



## Validity of notarial deed with appearance people with deaf disabilities

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### Abstract

One of the obligations of a notary is to make an authentic deed, then provide an obligation for the Notary to read the deed in front of the audience as explained in Article 16 paragraph (1) letter m UUJN. However, if in reality the person facing the hearing is a deaf person, then the notary has a role in fulfilling their rights so that they are not harmed. This research aims to examine the validity of notarial deeds, examine legal certainty for deaf persons with disabilities, and to examine legal protection for deaf persons regarding deeds made by notaries. The research method used in this writing is a qualitative method with a normative research type that uses a statutory approach, a conceptual approach and an empirical approach. The results of this research are the validity of making an authentic deed, a deaf disabled person can still make a notarial deed in his own name because he is still able in his mind to carry out his own legal actions and a deaf disabled person in making a notarial deed is still a subject who acts on his own name. Legal certainty for deaf people with disabilities in making notarial deeds, there is a legal vacuum, this is because the UUJN has not yet explicitly regulated the impact of the absence of implementing regulations for UUJN for hearing impaired persons is that legal certainty is not guaranteed for deaf disabled people. The legal protection provided is by using a court order, sign language techniques to communicate, and the protection provided by the hearing impaired is by consulting first with a notary regarding what a person should do when making a notarial deed.

**Keywords:** Validity, notarial deed, deaf disabled people

### Introduction

Every human being was created by God perfectly, but there are some who have physical or mental deficiencies or limitations, who are called people with disabilities. People with disabilities experience limitations in physical, sensory, intellectual or mental abilities, either from birth or due to accidents. These limitations can hinder their involvement in social activities and interactions with society. However, people with disabilities have human rights that must be protected by law. Law Number 8 of 2016 concerning Persons with Disabilities aims to fulfill the rights and freedoms of persons with disabilities, as well as realizing justice, benefit and legal certainty (Nasution, 2014:148) <sup>[8]</sup>

The existence of people with disabilities in life is still marginalized from the lives of the general public which will be one of the obstacles for people with disabilities, especially obstacles in carrying out activities. Persons with disabilities are regulated through Law Number 8 of 2016 About People with Disabilities, created by the state to fulfill the wishes of people with disabilities so they can exercise their rights. Article 4 paragraph (1) of Law Number 8 of 2016 concerning Persons with Disabilities, provides a more in-depth explanation of the types of people who have limitations or can be said to be disabled. Firstly, there are people with intellectual disabilities, these people with disabilities can be characterized by a level of intelligence that is below average so that the function of the mind is disrupted, resulting in slow learning or Down syndrome, then there are also people or disabilities who experience mental or brain disorders that create them. unable to function normally, emotions and behavior. Thirdly, there are people with sensory disabilities, these people with disabilities experience disorders or have limited function in one of their five senses, such as speech disabilities, visual

disabilities, hearing disabilities, and finally people with physical disabilities, namely their physical movement function is disturbed, namely paralyzed, withering, amputation, stroke, or cerebral palsy (Pratiwi, 2018:10).

Every person with a disability has the right to be a legal subject in every legal action. This is stated in Article 9 letter b of Law Number 8 of 2016 concerning Persons with Disabilities, which states that one of the things included in justice and legal protection for persons with disabilities is the right to be recognized as a legal subject (MKRI Public Relations). Legal subjects are all parties who support rights and obligations and carry out legal relations. To be able to become a legal subject, a person must fulfill the requirements specified in Article 1320 of the Civil Code (Civil Code) regarding the conditions for the validity of an agreement, namely the existence of an agreement, skills, certain things, and a lawful cause (Jusuf Patrianto Tjahjono).

Based on Article 1330 of the Civil Code, people who are considered incompetent in carrying out legal actions are those who are not yet adults (*minderjarigen*) and people who are under guardianship (*curatele*). This means that a person is said to be legally competent if he is an adult and is not under guardianship (Ridwan, 2018) <sup>[9]</sup> The law regulates that the interests of people who are incompetent or unable to carry out legal actions must be taken care of by the party who represents them, namely in a guardianship or guardianship institution (Ahdiana, 2009) <sup>[3]</sup>. If the competency requirements to make an agreement are not met, then the agreement can be requested to be cancelled.

