

THE PROTECTION OF LOCAL HANDICRAFTS THROUGH THE GEOGRAPHICAL INDICATION BY THE REGIONAL GOVERNMENT IN EAST JAVA, INDONESIA

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Abstract

The Directorate General of Intellectual Property Rights data in December 2021 show that only 10% of 97 local handicraft products were registered in Geographical Indication and none of those are East Java products. In fact, East Java owns numerous handicrafts sold in the export market. The registration of GI, as in brand registration, can help Small and Medium Industries to market their products abroad. The causal factors of the nonexistence of GI registration for handicrafts in East Java should be studied. It is crucial to know the attempts of East Java's regional government to develop the access quality of trading local's handicraft through GI. This is a juridical-empiric study, using juridical sociology approach. The results reveal that the three regional governments, Malang Regency, Ponorogo Regency, and Tulungagung Regency understood the branding concept but not GI protection. According to Syathibi's masalah concept, GI regulation and regional government's role are urgent to keep legal purposes, that is to protect local society. GI is a communal right of ownership—in the Milkiyyah concept it is called al Milk al 'Ammah—that can be jointly used. This study is a recommendation for local governments to facilitate the GI for the handicraft businessmen.

Data Dirjen Hak Kekayaan Intelektual pada Desember 2021 menunjukkan bahwa masih 10% dari 97 produk kerajinan tangan masyarakat lokal yang terdaftar Indikasi

Geografis dan belum ada produk kerajinan tangan Jawa Timur yang terdaftar. Faktanya, Jawa Timur memiliki banyak kerajinan tangan yang sudah masuk pasar ekspor. Pendaftaran indikasi geografis sebagaimana pendaftaran merek, dapat membantu pelaku industri kecil menengah dalam perdagangan ke luar negeri. Faktor penyebab belum adanya pendaftaran indikasi geografis untuk kerajinan tangan di Jawa Timur menarik dikaji. Penting mengetahui upaya yang telah dilakukan oleh pemerintah daerah di Jawa Timur dalam meningkatkan kualitas akses perdagangan kerajinan tangan masyarakat melalui indikasi geografis. Jenis penelitian yang digunakan adalah yuridis empiris dengan pendekatan yuridis sosiologis. Hasil penelitian menunjukkan tiga pemerintah daerah yang menjadi sampel penelitian yaitu Kabupaten Malang, Kabupaten Ponorogo, dan Kabupaten Tulungagung memahami konsep merek namun belum memahami konsep perlindungan indikasi geografis. Menurut konsep kemaslahatan Syathibi, pengaturan indikasi geografis dan pentingnya peran pemerintah daerah adalah untuk memelihara tujuan hukum yaitu melindungi masyarakat lokal. Indikasi geografis merupakan hak milik komunal yang dalam konsep al-Milkiyyah disebut al-milk al-ammah yang boleh diambil manfaatnya bersama-sama. Penelitian ini diharapkan menjadi rekomendasi pemerintah daerah terkait pentingnya memberikan pendampingan indikasi geografis pada pelaku usaha kerajinan tangan.

Keywords: geographical indication, local handicrafts, masalah

Introduction

Globalization is a challenging factor for the development of the Indonesian economy. Free trading as the typical characteristic of globalization sets no boundaries for trading between countries.¹ International scale free trading significantly affects the growth of the economy of a country.² Free trading can also affect high-quality products contributing to economic development.³ In response to international free trading, in 2015, ASEAN countries had an incredible idea to create the so-called AEC (ASEAN Economic Community). Through the AEC concept, there are five things that should not be limited i.e.,

- 1 Moh Hudi, "Peran Politik Dalam Pembangunan Ekonomi Indonesia," *Madani Jurnal Politik Dan Sosial Kemasyarakatan* 12, no. 03 (December 26, 2020): 232–48, <https://doi.org/10.52166/madani.v12i03.2172>.
- 2 Marie-Catherine Riekhof, Esther Regnier, and Martin F. Quaas, "Economic Growth, International Trade, and the Depletion or Conservation of Renewable Natural Resources," *Journal of Environmental Economics and Management*, SURED 2016: Dynamic and strategic aspects of environmental economics, 97 (September 1, 2019): 116–33, <https://doi.org/10.1016/j.jeem.2018.04.008>; Wajdi Bardi and Mohamed Ali Hfaiedh, "International Trade and Economic Growth: Evidence from a Panel ARDL-PMG Approach," *International Economics and Economic Policy* 18, no. 4 (October 1, 2021): 847–68, <https://doi.org/10.1007/s10368-021-00507-4>.
- 3 Simon Abenden and Pingfang Duan, "International Trade and Economic Growth in Africa: The Role of the Digital Economy," ed. Christian Nsiah, *Cogent Economics & Finance* 9, no. 1 (January 1, 2021): 1911767, <https://doi.org/10.1080/23322039.2021.1911767>.

flow of goods, services, investments, capitals, and skillful labors.⁴

As one of ASEAN members, Indonesia has applied various policies to optimize several potentials, both products and services, to compete in AEC.⁵ Many regulations are implemented to support and protect society from the negative effects of free trading.⁶ One of the local products that can compete in the international market is handicraft. Indonesia is a country with a diversity of geographical conditions, from Aceh to Merauke. Indonesia is also well-known as a multicultural country. This condition results in the variation of handicraft works, such as batik pattern, weaving fabric, and carving. The different patterns are influenced by the distinguished society and geographical conditions.

In fact, numerous handicraft products of Indonesia have been traded in the international market, one of them is the carving crafts from Jepara. Some countries on the list of Jepara carving crafts markets are the USA, Tunisia, Democratic Republic of Congo, Finland, Iran, and Romania. To protect this local product, the regional government has registered the carved furniture of Jepara to the Directorate General of Intellectual Property Rights (known in Indonesia as HKI) in 2010 so it will be included in the Geographical Indication.⁷ As an attempt to safeguard the local property, the Indonesian government issued Law No. 20 of 2016 concerning Brands and Geographical Indications.⁸ Geographical

4 Koichi Ishikawa, "The ASEAN Economic Community and ASEAN Economic Integration," *Journal of Contemporary East Asia Studies* 10, no. 1 (January 2, 2021): 24–41, <https://doi.org/10.1080/24761028.2021.1891702>.

