

THE PRECAUTIONARY PRINCIPLE IN THE TRANSFER OF TRADEMARK RIGHTS BY NOTARIES

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ABSTRACT

Keywords: precautionary distribution of trademark rights	Notary; principle; distribution of trademark rights	The outcome of business activities in the field of services or trade can be identified as a trademark or service mark. The term "trademark" refers to a symbol that can be in the form of a picture, name, numbers, color arrangement, or a combination of these elements, possessing the ability to distinguish and be used in the trade of goods or services. Trademarks are intangible entities that can be transferred, including through agreements transferring ownership rights to the trademark. In the context of a trademark transfer, a notary plays a role in drafting the transfer deed. The purpose of this research is to comprehend and analyze the notary's role in the preparation of trademark transfer deeds and evaluate the notary's responsibility in providing legal protection to the parties involved, considering the intangible nature of trademarks. Legal data collection techniques involve primary and secondary legal materials. The research method employed is a normative juridical approach with legislative and conceptual perspectives. Based on the research findings, it is revealed that the principle of caution is one of the key principles that must be followed or adhered to by a notary in the execution of their duties.
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Introduction

The use of law is very important for individuals, especially within the framework of the global economic system. The need for law arises from the existence of legal legislation, a clear legal framework, legal predictability, and strict enforcement by the authorities. Notaries are one example of law enforcement officials in the civil field.

Notaries function as General Officers or (Openbaar Ambtenaar) and are obliged to behave professionally. This is due to the responsibility of Notaries as representatives of the state in carrying out their obligations and duties, especially in making valid deeds as valid evidence. In carrying out its responsibilities, Notaries must carry out their activities independently, free from outside influences, especially executive influences.

Designations for the results of commercial endeavors in a service industry or trade are sometimes referred to as trademarks or service marks. A "brand" is a distinguishing symbol, such as an image, name, number, color arrangement, or mixture of these components, used in commercial transactions to distinguish and promote goods or services.

A trademark right is a legally protected privilege granted by the government to the owner of a registered mark, recorded in the general register of marks, for a certain period of time. The owner of the right has the power to use his own trademark or give

consent to other companies for its use. The main purpose of trademark registration is to ensure legal protection of the rights of the trademark owner, especially when the mark has been officially registered at the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia. Moreover, ownership of registered marks can be transferred to third parties in accordance with the provisions contained in Article 41 paragraph (1) of Law Number 20.

For brand buying and selling transactions, it is important to have evidence to ensure legal certainty and fairness. Article 1867 of the Civil Code states that "proof by writing can be done either by authentic writing or by writing under the hand. As mentioned earlier, Notaries have the authority to make authentic deeds. However, in practice, there is often a transfer of rights to registered marks without using an authentic deed made by a Notary".

Within the scope of Intellectual Property Rights, the use of Notary Deed is only required for agreements relating to Plant Variety Protection (PVP) and License. However, there are no specific restrictions that require the use of notarial deeds for the transfer of trademark rights. As a result, this can lead to skepticism and legal ambiguity regarding the procedure for transferring ownership of a brand. Rahmi Jened emphasized that the transfer of trademark rights cannot be done through oral communication, but there is a need for a notarial deed because there is a transfer of ownership rights.

To transfer Intellectual Property Rights, especially trademark rights, it is necessary to carry out a registration process. This includes registration of rights in the General Register of Marks at the Directorate General of Intellectual Property Rights, as well as announcements in the Official Trademark Gazette (BRM) and notifications to trademark owners. The purpose of registering the transfer of rights of a mark is to establish its legal authority over third parties. The purpose of this registration requirement is to ensure "Legal Protection" by enabling effective legal protection of rights, in particular for future rights holders. Further, this registration mandates that any new legal consequences arising from the transfer of trademark rights must be formally documented in the General Register of Marks (DUM). The purpose of this stage is to streamline supervision and ensure legal certainty.

Based on the previous background description, the problem can be formulated:

1. How is the implementation of the principle of prudence of Notaries in the implementation of deed making?
2. What is the role of Notaries in transferring rights to registered marks based on Law Number 20 of 2006 concerning Marks and Geographical Indications?

Research Methods

This research uses a Juridical-Normative approach as a legal research technique. Juridical-Normative Studies is a type of legal study that focuses on literature and document research. Both sources focus only on written rules or other legal entities. For example, secondary data collection involves access to legal sources at the secondary, primary, and tertiary levels.

The methodology used is a technique that relies on established legal norms. Statutory law techniques include examination of laws and regulations relating to the particular issue or subject matter being examined. This approach includes checking conformity and compliance between multiple laws or between regulations and legislation.

