

Impact of diversity on adult age limits on legal certainty in Indonesian statutes

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Abstract

This article will explain the implications of various restrictions on the age of majority in Indonesian regulation related to the legal certainty principle in creating order in society as the purpose of enacting a law. The research method used in this study is normative legal research conducted by examining legal sources that emphasize the statutory approach related to various regulations of the age of majority in the legal system in Indonesia, the case approach, comparative, and the conceptual approach. The findings revealed that the variety of regulations regarding the age of majority in legislation in Indonesia has implications for overlapping laws and regulations with other laws and regulations and causes legal insatiability to several decisions of District Courts and Religious Courts. Therefore, it is necessary to synchronize the laws and regulations to achieve legal certainty and justice.

Keywords: *Legal Certainty, Adult, Age, Regulations*

Introduction

Mature is always a level of responsibility according to the numerous laws and regulations that are in effect in Indonesia, because only someone who has grown up can be accounted for. In the realm of legal science, maturity can be used as a measure and determination of the validity of legal acts. An immature individual must have parental or guardian representation in court since they are viewed as legal subjects who are incapable of acting on their own (Pujiyono et al., 2020).

Currently, the limit of maturity to perform legal acts has not been uniform or basic requirements set down in laws and regulations for someone to be deemed legally capable or permitted to carry out legal acts. This can be observed from a number of legislative regulations that qualify actions that are essentially limited to adults. The inconsistent treatment of adult and child age restrictions across Indonesian laws and regulations makes it difficult for citizens to fulfill their legal responsibilities and creates legal uncertainty. Legal certainty is one of the legal principles that aims to create order in society so that its absence is a major and systematic problem that covers all elements of society (Ghufron, 2016).

Certain laws seem to determine the age of maturity differently than others because there is no association at all between them. For example, in the Civil Code/BW the age limit of maturity is 21 years, then the age limit of maturity in Law No. 1 of 1974 Jo No. 16 of 2019 concerning Marriage is 19 years, and the age limit of maturity in Law No. 23 of 2002 concerning Child Protection as amended by Law No. 1 of 2023 is 18 years. From this example, it can be further observed that laws and regulations in the field of civil law, there are 2 indicators of maturity, namely age indicators and marital status indicators. For age indicators, there are 3 variations, namely 18 years old, 19 years old, and 21 years old. For indicators of marital status, there are rules and rules, some that don't (Suwadi et al., 2022).

Due to the difference in the age of majority in these laws and regulations, it has implications for the overlap between one law and another. For example, in civil cases, there are inconsistencies between the Banking Law and the Notary Office Law in terms of opening a bank account, basically having to meet the conditions of the agreement. Article 330 of the Civil Code states that the competence in making agreements is an adult aged 21 years or married. However, a person can already enter into an arrangement with a bank to open a savings account or deposit at the age of 17, negating the need for parental or guardian representation. Then, according to Article 39 paragraph (1) of the Notary Office Law, a person must be married or at least eighteen years old in order to visit a notary to make a deed. This certainly confuses applying the rule of law because some use the age of 17 years in the Administrative Law, 18 years in the Notary Position Law, and 21 years in the Civil Code (Pujiyono et al., 2019).

The existence of legal uncertainty researchers found in several court decisions that were inconsistent in using adult age criteria, namely some who used the age of 21 years and also used 18 years. For instance, Decision No. 278 / K / Pdt / 2000 of the Supreme Court of the Republic of

Indonesia employs the 21-year standard. Since Defendant III is not yet 21 years old and is considered an adult, his parents are responsible for losses resulting from Defendant III's actions. The fact that cases exist demonstrates that judges have not always applied the law in a way that is legally certain, with variations in the determination of legal competence or the age of majority (Ali, 2002). These inconsistencies also indicate legal uncertainty due to differences in the age of majority in Indonesian laws and regulations. Looking at these problems, it is interesting to examine how the implications of the diversity of adult age limits on legal certainty in Indonesia?

