

THE IMPLEMENTATION OF THE LEGAL CERTAINTY PRINCIPLE IN DETERMINING THE ABILITY TO MAKE NOTARIAL DEEDS BEFORE A NOTARY

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Abstract

This study aims to find out the legal basis for the ability to make an agreement before a notary and to examine the application of the principle of legal certainty in determining the ability to make a notarial deed. This study uses a normative legal research method with a statutory approach and a conceptual approach. The findings indicate that the legal basis for making an agreement before a notary is stated in Article 39 paragraph (1) of the Notary Position Law (UUJN) and the application of the principle of legal certainty to the ability to make a deed, namely the legal basis refers to the UUJN not the Civil Code. The resolution of the conflict of norms is by using the principle of preference, namely the rules that apply are the rules of the UUJN, while the rules of the Civil Code do not apply.

Keywords: Agreement, Legal Certainty, Notary, Notarial Deeds, Law of Notary's Position

1. INTRODUCTION

In daily life, legal acts, such as buying and selling, leasing, and other contractual legal relations, are done to satisfy a person's requirements. In general, legal rules related to contracts and agreements are used as the basis for making agreements. With regards to base on: There is an agreement; Proficiency; A certain thing; and A lawful cause.

Juridically, the article determines whether there is an agreement. That is, the agreement is deemed to exist, if it meets the requirements mentioned above. Conversely, if the agreement does not meet these requirements, then the agreement is deemed not to exist. Whether or not an agreement exists is judged by the validity of the agreement itself. These requirements have a legal nature that must be considered. The nature of the law in question is a subjective nature and an objective nature. Its subjective nature can be seen in terms of agreement and terms of proficiency. Both of these conditions concern the subjectivity of the party making the engagement, the next condition is that there is a permissible cause and something that is permissible is objective. The subjective and objective properties are obliged to be due to the two properties into a dead price in making an agreement in the notary of the notary.

Beginning with an agreement, then capability, where the capability referred to in Article 1320 of the Civil Code, namely "has reached the age of twenty-one; those who have reached this age may legally enter into contracts (legal actions); those who have not yet reached this age may do so if they are married" (Pathi, 2010). Marriage status is another indicator of adulthood. Thus, in the Civil Code, the adult age for a person making an agreement is 21 years.

Personally different, in terms of special regulations, namely the Notary Position Law or known as UUJN where a person as “the party making the agreement must be eighteen years of age or already married”. This article determines the minimum age limit of parties who are allowed to make an agreement before a Notary. If the party making the agreement is not yet 18 years old, then it is not permissible to make an agreement at a Notary.

Theoretically, between skills (*rechtsbekwamheid*) and authority (*rechtsbevoegheid*) have a very close relationship. This close relationship can be seen from the existence of skills, legal actions and authority (Rinaldi, Lasyta Herdiana, 2021). The ability to make agreements before a Notary is the ability to act according to norms. According to the law, adulthood is synonymous with prowess. As a theoretical basis, the competency must be possessed in advance by the party making the deed. After fulfilling the qualifications, the party has the authority to take legal action. The intended legal action is the act of making a notarial deed (Rinaldi, Lasyta Herdiana, 2021). Through this sequence, it is very clear that there is a relationship between skills and authority. If that person is in a competent condition, then it can be said that he has authority. Conversely, if the person is not competent or incompetent, then he does not have authority or has not been given authority by UUJN as a special rule.

Article 1433 of the Civil Code contains about being under guardianship, implying “every individual is placed in custody, that is, when a person is in a dumb condition, his brain hurts, his eyes are dark, or extravagant”. Siratan provides a benchmark for people who can be said to be under ability. If a person who is facing a situation in custody, it can be considered that he is unable to take legal action or is unable to carry out his rights and obligations as a legal subject. The person who is under guardianship is declared incapable of acting as a party to the agreement. However, in this case, UUJN in Articles 39 and 40 paragraph (2) provides a standard age of eighteen to be able to act on a legal basis to become a notary appearer. Even though the UUJN does not regulate the age limit of adulthood, but with the age of 18 years of article on 39 then the 18-year-old one was considered to be aware of the agreement in the notary of the adult age 21 years old.

