

## **The Concept Of Authentic Acte Making Arrangements For People With Visual Impairments**

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### **Abstract**

*It is said to be visually impaired when a person experiences a vision disorder that, despite being corrected with certain medications or optical devices, still has difficulty in vision and is no longer able to take advantage of his sense of sight. The visually impaired as part of a disability are often considered one-eyed, both in everyday life and when they want to carry out legal acts. Blind people are still considered not qualified according to their legal requirements in making agreements. The condition of the validity of the agreement according to Section 1320 of the Civil Code (KUHPer) is the agreement of the parties who bind themselves, the ability to make an alliance, a certain object or thing, and a lawful cause. When all persons with disabilities, including the Blind, are considered incompetent and must be placed in a guardianship in the determination of the court, based on the rigid interpretation contained in Section 32 of Act Number 8 of 2016 concerning persons with Disabilities which states that persons with disabilities can be declared incompetent based on the determination of the District Court, it is good that we should be able to examine further in other Sections both contained in Act Number 8 of 2016 and from other laws and regulations. The results showed that blind people described in Act No. 8 of 2016, fall into the category of sensory disabilities, which is in the explanation of Section 4 Verse 1 letter d. Meanwhile, in the decision of the Constitutional Court number 93/PUU-XX/2022 concerning guardianship, that guardianship problems caused by "stupid", "sick" brain", and "dark eyes" conditions are sourced from Section 433 of the Civil Code, which is part of mental disability and/or intellectual disability. So that blind persons are not included in the category of guardianship because they do not enter the category mentioned in the Constitutional Court decision. Then in the concept of setting the implementation, blind people in making authentic Actes can use the following methods: first, the use of surrogate, second, the use of companion, third, the use of the Acte using Braille. In comparison with the Japanese notary law, observer/Observer method can be used in the concept of implementation in Indonesia.*

**Keywords: Arrangement, Authentic Acte, Blind**

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## **INTRODUCTION**

People with disabilities in Indonesia are recognized as citizens and are therefore granted the same rights and obligations as other citizens. This is in accordance with the provisions contained in Constitution 1945 Section 28D Verse (1). Persons with disabilities are essentially entitled to be subjects of law to perform a legal act. Act Number 8 Year 2016 concerning persons with disabilities Section 9 letter b of confirms that persons with disabilities have the right to be recognized as subjects of law. Increasing the role of people with disabilities in national development is very important to do. Including persons with disabilities in all aspects of national life, including national development, can provide legal protection through legal regulations. Legal protection required by persons with disabilities, one of which is related to the manufacture of acte.

As a state of law, the Indonesian nation always puts respect for the dignity of every human being in all aspects of the nation, state and society. This is as enshrined in the Constitution of the Republic of Indonesia in 1945 in Chapter XA Section 28 F which states that "everyone has the right to communicate and obtain information to develop their personal and social environment, and the right to seek, obtain, possess, store, process, and convey information using all available channels", it is one of the guarantees from.

As a form of implementation of Section 28 F of the Constitution of the Republic of Indonesia year 1945 mentioned above, the government of Indonesia passed Act Number 8 of

2016 concerning persons with disabilities. Noting the report of the Central Statistics Agency in 3 provinces in Indonesia which states that in the province of DKI Jakarta, the total population in 2018 was 10.47 million people, while blind people with disabilities in the same year were 1,074 people or about 0.01% of the total population. Then in West Java province, the total population in 2020 was 49.97 million people, while blind people with disabilities in the same year were 3,650 people or about 0.007% of the total population. Then in Banten province, the total population in 2019 was 12.9 million people, while blind people with disabilities in the same year were 3,529 people or about 0.02% of the total population.

According to the KBBI (Big Indonesian Dictionary), the word blind comes from the word *tuna*, which means damage, and *blind*, which means eye. Blind refers to damaged eyes or visually impaired eyes. As time goes by, vision has taken on a broader meaning. According to the international definition, vision can be interpreted in legal and functional terms in relation to education.

