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ARRANGEMENTS FOR SIGN LANGUAGE INTERPRETERS IN MAKING AUTHENTIC DEEDS BY A NOTARY FOR DEAF APPEARERS

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ABSTRACT

The objective of this paper is to analyze the arrangement for sign language interpreters in making authentic deeds by a Notary for deaf appearers in Indonesia and to analyze the relevant arrangements regarding this issue in terms of the provision of sign language interpreters by a Notary for deaf appearers in the future. The benefit of this writing is to provide a juridical understanding regarding the arrangements for providing sign language interpreters in making authentic deeds by a Notary for deaf appearers in Indonesia as well as providing scientific contributions in the dimension of the Notary Act. The void of norms underlying writing uses a type of normative legal research through statutory and comparative approaches which are analyzed using descriptive, comparative, argumentative, and prescriptive techniques. The results of the study show that the authority of a Notary to make authentic deeds is contained in Article 15 paragraph (1) of the Amendment to the Act on the Position of Notary. This arrangement is intended for appearers with non-disabled conditions only because it contains a "sufficiently clear" clause. Based on a comparative study of the Amendment to the Act on the Position of Notary and the Japanese Notary Act, the Amendment to the Act on the Position of Notary has not regulated the provision of sign language interpreters for deaf appearers, while the Japanese Notary Act has regulated sign language interpreters. Resolving the urgency of this problem by formulating arrangements for sign language interpreters in the Amendment to the Act on the Position of Notary by adopting the provisions contained in the Japanese Notary Act.
Keywords: Authentic Deed; Sign Language Interpreter; Notary Public; Deaf Facing

1. INTRODUCTION

The creation of order, certainty, and the benefit of the law is the hope of every human being living in a nation based on the rule of law. The law was formed in order to accommodate society to properly bridge obligations.[1] The realization of these three elements can be realized through "written evidence" that is authentic, with the enactment of a legal action desired by the community in which the evidence is made by an authorized official, namely a Notary. In his pride as an official appointed by the government to carry out legal and authentic legal actions, the role of a notary becomes very important. An authentic deed in Article 1868 of the Civil Code (hereinafter shall be referred to as the "KUHPer") is defined as, *"a deed in the form determined by law, made by or before public officials who have power for such purpose in the place where the deed is made by him"*[2]. The notarial deed is then classified into 2 (two) namely *relaas* deed, which is a deed made by a notary, and *partij* deed, which is a deed made before a notary.

1 Muhammad Agung Ardiputra, "Pola Efektif Pembinaan Hukum untuk Meningkatkan Keberhasilan Pembangunan Hukum," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 40
2 "Kitab Undang-Undang Hukum Perdata," art. 1868

The existence of a Notary legally and formally regulated in Act Number 30 of 2004 concerning the Position of Notary (hereinafter shall be referred to as the "Act on the Position of Notary") in conjunction with Act Number 2 of 2014 concerning Amendment to Act Number 30 of 2004 concerning the Position of Notary (hereinafter shall be referred to as the "Amendment to the Act on the Position of Notary"). Article 1 point 1 of the Amendment to the Act on the Position of Notary stipulates that a *"Notary is a public official who has the authority to make authentic deeds and other authorities as referred to in this Act"*[3]. A notary is a public official who is appointed by the government, however, in carrying out his position the Notary does not receive a salary from the government, but receives an award in the form of an honorarium from the public who appears before him. Notaries in their role must behave professionally by upholding the value of justice considering the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter shall be referred to as the "1945 Constitution") states that, "*Indonesia is a nation based on the rule of law*"[4].

To be able to become a Notary's appearer, a person must meet the qualifications as set forth in Article 39 paragraph (1) of the Amendment to the Act on the Position of Notary which formulates, among other things *"at least 18 (eighteen) years of age and competent in carrying out legal actions."*[5] The policy then drew the attention of the authors that a person with disabilities can appear before a Notary as long as he is not under guardianship. As a nation based on the rule of law, the existence of Act Number 39 of 1999 concerning Human Rights (hereinafter shall be referred to as the "Human Rights Act") and Act Number 8 of 2016 concerning Persons with Disabilities (hereinafter shall be referred to as the "Act on Persons with Disabilities") provide a legal umbrella for persons with disabilities to obtain equal rights as legal subjects including as appearers before a Notary considering that in every period of time, there is a high percentage of persons with disabilities as described in Infodatin of the Indonesian Ministry of Health that obtained data on persons with disabilities through Riskesdas in 2007, 2013 and 2018.[6]

Goffman defines a person with a disability as someone who has limitations by not being able to communicate with other individuals.[7] Article 4 paragraph (1) of the Act on Persons with Disabilities classifies a variety of persons with disabilities including, *"persons with physical disabilities, persons with intellectual disabilities, persons with mental disabilities, and persons with sensory disabilities."*[8] Of the four classifications that meet the elements of Article 39 paragraph (1) of the Amendment to the Act on the Position of Notary to be able to become a Notary's appearer are persons with sensory disabilities, namely the disruption of one of the functions of the five senses because they do not lose their mind and common sense so they are able to become a Notary's appearer, one of them is someone with a deaf condition. Various terms are reserved for someone with a deaf condition, usually in public life they are called a person with a deaf condition, while in the perspective of the Act on Persons with Disabilities, this condition is referred to as Deaf Disability.