Law Number 8 of 2016 concerning Persons with Disabilities classifies various types of persons with disabilities, namely persons with physical disabilities, persons with intellectual disabilities, persons with mental disabilities, and persons

with sensory disabilities. One of the disabled people who can become a notary public is people with sensory disabilities, namely those who experience problems with one of the functions of the five senses, such as being deaf, because they still have an intact mind and common sense.

A notary is a public official appointed by the government, but in carrying out his duties, the notary does not receive a salary from the government, but rather an honorarium from the community that faces him. As a public official, a notary must act professionally and uphold the values of justice, considering that Indonesia is a country of law. One of the obligations of a notary is to make an authentic deed as regulated in the Notary Position Law No. 2 of 2014. The notary also has the authority to read the deed in front of the audience, as regulated in Article 16 paragraph (1) letter m UUJN. This provision is intended for persons with non-disabled conditions. However, in practice, the notary is not only tasked with making authentic deeds, but also provides information and services related to legal actions to be carried out by the person appearing. It is possible that the person facing the notary is someone who is hearing impaired (deaf), so the notary must be able to accommodate their rights and provide maximum service.

Providing information by a notary to all citizens, including people with hearing impairments, is a protection of constitutional rights mandated in Article 28F of the 1945 Constitution. Article 15 paragraph (2) letter e of the Notary's Position Amendment Law regulates the obligation of notaries to provide legal counseling in the process of making deeds. This is important to ensure the notary's thoroughness and accuracy and prevent inconsistencies with positive law. The notary's obligation to read the deed to the audience aims to convey the truth of the contents of the deed and ensure that the parties understand the contents of the deed before signing it. However, the Law on Notary Positions does not yet clearly regulate how notaries provide services for making and reading authentic deeds for hearing impaired people who are hearing impaired persons. This condition causes a legal vacuum and uncertainty in protection for deaf people with disabilities. This needs to be addressed immediately so that it does not cause problems in the future.

Apart from causing problems for deaf people, the absence of norms in the Law on Notary Positions can also cause problems for notaries themselves. The law does not strictly regulate how notaries must act and communicate with hearing impaired people who are presenters. As a profession that works in the legal field, notaries have an obligation to provide guarantees of legal certainty. For this reason, deaf people need clear legal protection so that they can be protected from harmful things. The existence of protection for people with disabilities can create an environment and public facilities that can be used, so that they are beneficial for independent and social life (Garin, 2018:75) <sup>[16]</sup>. Thus in this research, the author will examine "The Validity of Notarial Deeds for Deaf People with Deaf Disabilities", especially sensory or deaf disabilities which will be the focus of discussion in this research.

### Research Methods

The research method used in this writing is a qualitative method by interpreting the legal materials that are processed, then providing descriptions of the legal materials. This type of research is normative research, using a

statutory approach, conceptual approach and empirical approach (Abdulkadir, 2004:52) <sup>[2]</sup>.

The technique used in collecting data for this research is by collecting secondary data consisting of primary legal materials and secondary legal materials that are related to the main research problem. The model for collecting legal materials used is the library research model or library study. This study takes place in a library or other place where various data sources for the required legal materials can be obtained (Zainuddin, 2010).

The legal materials that have been collected are analyzed, namely description, interpretation, evaluation and systematization. The description technique is to describe (abstract) a phenomenon as it is or the position of the legal and non-legal propositions encountered.

### Results and Discussion

#### a. Validity of Notarial Deeds with Deaf Persons with Deaf Disabilities

Notaries have responsibilities not only towards themselves and fellow notaries, but also towards clients and the public who need their services. Notaries must provide the best service to the community, provide legal education to increase legal awareness, and serve underprivileged members of society (Bunga dkk, 2023:736). Every person is considered a legal subject who has rights and obligations that can be protected and enforced by law. Legal subjects must have the legal capacity to act within the legal system. However, there are factors that can prevent someone from carrying out their rights and obligations, such as people with disabilities, especially the deaf.

