

Rechstvaccum: Making of Authentic Deed for Persons with the Blind Persons

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Abstract

Legal certainty is an integral part of the anatomy of the purpose of the law being formed. One of the premises that was built in assembling this anatomy occurred when we discussed the amendment of the deed carried out by persons with disabilities (people with visual impairments). Where, in principle, a notary as a public official is obliged to make sure that the deed made is understood by the appearers. When linking the aspects of Persons with Disabilities in Article 43 of the UUDN there is a provision that the Article provides legal guarantees for notarial products using an understandable language. This scheme then leads to the question that if the Notary Product uses Article 43 paragraph (1) of the UUDN, the deed must be made in Indonesian, is it written using the alphabet or using Braille?

Keywords

authentic deed; disability; blind



I. Introduction

The term “Persons with Disabilities” became known when Law Number 8 of 2016 concerning Persons with Disabilities (hereinafter referred to as the Law on Persons with Disabilities) was promulgated on April 15, 2016. The term Persons with Disabilities replaced the term persons with disabilities used in Law Number 4 of 1997 concerning Persons with Disabilities. . Article 1 point 1 of the Law on Persons with Disabilities explains that Persons with Disabilities are any person who experiences physical, intellectual, mental, and/or sensory limitations for a long period of time who in interacting with the environment may experience obstacles and difficulties to participate fully and effectively with citizens. others based on equal rights.

The community's paradigm towards people with disabilities is often likened to a person's medical incapacity, so that people with disabilities are considered as sick people who always need help and cannot get an education, let alone work like humans in general. A person with a disability is a person with physical or mental limitations, such as experiencing physical, mental limitations or a combination of both for a long period of time. Diffables find it difficult to access public services, such as in the fields of education, health, and employment, due to the lack of accessibility of support for people with disabilities in these public service places. The position and rights of people with disabilities are guaranteed by Law Number 8 of 2016 concerning Persons with Disabilities which emphasizes Article 28 A of the 1945 Constitution of the Republic of Indonesia concerning the position and rights and obligations as well as equal roles as part of the Indonesian people.

Here it is clear that Law Number 8 of 2016 concerning Persons with Disabilities, hereinafter referred to as the Law on Persons with Disabilities, is a legal reference (legal framework) for the fulfillment of the rights of persons with disabilities, in order to provide equal opportunities and to combat separation, institutionalization and the exclusion of

persons with disabilities as a distinctive form of disability discrimination. The Law on Persons with Disabilities recognizes that persons with disabilities are legal subjects, therefore they have the same rights and obligations as other human beings, one of which is gaining accessibility to public services.

Persons with Disabilities are required to obtain accessibility in public services. This is as confirmed in Article 18 letter b of the Law of the Republic of Indonesia Number 8 of 2016 concerning Persons with Disabilities that:

"Article 18"

Accessibility Rights for Persons with Disabilities include the right to:

- a. *get accessibility to take advantage of public facilities; and*
- b. *get Decent Accommodation as a form of Accessibility for*

Persons with Disabilities if it is associated with the services provided by a Notary, that a Notary actually has an obligation to provide Accommodation for Persons with Disabilities. However, unfortunately, this provision is not emphasized in the Notary's Obligations under UUJN as stated in Article 16. Regarding the Obligation to Fulfill Accessibility Rights for Persons with Disabilities in the Implementation of Notary Positions, it is necessary to pay attention to the clause in Article 43 of the UUJN which opens up opportunities for accessibility of persons with disabilities provided by a Notary. . It is stated in Article 43 UUJN that:

"Article 43"

- (1) *The deed must be made in Indonesian.*
- (2) *In the event that the appearer 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 understood by the appearer.*
- (3) *If the parties so desire, the Deed can be drawn up in a foreign language.*
- (4) *In the event that the Deed is made as referred to in paragraph (3), the Notary is obliged to translate it into Indonesian.*
- (5) *If the Notary is unable to translate or explain it, the Deed is translated or explained by an official translator.*
- (6) *In the event that there are differences in interpretation of the contents of the Deed as referred to in paragraph (2), the Deed made in the Indonesian language shall be used."*

