

THE IMPLEMENTATION OF ADULT AGE LIMITS AFTER THE NATIONAL CONGRESS OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA 2011

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ABSTRACT

The substantive civil law of adult age limit in various regulations in Indonesia is highly varied. Act no. 1 of 1974 concerning on marriage provides adult age limit of 18 years old. Article 98 paragraph (1) Presidential Decree No. 1 of 1991 on the compilation of Islamic law states the age limit that is the capable of stand-alone child or adult is 21 years old. The court product also addresses the legal uncertainty about the varied age limit. The courts are not consistent with the limitation. Some courts uses 18 years old as the limitation but other uses 21 years old. The Supreme Court's National Congress in 2011 has agreed that the appropriate adult age limit is based on Act No. 1 of 1974 on Marriage, namely 18 years old since it is in accordance with the principle of *Lex Postiori Derogate Lex Priori* (new regulations remove the old rules) which are defined in Article 66 of Act No. 1 Year of 1974. The purpose of this study is to analyze the implementation of the congress of the Supreme Court of the Republic of Indonesia in 2011 concerning on the adult age limit in the civil juridical practice. This study used empirical-juridical approach that sees the law not only as a set of normative rules or what the text of the *actis* (law in the books), but also see how the law interacts with the community (law in action). The results of the study showed that the judges use various limitation of the age for the regulation rules vary. The age limits that are used by the judges are 18 years old (with the legal basis of Act No. 1 of 1974) and 21 years old (with the legal basis of Islamic law compilation and the Civil Code law). Their use depends on the type of cases that is examined and decided. The implementation of the results of the national congress of the Supreme Court in 2011 about the adult age limit used is 18 years old in the civil juridical practices are not maximally implemented. The judges see the results of the congress as a recommendation guideline, not binding on the judge to be guided by it. The judges consider the cases which are examined by the act that govern them. Moreover, there are various regulations governing adult age limits, so that the civil judicial practice after the congress in 2011 remains the same as before the congress. Suggestions in this study are, (1) the harmonization and synchronization of relevant legislations concerning adult age limits, should be done immediately although it takes a long time and cost a lot. Therefore, there will be a standard for the adult age limit that would provide legal certainty. (2) the Supreme Court needs to follow up on the results of the national congress (with the supreme court rules) in order to make it be useful in the practice of civil juridical.

Keywords: adult age limit, National Congress' Result

INTRODUCTION

Everyone is a subject of the law, but each person cannot perform legal acts. Only the competent legal subjects who have been ably laws can perform legal acts. Legal capacity is often associated with adult age limit. However, the standards of adult age limit in Indonesia are various. This is due to the classification of the population since the time of the Dutch occupation. For those who are Muslims, maturity cannot be seen from the age limit but from 'akilbaligh'. Traditionally, the adult age limit is when a person 'kuatagawe' (able to work / independent). Various regulations regarding to the adult age limit do not mention the exact and standard limitation. BW provides relatively more certain adulthood standard that is 21 years old (Article 33). However, in a variety of products of our national acts, they are more varied. For example, Act No. 1 of 1974 concerning marriage provides adult age limit of 18 years old as well as the ActNo. 30 of 2004, Article 39 which states that those who could face the Notary are those who are 18 years old. Likewise Presidential Decree No. 1 of 1991 on the compilation of Islamic law which is often used as guidelines in in the court practices. Article 98 paragraph (1) mentions the age limit that is capable of stand-alone or adult is 21 years old. Court product was addressing the legal uncertainty about the varied of adult age limit. The court was not consistent with the adulthood standard. Some are based on the age limit of 21 years old as ; Central Jakarta District Court No. 1138 / Pdt.P / 1987; MA No. 59K / AG / 2007, dated June 6th, 2007 ; Religious Court of Wonosari No. 0432 / Pdt.G / 2008 / PA.Wno , dated8-5-2008 ; MA 95 K / AG / 2009, dated.04-17-2009 ; MA No. 294 K / AG / 2009, dated 06-16-2009 , and there are some others which can be inferred hold on the adult age standard of 21 years old, such as Palembang High Court, inferred from Decision No. 41/1975 Civil High Court. In the other decisions, the court adheredto the age of 18 years old, such as the North Jakarta District Court No. 1530 / Pdt / 1987 / PN.Jakut, dated 11-5-1987 andother decisions, can be concluded that the court adhered to the adult age of 18 years old ,i.e Supreme Court No. 447 / K / Sip / 1976 dated October 13th, 1976.¹ Court decisions which are based on different age limits reflect inconsistencies in the Indonesian judiciary. National Congress in 2011, the Supreme Court agreed that the appropriate adult age limit is based on Act No. 1 of 1974 on Marriage, namely 18 years old since it is in accordance with the principle of *LexPostioriDerogate Lex Priori* (new regulations remove the old rules) which are defined in Article 66 of Act No. 1 of 1974.