Article 16 letter (m) UUJN Number 2 of 2014 concerning Amendments to UUJN Number 30 of 2004 concerning the Position of Notaries states that the notary must read the deed in front of an audience in the presence of at least 2 (two) witnesses. However, if one of the parties to the hearing is a deaf person, then they will experience obstacles and difficulties in understanding the contents of the deed or the concept of the contents of the notarial deed agreement.

Based on an interview with Notary Gita Melisa, SH, M. Kn., the validity of a notarial deed is not influenced by the physical condition or disability experienced by one of the parties to the agreement. Deaf disabled people are legal subjects who have the right to carry out legal actions, including making notarial deeds. There is no difference between deeds made for deaf people and deeds in general, because deaf people are able to understand and read the contents of the deed (Gita Melisa, SH, M.Kn).

According to Notary Gita Melisa, there are several conditions that must be met in making a notarial deed for a deaf person, namely: (1) a health letter stating that the person with a hearing impairment is a deaf person, (2) a letter of pardon decided by the District Court, and (3) Use of a sign language interpreter to read and explain the contents of the deed to the Deaf person (Article 433 of the Civil Code).

Furthermore, according to the Deputy of the Banda Aceh District Court, Teuku Syarafi, SH, MH, pardon shows that a person does not have full legal capacity to carry out legal action independently. The preparation of a notarial deed must comply with clear and clear principles in ensuring validity, so it requires a structured and detailed process to ensure all parties involved understand the implications of the legal action being taken.

According to Teuku Syarafi, SH, MH, those who have the right to apply for guardians are parents or guardians. If someone is under guardianship due to a disability or other limitation, they are required to have a Psychologist's Letter or Health Certificate from the hospital as well as a witness from the family who can explain that the person is a deaf person (Article 1330 of the Civil Code).

People who are not legally competent to enter into agreements include those who are under guardianship. Guardianship is a situation where a person does not have full legal capacity to carry out his own rights and obligations, so he requires another person or institution to act on his behalf (guardian or guardian). However, guardians or guardians do not have the authority to remove the legal subject status of someone under guardianship, even though they are responsible for protecting that person's best interests (Novi Sri Wahyuni, SH, M.Kn.).

Article 44 paragraphs (1) and (2) UUJN states that a notarial deed must be read and signed by the parties, witnesses and the notary. An exception is granted if one of the parties has a physical disability that prevents him from signing, provided that the reason must be stated explicitly at the end of the deed (Article 44 paragraph (2) UUJN). For people with sensory disabilities, such as the deaf, the notary is obliged to explain the contents of the deed in a language that the party understands (Article 43 paragraph (2) UUJN).

If the parties wish, the deed can be drawn up in a foreign language, but the notary is obliged to translate it into a language understood by the parties. The translated deed must be signed by the parties, a notary, witnesses and a certified translator (Article 43 paragraph (3) UUJN). Reading, translation or explanation, as well as signing must be stated explicitly at the end of the deed (Article 44 paragraph (4) UUJN). Before making a notarial agreement deed, the notary must ensure that the parties have fulfilled the legal requirements for the agreement in accordance with Article 1320 of the Civil Code (Novi Sri Wahyuni, SH, M.Kn.).

**Table 1:** Valid Terms of Agreement

Conditions for valid agreements according to Article 1320 of the Civil Code	Valid conditions for an agreement outside the Civil Code
1. They agreed to tie him up.	1. Must be done in good ethics.
2. Able to make an agreement.	2. It must not conflict with custom.
3. A certain thing and.	3. Must be based on the principles of decency/appropriateness.
4. A legitimate cause.	4. Must not violate/not conflict with public order.

