

## CHAPTER I

### INTRODUCTION

#### 1.1 Background

Man is a special creation of God. The human ability to use common senses in understanding the environment is the basic proof that human has the potential to think and act accordingly. Man has an almost limitless imagination, thus is virtually defined by creativity—in manufacturing, art, literature, music, humor, and virtually every other field of activity.<sup>1</sup> Only man has the ability to create pictures in the mind and then manipulate materials from the earth to bring into reality what was imagined. Imagination ignites creativity and gives the human mind its uniqueness. In his book *The Incredible Human Potential*, Herbert Armstrong explained that man was created and designed according to God's image, and thus has the Godly-type of mind that allows them to think, to reason, and to make choices and decisions. This ability of human to think allows them to create works and to be artistic.

Writer wanted to assert that human's creativity should be appreciated and protected. Thus, the presence of Intellectual Property Law is very

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<sup>1</sup> Dennis Leap. "The Mystery of Human Creativity Explained." Invention and imagination are awesome, and uniquely human, abilities. Where did they come from? Why do we create? February 2012. Accessed June 12, 2017. <https://www.thetrumpet.com/8960-the-mystery-of-human-creativity-explained>.

significant in human life. Intellectual Property law can protect the literary and artistic works as well as the invention of usage or imitation by other parties without permission.<sup>2</sup> Thus, Intellectual Property Rights are generally associated with the protection of the application of ideas and information that have commercial value.<sup>3</sup>

The importance of Intellectual Property Rights, especially mark, in this era of globalization becomes very clear as it is closely related to global trading at the international level. Significantly, there are at least four important roles of Intellectual Property Rights in global trading<sup>4</sup>:

1) As a distinctive mark

One of the most important requirement of a trademark is to have sufficient distinguishing or distinctive power<sup>5</sup>. As a distinctive mark, Intellectual Property Rights plays a significant role in global trading. One of the most interesting and valuable topic of Intellectual Property Rights to be discussed is mark. From its definition, mark is a tool to distinguish the goods and services produced by a company.<sup>6</sup> Furthermore, a definition of 'mark' by WIPO: "A trademark is a distinctive sign which identifies

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<sup>2</sup> Tim Lindsey, dkk., *Hak Kekayaan Intelektual: Suatu Pengantar. 5th ed.* (Bandung: Alumni, 2006), p. 2

<sup>3</sup> *Ibid.* p. 3

<sup>4</sup> Henry Soelistyo Budi, *Hak Kekayaan Intelektual: Konsep, Opini, dan Aktualisasi. Buku Pertama ed.*, (Jakarta: Penaku, 2014), p. 53-54

<sup>5</sup> Rachmadi Usman, *Hukum Hak Atas Kekayaan Intelektual: Perlindungan dan Dimensi Hukumnya di Indonesia.* (Bandung: Alumni, 2003), p. 325

<sup>6</sup> Muhamad Djumhana and R. Djubaedillah, *Hak Milik Intelektual: Sejarah, Teori, dan Prakteknya di Indonesia.* (Bandung: Citra Aditya Bakti, 1993), p. 222

certain goods or services as those produces or provided by a specific person or enterprise. Its origin dates back to ancient times, when craftsmen reproduced their signatures, or ‘marks’ on their artistic or utilitarian products. Over the years these marks evolved into today’s system of trademark registration and protection. The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.”<sup>7</sup>

Trademarks are also important for business. In conducting its business activities, a company relies on its own trademark to let consumers (or buyers) be able to distinguish the goods and/or services produced by the company. In other words, a company use its trademark to be able to maintain the uniqueness of the product or service provided by the said company. According to Sudaryat in his book *Hak Kekayaan Intelektual*, as a distinctive tool, trademark has the functions to identify the company which sells the goods and/or services, to indicate the reputation of the company, and as sources of information for the consumers so that the consumers know about the company’s business activities.<sup>8</sup>

## 2) Consumer protection

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<sup>7</sup> [wipo/trademarks/en/trademarks.html](http://wipo/trademarks/en/trademarks.html). Accessed October 4, 2017.

