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## **Legal Status of Authentic Deed Confidentiality Drafted before Notary with Sworn Translators**

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### **ABSTRACT**

*In Indonesia, authentic legal deeds must be written in Bahasa Indonesia as required by law. Notaries are responsible for maintaining the confidentiality of these documents according to the Notary Position Act and the Code of Ethics. When parties involved are not proficient in Bahasa Indonesia, a sworn translator is required to ensure the deed's authenticity and validity. The notary must oversee the accurate translation or explanation of the deed's contents, especially if they are unfamiliar with the language in which the deed is written. This research aims to examine and analyze the vagueness of legal norms regarding whether the confidentiality status of authentic deeds is still classified as confidential in the presence of a sworn translator in the deed drafting according to the Notary Position Act as well as the responsibilities of sworn translators regarding their participation for the sake of constitutional law. This research applies normative and literature review method with statutory and legal concept approach. The research findings indicate that the confidentiality of an authentic deed prepared by a notary with the assistance of a sworn translator is legally protected. Both the notary and the translator are bound by law to maintain the deed's confidentiality, with specific legal provisions requiring them to adhere to their professional ethics. Sworn translators are responsible for ensuring accurate translations and may face civil or criminal liability for breaches of confidentiality or inaccuracies in their work. This includes potential penalties under the Civil Code and Criminal Code for unlawful acts or false testimony.*

**Keywords:** *Authentic Deed, Confidentiality, Sworn Translator*

## INTRODUCTION

Within a country, the rule of law is necessary to regulate the organization of social and state activities. The rule of law allows these activities to take place safely, orderly and fairly, and prevents arbitrary actions from the authorities and anarchic actions from the community. A country that is based on the rule of law is referred to as a state of law. The concept of the rule of law was first proposed by Immanuel Kant (1724-1804) from France. According to Kant, the state must be based on law to maintain order and justice. This concept is popularly recognized as a pure rule of law or a rule of law in the narrow sense, where the state only functions as a guardian of order and justice without having any other functions.<sup>1</sup>

As social creatures, humans depend on each other in daily life as well as in work. Aristotle referred to humans as *zoon politikon*, which requires interaction to achieve a common ideal or goal.<sup>2</sup> Language is the ultimate medium of communication and interaction, facilitating understanding between individuals. Language is a system of sound symbols generated by human speech through the vocal chords, and it serves as a tool for social communication. Language distinguishes humans from other created beings and enables interaction and the maintenance of balance and harmony in the world.<sup>3</sup>

Language also functions as a symbol of the state, as stipulated in Article 2 of Law No. 24/2009 on the Flag, Language, and State Emblem, as well as the National Anthem.<sup>4</sup> This law states that language is a symbol of state identity. In Article 36 of the 1945 Constitution of Indonesia, Bahasa Indonesia is the state language, marking it as an integral element of the state's symbols. In communication, not only language is important, but also attitudes and speech actors. The effectiveness of communication is influenced by the attitudes of speakers and speech partners, as well as factors that influence conversational offenses. Indonesia, as an archipelago with a diversity of cultures and regional languages, establishes Bahasa Indonesia as the national language used in various fields of life, including formal legal documents. The use of proper and correct Bahasa Indonesia is crucial in formal contexts. Errors in spelling, diction, phrasing, terminology and sentences should be avoided.

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<sup>1</sup> Cecep Cahya Supena, "Tinjauan Tentang Konsep Negara Hukum Indonesia Pada Masa Sebelum Dan Sesudah Amendemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Moderat: Jurnal Ilmiah Ilmu Pemerintahan* 9, no. 2 (May 31, 2023): 372–88, <https://doi.org/10.25157/moderat.v9i2.3125>.

<sup>2</sup> Muh Sholeh, *Etika Politik Dan Kewarganegaraan Dalam Bingkai Pendidikan IPS*, 2019, <https://doi.org/10.31227/osf.io/jvykr>.

<sup>3</sup> Sarath Samaranayake and Suneeta Kositchaivat, *The Nature of Human Language and Its Characteristics from a Semiotic Perspective*, 2023.

<sup>4</sup> Luh Putu Swandewi Antari, "Bahasa Indonesia Sebagai Identitas Nasional Indonesia," *Stilistika: Jurnal Pendidikan Bahasa Dan Seni* 8, no. 1 (2019): 92–108, <https://doi.org/10.59672/stilistika.v8i1.580>.

