

Sworn Sign Language Interpreters Provision for Deaf People Appearing before Notary Based on Justice Principle

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ABSTRACT

This study is motivated by the incompleteness of law in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. The aims of this study are to (1) Identify the laws and regulations in Indonesia regarding the fulfillment of the rights of deaf people who appear before a notary who fulfill the principles of justice and (2) Analyze the regulatory concept regarding the provision of sworn sign language interpreters for deaf people who appear before a notary who fulfill the principles of justice. This study used normative juridical methods through a statutory approach and a conceptual approach. Moreover, legal materials were analyzed through grammatical and systematic interpretation analysis methods. The results of this study show that the Law on Notary Positions and its Amendments does not regulate the provision of sworn sign language interpreters for deaf people who appear before a notary to conduct legal actions in an authentic deed. In addition, it does not regulate the mechanism for a notary's obligation to read an authentic deed in front of interested parties so that a sworn sign language interpreter is required in the process of signing the deed in order to verifying the deed in order to create balanced justice in Law on Notary Position and its Amendments.

Keywords:

Disability,
Deaf People;
Sworn Sign Language
Interpreter.

INTRODUCTION

A notary is a public official who is given the authority to make authentic deeds by the state as stated in Article 1 point 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as "UUJN"). In addition to make authentic deeds, Article 15 paragraph (1) UUJN explains that a notary has full authority to take legal action in an agreement or contract which is then stated in an authentic deed by providing a guarantee of date certainty, storing the deed, giving grosse and all copies and quote of deed that during the process of making the deed by a general policy are not assigned or excluded to other officials. Furthermore, in conducting their duties and positions, notaries are obliged to serve the public in the legal field through authentic deeds that are made. This authentic deed must provide justice, legal certainty and legal protection for complainant. It aims to ensure that the deed can be used as strong and valid evidence if a dispute arises in the future.

As a country of law, Indonesia has guaranteed the protection of constitutional rights for all Indonesian people in order to be able to communicate and obtain information which is aimed at developing their personal and social environment in accordance with Article 28F of the 1945 Constitution. It means that even though deaf people are limited in their ability to hear and speak, they are not means he is not entitled to guarantee the protection of his rights. Therefore, the state and all its contents are obliged to respect and recognize the rights of every human being without exception for people with hearing impairments. In general, the rights and obligations of persons with disabilities are stated in Law Number 8 of 2016 concerning Persons with Disabilities (hereinafter referred to as "UUPD") in which

becomes legal basis for them to be able to maintain equal rights and obligations as legal subjects.

A person with a disability is someone who has limited abilities, whether physical, sensory, mental or intellectual, as classified in Article 4 paragraph (1) of the UUPD. In this matter, deaf people are classified as sensory disabilities since they are only limited in hearing and speaking. Regarding the classification of complainant, it has been further explained in Article 39 paragraph (1) UUJN, namely that complainant must be at least 18 (eighteen) years of age and be a person who is capable of conducting legal acts.

Even though there is no implied explanation regarding complainant with hearing impairments, they can still act as complainant before notaries as long as they have common sense and they are not under guardianship in accordance with Article 1330 of the Civil Code (hereinafter referred to as the "Civil Code"). This article further regulates the requirements for a person's ability to act, that are they have met the minimum age considered to be an adult, are not under guardianship, and are not prohibited by law from conducting legal acts. Meanwhile, as a contrario, a person can be said to be not under guardianship if he is not in a state of stupidity, madness or dark eyes, and for his extravagance as stated in Article 433 of the Civil Code. Therefore, deaf people based on Article 9 letter b of the UUPD, can still obtain the right to justice and legal protection, and are legally recognized as legal subjects.