The legislative approach and the conceptual approach are two approaches used to overcome this problem. Investigating any laws and regulations pertaining to the legal issue under consideration is the first step in the legislative approach. In the preparation of research proposals, conceptual methods require an understanding of theories and points of view that arise in legal science.

As explained earlier, the purpose of this study is to analyze the validity of deeds made for marks that are still in the process of registration, as well as to examine the legal consequences for notaries if the trademark application is not registered in the General Register of Trademarks. Within the framework of the legislative approach, this study will analyze related regulations, including UUJN, UUPJN, BW (Burgelijk Wetboek), Trademark and Geographical Indication Law, and other regulations related to the role of Notaries. This research uses conceptual methodology by conducting a thorough examination of law books and law magazines. This strategy aims to identify legal terminology, concepts, and principles relevant to the particular legal topic under study.

Results and Discussion

Implementation of Notary Precautionary Principles in the Implementation of Deed Making

Notaries or their positions are mandated by legal regulations with the aim of providing assistance and services to the public that require authentic written evidence related to legal events or actions. In accordance with this principle, those who are elected as Notaries are required to have a strong spirit in helping the community. People who believe that the Notary has carried out their duties can choose to give honorarium as a form of appreciation for the services provided. Therefore, the importance of the Notary office arises when the public needs it. Notaries must adhere to the precautionary principle which mandates that Notaries behave prudently in order to safeguard the interests of those who entrust their responsibilities and positions. The purpose of applying the precautionary principle is to guarantee that notaries consistently function within the appropriate legal framework. By using the precautionary principle, the aim is to maintain public trust in Notaries, thus fostering self-confidence and encouraging the public to utilize Notary services. Every action requires careful consideration.

Notary carelessness in drafting authentic deeds to information provided by parties related to subjects or objects is often the cause of criminal law problems in notary practice. This may give rise to unlawful activities, such as forgery of papers or making false claims by parties involved in making a valid deed certified by a Notary.

Notaries must be very careful and stick to the concept of prudence in making valid deeds as their responsibility and role. This problem arises because there are often legal problems with authentic deeds made by Notaries, where certain parties commit illegal acts such as secretly inserting false deeds and misleading statements into Notary Deeds. To reduce the possibility of Notaries being charged with criminal acts due to unlawful acts, it is necessary to make changes to laws and regulations relating to the role of Notaries. This aims to provide advice and direction to Notaries in order to improve their diligence, thoroughness, and thoroughness in the process of making a valid deed.

The precautionary principles that must be adhered to by Notaries in the deed making process include: accurately identifying the parties involved, conducting thorough verification of the data of the persons and property involved, allowing sufficient time for deed preparation, being careful, thorough, and thorough in the deed making process, complying with all technical requirements for making a deed, and immediately reporting any signs of money laundering in the the transaction to the Notary. Compliance with this precautionary code is seen as important for notaries to proactively mitigate potential legal complications related to making a valid deed in the future.

To mitigate potential dangers such as sanctions or cancellation of legal deeds, both Notaries and interested parties must be more careful and show the highest sincerity in making valid deeds before a Notary. This requires increased attention and compliance with relevant legal regulations, guided by moral and ethical principles.

This approach is a feasible way to apply the precautionary principle in identifying observers. The discrepancy between the applicant's data and the data on the Identity Card can be seen from the physical and behavioral characteristics that can be observed. A Notary Public must possess traits such as knowledge, ethics, and professionalism. The notary must have a comprehensive understanding of all legal proceedings that the parties seeking his services wish to undertake. Proficiency and expertise in the field of law have significance. If the Notary Public fails to understand the legal activities required by the parties involved, this indicates a lack of necessary understanding. If the Notary Public has the capacity to carry out the requested legal activities on behalf of the parties, then this can mitigate potential losses and conflicts that may arise both for the parties and the Notary itself.

Once all formal criteria have been met by the parties involved, the notary has an adequate basis to proceed with appropriate legal activities. Notaries are not obliged to actively seek material truth, but should investigate any uncertainties or anomalies in the papers necessary for the making of a legal deed. In such cases, Notaries should diligently examine the deeds of the parties to find out the material truth. To adhere to the principle of prudence, the Notary Public must refuse to make the original deed if there are uncertainties or inaccuracies in the documents of the parties. This action is taken to proactively avoid potential conflicts in the future.

The role of Notaries in transferring rights to registered marks based on Law Number 20 of 2016 concerning Marks and Geographical Indications

One of the exclusive rights of trademark holders is the right to transfer rights regulated in Article 41 paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical Indications: "Rights to marks can be transferred or transferred through a. inheritance, b. will, c. endowment, d. grant, e. Agreement, f. Or any other cause permitted by law as stated."

