

Legal Position of the Surrogate as a Substitute For a Signature In a Notarial Deed

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Abstract: A handwritten signature on an authentic deed serves a fundamental legal function as an identifier and acknowledgment to legalize all rights and obligations outlined in the deed. According to the regulation concerning the Notary Public Functional Position (Undang-Undang Jabatan Notaris), an authentic deed must contain the signatures of all parties involved (the notary public, witnesses, and the first and second parties) as mentioned in the deed. However, this regulation can create issues when one of the parties is unable to provide a signature on the authentic deed. This research analyzes how notarial deeds are signed for people who cannot sign. This research is normative legal research using a statutory approach and a conceptual approach. The results of this study show that there are three procedures for using a Surrogate in authentic deeds First procedure: If the individual cannot read or write but has no physical disabilities (they have all their fingers and can make a signature), a fingerprint will be used as the Surrogate. This should be noted and attached to the last page of the authentic deed; Second procedure: If the individual can read and write but has issues with their fingers (due to an injury or the absence of fingers), the Surrogate can be used, but it must be accompanied by an official medical letter from a doctor or hospital. This should also be noted and attached to the last page of the authentic deed. Third procedure: If the individual has visual impairments (is blind), the Surrogate can be used, but it must be accompanied by an official medical letter from a doctor or hospital. This should be noted and attached to the last page of the authentic deed.

Keywords: : Notarial Deeds, Signature, Surrogate

1. Introduction

The 1945 Constitution of the Republic of Indonesia stipulates that the Republic of Indonesia is a legal state. The principle of the rule of law guarantees certainty, order, and protection of laws that have truth and justice as their core. Certainty, order, and legal protection require, among other things, that legal traffic in community life requires evidence that determines a person's rights and obligations as a legal subject in society.

Authentic deeds, as the strongest and most complete evidence, play an important role in every legal relationship within society. In various business relationships, banking activities, land transactions, social activities, and more, the need for written proof in the form of authentic deeds is increasing, in line with the growing demand for legal certainty in various economic and social relations at national, regional, and global levels. Based on the formulation in Article 1868 of the Burgerlijk Wetboek, the conditions for a document to be considered an authentic deed are as follows: 1) It must be made in the form determined by law; 2) It must be made by and before an authorized official; and 3) It must be made in a place within the jurisdiction of the official who made the deed.

In Article 1, number 1 of Law Number 30 of 2004 concerning the Position of Notaries, as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004

(hereinafter referred to as UUJN), a Notary is defined as a public official with the authority to make authentic deeds and perform other duties. The definition provided by this Law refers to the duties and authorities carried out by a Notary, meaning that a Notary acts as a public official with the authority to create authentic deeds and perform other functions as regulated by the Notary Position Law .

An authentic deed essentially contains formal truth in accordance with what the parties have communicated to the Notary. However, the Notary is obligated to ensure that the contents of the Notarial Deed are fully understood and align with the wishes of the parties. This is done by reading the deed aloud, thereby clarifying its contents, and by providing access to information regarding relevant laws and regulations to the parties who will sign the deed. Thus, the parties can freely decide whether to agree or disagree with the contents of the Notarial Deed they are about to sign.

The signature on an authentic deed has two fundamental legal functions: 1) It serves as the signatory's identification; and 2) It acts as an indication of the signer's agreement to the obligations attached to the deed. Based on these two legal functions, it can be concluded that a signature is an identity marker that also signifies agreement to the obligations associated with the deed.

According to the UUJN, a signature is a formal requirement that must be fulfilled in creating Deed Minutes. Article 1, number 8 of the UUJN states that the minutes of a deed are the original document containing the signatures of the presenters, witnesses, and the Notary, which are kept as part of the Notary Protocol. This implies that the minutes must include the signatures of the presenter, the witnesses, and the Notary. From these provisions, a question arises: What happens if a presenter is physically unable to sign?

In practice, it is not uncommon for someone to be unable to sign due to physical limitations, such as a stroke, Parkinson's disease, or other conditions. In such cases, Notaries often take the person's fingerprint as a substitute for a signature by physically lifting the person's hand to do so. However, this may not represent the free will of the individual, and if it is later proven that the person was coerced, the Notarial Deed can be annulled by a court decision.

Article 44, paragraph (1) of the UUJN states that immediately after the deed is read, it must be signed by each presenter, witness, and the Notary, except when a presenter is unable to sign and provides a reason. Based on these provisions, a signature can be replaced by a statement, which in notarial science is known as a "Surrogate." Surrogate comes from Dutch and means "replacement." In the context described above, a Surrogate serves as a substitute for a signature when the person appearing is unable to sign for a specific reason, which must be explicitly stated in the deed. According to Habib Adjie, this is referred to as "information about being prevented from writing" .

