

Urgency of Authentic Deeds in Transfer of Intellectual Property Rights Based On Agreements



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ABSTRACT: Intellectual property can be transferred or assigned either in whole or in part due to inheritance; grant; will; endowment; and agreement. Some also mention that the transfer of intellectual property comes in two forms, based on laws and agreements. The transfer of intellectual property based on the Law is done through inheritance, grant, and will. Furthermore, transfer through agreements is done through licensing. In terms of form, agreements are made for the transfer of intellectual property through inheritance based on legal provisions, meaning without the need for a deed in advance, where intellectual property is transferred to heirs due to legal provisions. However, intellectual property can also be transferred in writing with a deed because the party transferring it is still alive, through grant and will. Meanwhile, intellectual property transferred based on an agreement is the right of the holder of intellectual property to transfer their rights to another party in the form of written permission (license). The transfer of rights in Intellectual Property made in writing may involve the services of another party, namely a notary who is a public official to create a deed. The research method used in examining the urgency of the authority of a notary is by using normative juridical theory by tracing and analyzing literature and documents related to the research substance. The results obtained as knowledge are the concept of a notary's role and responsibility in the making of a licensing agreement.

KEYWORDS: Urgency, Intellectual Property, Notary Deed

1. INTRODUCTION

Intellectual property can be transferred or assigned either in whole or in part due to inheritance; grant; will; endowment; and agreement. Some also mention that the transfer of intellectual property comes in two forms, based on laws and agreements. The transfer of intellectual property based on the Law is done through inheritance, grant, and will. Furthermore, transfer through agreements is done through licensing. In terms of form, agreements are made for the transfer of intellectual property through inheritance based on legal provisions, meaning without the need for a deed in advance, where intellectual property is transferred to heirs due to legal provisions. However, intellectual property can also be transferred in writing with a deed because the party transferring it is still alive, through grant and will. Meanwhile, intellectual property transferred based on an agreement is the right of the holder of intellectual property to transfer their rights to another party in the form of written permission (license).

The transfer of rights in the field of Intellectual Property made in writing may involve the services of another party, namely a notary who is a public official to create a deed. The research method used in examining the urgency of the authority of a notary is by using normative juridical theory by tracing and analyzing literature and documents related to the research substance. The results obtained as knowledge are the concept of a notary's role and responsibility in the making of a licensing agreement.

According to Article 1313 of the Civil Code, an agreement is an act by which one or more persons bind themselves to one or more other persons. This definition is not quite complete, but with this understanding, it is clear that in the agreement one party binds itself to another party. This definition should actually also explain the existence of two parties binding themselves to each other on a certain matter. (Ahmadi Miru dan Sakka Pati, 2008 : 63.)

An agreement is an event where a person promises to another person or where two people promise each other to carry out something. From this event, a relationship is established between the two individuals, which is called an obligation. The agreement creates an obligation between the two individuals who make it. In its form, the agreement consists of a series of words containing promises or commitments expressed or written. (Subekti, 2002 : 1).

The forms of agreements can be divided into two types, namely written and unwritten. A written agreement is an agreement made by the parties in written form. Meanwhile, an oral agreement is an agreement made by the parties verbally (based on the agreement of the parties). There are three forms of written agreements, including a Handwritten Agreement signed by the parties involved, an agreement made before a notary public in the form of a notarial deed (Salim H.S., 2008: 42). Regarding the

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form of the agreement, it also affects the strength of evidence in the future, where the evidential strength of a handwritten deed is weaker than the evidential strength of an agreement made with a notarial deed.