5 Marko S. Hermawan and Lena Choong, "Mapping the Terrain: An Indonesian Business Perspective of the ASEAN Economic Community," *The South East Asian Journal of Management*, October 29, 2018, <https://doi.org/10.21002/seam.v12i2.9730>; Ari- Siswanto and Marihot Janpieter Hutajulu, "The Reform of the Indonesian Competition Law to Anticipate ASEAN Economic Community," *PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW)* 5, no. 2 (September 18, 2018): 250–67; Darminto Hartono and Soekotjo Hardiwinoto, "Legal Perspective on Asean Economic Community," *Diponegoro Law Review* 3, no. 2 (October 30, 2018): 199–222, <https://doi.org/10.14710/dilrev.3.2.2018.199-222>; Umrotul Khasanah, "The Actualization of Economic Fiqh in Empowering the Small Traders to Challenge Asean Economic Community," *Jurisdictie: Jurnal Hukum Dan Syariah* 12, no. 1 (July 15, 2021): 123–44, <https://doi.org/10.18860/j.v12i1.12167>.

6 Tiara Putih Bastian, "Empowering Local Product Through Cultural Globalization," *Journal of Social Political Sciences* 1, no. 3 (August 30, 2020): 158–67.

7 Directorate General of Intellectual Property of Ministry of Law and Human Rights of The Republic of Indonesia, "Indikasi Geografis Mebel Ukir Jepara," 2010, <http://domain.tld>.

8 Lily Karuna Dewi and Putu Tunu Cakabawa Landra, "Perlindungan Produk-Produk Berpotensi Hak Kekayaan Intelektual Melalui Indikasi Geografis," *Kertha Semaya : Jurnal Ilmu Hukum* 7, no. 3 (January 17, 2019): 1–17, <https://doi.org/10.24843/KM.2019.v07.i03.p02>; Imam Lukito, "Peran Pemerintah Daerah dalam Mendorong Potensi Indikasi Geografis (Studi pada Provinsi Kepulauan Riau)," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 3 (November 23, 2018): 313–30, <https://doi.org/10.30641/kebijakan.2018.V12.313-330>; Ayup Suran Ningsih, Waspiah Waspiah, and Selfira Salsabilla, "Indikasi

Indications (hereinafter written as GI) is an attempt of protection on local products which have economical value. GI is a sign of origin for goods in the form of direct indication. GI has three basic functions, giving information on product names, geographical values, excellence, or characteristics related to the geographical areas.⁹ The registration of GI products in Indonesia, nevertheless, has yet to reach the maximum point. The data of the Directorate General of Intellectual Property Rights in December 2021 show that only 97 local products registered in GI.¹⁰

Based on the above data, some registered GI of handicrafts are Jepara carved furniture, Mandar silk weaving, Bali Gringsing weaving, Sikka ikat weaving, Tanimbar ikat weaving, Gianyar silver crafts, Alor ikat weaving, Alor songket weaving, Doyo weaving, and Silungkat weaving. We can say, only 10% of handicrafts are registered in GI.¹¹ Meanwhile, in East Java, not even one product has been registered, despite the province's fame as an area with numerous crafts such as Topeng Malangan, bamboo crafts, coconut shell crafts, coconut wood crafts, Djembe drum crafts, Damar Kurung Wayang Kulit (Shadow Puppet), Lontar and Pandan leaves webbing (anyaman), Reog Ponorogo, Marble and Onyx Tulungagung, and so forth. Some of the mentioned crafts have been traded in international markets. Lumajang bamboo crafts, for example, have been exported to Singapore and Malaysia.¹² *Reog Ponorogo* has also been sold to Australia, Bangladesh, and the Philippines.¹³

The export of handicrafts is a form of contribution made by creative industries to significantly elevate the country's income. The total of handicraft exports from Indonesia in 2019 reached USD 482 million. The number increased

Geografis Atas Carica Dieng Sebagai Strategi Penguatan Ekonomi Daerah,” *Jurnal Suara Hukum* 1, no. 1 (March 14, 2019): 105–20, <https://doi.org/10.26740/jsh.v1n1.p105-120>; Muhammad Rezka Eki Prabowo, Nuzulia Kumala Sari, and Emi Zulaika, “Kajian Yuridis Pendaftaran Pisang Mas Kirana sebagai Produk Indikasi Geografis Kabupaten Lumajang,” *Syntax: Idea* 2, no. 9 (2020): 626–34, <https://doi.org/10.36418/syntax-idea.v2i9.416>.

9 Ranggalawe Sugiri, “Utilization of Geographical Indication Protection System for Traditional Handicrafts in Indonesia,” *Indonesia Law Review* 10, no. 3 (December 31, 2020), <https://doi.org/10.15742/ilrev.v10n2.653>.

10 Directorate General of Intellectual Property of Ministry of Law and Human Rights of The Republic of Indonesia, “Indikasi Geografis,” 2021, <https://ig.dgip.go.id/>.

11 Directorate General of Intellectual Property of Ministry of Law and Human Rights of The Republic of Indonesia.

12 Dian Kurniawan, “Kerajinan Bambu Lumajang Tembus Pasar Singapura Dan Malaysia,” 2019, <https://surabaya.liputan6.com/read/4013702/kerajinan-bambu-lumajang-tembus-pasar-singapura-dan-malaysia>.

13 Naning Kristiyana and Titi Rapini, “Dinamika Usaha Pengrajin Reog Ponorogo,” *Jurnal Riset Akuntansi Dan Bisnis Airlangga* 2, no. 1 (May 31, 2017), <https://doi.org/10.31093/jraba.v2i1.22>.

by 41,49% from 2018, that was USD 340 million. Handicraft products include leather-material goods, bags, and travel goods.¹⁴ The increasing of society's handicraft exports can strengthen the economic potential in the country.¹⁵ To make this economic aspect work sustainably, the protection of local products originally from various areas in Indonesia definitely needs to be done. The regional government surely plays a significant role in socializing and advocating the community to register the GI of handicraft products.

Based on the explanation above, there are several purposes in conducting this study. First, it aims to describe the condition of local handicrafts in East Java Province. The reasons why GI has not been registered were also the target of this article. Finally, the authors try to analyse the government's role in improving the quality of local handicrafts through the registration of GI.

Research Method

This is a juridical-empiric study which primary data are from the interview results with, (a) The Head of Technical Implementation Unit of The Quality Development of Industrial Products and Creative Technology Malang (known as UPT PMPI and TK Malang); (b) The Chiefs of Product Variation and Design Section of *Disperindag* (Department of Industry and Trade) Malang Regency, Tulungagung, and Ponorogo; and (c) business actors in Malang Regency, Tulungagung, and Ponorogo. Meanwhile, the secondary data are the laws and regulations related to the geographical indication (GI), those are Law No. 20 of 2016 concerning Brands and Geographical Indications, The Government Regulation No. 51 of 2007 concerning Geographical Indications, and ownership concept in Islamic laws or *al-Milkiyyah*. The interview-based data were analysed using a descriptive-qualitative method; by classifying, identifying, and analysing the relation between the real field data and the mentioned laws or regulations.