Visual impairment itself according to WHO in (Tarsidi, 2002) define that there are two aspects that can be measured from visual impairment, namely based on visual acuity (visual acuity) and field of view (visual field).” The most common way to measure visual acuity is using the Snellen Chart. According to the World Health Organization (WHO) in (Tarsidi, 2002) blindness as visual acuity less than 3/60 (0.05) or loss of field of view in the better eye after best correction, or equal to loss of vision sufficient to be able to walk the road.

The definition of visual impairment based on the legal definition is used by the medical profession to determine whether a person is entitled to access certain benefits as regulated by applicable laws and regulations. Definition educationally (Columna; 2017; Dunlap, 2009; Tarsidi, 2002) For people with visual impairments, this can fulfill the requirements, so that it can indicate “what reading methods and reading learning methods should be used, what teaching aids and materials should be used, and what needs are related to mobility orientation.” (Somantri (2007, 66) explained, Blind Children can be grouped into two kinds, namely:

1. Blind

It is said to be blind if the child is completely unable to receive light stimuli from outside (his vision = 0).

2. Low vision

If the child is still able to receive light stimuli from outside, but the sharpness is more than 6/21, or if the child is only able to read headlines on newspapers. Theoretically reinforced also by the explanation Hadi (2005:46) that the classification of visual impairment is divided into two kinds, namely:

a. Blind

- 1) totally blind (totally blind) are those who cannot see at all both dark and light.
- 2) have residual vision (residual vision) are those who can distinguish between light and dark.

b. Low Vision

- 1) Light Perception, if only it could distinguish light and dark.
- 2) Light projection, can determine changes in light and can determine the light source.
- 3) Tunnel vision, visually impaired vision is centered so that when looking at the object can only be seen the middle.
- 4) Peripheral vision, so that the observation of objects only visible edges.
- 5) spotting vision, observation of objects there are certain parts that are not visible.

The degree of blindness based on its distribution ranges from mild to severe. Mild blindness is based on the ability to see the outline of objects. More specifically, the degree of impairment is classified as follows:

1. People with vision disorders that have the possibility of being corrected with certain medications or optical devices. People who fall into this group are not categorized in the blind group.
2. People who have vision disorders, although corrected by certain medications or optical devices, still have difficulty in vision. People who have vision disorders in the second group can be categorized as mild visual impairment, or better known as low vision, because they can still distinguish shadows.
3. People who have vision disorders that cannot be corrected with any treatment or optical device, because they are no longer able to utilize their sense of sight. In his daily life he relies on other senses to communicate, such as hearing and sense of touch. This vision disorder is better known as blindness (severe visual impairment). (Mohammad Efendi, 2008:31-32).

According to PERTUNI (Indonesian Blind Association) The Blind, those who suffer from blindness are divided into two groups: those who are completely unable to see (totally blind) and those who still have some vision but only a little, which is only able to read 12-point font under normal lighting conditions even with the aid of glasses. The visually impaired are still often considered one eye in everyday life. In the view of many people, the work that becomes the profession of people with visual impairments is a masseur. If we want to research further it is not like that. Many of the Friends of the Blind who have a profession and income that could be greater than non-blind people. The following are just some examples of people with visual impairments that have been covered by the media in Indonesia:

1. di Nugraha, works as a computer programmer who works at the National Amil Zakat Agency (BAZNAS), located in Jakarta.
2. Aryani, works as a culinary entrepreneur chicken Geprek, which has a turnover of tens of millions per month in the area Petukangan, Jakarta.
3. Edi, works as an informatics instructor and has a service business in the field of Information Technology in Jakarta.
4. Fitri, a souvenir entrepreneur who generates turnover of hundreds of millions every month in the area of West Lombok.
5. Maigel Dano, a businessman se'i fish in Rote, Nado, Kupang.
6. Miji, a culinary entrepreneur smoked fish also in the area of Kupang.
7. Monika, a culinary entrepreneur in Bekasi.
8. Ngadimin an oyster mushroom entrepreneur in the region of Blora, East Java.
9. Peni Sudiwati, a convection entrepreneur with Shabrina brand with a turnover of tens to hundreds of millions every month in East Java.

