

The Urgency of Notarial Deeds in the Transfer of Plant Variety Protection Rights

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Abstrak: *This research discusses the urgency of notarial deeds in the transfer of plant variety protection rights, focusing on the regulations governing the aforementioned matters and the applicable laws and regulations. This normative legal research utilizes primary legal sources, including Law No. 29 of 2000 on Plant Varieties, Law No. 02 of 2014 on Amendments to Law No. 30 of 2004 on Notary Positions, and Presidential Regulation of the Republic of Indonesia No. 14 of 2004 on the Requirements and Procedures for the Transfer of Plant Variety Protection and the Use of Protected Varieties by the Government. The article concludes by examining the legal force of notarial deeds in the transfer of plant variety protection rights and the laws regulating these matters.*

Keywords: *Notarial Deed, Plant Varieties, Transfer of Rights*

INTRODUCTION

Intellectual Property is intangible wealth that originates from personal intellect. All assets in the form of intellectual property must have a legitimate owner and, therefore, need to be protected.¹ For the principles of intellectual property protection to be effective, these principles must be incorporated into legal provisions (Rule of Law) under national law, and these legal provisions must be valid and binding on all parties. According to the Rule of Law, intellectual property owners must register their rights, and each registered right is evidenced by a registration deed.² At the same time, legal protection of intellectual property also constitutes a legal system, consisting of elements such as the rights holder, law enforcement officers, registered officials, and

law violators. Furthermore, the objects of legal protection, which are regulated by law, include copyrights, patents, trademarks, trade secrets, industrial designs, layout designs of integrated circuits, and plant variety protection.³

Intellectual property rights are inseparable from legal discussions concerning property, as intellectual property falls under the category of ownership rights. In the Civil Code, specifically in Book Two on Property, Article 570 states:

"Ownership is the right to freely enjoy the utility of a property and to act freely upon that property with full sovereignty, provided that it does not violate the law or public regulations established by an authorized authority, and does not infringe upon the rights of others; all of this is without

¹ Safitri, A. (2022). *Perlindungan Hukum Bagi Pemilik Konten Nft (Non-Fungible Token) Menurut Sistem Hukum Hak Kekayaan Intelektual* (Doctoral Dissertation, Universitas Jambi).

² Mustafa, M. E., & Sh, M. (2022). *Prinsip-Prinsip Beracara Dalam Penegakan Hukum Paten Di Indonesia, Dikaitkan Dengan Trip's-Wto*. Penerbit Alumni.

³ Taufik H Simatupang, "Sistem Hukum Perlindungan Kekayaan Intelektual Dalam Rangka Meningkatkan Kesejahteraan Masyarakat (Law System Of Intellectual Property Protection In Order To Improve People Prosperity)," *Penelitian Hukum De Jure* 17, No. 2 (May 30, 2017): 30–35.

prejudice to the possibility of the revocation of that right for public interest in accordance with legal provisions and with compensation."⁴

Legal protection of intellectual property rights in the production of plant varieties includes the economic benefits and other rights for plant breeders. This legal protection is essentially the implementation of various international obligations that Indonesia must honor, including those related to the United Nations Convention on Biological Diversity and the International Convention for the Protection of New Varieties of Plants. Under these agreements, every country, including Indonesia, is required to have and enforce regulations in the field of intellectual property rights.⁵

The provisions that can serve as a reference in reproductive activities are Article 55 of Law No. 12 of 1992 on the Plant Cultivation System and Article 45 of Government Regulation No. 44 of 1995 on Seed Production. However, the allocation based on these two provisions is sociological in nature, meaning it provides the authority to designate the results of discoveries and allocate a certain amount of money intended to cover the costs of selection activities.⁶ To support breeding activities and create a conducive environment for the development of the domestic seed industry, Law No. 29 of 2000 on "Plant Variety Protection" was enacted and promulgated on December 20, 2000. The creation of this law adopted many principles

from the UPOV (International Union for the Protection of New Varieties of Plants)⁷

METHODOLOGY

This research uses a normative legal research approach, which involves a process of discovering legal principles systematically, along with legal principles and doctrines used to address legal issues.⁸ The research employs a statute approach, which involves examining and analyzing all laws and regulations related to the legal issue at hand.⁹ In this case, it focuses on analyzing Law No. 29 of 2000 on Plant Variety Protection. The legislation used in this research includes Law No. 29 of 2000 on Plant Varieties, Law No. 02 of 2014 on Amendments to Law No. 30 of 2004 on Notary Positions, and Presidential Regulation of the Republic of Indonesia No. 14 of 2004 on the Requirements and Procedures for the Transfer of Plant Variety Protection and the Use of Protected Varieties by the Government. This research uses content analysis as a technique for analyzing legal materials. In this type of analysis, the documents or archives being analyzed are referred to as "texts."

