THE IMPACT OF TRIPS AGREEMENT ON THE DEVELOPMENT OF INTELLECTUAL PROPERTY LAWS IN INDONESIA

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Abstract

The purpose of this study is to analyze the impact of the TRIPs agreement on the development of intellectual property law in Indonesia. In the current era of globalization, the protection of intellectual property rights is related to global-scale trade at the international level. Protection of intellectual property rights becomes an important issue wherein the current era the development of technology, information and communication have developed very rapidly which gave rise to innovations. Therefore, it is necessary to study how the impact regarding the emergence of TRIPs and how the adjustments made by Indonesia so that the WTO/TRIPs Agreement is in accordance with the political dynamics of intellectual property law in Indonesia. This research is a doctrinal legal research based on secondary data. The materials used come from literature studies that focus on the study of intellectual property. Property rights become an important issue in the business world where business actors offering services or a product want to get guaranteed protection of intellectual property rights. One of the developments in intellectual property protection in Indonesia was affected by the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPs Agreement) which was found in the Uruguay Round agreement in the framework of GATT (General Agreement on Tariffs and Trade). Indonesia also agreed to the Uruguay round of GATT by adjusting intellectual property laws that have been regulated in TRIPs which marked the opening of provisions regarding TRIPs with Indonesian legal system. Therefore it becomes Indonesia’s obligation to harmonize and synergy exicising the legal instruments and strict law enforcement in the protection of intellectual property in Indonesia.

Keywords: Intellectual Property Rights, TRIPs Agreement.

A. Introduction

The phenomenon of globalization is developing very rapidly at this time, the development of information and communication technology currently spreading throughout the world. In addition to developments in the field of technology, in the era of globalization also helped encourage thinking patterns of society following the direction of changing times. Globalization as a process of spreading economic innovation that covers the whole world by adjusting political and cultural dynamics. Globalization as a terminology that is associated with economic aspects is considered too narrow. Understanding globalization is so multi-dimensional, a complex understanding both in terms of economics, politics, culture, and technology.
Globalization has created a problem in the order of people's lives in all corners of the world, which ultimately requires a harmonization under the culture of each country. Globalization is a global network that simultaneously brings people who were previously scattered and isolated on the Earth into mutually beneficial dependence and world unity. The bondage of countries in the world to the global economy after an agreement was made to form an international trade institution. In the current era of globalization regarding the protection of intellectual property rights is an important thing, because it is related to global trade in the international sphere. Entering the era of globalization, issues surrounding intellectual property rights are becoming increasingly complex. Problems that arise are not only about the discussion in the field of intellectual property rights.

The Trade Related Aspects of Intellectual Property (IPR) Agreements or known as TRIPs (The Trade Related Aspects of Intellectual Property Rights) were the result of negotiations during the Uruguay Round. The agreement reached in the Uruguay Round, Member States signed the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations in 1994 in Marrakech as well as the signing of the WTO Agreement. Outside Annex 4, in terms of substantive, it can be said that the WTO Agreement contains 3 material about the trade in goods, services, and intellectual property rights. TRIPs or Trade-Related Aspects of Intellectual Property came into force in 1995. According to Prof. John Braithwaite and Prof. Peter Drahos, the birth of TRIPs as the beginning of property globalization and will have a broad impact. During a separate transition period applied to each country, the latter is given a period in stages up to 10 years.

Basically, the WTO not only allows the opening of wider international market opportunities, but also provides a better multilateral protection framework for national interests in international trade. In principle, the World Trade Organization (WTO) is a tool to increase the occurrence of an orderly and fair free trade in the world. The WTO in carrying out its duties, enforces several principles that are the pillars of the World Trade Organization (WTO). For Indonesia, affirming or rejecting the existence of the WTO cannot be fully done, in the midst of the globalization of world life it is impossible for a country to live without associating with other countries.

The trips agreement is a 'foreign element' in the WTO provisions, where other WTO provisions relate to trade and trade arrangements, the Trips Agreement focuses on arrangements regarding the protection of intellectual property rights. The WTO requires Indonesia to make adjustments to national legislation governing Intellectual Property Rights. Various norms and standards for the regulation and protection of Intellectual Property Rights contained in the

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TRIPS agreement must be nationalized as soon as possible into the Intellectual Property Rights legislation⁸. TRIPs are an important milestone in the development of international standards in the Intellectual Property system⁹.