Discussion

Local Handicrafts in East Java that Has a Geographical Indication Potential and Economic Value in Foreign Market

14 Department of Communication and Informatics, East Java Province, "Kemendag Tingkatkan Ekspor Fesyen dan Kerajinan Tangan," 2020, <http://kominfo.jatimprov.go.id/read/umum/kemendag-tingkatkan-ekspor-fesyen-dan-kerajinan-tangan>.

15 Ni Ketut Sari Adnyani, "Penguatan Kewilayahan Dengan Pemetaan Keunggulan Potensi Daerah Di Era New Normal," *Target : Jurnal Manajemen Bisnis* 3, no. 1 (July 3, 2021): 59–66, <https://doi.org/10.30812/target.v3i1.1156>; Husna Ni'matul Ulya, "Alternatif Strategi Penanganan Dampak Ekonomi Covid-19 Pemerintah Daerah Jawa Timur Pada Kawasan Agropolitan," *El-Barka: Journal of Islamic Economics and Business* 3, no. 1 (May 31, 2020): 80–109, <https://doi.org/10.21154/elbarka.v3i1.2018>.

A geographical indication (GI) is a sign used for a product that has a particular geographical origin and a quality or reputation related to its place of origin. Generally, GI is the name of a product attached with the area name or the place where the product comes from. The World Intellectual Property Organization (WIPO) defines GI as:¹⁶

“A Geographical Indication is a sign used on goods that have specific geographical origin and possess qualities or a reputation that are due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil.”

Based on the aforementioned definition, here are the principal elements of GI: 1) a sign taken from the place of origin which becomes the special feature of a traded product or item; 2) a sign showing the quality or reputation of a product; 3) the product quality is influenced by nature, weather, and soil from the place of origin. The GI protection is ruled in Article 22 to Article 24 of TRIPs (Trade-Related Aspects of Intellectual Property Rights) Agreement. The TRIPs is a multilateral agreement which completely regulates Intellectual Property Rights including the regulation on GI. Article 21 gives another definition of GI, “A sign identifying a certain region in a country, an area, or a district as the place of origin of a product, in which its reputation, quality, and characteristic are determined by the geographical factors.”¹⁷ Meanwhile, the purpose of GI regulation is stated in Article 22, “Legal facility is provided for protecting all GI products, in other words, GI is protected as an attempt to avoid public misdirection and prevent unfair competition.”¹⁸

GI which is ruled in Article 56 of Law No. 20 of 2016 concerning Brands and Geographical Indications (known as UUM), is a general regulation. To implement the article as stated in Paragraph 9, The Government Regulation No. 51 of 2007 concerning Geographical Indications (PP-IG) was issued. The definition of GI, as written in UUM Article 56 and PP-IG Article 1 Paragraph (1), is a sign indicating the place of origin of a product: due to the geographical

16 International Trade Centre, *Secrets of Intellectual Property: A Guide for Small and Medium-Size Exporter* (Geneva: United Nations, 2004).

17 Fokky Fuad and Avvan Andi Latjeme, “Perlindungan Indikasi Geografis Aset Nasional Pada Kasus Kopi Toraja,” *Jurnal Magister Ilmu Hukum* 2, no. 2 (July 17, 2021): 10–16, <https://doi.org/10.36722/jmih.v2i2.742>.

18 Khoirul Hidayah and Iffaty Nasyi'ah, “Potensi Pendaftaran Indikasi Geografis Kopi Lereng Semeru Oleh Pemerintah Daerah Dalam Menghadapi ASEAN Economic Community,” *Kertha Patrika* 42, no. 2 (August 30, 2020): 132–49, <https://doi.org/10.24843/KP.2020.v42.i02.p03>.

factors such as nature, human, or the combination of both, it gives certain characteristics and quality on the produced item.

The definitions from WIPO, TRIPs, UUM, and PP-IG are similar, that it contains product elements, certain places of origin, and exhibiting quality, reputation, and characteristics including nature and human factors. The sign used as GI is in the form of etiquette or label attached to the product. This sign is usually the name of a place, area, or region, words, images, alphabets, or the combination of the mentioned elements. The place name is either taken from the geographical map or the commonly-used name that is eventually known as the product's place of origin. The GI protection covers the goods produced by nature, agriculture, handicrafts, or other industries.

The principles of GI protection is written in Article 6 of The Paris Convention: "The countries of the union agree to refuse or to invalidate the registration, and to prohibit by appropriate measure the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearing, flags, and other state emblems of the countries of the union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view."

The protection history started after the issuance of The Agreement for The Protection of Appellations of Origin and their International Registration in Lisbon on October 31, 1958. The agreement gives protection on the so-called "appellation of origin", namely geographical name of a country or a region, or a certain place which is well-known for the origin of a certain product because it has particular qualities or characteristics or it has exclusivity known for the geographical environment. The Appellations of Origin refers to the collective ownership rights which have eternal existence. For example, the originality of coffee taste cannot be cloned due to geographical factors, such as natural highlands, climate, rainfall, temperature, and air humidity level. The rights refer to a region's tradition or a producer bound by the formal-traditional regulations including: (a) a region well defined; (b) standardization of physical and sensory characteristics; (c) originally related to special environmental; and (d) a market defined.

The GI Protection is based on the national regulations of the respective country. One country applies a protection without requiring a registration, and others use a registration system (first to file system) which is currently implemented in Indonesia. UUM Article 53 Paragraph (3) rules that the applicant of GI registration is any entity representing a society in a region which produces certain goods; they are those managing natural resources and agricultural products, people

who make handicrafts and/or industrial products, the sellers of those mentioned products, the institution who has the authority, and the consumer community of the products.

The Geographical Indication is a collective right used by a limited number of people and can be accounted for in relation to geographical factors, unlike the exclusive right of HKI which is individual. Because of the collective rights, GI cannot be licensed or handed over to other parties. Article 23 of TRIPs regulates the additional protection for spirits and wines. Article 24 (5) of TRIPs states: "where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either: a) before the date of application of these provisions in that member as defined in Part VI, or b) before the geographical indication is protected in its country of origin; measures adopted to implement this section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to a geographical indication".

This regulation is intended to solve the juridical problem related to brand registration or use in good faith which has similarity with the GI achieved before the application of TRIPs or before the GI was protected. For example, the brands of Japan territory, such as Sapporo or Yokohama were used for electronic household products by Korean companies. In a different case, the name Sapporo is used for a beer product which has special characteristics and quality due to the geographical factors e.g., nature and human, in the brewing process. In this case, Sapporo is eligible to use for GI because it causes no harm to another Sapporo brand for electronic products that was in fact the first one using and registering the brand.

