



The Legal Aspect of Using Foreign Language in Notarial Deed Format

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Abstract

In the era of globalization and increasing cross-border transactions in the modern age, the involvement of foreign parties in legal relations in Indonesia has grown significantly. In practice, many foreign parties do not understand the Indonesian language but are nevertheless required to participate in the drafting of legally valid and binding deeds. This has created a need for notarial deeds to be prepared in a foreign language or at least in a bilingual format, so that the terms and intent of the agreement may be clearly understood by all involved parties. Therefore, the need of having deeds prepared in a language other than English has grown. From a judicial standpoint, the language rule is outlined in Law Number 24 of 2009 on the Flag, Language, State Emblem, and National Anthem. This law states that any product based on legislation that contains requirements must be written in Indonesian. According to Article 43 of the Law on Notary Office (UUJN-P), this is governed by when genuine deeds are being prepared. Notarial deeds that do not adhere to the requirements of Article 43 paragraph (3) of UUJN-P and are not prepared in Indonesian raising questions about their legality and authenticity. In order to find answers to the normative contradiction, this paper will use normative research methodologies in a statutory manner to investigate the execution of notarial deeds written in a language other than English and the legal ramifications of these deeds.

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Introduction

The need to document agreements between legal subjects from various countries has become increasingly important in this modern era, directly impacting notarial practice in Indonesia, especially in drafting deeds involving foreign parties. Therefore, language is required as a means of communication between Indonesian and foreign parties. In the context of notariats, a notary is needed to provide protection and legal certainty regarding language aspects in civil law for parties creating deeds. As a public official providing legal services, the notary must obtain protection and guarantees to ensure legal certainty related to the use of foreign languages in deed preparation.

Juridically, the authority of notaries to make deeds is regulated by Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (UUJN) and Undang-Undang Nomor 2 Tahun 2014 yang mengubah UUJN (UUJN-P). In these laws, the notary is defined as a public official authorized to make authentic deeds and other authorities according to statutory provisions. The notary is not funded or salaried by the State but receives honoraria from clients using their services ^[1]. Furthermore, Article 1 paragraph 7 of UUJN declares that a deed executed by or in the presence of a notary public in accordance with the prescribed form and processes is an authentic deed. A deed copy, which is an identical replica of the original document with a declaration of content similarity, and a deed minute, which is the original document with the signatures of the parties, witnesses, and notary all

¹ Darus, M.L.H., 2017, Hukum Notariat dan Tanggung Jawab Jabatan Notaris, UII Perss, Yogyakarta. p. 8.

preserved in the protocol, make up an authentic deed. Notaries are authorized to make legitimate deeds pertaining to any actions, agreements, and stipulations that are needed or desired by law, as stated in Article 15 of the UUJN-P. They are also able to store documents, provide certainty of the formation date of the deed, and provide grosses, copies, and extracts of the deeds. Notaries also have the power to render legal advice, validate signatures, register, create copies and certify photocopies, authenticate underhand writings, make deeds pertaining to property, and take minutes at auction. Statutory rules may allow other authorities to apply.

Authentic deeds are differentiated into two types: official deeds (made by authorized officials describing what is seen and done without other parties' initiative, with full responsibility of the notary) and party deeds (made at the request of interested parties and contain comparison about the authority of the parties in performing legal acts).

With increasing cross-border transactions, foreign parties' involvement in legal relations in Indonesia has also risen. Many foreign parties do not understand the Indonesian language but must still be involved in making legally valid and binding deeds. Therefore, there is a need to make notarial deeds in a foreign language or bilingual so that the intent and content of the agreement can be understood by all parties. This aspect is regulated in Article 43 of UUJN-P, which mandates deeds to be made in Indonesian. However, if the appearing parties do not understand the language, the notary must translate or explain the deed's content in a language understood. If desired, the deed can be made in a foreign language with the assistance of an official translator.

