

## THE COMPARATIVE STUDY ABOUT INTELLECTUAL PROPERTY RIGHTS AND THE TRANSFER OF LAND RIGHTS FOR THE DEVELOPMENT OF INDONESIA LAND LAW

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### **ABSTRACT**

*The transfer of land rights is a classic problem whose implementation is often uncertain. In the framework of alternative material for developing national land law, this article will try to compare the transfer of land rights with the transfer of Intellectual Property Rights. The method in this article is a normative legal research method with a comparative law approach as the primary approach. In the transfer of land rights, at least several types of law are used as a component in assessing their validity. When compared to the transfer of Intellectual Property Rights, an Intellectual Property Right must be registered for protection, as well as when the Intellectual Property Right is transferred. Regulations in Intellectual Property Rights are more specific because they are under specific statutory law and through a registration mechanism. The transfer of land rights seen from the perspective of Law Number 5 of 1960 concerning Basic Agrarian Regulations or what is often referred to as UUPA (Basic Agrarian Law) and Government Regulation Number 24 of 1997 concerning Land Registration does require land registration, but that does not mean that land that is not registered does not get protection, this also implements in the transfer of land rights. Even though the transfer of land rights does not use the mechanisms and conditions specified in Government Regulation Number 24 of 1997, the transfer of land rights under the main provisions in customary law is still recognized. It is usually implemented when the dispute goes to court.*

**Keywords:** *Transfer of Ownership, IPR, Land Rights*

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### **INTRODUCTION**

Intellectual Property Rights is a rights based on the creation and come from the creation of the human intellectual mind, usually related to knowledge and technology. Intellectual Property Rights, or in Indonesia, commonly called *Hak Kekayaan Intelektual* and in private law, is a part of an intangible thing that has moral and economic value. In history, the development of intellectual property rights occurred in the world because of the development of international trade through the World Trade Organization (WTO), which included the Agreement on

Trade Aspects of Intellectual Trade Organization (TRIPs) in Indonesia, followed by the Act Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization (Approval for the Establishment of the World Trade Organization).

If classified, IPR (Intellectual Property Rights) is generally divided into two types, namely Copyright (Hak Cipta) and Industrial Property Rights. The Industrial Property Rights include Patents, Industrial Designs, Trademarks, Protection of Plant Varieties (perlindungan Varietas Tanaman), Layout Design of Integrated Circuits (Tata Letak Sirkuit terpadu), and Trade Secret (Rahasia Dagang)<sup>1</sup>. All types of Intellectual Property Rights must be registered. Registration of Intellectual Property Rights has made the owner of the rights to have exclusive rights. Owners of exclusive rights can only be used for a certain period of time. Within the duration of time, the owner can enjoy the economic benefits of the right, and other parties are prohibited from using or exploiting the right with the permission of the owner or the right holder.

Intellectual Property Rights in private law are included in the intangible objects in movable goods ( ). As part of the type of property or law of thing, Intellectual Property Rights, like other property rights, could be transferable, either by inheritance, grants, wills, or become state property. The transfer of Intellectual Property Rights must use a notary deed. This is almost similar to the transfer of land rights, which is stated in Article 37 of Government Regulation No. 24 of 1997, which states that every transfer of land rights must be used as a deed, namely in one of the types of a PPAT deed.

A transfer of a land right or an apartment ownership right resulting from a sale/purchase transaction, from an exchange, from a grant, from incorporation into a company, or from any other legal act effecting such a transfer with the exception of an auction can be registered only if it is evidenced with a deed made by the authorized PPAT in line with the applicable regulations. Under certain circumstances as determined by the Minister, the Head of the Land Office can register a transfer of a right on a land parcel with the status of hak milik (right of ownership) between individuals of Indonesian citizenship which is evidenced with a non-PPAT deed, provided that the Head of the Land Office evaluates the deed as having an adequate content of truth to warrant the registration of the said transfer. (Article 37 Government Regulation Number 24 of 1997 concerning Land Registration)

However, unlike Intellectual Property Rights, Land Rights can be transferred even though they have never been registered. In addition, in certain cases in court, the transfer of land rights can be carried out without the need for an authentic deed in the transfer. Because sometimes it is not registered and does not require an authentic deed in its transfer, sometimes the transfer of land rights cannot provide legal certainty to either the buyer or other parties. This is certainly different from Intellectual Property Rights because they must be registered before get recognition and protection for the ownership. It is must go through mechanisms and procedures in the administration in the transfer.

