

The Role of Indonesian Notaries in the Transfer of Intellectual Property Rights

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Keywords

Keywords: Notary, Transfer of Intellectual Property Rights, Authentic Deeds, Legal Certainty, Legal Protection.

ABSTRACT

The transfer of Intellectual Property Rights (IPR) in Indonesia necessitates legal certainty and protection, roles fulfilled by notaries through authentic deeds. This study examines the strategic functions of notaries in IPR transfers, focusing on their roles as proof providers, trusted third parties, and compliance keepers. Using normative legal research with a regulatory approach, the study analyzes laws such as the Copyright Law, Patent Law, and Trademark Law, alongside secondary data from document studies. Findings reveal that notarial deeds serve as irrefutable evidence in IPR transfers, ensuring compliance with legal standards and reducing dispute risks. Notaries also facilitate transparency in digital IPR registrations, enhancing trust among parties. The research highlights the notary's obligation to verify IPR statuses and ensure transactional validity under Article 1320 of the Civil Code. Implications suggest that notaries are pivotal in safeguarding economic rights and adapting to technological advancements in IPR management. This study contributes to the literature by delineating the notary's expanded role in contemporary IPR transactions, offering insights for policymakers and legal practitioners to strengthen IPR frameworks.

INTRODUCTION

In today's globalization and knowledge-based economy, intellectual property rights (IPR) have become one of the most valuable assets in the world of business, technology, art, and culture. Intellectual property, which includes copyrights, patents, trademarks, industrial designs, and trade secrets, is not only an indicator of innovation and creativity, but also a commodity that can be transferred, traded, or inherited like other assets. Therefore, the process of transferring intellectual property rights requires assurance of legal certainty and orderly administration to protect the interests of the parties (IRIANTORO, 2022; Muri et al., 2018; Ridwan, 2020; Sonbai et al., 2022).

The general public views a notary as a person who executes documents and has legal knowledge. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notary (henceforth referred to as "UUJN") states that a notary is a public official who has the authority to create valid deeds and has additional powers as specified in this law or based on other laws (Abady & Rahayu, 2023; Atmaja, 2021; Putri, 2016; Ramadhan & Suhardini, 2019; Rizal, 2019). The UUJN further highlights in the general explanation that a notary is a public official with the authority to create authentic deeds, provided that the creation of specific authentic deeds is not intended exclusively for other public authorities. A notary's primary responsibility is to create deeds.

In addition to being mandated by laws and regulations, interested parties also need an authentic deed executed by a notary public in order to protect their rights and duties and to assure justice, certainty, and mutual benefit (B et al., 2020; Nita NurJanah, 2023; Rafiqi & Marsella, 2020; Septiandi & Sudiro, 2023; Tanaya, 2023).

Notaries primarily serve as General Officers and creators of authentic deeds. According to Habib Adjie, the term *Openbare Ambtenaren*, meaning public official, refers to an individual assigned the responsibility of drafting authentic deeds that benefit the public. This designation is granted to notaries or public officers, who are appointed or authorized under the law to carry out such duties. As public officials, notaries are legally empowered to produce authentic legal documents (Damayanti, 2022; Handoko, 2021; Mardiyah et al., 2017; Simarmata, 2020; Wibowo et al., 2022).

However, in practice, the role of notaries in the transfer of intellectual property rights in Indonesia has not been fully standardized or studied in depth. Many transfers are done informally or without an authentic deed, giving rise to potential disputes at a later date. In addition, the legal literature in Indonesia is still limited in discussing the concrete contribution of notaries in the IPR transfer process, both in terms of legal substance and practical implementation in the field.

