

Discourse on the Civil Rights of the Deaf People in Making a Notary Deed

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Abstract

It is generally said that disabled persons do not have proper access to justice and are not treated equally before the law. In Indonesia, the human rights approach has been incorporated into developing laws and policies for disabled persons. However, disabled people still face legal difficulties. This article aims to discuss the legal capacity of a deaf person to perform the legal action of making a deed before a notary in Indonesia from the perspectives of human rights, contracts, and notary laws. It reflects legal research that uses a statutory and conceptual approach. Primary legal materials are obtained from the national laws and regulations of Indonesia and relevant international legal instruments, while secondary legal materials are obtained from books, journal articles, and website content. The findings reveal that Indonesian national law generally recognizes the right of persons with disabilities, including deaf people, to perform civil law actions. In general, deaf people can sign a contract; however, there is no guarantee that they understand the communication process in making a deed. In this context, there are still obstacles related to the lack of sign language interpreters in Indonesia, which can complicate the transferring of information when making notarial deeds between deaf clients, notaries, and witnesses.

1. INTRODUCTION

Indonesia has evinced genuine effort to guarantee the rights of disabled people by becoming a state party to the Convention on the Rights of Persons with Disabilities (CRPD) in 2011, followed by enacting Law No. 8 of 2016 concerning Persons with Disabilities (Law on Persons with Disabilities).¹ Concurrent regulatory regimes across different sectors, rather than a uniform approach, have created outcomes that are inconsistent with the

¹ See Dewa Gede Sudika Mangku, Ni Putu Rai Yuliantini, and I Wayan Lasmawan, "Legal Protection for People With Disabilities in Indonesia in the Perspective of Justice Theory," *Unnes Law Journal* 8, no. 2 (2022): 248, 249, 258; and Vera Bararah Barid et al, "Legal Protection for Disabilities Persons with Language Limitations in Law Enforcement," *Jurnal HAM* 13, no. 3 (2022): 642; and Ristania Intan Permatasari, Sapto Hermawan, and Abdul Kadir Jaelani, "Disabilities Concessions in Indonesia: Fundamental Problems and Solutions," *Legality: Jurnal Ilmiah Hukum* 30, no. 2 (2022): 301-304.

proper and dignified treatment of persons with disabilities. For example, Law No. 11 of 2009 concerning Social Welfare tends to see disabled persons as those whose lives are not humanely worthy or feasible, face social problems or experience social dysfunction, necessitating social security.² Despite establishment of the National Disability Commission, the stigma of segregation as part of the old paradigm remains: considering disability issues as purely social affairs, which is antithetical to the human rights approach.³ Accordingly, one of the most severe difficulties in improving the lives of disabled persons has been the transformation of disability from a social issue into a human rights issue.⁴

Persons with disabilities in Indonesia have not received proper treatment, both in the context of law and social relations. This is characterised by difficulties in accessing public services, participation in social activities, as well as access to education and employment.⁵ Further, they are often treated differently by others.⁶ Many persons with physical disabilities in Indonesia live in markedly vulnerable circumstances characterised by underdevelopment and poverty, creating additional obstacles and difficulties as well as a practical reduction or elimination of their rights.⁷ Disabled people often experience institutional and social discrimination, and can face accessibility issues in the physical environment. These experiences can result in their exclusion from education, employment, legal processes, and healthcare.⁸ These outcomes imply a treatment differential, potentially attributable to discriminatory practices, resulting in unequal access and treatment of disabled persons compared to non-disabled person.

Recently, there has been a transformation in sentiment whereby disabled persons, having previously been perceived as a group deserving of pity, are now perceived as a group whose fundamental rights as human beings must be guaranteed and fulfilled by the State.⁹ For example, Indonesian law requires that every social worker must act objectively and non-discriminatively in consideration of a client's disability.¹⁰ The topics of equality before the law and access to justice for disabled persons were then

² See Law No. 11 of 2009 concerning Social Welfare, Art. 5 (2) (c), Art. 7 (1) and its elucidation, and Art. 9 (1).

³ Yeni Rosdianti, "Quo Vadis Komisi Nasional Disabilitas?," *Jurnal HAM* 12, no. 2 (2021): 224.

⁴ *Ibid.*

⁵ Mangku, Yuliantini, and Lasmawan, *op.cit.*, 250.

⁶ Iman Pasu Purba et al, "The Fulfillment of Human Rights of Disabled Person in Surabaya City BT," *Proceedings of the International Joint Conference on Arts and Humanities* (2022): 124.

