



## **MATURITY AND ABILITY TO UNDERSTAND RIGHTS AND OBLIGATIONS TO COMPLY WITH LEGAL ACTION UNDER INDONESIAN CIVIL CODE**

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Article	Abstract
<p><b>Keywords:</b></p> <p><i>Keyword: rights and obligations, legal acts, civil law</i></p> <p><b>Article History</b> Received: January 19, 2021; Reviewed: January 21, 2021; Accepted: January 28, 2021; Published: February 10, 2021</p>	<p>Civil law is the rule making a person an internal legal entity, jurisdiction and obligations in the exercise of rights and matters affecting jurisdiction. Law has a theme. Civil law subjects consist of natural persons and legal entities. All legal entities have rights and obligations when performing legal acts. The purpose of this paper is to examine under what conditions a person receives his rights and duties when performing juristic acts. The conclusion of this paper is that not everyone can exercise their rights and obligations in performing legal acts, and there are exceptions that prevent people from exercising their rights and obligations.</p>

### **1. INTRODUCTION**

The definition of civil law is the rules that make people capable and obliged to exercise internal legal entities, rights and jurisdictions. The scope of personal law includes legal entities, legal capacity and the factors affecting them. A legal entity is a person who has rights and obligations in order to have legal authority. Legal entities are divided into persons and legal entities.<sup>1</sup> When it comes to human rights, not everyone can take legal action. There are requirements and age limits to take legal action.

According to SEMA No. 4 of 2016, the determination of the age limit for taking legal action cannot be set at the same age, but depends on the law or statutory provisions applicable in the context of the case in question (causality).

<sup>1</sup> Salim HS, Pengantar Hukum Perdata Tertulis (BW) (Jakarta: Sinar Grafika, 2006), hlm. 23

Legal competence is very important in all areas of law, as all legal acts require legal skills. If an action is taken by a person who does not yet have legal capacity, that action cannot be initiated and undone. This legal capacity is therefore the basis for determining whether a person can obtain rights and/or take legal action.<sup>2</sup>

Determining an individual's age limit is important. This is to determine whether an individual has the authority to act in legal transactions and whether an individual may take legal action. However, regulations in different laws in Indonesia are implemented in different ways and should be equated. The purpose of this paper is to show the difference in the purpose of setting the adult limit, the difference in the setting of the legal capacity limit between 18 and 21, and to clarify the efforts to overcome it. This diversity by issuing a circular. Supreme Court No. 7 of 2012.<sup>3</sup>

There is a difference between Article 330 of the Civil Code and Article 47(1) of Law No. 1 of 1974 on Marriage. Article 330 of the Civil Code states that "a person is considered an adult under the law if he has reached the age of 21 or is not married". 21 years of age must be married or married before reaching 21 years of age.

*(Pasal 330 KUH Perdata dengan Pasal 47 Ayat 1 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Pasal 330 KUHPerdata menyatakan bahwa "seseorang dianggap dewasa menurut hukum, jika ia telah berumur 21 tahun atau belum kawin". Usia 21 tahun harus menikah atau menikah sebelum menginjak usia 21 tahun.)*

In civil law, the term Personal Law is known, derived from a translation of the words *Personenrecht* (Dutch) or *Personal Law* (English). Civil law defines the rules concerning human beings as legal entities, their capacities, their rights and duties to act independently, the rules for exercising those rights, and the rules concerning matters affecting their capacities.<sup>4</sup>

## 2. RESEARCH METHODS

The research used "Normative Juridical Legal Research" in accordance with Soerjono Soekanto's opinion that legal research is carried out by examining secondary materials or library materials or library legal research, through searching for books, laws, literature, and other legal

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<sup>2</sup> Ahmad Mfaid, "Kecakapan Menerima Hak Dan Melakukan Perbuatan Hukum Dalam Tinjauan Ushul Fiqh" El Ahli : Jurnal Hukum Keluarga Islam. Hlm. 3

<sup>3</sup> H. Sudone "Untuk Kepentingan Apa Batasan Dewasa Itu" <https://www.pa-blitar.go.id/informasi-pengadilan/160-untuk-kepentingan-apa-batasan-usia-dewasa-itu.html> accessed 7 December 2022. Accessed 7 December 2022

<sup>4</sup> Salim HS, "Pengantar Hukum Perdata Tertulis (BW)" Jakarta: Sinar Grafika, 2006, hlm. 19.

materials.<sup>5</sup>

### **3. DISCUSSION**

#### **3.1 Problem Formulation**

- a. What are the conditions and limitations in the authority and right to take legal action?
- b. How do people who do not meet the requirements in their rights and obligations to carry out legal actions?