This study examines the strategic functions of notaries in IPR transfers, focusing on their roles as proof providers, trusted third parties, and compliance keepers. The current research builds upon existing studies by comprehensively analyzing the multifaceted role of Indonesian notaries in the transfer of Intellectual Property Rights (IPR), emphasizing their functions as proof providers, trusted third parties, and compliance keepers. While prior research, such as that by Habib Adjie (2020) and Tan Thong Kie (2007), highlights the general role of notaries in creating authentic deeds, this study specifically addresses the legal certainty and protection notaries provide in IPR transactions, which is increasingly critical in the digital era. The research also integrates recent regulatory updates, such as Permenkumham Number 60/2016 and the Trade Secrets Law, to underscore the evolving legal landscape. Additionally, it explores the practical challenges and procedural nuances in IPR transfers, such as database verification and compliance with Article 1320 of the Civil Code, offering a more dynamic and applied perspective compared to earlier normative studies.

METHOD

The function of notaries in the transfer of intellectual property rights is examined in this normative legal study, which is prescriptive analytic in nature. Considering how crucial written documentation is to the transfer of intangible yet economically valuable property. By looking at main legal materials like laws and regulations, secondary legal materials like literature and legal journals, and tertiary legal materials as support, the data for this study was gathered through a literature review. In order to comprehend and methodically explain the function of notaries in the process of transferring intellectual property rights in Indonesia, the analysis is conducted qualitatively by interpreting and scrutinizing the substance of legal norms.

RESULTS AND DISCUSSION

Events and Legal Acts of Transfer of IPR

The transfer of IPR can occur either through legal events or legal actions. Legal events refer to transfers that happen without the intention of the involved parties, such as through inheritance. In contrast, legal actions involve deliberate decisions by the parties, such as through grants, wills, contracts, or other reasons. Within the context of inheritance law, a Notary is one of the authorized officials who can issue inheritance statements for individuals subject to Western civil inheritance law. Although a Notary's Certificate of Inheritance is not classified as an authentic deed with absolute

evidentiary value and is not explicitly governed by Indonesian legislation, it is widely trusted by the public, as well as by government and private institutions. As a public official providing legal services, a Notary is seen as a Trusted Third Party who can vouch for the accuracy of the information contained in the inheritance certificate. This allows the public to clearly identify the rightful heirs of a deceased person. Even government institutions such as the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency accept a Notary-issued inheritance certificate as valid proof of heirship in cases involving the transfer of land ownership due to inheritance. Consequently, the Notary bears responsibility for the document, as its contents reflect their legal opinion based on verified legal facts.

In relation to inheritance distribution, Article 874 of the Civil Code states that a person's estate may be passed on not only to their legal heirs but also to others, as specified by law. This principle also applies to IPR, which can be transferred based on a will. Article 1 point 1 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 60 of 2016 on Procedures for Reporting Wills and Requests for Electronic Will Certificates ("Permenkumham No. 60/2016") defines a will as a document expressing a person's wishes for what should occur after their death, and which can be revoked by the person who made it. According to Tan Thong Kie, a will is a document stating the testator's intentions for after death. Similarly, Ardella Firdasari and Liza Priandhini define a will as a person's final wish to be fulfilled after their death, which may include the transfer of assets, liabilities, or other instructions. As outlined in Article 931 of the Civil Code, wills can take various forms: holographic (handwritten by the testator), public (general), or closed (secret). Aside from emergency situations covered in Articles 946–949 of the Civil Code, the creation of a will generally involves a Notary. Even if someone writes their own will, it must still be formalized or stored through a Notary's deed. Once a will is documented by a Notary, it must be reported to the Central Register of Wills maintained by the Directorate General of General Legal Administration at the Ministry of Law and Human Rights of the Republic of Indonesia. This report must be submitted within five days during the first week of the following month. The Notary is responsible for reporting any wills they created or received in the previous month within this timeframe.

Notaries also play an important role in the transfer of other forms of IPR, particularly in legal acts such as grants. A grant (*hibah*) refers to a gift given by a person during their lifetime to another person. Provisions related to grants are outlined in Articles 1666 to 1693 of the Civil Code. Specifically, Article 1666 defines a grant as an agreement in which the donor, while still alive, transfers an object to the recipient without compensation and in an irrevocable manner. The law only recognizes grants made between living persons. According to Article 1682 in conjunction with Article 1683 of the Civil Code, the legal act of granting must be executed through a Notarial deed.