Authentic deeds are regulated in Article 1868 of the Civil Code (KUHPerdata). A deed is considered authentic if it complies with legal provisions and is issued by an authorized official. Deeds that do not meet the requirements are not considered authentic and only have the strength of a deed under hand. Notarial deeds must be drafted in accordance with the provisions in the Notary Position Act and the Notary Position Act Amendment.<sup>5</sup> Article 43 Paragraph 1 of Law No. 30/2004 on the Position of Notary states that the deed must be drafted in proper Bahasa Indonesia.<sup>6</sup> Should the applicant have difficulty with Bahasa Indonesia, the notary is obliged to translate or explain the contents of the deed. The deed may also be drafted in any foreign language if desired, but it must be translated into Bahasa Indonesia if required. The translation is conducted by an authorized translator, and both the notary and the translator must sign the deed. Violation of this provision may result in the deed only having the force of a deed under hand, and the aggrieved party may sue for damages. In Bali, which is an international tourist destination, it is often the case that foreigners living or investing require a notarized deed. In case they are not proficient in Bahasa Indonesia, the assistance of a sworn translator is required in accordance with the statutory provisions to ensure the deed is authentic and valid.

An act that is not a legal act refers to an act that is not intended or regulated by the law. However, there are actions that are not intended but nonetheless still cause legal consequences, including:

1. Legal acts that are not prohibited by law: For instance, *zaakwaarneming* (handling other people's affairs without power of attorney), which is regulated in the Civil Code Book III (Articles 1354-1357);
2. Actions that are prohibited by law: Unlawful conduct that may cause harm and obligate the perpetrator to compensate for the harm.<sup>7</sup>

The elements of *zaakwaarneming* include:

1. Voluntary: Actions performed out of one's own consciousness without remuneration.
2. Represent the Affairs of Others: Action on behalf of another person without authorization.
3. With or Without Knowing: The person whose interests are being served may be unaware or tacitly consent.

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<sup>5</sup> Yuli Endah Wardantik, Khoidin Khoidin, and Wahyu Prawesthi, "Legal Liability for Notaries Due to the Issuance of Authentic Deeds Resulting in State Losses," *SRAWUNG: Journal of Social Sciences & Humanities* 2, no. 1 (March 7, 2023): 23–38, <https://doi.org/10.56943/jssh.v2i1.264>.

<sup>6</sup> Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris," 2014, <https://www.kemhan.go.id/ppid/wp-content/uploads/sites/2/2016/11/UU-2-Tahun-2014.pdf>.

<sup>7</sup> Indah Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (September 1, 2020): 53–70, <https://doi.org/10.35968/jh.v11i1.651>.

4. Obligation to Continue: Actions must be completed to the end and fulfill obligations properly.
5. Acts According to Law: Actions must be in accordance with legal obligations or not against the will of the interested party.<sup>8</sup>

This research correlates the use of language with the implementation of the notary's duties as a public official. According to the provisions of Article 43 Paragraph 1 of Law No. 2/2014 concerning the Amendment to Law No. 30/2004 concerning the Position of Notary, the deed must be drafted in Bahasa Indonesia. In addition, Article 54 Paragraph 1 of Law No. 2/2014 states that a notary may only provide, show, or disclose the contents of a deed to a directly interested person, heirs, or persons acquiring rights, unless otherwise provided by laws and regulations. However, the presence of an authorized translator in the drafting of a deed creates a conflict of norms, as the authorized translator is not included as a direct interested person and is not a party or a party to the deed. In addition, the notary also has an obligation to maintain the confidentiality of the deed.

The authentic deed referred to in Article 1868 of the Civil Code or also called an authentic deed in the Notary Position Act and the Notary Position Act Amendment is essentially the same. This deed possesses perfect evidentiary power, unless denied or disproved by anyone. If anyone disputes or feels aggrieved, it can be proven through the court with the applicable procedures. Authentic deeds come in a standard format that must be adhered to by notaries in accordance with the laws and regulations. This standard format maintains the formal legality of the deed issued. One of the standard elements is the use of language, which emphasizes that only deeds in Bahasa Indonesia are valid. In addition, the use of Bahasa Indonesia within the jurisdiction of the Republic of Indonesia is a tangible form of state sovereignty. If in the jurisdiction of the Republic of Indonesia it is allowed to use a language other than Bahasa Indonesia in the preparation of an authentic deed, it will certainly eliminate the essence of the use of the national language itself. In addition, the deed is included as a state document. Every country certainly expects its national language to be internationally recognized and sovereign within its country.<sup>9</sup>

