

Authentic Deeds and The Rights of The Deaf: Regulatory and Ethical Perspectives on Notarial Practice

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Received 12-07-2025

Revised 31-07-2025

Accepted 07-08-2025

Published 11-08-2025



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Abstract:

This study explores the legal obligations of Notaries in the preparation of authentic deeds involving deaf clients, with a focus on ensuring the fulfillment of their legal rights. According to Article 16 paragraph (1) letter m of the Indonesian Notary Position Law (Undang-Undang Jabatan Notaris or UUJN-P), Notaries are required to read aloud the contents of the deed to ensure the client's comprehension and consent. However, this provision lacks specificity in addressing the needs of clients with sensory disabilities, particularly the deaf. Employing a normative juridical method, this research analyzes existing legislation, comparative legal theories, and authoritative legal doctrines. The findings reveal a normative gap in the current legal framework, which does not explicitly mandate the presence of a sign language interpreter during the deed-reading process for deaf clients. This regulatory deficiency raises concerns regarding the legal protection and equal access to justice for persons with disabilities. Consequently, the study underscores the urgent need for more comprehensive and inclusive legal provisions to ensure legal certainty and the protection of the rights of deaf individuals in notarial practices.

Keywords: Notary, authentic deed, disability rights, UUJN-P, sign language interpreter.

Introduction:

In society, various problems and social disparities exist, including those experienced by people with physical differences, known as people with disabilities. People with disabilities are a vulnerable group, namely the group that most often experiences discrimination and whose rights are often not fulfilled. However, people with disabilities have equal rights and obligations before the law as the general public. As Indonesian citizens, they are entitled to special treatment as a form of protection from discrimination and human rights violations. For

this reason, Law Number 8 of 2016 concerning People with Disabilities The Law on Disabilities (Law on Persons with Disabilities) mandates various efforts, both through physical and non-physical access, to ensure the fulfillment of the rights of persons with disabilities. The Law on Persons with Disabilities classifies persons with disabilities into four types: physical, intellectual, mental, and sensory. Of these four groups, persons with disabilities sensory meets the requirements to become a Notary Public based on Article 39 paragraph (1) of Law Number 2 of 2014 concerning Amendments to the Notary Public

Law (UUJN-P). Article 4 paragraph (1) letter d of the Law on Persons with Disabilities explains that disabilities Sensory disorders include disorders in one of the five senses, such as sight, hearing, or speech. Thus, people with disabilities Sensory individuals can appear before a Notary as long as they are not under guardianship, have common sense, and are adults according to applicable legal provisions.

Deafness is a condition of hearing loss, either partial or total, due to the malfunctioning of the hearing aid, which makes it difficult for a person to use their hearing in everyday life and impacts various aspects of life (Indrawati et al. , 2020). According to Wardani, the term deafness (hearing impairment) covers various levels of hearing loss, ranging from mild to severe. A person is said to be deaf *if* they cannot hear at all and therefore have difficulty understanding language through hearing, with or without a hearing aid. While the term hard of hearing refers to people who still have residual hearing and can process language information with the help of hearing aids (Wardani et al., 2011). Thus, deaf people include those who have lost some or all of their hearing, so that their communication is hampered due to suboptimal hearing function. Regarding the rights of people with disabilities, Law Number 39 of 1999 concerning Human Rights (HAM Law) and the Law on Persons with Disabilities provide a legal basis that guarantees equal rights for people with disabilities as legal subjects, including as Notaries. Article 9 letter b of the Law on Persons with Disabilities states that the right to justice and legal protection includes the recognition of people with disabilities as legal subjects. Thus, they have equal rights and obligations with other individuals and can appear in the making of notarial deeds. Specifically for people with hearing disabilities, which is included in the disability sensory, they meet the requirements as Notary appearances in accordance with Article 39 paragraph (1) UUJN-P.

Notary is a legal profession that is considered noble (*officium nobile*) because its role is closely related to human values. Deeds made by

Notaries serve as the legal basis for property ownership and the determination of a person's rights and obligations. Errors in making a deed can result in the loss of rights or the emergence of unnecessary obligations (Navisa, 2022). As a public official, Notaries have the authority granted by the state to carry out certain public functions, regulated in Law Number 2 of 2014, so that their authority is derived directly from the law both in making authentic deeds and other special duties (Salim, 2015). The public's need for written evidence in the form of authentic deeds is increasing along with the demand for legal certainty in various matters. An authentic deed is an official document that is created from the beginning as evidence to deal with disputes, and Notarial deeds are one of the authentic deeds with formal, external, and material evidentiary power.