A written agreement in the form of a Notary deed, which is a legally binding document with complete evidential power, can also be used to formally transfer IPR. As a genuine document, a notarial deed represents the formal truth based on the data that the parties gave the notary. However, it is the notary's responsibility to make sure that the deed's contents are clear and accurately represent the parties' wishes. Reading the deed out loud and giving the parties access to pertinent information, such as applicable laws and regulations, accomplishes this. Consequently, the parties are able to decide with knowledge whether or not to accept and sign the deed.

The Role of Notaries in the Transfer of IPR

The notary's duty is inextricably linked to the transfer and transfer of intellectual property. Throughout the procedure, making sure that it complies with rules and regulations and giving the parties concerned a sense of security and trust until a document proving the transfer of intellectual

property is issued. Broadly speaking, there are at least 3 roles of Notaries, namely Notaries as Proof Providers, Notaries as Third Trusted Parties, and Notaries as Compliance Keepers

1. Notary as a Proof Provider

According to Herlien Budiono, until now the State does not have a "party or body" to make evidence for the benefit of the public, and that is the role of a Notary. Notary is an extension of the state designated as a public official. As a public official, Notaries are not part of the executive, nor part of the legislature nor part of the judiciary, only part of the state administrator.

Notarial deeds serve as evidence for the transfer of Intellectual Property Rights (IPR) and are governed by implementing regulations that supplement the main IPR laws. For trademarks, Article 39 paragraph (1) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 67 of 2016 on Trademark Registration as amended by Regulation Number 12 of 2021 (hereinafter referred to as the "Trademark Registration Regulation") states that deeds of grants and agreements can be used as proof of transfer of rights. In the case of copyright, Article 8 of Government Regulation Number 16 of 2020 on the Registration of Works and Related Rights (referred to as the "Regulation on Registration of Works") requires the submission of documents evidencing the transfer of rights, and/or their translations into Indonesian, as part of the registration process.

For industrial designs, Article 38 of Government Regulation Number 1 of 2005 on the Implementation of Law Number 31 of 2000 on Industrial Design (referred to as the "Implementation Regulation for Industrial Design") mandates that any application to register a transfer of design rights must be accompanied by documentation proving the partial or full transfer of those rights. Regarding trade secrets, the explanation of Article 5 paragraph (1) of the Trade Secrets Law specifies that transfers based on agreements should be made through a deed due to the complexity and scope of the rights involved. Although the regulation does not explicitly state that this deed must be a notarial deed, in practice, the Directorate General of Intellectual Property Rights requires it to be in notarial form. Among all IPR types, only patents explicitly require that their transfer be conducted through a notarial deed.

A Notarial Deed serves as evidence with full evidentiary strength. The role of evidence in criminal and civil procedural law differs significantly. According to Achmad Ali, in criminal law, a judge is not only guided by legally valid evidence but also by their personal conviction regarding the defendant's guilt. In contrast, in civil law, a judge's decision must be based solely on lawful evidence.

In civil cases, a Notarial Deed is considered an authentic deed with absolute evidentiary weight. Article 1870 of the Civil Code states that "An authentic deed provides perfect proof between the parties and their heirs or successors regarding what is stated in it." This means that no further evidence is necessary, and the legal event such as the transfer of IPR is accepted as fact, making it nearly impossible for the involved parties to dispute it.

Notarial Deeds carry both formal and material evidentiary power. Formal proof demonstrates that the parties have declared what is written in the deed, while material proof confirms that the legal action or event described in the deed actually occurred. As a result, an authentic deed is presumed valid and accurate without requiring additional validation unless proven otherwise. This aligns with the legal presumption principle, which holds that an authentic deed must be considered valid until the opposing side can successfully challenge its authenticity. In essence, an authentic deed stands on its own as self-sufficient proof.

