

The Role of Notarial Deed in Protecting Trademark License Holders

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ABSTRACT

This study examines the role of notarial deeds in providing legal protection for parties involved in trademark licensing agreements in Indonesia. A trademark license agreement allows the registered trademark owner to grant permission to another party to use their mark. Although not legally required to be made in the form of a notarial deed, in practice, such deeds significantly enhance legal certainty and evidentiary strength, especially when the agreement is registered with the Directorate General of Intellectual Property (DGIP). Through normative legal analysis and interviews with practitioners and academics, this research finds that notarial deeds add substantial value in ensuring legal protection and facilitating dispute resolution. Moreover, the authority of notaries as public officials guarantees neutrality and the legitimacy of the licensing process. The study recommends harmonizing existing legal norms with practical application and encourages improved understanding of intellectual property law among notaries. Therefore, a notarial deed should not be viewed merely as a formal requirement, but as a vital legal instrument in securing rights and obligations in trademark licensing relationships.

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Introduction

From a business perspective, brands play a crucial role in modern marketing as more than just identifiers of products or services—they represent a company's trust, reputation, and identity (Ganapathy, 2020; Indrasari, 2017; Minculete & Olar, 2018; Nwankwo & Ayoade, 2022). In the era of globalization, brands reflect the value, quality, and image of goods or services and are considered valuable intangible assets within Intellectual Property Rights (IPR) (Castaldi et al., 2024; Lin & Wu, 2022; May, 2015; Siltaloppi & Ballardini, 2023; Spina Ali, 2020). Understanding trademark law is essential for business actors to avoid legal missteps, especially in licensing arrangements where trademark owners (licensors) grant rights to others (licensees) for commercial use in exchange for royalties. As regulated in Articles 1(18), 41, and 42 of Law Number 20 of 2016 on Trademarks and Geographical Indications, such agreements help expand market reach and form strategic partnerships (Anshary et al., 2024; Nasrianti, 2022; Nur Hidayat, 2022; Sastrawan et al., 2022; Utama & Masrur, 2020). However, trademark misuse and infringement remain significant challenges, reinforcing the importance of legal protection. While the law mandates that trademark

use through licensing must follow specific rules, it allows flexibility regarding the form of the license agreement, whether underhand or authentic deed.

From an economic and legal perspective, trademark license agreements should ideally involve a Notary, given the significant value and exclusive rights attached to trademarks. Although the Notary has the authority to create authentic deeds under Article 15(1) of the Notary Position Law (JN Law), their involvement is often overlooked due to a lack of understanding among both notaries and business actors regarding Intellectual Property Rights (Dosi & Stiglitz, 2014; Dutfield, 2017; Jayasekara & Fredriksson, 2021; Kraizberg, 2023; Spina Ali, 2020). This oversight can lead to legal complications, as seen in the PT Tong Shen Enterprise case, where a typographical error in a private license agreement weakened the legal position of the licensee. Had the agreement been made by a Notary, it would have had stronger evidentiary value under Article 1870 of the Civil Code and ensured the accuracy of legal documents. Notaries are legally bound by Article 16(1)(a) of the JN Law to act independently, thoroughly, and in the best interest of all parties, ensuring both formal and material legal compliance. Legal scholars such as Hartanti Silihandari, Nisya Rifiani, Yahya Harahap, and Rahmi Jened support the view that notarial deeds offer greater legal certainty and protection, making the Notary's role crucial in the preparation of trademark license agreements.

The Notary profession is not only responsible for documenting agreements but also for ensuring their content complies with applicable laws, as stated in Article 15(e) of the JN Law, which obliges Notaries to provide legal counseling in deed preparation. A notary deed thus serves as a preventive legal tool to minimize future disputes and protect the interests of parties in license agreements. Trademark infringement disputes often arise from bad faith by business actors seeking unfair market advantage, highlighting the importance of Notary involvement. Furthermore, Articles 6 and 7 of Government Regulation No. 36 of 2018 (PP PLKI) regulate license agreements, including prohibitions and mandatory clauses, emphasizing the need for legal accuracy and proper recording.

- a) Detrimental to the Indonesian economy and Indonesia's national interests;
- b) Making restrictions that hinder the ability of the Indonesian nation to transfer, master, and develop technology;
- c) Resulting in unfair business competition; and/or
- d) It is contrary to the provisions of laws and regulations, religious values, morality, and public order.