Language plays a crucial role in law because through language, humans can understand, enforce, and uphold law in society. This is also affirmed in Article 36 of the 1945 Constitution which states that Indonesian is the state language used officially in various fields, including law. Law Number 24 of 2009 further emphasizes the use of Indonesian in legal products to maintain language uniformity, legal certainty, and document readability. In notarial deeds, the Indonesian language used has specific characteristics in structuring terms and content and must follow standard language rules.

According to linguists, language consists of sound and meaning and functions as a tool of communication and connection among social groups. Article 43 paragraph (1) of UUJN-P explains that Indonesian in deeds must conform to standard rules. Notaries must use language according to these rules^[2]. Legal language is characterized by intelligence, coherence of thought, clarity, and formality.

In practice, the provision in Article 43 paragraph (3) of UUJN-P regarding deed creation in a foreign language causes varying interpretations among notaries. Some interpret foreign language as English, while others broaden it to include all languages except Indonesian, including regional languages. Uncertainty also arises about whether this provision applies only to deed minutes or also deed copies. This inconsistency creates

confusion, especially for notaries dealing with foreign parties. Consequently, it is common to find deeds prepared bilingually or fully in a foreign language, particularly for international purposes such as investment, joint venture agreements, and company acquisitions. However, there is no detailed technical regulation governing the format, method, and limits of foreign language use in notarial deeds. This technical ambiguity allows diverse practices and potentially causes legal uncertainty, especially in evidence in court.

Given this normative confusion, an in-depth study on the legal aspects of foreign language use in notarial deed formats is essential.

Problem Formulation

1. How is the legal aspect of using a foreign language in the format of a notarial deed?
2. What are the legal consequences of a notarial deed made using a foreign language?

Purpose

This writing aims to analyze the implementation of drafting notarial deeds in a foreign language and to examine the legal consequences of notarial deeds made using a foreign language, in order to understand the practical implications and legal certainty related to the use of foreign languages in the preparation of notarial deeds.

Discussion

A. Legal Aspect of Using Foreign Language in Notarial Deed Format

There are two main categories of legal resources: formal and material. Formal legal sources are recognized by their form because the law applies generally, is binding, and is known and obeyed by society. The main characteristic of these sources is that they are formulated in a specific form that applies generally to all people. Meanwhile, material legal sources are social factors in society that influence the formation of law as well as the content of legal regulations^[3]. In the concept of a state of law, conflicts may arise between legal sources, especially the legislation in force in the country. According to Bagir Manan, a good legislative regulation must fulfill three bases^[4]: first, the juridical basis requiring the regulation to be made by an authorized official; second, the sociological basis requiring the regulation to align with societal needs and conditions; and third, the philosophical basis demanding the regulation to realize legal ideals such as justice and order. Therefore, legislation must reflect these core values and not contradict other regulations. An example of such conflict exists between Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris and Undang-Undang Nomor 24 Tahun 2009 tentang Bendera, Bahasa, dan Lambang Negara serta Lagu Kebangsaan. Formally, Undang-Undang Nomor 2 Tahun 2014 was enacted to fulfill society's need for legal certainty by providing written evidence prepared before an authorized official. This law updates

² Herlien Budiono, 2013. *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, Buku Kedua, Citra Aditya Bakti, Bandung, p. 265.

³ Ni'matul Huda, 2005, *Negara Hukum, Demokrasi & Judicial Review*, Yogyakarta: UII Press, p. 39.

⁴ Rachmat Trijono, 2013, *Dasar-Dasar Ilmu Pengetahuan Perundang-Undangan*, Jakarta: Papar Sinar Sinanti, p. 22.