Notaries are obliged to maintain the confidentiality of the deed in accordance with the Notary Position Act and the Code of Ethics. If the deed requires translation, the notary must ensure that the translation or explanation of the contents of the deed is properly conducted if the notary is unfamiliar with the language of the deed. However, there are no specific details regarding the form of translation. In the event

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<sup>8</sup> Diyaul Hakki and Sis Nanda Kus Andrianto, "Legal Protection for Gestors from Dominus Who Default in the Zaakwarneming Engagement," in *Proceedings of International Conference in Social Science* (Malang: Postgraduate School University of Merdeka Malang, 2022), 292–96, <https://doi.org/10.26905/iconiss.v3i1.9839>.

<sup>9</sup> Arya Bagus Khrisna Budi Santosa Putra and I Made Dedy Priyanto, "Tanggung Jawab Notaris Dalam Pembuatan Akta Otentik Dengan Bahasa Asing," *Acta Comitatus* 5, no. 3 (December 14, 2020): 526, <https://doi.org/10.24843/AC.2020.v05.i03.p08>.

that a notary violates the duty of confidentiality, sanctions may be imposed. Articles in the Law on Notaries regulate the obligation of notaries to keep the contents of the deed confidential and only provide information to directly interested parties. Article 4 Paragraph 2 and Article 16 Paragraph 1 letter e of the Notary Position Act regulates the obligation to keep deed information confidential unless otherwise stipulated by law. Article 54 of the Notary Position Act stipulates that a notary can only provide deed information to the rightful party, and must exercise the right of refusal to safeguard the interests of the parties if there are other parties who wish to obtain the information.

From the aforementioned descriptions, this research aims to examine and analyze the vagueness of legal norms regarding whether the confidentiality status of authentic deeds is still classified as confidential in the presence of a sworn translator in the deed drafting according to the Notary Position Act as well as the responsibilities of sworn translators regarding their participation for the sake of constitutional law.

## RESEARCH METHODOLOGY

This is a normative legal research, aiming to identify legal rules, principles, and legal doctrines to address the legal issues in question. The object is legal norms in primary and secondary legal regulations. This research was conducted using the literature review method, collecting data through the review of literature. The approach adopted a statutory approach, reviewing all laws and regulations related to the legal issues examined, as well as a conceptual approach to analyze problems on the basis of developing legal views and doctrines.<sup>10</sup>

The legal materials sources in this research include primary legal materials such as the 1945 Constitution and various laws related to notaries, secondary legal materials such as textbooks and journals, and tertiary legal materials such as legal dictionaries. The method of collecting legal materials is conducted by literature review and searches through a variety of media. The analysis applied a qualitative method with legal interpretation to interpret vague legal norms and build prescriptive legal arguments.<sup>11</sup>

## RESULT AND DISCUSSION

### **Authentic Deed According to *Herzien Inlandsch Reglement (HIR)* and *Rechtreglement voor de Buitengewesten (RBg)***

The existence of authentic deeds as evidence is regulated in Indonesian law, including in the *Herziene Indonesisch Reglement (HIR)* and the *Rechtreglement*

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<sup>10</sup> Rissa Dwi Novita and Muhammad Abdul Razak, "Personal Data Protection in Falsification of Covid-19 Vaccination: A Juridical Review," *YURIS (Journal of Court and Justice)* 1, no. 3 (2022): 25–37.

<sup>11</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D* (Bandung: Alfabeta, 2017).

voor de Buitengewesten (RBg). The following is a summary regarding the regulation:

1. *Herziene Indonesisch Reglement (HIR)*:
  - a. Article 165 of HIR: Stating that a valid deed is a deed drafted by or before an authorized public official. This deed is considered sufficient evidence for the parties, their heirs, and those who obtain rights from them regarding all matters stated in the deed. This deed serves as valid evidence and notice which is only valid if the notice is directly related to the contents of the deed.
  - b. Definition of Deed: A deed is a letter that contains a legal act, such as a sale and purchase agreement, a loan of money, a grant of power of attorney, and so on. An authentic deed is a deed drafted by or before an authorized public official.
2. *Rechtreglement voor de Buitengewesten (RBg)*:
  - a. Article 285 of RBg: Stating that an authentic deed is a letter made in accordance with the form stipulated by law by or before a public official authorized in the place where the deed is drafted. This deed is complete evidence between the parties, their descendants, and the person who obtains rights from them regarding all matters contained in the deed, as well as on statements that are directly related to the subject matter of the deed.