There are 14 Technical Implementation Unit (UPT) according to The East Java Governor Regulation No. 60 of 2018 concerning Nomenclature, Organizational Structure, Job and Function Descriptions, and The Working Procedure of UPT *Disperindag* (Department of Industry and Trade), East Java Province, one of which is called UPT PMPI and TK, Malang. This unit is obliged to conduct some jobs of the department (*Disperindag*) in developing the quality of industrial products, intellectual property, industrial product designs, creative technology, administration, and community service. Some of its functions are: to conduct the technical assistance in the form of standardization dissemination, intellectual property, industrial product designs, and creative technology; to conduct the technical support in the collaboration of development of industrial products quality, intellectual property, industrial product designs, and creative

technology.¹⁹

The development of geographical indications protection in Malang Regency, Ponorogo Regency, and Tulungagung Regency are explained as follows. First, Malang Regency has 13 districts. One of the strategic objectives of the Disperindag Malang Regency is to enhance the competitiveness of Small and Medium Industries (SMI) and export commodities, as well as the trading volume.²⁰ Based on the information from Disperindag's database of the non-agro SMI, some handicrafts produced in Malang Regency are patchworks from Kasri Village-Bululawang District, embroidery and ceramics in Dau District, *Topeng Malangan* (Malangan Mask) from Pakisaji Village-Jabung District, stocking flowers from Karangploso District, leather crafts from Kepanjen District, and eco-printing *batik*.

Of all the aforementioned crafts, some of them terminated their business due to the two-year Covid-19 pandemic. Mrs. Yuni, one of the handicraft businessmen, stated, "*Pandemic is the worst thing that we had no choice other than terminating the business. The batik crafts coaching has been working for so long. After the pandemic, the economic situation worsened. We took loans, but couldn't sell much which resulted in bankruptcy.*" She added that, before the pandemic, the income of Malang Regency craftsmen was good, which is completely different after the pandemic happened. All materials for the handicrafts are not from Malang. Some of them are purchased from the region that is unrelated to Malang geographical area, for example, in the making of *Topeng Malangan*. Mrs. Yuni explained, "*The woods, the main material of masks, are sorted from several different regions. The best wood is the aged one, that has been stored for decades. Using new wood will lower the quality. These days, we change the material to acrylic. There is also a mix of white cement. It is molded/printed, given the wood pattern, and is colored to get the wood-like impression.*" Besides *Topeng Malangan*, some prominent crafts of Malang Regency also have not been listed in the geographical indication because they do not have remarkable characteristics, in material and manufacturing process. Some of the examples are eco-printing *batik* made from leaves taken from different regions and ceramics. They do not meet the requirements of GI as stated in UUM Article 56 Paragraph (1) and PP-IG Article 1 Paragraph (1); that GI is a sign showing the product's place of origin and its geographical environment such as nature, human, or both giving particular characteristics and quality.

19 Regional Government of East Java Province, *Rencana Strategis Perubahan Tahun 2019-2024 Pemerintah Provinsi Jawa Timur* (Surabaya: Dinas Perindustrian dan Perdagangan Provinsi Jawa Timur, 2021).

20 Department of Industry and Trade (Disperindag), Malang Regency, *Buku Profil Dinas Perindustrian Dan Perdagangan Kabupaten Malang* (Malang: Dinas Perindustrian Dan Perdagangan Kabupaten Malang, 2017).

To boost the selling and commercial values of a product, GI status is essential. GI has economic value as trademark does, so it needs to be legally protected. Some of the crucial points of GI protection are: (a) GI is an identity signal of a product from a certain area, or a product's name manufactured in a certain region, thus cannot be used for another product (even if it is similar in type) of different regions; (b) GI is the quality and geographical indicators to show the customers that a product is made from certain area in which the nature affects its quality, and that it has renowned distinctive characteristics; (c) GI is a business strategy. It adds the commercial value of a product due to its originality and limitation that cannot be produced in different regions; and (d) based on the TRIPs agreement, GI is considered as part of intellectual rights, thus, the ownership rights can be maintained from all kinds of illegal actions and foul competition.

The second regency is Tulungagung. The most well-known handicraft from this region is marble. According to the interview result with *Disperindag Tulungagung*:²¹

“People who are not from here think that the special product of Tulungagung is marble crafts. In fact, the production of marble is rare nowadays. It is true that marble material is originally from Tulungagung, but the craftsmen are short in numbers. For the Small-Medium Industries (SMI), they only make tables, which are also difficult and don't have many choices because the material is heavy and hard to shape. For the marble sold in pieces or for floor tiles, it is manufactured by companies (PT), not SMI. The one that is developing more is onyx since the material is soft and easy to shape. Besides onyx, one of Tulungagung's excellent productions is batik.”

From the statement above, we can say that marble crafts produced and made by the citizens of Tulungagung are rarely found nowadays. They only dig and collect the marble materials and sell it to a big company. Only big companies do own the tools to manufacture the marble crafts. Despite this fact, Tulungagung is still known as the biggest producer of marble crafts in Indonesia. Some regions also have marble crafts as their prominent products, such as Magelang, West Sumatera, Lampung, and South Sulawesi.²² Meanwhile, onyx is also produced in other areas e.g., Bojonegoro, Malang Regency, and Bawean; the last area is the most well-known onyx producer with the best quality because they have various patterns and fiber.

21 Mohamad Salman Huda, Wawancara, (Tulungagung, 12 Agustus 2022)

22 William Ciputra, “5 Daerah Penghasil Marmer di Indonesia, Tulungagung dan Magelang Terkenal hingga Mancanegara Halaman all,” KOMPAS.com, February 17, 2022, <https://regional.kompas.com/read/2022/02/17/183825578/5-daerah-penghasil-marmer-di-indonesia-tulungagung-dan-magelang-terkenal>.

Referring to UUM Article 56 and PP-IG Article 1 Paragraph (1), onyx crafts from Tulungagung are eligible for GI registration if it has particular characteristics related to geographical condition, in terms of material and producing process. When filing a GI registration, the product will be reviewed. One of the things to fulfil when registering for GI is to have a book of requirements. It is a book about a product detail identification where it elaborates some specific factors of a product, consisting of: GI name, the product name, description on characteristics and quality, description on geographical environment as well as nature and human factors, description on region borders and/or regional map covered by GI, description on the history and tradition related to the use of GI, description on the process of production and management, description on the method used to test the quality, and label used for the product which contains geographical indications.²³ Tulungagung also has two villages specializing in blacksmithing where they communally produced knives. They are also part of a national-scale association. Unfortunately, the knife materials are from different regions and they have no specific carving or knife making process that can be made potential for GI registration.

