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Legal Certainty in The Preparation of Notarial Deeds By Appearers With Disabilities Who Are Unable to Sign

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Abstract: Authentic deeds drawn up by Notaries as public officials with the authority to do so, with strict legal formalities and superior evidentiary power. In its application, the certainty of signatures and/or fingerprints by appearers with disabilities in deeds is questionable, as this has not been strictly regulated in the Law No. 30 of 2004 on Notary Position as partially amended by Law No. 2 of 2014 on Amendments to Law No. 30 of 2004 on Notary Position (“NOTARY OFFICIAL LAW”). The issues raised in this article are: How can legal certainty be ensured for persons with disabilities who are unable to sign and/or provide fingerprints before Notaries? And what is the ideal arrangement for persons with disabilities who are unable to sign and/or provide fingerprints before Notaries? The research method used is normative legal research, a type of research commonly conducted in the development of legal science, namely Legal Dogmatics (*rechtsdogmatiek*). The approach used is laws and regulations. The results of the study show that signatures cannot be affixed. According to the NOTARY OFFICIAL LAW, the reason for the inability to affix signatures must be stated clearly and explicitly at the end of the deeds. If the deeds cannot be signed and the Notaries do not provide a clear and explicit reason at the end of the deeds, this can reduce the probative value of the deeds to that of private deeds and will provide grounds for the aggrieved party to claim cancellation of deeds. Of course, rules such as these will not work if legal certainty is not incorporated into the resulting law. Furthermore, if problems arise in the future on the voidable deeds, Notaries cannot be held criminally liable simply for recording the information requested by the parties. In this regard, it is necessary to improve the regulations for implementing the provisions of Article 44 of the Notary Position Law to ensure that appearers with physical disabilities who have limited hand use can still perform legal actions before Notaries.

Keywords: Legal certainty, Persons with disabilities, Notarial deeds, Private deeds

INTRODUCTION

Notarial practice, part of public legal services, is a service always needed by the people of Indonesia. Notaries are officials who are authorized to draw up deeds by the Law, as

stipulated in Article 1 number 1 of the NOTARY OFFICIAL LAW.¹ Authentic deeds are defined as documents drawn up by authorized public officials, subject to strict legal formalities and possessing superior evidentiary weight. If we look at deeds broadly and with a fundamental understanding, they are documents that involve significant legal formalities.² In civil law, deeds are defined as written instruments containing information about events or matters that form the basis of an agreement, and are signed by the parties involved. Article 1867 of the Civil Code (“Civil Code”) mandates that evidence in writing can be provided using two categories of instruments, namely authentic instruments and private instruments. Based on this legal framework, two classifications of deeds can be identified: authentic deeds and private deeds. Authentic deeds have a series of interrelated characteristics, one of which is the presumption of and authority of officials, meaning that documents claimed to be authentic deeds are considered valid and issued by authorized officials, unless there is valid and convincing evidence to refute such claims. This ensures a high degree of legal certainty for parties who rely on authentic deeds as evidence.³

The application of Article 1868 of the Civil Code explains the elements that give meaning to authentic deeds. *First*, the deeds must be drawn up by, or be drawn up before, public officials. *Second*, the deeds must follow the form prescribed by law. *Third*, the public officials who draw up or witness the execution of the deed must have the authority to do so. The authenticity of the deed must meet specific requirements, including being drawn up by authorized officials, attended by the parties involved, and both parties being known to or introduced to the officials concerned. The deeds must also be witnessed by two witnesses and include the identities of the Notaries (officials), the appearers involved, and the witnesses. In addition, the deeds must contain information regarding the place, date, month, and year of their creation, and be signed by all relevant parties. At the end of the deeds, there must be a confirmation regarding their reading, translation, and signing. If any of these requirements is not met, the deeds are considered private deeds and have no evidentiary value to support the disputed case.⁴ The phrase “before” as stated in Article 1868 of the Civil Code is still interpreted conventionally to this day, as is Article 16 paragraph (1) letter m of the NOTARY OFFICIAL LAW, which states that “appeared” is interpreted as being physically present to this day.⁵

In essence, notarial deeds cannot be considered authentic if the appearers or parties making the deeds do not meet the requirements and agreements outlined in Article 1320 of the Civil Code and does not follow the procedures for the preparation of authentic notarial deeds as stipulated in the NOTARY OFFICIAL LAW. As a supplement to the provisions stipulated in Article 1320 of the Civil Code and the NOTARY OFFICIAL LAW, Article 1330 of the Civil Code provides limitations on who is incompetent or unauthorized to act in law, specifically, incompetence to make agreements: minors, persons under guardianship, women in cases specified by law, and, in general, all persons whom the law has prohibited from making certain agreements.⁶ Looking at the phenomenon in Indonesia, being under guardianship means a person cannot perform specific tasks necessary to manage their legal and civil interests. This is implemented in cases where appearers with disabilities are unable to sign and/or provide fingerprints to create an authentic deed.

¹Article 1, paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position

²Achmad Ali & Wiwie Heryani, *Asas-Asas Hukum Pembuktian Perdata*, (Kencana: Jakarta, 2013), pp. 90-91.