#### **3.2 Definition**

##### **3.2.1 Ability**

The ability to act is a general authority to act. The capacity for general and radical actions applies to everyone. Explained that people have legal authority and are therefore empowered to exercise their rights and responsibilities.

The authority to act is a special authority that applies only to a specific person and to a specific legal act. There are no general rules for the right to act, as the right to act arises from the consideration of the act to which the right to act is granted. We recognize that the consequences of their actions must be legally protected. For this reason, the Legislative Branch (BW) associates legal bodies with the ability to act as adults.<sup>6</sup>

Ability comes from the basic word capable, which means being able to do something; capable; could; have the ability and intelligence to do something. Proficiency (*handelings bekwaamheid*) has a meaning that is closely related to a person's ability to calculate the consequences or legal consequences of his actions. Ability is an element of carrying out a legal act. Various kinds of laws and regulations governing matters of legal competence to carry out legal actions, both written and unwritten. Proficiency according to the Civil Code is often directly related to a person's age limit, whereas according to customary law it is considered competent when married. Ability is often referred to as the main factor when wanting to do something in society in general.<sup>7</sup>

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<sup>5</sup> Soerjono soekanto, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (RajaGrafindo Persada, Jakarta, 2011, hal.12)

<sup>6</sup> <http://www.pn-sabang.go.id/?p=2684> accessed 7 December 2022.

<sup>7</sup> Arifianto, D., Rato, D., & Sriono, E. *Kecakapan Seseorang Dalam Melakukan Perbuatan Hukum Menurut Hukum Adat Suku Tengger*. (2014).

### 3.2.2 Maturity

According to SEMA No. 7 of 2012, an adult is a person who has reached the age of 18 or is married.

The KBBI defines adult in several meanings,

- (1). up to age; akil balig (not a child or adolescent anymore);
- (2). has reached sexual maturity;
- (3). mature (in thoughts, views, etc.).<sup>8</sup>

Article 330 of the Civil Code A minor is a person who has not reached the age of 21 and has never been married. If your marriage is dissolved before you turn 21, you will not be reinstated as a minor. Determines the meaning of the term "minor" used in some laws against residents of Indonesia.

Law No. 1 of 1974 on Marriage Article 47 paragraph (1) Children who have not reached the age of 18 (eighteen) years or who have never entered into marriage are under the authority of their parents, as long as they are not deprived of their authority. and Article 50 paragraph (1) Children who have not reached the age of 18 (eighteen) years or who have never entered into marriage and who are not under the authority of their parents are under the authority of a guardian. The purpose of the law is that it means being an adult is when you are able to marry or are allowed to marry or at the age of 18.

### 3.2.3 Legal Act

According to R. Soeroso in his book Introduction to Legal Science (p. 291), a legal act is any human action performed intentionally to create rights and obligations. A legal act is any act of a legal subject (human being or legal entity), the consequences of which are regulated by law, because the consequences can be considered as the will of the one who does the act. A legal act or a legal action takes place only when there is a "declaration of will". There is a need for a statement of will:<sup>9</sup>

- 1) This person has the will to act and has/causes legally regulated consequences.
- 2) Statements of will, in principle, are not bound to certain forms and there are no exceptions, because they can occur spontaneously:

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<sup>8</sup> KBBI, (<https://kbbi.web.id/dewasa>)

<sup>9</sup>Sovia Hasanah, "Arti Perbuatan Hukum, Bukan Perbuatan Hukum dan Akibat Hukum", <https://www.hukumonline.com/klinik/a/arti-perbuatan-hukum--bukan-perbuatan-hukum-dan-akibat-hukum-1t5ceb4f8ac3137> accessed December 17, 2022.

- (1) Statement of intention explicitly, can be done by:
  - a. Written, it can be happened with:
    - a) Written by yourself
    - b) Written by a certain official and signed by that official, also called an authentic deed or official deed such as: establishing a PT with a notarial deed, a marriage with a marriage certificate and a person passing the exam is given a diploma.
  - b. Saying the word, this statement of will is enough to say the word agree, for example by saying ok, yes, acc and the like.
  - c. Gestures (gerben), assertive statements of will with gestures, for example: by nodding your head in agreement, shaking your head to refuse or with a hand or shoulder attitude, pouting your mouth, squinting your eyes and so on.
- (2) Expression of will secretly can be known from attitudes or actions, for example:
  - a. Silence shown in the meeting means agree
  - b. A girl asked by her parents to marry a young man. The girl silent means agreed.
- (3) Legal Act, consist of:
  - a. A unilateral legal action is a legal action taken by only one party that also gives rise to the rights and obligations of one party. for example:
    - a) Making a testamen (Article 875 Indonesian Civil Code (“Civil Code”)).
    - b) Provision of grants of objects (Article 1666 of the Civil Code).
  - b. A bilateral legal act is a legal act performed by two parties that gives rise to rights and obligations of both parties (reciprocity). Examples: Sales contract (Article 1457 of the Civil Code), lease contract, etc.