<sup>8</sup> Sudaryat, Sudjana, and Rika Ratna Permata, *Hak Kekayaan Intelektual*. (Bandung: Oase Media, 2010), p. 65

The fulfillment of the provisions of the Intellectual Property Law is tantamount to consumer protection, especially regarding the quality of a goods and/or services. As has been mentioned above in the previous point, one of the functions of Intellectual Property Law, specifically Trademark, is to give information to consumers about the goods and/or services in a company.

The provisions on this matter have also been agreed upon in the Uruguay Round, which is one of the annexes of the World Trade Organization Agreement, namely the TRIPS agreement. This provision regarding TRIPS Agreement and its effect on Indonesian Intellectual Property Law will be discussed further in the following section.

### 3) Prestige or symbol

The function of Intellectual Property Rights as a prestige or symbol are most obviously discussed in the scope of mark. One of the functions of mark is to give reputation guaranty, that is, privately relating the reputation of the product with its producer, as well as providing quality assurance of the product.<sup>9</sup> Reputation in the world of commerce is considered as a benchmark of the triumph (success or failure) of a company.<sup>10</sup>

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<sup>9</sup> Endang Purwaningsih, *Hak kekayaan intelektual (HKI) dan Lisensi*. (Bandung: Mandar Maju, 2012), p. 53

<sup>10</sup> *Ibid.*

#### 4) Valuable Assets

One of the two most basic rights for Intellectual Property Rights holder is economical right. Economical right is the right to gain economic advantage (or to benefit economically) from intellectual property. The inventor or creator of a creation/work has exclusive rights only to himself or to others that get the permission from the inventor or creator to exploit the economic value of the said creation/work.<sup>11</sup> By ensuring economical rights to the creator or founder of the creation, thus implied the assurance of assets or valuable wealth for them.

According to Business Insider, the top ten most valuable brands in the world are listed as follows: Google, Apple, Amazon, AT&T, Microsoft, Samsung, Verizon, Walmart, Facebook, and ICBC.<sup>12</sup> The holders of these trademarks are eligible to the exclusive economical rights from the business of the said trademarks. Another example for benefiting from trademark business can be seen through franchise business. Franchise business is actually business with a base of trademark rights. Franchisor is the holder of the trademark, and most are also the producer of the goods and/or services.<sup>13</sup> Franchisee is the person (or entity) that is given the rights to produce or sell the exact same goods and/or services as the franchisor. Franchisee usually has the access to the goods and/or services

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<sup>11</sup> Muhamad Djumhana and R. Djubaedillah, *Op.cit.*, p. 26

<sup>12</sup> Julien Rath, "The 10 most valuable brands in the world." April 1, 2017. Accessed October 3, 2017.

<sup>13</sup> Endang Purwaningsih, *Op.cit.*, p. 56

and is a part of the marketing network of the franchisor. Financially, franchisee will pay royalties to franchisor on a regular basis.<sup>14</sup> Thus, confirmed the function of trademark as valuable wealth (or at least as a valuable source of wealth) to the trademark holder.

Judging from the description above, Intellectual Property Rights not only took great role to protect human's creativities and thoughts, but also it contributes enormously in international economics relation, thus made it an interesting issue or topic of discussion. As time pass, economic competition took dominant role in society. Everybody is competing to create new works or creations that has never been found by others, to enjoy financial benefits from it. Oftentimes, some conflicts in regards of these works or creations may arise. There are number of cases regarding Intellectual Property Rights; who will have the right to use, to sell, to share, to make copy, etc. In light of this matter, regulations regarding Intellectual Property Rights are undeniably necessary. Therefore, Intellectual Property Law are created with the purpose to protect human's creations and inventions from unauthorized users. Implementation of a good Intellectual Property Rights system requires not only legislation and regulation, but also must be supported by the administration, law enforcement and optimal socialization program on Intellectual Property Rights.