Overall, an authentic deed possesses strong evidential power, recognized by law as sufficient and valid evidence for the parties concerned as well as the person who derives rights from it. This deed is considered incontestable unless there is evidence to prove otherwise.

### **Authentic Deed According to the Civil Code**

In general, evidence in civil law is regulated in the Fourth Book of the Civil Code, and includes several important aspects related to authentic deeds and deeds under the hand:

1. Burden of Proof:
  - a. Article 1865 of the Civil Code: Every person claiming a right or asserting his right or denying the right of another shall prove the right or event claimed by him.
  - b. Evidence: Includes written evidence, witnesses, testimony, and oaths (Article 1866 of the Civil Code).
2. Authentic Deeds and Deeds Under Hand:
  - a. Authentic Deed: Drafted before an authorized public official (Article 1868 of the Civil Code). This deed possesses perfect evidentiary power and is considered strong evidence, unless there is evidence to the contrary (Article 1870 of the Civil Code).

- b. Deed Under Hand: Not drafted before a public official, but may still serve as evidence by being signed by the parties (Article 1869 of the Civil Code). Its force is not as strong as an authentic deed.
- 3. Consensualism Principle:
  - a. Article 1320 of the Civil Code: In an agreement, the parties must agree on the subject matter of the agreement. This agreement must be based on the mutual comprehension.
- 4. Evidentiary Power:
  - a. Authentic Deed: Provides strong and perfect evidence of the rights and obligations of the parties. Judges are bound by an authentic deed as long as the deed meets the legal requirements (Article 1886 Civil Code).<sup>12</sup>
  - b. Deed Under Hand: Its evidentiary power is weaker than that of an authentic deed, and its assessment depends on additional evidence presented at trial.
- 5. Role of the Judge:
  - a. Judges are entitled to assess evidence at trial (*yudex facti*). Judges are not bound by the evidentiary power established by law unless the law specifically regulates.

Authentic deeds are considered stronger evidence than underhand deeds and possess greater legal force in establishing rights and obligations. Under Notary Position Act Amendment, a notarial deed is an authentic deed drafted by or before a notary in accordance with the provisions of the law.<sup>13</sup> The Notary Position Act Amendment regulates the terms and conditions of notarial deeds in detail, including the physical form of the deed. Article 1 Point 7 of the Notary Position Act Amendment defines a notarial deed as “an authentic deed drafted according to the form and procedure stipulated in the law.”<sup>14</sup> The conditions for authentic deeds are also listed in Article 1868 of the Civil Code, including the drafting of deeds in accordance with the form, by authorized public officials, and in their areas of authority.

Notarial deeds must comply with the provisions of Article 38 of the Notary Position Act juncto Notary Position Act Amendment, which includes the beginning, body, and end of the deed, as well as the format and information that must be included. Notaries, as public officials with attributive authority, are responsible for drafting authentic deeds in accordance with laws and regulations. Article 15

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<sup>12</sup> Mohd. Afnizar, Devinsyah Nasution, and Muksin Putra Haspy, “Kedudukan Akta Autentik Notaris Sebagai Alat Bukti Menurut Pasal 1886 KUH Perdata,” 2021, <https://mkn.usu.ac.id/images/28.pdf>.

<sup>13</sup> Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, “Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris.”

<sup>14</sup> Menteri Hukum dan Hak Asasi Manusia Republik Indonesia.

Paragraph 1 of the Notary Position Act Amendment stipulates the notary's authority to draft authentic deeds regarding acts, agreements, and stipulations that are required or desired.<sup>15</sup> With the fulfillment of these elements, a deed drafted by or before a notary will serve as a valid authentic deed and can be used as evidence for the relevant parties and their heirs.

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<sup>15</sup> Menteri Hukum dan Hak Asasi Manusia Republik Indonesia.