Departing from this explanation, the Amendment to the Act on the Position of Notary formulates that a Notary has the authority to make an authentic deed as set forth in Article 15 paragraph (1) which then provides an obligation for the Notary to read the deed before the appearer as set forth in Article 16 paragraph (1) letter m. The formulation of this article is "sufficiently clear" which means that the provisions that apply in it are only intended for persons with non-disabilities. In reality, of course, a Notary does not only provide services in the form of making authentic deeds but also provides services in the form of providing information on

3 "Undang-Undang Republik Indonesia No. 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris," § Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3 (2014), art. 1 point 1

4 "Undang-Undang Dasar Republik Indonesia" (1945), art. 1 paragraph 3.

5 "Undang-Undang Republik Indonesia No. 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris," § Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3 (2014), art. 39 paragraph 1

6 Frichy Ndaumanu, "Hak Penyandang Disabilitas: Antara Tanggung Jawab dan Pelaksanaan oleh Pemerintah Daerah," *Jurnal HAM* 11, no. 1 (2020): 132

7 Ebenhaezer Alsih Taruk Allo, "Penyandang Disabilitas Di Indonesia," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 9, no. 3 (2022): 808

8 "Undang-Undang Republik Indonesia No. 8 Tahun 2016 Tentang Penyandang Disabilitas," § Lembaran Negara Republik Indonesia Tahun 2016 Nomor 69 (2016), art. 4 paragraph 1

all interests of legal actions that are to be carried out because it does not rule out that people who come as appearers are someone with hearing limitations, namely deaf people so that the deaf community need a Notary who can accommodate their rights and provide maximum services. The provision of information as intended can be related to legal counseling conducted by a Notary (Article 15 paragraph (2) letter e of the Amendment to the Act on the Position of Notary) because the process of making a deed requires accuracy and thoroughness by a Notary and ensures legal actions that will be contained in the authentic deed leads to inconsistency with positive law. Providing information to all citizens including the deaf is a constitutional right protection from the state as mandated in the provisions of Article 28 F of the 1945 Constitution that, *"Everyone has the right to communicate and obtain information to develop his personal and social environment, and has the right to obtaining, searching, possessing, processing, storing, and conveying information using all kinds of available rules"*[9].

Based on the description above, there is a legal problem in the form of a void of norms in the Amendment to the Act on the Position of Notary, where the Amendment to the Act on the Position of Notary does not explicitly stipulate how Notaries provide services in the form of making up to reading authentic deed to people with deaf conditions who appear before them, considering that the community Deaf people need a sign language interpreter to communicate, and Notaries do not have special skills to perform sign language techniques. The existence of a void of norms in the Amendment to the Act on the Position of Notary has resulted in a lack of legal certainty and protection for deaf people who become before the Notary and if left unchecked can have implications as a problem in the future. In addition, this problem can also cause problems for the Notary himself because the Amendment to the Act on the Position of Notary does not regulate how a Notary acts to provide services when deaf people become his or her guardians. This is based on the fact that essentially all professionals working in the field of law including notaries are required to provide guarantees of legal certainty.

Referring to the description previously described, the formulation of the problem that will be studied for further discussion in this journal is: 1) What are the arrangements for providing sign language interpreters in making authentic deeds by a Notary for deaf persons in Indonesia? 2) What are the relevant arrangements regarding the provision of interpreters by a Notary for deaf persons in the future? From the formulation of the problem raised, it produces a writing objective, namely to analyze the arrangement for the provision of sign language interpreters in making authentic deeds by a Notary for deaf persons in Indonesia, as well as reviewing and analyzing relevant arrangements for the provision of sign language interpreters by a Notary for deaf persons in the future. With this research, it is expected that it can provide benefits in the form of a juridical understanding regarding the arrangements for providing sign language interpreters in making authentic deeds by Notaries for deaf persons in Indonesia as well as providing scientific contributions in the dimension of Notary's Affairs and Human Rights (hereinafter shall be referred to as "Human Rights") regarding relevant arrangements related provision of interpreters by a Notary for deaf appearers in the future.

Prior to the writing of this writing, there was previous research as comparison material and writing references including: The journal that was written by Garin Dinda Azzalea and Shafiyah Nur Azizah in 2022 with the title "*Kesulitan Penyandang Tunarungu Dalam Melakukan Pembuatan Akta Tanah Ditinjau Dalam Perspektif Hukum*" (Difficulties faced by Deaf Persons in Making Land Deeds from a Legal Perspective), and then journal that was written by Dea Derika in 2020 with the title "*Fungsi Notaris Dalam Pemeriksaan Identitas Penghadap Terhadap Autensitas Akta Dihubungkan Dengan Asas Kehati-hatian*" (Functions of a Notary in Examining the Identity of Appearers on the Authenticity of Deeds Associated with the Principle of Precautions). In the first article, the discussion is entitled "the legitimacy of deaf persons as appearers for a Notary in making land deeds" then in the second article the discussion refers to "the authenticity of a Notary's deed connected with the precautionary principle and the role of the Notary in examining the identity of the appearer". While the research conducted by the authors focuses on "arranging sign language interpreters in making authentic deeds by a Notary for deaf appearers in Indonesia and relevant arrangements regarding the provision of sign language interpreters by a Notary for deaf appearers in the future. So that there is the

9 "Undang-Undang Dasar Republik Indonesia" (1945), art. 28F.

renewal of legal research which will differentiate the focus of this writing from the focus of previous writings. Therefore, the authors are interested in appointing and holding journal writing with the title "Arrangement for Sign Language Interpreters in Making Authentic Deeds by Notaries for Deaf Appearers".

