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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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DIVERSITY
ADULT AGE LIMITS POSITIVE LAW IN INDONESIA
(Studies in Multidisciplinary Perspective)

Muhammad Andri
Universitas Darul ‘Ulum
Email : mandri1976@gmail.com

Abstract

Maturity has always been a responsibility of the size of a deed. Since only an adult is considered perfectly justifiable actions, but in some fields of science in practice there are differences in maturity parameters. This we can see from some of the provisions of the law which provides qualifications on works which in principle can only be done by those who have grown up. This type of research is a normative legal research includes studies of the principles of law or legal doctrine, technique of data collection is done with the study of literature in the form of documents or activities to collect and inspect, examine documents this be required. Research answering the problem formulation: why adults boundary conditions according positive law specified 21 years but from a wide range of existing regulations show the differences between one another. And what about the legal issues arising from the diversity of the legal adult age. the results of this study show that the legal system in Indonesia in general, there is disparity in the adult limit. Among the provisions is one to the other there is a correlation when the scope it governs have a point of tangency and the close linkage relationship. Supposedly every law that each other can be complementary and mutually close any vacancy that exists, but is actually giving each overlapping rules on the same subject, it is this which creates inconsistencies in the law enforcement and implementation of laws in the field , The need for re-assessment and research on determining the legal adult age by using an approach through a variety of disciplines in order to get the limited ability that is relevant to all disciplines;

Keywords: age limits, legal competence, maturity

I. INTRODUCTION

In almost every sphere of life in the world, has always been a benchmark measure of maturity responsibilities of a deed, why not? Since only an adult is considered perfectly justifiable actions. For example the provisions of Article 1320 of the Civil Code states that a condition of the validity of the agreement is that if the subject of legal capably acted, the notion of competent action is closely linked to the sense of ripeness / maturity, according to Article 1330 paragraph 1 of the Civil Code who are not competent to act that one of them is that they are immature / minderjarig. In marriage law also required the boundary adults as defined in Article 7 Paragraph (1) of Law No. 1 of 1974 that "Marriage is only allowed if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (six twelve) years.

This study only discussed in clumps social sciences, law, and religion. In the field of law alone a person is considered an adult can determine the validity of a legal act. Someone who has not been seen as a mature subject that has been unable to act on their own before the law, so that legal action should be represented by a parent / guardian.

But the fact the field there is a difference of interpretation in determining the legal adult age. In the act of marriage can indeed be one of determining ripeness / maturity, but not necessarily be the right size for ripeness / maturation itself is a situation where a person has reached a level of maturity in thinking and acting.

Based on these differences, the author attempts to analyze the maturity of the age limit from the standpoint of civil law and comparative with various laws and regulations related to the maturity of a person and give an idea of the adult age limit in order to observe these differences well. This study answered formulation of the problem, namely: why the provision of adult limit prescribed by positive law 21 years but from a wide range of existing regulations show the differences between one another. And what about the legal issues arising from the plurality of the legal adul age. This type of research is a normative legal research which includes research on the principles of law or legal doctrines¹. This study basically using qualitative methods which examines the rationale (*ratio decidendi*) to arrive at a verdict (*obiter dicta*) logical,² for the trial judge to decide and establish the age of maturity. This study uses normative, ie, legal research methods that conceptualize legal doctrines, which includes values, norms of positive law or a court decision. The legal materials used include the primary legal materials, legal secondary data, and tertiary legal materials. Source of data used in the form of books about the age limit of maturity, the latest scientific journals and research reports. As materials collection techniques do with the study of the document or library (library research)

II. DEFINITION OF PROWESS AND MATURITY

Diversity in determining the legal adult age caused by the absence of standards or parameters that can be used accurately to determine the limits of human maturity. While the level of maturity that is present in each and every person differently. Indeed, not all legislation explicitly mentioning about the limits of maturity, all settings are ultimately focused on the intent and understanding of maturity. In connection with the maturity that then I think about the paradigm of manhood if associated with the concept of Justice, Rule of Law

¹ ¹ Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif*, Prenada Media Group, Jakarta, 2016, hlm 95.

² *Ibid*, I Made Pasek Diantha, hlm 95

and Benefits Law is should to consider the value of equity than the value of legal certainty and effectiveness of law as a theory **Das Freie Rechtschule** (a judge can override the legislation) and confirmed by **Gustav Radbruch** that a judge can ignore the written law (statutory / state law) if it turns out written law in practice does not satisfy the justice as expected by the public as justice seekers who called Responsive law. If sticking to *lex posteriori derogate lex priori* (The new law put aside the old law), the maturity may refer to the article 330 (1) of the Civil Code and the Law marriage No 1 tahun 1974 article 6 (2) which have the same within the limits of adulthood.

