www.merekindonesia.dgip.go.id/>, (online) accessed on August 29, 2016

⁶² MPKE, *Book of Requirements for Geographical Indications of Arabica Coffee Kalosi*, 2012, p.48

⁶³ Harian Bisnis Indonesia, Jakarta, January 21, 2008.

⁶⁴ Article 69 Trademark and Geographical Indication Law

⁶⁵ Article 66 Trademark and Geographical Indication Law

- the use of geographical indications, either directly or indirectly, on goods and/or products that do not meet the standard of Geographical Indications and Requirement Book;
- the use of a sign of geographical indication, both directly and indirectly, on goods and/or products that are protected or not protected with a view to:

⁵⁵ Interview with the chairperson of the Association of Farmers' Internal Control Systems (ICS) and other Farmers' Groups (GAPOKTAN) Organic Arabica (ATO) North Toraja Regency, March 24, 2018

⁵⁶ Laode Rudita, *Op.Cit.*, p.211

⁵⁷ MPIG., *Op.Cit.*, p.17

⁵⁸ MPKE., *Op.Cit.*, p.26

⁵⁹ Saky Septiono, *Ibid.*

⁶⁰ <http://tess.uspto.gov/bin/>, (online) accessed on October 24, 2016

Regarding the use of the name Toraja as a registered trademark, according to Ellias Pasalli, it is not a violation of geographical indication, because the protected name is Toraja Arabica Coffee [66]. This opinion is in accordance with the provisions of the book of requirements that the registered geographical indication is Toraja Arabica Coffee. The use of the word coffee, Toraja or Toraja Coffee is not considered a misuse or imitation [67] of the geographic indication of Toraja Arabica Coffee. The same applies to the use of the name Kalosi Enrekang Arabica Coffee as a trademark by a third party [68].

The provisions of the book of requirements mentioned above indicate that the names Toraja and Kalosi are not geographical indications of Toraja Arabica Coffee or Kalosi Arabica Coffee. Therefore, the name is a public property, so its use does not constitute a legal violation of geographical indication as stipulated in Article 66 of the Trademark and Geographical Indication Law [69].

According to Umar Sape, the use of the name Kalosi as a registered trademark by PT. Toarco Jaya and PT.Sulatco on the packaging of Toraja Arabica coffee can obscure the Kalosi area, as in Toraja. These actions can be categorised as violations of the geographical indication of Kalosi Enrekang Arabica

Coffee and can be prosecuted [70]. Geographical indication is a sign that indicates the origin of a product which gives it certain reputation, quality, and characteristics due to geographical and environmental factors, including natural factors, human factors or a combination of these two factors. The word indication does not always refer to a place but also includes the product name associated with a place [71]. For example, the names Toraja and Kalosi-Enrekang are the names of regions in South Sulawesi that are famous for the highest quality of Arabica coffee products. An example of geographical indication related to this case: is the name Champagne in French law and international agreements, it can only be used by farmers who produce bubbly wine within the boundaries of the geographical indication region in the Champagne region of France, which is the holder of Champagne geographical indication. Every act of making bubbly wine outside the area of Champagne geographical indication is considered fraudulent or unfair business competition (unfair trade principles, unfair trade competition), because it can lead to a decrease in the quality and value of Champagne bubbly wine products [72].

In the use of geographical indication as trademark, the author is of the opinion that the legal protection of geographical indications should be carried out for names that already have an existing product reputation, instead of creating a new name that would obscure that reputation as a geographical indication. This is important because the legal protection of a geographical indication with an international reputation is determined by how far from the country of origin the legal protection of the reputation as a geographical indication can be carried out.

