

# Mineral Stone as a Natural Resource in the Protection of Geographical Indications Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications

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**Abstract**— Geographical Indication as one of the Intellectual Property fields gets protection based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications with implementing regulations Government Regulation No. 51 of 2007. The protection coverage is more clearly regulated in relation to Natural Resources goods and/or products. One of the natural resources that are protected as a product of Geographical Indication is mineral stone, because these stones are one of minerals mass that can consist of one or more types of minerals. So that every stone that is affected by mineral content due to geographical factors will produce stones of different types. The purpose of this study is to find out and analyze whether mineral stones are natural resources that can be protected under Law No. 20 of 2016 concerning Trademarks and Geographical Indications, and to know and analyze how to protect mineral stones as natural resources found in Ungaran Regency. This research using empirical juridical research method, where the method or the procedure is used to solve research problems by examining the primary data first, and that is a data that obtained directly from the chairperson of the Ratu Shima Cultural Heritage Care Society in Semarang Regency and then proceed to examining the secondary data which is associated with Law Number 20 of 2016 concerning Trademarks and Geographical Indications or literature studies that support this research.

**Keywords**— *Mineral Stone, Natural Resource, Geographical Indications*

## I. INTRODUCTION

Geographical Indications (GIs) in its meaning are regulated in Article 1 letter f, which states that a Geographical Indication is a sign that indicates the area of origin of an item and/or product which due to geographical environmental factors including natural factors, human factors or a combination of the two factors gives reputation, quality, and certain characteristics of goods and/or products produced. Where the scope of protection of Geographical Indications itself is the protection of goods and/or products in the form of natural resources, handicrafts, or industrial products (Article 53 paragraph 3 of Law No. 20 of 2016 about Trademarks and Geographical Indications).

Research related to Geographical Indications has been conducted by researchers on the Optimization of Legal Protection of Agricultural Products as Intellectual Property Assets (Studies in Central Java) and the Existence of Geographical Indications in Central Java (Judging from the Registration of Geographical Indications), the two studies conducted by this researcher are related to agricultural products in Central Java which has the potential as an GIs product based on the old Trademark Law, that is Law No. 15 of 2001 about Trademarks. The current research researchers are trying to review from the new Trademark Law, that is Law No. 20 of

2016 about Trademarks and Geographical Indications that govern more specifically related to the scope of IG protection of natural resources which in the old Trademark Law only covers agricultural products, for regulation in Trademark Law Number 20 of 2016 regulates natural resources more broadly, one of which is a natural resource of mineral stone.

Indonesia as a country that rich in natural products including agricultural products, plantations and mining brings its own benefits for Indonesia as a country that can be independent in meeting all the needs of the Indonesian people while increasing the income of the Indonesian economy and opening up opportunities for employment as much as possible and can equalize developed countries to manage their own natural products. This also needs to be balanced with a legal protection so that Indonesia's abundant natural products are not claimed by other parties, as a simple example the results of plants that can be used as medicines from Indonesia can be claimed by other parties or countries after mixing in the composition of making beauty creams or herbal medicines the other.

Protection of natural products can be protected under Law No. 20 of 2016 about Trademarks and Geographical Indications. Geographical Indications (GIs) can be used strategically to advance regional and national industries because GIs notifies prospective buyers that a product is produced in a certain place and has special characteristics that

are desired and are only found in that place.<sup>1</sup> The value of a region's specialty can be increased in the eyes of its customers when a regional group and its members have the exclusive right to use a particular GIs. GIs can add to the strength of dynamic product marketing, and because GIs are jointly owned, they can be very good tools for their region or for community-based economic development.<sup>2</sup>

Natural Resources fall within the scope of protection of Geographical Indications, one example is mineral stones which are natural products. Mineral stones are usually found in rivers and mountains that are still active, such as Mount Ungaran, which is a quarterly volcano which is the easternmost part of the North Serayu mountains. The Mount Ungaran area in the north is bordered by the alluvial plains of northern Java, in the southern part is a quarterly volcanic pathway (Sindoro, Sumbing, Telomoyo, Merbabu), while in the east it is bordered by the Kendeng Mountains.<sup>3</sup>

The activity of Mount Ungaran experienced three breaks, during which the volcanic sediment deposited/vulkaniklastik at the foot of Mount Ungaran.<sup>4</sup> Stone mineralogy on the product of Mount Ungaran shows the composition of andesitik and basaltic andesite with porphyritic texture. Mineralogically, all of Mount Ungaran's stone products have no striking differences.<sup>5</sup>

The potential of precious and agate stones in Semarang district is something that can be proven, the topography of the Semarang district that is hilly district, many stones and ancient rivers save a lot of potential precious stones. The quality of precious stones from Semarang district is not inferior to stones in other regions, one of them is purple stone with the name Javanese amethyst which is stored in Ronggowarsito Museum, Semarang.<sup>6</sup> Besides around Mount Ungaran, a river in Semarang district is also found a stone called jraja drajat, this stone has good fiber, the color is yellowish brown with successive triangular motifs. This stone drajat stone is found in Kalikayen River, East Ungaran, Kalikayen River, the river walls are many stones that are shaped like marble, and there is also an iron block with white and black composition. As well as this mineral stone can also be found in Mergi Hill, a hill that has been known as an excavation C mining area that stretches from the area of Leyangan Village to Lemah Abang Village in Semarang district and can also be found in the West Ungaran Kaligarang area. The discovery of unique stones in Semarang Regency is inseparable from the existence of Mount Ungaran which is included in the ancient mountain category.<sup>7</sup>

The discovery of mineral stones in Semarang Regency shows that the need for legal protection of mineral stones found

in Semarang Regency as Natural Resources in the protection of Geographical Indications based on Law No. 20 of 2016 about Trademarks and Geographical Indications. So based on the results of this research will be able to answer related to the formulation of the problem to be studied.