2. RESEARCH METHOD

The existence of the legal issue of the void of norms as described in the background above underlies this journal to use of normative legal research. Normative legal research positions legislation as an object of research. Journal writing uses a statutory approach, as well as a comparative approach with data sources originating from primary legal materials and secondary legal materials.

The authors present a regulatory analysis related to the topic raised, accompanied by arguments on the entire legal basis used to produce systematic writing. On that basis, the technique of collecting legal materials used is in the form of literature research which is carried out by studying and understanding the substance contained in each legal material which is used as a basis for sharpening the analysis carried out. The laws and regulations used in this article become the primary legal material which is inventoried as the main matter and is then paired with related legal materials starting from articles in journals, the results of research in sharpening the analysis carried out and accompanied by descriptive, evaluative, argumentative, and prescriptive.

Data analysis in this paper includes using: descriptive techniques which provide an objective description of the legal phenomena raised; comparative techniques, namely comparing one primary legal material with another primary legal material with the aim of obtaining the correct consensus on the legal issues that occur, especially regarding the arrangement of sign language interpreters for deaf persons; argumentative techniques that contain the reasoning and legal arguments used to strengthen the disclosure of scientific truth on the results of research conducted; and prescriptive techniques which are not limited to providing studies and analysis of legal issues but instead providing an overview and considerations for the formulation of a policy in the dimension of Notary law.

The structure of the discussion in this journal is made systematically to answer the main problem formulation according to the legal problems that have been described. The discussion includes findings that are analyzed and elaborated on and will be described descriptively so as to provide clear answers. The things that are dissected and discussed are based on a literature review that is relevant to the topic, especially the latest findings so that the solutions, recommendations, and novelty of the novelty of the results of this research will be clearly visible. This structure is presented in the discussion sub-chapter on the arrangement for the provision of sign language interpreters first, then regarding the relevant arrangements related to the non-regulation of this sign language interpreter in the Amendment to the Act on the Position of Notary and the analysis later outlines solutions for future policy formulation in the field of notary law. This journal is more specific than the research described previously, and there is no literature that specifically addresses the problems raised by elaborating notary law field policies with human rights.

3. DISCUSSION

3.1 Arrangements for Provision of Sign Language Interpreters in Making Authentic Deeds by Notaries for Deaf Appearers in Indonesia

Etymologically the word Notary comes from the word "*Notarius*" which is a term addressed to people who are engaged in writing in Roman times. Then there was a change in the function of the Notary, namely that the name was assigned to people who made records in shorthand, including stenographers. Notaries have an important meaning and role in realizing a prosperous nation's life in which they have an honorable position in the eyes of society. The era of digitalization has caused the standard of living to increase, so the existence of a notary, especially in the case of making authentic deeds, is a necessity. Full evidentiary force is owned by the parties to the authentic deed made by a Notary. There are 3 (three) arrangements that should be the main

provisions for the preparation of an authentic deed by a Notary, including:

1. Article 1320 of KUHPer concerning subjective and objective conditions for the validity of an agreement;
2. Article 1868 of KUHPer concerning the form of an authentic deed;
3. Act on the Position of Notary and Amendment to the Act on the Position of Notary.[10]

Normatively, the authority of a Notary is contained in Article 15 of the Amendment to the Act on the Position of Notary, in particular, the authority regarding making authentic deeds is formulated in Article 15 paragraph (1) of the Amendment to the Act on the Position of Notary that, "*The Notary has the authority to make authentic Deeds regarding all actions, agreements, and stipulations required by law and/or what is desired by the interested parties to be stated in an authentic deed, guarantee the certainty of the date of the making of the deed, keep the deed, provide grosse, copies, and excerpts of the deed, all of that as long as the making of the deed is not also assigned or excluded to other officials or other person determined by law*"[11]. Referring to the definition of an authentic deed as set forth in Article 1868 of the KUHPer, an authentic deed must have elements, including:

1. *"The form of a deed that has already been determined based on statutory provisions for a deed to be considered as an authentic deed;*
2. *Made by or before an authorized public official;*
3. *At the place where the deed was drawn up".*[12]

Departing from the authority of the Notary in carrying out his position, of course, some obligations then become a mandate that must be obeyed by the Notary, where after the deed is drawn up before the deed is signed, the Notary is obliged to convey back the contents of the deed desired by the parties or is referred to as the reading of the deed as stipulated in Article 16 paragraph (1) letter m of the Amendment to the Act on the Position of Notary, and this clause is reaffirmed by the provision of Article 44 paragraph (1) of the Amendment to the Act on the Position of Notary that, "*As soon as the Deed is read, the Deed is signed by each appearer, witness, and Notary, unless there is an appearer who is unable to sign by stating the reasons*"[13]. This means that the obligation to read the deed by a Notary in front of the parties is one of a series of formalizing the deed.[14]

Based on the authority and obligations of the Notary as described above, it can be concluded that the Notary plays a major role in guaranteeing legal certainty for legal actions agreed upon by the appearers which are then legalized in the form of an authentic deed. The appearers mean those who come and are present at the reading of an authentic deed by a Notary whose substance contains the will of the appearer, and not the will or will of the Notary[15]. To become a Notary appearer, a person must meet the qualifications of Article 39 paragraph (1) of the Amendment to the Act on the Position of Notary, including:

"The appearer must meet the qualifications, including:

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10 Rezeky Febrani Sembiring and Made Gde Subha Karma Resen, "Keabsahan Akta Notaris Berbasis Cyber Notary Dalam Pembuatan Akta Otentik," *E-Journal Ilmu Hukum Kertha Desa* 10, no. 2 (2022): 62.

