

Legal Synergy for Notary Deed Updating in the Field of Intellectual Property Rights

Mirza Alvina Maharani

Master of Notary, Universitas Indonesia, Indonesia

Article Info	ABSTRACT
Keywords: Notarial Deed, Intellectual Property Rights, Legal Protection, Notary.	Legal Synergy in the modernization of the notarial deed drafting process within the scope of Intellectual Property Rights (IPR) is a critical aspect of legal development in Indonesia. Along with the growth of the creative economy and business sectors, the demand for more effective protection of intellectual works continues to rise. This article aims to analyse the steps involved in drafting notarial deeds related to IPR, as well as the role of notaries in supporting the protection of intellectual property rights. The research was conducted using normative juridical methods, employing statutory and conceptual approaches, and utilizing primary, secondary, and tertiary legal materials. The results show that the IPR legal system in Indonesia is still fragmented, which makes it difficult for notaries to prepare deeds that are in accordance with all applicable provisions. Integrated guidelines and closer cooperation with the DJKI are needed to improve efficiency, legal certainty, and IPR protection for the community.
This is an open access article under the CC BY-NC license 	Corresponding Author: Mirza Alvina Maharani Universitas Indonesia, Indonesia mirza.alvina@ui.ac.id

INTRODUCTION

Indonesia officially became a member of the World Trade Organization (hereinafter referred to as the WTO) in 1995. As a member of the WTO, Indonesia has an obligation to harmonize the Intellectual Property Rights (hereinafter referred to as IPR) system with the provisions stipulated in the Trade-Related Aspects of Intellectual Property Rights Agreement or abbreviated and popularly known as the TRIPs Agreement, which came into force on January 1, 1995 (Eddy Damian, 2011).

Part II of the TRIPs Agreement has set out the minimum standards of IPR protection that must be met by each member state. This standard includes, among other things, the types of IPR that are protected, the objects included in the protection, the rights granted to IPR holders, exceptions to rights, and the period of protection for IPR. The IPR system in Indonesia must meet the minimum standards set by the TRIPs Agreement, but this does not mean that the IPR system in Indonesia must be identical to the system in other countries. Instead, this harmonization aims to ensure that the national IPR system still meets international requirements, while still taking into account domestic needs and interests (Maulana, 2005).

The basic justification for IPR is that a person who has put effort into a creation has a natural right to own and control what they have created (Tobing, 1980). This is illustrated by Article 27 Paragraph (2) of the Universal Declaration of Human Rights which states that

"everyone has the right to protection (for moral and material purposes) obtained from scientific, literary or artistic works in the case of him as a creator". Indonesia ratified the TRIPs Agreement through Law Number 7 of 1994. With this ratification, Indonesia has an obligation to enforce IPR regulations that are in line with the provisions in the TRIPs. As a member of the WTO and TRIPs, Indonesia must be able to harmonize its IPR system and commit to the convention by adjusting the laws and regulations in the field of IPR. Not only adjustments, in drafting IPR laws, we also need to pay attention, calculate, and evaluate domestic conditions and situations which of course must be beneficial for the parties to the agreement that regulates IPR. Until now, TRIPs are still the most comprehensive and comprehensive international agreement related to Intellectual Property Rights (Maulana *et al.*, 2021).

Prior to 1997, Indonesia had enacted three laws related to IPR in the field of Trademarks, Copyrights, and Patents, including:

1. Law Number 6 of 1982 concerning Copyright, which has been amended by Law Number 7 of 1987 concerning Copyright
2. Law Number 6 of 1989 concerning Patents
3. Law No. 21 of 1961 concerning Corporate Trademarks and Trade Marks, which has been amended by Law No. 19 of 1992 concerning Trademarks

In 1997, Indonesia again revised three laws related to IPR in the fields of Copyright, Patents, and Trademarks into:

1. Law Number 12 of 1997 concerning Copyright, which was later replaced by Law Number 19 of 2002 concerning Copyright
2. Law Number 13 of 1997 concerning Patents, which was later replaced by Law Number 14 of 2001 concerning Patents
3. Law Number 14 of 1997 concerning Trademarks, which was later replaced by Law Number 15 of 2001 concerning Trademarks

At the end of 2000, Indonesia again enacted four new laws related to IPR, namely:

1. Law Number 29 of 2000 concerning the Protection of Plant Varieties
2. Law Number 30 of 2000 concerning Trade Secrets
3. Law Number 31 of 2000 concerning Industrial Design
4. Law Number 32 of 2000 concerning Integrated Circuit Layout Design

In the most recent period between 2001-2016, Indonesia again replaced three main laws of IPR in the field of Copyright, Patents, and Trademarks as follows:

1. Law Number 28 of 2014 concerning Copyright
2. Law Number 13 of 2016 concerning Patents
3. Law Number 20 of 2016 concerning Trademarks and Geographical Indications

Significant changes in the latest law related to IPR include the establishment of a special court, namely the Commercial Court, to resolve civil disputes in the field of IPR. In addition, other important changes in the latest rules in the field of Trademarks, Copyrights, and Patents include the introduction of an electronic registration system (e-filing), an increase in fine sanctions, and registration applications for three-dimensional trademarks and sound marks. These reforms are always aimed at the progress and achievement of IPR in Indonesia (Damaiyanti and Roisah, 2024).