This research was created to meet the needs regarding the protection of mineral stones as Natural Resources in the Protection of Geographical Indications. So the problems that will be examined are:

1. Are mineral stones a natural resource that can be protected under the Law. No. 20 of 2016 about Trademarks and Geographical Indications?
2. How to protect mineral stones as natural resources found in Ungaran Regency in term of Law No. 20 of 2016 about Trademarks and Geographical Indications?

The paper analyzed the case through the concept of legal protection theory, in which that Legal Protection according to Philip M. Hadjon, is always related to power. There are two powers which are always a concern, and that is government power and economic power. In relation to government power, the issue of legal protection for the people (governed), to the government (governing) in relation to economic power. The problem of legal protection is protection for the weak (economy) against the strong (economy).<sup>8</sup> Philipus M. Hadjon divides the form of legal protection into 2 (two), are: Preventive Legal Protection and Repressive legal protection. A simple definition of preventive itself is an act of prevention to prevent violations of a law while repressive measures are taken as an effort to deal with violations.

## II. RESEARCH METHOD

This research uses an empirical juridical research method where the procedure used in this research is by researching secondary data first then continuing by examining primary data in the field,<sup>9</sup> so that in this case the researcher directly observe and interviews directly in the field about everything related to the protection of mineral stones as natural resources in the protection of geographical indications based on Law No. 20 of 2016 about Trademarks and Geographical Indications in Semarang Regency.

## III. RESULT AND DISCUSSION

### A. MINERAL STONES AS NATURAL RESOURCES CAN BE PROTECTED UNDER ACT NO. 20 OF 2016 ABOUT TRADEMARKS AND GEOGRAPHICAL INDICATIONS

Natural resources are all things that are sourced from nature that can be utilized to meet the needs and survival of human beings. Herman Haeruman stated that: Natural Resources are resources formed by natural forces such as land, waters, sea

<sup>1</sup> Kamil Idris, *Kekayaan Intelektual Sebuah Kekuatan Untuk Pertumbuhan Ekonomi*, ed. Dirjen HKI Kementerian Hukum dan HAM RI, diterjemah. (Indonesian: WIPO Publication No.888.1 (Indonesian), 2015), p. 21

<sup>2</sup> *Ibid.*

<sup>3</sup> Prihatin Tri Setyobudi, "Mengenal Geologi Dan Bumi: Geologi Gunung Ungaran," *Ptbudie.Com*, last modified 2019, <https://ptbudie.com/2009/01/25/21/amp/>.

<sup>4</sup> Jenian Marin, "Studi Geomorfologi Gunung Api Dan Petrogenesis Batuan Untuk Memahami Evolusi Vulkanotektonik Pada Gunung Ungaran" (Provinsi Jawa Tengah: Academia-Industry Linkage, 2015).

<sup>5</sup> *Ibid.*

<sup>6</sup> Kompas.com, (16/4/2015)

<sup>7</sup> Kompas.com

<sup>8</sup> Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: PT. Bina Ilmu, 1987). p. 2-5

<sup>9</sup> Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum* (Jakarta: Ghalia Indonesia, 1983). P. 24

biota, air and space, minerals, landscapes, geothermal and natural gas, wind, tides and currents the sea.<sup>10</sup>

Natural resources are divided into several types according to their nature where they are divided into renewable natural resources and non-renewable natural resources. Renewable natural resources are natural resources that will never run out such as animals, plants, air, water, sunlight, and other microorganisms while non-renewable natural resources are natural resources that have a limited amount because their formation requires a very long time such as minerals or mining materials.

Stone is a natural resource obtained by mining or from weathering or erosion of a large stone in a particular area. Stone is a non-renewable natural resource because it consists of one type of mineral or a collection of several kinds of minerals. Stones formed from nature which require a long time process in which the formation of a stone can be divided into three kinds, namely igneous stone, sedimentary stone, and metamorphic stone. This research related Amethyst is an igneous stone. Igneous stones are stones formed directly from freezing magma. Mineral elements commonly found as constituents of igneous stones are acid minerals and base minerals. Acid minerals =Felsic-minerals= Nonferromagnesian silicates. Composed of silica and alumina, generally brightly colored:

- a. Quartz: colorless, sometimes milky white or gray
- b. Feldspar Orthoclast: reddish white or pink, found mostly in acid igneous stones
- c. Feldspar Plagioclase: gray, milky white, showing symptoms of striation
- d. Muskovit: colorless to light brown, in the form of thin plates

Base minerals=Mafic-minerals=Ferromagnesian minerals. Composed of elements of iron, magnesium, and calcium, generally dark in color:

- a. Biotite: dark brown - black, in the form of thin plates
- b. Piroxene: black - dark green, short, 8-sided crystal
- c. Hornblende: black - green, 6 sided, long crystals
- d. Olivin: greenish yellow

The statement mentioned that the mineral content and/or other elements affect the color of a stone.

Mineral stone itself has a degree of crystallization and that is: holocrystalline (all crystalline), hypocrySTALLINE (volcanic crystal and glass) and holohialin (all volcanic glass). The degree of crystallization, shape, grain size and arrangement pattern of mineral grains in stone mass affect the texture of mineral stones.<sup>11</sup>

Stones have different shapes because they are influenced by minerals where the minerals in the soil are different in each region. The mineral content in the soil has a big influence on the nutrients it contains, so it is possible that each area has the

possibility that the stones in each area have different stone types with other stones.<sup>12</sup>

Geographical Indications are part of Intellectual Property that has been obtained from the potential of Natural Resources of a particular area due to natural factors and/or human factors themselves. Article 22 paragraph (1) of the TRIP's agreement states that:

“Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”.

