

Role and Authority of Notaries as Officials in Making Authentic Deeds for Transfer of Rights or Imposition of Guarantees on Intellectual Property Rights in Indonesia

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Abstract: Notary is an official who has the authority to make an authentic deed as stipulated in Act Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position. The authority of the Notary in making the authentic deed also has relevance to the issue of intellectual property rights in the form of making an authentic deed for the transfer of intellectual property rights. In addition, the notary also has the authority to make authentic deeds in the imposition of collateral for intellectual property rights. Legal arrangements for intellectual property rights in Indonesia are spread in various laws. Therefore, it is necessary to conduct a normative study to identify how the regulations concerning the role and authority of a notary public in transferring rights and imposing guarantees on intellectual property. The study is important to know whether or not the problem has been accommodated properly in the legislation. Based on the results of the discussion it appears that there is a need for regulations in the form of implementing regulations for the imposition of fiduciary guarantees on intellectual property rights.

1 INTRODUCTION

Notary is an official who has the authority to make an authentic deed as stipulated in Act Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position. Authentic deeds are needed as a basis for proof when disputes occur. According to Sudikno Mertokusumo, the deed is a letter that is given a signature, which contains events that are the basis of a right or engagement, which were made from the beginning intentionally for the purpose of proof (Mertokusumo, 2010). With regard to the authority to make authentic deeds, the Notary must truly understand the provisions regulated by law so that justice and legal certainty for the community is maintained properly (Andasmita, 1983).

In the context of intellectual property rights, Notary has the authority to make authentic deeds regarding the transfer of intellectual property rights and the authority to make authentic deeds regarding the imposition of guarantees in the form of intellectual property.

The transfer of intellectual property rights can occur due to inheritance, grants, wills, written agreements or other reasons justified by legislation (Sujatmiko, 2010). The transfer of intellectual property rights is carried out by making a license agreement. The license agreement is contained in the form of a deed signed by the grantor and the recipient of the license and is carried out before a notary as an authorized official (Murniati, 2015). For example, the transfer of rights to a trademark requires the role of a notary for the making of the transfer deed (Fatmawati, 2015).

According to its material status, intellectual property rights include movable objects that are intangible (Article 499 of the Civil Code). Intellectual property rights can be used as collateral for debt because they are material rights that have economic value. Conceptually, intellectual property rights contain two types of rights, namely moral rights and economic rights. Moral rights are fundamental and cannot be taken by others. Moral rights are inherent in the creator (Schere, 2018). According to Article 16 paragraph 2 of Law No. 28 of 2014 concerning Copyright that can be transferred

only in the form of economic rights, while moral rights remain attached to the Creator. Copyright Transition must be done clearly and in writing either with or without a notarial deed.

Debt collateral in the form of intellectual property rights can occur as a result of technological progress and development. Intellectual property rights can be in the form of scientific, literary and technological works that are born from human creativity so as to make the work have economic value. The most appropriate form of guarantee in this context is fiduciary guarantee. The fiduciary guarantee deed is made by a notary public to provide legal certainty and legal protection for the parties (Mulyani, 2012).

Regarding the issue of intellectual property rights, it is important for Indonesia as a member of the WTO. Indonesia has ratified the agreement on establishing the WTO through Law No. 7 of 1994. The legal consequence of ratification is that the Government of Indonesia is bound to all WTO agreements including the The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The WTO consensus on intellectual property rights contained in TRIPs has become the basis for the regulation of intellectual property rights in the Indonesian national legal order up to now (Sutiarnoto, 2014).

Based on the description above, it can be seen how important the role and authority of the notary in the field of intellectual property rights, especially regarding the transfer of rights and the imposition of collateral. This paper will conduct a normative analysis of the role and authority of the Notary in making authentic deeds related to intellectual property rights in the legislation in force in Indonesia.

2 METHODOLOGY

This paper uses the normative juridical method. Normative legal research method or literature law research method is a method used in legal research conducted by examining the library materials in the form of applicable legal norms contained in the legislation or judgment decisions (Soekanto, 1986). The normative juridical method is used in this paper to analyze whether the legal instruments concerning intellectual property rights have sufficiently regulated the role and authority of the notary public in the transfer of intellectual property rights and the imposition of collateral in the form of intellectual property.

3 RESULT AND DISCUSSION

In general, intellectual property rights can be classified into two parts: copyright and industrial property rights (Patents, Brands, Industrial Designs, Integrated Circuits, Trade Secret, Geographical Indication, and Plant Variety Protection) [10]. considering the wide variety of intellectual property rights as mentioned above, the following discussion is limited to copyright and patents.