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

The awareness of states to enter into cooperation to discuss the issue of Intellectual Property Rights has formally existed since the end of the 19th century. The first ever organization to handle this issue is the World Intellectual Property Organization (hereinafter referred to as “WIPO”).<sup>15</sup> Indonesia has been one of 188 state member of the WIPO since 1979.<sup>16</sup> Thenceforth, the development of Intellectual Property Law in Indonesia are quite promising and can be seen through the enforcements of several regulation regarding Intellectual Property Rights. Gradually, Indonesia has ratified several international conventions in relevance with Intellectual Property Rights<sup>17</sup>, namely:

- 1) Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement)
- 2) Paris Convention: Protection of Industrial Property and Convention Establishing World Intellectual Property Organization (Authorized legally through Presidential Decree No. 15 Year 1997)
- 3) Patent Cooperation Treaty (PCT) (Authorized legally through Presidential Decree No. 16 Year 1997)
- 4) Trademarks Law Treaty (Authorized legally through Presidential Decree No. 17 Year 1997)

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<sup>15</sup> Taryana Soenandar. *Perlindungan Hak Milik Intelektual di negara-negara ASEAN*. (Jakarta: Sinar Grafika, 2007), p. 7

<sup>16</sup> List of member states of WIPO. [www.wipo.int](http://www.wipo.int). Accessed October 4, 2017.

<sup>17</sup> Sudarmanto. *KI dan HKI serta Implementasinya bagi Indonesia*. (Jakarta: PT Elex Media Komputindo, 2012), p. 11-12

- 5) Berne Convention: Protection of Literary & Artistic Work (Authorized legally through Presidential Decree No. 18 Year 1997)
- 6) WIPO Copyrights Treaty (Authorized legally through Presidential Decree No. 19 Year 1997)
- 7) Convention on Biological Diversity (CBD) (Law No. 5 Year 1994)

From the list above, we can see that our government paid not little attention to the development of the regulation regarding Intellectual Property Rights in Indonesia. However, to keep the topic of discussion in the area of trademark, writer will narrow the discussion of international conventions to TRIPS Agreement, Paris Convention, and Trademark Law Treaty.

On 15 April 1994, the Government of Indonesia signed the Final Act Embodying the Result of the Uruguay Round of Multilateral Trade Negotiations, which includes the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). In an attempt to harmonize all laws and regulations in the field of Intellectual Property Rights with the TRIPS Agreement, in 2001 the Government of Indonesia passed Law No. 14 of 2001 on Patents, and Law No. 15 of 2001 on Trademarks. As the result from the negotiation in the Uruguay Round, TRIPS Agreement is an agreement focusing on Intellectual Property Rights, which consists of 73 articles. Thus, the main idea of the TRIPS

Agreement serves as a minimum standard for regulations regarding Industrial Property rights and the application of non-discriminatory treatment, protection and application of law to trigger new discoveries in the field of technology for social, economic and technological development.<sup>18</sup> Definition of Trademark according to the TRIPS Agreement are to be found in Article 5 para 1 of the agreement<sup>19</sup>.

*Article 15 Paragraph 1:* “Any sign or any combination of signs, capable of distinguishing, the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademark. Where signs are not inherently capable of distinguishing the relevant goods or services, members may take registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.”

Paris Convention on Protection of Industrial Property (hereinafter will be referred to as “Paris Convention”) and Convention Establishing World Intellectual Property Organization are one of the many conventions that regulates about trademark on a global scale. Indonesia first ratified the Paris Convention (1967) based on Presidential Decree Number 24 Year 1979.<sup>20</sup> Practically, Indonesia had also applied several principle of law in accordance with the ratification of the Paris Convention. Some of the

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<sup>18</sup> Endang Purwaningsih, *Op.cit*, p. 17-18

<sup>19</sup> TRIPS Agreement, Article 5 Paragraph 1

<sup>20</sup> Muhamad Djumhana and R. Djubaedillah, *Op.cit*, p. 215

principles are good faith, reciprocity, and right priority.<sup>21</sup> The substance of Paris Convention applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models, service marks, trade names (designations under which an industrial or commercial activity is carried out), geographical indications and the repression of unfair competition.<sup>22</sup> As mentioned previously, regulations regarding marks are stipulated in the Paris Conventions, namely well-known marks<sup>23</sup>, service marks<sup>24</sup>, collective marks<sup>25</sup>, and trade names<sup>26</sup>.