RESULT AND DISCUSSION

Plant Variety Protection is a provision in Intellectual Property (IP) law that is relatively new in its history as an immaterial property right granted to individuals by the state. The regulation of Plant Variety Protection in Indonesia is driven not only by the UPOV convention but also by the emergence of TRIPS. As a member of the WTO, Indonesia is

⁴ Soesilo, "Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)," Pustaka Buana, (2020), Hlm 199.

⁵ Titin Titawati, Aline Febryani Loilewen, And Gede Tusan Ardika, "Perlindungan Hukum Bagi Pemulia Tanaman," *Unmasmataram* 14, No. 1 (March 2020), [Http://Journal.Unmasmataram.Ac.Id/Index.Php/](http://Journal.Unmasmataram.Ac.Id/Index.Php/).

⁶ Sahabat, M. R. (2021). *Perlindungan Varietas Tanaman Kelapa Bido Di Kabupaten Pulau Morotai Suatu Kajian Undang-Undang Nomor 29 Tahun 2000 Tentang Perlindungan Varietas Tanaman* (Doctoral Dissertation, Universitas Khairun).

⁷ Yuwono Prianto And Swara Yudhasmita, "Tanaman Genetically Modified Organism (Gmo) Dan Perspektif Hukumnya Di Indonesia," *Al-Kauniah: Jurnal Biologi* 10, No. 2 (August 21, 2017), <https://doi.org/10.15408/Kauniah.V10i2.5264>.

⁸ Sigit Sapto Nugroho, Anik Tri Haryani, And Farkhani, *Metodologi Riset Hukum*, Pertama (Surakarta: Oase Pustaka, 2020).

⁹ Nur Solikin, *Pengantar Metodologi Penelitian Hukum* | 2 (Pasuruan: Qiara Media, 2021), Hlm 58.

obligated to implement the provisions contained in TRIPS. Other international conventions related to Plant Variety Protection include: 1) The International Treaty for Plant Genetic Resources for Food and Agriculture, and 2) The Convention on Biological Diversity.

According to Article 1, paragraph 4 of Law No. 29 of 2000 on Plant Variety Protection, plant breeding is defined as "a series of research and development activities on a variety, following standard methods to produce new varieties and maintain the purity of the resulting variety's seeds." Plant breeding is not only aimed at producing new superior plant varieties but also at maintaining the purity of existing varieties. Traditional plant breeding techniques, which have been practiced for a long time, include conventional breeding through crossbreeding, genetic mutation techniques, and selection¹⁰

Plant Variety Protection (PVP) provides protection for products, in the form of seeds produced using both biotechnological and natural techniques, in the form of new plant varieties, including the requirements for protection and exceptions. Therefore, plant varieties not protected under patents can be protected under the PVP Law.

Regarding the granting of a plant variety protection license, the PVP rights holder is entitled to grant a license to other individuals or legal entities based on a licensing agreement. This license allows the recipient to enjoy the economic benefits of the PVP rights for a specified period and under certain conditions (Article 42 of the PVP Law). The licensing agreement must be registered with the PVP office and published in the PVP database, with a fee determined by the regulations.

The Plant Variety Protection Law grants notaries the authority to create agreements in the form of notarial deeds related to the transfer of intellectual property rights. Article 40, paragraph 1 of the PVP Law states that "PVP rights may be transferred or alienated due to inheritance, donation, will, notarial deed, or

other forms of agreement that meet the legal requirements of an agreement." The article also specifies that the transfer of rights made in a notarial deed is not considered an informal agreement.

Currently, the notarial deed model must be created in writing based on the agreement of the parties involved, and the existence of this agreement is acknowledged. In accordance with Article 1857 of the Civil Code, a private deed has the same evidentiary value as an authentic deed.

PVP is granted to varieties of plant species that are new, distinct, uniform, stable, and named. A variety is considered new if, at the time of the PVP application, the propagation material or harvested products of that variety have never been sold in Indonesia. A variety is stable if it remains consistent during propagation using certain methods, such as hybrid seed production, tissue culture, and cuttings. A variety eligible for PVP must be named, and the name must then be the official name of the variety, in accordance with the regulations.

Plant Variety Protection (PVP) is granted to varieties of plant species that are new, unique, uniform, stable, and named. A variety is considered new if, at the time of the PVP application, the propagation material or harvested products of the variety have never been sold in Indonesia. A variety is considered stable if it does not change during propagation using certain methods, such as hybrid seed production, tissue culture, and cuttings. A variety eligible for PVP must be given a name, which then becomes the official name of the variety, with the following conditions:

1. The variety name can continue to be used even after the protection period has expired.
2. The name must not cause confusion about the characteristics of the variety.