Undang-Undang Nomor 30 Tahun 2004 and is characterized as responsive and populist, reflecting justice and public expectations, especially of notaries. Its formulation was participatory, involving broad public input, and aspirational as it contained content aligned with public will, emerging post-reformation to meet social demands. Notaries, as members of the legal profession, need certain safeguards and assurances in order to practice with confidence. Undang-Undang Nomor 24 Tahun 2009, which governs the use of the Indonesian language in official documents, such as notarial deeds, has horizontal relations with the Notary Act as well. The reasoning for this legislation is that the national anthem, flag, language, and state emblem are all emblems of national identity and unity that are embodied in the 1945 Constitution. They stand as cultural expressions that stem from the nation's historical variety while also expressing the nation's unity in its battle for independence. Previously, such matters were not regulated in law. However, Article 43 paragraph (3) of the Notary Act opens the possibility of notarial deeds being made in languages other than Indonesian if the parties desire, although this contradicts previous paragraphs mandating the use of Indonesian. In practice, notaries create authentic deeds fulfilling formal elements^[5]: formed in accordance with legal provisions, made before a public official, and at a designated place. Thus, notaries must follow the procedures and forms regulated in the Notary Act, especially Article 43. The regulation in paragraph (3) arises from the parties' request to use a foreign language, not the notary's initiative, conflicting with the Indonesian language requirement in Article 43 paragraph (1) and Article 27 of Undang-Undang Nomor 24 Tahun 2009.

Causes of the inconsistency between these regulations include formation by different institutions at different times, changes in authorized officials, dominance of sectoral rather than systematic approaches, weak inter-agency coordination, limited public participation, and lack of universal methods and standards across legislative bodies^[6]. Article 27 of Undang-Undang Nomor 24 Tahun 2009 affirms that the use of Indonesian language is mandatory in state documents, including notarial deeds stored by notaries, thus this law cannot be ignored. Ahmad Adjie Suseno adds that the use of Indonesian in deeds protects the dignity and honor of the Republic of Indonesia, because notaries are obliged to maintain it.

In case of conflict, several legal principles can apply: *lex superior derogate lege inferiori* (a higher rule overrides a lower one), *lex specialist derogate lege generale* (a specific rule overrides a general one), and *lex posterior derogate lege priori* (a later rule overrides an earlier one)^[7]. The principle *lex specialist derogate lege generale* is most relevant here since Undang-Undang Nomor 2 Tahun 2014 is a special regulation concerning the notary office, but it does not override the

obligation to use Indonesian according to Undang-Undang Nomor 24 Tahun 2009. Bambang S. Oyong argues that the obligation to use Indonesian is a formal requirement in deed-making, so Article 43 paragraph (3) of the Notary Act should be deleted as it contradicts the prior paragraph and Article 27 of Undang-Undang Nomor 24 Tahun 2009. Purnadi Purbacaraka and Soerjano Soekanto explain that the principle means when a special event occurs, the law specifically regulating that event applies, even if the event is also regulated by a more general law^[8]. Bagir Manan adds in his book "Hukum Positif Indonesia" that general provisions remain valid unless a special rule governs them; the special rule must be equal in rank to the general rule, and both must belong to the same legal domain.

Thus, the foreign language provision in Article 43 paragraph (3) of the Notary Act as *lex specialis* cannot override the obligation to use Indonesian under Undang-Undang Nomor 24 Tahun 2009, because notarial deeds are state documents that must be stored in the notary's protocol as deeds minutes, deed copies, and excerpts. In conclusion, the provision in Article 43 paragraph (3) of Undang-Undang Nomor 2 Tahun 2014 conflicts with Undang-Undang Nomor 24 Tahun 2009 and is inconsistent with Article 43 paragraph (1) of the same law, since the obligation to use Indonesian in deed-making is a formal requirement that notaries must comply with according to the law.

B. Legal Consequences of Notarial Deeds Made Using Foreign Languages

In notarial practice, a notarial deed is a legal document that holds perfect evidentiary power and an important position within the Indonesian civil law system. However, for a notarial deed to be recognized as authentic, it must meet formal requirements in accordance with statutory regulations^[9]. One crucial formal requirement is the language used in the deed. The use of a foreign language in a notarial deed without fulfilling legal provisions can trigger various legal consequences, both for the deed itself and the notary's liability. As regulated in Article 43 of UUJN-P, notarial deed creation must use the Indonesian language. If the appearing party does not understand the language used by the notary, the notary is required to explain or translate the deed's content into a language understood by the party or to bring an official translator. Additionally, Article 31 paragraph (1) of the UU Bendera, Bahasa, dan Lambang Negara serta Lagu Kebangsaan also mandates that all official state documents must use Indonesian. These provisions confirm that the use of Indonesian in notarial deeds is imperative, not optional. Violation of this rule may undermine the deed's formal validity and directly affect its authenticity. Based on Article 1868 of the Civil Code, an authentic deed is a deed made in a form prescribed by law, by or before an authorized public official. If a deed is made in a foreign language without fulfilling the formal requirements under UUJN-P, such as not involving a sworn translator or lacking

