

## IDEAL LEGAL CONSTRUCTION ON THE USE OF BRAILLE IN NOTARIAL DEED TO REALIZE LEGAL RIGHTS EQUALITY FOR THE DISABLED (Visually Impaired)

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### ABSTRACT

*The present study aimed at discovering the depiction of ideal legal construction on Braille in a notarial deed because of Law no. 2 of 2014 about changes to the law no. 30 of 2004 on the Position of Notary does not regulate the type of letter in a notarial deed, there is the only stipulation about language use in a deed. What happens if the party stated within a notarial deed is a person with a disability (visual impairment) A person who is visually impaired can read using the Braille alphabet. A person who is visually impaired is the subject of law, in which there should be equality of legal rights for them The Indonesian Government commits to respect, protect, satisfy, and advances the rights of the people with disability by signing the Convention of Rights of People with Disability in 30 March 2007 in New York. One of the rights of the person who is visually impaired is to obtain accessibility, one of the kinds of accessibilities is the Braille alphabet. The present study was a qualitative descriptive legal. It took place in the Notary Office, Ministry of Law and Human Rights of Republic of Indonesia, The House of Social Service for Visual Impairment "bhakti candrasa" of Surakarta (Social service official of Provincial Government of Central Java), The lecturer of Special Education of UNS. The result of the study showed that there had not been a regulation about the use of Braille alphabet in a notarial deed, both in UUJN or other regulations. So, it is necessary to establish a regulation on the use of braille in a notarial deed. It can be regulated in the regulation of the Minister of Law and Human Rights. In the regulation, the stipulation on the use of foreign language in UUJN is also applied to the regulation on the use of Braille alphabet in a notarial deed. It is also necessary for the government to appoint the authorized institution or agency to provide certification to the Braille translator. In addition, inter-institution or agency is very crucial to establish an ideal legal construction on the use of braille in notarial deed to realize legal rights equality for the disabled (visually impaired).*

Keywords: Notary, Notarial Deed, Legal Rights Equality, Visual Impairment

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### INTRODUCTION

Indonesia is the State of Law based on Pancasila and The 1945 Constitution, that guarantee legal certainty, order, and protection for every Indonesian citizen. One of the forms of legal certainties, orders, and protections is authentic written evidence created by or before a Notary.

An authentic deed itself holds three evidentiary power namely formal evidentiary which prove that the parties have described what is written in a deed. The material evidentiary power which prove that between the parties, the event stated within the deed has occurred. The binding evidentiary power which prove that between the parties and the third party, in the date stated in the deed, the concerned parties have come before the public officer and explain what is written.<sup>i</sup>

Irawan Soerodjo, there are 3 (three) essential elements to satisfy the formal requirement of an authentic deed namely:

1. In the form of which the law regulates
2. It is made by and before the Public Official
3. The deed made by or before Authorized Public Official in the place where the deed is made.<sup>ii</sup>

A notary is an extension of the Government's hand, in this case the State, where the state gives authority to the notary to carry out some of State's business, especially in the field of civil law. A notary is expected to capable of answering the society' needs of an authentic evidentiary instrument to protect the society' legal interest. Notary, in carrying out their function, shall work professionally, honestly, independently and impartially. The function of Notary in Indonesia is regulated in Law no. 2 of 2014 about the changes to law no. 30 of 2004 on the Position of Notary (UUJN). A notary is a public official who is authorized to make an authentic deed and have more authority, it is stated in article 1 (1) of UUJN.

Article 1866 and 1867 of the Civil Code of Indonesia states that Notarial deed is written evidence. While in article 1 number 7 of UUJN, "authentic deed is a deed made by or in the presence of a Notary according to the forms and procedures stipulated in this Law". It is in line with Philipus M. Hadjon, who states that the requirements of an authentic deed are :

1. In the form of which the law regulates;
2. is made by and before the Public Official.<sup>iii</sup>

Concerning the form and the characteristic of a notarial deed, chapter VII article 38 until 65 of UUJN regulate them. In article 43 of UUJN, it is also regulated about the Notary' authority concerning the language use:

- (1) The deed shall be made in Bahasa Indonesia.
- (2) In the case the appearers do not understand the language used in the Deed, the Notary shall translate or explain the contents of the deed in a language understood by appearer.
- (3) If the parties want, Deed can be made in a foreign language.
- (4) In terms of the Deed made as referred to in paragraph (3), Notary shall translate into Bahasa Indonesia.
- (5) If the Notary cannot translate or explain, the Deed translated or explained by an official translator.
- (6) In the case of any differences of interpretation on the content of the Deed referred to in paragraph (2) then the use is made in the deed of Bahasa Indonesia.

