

CHAPTER I

INTRODUCTION

1.1 Background

Indonesia is a country that is based on the 1945 Constitution (*Undang-Undang Dasar 1945* (“**UUD 1945**”)). In accordance with the Article 1 of UUD 1945, it is emphasized that the Republic of Indonesia is a state of law, which means that every aspect of life in society, government and state must be based on law. Apart from UUD 1945, Indonesia also refers to the so called “Pancasila” as the fundamental foundation in organizing its society and government. Pancasila is based on 5 (five) fundamental principles which one of them is social justice to all Indonesian citizens.

Welfare is one of the important elements of the social justice and is related to government supports for disadvantaged society. The word “welfare” itself refers to three main elements which are (i) social welfare, (ii) economic welfare and (iii) state welfare. Social welfare means welfare in relation to the life of society, economic welfare relates to the financial perspective of welfare, and state welfare refers to system where government has the responsibility for the citizens’ welfare.

¹ To implement the welfare to the people is to maintain the country with powerful legal system where the state has to obey and implement the rules wisely and correctly.

In order to achieve the welfare mentioned above, it is important to apply the rule of law by the country. Rule of law is a principle where, instead of the government's decisions, legal instruments are ultimately being used to balance and provide justice in all areas of people's lives. Such principle also adopted by Indonesia, where Indonesia highly adheres to its laws and regulations in governing for its society. By adopting this principle, Indonesia can have a certainty on its citizens. Nonetheless, it is not rare to see cases in Indonesia where there are some laws and regulations which are not consistent one and another or absent in some material matters.

Trias Politica, the word comes from a Greek word which defines (*Tri*= Three; *As*= Axis/ center; *Politica*= power) which is one of the pillars of democracy. A theory that defines the state government power into three types of power, these powers are namely; the legislative power, executive power and judicial power. The alignment and independence of these three types of state institutions are needed so that these three state institutions can supervise and control each other based on the

¹ Black's Law Dictionary, "What is Welfare State? Definition of Welfare.", <thelawdictionary.org/welfare-state/>, accessed on 20 February 2020

principle of checks and balances². This theory was first introduced by Montesquieu, a French political³. Namely, the legislative power and executive power each of which is separate from one another. The legislative power is the power to make rules and laws; executive power is the power of implementing laws and includes the judicial power.

The treaty that is used by Montesquieu has different types of condition that causes the power such as the king or the same legislative body to enact tyrannical laws and implement them in a tyrannical way so that freedom by the people or as the result freedom is not felt by the people. At these present times, the application of *Trias Politica* is carried out in many countries, including Indonesia. The Indonesian state implicitly applies for the distribution of power according to the Trias theory. The politics that has been adopted by Montesquieu in which the division of power is based according to the functions of the State, including the Legislative, Executive and Judiciary, into state institutions in Indonesia.

² “*Apa Yang di Maksud Dengan Trias Politica?*” Januari 2017
<<https://www.dictio.id/t/apa-yang-dimaksud-dengan-trias-politika/5284>>, accessed on 20 February 2020

³ Zakky, al. “*Trias Politika: Pengertian, Teori Dan Penerapannya Di Indonesia*”, <www.zonareferensi.com/trias-politika/>, accessed on 20 February 2020.

In Indonesia, the state is powered by the level of legislation. Act of the 1945 Constitution (UUD 1945) as the constitution occupies the highest regulation, the laws may not conflict with the 1945 constitution. It explains to the next phase where the President, the House of Representatives (DPR) and the constitutional court (MK) are given a power by the 1945 constitution. However, the functions and duties of the state institution are regulated more further by law. The authority of the parliament in amending the Law was taken over by MK, which there was a cancellation regarding the articles that contradict to the 1945 constitution. ⁴

In the next section is about the executive power context, to the power itself is the institution that implement the law. It is headed by a head of state, where the head of state can be defining such as president, prime minister, or king. The executive power also has the authority in the fields of diplomatic, judicial, administrative, legislative and military. The executive power, the president as the head of state is assisted by the Vice President, officials and ministers in the cabinet stipulated in the Law. ⁵ The application of *Trias Politica* in Indonesia although is not entirely, Indonesia also implement the principle of *Trias Politica* Implicitly of the distribution of power in Indonesia is a basic consequence of the implementation