Based on statistical data from the World Intellectual Property Organization's (hereinafter referred to as WIPO) annual report in 2021 which was released at the end of 2022, the number of trademark applications in Indonesia ranked second, namely 127,142 applications. In addition, Indonesia is also included in the top 10 list of simple patent registrations among WIPO members. By referring to the data of the application that is quite fantastic, this should have an impact on increasing the volume of additional work for Notaries in the preparation of deeds and agreements related to IPR (Heriani, 2024).

Notaries as public officials have the task of drafting authentic deeds that have strong and perfect legal strength and proof. In this context, a notary deed can function as legal evidence regarding property rights, transfer of rights, licenses, and other commercial agreements related to IPR (Maulana, 2009). Therefore, the legal synergy of laws and regulations in the field of IPR with the procedure for making notary deeds is a must to be relevant to the development of the era and the demands of modern society. With regulations that work well together, IPR will become one of the foundations of an increasingly brilliant economy in the future to create new opportunities for creative actors.

Notary deeds in the field of IPR include related deeds such as transfer of rights, licenses, inheritance, and IPR grants. In making the deed, the Notary needs to pay more attention to several important things such as checking IPR data at the Directorate General of Intellectual Property (hereinafter referred to as DJKI), how to obtain rights, rights and obligations that arise, as well as the importance of the position of the parties in IPR such as creators, inventors, designers, and rights holders, which will later be outlined in the agreement (Selenggang, 2023).

This study focuses on the importance of legal synergy rather than the laws and regulations governing IPR with regulations on the procedure for making notary deeds in relation to IPR protection in Indonesia. This research will examine how existing regulations can answer the challenges of the times and provide recommendations in increasing the efficiency and effectiveness of protection that can be provided by notaries through IPR-related deeds that they make to meet the needs of the community.

Although Indonesia has made various changes and updates to laws related to IPR, the existing legal system is still fragmented. The rules regarding IPR are spread across various laws, such as the Trademark Law, Patents, Industrial Designs, and Copyrights, each of which regulates different aspects. This creates difficulties for notaries in drafting deeds that refer to relevant provisions.

These fragmented legal regulations have the potential to cause confusion among stakeholders and hinder efficiency in the implementation of IPR protection. Therefore, there is an urgent need to develop comprehensive guidelines for notaries in drafting deeds related to IPR, in order to comply with various applicable regulations and make it easier for stakeholders to understand and implement their rights.

This study will explore the necessity of establishing coherent guidelines for notaries, aimed at enhancing legal synergy within the IPR framework, and will provide recommendations to streamline notarial processes for better IPR protection in Indonesia.

METHODS

The type of research is juridical-normative, with a statute approach, using primary legal materials, especially the Law on Notary Positions and Laws related to Intellectual Property Rights concerning Trademarks, Copyrights, Patents, Industrial Designs, Trade Secrets, Protection of Plant Varieties and Integrated Circuit Layout Design (DTLST). Secondary legal materials include books and related journals. Tertiary legal materials include data sourced from the internet related to the problem being studied.

The data analysis technique in this juridical-normative research employs a qualitative approach to interpret and evaluate legal sources. This includes analyzing primary legal materials such as statutes and regulations relevant to the Notary Law and Intellectual Property Rights (IPR), which cover trademarks, copyrights, patents, industrial designs, trade secrets, plant variety protection, and integrated circuit layout designs. The analysis is conducted through statutory interpretation, examining the language and intent of the laws to understand the extent of legal authority and obligations, especially in relation to notarial deeds concerning IPR. Secondary legal materials, including books and academic journals, provide scholarly perspectives and context, aiding in a comprehensive examination of the legislative framework. Tertiary materials, such as internet-sourced data, offer additional insights on recent developments and practical implications, supporting a contextual understanding of IPR issues. This multi-tiered approach allows for a systematic interpretation of the legal landscape and aims to derive actionable insights and recommendations for improving notarial practices in the IPR domain.

RESULTS AND DISCUSSION

IPR Acquisition and Position of Parties in IPR

The acquisition of IPR can be submitted through the DJKI, except to obtain the right to protect plant varieties, then the application must be submitted to the Plant Variety Protection Office under the auspices of the Ministry of Agriculture. In IPR, it is known that there are Exclusive Rights for IPR holders which include Moral Rights and Economic Rights. Moral Rights are rights that are permanently attached to the holder of IPR, while Economic Rights are rights related to economic benefits or profits that can be obtained by the holder of the right to IPR that he owns, including in terms of publishing, reproduction in all forms, translation, adaptation, arrangement, or transformation of distribution, performances and others.