A Notarial Deed as an authentic deed means that the entire process of its creation, from the presence of the parties to the signing, must comply with the provisions of the law and be carried out by or before a Notary as an authorized official (Adjie, 2015). This deed officially records actions or events witnessed by the Notary, so that they can be accounted for and provide legal protection. An authentic deed is binding, with the truth of the contents being legally recognized as long as there is no evidence to refute it. Through this deed, the rights and obligations of the parties are clearly defined, guaranteeing legal certainty and preventing future disputes (Pramono, 2015). Specific provisions regarding authentic deeds by Notaries are regulated in the UUJN-P, which stipulates that the person appearing must be at least 18 years old or married and legally competent, including persons with disabilities who are not under guardianship. In practice, persons with disabilities can also appear before a Notary and have the same rights to be served without discrimination (Sutrisni, 2015).

In making an authentic deed, a Notary is required to ensure that the contents of the deed are understood and in accordance with the wishes of the person appearing, one of which is by reading the contents of the deed. This reading is an

important part of the deed-making process, starting from drafting, reading in front of the relevant parties, to signing by the person appearing, witnesses, and the Notary (Kusumastuti & Ririh, 2022). The obligation to read the deed has been clearly regulated in Article 16 paragraph (1) letter m of the UUJN-P. Reading the deed by a Notary is a mandatory step in making an authentic deed to ensure that each party understands the contents of the deed and can agree or reject it freely before signing. However, Article 16 paragraph (1) letter m of the UUJN-P only regulates this obligation for persons appearing without disabilities, without explaining the procedures for persons appearing with limitations such as deafness. Reading the deed is the last opportunity for the Notary and the person appearing to check and correct the contents of the deed, and provides space for the person appearing to ask questions or request explanations, thereby reducing potential problems in the future (Adjie, 2020). Therefore, Notaries must find appropriate solutions to protect the rights of deaf parties, for example by providing communication facilities such as sign language interpreters. This must be done without diminishing the Notary's obligation to read the contents of the deed in accordance with the regulations. As a country that upholds the law and human dignity, Indonesia requires Notaries to provide inclusive, authentic deed services for deaf persons by providing sign language interpreters to ensure their rights are fully fulfilled.

In relation to translators in the preparation of authentic deeds, Article 43 of the UUJN-P stipulates that:

- "(1) The deed must be made in Bahasa Indonesia.
- (2) If the person appearing does not understand the language used in the Deed, the Notary is obliged to translate or explain the contents of the Deed in a language that the person appearing understands.
- (3) If the parties wish, the Deed can be drawn up in a foreign language.
- (4) In the event that a Deed is made as referred to in paragraph (3), the Notary is obliged to translate it into Bahasa Indonesia.

- (5) If the Notary cannot translate or explain it, the Deed will be translated or explained by an official translator.
- (6) In the event of a difference in interpretation of the contents of the Deed as referred to in paragraph (2), the Deed drawn up in Bahasa Indonesia shall be used."

The provisions in Article 43 paragraph (5) of the UUJN-P do not yet regulate in detail how the reading of deeds is carried out for deaf appearers. The phrase " If the person appearing does not understand the language" is still unclear, especially regarding its application to deaf people. Notaries often face obstacles if there is no sign language interpreter available, while the UUJN does not regulate the obligation to provide a special interpreter for sign language. Because deaf people require special communication assistance and Notaries generally do not master sign language, the presence of an interpreter is very important. If the reading of the deed cannot be done in a way that is understood by deaf appearers, such as through sign language, this has the potential to cause legal problems in the future. In addition, there are still different views on the need for an official interpreter for deaf appearers, which is a challenge for Notaries because there are no clear legal regulations. The lack of norms in Article 43 of the UUJN-P creates legal uncertainty, because this provision is more directed at foreign citizen appearers, so it is not clear whether it also applies to deaf appearers.