The word "geographical origin" explains that it shows its geographical origin which is influenced by natural factors (climate, temperature, soil, etc.), human factors (culture / habits) or a combination of the two factors.

The regulation of Geographical Indications in Indonesia is contained in Article 1 paragraph (6) of Law Number 20 Year 2016 about Trademarks and geographical indications that the Geographical Indication is a sign indicating the area of origin of goods and/or products due to geographical environmental factors including natural factors, human factors or the combination of these two factors gives a certain reputation, quality, and characteristics to the goods and/or products produced. From the understanding of the geographical indications it can be identified that a product can be categorized as a geographical indication product must have a Name (the name referred to is the name label on the product that is associated with the geographical area of origin); Product (the product what is meant is a product of special quality because it is affected by natural and/or human factors); The geographical condition of the area of origin; Have a certain reputation, quality, and characteristics (the product has a reputation because of its quality and characteristics).<sup>13</sup>

If a product has a reputation as a product comes from a certain geographic area, and this reputation has been around for a long time, there is a big chance that the product also has special qualities and certain characteristics. If the product has certain qualities and characteristics, but there is no reputation, it is possible that this special quality is not unique enough to be appreciated by consumers. This will make it difficult to ask for the need for protection of Geographical Indications and there is a possibility that the authorities may refuse registration of Geographical Indications.<sup>14</sup>

Geographical Indications do not include personal ownership but general ownership so that the right to register a Geographical Indication is contained in Article 53 paragraph (3) of the Geographical Indication Law, and that is the provincial or district/city government or institutions that

<sup>10</sup> Yuyu Hendrawati, “Sumber Daya Alam Dan Lingkungan Hidup,” [http://file.upi.edu/Direktori/DUAL-MODES/KONSEP\\_DASAR BUMI\\_ANTARIKSA\\_UNTUK\\_SD/BB\\_M\\_4.pdf](http://file.upi.edu/Direktori/DUAL-MODES/KONSEP_DASAR BUMI_ANTARIKSA_UNTUK_SD/BB_M_4.pdf). Accessed on 22 August 2019 at 23:00 WIB p.4.5

<sup>11</sup> Soetoto, *Geologi Dasar* (Yogyakarta: Penerbit Ombak, 2017), p. 28-30

<sup>12</sup> Christiano Lopulisa Bali, Indriyani, Asmita Ahmad, “Identifikasi Mineral Pembawa Hara Untuk Menilai Potensi Kesuburan Tanah,” *Jurnal Ecosolum* 1 (2018): p. 82.

<sup>13</sup> Riyaldi and Peter Damary, “Pelatihan Indikasi Geografis Bagi Penda Dan Kanwil DJHKI Untuk Dipergunakan Selanjutnya Di Internal Kantor Wilayah Setempat” (Jakarta, 2018). p 15

<sup>14</sup> *Ibid.* p. 6

represent the community in a particular geographical area that is commercializing a goods and/or products in the form of: natural resources; handicraft items; or industrial output.

Protection of Geographical Indications is an important step in which in this case it is one of the strategies to increase the economy of an area of goods and/or products that are endeavored so as to provide economic benefits for the people living around certain areas. The role of the government in this case is very important for the steps to get the protection of Geographical Indications, but the government's attention has not been any real action against Geographical Indications as an increase in the regional economy.

Based on Law No. 23 of 2014 about Regional Government mandates that the implementation of regional government is directed to accelerate the realization of community welfare through improved services, empowerment, and community participation, and increased regional competitiveness. Furthermore, the Regulation of the Minister of Home Affairs No. 9 of 2014 about Guidelines for the Development of Regional Leading Products also mandates that the economic potential of the region needs to be optimally developed into a competitive local product and can improve the welfare of the community in accordance with the conditions and special characteristics of the region. The legal structure of each regional government still does not cover matters related to the attention of goods and/or products in Geographical Indications, because in order to run the role of government, it is necessary to have a statutory regulation to run its role.

Geographical Indications are part of Intellectual Property with the scope of one of which is Natural Resources, the local natural resources of an area associated with Article 53 of Law Number 20 Year 2016 about Trademarks and Geographical Indications, according to the explanation of Article 53 paragraph (3) letter a number 1 is anything based on nature that can be used to meet the needs of human life which includes 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. Stones in this case have mineral components. and/or other contents which can be found in various regions, where each region has a different mineral structure. Stone also belongs to the type of Natural Resources that cannot be renewed because of the formation of stones through an old stage. The stone can be used for everyday life that has economic value.

Potential Geographical Indications sourced from the Natural Resources of an area basically consists of four things, that is: determining the region that produces the product, specifications of the product production method, specifications for the quality of the product, as well as the names and specifications of the quality of the product, as well as certain names and specifications that differentiate it from similar products.<sup>15</sup>This is closely related to the reputation, quality and characteristics of geographical indication products, where reputation has long been known as a good product by using a specific name related to location, for the quality itself includes

taste, texture, size, color or in other words the product it is easy to recognize. As for the characteristics of physical, chemical, organoleptic, nutritional or related to laboratory analysis.

<sup>16</sup>Related to the description above, that the discovery of the Javanese amethyst in Semarang Regency related to reputation is not yet known/widely known by the public because the discovery is still a secret, related to the quality also can not be clearly identified that it has a quality that is different from other regions, but from the findings Java Amethyst in Semarang Regency shows that there are differences in the color of the stone when compared to other regions, especially Amethyst found on the island of Kalimantan. As for the characteristics of the Javanese amethyst, special research has never been done regarding the mineral content in the stone.

