

## CHAPTER I

### INTRODUCTION

#### 1.1. BACKGROUND

Indonesia is a constitutional state, this has been emphasized in the Third Amendment to the 1945 Constitution that has added the norms concerning the rule of law in Article 1 paragraph 3, which reads:

"The State of Indonesia shall be a state based on the rule of law."

This provision is a form of normalization derived from the contents in the explanation of the 1945 Constitution which states "The Indonesian State is based on Law (*Rechtsstaat*) not based on mere power (*Machtsstaat*)".<sup>1</sup>

Janpatar Simamora states that in general, the concept of a rule of law is always oriented to two different legal traditions, namely the common law system and the civil law system. The two legal systems use different terms, namely *rechtsstaat*, in the Continental European legal system, which is also referred to by other terms such as the concept of legality or *etat de droit*, and the rule of law that became popular after the publication of the AV. Dicey book with the title "Introduction to Study of the Law of the Constitution" in 1885.<sup>2</sup>

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<sup>1</sup> Aidul Fitriaciada Azhari, "Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi", Jurnal Hukum IUS QUIA IUSTUM, No. 4, Vol. 19 OKTOBER 2012, p. 490.

<sup>2</sup> Haposan Siallagan, "Penerapan Prinsip Negara Hukum di Indonesia", Sosiohumaniora, Vol. 18, No. 2 Juli 2016, p. 131.

According to Frederich Stahl, there are at least four elements of *Rechstaat*, namely:<sup>3</sup>aa

- 1) Guarantee of Human Rights;
- 2) There is a distribution of power;
- 3) Government based on Legislation;
- 4) The existence of a State Administrative Court that stands alone or independent.

Meanwhile, A.V. Dicey explained that there are three important elements in every rule of law state which he calls "The Rule of Law", namely:<sup>4</sup>

- 1) Supremacy of Law, namely the domination of legal rules for opposing and eliminating the arbitrariness and wide-ranging free authority of the government;
- 2) Equality Before the Law, which is equality before the law or the same submission of all groups to the ordinary law of the land implemented by the ordinary court means that no person is above the law, either official or ordinary citizen, is obliged to obey the same law;
- 3) Due Process of Law or the assurance of human rights by the constitution which is the result of "the ordinary law of land", that constitutional law is not a source, but a consequence of individual rights formulated and affirmed by the judiciary, in short, the principle the principles of private law through judicial and parliamentary action are thus extended to limit the positions of crowns and officials

In terms of its terminology, the term "rule of law" in the provisions of Article 1 paragraph (3) of the Third Amendment of the 1945 Constitution does not

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<sup>3</sup> Adi Sulistiyono, *Negara Hukum: Kekuasaan, Konsep, dan Paradigma Moral*, Cetakan I, (Surakarta: Lembaga Pengembangan Pendidikan (LPP), Universitas Sebelas Maret (UNS) : Unit Pelaksanaan Teknis (UPT) Penerbitan dan Pencetakan, Universitas Sebelas Maret (UNS Press), 2007), p. 32.

<sup>4</sup> Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia, Sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*, (Surabaya: Bina Ilmu, 1987), p. 75.

refer specifically to one of the main concepts, either the *rechtsstaat* or the rule of law. It is a relatively neutral concept that opens up space for new interpretations in accordance with the paradigm and reality of the Republic of Indonesia. However, the term "rule of law" in the 1945 Constitution historically derives from the formulation in the explanation of the 1945 Constitution that clearly refers to the concept of *Rechtsstaat* that developed in the Continental European legal tradition. Therefore, the term "rule of law" in the provisions of Article 1 paragraph (3) of the Third Amendment of the 1945 Constitution can also be said that it refers to the concept of *rechtsstaat*, and does not refer to the concept of rule of law. This means that the term "rule of law" in the 1945 Constitution is a relatively "neutral" concept that opens up space for new interpretations in accordance with the paradigm and reality of the Republic of Indonesia.<sup>5</sup>

In fact, the four *rechtsstaat* principles can in essence be combined with the three rule of law principles developed by A.V. Dicey to mark the characteristics of the modern rule of law today. For example, The International Commission of Jurist, added the principles of rule of law are to the principles of independence and impartiality of judiciary which today are increasingly felt to be absolutely necessary in every democratic country. These principles that are considered the essential

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<sup>5</sup> Aidul Fitriadi Azhari, "Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi", Jurnal Hukum IUS QUIA IUSTUM, No. 4, Vol. 19 OKTOBER 2012, p. 490.

characteristics of the rule of law according to "The International Commission of Jurists" are:<sup>6</sup>

- 1) The state must comply with the law.
- 2) The government respects individual rights.
- 3) Free and impartial trial.