³Husni Thamrin, *Pembuatan Akta Pertanahan oleh Notaris*, (Laksbang Pressindo: Yogyakarta, 2011) p. 11.

⁴Yusmi Zam Zam Maharani I, Khoidin, Rahmadi Indra Tektona. “Tanggung Jawab Notaris Terhadap Pembuatan Akta Otentik Melalui Sistem Elektronik”, *Aktivisme : Jurnal Ilmu Pendidikan, Politik dan Sosial Indonesia*, Vol. 2 No. 1 (2025), p. 50. DOI: <https://doi.org/10.62383/aktivisme.v2i1.650>

⁵Cristhine Hutapea “Konsep Menghadap Notaris Dalam Pembuatan Akta Berdasarkan Perkembangan Cyber Notary”, *Journal Hukum*, Vol. 4 No. 4 (2023), p. 8.

⁶Adella Tiara Maharani., Kekuatan Pembuktian Akta Notaris Terkait Ketidcakapan Penghadap Setelah Penandatanganan Akta”, *Jurnal Officium Notarium*, Vol. 1 No. 1 (2021), p. 2. Doi: 10.20885/JON.vol1.iss1.art1

Currently, the legal implementation of signatures and/or fingerprints still lacks clear legal certainty in its implementation. Notaries, in their positions, encounter legal uncertainty because appearers with disabilities, who are unable to provide their signatures in the minutes of notarial deeds are not strictly regulated in the NOTARY OFFICIAL LAW. Although Article 44 of the NOTARY OFFICIAL LAW guarantees the execution of deeds that cannot be signed, there is still no further clarity regarding what documentation needs to be attached to the deed minutes and how the sentence at the end of the deeds, as stipulated in Article 44 of the NOTARY OFFICIAL LAW, must be written so as not to risk reducing the probative value of the notarial deeds to that of private deeds.

Furthermore, Article 16 paragraph (1) letter m of the NOTARY OFFICIAL LAW reinforces the basis for affixing signatures, stipulating that every closing of a notarial deed shall contain the sentence "After I, the notary, have read this deed to the appearers and witnesses, the appearers, witnesses, and I, the notary, shall immediately sign this deed." In the event that the appearers inform the Notaries that they are unable to affix their signatures to the deeds and/or are prevented from doing so for specific reasons, the deeds drawn up by the Notaries must state the reasons preventing the affixing of signatures to the relevant deeds. The absence of signatures on deeds may render them invalid, making them unauthentic. Even private deeds cannot be considered valid unless they are signed. The NOTARY OFFICIAL LAW stipulates that if the appearers are unable to sign due to unavoidable circumstances, such as paralysis, serious illness, or other reasons, their signatures may be replaced by fingerprints in the deeds' minutes.⁷

In fact, with the affixing of fingerprints, appearers with disabilities can also replace signatures or statements that the appearers or the so-called parties are unable to affix their signatures. In practice, this can be equated with the signatures of the appearers and interpreted as statements that the appearers are deemed to have known, understood, and agreed to the contents of the deeds and bound themselves to them. This is called a *Surrogate Akta*.⁸ When the NOTARY OFFICIAL LAW-P was enacted, the fingerprints of the appearers or parties who need to sign a deed became a requirement for Notaries to attach the appearer's fingerprint to the minutes of the deed. Therefore, the legal consequence of not doing so is that the Notaries will be subject to Article 16 paragraph (11) of the NOTARY OFFICIAL LAW "Notaries who violate the provisions referred to in paragraph (1) letters a to l may be subject to sanctions in the form of: a. a written warning; b. temporary suspension; c. honorable dismissal; or d. dishonorable dismissal." In accordance with the provisions of the national legal system and the legislative process, all laws and regulations in Indonesia should be formulated and implemented in accordance with this principle. The same should also apply to the NOTARY OFFICIAL LAW, which must uphold legal certainty in its implementation for the entire community.⁹ With the current legal uncertainty in notarial practice regarding the affixing of signatures and/or fingerprints by persons with disabilities, which has also led to assumptions about the articles or clauses contained in the NOTARY OFFICIAL LAW, the authors will discuss this issues comprehensively to answer the following questions: How can legal certainty be ensured for persons with disabilities who are unable to affix their signatures and/or

⁷Savira Ramadhanty., "Agus Budiarto: Pemberian Persetujuan Yang Sah Terhadap Akta Notaris Yang Dibuat Oleh Difabel Tanpa Sidik Jari", *Notary Journal*, Vol. 3 No. 1 (2023), p. 73. DOI: <https://doi.org/10.19166/nj.v3i1.6732>

⁸Larashati, Gusti Ayu Mahadewi., " Pertanggungjawaban Notaris Terhadap Keabsahan Akta Autentik Yang Menggunakan Surrogate" *MORALITY: Journal Ilmu Hukum*, Vol. 9 No. 1 (2023), pp. 84-93. DOI: <http://dx.doi.org/10.52947/morality.v9i1.335>

⁹Merry Rosari Kurniawati Weol & Dewi Cahyandari., " Pengaturan Pelekatan Sidik Jari Dalam Minuta Akta BagiPenyandang Tuna Daksa", *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol. 12 No. 3 (2023), p. 634. DOI:10.24843/JMHU.2023.v12.i03.p11

fingerprints before Notaries? How can ideal arrangements be made for persons with disabilities who are unable to affix their signatures and/or fingerprints before Notaries?