From the existing provisions, it can be seen that there is a legal gap regarding the reading of authentic deeds for deaf parties. The process of reading or explaining the contents of the deed should involve an official translator or sworn translator, so that the contents of the deed can be truly understood by deaf parties. However, Article 43 of the UUJN-P does not clearly regulate the use of sign language and only discusses foreign languages. Therefore, in practice, deaf parties should receive assistance from a translator who understands sign language. Neither the UUJN nor the UUJN-P to date have fully accommodated the needs of the deaf community. Therefore, more

detailed and clear regulations are needed so that the right of deaf people to understand the information in authentic deeds can be truly fulfilled.

Based on this description, the author assesses that there is a gap in the norms in the UUJN-P regarding the regulation of the presence of an interpreter in making certificates for deaf persons with disabilities .

Method:

The legal research in this study uses a normative juridical method, namely an approach that focuses on law as a system of norms. The purpose of this study is to find the right legal solution in certain situations, specifically regarding the reading of authentic deeds by Notaries to deaf parties. The research approach used in this study is the Statute Approach, Comparative Approach and Conceptual Approach.

The legislative approach is carried out by examining the legislation related to the legal issues in this research, namely Law Number 2 of 2014 concerning the Position of Notary, namely in Article 43 paragraph (5), then, the comparative legal approach is a relevant method in normative legal research, especially when there is more than one law governing a similar legal substance or object. The comparative approach used in this research is a micro-comparison. The micro-comparison approach is a method that compares certain legal rules from other countries with the legal rules being studied. This approach can also be used to fill gaps in positive law (Efendi & Rijadi , 2024). Furthermore, the Conceptual Approach is an approach that departs from the views and doctrines that have developed in legal science (Syamsudin, 2007).

Results and Discussion:

Notary's obligations if there is a deaf person in the production of an authentic deed

1. Notary Obligations

A Notary as a public official is responsible for ensuring that all formal and material requirements for making a deed are met and

providing the best service for the public who require an authentic deed as legal evidence. In accordance with Article 16 paragraph (1) letter m of the UUJN-P, a Notary is required to read the deed in front of the parties appearing so that the contents of the deed are truly understood and agreed to by all parties involved. Reading the deed is an important part of the process of making an authentic deed to ensure that the contents and purpose of the deed are in accordance with the wishes of the parties and to guarantee that the signed document is the same as the one that has been read. Through this reading, the parties can ask questions and request explanations if there are parts that are unclear, so that it becomes a joint control for the Notary and the parties appearing so that the contents of the deed are accurate and free from errors before being signed by the parties appearing, witnesses, and the notary. The main purpose of reading the deed is so that all parties, including the Notary, can make corrections or clarifications so that the authentic deed can contain the truth according to what the parties appearing to the Notary, and the parties can determine whether or not they agree with the contents of the deed before signing.

2. Obligations of Notaries to Deaf Applicants

Regarding the obligations of Notaries towards deaf persons, Law Number 39 of 1999 concerning Human Rights affirms that deaf persons have the right to equal rights as legal subjects, including as persons appearing before a Notary. Because deafness is considered a disability. sensory, they meet the requirements as Notary public appearances according to Article 39 paragraph (1) UUJN-P, provided they are capable of carrying out legal actions. In reading the deed, if the person appearing is deaf, the Notary is obliged to find a solution that respects the person appearing to use sign language as a means of communication. The Notary must still read the contents of the deed before signing according to Article 16 paragraph (1) letter m UUJN-P, one of which is by involving a sign language interpreter. Article 24 letter c of the Law on Persons with Disabilities guarantees the rights of persons with

disabilities to obtain communication facilities, including sign language. However, Article 43 paragraph (4) UUJN-P only regulates official translators for foreign languages, so in practice deaf people appearing must be accompanied by an official translator to avoid misunderstandings about the contents of the deed. Clear, predictable, and consistent legal regulations are needed to protect the rights of deaf people appearing. Referring to Apeldoorn's Theory of Legal Certainty, legal certainty means that individuals know how the law is applied in certain situations before the legal process takes place. Reading the deed before signing ensures legal certainty for the Notary and the deaf person appearing in two important aspects: the ability to determine the law in a particular case and protection from arbitrary decisions.