Professor Utrecht distinguishes between the rule of law into two different types, namely the Formal Rule of Law and the Materiel Rule of Law. Firstly, formal rule of law concerns the definition of law which is formal and narrow, especially in the sense of written statutory regulations, while the materiel rule of law which is more up to date also includes the notion of justice in it. This distinction is intended to emphasize that in the concept of a rule of law, justice will not necessarily be materialized substantively because people's understanding of law itself can be influenced by not the flow of the meaning of formal law and the flow of thought on material law.

In a sense, if the law is understood in a rigid and narrow manner in the meaning of statutory regulations alone, the definition of a rule of law developed is also narrow and limited and does not necessarily guarantee substantive justice. Therefore, the term 'the rule of just law' has also been developed to ensure that our understanding of 'the rule of law' includes a more essential definition of justice than simply the functioning of statutory regulations in a narrow sense. Even if the term

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<sup>6</sup> Jimly Asshiddiqie, "Gagasan Negara Hukum Indonesia", <[https://pn-gunungsitoli.go.id/assets/image/files/Konsep\\_Negara\\_Hukum\\_Indonesia.pdf](https://pn-gunungsitoli.go.id/assets/image/files/Konsep_Negara_Hukum_Indonesia.pdf)>, accessed on 28 September 2020.

used remains 'the rule of law', it is this broad definition that is expected to be included in the term 'the rule of law' which is used to describe the current conception of the rule of law.<sup>7</sup>

Other than being a state based on the rule of law, the attainment of prosperity and welfare for all Indonesian people is also one of the ideals intended by the founding fathers of Indonesia. These elements of the welfare state have been incorporated into the Pancasila and the 1945 Constitution as the foundations of the Indonesia at the time of preparation for the meeting to discuss the preparation and post-independence of the Indonesian state. The Preamble to the 1945 Constitution which contains the formulation of the objectives of the Indonesian state and also the Pancasila states that:

The Indonesian state was formed "... to protect the entire Indonesian nation and all Indonesian bloodshed and to promote public welfare, educate the nation's life, and participate in implementing world order ... by based on ... social justice for all Indonesian people."

Those two ideologies were then manifested in the body of the constitution of the Indonesian state to be used as a guide for national life and state administration, particularly in Article 34 of the Pre-Amendment of the 1945 Constitution, the state declared its responsibility to care for the poor and neglected children. After the fourth amendment, the state's duties in the field of social welfare were expanded with the additional responsibility for developing a social security

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<sup>7</sup> Utrecht, *Pengantar Hukum Administrasi Negara Indonesia*, (Jakarta: Ichtiar, 1962), p. 9.

system and empowering the poor, as well as providing health services and public service facilities for its people.

In addition, several articles in the 1945 Constitution also reflect the basic values of the welfare state, such as Article 27 (2) that states:

"Every citizen has the right to work and a decent living for humanity."

Furthermore, it is also reflected in articles 28B, 28C, 28H, 31, 33, 34, especially in Article 28A that states:

"Everyone has the right to live and has the right to defend his life and life."

The concept of a welfare state has been born since around the 18th century that goes back to the 18th century when Jeremy Bentham (1748-1832) promoted the idea that the government has the responsibility to guarantee the greatest happiness or welfare of the greatest number of their citizens. He used the term 'utility' to describe the concept of happiness or well-being and developed the principle of utilitarianism which argued that anything that can lead to extra happiness is something good. On the other hand, something that causes pain is bad. According to him, government actions should always be directed to increase the happiness of as many people as possible. Bentham's ideas regarding legal reform, the role of the constitution and social research for the development of social policy made him known as the father of welfare states.<sup>8</sup>

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<sup>8</sup> Oman Sukmana, "Konsep dan Desain Negara Kesejahteraan (*Welfare State*)", Jurnal Sospol, Vol. 2, No. 1 (Juli-Desember 2016), p. 105

Moreover, Spicker argues that the welfare state can be defined as a social welfare system that gives a bigger role to the state (government) to allocate a portion of public funds to ensure the fulfillment of the basic needs of its citizens.<sup>9</sup> Whereas, Husodo stated that the welfare state is briefly defined as a country in which the state government is considered responsible for ensuring the minimum standard of living welfare for every citizen.<sup>10</sup> According to Pierson, the word welfare in it contains at least three sub-classifications, namely:

- 1) Social welfare, which refers to the collective acceptance of welfare;
- 2) Economic welfare, which refers to guaranteeing security through the market or formal economy; and
- 3) State welfare, which refers to guaranteeing social welfare services through agents from the state.