Based on these provisions, it is clear that the notary is obliged to make sure that the deed made is understood by the appearers. Regarding the aspect of Persons with Disabilities in Article 43, there is a provision that the Article provides legal guarantees for notarial products using an understandable language. This scheme then leads to the question that if the Notary Product uses Article 43 paragraph (1) the Deed must be made in Indonesian, is it written using the alphabet or using Braille? Article 43 paragraph (1) of the UUJN confirms that the deed must be made in Indonesian, confirms that there is a vacancy in the legal issue, because the norm is only to provide regulation on the language (in this case Indonesian) there is no information on the language written in what kind of letters.

II. Research Method

The research method of research that used is normative juridical research. According to general law, this research focuses on solving the problems discussed based on the applicable regulations and seeking the truth and answers to cases and/or answers to cases and/or investigations. The relevance of the research that the author has researched, this normative juridical research is expected to be able to answer the problems of Making Authentic Deeds for Appearing Blind Persons.

III. Results and Discussion

3.1 The Validity of the Deed Made by a Notary Using Braille for the Blind Applicant

In practice in people's lives, the meaning of a contract or agreement is sometimes misunderstood or ambiguous. There are so many business people who have mixed up the two terms, giving rise to the thought that a contract or agreement has different meanings. In Burgerlijk Wetboek or BW, the term *overeenkomst* or contract is used which is the same meaning. This can clearly be seen from the title of Book III, Second title concerning "Agreements Born from Contracts or Agreements" which in the original language (Dutch), namely: "Van verbintenissen die uit contract of *Overeenkomst* geboren worden". This understanding is also supported by the opinions of many scholars, including: Hofmann, j.Satrio, Soetojo Prawirohamidjojo and Marthalena Pohan, Mariam Darus Badruzaman, Purwahid Patrik,

Contract law regulatory system that uses an open system (open system). means that everyone is free to enter into a contract or agreement as well as for persons with disabilities, especially the blind, whose rights are contained in Law Number 8 of 2016 regulating Persons with Disabilities.

The arrangements have been regulated or those that have not been regulated in the Act. This is obtained from the provisions contained in Article 1338 paragraph (1) of the Civil Code, which states that all agreements made legally apply as law for those who have made them. The provisions of Article 1338 paragraph (1) of the Civil Code provide freedom to the parties who are entering into an agreement or contract to:

1. whether or not to make an agreement,
2. enter into an agreement with anyone,
3. determine the contents of the agreement, the implementation arrangements, and explain the terms of the contract, and
4. determine the form of the agreement, namely in writing or orally.

Development is a change towards improvement (Shah et al, 2020). In the history of its development, contracts initially used a closed system. This means that the parties are bound and the meanings stated in the law. This is due to the influence of legislature teachings which view that there is no law outside of the law of sects that highly respects the law. In the decision of HR 1919, the definition of an unlawful act is not only against the rules contained in the law, but also has violated the subjective rights of others, as well as decency, and public order.

With the principle of freedom of contract, it gives rights to anyone who will enter into a contract or enter into an agreement. In carrying out a contract, all legal subjects are allowed to enter into an agreement, but must also pay attention to and fulfill the legal requirements of the agreement that have been specified in Article 1320 of the Civil Code. or null and void by one of the parties having an interest.

In carrying out a contract, the parties involved in the contract can act in their own interests and on their own behalf, which means if the person has an interest in making the contract and he is himself legally competent to perform the contract. But it can also act on its own behalf. Agreements can occur in writing or unwritten, with an agreement that has been agreed but in an unwritten way it can be in the form of an oral agreement, certain symbols, or secretly. A written agreement is usually carried out either with an underhand deed or an authentic deed.