Based on the description above, one of the examples of Mineral Stone is Java Amethyst in Semarang Regency is a natural resource that can be given protection of Geographical Indications if it has characteristics, reputation and quality of the products produced due to geographical, natural and human factors. From the description of reputation, quality and product characteristics, the Java Amethyst only meets in terms of quality. However, if it is related to the formulation of the definition of Geographical Indications in Law Number 20 Year 2016 about Trademarks and Geographical Indications that the most important and mainly influenced by geographical factors can be due to natural factors and human factors. Based on this, Java Amethyst findings are strongly influenced by natural factors due to the process of the formation of these stones, and are also influenced by human factors if Java Amethyst is made of certain products that are characteristic of Semarang Regency. The human factor itself has also not been realized due to the discovery of the Javanese amethyst that has not been widely used by the people of Semarang Regency.

Although not influenced by human factors, then based on the understanding of geographical indications of the discovery of Javanese Amethyst in Semarang Regency is influenced by natural factors and it is believed that the location of Java Amethyst is still a lot of potential Java amethyst that can be found.

The legal products of a government also holds an important role in the role of the government to carry out the mandate of Regulation of the Minister of Home Affairs Number 9 of 2014 about Guidelines for Regional Leading Product Development as a strengthening of the local economy to improve the welfare of the community in accordance with the conditions and geographical characteristics of a region. If the Javanese amethyst findings in Semarang Regency can be extensively used by the community and realized as a superior product from Semarang Regency because of its geographical peculiarities, then the implementation of the Minister of Domestic Affairs Regulation can be realized.

To identify in principle a product can become an IG, there are a few short questions:<sup>17</sup>

1. Does a product have a name tag (or other mark) related to the geographical area of origin?

<sup>15</sup> Ahmad Moelyono and Mieke Yustia Ayu Ratna Sari Anasis, "Perlindungan Indikasi Geografis Terhadap Damar Mata Kucing (*Shorea Javanica*) Sebagai Upaya Pelestarian Hutan (Studi Di Kabupaten Pesisir Barat Provinsi Lampung)," *Jurnal Hukum Ius Quia Iustum* 22 (2015): p.573

<sup>16</sup> Ditjen KI Kemenkumham ISIP II, "TOT Indikasi Geografis" (Jakarta, 2019). P. 6

<sup>17</sup> Riyaldi, "Pelatihan Indikasi Geografis Bagi Pemda Dan Kanwil DJHKI Untuk Dipergunakan Selanjutnya Di Internal Kantor Wilayah Setempat." p.16

2. Does the product obtain quality specifically because it is influenced by natural factors and/or human factors where the product is produced?
3. Does a product have a reputation for quality and characteristics related to the geographical type of the area of origin?
4. Has the product been around for a long time (several years)? (not a new product)?
5. Is the product produced by many producers in the area of origin?
6. Is the product in the list of permitted products? (not against the law, ethics, and religion)? (related to the place where the discovery of the Javanese amethyst is not yet certain whether the discovery site is a mining prohibition area, because until the time of this study the site was still kept secret)

If the answer is "Yes", probably that the product can become an GIs, if the answer is not certain then further research must be carried out involving all levels of society and the authorities/government. Meanwhile, if the answer "no" to one of the questions above is likely the product cannot be GIs. And if it is related to the discovery of Javanese Amethyst in Semarang Regency, of the 6 questions that indicate as GIs products, only 1 question related to Javanese Amethyst is quality, Javanese Amethyst until now cannot be categorized as GIs product.

#### B. PROTECTION OF MINERAL STONES IN SEMARANG REGENCY AS NATURAL RESOURCES JUDGING FROM LAW NUMBER 20 YEAR 2016 ABOUT TRADEMARKS AND GEOGRAPHICAL INDICATIONS

Stones, according to Whitten and Brooks, are masses of mineral material, both hard and compact, which form part of the earth's crust. Stone consists of one type of mineral or a collection of various kinds of minerals.<sup>18</sup>

Mineral stones include mineral resources which are natural resources that cannot be renewed (un-renewable resources). The amount of these resources is very limited and the process of formation and recovery takes a long time. For this reason, its use must be used as effectively and efficiently as possible. Mineral resources are mineral deposits that are expected to be exploited significantly. The mineral resources themselves according to geological knowledge, it can turn into reserves after a mine feasibility study has been conducted and meets the mine's eligibility criteria.<sup>19</sup>

From the point of view of the trading world, mineral stone formations are gemstones. Gemstones are usually transparent colored mineral stones obtained from nature with unique physical and chemical properties and then are processed through a cutting and polishing system in order to add aesthetic value so that they are of high selling value.<sup>20</sup>

In Indonesia gemstones are mined in various regions, and the most famous area is South Halmahera, North Maluku.

The exact island in Bacan Island which is known as Indonesian bacan or jade, the Martapura area of South Kalimantan with diamonds, sapphires, amethysts, etcetera, and then the Banten area with its black Kalimantan, the Aceh region with its Aceh jade, the Tanjung Bintang area, South Lampung with the amethyst.<sup>21</sup>

Amethyst is a type of quartz mineral stone and is a semi-precious stone. In the international world, amethyst is better known as Amethyst, its name comes from the Greek *a-methystos*, which means "not intoxicating", while in Indonesia itself, the name of amethyst was related to intoxicating amethyst. The name is related but has a different meaning.<sup>22</sup>