There is still limited understanding of how a Surrogate is used in the realm of Notarial Affairs in Indonesia, leading to concerns about the legal standing of notarial deeds in which a Surrogate is employed as a substitute for a signature. This concern arises because the UUJN does not provide clear procedures for using a Surrogate, nor does it specify whether a Surrogate can be applied under the "prevented from writing" provisions in a Notarial Deed.

2. Method

In this research, a normative juridical research type is used, meaning that this research is based on a literature review of a set of existing norms, especially Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. This research uses an approach through statutory regulations (*Statute Approach*) and a research approach through concepts, principles, doctrine and opinions of scholars (*Conceptual Approach*).

3. Discussion

3.1. Position of Signature in Notarial Deed

A signature, derived from the word "signare," which means "sign" or initials, is a form of handwriting that often includes a specific style of a person's name or another identification mark. It is written on a document as proof of personal identity and intent. This sign is a handwritten symbol of a person's name, serving as a personal mark indicating that the individual knows, accepts, or agrees.

A dissertation titled *Het Rechtscharakter van de Onderteekening*, written in 1892, explores this topic. Through this dissertation, Mr. C. J. J. De Joncheere earned his doctorate in law (de rechtswetenschap) in Amsterdam, the Netherlands. The dissertation discusses, among other things, the purpose and intent (strekking) of a signature and the conditions required for a piece of writing to be recognized as a signature. It raises questions such as whether a simple signature is sufficient, or whether crosses, initials, or other difficult-to-read markings can also be considered valid signatures ¹.

The meaning of the word "to sign" (ondertekenen) etymologically (the study of the origins of a word) is easy to determine, namely to place a sign (sign) beneath something. However, according to De Joncheere, in practice, the definition mentioned above is not entirely satisfactory, as everyday usage gives the word a more nuanced meaning; this may also have been the intent of the legislator. Nevertheless, there is no clear definition of the word "signing" in the law.

De Joncheere argues that a signature does not exist in isolation. His view is based on the Dutch word *ondertekenen*. The detailed translation of this word is "to make a mark under" (onder). Thus, "making a sign" must be "under" something, and that something is writing (the translation of the element "under" does not have an exact equivalent in Indonesian) ². Furthermore, according to De Joncheere, the form of a signature should be as follows:

¹ Tan Thong Kie, *Studi Notariat & Serba-Serbi Praktek Notaris* (Jakarta: PT Ichtiar Baru van Hoeve, 2007).

² Kie.

- a. A signature made by writing slowly, as if it were painted by someone who does not write often, resulting in clearly legible letters, can be compared to the signature of someone whose daily work involves signing many letters and documents. For example, a bank cashier who signs dozens of receipts daily may have a signature that becomes difficult to read and appears as mere scribbles. Can this latter form of writing also be considered a valid signature? Legal experts disagree on this matter. Diephuis argues against considering such a scribbled signature as valid, believing that there should be a distinction between the signature of someone who cannot write and the signature of someone who does not care to write neatly. On the other hand, De Joncheere believes that a person's signature must have individual characteristics (individual character) reflected in the letters they write. Therefore, De Joncheere concludes that any signature written by hand meets the requirements for a valid signature, regardless of its form.
- b. Signatures made with printing machines (drukkers), including signature stamps, are considered by De Joncheere to lack the individual characteristics necessary for a valid signature.
- c. According to De Joncheere, signatures made using clichés (such as those on banknotes) contain all the subtle details of a signature and fulfill the requirement of authenticity, namely the individual nature of the writing.
- d. A signature made with the help of another person is not considered valid as a signature ³.

Scientifically, the aim and purpose of a signature is a legal fact (*rechtsfeit*), namely a statement of the signature maker's will (signatory), that by affixing his signature under a writing he wishes that the writing be considered in law as his own writing. This is the legal meaning of signing ⁴.

Regarding the purpose of a signature in a Notarial deed, Arianto Mukti Wibowo believes that the purpose of a signature is to characterize or individualize a deed. According to Sudikno Mertokusumo, a deed is a signed document as evidence, which contains events that form the basis of a right or obligation, which from the beginning was created deliberately for the purpose of proof ⁵. So, to be classified as a deed, the letter must be signed. The requirement for a signature has no other purpose than to differentiate one deed from another deed or from a deed made by another person. So the function of a

³ Hatta Isnaini Wahyu Utomo, *Memahami Peraturan Jabatan Pejabat Pembuat Akta Tanah* (Jakarta: Kencana, 2020).