Thus, a welfare state can be briefly defined as a country in which the state government is considered responsible for ensuring the minimum standard of living welfare for every citizen.<sup>11</sup>

Based on Esping-Anderson, the welfare state basically refers to the active role of the state in managing and organizing the economy, which includes the state's responsibility to ensure the availability of basic welfare services at a certain level for its citizens. In general, a country can be classified as a welfare state if it has four main pillars, namely:

- 1) Social citizenship;
- 2) Full democracy;
- 3) Modern industrial relation systems;

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<sup>9</sup> Edi Suharto, *Analisis Kebijakan Publik: Panduan Praktis Mengkaji Masalah dan Kebijakan Sosial*, (Bandung: Alfabeta, 2005), p. 50.

<sup>10</sup> Oman Sukmana, *loc. cit.*

<sup>11</sup> Oman Sukmana, *op. cit.*, p. 104.

- 4) Rights to education and the expansion of modern mass education systems.

These four pillars are possible in a welfare state because the state treats the implementation of social policies as the granting of social rights to its citizens which are guaranteed such as rights to property, cannot be violated, and are given on the basis of citizenship and not on the basis of performance or class.<sup>12</sup>

In its implementation, through the implementation of social insurance / security and / or social welfare, how big the state's responsibility for the welfare of its citizens creates two broad categories of welfare state models, such as the institutional welfare state and the residualist welfare state.<sup>13</sup> Firstly, in the institutional welfare state, the state positions itself responsible for guaranteeing a decent standard of living for all citizens and providing universal rights. Consequently, the more conditions that are put in place by the state so that its citizens can access these universal rights and the weaker and less equal impact of the protection program, which means that the country is further away from the institutional welfare state model.

As for the residualist welfare state, the new state is involved in dealing with welfare issues when other resources, including the services provided by the private sector by buying insurance, family and society, are inadequate. Therefore, the state

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<sup>12</sup> Oman Sukmana, *op. cit.*, p. 107.

<sup>13</sup> Alfitri, "Ideologi Welfare State dalam Dasar Negara Indonesia: Analisis Putusan Mahkamah Konstitusi Terkait Sistem Jaminan Sosial Nasional", *Jurnal Konstitusi*, Vol. 9, No. 3, September 2012, p. 456.



makes minimal or very selective provisions on welfare programs and places greater responsibility on individuals to fulfill their own welfare.<sup>14</sup>

Those two welfare state models actually have their own variations in various countries that claim to adhere to the ideology of the welfare state, such as Liberal or Residual, Conservative, and Social-Democratic.<sup>15</sup>

First, the Liberal or Residual (Anglo-Saxon) Model is a model that has been adopted by United States, Canada, and Australia with the following characteristics:

- 1) Social support that is means-tested, or limited, or conditional, and is more of a safety net;
- 2) Greater state effort should focus on creating financing schemes so that citizens can (re) participate in the labor flow; and
- 3) Simultaneously, industrial and trade development is developed first (precursory) to create access to goods and services, as well as sustainable purchasing power.

Second, the Conservative Model (Continental Europe), that has been adopted by Austria, France, Germany, and Italy, has the following characteristics:

- 1) The state pursues a welfare scheme that is managed by the state;
- 2) In production and organization, the state is not the only implementer, but also collaboration between citizens / workers and the private sector,

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

<sup>15</sup> Emanuele Ferragina and Martin Seeleib-Kaiser, “*Welfare Regime Debate: Past, Present, Futures,*” *Policy & Politics*, Vol. 39, No. 4, 2011, p. 584.

and also state taxes that are linked to certain benefits;

- 3) However, taxes can be said to remain high, which is related to the broad financing of the needs of citizens, including those that cannot be financed with the collaboration of citizens / workers and the private sector; and
- 4) The direction of the welfare scheme is primarily to finance conditions in which citizens are "sick" both socially (unemployed, disabled, old, etc.) and physically (health matters), so that this model is often called a social protection model.