⁴ “Mengenal Trias Politik Di Indonesia.”, <www.kompasiana.com/afandiwicaksonolie/5c1b8b8ebde5751a0476cfea/mengenal-trias-politik-di-indonesia>, accessed on 20 February 2020

⁵ *Ibid*, accessed on 20 February 2020

of a democratic system. With the administration framework is presidential, at that point of the bureau is not responsible to the House of Representatives and therefore cannot be ousted by the House of Representative during the term of office. The president also cannot dissolve the House of Representative. In the broader outline the characteristics of the *Trias Politica* standard principle in the sense of the distribution of power are seen in the Indonesian constitutional system. However, during the guided democracy there was an attempt to abandon the *Trias Politica* idea.

Indonesia is a country that is known as a welfare state country. The word welfare state comes from a social system that is based on the assumption by a political state of primary responsibility for the individual and social welfare of its citizens/ a nation or state characterized by the operation of the welfare state system.

⁶ This welfare state meaning is a theory that explains the foundation of the Indonesian State and affirms that the state whose government guarantees the welfare of the people. It is said that to understand of the elements of a welfare state, its people must be based on the five pillars of state which are: Democracy, Rule of Law, Human Rights Protection, Social Justice and Anti- Discrimination. The word welfare defines of three concepts, which are: (a) Social welfare, define where the acceptance of welfare; (b) economic welfare, which refers to the market and

⁶ "Welfare State", <www.merriamwebster.com/dictionary/welfare%20state>, accessed on 20 February 2020

economy; (b) State welfare, where it guarantees of social welfare service through state agents.

Welfare State has four main elements which consist of;

- 1.) First explains that *as a well- being condition, (Social Welfare) is a condition of meeting material and non- material needs.* The prosperous conditions that occurs when human life is safe and happy because of the needs for nutrition, health, education, shelter and income.
- 2.) The second element comes to *Social Service* which generally includes five types of forms namely; *Social Security, health benefits, education, housing and personal social services.*
- 3.) Third Element explains about the social benefits that a social welfare given to the poor. Most beneficiaries of welfare are for the poor, disabled, unemployed, which creates a situation of a negative connotation in terms of welfare such as poverty and dependency.
- 4.) The fourth and last element is a planned process or business that is carried out by an individual to social institutions, communities and government agencies to modify the quality of life through the provision of social benefits.⁷

⁷ “Implementasi Teori Negara Kesejahteraan Di Indonesia - Analisa - Wwww.indonesiana.id.”
Indonesia, 2 June 2018, <www.indonesiana.id.> accessed on 21 February 2020

According to Bagir Manan he provided a definition and statement regarding Indonesia a country that is based on the Rule of Law where it stated that legislation is written and issued by a government official that contains rules of behavior that are general or authoritative. It is general in nature and means not to distinguish certain individuals so it applies to each lawful subject who meets the components contained in regards to the personal conduct standards. Rajagukguk stated that there are qualities conductive regarding to the developments, which are:

- a) Stability of law means that the law must be able to create stability or accommodate balancing competing interests in the society.
- b) Predictability means that the law must create predictability so that everyone can predict the consequences of the steps or actions taken.⁸

The definition of Social Justice refers to one of the characteristics of society full of justice and prosperous aspects of fairness for all people. The term fair refers on what a person must have sympathy for what is his/her right. Social justice explains about not having one-eyed view to one perspective but it must prioritize the public interest also based on the individual and egoistic actions. Nevertheless, these acts contained in justice values that are based on the essence of the human justice.⁹ It

⁸ “*Pengertian Negara Indonesia Adalah Negara Hukum.*”, <www.padamu.net/pengertian-negara-indonesia-adalah-negara-hukum> accessed on 21 February 2020.

⁹ Dadang. “*Makna Sila Ke 5 (Lima) Pancasila Dan Contohnya Dalam Sehari Hari.*”, <rumus.co.id/makna-sila-ke-5/>, accessed on 21 February 2020

was explained that Indonesia is a country that is based on the rule of law and a country based on unity and prosperity. The reason that there are the existences of law to maintain order for the people of Indonesia and have justice. One of the important aspects of law for the Indonesian state is the law on Intellectual Property (IPR/HAKI) which we can learn about respecting other people's creation their rights.