⁵ Habib Adjie, 2015, *Penafsiran Tematik Hukum Notaris di Indonesia* berdasarkan Undang-Undang Nomor 2 Tahun 2014 tentang perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, Bandung: PT Refika Aditama, p. 43.

⁶ "Harmonisasi dan Sinkronisasi Peraturan Perundang-undangan", Direktorat Jenderal Peraturan Perundang-undangan, Kementerian Hukum dan HAM RI, 2018, pp. 4- 6.

⁷ Sumberilmuhukum, "Pengertian dan Contoh Asas Hukum," Sumberilmuhukum.com, 2017.

⁸ Shinta Agustina, *Implementasi Asas Lex Specialis Derogat Legi Generali Dalam Sistem Peradilan Pidana*, Jurnal Hukum, Fakultas Hukum Universitas Andalas, p. 504.

⁹ Santika, I.B.A.P., Renaya, N. and Mahaputra, K.Y., 2023. Notary Authority As a Class Ii Auction Official in the Perspective of the Notary Office Act. *NOTARIAL Jurnal Kenotariatan*, 8(2), pp.98-104.

adequate legal explanation, the deed does not meet the legally mandated form. Consequently, the deed loses its authenticity and is considered only a private deed. As Habib Adjie explains, deeds not meeting regulatory requirements—especially regarding form and procedure—cannot be categorized as authentic but only have evidentiary power equivalent to private deeds^[10]. Thus, noncompliance with language rules reduces the legal status of the deed from conclusive evidence to evidence requiring additional proof.

Legal consequences of drafting deeds in a foreign language include potential nullification of the deed if made without fulfilling requirements, meaning it is regarded as never having existed from the outset. Moreover, the evidentiary value drops from strong authentic deed status to weaker private deed status. Notaries may also face administrative and civil sanctions for violating statutory provisions in deed creation. These formal defects affect legal certainty and protection for involved parties, such as the possibility of deed annulment by courts due to lack of valid agreement since one party may not understand its content, material and legal losses suffered by parties misled or misunderstanding the deed, and loss of executorial power if the deed contains an executorial clause. This was reflected in the Supreme Court Decision No. 2808 K/Pdt/2014, which held that deeds made in a foreign language without a sworn translator's presence and without the notary's explanation to foreign parties were invalid as authentic deeds. This ruling affirmed that language comprehension is a substantial element in forming party consensus, not merely a technicality.

When a deed loses authenticity due to language misuse, the notary as the public official responsible may face administrative, civil, and in cases of gross negligence or intentional acts, possible criminal liability. Article 16 paragraph (1)(a) of Notaries are required under UUJN-P to conduct themselves in an honest, meticulous, independent, and unbiased manner while also protecting the interests of all parties concerned. Ethical and professional infractions may result from neglecting these responsibilities, particularly in making sure the parties comprehend the contents of the deed. The Notary Supervisory Council may impose sanctions ranging from written warnings, temporary suspension, to dishonorable dismissal recommendations for serious or repeated violations.

According to Subekti, a valid agreement occurs only if parties fully understand the agreement's meaning; defects in communication or language may render the agreement void^[11]. Internationally, cross-border deed drafting usually requires clarity through official translation or bilingual agreements. Indonesia holds a similar principle but maintains Indonesian as the national legal basis. Use of foreign languages in deeds is permitted only under formal conditions such as involving a sworn translator or providing sufficient legal explanation in a language understood by the parties. Nonconformity with these procedures may invalidate the deed's authenticity, reducing evidentiary strength to that of a private deed.