11 "Undang-Undang Republik Indonesia No. 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris," § Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3 (2014), art. 15 paragraph 1.

12 Agus Toni Purnayasa, "Akibat Hukum Terdegradasinya Akta Notaris yang Tidak Memenuhi Syarat Pembuatan Akta Autentik," *Acta Comitas* 3, no. 3 (2018): 398

13 "Undang-Undang Republik Indonesia No. 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris," § Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3 (2014), art. 44 paragraph 1.

14 Kadek Setiadewi and I Made Hendra Wijaya, "Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik," *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020): 131

15 Ni Putu Anggelina, "Kedudukan Hukum Saksi Instrumentair Terkait Keautentikan Akta Notaris," *Acta Comitas* 3, no. 3 (2018): 511.

a. The minimum age is 18 (eighteen) years and/or married;

b. proficient in carrying out legal actions."[16]

It is understood that this provision explicitly regulates only adults or those who are married and people who have common sense/mind who can act as appearers. However, if the provisions in Article 39 paragraph (1) of the Amendment to the Act on the Position of Notary related to the authority of a Notary in making deeds (Article 15 paragraph (1) of the Amendment to the Act on the Position of Notary) are examined again, a question arises, can a person with disabilities be able to appear before a Notary? bearing in mind that in reality not all disability qualifications are incapable of bridging legal traffic.

Disability in the English language contains the term disability. Normatively, regulation of disability in Indonesia is regulated in the Act on Persons with Disabilities, which further in Article 1 number 1 defines persons with disabilities as, *"People who experience physical, intellectual, mental, and/or sensory limitations who experience obstacles and difficulties in interacting with the environment participate fully with other citizens based on equal rights"*[17]. Then, Article 4 of the Act on Persons with Disabilities formulates qualifications or types of disabilities, including:

a. *"Physical disability, is a limitation due to disturbances in bodily functions*;
b. *Intellectual disability, is a limitation because it is difficult to receive information and tends to have a low IQ so it is not sensitive to the environment;*
c. *Mental disability, is a limitation due to disturbances in the mind or brain; and*
d. *Sensory disability, is a limitation on the function of the five senses, such as the blind, deaf, and so on*".[18]

From the qualifications for disability in Article 4 of the Act on Persons with Disabilities above, it can be observed that not all of the disabilities mentioned above experience disturbances in their minds and/or common sense, so some persons with disabilities have the skills to become legal subjects. The ability to act is the ability to perform legal actions. In the Civil Law dimension, there are qualifications for someone to be legally competent including:

1. *"A legal adult when they are 21 (twenty one) years old*;
2. *The person is married even though he is not yet twenty one years old*;
3. *Someone who is not under guardianship;*
4. *The person is not in a mental disorder, in other words physically and spiritually healthy*".

Article 433 of KUHPer then regulates the meaning of "*under guardianship*" which means, "*Every adult, who is always in a dumb state, has brain pain or dark eyes. must be under guardianship, even if he is sometimes capable of using his mind, an adult may also be placed under the guardianship of his wastefulness*." Departing from the descriptions of the article and referring to the qualifications of persons with disabilities as described above, it can be understood that a person with disabilities who can become a Notary's appearer is someone with a sensory disability because he is not included in the qualifications under guardianship and of course capable of acting, provided that while carrying out legal actions to be subsequently set forth in the form of an authentic deed by a Notary, a person with the age of maturity as determined by law. Today's society is full of bureaucratic existence[19], which means that deaf people have access to run the bureaucracy like someone

16 "Undang-Undang Republik Indonesia No. 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris," § Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3 (2014), art. 39 paragraph 1

17 "Undang-Undang Republik Indonesia No. 8 Tahun 2016 Tentang Penyandang Disabilitas," § Lembaran Negara Republik Indonesia Tahun 2016 Nomor 69 (2016), art. 1 point 1.

18 "Undang-Undang Republik Indonesia No. 8 Tahun 2016 Tentang Penyandang Disabilitas," § Lembaran Negara Republik Indonesia Tahun 2016 Nomor 69 (2016), art. 4.

19 Taufik H. Simatupang, "Analisa Yuridis Peran Kantor Wilayah Kementerian Hukum dan HAM dalam Pengelolaan dan Pelayanan Database Peraturan Perundang-Undangan di Daerah," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 1

with a "non-disability" condition.