## **Confidentiality of Notarial Deed as a State Document According to the Personal Data Protection Law**

In general, a deed drafted by a notary, whether an authentic deed or an underhand deed, does not contain a person's personal data. However, the drafting of a deed by a notary involves the handling of personal data, making it necessary to comply with the personal data protection provisions stipulated in Law No. 27/2022 on Personal Data Protection. The following are the major points related to personal data protection and the role of notaries:

1. **Personal Data:** Data concerning an individual identifiable either directly or indirectly, through electronic or non-electronic systems. The protection of personal data involves actions taken to ensure that data subjects' constitutional rights are protected.
2. **Information:** Information or statements of value, meaning and message that can be presented in a variety of formats.
3. **Rights of Personal Data Subjects:**
  - a. Obtain information on the identity, basis of legal interest, purpose of use, and accountability of the party requesting personal data.
  - b. Personal data could be categorized into:
    - 1) **Specific:** Medical data, biometrics, genetics, crime records, child data, personal financial data.
    - 2) **General:** Name, gender, nationality, religion, marital status, and so on.
4. **Exceptions to Personal Data Subject Rights:** Rights may be excluded in the interests of defense, national security, law enforcement, state administration, financial sector oversight, or scientific research.
5. **Notary and Personal Data Protection:**
  - a. Notaries are not included in the category of personal data controllers and processors as stipulated in Article 19 of the Personal Data Protection Law.
  - b. Notaries are obligated to protect personal information provided by the parties as part of private or civil law.
6. **Principles of Personal Data Protection (Article 3 of the Personal Data Protection Law):**
  - a. Protection, Legal Certainty, Public Interest, Benefit, Prudence, Balance, Responsibility, and Confidentiality.
  - b. The principle of confidentiality in the protection of personal data is in line with the notary's obligation to maintain the confidentiality of the notary's data and protocol.

In conclusion, whilst notaries do not act as controllers or processors of personal data under the law, they still hold a responsibility to maintain the confidentiality of the personal data they handle.

### **Confidentiality of Notarial Deed as a State Document According to the State Archives Law**

Law No. 43/2009 on Archives governs the management of archives in Indonesia, outlining responsibilities and definitions related to archiving. The law identifies archive creators as those with authority over dynamic archives and defines archives as records of activities or events crucial to the state and society. Notaries, as public officials, are considered creators of state archives, and they must properly manage their protocols due to the legal and historical importance of these documents. The purpose of organizing archives includes ensuring the availability of authentic records as legal evidence, protecting state interests, and safeguarding national assets. This law emphasizes the management of archives within state and public institutions, particularly focusing on state documents like authentic deeds.

### **The Confidentiality of Notarial Deed as a State Document According to the Notarial Position Act**

According to Article 1 point 7 of Law No. 2/2014, a notarial deed is an authentic deed drafted by or before a notary in accordance with the forms and procedures stipulated in the law. The definition of a deed includes several types of documents:

1. Minutes of Deed: The original deed that includes the signatures of the signatories, witnesses, and notary, kept as part of the Notary Protocol.
2. Deed Copy: A verbatim copy of the deed, with the phrase "given as an equally worded COPY".
3. Deed Excerpt: A verbatim quotation of part of the deed, with the phrase "given as a QUOTE".
4. Grosse Deed: A copy of the deed for the acknowledgment of debt with executorial power, titled "FOR THE SAKE OF JUSTICE BASED ON THE KINGDOM OF THE Almighty God".
5. Notary Protocol: A collection of state archive documents that must be kept and maintained by notaries.

The confidentiality of the deed is regulated in Article 4 of the Notary Position Act and Article 16 Paragraph 1 letter f of the Notary Position Act Amendment, which requires notaries to keep all matters related to the deed confidential unless otherwise stipulated by law. Notaries may not disseminate the contents of the deed to outsiders without authorization, however, if necessary, an authorized translator may be engaged to explain the deed to parties not proficient in Bahasa Indonesia (Article 43 Paragraph 5 of the Notary Position Act Amendment). The authorized translator is also bound by confidentiality, being responsible for keeping the deed and the personal data of the notary public confidential. The translator may also act as a witness in an authentic deed. Witnesses are required to be more than one, in

accordance with the legal principle of *unus testis nullus testis* as stated in Article 185 Paragraph 2 of the Criminal Procedure Code.