⁷ Sarifah Arafah Nasir and Ahkam Jayadi, "Penerapan Hak Aksesibilitas bagi Penyandang Disabilitas Perspektif Hukum Positif dan Hukum Islam di Kota Makassar," *Jurnal Shautana* 2, no. 1 (2021): 190.

⁸ Adrianna Bella and Teguh Dartancto, "Persons with Disabilities (PWD) and Poverty in Indonesia," *Malaysian Journal of Economic Studies* 55, no. 2 (2018): 167.

⁹ Frichy Ndaumanu, "Hak Penyandang Disabilitas: Antara Tanggung Jawab dan Pelaksanaan Oleh Pemerintah Daerah," *Jurnal HAM* 11, no. 1 (2020): 133.

¹⁰ Law No. 14 of 2019 concerning Social Workers, Art. 42 (g).

widely discussed in various forums.¹¹ Embracing diversity is a crucial aspect of social justice regarding the rights of people with disabilities. Ethics that underpin social justice imply valuing all people equally in terms of their rights to wellbeing and their ability to contribute to decision-making.¹²

Generally, disabilities can be distinguished between physical disabilities and mental disabilities.¹³ Physical disabilities are commonly characterised by disturbances in bodily functions, for example, being blind, deaf or mute. Such disabilities can exist concurrently, such as persons who are both deaf and blind.¹⁴ Mental disabilities are generally understood to be behavioural disorders that are caused by either congenital defect or as a result of illness.¹⁵ Over the decades, 'special needs' has been popularized to substitute the term 'disability' euphemistically.¹⁶

One of the technical-juridical problems faced by disabled people in Indonesia is when they want to enter into contractual relations. Due to a prerequisite of contract validity being the requirement of good mental health, mentally disabled persons cannot enter into a contract. However, some types of physically disabled persons also face difficulties in entering a contract, for example, those who do not have hands and fingers and cannot sign a contract,¹⁷ blind persons in circumstances where the contract is not translated into Braille, and deaf persons. However, in practice, there are still various ways to overcome these impediments.

The scope of this paper is limited to the situation faced by deaf people. This is important because there are an increasing number of deaf people globally. The 2021 Report on Hearing released by the World Health Organization provides that more than 1.5 billion people (20% of the world's population) experience some level of hearing loss. The report also predicted a

¹¹ Brent C Elder and Michael A Schwartz, "Effective Deaf Access to Justice," *The Journal of Deaf Studies and Deaf Education* 23, no. 4 (2018): 332-333.

¹² Siri H Eriksen, Robyn Grøndahl, and Ann-Marit Sæbønes, "On CRDPs and CRPD: Why the Rights of People with Disabilities are Crucial for Understanding Climate-Resilient Development Pathways," *The Lancet Planetary Health* 5, no. 12 (2021): 930.

¹³ Dian Fitriyani and Irma Cahyaningtyas, "Rekonstruksi Penegakan Hukum Bagi Penyandang Disabilitas dan Keberlakuan Keterangan Psikiater Sebagai Keterangan Ahli," *Jurnal Magister Hukum Udayana* 11, no. 2 (2022): 414-416.

¹⁴ *Ibid.* See also Vuokko Einarsson et al. *Psychological Assessment of Individuals with Deafblindness* (Stockholm: Nordic Welfare Centre, 2020), 18-19.

¹⁵ Some terms are generically used to refer to the uncommon mental situation of a person, such as 'intellectual disability,' mental illness, and mental disorder. A person with an intellectual disability may also have a mental illness or mental disorder. Generally, persons with mental illness and mental disorders are poorly recognized and treated as people with intellectual disability. See Intellectual Disability Rights Service, "Intellectual Disability and Mental Illness," http://www.idrs.org.au/s32/guide/p040_4_2_IDandMI.php

¹⁶ Morton Ann Gernsbacher et al, "Special Needs" is an Ineffective Euphemism," *Cognitive Research* 1 (2016): 2.

¹⁷ Ramadhanty and Budianto examined the validity of deeds made by persons with disabilities without fingerprints who cannot put their signature and fingerprint stamp on the deed and discuss the responsibilities of a notary for deeds made in this way. See Savira Ramadhanty and Agus Budianto, "Pemberian Persetujuan yang Sah terhadap Akta Notaris yang Dibuat oleh Difabel Tanpa Sidik Jari," *Notary Journal* 3, no. 1 (2023): 74.