Agreement between deaf parties can only be reached if the contents of the deed are explained or translated accurately. Without reading or translating the contents of the deed, deaf parties will not understand the contents of the deed and therefore cannot provide consent. Therefore, reading the deed is very important so that the parties obtain clear and correct information, so that an agreement can be reached. If the contents of the agreement are clear and understood, potential problems in the future can be minimized. The lack of regulations regarding the reading of deeds for deaf parties creates legal uncertainty for them, and Notaries who do not read the deed using sign language risk creating legal problems in the future. Therefore, more detailed regulations are needed so that the rights of deaf people with disabilities as Notary publics can be fully protected.

3. Arrangements to Accommodate the Needs of Deaf Applicants in the Preparation of Authentic Deeds

Protection for persons with disabilities, particularly those with hearing impairments, includes their right to obtain information about the contents of the deed being drawn up. The UUJN and UUJN-P require the deed to be read before the person appearing and witnesses before signing,

but this regulation is still limited to persons with physical disabilities, such as the use of substitute signatures, and does not clearly accommodate the needs of the deaf. A Notary is required to read and translate the contents of the deed if the person appearing does not understand Indonesian, as per Article 43 of the UUJN-P, with an official translator as an alternative if the Notary is unable to do so. The deed-making process must meet the requirements of *verlijden*: preparation, reading, and signing. For persons with hearing impairments, reading the deed is crucial so they understand the legal consequences and the Notary can ensure the contents of the deed are in accordance with the person appearing. A translator can be understood as an individual tasked with transferring or transferring ideas, concepts, thoughts, and information from one language to another (Saputro, 2021). UUJN-P regulates the provision of official interpreters for those appearing without Indonesian, with embassy staff serving as an alternative if a sworn interpreter is unavailable, referring to foreign language interpretation. Therefore, a legal review is needed to equalize the rights of deaf persons appearing, including the importance of sign language interpreters for a fair and legitimate legal process.

Notaries can apply legal discovery through the analogy method, linking existing regulations to address legal gaps in the regulation of deaf witnesses who create authentic deeds. According to Subekti (1983), a nation's culture and law are reflected in its mindset and outlook on life, which differ between Western and Indonesian societies, thus influencing legal regulations. The UUJN-P regulates the obligation to read deeds but does not adequately accommodate the needs of deaf witnesses. Meanwhile, the Law on Persons with Disabilities affirms the right to adequate information and communication, including in legal interactions. Therefore, a comparative analysis is necessary to identify disharmony and formulate legal improvements. This normative gap is evident in Article 43 of the UUJN-P, which does not list sign language as a foreign language. Given that deaf witnesses require special

communication assistance and Notaries lack such expertise, the presence of a sign language interpreter is crucial. Deaf witnesses can bring a neutral interpreter or request a Notary to provide one to explain the contents of the deed clearly, to avoid future legal issues. After the reading, the deed must be signed by all parties, and the name of the official interpreter must be included as proof that the contents have been translated correctly and understood. The procedure for reading, translating and signing the deed with an official translator must be stated explicitly at the end of the document to ensure legal validity and certainty.

Provisions for Deaf Persons Related to The Creation of Authentic Deeds

1. Notary's Responsibilities in Making Deeds

As a state official, a Notary holds the primary authority and responsibility for the preparation of authentic deeds aimed at realizing justice and legal certainty for the community. One of the important obligations of a Notary is to read the deed (*verlijden*) so that the contents of the deed are truly understood and agreed to by the parties appearing. If this reading is not carried out, the deed is only considered a private deed without full evidentiary force, according to Article 16 of the UUN-P and Article 1868 of the Civil Code. The Notary is obliged to formally verify the identity and will of the parties and ensure that the contents of the deed reflect a valid agreement that does not conflict with the law. Negligence in the deed preparation process can result in civil, administrative, and even criminal liability. In the context of people with disabilities, especially the deaf, the reading of the deed must be accompanied by a sign language interpreter so that the parties appearing truly understand the contents of the deed and give conscious consent. This is important to avoid legal disputes in the future.