Contracts that are mostly carried out by the parties generally use the perfect language in writing or orally, make a written contract agreement aimed at providing legal certainty for the parties who have entered into the contract and can also be used as perfect evidence, and when a dispute arises in the future it can be used as evidence. However, not all legal subjects can enter into contracts in this written way, because they have physical limitations or are common for persons with disabilities, one example of persons with disabilities is the Blind.

For people with visual impairments they have a deficiency in their vision. Blind people need a tool in carrying out their daily activities. For example, if a blind person walks, one of the assistive devices for people with visual impairments in traveling is to use a cane or what is known as The White Cane. Based on its function, blind sticks are divided into two, namely sticks for mobility orientation and sticks that help walk as a procession of introducing terrain, roads, spaces and conditions around the blind. And for people with visual impairments to read an article they need Braille, Braille is a type of touch writing system that can be used by blind people.

So if there is one of the contract makers (who makes an agreement) is a blind person with disabilities, who in making an agreement chooses to use the written method, then one of the parties who agrees has limitations in seeing the contents of the agreement that has been agreed, then for the Blind people can use Braille as an alternative so they can see and find out what the contents of the agreement have been agreed upon by the parties. Because people with visual impairments also have the right to be able to carry out legal actions independently without the need for help from other people. However, the basic question that arises is what is the status of the deed made in Braille? Although the deed is defined as a form of legal protection.

Protection is an important element in rights, as Houwing's opinion sees rights as an interest that is protected by law in a certain way. The law must consider interests carefully and strike a balance between them. Van Dijk stated that the law must function in achieving the goal of peace, the goal of achieving peace can be realized if the law provides as many fair arrangements as possible.

Everyone has the right to get protection from the law. Almost all legal relationships must get protection from the law. Therefore there are various kinds of legal protection.

M. Isnaeni is of the opinion that legal protection in terms of its source can be divided into 2 (two) types, namely, external legal protection and internal legal protection. Meanwhile, Philipus M. Hadjon said that there are 2 (two) kinds of legal protection, namely, preventive legal protection and repressive legal protection.

Legal protection also applies to groups of people with disabilities, because they have the same position, rights and obligations as non-disabled people. Persons with disabilities as part of Indonesian citizens deserve special treatment as an effort to protect them from various violations of their rights. According to Law Number 8 of 2016 concerning Persons with Disabilities (hereinafter referred to as the Law on Persons with Disabilities) Article 1 number 5 states that protection is a conscious effort to protect, protect, and strengthen the rights of persons with disabilities.

Persons with disabilities are a diverse group of people, including persons with disabilities who have physical disabilities, mental disabilities or a combination of physical and mental disabilities. The term persons with disabilities is also very diverse. The Ministry of Social Affairs refers to people with disabilities as people with disabilities, the Ministry of National Education refers to people with special needs, while the Ministry of Health refers to people with disabilities.

The Importance of Making a Notary Deed Using Braille for Blind Petitioners in Indonesia cannot be separated from the implementation of guarantees for Human Rights as stated in Article 28A-28J of the 1945 Constitution. Officially this article has made it a constitutional right for every citizen or "constitutional right". ". In Law No. 8 of 2016 concerning persons with disabilities contained in Article 1 paragraph (1) stipulates that what is meant by "persons with disabilities is anyone who experiences physical, intellectual, mental, and/or sensory limitations for a long period of time. When interacting with the surrounding environment, you can experience an obstacle and also difficulty being able to participate fully and effectively with residents in the environment based on having equal rights."

So in writing contracts whose preparation uses Braille so that the rules can be considered valid if the contract uses Braille because in Law Number 2 of 2014 contained in Article 43 paragraph (1) only explains that the contract deed that has been agreed must be made in English. Indonesia. There are no rules that explain the use of Braille letters for the blind in terms of contract drafting. The meaning of Braille is the letters used by persons with disabilities, especially for the visually impaired, whose function is to read. The letters were created by a French person who was blind when he was a child, namely Louis Braille. The form of writing in Braille is in the form of dots and raised lines made using a nail-like tool called a stylus.