Furthermore, the provisions of Article 7 paragraph (2) of the PP PLKI stipulate that the license agreement is mandatory to contain:

- a) the date, month, year, and place where the License agreement was signed;
- b) the name and address of the Licenser and the Licensee;
- c) the object of the License agreement;
- d) the terms of the License are exclusive or non-exclusive, including sublicens;
- e) License agreement term;
- f) the jurisdiction of the License agreement; and
- g) the party making the annual fee payment for the patent.

To ensure compliance with Articles 6 and 7 of PP PLKI, the involvement of a Notary is crucial, as mandated by Article 15(2)(e) of the JN Law, which requires Notaries to provide legal counseling so that license agreements align with applicable laws. This highlights the need to strengthen legal protection in trademark licensing—not only through registration at the Directorate General of Intellectual Property (DJKI) but also by drafting agreements that uphold legal certainty. A notarial deed serves as a key instrument in this process. Based on these issues, the author is interested in studying the role of notaries in trademark license agreements through the research titled "The Role of Notarial Deed in Protecting Trademark License Holders".

Materials and Methods

Types of Research

In English, "research" refers to a systematic and methodical investigation aimed at developing knowledge or solving problems. "Methodological" relates to a specific method, "systematic" implies a structured approach, and "consistent" means free from contradictions. The author uses a Normative-Empirical Legal Research method, focusing primarily on secondary data—such as primary, secondary, and tertiary legal materials—supported by primary data from interviews with relevant sources. This approach aligns with examining how legal norms are applied in real-life legal events, particularly through case studies from court decisions.

Data Type

In conducting this research, the author utilized secondary data obtained through literature studies and supported it with primary data from interviews. The secondary data includes various legal materials: (1) Primary Legal Materials, such as Article 28D of the 1945 Constitution of the Republic of Indonesia; Articles 499, 570, 1320, and 1870 of the Civil Code; Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of Notary; Law Number 20 of 2016 on Trademarks and Geographical Indications; Government Regulation Number 36 of 2018 on the Registration of Intellectual Property License Agreements; and the Regulation of the Minister of Law and Human Rights Number 8 of 2016 concerning Terms and Procedures for Applications for Registration of Intellectual Property License Agreements. (2) Secondary Legal Materials consist of books, expert writings, theses, dissertations, and national or international journals. (3) Tertiary Legal Materials include supporting references such as abstracts, government publications, official records, scientific magazines, dictionaries, and relevant websites. These secondary materials are further reinforced by primary data gathered through interviews with legal experts in the field of Intellectual Property Rights.

How to Obtain Data

This study employs secondary data collection to support primary data as a complement. Secondary data is obtained through document analysis from books, literature, laws, and relevant regulations, conducted via literature studies at Universitas Pelita Harapan's library and verified online sources such as national and international journals. Primary data is collected through purposive sampling interviews with competent sources relevant to the research topic, including

Noviana Tansari (Notary and PPAT in Tangerang), Sahat Marulitua Sidabukke (Advocate, IPR Consultant, and academic at Universitas Pelita Harapan), and Yossi Niken Respati (IPR academic at Universitas Pelita Harapan).

How to Approach

This research employs several approaches, namely the legal systematics approach and the case approach. The legal systematics approach is used to identify basic legal concepts—such as legal subjects, rights and obligations, and legal events—through the study of written legal regulations. Meanwhile, the case approach involves analyzing court decisions, both with permanent legal force (*inkracht*) and those without, to understand legal phenomena relevant to the research topic.

Data Analysis

This study uses a normative-empirical approach to analyze legal materials systematically and consistently by focusing on legal principles, concepts, and norms, supported by expert interviews. The analysis is conducted qualitatively to deeply address the research problems, prioritizing the quality and substance of the data. Legal materials collected are processed using a deductive method, drawing conclusions from general principles to more specific and concrete issues.

Results and Discussions

Regulations on Legal Protection for Trademark Licensees made by Notary Deed

Trademark rights, as defined in Article 1 number 5 of the Trademark Law, grant exclusive rights to the registered owner to use or license their trademark for a certain period, providing legal protection against unauthorized use. These rights arise only after official registration, reflecting Indonesia's first-to-file system as stated in Article 3, making registration essential to secure protection and prevent conflicts. Trademark rights enable owners not only to use their marks but also to license them, forming a legal basis for commercial agreements. Internationally, Priority Rights under Article 1 number 17 allow applicants from member countries to claim an earlier filing date, facilitating global brand protection. Thus, trademark registration, initiated by a formal application (Article 1 number 8), is crucial for protecting intellectual assets and supporting business growth through licensing both nationally and internationally.

