

Solutions for the Legality of Child Legal Actions in Making of the Notary Deed and PPAT Deed

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Abstract. *This study aims to analyze and assess the legal arrangements for legal acts of children in the practice of notary duties and positions in the perspective of the Notary Position Law, as well as obstacles and solutions to its implementation. This study used a sociological juridical approach with descriptive analysis characteristics. Sources of data used in this study include primary data taken using interviews and secondary data with documentation studies, data analyzed using qualitative descriptive. Based on the research, it is concluded that the legal actions of a new child can be declared valid if the child is 18 years old, but in practice, notaries only serve the making of notary deeds for those who are 18 years old, while PPAT deed services are only intended for those who are 21 years old. The difference in service is the difference in age because of the existence Regulation of the Head of the National Land Agency which enforces a minimum age of 21 years for PPAT deeds, according to the provisions of the Civil Code (BW). The Regulation of the Head of BPN is an obstacle to the application of UUJN and even makes UUJN have no legal certainty, it is also against the constitution and other laws of a higher degree. As a solution, the notary divides the deed into two parts, namely the notary makes a deed for 18 years old in the form of a notary deed, and for those who are 21 years old, besides a notary deed, a PPAT deed can also be made.*

Keywords: Validity; Child Legal Actions; Notary Deed, Deed of PPAT.

1. Introduction

Every human being, whether citizen or foreigner, is a right bearer who has the right and obligation to carry out legal actions, including entering into agreements with other parties. Agreement is the most important source that gives birth to the engagement.¹

On the other hand, the lack of legal certainty is a major problem in Indonesia. In short,

¹ Suharnoko. (2008). *Hukum Perjanjian, Teori dan Analisa Kasus*. Jakarta : Prenadamedia Group.p. 117.

if someone is asked what Indonesian law is about a certain subject, it is very difficult for that person to explain it with certainty, let alone how the law will be applied later.²

One of them is regarding the limit of adult age. The age of adulthood which is considered competent in law is still not thoroughly debated by the ulama or the Indonesian government. The non-uniformity of age limits for adults or age limits for children in various laws and regulations in Indonesia often raises questions about which boundaries should be used. Things like this create confusion in determining when a person is declared competent to perform legal actions.

Children are legal subjects and assets of the nation, as part of the younger generation children play a very strategic role as the next generation of a nation. In the Indonesian context, children are the successor to the ideals of a nation's struggle. "This strategic role has been recognized by the international community to give birth to a convention which essentially emphasizes the position of children as human beings who must receive protection for their rights.³ Children are also the hope and foundation of parents, the hope of the nation and state that will continue the baton of development and have a strategic role, have special characteristics or characteristics that will ensure the continuity of the existence of the nation and state in the future. Therefore, every child must receive guidance and protection from an early age, children need to have the widest possible opportunity to grow and develop optimally, both physically, mentally and socially. Moreover, childhood is a period of sowing seeds, erecting piles,

² Suherman, Ade Maman and J. Satrio. (2010). *Penjelasan Hukum tentang Batasan Umur*, Jakarta : Nasional Legal Reform Program.p. 2.

³ Ruben Achmad. (2005). *Upaya Penyelesaian Masalah Anak yang Berkonflik dengan Hukum di Kota Palembang*, Jurnal Simbur Cahaya Nomor 27 Tahun X, Januari. p. 24.

making foundations, which can also be called a period of shaping the character, personality and character of a human being, so that they will have strength and ability and stand firm in life.⁴ In Indonesian law there is pluralism regarding the meaning of child. This is the result of each statutory regulation that regulates the child regulations itself. In the field of civil law, the age element has an important role, because it is associated with the problem of a person's ability to act as a legal subject in his legal action. There are several groups of people who by law have been declared "incapable" or "incompetent" to act alone in carrying out legal actions (they are called *handelingsonbekwaam*), but they must be represented or assisted by someone else.⁵ The law should not be positioned on two opposing concepts as if it were true or false. This is because the distance between right and wrong can be unclear. Because "right in the view of the wrong person will it becomes wrong when viewed from the truth of the right person, and vice versa, wrong according to the view of the right person will be right when viewed from the fault of the wrong person ". Satjipto Rahardjo, stated that knowledge is one unit (unity). And science must be able to do liberation and enlightenment with a way of searching that is continuous without stopping, because every human being views knowledge with different points of view. There is no mistake in the existing knowledge, it is a different view from one another, because absolute truth does not actually belong to humans, but belongs to Allah SWT., Alone. However, the law is made and approached from any aspect is possible because law science is not

⁴ Maidin Gultom. (2008). *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*, Bandung: Refika Aditama.p. 1.