The right to the mark is only obtained after it is registered by Article 3 of Law Number 20 of 2016 concerning Marks and Geographical Indications, meaning that property rights to the mark are obtained when the mark is registered in the general register of marks so that it can be transferred. However, there are further arrangements related to the rights transfer in Article 41, paragraph (8) of Law Number 20 of 2016 concerning Marks and Geographical Indications. The transfer of rights to marks, as referred to in paragraph (1), can be carried out during the trademark registration application process. This means that marks still in the application process can be transferred to other parties, while the mark is still likely to be rejected, so the applicant does not get the right.

For marks that are still being applied for, then the rights to the mark have not arisen because the rights to the mark are obtained after the mark is registered, so if it is transferred to another party, it will pose a risk, especially the transfer of rights due to an agreement with the basis of the right to the trademark sale and purchase agreement. Trademark rights are intangible assets with very high economic value, which are the object of sale and purchase; the provisions of Article 1457 BW to Article 1540 BW apply as long as they are not explicitly regulated.⁸ Sale and purchase by Article 1457 BW is An agreement by which one party binds himself to deliver an object and the other party to pay the agreed price. If the transfer of trademark rights, primarily buying and selling, is carried out on the brand being applied for and during the application process, there are obstacles, the buyer will be harmed.

Transferring trademark rights must be accompanied by supporting documents, especially the basis of sale and purchase rights. Then, the documents are in the form of an agreement or deed of sale and purchase then the agreement or deed of sale and purchase is recorded in the trademark unum register and announced in the official brand gazette. The rights transfer does not legally affect third parties if it is not recorded. The process of transfer of rights occurs when the agreement or deed of sale and purchase is agreed upon by both parties, according to article 1458 BW: "The sale and purchase shall be deemed to have taken place between the two parties, immediately after which these persons reach an agreement on the property and the property even though the property has not been delivered, nor the price has not been paid."

Meanwhile, the recording carried out at the Directorate of Marks and Geographical Indications is not a registration but only a recording of notifications, so it has legal consequences for third parties, including the transfer of rights when the trademark application is also recorded. At the time the sale and purchase are carried out,

the right has passed from the seller to the buyer, including the mark that is being applied for where the applicant under civil law does not have a basis for ownership to transfer rights because the mark has not been registered in the general register of marks. Problems occur when a trademark transfer has not been registered or recorded and an authentic deed is made before a Notary.

On the one hand, a Notary Officer cannot refuse to make such an agreement if it has fulfilled the legal conditions of the 1320 BW agreement and as long as it is not made up by law. Problems will arise when the deed of rights transfer to a mark that has not been registered has been authentically made by a Notary Officer, but the mark is not registered in the General Register of Marks. Therefore, it is necessary to investigate further what the impact of making this Unregistered Trademark Transfer Agreement is before a Notary because if the mark really cannot be registered, it may result in the agreement becoming null and void, which will undoubtedly have consequences for Notaries who make the deed of Unregistered Trademark Transfer Agreement.

The notary's duty in making a deed of transfer of a mark that has not been registered is essential to ensure that the transaction and deed of transfer of the mark are valid and according to applicable laws and regulations. In addition, notaries also play a role in protecting intellectual property rights to transferred marks by ensuring that the deed of transfer of marks made has met the formal and material requirements stipulated by laws and regulations.

Conclusion

Notaries have a very important and fundamental role in making unregistered trademark transfer deeds. Notaries have the duty to ensure the completeness and correctness of all letters and statements given by the parties concerned. Furthermore, the notary must verify that the application for transfer of trademark rights has been submitted but has not been officially registered with the Directorate of Trademark and Geographical Indications of the Directorate General of Intellectual Property (DJKI).

With the fulfillment of these conditions, the Notary Public is given the responsibility to make a deed of trademark transfer. This document contains the identities of the parties involved, a thorough description of the transferred trademark, and the terms and circumstances governing the transfer of rights. In this process, the Notary is responsible for ensuring that the deed of transfer of the mark has met the formal and substantive requirements outlined in the laws and regulations. Notaries are required to provide copies of the deed of transfer of marks to all transacting parties.

Furthermore, Notaries are required to officially register or document the deed of transfer of the mark to the Directorate of Marks and Geographical Indications, Directorate General of Intellectual Property (DJKI) in order to maintain the intellectual property rights related to the transferred mark. Therefore, notary duties not only cover the legal aspects of a transaction, but also include securing transferred intellectual property assets."

Furthermore, the Notary Public must provide important information to all transacting parties, including the party who waives the rights to the mark (the transferor) and the party who acquires the right to the mark (the receiving party), regarding the consequences that may arise if the mark is not properly registered in the Register. General Brand. This aims to ensure that Notaries as the makers of the transfer deed are not subject to lawsuits.

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