Article 43 paragraph (1) of the UUN confirms that the deed is made in Indonesian, although it is possible to make it in another language understood by the Notary, witness if the interested party wishes as long as the law does not specify otherwise (Article 43 paragraph (4) of the UUN) . Basically, the minutes of the deed are made in Indonesian or other languages. In other words, the minutes of the deed must be made in only one language, for example, it is not allowed in one deed in the form of the Minutes to be made in more than one language.

The substance of Article 43 UUN can be interpreted as follows:

1. Minutes of deed made in Indonesian or other languages, at the time of reading, if desired by the appearers, the Notary can translate directly at that time or by an official translator in the language desired and understood by the appearers;
2. A copy of the deed is made in Indonesian, and can also be made in another language understood by the Notary or by an official translator.

With the provisions as mentioned above, it is not possible for a Notary deed for either Minuta or a copy to be made in Braille. This is because the framework in the Article only focuses on the phrase "Language" so that both the Minuta and copies can be made in Indonesian or other languages that can be understood by the Notary and the appearers, and also only regulates the use of written language from one language which is translated into English. other. In certain cases, especially for the appearer who has certain physical disabilities, for example in this case the blind person, if it is not read by the appearer himself, then the Notary is obligated to read it, and when it is being read it must be accompanied to translate it specifically for the deaf appearer. mute,

So that the current norm does not allow for the making of a deed in Braille, but only allows the making of a copy of the translation of the deed in Braille. Where for those who appear to be blind, if the appearers in question ask for a copy of the deed, the Notary is obliged to give it to the appearers after being translated into a language that is understood by the appearers, even though the problem is that the appearers understand Indonesian but do not understand the use of letters other than Braille, so ideally In the future, it is necessary to have a clause/norm that requires at the request of one of the presenters, a copy of the deed is made in Braille. So here it can be concluded that the Braille letters in making a deed are only interpreted as making a copy of the deed, not the main deed document.

This analogy also actually supports the view that when the Deed is made in Braille. So the deed does not have the ability to be read by a notary and interested parties (examples in this case are witnesses and the parties in court when a dispute occurs). The consequence of the Deed made in Braille is that the notary who is not blind, witnesses, and the court will not be able to read the contents of the Deed.

Thus, the Deed text made in Braille has a position as a copy. If the analogy has similarities with the translation of the deed into a language other than Indonesian as referred to in Article 43 of the UUJN that "A copy of the deed is made in Indonesian, and can also be made in another language that is understood by a Notary or by an official translator." But unfortunately, legal certainty regarding the making of copies by translating the use of letters is not an implied part of Article 43 UUJN, because Article 43 UUJN only provides an obligation for Notaries to make cross-language deed copies (in this case Indonesian to foreign languages, not Indonesian). with Latin/Abjad letters to Indonesian with Braille).

3.2 Future Arrangements Regarding the Making of Notary Deeds Using Braille for Blind Applicants

Discussing future arrangements related to the making of a notarial deed using braille for the applicant cannot be separated from the understanding of legal protection. In fact, a person with a visual impairment cannot make a deed before a notary. Apart from that, in general, notaries provide advice to the appearers to be represented. Meanwhile, to assist the appearer in reading the deed, a magnifying glass is used, and the appearer can also read using braille.

Based on Article 43 paragraph (2) of the UUJN-P, it is stated that in the event that the appearer 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 understood by the appearer. Then in paragraph (3) it states that if the parties wish, the deed can be made in a foreign language.

Based on the explanation above, if you look at Article 43 paragraph (2), a notary is obliged to translate or explain into a language that is understood by the appearer, then it must be done because it is an order of the UUJN. In paragraph (3) it is stated that the deed can be made in a foreign language, but the construction in Article 43 paragraph (3) is only limited to "foreign language" which is clearly different from the context of "letters" one of which is braille which is specifically for people with disabilities, especially the visually impaired neutral.