significant increase to 2.5 billion people by 2050.¹⁸ In most developing countries, inflammation of the middle ear cavity is considered a generic source of childhood hearing loss.¹⁹ In the Indonesian context, it is estimated that nearly 2.1 million deaf people in Indonesia use Indonesian Sign Language to communicate.²⁰ A disability study by the Ministry of National Planning in 2021 shows that the percentage of deaf persons has reached 29% of the total number of people with disabilities in Indonesia, placing it at number four after vision, mobility, and cognitive impairments.²¹ In everyday life, a deaf person tends to have difficulty communicating as they need a sign language interpreter who can provide a translation from and into sign language codes.²² Conversely, there is a shortage of such interpreters in Indonesia. Based on data from the Sign Language Interpreter Service Center, the total number of sign language interpreters in the 2018-2022 period was 125, consisting of 94 hearing interpreters and 31 deaf interpreters.²³ Historically, a person who was born deaf and mute was presumed to lack capacity to enter into contracts. Courts, equating the physical inability to hear with a mental disability, voided contracts entered into by deaf persons. This created circumstances where deaf people were prohibited by judicial disposition to become parties to a contract.²⁴

The generic term 'deaf' refers to physical limitations experienced by a person on their ability to hear. Other terms used to describe this phenomenon include hearing impairment,²⁵ hard of hearing (HoH),²⁶ and hearing loss (HL).²⁷ Deafness is currently considered a public health problem as it interferes permanently with a person's development. The causes of deafness may be genetic, environmental, or a combination of

¹⁸ Charmaine Kai Ling Tan et al, "An Improved Hearing Aid Fitting Journey; The Role of 3D Scanning, Additive Manufacturing, and Sustainable Practices," *Materials Today: Proceedings* 70 (2022): 504.

¹⁹ Ratna Anggraeni et al, "Otitis Media Related Hearing Loss in Indonesian School Children," *International Journal of Pediatric Otorhinolaryngology* 125 (2019): 44.

²⁰ Joshua Project, "Deaf in Indonesia," https://joshuaproject.net/people_groups/19007/ID

²¹ Assistant Minister for Social and Poverty Alleviation of the Ministry of National Development Planning, "Kajian Disabilitas: Tinjauan Peningkatan Akses dan Taraf Hidup Penyandang Disabilitas Indonesia: Aspek Sosioekonomi dan Yuridis," Jakarta, 2021, 23.

²² Ida Ayu Pradnyadewi and I Gusti Agung Jayantiari, "Pengaturan Juru Bahasa Isyarat dalam Pembuatan Akta Otentik oleh Notaris bagi Penghadap Tunarungu," *Jurnal Ilmiah Kebijakan Hukum* 17, no. 1 (2023): 88.

²³ Siti Fauziyah and Lina Miftahul Jannah, "Access to Disclosure of Disasters Information for Deaf People through Sign Language Interpreter," *Indonesian Journal of Disability Studies* 9, no. 1 (2022): 138.

²⁴ Sean M. Scott, "Contractual Incapacity and the Americans with Disabilities Act," *Dickinson Law Review* 124 (2020): 275.

²⁵ Reenad Husain Bedaiwi, Marzouqi Abdulaziz Salamah, and Roa Talal Halawani, "Parents' Awareness of Ear Health in Madinah Region, Saudi Arabia," *Egyptian Journal of Otolaryngology* 38 (2022): 1.

²⁶ Eva Gutierrez-Sigut et al, "How Do Face Masks Impact Communication amongst Deaf/HoH People?," *Cognitive Research* 7, 81 (2022): 2.

²⁷ Mohamed A. El-Begermy et al, "Save the Hearing, an Ear Surgery Training Project Program to Combat Deafness in Developing Countries," *Egyptian Journal of Otolaryngology*, 32 (2020): 1.

both.²⁸ While deafness is generally regarded as a medical matter, some concepts are developed to expand its scope and perspective. For example, a 'culturally deaf people' was conceived as hearing-impaired people who can use sign language, attended residential schools for deaf children, and identify with and are accepted by the deaf community.²⁹ The laws and regulations of Indonesia provide classifications and definitions of deaf people. Law on Persons with Disabilities classifies deaf persons as persons with sensory disabilities.³⁰ In addition, a Minister of Manpower decree defines deaf people as those who have partial or complete loss of hearing and use sign language to communicate.³¹

Several studies have addressed this issue. Pradnyadewi and Jayantiari (2023) identified legal issues in circumstances where the Notary Law does not explicitly regulate how Notaries provide services to deaf people when drafting up deeds and the Notary does not have any particular expertise in sign language.³² Research by Kumala, Mahendrawati, and Puspadma (2021) identified the procedure for ratifying a notary deed involving hearing-impaired persons and the legal strength of a notary deed involving disabled persons.³³ Rosdianti (2021) describes a new dimension to strengthen human rights perspectives by reforming the scope and mandate of the National Commission on Disabilities to include in its ambit matters such as participation of persons with disabilities in broader society.³⁴