Further provisions regarding the procedure for submitting a trademark registration application are regulated in Article 4 of the Trademark Law. In the provision, it is explained that:

1. Trademark registration applications can be submitted directly by the Applicant or through his/her Proxy to the Minister, either electronically or non-electronically, and must use Indonesian.
2. Each registration application must include a number of important information, namely:
 - a. The date, month, and year of application;
 - b. The applicant's full name, nationality, and address;
 - c. Information about colors if the brand contains color elements;
 - d. The name of the country and the date of the first trademark registration request, if the application is submitted using the Priority Right;

- e. The class of goods and/or services, as well as a description of the type of goods and/or services to be protected by the brand.

Article 4 paragraphs (3) to (8) of the Trademark Law outline that trademark registration applications must be signed by the applicant or attorney and include supporting documents such as the trademark label, proof of payment, and a statement of ownership. The label must clearly describe the trademark's characteristics—whether two-dimensional, three-dimensional (showing shape and features), or sound (with notation and recording). This detailed procedure ensures that registrations are legal, transparent, and accountable, while also allowing assessment of a trademark's originality and uniqueness to prevent conflicts with existing marks. According to Sudargo Gautama, this registration process is crucial as the initial legal protection gateway and as a control mechanism to avoid overlapping or infringement of trademark rights.

Trademark rights are not permanent, but are granted by the state within a certain period of time as stipulated in the Trademark Law. In Article 1 number 5 it is stated that:

"Right to a Trademark is an exclusive right granted by the state to the registered owner of a Trademark for a certain period of time by using the Trademark itself or giving permission to another party to use it."

The phrase "certain period of time" means trademark protection is limited and must be renewed by the owner to maintain exclusive rights. Failure to renew can lead to legal risks, including others registering identical or similar trademarks for related goods or services, potentially causing the original owner to lose their rights and suffer legal and economic losses.

Furthermore, the provisions regarding the period of trademark protection are explicitly regulated in Article 35 paragraphs (1) and (2) of the Trademark Law which explains that:

(1) Legal protection for registered Trademarks is granted for a period of 10 (ten) years from the Date of acceptance and may be extended.

(2) The extension as intended in paragraph (1) is granted for the same period of time.

Thus, legal protection for a registered trademark is valid for 10 years from the date of receipt of the trademark registration application. After the 10-year period ends, the trademark owner has the right to apply for an extension for the next 10-year period, and this renewal can be done continuously as long as the trademark is still in use and meets the applicable legal provisions.

The procedure for applying for an extension of trademark registration is also clearly regulated in Article 35 paragraph (3) of the Trademark Law, which states that:

"An application for renewal can be submitted by the Trademark Owner or his Attorney in an electronic or non-electronic form in Indonesian within a period of 6 (six) months before the expiration of the protection period for the registered Trademark."

Trademark owners must proactively apply for renewal no later than six months before their 10-year protection expires, either online or offline in Indonesian. This renewal is vital not only for legal protection but also for business continuity, legal certainty, and consumer trust. Failure to renew risks losing exclusive rights and allows others to register similar marks. According to the Trademark Law, renewal requires proof the trademark is still in active use for goods or services, ensuring protection is granted only to economically active brands. Unregistered trademarks receive

no legal protection, highlighting the importance of timely registration and renewal for sustaining trademark rights.

If these conditions are not met, the application for extension will be rejected. This provision is expressly regulated in Article 37 of the Trademark Law, which explains that:

- (1) The Extension Application is rejected if it does not meet the provisions as intended in Article 36.
- (2) The rejection of the renewal application as intended in paragraph (1) shall be notified in writing to the owner of the Trademark or his Attorney by stating the reason.
- (3) Objections to the rejection of the extension application as intended in paragraph (2) can be submitted to the Trademark Appeal Commission.
- (4) The provisions regarding the appeal application as referred to in Articles 28 to 30 apply *mutatis mutandis* to the rejection of the extension application.