Indonesia as a developing country also ratified the Establishment of the World Trade Organization (WTO Agreement) on November 2, 1994, through Law No.7 of 1994. This ratification step took place quickly because Indonesia had previously signed the WTO Agreement in Marrakech, Morocco, as a form of action continued the outcome of the Uruguay Round of multilateral trade negotiations. The participation of Indonesia in the signing of WTO agreement brings consequences to this country in term of harmonizing the Intellectual Property Rights (IPR) owned by Indonesia and the one prevails internationally¹⁰. In this ratification process, many parties have argued that ratification by Indonesia is a rash act because there has not been a comprehensive review of the content of the WTO Agreement, especially in terms of the possibility of impacts that could have broad implications. When viewed in Law No.7 of 1994, government politics to participate in the WTO Agreement is because globalization is inevitable and is the key to achieving the wealth of the nation. On the other hand, Indonesia as a legitimate country in the WTO Agreement is certainly very hopeful of an advantage with its participation in the WTO Agreement, but in reality, the Indonesian State has difficulty implementing WTO Agreement obligations¹¹.

Several previous studies were found by the author, especially those related to the Trips Agreement and its legal developments in Indonesia. Rini Ariati's thesis¹², discusses the implementation of the TRIPs (Trade Related Aspect of Intellectual Property Rights) agreement in the national Intellectual Property Rights legal system, how does the TRIPs (Trade Related Aspect of Intellectual Property Rights) agreement affect law enforcement of Intellectual Property Rights (IPR) especially in the Commercial Court and what obstacles are encountered in the implementation of law enforcement on Intellectual Property Rights (HaKI). Rini's thesis focuses more on the implementation of the Trips Agreement in practice in the Commercial Court.

Another study was conducted by Siti Munawaroh¹³, focusing on the role of the Trips Agreement in Indonesian IPR law in the field of information technology. In the paper, the author wants to discuss the impact of the emergence of TRIPs and how adjustments made by Indonesia so that the WTO / TRIPs Agreement is in accordance with the political dynamics of intellectual property law in Indonesia.

The novelty of this research is to discover the emergence of TRIPs and how to adjust what Indonesia does so that the WTO/TRIPs Agreement is by the political dynamics of intellectual property law in Indonesia. Due to the current era of globalization, the protection of intellectual property rights is related to global trade at the international level. The protection of intellectual

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¹¹ Titon Slamet Kurnia, Perlindungan Hukum Terhadap Merek Terkenal Di Indonesia Pasca Perjanjian TRIPs (Bandung: Alumni, 2011).
property rights is an essential issue in the current era; technology, information, and communication development is increasing, giving rise to innovations.

The research method used in writing this article is by using normative legal research. Where to get accurate data related to this legal research, the author uses several approaches that are commonly used in legal research, namely the law approach, case approach, and comparative approach\textsuperscript{14}. This research was conducted by conducting library research. Library research is carried out by obtaining secondary data in the form of library books, research results, journals, articles, and laws and regulations relating to the object of research\textsuperscript{15}. The collection of legal materials in library research or library research is a documentary technique, which is collected from archive studies or literature studies such as books, papers, articles, journals, or the work of experts related to Intellectual Property Rights.

B. Discussion

1. TRIPs as a milestone in the protection of Intellectual Property Rights on a global scope

TRIPs as an international legal instrument is based on the International Court of Justice Statute as a source of international law. However, TRIPs is not the first agreement that collated an initial agreement on the concept of intellectual property rights. Various international agreements that have been born for a long time and have been amended several times. Significant in becoming the main basis for the concept of industrial property is the Paris Convention for the Protection of Industrial Property. As for the copyright, the field is the Berne Convention for the Protection of Literary and Artistic Works. So in terms of traditional, intellectual property is divided into an intellectual property which includes patents, industrial brands, and designs, as well as copyright and title rights. The essence of these two conventions concerns the part inherent in TRIPs\textsuperscript{16}.