This article aims to discuss the legal capacity of a deaf person to perform the legal action of making a deed before a notary in Indonesia from the perspectives of human rights, contracts, and notary laws. To address the issue, this paper firstly discusses Indonesia's framework on the rights of deaf persons. Second, it explores the civil rights of the deaf persons to enter into a contractual relationship. Next, it discusses the capacity of deaf persons in making private contracts and notarial deeds. Lastly, it identifies the potential challenge of deaf foreigners in Indonesia. This article reflects normative research. This article reflects legal research that applies a statutory approach that scrutinizes primary legal sources in the form of national laws and regulations of Indonesia and other countries and relevant international legal instruments. Secondary materials from books, journal articles, and website content complement those primary legal sources. In

²⁸ Maria Francisca Rego, Ivone Duarte, and Rui Nunes Hearing, "Impairment and Nightmares: A Theoretical Insight," *SpringerPlus* 4 (2015): 3.

²⁹ Neil Glickman, "Cultural Identity, Deafness, and Mental Health," *Jadara* 20, no. 2 (1986): 1.

³⁰ Law No. 8 of 2016 concerning Persons with Disabilities, Elucidation of Art. 4 (1) (d).

³¹ Decree of the Minister of Manpower of the Republic of Indonesia No. 207 of 2021 concerning Determination of Indonesia's National Work Competency Standards for the Category of Professional, Scientific, and Technical Activities and Staple Group of Professional, Scientific and other Technical Activities in the Occupation of Deaf Sign Language, Annex Chapter I, Section B.

³² Pradnyadewi and Jayantiari, *op.cit.*, 83.

³³ Ida Ayu Ratna Kumala, Ni Luh Made Mahendrawati, and I Nyoman Alit Puspadma, "Notary Legality as an Authentic Diction in Terms of Physically Disabled Based on Law of Position Notary," *Jurnal Notariil* 6, no. 1 (2021): 55.

³⁴ Rosdianti, *op.cit.*, 212.

addition to the statutory approach, it applies a conceptual approach in exploring concepts related to the civil rights of persons with disabilities. The first is the human rights concept of equality before the law, while the second is the concept of legal capacity in a contract's validity in the context of Private Law and Contract Law. These concepts are the theoretical basis for analyzing the legal problem raised in these issues.

2. RESULT AND ANALYSIS

2.1. Indonesia's Framework on the Rights of Deaf Persons

As previously mention in Section 1, Indonesia has been a State party to the CRPD since 2011. After the ratification of that convention, Indonesia established Law on Persons with Disabilities in 2016, replacing Law No. 4 of 1997. Previously, provisions regarding disabilities were also partially regulated in Law No. 39 of 1999 concerning Human Rights, Law No. 28 of 2002 concerning Building Construction, and Law No. 25 of 2009 concerning Public Services.³⁵

The ongoing National Human Rights Action Plan Year 2021-2025 identifies disabled persons as one of the most vulnerable population groups.³⁶ The Action Plan describes particular challenges at the intersection between disabled people and the law, for example, the protection of rights and provision of legal assistance for persons with disabilities involved in legal disputes is sub-optimal. The broad strategic goals enacted by the Action Plan to address these challenges are to include the provision of effective legal, health, and psychosocial assistance services.³⁷

In early 2022, the Ministry of Social Affairs launched the Indonesia Hear Program which aims to provide access to information and communication services for persons with disabilities and implement therapy programs for persons with disabilities to maximize their bodily functions.³⁸ The Law on Persons with Disabilities mandates the establishment of the Disability National Commission that, among other functions, will advocate for disabled people and monitor and evaluate progress on the respect, protection and fulfilment of the rights of people with disabilities.³⁹ Regarding deafness, the National Committee for the Management of Hearing Loss and

³⁵ Okki Chandra Ambarwati, Amalina Niara Putri, and Riant Nugroho, "Descriptive Study of Policy Research on Disabled Rights in Indonesia," *Matra Pembaruan: Jurnal Inovasi Kebijakan* 6, no. 1 (2022): 30.

³⁶ Majda El Muhtaj, "A Critical Analysis of the Indonesian Human Rights Action Plan 1998-2020," *Jurnal HAM* 13, no. 3 (2022): 528.

³⁷ Presidential Regulation No. 53 of 2021 concerning the National Human Rights Action Plan for 2021-2025, Annex I.