2. METHODS

The research method used to compile this article is to use normative legal research. Normative legal research is research aimed at obtaining objective law (legal norms), namely by conducting research on legal issues and obtaining subjective law (rights and obligations) (Hardijan Rusli, 2006 : 50). Normative legal research in this paper is to study document studies, namely using various secondary legal materials such as legislation, legal theory, and can be in the form of scholars opinions relating to the subject matter

3. RESULT AND DISCUSSION

Notary Authority In Transfer Of Intellectual Property Rights In Indonesia

Intellectual Property in Indonesia is broadly divided into 2 main parts, namely Copyright and Industrial Property Rights. Industrial Property Rights are further divided into several parts, including Patents, Industrial Designs, Trademarks, Plant Variety Protection, Layout Designs of Integrated Circuits, and Trade Secrets (Directorate General of Intellectual Property, 2008: 3). To ensure legal certainty, Intellectual Property Rights need to be registered with the Directorate General of Intellectual Property (DJKI). Therefore, Intellectual Property that has been registered has the consequence that the owner or holder of the rights has exclusive rights, enabling them to exercise their rights such as economic rights that can be transferred to others and the right to claim the results of their work.

Some also mention that the transfer of intellectual property comes in two forms, based on laws and agreements. The transfer of intellectual property based on the Law is done through inheritance, grant, and will. Furthermore, transfer through agreements is done through licensing.

Intellectual property that is transferred through inheritance occurs based on legal provisions, meaning it does not require a deed beforehand, where the intellectual property ownership is transferred to the heirs according to legal provisions. However, intellectual property can also be transferred in writing through a deed because the party transferring it is still alive, through grant and will. Meanwhile, intellectual property transferred based on an agreement is a right where the holder of intellectual property can transfer their rights to another party in the form of written permission (license). The transfer of rights in the field of Intellectual Property made in writing can involve the services of another party, namely a notary who is a public official authorized to create deeds.

Article 1 (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions (hereinafter referred to as the UUJN), states: "A Notary is a public official authorized to create authentic deeds and has other authorities as intended in this Law or based on other laws."

Authentic regarding all actions, agreements, and determinations required by regulations and/or desired by stakeholders to be declared in an authentic deed, guaranteeing the certainty of the deed's creation date, preserving the deed, providing engrossments, copies, and excerpts of the deed, all as long as the creation of those deeds is not also assigned or exempted to another official or person designated by law."

Based on the two articles, namely Article 1 (1) and Article 15 (1) of the UUJN, a Notary is a public official authorized to create authentic deeds and has other authorities based on other laws. The meaning of "other laws" is the authority of the Notary granted by the law in the field of Intellectual Property in agreements for the transfer of rights based on a notarial deed. In order to exercise this authority, a notary is not able to perform optimally due to the lack of synchronization between Intellectual Property Laws and their Implementing Regulations, which do not explicitly require a notarial deed to be attached or uploaded when applying for the registration of the transfer of rights, whether electronically or non-electronically.

Intellectual property is an intangible movable object that can be utilized or used by third parties through transfer based on law or agreement, as mentioned in the Intellectual Property Law.

Intellectual property can be transferred or assigned either wholly or partially due to:

1. inheritance;
2. grant;
3. will;
4. endowment; and
5. agreement.

The transfer of intellectual property can occur in two ways, namely based on law and agreement. The transfer of intellectual property based on the Law is carried out by inheritance, grant, and will. Furthermore, the transfer by agreement is carried out by license.

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Intellectual property that is transferred due to inheritance occurs based on the provisions of the law, meaning without requiring a deed in advance where the intellectual property transfers ownership to the heirs due to the provisions of the law. However, intellectual property can also be transferred in writing with a deed because the party transferring it is still alive, namely through grants and wills. Meanwhile, intellectual property that is transferred based on an agreement is a right owned by the holder of intellectual property who can transfer his rights to another party in the form of a written permit² (license). The transfer of rights in the field of Intellectual Property that is made in writing can use the services of another party, namely a notary who is a public official to make a deed.

The provisions of Article 1 (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), state that: "A notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws."