Blind people are considered unable to carry out the process of making a Acte before a notary, who is basically qualified to make an agreement or legal action because they are in a healthy condition physically and spiritually, only experiencing deficiencies in vision. The condition of the validity of the agreement according to Section 1320 of the Civil Code is the agreement of the parties who bind themselves, the ability to make an alliance, a certain object or thing, and a lawful cause. Terms of validity of the agreement one of them is the ability of the parties in making an agreement.

Persons entering into an agreement must be legally competent, i.e., they must be of legal age and sound in mind and body. Persons who are legally competent under Section 1330 of the Civil Code are those who are normally capable of understanding their actions and the consequences of their actions. Evidence with full probative force, such as authentic Actes, is essential to ascertain the truth of a legal action. Therefore, it is preferable to record an act, agreement, or other decision in the form of a notarial Acte rather than a private letter, even if it is signed on stamp paper and reinforced by the signatures of witnesses. Meanwhile, adults who are considered incapable of understanding their actions and the consequences of those actions can use the guardianship institution of the Court. Meanwhile, we would like to know whether, at the

implementation level, there have been any visually impaired clients who have made an agreement or contract at a Notary/PPAT office in the areas we are researching, namely the provinces of DKI Jakarta, West Java, and Banten.

Those who make covenants must be qualified according to the law, that is, mature and healthy physically and spiritually. (A. Ningsih, et. al, 2019; 1-28) a legally capable person according to Section 1330 of the Criminal Code is a person who is normally able to realize his actions and the consequences of his actions. Evidence with perfect evidentiary power such as authentic Acte is needed to know the truth of a legal act. (T. Din, 2019;184) therefore, a Acte, agreement, or other provision is better stated in the form of a notarial Acte than a letter under hand even though it is signed on stamp duty and reinforced by the signatures of witnesses. Meanwhile, adults who are considered incapable of realizing their actions and the consequences of their actions can use the institution of guardianship from the court. Meanwhile, we would like to know whether at the level of implementation there have been clients with visual impairments make an agreement or contract at the notary office/PPAT in the area we studied, namely the province of DKI Jakarta, West Java and Banten province.

## RESEARCH METHODS

This study uses a normative juridical method focused on regulatory arrangements that are possible for people with disabilities with visual impairments which are then compared with empirical approaches through interviews with relevant parties, such as notaries in the provinces of DKI Jakarta, Java Beret and Banten. Primary legal materials used are laws and regulations while secondary legal materials include books and Sections related to the topic of discussion. Data analysis techniques using grammatical interpretation to interpret the provisions in the legislation related to legal protection for people with disabilities with visual impairments, as well as systematic interpretation that connects the relationship between one regulation with another.

## RESULT AND DISCUSSION

Blind person is a person who has physical limitations and is classified as one of the persons with disabilities as stipulated in Act Number 8 Year 2016 About Disabilities, it is stated in Section 1 People who experience long-term physical, intellectual, mental, and/or sensory limitations are categorized as persons with disabilities. They experience obstacles and difficulties in interacting with their environment, which also hinders their participation and efficiency alongside other citizens, especially in terms of exercising equal rights.

Cancellation of building rights certificate (HGB) due to administrative defects result in the loss of legal validity of the rights that have been granted, because the process of issuing certificates is not carried out according to the procedure, using unauthorized documents, or without careful verification of juridical and physical data. In practice, a SHGB issued on a flawed legal basis would lose legitimacy and could be annulled through an administrative decision by the Minister of ATR/BPN or through a court ruling. This confirms that accuracy in the examination and validation of physical and juridical data is very important so as not to cause legal conflicts in the future. Thus, the cancellation of the SHGB not only cancels the right to land, but also serves as a reminder that the land administration system must be run with the principles of prudence, legality, and legal certainty.