The third location discussed in this study is Ponorogo Regency. Ponorogo has traditional art called *Reog*. *Reog* is a traditional dance using accessories of lion head mask and peacock feathers as well as magic elements. It becomes public entertainment that has been existing to date. The art pieces used in *Reog* are *Barongan* mask, *Dadak Merak*, and *Bujang Ganong* mask. The masks have been exported abroad as stated by UD. Suromenggolo, “*The masks have been traded to all areas in Indonesia and also abroad such as Australia, Taiwan, and Korea. Those ordered from abroad are usually Indonesian workers and also university lecturers.*”

Reog consists of masks and other art pieces. Here is the interview result with one of the craftsmen, the owner of UD. Suromenggolo:²⁴

“We supply all Reog Ponorogo equipment, namely Barongan mask, Dadak Merak, Bujang Ganong mask, emblek, gamelan, dance equipment, and Reog dancers’ clothes. If it is for accessories, the Bujang Ganong masks are made by small craftsmen. However, if it is for festival purposes, we made it ourselves since the painting quality, the smooth sanding, and the hairstyle must be good. There is no standard in Reog accessories making, all craftsmen are free to express their creativity in mask making, such as the paint combination, face features, and how to set the eyes. The standard exists only for

23 Article 6 Paragraph (3) The Government Regulation (PP) No. 15 of 2007 concerning The Geographical Indications

24 Cahyo Nugroho, interview (Ponorogo, July 4, 2022)

the stage of the Grebeg Suro Festival, for instance Ganong masks can be either with or without fangs. So, non-Ponorogo citizens can learn how to make Barongan and Ganongan masks from YouTube and don't have to come and learn from Ponorogo craftsmen. Various materials, fabrics, Ponorogo local threads, horse tails from Magelang or Sulawesi, and blue peacock feathers from India can also be used."

Masks in *Reog* art are the special characteristic of Ponorogo. The required masks are *Bujang Ganong*, *Barongan*, and *Dadak Merak*; beside *Jaran Kepang*. All masks are made by hand. On February 15-16, 2022, *Reog Ponorogo* was registered to UNESCO as the intangible cultural heritage (Traditional Cultural Expression or TCE). The masks do not have brands and geographical indications as the identity to sell them abroad. However, *Reog Ponorogo* is dissimilar with the two aforementioned handicrafts from Malang Regency and Tulungagung Regency. It is because *Reog* is not categorized as crafts eligible for GI registration, but TCE. TCE is "every expression of creative works both tangible and intangible, or combination of both showing the presence of a certain traditional culture which is communal and across generations."²⁵ This is as stated by Ridsyal Rizki Yogaswara and Didik Prihantoro²⁶ In terms of local crafts, there are two regimes i.e., Law on Copyrights and Law on Brands. In Copyrights law, this craft is considered as TCE, meanwhile in the second law, it is called GI as long as it meets the requirements. For the Copyright regime, there are TCE and traditional knowledge. TCE is usually in the forms of traditional ceremonies, tradition, custom, art performance, procession, and not a product, thus, *Reog* is definitely categorized as TCE.

Similar to GI, TCE is a communal aspect that cannot be owned individually. The only difference lies in the fact that TCE is not connected to economic potential. As stated by Ridsyal:

"the purposes of GI and TCE are slightly different. GI forbids you to use anything which belongs to me without my consent. For TCE, anyone is allowed to quote or mention the name of an area. GI is related to monopoly; meanwhile, TCE is closely related to preservation. So, two different regimes exist".²⁷ Furthermore, he said: "GI is already registered, since it is a part of trademark regime. On one hand, TCE is recorded or written in the inventory. It can be checked in KI-komunal-Indonesia.id. During a registration process, an investigation mechanism is involved. The status of GI can be checked through the website. The stages involve publishing, verifying, and registering."

25 Directorate General of Intellectual Property, Ministry of Law and Human Rights of The Republic of Indonesia, "Ekspresi Budaya Tradisional," DJKI, accessed November 14, 2022, <https://kikomunal-indonesia.dgip.go.id/jenis/1/ekspresi-budaya-tradisional>.

26 Ridsyal Rizki Yogaswara dan Didik Prihantoro, interview (Surabaya, July 11, 2022)

27 Ridsyal Rizki Yogaswara dan Didik Prihantoro, interview (Surabaya, July 11, 2022)

If GI belongs to a certain region and must go through a registration mechanism, then TCE is a recognition that is inventoried or recorded and protected as the property of a certain state. Article 38 of Law No. 28 of 2014 concerning Copyright says: “Copyright over traditional cultural expressions is held by the State, and the state shall inventory, maintain, and preserve these traditional cultural expressions.” Furthermore, Article 38 paragraph (3) of the Copyright Law says: “The use of traditional cultural expressions as referred to in paragraph (1) must pay attention to the values that live in the developing community.” *Reog* is a cultural art originating in the Northwestern of East Java, and Ponorogo is considered the true hometown of *Reog*. The city gate of Ponorogo is decorated with warok and gemblak figures, two figures that also appeared when *Reog* was performed. *Reog* is one of the regional cultures in Indonesia that is still closely related to mystical things and strong mystical science. It is a traditional dance in an open-arena that serves as a folk entertainment containing magical elements, and the main dancer is a person wearing a lion head figure with peacock feather decoration. Some masked dancers and kuda lumping (flat horse) performed too. There are two different forms of *Reog* of Ponorogo known today, namely *Reog Obyog* and *Reog Festival*.²⁸

Local Government Efforts in Providing Geographical Indication Protection for Handicraft Businessmen

In an interview, Mrs. Yuni Hayati, the Section Head of the Miscellaneous Industry and Design of Research Product at the Disperindag Malang Regency said:²⁹

“I have never known about geographical indications and have never had one. I know about brands, but I don’t know what geographical indication is.” This is in line with what was said by Mrs. Yus Suhartatik, a Topeng Malangan entrepreneur who said: “I have never known about geographical indications and got any socialization. I only have a brand, specifically made for my mask business. If Universitas Islam Negeri Malang indeed wants to facilitate the registration, then we will be very happy and ready to contact my friends to gather many craftsmen. I’ve been using my own brand name. Actually, if GI exists, it will be very interesting. Then, later on, the craftsmen can help. Regarding the association, Topeng Malangan does not have one yet.”

28 Ilham Tito Herfino, Sugiyanto Sugiyanto, and Hanik Likustyawati, “Aktivitas fisik pemain reog Ponorogo Jawa Timur,” *Prosiding Seminar Nasional Fakultas Ilmu Kesehatan dan Sains* 1, no. 1 (September 24, 2020), <http://prosiding.unipma.ac.id/index.php/SENFIKS/article/view/1668>.