While according to *Cholil Nafis*, Islam divides the human development of children and adults through three stages, namely: ash-Sagheer, mumayiz and puberty. 1). As-Sagheer In begins at birth until tamyiz at the age of 7 years. This period is classified as *ghoir mukallaf* (people who do not have the burden of Personality '). 2) Stages Tamyiz period of seven years to adult. At this time, children do not have eligibility al No '(execution) law perfectly. And must have the ability to sense, the body healthy and strong. 3) Bulugh puberty / adolescence / al murahaqoh. Etymologically al bulugh is al wushul wal idrak (up and recognize / understand), balagha al ghulam is that (the child was able to understand). As in terminological al bulugh is endless adolescence in this context referred to as human mukallaf.

Proficiency in attitude-acts or behaves in customary law exists, if the person concerned was adult.³ However, the maturity of a person under customary law often depends on the assessment of the local community. According to **B. Ter Haar** at the time he or she married and separate themselves from their parents or household oaring in-law, and the bride had to have housekeeping on their own.⁴ Then according Supomo in his *Adatprivaatrech van west java* states that a person is considered an adult in customary law, if someone has a strong *gawe* (able to work independently) capably take care of property as well as its requirements itself, as well as capable to carry out all procedures of social life (social).⁵

Understanding Psychology where adult according to ripeness / maturity of a pase on depicting human life has been striking a balance mental and mindset in every word and deed.

As in the writings of Augustine Danan Likes Dharma in legal journals On the question of differentiation in adults can be held: a). adult politics, for example, is the age limit of 17 years to be able to go to the polls; b). adult sexual, for example, is the age limit of

³Soerjono Soekamto, *Hukum Adat Indonesia*, Raja Grafindo Persada. Jakarta, 2008, hlm.165

⁴Ibid, hlm 165

⁵Ibid, hlm,165

18 years to be married under the Marriage Act was new; c). legal adult. Adults law is meant certain age according to the law can be considered competent to act within the law.⁶

In the appeal to the Supreme Court, the Supreme Court Decision Republic Of Indonesia 477 / K / Sip./1976 November 2, 1976, the judges found that a child who is under the authority of parents or guardians is 18 years old and not 21 Years.⁷

In the East Jakarta District Court Decision No. 1 15 / Pdt.P / 2009 / PN. East Jakarta On March 17, 2009 (p. 145). Judges use the consideration that the adult age limits a person to act legally competent reference to Article 47 paragraph (1) and (2) of Law No. 1 of 1974 on Marriage.⁸

The term "*meerderjarig*" refers to the state of the adult, who meet legal requirements while the term "*minderjarig*" refers to the state of immature adult who by law is stated (*vania aetati*)⁹. Legally the maturation process can be done in two ways, among others: Maturing Fully provided with a statement of adult (*Vania Aetatis*) According to Article 420 of the Civil Code to get the maturation of the full child must have turned 20 (twenty) years, which gives the status of the maturation of the the child is the President (Minister of Justice) after talks with the Supreme Court.¹⁰ In article 426 of the Civil Code maturation to some legal acts of certain (limited) a person must be aged even 18 (eighteen) years by the local Court over the demanders are concerned.¹¹

III. THE LIMITS CONDITIONS OF ADULTS BY LAW

According to the R. Subekti that someone called adult in civil law meant she was independent, legal actions by self without represented or assisted by his parents.¹² Below are the authors describe some of the provisions of the law concerning the minimum age of maturity as follows:

Article 330 Paragraph (1) of the Civil Code states minors are those who have not even reached the age of twenty-one years old and not married first. According to the **R Soetodjo Prawirohamidjodjo** that someone said *meerderjarig* since the age of 21 years, then he should reach that age to be able to act in traffic law.¹³

⁶Agustinus Danan Suka Dharma, <http://jurnal.hukum.uns.ac.id/index.php/repertorium/article/viewFile/769/721>

⁷<http://www.hukumonline.com/klinik/detail/lt4eec5db1d36b7/perbedaan-batasan-usia-cakap-hukum-dalam-peraturan-perundang-undangan>, tanggal, 03 Desember 2016.

⁸<http://www.hukumonline.com/klinik/detail/lt4eec5db1d36b7/perbedaan-batasan-usia-cakap-hukum-dalam-peraturan-perundang-undangan>, tanggal, 03 Desember 2016.