As a form of respect for human rights, notaries are prohibited from taking sides based on their background or economic status and must safeguard their interests in serving their clients (Herlien Budiono, 2007) as regulated in Article 16 paragraph (1) letter a UUJN. Furthermore, article 16 paragraph (1) letter m UUJN explains that a notary is obliged to read the deed and ensure that all matters stated in the contents of the deed have been understood and adjusted to the wishes of each party. In this case, reading the deed is the final step for the notary in conducting the deed examination, as well as an opportunity for the parties to ask questions regarding matters which are considered unclear and can ask the notary to change the contents of the deed before it is signed (Karwelo, E.S., 2021) . In addition, reading the deeds aims to avoid errors in writing the identity so that if a dispute arises in the future, the parties cannot deny that they consciously knew and agreed to the matters contained in the deed.

However, the problem is the incompleteness of the regulations in the UUJN which accommodate the rights of people with hearing impairments. It can be proven by the absence of regulations in Article 16 paragraph (1) UUJN which regulate the reading of the deed if the complainant condition is deaf and cannot hear or speak. In addition, Article 43 UUJN regulates the mechanism for making authentic deeds which should be made in Indonesian and if the complainant does not understand the contents of the deed, an official translator can be provided to accompany them. It means that Article 43 UUJN is only intended for complainants who do not understand Indonesian and tends to apply only to the use of foreign languages. Meanwhile, the language used by deaf people is sign language and not all notaries can understand and interpret this language. Based on these two articles, the UUJN seems to exclude the rights of deaf people in order to obtain access and facilities which make it easier for them to conduct legal actions before a notary, and does not provide justice and guarantees of legal certainty for people with hearing impairments.

Therefore, based on the explanation above, there are 2 problem formulations,

namely (1) Do the laws and regulations in Indonesia regarding the rights of deaf people who appear before a notary fulfill the principles of justice? and (2) What is the regulatory concept regarding the provision of sworn sign language interpreters for deaf people appearing before a notary which meets the principles of justice?

RESEARCH METHOD

This study used normative juridical method which conceptualizes law as a rule that becomes a benchmark for every human being to behave towards each other (Amiruddin & Zainal Asikin, 2012). This research method is based on primary and secondary legal materials which lead to legal norms in statutory regulations (Soerjono Soekanto, 1984). There were 2 (two) approaches used, namely the conceptual approach and the statutory approach.

The types of legal materials used were primary, secondary and tertiary legal materials. The primary legal materials focus on analyzing problems based on the Civil Code, the 1945 Constitution, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as "UUJN"), Law Number 8 of 2016 concerning Persons with Disability (hereinafter referred to as "UUPD"), Law Number 19 of 2011 concerning Ratification of the Convention On The Rights of Persons With Disabilities (hereinafter referred to as "CRPD"), Law Number 39 of 1999 concerning Human Rights (hereinafter referred to as "UU Human Rights"), Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as "UUPK"), and Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations (hereinafter referred to as "PPP Law").

Meanwhile, the secondary legal materials used were interviews with notaries who have had deaf people as their clients, studies of journal collections, various book references, and the opinions of scholars regarding the legal issues being researched. In addition, the tertiary legal materials were used to provide guidance on the 2 (two) previous legal materials, including encyclopedias, legal dictionaries or through internet searches, collections of laws, and expert explanations (Peter Mahmud Marzuki, 2017), as well as legal dictionaries, Great Dictionary of the Indonesian Language (KBBI), and English dictionary.

In this study, the technique for searching for legal materials used a literature study which was supported by the collection of primary, secondary and tertiary legal materials. Moreover, this literature study was implemented directly by systematically studying, reviewing and analyzing the library materials which had been collected to be able to answer the problems in this study relating to the obligations of notaries in reading deeds for complainant with hearing impairments.

The legal material analysis methods were systematic and grammatical interpretation. Grammatical interpretation was conducted by interpreting according to grammar and words which are tools for legislators in expressing their goals and desires (R. Soeroso, 2008). Meanwhile, systematic interpretation involves connecting one article with another article in the relevant legislation or other legal legislation, as well as reading the explanation in order to achieve better understanding on the meaning of the article and answer the problem formulation written in this study. Based on the collection of legal materials above, the inventory, classification and analysis stages would then be conducted. Thus, it is expected that it can contribute to idea regarding the regulation of providing sign language

interpreters for deaf people who appear before notaries and regarding the obligation of notaries to read deeds before complainant with hearing impairments.