METHOD

Normative legal research is a type of research commonly conducted in the development of legal science, which in the West is also known as Legal Dogmatics (*rechtsdogmatiek*). The method used in this study is normative legal research using a legislative approach. The data sources used in this study are secondary, namely legislation, scientific journals, and legal literature.¹⁰ The data collection technique used in this study is a literature review, and the data analysis technique is qualitative analysis.¹¹

RESEARCH RESULTS AND DISCUSSION

Uncertainty in the Implementation of Signatures and/or Fingerprints for Persons with Disabilities

The 1945 Constitution of the Republic of Indonesia (“1945 Constitution of the Republic of Indonesia”) and Law No. 8 of 2016 concerning Persons with Disabilities (“Law on Persons with Disabilities”) have legal force and are interrelated in protecting the rights of all Indonesian citizens, including persons with disabilities, particularly those with physical disabilities who have limitations in using their hands. The mandate of the 1945 Constitution of the Republic of Indonesia and the Law on Persons with Disabilities, when applied to notaries faced with appearers who are unable to sign or affix their fingerprints to deeds, can create uncertainty for notaries who wish to draw up authentic deeds and for appearers with disabilities who have no hands or fingerprints.¹² This is because the NOTARY OFFICIAL LAW does not explicitly regulate in detail the actions of Notaries when faced with appearers with disabilities without hands and/or fingerprints. Articles 44 paragraphs (1), (4), and (5) of the NOTARY OFFICIAL LAW state that deeds must be signed by the appearers, unless there are appearers who are unable to sign and state the reason for this, which must be stated explicitly at the end of the deeds. If this is violated, the deeds will not have full evidentiary force. The NOTARY OFFICIAL LAW does not explicitly regulate the clear statement of reasons at the end of the deeds. When the NOTARY OFFICIAL LAW and the relevant Laws and Regulations do not specify details, implementing regulations under the existing Law are required.¹³

Article 28H paragraph (2) in conjunction with Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that every person shall have the opportunity and receive special treatment to obtain equal opportunities and benefits to achieve equality and justice. Every person shall be free from discriminatory treatment on any basis and shall be entitled to protection against such discriminatory treatment.¹⁴ Law Number 39 of 1999 on the Human Rights (“Human Rights Law”) also states that Indonesia recognizes and upholds human rights and fundamental freedoms, that every person is born free with the same dignity and worth, and that every person is entitled to the protection of human rights and fundamental freedoms. Article 7, paragraph (2) of the Human Rights Law also states that international legal provisions that have been accepted in Indonesia concerning human rights are the responsibility

¹⁰Kornelius Benuf, and Muhamad Azhar. “Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer,” *Jurnal Gema Keadilan*, Vol. 7 No. 1 (2020). p. 26. DOI: <https://doi.org/10.14710/gk.2020.7504>

¹¹Ali Arben, Andrew S., “Kedudukan Akta Notaris Sebagai Akta Autentik Dalam Hukum Perdata Berdasarkan Undang-Undang Jabatan Notaris”, *Andrew Law Journal*, Vol. 3 No. 1 (2024), p. 3. DOI: <https://doi.org/10.61876/alj.v3i1.26>

¹²Secretariat of the Cabinet of the Republic of Indonesia. “Mengapa Undang-Undang Perlu Peraturan Pelaksanaan?.” *Secretariat of the Cabinet of the Republic of Indonesia*, <https://setkab.go.id/mengapa-undang-undang-perlu-peraturan-pelaksanaan/>, accessed on February 14, 2025.

¹³Law No. 2 of 2014 concerning Amendments to Law No. 20 of 2004 concerning the Notary Position

¹⁴Article 28H paragraph (2) in conjunction with Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

of the government.¹⁵ If we look at the International Convention on the Rights of Persons with Disabilities (CRPD), which was ratified in 2006 and has also been ratified in Indonesia, this convention serves as a reference for the implementation of the rights of persons with disabilities in the practice of law enforcement by legal professionals in Indonesia.¹⁶ In addition, the Law on Persons with Disabilities accommodates the majority of persons with disabilities in Indonesia who live in conditions of extreme vulnerability, backwardness, and/or poverty due to the continued existence of restrictions, barriers, difficulties, and the reduction or elimination of the rights of persons with disabilities. Of course, Article 4 of the Law on Persons with Disabilities is of particular concern, as this Law explains the difference of persons with disabilities, with those who are not, include those with physical, intellectual, mental, and/or sensory disabilities. The explanation of Article 4 paragraph (1) of the Law on Persons with Disabilities explains that a person with physical disabilities is someone who experiences impaired motor function, including amputation, paralysis or stiffness, paraplegia, cerebral palsy (CP), stroke, leprosy, and dwarfism. Persons with disabilities who cannot use their hands and/or fingerprints are also classified as persons with physical disabilities. Article 5, paragraph (1), letters d and n, of the Law on Persons with Disabilities further explain that persons with disabilities have the right to justice and legal protection, as well as to public services.