In the Round of Negotiations in Uruguay, the 8th took place in 1986 precisely in the city of Punta Del Este, not only negotiating matters relating to market products only, but matters concerning service products also included in the discussion, further on intellectual property rights. The General Agreement on Tariff and Trade (GATT) is the background of the agreement on the Trade-Related Aspect of Intellectual Property Right, Including Trade-In Counterfeit Good, which is based on the impact of the international economic and trade situation which at the time experienced extensive growth. In a meeting between countries in Marrakesh, Morocco the participants present with an agreement to sign the Final Act Embodying the Result of the Uruguay Round of Multilateral Trade Negotiation, which the countries also agreed with and their attachments\textsuperscript{17}. It is the unrest about the world economy and rapid growth in many of these countries that ultimately the countries of the world want better protection for world markets, this is done to prevent conflicts that can lead to war. Because if we examine more deeply the world at a time when it is developing and have hopes to become more advanced with conduciveness that must continue to be treated together of course. In essence, TRIPs contain four regulatory groups:

1. Relating to intellectual property with the concept of international trade. This connection is considered by some scholars as controversial because on the one hand, the WTO is the basis for free trade but on the one hand, the intellectual property contains various restrictions

2. There are obligations for member states to comply with the Paris Convention and the Berne Convention

\textsuperscript{14} Peter Mahmud Marzuki, \textit{Penelitian Hukum} (Jakarta: Kencana Prenada Media Group, 2005).

\textsuperscript{15} Soerjono Soekanto dan Sri Mamudji, \textit{Penelitian Hukum Normatif Suatu Tinjauan Umum} (Jakarta: RajaGrafindo Persada, 2007).

\textsuperscript{16} Achmad Zen Umar Purba, \textit{Perjanjian TRIPs Dan Beberapa Isu Strategis}.

3. Establish separate rules and regulations
4. Included in law enforcement efforts contained in the legislation of Member States. Besides Paris and the Berne Convention, TRIPs also refers to other international agreements

In accordance with the status of TRIPs as an international treaty, the opening section of TRIPs states that Member States can convince themselves to reduce distortions and barriers to international trade and take into account the need to be able to advance effective and commensurate protection, and not become obstacles to international trade.18

Furthermore, the provisions regarding Intellectual Property Rights are contained in the attachment to the WTO Agreement namely, Annex 1c entitled Agreement on Trade Aspects of Intellectual Property Rights (TRIPs Agreement). The birth of TRIPs also has a special correlation because some countries such as the United States that consider the World Intellectual Property Organization (WIPO) under the United Nations, are unable to protect their Intellectual Property Rights in the international market, which results in their trade balance being negative. The United States argument about the weaknesses of WIPO is as follows:

1. WIPO is an organization whose members are limited so that its provisions cannot be applied to non-members
2. WIPO does not have a mechanism to resolve and punish any violation of intellectual property rights
3. WIPO is also considered unable to adapt changes in the structure of international trade and changes in the level of technological invasion.19

In his book Prof. Peter Drahos and Prof. Braithwaite, the birth of TRIPs is the beginning of property globalization.20 So it has a broad impact on the development of Intellectual Property Rights in the world. And in the WTO agreement is a picture of funding the construction of TRIPs among other agreements in which all the contents of the agreement support the existence of smooth international trade. This is explained as contained in the first paragraph of the opening section of TRIPS which reads as follows: “Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade”

The Agreement on Trade Aspect of Intellectual Property Rights itself has a clear legal status, as an attachment to, and because it is an inseparable unit of the World Trade Organization Agreement, this is stated in the WTO agreement:

Article II

1. The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.
2. The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members

This closes the provisions and avenues for any country, including underdeveloped countries to behave differently, for example, because the country does not have an existing patent system.21 By including intellectual property rights as well as aspects of law enforcement as an element of international trade as an observant attitude, compared with Paris convention and

barne conventions that do not contain provisions concerning law enforcement\textsuperscript{22}. The law enforcement agenda and its application in the future provide hope that the world in the future will have a firmer protection system than what the previous WIPO did that was considered too friendly to developing countries.