Trademark Law Treaty is the result of the conference held by WIPO member countries in Geneva, Switzerland, on October 28, 1995. This treaty, which consist of 25 articles with an additional of 8 provisions, has been ratified in Indonesia through Presidential Decree Number 17 Year 1997 regarding Ratification of Trademark Law Treaty.<sup>27</sup> On 2009, this Trademark Law Treaty was being revised by Singapore Treaty on the Law of Trademarks (hereinafter will be referred to as “the Singapore Treaty”). According to the information obtained from the official website of WIPO<sup>28</sup>, Indonesia has not yet ratified this newly revised treaty. In the area of trademark, the Singapore Treaty includes provisions on the

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<sup>21</sup> O. C. Kaligis, *Teori-Praktik Merek dan Hak Cipta*. (Bandung: Alumni, 2012), p. 266

<sup>22</sup> Summary of the Paris Convention for the Protection of Industrial Property (1883). Accessed October 3, 2017. [http://www.wipo.int/treaties/en/ip/paris/summary\\_paris.html](http://www.wipo.int/treaties/en/ip/paris/summary_paris.html).

<sup>23</sup> See *Article 6bis*, Paris Convention

<sup>24</sup> See *Article 6sexies*, Paris Convention

<sup>25</sup> See *Article 7bis*, Paris Convention

<sup>26</sup> See *Article 8-9*, Paris Convention

<sup>27</sup> Muhamad Djumhana and R. Djubaedillah, *Op.cit.*, p. 215

<sup>28</sup> [www.wipo.int](http://www.wipo.int). Accessed October 3, 2017

recording of trademark licenses, and establishes maximum requirements for requests for recordal, amendment or cancellation of the recordal of a license. However, the Singapore Treaty shall only apply to trademarks and service marks.<sup>29</sup>

Besides international instruments as has been discussed above, the government of Indonesia has also enacted several laws and regulations regarding Intellectual Property Rights, as well as regulations on trademarks. According to the information on the official page of the Intellectual Property Directorate of Indonesia<sup>30</sup>, historically, legislation in the field of Intellectual Property Rights in Indonesia has existed since the 1840s. The Dutch Colonial Government introduced the first law on Intellectual Property Rights protection in 1844. Generally, there are four types of Intellectual Property that is to be protected in Indonesia, namely Copyrights, Patent, Trademarks, and Trade Secret. The brief history of the development of Intellectual Property Law above indicates the significance of Intellectual Property Rights in Indonesia, especially in the field of Trademarks. Hereon after, writer will narrow down the discussion by focusing more on the history of Trademark Law in Indonesia, as well as its development.

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<sup>29</sup> See Article 2 of the Singapore Treaty.

<sup>30</sup> laman dgip.go.id. Accessed October 3, 2017

On August 28, 1992 the Government of Indonesia passed Law No. 19 of 1992 on Trademarks (the 1992 Trademark Law), which came into force on 1 April 1993. The 1992 Trademark Act supersedes the Trademark Act of 1961. There has been a number of amendment regarding Trademark Law in Indonesia, from Law No. 21 Year 1961 amended by Law No. 12 Year 1992, and then amended by Law No. 14 Year 1997. Later on 2001, it was amended again by Law No. 15 Year 2001 regarding Trademark, lastly and most recently was amended again by Law No. 20 Year 2016 concerning Trademark and Geographical Indication. In total, there are at least four amendments regarding Trademark Law in Indonesia in the last decades.