RESULTS AND DISCUSSION

1. Analysis of Justice in Indonesian Legislation Regarding the Rights of Deaf People Who Appear before a Notary

As a country of law, Indonesia should protect every human right in every administration and public service, including notaries. The law must be able to protect the entire community in conducting every action and/or legal act in order to provide justice and legal certainty for those who need it, including people with hearing impairments. Notaries are bounded and guided by the rules in the UUJN when conducting their duties and positions. Furthermore, article 16 paragraph (1) letter m UUJN explains the obligation of a notary to read the deed in front of the parties in the presence of at least 2 witnesses or 4 special witnesses and at the same time the deed is signed by the complainant, witness and notary. Therefore, based on this article, the mechanism for reading a deed is not regulated if a notary finds a client with hearing impairments who has limitations in hearing and speaking accompanied by a sign language interpreter.

The purpose of reading a deed by a notary is to make interested parties can properly understand and comprehend the contents of the deed, avoid misunderstandings, multiple interpretations, or any forms of fraud that may be committed, both by the complainant and the notary himself. In addition, it can be an opportunity for the complainant to make corrections in the deed if there are errors; such as, writing identity or spelling names, addresses, etc. It is necessary to avoid disputes which might arise in the future. If the notary misses his obligation to read the deed, it is the same as the notary committing an act of falsifying information in a deed which will have legal consequences for the deed's evidentiary strength being degraded, namely it will become illegal or can be null and void as explained in Article 84 UUJN. The relegation of an authentic deed to a private deed or void by law can be detrimental to the parties so that it can be a reason for the complainant to ask the notary for compensation and/or fines. If the notary is negligent and/or deliberately does not read the deed in front of the parties but only provides a draft of the deed for the parties to read it themselves, it does not rule out the possibility that the notary committed fraud to change the identities of the parties in the deed without the parties concerned knowing. Thus, the deed reading is a crucial and it cannot be missed.

In the stage of making a deed, Article 43 UUJN explains that the deed must be made in Indonesian. However, if the complainant does not understand Indonesian, the notary can interpret it himself or with the help of an official/sworn interpreter. Therefore, the absence of the phrase "sworn sign language interpreter whose job is to accompany people with hearing impairments" makes the UUJN and its amendments tend to favor people with non-disabilities since not all notaries can perform and interpret sign language themselves. In other words, this regulation does not fulfill the aspects of justice which guarantee legal certainty for people with hearing impairments.

The existence of the UUPD is an opportunity for deaf people to be able to fight for the fulfillment of their rights properly and to be seen as equal (R.H. Alfikri, et.al, 2022). It is believed that equality refers to the freedom for deaf people in order to fight against exclusion or discriminatory treatment in their social life (Mhd. Yadi

Harahap and Aula Mashuri Siregar, 2021). Even though they have certain limitations, they can be recognized as legal subjects with rights and obligations that must be recognized and respected accordingly.

Article 4 paragraph (1) UUPD has classified types of disabilities, namely sensory, physical, mental and intellectual disabilities. Deaf people are classified as sensory disabilities since they only have limitations in their five senses. A person can be said to have the authority to conduct legal acts if he or she has been deemed to have fulfilled the provisions as in Article 1320 of the Civil Code which regulates the conditions for the validity of an agreement, which includes the existence of something that is not prohibited, the parties are declared legally competent, an agreement has been established, and there is a principal/things agreed upon. Furthermore, it means that a person can conduct legal acts if he is considered legally competent (*bekwaamheid*) or has the ability (*capable*) to conduct a legal act and has the authority (*bevoegheid*) or has the right (*competence*) even though he does not meet the legal requirements (Bachrudin, 2019). Therefore, deaf people can still be classified as legal subjects who can conduct legal actions before a notary as long as they have common sense and they are not under guardianship as stated in Article 1330 of the Civil Code.