Copyright

Article 1 Number 1 of Law Number 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law) explains that copyright is an exclusive right owned by the creator, which arises automatically based on the declarative principle after the work is realized in tangible form, while still paying attention to the limitations regulated in laws and regulations. From this definition, it can be seen that the person who sets aside the copyright is referred to as the "Creator" and the work he makes is referred to as "Creation". From this definition, it can also be seen that to obtain a copyright, it is not always necessary to go through the recording process (optional) because of the nature of the rights that arise automatically.

The Copyright Law also provides a definition of a Copyright Holder in Article 1 Number 4 which states that a Copyright Holder is the Creator as the copyright owner, the party who legally receives the right from the creator, or another party who receives further rights from the party who receives the right legally. From this article, it can also be seen that the copyright holder does not always have to be the creator himself, but it can be other parties other than the creator who receive the rights legally either from the transfer, license or from the power of attorney. This must then also be the main focus for Notaries in making agreements related to Copyright.

The principle of copyright protection that was born automatically is in accordance with the principle of "automatic protection" embraced in the Bern Convention for Literary and Artistic Works and TRIPs. This principle emphasizes that copyright protection is not based on the fulfillment of a formality. Although there is no obligation to register copyright, the Indonesian government through the DJKI still organizes the registration of works and related rights products as it turns out in Article 64 of the Copyright Law which states that Registration is not a requirement to obtain Rights. Copyright protection is carried out for a longer period of time in line with the application of rules in various countries so that the period of protection of copyright rights in certain fields is enforced during the life of the creator plus 70 (seventy) years after the death of the creator.

The registration of works and related rights products is carried out through a written request in Indonesian by the creator, copyright holder, related rights owner, or attorney representing them. This application is made electronically or non-electronically by including:

- a. Include examples of works, related rights products, or their successors;
- b. Attach a statement of ownership of the work and related rights; and
- c. Pay the fee.

Although this recording is not a proof of ownership of rights, but with the existence of a record, it can be the initial proof of ownership of a work, unless proven otherwise. Later, the recorded work will receive a certificate of recording. However, in Article 72 of the Copyright Law, it is emphasized once again that this recording is not an endorsement of the content, meaning, intent, or form of the work or related rights products that are recorded. This means that the government is not responsible for the content, meaning, intent, or form of the recorded work.

Therefore, the Copyright Law contains many phrases "unless proven otherwise" which means that anyone can file a lawsuit to request the cancellation of the registration of a work if it can be proven that the creator whose name is listed on the certificate is not the original creator. This lawsuit will later be filed and become the domain of the Commercial Court.

Brand

A trademark is a sign that can be depicted graphically, such as images, logos, names, words, letters, numbers, color arrangements, in the form of two-dimensional and/or three-dimensional, sound, hologram, or a combination of two or more of these elements, which are used to distinguish goods and/or services produced by individuals or legal entities in the activity of trading in goods and/or services.

There are three types of trademarks in Law Number 20 of 2016 concerning Trademarks and Geographical Indications (hereinafter referred to as the MIG Law), namely Goods Marks, Service Marks and Collective Marks. The right to the trademark is granted by the state to the registered trademark owner for a period of 10 (ten) years from the date of receipt of the trademark registration which can be extended within a period of 6 (six) months before the expiration of the trademark protection period. The rights to these trademarks can be used by themselves or permission can be granted to other parties to use them.

From the definition of trademark rights, it can be seen that the rights to a trademark are obtained after the trademark is "registered". In terms of brands, Indonesia adheres to the first to file system, that is, which party is the first to apply for registration, then legally that party is the first to be entitled and legally protected. Although Indonesia adheres to the first-to-file system, this is not absolute because a trademark submitted for registration, in addition to having to go through the formality stage and the substantive stage, can still be canceled or cannot be registered at a later date through a court decision if it is proven to violate Article 20 of the MIG Law as follows:

- a. Contrary to state ideology, laws and regulations, morality, religion, morality, or public order;
- b. Same as, related to, or only mentioning the bararg and/or services for which registration is requested;
- c. Contains elements that can mislead the public about the origin, quality, type, size, type, purpose of use of goods and/or services for which registration is applied or is the name of a protected plant variety for similar goods and/or services;
- d. Contains information that is not in accordance with the quality, enthusiasm, or efficacy of the goods and/or services produced;
- e. It has no discriminating power; and/or
- f. It is a common name and/or a symbol of public property.

Godfathers

A patent is an exclusive right granted by a state to an inventor for his or her invention in the field of technology for a certain period of time, which allows the inventor to carry out his own invention or grant permission to another party to use it. From this definition, it can be seen that the creator of a Patent is called an "Inventor" and the result of his work is referred to as an "Invention". While the patent holder is the inventor as the patent owner, the party who obtains the patent rights from the patent owner, or another party who subsequently receives the right and is recorded in the general register of patents. The term of patent protection is granted within 20 (twenty) years from the date of receipt and cannot be extended. While simple patents are granted for a period of 10 (ten) years from the date of receipt and cannot be extended.