The variety of adult age limits impacts on the judges' thought differences in examining and deciding the case. Moving on from that, this paper aimed to analyze the implementation of adult age limit in the practice of civil judicial after the results of the national congress of the Supreme Court of the Republic of Indonesia in 2011 regarding to the adult age limit.

LEGAL CAPACITY

A person may be a subject to the legal starts from their birth and ends at the time he died. Even a person can be a subject to the law since he is in the womb if he isreally needed by the law, only if he was born in living conditions. Although according to the law as mentioned above, each person is as a supporter of the rights and obligations but that is not a guarantee that he has legal skills or qualified to the legal actions. That means that not everyone is allowed to act themselves in doing their rights.²

It is regulated in Article 2 Paragraph 1 which says that: "the child in the womb of a womanis considered as legal subjects who have been born, if the interests of the child wish". Whereas Article 2, paragraph 2 of the Civil Code states that: "if he had been born dead, then he is considered to have never been existed. Civil Code states that a person who is in the mother's womb could be a subject to legal action if it is really needed, with the condition that he was born in living condition. It is set in terms of inheritance, so if one of the child's parents died, for example the father, and he was still in the womb, then it could be a legacy of property abandoned.

¹Ade MamanSuherman, J Satrio, *PenjelasanHukumTentangBatasanUmur (KecakapandanKewenanganBertindakBerdasarBatasanUmur)*, (ed 1, Gramedia,2010) 12

²Ahmad Supriyadi, 'Analisis Orang SebagaiSubyekHukumDenganPendekatanSosiologiHukum Islam Dan HukumPerdata ' (2011) Vol 3 No. 2 Addin, Media DialektikaIlmu Islam, 1,9

Article 2 of BW mentions human supports rights and obligations under the law from birth to death. However, the law states that not all people who are supporters of the rights and obligations are proficient (*bekwaam*) to take their own rights and obligations. Proficient (*bekwaam*) is the general criterion associated with the condition of a person. Subekti says that proficient is when someone understandstoward something that is done and knows the impact of the action. Basically, every person who is adult or 'akilbaligh' and has a healthy mind is proficient according to law.³ J Satrio wrote that proficiencyin taking legal action in civil law is associated with maturity; in that case it is not directly related to the age. In the other hand, itrelates to the provisions that exist in BW, among others, Article 307 in conjunction with Article 308, Article 383 and Article BW 7 & and Article 50 of Law No. 1 of 1974 on Marriage, Article 1330 and Article 1446 BW, one can conclude that, basically, those that can legitimately take legal action to the perfect the legal consequences are those who have grown up or mature. In short, proficiency in acting depends on the maturity which is limited by age. However, there are other factors, such as marital status, which can affect a person's proficiency. Because acting proficiencyis associated with age, and the age factor is based on the assumption that people under a certain age cannot be fully realized as a result of his actions, it can be concluded that the problem of inadequacy acted within the law have to conform with the reality.

Maturity in Indonesian dictionary is associated with the adulthood.⁴ Maturity in positive law is a legal sense because its determination is calculated based on age or years that passed since the birth of the person so that maturity in the positive law is not the same as the physical characteristics of maturity in society, customary law or biological trait in accordance with Islamic law. Linking the problem with the age of maturity is to ensure legal certainty. A person who is competent to act is an adult, because one's adulthood, he/sheis considered capable and fully realized the result of the act that he/she is done so that his interests can be protected.