⁵ Kansil. (1999). *Pengantar Ilmu Hukum*, Jakarta: Balai Pustaka.p. 85.

"Sterile" from other sciences, therefore law and law itself are not value free.⁶ This means that it is always related to the social context, including in the context of civil law, in this case the legality of children's legal acts in the perspective of the Notary Position Law.

This study aims to analyze and assess the legal arrangements for legal acts of children in the practice of notary duties and positions in the perspective of the Notary Position Law, as well as obstacles and solutions to its implementation.

2. Research Methods

Sources of data used in this study include primary data and secondary data. Primary data were collected using semi-structured interviews. Secondary data is obtained by conducting documentary studies of statutory regulations, literature books and other documents relating to the object or material of the study. The data analysis method in this study used a qualitative descriptive.

3. Results and Discussion

3.1 Application of the Legality of Child Legal Actions in Practices and Positions of Notary Public

The ability to take legal action in civil law is linked to the element of maturity and thus indirectly with the age element but from the provisions in the Civil Code, among others, from Article 307 jo Article 308, Article 383 of the Civil Code, Article 47, Article 50 UUP , Article 1330 and Article 1446 of the Civil Code, one can conclude that in

⁶ Sholih Mu'adi, *Penyelesaian Sengketa Hak Atas Tanah Perkebunan Melalui Cara Non Litigasi (Suatu Studi Litigasi Dalam Situasi Transisional)*, Disertasi, Departemen Pendidikan Nasional, Program Doktor Ilmu Hukum Pascasarjana Universitas Diponegoro, Semarang, 2008, h. v-vi.

principle, those who can carry out legal actions legally, with perfect legal consequences are adults.⁷

Practices in the field regarding the age limit for legal action are related to the authority of the Notary and PPAT, which in this case relates to officials who make authentic deeds in every legal act of a person. According to UUJN Article 1 paragraph (1), Notary is: "Public official authorized to make authentic deeds and other authorities as referred to in this Law" In practice, a Notary is also a PPAT, these two positions are indeed carried by one person, who both have the capacity to make an authentic deed but the functions, obligations and authorities of each of these positions are different, and both of them have also been regulated in the laws and regulations. different invitations. Specifically to regulate the Position of Notary Public, the government in 2004 then issued Law No. 30 of 2004 concerning the Position of Notary which was later abbreviated as UUJN. One of the problems between the Notary who serves as PPAT is regarding Regulating the legality of children's legal acts in the practice of the duties and positions of a notary in the perspective of the Notary Position Law, namely The age limit for adults is 21 years old as an absolute requirement of BPN which must be fulfilled by a person if he is a party or subject in making a land deed which is made under the authority of PPAT. The adult age as stipulated in Article 39 paragraph (1) UUJN which states that the age of 18 is already mature and legally competent, the Notary will make a Sale and Purchase Agreement Deed, in this case the deed made in his capacity as a Notary. Then the Sale and Purchase Deed was also drawn up, the

⁷ J. Satrio.(1999). *Hukum Pribadi Bagian I Person Alamiah*, Bandung: Citra Aditya Bakti.p. 49-50.