The description of the articles mentioned above provides an understanding that not all persons with disabilities are incapable of acting, in other words, there are several qualifications for persons with disabilities that make it possible for a person with disabilities to become a notary's appearance. From a number of disability qualifications, this research then focuses on persons with disabilities with sensory impairment (deaf) who appear before a Notary, moving from the statutory provisions that the deaf are included in sensory disability qualifications who have common sense so that they are competent in carrying out legal actions, including being notary appearer. A deaf person is someone with very severe hearing loss, who experiences problems in processing linguistic information through hearing, whether using or not using a hearing aid so it has implications for disrupting social skills[20]. In everyday life, deaf people tend to have difficulty communicating, therefore they need a sign language interpreter who is able to provide understanding through sign language codes so that deaf people are able to understand the meaning of the message being conveyed. So it is clear that if analyzed in terms of the dimensions of the Act on Persons with Disabilities, a person with a deaf condition as set forth in Article 4 can act as a Notary's appearance by providing a sign language interpreter in the process of making a deed as a form of legal protection.

The things above are in line with the conception that Indonesia is a nation based on the rule of law that is full of Human Rights for its citizens.[21] In providing legal services, notaries are also prohibited from discriminating between parties, including siding with one of the parties based on their status and class.[22] Citing Bahder Johan's view that the understanding of Human Rights is *"natural rights that are inherited by humans since humans are born into the world. Such an understanding of human rights is a general understanding without distinguishing academically the rights in question and without questioning the origins or sources of obtaining these rights*"[23]. Thus, equal and natural rights between non-disabled and deaf appearers are "equal" in the sense that there is no distinguishing element where both are equally capable in bridging themselves as legal subjects. Citing the view of Immanuel Kant that "*all humans must be treated not merely as tools, because humans are rational individuals who have goals in themselves.*"[24] The protection of Human Rights is contained in the basic norms, namely in the "preamble" and "body" of the 1945 Constitution.[25] And to accommodate these human rights, Indonesia has a policy in the form of a regulation known as the Human Rights Act. Article 1 point 1 of the Human Rights Act states that: *"Human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of respect and protection of human dignity*"[26]. And the authors quote the article stating that, "The Ministry of Law and Human Rights (the Kemenkumham) as the government in charge of human rights in Indonesia"[27], it can be said that in Indonesia, the government that oversees human rights affairs is the Kemenkumham.

(2018): 9.

20 Octavia Dewi Indrawati and I. G. N. Dharma Laksana, "Kekuatan Pembuktian Keterangan Saksi Penyandang Disabilitas Sensorik (Tuna Rungu) Dalam Proses Peradilan Pidana," *E-Journal Ilmu Hukum Kertha Wicana* 9, no. 3 (2020): 11.

21 Agung Mas Triwulandari, "Problematika Pemberian Bantuan Hukum Struktural dan Non Struktural Kaitannya dengan Asas Equality Before The Law," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (2020): 549

22 Ayu Ningsih, Faisal A.Rani, and Adwani, "Kedudukan Notaris sebagai Mediator Sengketa Kenotariatan Terkait dengan Kewajiban Penyuluhan Hukum," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 2 (2019): 202–203

23 Bahder Johan Nasution, *Negara hukum Dan Hak Asasi Manusia*, (Bandung: Mandar Maju, 2018), 129

24 *Ibid*, 160

25 Ahmad Sanusi, "Pengeluaran Tahanan Demi Hukum bagi Tersangka dalam Perspektif Hukum dan Hak Asasi Manusia," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (2020): 442

26 "Undang-Undang Republik Indonesia No. 39 Tahun 1999 Tentang Hak Asasi Manusia," § Lembaran Negara Republik Indonesia Tahun 1999 Nomor 165 (1999), art. 1 point 1

27 Yuditia Nurimaniar and Hilmi Ardani Nasution, "Humanitarian Intervention: Institutional Support from the Ministry of Law and Human Rights of the Republic of Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 3 (2022): 378–379

Referring to the explanation above that someone with a hearing impairment condition can become a notary's appearers, and the focus of this research is how the Notary acts in making an authentic deed up to reading the contents of the authentic deed he made when the Notary finds and/or is confronted with a appearer who have limited hearing. This is based on bearing in mind the provisions of Article 15 paragraph (1) of the Amendment to the Act on the Position of Notary which gives authority to a Notary as the maker of an authentic deed then the provisions in Article 16 paragraph (1) letter m of the Amendment to the Act on the Position of Notary and Article 44 paragraph (1) of the Amendment to the Act on the Position of Notary governing the obligation for a Notary to read the contents of the deed before the appearer. The clauses as contained in these articles in the Amendment to the Act on the Position of Notary are "self-explanatory" and thus, based on the analysis conducted by the authors, the provisions in the article can be said to be intended only for appearers with normal or non-disabled conditions. So, in this case, the Amendment to the Act on the Position of Notary has not explicitly regulated regulatory policies regarding how Notaries act in the process of making authentic deeds which generally begins with discussions in the form of legal counseling between Notaries and the parties, then the inclusion of the clauses of the articles desired by the parties, after that, the contents of the authentic deed are read, up to the signing of the deed. Sign language interpreter regulation policies are urgently needed nowadays, especially in making authentic certificates for deaf persons, bearing in mind that their sensory limitations require a sign language interpreter to understand the meaning of the message conveyed in communication. Therefore, the arrangement for providing sign language interpreters here is important both for the Notary himself and for the deaf appearers. The benefit for the Notary is that it can make it easier for him to act on his position because the content and meaning of the deed he makes will be conveyed correctly and clearly by the sign language interpreter for the Notary in communicating with deaf persons when in making the deed they want to carry out discussions or wish to change the contents of the deed, and for the deaf appearer itself makes it easier for them to convey their wishes for the clauses to be included in the authentic deed.