This article will explore by comparing the context of preparing a national land law towards a positive publication system. A positive publication system is a registration system that produces an “indefeasible title”, a right that cannot be changed. The transfer of land rights with a positive publication system will guarantee the results for each transfer of rights by the state. If a real owner is harmed, for example, it turns out that the person who transferred is a person who is not the real owner of the land, then the state will provide compensation to the real owner, after receiving a lawsuit and through a court decision. The buyer with good faith

<sup>1</sup>Rilda Murniati, (2015), “Tinjauan Yuridis Pengalihan Hak Kekayaan Intelektual Berdasarkan Undang-Undang Dibidang Hak Kekayaan Intelektual,” *FIAT JUSTISIA: Jurnal Ilmu Hukum*, <https://doi.org/10.25041/fiatjustisia.v4no3.271>. p.24

still gets legal protection for the title, and remains the owner of the land, even though he may get it from an unauthorized party or not the real owner.

In preparation for the positive publication system as mandated in the 2015-2019 RPJMN (National Medium Term Development Plan), then the first thing that needs to be addressed is the model of transfer of rights, because in land cases there are often various recognized transfer models, even the transfer of rights without using an authentic PPAT (Land Titles Registrar) deed. Based on this, this paper will try to look at the system of transfer of intellectual property rights that already uses one system, to get an overview so that the transfer of land rights will later use a transfer system, for example only through authentic PPAT deed.

This article will make a legal comparison regarding the regulation of the transfer of Intellectual Property Rights which are included in the category of Intangible Movable Objects, compared with the regulation for the transfer of Land Rights which are included in the category of Tangibles Immovable Objects. Comparison of these arrangements is carried out to look for similarities and differences in the regulation with the ultimate goal of revealing the advantages and disadvantages of each regulation for the transfer of rights. Based on this background, the legal issues in this paper are how is the differentiation of the concept of the transfer of Intellectual Property Rights and the concept of the transfer of Land Rights in Indonesia?

## METHOD

The research method in this study is a normative legal research method. The approach method uses a statute approach, a comparative approach, and an analytical approach. The emphasis in this research is on the comparative law approach, with the ultimate goal of developing the study of national law<sup>2</sup>, as a way to provide alternatives for the development of national law<sup>3</sup>, *although comparative studies only describe differences in legal regulations*<sup>4</sup>.

## ANALYSIS AND DISCUSSION

As previously explained, this paper will place more emphasis on the comparative law approach. Comparative law itself can be included as part of the approach method and can also be included as a legal theory. According to Tahir Tugadi<sup>5</sup>, the benefits of comparative law are related to this research for legal reform, which is to deepen explore of national law. Referring to the purpose of this legal comparison, the results of a legal comparison can be used as material for legal reconstruction, namely as the act or process of building or process of rebuilding, recreating, or reorganizing something<sup>6</sup>, which essentially wants to depelov by building and re-creating existing regulations.

This is in line with the opinion of James P Chaplin<sup>7</sup> which states that reconstruction means building or restoring something based on the original incident, where the reconstruction contains primary values that must remain in the activity of rebuilding something according to its original condition. This is very different from Deconstruction, which is rebuilding something that is something completely new.