Patents are granted on an application. Similar to the trademark system, the patent system in Indonesia also applies the principle of first to file, meaning that patent protection is given to the applicant who first submits an application for registration. Referring to Law Number 13 of 2016 concerning Patents (hereinafter referred to as the Patent Law),

applications for patent registration can currently be made electronically or non-electronically. The stages in the Patent application process include:

- a. Application (Articles 24 to 45 of the Patent Law);
- b. Announcement (Articles 46 to 50 of the Patent Law);
- c. Substantive examination (Articles 51 to 56 of the Patent Law);
- d. Grant or Refusal of Patents (Articles 57 to 63 of the Patent Law).

Industrial Design (DI)

Industrial design is a creation that includes shapes, configurations, or line and/or color compositions, either in three-dimensional or two-dimensional form, which gives an aesthetic impression and can be realized in these patterns. This design can be used to produce a product, industrial item, or handicraft. A designer in industrial design is one or more people who produce Industrial Design. Meanwhile, Industrial Design Rights are exclusive rights granted by the state and government to the Designer for the results of his creation for a period of 10 (ten) years to carry out on his own, or give his consent to other parties referred to as the Industrial Design Rights Holder to carry out matters related to the Industrial Design he owns.

Similar to the acquisition of trademark and copyright rights, the right to industrial design can also be obtained by submitting a registration application. An application for registration of an industrial design can be submitted by more than one person. If the application is submitted by more than one person, the application can be signed by one of the applicants, provided that it is accompanied by the written consent of the other applicant.

Trade Secrets

Trade secrets are information that is not known to the public in the field of technology and/or business, has economic value because it is useful in business activities, and is kept secret by the owner of the trade secret. The scope of trade secret protection includes production methods, processing methods, sales methods, or other information in the field of technology and/or business that has economic value and is not known to the public.

Similar to copyright, trade secret protection occurs not because of registration. If there is a registration of trade secrets, then this is the same as the disclosure of trade secrets. Therefore, in Law Number 30 of 2000 concerning Trade Secrets, it is said that a trade secret will continue to obtain legal protection as long as the information meets the following elements of trade secrets:

- a. Trade Secrets are protected if the information is confidential, has economic value, and is kept confidential through appropriate efforts.
- b. Information is considered confidential if the information is only known by certain parties or is not generally known by the public.
- c. Information is considered to have economic value if the confidentiality of the information can be used to carry out commercial activities or businesses or can increase economic profits.
- d. Information is considered confidential if the owner or the parties in control of it have taken appropriate and appropriate steps.

Plant Variety Protection (PVT)

Plant Variety Protection (hereinafter referred to as PVP) is a special form of protection provided by the state, in this case represented by the Government, and its implementation is carried out by the Plant Variety Protection Office, for plant varieties produced by breeders through plant breeding activities. From this definition, it can be seen that the producer of plant varieties is called "Plant Breeder" and the series of research and testing activities or the discovery and development of a plant variety is called "Plant Breeding". Parties are entitled and can apply for plant variety rights including:

- a. Breeders;
- b. A person or legal entity that employs a breeder or who orders varieties from a breeder;
- c. Heirs; or
- d. PVT Consultant

A variety itself is a group of plants of one type or species that have certain characteristics such as plant shape, growth, leaves, flowers, fruits, seeds, and expression of genotype characteristics or a combination of genotypes that distinguish them from the same type or species based on at least one important trait, and remain unchanged when propagated. These varieties usually contain several material advantages compared to previously known varieties. For example, a person or company can produce a new variety of rice that grows faster than regular rice, is more nutritious and resistant to pests.

Protection of rights to plant varieties can only be submitted to the Plant Variety Protection Office in writing in Indonesian and with a fee. The PVP Office considers views, objections, rebuttals, and explanations as additional materials in the decision to accept or reject PVP rights applications.

The PVP period is 20 (twenty) years for annual crops and 25 (twenty-five) years for annual crops calculated from the date of granting PVP rights. As long as the PVP application has not reached the granting of rights, the applicant will be given temporary protection.

Integrated Circuit Layout Design (DTLST)

The increasing need and dependence on computers in the modern world has had an impact on the creation of laws and regulations that provide special protection for the layout of integrated circuits used in computers and various other electronic products such as televisions and radios.

Layout Design is a creation in the form of a three-dimensional layout design of various elements, where at least one element is an active element, and involves part or all of the interconnection in an Integrated Circuit. This three-dimensional laying is intended to prepare for the creation of an Integrated Circuit. An Integrated Circuit itself is a product in a finished or semi-finished form consisting of various elements, with at least one active element, where some or all of those elements are interconnected and integrally formed in a semiconductor material to produce electronic functions.