There are several reasons why Intellectual Property Rights must be highly accommodated throughout the law in Indonesia. Intellectual Property Rights shows that respect other people's right and creation. In the general definition, Intellectual Property Rights is any result of the human intellect that the law protects from unapproved use by others. The responsibility for property characteristically makes a restricted syndication in the ensured property. Intellectual property is generally contained in four categories, which are *patent, copyright, trademark and trade secrets*.¹⁰ There are other seven elements regarding the branches of the Intellectual Property Rights which are, copyright, patent, trademark, industrial design, geographical indication, trade secrets, plant breeders' rights & layout design of integrated circuits. These seven branches will be further more explained on in Chapter two of this thesis.

¹⁰ Law Cornell, "Intellectual Property *Legal Information Institute*, Legal Information Institute", <www.law.cornell.edu/wex/intellectual_property>, accessed on 21 February 2020.

On a theory, Intellectual Property Rights are based on the principal philosophical theory that is applies to the protection of utilitarian works. This theory was implied by Jeremy Bentham and John Stuart Mill, utilitarian scholars where they explain the formation of Intellectual Property Rights which are the creation of invention of certain period time, and the aids of the economic development of a country by promoting healthy competition, as they believe that it allows creativity to flourish. Jeremy Bentham aimed to ensure those with the exclusive rights get monetary reward however, not at the expense of people in the general intrigue ¹¹.

The history of IPR in Indonesia, particularly refers to the legislation in the field of IPR that has existed since the 1840's. The Dutch colonial government presented the primary law concerning IPR security in 1844. The Dutch government sanctioned the Trademark Law (1885), Patent Law (1910), and the Copyright Act (1912). Indonesia, which is around then was still called the (*Hindia Belanda*), had been an individual from the Paris Convention for the protection of Industrial Property since 1888 and an individual from the Berne Convention for the Protection of Literary and Artistic Works since 1914. On the date of October 11, 1961, the Indonesian government declared Law No. 21 of 1961 concerning Company Trademarks and Trade Marks (1961 Trademark Law) to supplant the Dutch Colonial Trademark Law. 1961 Trademark Law and went into compel one month

¹¹ Peter, S, Menell, "*Intellectual Property: General Theories.*", <www.dklevine.com>, accessed on 21 February 2020.

after this law was instituted. The law came into force on November 11 1961. The stipulation itself of the 1961 Trademark Law was present, each November 11 it was assigned as National Formation Day.¹²

Indonesia has been a WTO member since 1 January year 1995. WTO itself is the only international organization that regulates the international trade. Formed since 1995, the WTO operates based on a series of agreements upon by a large number of countries in the world and ratified through its parliament¹³. Indonesia's involvement regarding the position in the WTO in the DDA (*Doha Development Agenda*) is based on national interest in order to encourage the economic growth and poverty alleviation. In the year 2000 after officially being partly of the WTO/TRIPs Agreement, there are four new regimes of IPR protection that were introduced in Indonesia with the promulgation of Laws on plant variety protection rights, trade secrets, industrial designs and integrated circuit layout design. In the late 2014 Indonesia embarked on the IPR reforms, that the issuance was marked in the Law No. 28 of 2014 concerning Copyright.¹⁴ This was followed two years later

¹² Direktorat Jenderal Kekayaan Intelektual "Sejarah Perkembangan Perlindungan Kekayaan Intelektual (KI)", <dgip.go.id/sejarah-perkembangan-perlindungan-kekayaan-intelektual-ki> accessed on 21 February 2020

¹³ "World Trade Organization." *WTO*, www.wto.org/english/thewto_e/countries_e/indonesia_e.htm?fbclid=IwAR2WZpcN0ZFRK-qk8QoDGFSOHtZRtZgGdy0T69Q0UHJE0yFoBPSRLhNgvfY#top, accessed on 21 February 2020

¹⁴ "World Trade Organization Wto: Portal Kementerian Luar Negeri Republik Indonesia." *World Trade Organization Wto | Portal Kementerian Luar Negeri Republik Indonesia*,

by the Law No. 13 of 2016 concerning Patent and the Law No 20 of 2016 concerning Mark and Geographical indications.