<sup>2</sup>Ade Maman Suherman. (2004). *Pengantar Perbandingan Sistem Hukum*, Jakarta: Raja Grafindo Persada. p.18

<sup>3</sup>Mike McConville and Wing Hong Chui. (2007). *Research Methods for Law*, Manchester: Edinburgh University Press. p.8

<sup>4</sup>Edward L. Rubin. (2010). "Legal Scholarship in A Companion to Philosophy of Law and Legal Theory," ed. Dennis Petterson, West Sussex: Blackwell Publishing. p.551

<sup>5</sup>Ade Maman Suherman, *Pengantar Perbandingan Sistem Hukum*. Loc.,Cit

<sup>6</sup>Soejono Soekanto dan Sri Mamuji. (2000). *Penelitian Hukum Normatif*, Jakarta: Raja Grafindo Perkasa. P.6

<sup>7</sup>Zaenal Asikin. (2015). *Mengenal Filsafat Hukum*, Mataram: Pustaka Bangsa. p.105

With the reconstruction of the law, the law does not only function as a mere instrument of state coercion but is more defined as a tool of social engineering to be able to provide justice and certainty, with the ultimate goal of benefiting the great wealth for community.

Law as a tool of social engineering is not only understood as a tool to “force” the government’s will on its people. However, now the concept has been extended, meaning that the law is a tool for reforming society and the bureaucracy. Therefore, the legislation of a country describes the regulation, control, and supervised the citizens by the state<sup>8</sup>.

Through a legal reconstruction, a norm that was previously multi-interpreted can be formulated into a more definite norm formulation so that it can make legal certainty<sup>9</sup>. With the formulation of definite norms, everyone has clear and same guidelines, and finally minimizing discrimination and not making a large difference in interpretation. This article will try to explore the transfer model of Intellectual Property Rights to find the best type of transfer model of land rights that gives legal certainty and justice to the parties.

#### Transfer of Intellectual Property Rights

Intellectual Property Rights according to the Directorate General of Intellectual Property are divided into Patents, Trademarks, Industrial Designs, Copyrights, Trade Secrets, and DTLST. Each type of Intellectual Property Right is given a definition such as patents and others. The definitions will be described as follows: First, a patent is the exclusive right of the inventor to an invention in the field of technology for a certain period to use his invention or to give approval to another party to use his invention. An invention is an inventor’s idea that is poured into a specific problem-solving activity in the field of technology, it can be in the form of a product or process or product process improvement. The patent itself in its type can be in the form of a simple patent in the form of a new product or tool and has practical use value due to its shape, configuration, construction, or component, which can obtain legal protection for their component in a simple patent.<sup>10</sup>

Second, a trade Mark is a sign that can be displayed graphically in an image, logo, name, word, letter, number, or color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) dimensions) or more of these elements to distinguish goods and/or services produced by persons or corporations in the activities of trading and/or services. Third, Industrial Design is a creation about the shape, configuration, or composition of lines or colors, or lines and colors, or a combination thereof in the form of three or two dimensions which gives an aesthetic impression and can be realized in three-dimensional or two-dimensional patterns and can be used for produce a product, goods, industrial commodity or handicraft<sup>11</sup>. In practice, this industrial design can be registered if it meets certain criteria, such as having a novelty.

In contrast to other types of Intellectual Property Rights, Fourth, Copyright is one part of intellectual property that has the broadest scope of protected objects, because it includes science, art and literature (art and literary) which includes computer programs. The development of the creative economy which is one of the mainstays of Indonesia and developed countries and the rapid development of information and communication technology requires the development of Copyright Law, because the Copyright is the most important basis of the national creative economy. With the Copyright Law hopefully country’s economy can be more optimal because

<sup>8</sup>Satjipto Rahardjo. (1981). *Hukum Dalam Perspektif Sosial*, Bandung: Alumni. p.153

<sup>9</sup>Adanya aturan itu dan pelaksanaan aturan tersebut menimbulkan kepastian hukum Peter Mahmud Marzuki. (2008). *Pengantar Ilmu Hukum*, Jakarta: Kencana, 2008). p.158

<sup>10</sup><https://dgip.go.id/tentang-djki/kekayaan-intelektual>

<sup>11</sup>Ibid



its protections<sup>12</sup>. However, in Copyright there are also types of works that can be protected but they have period of protection.