Based on the provisions of Article 37 of the Trademark Law, it can be concluded that the renewal procedure is not automatic, but must go through administrative verification of the use of the trademark. In the event of a refusal, the applicant is still given the right to appeal to the Trademark Appeal Commission according to the established mechanism. This is a form of legal protection and the fulfillment of the right to legal certainty for trademark owners who object to the rejection decision. However, there are exceptions to certain trademark renewal procedures. The exception is regulated in Article 38 of the Trademark Law, confirming that:

"The renewal of the Renewal of the registered Trademark in the form of the logo or emblem of the company or legal entity, does not require the procedure as referred to in Articles 35 to 37, but it is sufficient to pay the renewal fee within a period of 6 (six) months before the end of the protection period, as long as there is no dispute with the renewal of the Trademark in question."

This provision allows simpler renewal of trademarks in the form of logos or emblems for companies or legal entities, provided there are no disputes. The owner only pays the renewal fee without needing to prove use, unlike other trademarks. This ensures that renewal is not just administrative but also verifies the trademark's active use, maintaining the integrity of the trademark system and preventing unused or monopolized trademarks from being renewed without real use.

License is a form of utilization of Trademark Rights that allows other parties to use a registered Trademark based on the permission of the owner. In Article 1 number 18 of the Trademark Law, it is explained that:

"License is permission granted by the owner of the registered Trademark to another party based on a written agreement in accordance with the laws and regulations to use the registered Trademark."

Trademark licenses can only be granted by the legitimate trademark owner through a written agreement to ensure legal binding and accountability. The license authorizes another party to use the trademark commercially while ownership remains with the original owner. According to Article 41 of the Trademark Law, trademark rights can be transferred through various legal means, including licensing. Article 42 allows owners to grant licenses partially or fully for specific goods

or services, providing flexibility in usage control. Article 43 states that licensing does not remove the owner's right to use or grant further licenses unless exclusivity is agreed. License registration is regulated by Permenkumham Number 8 of 2016, requiring license agreements to be registered with the Ministry of Law and Human Rights either electronically or in writing, subject to applicable fees.

In the event that the application is made electronically, Article 4 of Permenkumham Number 8 of 2016 explains that the applicant is required to upload several documents, namely:

- a) A copy or proof of the license agreement;
- b) A copy or citation of a valid brand certificate;
- c) A special power of attorney (if using a power of attorney);
- d) Proof of payment of registration fee;
- e) An electronic declaration form stating that the object of the license:
 - a. Still in the protection period;
 - b. It does not harm national economic interests;
 - c. Does not hinder the development of technology; and
 - d. It does not contradict the provisions of laws and regulations, morality, and public order.

For non-electronic applications of trademark license registration, Permenkumham Number 8 of 2016 requires submission of physical documents in a specified format, with foreign applicants needing to apply through an Indonesian Intellectual Property Consultant. Applications undergo a document completeness check within 10 working days, with applicants given 10 days to complete deficiencies or face withdrawal. Once complete, the license agreement is recorded and announced officially for a 5-year period, extendable upon application and fee payment. License agreements can be exclusive—granting sole usage rights to the licensee within a territory and period, restricting the owner from granting others—or non-exclusive, allowing multiple licensees simultaneously while the owner retains usage and licensing rights. Registration strengthens legal certainty, preventing disputes by protecting the trademark owner's and licensee's rights. Brands hold significant economic value, often exceeding physical company assets, by building consumer trust, market expansion, and customer loyalty through consistent efforts.

The trademark as an asset of a corporation is also affirmed in the provisions of Article 1 of the Paris Convention for Protection of Industrial Property which states that:

- (1) The countries to which this Convention applies constitute a Union for the protection of industrial property.
- (2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.
- (3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.

- (4) Patents shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.

The Convention highlights the importance of protecting industrial property, including trademarks, as internationally recognized rights that apply across sectors like industry, commerce, agriculture, and mining. International protection strengthens brands as strategic intangible assets that enhance corporate value globally. According to Article 503 of the Civil Code, assets are classified as tangible or intangible, with intangible assets including intellectual property such as brands. While intangible assets cannot be physically touched, they still grant legal rights and full control to their owners over their use and exploitation.

Shannon explained that Trademark Rights as an intangible asset, can be assessed through several approaches, namely:

(1) Market Approach

This approach estimates the value of a brand by comparing other similar brand sales or licenses in the market

(2) Income Approach

This approach assesses brand value based on the economic income generated, whether from direct use, licensing, or brand leasing, taking into account current and potential future value.