According to Article 1329 of the Civil Code, every person is considered competent to perform legal acts, unless when they are concerned as not legally competent by the law. Regarding to the legal capacity can be seen in Article 330, 433 and 1330 of the Civil Code. These articles do not state explicitly about someone who declared as legally competent. However, from the contents of the articles, it can be concluded those who are legally competent. In Article 1330 of the Civil Code, it is statedthat: the following are those who are not competent to make an agreement: (1) people who are immature, (2) thosewho were put under an amnesty, (3) women, in terms that are established by law, and generally for all people to whom the law had made a prohibitionto make certain agreements. From the contents of Article 1330 of the Civil Code, it can be interpreted in *a contrario* that those who are proficient in making agreements are those who are adults, people who are not placed in an amnesty, women in matters which are not specified in the law and people who are not prohibited by the Act.⁵ Regarding to those who are adult can be interpreted from the provisions of Article 330 of the Civil Code which states: 'immature are those who have not attained the age of twenty-one years old and not first been married. If the marriage was dissolved before the age, they do not re-gain their position as immature people.

S Chandra wrote, the proficiency to act in law (*rechtbekwaam held*) is a person's ability to make an agreement, as the engagement to what he does to become lawful.⁶ Ahmad AzharBasyir⁷, explains that a perfect proficiency which is possessed by a person who has been 'baligh' is emphasized on the existence of a perfect reasoning, not on the age, the number of years which had been passed (approximately 15 years old). However, the provisions for maturity are not restricted to 15 years old, the age of a person when they reach 'baligh', but also include Rashid factors (reasoning

³Subekti, *HukumPerjanjian*, (ed XI, Intermedia, 1987) 17

⁴ Cited from <http://kamusbahasaIndonesia.org/kedewasaan>, Thursday 20 May 2014

⁵Imma IndraDewi, 'Pelaksanaan Hak Dan Kewajiban' (2008) Vol 20 No.3 *Mimbar Hukum* 559, 561

⁶S. Chandra, *Sertifikat Kepemilikan Hak Atas Tanah (Persyaratan Permohonan di Kantor Pertanahan)*, (Gramedia, 2005) 28

⁷Ahmad AzharBasyir, *Asas-asas Hukum Muamalat (Hukum Perdata Islam)*, (UII Pers, 2004), 31-32

maturity). Proficiency is also defined as the authority to take legal action in general, and according to the law, every person is competent to make the agreement except those who, according to the law are declared incompetent.⁸

Proficiency is an element of maturity, and it is not directly related to age. However, from the provisions which are contained in BW, such as Article 307 in conjunction with Article 308, Article 383 BW, as well as Article 47 and Article 50 of Law No. 1 of 1974 on Marriage, Article 1330 and Article 1446 BW, it can be concluded that, in principle, those who can legitimately take legal action with the perfect legal consequences are those who have grown up.⁹

Remembering that proficiency is always associated to maturity, maturity can be seen from the various provisions of the law. Generally, the applied provisions of maturity are based on the marital status which have been done and the age. A person is considered an adult is not only by their marital status but also by their age which according to the provisions of the law has grown. The maturity by age is one of the parameters for them to be considered as capable and have their rights towards something that is provisioned by the law. In law, the maturity which is based on the age is one of the most important elements for a legal subject. Although there are dispensations or tolerance for age limit adopted by the court, the subject of law can be considered to be not capable in law if the person concerned has not had sufficient age. For example, about the validity of the agreement which is according to Article 1320 BW is the presence of the capable parties (able) to take legal actions that one of the parameters is the adequacy of age. With the insufficient age a person cannot perform the civil law acts by his/herself (unless he/she is already married or authorized by court).

Besides, the criteria of proficiency in Customary Law are: (1) can work by his/himself (independent), (2) capable to do what is required in social life and be responsible, and (3) can take care of their own property.¹⁰ The Customary Law does not use age or how many years that have been passed by a person, but based on what can be seen in the real looks. Acting capacity in customary law is determined by whether he/she is a child or a self-sustaining. In traditional Batak society, generally, children who are 17 or 18 years old are considered as competent to act. It should be admitted that the standard of "maturity" in the Customary Law –which is measured qualitatively- is fairer. However, it does not meet the legal certainty because it is not easy for us to measure whether a person is already independent or not. BW uses quantitative measures (based on the number of years) and more emphasizes on the legal certainty.