The series of processes for making an authentic deed, both in terms of the validity of the agreement that will be set forth in the deed up to the reading of the deed, is an important whole. Before the deed is signed, the Notary is also obliged to read out the contents of the authentic deed with the aim of being the last stage and/or option for the Notary before the deed is signed, and if the deed he makes still contains errors or mistakes that are not desired by the parties, the Notary can make revisions or changes agreed upon by the appearers. The implementation of the duties of a notary in Indonesia cannot be separated from how the philosophical basis rests on Pancasila values so that all aspects of service from a notary using authority cannot be separated from practicing the five precepts in the basis of the Indonesian state.[28]

3.2 Relevant Arrangements Regarding Provision of Sign Language Interpreters by Notaries for Deaf Appearers in the Future

Notary authority is the maker of authentic deeds determined by laws and regulations as well as by the will of the parties and/or legal entities that need them. The truth of the clauses contained in an authentic deed cannot be denied unless it can be proven that an error was made by a notary so that the contents of the deed are not in accordance with the rules or reality.[29] The notary profession is not only needed in countries with a "*civil law*" legal system but also needed by countries with a "*common law*" legal system. A notary in a "*civil law system*" country becomes a "*public servant*" in this case a notary as a party implementing written rules as set out in laws and regulations. Meanwhile, in a "*common law system*" country, a Notary acts as someone with integrity by providing validity and validation of documents, in this case, not someone who practices in the field of law. Notaries in the "*civil law*" state system are called *Latijnse Notariat*, while in countries with a "common

28 I Gusti Agung Ika Laksmi Mahadewi, Ni Komang Tari Padmawati, and I Gusti Agung Mas Rwa Jayantiar, "Notary in Indonesia: How Are State Fundamental Values Reflected in Law and Professional Ethics?," *Udayana Journal of Law and Culture* 6, no. 2 (2022): 205

29 Komang Dicky Darmawan and Nyoman Satyayudha Dananjaya, "Keabsahan Transaksi E-Commerce Dalam Pembuatan Akta Perspektif Cyber Notary Dengan Menggunakan Digital Signature," *Acta Comitas* 7, no. 02 (2022): 233

law system" they are referred to as "*Public Notaries*", thus the Notary is not domiciled as a profession but as a holder of a noble position[30].

The clause contained in Article 15 of the Amendment to the Act on the Position of Notary then provides for an obligation for the Notary to*: "read the deed before the appearer in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a privately executed deed of will, and signed at the same time by the appearer, witness, and Notary."* (Article 16 paragraph (1) letter m of the Amendment to the Act on the Position of Notary). Based on the analysis conducted by the authors, these provisions are only intended for appearers with normal/non-disabled conditions because the terminology in these provisions does not explicitly mention appearers with disabilities, so the Amendment to the Act on the Position of Notary has not implicitly regulated how to make and read authentic deed by a Notary for appearers who are deaf, bearing in mind that a Notary is not someone who is certified to be able to become a sign language interpreter so it is clear that in the Amendment to the Act on the Position of Notary, there is still a void in norms. The significance of the need for arrangements for the provision of sign language interpreters in the Amendment to the Act on the Position of Notary is to facilitate the Notary in carrying out his position, as well as to make it easier for deaf appearers to convey the message to be conveyed or set forth if there is a clause in the authentic deed that is still unclear and if you wish to correct it before the deed is signed handle.

Departing from the absence of norms in the Amendment to the Act on the Position of Notary, this journal then uses a comparative approach, namely analyzing and making comparisons between the Amendment to the Act on the Position of Notary and the Japanese Notary Act, namely Act Number 74 of 2011 concerning changes to the Act Number 53 of 1908 (hereinafter written the Japanese Notary Act). The use of Japan as a regulatory comparative study is because this country bridges the position and existence of persons with disabilities and is also a country with a civil law system, as is Indonesia. The need for new arrangements in the Amendment to the Act on the Position of Notary as a form of creating legal certainty and benefits and minimizing the occurrence of situations or conditions that cause problems in the future, because true law must have the dynamic authority which means it is able to bridge complex developments in society.[31]

It is stated that in Article 15 paragraph (1) of the Amendment to the Act on the Position of Notary, *"The Notary has the authority to make authentic Deeds regarding all actions, agreements, and stipulations required by laws and regulations and/or desired by interested parties to be stated in authentic Deeds, guaranteeing certainty of the date of making the deed, keeping the deed, providing grosse, copy, and excerpt of the deed, all of this as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law*"[32]. The notary's authority has similarities with the Japanese Notary Act, as set forth in Article 1 of the Japanese Notary Act, that:

> *"Notaries have the authority to carry out the following processes upon commission from a party or any other person concerned:*
>
> *i. creating a notarized instrument with regard to a juridical act or any other fact concerning a private right;*
>
> *ii. certifying a private instrument;*
>
> *iii. certifying articles of incorporation pursuant to Article 30, paragraph (1) of the Companies Act (Act No. 86of 2005) and the provisions pursuant to which Article 30, paragraph (1) of the Companies Act applies mutatis mutandis, as we; as Articles 13 and 155 of the Act on General Incorporated Associations and General Incorporated Foundations (Act No 48 of 2006); and*