notary, who in the act of this Sale and Purchase Deed, was himself the PPAT. However, when the PPAT notary wanted to register the Sale and Purchase Deed, BPN was refused on the grounds that BPN was not subject to UUJN.⁸ and only considers the age of maturity and legally capable of being 21 years. BPN then asks to wait until the child is an adult or 21 years old. BPN was not subject to UUJN.⁹ and only considers the age of maturity and legally capable of being 21 years. BPN then asks to wait until the child is an adult or 21 years old. The adult age limit is still held and is one of the conditions for making a PPAT deed. Especially deeds relating to the transfer of rights to land, because land deeds must be registered at the BPN, while BPN is a government agency that still uses the provisions of the Civil Code, where the age limit for adults and capable of taking legal actions is 21 years of age, because BPN acted in submission to UUJN.¹⁰ but voluntary submission to the Civil Code, because it is based on immaturity in the Civil Code. The possibility for a non-European to voluntarily obey European private law is stipulated in an organic regulation (in article 131 paragraph 4 IS) contained in the LNHB 1917 - 12. This regulation is called "Regeling Nopens de Vrijwillige Onderwerping aan Europeesch Privat Recht (regulation regarding voluntary adherence to European private law)".¹¹ Land registration is included in the realm of agrarian law as

⁸ Stating that BPN does not comply with UUJN, it can be interpreted that BPN in carrying out land registration only submits to the Civil Code or Burgerlijk Wetboek voor Indonesie (BW), inherited from the Dutch Colony.

⁹ Interview With Abd. Jalil Hamzah, SH., M.Kn. Notary and PPAT, domiciled in Cirebon Regency, on July 11, 2020.

¹⁰ Utrecht, E. (1959). *Pengantar Dalam Hukun Indonesia*, Jakarta: PT Penerbit dan Balai Buku " Ichtiar ", cet. V. p. 628 - 629.

¹¹ Lawrence M. Friedman. (1977). *Law and Society, an introduction*, Prentice Hall, New Jersey, p.7. (Selanjutnya disebut Lawrence M. Friedman I) In principle, according to Friedman, the legal system consists of a legal structure, legal substance and legal culture. The legal structure concerns its institutions, the substance of the law includes all legal regulations, meanwhile the legal culture includes a description of attitudes and behavior towards law, and the factors that determine the acceptance of a certain legal system in a society.

regulated in Law Number 5 of 1960 concerning Regarding Basic Agrarian Regulations (UUPA), in the General Explanation point III (1) UUPA states, that: "By itself the new Agrarian Law must comply with the legal awareness of the people at large. Since the Indonesian people are largely subject to customary law, the new Agrarian Law will also be based on the provisions of that customary law. As original law, which was refined and adapted to the interests of the people in a modern country and in relation to the international world and adapted to Indonesian socialism. As it is understood, customary law in its growth cannot be separated from the political influence and colonial society which is capitalist and self-governing society which is feudal. In Article 5 of the UUPA it is stated, "The agrarian law that applies to the earth, water and space is customary law, as long as it does not conflict with national and state interests, which are based on national unity, with Indonesian socialism and with the regulations contained in the law. this law (meaning: UUPA) and with other laws and regulations, everything with heed the elements that rely on religious law ".

The elucidation of Article 16 of the UUPA states that: "This article is the implementation of the provisions in Article 4. In accordance with the principle laid down in Article 5, that the National Land Law is based on Customary Law, the determination of rights to land and water in this article. also based on the systematic principle of customary law. Meanwhile, Business Use Rights and Building Use Rights are held to fulfill the needs of modern society today. It is necessary to emphasize that the Right to Cultivate Business is not an erfpacht right from the Civil Code. Right to Use Building is not an installation right. Since the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), the erfpacht and opstal institutions were

eliminated with the revocation of provisions in Book II of the Civil Code. The legal system according to Lawrence M. Friedman consists of three elements, namely the legal structure, legal substance, and legal culture.¹² According to Achmad Ali, the problem facing Indonesia today is the deterioration in the three elements of the legal system, and what is very sad is the fact that the three elements of the Indonesian legal system are still not harmonious with each other. One example is the statement from BPN that BPN is not subject to UUJN but only subject to the Civil Code, which in fact part of the article has been abolished by UUPA. According to the author, the statement that BPN is not subject to UUJN and only submits to the Civil Code is contrary to the 1945 Constitution of the Republic of Indonesia as a sovereign state, because the Government, in this case BPN, is subject to the Civil Code, which is a legal note from the Dutch Colonial Government. the colonial period in Indonesia, which until now cannot be replaced by the Civil Code of the Indonesian nation itself.