The first Trademark Law enacted in Indonesia was Law No. 21 Year 1961, the reason behind the establishment of this law can be related to the independence of Indonesia. As stipulated in the transitional provisions of the 1945 Constitution, all of the Dutch colonial legislation rules remain in force as long as they are not contradictory to the 1945 Constitution. On 1961, the government of Indonesia promulgated Law No. 21 Year 1961 concerning Company Brand and Trademark to replace the Trademark Law during Dutch Colonial. This movement indicates the initial awareness of Indonesian government towards Intellectual Property Law, especially Trademark Law, in Indonesia. However, the regulations in Law No. 21 Year 1961 seems simple and sketchy, since it was adopted

from the conception of trademark law which grew during the World War II.<sup>31</sup>

By reason of the lackness of Law No. 21 Year 1961, the first amendment of Trademark Law in Indonesia took place. On 1992, the government enacted Law No. 19 Year 1992 to replace Law No. 21 Year 1961. New concept provided in this law is the application of the new principle, *first-to-file* system, since Law No. 21 Year 1961 applied *first-to-use* system. *First to file* is a system where the owner of the right to a trademark is the right owner of the mark who has registered in the trademark office first.<sup>32</sup> Another adaptation form Law No. 19 Year 1992 can be seen in the regulations concerning the registration procedure of a trademark, that in addition to formal examination there will also be substantive examination.<sup>33</sup>

Second amendment regarding Trademark Law in Indonesia took place on 1997. Law No. 14 Year 1997 was enacted to revise Law No. 19 Year 1992. This second amendments are based on several reasons, one of which are due to the approval of the Provisions in the Uruguay Round, which was signed by Indonesia on 1994, held in Morocco. The result if this approval was no other than the TRIPS Agreement, as has been discuss

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<sup>31</sup> Muhamad Djumhana and R. Djubaedillah, *Op.cit.*, p. 211

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid*, p. 212

in the previous section. Hence, in an attempt to harmonize all laws and regulations in the field of Intellectual Property Rights with the TRIPS Agreement, on 1997 the government of Indonesia passed Law No. 14 Year 1997 regarding Trademarks.

On 2001, the government of Indonesia passed new law regarding Trademark again, namely the Law No. 15 Year 2001. The reason behind this amendment is the consideration to face the era of global trade and to maintain a fair business competition. Moreover, this amendment also served as a follow-up to the implementation of international conventions regarding trademarks that have been ratified by Indonesia. The most recent amendment of Trademark Law in Indonesia took place last year, on 2016. The result of this last amendment is Law No. 20 Year 2016 concerning Trademark and Geographical Indication.

These amendments thus confirmed the importance of trademark in Indonesia. Trademark has been playing a significant role in the field of Intellectual Property Rights in Indonesia, especially in economic life on goods and trade due to the fact that marks have the distinctive function between one product and the other. The registration of marks serves as valid proof and as the basis of preventing others to file or to use the same marks in distributing goods and services. According to Article 3 of Law No. 15 Year 2001, mark is the exclusive rights granted by the state to the

registered mark owner<sup>34</sup>. Indonesia applied *first-to-file* system, in which the right to the mark is created because of registration and not because of first use. Therefore, the registration of marks is no less important than the function of mark itself. However, in filling the application for the registration of a mark, Applicant must not have bad faith.<sup>35</sup>

Furthermore in Article 6 verse (3) letter c of Law No. 15 Year 2001 it is stated, “An Application for registration of a mark shall also be refused by the Directorate General if it constitutes an imitation or resembles an official sign or seal or stamp used by a state or a government institution, except with the written consent of the competent authority.” Similarly, Article 21 verse (2) letter b of Law No. 20 Year 2016 also stated: “Application shall be rejected if the relevant Mark constitutes a name or resembles a name or an abbreviation of name, flag, badge, or symbol or emblem of a country, or a national institution nor international institution, unless with a written consent from the competent authority.” These articles correspond with the issues that writer want to discuss in this thesis.