⁹R. Soetojo Prawiro Hamidjodjo, Marthalena Pohan, Hukum Orang dan Keluarga, airlangga university pers, 2008,Surabaya, hlm. 234-235

¹⁰Djaja S Meliala, Perkembangan Hukum Perdata Tentang Orang dan Hukum Keluarga, Nuansa Aulia, Bandung, 2015, hlm;23

¹¹Djaja S Meliala, Perkembangan Hukum Perdata Tentang Orang dan Hukum Keluarga, Nuansa Aulia, Bandung, 2015, hlm;23

¹² Ketut Oka Setiawan, Hukum Perorangan dan Kebendaan, Sinar Grafika, Jakarta, 2016, hlm; 95

¹³R Soetodjo Prawirohamidjodjo dan Marthalena Pohan, Hukum orang dan Keluarga, Airlangga University Pers,Surabaya, ,2008, hlm. 234

In-Law No. 1 of 1974 on Marriage Article 47 paragraph (1) A child who has not attained the age of 18 (eighteen) years or have never been into marriage were at the mercy of his parents as long as they are not deprived of the power of Article 50 Paragraph (1) mentioning "Children who have not attained the age of 18 (eighteen) years or have never been into marriage, which is not under the authority of parents, under the authority of a guardian" while on the limits of maturity to enter into marriage defined in Article 6 Paragraph (2) states "for to mate a man who has not yet reached the age of 21 (twenty one) years old must obtain permission from both parents. So according to the author that proficiency in accordance with the sound of article 6 (2) UUP although not explicitly, but indicated the 21-year-old has been ably (bekwaam)

Article 45 states "In the event of a criminal prosecution against minors for committing an act before the age of sixteen years, the judge can determine: ordered that the guilty be returned to their parents, guardians or caregivers, without any criminal; or ordered that the guilty be submitted to the government without any criminal; The Code of Criminal Procedure (Criminal Code) Article 171 states "That may be examined to testify without oath is: a). a child who was not quite fifteen years and have never been married b). the insane or mentally ill although sometimes a good memory back Article 153 Paragraph (5) states" Trial the presiding judge may determine that a child who has not attained the age of seventeen are not allowed to attend the trial " Act No. 11 of 2012 on the Criminal Justice System Child Article 20 In case of criminal offenses committed by the Son before even the age of 18 (eighteen) years and put on trial after the child in question exceeded the age limit of 18 (eighteen) years old, but not attained the age of 21 (twenty-one) years, children still submitted to trial Son.

Act No. 35 of 2014 on Child Protection in Article 1 of this Act referred to as: 1. The child is a person under 18 (eighteen) years, including children who are still in the womb. In contrast to the provisions of Law Number 24 Year 2013 About Population in article 63 paragraph (1) reads: Population Indonesian Citizens and Foreigners who have a fixed residence permits that have been aged 17 (seventeen) years of age or have been married or never married are required to have electronic identity card.

According to Law Number 10 2016 contained in Article 57 paragraph (2) In the case of Indonesian citizens are not registered as Voters referred to in paragraph (1), at the time of voting showed Identity Card Elektronik. Kemudian the Election Commission of Republic of Indonesia Regulation Number 14 in 2016 in article 1, paragraph (18). Voters are resident aged a minimum of 17 (seventeen) years of age or are / have been married registered in the

election. In this case can be said of political adult / or the constitutional rights in the perspective of the law of residence.

Provisions on the legal adult age stipulated in Law No. 2 of 2014 concerning Notary Article 39 Paragraph (1) states that: "must front meet the following requirements: a) at least 18 (eighteen) years or has been married and b) capable of doing a legal act "(2) front should be known by the Notary or introduced to him by two (2) witnesses identifier that at least 18 (eighteen) years or has been married and legally competent or introduced by 2 (two) other facing.

In Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law Article 98 Paragraph (1) states that "the age limit of children who were able to stand on its own is 21 years throughout the child is not physically or mentally handicapped or have never been into marriage"

According to the Shafi'i school of imama that there are some signs that puberty was quoted as saying in the book Safinatunnajah which means: Signs of puberty there are three: 1) Have reached the age of 15 years (hijrah) for men and women, 2) wet dream for male and female, and 3) menstruation for women aged 9 years¹⁴

Scholars differed about the limitations of age baligh perfection, Abu Hanifah claimed perfection of legal age limit for women is 17 years, and for men is 18 years. While Abu Yusuf Muhammad, Imam Shafi'i and Imam Ahmad bin Hanbal not distinguish the boundaries between men and women. Both have the same restriction of 15 years. Meanwhile, according to Imam Malik is 17 years old.