29 Yuni Hayati, interview (Malang, June 23, 2022)

Likewise, the craftsmen from Ponorogo also have never known what GI is. What is important to them is only making masks to meet the order coming from both domestic and abroad. The following is the result of an interview conducted with the Head of the Technical Implementation Unit (TIU/UPT) of the Industry Sector of Disperindag Ponorogo:³⁰ “There has not been any socialization given by the authorized officers from the province regarding geographical indications. Meanwhile, Reog has been registered to UNESCO through the Tourism Office. So, the form of protection is through culture. Thus, Reog is a part of the culture of the Ponorogo people.” Meanwhile, Mr. Aruno, the Head of the Geographical Indications Section of UPT PMPI and TK Malang³¹ stated that there had never been any socialization about GI to the craftsmen community. Hence, people did not understand what GI is and they call all intellectual property rights as patents or copyrights.

These interviews reveal that local governments also do not understand much about geographical indications. This fact is also found in Tulungagung Regency. The following is the result of an interview conducted with Disperindag Tulungagung staff:³²

“Disperindag always provides assistance for the SMI. For medium to upper SMI, we only provide assistance for overcoming difficulties in technology transfer and a number of other things. However, for small SMIs, we provide assistance from the scratch and training, permission facility, to sales. So far, we have been active in performing 30 socialization activities carried out for our fostered communities. The authorized officials of the Provincial Office provided us socialization. The mechanism starts with how we provide an activity format, the provincial party will then present and become the speaker of socialization. We also facilitate the central office. We immediately invite the parties who have the authority to provide socialization. Thanks to this technological advancement, everyone can have access to the web and all information are presented there. However, the translation is difficult. We sometimes have difficulty understanding the language in the permit documents. So, we requested to make the language as easy as possible. That’s why it needs direct socialization given by those who have the authority so that the information can be more easily understood. However, for geographical indications, there has yet any assistance regarding the issue.”

From the interview above, Disperindag Tulungagung still uses the term “patent”; meanwhile, Disperindag Malang and Ponorogo Regency still have no idea of what GI means. This shows a lack of legal knowledge regarding GI. Legal knowledge is the first step that must be taken to gain an understanding

30 Zainal, interview (Ponorogo, July 8, 2022)

31 Aruno, interview (Malang, August 1, 2022)

32 Mohamad Salman Huda, interview (Tulungagung, August 12, 2022)

of the law, then, implement the law as expected. In accordance with the legal *fictie* theory. Everyone should be considered to know the law after law (through statutory regulations) has been ratified and promulgated in the *state gazette*. To form public legal awareness, legal knowledge is a requirement. The adage says *ignorantia jurist non excusat*, which means ignorance of the law cannot be forgiven. Thus, it becomes natural that the public cannot distinguish the types of intellectual property rights. All are said to be patents as what was received as the result of interviews at UPT PMPI and TK Malang and the craftsmen from Ponorogo.

Legal knowledge and understanding can be obtained through socialization. However, a matter regarding the one who should provide this socialization still becomes a technical issue between the authorized institutions. Certain procedures and a continuous socialization program must be made so that the expected legal socialization can be achieved. Regarding the one who should provide outreach to the public about GI, Mr. Aruno³³ said: “Definitely, the local government. So, later, if it is possible, we can also provide education and facilitate the related matter.” The point is about how the local government must provide knowledge to the public or local government about GI through related institutions or TIUs. Apart from the local government, UPT PMPI and TK Malang can also conduct socialization in the form of education and provide facilities. However, this has never been done. They said that a socialization or education about GI given to the public was precisely the further step after the craftsmen could identify their products and register them to the Ministry of Law and Human Rights of the Republic of Indonesia if they had any potential GI. This is the reason UPT PMPI and TK Malang have never made a request to this ministry to conduct a socialization. The next reason is the fact that educating the public regarding intellectual property rights cannot be done at a time and simultaneously, which means that it requires a fairly long process until the public knows and understands it.

The socialization for Tulungagung Regency has been carried out by Bappeda (Regional Development and Research Planning Agency). From the interview, it was said: “*Actually, related to IG, Bappeda understands better. Last year, we conducted a study on HKI regarding GI and earlier this year (2022) the HKI service clinic was launched. So, it seems that GI indeed focuses on this aspect. There is no cooperation with Disperindag, although the law gives the authority to us, maybe the data was already provided there. So, a follow-up interview can be conducted. In Disperindag, the latest data regarding*

33 Aruno, interview (Malang, August 1, 2022)

GI handicrafts and agricultural products are still unavailable. Actually, we also want to do mapping, but we lost to Bappeda. Hence, we only do coaching, training, and socialization.” There are structural constraints that must be addressed. Because if not, there will be overlapping authorities which will actually affect the understanding and legal protection of society. Likewise, Ridsyal³⁴ gives a statement about this structural obstacle: *“This is definitely a structural obstacle. Secondly, they already have their own performance targets. If we want to join the program there, they will not welcome us. People change, work targets change. They already have their own budget base. So, they have launched a program from their own budget. They put their own activities first.”* The work program will change when the leadership changes. If a socialization program has been launched, then the leadership changes, it is likely that this socialization program will also change. Likewise, for financial allocation and provision of facilities in one leadership, the priority of financial planning and facilities will be different from other leadership. Thus, there are 2 (two) more obstacles besides the lack of understanding of the relevant agencies; those are structural constraints and financial constraints

Geographical Indication from the Al-Milkiyyah Concept Perspective

Ownership is a specialization of an object that allows one to act legally against the object according to one’s wishes as long as there are no sharia obstacles and prevent other people from acting legally on the object. This means that objects that belong to someone are completely under his/her control so that other people cannot act and take advantage of them.³⁵ In the context of positive law in Indonesia, basic regulations regarding objects (*zaak*) and ownership of objects are regulated in the Civil Code (KUHPer).³⁶ Article 499 of the Criminal Code states that objects (*zaak*) are anything that can become an object of property rights. The object of property rights can be in the form of goods and rights, such as copyrights, patents, geographical indications and others. The owner or holder of rights to this object is referred to as *zakelijk recht*. *Zakelijke recht* gives a person the right to act or do no act towards the objects he owns.

According to Ibn Taimiyah, ownership or property right is a power based on Sharia to use an object, but this power greatly varies in form and level. Sometimes, this power is complete, so the owner of the object has the right to sell, give, lend, inherit or use it for productive purposes. However, sometimes the power is

34 Ridsyal Rizki Yogaswara, interview (July 11, 2022)

35 YUSDANI YUSDANI, “Sumber Hak Milik Dalam Perspektif Hukum Islam,” *Al-Manarid: Jurnal Hukum Islam* 9 (2002), <https://journal.uin.ac.id/JHI/article/view/2607>.