In general, amethyst is usually purple, in fact this stone is purple sapphire or purple sapphire. The purple color on this stone is caused by irradiance that comes from the impurity of the iron element, including the presence of several elements that leave traces and intricate crystal geometric patterns giving rise to a beautiful and unique purple color. In addition to the amethyst purple color also has several colors, including purple to pink, but some are yellow, ice white, light purple, pseudo purple red, pseudo purple blue, and dark purple, or even the color is almost black. Amethyst has a hardness of 7 Mohs so that amethyst is often referred to as Precious Stones or Gemstones class II. The most expensive amethyst is dark purple, like a Deep Russian amethyst with prices reaching thousands of dollars.<sup>23</sup>

In Indonesia amethyst is found in many areas in Kalimantan and Sumatra, amethyst from Indonesia which is famous for its quality is the amethyst amethyst that is found in the area of Tanjung Bintang, South Lampung, amethyst amethyst has the characteristics of clear purple and shiny. And amethyst wulung, or amethyst darker or black but purple when exposed to light mostly come from Kalimantan,<sup>24</sup> while in 2015 amethyst was discovered in Semarang Regency, This is evidenced by the presence of purple stone with the name Javanese amethyst stored in the Ronggowarsito Museum in Semarang.

Based on research at the Ratu Shima Cultural Heritage Protection Society on July 19, 2019 where it has found and processed the Javanese amethyst as an accessory, where the stone is different from the amethyst found in the Kalimantan region. The stone is murky purple in contrast to the amethyst in Kalimantan which is clear purple.

<sup>18</sup> Soetoto, *Geologi Dasar*. p.28

<sup>19</sup> Andhika Nugraha, *Sumber Daya Mineral Dan Energi* (Yogyakarta: BPFE, 2014). p.1

<sup>20</sup> Joko Susabda, *Kilau Bisnis Batu Mulia* (Yogyakarta: Kiswatin Publishing, 2015). p. 8

<sup>21</sup> Chandra A.F., *Pesona Batu Mulia* (Yogyakarta: Sinar Kejora, 2014). p. 10

<sup>22</sup> Abdaru Bima Prasetya, *Perancangan Informasi Batu Permata Indonesia Melalui Media Buku*, Laporan Pe. (Bandung: Universitas Komputer Indonesia, 2018). p. 20

<sup>23</sup> Albab A, *Rahasia Kaya Raya Dari Bisnis Batu Mulia* (Yogyakarta: Real Books, 2015). p.39

<sup>24</sup> Susabda, *Kilau Bisnis Batu Mulia*. p. 137



Figure 1 Polished Javanese Amethyst



Figure 2 Polished Java Amethyst

The definition of Geographical Indications according to Article 1 paragraph (6) of Law Number 20 Year 2016 concerning Trademarks and Geographical Indications is:

"Geographical Indication is a sign that indicates the area of origin of goods and/or products which due to geographical environmental factors including natural factors, human factors or a combination of the two factors give a certain reputation, quality, and characteristics to the goods and/or products produced."

In the agreement TRIPs governs Geographical Indications relating to brands. Article 22 paragraph (1) of the TRIPs agreement states that:

"Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".

Mineral Stone is an item that can be protected with Geographical Indications where mineral stones have the reputation, quality and characteristics of each stone which is influenced by geographical factors, and that is natural factors, although included for the protection of Geographical Indications but it does not clearly state that Natural Resources are protected with Geographical Indications including mineral

stones where mineral stones are favored by the community or lovers of stones as accessories one of them is amethyst.

Based on the explanation of Article 53 paragraph 3 letter a number 1 Law Number 20 Year 2016 about Trademarks and Geographical Indications, what is meant by Natural Resources is anything based on nature that can be used to fulfil the needs of human life which includes not only biotic components such as animals, plants, and microorganisms but also abiotic components such as oil earth, natural gas, various types of metals, water and soil. The word "as" written in the explanation of this article can still be interpreted broadly, although not clearly written in the scope of natural resources, one of which is mineral stones/stones but it can be interpreted that the word "like" also includes mineral stones as part of Natural Resources . therefore, when there are regions that find natural resources in the form of stones due to the influence of various minerals and forming stones with high economic value and can be used to increase regional income and the welfare of their communities, these stone products can be categorized as Geographical Indications products.

Amethyst is a part of mineral stones having a high reputation for economic improvement if it has become an indication product of an area. However, the discovery of the amethyst in Mount Ungaran, Semarang Regency cannot be categorized as a product of Geographical Indications because there has not been found any concrete evidence that fulfils the Geographical Indications, such as whether the findings of the stone can be used economically by the people of Semarang Regency, where the place of discovery until the time of research This is still being carried out with the existence of the most concrete reason is that there will be environmental damage if the relevant location is continuously mined.

Although the discovery of amethyst in Semarang Regency there is the affected of geographical/natural factors that can be affected by the type of soil, landscape, water, altitude, and climatic conditions that can affect production and quality, but from the human factor there has been no affect due to the results the findings are not processed or made into a product that has a certain reputation, quality and characteristics of the goods and/or products produced. This human factor greatly affects the way people manage or process goods and/or products.