Other types of Intellectual Property rights are Geographical Indications. Geographical Indication is a sign indicating the area of origin of an item or product which, due to geographical and environmental factors including natural factors, human factors or a combination of these two factors, gives a certain reputation, quality, and characteristics to the goods and/or products. Signs used as Geographical Indications can be in the form of labels or labels attached to the things. The sign can be the name of a place, area, or region, words, pictures, letters, or a combination of these elements. The applications for registration of Geographical Indications shall be submitted by: institutions representing the community in some geographical regions that cultivate goods and/or products in the type of natural resources; (2). handicraft items; or (3). industrial product. As an institution, the provincial or district/city government can apply for registration of geographical indications. Another Intellectual Property Right is the Trade Secret, which is information not known to the public in the field of technology and/or business, has economic value because it is useful in business activities, etc. The scope of Trade Secrets protection includes production methods, processing methods, sales methods, or other information in the field of technology and/or business that has economic value and is not known by the general public. Whereas Integrated Circuit Layout Design is a creation in the three-dimensional layout design of various elements, at least one of these elements is an active element, as well as part or all of the interconnections in an integrated circuit and the three-dimensional placement is intended to prepare for the manufacture of an integrated circuit. The integrated circuit is a product in the type of finished or semi-finished, in which there are various elements, and at least one of these elements is an active element, which is partially or completely interconnected and formed in an integrated manner in a semiconductor material to generate electronic functions<sup>13</sup>.

Regarding the transfer of Intellectual Property Rights such as Patent Rights, it can be partial or complete patent rights through Inheritance, Grant; Will; Waqf; Written agreement; or other ways based on legislation (Article 74 of Law 13 of 2016 concerning Patents). While the Transfer of Rights to Registered Trade Marks can be transferred or transferred due the similar thing like Patent Rights. The transfer of rights to trademarks according to Act Number 20 of 2016 concerning Marks and Geographical Indicators and Indications, Article 41 states that rights to registered marks can be transferred due to inheritance, will, endowments, grants, agreements, and other ways based on legislation. The transfer of rights for a registered mark that has similarities in principle or in its entirety or similar goods and/or services can only be if all the registered marks are transferred to the same party. Trademark transfer must register with the Minister. The application for the Rights transfer to Mark, as referred to in, is accompanied by supporting documents. The transfer of rights trademarks that are not registered does not have legal consequences for third parties. The transfer of rights to a mark may be carried out during the registration.

Act Number 28 of 2014 concerning Copyright in Article 36 states, “Unless agreed otherwise, the Author and the Copyright Holder for the Works made in a working relationship or based on orders are the parties who do the Works”. That Act Number 28 of 2014 has regulated the transfer of Copyright (Article 16 paragraph (2) of Act Number 28 of 2014 concerning Copyright. Copyright may be transferred either in whole or in part due to: inheritance, grant; waqf; will; written agreement; or other reasons under the provisions of the legislation. While it should be noted that what is meant by “can be transferred” is only economic rights, moral

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<sup>12</sup>Ibid

<sup>13</sup>Ibid

rights remain attached to the Creator. Regarding the transfer of moral rights, based on Article 5 paragraph (2) of Act Number 28 of 2014 concerning Copyright, moral rights cannot be transferred as long as the author is still alive. Still, these rights can be moved by a will or other reasons under the provisions of the legislation after the author dies. Furthermore, specifically in the provisions of Act Number 28 of 2014 concerning Copyright in article 16, paragraph 2 letter f stating that Copyrights can be transferred, either in whole or in part, due under the provisions of the legislation<sup>14</sup>. Those are some examples of transfers in the field of Intellectual Property Rights.