One of them is regulated as the authority of the Notary to the person who appears before him to make a deed. In drawing up a deed before a notary, the parties must be at least 18 years old and married. With UUJN coming into effect, there are two age standards in carrying out legal actions in making agreements, namely 21 years based on Article 39 UUJN, and based on Article 1330 jo. Article 330 of the Civil Code determines 18 years. The two different provisions regarding skills within the age limit create legal uncertainty, which means that there is a conflict of norms (*geschijld van normamen*) in the two laws. Horizontally between the two regulations of the same level (same hierarchy), namely, between Article 330 of the Civil Code and Article 39 of UUJN. Norm conflicts in these two provisions create legal uncertainty in determining the age limit for private legal subjects (individuals) to be able to perform contractual legal actions. Therefore, it becomes very important to do legal research.

Previous research was conducted by Bima Bagus Wicaksono with the title “The Influence of Proficiency in Online Buying and Selling Agreements”. This research discuss on how to buy and sell online where the parties are not yet twenty-one years old and if the parties are not yet mature, what are the legal consequences (Wijaksono, Bagus, 2018). Furthermore, research conducted by Ni Nyoman Endi Suadnyani entitled “Age Limits for

Proficiency in Making Agreements Before a Notary”. As for the formulation of the problem is "what is the age limit for being able to make a deed before a Notary and what are the legal consequences if the parties are immature in making a deed agreement" (Suadnyani, 2017). Both of these studies are related to skills in making agreements before a notary, while the difference lies in the study of legal issues. The norms at stake and ways to resolve them are the focus of the current investigation. Therefore, the findings of this research constitute its advancement.

Based on the background mentioned above, this study aims to find out the legal basis for the ability to make notarial deeds before a notary, and the implementation of the principle of legal certainty in making notarized deeds before a notary.

2. RESEARCH METHOD

In this study, normative law was adopted. This form of research was chosen to investigate legal requirements. The review of legal norms was carried out because of conflicting norms. In this case, contradictions of norms, ambiguity of norms and emptiness of norms are legal requirements for normative law-type research (Mahmud Marzuki, 2005). The conflicting norms were between the norms of the Civil Code and Notary Position Law (UUJN). The type of approach used was the statutory approach and the concept approach. The sources of legal materials in this study use primary legal sources, namely the Civil Code and UUJN, while secondary sources of legal materials include books, scientific journals, and internet media. The technique for collecting legal materials uses a document study technique by collecting data from previous research and taking an inventory of laws and regulations related to the legal issues studied. The processing and analysis technique of legal materials was done by qualitative descriptive technique, namely providing explanations and conducting studies on legal issues in this study.

3. RESULT AND DISCUSSION

3.1. Legal Basis for Proficiency in Making Notarial Deeds Before a Notary

Juridically, making an agreement before a notary must have the skills or capability. As a legal basis in determining a person's competence, it is based on “proficient, in essence being competent plays an important role in a deed because being competent is a supporter of rights and obligations” (Saputra, 2019). The meaning implied in the sentence was to reflect the permissibility and impossibility of doing. Proficient determines a legal action, conversely competent also determines the absence of such legal action. In other words, whether a legal action exists or not is determined by the presence or absence of person capability. Consequently, maturity is associated with capability.

In connection with the above provisions, it can be said that for people who are “adult according to civil law are those who are twenty-one years of age or have been married or have been married before” (Suadnyani, 2017). Ever married means that someone has been married before but are currently separated. The old marriage still applies. This means that even if they have separated when they were before twenty-one years old, it does not mean that they are again declared immature, as they are still declared adults by the Civil Code. Marrying and not marrying also determines whether the person is mature or not because it

is closely related to acting legally. When they have the status of a widow or widower, they are still allowed to make notarial deeds. In other words, adults who are not yet 21 years old but are already married.

Another exception is "an appearer must meet the requirements of at least 18 not 21". This exception was supported by UUJN which allows someone to make a deed. This permissibility as the permissibility granted by law and at the same time becomes a requirement in making the most important notarial deed. This requirement was used as a guide in the maturity of a person facing a Notary, or a definite guideline. If the notary pays attention to these conditions, the deed made by the parties becomes subjectively valid and guarantees legal certainty.