30 Ghansham Anand, *Karakteristik Jabatan Notaris Di Indonesia* (Jakarta: Prenadamedia Group, 2018), 90

31 Mohammad Kamil Ardiansyah, "Pembaruan Hukum oleh Mahkamah Agung dalam Mengisi Kekosongan Hukum Acara Perdata di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (2020): 363

32 "Undang-Undang Republik Indonesia No. 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris," § Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3 (2014), art. 15 paragraph 1.

iv. certifying electronic of magnetic records (records made in electronic form, magnetic form, or any other form that is impossible to perceive by the human senses (hereinafter referred to as an "Electronic or Magnetic Form"), which are used in information processing by computers; the same applies hereinafter); provided, however, that this applies only in cases of certifying electronic or magnetic records other than ones created by a government employee in performing said employee's duties".[33]

In essence, these provisions mean:

"The notary's duty is to serve requests from interested parties to:

i. make authentic deeds regarding all forms of legal action;

ii. certify private instruments;

iii. approve the articles of association;

iv. legalize all forms of electronic documents".

Then Article 43 paragraph (1) and paragraph (2) of the Amendment to the Act on the Position of Notary emphasizes that: *"The deed must be made in Indonesian" and "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 the language understood by the appearer*".[34] Whereas Article 29 of the Japanese Notary Act stipulates that "*In order to create an instrument in cases where a client does not understand the Japanese language or a client is deaf or mute, or any other person who is incapable of speaking any language and who does not understand written words, notaries must have an interpreter attend the creation of said instrument*".[35] In Indonesian, this provision is translated as: "*In the case of drawing up a deed where the appearer does not understand Japanese or the appearer is a deaf/mute person or a person who is unable to speak any language and does not understand written words, the Notary is obliged to present an interpreter at the time of making the deed"*. The provisions in Article 29 of the Japanese Notary Act clearly stipulate that if a Notary finds a deaf/mute (deaf person) appearer, the Notary is obliged to present an interpreter when the making of the deed takes place, namely an interpreter or "sign language interpreter".

After conducting a comparative study between the Amendment to the Act on the Position of Notary and the Japanese Notary Act, the authors can describe the differences between the Amendment to the Act on the Position of Notary and the Japanese Notary Act, namely: First, arrangements regarding the circumstances of the appearer where in the Amendment to the Act on the Position of Notary if the appearer does not understand the language which is stated in the contract, namely Indonesian, the Notary is obliged to provide an interpreter, whereas in the Japanese Notary Act the provisions are explicitly intended not only for appearers with non-disabled conditions who do not understand the language used in the deed, namely Japanese, wherein the Japanese Notary Act also emphasized that if the Notary finds a deaf person present, the Notary is obliged to present an interpreter who conveys the message simultaneously (directly) in sign language or what is referred to as a sign language interpreter. Second, the recognition of a deaf person as an appearer, where the Amendment to the Act on the Position of Notary has not explicitly regulated the provision of a sign language interpreter for deaf appearers in the process of making an authentic deed, whereas the Japanese Notary Act has regulated the obligation of a Notary to provide a sign language interpreter when encountering an appearer with deaf conditions. Thus, the importance of regulating the provision of sign language interpreters in the Amendment to the Act on the Position of Notary in the future aims to provide legal certainty for both Notaries and deaf persons, in which the Amendment to the Act on the Position of Notary can adopt the provisions contained

33 "Undang-Undang No. 74 Tahun 2011 Tentang Perubahan Atas Undang-Undang No. 53 Tahun 1908 (Koshoninho)," art. 1 (diterjemahkan oleh Penulis)

34 "Undang-Undang Republik Indonesia No. 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris," § Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3 (2014), art. 43 paragraph 1 and 2

35 "Undang-Undang No. 74 Tahun 2011 Tentang Perubahan Atas Undang-Undang No. 53 Tahun 1908 (Koshoninho)," art. 29

in the Japanese Notary Act. This then becomes the obligation for the legislature to immediately confirm the provisions that have not yet been regulated in the Amendment to the Act on the Position of Notary, especially regarding sign language interpreters, in view that deaf Notary appearers have the same nature, rights, and position as non-disabled appearers in legal traffic.

The conception of the translator is certainly different from the sign language interpreter, where the translator is the transfer of a written message which is then translated into the desired language. Meanwhile, a sign language interpreter is a profession with the position of a linguist, namely someone who has the ability to translate directly the target language, especially sign language. The existence of sign language interpreters usually exists in television media, namely television stations provide a sign language interpreter to translate the broadcasts that are shown to people with hearing impairments. The qualifications to be able to become sign language interpreters have not been regulated in Indonesia, but in essence, the qualifications for sign language interpreters can refer to the provisions contained in Article 43 paragraph (4) of the Amendment to the Act on the Position of Notary that: *"Official translators in this provision include translators a certified and registered sworn in or use staff at a foreign embassy if there is no sworn translator*".[36] The clauses in these provisions can be used as a reference for the qualifications of sign language interpreters in Indonesia. The existence of the provisions of Article 43 of the Amendment to the Act on the Position of Notary accommodates the importance of a language used so that it does not create multiple interpretations or different interpretations because legal norms are "abstract" in nature.[37]