In addition, the transfer of IPR through Waqf has been regulated in the Waqf Law. The provisions regarding IPR can also become the object of waqf as stated in Article 16 paragraph (1) letter b of the Waqf Law and Article 21 letter b of Government Regulation Number 42 of 2006 concerning the Implementation of Act Number 41 of 2004 concerning Waqf, which states that movable objects other than money due to laws can be donated. As long as they do not conflict with sharia principles, namely Intellectual Property Rights in the form of Copyrights, Trademark Rights, Patent Rights, Industrial Design Rights, Trade Secret Rights, Integrated Circuit Layout Rights, Plant Variety Protection Rights, and/or other Rights.<sup>15</sup>

Intellectual Property Rights can be transferred in whole or part through “inheritance, grants, wills, made state property, or an agreement with a deed.” The transfer of intellectual property rights is usually for commercial purposes, namely the use or use by other parties with permission based on an agreement to utilize the economic rights of the intellectual work. The transfer of IPR cannot be carried out verbally but must be in writing, namely through an agreement with an authentic deed or a non-authentic deed. If the creator/inventor/designer wants to transfer intellectual property when they are alive, then the transfer is carried out through grants and wills. The transfer of IPR by granting a permit is called a license; this license must be registered. With the existence of a license, the creation/invention can be felt by consumers in a broader range, the national and international.<sup>16</sup> The Directorate General of Intellectual Property Rights (DJHKI) is a registration agency for obtaining a license.

For each statutory regulation related to the transfer of IPR, Generally the arrangements are as follows:<sup>17</sup>

1. The transfer of copyright due to inheritance grant must be in writing. Copyright will belong to the heirs when the Creator dies. The implementation of inheritance copyrights must be based on positive law. Copyright will become state property if, after 70 years, the Creator dies and there is no heir or family who takes over the copyright;
2. The transfer of copyright due to inheritance, grant and will be in writing. The copyright will belong to the heirs when the Creator dies. The implementation of inheritance copyrights must be based on positive law. Copyright will become state property if, after 70 years, the Creator dies and no heir or family takes over the copyright;
3. The transfer of copyright due to inheritance, grant and will be in writing. Copyright will belong to the heirs when the Creator dies. The implementation of inheritance copyrights must be based on positive law. Copyright will be made state property if, after 70 years, the Creator dies and no heir or family takes over the copyright;
4. Patents can be transferred through inheritance, grants, wills, and other ways based on positive law. All forms of patent transfer must be registered and announced by submitting an application

<sup>14</sup>Anak Agung Sagung Ngurah Indradewi, (2020), “Substansi Hukum Kekaburan Norma Pada Peralihan Hak Cipta,” *Jurnal Pendidikan Kewarganegaraan Undiksha* 8, no. 3 : 51–56.

<sup>15</sup>Ummi Salamah Lubis, (2020), “Hak Kekayaan Intelektual Sebagai Objek Wakaf,” *Iuris Studia: Jurnal Kajian Hukum* 1, no. 1 : 31–38.

<sup>16</sup>Hari Sutra Disemadi and Cindy Kang: (2021) “Tantangan Penegakan Hukum Hak Kekayaan Intelektual Dalam Pengembangan Ekonomi Kreatif Di Era Revolusi Industri 4.0,” *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 : 54–71.

<sup>17</sup>Ibid.