Article 1320 of the Civil Code regulates the requirements for agreements, namely the existence of an agreement between the parties who are bound by it, the competence of those who make the contract, a specific matter, and a lawful or non-prohibited cause. The competence of the parties and the agreements between them are subjective requirements, whereas a lawful cause and a specific matter are objective requirements. If the subjective requirements are not met, the agreements may be rescinded, and if the objective requirements are not met, the agreements are null and void.¹⁷ Referring to the unfulfilled objective requirements of the agreements and the resulting consequence that the agreements can be rescinded by either party upon request, it is necessary to examine further whether physical disabilities that limit the use of hands and/or fingerprints constitute disabilities that require guardianship and to what extent signatures and/or fingerprints can be considered agreements in contracts, particularly in authentic notarial deeds. Article 433 of the Civil Code states that every adult who is always in a state of mental incapacity, brain disease, or blindness must be placed under guardianship, even if they are sometimes capable of using their mind. Therefore, in this case, if single physical disabilities that limit the use of hands and/or fingerprints are considered to require guardianship, this constitutes discrimination¹⁸ against persons with physical disabilities who are mentally competent. In relation to agreements in written contracts, whether in the form of signatures or fingerprints as a means of identifying a person in the making of an agreement/deed/contract, it is necessary to further examine the forms of agreement in accordance with applicable laws and regulations. Agreements can be made verbally or in writing, and some agreements must be made in writing, such as subrogation agreements, fiduciary guarantee agreements, mortgage agreements, and deeds of establishment of legal entities.¹⁹

¹⁵Article 7 paragraph (2) of Law No. 39 of 1999 concerning Human Rights.

¹⁶Melania Indiana Putri Firmansyah., "Perlindungan Hukum Bagi Penghadap Penyandang Disabilitas Dalam Pembuatan Akta Notaris", *Acten Journal Law Review*, Vol. 1 No. 3 (2018), pp. 206-207 DOI:10.71087/ajlr.v1i3.16

¹⁷Annisa Saraswati., "Pertanggungjawaban Notaris Terhadap Akta Perjanjian Yang Pertanggungjawaban Notaris Terhadap Akta Perjanjian Yang Penghadapnya Tidak Memiliki Kewenangan Untuk Bertindak Penghadapnya Tidak Memiliki Kewenangan Untuk Bertindak (Studi Putusan Pengadilan Negeri Pekanbaru Nomor 246/PDT.G/ (Studi Putusan Pengadilan Negeri Pekanbaru Nomor 246/PDT.G/ 2019/PN PBR)", *Indonesian Notary*, Vol. 3 No. 3 (2021), pp. 179-180. <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1095&context=notary>

¹⁸G. D. Azzalea & S. Nur Azizah., "Kesulitan Penyandang Tunarungu Dalam Melakukan Pembuatan Akta Tanah Ditinjau Dalam Perspektif Hukum", *Jurnal Hukum dan HAM Wara Sains*, Vol. 1 No. 2 (2022), pp. 79-83. <https://wnj.westsociences.com/index.php/jhhws/article/view/26>

¹⁹ Muhammad Syaifuddin, *Hukum Kontrak: Memahami Kontrak dalam Perspektif Filsafat, Teori, Dogmatik dan*

The United Nations in efforts to establish a universal system form promoting and protecting human rights, as well as implementing programs to develop legally binding instruments to address specific aspects of human rights through the Convention on the Rights of Persons with Disabilities, which was subsequently ratified through Law No. 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with (“Law 19/2011”) in Indonesia, as a form of implementation of the Law on Persons with Disabilities.²⁰ Normatively, the CRPD aims to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity.²¹ The state members of the CRPD are obliged to adopt legislative and administrative policies related to CRPD, and to take measures in accordance with legal provisions and customs to change and revoke discriminatory practices against persons with disabilities. Furthermore, it is necessary to protect and promote human rights and to eliminate discrimination based on disability by any person, organization, or private institution. Providing information accessible to persons with disabilities regarding mobility assistance, equipment, and assistive technology for persons with disabilities, including new technologies and other forms of assistance, services, and supporting facilities, promoting training for professionals and support staff working with persons with disabilities on human rights. Therefore, all countries are obliged to implement provisions that guarantee legal certainty, paying special attention to those that prioritize the human rights of persons with disabilities, in this case, ensuring the convenience of persons with disabilities in signing and/or providing fingerprints before notaries.