Notary as a Third Trusted Party

Due to their appointment and dismissal by the government, notaries are considered public officials who have certain executive and governmental authority to testify. Before performing his duties as a public official, the notary is required to swear an oath. Paragraph 2 of Article 4 of the UUJN governs the notary public's oath of office:

"I swear/promise:

that I will obey and be loyal to the State of the Republic of Indonesia, Pancasila and the Constitution of the Republic of Indonesia in 1945, the Law on the Office of Notary and other laws and regulations.

that I will carry out my position with trust, honesty, thoroughness, independence, and impartiality.

that I will maintain my attitude, conduct, and will carry out my obligations in accordance with my professional code of ethics, honor, dignity, and responsibility as a Notary.

that I will keep the contents of the deed and information obtained in the exercise of my position confidential.

that I am to be appointed to this office, either directly or indirectly, under any name or pretext, never and will never give or promise anything to anyone."

Moreover, Article 16 paragraph (1) highlights the duty of notaries to protect the interests of linked parties in legal acts and to behave in a trustworthy, honest, thorough, independent, and unbiased manner. The public trusts notaries because of their neutrality. Tan Thong Kie claims that a notary is regarded as a place where one may get trustworthy counsel, that all of the information he writes and stipulates (constabulary) is accurate, and that he is an effective document maker in a court of law.

This can be understood because there is a need for legal certainty by the community in the midst of their lives, especially in making agreements or agreements in economic activities. This trust in Notaries is based on the public's expectations for legal certainty in the long term, which is based on the freedom to act as actors in social and economic activities. Therefore, the third party in this case is a Notary, will assist the parties in drafting and formatting the agreement or agreement to be implemented. Notaries are considered as third parties who are trusted to explain the content of the agreement or agreement, both legally and in terms of the intention and intent of the parties. A notary is also required to fulfill other duties, such as maintaining the confidentiality of the deed's contents and the information gathered during its creation. This makes Notary a trusted position because the parties will submit data both related to their business activities and data related to their personal data. The parties who will make the transfer of IPR will voluntarily provide the data to the Notary, hence the obligation, so that there will be no irresponsible misuse of the data.

3. Notary as a Compliance Officer

It is once more using Article 1320 of the Civil Code as the foundation for an agreement's validity, which specifies that the requirements for an agreement's validity are:

- a. "the agreement of those who bind him;
- b. the ability to make an alliance;
- c. a specific subject matter; and
- d. a cause that is not forbidden."

When creating a deed, the notary will make sure that these four requirements are met. First, have the parties involved in the IPR transfer established a consensus on the agreement? Notaries are required to make sure that the parties agree with the terms of the IPR transfer agreement while creating deeds. This notary duty is further fulfilled by reading the deed in front of the parties to

ensure that the parties have grasped its contents and that the information contained within is accurate and in line with their wishes. Therefore, the parties are allowed to accept or reject the Notary's content before signing the deed as a form of agreement. This is also emphasized in Article 36 paragraph (3) letter c of the UUJN which states that the content of the Deed is the will and desire of the interested parties. Even in the event that one of the parties does not understand Indonesian, the Notary is obliged to translate or explain the contents of the deed into a language understood by the party concerned. Deeds that are already an agreement are prohibited from being changed to their contents, except by the agreement of the parties. The procedure for making these changes has also been determined in the UUJN.

Legal competence is the second requirement for the agreement's legitimacy. In terms of mature age, capacity to do legal acts, signing power, and whether or not specific other parties' consent is required for the transfer action, the notary will make sure that the party transferring intellectual property is the legally allowed party. In Indonesian laws and regulations, the legal action to be taken determines the age of adulthood. The key is that the transfer is executed by a legally capable party in compliance with applicable rules and regulations.