Another part of Intellectual Property Rights that are closely related to the trademark is copyright. Copyright is the exclusive right of the creator or copyright holder to announce or reproduce his or her creations,

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<sup>34</sup> Law No. 15 Year 2001, Article 3

<sup>35</sup> See Article 4 of the Law No. 15 Year 2001.

which arise automatically after a creation is born. Copyright protection is automatic and arises after a creation is manifested in its tangible form, meaning, the registration of Copyrights is not a compulsory. A creator can choose whether or not to register his or her creation. This is because Indonesia applied declarative system to its Copyrights registration system.<sup>36</sup> According to Article 12 verse 1 point (f) of Law Number 19 Year 2002 (“Copyrights Law”), works protected under copyright shall be the work in the field of science, arts and literature, which includes all forms of art, such as paintings, drawings (logo), engravings, calligraphy, carvings, sculptures, collage, and applied arts. From this article, we can see there is some clash between trademark and copyright law. The reason behind it is because for the type of creation such as symbols, logos, photographs or images, such creations can be registered both as trademark and as copyright. The registration procedure stipulated in Trademark Law are different from those stipulated in Copyrights Law. In Copyright Law, the registration procedure are more simple since it does not applies substantive examination, and thus it is easier to register a logo (picture) as a matter of Copyrights than as Trademark. Writer wants to assert that in this thesis, the scope of discussion will be focusing on trademark, in which the picture (or logo) in the case that writer will use is subject to Trademark Law instead of Copyright Law.

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<sup>36</sup> Soedjono Dirdjosisworo, *Hukum Perusahaan Mengenai Hak Atas Kekayaan Intelektual: Hak Cipta, Hak Paten, Hak Merek*. (Bandung: Mandar Maju, 2000), p. 62

In writing this thesis, writer used case approach about a phenomenal Intellectual Property case regarding Trademark that happened in Indonesia few years ago, namely the case between Indonesia renowned health elixir brand “Cap Kaki Tiga” against a British citizen that files a lawsuit on behalf of a self-governing British Crown dependency in the Irish Sea between England and Ireland, also known as the Isle of Man. “Cap Kaki Tiga” is a popular brand of health elixir in Indonesia, where the Jakarta-based Kino Group markets several drinks that allege to treat sore throats and thrush.<sup>37</sup> Russell Vince, the British citizen, requested that the Commercial Court at the Central Jakarta District Court cancels 49 certificates of the “Cap Kaki Tiga” trademark owned by Wen Ken Drug and taking them out of the General Register, because the Defendant has without permission used of the symbol of the Isle of Man as the trademark for “Cap Kaki Tiga”.<sup>38</sup> With the supporting facts from the Supreme Court Decision Number 582 K/Pdt.Sus-HaKI/2013, writer notice the relevancy of this case to this thesis, and therefore chose this case as case study to complete this thesis.

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<sup>37</sup> 'Cap Kaki Tiga' in Hot Water Over Lifted Isle of Man Logo  
<http://jakartaglobe.id/business/cap-kaki-tiga-told-to-scrap-logo-for-resemblance-with-british-island-emblem/> Accessed October 18, 2017

<sup>38</sup> Cap Kaki Tiga brand pulled for resembling Isle of Man logo  
The Post - <http://www.thejakartapost.com/news/2016/09/14/cap-kaki-tiga-brand-pulled-for-resembling-isle-of-man-logo.html> Accessed October 18, 2017

## **1.2 Formulation of Issues**

- 1) How does Law No. 20 Year 2016 (“Trademark and Geographical Indication”) regulate the cancellation of trademarks that resemble state symbols?
- 2) How was the regulation concerning trademark cancellation implemented by the Supreme Court on the Decision No. 582 K/Pdt.Sus-HaKI/2013?