³⁸ Indonesian Ministry of Social Affairs, "Luncurkan Indonesia Mendengar, Kemensos Buka Akses Luas untuk Penyandang Disabilitas," <https://kemensos.go.id/luncurkan-indonesia-mendengar-kemensos-buka-akses-luas-untuk-penyandang-disabilitas#:~:text=Program%20Indonesia%20Mendengar%20merupakan%20wujud,fungsi%2Dfungsi%20tubuh%20yang%20dimilikinya>

³⁹ Galuh Wahyu Kumalasari, "The Indonesian Disability National Commission as a Strategic Policy in Fulfilling the Rights of People with Disability," *Diponegoro Law Review* 2, no. 2 (2017): 306.

Deafness (Komnas PGPKT) was established by Decree of the Minister of Health No.768/Menkes/SK/VII/2007.⁴⁰

Besides the government, civil society also plays a vital role in enhancing outcomes for deaf persons. For example, the Indonesian Association for the Welfare of the Deaf (IAWD/GERKATIN) is a national association and has been a member of the World Federation of the Deaf (WFD) for three decades.⁴¹ Further, disability-care virtual communities for deaf persons in Indonesia are driven by a variety actors including disability communities that establish associations for people with disabilities without formal organizational structure (e.g. Komunitas Tuna Rungu Kreatif) and volunteers with disabilities under informal organization structures established by the general public (e.g. Deaf Volunteering).⁴²

2.2. Civil Rights of Deaf Persons to Enter into a Contractual Relationship

Many national, regional, and international instruments recognize, protect, and safeguard the civil rights of the disabled on an equal basis with others.⁴³ Essentially, each person has equal opportunity to access the same services and facilities, but practically, some people need more support and assistance to achieve this and be provided more protection when they are unable to do so.⁴⁴ After CRPD entered into force in May 2008, it encouraged a universal deliberation regarding its long-term impacts on the lives of disabled people.⁴⁵ The human rights concept behind the CRPD was constructed by perceiving persons with disabilities as active agents rather than medical objects or objects of pity.⁴⁶

Looking back at history, civil rights were developed in the 18th century,⁴⁷ however, the focus on the civil rights of disabled persons took place a few decades ago in various countries.⁴⁸ Persons with disabilities, both in developed and developing countries, tend not to have savings and

⁴⁰ Densy Tette, "Laporan Kegiatan PGPKT Bersih-Bersih Telinga," *Jurnal Medical Profession* 4, no. 1 (2022): 18.

⁴¹ Indonesian Association for the Welfare of the Deaf (Gerkatin), "Sejarah Gerkatin," <https://gerkatin.org/tentang-kami>

⁴² Nurul Hasfi and Turnomo Rahardjo, "The Disabled People Virtual Communities in Social Media from The Perspective of Public Sphere Theory," *Jurnal Komunikasi Ikatan Sarjana Komunikasi Indonesia* 4, no. 2 (2019): 70-71.

⁴³ J. Adams Adoga-Ikong and Adaeze Favour Ibekwe, "Right to Freedom From Discrimination: The Case of The Disabled in The Context of International Human Rights and The Practice in Nigeria," *Pinisi Discretion Review* 3, no. 2 (2020): 340-341.

⁴⁴ Raymond Lang et al, "Implementing the United Nations Convention on the Rights of Persons with Disabilities: Principles, Implications, Practice and Limitations," *Alter: European Journal of Disability Research* 5, no. 3 (2011): 209.

⁴⁵ *Ibid.*, 207.

⁴⁶ Kjersti Skarstad, "Human Rights through the Lens of Disability," *Netherlands Quarterly of Human Rights* 36, no. 1 (2018): 25.

⁴⁷ Marie S epulchre, "Ensuring Equal Citizenship for Disabled People: A Matter of Rights or a Matter of Costs?," *Alter: European Journal of Disability Research* 14, no. 2 (2020): 117.

⁴⁸ See Rafael Lindqvist and Kamal Lamichhane, "Disability Policies in Japan and Sweden: A Comparative Perspective," *Alter: European Journal of Disability Research* 13, no. 1 (2019): 7.

other assets.⁴⁹ CRPD implies a right to self-determination that expects the respect of every human being's inherent dignity and individual autonomy. However, practices indicate that person with disabilities –in particular, those who are dependent on other persons– tends not to obtain such respect.⁵⁰

Article 12 of the CRPD reflects the idea of terminating the substituted decision making in most guardianship laws.⁵¹ It determines the equal recognition before the law that covers both legal personhood (passive capacity) and legal capacity (capacity to act).⁵² Article 12 of the CRPD, therefore, calls for an end to substituted decision making regimes that are included in most guardianship laws today. The Committee on the Rights of Persons with Disabilities emphasizes that the support in exercising legal capacity must respect the rights, intentions, and preferences of disabled persons and should not substitute decision-making.⁵³ Countries in the world indicate a willingness to recognize the legal capacity of a disabled person in their national legislation. As an example, the Government of Peru enacted a decree which recognized the equality of legal capacity between persons with disabilities with others and further instituted a framework for appointing supported decision-makers before a notary or judge.⁵⁴ The right to be regarded as a person before the law and the right to enter a valid contract are types of civil rights.⁵⁵