That article explains that the language used in a notarial deed shall be Bahasa Indonesia. However, a notarial deed can be made using a foreign language with the stipulations in UUJN and do not violate the regulatory legislation. In UUJN, there is no regulation concerning the type of letter used in a notarial deed. There is only a regulation concerning language use namely Bahasa Indonesia.

From the stipulations explained above, what happens if one of the parties within the deed is a blind person? A blind person is a person with visual impairment.<sup>iv</sup> People with visual impairment are included as the subject of law and obtain equal treatment before the law, as it is stated in article 9 letter a and b of law no. 8 of 2016 about Disabilities (Law on Disability) "rights of legal equity and protection of the people with disability includes the rights of:

- a. equal treatment before the law
- b. being acknowledged as the subject of law."

People with visual impairment hold the rights of accessibility as it is stated in article 1 (8) of Law on Disability "accessibility is the ease provided for the people with disabilities to realize equality and opportunity". Concerning the accessibility, an aid device to ease the realization of equality and opportunity is pivotal. A person with visual impairment holds a right to gain accessibility through aid, especially to be able to read through Braille letters. Braille is a tactile writing system used by blind people.<sup>v</sup> Blind people are people with visual impairment.

Indonesia itself, shows its commitment to respect, protect, satisfy, and advance the rights of the disabilities in order to fulfill the disabilities' welfare. Its' commitment is shown by signing the Convention on the Rights of Persons with Disabilities on 30 March 2007 in New York. In addition, the 1945 Constitution states "guarantee on equality before the law and government is included in article 27 (1) and article 28D (1) who states that each person has the right to recognition, security, protection and certainty under the law that shall be just and treat everybody as equal before the law.

Indonesia's participation in Convention on the Rights of Persons with Disabilities makes Indonesia's Government should be better in noticing the rights of disabilities, especially the visual impairment. Particularly legal rights, in the case of a notarial deed as an authentic means of evidence. However, to date, there has not been a definite regulation about the form of accessibility provided by the notary to the persons with visual impairment in order to provide equality in making a notarial deed. Whereas, the number of people with visual impairment in Indonesia is approximately 3.5 millions people.<sup>vi</sup> Based on the description above, the writer intended to discuss an ideal legal construction on the use of braille in notarial deed to realize legal rights equality for the disabled (visually impaired).

## RESEARCH METHOD

This study employed empirical legal study. Soerjono Soekanto stated that empirical legal study is a study that is grounded on a particular method, systematic, and reasoning, which is aimed at studying one or several social phenomena by analyzing it.<sup>vii</sup> The present study was a descriptive study, it was in line with the problem and the aim of the study.

The types and sources of data of the present study were:

- a. The primary data, data obtained and collected directly from the field as the object of the study, or are obtained through an interview in the form of information or facts, or the data obtained from the first source.<sup>viii</sup> In the present study, the primary data were:
  - a) Notary.
  - b) Ministry of Law and Human Rights of the Republic of Indonesia.
  - c) The House of Social Service for Visual Impairment "bhakti candrasa" of Surakarta (Social service official of Provincial Government of Central Java)
  - d) Dosen Pendidikan Luar Biasa UNS.
- b. Secondary data are the data from information or pieces of knowledge obtained indirectly through official documents, books, the result of the studies.<sup>ix</sup>

The present study employed qualitative data by utilizing, categorizing, and selecting the data obtained from the field study, which were then associated to the theories, principles, and rules of law obtained from literature study.

## RESULT AND DISCUSSION

### THE ROLE AND FUNCTION OF MINISTRY OF LAW AND HUMAN RIGHTS AND ITS CORRELATION WITH NOTARY

**Ministry of Law and Human Rights of Republic of Indonesia** (disingkat **Kemenkumham RI**) is a ministry that is in charge of legal and human rights affairs. Ministry of Law and Human rights is under and is responsible to the President. Ministry of Law and Human rights is lead by a Minister which since 27 October 2014 is held by Yasonna Laoly. Ministry of Law and Human rights had experienced some name alteration namely: "Departemen Kehakiman (Department of Judicature)" (1945-1999), "Departemen Hukum dan Perundang-undangan(Department of Law and Legislation" (1999-2001), "Departemen Kehakiman dan Hak Asasi Manusia (Department of Judicature and Human Rights)" (2001-2004), "Departemen Hukum dan Hak Asasi Manusia (Department of Law and Human Rights)" (2004-2009), and "Kementerian Hukum dan Hak Asasi Manusia (Ministry of Law and Human Rights)" (2009-now).<sup>x</sup>