People with disabilities experience barriers and difficulties to participate fully and effectively with others when interacting in everyday life. Section 1 Verse (5) of Act Number 8 of 2016 states that the protection of persons with disabilities is an effort or way that can be done

to protect, protect, and strengthen the rights of persons with disabilities. Rights of persons with disabilities who must be protected some of them are: 1. Right to equal treatment before the law; 2. Recognition as a subject of law; 3. Owning and inheriting movable or immovable property; 4. Controlling financial matters or appointing people to represent his interests in financial affairs; 5. Gain access to banking and non-banking services; 6. Obtain the provision of accessibility in the service of justice for any pressure, violence, persecution, discrimination, and/or deprivation of property; 7. Selecting and appointing persons to represent his interests in civil matters either in or out of court; and 8. Protected intellectual property rights.

Visual impairment is one type of disability that has obstacles in vision. Visual impairment is a part for people who are in their vision do not function as a medium for receiving information but still carry out daily activities like someone who can listen well. The visually impaired have a physical relationship so that in carrying out their activities only involve some senses such as the sense of the senses, the sense of smell, and hearing. (Rosalina and Apsari, 2020: 424) differences in opinions and perceptions of a system can help understand obstacles in their daily activities. Visual impairment can be called by several factors including: (a) when before the process of death, called by genetic factors, infection of pregnant women, or poisoning, (b) when the process of death, called by the process of death that lasts a long time (anoxia), the destruction of oxygenation, or the disease is usually not curable with drugs, but can be cured with drugs. (Sukawati, et.all, 2018: 417)

Agreements are often understood as something different and cause confusion.

Many people often consider contracts and agreements to be two different things, but in fact, in the Civil Code, an *overeenkomst* is a commonly used contract. In the second book, Obligations arising from contracts or agreements are referred to in Dutch as *Van verbintenissen die uit contract of Overeenkomst geboren worden*. (Denise Elysia, 2020) Contracts generally use an open legal system, which provides space for everyone to enter into agreements without exception, including persons with disabilities, as also supported by the UU PD. Civil Code Section 1338 Verse 1 states that all agreements are made legally and are binding as law for the parties who make them. This provision allows all parties to 1) enter into agreements; 2) with the parties they wish; 3) determine the content, implementation, and terms of the agreement; and 4) determine the form of the agreement.

In the past, general agreements were formed within a closed system, in which the parties involved in the agreement were determined by law. In HR 1919, actions that were considered to violate subjective rights, rules, norms, and public order were prohibited. With the advent of freedom to enter into agreements, all parties can enter into agreements as long as they comply with Article 1320 of the Civil Code. Consequently, if the subjective requirements are not met, the agreement may be rescinded.

In making a contract, the parties involved in the contract may act in its own interest and on its own behalf, which means if the person has his own interest in making the contract and he himself is legally competent to make the contract. They can also act on their own behalf. The agreement can occur in writing or unwritten, with an agreement that has been agreed but in an unwritten way it can be in the form of oral agreements, certain symbols, or in a tacit way. Written agreement is usually done either by Acte under hand or authentic Acte.

Contracts that are generally made by parties usually use clear and precise language, both in writing and verbally. The purpose of a written contract agreement is to provide legal certainty for the parties who have made the contract, and it can be used as valid evidence. If a dispute arises in the future, the agreement can be used as evidence. However, not all legal subjects can enter into written contracts, as they may have physical limitations or be part of a group of persons with disabilities. One example of persons with disabilities is the visually impaired. Blind people have impaired vision. They need assistive devices to carry out their daily activities. For example, if a blind person is walking, one of the assistive devices for people with visual impairments is a

cane, also known as a white cane. Based on its function, a cane for the blind is divided into two types: a cane for mobility orientation and a cane that helps with walking as a process of recognizing the terrain, roads, spaces, and conditions around the blind person.