Previously, On the date 28 August 1992, president need the people's representative DPR established Law No. 19 of 1992 on Trademarks to supplant the 1961 Trademarks Law. On 15 April 1994, Indonesia consented to consent to the arrangement of Trade- Related Aspects of Intellectual Property Rights (TRIPS Agreement). Since then, with Indonesia present being a World Trade Organization part, the DPR ordered Law No. 15 of 2001 on Trademarks (2001 Trademarks Law) in 2001 in order to being Indonesia's laws and guidelines identified with protected innovation into line with the TRIPS agreement.¹⁵ Since then, in Law Number 15 of 2001 on Trademark there are still shortcomings and have not accommodate the development needs of the community in the field of Mark and Geographical Indications and not enough guaranteeing the protection of potential local and national economies so it needs to be replaced by the new law namely, Law No. 20 of 2016 on Trademarks.

kemlu.go.id/portal/id/read/133/halaman_list_lainnya/world-trade-organization-wto,
accessed on 21 February 2020

¹⁵ Assegaf Hamzah & Partners. "New Trademarks Law Enhances Indonesia's Intellectual Property" Regime, accessed on 21 February 2020

Regarding the goal to utilize all laws and regulations in the field of IPR with TRIPs Agreement, in 2001 the administration passed the Law No. 14 of 2001 regarding Patents and Law No. 15 of 2001 regarding Trademark. Both of these laws supplant the former law in the related field. Consequently, in mid 2002, Law No. 19 of 2002 concerning Copyright that supplanted the old law.

In the meantime, the international managing IPR issues is the World Intellectual Property Organization (WIPO), a particular UN Agency, and Indonesia, including one of its members with the ratification of the Paris Convention for the protection of Industrial Property and Convention establishing the World Intellectual Property Organization. IPR turns into a significant issue, both in national and international forums. The appearance of Indonesia into the TRIPS Agreement in the WTO Agreement marked the beginning of a period of IPR advancement all through the world.¹⁶

The World Intellectual Property Organizations (WIPO) set certain limits on Well-known Marks as they agreed in the Joint Recommendation concerning provisions on the Protection of Well-known marks that it stated these factors can be used to determine whether Mark is in the well-known category namely; the level

¹⁶ Firmansyah, Muhammad. *Tata Cara Mengurus Haki*, Transmedia Pustaka, 2008.

of knowledge or brand recognition in sectors that are relevant to society and geographical area.¹⁷

Intellectual Property Rights/ *Hak Atas Kekayaan Intelektual (HKI)* is a very common and one of the most important issues amongst the citizens of Indonesia as there are numerous cases regarding Intellectual Property Rights/ Brand Rights throughout the years such as the latest case Cap Kaki Tiga case, *Ikea Case Putusan nomor 264 K/Pdt/Sus-HKI/2015*. This law is very important to companies due for their own protection of their property rights. Within the era of globalization, Intellectual Property Rights and their law must be very specific regarding companies that are registering a new product and on how to apply it without bad faith. At the moment, technology can help companies or people to do preliminary research whether the name of the brand has already registered in the Direktorat Jenderal Kekayaan Intelektual. The modern technology helps them to reassure within the name of the brands, although the products that are made from companies is to satisfy the needs of the customers and to fulfill obligation of the company itself.

¹⁷ “Perlindungan Merek Terkenal Berdasarkan Hukum Di Indonesia.” *Hukumonline.com/Klinik*, www.hukumonline.com/klinik/detail/ulasan/lt5941f01d7fa0e/perlindungan-merek-terkenal-berdasarkan-hukum-di-indonesia, accessed on 23 February 2020

The IPR system in Indonesia has been explicitly divided into several based on their perspective laws, among others; Law No. 20 of Year 2016 on Trademarks and Geographical Indication, Law No. 28 of 2014 on Copyright (*Hak Cipta*), Law No. 13 of 2016 on Patent (*Hak Paten*). Trademark regarding the Intellectual Property Rights, brand rights are one of the biggest issues that are well-known all over the world especially in Indonesia. Brand rights itself is a legal means of protecting owner of a brand. It is a type of Intellectual Property Rights that provides exclusive publication, distribution, and usage rights. A brand is an identity marker of product or service that is in trade regarding the identity. A brand also does an important role by representing the reputation of not only their products, yet as also the makers of the planned item/ service¹⁸. The trademark rights are the type of IPR assurance that gives restrictive rights to enrolled trademark proprietors to utilize the imprint in the exchange of merchandise and/ or administrators, as per sort of products for which the imprint is registered.