Based on the Presidential regulation no. 44 of 2015, Ministry of Law and Human rights is authorized to carry out the governmental affairs in the field of law and human rights to assist the President in administering the state governance. In carrying out its duty, the ministry of law and human rights performs the function of:

1. Formulation, stipulation, and implementation of policies in the sector of regulatory legislation, public law administration, correctional, immigration, intellectual property, and human rights;
2. Duty coordination, guidance, and providing administrative support to the entire element of organizations under the Ministry of Law and Human Rights;
3. State assets' Management;
4. Supervising the duty in the circle of Ministry of Law and Human Rights;
5. Technical guidance implementation and supervision on the implementation of the Ministry of Law and Human Rights' affairs in regions;
6. National legal guidance implementation;
7. Research and development in the field of law and human rights;
8. Development of human resources in the field of law and human rights;
9. National-scale technical activities;
10. Technical activity in Central level until the regional level; and
11. Substantive support to the entire elements of organizations under Ministry of Law and Human Rights.

The organizational structure of the ministry of law and human rights, based on the presidential regulation no. 24 of 2010, is as follow :

1. Secretariat General
2. Directorate General of Legislation
3. Directorate General of Legal Administrative Affairs
4. Directorate General of Correctional Affairs
5. Directorate General of Immigration
6. Directorate General of Intellectual Properties
7. Directorate General of Human Rights
8. Inspectorate General
9. Agency of National Law Development
10. Agency of Research and Development
11. Agency of Human Resource Development
12. Special Advisor to the Minister on Politics and Security Affairs
13. Special Advisor to the Minister of Economic Affairs
14. Special Advisor to the Minister of Social Affairs
15. Special Advisor to the Minister on Inter-agency Relation
16. Special Advisor to the Minister on for Bureaucratic Reform

Directorate General of Legal Administrative affairs is one of the elements of implementation in Ministry of Law and Human Rights of the Republic of Indonesia whose duty is to administer the formulation and implementation of policy in the field of legal administration following the provision of regulatory Legislation.

The organizational structure of the Directorate General of Legal Administrative Affairs consists of:

1. Secretariat of The Directorate General;
2. Directorate of Civil Law, its duties are: Legalizing Legal Body, Settling the request of appointment,transfer, and dismissal of a Notary, Completing legalization; Creating legal opinion, settling request for of name changes; settling the request of using Foreign legal expert; Managing Inheritance, Managing the assets of people considered bankrupt; providing letter of will, Settling the registration of Fiduciary guarantee.

3. Directorate of Penal Law, its duties are: Settling the request of appointment of people with visual impairment (PPNS).
4. Directorate of State Administrative Law, its duties are: Settling request of naturalization); Political party registration.
5. Directorate of International Law, its duties are: Carrying out events in the field international law, take a role in discussion and study on the material of International law, taking a role in the development of international law through socialization, and participate in discussing bilateral agreements negotiation, as well as providing guidance and consideration towards issues concerning international law.
6. Directorate of Dactyloscopy, its duties are: Settling the Formulation and Identification of Fingerprint.

Duties in the field of technical legal services comprise:

1. Guidance and maintenance of duties of Estate Property Bureau in Indonesia.
2. Providing consideration/ response to issues concerning civil law.
3. Preparing material for the legal opinion.
4. Settling clemency, amnesty, abolition and rehabilitation.
5. Settling the appointment process of PPNS
6. Providing response/consideration on the penal law issues.
7. Providing guidance and consideration on the issues of state administration.

In regard to the notary, ministry of law and Human rights is authorized to appoint, transfer, dismiss, supervise a notary.

#### **THE ROLE AND FUNCTIONS OF THE HOUSE OF SOCIAL SERVICE FOR VISUAL IMPAIRMENT “BHAKTI CANDRASA”**

The main role of The House of Social Service for Visual Impairment “bhakti candrasa” of Surakarta is to carry out the technical and operational activities in the field of Social Guidance and Rehabilitation (PKMS) for People with visual impairment through multiple services.

In carrying out its role, The House of Social Service for Visual Impairment “bhakti candrasa” administers the function of :

- 1) Arranging technical work plan of social guidance and rehabilitation for people with visual impairment.
- 2) Arranging technical policy of social guidance and rehabilitation for people with visual impairment.
- 3) Monitoring, evaluation, and reporting guidance and rehabilitation for people with visual impairment.
- 4) Administration management.
- 5) Carrying out other duties authorized by the Head of Social Agency following its main duties and functions.