The third condition for the validity of an agreement is a specific issue. In order to be used as an object of transfer, the Notary must ensure that the type of IPR has been registered in accordance with the laws and regulations in Indonesia. Whether the transferred IPR is a trademark right as regulated in the Trademark Law, or Copyright as regulated in the Copyright Law, or Patents regulated in the Patent Law and so on. If it turns out that the IPR has not been registered, the Notary can provide legal counseling on what to do in order to mitigate the legal risk. This is also in line with the legal obligation of Notaries to comply with the applicable laws and regulations in Indonesia.

Notary compliance with the applicable laws and regulations in Indonesia is also manifested in the form of checking whether the IPR to be transferred has been registered with the relevant ministry or not. Notaries in this case can do several things such as searching databases, requesting certificates and checking official documents. First, the database search is carried out online through the official website of the Directorate General of Intellectual Property of the Ministry of Law of the Republic of Indonesia (hereinafter referred to as "DJKI"). Second, by submitting an application for a certificate of IPR registration status to the DJKI. At the time of submitting this application, of course, it must include complete information about the IPR that the status of the IPR to be checked. Third, through the examination of the documents that have been owned. Such things show the prudence of the Notary in carrying out his position in making authentic deeds.

The notary will also check whether there is a prohibition on the transfer of IPR. To answer these questions, the Notary will ask for related documents to be studied first so that at the time of transfer of rights marked by the signing of the Notary deed, the four conditions have been met. This is the fundamental difference if the agreement or agreement is not made in the form of a Notary deed, then no third party will validate the elements of the validity of an agreement based on Article 1320 of the Civil Code.

CONCLUSION

This research underscores the pivotal role of Indonesian notaries in ensuring legal certainty and protection in the transfer of Intellectual Property Rights (IPR) through their functions as proof providers, trusted third parties, and compliance keepers. By drafting authentic deeds, notaries mitigate disputes, validate transactions, and uphold regulatory standards, thereby fostering trust in IPR transactions. However, as technology and digitalization continue to reshape IPR management, future research should explore the integration of advanced tools, such as blockchain and artificial

intelligence, into notarial practices to enhance efficiency and transparency. Additionally, empirical studies could assess the challenges notaries face in adapting to evolving IPR laws and cross-border transactions, offering practical recommendations for legal reforms and professional training. Such advancements would further solidify the notary's role in a rapidly changing legal and technological landscape.

REFERENCES

- Abady, A. R. P., & Rahayu, M. I. F. (2023). Penyuluhan Hukum Pembuatan Akta oleh Notaris Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris. *Journal on Education*, 5(2). <https://doi.org/10.31004/joe.v5i2.1087>
- Adjie, H. (2020). *Problematika dan solusi terpilih tentang hukum kenotariatan Indonesia* (Cet. 1). PT Citra Aditya Bakti.
- Atmaja, S. S. (2021). *Publikasi Jabatan Notaris Pada Akun Pribadi Media Sosial Ditinjau Dari Undang-Undang No. 2 Tahun 2014 Tentang Jabatan Notaris dan Kode Etik Notaris*. Universitas Islam Sultan Agung (Indonesia).
- B, I. W. A., Hafidz, M., & Poernomo, S. L. (2020). Responsibilities Of A Notary Againts An Authentic Deed Made Before A Notary. *Meraja Journal*, 3(3). <https://doi.org/10.33080/mrj.v3i3.132>
- Damayanti, F. (2022). *Tinjauan Yuridis Peran Dewan Kehormatan Notaris Dalam Memberikan Sanksi Terhadap Notaris Yang Melakukan Pelanggaran Kode Etik Jabatan Notaris*. Universitas Islam Sultan Agung (Indonesia).
- Firdasari, A., & Priandhini, L. (2024). Pewarisan secara lompat tangan (Fidei Commissaire) kepada cucu. *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)*, 4(6), Artikel diterbitkan September 2024.
- Handoko, R. F. (2021). *Politik Hukum Kenotariatan Undang-Undang Jabatan Notaris Untuk Meningkatkan Kesejahteraan Notaris*. Universitas Islam Sultan Agung (Indonesia).
- IRIANTORO, A. (2022). Position, Tenure And Responsibility Of The Notary In Carrying Out The Position Of Notary. *Protection: Journal Of Land And Environmental Law*, 1(2). <https://doi.org/10.38142/pjlel.v1i2.515>
- Mardiyah, M., Setiabudhi, I. K. R., & Swardhana, G. M. (2017). *Sanksi Hukum Terhadap Notaris Yang Melanggar Kewajiban Dan Larangan Undang-Undang Jabatan Notaris*. Udayana University.
- Muri, D. P. D., Prayogo, G., & Arif, F. (2018). The rights and obligations of notaries according to Indonesian law concerning notary position. *International Journal of Mechanical Engineering and Technology*, 9(8).
- Nita NurJanah, D. (2023). Legal Consequences of Authentic Deed Made by Notary after Declared Bankruptcy. *Authentica*, 6(1). <https://doi.org/10.20884/1.atc.2023.6.1.360>
- Putri, K. P. (2016). *Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Purna Bakti Terhadap Akta Yang Pernah Dibuat (Analisis Pasal 65 dan Pasal 66 Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris)*. Brawijaya University.
- Rafiqi, R., & Marsella, M. (2020). Legal Satisfaction of Electronic Authentic Diction Made Notary in Facing Industrial Revolution 4.0. *Budapest International Research and Critics Institute (BIRCI-Journal) : Humanities and Social Sciences*, 3(1). <https://doi.org/10.33258/birci.v3i1.778>