The Creator of the Integrated Circuit Layout Design (hereinafter referred to as DTLST) is referred to as the "Designer". Definition of a Designer is one or more people who produce DTLST. The Designer has the Integrated Circuit Layout Design Right is an exclusive right granted by the state to the Designer over his creation, which allows the Designer to exercise

the right himself or grant permission to another party to do so for a certain period of time. The Creator is not necessarily a Rightholder, what is meant by the right holder in the DTLST is the Designer or the recipient of the rights of the Designer registered in the DTLST General Register.

Protection of the Integrated Circuit Layout Design Rights (hereinafter referred to as DTLST Rights) is granted to the Rightholder from the first time the design is commercially exploited anywhere, or from the Date of Receipt. Protection as provided for 10 (ten) years. DTLST rights are given on the basis of submitting a registration application. If the application for rights is filed collectively by more than one person, the application may be signed by one of the applicants, accompanied by the written consent of the other applicant. If the application is not submitted by the designer, the application must be accompanied by a statement accompanied by sufficient evidence that the applicant is entitled to the DTLST. This registration will later produce a certificate called an integrated circuit layout design certificate.

The Role of Notaries in the Preparation of Agreements in the Field of Intellectual Property

An agreement made before a Notary is referred to as an agreement made by a notary. Article 1 Number 7 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position explains that a notary deed is an authentic deed prepared by or before a Notary in accordance with the form and procedures regulated in this law.

The position of the Notary Deed when compared to the deeds or agreements made under the hand if faced with a legal dispute, the notary deed will have a higher position and be considered as perfect evidence in front of the court because it has perfect evidentiary power. An exception occurs if the official, in this case the notary or the party involved in the agreement, is not authorized or competent in making the deed. In this case, there is a legal defect in the deed, and the deed will be considered as writing under the hand.

Along with the development of business and the increasing awareness of entrepreneurs and companies about the need for deed of agreement that has strong evidentiary power in the eyes of the law, in this case the role of a notary is very crucial for people who want to make agreements in the field of IPR by notarization. The scope of notary work will also expand, such as by making license agreements, rights transfer agreements, franchises and so on. A notary in carrying out his duties must have a good understanding, both theoretically and technically. Therefore, notaries need to prepare themselves, both in terms of human resources and the ability to understand the law in the field of IPR, in order to provide broader and more comprehensive knowledge in making IPR agreement deeds.

The UUJN has more or less regulated the scope and authority of notaries in making deeds as public officials. In the UUJN, what is meant by a notary as stipulated in Article 1 Number 1 of the UUJN is a public official who is authorized to make authentic deeds and has other authorities as referred to in the UUJN or based on other laws.

The Notary has the authority to make an authentic deed related to all actions, agreements, and determinations required by laws and regulations and/or requested by interested parties to be stated in an authentic deed. In addition, the notary also guarantees the certainty of the date of making the deed, storing the deed, and providing grosses, copies,

and excerpts of the deed, as long as the making of the deed is not transferred or exempted to officials or other parties as determined by law. In addition, the Notary is also authorized to:

1. Certifying signatures and establishing the certainty of the date of the letter under hand by registering in a special book;
2. Book a letter under hand by registering in a special book;
3. Make a copy of the original letter under the hand in the form of a copy containing the description as written and described in the letter concerned;
4. Certify the photocopy of the match with the original letter;
5. Providing legal counseling in relation to the making of deeds;
6. Making deeds related to land; and
7. Make an auction minutes deed.

In order for a deed to be declared an authentic deed, the deed must meet the following requirements:

1. The deed must be made by (door) or in the presence of (ten overstaan) a public official;
2. The deed must be made in a form that has been prescribed by law;
3. The public officer by or before whom the deed is made, shall have the authority to make the deed.

Notary Deed consists of 2 (two) types of deeds, namely:

1. Akta Relaas / Relaas Akta (Akta Pejabat) atau Ambtelijke Akten
Deed of Relaas / Relaas Deed (Deed of Official) is a deed made "by" (door) a Notary in his office as a Public Officer at the request of an interested person that authentically describes an action performed or a situation that is seen/witnessed, heard, and experienced by the Notary as a Public Official. Examples: Minutes of the General Meeting of Pattern Holders, Budel Registration Deed, and Lottery.
2. Akta Partij / Partij Akta (Akta Penghadap) atau Partij Akten
Partij Deed / Partij Deed (Contestant Deed) is a deed made in the "front" (ten overstaan) of a Notary based on testimony from the Witnesses explaining their wishes to the Notary. From this information, the notary constantly, compiles and formulates the editorial authentically in the deed. The notary is not responsible if there are things that are not conveyed to him related to the legal acts in the deed. Examples: Tenancy Deed, Cooperation Agreement, Debt Acknowledgment and so on.