3.1 Role and Authority of Notary in Making Deed for Transfer of Intellectual Property Rights

The Copyright can be transferred, either in whole or in part because of inheritance, grants, endowments, wills, written agreements or other justified reasons in accordance with the provisions of the prevailing laws and regulations.

The transfer of economic rights to copyright is regulated in Article 16 of Law No. 28 of 2014 concerning Copyright. The explanation section of the above provisions states that the transfer is only for economic rights, while the moral right remains attached to the Creator. The role and authority of a notary can be found in this context where the transfer of copyright must be carried out clearly and written in a notarial deed. Unfortunately this article still confirms the transfer of copyright without a notarial deed. Actually the transfer of copyright with a notary deed will provide more certainty and legal protection for the parties.

The transfer of patent rights is regulated in Article 74 of Law No. 13 of 2016 concerning Patents. As with copyright, transfer of rights to patents occurs because of inheritance, grants, wills, endowments, written agreements or other justifiable reasons based on the provisions of the legislation. The transfer of the patent does not remove the inventor's right to keep his name and identity included in the patent, because the right is an inherent moral right (Djumhana, 2014).

In addition, in fact according to the prevailing legislation the Notary has the role and authority to make authentic deeds regarding the transfer of intellectual property rights not to register for intellectual property rights, but in fact many parties authorize the notary to register the right to property intellectual. The institution that has the role and duty to register intellectual property rights is the Consultant Institute for Intellectual Property Rights.

3.2 Role and Authority of Notaries for Debt Guarantees in the Form of Intellectual Property Rights

Act No. 28 of 2014 concerning Copyright has regulated that Copyright can be used as an object of Fiduciary Guarantee. According to Sudjana, the guarantee institution that is most likely to be charged to Copyright as an object of collateral for debt is a fiduciary guarantee institution (Sudjana, 2012).

The imposition of fiduciary guarantees is regulated in Article 4 through Article 10 of Law Number 42 of 1999 concerning Fiduciary Guarantees. The nature of a fiduciary guarantee is a follow-up agreement (*accessoir*) of a principal agreement which creates an obligation for the parties to fulfill an achievement. The imposition of a fiduciary guarantee is carried out in the following ways: (a) Made by notarial deed in Indonesian, (b) Debt whose repayment is guaranteed by a fiduciary guarantee (Salim, 2014).

With regard to copyright which is used as an object of fiduciary guarantee, in this case the notary has the authority to make his fiduciary collateral deed. Because of 2 (two) rules, namely the Fiduciary Guarantee Law and the Copyright Act, there is no reason for the notary to refuse to make a fiduciary deed on copyright.

Fiduciary guarantee is a special guarantee that arises because of a special agreement between the debtor and the creditor. Fiduciary guarantees can be executed without going through a court decision (*execution parate*) because the head of the Fiduciary Guarantee Act has written the executorial title in the form of the sentence "For Justice Based on the One God Almighty". The regulation on fiduciary guarantee in Indonesia is contained in Law Number 42 of 1999 concerning Fiduciary Guarantees. secondly the related laws and regulations, normative Copyright can be used as an object of fiduciary guarantee.

However, in practice, Article 6 of Law Number 42 of 1999 concerning Fiduciary Guarantees stipulates that the Fiduciary Guarantee deed made by a Notary must include the guarantee value and the value of the object used as the object of fiduciary guarantee, this makes a new question, where is the value of the object obtained? (Setianingrum, 2016).

The challenge for notaries in the future when faced with this problem is in the case of making a fiduciary loading deed, it is necessary for the Notary to explain in detail in the fiduciary guarantee deed even more so in relation to the description of the object that is the object of collateral, guarantee value

and the value of the object that becomes object of fiduciary guarantee.

This is because the collateral for copyright is not something that is tangible in nature but that is submitted for collateral is a "right" which is intangible. Regarding the description concerning the object guaranteed in the deed, the notary can request the Creator as the Fiduciary Giver to submit the work that is owned along with documents that prove ownership of the work (Sary, 2016). Although the protection of Copyright adheres to the declarative system (does not require registration), but in order to protect the Economic Right of the creation, the creators must register the Copyright to the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights, so that there is one certainty the law of who is entitled to guarantee a Copyright.

4 CONCLUSIONS

Based on the results of the above discussion, it can be seen that the transfer of rights or the imposition of collateral for intellectual property rights requires the role and authority of the notary public. This is based on the fact that an authentic deed made by a notary will be a strong proof that can provide legal certainty and protection for the parties. When compared, the Copyright Act more explicitly regulates the role and authority of the Notary rather than the Patent Law because it mentions it explicitly. But unfortunately the Copyright Act still justifies the transfer of rights to the work without involving a notary. Regarding the imposition of a debt guarantee on intellectual property rights, there is a need for implementing regulations considering that the existing laws do not have detailed arrangements.

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