Comparative legal approach according to Peter de Cruz can be a solution to fill the legal gap by studying best practices from other countries, encouraging inclusive legal reform, and harmonizing regulations related to the rights of

people with disabilities in the creation of authentic deeds. According to Subekti, differences in culture and outlook on life within a nation, such as individualistic and analytical Western societies, and collectivist and tradition-based Indonesian societies, influence the form and application of law. Therefore, legal regulations must be adapted to the local cultural context. From an ethical and professional perspective, a Notary is required to explain the content and intent of the deed so that the parties understand their rights and obligations. If the person appearing has a disability, such as deafness, the Notary must adjust the process, including providing a sign language interpreter. Without adequate reading and explanation, the deed can be invalidated for not meeting formal requirements, particularly the principle of agreement according to Article 1320 of the Civil Code.

Comparative law also serves as a legal construction tool to fill gaps, interpret regulations, and find solutions to issues not explicitly regulated. Based on existing regulations, new rules can be formulated that require the reading of deeds through a sign language interpreter. With an agreement understood by the parties with disabilities, these new rules ensure valid consent to the contents of the deed. Conversely, without an interpreter, a deaf party cannot be considered to have given valid consent. Therefore, Notaries have a crucial role in providing guidance and advice regarding the use of interpreters for deaf parties to ensure their rights and legal certainty.

2. The Form of Arrangement for Deaf People Required

Legal regulations in Indonesia are expected to develop to be more comprehensive by prioritizing preventive measures by Notaries, rather than solely repressive ones, in order to provide more effective protection for victims. These preventive measures include identity checks and procedural adjustments for those appearing who have difficulty reading, writing, hearing, or speaking. Therefore, Article 43 of the UUN-P needs to be adjusted to include provisions regarding the explanation of the contents of deeds

through sign language interpreters. The lack of norms governing the obligation of Notaries to read authentic deeds to deaf appearers has the potential to result in the non-fulfillment of the right to information for both the appearers and Notaries. This can create uncertainty regarding permissible and prohibited actions and the rights and obligations within the contents of the deed, thus implicating the lack of legal certainty, particularly for Indonesians with disabilities sensory, namely deaf.

The situation different If compared to Colorado, a state in the United States. Based on Colorado Revised Statutes (CRS) § 24-21-514.7, which is the law in the state of Colorado, contains arrangement law special about utilization service translator in the manufacturing process deed Notary, especially if Notary and signing parties document No use the same language. Terms This effective valid since September 1, 2023 and is Colorado state 's steps in adapt practice Notary with dynamics need multilingual society as well as development today 's technology.

Colorado Revised Statutes § 24-21-514.7

“(1) If a Notary officer and an individual for whom a Notary act is to be performed do not communicate in the same language , an interpreter who communicates in a language in common with both the Notary officer and the individual may be used to facilitate the Notary act. A notarial officer May rely on representations made by the interpreter on represent of the individual for whom the Notary act is performed as factual. Any errors in interpretation are not attributable to the Notary officer , and the Notary officer is not liable in any disputes arising from such errors. ”

Which when translated in Bahasa Indonesia is as follows:

“(1) Jika pejabat Notaris dan individu yang untuknya akta Notaris akan dibuat tidak berkomunikasi dalam bahasa yang sama, seorang juru bahasa yang berkomunikasi dalam bahasa yang sama dengan pejabat Notaris dan individu tersebut dapat digunakan untuk memfasilitasi akta Notaris. Seorang pejabat Notaris dapat

mengandalkan pernyataan yang dibuat oleh juru bahasa atas nama individu yang untuknya akta Notaris dibuat sebagai fakta. Setiap kesalahan dalam penafsiran tidak dapat dikaitkan dengan pejabat Notaris, dan pejabat Notaris tidak bertanggung jawab atas perselisihan yang timbul dari kesalahan tersebut.”

Colorado requires the presence of an interpreter for deaf parties when drafting deeds. This differs from the Indonesian Law on Deafness and Impairment (UUJN-P) which does not explicitly stipulate the obligation to provide an interpreter for deaf parties. Therefore, it is necessary to formulate a norm requiring Notaries to read deeds to deaf parties to ensure fairness and transparency. The state authorizes Notaries to record, determine, and provide legal guidance to the public, particularly in civil matters. In both Indonesia and Japan, Notaries are required to read deeds to the parties before signing to ensure understanding and compliance with the parties' wishes. Through comparative legal theory, the lack of norms in the UUJN-P regarding the reading and explanation of deeds for deaf parties is a concern, as there are no provisions regarding sign language interpretation. Therefore, a comparative analysis between the UUJN-P and regulations from other countries that have regulated interpretation for deaf parties is important.

