

Jurnal Notariil

Jurnal Notariil, Vol. 6, No. 1, Mei 2021, 53-57

P ISSN 2540 - 797X

Available Online at <https://ejournal.warmadewa.ac.id/index.php/notariil>

E ISSN 2615 - 1545

NOTARY LEGALITY AS AN AUTHENTIC DICTION IN TERMS OF PHYSICALLY DISABLED BASED ON LAW OF POSITION NOTARY

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How To Cite:

Kumala, I. A. R., Mahendrawati, N. L. M., & Puspadma, I. N. A. (2021), Notary Legality as an Authentic Diction in terms of Physically Disabled Based on Law of Position Notary, *Jurnal Notariil*, 6 (1) 2021, 53-57, Doi: <https://doi.org/10.22225/jn.v6i1.3608.53-57>

Abstract

An authentic deed can be perfect proof that must be signed by the parties. It becomes a problem when one or all of those who are obliged to sign or put fingerprints, but have a total disability of the hand or fingers (physically disabled) so that the person concerned is not able to sign or fingerprint. There is a norm in relation to a person with disabilities to make a deed before a notary. The purpose of this study is to find out the procedure for ratifying a notary deed in terms of hearing-impaired persons and the legal strength of a notary deed in terms of disabled persons. This study uses normative legal methods. The results of this study indicated that the stipulation of Article 44 of UUJNP makes it possible for persons with disabilities not to sign the deed, then at the end of the deed it is explained about a situation where the applicant is unable to sign the deed and therefore uses other forms of endorsement by writing by mouth and affidavit. The deed made by the person with disabilities is an authentic deed because the provisions of Article 44 UUJNP can be a substitute for signatures, so the notary deed made by persons with disabilities can function as evidence and are equipped with an affidavit. There is a need for a written rule that states clearly about the procedures for dealing with persons with disabilities in making a deed for the use of affidavit.

Keywords: Legality; Notary Deed; Authentic Deed; Physically Disabled

1. INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) states that "the State of Indonesia is a state of law", by representing this country the State of Indonesia requests to provide legal protection for the country. Preventive law is also the protection of repressive law. Humans are social interactions that cannot be separated from interactions with other humans. With this interaction, there arises a relationship between humans and other humans in one place that can be called a society or class. Each relationship model that arises from the interaction gives birth to the rights and obligations of each party. To protect the rights and obligations required, there must be binding on each party so that no one is harmed. These new rights and obligations need to be fortified with documents that can be

approved by legality to avoid overlapping in fulfilling or exercising rights, the documents needed then become a tool needed by the community when it happens s. Documents that are approved are written, and written documents are approved and are handwritten. Based on Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) a deed proves something made in accordance with the law made by or at a meeting of public officials intended for that at the place the deed was made. By definition, the first condition that must be approved is that an authentic deed must be made in the form determined by law. The word 'form' here is a translation of the Dutch word vorm and is not interpreted as a round, oval, long shape and so on, but its construction must meet the provisions of the law. The second requirement agreed upon is the manufacture made in the presence or by public officials. The word 'before indicates that this deed was made

at the request of someone, while the deed was made by a public official because of an event, examination, decision, and so on. The third requirement is that as expected there must be where the deed is made. This authority (*bevoegd*) is a requirement that is taken (1) ownership and type of deed drawn up; (2) day and date of deed making; and (3) the place of the deed is made. The deed proves to be the strongest and fullest evidence of an important role in every legal relationship in people's lives. Through an approved deed that determines rights and obligations, guarantees legal certainty, and can be approved whenever agreed.

Notary is one of the public officials authorized to make the intended authentic deed, this is based on Act Number 30 of 2004 concerning Position of Notary of the Republic of Indonesia State Gazette Number 117 of 2004, Supplement to the Republic of Indonesia State Gazette Number 4432 which was later amended by Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Position of Notary of the Republic of Indonesia State Gazette of 2014 Number 3, Supplement to the Republic of Indonesia State Gazette Number 5491 (hereinafter referred to as UJNP). The position of a notary public as a functionary in society is still considered to be respected. A notary is usually considered an official where someone can get reliable advice. As mandated in Article 15 of the UJNP the duties and authority of a notary public are as follows:

Notary is authorized to make authentic deeds regarding all deeds, agreements, and provisions required by statutory regulations and / or that are desired by the parties concerned to be stated in authentic deeds, guarantee the certainty of the date of making the deed, keep the deed, give a gross, copy and citation on deeds, all of them as long as the making of the deeds are not also assigned or excluded to other officials or other people determined by law.

Notary is also authorized:

Authorize the signature and set the certainty of the date of the letter under the hand by registering in a special book. Book the letters under the hand by registering in a special book.