(3) Cost Approach

This approach assesses brand value based on the costs required to create a substitute asset that has similar benefits and functions, following the principle of substitution economics.

By applying these three approaches, companies gain a clearer, more objective understanding of their brand value to support informed decisions in asset management, expansion, and commercial deals. Brands, as intangible assets, not only differentiate products but also generate income through use, licensing, or partnerships. Thus, brands must be protected and developed professionally for sustainable growth. The transfer of trademark rights and licenses occurs through agreements, which must meet the validity requirements outlined in Article 1320 of the Civil Code, applying to all agreements including trademark licenses.

In this case, Article 1320 of the Civil Code states that in order for an agreement to be considered valid and legally binding, it must meet four conditions, namely:

- (1) Agree with those who bind him;
- (2) Ability to make an alliance;
- (3) A certain thing;
- (4) A halal cause.

The four conditions for a valid agreement are divided into subjective and objective categories. Kartini Mulyadi explained that the first two subjective conditions—agreement and competence—relate to the parties, and if unmet, the agreement can be canceled. The last two objective conditions concern the agreed-upon object, and failure to fulfill them can nullify the agreement. The first condition, "agree," requires free consent without coercion or fraud, typically shown in a written brand licensing contract. The second, "competence," demands legal capacity—

being an adult (21 years or married) and not under guardianship—as stated in Article 330 of the Civil Code. The four conditions for a valid agreement are divided into subjective and objective categories. Kartini Mulyadi explained that the first two subjective conditions—agreement and competence—relate to the parties, and if unmet, the agreement can be canceled. The last two objective conditions concern the agreed-upon object, and failure to fulfill them can nullify the agreement. The first condition, "agree," requires free consent without coercion or fraud, typically shown in a written brand licensing contract. The second, "competence," demands legal capacity—being an adult (21 years or married) and not under guardianship—as stated in Article 330 of the Civil Code.

(1) Immature people

(2) Those who are placed under guardianship

(3) Women in the case stipulated by law and in general all persons to whom the law has prohibited to make certain agreements

Incompetence of one or both parties can lead to the cancellation of an agreement, which is crucial in licensing agreements involving individuals, legal entities, or their representatives. The first objective condition, "a certain thing," requires the agreement to have a clear and definite object. Yahya Harahap notes that the Civil Code defines certain objects, especially regarding goods, in the form of:

(1) The goods that are the object of the agreement must be goods that can be traded (Article 1332 of the Civil Code)

(2) When the agreement is made, the type of goods can at least be determined (Article 1333 paragraph (1) of the Civil Code)

(3) The number of goods does not have to be immediately certain, as long as the goods can be calculated or determined later (Article 1333 paragraph (2) of the Civil Code)

(4) The agreed goods can also be new goods and will exist in the future (Article 1334 paragraph (1) of the Civil Code)

(5) It is not allowed to make agreements on goods that are still part of the inheritance that have not been opened (Article 1334 paragraph (2) of the Civil Code)

The Civil Code states that a "certain thing" includes both tangible and intangible objects, such as registered trademarks, which can be the subject of a license agreement. The final condition, "halal cause," requires the agreement's purpose to be lawful and not against public order or morality. Meeting these four conditions ensures the license agreement is legally binding under Article 1338 of the Civil Code. Thus, trademark license agreements must comply not only with administrative rules but also with substantive legal requirements under Article 1320 to be valid and enforceable in Indonesian law.

A license agreement, which grants the right to use a trademark, falls under civil law agreements regulated generally by Article 1319 of the Civil Code, recognizing both named (regulated by law) and unnamed agreements. Trademark license agreements are considered named agreements due to specific regulations under the Trademark Law, but still must meet the Civil Code's validity requirements (Article 1320) to be legally binding. Thus, license agreements are not only administrative documents but also valid civil contracts. In practice, parties may fail to fulfill

their obligations, resulting in default (*wanprestasi*), defined under Article 1238 as negligence proven by a summons or agreement clause, making the debtor liable for non-performance.

Furthermore, the provisions of Article 1243 of the Civil Code provide a legal basis for creditors to claim compensation for default, namely:

"Reimbursement of costs, losses and interest due to non-fulfillment of an agreement will only begin to be obligatory, if the debtor, after being declared negligent in fulfilling his agreement, still neglects to fulfill it."