Third, the Social-Democratic (Redistributive-Institutional) Model has been adopted by Scandinavia, such as Sweden and Norway has the following characteristics:

- 1) One tax scheme is used to finance the entire welfare scheme financing;
- 2) This welfare scheme includes comprehensive services with the highest standards, and universal coverage. Citizens are deemed to have the right to regulate welfare schemes (equity principle); and
- 3) State policy is directed at the integration of industry and trade with the welfare schemes.

In implementing its role as a welfare state, Indonesia has to carry out national development as one of its ways to achieve the desired goal of citizens' welfare. In accordance with the objectives stated in the fourth paragraph of the Preamble to the

1945 Constitution, it is stated that the essence of national development is: to educate the nation's life, to create public welfare, to protect all the blood of Indonesia, and to help carry out world order and eternal peace. Pancasila and the 1945 Constitution are in fact the ideal foundations for the development as both of them have wisely formulated the concept of democracy in the realm of development in accordance with Indonesia's social and cultural environment.

In a number of concepts about democracy, it is stated that there is a meeting point between democracy and development in which both of them can be considered as a humanizing process. In a democratic country, development takes place on its own based on the will, needs and abilities of the people, then it is carried out independently by the people, and then the results and impacts are used for the people themselves.<sup>16</sup>

As a nation that binds itself, the national goal needs to be realized by all layers of the nation without exception. The government as state facilitator and dynamist of the realization of this national goal. In implementing development, the government acts to represent the interests of all levels of the nation. Development carried out by the community consists of: the individual micro level or the private person of the people; the aggregate-national level starts at the level of community groups, villages, sub-districts, regencies-cities, provinces to the national level; and the global-international level of development between nations.

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<sup>16</sup> Pokok-pokok Penyelenggaraan Pembangunan Nasional, <[https://www.bappenas.go.id/files/3413/4986/1934/info\\_\\_20091015133401\\_\\_2370\\_\\_0.pdf](https://www.bappenas.go.id/files/3413/4986/1934/info__20091015133401__2370__0.pdf)>, accessed on 29 September 2020.

According to Bappenas, there are several values of national development and its objective conditions, namely:<sup>17</sup>

Firstly, national values, that national development is actually development carried out in a synergy, harmonious and dynamic manner by all Indonesian people everywhere. Real development is an effort to solve the nation's problems in the form of facing the nation's challenges both from within the country and abroad.

Secondly, autonomy values, that national development is actually the development of the people, by the people and for the people. Development in simple terms needs to be understood as an effort to realize the ideals of the Preamble of the 1945 Constitution (paragraph 4). The main autonomy values of development include community autonomy and regional government autonomy. Both the Regional Government Law and the Law on Financial Balance between the Central and Regional Governments actually contain the principle of development autonomy, not merely political autonomy, namely the authority of the regional government and regional communities in implementing regional development in order to realize the maximum welfare of the people.

Thirdly, human values, that humanity is the highest value valued by Almighty God. The appreciation of Almighty God for humanity is marked by the position of religion which is very important for every human being. The basic principle of humanity is an equal relationship between humans which is required

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<sup>17</sup> *Ibid.*

by conditions where every individual human being has the same rights and obligations in his position in society and every individual human being has an equal position before Almighty God. Of the two conditions, the difference that exists is actually the difference in interests among humans in exercising their respective rights and obligations; as well as differences in faith in carrying out religious teachings. These basic humanitarian principles are important values that must be considered in their application to all aspects of development.

The principle of formulating a development program in accordance with the values of nationality, autonomy, democracy, then the principles of programming as follows:<sup>18</sup>

- 1) Human development. Human development is development that humanizes humans. Such principles are directed at maintaining and enhancing human dignity. The goal of human development is to improve and strengthen the vision of development, improve the quality of life and increase the competitiveness of Indonesian people.
- 2) Economic development. Economic development is development that provides equal opportunities for every human being to gain economic access. Such principles are directed at efforts to build a strengthening of the economic resources possessed by every human being. The objective of economic development is to increase the efficiency of economic resources in order to realize people's welfare.
- 3) Infrastructure development. Infrastructure development is a development that provides infrastructure assistance and means of supporting human development and economic development. Such principles are directed at efforts to stimulate and spur support for the implementation of human development and economic development. The objective of infrastructure development is to provide basic support for the implementation of human and economic development.
- 4) Institutional development. Institutional development is development that strengthens existing development mechanisms in society. Such principles are directed at efforts to implement real development autonomy in society. The objective of institutional development is to

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<sup>18</sup> *Ibid.*

institutionalize the development process of the people, by the people, and for the people through government development institutions and community-owned development institutions.