As public officials, notaries are required to be careful in carrying out their duties to avoid legal problems. In the judicial process, evidence includes witness testimony, experts, letters, instructions, and testimony of the defendant (Article 184 of the Criminal Procedure Code) as well as written evidence, witnesses, testimony, confessions, and oaths in civil law (Article 1866 of the Civil Code).<sup>16</sup> Notaries are liable not only in administrative terms but also in civil and criminal terms. Notarial deeds must comply with statutory regulations, oath of office, code of ethics, and the principle of prudence to be valid evidence. Notaries as trustworthy officials have a lifetime liability for the deeds they make.<sup>17</sup> The involvement of a translator is regulated in Article 43 of the Notary Position Act Amendment, with an officially certified translator to be engaged if the notary is incapable of translating the deed. Notaries are required to adhere to the principles of prudence, authenticity, and professionalism, and avoid abuse of office. The principle of proportionality must also be observed to ensure fairness between the rights and obligations of the parties.

### **Semantic Equivalence of Translation Results by Sworn Translator**

Sworn translators require specialized skills and bear great responsibility for the accuracy and quality of their translations. Proper use of vocabulary, such as phrases, sentences and grammar, is essential to prevent multiple interpretations or errors in the deed. Translation plays an important role in human resource development and contributes to the development of science, with language as the medium of instruction.<sup>18</sup> Translation studies is divided into two main sub-disciplines: pure translation, which examines the phenomenon and theory of translation, and applied translation, which studies the impact of translation on practical activities. Applied translation includes translation training, translation assistance and translation criticism. Training focuses on curriculum and teaching methods, assistance on dictionaries and software, and critique deals with revising and editing translations. In translation, the translator faces two choices: either to follow the form of the source language or to adapt it to the target language. Translation procedures include:

1. Cultural equivalence: Translate the culturally charged word with the appropriate equivalent in the target language.

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<sup>16</sup> Rafiqqa Qurrata A'yun, "The Problems of Expert Witness in Criminal Law," *Indonesia Law Review* 4, no. 3 (December 31, 2014): 340, <https://doi.org/10.15742/ilrev.v4n3.115>.

<sup>17</sup> Ida Bagus Paramaningrat Manuaba, I Wayan Parsa, and I Gusti Ketut Ariawan, "Prinsip Kehatian Notaris Dalam Membuat Akta Autentik," *Acta Comitas* 3, no. 1 (April 2, 2018): 59, <https://doi.org/10.24843/AC.2018.v03.i01.p05>.

<sup>18</sup> Akhmad Baihaqi, *Penerjemahan Dan Kesepadanan Dalam Penerjemahan* (Pandeglang: STAISMAN Press, 2017), [https://www.researchgate.net/profile/Akhmad-Baihaqi-2/publication/348279512\\_PENERJEMAHAN\\_DAN\\_KESEPADANAN\\_DALAM\\_PENERJEMAHAN/links/5ff5f74892851c13fef1c126/PENERJEMAHAN-DAN-KESEPADANAN-DALAM-PENERJEMAHAN.pdf](https://www.researchgate.net/profile/Akhmad-Baihaqi-2/publication/348279512_PENERJEMAHAN_DAN_KESEPADANAN_DALAM_PENERJEMAHAN/links/5ff5f74892851c13fef1c126/PENERJEMAHAN-DAN-KESEPADANAN-DALAM-PENERJEMAHAN.pdf).

2. Transference: Transferring a word from the source language to the target language, often used for names of people or places.
3. Naturalization: Adjusting the phonology and morphology of a word from the source language to the target language.
4. Meaning component analysis: Adding components to approximate the original meaning of the source language.<sup>19</sup>

Translation equivalence is at the center of debate, with several experts arguing for the importance of source versus target text equivalence. Equivalence is a key factor relating to the function of the text and the method of translation.<sup>20</sup>

### **Authority of a Sworn Translator**

Authority is derived from the root word authorize, which means the right and power to act. Authority is formal power derived from legislative power (granted by law) or administrative executive power.<sup>21</sup> Authority includes power over a specific group or area of government, and usually involves a range of powers. Authority is the scope of public legal action that includes making government decisions and carrying out tasks, and the granting and distribution of authority is stipulated in laws and regulations. Juridically, authority is the ability given by laws and regulations to cause legal consequences.

Sworn translators have attributive authority granted by the Minister of Law and Human Rights, in accordance with Article 43 of the Notary Position Act Juncto Notary Position Act Amendment. In the process of drafting an authentic deed, the sworn translator plays an important role as a witness, and must sign the deed as a condition for the validity of the notarial deed. The quality of notarial deed translation is assessed by the accuracy, acceptability, and readability of the deed.<sup>22</sup> The sworn translator must fully comprehend the terms, content and intent of the deed in order to deliver a precise and accurate translation.