Research Method

Legal research is a *know-how* activity to solve legal issues faced (Suwadi et al., 2023). Research in legal writing is normative legal research that is prescriptive and applies a case-based, comparative, statutory, and conceptual approach. Laws and regulations as sources of legal information and sources of research information collected with literature studies (Pati et al., 2021).

Results and Discussion

Adult Age Limit Uncertainty Implications

Law that lacks certainty value will become meaningless because it can no longer be applied to everyone as a behavioral guide (Rukmono et al., 2023). The establishment of legal norms is aimed at producing a clarity of legal arrangements to achieve the principle of legal certainty (Abduh & Hanifah, 2020). The principle of legal certainty was introduced by Gustav Radbruch who also explained that 3 (three) values support the ideal of law, namely Justice, Expediency, and Legal Certainty (Saputra et al., 2023). Legal certainty is the assurance that someone will receive what is expected of them in a given situation, which provides justiciable protection against capricious behavior. This is in line with Van's statement. Apeldoorn said there are two aspects of legal certainty, namely the ability to determine the law specifically and legal certainty (Ardi et al., 2023). With the existence of law, it is expected to bring certainty because the goal is to create public order (Sasono et al., 2023).

However, legal uncertainty is evident in determining the age of majority in the regulation of the Adult Age Limit Regulation in Indonesian laws and regulations. Age restrictions are

regulated and determined differently by each law as a measure of maturity so as not to prohibit people from meeting in certain situations despite a number of legal regulations. Legal certainty regarding the passage of the legislation itself may be affected by this circumstance. The author finds some implications as follows (Rukmono ,et al., 2023):

1. There is an overlap between laws and regulations, for example:
 - a. During the speeding ticket hearing for violations of the Road Transport Traffic law. Regarding the age limit, a person is allowed to have a driver's license.

Article 81 Paragraph (2) of Law Number 22 of 2009 concerning UULJ states that a child who is 17 years old is eligible to obtain a driver's license (SIM). However, the Juvenile Court Law states that a child who is 17 years old is still considered a child, so when the child commits a traffic violation and is tried in court, Law Number 3 of 1997 concerning Juvenile Court should be applied, and the trial process must follow the procedures outlined in the trial child.

- b. In the case of a child who is 15 years old according to Article 171 of the Code of Criminal Procedure, he has been able to testify as a witness under oath with all legal consequences for his oath and statement.

A person who is fifteen years old must be regarded as a minor child in the event that this item is subject to the Child Protection Act. The trial's presiding judge may decide that minors under the age of seventeen are not permitted to attend the hearing if Article 171 of the Code of Criminal Procedure is related to the provisions of Article 153 Paragraph (5) of the Code of Criminal Procedure. From this article, if examined from the qualification of the age limit of adulthood from the legal paradigm, this will certainly lead to contradictory circumstances.

- c. The age of majority clauses in account agreements made at the Bank are in conflict with the Banking Law, Administration Law, and UUJN when it comes to creating and possessing an ID card (KTP).

One of the agreements made by legal subjects, namely customers, is included in the establishment of savings accounts and deposit accounts at banks under Article 1 number 17 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Naturally, Article 1320 of the Civil Code—which addresses the legal requirements of an agreement, including agreement, competence, a specific item, and a valid cause—applies when creating an agreement. Competence means the ability to act legally which is characterized by

maturity according to the law. Then, according to Article 330 of the Civil Code, a person is considered an adult once they get married or turn 21 (Basuki et al., 2023).

There are 2 categories of account opening based on age and the presence or absence of ID cards, namely adult individuals and immature individuals represented. Indonesian Law No. 24 of 2013 Concerning Population Administration contains regulations pertaining to KTP. A KTP is necessary for foreign nationals with a stay permit who are married or older than 17 years old, as well as Indonesian citizens. This according to the authors shows there have been inconsistencies considering the opening of an account at a bank including an agreement (Fathoni & Vasalo, 2023).