E.2. Public Law Enforcement

Public law enforcement can be done through cancellation and chastisement of registered brands, deletion of registered trademarks on the initiative of the Minister, and criminal charges. Cancellation of a registered mark shall be carried out on the initiative of the Minister if the mark has been used for all or part of the same type of goods after a period of two years from the date the mark was registered as a geographical indication, the owner of the mark or his proxy notified in writing stating the reason, and the process recorded and announced in the Official Gazette of Trademarks. Cancellation of a registered mark results in the expiration of legal protection for the mark for all or part of the same type of goods. If the trademark owner does

1. shows that the goods and/or products are of comparable quality with goods and/or products protected by geographical indication;
2. benefit from the usage; or
3. benefit from the reputation of geographical indication.
- c. the use of geographical indications that can mislead the public regarding the geographical origin of the item;
- d. the use of geographical indication by non-registered geographical indication users;
- e. imitation or misuse which can be misleading in relation to the origin of the goods and/or products or the quality of the goods and/or products contained in:
 1. packaging;
 2. information in advertisements;
 3. information in the document concerning the goods and/or products;
 4. information that can be misleading about its origin in a package.
- f. other actions that may mislead the public about the truth of the origin of the goods and/or products.

⁶⁶Interview with the chairman of the Toraja Arabica Coffee MPIOG on December 8, 2016

⁶⁷MPIOG., *Op.Cit.*, p.74

⁶⁸MPKE., Book of Geographical Indication Requirements, p.75

⁶⁹Articles 67 and 69 of the Trademark and Geographical Indication Law

⁷⁰Interview with MPKE Management on March 24, 2018

⁷¹Tomi Suryo Utomo, *Hak Kekayaan Intelektual (HKI) di Era Global Sebuah Kajian Kontemporer*, Graha Ilmu, Yogyakarta, 2010, p.219

⁷²Directorate General of IPR, Book Requirements for Champagne Geographical Indications, 2008, p. 29

not accept the decision to cancel the registered mark by the Minister, he can take legal action the commercial court and appeal to the Supreme Court [73].

The author; hold the opinion that the cancellation of registered trademarks that infringes on geographical indication by the Minister's initiative is one of the government's efforts to provide legal protection to holders of geographical indications, who are generally Small and Medium Enterprises (UKM).

In connection with the use of the names Toraja and Kalosi, the name Toarco_Toraja Brand is used by PT. Toarco Jaya (Key Coffee, Inc Corporation Japan) and Sulotco Kalosi Toraja Coffee Brand is used by PT. Sulatco (California American IFES Inc. Corporation); their cancellation should be carried out by the Minister based on the principle of good faith, which prevents other parties from using a mark that has a reputation in the form of words, names, symbols or loops from the region of origin of a geographical indication to obtain economic benefits [74]. Although the names Toraja and Kalosi are not registered geographical indications [75], they belong to the Toraja and Kalosi Enrekang communities. Therefore, the use of Toraja and Kalosi by other parties on products originating from Toraja and Kalosi Enrekang must be considered as bad faith. For example, Gayo, the name of the plateau in Bener Meriah Regency and Central Aceh, Nagroe Aceh Darusalam Province is known as one of the world's best Arabica coffee producing areas since 1926. On July 15, 1999, the name Gayo Mountain Coffee was registered with European Coffee BV upon the request of Holland Coffee. With the European BV brand certificate, Holland Coffee banned coffee exporters from Medan North Sumatra from exporting Arabica coffee to the Netherlands under the name Gayo Coffee because the name has something in common with its Gayo Mountain Coffee Brand. European BV also prohibits all coffee companies around the world from marketing Arabica coffee under the name Gayo in the Netherlands

⁷³Article 68 paragraphs (2),(3),(4), and paragraph ,(7) Trademark and Geographical Indication Law jo Article 27 (1) Government Regulation on Geographical Indication,

⁷⁴Andris. *Penerapan Prinsip Itikad Baik Terhadap Indikasi Geografis Kopi Arabika Toraja Indonesia Yang di daftarkan Sebagai Merek Dagang Toarco Toraja Oleh Key Coffee (Perusahaan Jepang) Berdasarkan Undang-Undang Nomor 15 Tahun 2001 tentang Merek dan Peraturan Pemerintah Nomor 51 Tahun 2007 tentang Indikasi Geografis*, Faculty of Law, University of Padjadjaran, Bandung, 2015, p. 8

⁷⁵Registration refers to the application through the process of examining formalities, announcements, and the substantive examination process and obtaining approval from the Minister for the issuance of certificates. Explanation of Article 3 of the Trademark and Geographical Indication Law

[76]. In 2010, Gayo Arabica coffee obtained a certificate of geographical indication from the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights at the request of the Gayo Coffee Protection Society (MPKG). Furthermore, through the Indonesia-EU Trade Cooperation Facility (TCF) trade cooperation programme, Gayo Arabica coffee later obtained a collective brand certificate from the European Union, with registration number 014330484 dated October 26, 2015, issued by the Office For Harmonization in the Internal Market (OHIM) [77].