36 Khoirul Hidayah, *Hukum Hak Kekayaan Intelektual*, (Malang: Setara Press, 2017), 4.

incomplete, so the owners' rights are limited.³⁷ Wahbah explained that in terms of linguistics, property (things) is *al-maal* which means inclination, tendency, and slope. The assets in this sentence are anything that is obtained or needed by humans, such as gold, silver or animals, which are categorized as visible objects. These also refer to abstract forms that can be used, such as vehicles, clothes and shelter. Something that cannot be controlled by humans cannot be categorized as a property; for instance, birds flying in the sky.³⁸ It can be stated that objects are anything that can be used by humans for their life. In a certain way, someone (human) can own this object. As said by Wahbah Az-Zuhaili, ownership is a relationship between a person and property that is legalized by sharia, so that person becomes the owner of the property, and has the right to use it as long as there is no prohibition against its use.³⁹

Another opinion regarding the concept of ownership was formulated by Baqir al-Sadar.⁴⁰ According to Sadar, property rights have two concepts of ownership in Islam, private and collective ownership. Collective ownership is further divided into two sub-ownerships, public and state ownership. Private property is limited to the right to reap the benefits, priority and the right to stop others from using the property. The difference between public and state ownership lies in their use. Realizing that he relies almost entirely on state ownership, he places greater authority on the role of the state in allocating resources and public welfare. The state has the power, so it has a big responsibility to create justice. From some opinions above, it can be concluded about what so called an object. Ghufron A. Mas'adi mentions the elements of an object, which are: a) it is a material (*'aniyah*) or has a real form; b) it can be kept for possession (*qabilan lit-tamlík*); c) it can be utilized (*qabilan lil-intifa'*); d) it is an *'urf* (customs or habits); and e) people see it as a property.⁴¹

Islam regulates all aspects of human life, including muamalah aspects in *al-maal* and *al-milk*. Islam teaches a person to respect or appreciate the property of others. Thus, anyone who violates or seizes the property rights of others will be given harsh sanctions such as cutting off their hands (*had*).

37 Fasiha Fasiha, "Pemikiran Ekonomi Ibnu Taimiyah," *Al-Ammal: Journal of Islamic Economic Law* 2, no. 2 (September 17, 2017): 111–27, <https://doi.org/10.24256/alw.v2i2.634>.

38 Fitri Utami, Dini Maulana Lestari, and Khaerusoalikhin Khaerusoalikhin, "Analisis Kritis Konsep Kepemilikan Harta Dalam Islam," *JURIS (Jurnal Ilmiah Syariah)* 19, no. 2 (December 18, 2020): 133–45, <https://doi.org/10.31958/juris.v19i2.2330>.

39 Wahbah al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh*, vol. 4 (Damaskus: Dar Al-Fikr, 1984), 2892.

40 Nur Chamid, *Jejak Langkah Sejarah Pemikiran Ekonomi Islam*, Cet.1 (Yogyakarta: Pustaka Pelajar, 2010), 45.

41 Ghufron A Mas'adi, *Fiqh muamalah kontekstual* (Jakarta: PT RajaGrafindo Persada, 2002).

Islam highly values someone's ownership of certain assets so that someone who has property can defend and protect the property from other people who want to take or seize it in a bad way. Although all properties in this world belong to Allah the Almighty as the creator, Allah allows humans to own and utilize what Allah creates in this world for human needs or welfare. Allah says in the Quran, particularly in Surah Ali-Imran, Verse 189 which means: "To Allah alone belongs the kingdom of the heavens and the earth, and Allah is the Most Capable of everything." Furthermore, Surah al-Baqarah, Verse 29 mentions: "He is the One Who created everything in the earth for you." It can be said, firstly, that the essence of property ownership in Islam is the truth that Allah is essentially the Owner and Creator of property; secondly, property is a facility provided for human life in the world; and thirdly, Allah has bestowed ownership on human beings.⁴²

Because of how valuable ownership and respect for a person's ownership of property, Islam makes it one of the goals to be achieved in establishing a law. The protection of property (*hifdz al-mal*) is one of the purposes of establishing the law itself (*al-maqashid al-shari'ah*). According to Syathibi,⁴³ Allah the Almighty set the welfare in this world and the hereafter as the objective of a legal setting. Syathibi further explained that the importance of the existence of law is to preserve the *maqashid* (objective) of law for the benefit of mankind. All obligations (*taklif*) were created in order to realize the welfare of humans. According to asy-Syatibi, there is no single law, which Allah the Almighty decided, that does not have an objective. He further states that the law that does not have any objective or goal is similar to *al taklif maa la yu'ta* (an order that cannot be carried out).

Maqashid al-syariah is a term in *ushul fiqh* used by Imam Syathibi and Abdul Karim Zaidan. Some Islamic thinkers use different terms although principally they refer to the same meaning. For example, Zaky al-Din Sya'ban and Abdul Wahab Khallaf who call it *maqasid al-tasri*. Meanwhile, Muhammad Abu Zahra calls it *maqasid al-ahkam* and Najmuddin al-Thufi knows it as *al-maslahah*.⁴⁴ If it is associated with the ownership of objects, in the Islamic concept, it is built on three basic principles comprising the discussion of wealth ownership, wealth

42 See Q.S. An-Nur [24]: 33, Al-Baqarah [2]: 29, An-Naba' [78]: 6-16, Al-Baqarah [2]: 3 and 188.

43 Abu Ishaq Al Syathiby, *Al Mumaffaqaat Fi Ushul Al Syari'ah* (Saudi Arabia: Wuzarah Al-Syu'un Al-Islamiyah Wa Al-Awqaf Wa Al-Da'wah Wa Al-Irsyad, N.D.), 150.

44 Suansar Khatib, "Konsep Maqashid Al-Syari'ah: Perbandingan Antara Pemikiran Al-Ghazali Dan Al-Syathibi," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, Dan Keagamaan* 5, No. 1 (December 30, 2018): 53, <https://doi.org/10.29300/Mzn.v5i1.1436>.

management and distribution of wealth.⁴⁵ Along with the advancement of the era, the meaning of objects also developed. Objects that were originally tangible and concrete, can be touched by the hand and can be transferred physically, are currently developing into objects that are intangible, not real and can be transferred by means virtually. However, it essentially remains as something that can be owned by someone, can be utilized, maintained, and transferred, most importantly, it is something that has economic value.