It should be underlined that the visually impaired are classified into two groups, namely total blindness and lack of Vision (low vision). (A. Hastrie, 2021) total blindness is a vision condition that cannot see two fingers on his face or only see rays or light, so to understand a writing the person cannot use letters other than braille letters, while for the visually impaired low vision is a vision condition that when seeing something, must be brought closer or the eyes must be kept away from the object he sees or has a blurred view when seeing objects. (D. Mustika, 2022) low vision blind people can still read and see but must use aids such as a magnifying glass or must be in large letters. Hence whether a person is visually impaired can still be considered as someone who cannot act independently and is not capable based on reality. By generalizing a visually impaired person with a sensory disability resulting in a visually impaired person can and/or should be under the supervision.

With these limitations in vision, of course, it needs to be assessed whether blind people are considered to have skills in acting, making contracts or agreements. In Section 1330 of the Civil Code it is explained that a person who is considered incompetent is one of the adults who are under guardianship. The question is whether blind people with limitations in their vision are included in people who are under guardianship. Quoting Satrio's opinion, it is actually a matter of incompetence to act within the law, it does not have to be in accordance with reality or in other words, incompetence here is juridical incompetence or alleged incompetence (*jurisische onbekwaamheid* or *veronderstelde onbekwaamheid*), not actual incompetence (in accordance with existing reality), therefore people with disabilities with visual impairments can never be said to be.

When all persons with disabilities who are visually impaired must be placed in a guardianship, based on the interpretation contained in Section 4 letter (d) of the law on persons with disabilities who are explained rigidly, even though the individual is fit and capable and should not be placed under guardianship (it should be said medically competent), it is tantamount to stating if the act committed is not or is not due to self-awareness and is not freely desired *actus hominis*. (Sumaryono, 2006) not only that equality for people with disabilities is not only done by giving things that are usually given to normal people, but also related to how to appreciate and see that not all people with disabilities cannot do everything on their own. When a person is considered not legally capable, of course, it will have an impact on his life. The impact is that a blind person is directly or indirectly unable to perform legal acts such as making an agreement. Although the placement of a blind person “under guardianship” is one form of legal protection, it is not the best solution for a blind person because in exercising his authority must be represented by someone else.

Related to this, through an interview with Prof. Dr. I Ketut Oka Setiawan SH.,MH.,SP.N, he said that “a person with visual impairment has a natural nature of human shortcomings stipulated in the Notary Public Act. The figure of the law already gives rights to a blind person, as to a person who cannot read and write. This means that in the law, regulating the making of authentic Acte, a person who has deficiencies such as blind people can make authentic Acte without the need for authorization from the court, namely by being assisted by others in conveying his intentions, so that his intentions are conveyed as stipulated in 1320 of the Civil Code, so that his wishes and intentions can be.

Then if we look at the conclusion of the contents of the decision of the Constitutional Court number 93/PUU-XX/2022 on guardianship, that the guardianship problems caused by the condition of “stupid”, “sick” brain”, and “dark eyes” are sourced from Section 433 of the Civil Code, which is part of mental disability and/or intellectual disability as referred to In Act Number 8 of 2016. Although blind people are included in the category of sensory disabilities under Law

No. 8 of 2016, they are not included in the category of disabilities as described in Article 433 of the Civil Code. This means that blind people have independent legal standing in making authentic deeds before a notary and do not require court approval.