The history of trademarks, could refer back in the 5,000 BC where the first buffalo bunches were painted on the dividers, in a way which archeologists believes that it indicates the tribal ownership. What's more is that it is not the main case of ancient stamping. In the Middle East, stone seals have been discovered engraved with the signs of various dealers or laborers. In old Egypt, Rome and China,

¹⁸ "Merek.", www.hki.co.id/merek.html, accessed on 23 February 2020

different types of stamps or markings were utilized to demonstrate who made which blocks. It was in the Medieval Europe that trademarks started to take on a more prominent significance.

When guilds of various traders were formed, each embracing their very own particular check or identification. In 1226, the silversmiths were required by law to mark their products. This thought spread over the world, and soon all significant makers were denoting their products to show its nation of inception and who had fabricated it. In other explanation regarding the history of Trademark, it is found in the definition of the meaning symbolic representations or Hieroglyphs, it is a Greek Egyptian hellenistic writer, Horapollon, where it composed a book where it expresses about pictographs filled in as ideograms that passed on thoughts, not as components not as elements of local language. Models contained inside the book turned out to be progressively normal and more visible in symbolic science. For instance, he discussed the Phoenix winged creature and its importance. As he portrayed the book, demotic content was first round as ahead of 600 BC toward the beginning of the 26th dynasty.

Therefore, trademarks are frequently connected with a company's reputation or goodwill, and many companies have a brand name, which is related with excellence

and so forth.¹⁹ They are the only one that have the right to produce and distribute that trademark, so not simply anybody can proceed to put a F sign on a website as logo for the company especially with the same color and font like from Facebook. Since then, commencement of trademark law, the law has attempted to protect the customer from inferior counterfeits. Likewise, ensures the maker, as they have a notoriety to secure, and if someone is producing a low-quality product and putting their image name on it, that bad quality is going to get associated with the company itself and it will harm their business reputation.²⁰

The Law UU 20 Year 2016 regarding Trademark and Geographical Indication where it stated on article one (1) *A brand is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, arrangements color, in the form of 2 (two) dimensions and/ or 3 (three) dimension, sound, hologram, or a combination of 2 (two) or more these elements to distinguish goods and services produced by persons or legal entities within trading activities of goods and services.* Article 2 explained about trademark rights where it states *Trademark is a trademark used on goods which is traded by someone or several people jointly or*

¹⁹ “History of the Trademark”, <www.oof.co.uk/blog/history-of-the-trademark/>, accessed on 23 February 2020

²⁰ “Intellectual Property Management and Commercialization of New Products”
<https://www.wipo.int/export/sites/www/sme/en/documents/pdf/icamt.pdf>, WIPO Int, accessed on 23 February 2020

a legal entity for differentiate from other similar goods. The law itself was made very clear and perfect for people that are registering a new type of brand for important usage.

There certain regulations regarding the Protection of Well-known marks can be seen in Article 21 paragraph (1) of the law No. 20 of year 2016, which states that *An application is rejected if the mark has similarities in principle or in whole with:* registered mark that belongs to another party or has been applied in advance by another party for similar goods and/or services. In addition, the consideration is also given to the brand's reputation that is obtained due to the intense and massive promotion. In a relation to the topic this type of element regarding the protection of a well-known mark will elaborately explained in the upcoming paragraphs.