#### **IDEAL LEGAL CONSTRUCTION ON THE USE OF BRAILLE IN NOTARIAL DEED TO REALIZE LEGAL RIGHTS EQUALITY FOR THE DISABLED (Visually Impaired)**

Ideal Legal Construction in this study is a description of regulations concerning the use of Braille letter in a notarial deed. Legal construction concerning the use of Braille letter in a notarial deed is necessary to realize legal rights equality for the disabilities (persons with visual impairment). Because essentially, men are created free by the creator, and hold equality before the law as well as human rights.

Indonesia as the State of Law based on Pancasila and The 1945 Constitution guarantee a legal certainty, order, and protection for every Indonesian citizen A state of Law requires all action or behavior possessing a clear legal basis based on both written and unwritten law. One of the forms of legal certainties, orders, and protections is an authentic written evidence created by or before a Notary.

Notary carries out its duty based on UUJN and other regulatory legislation. Anything regulated in UUJN shall be adhered by a notary. UUJN regulates the form of the deed, it is regulated in article 38 of UUJN concerning the head letter of the deed, the content of the deed, and closing of the deed.

In addition to the regulation on the form of the deed, UUJN also regulates the language use of a deed. The language shall be used in a deed is Bahasa Indonesia. It is mentioned in article 43 of UUJN :

- (1) The deed shall be made in Bahasa Indonesia.
- (2) In the case the appearers do not understand the language used in the Deed, the Notary shall translate or explain the contents of the deed in a language understood by appearer.
- (3) If the parties want, Deed can be made in a foreign language.
- (4) In terms of the Deed made as referred to in paragraph (3), Notary shall translate into Bahasa Indonesia.
- (5) If the Notary cannot translate or explain, the Deed translated or explained by an official translator.
- (6) In the event of any differences in the interpretation of the content of the Deed referred to in paragraph (2), then the use is made in the deed of Bahasa Indonesia.

What considered a problem by the present study is UUJN possess no regulation concerning the letter used in the notarial deed. Whereas the persons with visual impairment are also the subject of law, it is proven in article 9 letter a and b of Law on Disabilities "rights on legal equality and protection for the disabilities comprise the rights of :

- a. equal treatment before the law
- b. being acknowledged as the subject of law.”

In addition to Law on Disabilities, the 1945 Constitution states “guarantee on equality before the law and government is included in article 27 (1) and article 28D (1) who states that each person has the right to recognition, security, protection and certainty under the law that shall be just and treat everybody as equal before the law. Based on the provision, there should be no more reason to discriminate or not to fulfill the rights of persons with visual impairment as the subject of law in regard to a notarial deed.<sup>xi</sup> Persons with visual impairment can only read braille letter, it is a letter in the form of the combination of raised dots with particular use for persons with visual impairment to study general knowledge, social knowledge, religious knowledge through Al-Quran and so forth.

Another reason why regulation on the use of Braille in notarial deed for persons with visual impairment is to provide accessibility. Accessibility is ease provided for persons with disabilities to realize equality and opportunity (Article 1 (8) of Law on Disabilities). Indonesia is one of the countries that sign the Convention on the Rights of Persons with Disabilities on 30 March 2007 in New York. It shows the commitment of Indonesia to respect, protect, satisfy, and advance the rights of the people with disabilities in order to fulfill the prosperity of persons with disability. The commitment of Indonesia is related to the rights of people with disabilities, including people with visual impairment.

In line with the description above, according to Sartono “ to date, there has not been a notarial deed using braille letters. It is considered important to apply braille letters in a notarial deed. In addition to easing the persons with visual impairment understanding the deed he makes, it will be the form of belief on the visually impaired individual to carrying out legal action independently”.<sup>xii</sup> According to Tri Junianto " The use of Braille letters in notarial deed has not been regulated by the prevailing regulatory legislation. Either in UUJN or other regulations. Actually, the use of braille in a notarial deed is necessary, it will guarantee the rights of persons with visual impairment as a legal subject. However, those all should be regulated to avoid abuse in the future”.<sup>xiii</sup>

Based on the informant’s statement above, it could be concluded that the use of Braille letter is highly required to carry out the mandate of 1945 Constitution concerning the equal rights in legal certainty for all Indonesian, including Indonesian with visual impairment. However, there must be a clear regulation to avoid abuse and to ensure legal protection.