Make copies of original documents under the form of a copy containing the description as written and described in the relevant letter.

To validate the compatibility of the photocopy with the original letter.

Providing legal counseling in connection with making the deed.

Make a deed relating to land.

Then, in order for an authentic deed to become a perfect proof, it must be signed by the parties, signing by the parties is to sign the name of the signatory, so affixing initials, i.e. the signature abbreviation is deemed insufficient. The name must be written by the signatory himself of his own free will. Article 44 of the UJNP states that as soon as the deed is read, the deed is signed by every registrant, witness and notary, except if there are those who cannot sign the name stating the reasons. These reasons must be stated expressly in the Deed. However, it is not uncommon to find cases of non-tangible signatures, in which the person who does not appear is actually coming and faces the notary and the person who has the right to sign the deed. With this case, the amendment to the law of notary office revived the provisions of fingerprint sticking (fingerprinting) on the minutes of the deed made by the notary. Article 16 paragraph (1) letter c of the UJN states that "In carrying out his position, the Notary is required to attach letters and documents and fingerprints to the Minutes of Deed". The urgency of applying fingerprints / parties / parties to the notary deed minutes is used to prove the deed being denied in the future, also gives more legal force to the notary deed products so as to provide more legal protection to the parties concerned, the Notary himself, as well as third parties, besides fingerprints can also be used if the user is illiterate so he cannot read and write, nor can he sign. However, if the person facing a physical disability in this case does not have a hand or fingers in total so that they cannot sign or put fingerprints on the Deed Minutes, then the person concerned certainly cannot make the deed. This then becomes a problem when one or all of those who are obliged to sign or put fingerprints, but have a total disability of the hand or fingers (disabled) so that the person concerned is unable to put a signature or fingerprint so that the loss of a person's right to an act agreed in the deed. Surely this must have a solution so that those who experience the disability can take legal action in the form of making a letter as agreed in the deed. UJN has not yet regulated the matter, so there is a legal vacuum that can make a person with a

disability to make a deed before a notary.

Some related studies with this present study have been conducted previously. (Swandewi, Subawa, & Swardhana, 2016) in their study, examined the appearer with a physical disability be able to authenticate a notarial deed and examined the legal consequences of a notarial deed made if the appearer cannot sign the deed with his/her hand. The results of the study indicate that the legal arrangements for the legalization of the notarial deed for the appearer who has a physical disability, especially in his or her hands, as well as the obligation to attach fingerprints on the minutes of the notarial deed has not been expressly stipulated in the Law Number 30 of 2004 (UUJN) and the UUJN-P. In particular to Article 44 paragraph (1), (2) and Article 16 Paragraph (1) c. that stipulate the appearer who has a physical disability condition can authenticate the notary deed, on condition that, the deed is eligible and conforms to the rules in Article 1320 of the Civil Code, Article 1868 of the Civil Code of the authentic deed and the Law Number 30 of 2004 of the Law on Notary Position in conjunction with the Law Number 2 of 2014 on the Amendment of the Law on the Position of Notary Public. Meanwhile, another similar study with this present study have been conducted by (Sesung & Hidayatullah, 2018) that analyze the physical healthy boundaries for Notary As well as regarding the validity of the deed made by the Notary who is not physically fit. The results of this study is the limits on physical health required by the Law -The Notary Public Office is physically and spiritually healthy as stated by the doctor's certificate, so that in carrying out his position if there is a Notary who suffered physical disability, the healthy restriction in determining a Notary can continue his position shall be supervised by the Assembly of Supervisor Notaries. Regarding the physical boundaries for the Notary who suffer physical disability at the time of course affect the authenticity of the authentic deed he made, then regarding the validity of the deed as long as it is made in accordance with the provisions of Article 38 UUJN, the authentic deed may be considered valid. Regarding of the physical health restrictions contained in the law of office of a notary should be described in more detail in the law, so the candidates of the notaries will be better prepared to be a professional notary. Thus, based on the previous related study above, it can be mentioned that the similarity those

previous studies with this present study is examining the legal strength of a notary for disabled people. However, the differences of those previous related studies with this present study is the study objective which focused on procedure for ratifying a notary deed in terms of hearing-impaired persons. Therefore, the purpose of this study is to find out the procedure for ratifying a notary deed in terms of hearing-impaired persons and the legal strength of a notary deed in terms of disabled persons.

