



THE URGENCY OF REGULATIONS REGARDING SWORN TRANSLATORS FOR LEGAL CERTAINTY IN THE PREPARATION OF NOTARIAL DEEDS

Darush Fitrian Nur^{1*}, Habib Adjie²

Magister Kenotariatan, Fakultas Hukum, Universitas Narotama Surabaya

Email: Squadreidarush@gmail.com, habib.adjie@narotama.ac.id

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ABSTRACT

Notaries, as public officials, are authorized to draw up authentic deeds in the Indonesian language as mandated by Article 43 paragraph (1) of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 concerning the Notary Position (UUJN-P) and Article 31 of Law Number 24 of 2009 concerning the National Flag, Language, Emblem, and Anthem. In practice, parties who do not understand Indonesian including foreign nationals often require the assistance of a translator to ensure that the content of a deed is fully understood before signing. The problem is that regulations governing the position, qualifications, and legal responsibilities of sworn translators who assist in the making of notarial deeds remain scattered, overlapping, and partly derived from colonial-era regulations such as Staatsblad 1859 Number 69 and Staatsblad 1894 Number 16, thereby creating a normative gap that potentially threatens the legal certainty of authentic deeds. This study aims to examine the urgency of specific regulations concerning sworn translators in the context of notarial deed-making and its implications for the validity and evidentiary force of deeds. The study employs a normative juridical method with a statute approach and a conceptual approach, analyzed qualitatively and prescriptively. The findings indicate that the absence of comprehensive regulation on the role of sworn translators in notarial deed-making creates uncertainty regarding legal liability when translation errors harm the parties, as well as ambiguity concerning the translator's position within the structure of an authentic deed. This study recommends harmonizing regulations among the UUJN-P, the Language Law, and the Ministerial Regulation on Sworn Translators, accompanied by specific technical rules binding notaries and sworn translators to guarantee legal certainty and protection for parties to a notarial deed.

Keywords: Sworn Translator; Notarial Deed; Legal Certainty; Notarial Law

A. INTRODUCTION

A notary is a public official who is given attributive authority by the state to make authentic deeds and other authorities as regulated in Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN-P). A notarial deed as an authentic deed has perfect evidentiary power (*volledig bewijskracht*) as long as it is not proven otherwise, so that the validity and accuracy of every word contained therein becomes crucial. One of the formal requirements for a notarial deed is the use of Indonesian, as stated in Article 43 paragraph (1) of UUJN-P and reinforced by Article 31 of Law Number 24 of 2009 concerning the Flag, Language, and National Emblem, as well as the National Anthem (Language Law) which requires the use of Indonesian in memorandums of understanding or agreements involving state institutions, government agencies, Indonesian private institutions, or individual Indonesian citizens. Problems arise when one of the parties in the making of the deed does not master the Indonesian language, as is common in transactions involving foreign citizens, foreign investment, or mixed marriages. Article 43 paragraphs (3) to (5) of the UUJN-P provides a solution in the form of an obligation for the notary to translate or explain the contents of the deed to the person appearing who does not understand Indonesian. In practice, this obligation is often carried out by presenting a translator, either a sworn translator or an ordinary translator, so that the person appearing truly understands the intent and legal consequences of the deed to be signed. The presence of a translator in the process is not merely an administrative complement, but also helps determine the validity of the fulfillment of the principles of competence

and free agreement of the parties, two elements that are conditions for the validity of an agreement according to Article 1320 of the Civil Code.

The problem is, the regulation regarding sworn translators in Indonesia has not been fully integrated with notary law. The legal basis for the institution of sworn translators was only updated through the Regulation of the Minister of Law and Human Rights Number 29 of 2016 concerning the Requirements and Procedures for Appointing, Reporting, and Dismissal of Sworn Translators as amended by Regulation of the Minister of Law and Human Rights Number 4 of 2019 (hereinafter referred to as the Regulation of the Minister of Law and Human Rights on Sworn Translators). Prior to the issuance of the Regulation, the legal basis for the profession of sworn translators still referred to colonial regulations, namely Staatsblad 1859 Number 69 concerning the Oath of Translators and Staatsblad 1894 Number 16 concerning Translators, which even caused a vacuum in the appointment of sworn translator services from 2011 to 2016 due to the unclear authority between the central government and regional governments in appointing translators. Although the Minister of Law and Human Rights Regulation on Sworn Translators regulates the requirements and procedures for appointing, reporting, and dismissing sworn translators, the regulation does not specifically regulate the position, authority, responsibilities, or legal accountability mechanisms of sworn translators when they are involved in the process of drafting notarial deeds. This lack of regulation gives rise to a number of legal issues. First, there is no clarity regarding the form of involvement of sworn translators in the structure of the deed: whether it is sufficient to be recorded as additional information, or whether they must also sign the deed as a party guaranteeing the accuracy of the translation. Second, there is no clarity regarding the legal responsibility of sworn translators if a translation error occurs that causes the parties to misunderstand the contents of the deed, resulting in losses. Third, there is a potential conflict of norms (antinomy) between the UUJN-P, the Language Law, and the Minister of Law and Human Rights Regulation on Sworn Translators regarding when the use of sworn translators is mandatory and when it is optional. Such conditions have the potential to threaten the principle of legal certainty (*rechtszekerheid*) that should be inherent in every authentic deed, while also opening up the opportunity for the judge to annul the deed if the subjective or objective requirements for the validity of the agreement are deemed not to have been met due to the parties' lack of understanding of the contents of the deed. Based on this description, this article examines two main issues: first, what is the legal position of sworn translators in the process of making notarial deeds according to the current legal framework; and second, why are special regulations regarding sworn translators needed to guarantee legal certainty in the making of notarial deeds. This study is important considering the increasing number of cross-language legal transactions in Indonesia, whether due to foreign investment, labor migration, or mixed marriages, which require assurance that the resulting authentic deed truly reflects the free will of the parties without linguistic distortion.