Based on the description of the research results above, in the author's opinion, that in the legality of legal actions related to the practice of notary duties and positions, the legal acts of children who are not yet 18 years old are invalid, while those who are 18 years old but not 21 years old are in practice. Notary can only serve notary deed making, while PPAT deed making service for both transfer of rights and creation of land rights, is only given to people who are 21 years old or whose registration is pending after the PPAT deed is 21 years old.

¹² Achmad Ali (2008). *Menguak Realitas Hukum*, Jakarta : Kencana Prenada Media Group.p.9 – 11.

Based on the description of the research results and theoretical discussion, according to the author's opinion, children in the practice of notary duties and positions in the perspective of the Notary Position Law, their application does not have legal certainty, because let alone children or children who are under 18 years of age. , whereas only 18 years of age can be declared legally based on UUJN to make an authentic deed before a notary public, especially in the case of making PPAT deeds related to the transfer of land rights and making deeds of land rights, based on Head of BPN Regulation No. 1 of 2006 is declared unable to carry out legal actions in the form of making PPAT deeds related to the transfer of land rights or deeds of land rights, because the adult basis used by BPN refers to the Civil Code (BW).

3.2 Solving Problems of the Legality of Child Legal Actions in Practices and Position of Notary Public

We know that the current BW Civil Law applies in our country based on the "concordance principle".¹³ Because the enactment of BW is based on the concordance principle, the contents of the BW are mostly almost the same as the Civil Code in the Netherlands. In line with the voluntary submission of the Civil Code, there are issues that must be questioned, whether in making the PPAT deed, whether it is a deed of transfer of land rights or registration of land rights, can a woman who is married without getting permission from her husband submitting to the Civil Code (BW), BPN or PPAT should not issue a legalization deed made by a married woman. This is of course different from the opinion of the Supreme Court of the Republic of

¹³ Soediman Kartohadiprodjo (1967). *Pengantar Tata Hukum di Indonesia*, Jakarta: Penerbit PT Pembangunan, cet7 V, I S. .p. 56.

Indonesia Supreme Court Circular Letter Number 3 of 1963 concerning the Idea of Regarding Burgelijk Wetboek as not a Law. As for Supreme Court Circular Letter No. 3 of 1963 (SEMA No. 3/1963) in full states the following: Since the beginning it has generally been felt as an oddity, that in Indonesia, even though it has been an independent State, there are still many laws whose nature and objectives are more or less inseparable from the thinking of the colonialists, who in their actions were first and foremost. perhaps as a whole, pursuing only the interests of the Dutch State and the Dutch people. So it is only with a sense of compulsion that statutory regulations originating from the Dutch colonial era, are implemented by the authorities. In this situation, one can understand that a way is often sought, especially in a special way, to avoid that society is disadvantaged. Considering the crime, that the Dutch colonialist Burgelijk Wetboek was deliberately conceived as a mere clone of the Burgelijk Wetboek in the Netherlands and again to be treated first of all for the Dutch people in Indonesia, the question arises, whether in the atmosphere of an independent Indonesia that broke away from the shackles of Dutch colonialism, it is still appropriate to view the Burgelijk Wetboek as being parallel to a law that was officially valid in Indonesia. In other words: whether this colonial Burgelijk Wetboek still deserves to be officially revoked first to stop its enactment in Indonesia as a law. In connection with this there is an idea that the Burgelijk Wetboek :

- a. Articles 108 and 110 BW concerning the authority of a wife to commit legal acts and to appear before the court without permission and assistance from the husband.

b. Article 128 paragraph (3) BW regarding the recognition of children born outside of marriage by a native Indonesian woman. Thus, the recognition of children no longer results in a break in legal relations between mother and child, so that there is no longer any difference between all Indonesian citizens in this matter.

c. Article 1682 BW which requires one gift with a notary deed.

d. Article 1579 BW which stipulates, that in the case of leasing goods, the owner of the goods cannot stop the rental by saying that he is using the goods himself, unless at the time of forming this lease agreement it is promised to be allowed.

e. Article 1238 BW which concludes that the implementation of an agreement can only be requested in front of a judge, if this lawsuit is preceded by a written collection.