Based on these provisions, if there has been a default, the aggrieved party (creditor) can claim compensation in the form of costs, losses, and interest, as long as the debtor has been declared negligent but does not also meet his achievements.

The view on default is also explained by Subekti who explains that default can be classified into 4 forms, namely:

- (1) Not carrying out what has been promised (total failure to meet achievements);
- (2) Perform performance but not as it should;
- (3) Carrying out the achievement but late from the specified time;
- (4) Doing something prohibited by the agreement.

In the context of a trademark license agreement, it can be concluded that a default can appear in various forms for example:

(1) Not delivering on what was promised:

In the context of a trademark license agreement, this form of default occurs when the licensee does not use the licensed trademark at all, even though it has acquired the right and is obliged to use the trademark for the agreed commercial purpose. On the other hand, the licensor may also be deemed to have committed a default if it does not assign the right to use the trademark as stated in the agreement.

(2) Perform what is agreed but not as intended:

This act occurs if the party receiving the license does use the trademark as agreed, but its use is not in accordance with the agreed provisions or standards. For example, the licensee uses a trademark for a type of goods/services not mentioned in the agreement, or uses the trademark in a way that damages the reputation of the trademark. This is contrary to the principle of good faith and can be detrimental to the brand image

(3) Execute the agreement but late from the specified time:

This type of default occurs if one of the parties delays the performance of the obligation, for example the licensee is late in making royalty payments, or the licensor delays the grant of the right to use the mark even though the agreement has entered into force. This delay can be detrimental to one party, especially if it is related to the timing of product launches or marketing campaigns

(4) Doing something that should not be done according to the content of the agreement:

This act of default relates to a violation of the prohibition provisions in the license agreement. Examples are licensees who transfer the right to use the brand to a third party without permission, or a licensor who grants a license to another party in an exclusive agreement, even though it is expressly prohibited in the agreement

To ensure legal certainty and protect the rights of both parties, license agreements should be drafted clearly, including clauses on sanctions and dispute resolution in case of default. Notaries play a vital role in this process, as they are public officials authorized to create authentic deeds, as stated in Article 1 point 1 of the Notary Law (UUJN). According to Lumban Tobing, notaries have exclusive authority to formalize legal acts and agreements into authentic deeds, ensuring their legal validity and evidentiary strength. Appointed by the Minister of Law and Human Rights, notaries serve as state organs with a mandate to maintain legal integrity, public trust, and uphold the dignity of their profession.

Notary deeds, as a form of authentic deeds, have the highest evidentiary power in the civil law system in Indonesia. This is based on Article 1868 of the Civil Code which states that:

"An authentic deed is a deed made in the form prescribed by law, by or in the presence of a public official authorized for it at the place where the deed is made."

Authentic deeds have strong legal force and are recognized as perfect evidence under Indonesian civil law. Article 1870 of the Civil Code affirms that an authentic deed serves as conclusive proof between the parties, their heirs, and third parties, unless rebutted by valid counter-evidence (*tegenbewijs*). Experts like Habib Adjie and Yahya Harahap emphasize that the truth of the deed's content is presumed valid until proven otherwise. Judges are legally bound to consider authentic deeds as valid evidence in civil cases. Therefore, notarial deeds play a crucial role in ensuring legal certainty and protection, including in trademark licensing agreements.

In addition to the authority of the Notary regulated in Article 15 paragraph (1) of the JN Law, the Notary is also given additional authority as described in Article 15 paragraph (2) of the JN Law, namely:

- (1)Authenticate signatures and establish the certainty of the date of the letter under hand by registering it in a special book;
- (2)Booking the letter under hand in a special book;
- (3)Make a copy of the original letter under hand with the description as the original;
- (4)Certify the compatibility of the photocopy with the original document;
- (5)Providing legal counseling in connection with the making of deeds;
- (6)Making deeds related to land; and
- (7)Make an auction minutes deed.