This is related to the concept of "*terroir*". *Terroir* is a French word that originally used in the wine sector. However, this word has now been adapted in English which means a combination of natural factors, such as soil, climate and environment, as well as giving unique characteristics to the product.<sup>25</sup>

<sup>25</sup> Riyaldi, "Pelatihan Indikasi Geografis Bagi Pemda Dan Kanwil DJHKI Untuk Dipergunakan Selanjutnya Di Internal Kantor Wilayah Setempat." p. 4

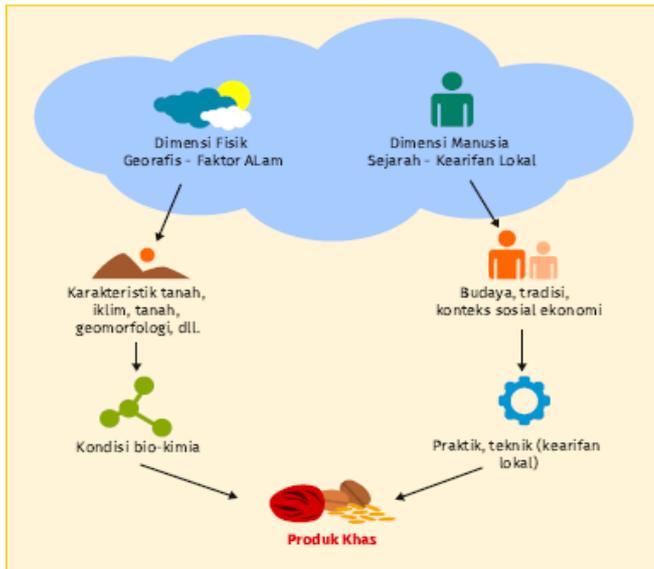


Figure 3 "Terroir" Geographical Area

Explanation:

- Natural factors are soil type, landscape, water availability, altitude and climatic conditions that can affect production/cultivation (plants, animals) and their quality.
- Human factors are local wisdom (practices and techniques, including selection of plant varieties) that have developed in certain cultural, social and certain economic contexts. This can greatly affect the way people manage their plants, animals or process their goods and/or products.

Based on these two factors, the products categorized as geographical indications are at least influenced by natural or human factors or can be influenced by both factors at once. If it is related to the discovery of the amethyst that the formation is caused by the stones constituent chemical elements (a transition element that gives color to the main components which are usually clear) and also physical treatments such as temperature at the geographic location of these stones, this has shown that there are affected by natural factors.

As for the human factor, there is no concrete proof, but from some amethysts found and after passing through the cutting process, forming process, and polishing, it produces accessories that have aesthetic value and high economic value. This is evidenced by the discovery of the amethyst in Mount Ungaran Semarang Regency which has become an accessory owned by Mr. Sutikno.

The influence of these natural and human factors results in "distinctive" products which have a special quality unique to their place of origin, implying that the exact same product, with the same special characteristics, will not be obtained in other locations.

In the definition of Geographical Indications, the word "OR" indicates that a product of a certain quality that is affected "only" by human factors or "only" by natural factors can also be protected as a geographical indication. It is not easy to find goods and/or products that are only influenced by natural factors, because during cultivation, processing, the role of humans must remain (although it can be said that products

that are obtained illegally/directly from nature), or products that are mined will be included in this category.<sup>26</sup>

Mineral resources are mineral sediment that are expected to be used significantly. The mineral resources themselves according to geological trust can turn into reserves after there has been conducted an assessment about mining appropriateness and after fulfilling mining conditions.<sup>27</sup> In correlation to mineral stones, amethyst is a non-renewable natural resource. So that mineral stone is one of the natural resources that can get the protection of Geographical Indications in Article 53 paragraph (3) number 1 letter a of Law Number 20 Year 2016 about Trademarks and Geographical Indications.

Generally, Geographical Indications provide the following benefits:<sup>28</sup>

- 1) Protect products and institutional member producers of Geographical Indications against fraud, misuse and falsification of Geographical Indications marks;
- 2) Improve the bargaining position of products and the ability to enter new markets at the national and international levels;
- 3) increase value-added, increase employment, improve product quality, increase opportunities for product diversification;
- 4) Provide clear information to consumers about the type, quality, and origin of the product that has been purchase;
- 5) Increase promotion opportunities to get a better reputation;
- 6) Increase the income and welfare of merchant;
- 7) Improve the economy and accelerate regional development;
- 8) Maintaining environmental sustainability to ensure the existence of characteristics and product quality; and
- 9) Maintaining the preservation of the nation's culture related to the quality and reputation of a Geographical Indication item.

Some benefits from the protection of Geographical Indications, at least the concerned product has a characteristic for an region, increasing employment which at the same time will increase the income and welfare of merchant and increase the economy to Increasing regional development.

Based on point 8 which states that Geographical Indications are useful for maintaining environmental sustainability to ensure the existence of characteristics and quality of products. However, this will not be realized because the discovery of the amethyst in Semarang Regency for its location is kept in secret until now because if it is known to the public sooner or later environmental damage will be happen.

The above statement from the viewpoint of the Ratu Shima Cultural Heritage Protection Society, according to Mr. Sutikno, is very aware of human nature that has no limits to fulfill his wishes when people know that that around along Mount Ungaran has been discovered of valuable stones, then Mr. Sutikno has ensured that there will be many people doing illegal mining, this is the reason that the place where Java

<sup>26</sup> *Ibid.* p. 5

<sup>27</sup> Nugraha, *Sumber Daya Mineral Dan Energi*. (Yogyakarta: BPFE, 2014) p.1

<sup>28</sup> Personal Interview to Mr Idris (Kepala Seksi Pemantauan dan Pengawasan Indikasi Geografis Direktorat Jenderal Kekayaan Intelektual) pada tanggal 04 April 2019

amethyst is found, is kept in secret so that no environmental damage occurs.

Even though there will be legal regulations regarding the mining of mineral stones around Mount Ungaran, according to Mr. Sutikno, he is not sure and cannot believe that people who do mining according to applicable regulation. Regarding the mining regulations themselves, actually become the authority of the relevant agencies and that is the Mineral Resources Energy Office. However, regarding the discovery of the Java amethyst, the party from the Department of Energy and Mineral Resources did not know that, so that if rules are made about mining mineral stones around Mount Ungaran it will not be effective because the location of the discovery of the Java amethyst is unknown. However, if the area found is not a mining prohibition area, then it is permissible for anyone to conduct mining in the area.