The Supreme Court has already decided, among two Chinese, that the delivery of a derivative of the lawsuit to the defendant can be considered as a custodian, because the defendant can still prevent the claim from being fulfilled by paying his debt before the court session day.

f. Article 1460 BW concerning the risk of a buyer of goods, which article determines that a certain item, which has been promised to be sold, is the buyer's responsibility since then, even though the delivery of the goods has not yet been made. With this article no longer in effect, then it must be reviewed from each situation, whether it is not appropriate to be responsible or the risk of destroying the goods that have been promised to be sold but have not been delivered, must be paid between the two parties, and if so, to what extent.

- g. Article 1630 x paragraph 1 and paragraph (1) BW which discriminates between Europeans on the one hand and non-Europeans on the other hand regarding labor agreements.

BPN's submission to the Civil Code (BW) because it refers to the Head of BPN Regulation No. 1 of 2006 is related to the ratification of the PPAT deed regarding the transfer of land rights and land deeds which require the maker to be 21 years old as stipulated in the Civil Code (BW) not to UUJN, if it refers to SEMA No. 3/1963, then Head of BPN Regulation No. 1 of 2006 does not reflect that the Republic of Indonesia is a sovereign state and has sovereignty, because of the Regulation of the Head of BPN No. 1 of 2006 still recognizes that it is no longer a person from the Indonesian nation, but as a whole the Republic of Indonesia submits to the Civil Code (BW) which MARI does not consider as the law of an independent Indonesian nation, but only as a guideline. Pitlo argues that the legality or ability to act is related to the age factor, and this age factor is based on the assumption that a person under a certain age is not fully aware of the consequences of his actions, so it can be concluded that the problem of inability to act in law does not have to be in accordance with the reality. or in other words, inadequacy here is a juridical incompetence or suspected incompetence (jurisische onbekwaamheid or veronderstelde onbekwaamheid), not actual inadequacy (according to existing facts).¹⁴In line with Pitlo's opinion above, Satjipto Rahardjo in his progressive legal theory argues that:

- a. Progressive law is intended to protect the people (children) towards the legal ideal.

¹⁴ Pitlo (1971). *A Het Systeem van het Nederlandse Privaatrecht*, terjemahan J. Satrio, cetakan keempat, H.D. Tjeenk Wilink, Groningen.p. 89.

b. Law is an institution that aims to lead humans (children) to a just, prosperous life and make humans happy.

c. Progressive law is pro-people law and pro-justice law.

Next Satjipto Rahardjo stated that hProgressive law rejects the notion that order works only through state institutions. Progressive law is aimed at protecting the people towards legal ideals and rejecting the status-quo, and not wanting to turn law into a technology that has no conscience, but a moral institution.¹⁵

Based on the results of research and theoretical analysis, especially progressive legal theory, according to the author Head of BPN Regulation No. 1 of 2006 besides contradicting the 1945 Constitution of the Republic of Indonesia, it also contradicts other laws and regulations, for that as a solution to obstacles inThe application of the legality of legal acts of children who are under 18 years of age or people who are 18 years old who are considered valid to carry out legal acts such as authentic deeds or PPAT deeds such as transfer of rights to land or making deeds of land rights, is by revokingHead of BPN Regulation No. 1 of 2006, because it contradicts the 1945 Constitution of the Republic of Indonesia as well as other laws and regulations of a higher degree than the Head of BPN Regulation No. 1 of 2006.

¹⁵ Satjipto Rahardjo I, p.2.