2. METHOD

This study used a normative legal research. Normative legal research is also called doctrinal law research, also referred to as library research or document study. It was normative legal research and doctrine, because this research was conducted or aimed only at written regulations or other legal materials. After the legal material collected, then legal materials are examined in depth the relevant legislation and legal doctrines as well as sources of legal material related to the research topic, namely about judicial review of the legality of notary deeds made by persons with disabilities based on Law Number 2 of 2014 concerning Amendment to Law Number 30 Year 2004 concerning the Position of Notary.

3. RESULT AND DISCUSSION

The Procedure for Ratifying a Notary Deed in Terms of Hearing Impaired Persons

Arranging a notary deed must have a systematic flowchart, for that notary deed has its own anatomy, meaning that it has its own parts and names that cannot be separated from other parts, just like the human body, from the tip of the hair on the head to the soles of the feet not apart from each other (Adjie, 2011). Notarial deeds can be said to qualify as authentic deeds if the deeds made by or before the Notary have been in accordance with the forms that have been determined based on the provisions of Article 38 UUJN and UUJNP. The notary is obliged to guarantee the certainty of the day, date, month, year and time of the meeting that is listed or mentioned at the beginning of the notary deed, as proof that the parties face and sign the deed on the day, date, month, year and time mentioned in the deed and all procedures the making has been done in accordance with the applicable legal

rules, in this case UJUN. If the party before a Notary at the time he believes is correct, but it turns out that the copy and minutes of the deed are not in accordance with the reality he believes, then the party concerned is taking action to deny the certainty of the day, date, month, year and time facing stated in the deed. An authentic deed which has a signature signed at the end of the deed will cause the deed to become legal before the law and can be used as perfect evidence, as long as the process of making it meets the provisions of Article 1320 of the Civil Code as a condition for the legality of the agreement, Article 1868 of the Civil Code and UJUNP. Signatures on an authentic deed actually have two basic legal functions, namely:

Sign of identity of the signatory

As a sign of agreement from the Signatory of the obligations attached to the deed.

Based on these two legal functions, a conclusion can be drawn that a signature is an identity that functions as a sign of agreement to the obligations attached to the deed. If seen from UJUN, the signature is a formal aspect that must be fulfilled in making the minutes of the deed which in the minutes must have the signatures of the parties, the witnesses' signature and the signature of the Notary Public. According to De Joncheere the form of the signature is as follows (Kie, 2007):

A signature is made by someone by writing it slowly, as if it was painted or it could also be a graffiti.

Signed cliches (for example signatures on banknotes).

Signatures made with the help of others.

Signatures are made using a printing press, including a signature stamp.

Hand sign serves as proof that someone has given his consent by signing something, that he approves the action that he did both the information contained in it in accordance with the purpose of using the signature (Makarim, 2011). Put a signature on the minutes of the deed which is a legal obligation that determines the validity or authenticity of a deed and serves to guarantee the veracity of the identity of the tappers and protect the notary public in the future if one of the

tappers denies any legal action carried out before a notary public and causes a dispute. Thus, the procedure for ratifying a notarial deed is formally valid if its form is based on the law and is made before an official. The stipulation of Article 44 of UJUNP makes it possible for persons with disabilities not to sign the deed, then at the end of the deed it is explained about a situation where the applicant cannot sign the deed and therefore uses another mark of endorsement by writing by mouth.

The Legal Strength of a Notary Deed in Terms of Disabled Persons

A deed will not lose its authenticity if the parties do not sign their signature, as long as the situation is explained at the end of the deed, so that if the contact does not put his fingerprint as a substitute for signature in making an authentic deed, it will not bring legal consequences resulting in the deed losing its authenticity. The deed is still legally valid and retains its value as an authentic deed although it is not affixed with thumbprints or fingerprints instead of signatures, because the depositor's information as mandated by Article 44 of the UJUNP as the basis for ratification of the deed and this information is recognized as a substitute for signature. However, the provisions of Article 44 of the UJUNP for persons with disabilities must be accompanied or accompanied by at least two witnesses who will later make a deed of witness before the notary that he witnessed the person with disabilities have made the deed before the notary concerned. The deed of statement of testimony made by the two witnesses before the notary concerned in this study is called affidavit and with affidavit evidence used as complementary evidence to explain a fact relating to a matter or event that occurred in which case the right conditions of the confronting cannot put his signature and fingerprint on the minutes of the deed. Affidavit as a supplementary evidence if a dispute is made against a disputed legal person before a notary public draw the conclusion that in this condition affidavit has the same legal force as the initial evidence.

4. CONCLUSION

There is a need for a written rule that states clearly about the procedures for facing persons with disabilities in making party deeds so that legal certainty and legal justice can be achieved and can be a guideline for the Notary in carrying out

his / her office duties. affidavit for persons with disabilities as evidence so that legal protection can be achieved for the parties concerned

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