- Ramadhan, E. D., & Suhardini, E. D. (2019). Pertanggungjawaban Pidana Notaris dalam Pembuatan Akta yang Didasarkan Pada Keterangan Palsu Dihubungkan dengan Kitab Undang-Undang Hukum Pidana dan Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan. *Wacana Paramarta: Jurnal Ilmu Hukum*, 18(1). <https://doi.org/10.32816/paramarta.v18i1.64>
- Ridwan, M. (2020). Reconstruction Of Notary Position Authority and Implementation Of Basic Concepts Of Cyber Notary. *Jurnal Akta*, 7(1). <https://doi.org/10.30659/akta.v7i1.9432>
- Rizal, M. Y. (2019). Akibat Hukum Bagi Notaris Yang Rangkap Jabatan Sebagai Pejabat Negara Berdasarkan Undang-Undang Nomor 30 Tahun 2004 Jo Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris. *Jurnal Ilmiah Hukum*, 13(1).
- Septiandi, P., & Sudiro, A. (2023). Analysis of Judges' Legal Considerations on the Validity of Authentic Deeds Made By a Notary. *Edunity Kajian Ilmu Sosial Dan Pendidikan*, 2(10). <https://doi.org/10.57096/edunity.v2i10.118>
- Simarmata, F. J. R. (2020). Pelaksanaan Sanksi Bagi Pejabat Notaris Berdasarkan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris. *Lex Et Societatis*, 8(2). <https://doi.org/10.35796/les.v8i2.28495>
- Sonbai, E. A. P. K., Mahendrawati, N. L. M., & Santika, I. B. A. P. (2022). Qualification Of The Prudence Principle Of Notary On Implement The Position Based On Act Of Notary Position. *Notariil Jurnal Kenotariatan*, 7(1). <https://doi.org/10.22225/jn.7.1.2022.32-38>
- Tanaya, I. P. A. (2023). Validity Of Authentic Deed Made By Notary In Suspect Status. *Notariil Jurnal Kenotariatan*, 8(2). <https://doi.org/10.22225/jn.8.2.2023.73-81>
- Thong Kie, T. (2007). *Studi notariat dan serba-serbi praktek notaris* (Cet. 1). PT Ichtiar Baru Van Hoeve.
- Wibowo, W. S., Najwan, J., & Bakar, F. A. (2022). Integritas Notaris Sebagai Pejabat Pembuat Akta Autentik dalam Undang-Undang Jabatan Notaris. *Recital Review*, 4(2), 323–352.