4. Closing

4.1. Conclusion

Based on the description, it can be concluded that: Legal acts of children based on the Law on the Position of Notary Public can only be declared valid if the child is 18 years old, but in practice, notaries only serve the making of notary deeds for those aged 18 years, while the PPAT deed service is good transfer of rights and making deeds of land rights, only for those who are 21 years of age or whose registration is pending after those who make the PPAT deed are 21 years old, the difference in services for making PPAT deeds and PPAT deeds is based on age differences because of the existence of Regulation of the Head of the National Land Agency No. 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Position Regulation of Land Deed Making Officials which impose a minimum age of 21 years for PPAT deeds, because BPN is subject to the provisions of the Civil Code (BW). Head of BPN Regulation No. 1 of 2006 is an obstacle in implementing UUJN and even makes UUJN not having legal certainty, besides contradicting the 1945 Constitution of the Republic of Indonesia it also contradicts other laws and regulations of a higher degree, for that as a solution to obstacles in application of the legality of legal acts of children who are under 18 years of age or people who are 18 years old who are considered valid to carry out legal acts such as authentic deeds or PPAT deeds such as transfer of rights to land and making deeds of land rights, the notary divides the deed into two parts, namely the notary makes a deed for 18 years old in the form of a notary deed, and for those who are 21 years old, besides a notary deed, a PPAT deed can also be made.

4.2. Suggestion

As a solution to the problems found in this legal research, it is suggested as a solution as follows: Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Position of Land Deed Making Officials which impose a minimum age of 21 years for PPAT deeds who are guided by or even subject to the Civil Code (BW) is contrary to sovereignty The Republic of Indonesia, which is independent from colonial rule, is also in conflict with other laws and regulations which have a higher degree than the Regulation of the Head of the National Land Agency, so these regulations should be immediately revoked and canceled. Destination Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Position of Land Deed Making Officials To provide protection for people who wish to transfer their rights to land and make land deeds should be appreciated by reconstructing it Regulation of the Head of the National Land Agency, so there is no term to submit to the Civil Code as a Dutch colonial legacy.

5. References

Journals:

Ruben Achmad. (2005). *Upaya Penyelesaian Masalah Anak yang Berkonflik dengan Hukum di Kota Palembang*, Jurnal Simbur Cahaya Nomor 27-X, January.

Books:

[1] Suharnoko. (2008). *Hukum Perjanjian, Teori dan Analisa Kasus*. Jakarta : Prenadamedia Group.

[2] Suherman, Ade Maman and J. Satrio. (2010). *Penjelasan Hukum tentang Batasan Umur*, Jakarta : Nasional Legal Reform Program.

- [3] Maidin Gultom. (2008). *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*, Bandung: Refika Aditama.
- [4] Kansil. (1999). *Pengantar Ilmu Hukum*, Jakarta: Balai Pustaka.
- [5] Sholih Mu'adi, *Penyelesaian Sengketa Hak Atas Tanah Perkebunan Melalui Cara Non Litigasi (Suatu Studi Litigasi Dalam Situasi Transisional)*, Disertasi, Departemen Pendidikan Nasional, Program Doktor Ilmu Hukum Pascasarjana Universitas Diponegoro, Semarang, 2008, p. v-vi.
- [6] J. Satrio.(1999). *Hukum Pribadi Bagian I Persoon Alamiah*, Bandung: Citra Aditya Bakti.
- [7] Pernyatakan BPN tidak tunduk kepada UUJN, dapat diartikan bahwa BPN dalam melakukan pendaftaran tanah hanya tunduk kepada KUH Perdata atau Burgerlijk Wetboek voor Indonesie (BW) Warisan Kolonia Belanda.
- [8] Utrecht, E. (1959). *Pengantar Dalam Hukun Indonesia*, Jakarta: PT Penerbit dan Balai Buku " Ichtiar ", cet. V.
- [9] Lawrence M. Friedman. (1977). *Law and Society, an introduction*, Prentice Hall, New Jersey
- [10] Achmad Ali (2008). *Menguak Realitas Hukum*, Jakarta : Kencana Prenada Media Group.
- [11] Soediman Kartohadiprojjo (1967). *Pengantar Tata Hukum di Indonesia*, Jakarta: Penerbit PT Pembangunan, V, I S.
- [12] Pitlo (1971). *A Het Systeem van het Nederlandse Privaatrecht*, terjemahan J. Satrio, H.D. Tjeenk Wilink, Groningen.

Interview:

Interview With Abd. Jalil Hamzah, SH., M.Kn. Notary and PPAT, domiciled in Cirebon Regency, on July 11, 2020.