Therefore, in notarial practice, language use must be taken

seriously and not regarded as secondary. Language use must adhere to cautionary principles and normative rules so that deeds provide legal certainty, protection, and authentic evidentiary power for involved parties. Language is an essential element of authentic deeds pursuant to Article 1868 of the Civil Code and Article 43 of UUJN-P. Indonesian is legally designated as the official language mandatory for every notarial deed to ensure legal proof and uphold national legal sovereignty.

In Philipus M. Hadjon's theory of authority, authority (*bevoegdheid*) is the legal power granted by norm to officials or institutions to act and produce legally valid consequences. Any official act without proper legal authority can be categorized as *ultra vires* (beyond authority) or *détournement de pouvoir* (abuse of power)^[12]. In the notary context, drafting a deed in a foreign language without meeting Article 43 UUJN-P requirements, e.g., without using a sworn translator, constitutes abuse of power as it exceeds authorized authority. The legal consequence is that the deed downgrades to a private deed for failing formal requirements like language understandable to parties and notary. Furthermore, misunderstandings of deed content may damage parties and expose the notary to civil claims and administrative or ethical sanctions. Formally, the notary acts beyond authority by violating explicit Article 43 provisions. Substantively, the deed lacks validity as evidence and cannot serve as a strong legal basis in dispute resolution. Regarding legal accountability, the notary may be summoned by the Notary Supervisory Council for professional liability or be subject to civil liability if harmed parties' initiate lawsuits.

Closing Conclusion

1. The clause in Article 43 paragraph (3) of Undang-Undang Nomor 2 Tahun 2014 about the Notary Public is at odds with the clause in Undang-Undang Nomor 24 Tahun 2009 on the National Language, Spelling, and Song. In addition, the wording of this provision does not align with the wording of Article 43 paragraph (1) of Undang-Undang Nomor 2 Tahun 2014. The reason for this is the explicitly regulated and mandatory need to utilize Indonesian language while preparing notarial deeds, as stated in Article 27 of Undang-Undang Nomor 24 Tahun 2009 tentang Bendera, Bahasa dan Lambang Negara serta Lagu Kebangsaan.
2. The use of Indonesian in making notarial deeds is a formal obligation that must be complied with according to statutory regulations to maintain the authenticity and evidentiary power of the deed. The use of a foreign language without fulfilling legal requirements, such as failing to involve a sworn translator or providing adequate explanation, may result in the deed losing its authentic status, being downgraded to a private deed, and creating risks of annulment, losses for interested parties, and legal liability for the notary. Therefore, notaries must act within their lawful authority to ensure that the deeds they create provide legal certainty, legal protection, and strong evidentiary power for all interested parties.

¹⁰ Habib Adjie, 2011, *Hukum Notaris Indonesia*, Refika Aditama, Bandung, p. 84.

¹¹ Subekti, 2005, *Hukum Perjanjian*, PT. Intermasa, Jakarta, p. 17.

¹² Philipus M. Hadjon, 2011, *Pengantar Hukum Administrasi Indonesia*, Seventh Edition, Gadjah Mada University Press, Yogyakarta, pp. 87-88.

Suggestions

1. The provision in Article 43 paragraph (3) of Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris should be revised or repealed to align with Article 27 of Undang-Undang Nomor 24 Tahun 2009 tentang Bendera, Bahasa, dan Lambang Negara serta Lagu Kebangsaan, and to avoid conflict with Article 43 paragraph (1) of Undang-Undang Nomor 2 Tahun 2014. This step is important to eliminate normative conflicts and ensure consistency in the use of the Indonesian language in the preparation of notarial deeds.
2. Supervision and law enforcement need to be strengthened to ensure that notaries always comply with the obligation to use Indonesian in making authentic deeds. If limited use of a foreign language is necessary, it must be accompanied by a sworn translator or adequate legal explanation to maintain the authenticity of the deed and prevent potential annulment and legal risks for notaries and related parties. Education and training for notaries regarding these provisions are also essential to guarantee legal protection and certainty for all parties involved.

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