- for registration of the transfer of a patent to the Directorate General of Intellectual Property Rights, and the application must be accompanied by written evidence;
5. Trademark rights may be transferred through inheritance, grants, wills, and other ways based on positive law. Transferable trademarks are only marks that have been previously registered in the Directorate General of Intellectual Property Rights. The rights transfer to a trademark can be carried out during the trademark registration application process. The transfer of rights to a trademark must be registered with the Directorate General of Intellectual Property Rights and registered in the General Register of Marks;
  6. The transfer of rights to Industrial Designs can be carried out through inheritance, grants, wills, and other ways based on positive law. The transfer must be registered with the Directorate General of Intellectual Property Rights by attaching the required documents and paying the transfer fee;
  7. The transfer of rights to the Layout Design of the Integrated Circuit can be done through inheritance, grants, wills, and other ways based on positive law. All transfers of rights to the Layout Design of the Integrated Circuit must be registered with the Directorate General of Intellectual Property Rights by enclosing the relevant documents and recorded in the DTLST General Register;
  8. The transfer of rights to a Trade Secret may be carried out through inheritance, grants, wills, and other ways based on positive law. The transfer of ownership to Trade Secrets must be registered with the Directorate General of Intellectual Property Rights; and
  9. The transfer of rights to the Protection of Plant Varieties can be carried out through inheritance, grants, wills, and other ways based on positive law in Indonesia. This transfer must be accompanied by an agreement in the form of a notarial deed and documents related to the protection of related plant varieties. The transfer of rights to Plant Variety Protection is registered with the Office of Plant Variety Protection and recorded in the General Register of Plant Variety Protection under the Ministry of Agriculture Officials.

Based on the description above, it can be concluded that almost all arrangements regarding the transfer of IPR have the same procedure, namely through inheritance, grants, and wills. In addition, there is another way to transfer IPR, namely by entering into a written agreement called a license. The legal basis for licensing is the Government Regulation 36 of 2018 concerning the Recording of Intellectual Property License Agreements. Every holder of intellectual property rights can grant intellectual property rights to other parties to exercise economic rights based on the Legislation related to Intellectual Property Rights<sup>18</sup>. Unless otherwise agreed, the license agreement for the type of the license which includes with all thing.

License agreements are prohibited from containing provisions that can: (Article 6 PP 36/2018)

- a. Detriment to the Indonesian economy and Indonesia's national interests;
- b. Contains restrictions that impede the ability of the Indonesian people to transfer, control and develop technology;
- c. Resulting in unfair business competition; and/or
- d. Contrary to the provisions of laws religious values, decency, and public order.”

Transfer of Land Rights

The transfer of Land Rights is not much different from the transfer of Intellectual Property Rights. The transfer of Land Rights can also be in the category of intended and unintended or by agreement and non-agreement. The transfer is considered to occur because of laws or without agreement such as the transfer of rights due to inheritance, from heir to heir or estate based on

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<sup>18</sup>Ibid

a will. Meanwhile, the intended that there is an agreement between the parties regarding the transfer of land rights.

The objects of this land registration (Article 9 PP No. 24 of 1997 concerning Land Registration) include:

- a. land parcels having the status of hak milik (right of ownership), hak guna usaha (right to cultivate), hak guna bangunan (right of use of structures), and hak pakai (right of use);
- b. land having the status of hak pengelolaan (right of management);
- c. wakaf land (edified land/land donated for religious purposes);
- d. an apartment ownership right;
- e. hak tanggungan (mortgage);
- f. state land.

In the case of state land serving as a land-registration object, its registration shall be carried out by recording the state land in question in a land register.

Government Regulation Number 24 of 1997 does not focus on the transfer of Land Rights but on land registration activities. The transfer of land rights that have not been registered can be carried out based on Government Regulation but is directed as a way for the first time land registration for the land.

The implementation of land registration includes activities for land registration for the first time and maintenance or update of the land registration data. Land registration for the first time includes: Article 12 (PP Number 24 of 1997)

- a. The activity of first-time land registration shall comprise the following:
- b. collecting and processing physical data;
- c. verifying rights and recording them;
- d. issuing certificates;
- e. presenting physical data and juridical data;
- f. storing public registers and documents

The activity of maintaining land registration data shall comprise the following:

- a. registering transfers and encumbrances;
- b. registering other changes in land registration data

Maintenance of land registration data is carried out if there is a change in physical data or juridical data of registered land registration objects. The transfer of land rights either through buying and selling, exchanging, grants, become assets in the company and other legal acts of transferring rights, except the transfer of ownership through auctions, can only be registered if it is proven by a deed made by the PPAT according to the provisions in positive law in Indonesia. In certain circumstances, as determined by the Minister, the Head of the Land Office may register the transfer of land rights, carried out between individual Indonesian citizens as evidenced could not be drawn up by the PPAT, but which according to the Head of the Land Office the level of truth is sufficient (Article 37), although until now there has been no regulation regarding what deed not made by the PPAT, both regarding the type and form that can be accepted by the Land Office.