- 5) Sustainable development. Sustainable development is development that strengthens the development control system so that it is in line with national development goals. Such principles are directed at efforts to implement sustainable development towards progress and independence in the implementation of development. The goal of sustainable development is to strengthen implementation to realize the national development vision.

In applying all these values, Joko Widodo used the term *Nawacita* for political purposes when he was running for President and Jusuf Kalla as a candidate for Vice President in the 2014 Election. *Nawacita* is a general term taken from the Sanskrit language, *nawa* meaning nine and *cita* which means hopes, desires, dreams. *Nawacita* means nine hopes, wishes, dreams from Joko Widodo for the welfare of the Indonesian people and was used as his vision and mission when he was elected President and Vice President in the 2014-2019 elections. The vision and mission of Joko Widodo and Jusuf Kalla contains nine priority agenda items to continue Soekarno's spirit of struggle known as *Trisakti*, namely politically sovereign, economically independent, and having a personality in culture. *Nawacita* programs has nine essences in its implementation:<sup>19</sup>

- 1) Bring back the state to protect the entire nation and provide a sense of security to all citizens, through free and active foreign policy, reliable national security and the development of an integrated *Tri Matra* national defense based on national interests and strengthening its

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<sup>19</sup> Dini Safitri, "Representasi *Nawacita* dalam 100 Hari Kabinet Kerja Jokowi-JK", <[https://www.researchgate.net/publication/311768278\\_Representasi\\_Nawacita\\_dalam\\_100\\_Hari\\_Kabinet\\_Kerja\\_Jokowi-JK](https://www.researchgate.net/publication/311768278_Representasi_Nawacita_dalam_100_Hari_Kabinet_Kerja_Jokowi-JK)>, accessed on 29 September 2020.

identity as a maritime country.

- 2) Make the government not absent by building clean, effective, democratic and reliable governance, by giving priority to efforts to restore public confidence in democratic institutions by continuing to consolidate democracy through reform of the party system, elections and representative institutions.
- 3) Developing Indonesia from the periphery by strengthening regions and villages within the framework of a unitary state.
- 4) Rejecting a weak state by reforming a system and law enforcement that is free of corruption, dignified and reliable.
- 5) Improving the quality of life of Indonesian people through improving the quality of education and training with the "Smart Indonesia" program; as well as improving the welfare of the community with the "Indonesia Kerja" and "Indonesia Prosperous" programs by encouraging land reform and a nine hectare land ownership program, subsidized low-cost residential housing programs and social security for the people in 2019.
- 6) Increase people's productivity and competitiveness in the international market so that the Indonesian nation can advance and rise up together with other Asian nations.
- 7) Realizing economic independence by moving strategic sectors of the domestic economy.
- 8) Carry out a national character revolution through the policy of

restructuring the national education curriculum by prioritizing aspects of civic education, which proportionally place aspects of education, such as teaching the history of nation formation, values of patriotism and love for the country, the spirit of state defense and character in the curriculum Indonesian education.

- 9) Reinforce diversity and strengthen Indonesia's social restoration through policies to strengthen diversity education and create spaces for dialogue between citizens.<sup>20</sup>

In regard to national development in social and culture, laws are needed to regulate all the citizens. One of the examples is laws that are related with Intellectual Property Rights. Intellectual Property Rights as regulated in Law No. 7 of 1994 concerning the Ratification of the WTO (Agreement Establishing the World Trade Organization), which means the right to property from human intellectual abilities, has a relationship with a person's individual rights (human rights). The World Intellectual Property Organization (WIPO) states this as a creation of thought humans, including inventions, literary works, works of art and scientific works, inventions in all fields of human business, scientific discoveries, industrial designs, trademarks, service marks, and names in commercial markings, protection against competition is not healthy, and all other rights resulting from intellectual activities related to industry, scientific works, literature, and fields of