B. RESEARCH METHOD

This research uses a normative legal research method (normative juridical), namely research that examines law as a written norm and places statutory regulations as the main legal material. The approach used includes a statutory approach, which is carried out by examining and testing the coherence between the UUJN-P, the Language Law, the Civil Code, and the Minister of Law and Human Rights Regulation on Sworn Translators; as well as a conceptual approach to analyze the concepts of legal certainty, authentic deeds, and professional responsibility in relation to the role of sworn translators.

The legal materials used consist of primary legal materials in the form of relevant laws and regulations, secondary legal materials in the form of books, scientific journals, and previous research results on notaries and sworn translations, and tertiary legal materials in the form of legal dictionaries and other supporting reference materials. The legal material collection technique is carried out through library research by tracing laws and regulations, accredited journals, and official documents of the relevant ministries. The collected legal materials are then analyzed qualitatively using a prescriptive-analytical method, namely not only describing the applicable legal conditions (*das sein*), but also formulating how these regulations should be formed (*das sollen*) to ensure legal certainty in the preparation of notarial deeds involving sworn translators.

C. DISCUSSION

1. Legal Position of Sworn Translators in the Preparation of Notarial Deeds

Article 43 paragraph (1) of the UUJN-P stipulates that deeds must be drawn up in Indonesian. This provision is consistent with Article 31 of the Language Law, which requires the use of Indonesian in memoranda of understanding, agreements, and other official documents involving Indonesian parties. However, Article 43 paragraph (3) of the UUJN-P provides an exception: if the person appearing does not understand the language used

in the deed, the notary is required to translate or explain the contents of the deed in a language the person appears to understand. This provision essentially opens up space for the involvement of a translator, but the UUJN-P does not explicitly require that the translator involved must have the status of a sworn translator, so that in practice there are notaries who translate themselves, ask for a sworn translator, or even ask a third party who only has a command of a foreign language without official certification.

This ambiguity has the potential to create evidentiary issues. According to Article 1, number 1 of the Minister of Law and Human Rights Regulation on Sworn Translators, a sworn translator is someone who has the expertise to produce translations and has been sworn in by the Minister responsible for government affairs in the field of law and human rights and is registered with that ministry. This "sworn" status normatively gives greater evidentiary weight to the translation, because sworn translators are bound by an oath of office and can be held administratively and civilly liable for errors in their translation. Conversely, non-sworn translators do not have equal legal standing, making their translations vulnerable to challenges to their validity, especially in disputes involving legal documents such as contracts, company deed of incorporation, or deeds of sale relating to foreign parties.

In notarial practice, the involvement of a sworn translator is generally stated in the form of a statement at the end of the deed stating that the deed has been translated or explained to the parties concerned. However, the standard format for how this statement should be included, whether the translator must also affix his signature and stamp as a sworn translator on the minutes of the deed, or simply be named as a witness/translator, is not expressly regulated in the UUJN-P or other notarial implementing regulations. As a result, practices between notaries are not uniform, and this has the potential to lead to differences in judges' assessments when the deed's validity is questioned in court.

2. Emptiness and Overlapping of Norms as a Threat to Legal Certainty

One of the fundamental principles in notarial law is the principle of legal certainty, namely the guarantee that the deed made by the notary provides certainty regarding the rights and obligations of the parties clearly and does not give rise to multiple interpretations. The teaching of *stufenbau des recht* from Hans Kelsen, developed by Hans Nawiasky, teaches that more specific norms (*lex specialis*) should be prioritized over more general norms (*lex generalis*) if there is a conflict between the norms. In the context of sworn translators and notarial deeds, there are at least three intersecting legal regimes, namely the UUJN-P as the formal law of notaries, the Language Law as the national linguistic law, and the Regulation of the Minister of Law and Human Rights on Sworn Translators as the law of the translator profession. The absence of a bridging norm that explicitly regulates the legal relationship between notaries and sworn translators causes the three regimes to operate independently without integration.