Other authorities granted to a notary normatively are also explicitly stated in Article 15 (1) of the UUJN, which reads:

"A notary is authorized to make authentic deeds regarding all acts, agreements and stipulations required by laws and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosse, copies and extracts of the deed, all of which as long as the making of the deeds is not also assigned or excluded to other officials or other people as stipulated by law". Thus it can be concluded that based on the two articles, namely Article 1 (1) and Article 15 (1) UUJN, a Notary is a public official who is authorized to make authentic deeds and has other authorities based on other laws. The meaning of other laws is the authority of a Notary granted by law in the field of Intellectual Property in a transfer of rights agreement based on a notarial deed. To exercise this authority, notaries have not been able to carry it out optimally because of the lack of synchronization between the Intellectual Property Law and its Implementing Regulations which do not explicitly require a notarial deed to be attached or uploaded when applying for registration of the transfer of rights, either electronically or non-electronically.

Intellectual property is an intangible movable object that can be utilized or used by a third party by way of transfer or assignment based on law or based on agreement³ as stated in the Intellectual Property Law. In this regard, the problem in this study is whether a notarial deed is a requirement in the transfer of Intellectual Property based on legislation. Furthermore, it is also necessary to examine in this study the philosophical reasons why a notarial deed is needed in the transfer of Intellectual Property.

Transfer of rights is the process of transferring ownership rights from one person to another by way of sale or exchange or by other means permitted by law (Adrian Sutedi, 2010: 65). Transfer of rights is the transfer of power over an object from a legal subject on one party to another legal subject on the other party. The legal subject who can transfer and receive the right is a person, legal entity, or even a state. The Intellectual Property Law states that a right can be transferred and assigned by way of inheritance, grant, will, written agreement, and other reasons permitted by law. Thus, various methods of transferring Intellectual Property can be carried out, one of which is in the form of a written agreement. A written agreement here can generally be interpreted as being made underhand or by notarial deed. Based on an analysis of seven laws and regulations in the field of Intellectual Property, there are two laws that require the transfer of these rights in the form of a notarial deed, namely Law Number 29 of 2000 concerning Protection of Plant Varieties and Law Number 30 of 2016 concerning Patents. Outside the provisions of the two intellectual property regulations such as: Copyright, Industrial Design, Integrated Circuit Layout Design, Trade Secrets and Trademarks do not explicitly mention using a notarial deed, but are stated in the form of a (written) agreement. A written agreement has the meaning of an agreement made underhand, which means it is made by the parties without involving the intervention of public officials, or by an authentic deed.

Based on Article 40 (1) of the Plant Variety Protection Law, it is stated that "PVT rights can be transferred or assigned due to inheritance; grant; will; agreement in the form of a notarial deed; or other reasons permitted by law." The article explicitly states that the agreement is made in the form of a notarial deed (authentic deed) not a written agreement under hand. This norm instructs that a notarial deed must be made by the parties if they wish to transfer rights to Plant Variety Protection. On the other hand, the transfer of rights to Patents is stated in Article 74 (1) of the Patent Law, which stipulates that: "rights to patents can be transferred or assigned either in whole or in part due to inheritance; will; endowment; grant; and agreement; or other reasons permitted by laws and regulations. Normatively, the transfer of rights to a Patent does not explicitly state that the agreement is made in a notarial deed, but in the Explanation of Article 74 (1) of the Patent Law it states that the transfer of rights to a patent must be carried out by a Notarial deed (authentic deed), namely:

"As an exclusive right, a Patent can be transferred by its inventor or by the party entitled to the invention to an individual or to a legal entity. What is meant by "can be transferred or assigned" is only economic rights, while moral rights remain attached to the inventor. The transfer of Rights to a Patent must be carried out by Notary (authentic deed)."

Article 16 paragraph (1) of Government Regulation Number 14 of 2004 on Requirements and Procedures for the Transfer of Plant Variety Protection and Use of Varieties Protected by the Government stipulates that "The recipient of PVT rights due to an agreement in the form of a notarial deed submits an application for registration of the transfer of PVT rights to the PVT Office by filling out the PVT rights transfer application form and attaching:

- a. a copy of the notarial deed regarding the transfer of PVT rights;

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- b. the relevant PVT rights certificate;
- c. special power of attorney, if the application is submitted by proxy;
- d. proof of payment of the application fee for recording the transfer of PVP rights.”