<sup>19</sup> Dewi Puspitasari, "Kesepadanan Pada Penerjemahan Kata Bermuatan Budaya Jepang Ke Dalam Bahasa Indonesia: Studi Kasus Dalam Novel Botchan Karya Natsume Soseki Dan Terjemahannya Botchan Si Anak Bengal Oleh Jonjon Johana," *Izumi* 3, no. 2 (2014): 1–14, <https://doi.org/10.14710/izumi.3.2.1-14>.

<sup>20</sup> Jeremy Munday, Sara Ramos Pinto, and Jacob Blakesley, *Introducing Translation Studies: Theories and Applications* (New York: Routledge, 2022).

<sup>21</sup> Yanti Krismayanti et al., "Kewenangan, Kekuasaan, Dan Pengaruh Kepemimpinan Pendidikan (Berlandaskan Tinjauan Agama, Filsafat, Psikologi Dan Sosiologi Di SDN 198 Mekarjaya)," *Al-Mujaddid: Jurnal Ilmu-Ilmu Agama* 3, no. 1 (2021): 21–35, <https://doi.org/10.51482/almujaddid.v3i1.51>.

<sup>22</sup> Hanifa Pascarina, M.R. Nababan, and Riyadi Santosa, "Loss Dan Gain Pada Terjemahan Buku Hukum The Concept of Law Karya H. L. A. Hart Ke Dalam Versi Bahasa Indonesia 'Konsep Hukum,'" *PRASASTI: Journal of Linguistics* 2, no. 2 (November 15, 2017): 237, <https://doi.org/10.20961/prasasti.v2i2.1374>.

### **Code of Ethics for Sworn Translators**

According to Minister of Law and Human Rights Regulation No. 29/2016 and its amendment in Minister of Law and Human Rights Regulation No. 4/2019, a sworn translator is an individual who has expertise in translation and has been appointed by the Minister in charge of law and human rights, and registered with the relevant ministry.<sup>23</sup> Translation includes the transfer of language, whether written or spoken, from a foreign language to Bahasa Indonesia or vice versa.

In carrying out their profession, sworn translators are obliged to uphold the values of the Almighty God, the dignity of the Unitary State of the Republic of Indonesia, the morals and ethics of the society, and comply with the laws and regulations. The sworn translator is fully responsible for the accuracy and quality of the translation, ensuring that all translations are rendered in good faith and in accordance with the intended meaning.

### **Oath of a Sworn Translator**

A sworn translator is required to take an oath/pledge in accordance with Article 11 Paragraph 4 of Minister of Law and Human Rights Regulation No. 29/2016 as follows: "I swear/pledge: that I, in order to be appointed as a Sworn Translator, of the language (to be translated), will obey and be loyal to the State of the Republic of Indonesia and the Pancasila. That I will obey according to the real truth, translate the letters given to me, without adding or subtracting the meaning, with trustworthiness, honesty, thoroughness, independence, and impartiality, and will not disclose anything, which must be kept secret in my duties. That I, in order to be appointed as this Translator, either directly or indirectly, under any name or pretext, have never and will never give or promise anything to anyone."<sup>24</sup>

### **Responsibilities of a Sworn Translator**

Sworn translators play a vital role in providing legal translations of official documents such as birth and marriage certificates, ensuring these translations meet the requirements of government agencies and international institutions. Their work must adhere to legal provisions, accurately reflect the meaning and nuances of the original document, and include an official signature or seal for legal validity. Additionally, sworn translators are obligated to follow a professional code of ethics, maintain confidentiality, and undergo certification. In notarial contexts, they are responsible for translating deeds and ensuring their correctness, as any violation of standards can result in the deed losing its evidentiary power and potential legal consequences.

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<sup>23</sup> Kementerian Hukum dan HAM Indonesia, "Peraturan Menteri Hukum Dan HAM Nomor 4 Tahun 2019 Tentang Perubahan Atas Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 29 Tahun 2016 Tentang Syarat Dan Tata Cara Pengangkatan, Pelaporan, Dan Pemberhentian Penerjemah Tersumpah" (Jakarta, 2019), <https://peraturan.bpk.go.id/Details/133119/permenkumham-no-4-tahun-2019>.

<sup>24</sup> Indonesia.