⁴ Hatta Isnaini and Hendry Dwicahyo Wanda, "Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah Dalam Peralihan Tanah Yang Belum Bersertifikat," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 3 (July 2017): 467–87, <https://doi.org/10.20885/iustum.vol24.iss3.art7>.

⁵ Sudikno Mertokusumo, *Hukum Acara Perdata* (Yogyakarta: Liberty, 2002).

signature is none other than to characterize or individualize a deed. The deeds made by A and B can be identified from the signatures affixed to the deeds. Therefore, a name or signature written in block letters is not enough, because from the block letters, not many characteristics or characteristics of the maker are visible.

Furthermore, according to Habib Adjie, the function of the face's signature in the view of the notary includes:

- a. Self-identification or personal identity of the person concerned;
- b. Proof that the person concerned has appeared before a notary;
- c. Agreement that the applicant agrees with everything stated or stated in the deed⁶.

In general, signing an authentic document or deed aims to fulfill the four elements below:

1. Proof: A signature authenticates a document by identifying the signer with the signed document.
2. Formality: Signing a document 'forces' the signing party to acknowledge the importance of the document.
3. Consent: In some conditions specified in the law, a signature expresses the signing party's consent to the contents of the signed document.
4. Efficiency: A signature on a written document often provides clarification on a transaction and avoids implied consequences beyond what has been written.

3.2. Surrogate as a Substitute for Signature in a Notarial Deed

As previously mentioned, the signing of the deed by the parties is a condition that cannot be omitted in a "partij-akte" and is a formal requirement for an authentic deed that has been determined by the UUJN.

The requirement for a signature in a Notarial deed is not necessary if it is related to a Relaas deed (minute deed). Based on Article 46 of the UUJN, a Relaas deed does not always contain a signature, in fact a signature of the facer is not required. For example, in the articles of association of Limited Liability Companies, Foundations, Associations and Cooperatives there is always a clause that if the Minutes of Meeting are prepared by a Notary, then the signatures of the presenters are not required.

Regarding the signature in the Partij deed, R. Soesanto argued that a signature by a person who cannot write but with the help of another party is not recognized as his signature. Giving a stroke or a cross cannot be considered a signature. The signature may or may not include a first name. A woman who is married or widowed must sign her own name."

⁶ Adjie, *Penafsiran Tematik Hukum Notaris Indonesia (Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris)*.

R. Soesanto's opinion above is in line with the opinion of G.H.S. Lumban Tobing which states that the Deed must be signed by all parties present. The law requires that the signing be carried out by the presenters themselves, meaning that the signatures must be affixed by the presenters themselves. This means that the signing of the deed by the party must not be controlled by other people and if this happens then the signing is considered non-existent .

Still according to G.H.S Lumban Tobing, The provisions in Article 28 paragraph (3) of the Notary's Position Regulations open the way for illiterate people or people who due to accidents or other reasons cannot put their signature on a deed, so that they can also make a "partij-deed" promise in before a Notary. Meanwhile, in several cases and based on certain conditions, the signing can be omitted, but the deed also contains statements from the parties. This is made possible by Article 28 paragraph (3) of the Notary Position Regulations mentioned above .

If the parties state that they are unable to add their signatures or that they are unable to do so, then this information and the reasons for this obstruction must be stated explicitly by the Notary in the deed. Still according to G.H.S Lumban Tobing, the cases where the signature can be replaced by "surrogaat" according to the law are:

1. Cannot sign because they have not studied (illiterate) and
2. Unable to sign, even if one has learned to write, which includes all matters, where a person due to certain circumstances, whether permanent or temporary, cannot sign under the deed, even though he has writing skills .

So the person who is unable to sign it (because he is not good at writing) or because he is unable to do so, provides the following information: "I want to sign it, but I'm not good at writing and therefore I can't put my signature" or explain: "I am unable to add my signature, because".

In this case, it should be noted that the information is not like the information contained in the "partij-deed", which is given by signing it, but is an oral statement and is included by the Notary in the deed. Here, too, there is a great deal of trust in the Notary, which allows for the existence of a deed which, even though there is no signature, can be considered to contain statements from the parties, meaning a deed that is the same as a signed deed.