The Special Rapporteur on the rights of persons with disabilities, Catalina Devandas Aguilar reveals that the guardianship system loses the legal capacity of a person with disabilities to exercise all or almost all of their rights and make them not have control over decisions related to their lives, from entering into contracts.⁵⁶ She also proposes that states conduct comprehensive law reviews to fully implement the right to the legal capacity of persons with disabilities that, among others, covers the issue of contractual law.⁵⁷ Further, Aguilar pays a concern to the vital role of notaries, the profession related to the conclusion and formalizing legal transactions (contracts, wills, and powers of attorney), in addressing

⁴⁹ Alexandra Gartrell et al, "Social Determinants of Disability-based Disadvantage in Solomon Islands," *Health Promotion International* 33, no. 2 (2018): 251.

⁵⁰ Synne Nese Skarsaune, "Self-determination of People with Profound Intellectual and Multiple Disabilities," *Developmental Medicine and Child Neurology* 65, no. 1 (2023): 16-23.

⁵¹ Jillian Craigie et al, "Legal Capacity, Mental Capacity and Supported Decision-Making: Report from a Panel Event," *International Journal of Law and Psychiatry* 62 (2019): 160-168.

⁵² Renato Antonio Constantino Caycho, "The Flag of Imagination: Peru's New Reform on Legal Capacity for Persons with Intellectual and Psychosocial Disabilities and the Need for New Understandings in Private Law," *The Age of Human Rights Journal* 14 (2020): 157.

⁵³ The United Nations Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), Article 12, Equal Recognition before the Law.

⁵⁴ Samantha Backman, "The Right to Legal Capacity for Canadians with Disabilities: A Quest for Dignity, Equality, and Autonomy," *International Human Rights Internship Program Working Paper Series* 8, no. 1 (2020): 34.

⁵⁵ Sépulchre, *loc.cit.* See also Theresia Degener, "Disability in a Human Rights Context," *Laws* 5, no. 3 (2016): 5.

⁵⁶ The United Nations Human Rights Council. Report of the Special Rapporteur on the Rights of Persons with Disabilities" A/HRC/37/56, para 16.

⁵⁷ *Ibid.*, para 65.

structural factors that can hinder or violate the exercise of the legal capacity of persons with disabilities.⁵⁸ It, therefore, requires the capacity building for notaries through training to make them understand the recognition of universal legal capacity when assessing the capacity of individuals entering into legal relationships.⁵⁹

2.3. Capacity of Deaf Persons in Making Private Contracts and Notarial Deeds

Article 16 (1) of the Law No. 30 of 2004 concerning Notary⁶⁰ (Notary Law) obliges a notary to act in a trustful, impartial manner and protect the interests of parties involved in legal actions as well as provide services in accordance with the provisions of this Law unless there is reason to refuse. In addition, the Indonesian Notary Association's Code of Ethics of Notary (Code of Ethics of Notary) sets obligations for notaries, among others, to treat every client well regardless of their economic and social status.⁶¹ Therefore, it is reasonable to interpret that a notary must treat a deaf client equally without discrimination.

Article 1320 of the Civil Code outlines four conditions of a valid agreement: (1) consent between the parties; (2) capacity to conclude an agreement; (3) specific subject (certain content); and (4) admissible cause.⁶² The first, third, and fourth conditions in this context do not raise an issue. However, the second condition, being the legal capacity of a deaf person to conduct legal actions, in particular during the process of executing a deed, potentially raises problems. The concept of legal capacity underlines that parties involved in contractual relations must be regarded as a subject of law.⁶³ Article 39 (1) of the Notary Law provides that a client must meet the minimum requirements of being 18 (eighteen) years old or married and capable of performing legal actions. Therefore, a deaf person who has fulfilled those requirements must be considered legally capable. Persons with disabilities basically have the right to become legal subjects in making a deed before a notary as long as they meet the requirements specified in Article 39 of the Notary Law and are not classified as an incompetent individual to conclude agreements as stipulated in Article 1330 of the Civil Code, i.e., minors, individuals under guardianship, and married women, in

⁵⁸ *Ibid.*, paras 60 and 77.

⁵⁹ *Ibid.*, para 77.

⁶⁰ The law was lastly amended by Law No. 2 of 2014.