Based on data from the Statistics Central Agency regarding the latest number of notaries spread across 514 regencies and cities in Indonesia, totalling 19,109 people, it can be said that notaries in office are likely to encounter persons with disabilities who have difficulty using and/or moving their hands and/or fingers to sign and/or affix their fingerprints in the preparation of notarial deeds.²² Similarly, the absence of implementing regulations for the NOTARY OFFICIAL LAW regarding the procedure for the preparation of deeds by persons with disabilities who are unable to sign and the lack of legal norms for appearers with physical disabilities who are unable to sign deeds and/or affix their fingerprints means that Article 44 paragraphs (1), (4) and (5) of the NOTARY OFFICIAL LAW can be interpreted to be implemented the principle of prudence in implementing the provisions of these articles in practice. Based on the researchers’ observations²³ conducted with Notaries/Land Deed Officials in practice, Article 44 paragraphs (1), (4), and (5) of the NOTARY OFFICIAL LAW can be implemented in the following ways:

1. The use of unambiguous, unwavering, and specific wordings at the end of the deeds to indicate that persons with disabilities who do not have fingerprints cannot sign and affix their fingerprints to the deeds they represent is a must; and
2. The notaries’ diligence and thoroughness in requiring doctors' certificates, both clinical and functional diagnosis, an explanation of the inability of the person represented to sign and affix their fingerprints to the deed they represent, and an explanation of the inability of the person represented to sign documents.

Praktik Hukum, (Bandung: CV Mandar Maju 2012), p. 146.

²⁰ Ave Agave Christina Situmorang; Winanda Kusuma ., “Convention on the Rights of Person with Disabilities: Upaya Pemenuhan HAM terhadap Akses Pekerja Disabilitas?”, *Uti Possidetis: Journal of International Law*, Vol. 4 No. 2 (2023), p. 166. DOI: <https://doi.org/10.22437/up.v4i2.23674>

²¹ Article 1 of the Convention on the Rights of Persons with Disabilities.

²²“Population Aged 5 Years and Above by Age Group, Urban/Rural Area, Gender, and Level of Difficulty Using Fingers and Hands, INDONESIA, 2023.” *Central Statistics Agency*, 2023, sensus.bps.go.id/topik/tabular/sp2023/148/1/0, accessed on May 10, 2024.

²³Interview with Werda, Notary in West Jakarta, April 5, 2024, at 3:00 p.m. WIB.

The absence of norms in these laws and regulations needs to be addressed using the approach outlined by Nonet and Selznick²⁴, namely by treating the law as a means of responding to society's current needs. The absence of norms refers to the legal uncertainty experienced by persons with disabilities. Rules are guidelines that will be implemented in the future to ensure actions are in accordance with applicable norms. This also results in confusion for notaries in taking action on the minutes of deeds they have drawn up. Quoting Gustav Radbruch's theory of legal certainty²⁵, contradictions in the law can cause doubt and uncertainty, which can ultimately undermine public trust in the legal system. *First*, legal certainty is an essential legal instrument for a country that prioritizes clarity, stability, and justice. Legal certainty guarantees that the rights and obligations of every citizen are protected and enforced in accordance with the applicable legal framework, taking into account the relevant cultural and social contexts. This means that all interests attached to persons with disabilities and notaries form a single entity with legal certainty, as evidenced by the state's justice system in establishing new norms regarding signing or fingerprinting at notaries. Also, when carrying out their duties to accommodate persons with disabilities, notaries must exercise prudence, as this is a crucial matter given that it often raises legal issues regarding notarized deeds. This principle is to ensure that notaries are not deceived by appearers who have malicious intentions, even if the appearers with disabilities, because in some cases there has been fraud by appearers who have provided false documents or false deeds to them.

Second, justice. This is also an aspect of legal certainty as proposed by Radbruch,²⁶ equality among individuals, but the implementation of this principle of equality is not simple, considering that true equality can only be realized within the framework of inter-individual relations, not in the substance of equality itself in absolute terms. Radbruch felt it necessary to integrate the element of benefit as a complement to the idea of justice. Furthermore, regarding the usefulness of executing notarial deeds without signatures and/or fingerprints, which should accommodate various interests, especially the interests of persons with disabilities, the essence of this aspect is to see what is gained by persons with disabilities. Of course, in this case, the concept of authentic deeds, original deeds, and party deeds has been explained. Both have legal force before notaries because the meaning of these two terms is one and the same. Original deeds are deeds signed by the parties and submitted in their original form by the notaries concerned, whereas party deeds are deeds signed by both parties. Furthermore, if the deeds are invalid unless they are signed, is it valid if a person signs them while disabled? Of course, in this case, it becomes a reference for notaries to sign deeds that persons with disabilities cannot sign. All of this has also been emphasized in the previous paragraph that appearers with disabilities, have special rights under the Law on Persons with Disabilities in line with Human Rights, where persons with disabilities receive special treatment in signing and/or fingerprinting.

Third, Usefulness. Usefulness is defined as an effort to accommodate the diverse interests of various parties in society. This effort can only be achieved to a degree, given that each party has diverse and often conflicting views, which can trigger endless differences of opinion. Therefore, legal certainty will be guaranteed, meaning that those entitled by law can exercise their rights and that the rules governing signing and fingerprinting can be enforced. This aspect is seen by notaries not because the appearers appearing before them have physical disabilities, or because they are persons with disabilities who cannot be served by notaries (e.g., fingerprinting or signing documents). Still, the more critical aspect is the legal requirement,

²⁴Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law*, (Jakarta: Huma, 2003), p. 59.

²⁵Gustav Radbruch, *Legal Philosophy*, in *The Legal Philosophies of Lask, Radbruch, and Dabin*, ed. John H. Wigmore, (Massachusetts: Harvard University Press, 1950), pp. 100- 120.