Because BW has a different maturity standard to the Customary Law- in order to avoid confusion- the legislators feel that it is needed to give guidance on how to interpret the "immaturity", in a law, which applies for both those who are subjects to the BW and Customary Law, uses the term "immature" (*minderjarig*) in it. S. 1917: 738 (in translation version of Subekti-Tjitrosudibjow which is written S. 1917: 138) tries to give a hint by saying that the adult limits for those who are subject to the Customary Law is 21 years old, but is limited only if the law uses the term "immature" (*minderjarig*), and therefore it should be interpreted very narrowly so that it does not apply when the "law" does not use the term immature in its provisions. Customary law does not associate the acting capacity to the age. The explanation in S. 1917: 738 is only for the interpretation when the law uses the term "minderjarig". However, it does not want to say that people who are subject to the Customary Law since the age of 21 years - or has been married before the age - be competent to act, therefore generally acting capacity have to be measured according to the Customary Law. For the customary law, the provisions do not have any influences.

In line with the provisions of St. 1924: 557, for non-Chinese Orientals Group applies the family law of the group itself so that the adult age limits vary. Therefore, if the colonial government was already seeing the potential for ambiguous in adult age limits, especially now, in the past the law runs more intense. With the background of legislation

⁸Lathifah Hanim,

“Pengaruh Perkembangan Teknologi Informasi Terhadap Absahan Perjanjian Dalam Perdagangan Secara Elektronik (E-Commerce) Di Era Globalisasi” (2011) 11 Jurnal Dinamika Hukum 59, 64

⁹Bertrand A. Hasibuan, *‘Problematika Kedewasaan Bertindak di dalam Hukum (Studi pada Praktik Notaris di Kota Medan)’*, Thesis, North Sumatera University, 2006, 36

¹⁰Soerojo Wignjodipoero, *Pengantardandan Azas Hukum Adat*, (CV Haji Masagung 1987) 104

as mentioned above, and by enacting of various family law systems for some segments of the population, it enables the decision of the Court of different adult age.¹¹

Who is immature? According to the Civil Code a person is considered immature or underage if he/she has not reached the age of 21 years, unless he is married.¹² According to the Civil Code, for those who are already married, he is no longer considered an underage person and has been considered as an adult even though the marriage was decided before he reaches the age of 21 years. According to B.A woman who had been married generally are also not allowed to act herself in the law, but should be supported by her husband. She belongs to the person who, by law, is considered less competent to act herself.

In the Civil Code there are many articles that specifically distinguish between the capacity between men and women in certain things. For examples¹³: (1) a woman can marry, if she has been 15 years and, 18 years old for men. It was already removed by the Act No. 1 of 1974 on the marriage of Article 7, paragraph 1 that marriage can only be permitted if the man has reached 19-year-old and the woman has reached the age of 16 years. (2) a woman may not remarry before the expiry of 300 days after the marriage was decided, whereas there is no prohibition for men. (3) a man is allowed to admit his child, if he is at least 19 years old, while for women there is no restriction. However, the marriage law establishes adults age of 18 years is in accordance with Article 50 of Act No. 1 of 1974 which says: children who have not attained the age of 18 (eighteen) years or never enters into a marriage, which are not under the authority of a guardian.

During its development, based on Article 47 and 50 of Act No. 1 1974 maturity of a person is determined that a child is under the authority of a parent or guardian until he/she reaches the age of 18 years. Furthermore, the Supreme Court by Decision No. 447 / Sip / 1976 dated October 13, 1976 stated that by enacting the Act No. 1 of 1974, the limit of a person under the authority of the guardian is 18 years old, not 21 years old. Henry R. Chesebrough explains that in the common law system, someone is said to be immature if she is not 18 years old yet (woman) and 21 years old for men. During its development, generally the states in the United States has agreed that maturity is determined if a person 18 years old that applies to both women and men.¹⁴

LIMITATION OF AGE BASED ON THE LEGISLATIONS

The following are some provisions on the child and adult age limits according to the laws and regulations in Indonesia which are concluded from the book *Penjelasan Hukum Tentang Batasan Umur (kecakapan dan Kewenangan Bertindak Berdasar Batasan Umur)* published by NLRP.¹⁵

¹¹Atja Sandjaya, Ketua Muda Mahkamah Agung Bidang Perdata, "Batasan Umur (Kecakapan dan Kewenangan Bertindak Berdasarkan Batasan Umur)" (Makalah Rakernas MA 18-22 September 2011), <<http://rakernas.mahkamahagung.go.id/index.php/peradilan-umum/86-tentang-peninjauan-kembali-makalah-wakil-ketua-ma-bidang-yudisial>> retrieved on 15 May 2014