Intellectual property rights (HKI) are someone's property rights that are intangible but have economic value. In article 4 of Law No. 28 of 2014 concerning Copyrights it is said that HKI contains exclusive rights for the creator, moral and economic rights. As one of the forms of HKI, geographical indications, based on the concept of *al-milkiyyah*, are properties that are *'am* (*'ammah*/general) in nature because GI is a communal property. This is caused by the fact that geographic indications may not be owned individually but can be owned jointly. As stated in article 53 paragraph (3) of UUM and GI, GI is communal property. This means that the status of GI cannot be owned and benefited economically by individuals. Some of the Principles of Communal Rights are: passing on these rights from generation to generation, showing the identity and culture of a particular community, the maker/creator is not recognized, knowing that they are generally not suitable for commercial purposes but are preferably used as a means of culture and religion, developing among the community, the ownership and the preservation is communal, and the protection and preservation is desired without any time limit. Thus, communal property rights put more emphasis on religious and cultural means and are very difficult to develop because they contradicted the prevailing values. TCE, traditional knowledge and geographical indications are included in this category. Communal property rights in HKI are referred to as Communal Intellectual Property (KIK). KIK is a form of HKI that is fully owned by a group of people who live in a certain place permanently.⁴⁶ In contrast to TCE and traditional knowledge, GI has more economic value. This must be underlined because, in fact, GI does not only give recognition to certain products but also contains commercial benefits for the owner. That is why legal protection for GI must

45 Wedi Pratanto Rahayu, "Konsep Kepemilikan Dalam Islam" 7, no. 1 (June 28, 2020), <http://ejournal.unhasy.ac.id/index.php/irtifaq/article/view/776>.

46 Regional Development and Research Planning Agency, Bogor Regency, "Sistem Perlindungan Hukum Kekayaan Intelektual oleh Kemenkumham Ri," *Bappedalitbang* (blog), October 16, 2017, <https://bappedalitbang.bogorkab.go.id/topik/sistem-perlindungan-hukum-kekayaan-intelektual-oleh-kementerian-hukum-dan-ham-ri/>.

be made constitutionally by upholding the principle of legality.

In the concept of *al-milkiyyah*, as KIK, GI is categorized as *naf'i* property, which is an object that can develop from time to time and can be beneficial.⁴⁷ GI is also categorized as *qimi* property, which is an asset that has no similarities with other things. For example, a thin cloth in Malaysia is considered as a *qimi* property because there is nothing that is equivalent to it in the market. Meanwhile, for Indonesia, the thin cloth is categorized as a *mitsli* property because it is easy to obtain. As stated in article 56 of the UUM, GI is a *qimi* property because the GI of an area may no longer be used by another region even if it is using the same object or form. It is caused by one of the main requirements for GI, which requires that the geographical character of one place and another should be different.

Similar to the concept of ownership in conventional law, the concept of *al-milkiyyah* also divides property ownership into 3 parts; which in general, in many Fiqh books, are classified into: 1) private or individual ownership (*al-milkiyyah al-fardliyyah*); 2) public ownership (*al-milkiyyah al-'ammah*); and 3) state ownership (*al-milkiyyah al-daulah*).⁴⁸ The concept of property rights was originally used by Islam. It did not exist in the old times. Objects that belong to the general ownership category are objects that have been declared by Allah the Almighty as objects needed by the community and must not be controlled by a person or certain groups. Because it is public property, every individual can use it but is prohibited from owning it. Jurisprudence experts define what is meant by public ownership include public facilities; mining goods; and resources which, in terms of form, are difficult for individuals to own.

Islam does not want an imbalance between the rights of individual owners and the rights of other communities. The rights of the owner based on the Islamic perspective are standard. What may be a little indifferent is the point that the government has the right to intervene in terms of law. However, it is very limited to certain cases which have to do with social targets that need to be realized.⁴⁹ Such position that Islam has is meant to strike a balance between property rights and intervention rights, which are worrying people that they may be excessive under the pretext of public welfare. The ownership of private wealth is considered as a motivation to stimulate human best efforts to expand

47 Nasroen Haroen, *Fiqh Muamalah* (Jakarta: Gaya Media Pratama, 2007), 76.

48 Muhammad Baqir Ash Shadr, *Buku Induk Ekonomi Islam : Iqtishaduna*, trans. Yudi (Jakarta: Zahra, 2008), 147.

49 Agus Gunawan, "Kepemilikan Dalam Islam," *Tazkiya* 18, no. 02 (December 29, 2017): 145–58.

society's wealth. However, for the socialists, it is the main cause of the irrational and unjust distribution of wealth. The Islamic concept of private property is unique. Ownership, in its essence, belongs to Allah, and there are only some parts, with certain conditions, that belong to humans so that they can fulfil the purposes set by Allah. It is the communal purpose that can be achieved by acting as a guardian for those in need.⁵⁰

Regarding KIK, the law defines it in HKI as a right that must be legally recognized; thus, it must be registered or inventoried. KIK that meets the requirements as GI must be first registered, but KIK that meet TCE and traditional knowledge (TK) requirements must be inventoried. TCE and TK are KIK that can be used by anyone, not limited to time and place, but the region of origin must be mentioned. This "region of origin" can be found in the inventory list on the website of the Directorate General of Intellectual Property Rights. Traditional knowledge, or knowledge, is put in the public domain because it is unlimited or infinite and does not run out due to any use. Knowledge is known as a free good. It is very difficult to prevent other people from consuming the same knowledge. The acquisition of knowledge does not create competitors (non-rivalrous). Meanwhile, the existence of a human intellectual relationship is very limited (finite) for each individual and there are certain requirements that must be met.⁵¹

Conclusion

From the discussion above, it can be concluded that, even though, the East Java local handicrafts are widely known, they have not been registered in the Geographical Indication. This is due to the absence of socialization and training regarding the GI from the local government. Meanwhile, the handicrafts of the three regencies that can be potentially registered in GI are Topeng Malangan from Malang Regency, marble/onyx crafts from Tulungagung Regency and Reog from Ponorogo Regency. However, these three crafts must be studied more to know about their peculiarities as required by UUM and Government Regulations concerning GI.

50 Dimyauddin Djuwaini, *Pengantar Fiqh Muamalah*, 1st ed. (Yogyakarta: Pusaka Pelajar, 2008), 25.

51 The works that can be protected by Copyrights must fulfill the requirement of "originality" and "creativity" in some cases, "fixation" is also needed. The invention that can be considered as "patent" must fulfill the requirement of "novelty", "inventive step", and "industrially capable". A brand sign used for trading should have "distinctiveness". "Originality" and "new" factors are required for Industrial Design. The design of DTLST must be original. The information of The Trade Secret should at least show its originality.

The local government can encourage the community to create handicrafts that have GI potential by conducting socialization and/or training. However, it still has both structural and financial constraints. In the concept of *al-Milkiyyah*, GI is considered as *an-naf'i* property, an object that can be taken advantage of and as *qimi*, an object that is different or has the peculiarities of certain areas. In terms of ownership, GI is a joint property that cannot be owned by anyone but can be used jointly as a general property or *al-milk al-'ammah*.

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