Sunarto and Novendri states that an ideal legal construction concerning Braille in a notarial deed is " regulation on the use of foreign language use can be applied to form an ideal legal construction, and a statement at the end of the deed which states that one of the parties is a person with visual impairment, and the parties and the witness approve the deed or the copy of deed made with Braille letter".<sup>xiv</sup> Regulation on the use of foreign language in article 43 of UUJN, as it has been described above, one of them is, the deed shall be translated or be explained by an official translator if the notary cannot translate or describe it. An official translator is a certified and sworn translator, or employing a staff of a foreign state embassy if there is no sworn translator.

An ideal legal construction concerning the use of Braille letter by equalizing it with the regulation on the use of foreign language in UUJN apparently inapplicable. Based on the result of the interview with Subagyo " to date, there has been not a certified or sworn Braille translator for there is no authorized institution to certify Braille translator".<sup>xv</sup> In harmony with the previous statement, Sartono states " to date, there is no certified Braille translator".<sup>xvi</sup>

The absence of a certified and sworn Braille translator should be a reference for the government in the future, to appoint an institution that is capable of certifying the Braille translator. Based on the interview, Sartono states " the proper institution shall be from the academic sector or university that possess special education study program that assisted by Braille learning institution, either governmental or private sector".<sup>xvii</sup> Based on the informant's statement above, the writer concludes that there shall be coordination among the institutions, either from universities who have special education study program or with the social agency as well as the private institution possessing Braille learning institution. In this case, the government shall be active in forming an institution that possesses authority in regard to the certified braille translator.

In addition to the unavailability of certified and sworn translator, another problem is related to the Braille printing device. There are many types of Braille printing device namely: regret (manual tool), Braille typer, and braille printer In Indonesia, the number braille printing device are still few for its price are highly expensive and Indonesia has not been able to produce it. To date, we still depend on braille typewriter which the amounts are also minimal. Braille typewriter is only possessed by certain institutions, one of them is possessed by Municipal/Regency level, according to Subagyo " Braille printer is classified as expensive, however, if it is only for a few papers, braille typewriter is still useful".<sup>xviii</sup> The writer argues that in order to make a notarial deed with a braille letter, a braille typewriter is enough. However, Braille typewriter is only held by some institution or agencies, particularly Social Agency in regional/ municipal level, and it is not even. In this case, the government shall provide at least a braille typewriter in each social agency of regional or municipal government.

In regard to the proper regulation regulating the use of Braille in notarial deed, Tri Junianto argues “ regulation concerning the use of braille shall be regulated, at least in the minister regulation”.<sup>xix</sup> Minister regulation meant is Minister of Law and Human Rights, Minister of Law and Human Rights concerning supervision, appointment, transfer, dismissal of a notary, as well as establishing policies allowed by the regulatory legislation. The writer argues that regulation on the use of Braille in notarial deed is urgently needed, so that the regulation that can be enacted is by the regulation of Minister of Law and Human Rights.

## CONCLUSION

Ideal legal construction on the use of braille in notarial deed to realize legal rights equality for the disabled (visually impaired). Regulation concerning the use of braille letter is necessary to be regulated. It is the form of government’s concern on the people

with disability especially visually impaired persons, to obtain accessibility on means of evidence namely notarial deed. The form of proper regulation concerning braille letter in notarial deed is Regulation of Minister of Law and Human Rights. With stipulations that are similar to the stipulation of the use of foreign language in notarial deed in UUJN.

The unavailability of certified and sworn translator shall be concerned to give an authority to the institution or agency to do certification towards the braille translator. The government, through the Ministry of Social and Universities that possess special education program and Ministry of Law and Human Rights perform coordination concerning this matter. The printing of notarial deed into braille letter can be done through braille typewriter. Such printing can be done by the Social Agency in the regional or municipal level that possesses braille typewriter, or other institution that possess such devices.

## SUGGESTION

The state shall give more attention to the rights of people with disability, especially people with visual impairment. Such attention can be given by providing a legal certainty by enacting a proper regulation concerning the use of braille letter. Such regulation will ease in realizing the rights equality for persons with disabilities (visual impairment).

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<sup>xvi</sup> The result of the interview with Sartono, September 2018 in The House of Social Service for Visual Impairment “bhakti candrasa” of Surakarta (Social service official of Provincial Government of Central Java).

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<sup>xix</sup> The result of the interview with Tri Junianto, September 2018, in Ministry of Law and Human Rights of Republic of Indonesia, the provincial government of Central Java.

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