¹²(C.S.T.Kansil, 1989:216 and Subekti, 1989:20)

¹³Subekti, *Hukum Perjanjian*, (ed XI, Intermasa, 1987) 20

¹⁴Ridwan dalam Retna Gumanti, "Syarat Sahnya Perjanjian (Ditinjau dari KUHP Perdata)", (2012) *Jurnal Pelangi Ilmu* Vol 05, No.01

¹⁵Diana Kusumasari, 'Perbedaan Batasan Usia Cakap Hukum dalam Peraturan Perundang-undangan' 27 Desember 2011, <<http://www.hukumonline.com/klinik/detail/lt4eec5db1d36b7/perbedaan-batasan-usia-cakap-hukum-dalam-peraturan-perundang-undangan>> accessed on 10 March 2014

Table 1: Child Age / Immature

Legal basis	Article
Civil Code (Burgerlijk Wetboek)	Article 330 Immature people are those who have not attained the age of twenty-one and haven't married before the age.
Law no. 1 of 1974 on Marriage	Article 47 Children who are referred in the Marriage Law are those who haven't reached 18 years old.
Law No. 13 of 2003 on Labour	Article 1 number 26 Child is any person under the age of 18 (eighteen) years.
Law no. 12 Year 1995 concerning Corrections	Article 1 paragraph 8 Protégé correctional are : a. Criminal child, is a child who is based on the decision of the court sentence is in prisons maximally until the child reaches the age of 18 (eighteen) years ; b. Countries' Children, namely children who are under the court ruling handed over to the state to be educated and placed in prisons child until the age of 18 (eighteen) years ; c. Civil child, that is child at the request of a parent or guardian to obtain a court warrant to be educated in the child prisons until the age of 18 (eighteen) years.
Law no. 3 of 1997 on Juvenile Justice	Article 1 The child is in the case of juvenile delinquents have reached the age of 8 (eight) years but have not reached the age of 18 (eighteen) years old yet and has never been married
Law no. 39 of 1999 on Human Rights	Article 1 paragraph 5 Child is every human who is below the age of 18 (eighteen) years of age and unmarried, including the unborn child if it is for his/her interest.
Law no. 23 of 2002 on the Protection of Children	Article 1 (1) A child is a person under the age of 18 (eighteen) years of age, including children who are still in the womb.
UU no. 44 Year 2008 on	Article 1 (4)

Pornography	A child is a person under the age of 18 (eighteen) years.
UU no. 30 of 2004 concerning Notary	Article 39 paragraph (1) The parties face the notary must meet the following requirements : a. Be at least 18 (eighteen) years or has been married ; b. legally competent
Law no. 36 of 2008 on the fourth amendment to Law No. 7 of 1983 on Income Tax	Elucidation of Article 8 (4) The definition of an immature child is a child under the age of 18 (eighteen) years old and had never been married.
Law no. 12 of 2006 on Citizenship of the Republic of Indonesia	Article 4 Indonesian citizen : a - g ... Children who born out of wedlock to a mother legitimate as a foreigner and recognized by an Indonesian citizen father as a child and the recognition is done before the child is 18 (eighteen) years old or before the child is have not married yet.
Law no. 21 of 2007 on the Eradication of Human Trafficking	Article 1 paragraph 5 Child is a person under the age of 18 (eighteen) years, including children who are still in the womb.

Tabel 2. Adult Age

Legal Basis	Article
The compilation of the Islamic Law	Article 98 paragraph [1] The ages limit of those the independent child or adult is 21 years old, as long as the child is not physically or mentally defected or never enters into a marriage.
Decree of the Minister of the country DG Directorate Agricultural Land Registry (Cadastre) No. Dpt.7 / 539 / 7-77 , dated 13-7-1977	Maturity can be defined as these following distinction: a. political maturity, such as the limit of 17 years old to go to the polls ; b. sexual maturity , such as the limit of 18 years old to be able to get married under the newest Marriage Law; c. legal maturity. Legal maturity was meant by in a certain age according to the laws who can be considered competent to act within the law.