One of the rights of deaf people is the right to accessibility and the right to obtain justice and legal protection from the state as stated in Article 5 paragraph (1) of the UUPD. It is in line with Article 18 of the UUPD which explains in more depth that the right to accessibility in question is to obtain optimal accommodation in every public service. In this case, the public service in question can be a notary service in serving deaf people and can adapt to the needs of people with hearing impairments. In order to fulfill the rights of people with hearing impairments, Article 9(e) CRPD also explains that the state through the Government must be able to accommodate forms of assistance which include guides, readers and professional sign language interpreters in order to fulfill the right to accessibility in public services. Through these regulations, the state, through the Government, should be able to provide all types of communication which can make things easier for people with hearing impairments. Sign language is language which is conducted through body movements, hands and facial expressions.

The presence of sign language has been recognized by the state as stated in Article 21(b) CRPD and it is used for official interactions. With the recognition of sign language and the provision of sworn sign language interpreters, it can help deaf people to participate in conducting legal actions which in this case relate to notaries. Therefore, the author considers that the CRPD is an ideal legal instrument to use as a reference since it contains aspects of justice for people with disabilities which not only regulates in general, but it also covers disabilities as a whole, such as physical, mental, intellectual and sensory. In addition, the CRPD contains national ideals; such as, the fifth principle of Pancasila so that social justice is fulfilled for all Indonesian people.

Regarding the rights and obligations of people with hearing impairments, discussion of human rights which can be defined as rights that are inherent in a person from the time he is in the womb. Furthermore, Article 1 number 1 of the Human Rights Law explains that human rights are natural and binding rights in every human being as God's creation and must be respected, protected and upheld. However, in reality, people with disability; especially, people with hearing

impairments, still often receive discriminatory treatment, both in society and before the law. Even though they have limitations, it does not mean that their existence can be ruled out since they also have the same rights, obligations, freedoms and opportunities as other humans.

Human rights are inviolable because of their inherent nature, if anyone disturbs any human rights it means that they have disturbed human dignity. Therefore, everyone is prohibited from disturbing and limiting other people from getting what is their right. It is in line with Aristotle's opinion which stated that human beings are *zoon politicon*, which means that humans are social creatures who cannot escape from other humans in daily life (Herimanto and Winarno, 2012). Therefore, the state and every citizen are obliged to respect, protect and look after each other in order to realize justice, including for people with disabilities.

Apart from being regulated in the UUPD, CRPD and Human Rights Law, the rights of persons with disabilities are also regulated and protected in the UUPK. Complainant with hearing impairments who conducts legal acts before a notary can be said to be a consumer since he or she has used the services of a notary through making an authentic deed. Therefore, the rights of complainant with hearing impairments as notary consumers must be protected in order to provide optimal benefits, fair justice, equality and safety for legal actions conducted in order to avoid disputes in the future. In addition, article 44 UUPK details discusses several things which are the rights and obligations of consumers, including the right to receive services as agreed and the right to be treated with fair, equal and non-discriminatory treatment.

Consumer rights as stated in the UUPK are a follow-up to the rights regulated in the Human Rights Law. However, the UUPK only regulates the rights and obligations between consumers and service/goods providers in general and it does not mention anything about consumers with disabilities; especially, people with hearing impairments. However, it is not an obstacle for complainant with hearing impairments to get justice and legal protection for their actions. As a service provider, a notary also has an obligation to fulfill the rights of its consumers so that they receive structured, correct and not misleading information during the process of making an authentic deed. With the good faith which exists between the notary as a service provider and the deaf people as a consumer, it can be a step in order to minimize the occurrence of disputes which can be detrimental to both parties as well as to guarantee justice, benefit, certainty and legal protection.