²⁶*Ibid.*

imposed by the notaries themselves, to execute deeds in accordance with the principle of prudence.

Article 44 paragraphs (1) and (2) of the NOTARY OFFICIAL LAW guarantee that persons with disabilities who are unable to sign notarial deeds can still appear before notaries to create authentic deeds, provided that the notaries write down the reason for the inability to sign the deeds. Regarding the legal consent that persons with disabilities can use to give their consent in agreements, the NOTARY OFFICIAL LAW does not further regulate this matter, due to the requirement for signatures, resulting in differences of opinion regarding the legal consent that persons with disabilities can give through the legal system due to the absence of legal norms/regulations. Notaries are responsible for the validity of deeds drawn up in their presence, including deeds drawn up by persons with disabilities. The following regulations address notaries' responsibilities in cases of deeds without signatures or fingerprints. At the end of the deeds, the notaries must explain why the persons present are unable to sign and provide their fingerprints. In addition, if the persons present are unable to sign the deeds or affix their fingerprints to the deeds because they do not have hands and/or fingerprints, they can affix an 'X' to the deeds with another part of their body. To assist those who are unable to sign the deeds or affix their fingerprints to the deeds, the notaries must provide guidance to the general public and/or the concerned appearers on what they can do when dealing with notaries.

Notaries can avoid disciplinary action if they explain why the persons signing are unable to affix their signatures and fingerprints, and provide supporting evidence of their inability to sign and/or affix their fingerprints to the deeds. Notaries are responsible for the validity of the deeds they draw up, including deeds drawn up without the signatures or fingerprints of the appearers with disabilities. In the event that the appearers cannot sign the deeds, the notaries may use a surrogate, namely a statement from the appearers explaining the reason why they cannot sign the deeds. The notaries must include the surrogate in the deeds and explain it clearly and explicitly at the end of the deeds. To enable notaries to fulfill their roles in the process of creating a substitute for a deed that cannot be signed and fingerprinted, the concept of prudence is used in the process of creating the surrogate.²⁷ For the deeds to retain their full evidentiary weight in the future, the application of this concept of prudence is one of the duties of notaries. The wording at the end of the deeds or substitute must be drafted simultaneously with the available doctor's certificates, which can be used to confirm whether the diagnosis states that the persons concerned are indeed unable to sign and affix their fingerprints, or whether other parts of the body allow the appearers concerned to sign and affix their fingerprints on the deeds.

Minutes of deed include an attachment showing the existence of doctor's certificates. The existence of the doctor's certificates does not need to be recorded at the time of closing the deeds; it is sufficient to attach a statement that the certificates exist. The matters mentioned that need to be done apply without any standards, based on the articles listed in the NOTARY OFFICIAL LAW. Although the NOTARY OFFICIAL LAW regulates the writing of reasons for not affixing signatures at the end of the deeds, the NOTARY OFFICIAL LAW has not yet further restricted how the writing will not diminish the probative force of the notarial deeds, nor does it regulate the principle of prudence that must be exercised by notaries by attaching evidence that signatures and/or fingerprints cannot be affixed to the deeds. This legal norm vacuum ultimately has the potential to affect the implementation of practices without legal standards, so that each notary may use different practices in dealing with similar cases.

In fact, the impact of signing by persons with disabilities has sparked much controversy, even though persons with disabilities are normatively regulated in Article 44 of the NOTARY

²⁷Uci Kartika Anggre, Siti Malikhatun Badriyah. "Implementasi Penggunaan Surrogate Sebagai Pengganti Tanda Tangan dalam Pembuatan Akta Notaris", *Jurnal Notarius UNDIP*, Vol. 18 No. 2 (2025), pp. 416-418 DOI: <https://doi.org/10.14710/nts.v18i2.53257>

OFFICIAL LAW, as discussed in the previous paragraph. However, the essence of this is to prevent legal consequences arising from the signing of deeds by persons with disabilities in ways not intended by the NOTARY OFFICIAL LAW. The requirement for signatures is intended solely to distinguish one deed from another made by others, giving rise to debate about the legal protections that can be provided to persons with disabilities. As it should be, the requirement for persons with disabilities to sign documents is intended to distinguish between one deed and another or from deeds made by other people. Broadly speaking, these signatures are to give distinctive features to the deeds, which will later be identified for legal purposes, so that affixing initials, which are an abbreviation of the signature, is not considered sufficient. The name must be written by hand by the signatory themselves of their own volition.²⁸ For legal efforts in this case not to be procedurally flawed²⁹, everything related to signing must guarantee legal certainty and justice, meaning that legal procedures must be competent, fair, capable of recognizing public desires, and committed to achieving existing substantive commitments.³⁰

Ideal Arrangements for Persons with Disabilities in the Implementation of Signatures and/or Fingerprints

Discussing the ideal arrangement for the issues above is synonymous with reorganizing or reconstructing the regulations, as the authors previously discussed. The NOTARY OFFICIAL LAW currently contains many articles that lack clarity and must be amended in accordance with Indonesian regulations. The interconnection between one Law and another, such as the Law on Persons with Disabilities, the Human Rights Law, and the NOTARY OFFICIAL LAW, really needs to be accommodated in terms of the limitations of persons with disabilities in their status as appearers in signing and/or providing fingerprints when making deeds before notaries, as well as the Civil Code, which also fully regulates the legal capacity of an appearer as a competent legal subject. Fulfilling the rights of persons with disabilities as appearers is not only the responsibility of notaries, but also the responsibility of the central government, which continues to pay attention to the regulations and the implementation of Law that accommodate rules that prioritize legal protection and human rights for persons with disabilities. Concrete actions are needed not only from the government but also from society itself so that in the future, the Indonesia's laws and regulations will become more unified to generate a paradigm shift and evolving values in society's view of persons with disabilities.

