

# LEGAL STATUS, CAPACITY AND RESPONSIBILITY OF CHILDREN UNDER INDONESIAN LAW

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## **Abstract:**

Legal capacity is one of the most important things in human life. Through the legal capacity, a person can express his/ her will to others and therefore can have his will fulfilled. However, before a person can have a legal capacity, its legal status must be confirmed. Legal capacity will result in legal acts which ended in legal responsibility. The research aims to discuss the legal status, capacity, and responsibility of children or minors in Indonesia. The research is normative legal research. It used secondary data for analysis, which consisted of primary legal sources, secondary legal sources, and tertiary legal sources. Data were collected using google machine using main keywords “children”/ “minors”/ “legal”/ “capacity”. Analysis was conducted using qualitative method with descriptive-analytically approach. Findings and discussions proved that there are many laws and legislations that regulate about children, however not all laws and regulations directly specified the same conception on the legal status and therefor the legal capacity of children or minors. Therefore researcher suggest that for the purpose of protecting the child’s interest, especially in financial wealth, a comprehensive law must be made.

**Keywords:** children, minors, legal subject, legal capacity, Indonesia

## **I. INTRODUCTION**

In every legal system in the world, every human being born alive is a legal subject that can bear rights and obligations. He/ she is free to express his/ her own will and to do anything that he/ she likes, subject to the limitation/ prohibition provided by the prevailing laws and regulations in each legal system. However, due to the acceptable minimum knowledge and the minimum capacity to think and behave, every legal system provides specific norms and institution that assists those who are considered to be “incapable”. There is some terms and conditions that are applied to determine as whether a certain legal subject is considered to be “incapable”. In general, the law states that every human being is a legal subject that is able to act before the law. The incapable is an exception.

Different legal system may determine which kinds of person to be declared incapable. Indonesian Civil Code, which is codified from Old Dutch Civil Code also provides the

regulations of the incapable. In general, Indonesian Civil Code (ICC) stated that only mature person can act, make and agreement and be bound with the agreement he/ she makes. It may be simply read that minors do not has capacity. The research tries to elaborate the concept of legal status, capacity and responsibility of children/ minors based on the prevailing laws and regulations in Indonesia.

## **II. RESEARCH METHOD**

The research is normative legal research. It will discuss the concept of the minors and their legal status, capacity to act and to bind themselves in law and subsequently the responsibility. It used secondary data, which are data available for public, which mostly consisted of primary legal sources, some secondary legal sources, and if required tertiary legal sources. During Covid-19 pandemic, data were search using google machine using the

main keywords of minors, child(ren) and laws, regulations.

Data obtained during the research were analyzed based on its relevancy to the research using content analysis. The selected data then used for further analysis to explain the aim of the research. Data analysis was conducted qualitatively using descriptive-analytical approach to discuss the content of the norms in the prevailing laws and regulations.

### III. RESULTS AND DISCUSSIONS

Research finds out that there are many laws and regulations that regulate the right and obligations of children. They are:

1. Indonesian Civil Code (*Burgerlijk Wetboek voor Indonesie* - State Gazette No.23 of 1847) (ICC);
2. Law No.1 of 1974 regarding Marriage as amended by Law No.16 of 2019 regarding the Amendment of Law No.1 of 1974 regarding Marriage (the Marriage Law);
3. Law No.23 of 2002 regarding Child Protection as amended by Law No.35 of 2014 regarding the Amendment of Law No.23 of 2002 regarding Child Protection (the Child Protection Law);
4. Law No.4 of 1974 regarding Child Welfare;
5. Law No.23 of 2006 regarding Population Administration as amended by Law No.24 of 2013 regarding the Amendment of Law No.23 of 2006 regarding Population Administration (the Population Administration Law);
6. Law No.13 of 2013 regarding Employment as amended by Law No.11 of 2020 regarding Work Creation (the Employment Law), which revoke the following laws, some were promulgated during the period of Dutch Indie, such as:
  - b. Ordinance of 1926 Regulation regarding Children and Young Man Works on the Ship (State Gazette No.87 of 1926); and
  - c. Ordinance No.9 of 1949 regarding Work Limitation for Children (State Gazette No.8 of 1949).

ICC provided the terms and conditions for a contract to become valid. There are four terms and conditions that must be fulfilled (Subekti, 2008) (Satrio, 2001). Two of them are related to the terms and conditions of the legal subjects that make or enter into the contract. The other two are the terms and conditions that belongs to the objects of the contract, which refers to the obligations arise from the contract (Widjaja & Muljadi, 2010). The non fulfilment of the first two terms and conditions will cause the contract to become nullable. It means that before the contract or the act is declared to be null and void by court decision, the contract or act remained valid. These terms dan conditions is different with the other two terms and conditions (Prodjodikoro, 1993) (Satrio, 1995, 2001).

The first two terms and conditions under Article 1320 ICC are the consensus between the parties who make the contract, and the legal capacity of the parties. Under Article 1330 ICC, the incapable, those who ha no capacity is, among other, minors. Minors is defined in Article 330 ICC. According to Article 330 paragraph (1) ICC, minors are those who has not reach 21 years old of age and has never married before. These are cumulative conditions. Those conditions applicable for people living in Indonesia (before known as Dutch Indie) with no exception. If there is child that got married before reaching the age of 21 and divorced before 21 years old, the child shall not be constituted as minors anymore. In such a condition, below 21 years old and has not married, minors are not supposed to act by him/herself.