This condition is exacerbated by the fact that the Minister of Law and Human Rights Regulation on Sworn Translators focuses more on the aspects of appointment, reporting, and dismissal of translators, rather than on the substantive aspects regarding the translator's legal responsibility in the context of making certain legal documents, including notarial deeds. As a result, when a translation error occurs that causes the person appearing to misunderstand a clause in the deed, for example, misunderstanding the amount of payment obligations or the object of collateral in a mortgage deed, there is no clear legal accountability mechanism between the notary, the sworn translator, and the person appearing to be harmed. Is this responsibility borne entirely by the translator based on the principle of professional responsibility, or does it also burden the notary due to his negligence in ensuring the person appearing to understand as required by Article 16 paragraph (1) letter a of the UUJN-P regarding the obligation to act trustworthy, honest, thorough, independent, and impartial, until now there has been no clear normative answer.

This kind of uncertainty poses a significant risk to the validity of the deed itself. Referring to the requirements for a valid agreement in Article 1320 of the Civil Code, an agreement reached without a complete understanding of the agreement's contents has the potential to be flawed (*wilsgebreke*), particularly in the form of an error (*dwaling*), which can be grounds for cancellation of the agreement by the aggrieved party. If the translation accompanying the deed is not carried out by a competent and legally responsible party, the risk of cancellation of the notarial deed, which should have complete evidentiary force, becomes higher. This clearly contradicts the main purpose of creating an authentic deed, which is to provide certainty and legal protection for the parties.

3. Urgency of Special Regulations and Direction of Regulatory Harmonization

Based on the analysis above, there is an urgent need to establish special regulations that bridge notarial law with the law of the profession of sworn translators. These regulations must contain at least four main points. First, the criteria for when the use of a sworn translator is mandatory in the preparation of a notarial deed, for example when the person appearing is a foreign citizen or does not actively master the Indonesian language, in order to avoid ambiguity between the notary's authority to translate independently based on Article 43 paragraph (3) of the UUJN-

P and the objective need for a certified translator. Second, the standard format for including the sworn translator's information in the deed, including the obligation to affix the translator's signature, stamp, and statement of responsibility on the minutes of the deed, so that the translator's involvement is recorded authentically and can be accounted for.

Third, the mechanism for sharing legal responsibility between notaries and sworn translators in the event of translation errors, while maintaining the principle that notaries are responsible for the entire process of making deeds while sworn translators are responsible for the accuracy of the substance of the translation in accordance with the rules of responsibility of their respective professions. Fourth, harmonization of the definition and scope between the UUJN-P, the Language Law, and the Regulation of the Minister of Law and Human Rights on Sworn Translators, for example through the issuance of joint regulations (cross-sector ministerial regulations) between the Ministry of Law and Human Rights as the supervisor of notaries and supervisor of sworn translators, by involving professional organizations such as the Indonesian Notary Association (INI) and the Indonesian Translators Association (HPI).

The establishment of these special regulations aligns with the law's function as a means of certainty and protection (*rechtsbescherming*) for justice seekers, particularly in legal transactions involving cross-language and cross-nationality, the number of which continues to increase with increasing foreign investment and global population mobility. Without clear regulations, the potential for disputes resulting from misunderstandings in the language of notarial deeds will continue to recur, burdening the judicial system and undermining public trust in notarial institutions as guarantors of legal certainty. Therefore, strengthening regulations regarding sworn translators in the context of notarial deeds is not merely a technical administrative necessity, but part of a structural effort to uphold the principle of legal certainty in the Indonesian notarial legal system.

D. CLOSING

1. Conclusion

The legal status of sworn translators in the preparation of notarial deeds has not been regulated comprehensively and integrately. The UUJN-P only regulates the obligation of notaries to translate or explain the contents of the deed to those appearing who do not understand Indonesian without explicitly requiring the use of a sworn translator, while the Regulation of the Minister of Law and Human Rights on Sworn Translators regulates the appointment and professionalism of translators without touching on their relationship to the process of preparing authentic deeds. This lack of connecting norms creates ambiguity regarding the format for including the translator's information in the deed and the legal liability mechanism in the event of a translation error, thus potentially threatening legal certainty and the evidentiary power of the notarial deed itself.

Therefore, special regulations regarding sworn translators in the context of notarial deeds are urgent. These regulations need to include criteria for the mandatory use of sworn translators, a standard format for their involvement in the deed, a mechanism for dividing legal responsibility, and harmonization between the UUJN-P, the Language Law, and the Minister of Law and Human Rights Regulation on Sworn Translators to ensure complete legal certainty for all parties, particularly in the increasing number of cross-language legal transactions.

2. Suggestions

The government, specifically the Ministry of Law and Human Rights, is advised to draft cross-sectoral technical regulations specifically governing the relationship between notaries and sworn translators in the preparation of authentic deeds, involving the Indonesian Notaries Association and the Indonesian Translators Association in the formulation process. Furthermore, further empirical research is needed to map the practice of sworn translator involvement in various notary offices in Indonesia as a supporting database for the formation of policies that are more responsive to the legal needs of the community.

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