## **Legal Consequences of Not Keeping the Deed Confidential by the Sworn Translator**

As a profession that is required to maintain confidentiality, sworn translators face legal consequences in case of violating this obligation. Violation of confidentiality may result in criminal charges, as stipulated in Article 322 Paragraph 1 of the Criminal Code, which states that revealing the secrets of an office or job is punishable by imprisonment of up to nine months. In addition, providing false testimony under oath is punishable under Article 242 of the Criminal Code with imprisonment of up to seven years, or nine years if it harms the defendant or suspect in a criminal case.

From a civil perspective, the sworn translator could be sued on the basis of tort under Article 1365 of the Civil Code. This covers both material (actual loss suffered) and immaterial (loss of benefits that may be received in the future) damages. The aggrieved service user may hold the sworn translator liable, in accordance with the principle of legal responsibility under the element of fault.<sup>25</sup> In addition, violations of the code of ethics may potentially result in removal from office. Notaries, for example, remain liable for life to any deeds they have drafted, even after ceasing to hold office, in accordance with the provisions of Article 65 of the Notary Position Act.

### **Dismissal of a Sworn Translator**

Sworn translators may also be dismissed from their positions for not performing their duties as sworn translators, being spiritually incapable to perform their duties as sworn translators continuously for more than three years, holding concurrent positions as civil servants, state officials, advocates, or holding other positions prohibited by law to be held concurrently with the position of sworn translator, and being sentenced to imprisonment based on a court decision that has permanent legal force for committing a criminal offense punishable by a minimum imprisonment of four years or more. The appointment may also be conducted by the governor as long as it does not contradict the Regulation of the Minister of Law and Human Rights. Nevertheless, the terms and conditions are still to submit the administration through the Ministry of Law and Human Rights in accordance with the provisions applicable to it, within a maximum period of one year as of the date of the decision of appointment as a sworn translator shall notify the Minister.

### **Sworn Translator in Authentic Deed**

The position regarding the explanation of the presence of a translator in the drafting of the authentic deed and/or the will of the applicant is contained in Bahasa Indonesia from the translation by a sworn translator, which is stated at the end of the deed. This has been regulated by the provisions of Article 44 Paragraph 4 of Law No. 2/2014 on the Amendment to Law No. 30/2004 on the Notary Position,

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<sup>25</sup> Widyantari, "Fungsi Dan Kedudukan Penerjemah Tersumpah Dalam Pembuatan Akta Notaris."

which reads: "The reading, translation or explanation, and signing as referred to in Paragraph (1) and Paragraph (3) as well as in Article 43 Paragraph (3) shall be expressly stated at the end of the deed."<sup>26</sup>

## CONCLUSION

The legal status of the confidentiality of an authentic deed drafted before a notary with a sworn translator remains confidential. An authentic deed is a state document that must be kept confidential, both by the notary as a public official and by the sworn translator. A sworn translator is required in cases where the notary is unable to explain the notary's intention in drafting the deed. Both professions must work in accordance with the applicable provisions, referring to the validity of the deed and Article 43 Paragraph 5 of Law No. 2/2014 on the amendment of Law No. 30/2004 on the Notary Position. The oath/pledge of notary is stipulated in article 4 of Law No. 30 (2)/2004 (Notary Position Act) to maintain confidentiality, and the oath/pledge of sworn translator is stipulated in Article 11 Paragraph (4) of the Regulation of the Minister of Law and Human Rights No. 29/2016. It is expected that the sworn translator shall be responsible for the semantic equivalence or similarity of meaning, as well as the intent and purpose of the translation of the deed content from the source language to the target language. The sworn translator also has to be ready to take the liability in the future in the event of any misunderstanding between the two parties using their services, whether in civil law, criminal law, or administrative sanction of code of ethics.

In civil law, a sworn translator is liable to be sued for unlawful act as stipulated in Article 1365 of the Civil Code. This article states that every unlawful act that brings harm to another person obliges the person who causes the harm to compensate the loss suffered by the party in the deed. In criminal law, a sworn translator is liable to imprisonment if they intentionally disclose secrets, as stipulated in Article 322 Paragraph 1 of the Criminal Code (KUHP). In addition, testifying falsely under oath may result in punishment under Article 242 of the Criminal Code, which carries a maximum imprisonment of 7 years, or 9 years if the false statement harms the defendant or suspect in a criminal case.

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<sup>26</sup> Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris."

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