In simple terms, the conditions in Article 43 can be analogized with language and letters. Language is an arbitrary sound symbol system, which is used by members of a society to work together, interact, and identify themselves. Which means language is a tool for interaction between members in a society. Indonesian has a different system with Arabic or English. While the letter is a sign in the writing system which is a member of the

alphabet that symbolizes the sound of language. A simple analogy means that letters are symbols of the sound of a language, while language is a tool for interacting. In Hijaiyah Letters (Arabic Letters) have a different sound from the Alphabet letters, but when the sound arrangement of each letter is arranged it will become a language.

So the provisions of Article 43 UUJN that the deed must be made in Indonesian and can be translated into a foreign language, which means that the obligation to make the deed is to use "language" instead of using "letters". The conditions in Article 43 can be a legal loophole for the Blind Persons to obtain services in the form of making a deed in Braille.

However, future arrangements that need to be considered are how the UUJN provides technical guarantees (normative, administrative, and empirical) that the blind applicant's right to obtain a deed in braille as a form of legal protection. Based on Article 43 paragraph (2) of the UUJN-P, it is stated that in the event that the appearer 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 understood by the appearer. This means that it must be carried out because it is an order

UUJN. Then in paragraph (3) it states that if the parties wish, the deed can be made in a foreign language. Foreign languages here include the use of braille to provide protection for people with visual impairments or only general languages such as national languages, international languages or regional languages.

According to Habib Adjie and Rusdianto Sesung, it was stated that if the appearers wanted a copy of the deed, an excerpt of the deed in another language, as well as in other languages and letters, then the translation of the copy of the deed, the Indonesian language excerpt had to be done. In addition, the translation into another language desired by the appearers is carried out by an official translator based on a copy or quote of the deed. This is in accordance with Article 43 paragraph (5) of the UUJN-P which states that if a notary cannot translate or explain it, the deed will be translated or explained by an official translator. Official translators as mentioned in the explanation of Article 43 paragraph (4) UUJN-P are official translators in this provision, including certified and registered sworn translators or using staff at embassies of foreign countries if there is no sworn translator.

In certain cases, especially for appearers who have certain physical deficiencies, such as deaf and mute, if the appearers do not read them themselves, then the notary must read them out and when they are being read they must be accompanied to translate so that the appearers understand and at the end of the deed must mention the name of the translator. Likewise, for the visually impaired appearer, if the person concerned asks for the deed to be translated into a language understood by the appearer, namely braille, then the notary is obliged to translate it. At the end it must be stated at the request of the appearers or one of the appearers of the deed translated into braille.

Therefore, in the future, in the context of using Braille, Article 43 of the UUJN-P must be translated with the possibility still open if it is desired by the presenters (Article 43 paragraph (3) of the UUJN-P) to be translated into other languages or other letters. , but only a translation made from a copy of the deed, not a notarial deed. This is because based on Article 43 paragraph (1) UUJN-P states that the deed must be made in Indonesian. Elucidation of Article 43 paragraph (1) of the UUJN-P explains that the Indonesian language referred to in this provision is Indonesian which is subject to standard Indonesian language rules. Mandatory according to the Big Indonesian Dictionary means that it must be done, it cannot be done. This means that the notarial deed must be made in the Indonesian language in accordance with standard, coercive, in other words cannot be violated or deviated. In addition, Article 43 paragraph (6) of the UUJN-P states that in the event that there are differences in interpretation of the contents of the deed as referred to in

paragraph (2), the deed made in the Indonesian language shall be used. In addition to being required, the deed must be made in Indonesian, if there is a difference in interpretation, the Indonesian language deed is also used. Then in Article 31 paragraph (1) of Law Number 24 of 2009 concerning the State Flag, Language and Emblem, as well as the National Anthem it is stated that the Indonesian language must be used in a memorandum of understanding or agreement involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions or Indonesian citizens. This means that not only UUJN requires the deed to be made in Indonesian, but Law Number 24 of 2009 also requires the same thing.