Sumber: Mulyoto, 2012:34-35 <sup>[7]</sup>

According to Notary Novi Sri Wahyuni, SH, M. Kn., communication between a notary and a hearing person can make the process of making a deed difficult. In practice, a sign language interpreter can be used who is able to convey the contents of the deed precisely and accurately to deaf audiences (Novi Sri Wahyuni). The Law on Notary Positions does not yet clearly regulate how notaries act in making authentic deeds for deaf people, such as legal counseling, inclusion of clauses, reading the contents of the deed, and signing. Therefore, regulations are needed regarding the provision of sign language interpreters to make it easier for notaries and deaf speakers in the process of making deeds.

Notaries must apply the principle of caution in making authentic deeds, especially in the use of sign language interpreters. Notaries need to choose a certified sign language interpreter to minimize errors or omissions in the delivery of sign language, which can have an impact on differences in interpretation of the contents of the deed. In addition, the notary can provide an opportunity for the deaf person to pay close attention and re-read the clauses in the deed before signing, to avoid the risk of canceling the authentic deed (Berian, 2022:29).

Based on the results of an interview with Mr. Teuku Syarafi, SH, MH, the validity of a notarial deed with a person with a deaf disability must be ensured by taking into account the needs and rights of the deaf person concerned, such as (Teuku Syarafi, SH, MH)

1. Effective communication. Communication with deaf people must be carried out with attention to appropriate communication methods, such as sign language, writing, or hearing aid technology. The notary and related parties must ensure that the message is conveyed clearly and is well understood by the person appearing.
2. Ensure understanding deaf persons fully understand the contents of the notarial deed, its legal implications, and the action they are taking by signing it. The notary must provide a detailed explanation and ensure that the party has adequate understanding before they sign the deed.
3. No coercion. Ensure that the deaf person's actions in signing the notarial deed are carried out voluntarily and without coercion from other parties. They should be given sufficient time to consider their decisions without pressure.
4. Protection: Notaries must ensure that the process of making notarial deeds takes into account the best interests of deaf people, as well as ensuring that they are protected from abuse.

KThe validity of making a deed for a person with a deaf disability is that he can still make a notarial deed in his own name because he is still able in his mind to carry out his own legal actions, but he only needs assistance or someone who helps the disabled person to communicate, such as using a certified translator to help him communicate. With deaf people so that they understand the contents of the agreement. So it can be concluded that deaf people in making notarial deeds are still subjects who act on their own behalf.

**b. Legal Certainty for People with Deaf Disabilities in Making Notarial Deeds**

Indonesian law recognizes every human being as a legal subject. as a citizen (which means being a legal subject) does not depend on certain conditions set by the state. Recognition of humans as legal subjects begins when humans are in the womb (if their interests require it), until the human dies (Gilang, 2022:33) <sup>[17]</sup>. As a legal state, it is mandatory for the Indonesian State to protect the rights of Persons with Disabilities. Persons with disabilities have full legal subjects, are equal in dignity and rights, and must be treated with full respect. Based on the results of interviews with Notary Asmanizar, SH, M.Kn. Deaf disabled people have equal rights to normal human beings in general, and indeed the UJUN has not yet regulated legal certainty for deaf disabled people, which is a guarantee that the law will

be enforced, and that they will have their rights and decisions can be enforced.

Legal certainty is an important principle which states that the law must be clear, clear and stable. In the context of making notarial deeds, legal certainty for deaf people is very important to guarantee their rights and obligations. Article 28D paragraph (1) of the 1945 Constitution states that every individual has the right to receive recognition, guarantees, protection and fair legal certainty, as well as equal treatment before the law (Teuku Syarafi, SH, MH).

The impact of the absence of implementing regulations for the UUJN for deaf persons with disabilities is that legal certainty is not guaranteed and real regulations cannot be enforced, resulting in the potential for the rights of persons with disabilities not to be fulfilled as regulated in the Law on Persons with Disabilities Number 8 of 2016. Therefore, it is necessary to make changes to the UUJN in order to create legal certainty and usefulness, as well as minimize problems in the future.