⁶¹ I Gusti Agung Ika Laksmi Mahadewi, Ni Komang Tari Padmawati, and I Gusti Agung Mas Rwa Jayantiari, "Notary in Indonesia: How Are State Fundamental Values Reflected in Law and Professional Ethics?," *Udayana Journal of Law and Culture* 6, no. 2 (2022): 209-210.

⁶² See Dhaniswara K Harjono, "Standard Agreements in the Concept of Freedom of Contract," *Russian Law Journal* 11, no. 3 (2023): 653; Indonesian Civil Code. English translation available at: <https://www.refworld.org/pdfid/3ffbd0804.pdf>

⁶³ Atharyanshah Puneri, "Comparison of the Law of Contract Between Islamic Law and Indonesian Law," *Journal of Law and Legal Reform* 2, no. 1 (2021): 76.

the events stipulated by law, and in general, individuals who are prohibited by law from concluding specific agreements.⁶⁴

The further issue is whether the deaf person understands the content of the deed. In practice, deaf persons are able to sign a deed in their name before a notary because a deaf person is generally still in good health and can use their common sense to take legal action.⁶⁵

If the client is a deaf person, a notary, who generally does not have sign language skills, needs a sign language interpreter who can convey messages through sign language. Articles 43 and 44 of the Notary Law regulates the role of an official interpreter in case a deed is translated into a foreign language, but does not determine the need to use sign language interpreters for a deaf client, which may have implications for future problems and affect the authenticity of the deeds.⁶⁶ Wardani argues that Article 43 (2) of the Notary Law is the provision regulating the situation when a deaf person becomes the client before a notary.⁶⁷ This provision holds that if the client does not understand the language used in the deed, the Notary has an obligation to translate or explain the contents of the deed in a language understood by the client. Further, Article 43 (5) of the same law provides that if the Notary cannot translate or explain the deed, it is translated or explained by an official interpreter.

Differences in interpretation between the contents of the deed and the conveyed sign language can have implications in terms of material and immaterial loss for the Notary and the deaf client. Therefore, while executing the deed, notaries need to apply the prudence principle to prevent legal problems from occurring in the future, for example, questions over the authenticity of the deed.⁶⁸ The principle of prudence, as reflected in Article 16 (1) of the Notary Law, requires thoroughness and scrupulousness. In practice, this principle can be implemented by certainty over the identity of the parties, carefully verifying the data of the subject and object, acting carefully and thoroughly in the process of preparing the deed, and fulfilling all the technical requirements for preparing a notarial deed.⁶⁹

The authority of a Notary to make an authentic deed is stipulated in Article 15 (1) of the Notary Law. To be recognized as an authentic document, a notarial deed must meet the requirements specified in Article 1868 of the Civil Code. This provision requires that an authentic deed must be made in

⁶⁴ See Melya Kusuma Wardani, "Perlindungan Hukum bagi Penyandang Disabilitas dalam Pembuatan Akta di Hadapan Notaris" (Master's Thesis, Notary Master Program, Indonesia Islamic University, 2021), 66; and Indonesian Civil Code.

⁶⁵ Garin Dinda Azzalea and Shafiyah Nur Azizah, "Kesulitan Penyandang Tunarungu Dalam Melakukan Pembuatan Akta Tanah Ditinjau Dalam Perspektif Hukum," *Jurnal Hukum dan HAM Wara Sains* 1, no. 2 (2022): 81.

⁶⁶ Pradnyadewi and Jayantiari, *op.cit.*, 94.

⁶⁷ Wardani, *op.cit.*, 65-66.

⁶⁸ *Ibid.*, 93.

⁶⁹ Ida Bagus Paramaningrat Manuaba, I Wayan Parsa, and I Gusti Ketut Aryawan, "Prinsip Kehati-hatian Notaris dalam Membuat Akta Autentik," *Acta Comitas* 3, no. 1 (2018): 66, 68, 69.

a certain form that has been prescribed by law and is made before a public official that has the authority to make deeds.⁷⁰

The notarial deed has the presumption of validity unless it can be proven that the deed was falsified. Therefore, a judge must accept the notarial deed as valid and authentic if used in court. This also applies to a notarial deed made by a person with disabilities, as it ensures legal certainty and protection. An authentic deed has three evidentiary powers. First, outward evidentiary powers that prove the authenticity of a deed are seen from its physical appearance or the outside. Second, formal evidentiary power proves that the parties have explained what is written in the deed. Third, material evidentiary power proves that legal events stated in the deed happened.⁷¹