The making of this PPAT deed is attended by the parties and witnessed by at least 2 (two) people who meet the requirements to act as witnesses in law. PPAT refuses to making a deed if: (Article 39)

A PPAT shall turn down an application for a deed if the following is true:



- a. in the case of a registered land parcel or apartment ownership right, the original certificate of the right in question is not submitted to him/her or the certificate in question does not match the registers kept at the Land Office; or
- b. in the case of an unregistered land parcel, any of the following is true:
  1. the right-evidencing document (surat bukti hak) as meant in Article 24(1) or a letter made by the Village/Kelurahan Chief stating that the applicant has been possessing the land parcel in question as meant in Article 24(2) is not submitted to him/her; and
  2. a letter made by the Land Office stating that the land parcel in question has not been certified or a similar letter made by the applicant and endorsed by the Village/Kelurahan Chief in the case where the land parcel in question is located far away from the Land Office is not submitted to him/her; or
- c. one or all of the parties which will take the legal act in question or one of the witnesses as meant in Article 38 have no right to do so or have not fulfilled the requisitions to do so; or
- d. one or all of the parties involved act on the basis of surat kuasa mutlak (absolute power of attorney) which basically contains a legal act effecting a right transfer; or
- e. a permit has not been obtained from the authorized official or institution in the case where such a permit is required for the legal act in question in line with applicable regulations; or
- f. there is a dispute over the physical data and/or juridical data on the object of the legal act; or
- g. the requisitions imposed by the applicable legislation have not been fulfilled or the injunctions imposed by the applicable legislation have been violated.

Information about a refusal to make a deed, together with the reasons for the refusal, shall be sent in writing to the interested parties.

The refusal to make a deed is notified in writing to the parties with the reasons. After that, no later than 7 (seven) working days from the date of signing the deed in question, the PPAT is obligated to submit the deed he made along with the relevant documents to the Land Office for registration. The PPAT is then obliged to submit a written notification regarding the submission of the deed to the parties.

But keep in mind, even though there are regulations for the transfer of land rights in Government Regulation Number 24 of 1997, since Indonesia's independence in 1945, or since the promulgation of the 1945 Constitution, Indonesia has enforced several types of law. These various types of law, apart from having different sources of law, actually also have other characteristics of norms. The enactment of various types of law is inseparable from the constitutional in Article 16 B of the 1945 Constitution, which states that the state recognizes and respects the unity of indigenous peoples and their traditional rights..., and the provisions of Article I of the Transitional Rules of the 1945 Constitution which states that all existing laws and regulations are still valid as long as before the new laws are enacted. Therefore, based on the constitution, there are at least three types of law currently in effect in Indonesia, namely: Dutch Colonial Rule, Customary Law, and State Law.

In entering into an agreement, the parties will be considered valid if the agreement they make fulfills the provisions in Article 1320 of the Civil Code, namely:

- A. agreed between the parties
- B. The capacity to make an engagement
- C. A certain subject
- D. not forbidden by the legislation

In a transfer land rights agreement, such as a sale and purchase agreement, land rights are considered to occur and bind both parties after the essential elements are fulfilled. The vital components in a sale and purchase agreement, for example, are goods and prices. Basic

provisions in agreements such as legal terms of deals and others in Burgerlijk Wetboek are often used in Indonesia as the basis for determining the validity of a deed of agreement or others.