The similarity is that both regulate that Actes must be drawn up in the language of each country. The UUJN-P states in Section 43 Verse (2.1) that Actes must be drawn up in Indonesian, while the Kōshōnihō states in Section 27 that “a notary is not permitted to draw up Actes except in Japanese”. The difference is:

First, there is the condition of the person appearing before the court. The UUJN-P regulates that if the person appearing before the court does not understand Indonesian, the Acte can be made in a foreign language, which must then be translated into Indonesian. The UUJN-P does not directly mention the condition of blind parties, so the interpretation of foreign languages referred to in Act Number 2 of 2014 is not clearly explained as to whether it refers to languages other than Indonesian or whether it can also refer to written languages that can be understood by blind people, such as Braille. Meanwhile, the Kōshōnihō mentions conditions for parties that are not only for parties who do not understand the language used, but also clearly mentions parties who are blind/visually impaired. Therefore, the treatment of parties does not need to be interpreted differently from what is written in Section 30 of the Kōshōnihō.

Second, the facility provided by UUJN-P, namely an interpreter for blind clients, can only be understood through an interpretation of Section 43 Verse (2) above, using an analogy of foreign language translation into a language or writing that can be understood by blind clients. Meanwhile, the Kōshōnihō clearly states that if the client is blind or visually impaired, the notary must prepare an observer or companion in the preparation of the Acte to ensure that the client understands what is agreed upon in the authentic Acte being prepared.

Third, recognition of the blind community. The clear inclusion of the condition of a blind person in the Kōshōnihō, which does not need to be interpreted in any other way, shows that the Notary Act in Japan clearly recognizes the existence of the blind community, so that the Notary Act in Japan treats them clearly, without bias. Meanwhile, the Indonesian Notary Act does not clearly mention the condition of the person appearing before the notary in the law, indicating that there is no clear recognition of the blind community.

To test this research we conducted interviews via google form to several notaries representing in the provinces of DKI Jakarta, West Java and Banten. The question that we give is as follows: “Do you agree if there is a blind client facing you to make an authentic Acte without the need for court guardianship?”

The following are the answers of the notary respondents we interviewed: 1. Hj.Hermawati Parinduri, SH., MKn, notary / PPAT South Jakarta = agree, because the blind can still and are able to read and hear even with special letters. 2. Dr. H. Wira Francisca, SH., MKn, notary / PPAT Bandung = agree, as long as the person concerned understands and understands the contents of the Acte. 3. Holy Nurhidayah, SH., MKn, notary / PPAT Kota Tangerang Selatan = agree, but there must be an identifying witness from the blind facing where this witness is not a blind person. 4. I Wayan Juniantara, SH., MKn, notary / PPAT Tangerang regency = agree, because the Blind are the same as other disabilities u=which for example cannot walk, as long as the mind is still normal and Sane evidenced by the information of a healthy doctor, the person concerned is considered capable according to Section 1320 jo 1330 of the Civil Code. From here we can conclude based on research on the formulation of the first problem can be seen that a person with visual impairment is independent and does not require the ability of the court in making an authentic Acte before a notary/PPAT.

Therefore, based on our conclusions from research validated by interviews with notaries/PPATs, there are no regulations regarding observers for blind people in the preparation of authentic Actes before notaries/PPATs, as stipulated in the Notary Act in Japan. Regarding this matter, the respondents had differing opinions. Some said that observers were not necessary

in Indonesia, as this would burden persons with disabilities, and that it was sufficient for them to be accompanied by a competent person who could simply assist them. Meanwhile, respondents who agreed that observers should be implemented in Indonesia stated that while there are currently no regulations in place, it is recommended that the Government issue a Government Regulation stipulating the presence of observers for persons with disabilities with predetermined qualifications.

## CONCLUSION

There is a condition facing. In UUJN-P regulates the condition of the person who does not understand Indonesian, the Act can be made in foreign, which then remains translated in Indonesian. UUJN-P does not mention directly the condition of blind people, so that the interpretation of foreign languages referred to in Act No. 2 of 2014 is not explained precisely whether what is meant is a language other than Indonesian or it can also be a written language that can be understood by the blind such as braille. While in Kōshōnihō, mention the condition of the face that is not only for the face that does not understand the language used, but clearly mentions the face in the condition of the blind/blind. So that the treatment of the person does not need to be interpreted other than what is written in Section 30 Kōshōnihō.

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