Based on the explanation of several laws above, it shows that the UUJN and its amendments have not yet achieved the indicators or aspects of justice as in the UUPD, CRPD, Human Rights Law and UUPK. Therefore, there should be a reconstruction of the regulations in the UUJN so that it can accommodate special treatment with the help of a sworn sign language interpreter for complainant with hearing impairments during the process of making the deed, both from the initial appearance (*opmaken*) to the reading and signing of the deed (*verlijden*). It needs to be conducted in order to support and maximize efforts to respect, promote, protect and fulfill justice for the human rights of every human being (Imas Sholihah, 2016).

2. Arrangements Concept that Meet the Principles of Justice Regarding the Provision of Sworn Sign Language Interpreters for Deaf people Who Appear before a Notary

As legal subjects, deaf people who appear before a notary are obliged to first explain their position, whether acting for themselves, acting for and on behalf of other people, or acting in their position or based on statutory provisions (Tuti Irawati, 2010). Based on the statements of the complainant, the notary is obliged to formally verify the documents of the complainant (Luthfan Hadi Darus, 2017). In connection with the recognition and checking mechanism, G.H.S. Lumban Tobing believes that "notaries have their own mechanism for introducing the public. He can verify through Resident's Identity Card, Passport and other documents. However, it can also be conducted through people who are known or trusted by the notary and conduct questions and answers in order to examine the information from the complainant" (Tobing, G.H.S. Lumban, 2001). It aims to provide a guarantee of legal certainty and security for the notary before making the deed; besides, to convince the notary that the person facing him is the same person whose identity is stated in the authentic deed. Therefore, notaries should implement the prudential principle.

The UUJN and its amendments do not explicitly regulate deaf people who are accompanied by a sworn sign language interpreter so that it will make it difficult for the notary to provide information and suggestions to the complainant. In addition, there is no guarantee that can deaf people understand what the notary is explaining, and vice versa since it is not possible for a notary to read the deed while simultaneously demonstrating sign language considering that not all notaries have the ability to do so. Therefore, in order to make it easier for deaf people and notaries, it is appropriate for the Government to implement the UUJN and its amendments which regulate the provision of sworn sign language interpreters. When a notary makes a deed for people with hearing impairments, the notary is obliged to include at the end of the deed the condition of people with hearing impairments, so that he needs to be accompanied by a sworn sign language interpreter who also signs the minutes of the deed.

In order to support this argument, the researcher has conducted an interview with Irma Savyna Firdaus, as a Notary/PPAT in Banten City who has had deaf people as her clients, she stated that:

"In the case of complainant with hearing impairments accompanied by a sworn sign language interpreter, as a notary it is mandatory to verify his identity or proof of official certification that he has indeed been sworn in his position to interpret sign language." (Irma Savyna Firdaus, 2024).

This guidance aims to avoid communication errors and multiple interpretations so that the information explained by the notary can be received well and clearly by the people with hearing impairments. Therefore, this guidance should be conducted from the initial appearance (opmaken) to the most fundamental process related to reading and signing, namely the verification of the deed. This process can be conducted by communicating simultaneously, namely the sworn sign language interpreter which is near the notary and when the notary reads the deed, the spoken language is simultaneously interpreted into sign language.

Justice can be understood as fairness in order to obtain equal opportunities in the eyes of the law which is not only intended for people with good conditions, but also for those who have limitations, including people with hearing impairments. By

regulating the provision of sworn sign language interpreters for complainant with hearing impairments, it is considered as an effort to meet justice for them which can be based on the concept of distributive justice by John Rawls which emphasizes that justice is equality in inequality which consists of freedom and the fulfillment of equal portions of political rights for all citizens without regard to advantages or disadvantages, and these rights must not be reduced or compensated in other forms. Therefore, every individual who is in a disadvantaged position must gain more benefits than those who are fortunate. It applies to deaf people who also have the right to obtain information or knowledge regarding legal acts conducted before a notary and it is the notary's obligation to provide as clear information as possible regarding the legal acts contained in the authentic deed.