Based on Article 15 paragraph (2) of the Notary Law, notaries have the authority to provide legal counseling, ensuring that parties understand the legal implications, risks, and consequences of the agreements they enter into, including trademark license agreements. This authority is limited to matters directly related to deeds they prepare and does not extend to acting as legal advisors in general. Notaries also have the authority to draft authentic deeds, which serve as perfect legal evidence under Articles 1868 and 1870 of the Civil Code and bind the parties unless proven otherwise. Article 1338 of the Civil Code affirms the principle of *pacta sunt servanda*, meaning legally made agreements are binding like law, provided they fulfill the conditions in Article 1320 and are made in good faith. For license agreements to have legal effect against third parties, Article 42 paragraphs (3) and (5) of the Trademark Law require them to be registered with the Directorate General of Intellectual Property (DJKI). Legal experts such as Yahya Harahap and Rahmi Jened

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argue that license agreements should be made in the form of a notarial deed due to the significant legal relationships they create and to ensure strong evidentiary value. According to R. Soeroso, authentic deeds provide *volledig bewijs* (perfect evidence), meaning their contents are presumed true in court unless proven otherwise. As Philipus M. Hadjon explains, notarial deeds offer both preventive legal protection—by reducing future legal risks—and repressive protection—by serving as decisive evidence in resolving disputes. Therefore, drafting a trademark license agreement through a notarial deed and registering it with DJKI is crucial for ensuring legal certainty, protecting the parties' interests, and minimizing the risk of legal conflicts.

The Role of Notaries in the Creation of Trademark Licensing Agreements based on Applicable Laws and Regulations

Notaries have an important position as public officials who are authorized by law to make authentic deeds. This is affirmed in Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN), which states that a notary is a public official who is authorized to make authentic deeds and has other authorities as stipulated in the law.

According to G.H.S. Lumban Tobing, the authority of a notary in making an authentic deed is expressly limited by laws and regulations and can be grouped into four main aspects:

- (1) This authority only applies to the type of deed that is legally assigned to a notary. Not all deeds can be made by a notary, but only those specifically authorized by law.
- (2) The notary's authority is also limited by the legal subject served; Notaries are prohibited from making deeds for themselves, their families in a straight line or sideways up to the third degree, or parties who have a direct interest relationship. A deed made in violation of this provision will lose its authentic nature and will only be considered as a deed under the hand.
- (3) The notary's authority is also determined based on the area of his position. Notaries can only make deeds for legal acts carried out within the work area that has been determined according to their place of residence. If the deed is made outside the territory, then the deed does not have the force of an authentic deed.
- (4) The notary authority is valid only as long as the person concerned is legally carrying out his position. Notaries who are on leave, dismissed, have not been appointed, or have not taken the oath of office are not authorized to make deeds; Violation of this also results in the deed losing its authenticity.

The notary's authority to draw up authentic deeds, as stated in Article 15 paragraph (1) of the UUJN, is fundamental in ensuring the validity and legal force of such deeds. Authentic deeds serve as perfect evidence in civil law, reflecting the parties' free will, good faith, and compliance with legal requirements. In trademark licensing, although the law does not mandate a specific form, experts and case law—such as Decision No. 101/Pdt.Sus-HKI/Merek/2022/PN Jkt.Pst—emphasize the importance of using a notarial deed to strengthen legal certainty and evidentiary value. In that case, a licensing agreement not made as an authentic deed resulted in evidentiary weaknesses and delayed legal action. The court acknowledged the importance of authentic deeds as strong legal evidence under Article 1870 of the Civil Code. Therefore, to ensure legal protection, avoid

disputes, and provide binding force against third parties, trademark license agreements should be made in the form of a notary deed and registered with the Directorate General of Intellectual Property (DJKI).

Rahmi Jened argued that at least the license agreement must contain the following:

- (1) Identity of the Parties
- (2) Brand Data and its registration number as the object of the license
- (3) Core provisions include:
 - a. The term of the license, including the terms of whether it can be extended or not.
 - b. The scope of use of the brand, whether it includes all or part of the type of goods/services.
 - c. The ability to grant sub-licenses by the licensee to third parties.
 - d. The licensor's oversight obligations over the quality of goods or services marketed under the licensed brand.
 - e. The area where the license applies, either partially in Indonesia or nationally.
 - f. The licensor's right to continue to use the trademark or grant licenses to other parties, unless expressly prohibited in the agreement.
 - g. The determination of royalties and the method of payment is generally in the form of a percentage of gross turnover.
 - h. Additional provision, that the content of the agreement must not be contrary to the interests of the national economy.