Therefore, the government, together with the community, works consciously to comply with and implement the Legislation so that the human rights envisioned by the Indonesian people can be realized. Of course, this does not require only concrete actions by the government; it must be carried out continuously. The government can make new regulations and address in detail the aspects of persons with disabilities in signing and/or fingerprinting. Still, it must also monitor the implementation of enacted laws, the realities and obstacles, and the legal process and its consequences. Notaries, as a profession that embodies professionalism and autonomy³¹, are tested on their autonomy by implementing all laws and codes of ethics that they have. This autonomy makes notaries independent, allowing them to decide what should be done in accordance with the law and what should not be done at all, and to take full responsibility for the decisions they make in performing legal acts.

²⁸Sudikno Mertokusumo, 2009. *"Hukum Acara Perdata Indonesia"*, (Yogyakarta: Eighth Edition Liberty), pp. 153

²⁹Denty Tri Septiwani Daoed, "Minuta Akta Yang Dikeluarkan Notaris Tanpa Tanda Tangan Penghadap", *Journal of Student Research*, Vol. 3 No. 4 (2025), pp. 430-431. DOI: <https://doi.org/10.61722/jssr.v3i4.5352>

³⁰Sulaiman, *Hukum Responsif: Hukum Sebagai Institusi Sosial Melayani Kebutuhan Sosial Dalam Masa Transisi*, (Aceh: Malikulsaleh University), p. 5.

³¹Eliviana Sagala, "Tanggung Jawab Notaris Dalam Menjalankan Tugas Profesinya", *Jurnal Ilmiah "Advokasi"*, Vol. 4 No. 1 (2016), pp. 27-31. DOI: 10.36987/jiad.v4i1.349

In conducting legal actions for their clients, notaries must also remain impartial, as their duty is to carry out their profession in a reasonable, neutral, and unbiased manner. The authors believe that this autonomy and professionalism are stipulated in Article 16 paragraph (1) letter (a) of the the NOTARY OFFICIAL LAW stipulates that notaries, in carrying out their duties as professionals, are obliged to act faithfully, honestly, carefully, independently, impartially, and to protect the interests of the parties involved in legal actions. Despite practicing their profession, notaries encounter many obstacles, particularly the disharmony of regulations, which cause confusion and, worse, may lead to legal cases in the future. The establishment of different institutions and, often, changes in the authorities over time due to term limits, transfers, or replacements, a more dominant sectoral approach compared to a systemic approach in the formulation of regulations, weak coordination in the process of formulating regulations involving various agencies and legal disciplines, limited public access to participate in the process of formulating regulations, and the lack of consistent, standardized methods for all institutions authorized to formulate legislation. All of these factors contribute to this disharmony.³²

Another critical consideration for reconstructing the NOTARY OFFICIAL LAW regulations is the lack of knowledge among persons with disabilities regarding their rights when conducting civil matters before notaries, which ultimately discourages them from creating notarial documents, except in cases of urgent need. Even in cases of urgent need, persons with physical disabilities still do not fully understand what they need to do when dealing with notaries to create authentic deeds. As has been repeatedly explained, the importance of affixing signatures in the preparation of notarial deeds is regulated in Article 44 paragraph (1) of the NOTARY OFFICIAL LAW , which states that "Immediately after the deed is read, it shall be signed by each appearer, witness, and Notary, unless there is an appearer who is unable to affix their signature, stating the reason."

Then, Article 44 paragraph (2) of the NOTARY OFFICIAL LAW states that "the reasons referred to in paragraph (1) shall be expressly stated in the deed." This article states that after the deeds have been read to the appearers, namely persons with disabilities and witnesses, in the presence of notaries, the deeds must be signed to become authentic deeds. If the appearers are unable to sign the deeds for one reason or another, the notaries must state the reasons why the appearers are unable to sign the deeds. Quoted from Habib Adjie's statement,³³for appearers who can read and write but are physically unable to sign due to stroke, disability, or incomplete fingers or no hands (only one hand), then in such cases, thumbprints must be used. Meanwhile, for appearers who physically have complete hands and fingers but cannot read or write, they must affix their fingerprints on the sheet provided for this purpose. In this case, the affixing of fingerprints is equivalent to signatures. This can be referred to as "unable to write." Referring to the provisions of Article 44 of the NOTARY OFFICIAL LAW and its relation to the granting of legal consent to an agreement, in this case, the affixing of legal consent by appearers or witnesses is required as one of the ways for notarial deeds to be considered authentic deeds. The granting of legal consent, as regulated in the NOTARY OFFICIAL LAW, can be evidenced by signatures. Persons with disabilities who do not have fingers are certainly unable to give their legal consent using signatures or fingerprints. Based on this, the notaries can write a statement at the end of the deeds explaining why the appearers are unable to sign, to maintain the authenticity of the deeds, followed by supporting documentation that must be attached to the minutes of the deeds. The writing of this statement