2. The Role of TRIPs in the Development of Intellectual Property Rights in the Globalization Era

The global structure regarding the protection of intellectual property rights has entered a new era, the Agreement on Intellectual Property Rights relating to trade / TRIPs is part of a new integrated system of the World Trade Organization, which gives obligations to all WTO members to establish protection of intellectual property rights by high standards, as well as enforcing protection with high standards. In the WTO itself arranged various kinds of agreements included in a single WTO Agreement there are several related agreements covering agreements on trade in goods, services, investment, agriculture and intellectual property rights to all agreements. This has one goal to eliminate obstacles in international trade and create fair business competition\textsuperscript{23}.

The background happens by the end of the Cold War and has had an impact on the transfer of most of the investment and technology from the military industry to the non-military industry. Many countries that initially relied on their national economy, became aware of the importance of providing protection to intellectual property rights which were pillars in the non-military industry. In the context of these global trade transactions, protection is needed for IPR used by non-military industries. Legal globalization is formed in efforts to standardize law, among others, through international conventions, such as the GATT (General Agreement on Tariffs and Trade), which includes various provisions that must be followed by the participating member countries, which include intellectual property rights, services, and investment. Principles such as "Non-Discrimination", "National Treatment" and "Most Faced Nation", which are its characteristics as the substance of the national regulations of the participating member countries\textsuperscript{24}.

In his book, "The scattered points about the Right to Intellectual Property", James Petras said that the term globalization is absorbed by the academic world, the production and reproduction of its meaning take place more intensively (Budi, 2005: 282). Meanwhile, in the same book Anthony Gidden said that the terminology of globalization from the economist's point of view was considered too narrow. In the era of globalization in the perspective of intellectual property rights is very important, this is caused by the international market and the creation of a period of communication and transportation technology that causes the mobility of ideas across national borders with high intensity happening at this time. Even an economist like Keith E. Maskus, concluded that intellectual property rights can play an important and positive role in economic development. Furthermore, even among poor countries, this can happen, Markus added, that intellectual property rights can be an important condition for business improvement, as long as the field is accompanied by appropriate collateral policies, which according to him is an essential challenge as economies adopt stronger IPRs under the new global system\textsuperscript{25}. As a concrete illustration, the transaction value of intellectual property


\textsuperscript{23} Titon Slamet Kurnia, \textit{Perlindungan Hukum Terhadap Merek Terkenal Di Indonesia Pasca Perjanjian TRIPs}.


rights also shows a coherent view with Mark's opinion, namely intellectual property transactions continue to increase: US $10 billion in 1990 to the US $200 billion in 2007.26

Such opinions and theories have more or less been and have taken place in the era after the Agreement on Trade Aspects of Intellectual Property Rights (TRIPs Agreement) were agreed to become the world economic development agenda. This kind of world situation is obtained through a process that is not short-lived and requires time so that the next generation from any country should be able to ensure that the crimes in the Intellectual Property Rights of each person can be protected as a special and inherent right. Meanwhile, the world is surrounded in Industrialization with conditions that demand massive production in developed countries, so addressing this the world must not be indifferent to the protection of those who are powerless in the face of market capitalization. Conversely, even countries as policyholders must carefully make decisions with a regulatory system in which a healthy business climate is created for many Property Right-based industries. This future business can only run with a shared commitment to our mere condition as the world community wants to understand the importance of respecting the work of others.

3. Harmonization of WTO / TRIPs Agreement Arrangement In Accordance with the Political Law of Intellectual Property Rights in Indonesia

Law as a guideline for the nation of Indonesia in managing the country, and placed in the highest position. Law that gives power and authority to the government to administer the State following the mandate of the constitution. Article II of the additional rules of the 1945 Constitution states that the 1945 Constitution of the Republic of Indonesia consists of preamble and articles. The preamble and the articles are a unity of supreme constitutional principles in the national legal system. That the statutory regulations that were formed later by the competent institution must be based on the principle of the 1945 Constitution and it is not justified to contain principles that contradict the principles of the 1945 Constitution.27