From the explanation above, it can be seen that deeds and agreements made by notaries in the field of IPR include Deed of Partij, this is because deeds and agreements in the field of IPR are made based on information from interested parties (the witnesses), who convey their intentions and intentions to the notary to be then expressed in the form of authentic deeds. The notary in this case, acts as the compiler and formulator of the editorial in accordance with the will of the witnesses, without being responsible for matters that are not disclosed by them related to the legal acts that occur. For example, such as licensing agreements, franchising, transfer of rights, assignment of rights to works or patents, and other intellectual property commercialization cooperation agreements. These deeds regulate the agreement of the parties regarding the management, use, or transfer of intellectual property rights, where the

parties clearly express their intentions and agreements to the notary and then pour them into an authentic deed.

As a Partij Deed, deeds in the field of IPR must meet the absolute requirements of the validity of the Partij Deed or what is called the verlijden condition (the condition for the validity of the deed/the requirement for the authenticity of a deed), namely:

1. Must be compiled
2. Must be read
3. Must be signed

If the IPR deed does not meet the verlijden requirements, then its function will change to a deed under hand. In addition, the UUJN also regulates general requirements in the preparation of notary deeds which must consist of the beginning or head of the deed, the body of the deed and also the end or closing of the deed which contains the following:

1. The beginning of the deed or head of the deed:
 - a. Title of the deed;
 - b. Deed number;
 - c. Hours, days, dates, months, and years; and
 - d. The full name and place of residence of the Notary.
2. Body of the deed:
 - a. Full names, place and date of birth, nationality, occupation, position, position, residence of the persons they represent and/or persons;
 - b. A description of the acting position of the adversary;
 - c. The contents of the Deed which are the wishes and desires of the interested parties; and
 - d. Full name, place and date of birth, as well as the occupation, position, position, and residence of each identifying witness.
3. End or closing of the deed:
 - a. Description of the reading of the Deed as intended in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
 - b. A description of the signing and place of signing or translation of the Deed if any;
 - c. Full name, place and date of birth, occupation, position, position, and residence of each Deed witness; and
 - d. A description of the absence of changes that occurred in the preparation of the Deed or a description of changes that can be in the form of additions, crossouts, or replacements and the number of changes.

In the event that the Notary Deed is made by a Substitute Notary or Notary Temporary Official, in addition to containing provisions on the beginning or head of the deed, the body of the deed and also the end or closing of the deed, it also contains the number and date of the determination of the appointment, as well as the official who appointed it.

Presenters who want to enter into an agreement in the field of IPR with a notary deed must also meet the following requirements:

- a. At least 18 (eighteen) years old or married; and
- b. Capable of performing legal acts.

The Witnesses must also be known by the Notary or introduced to the Notary by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or married and capable of performing legal acts or introduced by 2 (two) other witnesses. This introduction must be expressly stated in the Act. Notaries who violate the provisions as referred to in the UUJN may be subject to sanctions in the form of:

- a. Written warning;
- b. Temporary suspension;
- c. Respectful dismissal; or
- d. Disrespectful dismissal.

Things that Need to be Considered by a Notary in Making an Agreement (Deed) in the Field of Intellectual Property

Notaries as public officials who are authorized to make deeds based on the wishes of the parties and witness the signing of deeds, play an important role in ensuring that intellectual property rights are not only registered and legally protected, but also transferred or licensed in a legal and transparent manner. In the protection of IPR, in the preparation of deeds related to IPR, the notary is authorized to verify and document agreements related to IPR. The notary ensures that the parties involved in the agreement understand the content and legal consequences of the document or transaction carried out.

The laws and regulations that regulate IPR consistently categorize IPR as a movable object. IPR is a movable object that can be used as a fiduciary object, licensed, and transferred. The types of IPR-related agreements may vary depending on the need for protection, management, or commercialization of those rights. Some common types of agreements include:

1. Assignment Agreement;
2. License Agreement;
3. Franchise Agreement;
4. Non-disclosure agreement; and
5. Research Cooperation Agreement

In practice, notaries are generally only involved in making deeds in rights transfer agreements, licenses, and franchises.

1. Assignment / Transfer of Rights Agreement in IPR

IPR transfer can occur for various reasons, such as:

- a. Inheritance;
- b. Grant;
- c. Testament;
- d. Written Agreement; or
- e. Other reasons permitted by the law.

In the IPR transfer agreement, there are several important things that must be considered to ensure the validity and completeness of the agreement, namely:

- a. The type of IPR that is transferred by clearly stating the type of IPR that is the object of the transfer.

- b. Effective Date of Transfer which expressly states when the right to IPR is transferred so that the original owner is no longer the holder of the right.
- c. Moral Rights (if any) that explain whether moral rights are still attached to the creator or transferred.
- d. Guarantees such as the provision of guarantees that the IPR is free from disputes or that there are no claims from third parties.
- e. Other Important Things (Boilerplate) contain general provisions that must be present in the agreement, such as dispute resolution methods, legal choices, and legal domicile.

By paying attention to these points, the IPR transfer agreement will become clearer and legally guaranteed.