The Regional Government in the term of the Semarang Regency Government also cannot confirm the finding of the amethyst in Semarang Regency, although it has not been proven yet that the Semarang Regency Regional Government already has planned to make a Regional Regulations, this is proven by the existence of a Regional Regulation (Draft Regional Regulation) related to the Management and Preservation of Cultural Heritage, where the draft regulation regulates related cultural heritage objects that are defined as natural objects and/or man-made objects, both movable and immovable in the form of a unit or group or parts, or remnants which has a close relationship with the culture and history of human development.

If this draft regional regulation is related to the discovery of Javanese amethyst in Semarang Regency, actually the mineral stone itself does not include as a cultural heritage object because it cannot be ascertained whether the stone is closely related to culture or history of human development. Because the one who discovered the stone is the community of cultural heritage protection, so that the Javanese amethyst is identified with objects of cultural heritage so it needs to be preserved then the findings are submitted to the Ronggowarsito Museum in Semarang for safekeeping.

Article 70 of Law Number 20 Year 2016 about Trademark and Geographical Indications that the central government and/or regional government in accordance with their authority, has an important role in the authority and guidance related to the protection of Geographical Indications, and that is:

- a. Preparation for fulfilling the requirements for a request for a Geographical Indication;
- b. Application for registration of Geographical Indications;
- c. Utilization and commercialization of Geographical Indications;
- d. Dissemination and understanding of the protection of Geographical Indications;
- e. Mapping and inventory of potential Geographical Indications products;
- f. Training and assistance;
- g. Monitoring, evaluation and coaching;
- h. Legal protection; and
- i. Facility for developing, processing and marketing Geographical Indications goods and/or products.

The role of the Government in accordance with article 70 Law No. 20 Year 2016 cannot be accomplished because mineral stone found in the form of Javanese amethyst cannot be categorized as a product geographic indication because it has not been produced as a product Characteristic of Semarang Regency and provides economic benefits to the people of Semarang regency.

Law No. 23 of 2014 about the local government mandated that the administration of local governments was directed to accelerate the realization of public welfare through improvement, service, empowerment, and participation Community, as well as increasing regional competitiveness, this can be realized when the findings of mineral stones in Semarang District can be used economically by keeping an eye on the prevailing regulations.

Further provisions are in regulation of the Minister of Home Affairs No. 9 of 2014 about Regional Product Development Guidelines also mandated that the economic potential of the region needs to be developed optimally to be the flagship product of the region Competitiveness and can improve the welfare of the community in accordance with the conditions and peculiarities of the region, supported by the increase of the institutional capacity of the independent area, and also pour the development of the regional superior products Planning documents.

Overall the findings of Javanese amethyst in Semarang district can be ensured the influence of the geographical factors (natural factors), while for human influence is not there because the findings are not produced into an goods and/or Products.

Legal protection and product development potential geographic indications are one of the means for local governments and all stakeholders/stakeholders to build local economic power as well as districts/cities that produce potential products as geographic indications. Based on explanation of government Regulation No. 51 year 2007 about Geographical Indications that through optimal geographical indication protection Not only environmental sustainability is expected to be maintained, the empowerment of natural and human resources in the region is expected to be prevented, \With the creation/opening of opportunities and employment to produce certain goods protected with geographical indication and expected to have economic value in the area.

Saky Septiono explained that like trademarks, Geographical Indications are also property rights that have economic value so they need legal protection, the reason is:

- 1) Geographical indications are the identification of the goods originating from a particular region or the name of the goods resulting from a particular region and on duty cannot be used for similar products produced from other territories.
- 2) Geographical indications are a quality indicator, the geographical indication informs the consumer that the goods are produced from a particular location where the effect of the environment produces the quality of goods with certain characteristics that continues to maintain its reputation.
- 3) Geographic indications are a business strategy whereby geographical indications provide a commercial added value

to the product due to its originality and the limitation of products that cannot be produced other areas.

- 4) Under the TRIP's Agreement, geographical indication is defined as part of intellectual property whose ownership rights can be retained from any act against the law and competition fraudulently.

The Efforts that undertaken by the local government to protect mineral stone and that is the stone of Java amethyst as a natural resource that potentially geographical indication there is no real action. Local government or provincial administration of mineral resources, in this case mineral stone only regulates the procedure related to good mining according to the provincial government of Central Java Energy and Mineral Resources about the procedure for mining business license.<sup>29</sup>

Law protection related to mineral stone is not up to only with geographical indication only, but because mineral stone is the result of the mine then there is a regulating arrangement related to mining. Central Java Governor Regulation number 18 year 2016 about the implementation of energy and Mineral Resources services in the province of Central Java, where these regulations govern related to the procedures of mining permits. Procedures for mining permits:<sup>30</sup>

1. Application of MBPA (Mining Business Permit Area/WIUP)

- a. Terms of administration:

FOR INDIVIDUALS

- Application Letter
- Copy of Identity card (KTP)
- Copy of taxpayer identification number (NPWP)

FOR BUSINESS ENTITY ADDED

- Domicile Certificate
- A business entity profile that contains the company's governing body
- Deed of incorporation of the business entity and the last amendment authorized by officials.

- b. Technical Requirements:

- Situation map (loading topography and region situation)
- Coordinate points (parallel to latitude and longitude using the National geodesic Datum)

- c. Financial terms:

- Regional Backup Payment proof
- Map Print Payment proof

2. Application of MBP (Mining Business Permit/IUP) exploration

- a. Terms of administration:

FOR INDIVIDUALS

- Application Letter
- Copy of Identity card (KTP)
- Copy of taxpayer identification number (NPWP)

FOR BUSINESS ENTITY ADDED

- Domicile Certificate
- A business entity profile that contains the company's governing body

- Deed of incorporation of the business entity and the last amendment authorized by officials.