Based on the results of interviews with Mr. Teuku Syarafi, SH, MH there is several problems that can arise because there is a legal vacuum for hearing impaired people:

1. Communication Limitations, deaf people face obstacles in communicating with notaries so it is difficult to know the intentions and goals of deaf people. P Reading the deed is certainly a good thing for the Notary. This is the last chance to correct any hidden wrongs, and for the parties involved, it is an opportunity to clarify anything that is unclear. Ideally, this will ensure there are no problems later (Gania, 2022:318-320) <sup>[15]</sup>.
2. Lack of understanding of the contents of the deed. People with hearing disabilities may not fully understand the contents of the deed they are signing if there is no obligation for the Notary to read the deed directly to them. This can result in uncertainty and lack of clarity regarding the rights and obligations they receive.
3. Risk of Error or Abuse: Without a Notary reading the deed directly to the deaf person, there is a risk of error or misuse, both from the deaf person himself and other parties involved in the process.
4. Lack of legal certainty. This void in norms can disrupt the creation of legal certainty as a whole, not only for people with hearing disabilities, but also for society in general. This is because legal certainty depends on consistency and clarity in the application of legal rules.

Based on the results of interviews with Notary/PPAT Mrs. Erlina, SH, M.Kn. legal certainty for deaf people with disabilities, their rights are protected by law, clearly stated in disability law number 8 of 2016 concerning people with disabilities. Legal certainty also includes protection against discrimination against people with disabilities, so that they are equal to normal humans. Then the procedure must be clear, especially for people with disabilities, to make a deed at a notary, a court order is requested, then for the process of reading the deed you can use a translator such as a sign language interpreter, then after all the requirements are met the notarial deed is legally recognized by law (Erlina, SH, M. Kn). Likewise, people with disabilities have had their rights fulfilled. So that the goal of absolute legal certainty must be achieved in order to protect public interests (which also include personal interests) by functioning as the main

motor for upholding justice in society (order), and upholding justice (Ridwan, 1987:166) <sup>[1]</sup>.

### c. Legal Protection for People with Deaf Disabilities Regarding Deeds Made by Notaries.

Legal protection is provided to everyone, including those who have limitations or disabilities. Legal protection for people with disabilities aims to meet their needs and protect their rights from detrimental actions, especially for people with hearing impairments. Article 28H paragraph (2) of the 1945 Constitution states that everyone has the right to receive special treatment to obtain the same opportunities and benefits in order to achieve equality and justice. Law Number 8 of 2016 concerning Persons with Disabilities, especially Article 3 letter a, states that legal protection is aimed at realizing full and equal respect, promotion, protection and fulfillment of human rights and basic freedoms of persons with disabilities.

Protection of the rights of persons with disabilities is an effort to ensure that every person with disabilities can exercise their rights and access public facilities and infrastructure. Therefore, legal protection of the rights of persons with disabilities can provide certainty and justice for them. In the context of deaf people with disabilities, legal protection is needed in the process of making notarial deeds and reading deeds in their presence. This legal protection aims to protect the rights of deaf people with disabilities and help meet their needs, so as to create an environment and public facilities that can be used by people with disabilities to achieve an independent and social life.

#### 1. Normative Legal Protection

In general, an agreement made in the form of a written deed or explained orally must use language that is easily understood by both parties (Habib, 2020:441) <sup>[5]</sup>. Clear communication in simple language is an important principle in designing clear, binding and secure agreements. The use of unclear terms can cause conflicts in agreements (Gita Melisa, SH, M.Kn.).

Several forms of legal protection for people with disabilities are listed in statutory regulations, including:

- a. The Constitution of the Republic of Indonesia (UUD 1945) Article 28I paragraph (2) emphasizes the principle of non-discrimination and the state's obligation to protect citizens from all forms of discrimination.
- b. Law Number 8 of 2016 concerning Persons with Disabilities, which regulates equal rights and accessibility for persons with disabilities.
- c. Government Regulation Number 39 of 2020 concerning Adequate Accommodation for Persons with Disabilities in the Judicial Process.
- d. Minister of Law and Human Rights Regulation Number 22 of 2018 concerning Requirements and Procedures for Registration of Sign Language Interpreters.

The UN Convention on the Rights of Persons with Disabilities also emphasizes the rights of persons with disabilities, such as access to inclusive education, employment, and participation in community life. This legal protection aims to ensure that people with disabilities have equal opportunities to fully participate in society.