Reading the deed provides important benefits, for the Notary this is the final opportunity to correct possible errors, as well as for the parties to ask for clarification on matters that are not yet understood, so that the potential for disputes in the future can be minimized . Provision of a translator in *Kōshōninhō* or the Japanese Notary Law Act No. 74 of 2011 is stated in Article 29 which states that:

“In order to create an instrument in cases where a client does not understand the Japanese language or a client is deaf or mute, or any other person who is incapable of speaking any language and who does not understand written words, Notaries must have an interpreter attend the creation of said instrument.”

Translated into Bahasa Indonesia:

“Dalam pembuatan suatu akta dimana klien tidak mengerti bahasa Jepang atau klien Tuli/ Bisu, atau orang yang tidak mampu berbicara dengan bahasa apa pun dan tidak mengerti kata-kata tertulis, Notaris wajib menghadirkan seorang penerjemah pada saat pembuatan akta.”

This comparison demonstrates the importance of regulating the provision of interpreters for deaf appearers, especially those with hearing impairments, in notarial practice according to the UUJN-P and *Kōshōnihō*. First, in the UUJN-P, an interpreter is present if the appearer does not understand the language of the deed (Indonesian), while *Kōshōnihō* requires an interpreter not only for language differences, but also for deaf appearers with disabilities or those who cannot speak or read. Second, in the UUJN-P, the interpreter focuses on accurate written translation, while in *Kōshōnihō*, the interpreter is tasked with conveying messages directly and accurately according to the needs of the appearer with disabilities. Third, recognition of the rights of deaf people in the UUJN-P has not been explicitly regulated, in contrast to *Kōshōnihō*, which explicitly requires the presence of an interpreter in the process of making a deed for deaf parties.

For persons with disabilities, particularly those with hearing impairments, the reading of the deed must be supported by a sign language interpreter to ensure full understanding of the deed's contents. Currently, the Law on Deaf Legal Aid does not explicitly stipulate the obligation to provide an interpreter for persons with hearing impairments, unlike some countries such as Colorado and Japan, which have explicit regulations on this matter. This absence of regulations has the potential to create legal uncertainty and injustice for persons with hearing impairments. A comparative legal approach is crucial to fill this gap by studying best practices from other countries to formulate new, inclusive and adaptive regulations. Furthermore, a Notary's responsibility also encompasses ethical and professional aspects to ensure that the deed reflects the valid agreement of the parties and

meets the formal and material requirements of applicable law.

The theory of legal discovery, in this case, is carried out by a Notary as a solution when there are unclear regulations, especially in serving deaf people. With the existence of regulations governing the presence of sign language interpreters, it is hoped that the rights of people with disabilities will be fulfilled, and authentic deeds made can be legally accepted without causing future disputes. With the existence of a legal vacuum in a regulation, a legal discovery is needed that leads to the formation of a new regulation. Finding a new law is a necessity when the rules regarding a matter are not only unclear or there is a lack of norms, but also there is indeed no regulation that regulates the existing legal event or there is a normative vacuum in a regulation, so that a formation is needed that can accommodate and resolve the legal event, the results of which are formulated in a decision.

Conclusion:

Based on the research results and explanations above, several conclusions were drawn to address the above problem. The Notary's Obligation and Responsibility towards Deaf Applicants is to request the presence of a sign language interpreter. This translation is very important during the deed reading process, which is a crucial step to ensure that the contents of the deed have been clearly understood and agreed to by the parties. This condition results in a lack of legal certainty and has the potential to give rise to legal problems that may arise in the future. Regulations regarding deaf persons appearing in the preparation of authentic deeds are still not regulated in the UUJN and UUJN-P in Indonesia, thus affecting the effectiveness of deed preparation. Unlike Colorado and Japan, which have expressly regulated the use of sign language interpreters, Indonesia needs to accommodate this need. Therefore, clear and specific regulations are needed in positive law in Indonesia to ensure optimal protection of the rights of deaf persons with disabilities.

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