With regard to the legal position of "a person listed in the Civil Code, the position must be even twenty-one years or have been married before the age of twenty-one". This provision becomes the legal basis when someone wants to have a legal position as a legal subject. As a very old rule, the Civil Code must be used as the main foothold in providing a legal basis because the Civil Code is the basis for UUJN. As a result, deviations are very immoral. However, in legal theory, the Civil Code is made as a regulation that is general in nature, not specific, so that when it is used as a legal basis, it is more general in nature.

This provision, even though "a person's ability is determined to be 21 years old, there are still exceptions" (Pradnyamitha & Desak, 2018). The exception lies in the marital status of the person making the agreement. If the person making the agreement is married but has not reached the age of 21, then that person is allowed to make an agreement before a Notary. In connection with this provision, as previously explained, if the person is "already married then the person is allowed to make a deed before a Notary, whereas if the person was married or when the person was separated before he was twenty one years old, then the person's status does not return to immature" (Jayadinata, 2020). Thus, those who have the status of a widow or have been married are allowed to make a deed before a notary.

The legal basis for the validity of the agreement before a notary is Article 1 number 7 UUJN that the meaning of "notary deed is an authentic deed drawn up by or before a notary according to the form and procedure stipulated in the notary's ratification. In making a deed by a general official, the authority to legalize the deed he made". The notarial deed made according to the stipulated form and procedure means the form of the deed made. The deed made can be in written form and can also be made in private form. The form of the deed made was agreed upon by the said party. Both written deeds legally signed by a Notary as a public official and also deeds made privately can also be legalized by a Notary as a legal deed or declared valid. The private deed becomes valid because it is signed by a notary in his capacity as a state official. The legalized underhand deed can be in the form of *waarmerking*. *Waarmerking* deed is the process of registering or registering private documents in a special book made by a notary where the document has been made and signed by the previous party or parties. As such, the *waarmerking* deed was not drawn up before a notary but is still legally valid and can be legal evidence.

Both types of authentic deed both have legal force or have authenticity. In this regard, the validity of both written and private agreements made by competent parties based on UUJN becomes legal according to law. The validity of the agreement is because it has fulfilled the implied conditions, besides that it has even reached the age of 18 UUJN. If someone wants to take legal action, especially in the field of civil law, he must be at least 18

years old or have been married. Thus, by law it has been deemed competent in carrying out legal actions. Thus, the agreement as well as the agreement can be used as perfect evidence in court.

The validity of the agreement made based on the UUJN becomes legal according to law. The validity of the agreement is because it has complied with the provisions implied in UUJN besides that, it has also reached 18 years of age. If someone wants to take legal action, especially entering the field of civil law, he must be at least 18 years old or have been married before. Thus, by law it has been deemed competent in carrying out legal actions. Thus, the agreement made before a Notary is a valid agreement according to law and at the same time the agreement can be used as perfect evidence in court.

3.2. Implementation of the Principle of Legal Certainty in Making Notarial Deeds Before a Notary

Norm conflict resolution is related to a person's ability to make agreements aimed at realizing definite law. The embodiment of certainty is the main goal of the validity of an agreement. According to Radbruch, there are three ideals (idee) in law, namely “justice, expediency and legal certainty”. Justice demands that the law always prioritizes justice, expediency demands that the law always prioritizes benefits, while legal certainty demands especially the existence of legal regulations. Legal certainty in the sense of a law or a regulation after it is promulgated will be implemented with certainty by the Government (Sudiarta, 2021). Any violation of the law will be followed up and subject to legal sanctions. In this case, legal certainty means that everyone can demand that the law be implemented and that demand must be fulfilled.

With regard to agreements made before a Notary, “legal certainty is a top priority in realizing legal objectives” (Mursil, 2014). It is said to be a top priority because the making of the agreement is based on a rule. Therefore, the law must be able to provide certainty in making agreements, including certainty in determining a person's ability to make agreements before a notary. Legal compliance certainly cannot be separated from the purpose of law (Pradnyautari et al., 2020).