The politics of law is interpreted as a whole process of making and implementing laws that show the nature and direction in which the law will be enforced. Political law as a legal policy as the creation and renewal of legal materials in order to be in accordance with the needs and implementation of existing legal provisions, including the affirmation of the functions of institutions and fostering law enforcement.28 National legal politics is increasingly facing a difficult phase associated with the emergence of globalization which has an impact on all aspects of people's lives. Globalization is increasingly formalized when the signing of the formation of the WTO by the countries of the world. After the WTO establishment convention was signed, GATT was established as part of the WTO discussion and TRIPs Agreement.29

The presence of the Trips Agreement will have its own implications for the Indonesian state, including the necessity for Indonesia to ratify the Trips Agreement. In this case, of course, the Trips Agreement is not a law that comes from the values that exist in Indonesian society. Contra against the results of the ratification of the Trips Agreement is a separate problem for the Indonesian people. The forced understanding as well as the sanctions applied have become a burden for the Indonesian people.

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The purpose of the Indonesian state is stated in the constitution, one of which is the welfare of the people. The Trips Agreement is not a law that has the aim of prospering the Indonesian people, it is clear that this law does not come from the Indonesian people. Trips Agreement is a law formed based on the interests of developed countries and the global community. Legal development in Indonesia should be based on state goals and nothing else, not because of coercion from developed countries. The national interest must be the main thing for the Indonesian state, not the interests of developed countries.

The consequence as a State that has ratified the WTO / TRIPS Agreement, that Indonesia must be able to follow the norms or principles agreed in the agreement and implement it. This is where an issue arises where Indonesia must implement the WTO / TRIPS Agreement, but on the other hand, Indonesia must be able to maintain the sovereignty of the State and protect national interests in accordance with the national mandate in accordance with the constitutional mandate. This can certainly be resolved by returning it to the 1945 constitution. Because the norms in the 1945 constitution do not only regulate political interests but also economic and social life. So that the WTO / TRIPS Agreement can be implemented as long as the country's sovereignty and national interests remain protected. Protection of intellectual property rights in relation to the role of the state is how the state realizes the ideals of law, which is further formulated in the ideal of protection with the concept of the government's responsibility to protect all its people, this has been explicitly regulated in the 1945 Constitution which has provided regulations that are protection and promotion of people's welfare. The role of the government in implementing the implementation to the community is a form of protection provided by the state to realize the welfare of the community for their intellectual property.

Upholding the principle of the 1945 Constitution in regulating intellectual property rights faces a significant challenge when Indonesia has ratified the WTO/TRIPS Agreement since 1994. The principles that the WTO / TRIPS Agreement carry out are not in line with the 1945 legal principles, for example:
1. Understand individualism that underlies the concept of intellectual property rights
2. The application of the principle of full compliance (Article XVI point 5 TRIPS Agreement), the same intellectual property protection standards for all Member States without regard to the national interests of each State
3. Commercialization of intellectual property rights to pursue maximum profits, and the rights of States that feel disadvantaged in their interests. Intellectual property rights to take action to retaliate or exert economic pressure on a particular country (Article 22 WTO Agreement).
Integrated dispute resolution system within the WTO framework. Settlement of property rights among the Member States and as an effort to guarantee the need for the TRIPS Agreement. This settlement system justifies the presence of sectoral cross retaliation. That a State may delay concessions granted or other obligations to other sectors if there is a write-off or a loss of profits contained in the agreement resulting from the sued State.

In addition to the above example, the reality of the implementation of the TRIPS Agreement and pressure from developed countries to developing countries is also a manifestation of the deviation of the goals and norms of the TRIPS Agreement itself. If initially intended to be able to set minimum standards of protection of intellectual property rights, but in reality, developed into a very ambitious agreement to create a system that applies throughout the world by setting a relatively high standard and creating a detailed enforcement mechanism. TRIPS have become a means for developed countries to be able to create a world trade system by harming developing countries. The intellectual property rights protection standards in the TRIPS

30 Asshidiqie, Agenda Pembangunan Hukum Nasional Di Abad Globalisasi.
Agreement are biased towards the interests of developed countries. Countries deemed to have violated intellectual property rights may be subject to retaliation and cross-retaliation in the form of trade sanctions. Of course, this is for developed countries that are already in a state ready from developing countries and underdeveloped countries, have mastered the latest science and technology. Therefore, it must be noted that the provisions must be examined more critically before harmonizing and applying them to the national legal system. Do not make the interests of the Indonesian state disadvantaged which results in its dependence on science and technology from developed countries. Harmonization in intellectual property rights legislation should not only be based on the insistence of developed countries, but also because of the reasons for the creation of inventions, inventions, and intellectual works of Indonesian citizens who can create national independence in the aspects of science and technology to support national development.