According to KBBI regarding Trademark/ Merek mentioned that it is a Mark worn by the entrepreneur (factory, producer, etc.) on the goods produced as identification; stamp that marks the name. by all means, regarding to the Trademark, a Trademark that can be registered must have distinguishing features and be used in the trade of goods/ services, and can be in the form of:

- a.) Picture, such as the Garuda Bird on the Garuda Indonesia logo
- b.) Words, like Apple, Google, Zippo etc.
- c.) Names such as Davidoff, Tommy Hilfiger etc.
- d.) Phrases such as Hot wheels,

- e.) Sentences, Building for a better future
- f.) Letters, such as F on the Facebook logo or the letter K on the Circle K logo.
- g.) Numbers, such as 7 on the 711 logos, 3 on the GSM Three Logo provider.
- h.) Color arrangements, as in the Pepsi Logo or PERTAMINA Logo
- i.) Hologram
- j.) Combination of these elements.²¹

Specifically, international registration of trademark is regulated from the *Madrid System*, specifically the Madrid Agreement Concerning the international Registration of Marks, which was marked in 1881 and became effective in 1892 a year after it was implemented. Just as the convention identifying with the 1989 *Madrid Agreement* (Madrid Protocol), which became effective on April 1, 1996.

This agreement is known as the *Madrid System*, which provides trademark registration, trademark maintenance and unified trademark management through the international bureau (IB) at the World Intellectual Property Organization (WIPO). *The Madrid Protocol* is consent to decrease the shortcomings/weakness of the *Madrid Agreement* by introducing a new development in the trademark enrollment framework. Indonesia's position is as yet still weak with expanding

²¹ "Merek." Hki.co.id.,
www.hki.co.id/merek.html#:~:targetText=Hak%20Merek%20adalah%20bentuk%20perlindungan,untuk%20mana%20merek%20tersebut%20terdaftar., accessed on 23 February 2020

national competitiveness in the international trade environment. Since 1979, Indonesia joined as the member of the World Intellectual Property Rights Organization (WIPO).²² By this, the country has participated in the Paris Convention a specific refine the protection for industrial property, well-known mark or the Paris members. It can be seen that its commitment in where material agreement that the violation or counterfeiting of well-known brands in general is against trademarks or services that are well known marks from abroad.

At first, author will describe a brief introduction regarding the brief history of DC Comics and PT. Marxing Fam Makmur. DC Comics is a well- known comic book publishing company established in 1934 where a writer named Malcolm Wheeler-Nicholson established National Allied Publications. The company itself distributed new Fun where the comic book featured a new material than reprints of newspapers strips. Consequently, it is hard for a newcomer to comprehend the impacts of the past. Therefore, DC Comics made a signature comic book character namely, the existence of Superman and Batman. Superman is a highly known superhero character where it can be defined as the mascot of DC Comics.

PT. Marxing Fam Makmur is a company that holds a various number of products regarding ‘Superman’ branded products, including wafers and chocolate.

²² “Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks”, <www.wipo.int/treaties/en/registration/madrid_protocol/>, accessed on 23 February 2020.

The company registered its products to the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights. The case DC Comics took example for this thesis topic where they are a comic book publishing company well known from the United States of America who sued PT. Marxing Fam Makmur from Surabaya for their chocolate wafer logo with a *Superman* logo and *Superman* picture. What's more is they continued the process at the Jakarta Commercial Court (*Pengadilan Niaga Jakarta*). PT. Maxing Fam Makmur registered the brand itself of the Superman. PT. Marxing Fam Makmur did not make this brand carelessly. They have registered the brand to the Director General of Intellectual Property Ministry of Law and Human rights with the number mentioned IDM000374438 and IDM000374439²³. Since then, they have a certificate regarding the brand so they have a right to create anything they want with the use of Superman brand especially for the category of wafers, coffee, tea, chocolate, ice cream and cereals.

When the time DC Comics wants to register their brand in Indonesia, it cannot be registered because there is already a similar or common name held by PT. Marxing Fam Makmur. Since DC Comics does not have any other way because *Wafer Superman* was already registered, stated on the date of 13th April 2018 the Central Jakarta District Court decided that plaintiff's claim could not be accepted

²³ RI, Team Mahkamah Agung. "Putusan No. 1105 K/Pdt.Sus-HKI/2018.", <mahkamahagung.go.id/id>, accessed on 23 February 2020.

through the process of the court. DC Comics itself does not receive and file an appeal to the Jakarta District Court (*niet on vanklicht verklaard*).