In addition to the provisions in the Civil Code, the validity of the transfer of land rights in Indonesia is determined based on the provisions in customary law or adat law. Customary law is used as a benchmark or guideline in transferring land rights because the Basic Agrarian Law is based on Customary Law. This is, for example, confirmed in the provisions of Article 5 of the Basic Agrarian Law, which states, "Agrarian law that applies to earth, water and space is adat law...". The use and utilization of Adat Law in assessing whether a transfer of land rights has fulfilled the elements in Adat Law is often used by judges in determining the validity of a transfer of land rights. This can be seen, for example, in several Supreme Court decisions Number: 1292\_K\_Pdt\_2012, Decision: 1364-K-PDT-2006, Decision: 3037\_K\_Pdt\_2013, and other decisions.

In buying and selling land according to adat law, one legal action, namely, the right to land, is transferred from the seller to the buyer when the land price is paid in cash (contant) by the buyer to the seller. The sale and purchase of land, according to adat law, is not an agreement as Article 1457 BW described. Still, a legal action intended to transfer land rights from the right holder (seller) to another party (buyer) by paying a sum of money in cash (contant) and carried out in the presence of the village head/customary local head (*terang*).<sup>19</sup>

Similar to the explanation above, Maria S.W. Soemardjono<sup>20</sup> then concluded that the legal requirements for buying and selling land according to customary law depended on the fulfillment of three elements, namely, cash, real and clear (*tunai, riil* and *terang*). What is meant by cash (*tunai*) is that the transfer of rights by the seller is carried out simultaneously with payment by the buyer and immediately, the right has been transferred. The price paid does not have to be paid off at all prices, and the remaining price will be considered a debt of the buyer to the seller. Then, the *riil* here means that the spoken will be followed by actual actions, for example, by receiving money from the seller and making an agreement before the village head. *Terang* means that buying and selling are carried out in front of the village head to ensure that the act does not contrary to the law.

From the explanation above, it can be said that IPR can only be transferred in written form and registered only in the Directorate General of Intellectual Property Rights. The advantage of this system is that ownership of an IPR gets legal protection for its ownership because the transfer is registered, so it is clear who the owner will receive legal protection. The transfer of land rights is still possible by using the non-PPAT deed as the basis for the transfer of rights. Because of this possibility, it is very difficult to determine who owns the land, unless it can be proven by the right holder, especially for the transfer of rights that do not use a PPAT deed or are not registered. Legal protection for holders of land rights will be difficult if there is a transfer of land rights not registered because it is difficult determining the land owner and the legality of the transfer.

## CONCLUSION

When compared to the transfer of Intellectual Property Rights, an Intellectual Property Right must be registered to get protection, as well as when the Intellectual Property Right is transferred. Regulations in Intellectual Property Rights are more certain or specific because

<sup>19</sup>Urip santoso. (2010). *Pendaftaran Dan Peralihan Hak Atas Tanah* (Jakarta: Kencana, 2010). p. 362-363

<sup>20</sup>Maria S.W. Soemardjono. (2001). *Kebijakan Perntanahan; Antara Regululasi Dan Implementasi* (Jakarta: Kompas). p. 142

they are under specific statutory law and through a registration mechanism. The transfer of land rights seen from the perspective of Law Number 5 of 1960 concerning Basic Agrarian Regulations or what is often referred to as UUPA (Basic Agrarian Law) and Government Regulation Number 24 of 1997 concerning Land Registration does require land registration, but that does not mean that land that is not registered does not get protection, this also implements to the transfer of land rights. Even though the transfer of land rights does not use the mechanisms and conditions specified in Government Regulation Number 24 of 1997, the transfer of land rights under the main provisions in customary law is still recognized, but implemented only when the dispute goes to court. Therefore, HKI is easier to carry out legal protection because the transfer ownership must be registered; while land rights are not easy to protect because ownership and transfer some times are not registered.

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