Based on some of the provisions in the legislations mentioned above, there are still found no standard regarding to a person's adulthood, some of them require 21 (twenty one) years old, the others require 18 (eighteen) years old, even 17 (seventeen) years old. This unstandardized limit is also encountered in the various verdicts, for example, the author quotes from the book *Penjelasan Hukum Tentang Batasan Umur (Kecakapandan Kewenangan Bertindak Berdasarkan Batasan Umur)* published by NLRP as follows:

- Decision of the Palembang District Court No. 96/1973 / PN.Plg dated July 24th, 1974 in conjunction. The High Court of South Sumatra in Palembang No. 41/1975 / PT.PERDATA dated August 14th, 1975 (p. 143), in the verdict; the judge ruled that a father is obligated to provide for the child of the marriage which broke up until the child reaches 21 - year -old. In this case, the judges state that a person under the age of 21 years is still considered a minor or immature. Therefore, his father has been obliged to provide until the child is 21 years old, a condition in which the child has grown up, and have therefore been able to take full responsibility and be competent to act within the law. In the Supreme Court, with the Indonesian Supreme Court Decision 477 / K / Sip. / 1976 dated November 2nd, 1976, the judges abrogated the verdict of the high court and examine by itself, where in the verdict, the judge ruled that the father is obliged to provide the living of the children of the marriage which broke up until they are 18-year-old. The judges stated that a child who is under the authority of parents or guardians is 18 years old, not 21 years old. Therefore, at the age of 18 years, a person is able to be responsible for their actions, and therefore be capable to act within the law. This is the right decision, in view of Article 47 and 50 of Act No. 1 of 1974 provide that a person who is under the authority of parents or guardians is that who have not 18 years old yet.

- East Jakarta District Court Decision No. 1 15 / Pdt.P / 2009 / PNJaktim On March 17th, 2009 (p. 145), the Judges use the consideration that the adult age limit for competent legal act referred in Article 47 paragraph (1) and (2) of Act No. 1 of 1974 on Marriage. In accordance with Article 47 paragraph (1) and (2) of Act No. 1 of 1974 on Marriage show that the judges believe that the age limit which is used as a parameter for determining the capacity to act in law is 18 years old.

THE SUPREME COURT'S EFFORTS IN UNITING THE STANDARD OF AGE LIMIT

Defining the limit of one's adulthood is important because it will determine the legitimacy of a person to take legal actions and his/her capacity to take legal actions.¹⁶ Various age limits used in the legislations led to the Judge, in examining civil cases, uses adult age limit consideration which is highly varied. The differences of the judges' views are caused by the differences in the legal basis on which become the legal considerations. Thus, to avoid legal uncertainty in the Court decision, there should be harmonization of legislation related to the capacity and authority to act based on the age limit. One of the parameters which is used to assess the capacity and authority to act is based on the age limit. However, related to the capacity and authority to act on age limit, most of the Judge's decision to use the term "underage" without outlining the legal basis and rationale which are used to determine the classification of "underage". Thus, it would be difficult to assess the accuracy of the implementation of the law by a judge, which further will lead to legal uncertainty in the community.

In a national congress of the Supreme Court in 2011 in Jakarta, it has been discussed deeply by the congress participants about the reality of pluralism problems that occur related to the maturity age limitation, especially in the courts. Therefore, the congress agreed to determine the age limit which can be used as guidance in the judicial practices in Indonesia. The congress concluded that; (1) the definition and formulation of adulthood in Indonesia is regulated in various legislations, Article 330 (I) of BW mention that adult is at the age of 21 years, Article 330 (II) of BW principally determines that the adult is those who are not under the authority of the parents and not under guardianship, the Act on the Notary regulations in Act No. 30, 2004 Article 39 states that that who could face the notary is a person who is already 18 years old. In Practice of Notary nowadays mentions that people who can make an official document is that who is already 21 years. (2) Which of the actual age limits that have to be followed in the judicial practices in Indonesia. The Supreme Court's Congress agreed that the appropriate adult age limit is based on the Act No. 1 of 1974

¹⁶Zaelani, "Batas Usia Dewasa Seseorang Dalam Melakukan Perbuatan Hukum Berdasarkan Peraturan Perundang-Undangan", (2012) Vol 9 No. 4 Des 2012 Jurnal Legislasi Indonesia 605, 609

on Marriage, namely the age of 18 years, since it is in accordance with the principle of *LexPostioriDerogatLexPriori* (The new rules remove the old regulation) and it has also been confirmed in Article 66 of Act No. 1 in 1974. (3) Noteworthy, in this age, the people are ably acted within the law. It should be noted in the legal authority to act in law. There are people who are capable but not authorized to take legal action. For example: someone could have not been capable, but given the authority or right to take legal actions like a 16 year old woman who may perform the marriage because of the marriage Constitution Law sets the marriage limit to a woman's age is 16 years. On the other hand, an adult but if he is under guardianship, the person is considered as not legally competent.¹⁷