The existence of sign language interpreters in Indonesia, especially in terms of being used as a party to participate in the translation of notarial authentic deeds, does not rule out the possibility of causing problems in the future. The problem referred to is that in translating sign language to a deaf person, errors or omissions may occur by the sign language interpreter, in other words, the contents of the deed are not in accordance with the sign language conveyed. As a result, an authentic deed that originally had perfect evidentiary power must be degraded into an underhanded deed or it can be null and void as formulated in Article 1871 of KUHPer, that "*If an authentic deed, in whatever form, is suspected of being fake, then its implementation can be suspended according to the provisions of the Civil Procedure Regulations*", therefore the interests of the parties as stated in the authentic deed do not work according to the rules.[38] This is a challenge for the Notary when providing a sign language interpreter as interpreter for the translation of the authentic deed he made. To minimize the occurrence of these problems, the orientation of a Notary recognizes the principle of prudence in holding his position even though the Amendment to the Act on the Position of Notary does not stipulate the existence of a Notary's obligation to carry out the precautionary principle. The principle of prudence is a principle that a Notary in holding his rank of office is careful with the aim of protecting the interests of the parties who appear before him.[39]

The importance of the precautionary principle for a Notary can prevent legal problems from occurring in the future on the authentic deed he made. Sign language interpreters in conveying messages using sign language to deaf Notary appearers may make mistakes and/or omissions which can lead to differences in interpretation between the contents of the deed and the sign language conveyed. This can have implications for both material and immaterial losses for the Notary and the deaf appearer himself. Thus, the use of vocabulary in an authentic deed must be clear so that multiple interpretations of the clauses of the deed do not occur.[40] The

36 "Undang-Undang Republik Indonesia No. 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 30 Tahun 2004 Tentang Jabatan Notaris," § Lembaran Negara Republik Indonesia Tahun 2014 Nomor 3 (2014), art. 43 paragraph 4

37 Nurul Qamar and Hardianto Djanggih, "Peranan Bahasa Hukum Dalam Perumusan Norma Perundang-undangan," *Jurnal Ilmiah Kebijakan Hukum* 11, no. 3 (2017): 341

38 Bella Okladea Amanda, "Prinsip Kehati-Hatian Notaris Di Dalam Pembuatan Akta Yang Sempurna," *Recital Review* 4, no. 1 (2022): 222

39 Khafid Setiawan, Bhim Prakoso, and Moh. Ali, "Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian," *Jurnal Ilmu Kenotariatan* 2, no. 2 (2021): 48.

40 Made Dita Widyantari, "Fungsi dan Kedudukan Penerjemah Tersumpah dalam Pembuatan Akta Notaris," *Acta Comitas* 4, no. 1 (2019): 36

implementation of the notary's precautionary principle in making authentic deeds can be done by knowing the specific identities of the appearers and observing indications of a criminal act. The precautionary principle, especially regarding the provision of sign language interpreters by a notary for deaf appearers, should notaries choose interpreters who have been certified as sign language interpreters in Indonesia, so that there is less possibility of negligence or errors in conveying sign language for the contents of the authentic deed he made. In this case, the Notary can also choose the option to provide an opportunity for the deaf person to examine and re-read the clauses in the authentic deed he made, considering that the contents of the deed are the will of the parties. Therefore, to avoid the consequences or the risk of canceling an authentic deed, both the Notary and the appearer must have good faith guided by the principle of prudence, and comply with applicable legal provisions based on morals and ethics.[41]

4. CONCLUSION

Normatively, the authority of a Notary as an authentic deed is formulated in Article 15 paragraph (1) of the Amendment to the Act on the Position of Notary. Human rights policies, especially in Indonesia, provide the conception that everyone has rights and equality before the law and because of that, legal protection is needed for persons with disabilities, especially those who are deaf, as an opponent of a Notary in making authentic deeds. In the event that the Notary does not have sign language skills, an interpreter, namely a sign language interpreter, is needed as the party delivers the message directly through sign language. However, in reality, the Amendment to the Act on the Position of Notary has not regulated regulatory policies regarding the provision of sign language interpreters for deaf people who become Notaries' appearers so there is a void in norms which can have implications for future problems which can also have an impact on the authenticity of an authentic deed.

Regulatory policies on the provision of sign language interpreters for deaf persons should be formulated immediately in the Amendment to the Act on the Position of Notary. This is considering that a deaf person is someone who is capable and not under assistance and has the same equal rights as someone with a normal condition. Therefore, it is expected that law enforcement officials will accommodate the formation of arrangements for deaf appearers, especially in terms of making authentic deeds by providing a policy for Notaries to provide sign language interpreters who have been certified as parties capable of performing sign language techniques. This is based on the existence of human rights equality which is also owned by deaf appearers, especially in the legal dimension.

The establishment of a future policy regarding the provision of sign language interpreters in the Amendment to the Act on the Position of Notary may adopt regulatory policies contained in the Japanese Notary Act. The qualifications of a sign language interpreter that can be presented by a Notary in the context of providing legal certainty to deaf appearers can refer to the provisions contained in Article 43 paragraph (4) of the Amendment to the Act on the Position of Notary.

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41 Brilian Pratama, Happy Warsito, and Herman Adriansyah, "Prinsip Kehati-hatian Dalam Membuat Akta Oleh Notaris," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 11, no. 1 (2022): 29

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