2. License Agreement in IPR

A license is a license granted by the owner of IPR to another party through an agreement, where the right to use IPR is granted without any transfer of ownership rights. This permit can cover all or part of IPR for a certain period of time and conditions. Because the license only grants limited use rights, it is usually regulated regarding the duration, region, and method of use, and must be recorded. Generally, a license agreement gives the recipient the right to manufacture and sell products, use the brand, or apply technology patented by the licensor. Licensees must generally meet certain conditions regarding the use of such rights and pay royalties.

For companies that have superior products but do not have the capacity to produce them themselves, licensing is the best solution to market those products. According to entrepreneurs, of the various marketing methods available, licensing offers the highest potential return on investment and a greater chance of success. Important clauses in the license agreement include:

- a. Definition
- b. License term
- c. Tax provisions
- d. Royalty payment details
- e. Exclusivity: non-exclusive, exclusive, or Single license
- f. License revocable or irrevocable
- g. Assignable or non-assignable
- h. Restrictions on use
- i. Right to sublicense
- j. Payment or license fee
- k. Timetable for launching products to market
- l. Monitoring and quality control
- m. Agreement renewal options
- n. License cancellation
- o. Product modifications
- p. Sub-agreements: non-disclosure agreements or non-compete agreements
- q. Restrictions imposed on licensees

- r. Applicable law
- s. Dispute resolution

The definition and further explanation of the types of licenses are as follows:

- a. A non-exclusive license is a type of license that can be granted to an unlimited number of licensees.
- b. Exclusive license which is a type of license that gives an exclusive right to one licensee to use and exploit IPR.
- c. Sole license is a type of license that is often confused with an exclusive license, but the important difference is that this sole license allows the owner of the IPR to use and exploit the IPR, as well as the existence of a single licensee.

3. Franchise Agreement

Franchising in Indonesia is currently regulated by Government Regulation Number 35 of 2024 concerning Franchising (hereinafter referred to as PP 35/2024) effective on September 2, 2024, which repeals Government Regulation Number 42 of 2007. In addition, there is also Regulation of the Minister of Trade Number 71 of 2019 concerning the Implementation of Franchises. Although the Permendag cannot revoke Government Regulations, the Ministry of Home Affairs has the authority to further regulate matters related to franchising.

Franchise as defined in Article 1 number 1 of GR 35/2024, is a special right owned by an individual or business entity over a business system with predetermined criteria, in order to market goods and/or services that have proven successful, and can be used by other parties based on a franchise agreement. The criteria for franchising based on Article 4 paragraph (2) of GR 35/2024 are:

- a. Have a business system;
- b. Businesses already provide profits;
- c. Have IPR that has been registered or registered; and
- d. Dukungan yang berkesinambungan dari pemberi waralaba dan/atau pemberi waralaba lanjutan kepada penerima waralaba dan/atau penerima waralaba lanjutan.

The business system in franchising is a standard operating and procedural that at least includes:

- a. Human resource management;
- b. Administration;
- c. Operational management;
- d. Standard method of operation;
- e. Selection of business location;
- f. Design of the place of business;
- g. Employee requirements; and
- h. Marketing strategy

The business system is created in writing and offered by the Franchisor or the advanced franchisor to the franchisor or the advanced franchisee. The business system should be easy to teach and apply and have a clear and equal framework between the franchisor or the advanced franchisor to the franchisor or the advanced franchisee.

The criteria that the business has generated profits can be evidenced by the fact that the franchised business has been operating for at least 3 (three) consecutive years, as well as financial statements for the last 2 (two) years showing profits, which have been audited by a public accountant with a reasonable opinion without exception. Meanwhile, continuous support from the Franchisor and/or Continued Franchisee to the Franchisee and/or Continued Franchisee according to Article 4 Paragraph (8) of GR 35/2024, may include:

- a. Training;
- b. Operational management;
- c. Promotion;
- d. Research;
- e. Market development; and
- f. Other forms of coaching.

Franchising is a form of licensing IPR, but its scope is wider than ordinary licenses. A license in a franchise is given to a person to run a business with the condition that there is a payment of initial fees and/or ongoing fees. In a franchise agreement, there is usually one or more forms of licensing. For example, in a McDonald's franchise, there is a license to use the McDonald's brand and logo on products, packaging, and restaurants, as well as a license to use patents or trade secrets.

From the articles and explanations above, it can be seen that in general, the elements or articles contained in the franchise agreement at least include the following:

- a. An overview or Premisse that describes the transaction to be held between the grantor and the franchisee.
- b. The duration or period of validity of the franchise agreement.
- c. Initial fees and continuing fees.
- d. Territories granted or allocated to franchisees.
- e. Selection and development of business locations.
- f. Initial training and ongoing support from the franchisor.
- g. The use of IPR includes trademarks, patents, and others.
- h. Advertising-related provisions.
- i. Insurance requirements that must be met.
- j. Recording and the right of the franchisor to audit the records of the franchisee.
- k. Other provisions (boiler plate) such as dispute resolution, applicable law, and general matters regulated in agreements in general.