RESEARCH METHODS

This study uses empirical juridical approach, which sees the law not only as a set of normative rules or what the text of the law (law in the books), but also sees how the law interact with the community (law in action). (Agus, 1999: 71)

The limitation of the study is descriptive analytical. A descriptive study is aimed to provide data as accurately as possible about people, circumstances or other symptoms (Soekarno, 1986: 10). In this study will be described the location of the study, the factors that affect the business loans, the implementation of business loans and the assistance efforts undertaken by *Bank Tabungan Pensiunan Negara* (State Pensioner Saving Bank) to small and medium enterprises who gets business loans credit in order to realize the community empowerment .

In this study, the data collection techniques used were interview with the respondents and the study of literature. The interview was the instrument to obtain information by asking the interviewee. The interview is a process of interaction and communication (Soekarno, 1986: 57) Interviews that was used in this study was focused-interview (directive interview) that uses a list of questions that had been prepared in advanced. (Soekarno, 1986: 60)

RESULTS AND DISCUSSION

In the civil judicial practices

Civil judicial practices in religious courts are almost the same as in the domestic courts. Judges use the standard age of maturity that vary according to the needs of the case. In this case, to face as litigants as Petitioner, Plaintiff or Defendant use standard of Act 1 of 1974 on Marriage Article 47, that is 18 years old. In addition to general civil cases (e.g debts, purchase, lease, not in the civil judicial practices) use standards Civil Code, which is 21 years old or have been married. Besides, for the witness that is to be presented uses a standard of Article 145 HIR that is 15 years old. In the case related to guardianship, uses the standard Article 47 of Law No. 1 of 1974 which is 18 years.

In the reality, the legal provision which is stated in the BW explicitly declared as no longer valid is the legal provisions relating to marriage. It is replaced by Act No. 1 of 1974 On Marriage, and the provisions of law relating to land, replaced by Act No. 5 Basic Rules of 1960 on Agrarian. BW provisions concerning the adults age limit (21 years old), explicitly and specifically has not been revoked and replaced with a new law that specifically regulates the matters related to the subject of law. However , there are many legal rules which are stated in the legislation as described above which determines that the limit for the age of the children and at the same time be the beginning of adult age limit is 18 years old.

The provisions of Article 98 of the Compilation of the Islamic Law, that adult age limit is 21 years old, it should be placed in hierarchy of legislation in Indonesia. Based on the Article 7 paragraph (1) of Act No. 12 of 2011 on the Establishment of the legislations, the Islamic law compilation is not included as the source of formal law because its

¹⁷VariaPeradilan No. 311 Oktober 2011 hal 53-54

implementation is based on the instructions of the President, while the Instruction is not included as formal legal source. Therefore, the provisions of law in the compilation of the Islamic law would bind and have executorial force if stated in the decision of the Court (judges). Moreover, based on the Supreme Court Rules No. 2 of 2008 on KHES, that a child is a person under the age of 18 (eighteen) years, means that a person whose age is 18 years old is considered as an adult.

The implementation of the results of the National Congress of the Supreme Court of the Republic of Indonesia in 2011 the adult age limit

The researcher limited the object of the study which is the results of the national congress of the Supreme Court of the Republic of Indonesia only in the civil field at 2 points. They are about the limits of adulthood in the practices of the court, which states "The National congress of the Supreme Court agreed that the appropriate adult age limit is based on Act No. 1 of 1974 on marriage, that is 18 years of old, because in accordance with the principle of *Lex Posteriori Derogat Lex Priori* (The new regulations remove the old regulation) and it has also been confirmed in Article 66 of Act No. 1 Year 1974."

The judges that were interviewed argued variously toward the existence of the result of the congress. There were some judges who believed that the result of the congress only as a recommendation in deciding a case, there were some others who believed that it have to be obeyed.