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<sup>20</sup> *Ibid.*



art.<sup>21</sup>

A. Zen Umar Purba defines that Intellectual Property Rights are assets that legally create rights and obligations for the owner, as well as other assets, such as land with certificates, and ownership of movable objects, attached to those in control. For that we need a registration process in order to obtain a certificate of ownership from the state. The awareness that intellectual work is an intangible object that can be used as an asset is the key to the problem, then with the element of ownership, it is hoped that it can foster business creativity.<sup>22</sup>

In the international order, Intellectual Property Rights have developed quite rapidly and have become one of the identities that indicate a current era of globalization. Legal provisions regarding Intellectual Property Rights were carried out for the first time in Venice, namely the Patent rule which came into force in 1470. Efforts to harmonize international rules regarding Intellectual Property Rights first occurred in 1883 with the birth of the Paris Convention.<sup>23</sup>

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<sup>21</sup> Tomi Suryo Utomo, *Hak Kekayaan Intelektual (HKI) di Era Globalisasi, Sebuah Kajian Kontemporer*, (Yogyakarta: Graha Ilmu, 2010), p. 1.

<sup>22</sup> Muhammad Djumhana & R. Djubaedillah, *Hak Milik Intelektual (Sejarah, Teori dan Prakteknya di Indonesia)*, (Bandung: Citra Aditya Bakti, 1997), p. 55-56.

<sup>23</sup> Haris Munandar dan Sally Sitanggang, , *Mengenal Hak Kekayaan Intelektual, Hak Cipta, Paten, Merek, dan Seluk-Beluknya*, (Jakarta: Erlangga, 2008), p. 6.

The following are various international legal instruments regulating Intellectual Property Rights:<sup>24</sup>

- 1) Convention Establishing the World Intellectual Property Organization (WIPO) was held in Stockholm in 1967, which was then ratified by Indonesia through Presidential Decree No. 24/1979 which was amended by Presidential Decree No. 15/1997. WIPO is a special agreement under the Bern Convention. Each Party shall comply with the substantive provisions concerning the Protection of Literary and Artistic Works (1886).
- 2) The Paris Convention for The Protection of Industrial Property Rights (Paris Convention) in the field of industrial property rights was signed in Paris on March 20, 1883. This convention was ratified by Presidential Decree Number 15 of 1997, discussing the protection of industrial property to help the people of one country obtain protection in other countries for their intellectual creations in the form of industrial property rights, known as:
  - a. Invention (patent)
  - b. Trademark
  - c. Industrial design
- 3) Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) in the field of Copyright, signed in Berne,

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<sup>24</sup> *Ibid.*, p. 33.

September 9, 1986. Indonesia ratified it with Presidential Decree No. 18/1997. The Bern Convention requires signatories to recognize the copyright of works- works of authors from other signatory countries.

4) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) which came into effect on January 1, 1995. This agreement addresses the trade in counterfeit goods for:

- a. Increasing the protection of intellectual property rights of traded products;
- b. Ensuring the implementation of intellectual property rights procedures that do not hinder trading activities;
- c. Formulating rules and discipline regarding the implementation of protection of intellectual property rights;
- d. Develop principles, rules and mechanisms for international cooperation

5) Agreement Establishing the World Trade Organization (WTO) which was ratified by Law Number 7 of 1994. The World Trade Organization (WTO) or the World Trade Organization is the only international body. The WTO multilateral trading system is regulated through an agreement containing the basic rules of international trade as a result of negotiations signed by member countries.

6) Trademark Law Treaty, regulating protection of the Trademark, ratified in Geneva on 27 October 1997, ratified by Indonesia through

Presidential Decree No. 17/1997. the trademark was given the same protection.

- 7) Patent Cooperation Treaty (PCT), namely a cooperation agreement in the field of Patents. Indonesia ratified it with Presidential Decree No. 16/1997. This agreement addresses the parties:
  - a. Want to contribute to the advancement of science and technology;
  - b. Improving legal protection against inventions;
  - c. Simplifying and making it more economical to obtain protection of the invention;
  - d. Facilitate and accelerate access by the public to technical information contained in documents that describe new discoveries.

Trademarks, as one of the Intellectual Property Rights, plays an important role, especially in the world of commerce. With the existence of a trademark, people can determine their choice of a product that has a trademark which becomes a guarantee of a product or service. Trademarks can prevent unfair business competition because with a trademark, a product or service can be distinguished from its origin, quality and guarantee of authenticity. Trademark holders or owners are entitled to protection of trademark because they have made efforts to develop the trademark they use.