Based on Government Regulation Number 14 of 2004 on Requirements and Procedures for Transferring Plant Variety Protection and Use of Varieties Protected by the Government, a copy of the notarial deed of transfer of rights to PVT is one of the requirements that must be attached/completed to submit a registration application prepared by the recipient of PVT rights. Furthermore, Article 16 paragraphs (4) and (5) emphasize that if the requirements as referred to in paragraph (1) have not been met, then within a maximum period of 30 (thirty) days from the date of receipt of the application, the PVT Office will notify the applicant to complete the requirements in question no later than three months from the date of notification from the PVT Office. If within the period as referred to in paragraph (4) the applicant does not complete the requirements, then the application for transfer of PVT rights is considered withdrawn. The requirements stated in Article 16 of PP No. 14 of 2004 are in accordance with those stated in Article 40 (1) of the UUPVT which states that the transfer of intellectual property can be done by means of an agreement in the form of a notarial deed. Likewise in Patents, Patent Holders also have the right to grant licenses as regulated in Article 76 of the UUP which states "Patent Holders have the right to grant licenses to other parties based on exclusive or non-exclusive license agreements to carry out acts as referred to in Article 19 of the UUP."

The urgency of notarial deeds in the transfer of intellectual property rights in Indonesia

Notaries as public officials are the only officials authorized to make authentic deeds regarding all acts, agreements and determinations, as long as the making of the deed by general regulations is not also assigned or excluded to other officials. Notaries have general authority while the authority of other officials is an exception. As a public official, Notaries have the character of a position that must refer to the UUJN; have certain authorities; are appointed and dismissed by the government; do not receive a salary or pension from the government and are accountable for their work to the community.

The presence of a notary is needed to meet the needs of the community who need legal documents (authentic deeds) in the field of civil law, so that notaries have the responsibility to serve the community. One form of such service is in the form of transfer of rights to Plant Variety Protection and Patents.

The transfer agreement for Intellectual Property, especially in the field of rights to Plant Variety Protection and Patents, needs to be made with a Notarial deed. This is because in producing a Plant Variety Protection and Patents through a fairly long research process and high costs. Thus, both Plant Variety Protection and Patents have high value when compared to other Intellectual Property fields such as Copyright, Industrial Design, Integrated Circuit Layout Design, Trade Secrets and Brands. The discovery of Plant Variety Protection and Patents requires stages such as research, discovery, testing until approval from the authorities is obtained. That is why the lawmakers provide philosophical reasons for the need for a notarial deed in the transfer of Intellectual Property because there are many stages that must be passed which require relatively large thought and effort. This long process has a high value for the discovery. For this reason, a written agreement in the form of a notarial deed is needed to create certainty and justice which is the basis for written evidence (Andhita Fatmawati, 2015: 5).

Related to the transfer of Intellectual Property, a Notarial Deed as written evidence is required in the case of submitting an application for recording the transfer of rights. Thus, if there is a transfer of rights, the Intellectual Property must be recorded. On this basis, the transfer of rights requires a notarial deed to achieve legal certainty between the parties making the agreement and as a perfect means of proof. Written evidence is regulated in Article 1867 of the Civil Code in conjunction with Article 1868 of the Civil Code which states "that proof in writing is carried out with authentic writings or with private writings." Meanwhile, an authentic deed is regulated in Article 1868 which states "An authentic deed is a deed in the form determined by law, made by or before public officials who are authorized to do so at the place where the deed is made."

Notarial Deed is an authentic deed that has the power of proof such as:

- a. The power of external proof (*uitwendige bewijskracht*), has the ability to prove its own validity, which is commonly called "*acta publica proban sese ipsa*"
- b. The power of formal proof (*formale bewijskracht*), is a statement by an official in writing contained in the deed is the same as that carried out and witnessed by the official concerned in carrying out his/her position, including the certainty of the date of its creation, his/her signature and the place where the deed was made and the identities of the people present and also the place where the deed was made. Without reducing the proof to the contrary, the proof is complete, where the power of proof of the official's deed and the deeds of the parties are the same, meaning that the statement of the official contained in both groups of deeds and the statements of the parties in the deed have formal proof and apply to the parties in accordance with Article 1667 of the Civil Code.