The abolition of a registered mark can be carried out by the Minister's initiative if the mark has similarities in principle or in its entirety with geographical indications.⁷⁸If the owner of a registered mark rejects the Minister's decision on the deletion of the mark, then he can file a claim with the State Administrative Court and appeal to the Supreme Court [79]. In the approval of the TRIPs, the member is obliged to, ex officio, if it is possible in its national law or at the request of the member concerned, reject or cancel the registration of a trademark containing a geographical indication or an item that does not originate from the indicated area; if the use indicated in the trademark or the item concerned in the territory of a member country is such that it misleads the public regarding the actual origin of the goods concerned [80]. According to Burkhardt, if there is a conflict between geographical indications and Brands, then the International Trademark Association (INTA) chooses A Madrid Type System to resolve the conflict by prioritizing the principles of territoriality, priority and exclusivity. Abolition of trademarks and geographical indications is carried out based on the principle of first in time, first in right, which refers to the principle of priority and exclusivity [81]. Whether geographical indications or brands are used first as a sign, the previous mark used is most entitled to legal protection.

In connection with the existence of a registered mark, before the geographical indication is registered,

⁷⁶ <https://www.scribd.com/doc/20976488/Perlindungan-Indikasi-Geografis-dan-Potensi-Indikasi-Geografis-Indonesia>, (online) accessed October 24, 2016

⁷⁷ <https://nasional.tempo.co/read/870293/kopi-gayo-resmi-diakui-merek-kolektif-uni-eropa>, (online) accessed on April 24, 2017

⁷⁸Article 72 Paragraphs (6) and,(7) Letter a, Trademark and Geographical Indication Law

⁷⁹Article 73 Trademark and Geographical Indication Law

⁸⁰Article 22 Paragraph (3) TRIPs Agreement

⁸¹I Gede Agus Kurniawan, *Pengaturan Penghentian Pemakaian Indikasi Geografis Pada Merek Terdaftar Oleh Pihak Lain Yang Tidak Berhak* (Studi Komperatif Beberapa Negara), Post graduate Program, University of Udayana, Denpasar, 2013, p.11

the TRIPs approval determines if a mark has been used and registered in good faith, or if a set of rights related to a mark has been obtained in good faith: “. . . before a geographical indication is protected in the country of origin, steps should be taken to ensure that the legal protection for the geographical indication may not threaten the existence or exclusive rights of a registered mark, on the grounds that the mark is identical or similar to geographical indication [82]”. The author is of opinion that; these provisions do not provide justice, certainty and legal benefits because they adhere to the principle of legal dualism. On one hand, the legal protection of registered geographical indication holders is based on a constitutive system (first to file principle), and the other hand, it is enforced based on the declarative system (first to use system). The application of these 2 principles emphasises legal certainty rather than legal justice and benefits related to legal protection of geographical indication holders as parties seeking geographical indication products with limited capital, knowledge and market access. Legal protection of geographical indication holders must be interpreted as legal protection of the economic rights of Small and Medium Enterprises (UKM) with registered geographical indications. The use of a registered geographical indication that has a reputation for similar or non-similar products by an unauthorised party will result in the matters indicated by Wenger as follows [83]:

1. Making emphasis on a name that has a reputation results in losing its appeal; this will endanger the impression in the community and lose reputation.
2. Cause harmful acts, where the user of an unauthorised name will enjoy the impression or reputation of goods that already have a reputation.
3. Products using a name that already has a reputation will receive recognition from all over the world and get a positive impression from the buyer; and will also have the effect of preventing consumers from doubting when the product are sold at high prices.
4. The facts and reasons mentioned above indicate that the use of a geographical name for a product other than the geographical product will drop the reputation and mislead the public. For example, France has regulated this matter, so that the legal protection of its geographical indication products is carried out nationally and internationally.