Normatively the notarial deed, the minutes of the deed, the copy of the deed and the quotation of the deed must be made in the Indonesian language. The use of Indonesian in the notarial deed, the minutes of the deed, the copy of the deed and the quotation of the deed are part of the formal aspects of the notary deed, because the notary deed must be made according to the form and procedure stipulated in this law. Therefore, the notary deed, the minutes of the deed, the copy of the deed and the quotation of the deed that do not use the Indonesian language are violations of the formal aspects, and violations of the formal aspects of the notary deed have sanctions as regulated in Article 41 UUJN-P. Article 41 of the UUJN-P which states that the violation of the provisions as referred to in Article 38, Article 39, Article 40 results in the deed only having the power of proof as a private deed.

The use of Indonesian in a notarial deed can also be reviewed based on Article 1320 of the Civil Code, the conditions for the validity of the agreement, especially regarding the objective conditions, namely a cause that is prohibited by law or the absence of a lawful cause. It is a general rule in contract law that an agreement that violates one of the objective conditions will be null and void by law.

Article 1337 of the Civil Code confirms that a cause is prohibited if it conflicts with the law, morality and public order. If you use the provisions of Article 1337 of the Civil Code, then the notarial deed, the minutes of the deed, the copy of the deed and the quote of the deed that are not made in Indonesian are null and void because they violate one of the objective conditions, namely the prohibited cause. If the law requires every contract or agreement in this case including notarial deed, minutes of deed, copy of deed and quote of deed using Indonesian language, it must be complied with. If this is violated, it will be null and void.

Based on the explanation above, it can be seen that the legal protection for persons with disabilities, in this case the visually impaired, regarding the making of a deed before a notary, basically there are no rules that regulate it firmly and adequately. It's just that in the UUJN there is a clause that underlies legal protection for the blind as stated in Article 43 paragraph (3) of the UUJN-P. It is said to "regulate firmly and adequately" this is because the blind person can translate into braille from a copy of the deed, but its nature is only a translation, not a notarial deed, because the deed itself must be made in Indonesian (Article 43 paragraph (1) UUJN-P) and if there is a difference of interpretation used is a deed made in Indonesian (Article 43 paragraph (6) UUJN-P), In addition, Law Number 24 Year 2009 also requires Indonesian language to be used for memorandums of understanding or agreements. Therefore, the notarial deed is limited by a deed in Indonesian language, the use of braille is only limited to translation, it is not a notarial deed so that the legal force of a deed is only attached to the main deed (which is not translated). So that in the future, to accommodate legal certainty, the affirmation of the clause must be translated into another letter even though it is in the same language it needs to be included in the UUJN-P. the use of braille letters is only limited to translation, not a notarial deed so that the legal force of a

deed is only attached to the main deed (which is not translated). So that in the future, to accommodate legal certainty, the affirmation of the clause must be translated into another letter even though it is in the same language it needs to be included in the UUJN-P. the use of braille letters is only limited to translation, not a notarial deed so that the legal force of a deed is only attached to the main deed (which is not translated). So that in the future, to accommodate legal certainty, the affirmation of the clause must be translated into another letter even though it is in the same language it needs to be included in the UUJN-P.

IV. Conclusion

Braille letters in making a deed are only interpreted as making a copy of the deed, not the main deed document. Then, the deed made in braille has the position as a copy. But unfortunately, legal certainty regarding the making of copies by translating the use of letters is not an implied part of Article 43 UUJN, because Article 43 UUJN only provides an obligation for Notaries to make cross-language deed copies (in this case Indonesian to foreign languages, not Indonesian). with Latin/Abjad letters to Indonesian with Braille). So that in the future, to accommodate legal certainty, the affirmation of the clause must be translated into another letter even though it is in the same language it needs to be included in the UUJN-P.

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