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- c. The power of material evidence (*materiele bewijskracht*), in the sense that the contents of the deed are true for every person who orders the deed to be made as evidence against him. The power of material evidence of an authentic deed is a certainty that the parties not only appear and explain to the notary but also prove that they have also done as stated in the material of the deed.

Authentic evidence is needed to be utilized by the maker himself or a third party, the interests or benefits of the state for law enforcement in terms of facilitating the settlement of civil cases easily and in a short time through guarantees of the truth of the contents of the deed and its legal certainty are not in doubt. Thus it can be said, the perfection as written evidence in the form of a deed made by and before a Notary according to the applicable legal system, is accepted and recognized by the legal community in Indonesia. For legal certainty, the transfer of Intellectual Property rights should be made/used with a notarial deed, because a notarial deed has strong legal force when compared to an agreement made under hand.

According to Sudikno Mertokusumo, a deed is a letter as evidence that is signed containing an event that is the basis for a right or obligation, which was made from the beginning intentionally for proof. Proof is one of the steps in the civil case process (Sudikno Mertokusumo, 1981: 149). Proof is needed because of objections or denials from the opposing party or to justify a right that is in dispute. A Notarial Deed is an authentic deed, a writing that is deliberately made to prove a certain event or legal relationship. As an authentic deed, made in a form that has been determined by the Law (Article 38 UUJN), made before authorized officials (public employees) and at the place where the deed was made. Therefore, the Notarial Deed provides complete and perfect evidentiary power for the parties who make it. The perfection of the Notarial Deed as evidence, then the deed must be seen as it is, there is no need to assess or interpret it otherwise, other than what is written in the deed.

Notarial Deed is an agreement between the parties that binds those who make it, therefore the requirements for the validity of the agreement must be met, Article 1320 of the Civil Code which regulates the requirements for the validity of the agreement, there are subjective requirements, namely requirements related to the subject who makes or makes the agreement, which consists of an agreement and is capable of acting to carry out a legal act, and objective requirements, namely requirements related to the agreement itself or related to the object that is used as a legal act by the parties, which consists of a certain thing and a reason that is not prohibited. Notarial Deeds must be made in the form that has been determined by Law, this is one of the characteristics of Notarial Deeds (Habib Adjie, 2009: 37).

Based on the Intellectual Property Rights Law, not all transfers of intellectual property are required by a notarial deed, but only the transfer of rights to Plant Variety Protection and Patents is required by a Notarial deed. The regulation of the norm of the requirement to use a notarial deed in the transfer of Plant Variety Protection rights is expressly stated in the Body, while in the Patent Law it is stated in the Explanation of the Article. The difference in these regulations is that both still provide binding force. The reason a notary deed is needed in the transfer of intellectual property rights is to create legal certainty and can be used as perfect evidence if there is a denial. In addition, plant varieties and patents have high value because they require a relatively long time and relatively high costs when compared to other intellectual property.

4. CONCLUSION

1. Based on the analysis of seven laws in the field of Intellectual Property, there are two laws that require the transfer of rights in the form of an authentic deed in the form of a notarial deed, namely Law Number 29 of 2000 concerning the Protection of Plant Varieties and Law Number 30 of 2016 concerning Patents. Other Intellectual Property Laws such as Copyright, Industrial Design, Integrated Circuit Layout Design, Trade Secrets and Trademarks do not explicitly mention the use of a notarial deed, but are stated in the mandatory form of an agreement (written). A written agreement has the meaning that it can be made with an agreement under hand, which means it is made by the parties without involving the intervention of a public official (notary).
2. Regarding the transfer of IP, a Notarial Deed as written evidence is required in the case of submitting an application for recording the transfer of rights. Thus, if there is a transfer of rights, the IP must be recorded. On this basis, the transfer of rights urgently requires a notarial deed to achieve legal certainty between the parties making the agreement and as a perfect means of proof.

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