## **1.3 Purposes of Research**

The writer’s purposes in conducting this research is mainly to gather the information needed in order to answer or to solve the problems that have been stated in the previous sub-section. Specifically, the purpose of this research is:

- 1) To know and understand how does Law No. 20 Year 2016 (“Trademark and Geographical Indication”) regulate the cancellation of trademarks that resemble state symbols.
- 2) To know how was the regulation concerning trademark cancellation implemented by the Supreme Court on the Decision No. 582 K/Pdt.Sus-HaKI/2013.

## **1.4 Advantages of Research**

Prior to the completion of this research, the writer hoped that it could be useful at least from this 2 point of view:

### 1) Academic point of view

From a legal perspective, the writer hoped that the results of this research can give a proper contribution to the studies of legal development in Indonesia, especially in the area of Intellectual Property Rights. Moreover, the result of this research is expected to provide in-depth explanation to guide others in understanding about the matter regarding Intellectual Property Rights.

### 2) Practical point of view

This research is intended to give basic understanding of Intellectual Property Rights, and the significance of it. By understanding about Intellectual Property Rights, writer also hoped that there may be decent development in the field of Intellectual Property Law in Indonesia. Practically, the writer hoped that with the development of Intellectual Property Law, it is to be expected that protection of rights can also be improved. It will affect the credibility of Indonesia in front of global investors, and thus will bring forward Indonesia's economic welfare.

## 1.5 Systematic of Writing

For the purpose of this thesis, the writer will divide the thesis into 5 (five) chapters that will eventually be related to each other. Systematically, this thesis will be written as follows:

a) CHAPTER I: INTRODUCTION

This chapter is divided into 5 parts, namely: background, formulation of issues, purposes of research, advantages of research, and systematic of writing. Firstly, the writer feels the need to explain the reason behind the selection of the topic for this thesis. The reason behind the selection of topic and the significance of the matter of the topic will be further elaborated in this background part. Second, the writer will also provide the formulation of the issues or problem that writer wants to assert. Followed by the second part of this chapter are the purposes of the research, which actually is to answer the problems as have been stated in the second part of this chapter. The fourth part of this chapter is the advantages of research, which will be viewed from both academic and practical point of view. Lastly, the writer will provide the systematic of writing to ease the reader in keeping up with this thesis.

b) CHAPTER II: LITERATURE REVIEW

This chapter will give thorough explanation about the selected topic. The writer will start from the definition and scope of Intellectual Property Rights generally, and then narrow it down to the specification of Intellectual Property Rights. Since this thesis will discuss mainly on the issue about trademarks and state's symbol, the writer will then specifically sort out the theoretical framework on

Trademarks—definition, types, legal basis, etc. For the issue regarding state's symbol, writer will also provide definition of state, symbol, and state's symbol.

c) CHAPTER III: METHOD OF RESEARCH

In the third chapter of this research, the writer will discuss about the method of research that will be used by writer in completing this thesis. This chapter are divided into 4 parts, namely: definition of research, objectives of research, types of research, and sources of research.

d) CHAPTER IV: ANALYSIS AND RESULT OF RESEARCH

This chapter is the main content of this research. In this chapter, the writer will elaborate the results of the research by using the method as abovementioned. Furthermore, it will be presented with the relevant legal theories, legal principles, and governing regulations. This chapter will be divided into 2 main sections, in which the first will contain the analysis on the regulations based on the prevailing and applicable Trademark Law. The second will be the discussion and analysis on the implementation of the said law, as well as the relation to the case based on Supreme Court Decision No. 582 K/Pdt.Sus-HaKI/2013, and also the analysis on expert's view on the case at hand.

e) CHAPTER V: CONCLUSION AND RECOMMENDATIONS

This chapter will contain the conclusion to the completion of the research, the summary of the entire thesis and followed by the suggestion from the writer to overcome with the issues as abovementioned. Writer wishes that the recommendations given will have great contribution normatively to the research, specifically giving prescriptions of what should be done under the Indonesian law regime in order to prevent same issues or mistake to be happening again in the future.