Providing information by a notary is one step to fulfill the accessibility rights of people with hearing impairments. Even though they have limitations in hearing and speaking, they are still able to obtain all the rights inherent in themselves. Furthermore, reconstruction of regulations in the UUJN must also prioritize the principle of pure procedural justice which does not favor the stronger party and excludes the weak, so that the legal products issued can meet the indicators of justice for people with hearing impairments. Apart from being guided by the theory of distributive justice presented by John Rawls, the fulfillment of justice in this study is conducted by referring to the theory of procedural justice which is closely related to efforts to legitimize actions which includes making and implementing decisions fair process in regulations, laws and statutes.

In fact, legal norms are abstract which allows for differences in interpretation (Nurul Qamar and Hardianto Djanggih, 2017). Therefore, in order to avoid it in relation to complainant with hearing impairments, it is necessary to reconstruct the clauses in the UUJN and its amendments which regulate the mechanism for reading deeds by a notary in front of complainant with hearing impairments based on the principles of justice; besides, as one of the steps in order to realize harmony between statutory regulations and the conception of the Indonesian state as a legal state which protects and respects every human right of its citizens for the sake of realizing justice (Agung Mas Triwulandari, 2020).

The ideal law is a law that applies universally, is effective, right on target, and is not misleading, is guided by the Pancasila philosophy which contains human values and ease of access to the law. In accordance with Article 5 of the PPP Law, when forming a legislative regulation it must be based on good and clear objectives since with fair input through UUJN, it will also provide output that provides justice and guarantees legal certainty. Furthermore, article 6 paragraph (1) of the PPP Law emphasizes that the material content contained in a statutory regulation should reflect the principles of justice which emphasize equality of treatment and position before the law. Therefore, by reconstructing the content of the articles in the UUJN to support disability, it will provide benefits for people with disabilities to be able to do their rights so that they can be protected by just laws and give them the opportunity to obtain an equal position in the eyes of the law and government; especially, for deaf people in conducting legal acts before a notary. Therefore, laws can be created that are based on the concepts of justice and equality.

Efforts to achieve justice can be conducted in 2 ways, as follows;

- a. Related to the provision of a sworn sign language interpreter, the costs of such provision are borne by the client himself. However, the Government

should take steps in order to formulate regulations regarding the allocation of funds guided by Article 19 of the UUPD and Article 9(e) of the CRPD. These two regulations explain that people with disabilities have the right to receive convenience in the form of guidance and interpreting facilities without being charged additional fees.

- b. Adding an article regarding deaf people who must be accompanied by a sworn sign language interpreter in the process of making a deed and reading the deed by a notary; especially, in Article 16 paragraph (1) letter m and Article 43 UUJN.

CONCLUSION

Incompleteness of legal norms in the UUJN which do not accommodate the accessibility rights of deaf people so that they do not provide justice and guarantee legal certainty. It is proven in Article 16 paragraph (1) UUJN which does not explicitly regulate the obligation of a notary to read the deed in the presence of parties with hearing impairments who have difficulty hearing and speaking. Moreover, Article 43 UUJN regulates procedures for making deeds in foreign languages where only sworn interpreters can be provided. Meanwhile, the language used by deaf people is sign language and not all notaries can understand and practice this language. Therefore, the incompleteness of the UUJN and its amendments which regulate the mechanism for providing sworn sign language interpreters can result in the deed-making process being vulnerable to misunderstandings and the occurrence of multiple interpretations which can give rise to disputes in the future. Hence, it is necessary to reconstruct the regulations in the UUJN-P which refer to aspects of justice in the UUPD, CRPD, Human Rights Law and UUPK so that they can accommodate the accessibility rights of complainant with hearing impairments.

Due to the incompleteness of the legal norms in the UUJN-P which accommodate the accessibility rights of people with hearing impairments, the reformulation of the articles so that they can fulfill aspects of justice for deaf people who appear before notaries can be realized in Article 16 paragraph (1) letter m UUJN and Article 43 UUJN by adding a phrase that discusses complainant with hearing impairments who are required to be accompanied by a sworn sign language interpreter in every process of making a deed starting from the opmaken to the deed verification stage which is the most important stage.

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