2. Legal uncertainty in some decisions of District Courts and Religious Courts is inconsistent in using adult age measures and criteria. Some hold on to the age of 21, based on the age of 18. And use the definition of "Underage"

Example of a verdict with an age limit of 21 years

- a. Siantar Challenger District Court Decision No. 33 /Pdt.GI/1998/PM.PMS

The panel of judges determined that the maturity was 21 years old so Defendant 1 who was 18 years and 1 month old was considered immature and his parents were also responsible for the losses caused by the defendant.

- b. Manado District Court Decision No. 205/Pdt.G/1998/PN. MDO

According to the Judge's Judgment, Defendant III is under 21 and is therefore deemed immature, his parents, Defendant I and Defendant III, are liable for any losses resulting from his behavior.

- c. South Jakarta District Court Decree No76/Pdt.P/2009/PN. Jaksel

The judge determined that the Petitioner was the widow of her husband who left behind 6 children, 2 of whom were 17 years old and 15 years old. In this case, the Judge declared the two children to be minors based on Article 330 jo 1330 BW.

- d. South Jakarta District Court Decree No76/Pdt.P/2009/PN. Jaksel

The applicant, according to the judgment, was the widower of a deceased and divorced wife who had two children: a girl (14 years old) and a boy (16 years old). The two children were deemed minors by the judge on the grounds of Article 330 of the Civil Code (BW). The applicant represented his immature son aiming to sell the land with the building of the house.

Example of a ruling with an age limit of 18 years

a. Pontianak Religious Court Decree No. 113/Pdt.P/2012/PA. Ptk

The widowed applicant filed for guardianship of her child because her husband had passed away. According to Law No. 1 of 1974 concerning Marriage, Article 47, Paragraph (1) states that parents have control over their children who are under 18 or have never married, so long as their rights are not violated. Paragraph (2) states that parents represent their children in court and outside of it.

b. Sukabumi District Court Decree No. 407/Pdt.P/2011/PN. Smi

Application of the biological father to act as guardian and pursue legal action against his two children, particularly to guarantee HM land certificates and sign credit letters. The judges utilized Article 47 paragraphs (1) and (2), Law No. 1 of 1974 concerning Marriage, as well as Articles 48, 49, and 50 to argue that the panel was immature because they had not yet turned eighteen and were single.

c. Surakarta Religious Court No. 0026/Pdt.P/2014/PA. Ska

The petitioner's two nephews, ages eight and fifteen, respectively, had lost both of their masters when they were assigned guardians by the judge. The youngster was the reason behind the judge's consideration that the two children were younger than eighteen. Article 51 paragraph (2) of Law No. 1 of 1974 Jo Compilation of Islamic Law Article 107 paragraph (3) serves as the legal foundation.

The aforementioned case examples demonstrate that a judge's decision to apply the legislation lacks legal certainty because there are still discrepancies in assessing an adult's size or legal competency (Basuki et al., 2023). To realize the judge's decision by the law and sense of justice, the judge must be able to investigate, adhere to, and comprehend the societal values. The judge's consideration is an important aspect of any decision to achieve the main goal, which is justice (Wiwoho et al., 2023). The judge's job is to protect the law and justice according to Pancasila by interpreting the law and investigating the tenets and foundations of the law via the cases he hears. This allows the judge to render decisions that are in accordance with the law and the community's sense of justice (Abduh, 2021). In addition, when making a decision in a case, it must take into account legal theory, legal norms and regulations, and legal facts that were shown during the trial.