### **3.3 Rightful Authority and Authority to Act**

#### **3.3.1 Rightful Authority**

Rightful Authority is a right given to a person from birth to death. Anything that can meet his basic needs. The right to exercise rights and the right to act do not coexist.

According to Article 2 of the Civil Code, every person has rights from the womb, but not every person has the authority and capacity to perform legal acts. Only persons of legal age and/or married persons may file complaints. A person is considered to be an adult when he

or she reaches the age of 21 or is married. Person's incapable of performing legal acts, namely:

- 1) Immature Person
- 2) A person under guardianship or supervision
- 3) Less Intelligent
- 4) Memory pain (Article 1331 KUH Perdata)

However, there are several factors that cause a person's rightful authority to be limited, namely :

- 1) Residence, in Article 3 of Government Regulation No. 24 of 1960 in Article 1 of Government Regulation No. 41 of 1964 (additional Articles 3A to 3C) jo. Articles 1 and 2 of the UUPA state that the prohibition of ownership of agricultural land by persons residing outside the sub-district where the land is located (absentee land).
- 2) Citizenship, Article 21 of the UUPA states that only Indonesian citizens have the right to own property in the form of land.

### **3.3.2 Authority to Act**

Authority to act is a person's authority to perform legal actions. Legal actions are actions that are regulated by law or cause legal consequences and if they are violated there will be sanctions or punishments. According to Article 330 of the Civil Code, a person who is an adult or married can exercise the authority to act.

Therefore, everyone has the authority to have the right, but not necessarily have the authority to act.

Everyone, without exception, must have rights, but in law not all have the authority to act independently in exercising their rights. People who are declared incapable of carrying out legal actions are:

- 1) People who are still underage (their age has not reached 21 years or is not yet an adult)
- 2) People who are unhealthy in mind (crazy), drunkards and wasteful, namely those who are still under guardianship (curatele).

Amnesty (curatele) is the condition of an adult who, because of his personal characteristics, is deemed incapable of defending his own interests or the interests of others dependent on him, and who wishes to be managed. you have to let someone else do it. Lawful

representation of a person who does not speak. Adults who are considered incompetent are called Curandus, and representatives of Curandus are called Curators.<sup>10</sup>

The people who are entitled to apply for amnesty are:<sup>11</sup>

- 1) For an imbecile person is a party that feels unable to carry out its own interests.
- 2) For people with mental illness, it is every blood family member and wife or husband, and prosecutors in the case of curandus do not have a wife or husband or blood family in the territory of Indonesia.
- 3) For people who are extravagant are all members of the blood family and relatives in a sideways line up to the fourth degree and/or wife or husband.

If an incapacitated person files a lawsuit, he/she may apply for cancellation of the lawsuit. However, the lawsuit remains valid until declared void. Also, if a contract is declared terminated, it shall be deemed not to have existed.

#### **4. CONCLUSIONS**

The age limit for legal capacity cannot in principle be set at the same age, but can be determined in accordance with the applicable legislation in the case. Everyone has rights, but not everyone has the authority to act. The power to have the right and authority to act refers to a person's legal capacity. Legal capacity is a person of adult or married age, not suffering from a disability, and of sound mind. A person who lacks legal capacity to perform a legal act may have that act rescinded. However, an incompetent person can have a guardian or curator take legal action.

Writter have some suggestion, consist of:

- a. There are clear provisions regarding the age limit for adults. This document has many legal restrictions that may make inaccurate assumptions about age limits.
- b. Those who are not authorized to act, especially the insane, should receive treatment and other assistance from the government to keep them from rioting and from doing prohibited legal acts.

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<sup>10</sup>Aris Prio. A. S, Widi Nugrahaningsih, dan Rezi, *"Pengantar Hukum Perdata"* Yogyakarta: Pustakabarupress 2021, hlm. 88.

<sup>11</sup> *Ibid.*

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