In general, the authenticity of a deed made by a notary can be challenged before the court. In some cases, notaries were sued under civil, criminal, or administrative liabilities for executing deeds in an unlawful way. In this regard, the deed can be cancelled or nullified by law, depending on whether or not the legal conditions of the agreement are fulfilled.⁷² The next question is whether or not a deaf can be a witness before the court. In a normative sense, not all types of disability may be regarded as 'disabled' in all court sessions. The judge(s) will consider whether someone can follow the sessions of a court (to be asked and to answer the questions, to understand the law process) or not.⁷³

2.4. Potential Challenges of Deaf Foreigners in Indonesia

It is generally understood that most private contracts in Indonesia are held between Indonesian nationals. However, in many provinces where foreigners live, especially those with residence permits, there is a high potential for civil contracts between Indonesians and foreigners. For example, Bali is a province occupied by many foreigners from various countries who carry out individual business transactions, including the execution of notarial deeds. Even though little has been disclosed by the media at this time, it is possible that among these foreigners are people with disabilities, including people who are deaf or hard of hearing, who draw up notarial deeds.

As a reflection of ideological contests about languages, BISINDO (Indonesian Sign Language) is used in education for deaf people in

⁷⁰ See Ikhsan Lubis et al, "Cyber Notary as a Mean of Indonesian Economic Law Development," *Sriwijaya Law Review* 7, no. 1 (2023): 62, 70. See also Agus Toni Purnayasa, "Akibat Hukum Terdegradasinya Akta Notaris yang Tidak Memenuhi Syarat Pembuatan Akta Autentik," *Acta Comitatus* 3, no. 3 (2018): 398.

⁷¹ Christin Sasauw, "Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris," *Lex Privatum* 3, no. 1 (2015): 98.

⁷² Santa Indah Theresia Pardosi, "The Limitations of Notary Legal Liability in Indonesia towards Disputed Authentic Deeds," *Jurnal Nurani Hukum: Jurnal Ilmu Hukum* 5, no. 2 (2022): 179.

⁷³ Siska Naomi Panggabean, "Access of People with Disabilities to Justice in Indonesia General Court System," *Indonesian Journal of Disability Studies* 6, no. 1 (2019): 98.

Indonesia, including in Bali.⁷⁴ At the same time, tourism practices in Bali tend to use various styles, including International Sign Language, American Sign Language, British Sign Language, and Australian Sign Language, to accommodate tourists of various origins.⁷⁵ Therefore, in the future, this will be a challenge for translators who mediate between foreign deaf clients and notaries. Thus, the problem is not only the difference in the legal system and the language difference between the deaf client and the notary but also the difference in the language style used between the deaf client and the interpreter. Suppose a scenario where the notary is disinclined to burden the deaf client with an interpreter fee as they deem it inappropriate, they may instead use the Sign Language Recognition Application System.⁷⁶ In this context, technological advances can assist in overcoming constraints and limitations in legal practice.

3. CONCLUSION

Indonesian national law, in general, has recognized the rights of persons with disabilities, including deaf people, to perform civil law actions. From a human rights perspective, the state has respected the civil rights of the deaf, equal to the rights of other people, to draw up notarial deeds. Notary Law and the Code of Ethics of Notary set an obligation to notaries to treat deaf clients equally without discrimination. Notary Law, in particular, does not prohibit a notary from processing the making of a deed submitted by a deaf person. This situation reflects that the human rights concept of equality before the law of disabled persons has been appropriately transformed into the law and regulations in Indonesia. Apart from this progressive development, the problem lies in the technical mechanism for doing a deed in the case of a deaf client. In terms of Contract Law, a person's legal capacity to enter a contract determines the validity of a contract. In general, deaf persons can sign a contract; however, there is no guarantee that they understand the communication process when executing a deed. In this context, a sign language interpreter is needed to transfer information when making notarial deeds between deaf clients, notaries, and witnesses. However, Indonesia's lack of sign language interpreters complicates this matter. The increasing number of deaf persons in Indonesia and the presence of deaf foreigners is undeniable. There is, therefore, a necessity for various legal breakthroughs, which are not only limited to recognizing the equality and legal capacity of the deaf person but also guaranteeing access, facilities, and simplicity for the deaf persons to enter into contractual relations with others, including in applying a notarial deed.

⁷⁴ Erin Moriarty, "Sign to Me, not the Children": Ideologies of Language Contamination at a Deaf Tourist Site in Bali," *Language & Communication* 74 (2020): 198.

⁷⁵ *Ibid.*, 195.

⁷⁶ See Suharjito, Suharjito et al, "Sign Language Recognition Application Systems for Deaf-Mute People: A Review Based on Input-Process-Output," *Procedia Computer Science* 116 (2017): 442.

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