Judge Dra Safiyah MH (worked for 17 years in the Religious court) said "the result of the congress has to be obeyed, but in terms of deciding the case, the judge may consider other matters outside the congress results with considerations which are outlined in the decision"

Judge Drs Hafizal MH (worked for 19 years) said, "the results of the congress is not the only standard" further he said, "the results of the congress is not binding, only as a suggestion"

While Judge Suparno and Judge Edy (both of them are the judges of Semarang District Court) suggested that by the existence of the universal standard of age, it is good for the sake of legal certainty. Judge Dzanum Syamsi (worked for 20 years) said, "I agree with the results of the congress because the Indonesian people will have the unification of adulthood.

Internally, there have not been a formal follow-up steps yet of the Supreme Court after the results of the congress such as using the Supreme Court Circular or the Supreme Court Rules as the follow-up steps. Therefore, the interpretation of the results of the congress is varied. Some argue that the results of the congress is binding, as a suggestion only, and as an object of study but in moral ethics it have to be obeyed.

Since the existence of the result of the congress, the implementation in the civil judicial practices that emphasize the consideration of the standard adult age limit is still going on in various ways, because it is according to the needs of its case. Types of civil cases are divided into two. They are *contensiosa* (claim) and *voluntaria* (petition). In the claims and petitions in the District Court which have absolute competence in the field that examine the general civil cases, since the existence of congress results, have followed age limit of 18 years as a standard of adulthood (the interview with Mr. Dr. Edy and Mr. Suparno, Semarang District Court). The litigants, in the cases of petitions and claims should have turned 18 years old. Meanwhile, according to the judge of Semarang religious court (Mr. Hafizal), in the implementation of the congress result in civil judicial practices specifically for Moslems (according to the absolute competence), there is still pluralism. The petition cases include guardianship petition, request for a dispensation to marry. While the claims include claims of inheritance, divorce claims, joint property claims, Islamic banking disputes.

In the hierarchy of laws and regulations of Indonesia in accordance with Article 7 of Act No. 12 In 2011, the result of a national congress of the Supreme Court is not a hierarchy of legislation because it is not ruling. Types and hierarchy of Indonesia legislation consists of (Article 7 of Act No. 12 of 2011):

- a. 1945 Constitution;
- b. People's Consultative Assembly Decree;
- c. Act/ Government Regulation in Lieu of Act ;
- d. Government Regulation;
- e. Presidential Regulation;
- f. Regional Regulation; and
- g. City Ordinance.

Therefore, the result of the congress is not binding but only as a suggestion. The policy products of the Supreme Court include:

- a. The regulation of the Supreme Court of the Republic of Indonesia
- b. Joint Regulation
- c. the Circular of the Supreme Court of the Republic of Indonesia
- d. Decision of the chief justice of the supreme court of the republic of Indonesia
- e. Regulation of the Secretary of the Supreme court of the republic of Indonesia
- f. decision of Secretary of the Supreme Court of the Republic of Indonesia (source: jdhi.mahkamahagung.go.id downloaded on December 1st, 2014)

Based on the sequence of the Supreme Court policy, then the most powerful regulation is the Regulation of the Supreme Court. The result of the national congress has no power at all so that it suggestions only. If it is needed that the result of the congress to be implemented effectively, the results of the congress has to be followed up with the Supreme Court Rules. Therefore, a synchronization can be created within the Supreme Court are. Especially in addressing this pluralism on the adult age limit, so that there will not be a different consideration of the judges in the determination and decision of the juridical practices civil judge (verdict) but actually the case is the same.

CONCLUSION

Civil judicial practices which is regarding to the age limits using the standard adult age which is highly varied, some judges use 18 years old and some others use 21 years old. This is because the regulations also use various age limits. The results of the national congress of the Supreme Court in 2011 of civil field on adult age limit which is 18 years old should be obeyed. In the practice, it leads to different interpretations of the judges. Some of them believe that the result of the congress is binding but some others believe that it is only a suggestion. Thus, in civil judicial practice after the results of the national congress, is still a plurality. If the result of congress is followed by the Rules of the Supreme Court, the binding force within the Supreme Court will be more certain.

SUGGESTION

Pluralism on the adult age limits in various regulations led the judges examine and decide cases using different standard of adulthood. The results of the national congress of the Supreme Court of the Republic of Indonesia should be followed up with the Supreme Court Rules and should be accompanied by adult age limit standardization in various regulations. Therefore, there is a harmonization between the various regulations related to adult age limit.

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