In addition to Rahmi Jened, Gunawan Widjaya also explained the things that need to be in a license agreement, namely:

- (1) Identity of the Parties, both licensors and licensees.
- (2) The type of Intellectual Property that is the object of the license.
- (3) Scope of License, including restrictions on the use of IPR.
- (4) The purpose of the License, i.e. its commercial reason or interest.
- (5) Nature of Exclusivity, whether the license is exclusive or non-exclusive.
- (6) Regional specifications, namely geographical boundaries and production and/or sales permits.
- (7) Reports and Inspections, the licensor's right to receive reports and conduct supervision.
- (8) Purchase Obligation, whether the licensee is obliged to purchase certain capital goods from the licensor.
- (9) Supervision by the Licensor, over the implementation of the license.
- (10) Confidentiality, maintaining licensed IPR information.
- (11) The Non-Compete Clause, restricts the licensee from competing directly.
- (12) IPR protection, the licensee's obligation to protect the rights of the licensee.
- (13) License Registration, as part of administrative compliance.
- (14) Compensation and Royalties, the amount of the reward and the method of payment.
- (15) Choice of Law, the law that applies in regulating the agreement.
- (16) Dispute Resolution, an agreed mechanism for dealing with disputes.
- (17) License Termination, conditions and manner of termination of license relationship.

Based on the opinions of Rahmi Jened and Gunawan Widjaya, it can be concluded that the ideal trademark licensing agreement must be comprehensive, written, and contain key clauses that not only govern the legal relationship between the grantor and the licensee, but also ensure the continuity of protection and supervision over the use of the licensed trademark. The opinions of the two experts emphasized the importance of containing:

1. The identity of the parties and the object of the license is clear.
2. The scope, term, region, and exclusivity of the license, which are fundamental elements in any license agreement.
3. The rights and obligations of both parties, including the supervision, reporting, and protection of intellectual property.
4. Additional clauses such as confidentiality, non-competition, compensation or royalties, as well as dispute resolution.
5. The importance of administrative recording and compliance, so that the license is valid for third parties and has binding legal force.

Juridically, the provisions regarding the content of the License Agreement are also regulated in Article 7 paragraph (2) of Government Regulation Number 36 of 2018 concerning Intellectual Property License Agreements, namely a License Agreement that contains at least the following:

- (1) Date, month, year, and place where the License agreement was signed
- (2) Name and address of the Licensor and Licensee
- (3) Object of the License agreement
- (4) The terms of the License are exclusive or non-exclusive, including sublicensing
- (5) License agreement term
- (6) The jurisdiction of the License agreement;
- (7) The party making the annual fee payment for the patent.

In conclusion, expert opinions and interviews with Notary Noviana Tansari, practitioner Sahat Marulitua Sidabukke, and academic Yossi Niken Respati collectively highlight that although there is no legal obligation for trademark license agreements to be made in the form of a notarial deed under Indonesian law, such as in Government Regulation No. 36 of 2018, the use of notarial deeds is highly recommended in practice. This is due to the stronger evidentiary power, legal certainty, and protection they provide, especially in the event of future disputes. Notaries play a crucial role not only as formal registrars but also as neutral legal advisors who ensure the agreement meets legal standards and aligns with Article 1320 of the Civil Code. While license agreements may be legally valid even in the form of private deeds, the registration process at the Directorate General of Intellectual Property (DJKI) often implicitly requires a notarial deed, making it a practical necessity. The interviews emphasize the need for notaries to enhance their understanding of intellectual property law through continuous education, as well as the importance of harmonizing legal theory with practice. Therefore, the use of a notarial deed, although not mandatory, is a prudent legal step to enhance the legitimacy, enforceability, and protection of trademark license agreements in Indonesia.

Conclusion

Empirical normative research shows that legal protection for trademark licensees in Indonesia is well regulated in the Trademark Law, which grants exclusive rights through registration at the Directorate General of Intellectual Property (DJKI) for 10 years, extendable, though further legal measures are needed for license agreements. While the law does not mandate notary deeds for licensing agreements, using them adds significant legal certainty, evidentiary strength, and protection, especially in disputes, and DJKI practices tend to require them administratively. Interviews with a notary and intellectual property experts confirm that notaries play a crucial role beyond formal registration, ensuring legal compliance and protecting parties' interests. Experts also stress the need for specialized notary training in intellectual property and better alignment between legal norms and practice. Overall, creating trademark license agreements as notary deeds is strongly recommended for mitigating legal risks and enhancing protection, highlighting the need for policymakers to harmonize regulations and practices for effective intellectual property protection in Indonesia.

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