## 2. Empirical Legal Protection

Empirical legal protection is something that protects legal subjects through applicable laws and regulations and its implementation is enforced using sanctions (Mog Kusnardi, 1998:102) <sup>[6]</sup>. Legal protection can be divided into two, namely preventive legal protection and repressive legal protection (Preventive Legal Protection, aims to prevent a violation before a violation occurs, so there are laws and regulations with the intention of preventing a violation and providing signs or limitations in carrying out an obligation. Repressive Legal Protection, namely, Protection Repressive law is protection in the form of sanctions such as fines, imprisonment and additional penalties given if there is a dispute where the person has committed a violation).

Preventive legal protection for deaf people with disabilities in making notarial deeds aims to ensure that their rights are respected and fulfilled. This is done to avoid discrimination and ensure equality for people with disabilities in making notarial deeds. Some steps that can be taken are providing sign language interpreters, using hearing aids, and developing supporting government procedures and regulations.

Repressive legal protection for persons with disabilities in notarial deeds requires an effective mechanism for handling complaints, enforcing sanctions, and providing support and compensation for victims. However, repressive legal protection for deaf people with disabilities in making deeds has not been regulated in the Notary Position Law (UUJN), so it is necessary to amend the UUJN to include special provisions that protect the rights of people with disabilities, especially deaf people, in the making process. Deed.

Based on an interview with Notary Novi Sri Wahyuni, SH, M. Kn., if the person facing the hearing and speech impairment, the form of legal protection depends on the policy of each notary to avoid risks. If the presenter is deaf, all forms of deeds can be read by the presenter himself, and if the presenter is unable to read the deed, he must be accompanied by a certified translator so that the presenter truly understands the contents of the deed (Novi Sri Wahyuni).

According to Teuku Syarafi, SH, MH, the district court granted pardon for disabled people in accordance with Article 436 of the Civil Code. Article 434 of the Civil Code states that blood relatives have the right to ask for forgiveness, and people who are unable to take care of their own interests can ask for forgiveness for themselves (Teuku Syarafi).

According to Notary/PPAT Asmanizar, SH, M. Kn., the solution for deaf and speech impaired people in making notarial deeds currently is assistance, but they do not agree if they are asked for forgiveness because basically they have common sense and can be responsible for legal actions (Asmanizar). Apart from protection from notaries, the government also provides preventative legal protection to prevent violations, and repressive legal protection in the form of fines, imprisonment and additional penalties if disputes or violations occur.

### Conclusion

Based on the discussion above, conclusions can be drawn from this research as follows:

- a. The validity of making an authentic deed is that a person with a deaf disability can still make a notarial deed in his or her own name because he is still able in

his mind to carry out his own legal acts and a deaf disabled person in making a notarial deed is still a subject acting in his or her own name.

- b. Legal certainty for deaf people with disabilities in making notarial deeds, there is a legal vacuum, this is because the UUJN has not yet explicitly regulated the impact of the absence of implementing regulations for UUJN for hearing impaired persons is that legal certainty is not guaranteed for deaf disabled people.
- c. The legal protection provided is by using a court order, sign language techniques to communicate, and the protection provided by the hearing impaired is by consulting first with a notary regarding what a person should do when making a notarial deed.

### Suggestions

The following are suggestions from this research:

- a. The government as a state institution should provide detailed legal protection and legal certainty for deaf people with disabilities when making notarial deeds, because there is a legal vacuum in the UUJN.
- b. It would be better for Notaries as legal practitioners to provide legal protection efforts for deaf people with disabilities by providing suggestions in the form of a sign language interpreter to make it easier for the aims and objectives of making notarial deeds. Due to communication limitations, deaf people with disabilities face obstacles in communicating with notaries making it difficult. To find out the intent and purpose of the deaf person, then if the notary does not use a sign language interpreter, there is a risk of error or misuse, without the Notary reading the deed directly to the deaf person, there is a risk of error or misuse, both from the deaf person himself and other parties. Others involved in the process.

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