According to R. Soesanto, By signing the deed it means that he has agreed to the deed that was read. If the applicant is deaf, the Notary should allow him to read the deed himself and then give his signature. If the speaker is dumb and deaf, he cannot write, according to Schermer, it is sufficient to use movements, for example lip movements that can interpret something the Notary means. Unless they can explain that they can't write, in that case. The statement that he cannot write is different from the statement that he is prevented from writing. The statement of not being able to write by law is considered sufficient. It was deemed that there was no need for an excuse that he could not write. So the statement in the deed that he cannot write is a substitute for signing the deed .

According to Komar Andasasmita, After the reading of the deed is complete, the deed must be signed by each person present, the witnesses (not including identifying

witnesses) if there is a language expert, as well as by the translator and the Notary himself. If any of the parties cannot sign it due to some reason (for example illiteracy or other obstacles/obstacles) then this must be explicitly stated in the relevant deed .

According to R. Soegondo Notodisoerjo, As soon as the deed is read, it is signed by the parties, instrumental witnesses and finally by the Notary. The identifying witnesses did not sign. If there is an interpreter who translates the deed then he or she also signs it. The sequence as mentioned above in signing a deed is a formality that cannot be ignored. If the applicant is not good at writing his signature or is unable to sign, this must be stated in the deed and if he is unable to sign, it must also be stated because he is absent. In this case, even if the deed is not signed by one or more of the parties, it has legal force and remains valid as an authentic deed as long as the signature is not mentioned .

According to Habib Adjie, when the presenter cannot put his signature, then the replacement signature is called a Surrogate, whose strength is the same as a signature, namely a statement from the presenter (not a Notary's statement) written by the Notary, that he can affix his signature for certain reasons. which is stated expressly in the deed .

Regarding the provisions for signing a Notarial deed, it is regulated in Article 44 paragraph (1) and paragraph (2) UUJN. After the deed is read to the presenters and witnesses, the deed must be signed so that it becomes a perfect deed. If one of the presenters or all of them cannot sign the deed, then it must be stated in the closing section of the deed the reasons why the presenters cannot put their signatures. With this information in the notarial deed, the deed remains valid as an authentic deed even without a signature from the person present who cannot sign.

Notaries who do not comply with the provisions of Article 44 paragraphs (1) and (2) UUJN have sanctions as stated in Article 44 paragraph (5) UUJN, namely that the position of the deed is degraded to the strength of proof as a private deed and if it is detrimental to the person present, the person concerned can demand compensation, costs and interest from the Notary concerned.

3.2. Procedures for Using Surrogates in Notarial Deeds

Article 44 paragraph (1) and paragraph (2) UUJN has accommodated someone who is unable to add a signature to make a partij deed before a Notary. The person who is unable to sign the deed can be caused by 3 (three) possibilities, namely:

1. The face cannot read and write even though he physically has complete hands and fingers.
2. The person can read and write but physically cannot sign because his hand hurts or he doesn't even have fingers or hands.
3. Facing people have limited vision (blind).

From the possibilities mentioned above, for each possibility of the person not being able to sign, there are different ways to replace the position of the signature.

According to Habib Adjie, for presenters who can read and write but are physically unable to sign because their hands are sick (for example, stroke, tremor, Parkinson's) or don't have fingers or don't have hands, if something like this happens, use a Surrogate.

Regarding the use of a Surrogate which occurred due to the person's physical limitations, the person also attached a doctor's certificate stating that the person at that time was really sick and could not function his hands properly. The certificate from the doctor will also be attached to the minutes of the deed.

Normatively, it is not regulated regarding the obligation to attach a doctor's letter when using a Surrogate to a Notarial deed, but this is merely a form of the Notary's principle of prudence in order to protect the interests of the parties and the Notary himself.

For visitors who physically have complete hands and fingers, but cannot read and write, they must put their fingerprints on the sheet provided for this purpose. In this case, the affixing of certain fingerprints is equivalent to a signature. This can be called "cannot write caption".

Article 16 number (1) letter c UUJN states that one of the Notary's obligations is to attach letters and documents as well as the person's fingerprints to the minutes of the deed. This provision provides space for the Applicant who is unable to put his signature and as proof the person concerned comes before the Notary and agrees with the deed made before the Notary by affixing his fingerprints on the sheet that has been provided for this purpose. And it can be considered as not appearing and not agreeing if there are no fingerprints, which will make it difficult for the Notary if there is denial by the presenters ⁷.