Up until this point, there has been large- scale copying of well-known mark from abroad for certain products. Literary theft is done, not just on the brand itself, but also in the design structure and different sorts. It is hard for the customers to recognize the original one and the fake one. This deceitful practice or taking other rights is referred as a bad faith²⁴, not only companies that own famous brands are harmed but also the people or public as consumers and the countries as well.

The author is fully aware of the existence of previous thesis or journals that were composed similarly to this thesis, previous thesis was titled *Perlindungan Hukum Merek Terkenal Terhadap Pelaku Bad Applicant Dalam Pendaftaran Merek di Indonesia* that was written by DS Hallatu of Universitas Nasional “Veteran” Jakarta in 2019.

There are similarities between this thesis and DS Hallatu’s thesis where it particularly discusses the DC Comics vs PT. Marxing Fam Makmur case regarding trademark of the Chocolate Wafer Superman while in this thesis it does not specify

²⁴ Melawan Kenakalan Di Balik Pendaftaran Merek, <www.hukumonline.com/berita/baca/hol22440/melawan-kenakalan-di-balik-pendaftaran-merek>, accessed on 23 February 2020

on just the *Bad Applicant* but this thesis will specify on the Law No. 20 of Year 2016 regarding Trademarks and Geographical Indication and how it is implemented throughout the case. In this paper, author will describe and explain regarding the Judicial Review of the relevant as discussed.

1.2 Formulation of Issue

Based on the background that has been addressed, the formulation of issue for this thesis will be:

1. How does the Indonesian Trademark Law provide legal protection for a well-known mark in Indonesia?
2. How does the implementation of the law in the court decision related to the Superman Case?

1.3 Research Approach

In order to achieve the answers to the formulation of issue in this thesis, author uses legal normative approach where author make a review of all applicable laws and regulations related to the Superman Case and author will particularly:

1. Analyze the provisions on legal protection of a trademark in Indonesia, treatment of well-known mark in Indonesia and the procedures to have a legal protection for a trademark; and
2. Analyze the implementation of laws and regulations in the Superman Case decision.

1.4 Research Benefit

Author hopes that the research and analysis in this thesis can provide the following theoretical and practical benefits:

1.) Theoretical Benefits

This research will be useful and provide ease of reference for the society and students to study the legal protection of a trademark in Indonesia and how the same is being implemented in the Superman Case.

2.) Practical benefits

The author hopes that the research and analysis in this thesis can be useful as reference for practitioners and Indonesian government to handle matters related to legal protection of trademark in Indonesia (for example, practitioners in handling similar case or Indonesian government in organizing and developing the regulatory system of trademark legal protection).

1.5 Framework

In order to provide a clearer picture of the discussions, research and analysis in this thesis, the author will describe the relevant chapters briefly as follows:

CHAPTER I: Introduction

The first chapter of this thesis will discuss an introduction that includes the background of the issue, the formulation of issue, research objectives, benefits of the research and systematics writing. This introduction will point out the reason why the author is conducting this judicial review analysis and why it is necessary.

CHAPTER II: Literature Review

The second chapter of this thesis will describe the theories, concepts and principles being used by the author in writing this thesis that is related and relevant to the issues identified in the formulation of issue. These theories will be used as analytical tools to answer the issues.

CHAPTER III: Research Methods

This third chapter of the thesis will discuss about the research purposes, types of research and procedures to obtain the research materials.

CHAPTER IV: Analysis

This fourth chapter of the thesis will discuss and make a specific analysis to answer the issues described in the formulation of issue, among others:

- a. How does the implementation of International Law on trademark being implemented by the Indonesian government through its laws and regulations, including Law No. 20 of 2016 concerning Trademark and MOLHR Regulation No. 67 of 2016 concerning Trademark Registration?

- b. How does the Indonesian Trademark Law can provide legal protection for a trademark (including the well-known mark) in Indonesia?
- c. How does the implementation of the laws and regulations (among others as mentioned above) by the judges in rendering its decision on the Superman Case?

CHAPTER V: Conclusion

In this last chapter of the thesis, author will make conclusions obtained from the research that has been done and provide suggestions that will be explained by the author in a relevant and concrete manner relating to the issues described in the formulation of issue, namely on the laws and regulations for trademark legal protection in Indonesia and its implementation by the judges in rendering its decision on the Superman Case.