For Indonesia to be able to reject the presence of the WTO / TRIPs Agreement is something that cannot be done completely. Moreover, Indonesia has ratified the current globalization of world life, so that it is impossible for a country to not depend on other countries. Globalization as a phenomenon of life between countries that have almost no boundaries, when talking about rejection just because it is not in accordance with the State of Indonesia, of course, there will be a serious conflict with the international community that is a member of the WTO organization and the United Nations. The thing to do is to harmonize the WTO / TRIPs Agreement to suit the national interest and to have an Indonesian character. The step that can be taken is to determine the intellectual property rights politics that presents the principles of Pancasila and the 1945 Constitution as the foundation in the development of intellectual property rights law.

The TRIPs Agreement requires minimum standards that must be met by member countries in the context of protecting IPR. TRIPs is a complex, comprehensive and extensive agreement. Based on the reality, Indonesia must be able to be careful in adopting the TRIPs Agreement into the Intellectual Property Law. If observed from the seven intellectual property laws owned by Indonesia, the dominant legal politics is the desire to be able to adjust the formation of legislation with the provisions of the WTO conventions, especially the TRIPs Agreement. While aspects of national interest that have been included in the considerations do not become part of the law. Because of the very important thing in intellectual property rights in Indonesia is not regulated in full and expressly, it seems like a compliment. For example, such as licenses obligatory, parallel imports, benefit-sharing, disclosure of origin, prior informed consent, license agreements that can harm the interests of the national economy, protection of traditional knowledge, folklore and the results of popular culture. All of these things are regulated in an article that is not operational because it is dependent on government regulations or presidential decrees, all of which have not been made until now.

With the rapid globalization nowadays, the entry of elements of international law is inevitable. According to a Mochtar Kusumaatmadja, the use of foreign legal models creates a difficulty in the development of law. Technically this is so, but when viewed in terms of substance, philosophical, juridical, and sociological aspects of Indonesian society, it is not uncommon to clash with each other. If Indonesia is not careful in doing harmonization, it will be very dangerous for national interests because it adopts foreign law without any critical study.

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33 Irawan, Politik Hukum Hak Kekayaan Intelektual Indonesia Kritik Terhadap WTO/TRIPs Agreement Dan Upaya Membangun Hukum Kekayaan Intelektual Demi Kepentingan Nasional.
36 Irawan, Politik Hukum Hak Kekayaan Intelektual Indonesia Kritik Terhadap WTO/TRIPs Agreement Dan Upaya Membangun Hukum Kekayaan Intelektual Demi Kepentingan Nasional.
with Pancasila and the 1945 Constitution. This happens in Indonesia, namely that the basis of foreign philosophy is more influential than the philosophy of the Indonesian people themselves, namely Pancasila and also influenced by the provisions that work through legislators.\(^{37}\)

Harmonization in the provisions of the TRIPS Agreement in the Act on intellectual property rights does not seem to go through a careful process and does not pay attention to protection related to national interests. The national interest, namely the previous law, was quite firmly regulated, but there was a change by revoking several provisions that protected Indonesia's national interests. If all this time the paradigm adopted by Indonesia is the desire to be able to adjust Indonesia's intellectual property laws with the TRIPS Agreement and other international conventions due to the emergence of pressure from other countries that are ready in international provisions, therefore there must be a direction in adjusting the rights law intellectual property in the national interest. TRIPS Agreement and international conventions must be seen as a foreign law that if you want to be adopted and implemented in Indonesia must be under national interests. The harmonization step that is expected to be related to the presence of the TRIPS Agreement law into the Indonesian intellectual property law is expected to go through various stages, namely:

1. Conduct a theoretical construction study of the concept of harmonization of law
2. Finding weaknesses of the harmonization method currently applied
3. Determine the method of legal harmonization of the principles of the TRIPS Agreement into the Indonesian intellectual property law

Harmonization of law is an effort that can be done to be able to overcome the difference or tension between the principles of intellectual property rights contained in the TRIPS of Agreement with the principles of Indonesian intellectual property rights based on Pancasila, the 1945 Constitution, and the social reality of the Indonesian nation. This harmonization activity does not mean that all provisions in two or more legal systems are adopted as a whole to produce the same provisions. Therefore, efforts to harmonize the law, in reality, do not always produce a complete harmony (as a whole), but at least some important principles can be linked so that they can reduce the conflict

According to a Candra Irawan, the method of modifying total harmonization becomes a rational choice for the Indonesian State. In this method, Indonesia remains consistent in applying the principles of the Agreement TRIPS so that there will be no disputes with the international community. What needs to be modified in Indonesia is to include provisions regarding the balance of individual and community interests, emphasizing the regulation of Indonesia's national interests and the authority of the State (government) to implement intellectual property rights in the public interest accompanied by factual and constitutional arguments in the intellectual property law. Modifications total harmonization modification are included so that Indonesia does not merely incorporate the principles of the TRIPS Agreement into the intellectual property law due to the demands of the convention, but is fully aware that the legal principles of national intellectual property rights must also be included to protect the public and national interests. This method does not substantially change the principles of the TRIPS Agreement, but the TRIPS Agreement remains in total harmony, while still incorporating the principles of national intellectual property rights. Then the provisions of the TRIPS Agreement are subject to national interests and the State's authority requires them. This method makes Indonesia not too far off the provisions of the TRIPS Agreement but on the one hand, national interests are still protected.\(^{38}\)

C. Conclusion

\(^{38}\) Irawan, *Politik Hukum Hak Kekayaan Intelektual Indonesia Kritik Terhadap WTO/TRIPs Agreement Dan Upaya Membangun Hukum Kekayaan Intelektual Demi Kepentingan Nasional*. 94
Based on the description above, it can be concluded that the WTO / TRIPs Agreement as an international agreement that binds its members and becomes a milestone in the implementation of intellectual property rights in the world. In the current era of globalization, developments in various sectors of life are increasingly rapid, which also makes TRIPs as an initial agreement on intellectual property rights that in this time would be very important, because of intellectual property rights in the current era of globalization relating to international trade which also affects each economic sector in every country. Indonesia as one of the WTO member countries has ratified this international law, which is sourced from the TRIPs Agreement relating to the regulation of intellectual property rights. From the discussion above it can be concluded that the intellectual property rights politics still follow the understanding of the TRIPs Agreement law. The TRIPs agreement has strong implications for the development of Intellectual Property law in Indonesia. The compulsion of the Indonesian state to the provisions of the Trips Agreement led to the ratification and harmonization of intellectual property rights law in Indonesia. The law that is built is no longer based on the values that exist in Indonesian society, but comes from the values of the global community. Indonesia as a member country naturally follows this international agreement and there is also pressure from developed countries that inspect intellectual property rights towards Indonesia regarding the need for national intellectual property rights. Indonesia still lacks the courage to create a political climate of intellectual property rights that originates from the philosophy of Pancasila and the 1945 Constitution as well as the interests of intellectual property rights in Indonesia. The pressure and pressure from developed countries voters of intellectual property rights must be able to be opposed and dealt with intelligently. Based on this reality, Indonesia must be careful to adopt the WTO / TRIPs Agreement into the intellectual property law. The harmonization step becomes an optional choice related to the presence of the WTO / TRIPs Agreement. In this method, Indonesia is still consistent in applying the TRIPs Agreement principle so that international disputes do not occur. However, there needs to be a modification of Indonesia by including provisions regarding the balance of individual interests of the Indonesian people, emphasizing the regulation of intellectual property rights following national interests and under the philosophy of the Pancasila and the 1945 Constitution.

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