In notarial practice, errors are often encountered in the use of substitute signatures in notarial deeds. There are still many habits that are carried out by Notaries, namely, when a presenter arrives who cannot sign because his hand is sick or there are limitations in the function of his hand, then the hand of the presenter is raised by the Notary or witness or employee of the Notary's office to have his fingerprints taken. This can be categorized as a form of coercion or not the free will of the person involved ⁸.

Based on the formulation of Article 1321 BW, if an agreement is made due to mistake or coercion and is not a matter of free will, then the agreement is not valid. Thus, if the applicant then sues the court and can prove that coercion as mentioned above has occurred, then based on the judge's decision the deed can be cancelled.

From what has been explained above, it follows that the applicant is unable to add his signature to the Notarial deed because:

⁷ Hatta Isnaini Wahyu Utomo, "Legal Counseling By A Notary As A Means To Produce A Balanced Agreement," *NOTARIL Jurnal Kenotariatan* 7, no. 1 (June 3, 2022): 1–8, <https://doi.org/10.22225/jn.7.1.2022.1-8>.

⁸ Hatta Isnaini and Wahyu Utomo, "The Existence of the Notary and Notarial Deeds within Private Procedural Law in the Industrial Revolution Era 4.0," *International Journal of Innovation, Creativity and Change* 10, no. 3 (2019): 128–39.

1. The person unable to read and write even though he physically has complete hands and fingers.

In this case, fingerprints are used which are affixed to the sheet provided for this purpose and later the sheet is attached to the minutes of the deed and provides information at the end of the deed. Furthermore, regarding the use of fingerprints as a substitute for a signature, it is stated at the end of the deed by stating: " - After I, the Notary, read this deed to the presenters and witnesses, then the presenters stated that they had understood everything written in this deed, at that very moment Mr/Mrs..... put his fingerprints on a separate sheet attached to the Minutes of this Deed, while the other presenters, the witnesses and I, the Notary, sign this deed."

2. The presenter can read and write but physically cannot sign because his hand hurts or he doesn't even have fingers or hands.

In this case, Surrogate is used. Regarding the use of a Surrogate in this condition, it is based on information from the applicant and not information from the Notary. To further guarantee the truth regarding the condition of the applicant who is experiencing physical limitations which means he is unable to sign, a doctor's certificate is attached. Furthermore, regarding the type of disease which is the reason why it is prevented from writing or signing, it is stated at the end of the deed by stating: " - After I, the Notary, read this deed to the presenters and the witnesses, then the presenters stated that they had understood everything written in this deed, according to the presenter's statement Mr/Mrs..... they were unable to add their signatures due to illness.. ..., according to the doctor's certificate dated....., while the other witnesses, the witnesses and I, the notary, signed this deed."

3. Facing people have limited vision (blind).

In this case, Surrogate is also used. Regarding the use of a Surrogate in this condition, it is based on information from the applicant and not information from the Notary. To further guarantee the truth regarding the condition of the applicant who has limited vision, resulting in him being unable to sign, a doctor's certificate is also attached stating that the applicant cannot see. Furthermore, this matter is stated at the end of the deed by stating: " - After I, the Notary, read this deed to the presenters and witnesses, then the presenters stated that they had understood everything written in this deed, according to the presenter's statement Mr/Mrs..... could not add their signatures due to limited vision ", according to the doctor's certificate dated....., while the other witnesses, the witnesses and I, the notary, signed this deed."

The replacement of the signature on the Notary's deed with that of the Surrogate or fingerprint must be clearly stated at the end of the deed. As stated in Article 44 paragraph (2), if the applicant cannot sign the deed, the reason must be stated at the end of the deed. Violation of these provisions means that a Notary's deed only has the power of proof as a private deed.

4. Conclusion

The procedure for using Surrogate in a partij deed For applicants who cannot read and write even though they physically have complete hands and fingers, in this case fingerprints are used which are affixed to the sheet provided for this purpose and stated at the end of the deed. For presenters who can read and write but are physically unable to sign because their hands are sick or even do not have fingers or hands, in this case a Surrogate is used based on information from the presenter accompanied by a doctor's certificate and stated at the end of the deed. For persons who have limited vision (blind), in this case a surrogate is also used based on information from the person, accompanied by a doctor's certificate and stated at the end of the deed.

Taking fingerprints as a substitute for a signature in a Notarial deed for the person present who is physically unable to affix the signature, which is done with the help of another person, is a form of coercion and results in the deed being annulled through a court decision. There is a need for written regulations that clearly state the provisions for the use of Surrogates or fingerprints for presenters who cannot sign the partij deed so that legal certainty can be achieved and can serve as a guide for Notaries in carrying out their official duties.

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