³²Nur Kemala, Alex., et al. "Disharmonisasi Peraturan Perundang-Undangan di Indonesia Antara Bentuk Penyebab dan Solusi", *Jurnal Ilmu Sosial Dan Humaniora*, Vol. 1 No. 1, (2024), pp. 55-63

³³Habib Adjie, Penafsiran Tematik Hukum Notaris Indonesia (Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, (Refika Aditama: Bandung, 2015), p. 22.

needs to be further examined in terms of the choice of language and the extent to which the notaries are responsible for writing the statement. The use of the concept of surrogate, as explained by G. H. S. Lumban Tobing, is similar to the statement made by Lieke Tukgali, that at the end of the deeds, the reason for the inability to sign deeds must be written in accordance with the rules in Article 44 paragraph (2) of the NOTARY OFFICIAL LAW.

The reconstruction of laws and regulations regarding the affixing of signatures and fingerprints by persons with disabilities to notaries is urgently needed to provide legal certainty for persons with disabilities before the law. Persons with disabilities who are unable to sign and provide fingerprints are certainly unable to do so, which may indicate they have no hand function or no hands; however, other obstacles, such as physical or mental limitations, may prevent them from signing. This makes notaries worried and reluctant to perform signing activities, as they fear becoming entangled in new legal problems. However, signing documents for persons with disabilities is very necessary to ensure the authenticity of the signed deeds. As discussed in the previous paragraph, signing is a necessary effort to prevent new criminal acts or future criminal acts.

Furthermore, if persons with disabilities are unable to sign the deeds, then in the making of deeds by appearers in accordance with Article 44 paragraphs (1) and (2) of the NOTARY OFFICIAL LAW, the appearers must clearly state the reason for this in the final section of the deeds. This is because the statement from the appearers written at the end of the deeds or explanation serves as a surrogate for signatures. The deeds are then signed by each appearer, witnesses, and notary, unlike in cases where an appearer does not affix their signature and states their reason. Based on this, if the appearer is a person with single physical disabilities and is unable to sign the deeds, then in accordance with Article 44 paragraphs 1 and 2 of the NOTARY OFFICIAL LAW, the appearers must clearly state the reason at the end of the deeds. This is because the statement from the appearers concerned, which is written at the end of the deed or explanation, serves as a surrogate for signatures. Therefore, the link between legal certainty and the legal protection sought by persons with disabilities is crucial. Legal protection must be guaranteed, and this guarantee must be incorporated or implemented through legislation. There is a need for regulations governing preventive and repressive legal protection. The government provides preventive legal protection with the aim of preventing violations before they occur.³⁴ Repressive legal protection is the final form of protection, involving sanctions such as fines, imprisonment, and additional penalties imposed when a dispute arises or a violation occurs.

Closing

Regarding the inability to affix signatures, Article 44 of the NOTARY OFFICIAL LAW states that the reason for the inability to affix signatures must be stated explicitly and clearly at the end of the deeds. If the deeds cannot be signed and the notaries do not provide a clear and explicit reason at the end of the deeds, this will reduce the probative value of the deeds to that of a private document and become grounds for the aggrieved party to claim reimbursement of costs, damages, and interest from the notaries. In addition, Article 44, paragraphs (1) and (2) of the NOTARY OFFICIAL LAW, form an integral whole in responding to challenges in the field faced by notaries when dealing with appearers who are persons with disabilities. With the professional autonomy right enjoyed by notaries, it is hoped that notaries can implement the NOTARY OFFICIAL LAW, which still does not provide legal certainty for carrying out legal actions to affix conventional signatures on the minutes of deeds or fingerprints on the attachments to the minutes of deeds in accordance with generally accepted procedures. Of course, rules such as these will not work if legal certainty is not

³⁴Moh Kusnardi and Harmaily Ibrahim, *Hukum Tata Negara Indonesia*, (Jakarta: Sinar Bakti, 1998), p. 102.

incorporated into the law. In addition, if there are problems in the future, notaries cannot be held criminally liable simply for recording the information requested by the parties. In this regard, it is necessary to improve the regulations implementing Article 44 of the NOTARY OFFICIAL LAW and ensure that persons with physical disabilities who have limited hand use can still perform legal actions before notaries.

A suggestion that researchers may wish to consider is that the government should conduct a more in-depth review to make substantive changes to Article 44 of the NOTARY OFFICIAL LAW, taking into account the existence of derivative regulations such as Government Regulations or Ministerial Regulations that strictly regulate the affixing of signatures and/or fingerprints for persons with disabilities. Then, the government, through the Ministry of Law, really needs to do adjustments to the Ministry of Law's system used by notaries to accommodate notarial deeds that cannot be signed by persons with disabilities, as well as a system that can be used to upload supporting documentation for persons with disabilities, which can be submitted electronically through the Ministry of Law's system.

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