Notaries also need to note that the creation of a franchise agreement must be accompanied by an offer prospectus, in accordance with Article 5 of GR 35/2024, which is a written statement from the franchisor to the prospective recipient as information about the business to be franchised. This prospectus, which serves as a kind of proposal, must be given no later than 14 (fourteen) days before the franchise agreement is executed to ensure that the prospective franchisee has a clear and complete understanding of the business to be carried out. The parties to the franchise agreement must also have a Franchise Registration Certificate (hereinafter referred to as STWP) which is a formality

requirement that must be possessed before making a franchise agreement. In the STWP submission process, proof of the franchise offer prospectus must be attached as part of the requirements. This STWP must be owned by both the recipient and the franchisor, and the STWP application is made by filling out the registration form that has been set.

Notaries need to pay attention to the content of the franchise agreement as stipulated in Article 6 paragraph 2 of GR 35/2024 which must contain at least the following clauses:

- a. Name and address of the Franchisor or Serial Franchisor and Franchisee or Serial Franchisee;
- b. Intellectual property that is still under protection;
- c. Business activities;
- d. Business systems run;
- e. The rights and obligations of each party (Franchisor or Continuing Franchisor and Franchisee or Continuing Franchisee);
- f. Assistance, facilities, operational guidance, training, and marketing provided by the Franchisor or Continuing Franchisor;
- g. Business area;
- h. Guarantee from the Franchisor or Continuing Franchisor to the Franchisee regarding compensation or franchise rights if the Franchisor ceases its business activities;
- i. Duration of franchise agreement;
- j. Procedure for payment of rewards;
- k. Franchise ownership and transfer of ownership;
- l. Dispute resolution;
- m. Procedures for renewal and termination of franchise agreements;
- n. Guarantee from the Franchisor or Continuing Franchisor to continue to perform its obligations to the Franchisee; and
- o. The number of outlets or business places that will be managed by the Franchisee or Continued Franchisee.

CONCLUSION

The study concludes that Indonesia's Intellectual Property Rights (IPR) legal framework is fragmented across various laws, which complicates the work of notaries in drafting comprehensive and compliant deeds related to IPR transactions, such as transfers, licenses, and franchises. This fragmentation creates challenges in ensuring legal consistency and efficiency in IPR protection, emphasizing the need for clear, unified guidelines specifically tailored for notaries. To address this, the study recommends the development of comprehensive procedural guidelines that integrate all relevant IPR regulations to streamline notarial practices. Additionally, it encourages ongoing education for notaries on both national and international IPR developments and suggests enhanced collaboration with stakeholders, particularly the Directorate General of Intellectual Property (DJKI), to improve legal synergies and socialization efforts, thereby strengthening IPR protection and providing clearer legal certainty for the public.

REFERENCE

- Damaiyanti, A. and Roisah, K. (2024) 'Peran Notaris dalam Perlindungan Hak Kekayaan Intelektual: Studi Komparatif Praktik Hukum Indonesia dan Standar Internasional', *UNES Law Review*, 6(4), pp. 11624–11632.
- Eddy Damian, S.B. (2011) 'Hak Kekayaan Intelektual Suatu Pengantar', *Bandung: Alumni* [Preprint].
- Heriani, F.N. (2024) *Permohonan KI Indonesia Masuk 10 Besar Negara Berkembang Anggota WIPO*, *Hukumonline*. Available at: <https://www.hukumonline.com/berita/a/permohonan-ki-indonesia-masuk-10-besar-negara-berkembang-anggota-wipo-lt63b7da596c0bc/>.
- Maulana, I.B. (2005) *Bianglala HaKI (hak kekayaan intelektual)*. Jakarta: Hecca Mitra Utama.
- Maulana, I.B. (2009) *Politik dan Manajemen Hak Kekayaan Intelektual*. Alumni.
- Maulana, I.B. *et al.* (2021) 'Pengantar (akta) Perjanjian Hak Kekayaan Intelektual untuk notaris dan konsultan HKI', *Bandung: Citra Aditya Bakti* [Preprint].
- Peraturan Pemerintah Nomor 35 Tahun 2024 tentang Waralaba.
- Selenggang, C.S. (2023) *Notaris Sebagai Pejabat Umum*. Depok: Rajawali Buana Pusaka.
- Tobing, G.H.S.L. (1980) *Peraturan jabatan notaris*. Jakarta: Erlangga.
- Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.
- Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta.
- Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis.
- Undang-Undang Nomor 13 Tahun 2016 tentang Paten.
- Undang-Undang Nomor 31 Tahun 2000 tentang Desain Industri.
- Undang-Undang Nomor 30 Tahun 2000 tentang Rahasia Dagang.
- Undang-Undang Nomor 29 Tahun 2000 tentang Perlindungan Varietas Tanaman.
- Undang-Undang Nomor 32 Tahun 2000 tentang Desain Tata Letak Sirkuit Terpadu.