Solutions to legal uncertainty due to varying age limits

The ideal formulation of the age of majority limit in Indonesian laws and regulations to achieve legal certainty and justice is to do Synchronization of laws and regulations. Synchronization comes from the English "*harmonize*" which means to make or be harmonious, commensurate, balanced, suitable, and integrated (Nurcahyo & Manitra, 2023). According to L.M Gandhi quoting the book *Tussen eenheid en verscheidenheid: Opstellen over harmonisatie instaat en bestuursrecht*, Legal synchronization refers to the process of improving the usefulness and clarity of the law while maintaining legal pluralism when necessary. It involves making changes to laws and regulations, government decisions, judges' decisions, legal systems, and legal principles in order to promote legal unity, legal certainty, justice (justice, gerechtiged), and comparability (quilt, billijkeid) (Priambada & Suwadi, 2023). Synchronization activities involve a thorough examination of a draft law to determine whether it reflects harmony or conformity with other national laws and regulations, with unwritten laws and regulations that are part of society, or with international conventions and treaties, both bilateral and multilateral, that have been ratified by the Government of the Republic of Indonesia. (Gov. Indonesia) (Saputra et al., 2023).

The issuance of SEMA 7 of 2012 from the civil chamber is a strict guideline that the age of the majority is related to the ability to act by not re-enforcing the provisions of the age limit of adulthood or legal capacity in the Civil Code. However, the issuance of SEMA No. 4 of 2016 again shows legal uncertainty. This SEMA changes the age of the majority to 18 years. But in this case, the Supreme Court mixes the meaning of ability to act (*handelingsbekwaamheid*) with the authority to act (*handelingsbevoegdheid*) to state that the age of majority is determined based on the Law or legal provisions. This points again to the government's inconsistency in making decisions about adult uniformity (Sufm et al., 2018).

This legal uncertainty certainly confuses the community, so it is necessary to make solutions so that laws and regulations can run orderly and achieve justice, namely:

- 1) The applicable legal principles are Lex superior derogat legi inferior (higher rules trump lower rules), Lex Specialis derogat legi jeneralis (more specific rules trump more general rules), and Lex posterior derogat legi priori (newer rules trump older ones) when there is friction between legal norms. It is anticipated that this idea will be able to break the deadlock caused by conflicting regulations.

- 2) Uniformizing the age limit of adulthood, especially in the civil sector, namely input on the reconstruction of the law that the author will propose, namely with policies that have been carried out by each institution as an effort to homogenize through:
 - a. The legal formulation of the outcomes of the Supreme Court plenary meeting as a guide for carrying out the court's duties is covered in SEMA NO 7 of 2012. State the following: "That an adult is capable of acting in law i.e. one who has attained 18 years of age or has married".
 - b. SE Minister of Agrarian Affairs and Spatial Planning / Head of BPN No.4 / SE / I / 2015 respecting Adult Age Limits in the Framework of Land Services. According to Number 7, a person must be married or at least eighteen years old to be able to carry out legal actions in the framework of land services.
- 3) Synchronization between institutions in implementing the adult age, namely the Supreme Court, National Land Agency, Banking Institution, Inheritance Hall, Directorate General of Population and Civil Registration, District Court, and Notary/PPAT so that they have harmonized provisions regarding the application of the adult age limit and to prevent sectoral interest to be occurred.

Conclusion

Based on the explanation above, it can be concluded that the various determinations of the age of majority in laws and regulations in Indonesia have implications for legal uncertainty to prevent the achievement of the objectives of law formation itself, namely justice, expediency, and legal certainty. In addition, the existence of legal uncertainty also creates confusion in the community as shown by several cases of overlap between laws and judges' decisions issued by District Courts and Religious courts due to differences in considerations between 21 years, 18 years, and even 17 years. Therefore, the author provides an ideal formulation of the need to synchronize laws and regulations governing the age limit of adulthood to achieve legal certainty. The legal reconstructions proposed to address this issue are as follows: first, applying the principles of *Lex Superior derogat legi generalis* and *Lex posterior derogat legi Priori*; second, restricting the legal age of majority by enacting a policy that is facilitated by the Supreme Court's Number 7 of 2012 circular letter, which serves as guidelines for the Court's implementation of its duties, and the Minister of Agrarian and Spatial's/head of BPN No. 4/SE/I/2015 circular letter.

The final one is collaboration between the legal system, financial institutions, and other organizations to stop sectoral interest from happening.

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