The principle of legal certainty must be applied in carrying out the Notary profession because to carry out the functions of a Notary, it is obligatory to provide legal certainty. The legal certainty given by the Notary is reflected in the notarial deed made and ratified by the Notary himself. As a public official, a notary is obliged to uphold laws and regulations and the notary's code of ethics. The code of ethics and UUJN are the main guidelines for public officials. General officials run by Notaries are officials in the field of legal services to the public. In carrying out these general positions, it must be carried out properly and correctly in accordance with these guidelines (Laksana & Griadhi, 2019). Likewise, making a notarial deed is a deed made in writing or known as authentic deed, if the deed made is a private deed then it cannot be used as evidence (Gita & Udiana, 2021).

The legal basis used as a guideline is UUJN, because this law is a special law. In connection with the resolution of the norm conflict above, the resolution is by using the principle of preference.

- 1) The principle of “*lex specialist derogate legi generalis*”, which means laws governing specific matters overrule laws governing substance in general
- 2) The principle of “*lex posterior derogate legi priori*”, means that laws and regulations that apply later override the laws that apply earlier, in terms of related substances.
- 3) The principle of “*lex superiori derogat legi inferiori*”, means that laws made by higher government officials have a higher position as well (Mertokusumo, 2008).

In connection with the preference principle above, to examine the conflicting norms between the provisions in Article 330 of the Civil Code and Article 39 UUJN, first look at the hierarchy of laws and regulations. Hierarchy of laws and regulations that have been determined. Regarding the provisions for the type of hierarchy, Article 5 of the Legislation Law regulates the principle of forming statutory regulations that there must be conformity between the types and the hierarchy. This statutory hierarchy is also strengthened by the *Stufenbau* Theory which states that “the rule of law is like a ladder that must pay attention to the hierarchy” (Haryanti, 2015).

Based on this *stufenbau* theory, “in principle laws and regulations may not conflict with the regulations above them” (Usfunan, 2020).

The juridical analysis used to resolve the conflict of norms is one of the principles of preference, namely the principle of *Lex Specialis Derogat Legi Generali*, which means that specific regulations can overrule general regulations. Hence, UUJN regulations are specific regulations, while the Civil Code are general regulations. The Civil Code and UUJN have parallel levels or hierarchies, namely laws. Therefore, UUJN can set aside the Civil Code. Based on the principle of *Lex Specialis Derogat Legi Generali* Article 330 of the Civil Code is set aside by Article 39 UUJN. Thus, the ability to make an agreement before a Notary applies Article 39 UUJN. Even though it determines that skill, it can still be ruled out or not applicable. By enforcing Article 39 UUJN it becomes clear that a person's ability to make an agreement before a Notary is 18 years old. These provisions provide legal certainty for the public in making agreements before a Notary. In addition, these provisions also provide certainty before a Notary. Likewise, if one day the parties who make the agreement experience a dispute, then the agreement made before the Notary can be used as perfect evidence in court. The court also looked at the evidence presented at trial. The agreement made has fulfilled the competence of the parties or at the time the agreement was made, the parties were 18 years of age or more. Everything that is made in the agreement becomes valid according to law.

4. CONCLUSION

Leading to the discussion, related to legal issues in this study, it can be concluded that the legal basis for the ability to make agreements before a notary is based on legal actions taken. Proficiency provisions based on the provisions of Article 1330 of the Civil Code. While this legal basis causes a conflict of norms, there is no legal certainty in carrying out legal actions before a Notary. The settlement of norm conflicts related to the ability to make agreements before a Notary is by using one of the principles of preference, namely the principle of *lex specialist derogate legi generali* which has special characteristics that can override general regulations. Hence, the provisions in the Civil Code can be overruled by Notary Position Law (UUJN) because UUJN is a special rule while the Civil Code is a general rule. In other words, the provisions of Article 1330 of the Civil Code may not be enforced. Therefore, what can be applied is the provisions of Article 39 paragraph (1) UUJN. As such, to determine the age limit in carrying out legal actions before a Notary, the minimum age is 18 years or has been married.

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