Every person who without right uses a sign that has the same equality with the geographical indication of another party for goods or products that are similar to the goods or products registered; liable to a maximum of 4 (four) years imprisonment or a maximum fine of Rp.2,000,000,000.00 (two billion

rupiah). And every person who without right uses a sign that the same in principle with a geographical indication of another party for the same or similar goods or products as the product registered, shall be punished with a maximum imprisonment of 4 (four) years and the maximum fine of IDR 2,000,000,000 (two billion rupiah) [84].

The formulation of the criminal act of geographical indication stipulated by the Trademark and Geographical Indication Law shows that the sentences have similarities in their entirety and essentially should be explained clearly so as not to cause a misinterpretation. Moreover, the criminal act is liable to the same period of imprisonment and the same fine, namely a maximum of 4 (four) years imprisonment and a maximum penalty of Rp.2,000,000,000 (two billion rupiahs).

In the author’s view, the names Toraja and Kolosi as registered trademarks based on the doctrine of equality in principle fulfil the elements of criminal acts against geographical indications as stipulated in Article 101 Paragraph (2) of the Trademark and Geographical Indication Law. The geographical indications applied for by MPIG-Toraja Arabica Coffee is the name Toraja Arabica Coffee, not the word Coffee, Toraja or Toraja Coffee [85]. Similarly, the geographical representation of Kalosi Enrekang Arabica Coffee, which the Geographical Indication Requirements Book determines, is the name Kalosi Enrekang Arabica Coffee [86]. This provision confirms that the names Toraja and Kalosi are not exclusive rights to the geographic indications of Toraja Arabica Coffee and Kalosi-Enrekang Arabica coffee [87]. Limitation of registered geographical indication elements like this should not be regulated in the requirement book; because it will obscure communal property rights and monopoly rights on geographical indications. Therefore, any use of marks that use the names of elements of geographical indications registered by other parties must be considered a violation of the law on geographical indications [88] and criminal prosecution would be based on the provisions of Article 101 of the Trademark and Geographical Indication Law, with a maximum imprisonment of 4 (four) years and a maximum fine of Rp.2,000,000,000 (two billion rupiahs).

⁸² Article 24 Paragraph (5) TRIPs Agreement.

⁸³ Saky Septiono, *Perlindungan Indikasi Geografis dan Potensi Indikasi Geografis di Indonesia*, <https://www.scribd.com/doc/20976488/>, (online) accessed on January 12, 2017

⁸⁴ Article 101 Trademark and Geographical Indication Law

⁸⁵ MPIG., *Op.Cit.*, p. 74

⁸⁶ MPKE., *Op.Cit.*, p. 26

⁸⁷ Article 1 Number 6 Trademark Law and Geographical Indications

⁸⁸ Article 101 Trademark Law and Geographical Indications

F. CONCLUSION

Based on the results and discussion, the conclusions of this paper are as follows:

1. The concept of legal protection for geographical indication is ideally given in communal property rights and monopoly to the holder of geographical indications. However, the idea cannot be implemented to support the economic rights of the geographical indication holders; because the legal rules of geographical indication integrated into the Law of the Republic of Indonesia Number 20 Year 2016 concerning Trademarks and Geographical Indications substantially places registered geographical indications as collective rights and communal property.
2. The contribution to economic rights by registered geographical indication is in the form of monopoly rights of production, use of signs and marketing of geographical indications products. But for the geographical movements of Toraja Arabica Coffee and Kalosi Coffee, these rights cannot be implemented by the Geographical Indications Protection Agency of Toraja Arabica Coffee (MPIG-Toraja Arabica Coffee) and Enrekang Coffee Protection Society (MPKE); because the Geographical Indication Requirements Book has not been understood adequately, and infrastructure supporting the standardisation of geographical indication products is not yet available.
3. The legal protection of the economic rights of the geographical indication holders related to the use of signs that have similarities with registered geographical indications is carried out by private and public law enforcement based on the Trademark and Geographical Indication Law. However, in using the names Toraja and Kalosi as signs by those who are not entitled to register for geographical indication, law enforcement cannot be implemented because the geographical indications listed are Toraja Kalosi Enrekang Arabica Coffee.

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