- b. Technical Requirements:

- A live History list and a statement letter of experienced mining/geology experts at least 3 years
- Copy of Map and Certificate of Mining business Permit area (SK WIUP)
- Work plan and exploration cost budget

- c. Financial terms:

- Proof of the guarantee of the determination of exploration
- Regional backup payment evidence and printable map of environmental requirements

- d. Environmental requirements:

- Statement to fulfill the provisions of the legislation in the field of environment (statement signed and stamp also signet 6,000)
- Environmental document approvals and environmental permits

The stages and conditions for mining must be first through a regional application to perform a mining in accordance with Article 109 and article 110 that the Governor regulation of Central Java number 18 year 2016 concerning implementation Energy and Mineral Resources services in Central Java province:

Article 109

- (1) The provision of mining business permit (WIUP) consists of:

- a. Radioactive mining business License area;
- b. Business license area of metal mineral mining;
- c. coal mining business license area;
- d. Non-metallic mineral mining business license area; and/or
- e. Mining business license area.

- (2) The area of radioactive mining business license as intended in paragraph (1) letter A shall be obtained in accordance with the provisions of legislation.

- (3) The business license area of mineral metal and coal as intended in paragraph (1) B and letter C is obtained by means of auction in accordance with the provisions of statutory regulations.

- (4) Business permit area of mineral mining not metals and stones as referred to in paragraph (1) d and letter E obtained by applying for the territory to the head of Community Empowerment Agency and Village (BPMD).

Article 110

- (1) To establish the Mining business Permit area (WIUP) in a mining business area (WUP) as intended in article 109 shall meet the criteria:

- a. Geographical location;
- b. Conservation rule;
- c. Environmental support ;
- d. Optimizing mineral and/or coal-powered sum; and
- e. Population density.
- f. In accordance with mining allocation area in regional spatial plan.

- (2) In case of mining business permit area (WIUP) of minerals instead of metals and/or stones in the region is

<sup>29</sup> Pemerintah Provinsi Jawa Tengah Dinas Energi Dan Sumber Daya Mineral, "Tata Cara Izin Usaha Pertambangan," [https://esdm.jatengprov.go.id/download/perizinan/TATA\\_CARA\\_ME\\_NGAJUKAN\\_IZIN\\_USAHA\\_PERTAMBANGAN.pdf](https://esdm.jatengprov.go.id/download/perizinan/TATA_CARA_ME_NGAJUKAN_IZIN_USAHA_PERTAMBANGAN.pdf) . accessed on 9 August 2019, at 19:00 WIB

<sup>30</sup> *Ibid.*

published by the head of Community Empowerment Agency and Village (BPMD).

- (3) The head of Community Empowerment Agency and Village (BPMD) sets the area and boundary of mining business permit (WIUP) minerals instead of metals and/or stones in a mining business area (WUP) based on the criteria referred to in paragraph (1).

That Regulation is said to do a mining that is found in article 110 paragraph (1) F that must conform to the mining allocation area in the regional spatial plan where if the territory found in the mineral stones Java Amethyst Stone does not In accordance with the mining allocation area in accordance with the Regional spatial plan because the position is still confidential, the amethyst is still legally protected and cannot do mining.

#### IV. CONCLUSION AND SUGGESTION

##### A. CONCLUSION

The paper highlighted and concluded some important points, as follows:

1. Stones are a natural resource acquired by mining or from weathering and the misguided of a large stone in a particular area. Stones are a natural resource that cannot be renewed because stones consist of a variety of minerals or a collection of some kinds of minerals that have a limited amount that is because its formation requires a very Materials, such as minerals or mining goods. So that mineral stone can be classified as a natural resource protected under Law No. 20 of 2016 about brands and geographical indications although in the explanation of article 53 related to natural resources scope is not mentioned Clear Mineral stone. Mineral stone can be categorized as a product of geographic indication when it has a reputation, quality and certain characteristics of goods and/or products produced because of the influenced geographical factors, both due to natural factors and human factors.
2. Mineral stone protection found in Semarang district has not been able to get protection of geographical indication, because to identify as a product geographical indication there are several brief questions as follows:
  - a. Does a product have a name label (or other marks) associated with the geographic area of the originating region?
  - b. Is the product gaining quality in particular because it is influenced by natural factors and/or human factors in which the product is produced?
  - c. is a product reputable because of the quality and characteristics associated with the geographical condition of the original region?
  - d. Has the product been there for a long time (several years old)? (not a new product)?
  - e. Is the product produced by many producers in the original area?
  - f. Is the product in the list of allowable products? (not contrary to law, ethics, and religion)?

If the product/goods resulting from the finding of Javanese amethyst in Semarang district is closely related

to the 6 questions above, it can get legal protection by registering a geographical indication.

Protection of the law related to mineral stone not only related to geographical indication only, but because mineral stone is the result of the mine then there is a regulating arrangement related to the mining of the Governor regulation of Central Java number 18 years 2016 on the implementation of energy and Mineral resources services in Central Java province, where these regulations govern related to the procedures of mining permits.

#### B. SUGGESTION

The paper suggests some points, are:

1. The findings of Javanese amethyst in Semarang district should be immediately followed up by a strict regulation in conducting mining so that the Javanese amethyst stone can be processed to produce a special product from Semarang district so that Able to improve the area economy.
2. The need to cooperate between the local government of Semarang and the central government and the protection of the Ratu Shima Cultural Reserve to make regulation in providing protection to the findings of mineral stone namely Javanese amethyst To be a product that has a reputation, quality and special characteristics that distinguish from other regions.

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