¹⁰ Muhammad Syaifudin & Sri Handayani, 2017, Hukum Perlindungan Rekayasa Genetika Relasi Moral, Hak Kekayaan Intelektual Dan Perlindungan

Varietas Tanaman Dan Peten Di Indonesia, Malang: Seyara Press Hlm 209- 210

3. The variety name must be chosen by the PVP applicant and registered with the PVP Office.
4. If the name does not comply with the requirements in point 2, the PVP Office has the right to reject the name and request a new one.
5. If the variety name has already been used for another variety, the applicant must change the name.
6. The proposed variety name may also be registered as a trademark in accordance with applicable laws.

Article 5 of the PVP Law states that if a variety is created based on a work agreement, the party who provides the work is the PVP rights holder, unless otherwise agreed between the two parties, without reducing the breeder's rights. If a variety is created based on an order, the party placing the order becomes the PVP rights holder, unless otherwise agreed between the two parties, without reducing the breeder's rights. The protection period granted is 20 years for annual plants and 25 years for perennial plants. Sanctions for violations of PVP rights may include imprisonment for up to 7 years and a fine of up to IDR 2,500,000,000.00 (two billion five hundred million rupiahs).

The application of PVP in practice should include a clause addressing legal aspects when PVP rights are involved in specific cases. This is necessary due to the varied levels of education and comprehensive legal knowledge involved. There are several articles in the law that need to be considered, particularly in Part Five, "Rights and Obligations of the Plant Variety Protection Rights Holder." Article 6, paragraph (1) states that the PVP rights holder has the right to use and grant approval to other individuals or legal entities to use the variety in the form of seeds and harvested products for propagation purposes. Paragraph (2) stipulates that the provisions in paragraph (1) also apply to: (a) essentially derived varieties from a protected or registered variety that has been

named; (b) varieties that cannot be clearly distinguished from the protected variety as referred to in Article 2, paragraph (1); and (c) varieties produced by consistently using the protected variety.

If a PVP right is granted to an individual or legal entity who is not entitled to the PVP rights, the rightful holder of the PVP rights may "file a lawsuit against the unauthorized individual or legal entity" in the district court. The "right to file a lawsuit" applies from the date the PVP certificate is granted. A copy of the district court's decision "on the lawsuit" must be promptly delivered by the court clerk to the PVP Office, where it will be recorded in the General PVP Register and published in the Official PVP Gazette.¹¹

Furthermore, after receiving a decision from the district court stating that the PVP right has been granted to an individual or legal entity not entitled to it, the PVP Office must cancel the PVP right granted to the unauthorized party (Article 58, paragraph (2), letter c) and grant it to the rightful individual or legal entity in the form of a new PVP Certificate.

With the cancellation of the PVP right, all legal consequences related to the PVP right are annulled from the date the right was granted, unless otherwise specified in the district court's decision. Third parties who are adversely affected by the cancellation of the PVP right may file an objection to the annulment of the legal consequences associated with the PVP right in the district court.

The third party referred to here is one who acts in good faith. The PVP rights holder or license holder has the right to "file a lawsuit with a claim for damages" through the district court against anyone who intentionally and unlawfully uses the PVP right. A claim for damages due to the use of the PVP right by someone who is not the rightful holder can only be accepted if it is proven that the variety used is identical to the protected variety.

To prevent greater harm to the party whose rights have been violated, the judge may order the infringer to temporarily cease the use

¹¹ Uu Pvt Tidak Mengatur Secara Jelas Apakah Orang Atau Badan Hukum Yang Dikalahkan Dalam Putusan Pvt Tersebut Dapat Mengajukan Banding Atau Kasasi. Dari Bunyi Ketentuan Pasal 66 Ayat

(3) Uu Pvt Dapat Ditafsirkan Bahwa Putusan Pengadilan Negeri Tersebut Bersifat Final.

of the PVP rights while the case is still under examination by the district court. The judge can only order the transfer of the results from the violation of the PVP rights once the court's decision has become legally binding.

Public awareness of PVP rights is still very low. Therefore, steps and strategies outside the legal framework are necessary, such as efforts by the PVP rights holder to socialize their rights to the public through advertisements or notifications.

CONCLUSION

The role of a notary in the creation of an agreement for the transfer of rights related to plant variety cultivation is not only to draft the deed of the transfer agreement, which is then formalized in a notarial deed as prescribed by law, but also to provide legal counseling to the parties involved regarding the transfer of PVP rights. The model of a notarial deed for the transfer of rights over plant varieties that can offer protection to the parties (the breeder and the recipient of the plant variety rights) is by including the content of the transfer agreement into clauses that do not harm the parties, ensuring that the clauses are in line with the principles of contract law.

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