Various legal instruments, both international and national, have tried to formulate protection of trademarks as part of IPR, both regarding the exclusive rights for trademark owners and for consumers. This convention and laws and

regulations aim to ensure a balance between the interests of the parties, namely producers, consumers and business actors. National law cannot be separated from the influence of international law, as well as in regulating Trademarks in Indonesia.

Historically, the development of Trademark law in Indonesia has been noted as a long journey since the colonial era until now. While still under Dutch control, the Dutch East Indies *Reglement Industrieële Eigendom* in 1912. After Indonesian independence, several laws and regulations in the field of Trademarks were established, among others, Law Number 21 of 1961 concerning Company Marks and Trade Marks, Law Number 19 of 1992 concerning Trademarks, and Law Number 14 of 1997 concerning Amendments to Law no. 19 of 1992 concerning Trademarks. During its development, in international forums there were significant changes in trade, namely the formation of the World Trade Organization (hereinafter referred to as WTO) in 1995. The WTO made provisions on trade in the IPR sector, namely the TRIPs agreement. This has an effect on countries that have ratified the agreement to form the WTO, including Indonesia. In 2001, Law Number 15 Year 2001 regarding Trademarks was formed as an adjustment to the WTO approval.

Based on the background that has been described, the writer of this thesis is interested in conducting research in the form of a thesis with the title "LEGAL PROTECTION OF THE USE OF A FAMOUS PEOPLE'S NAMES AS A TRADEMARK"

## **1.2.FORMULATION OF ISSUES**

Based on the elaborated information in the background, the writer would be focused in discussing on the following legal issues:

- 1) How is the legal protection towards the use of famous people's names on a Trademark according to Law Number 20 of 2016 concerning Trademarks and Geographical Indications?
- 2) How is the implementation of the Trademark regulations concerning the use of the name of a famous person as a trademark in Indonesia?

## **1.3.RESEARCH OBJECTIVE**

Based on the formulation of issues above, thus this thesis aims to:

- 1) Discover how the Law Number 20 of 2016 concerning Trademarks and Geographical Indications regulates the use of a famous person's name on a trademark.
- 2) Analyze the implementations of the regulations concerning the use of the name of a famous person as a trademark according to its laws, and determine the effectiveness of implementing such laws.

## **1.4.BENEFITS OF RESEARCH**

### **1.4.1. Theoretical Benefits**

This thesis is expected to be a contribution to the development of legal studies and to be used as material knowledge, specifically in the use of a famous

person's name on a trademark in the field of Trademarks and Geographical Indications.

#### 1.4.2. Practical Benefits

This thesis is expected to provide input and contribute thoughts for legal practitioners, especially in relation to cases of the use of a famous person's name on a trademark in the field of Trademarks and Geographical Indications.

### **1.5.STRUCTURE OF WRITING**

In writing this thesis, the structure consists of several Chapters and each of them consists of several Sub Chapters. The structure referred to are as follows:

#### 1.5.1. CHAPTER I INTRODUCTION

Introduction describes the Background of the Problem, Formulation of the Issue, Research Objectives, Research Benefits, Research Methods, and Systematics of Writing.

#### 1.5.2. CHAPTER II LITERATURE REVIEW

Literature review contains a number of literature studies relating to the title of the problem under study which will provide a foundation or theoretical framework as well as an outline of the framework of thought. This literature review includes several literature reviews on a general review of Intellectual Property Rights and Trademarks.

### 1.5.3. CHAPTER III RESEARCH METHODOLOGY

This chapter is presented briefly and simply regarding the research method which includes several sub-chapters, namely the definition, object, and scope of the research, types of legal research, legal approaches, research materials, and data collection and analysis.

### 1.5.4. CHAPTER IV DISCUSSION AND ANALYSIS

Discussion to create the results of research relating to the use of a famous people's names on a trademark in accordance with the Law Number 20 of 2016 concerning Trademarks and Geographical Indications and in the Decision No. 57/Pdt.Sus-HKI/Merek/2019/PN Niaga Jkt.Pst.

### 1.5.5. CHAPTER IV CONCLUSION AND RECOMMENDATION

This is the final part of writing this thesis. In this chapter, conclusions are drawn based on the results of the discussion and suggestions that can be submitted for the writing of this thesis.