IV. LEGAL ISSUES OF DIVERSITY TERJADI KIBAT THE LIMITS ADULT

Although any laws governing the age limit as a form of maturity / had a certain maturity and background of each, but did not rule in certain circumstances among several laws will meet each other. For example, a child aged 17 years on the basis of Article 81 Paragraph (2) of Law No. 22 of 2009 have been entitled to obtain a driver's license (SIM), while according to the Juvenile Court Act the age of 17 years are still in the category of children, so that when the child did traffic violation and then tried in court then it should comply with the Law No. 3 of 1997 on Juvenile justice that the trial should be using methods set forth in the hearing of children.

¹⁴http://www.rahima.or.id/index.php?option=com_content&view=article&id=1337:pemaknaan-baligh-versus-dewasa-dalam-beragam-konteks--dirasah-hadis-edisi-49&catid=37:dirasah-hadits&Itemid=270, tanggal 4 Desember 2016

In another case of a child aged 15 years according to Article 171 of the Criminal Procedure Code has been able to give testimony as a witness under oath with all legal consequences on oath and testimony, though according to the Child Protection Act he must be treated should as a minor child, even even odder if we associate with the provision of Article 153 Paragraph (5) Criminal Procedure Code that the chief judge hearing may determine that a child who has not attained the age of seventeen are not allowed to attend the trial, there arises a situation that is contradictory where on one side of the law has provided to obligation child to testify under oath, but the other he actually has not been able to attend the hearing because they belong to children.

As mentioned above in the provisions of the Criminal Procedure Code Article 171 to Article 153 Paragraph (5) obviously implies irrational, because if measured based on the value of responsibility and the risk carried, then certainly a witness under oath are much heavier than the risks just to attend the hearing, due to testify under oath, threatened to Article 242 Criminal Code if it turns out his statement is incorrect or contain lies and according to Article 161 of the Criminal Procedure Code of children over the age of 15 years may be imposed hostage if he refuses to swear, so that an age limit for someone to be a witness under oath should be higher than the age limit to be able to attend the trial. In the context of one's deeds performed Kusumohamidjojo Boediono as conveyed in his book Theory of Law that act humanely or "human act" that because of the combined action of three components 1. Knowledge (perpetrator knew what he was doing) 2. Independence (berkebebasan actors to do) 3 . Volunteerism (actors do the deed without coercion). Justice became the foundation for those who are already adults / competent as per the terms of the law (bekwaam) to be able to take legal action, stating **Rahardjo Satjipto** Demand justice device consists of elements of independence, equality, happiness and truth¹⁵

Conflicts in the practice concerning the limits of maturity often occurs when a legal event contains the point of tangency of some rules, either because it involves two different legal institutions as well as the scope of some of the laws that govern them. The national legal system should have a limit of maturity / the same maturity, at a minimum there is uniformity in a particular jurisdiction, to avoid confusion and doubts for the implementers in the field. The legislature also should do research and assessment before determining the limits of ripeness / maturity in a legislation.

¹⁵ Ibib, Budiono Kusumohamidjojo-hlm 275

V. CONCLUSION

Proficiency someone who is qualified law (*bekwaam*) is 21 years according KUHPerd Article 330, several laws including Law No. 1 of 1974 Article 6 (2) 21 years for someone who has passed the age limit terbut have to get permission to marry from parents but in article 47 (1) and article 50 (1) 18 years of this chapter concerns the power of parents and guardians. Compilation of Islamic Law Article 98 (1) 21 years of age who already have the skills to act (*bekwaam*), if linked to several laws such as Act No. 12 of 2012 regarding the juvenile justice system Article 20 that children who exceeded the age of 18 but has not yet reached 21 years , the child remains in the proposed trial to children. This means that age is not yet meet the skills and can not accountable (*onbekwaam*).

If we associate with the principle of *lex specialist derogate legi generali* and *Lex posterior derogate legi priori* that the implementation of the Act No. 1 of 1974 on Marriage actually adjust to family rech, although not explicitly mentioned about the age of people said to be an adult, but in Article 6 paragraph (2) has already signaled that proficiency (*bekwaam*) is aged 21 years. The reason for mating permit requirement only for those who still carried the age of 21. Therefore, the age limit is more appropriate maturity can be seen in Article 6 paragraph (2) of Law No. 1 of 1974 on Marriage. Supposedly every law that each other can be complementary and mutually close any vacancy that exists, but is actually giving each overlapping rules on the same subject, it is this which creates inconsistencies in the law enforcement and implementation of laws in the field ,

SUGGESTION

It is necessary to study and re-study of the legal adult age determination using an approach through a variety of disciplines in order to obtain the limit of maturity / adulthood is relevant to all disciplines;

If it is not possible uniformity limit of maturity / maturity for all disciplines, then at least in one area of particular setting limits maturity / the same maturity;

It needs a careful study for the legislators prior to formulate and determine the ripeness / maturity in a legislation in order to avoid overlapping with the rules or other legislation.

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