The acts of the minors shall be conducted through the representation of the parents. Parents consisted of father and mother in a marriage. Legitimate parents are father and mother at the birth of the child. The legitimate parent is the biological mother and biological father/ any man that enter into a valid marriage with the biological mother. Parenthood of a child is only once in a lifetime. Once the parent

get divorce, there is no legal terms of parent anymore. In the absence of parents, minors must be represented by their guardian. The guardian can be the living parent (in case the other pass away/ died) of appointed by court decision. The guardian only consists of one person. Legitimate guardian is the one that must be appointed by court, except for the living legitimate parents. Those guardians that were never appointed by law cannot be described as legitimate guardians, even they are doing the guardianship functions and tasks (the factual guardian).

However, when minors act, article 1446 ICC only open possibility to declare nullification of the act. Furthermore the nullification claim can only be made by the minors whenever the minors have become mature person, either because they have reached the age of 21 years old or get married. The time period for nullification can only be made at the time maturity come until 5 years after that. If maturity is caused by reaching the maturity age of 21, it means that nullification claim can be made from the age of 21 to the last day of age 25 by the minors when they reach age 21. If the maturity is caused by marriage, nullification claim can be made from the time of marriage until 5 years after the marriage. ICC does not provide the right to the parents or guardian to take action to claim nullification of the act. Article 403 ICC required the guardian (or parents) to obtain permit from Heritage Property Agency (*Balai Harta Peninggalan* = BHP) which will seek opinion from the family members of the minors. It is therefore nullification claim of minors' act was never found in practice. The article 1446 ICC confirms that actually minors can act and make contract in practice. However, it is in the risk of the mature and capable to determine as whether an act or contract made minors will be enforceable or not. It should be noted that a valid act or contract may not always be enforceable, especially when the enforcement of the contract is made against minors.

The act of the minors may sometimes become illegal or create loss or injury to others. In such manners, article 1367 ICC states that the parents and guardians shall be responsible for loss caused by the conducts or acts of the minors that live with them and to whom they are given the responsibility as parents or

guardians (including the factual guardian). It is therefore the parents or guardians must be able to direct and provide good care to the children.

The maturity of minors in terms of age in the Marriage Law is changed to 18 years old. This means that after the promulgation and effectiveness the effectiveness of the Marriage Law, minors are those below 18 years old and have not get married. The other terms and conditions remain as regulated in ICC. Due to the nullification, it can be applied that nullification claim can be made from the age of 18 to the last day of age 22 by the minors when they reach age 18. For maturity which is caused by marriage, the nullification claim can be made from the time of marriage until 5 years after the marriage.

The discussion of the above only relates to minors that were born from father and mother in a marriage. Regulations and practice proved that there are minors that:

1. only has relation with his mother (the child born outside a marriage);
2. legally acknowledged child;
3. legalized child;
4. as adopted child.

Any child that was born outside a marriage only has legal relation with his/ her mother. The mother is the guardian of the child, and therefore as long as the child is still minors, his/ her act must be represented by the mother. All the legal consequences of a child born outside a marriage is the same as a legitimate child that was born in a marriage.

The child born outside a marriage can be acknowledge by the biological father. Such acknowledgement can be done by the biological mother and biological father upon their marriage according to their religion. Such acknowledgement must be register with the Civic Registered Office (*Kantor Catatan Sipil*). If the marriage between the biological mother and father is also conducted according to and valid according to the state law (the Marriage Law), the child will become legalized child. The legal consequence of a legalized child is like the child born in a marriage (legitimate child). the legalization must also be registered

accordingly at the *Kantor Catatan Sipil*. The legalization can be made either from directly child that was born outside a marriage or from a legally acknowledged child. The process of the registration is regulated in the Population Administration Law.

There is also adopted child as minors. Based on article 1 paragraph 2 of Government Regulation No.54 of 2007 regarding the Implementation of Child Adoption (GR54), child adoption is “a legal conduct that divert a child from environment of the parental power, legitimate guardian, or other person that is responsible for the care, education and raising the child, to the environment of the family of the adoptive parent.” GR54 is the implementation of the Child Protection Law. Article 1 paragraph 9 of Child Protection Law stated that adopted child is “a child that was divert from the environment of the parental power, legitimate guardian and or other person that is responsible for the care, education and raising the child, to the environment of the family of the adoptive parent by on court decision or court ruling.” The same definition is used in article 1 paragraph (1) of GR54. Further regulation of adoption can be found in the Minister of Social Regulation No.110 of 2009 regarding the Adoption Conditions. However, there is no further explanation on the legal status of the child after adoption took place. The process of the registration of adoption is regulated in the Population Administration Law

During Dutch Indie, which is reflected in ICC, there is no regulation on adoption. Further, because of the requirement, the Dutch Indie Government in 1917 issued Regulation under State Gazette No.129 of 1917 (the 1917 Regulation). Article 5 to article 15 of the 1917 Regulation, Chinese descendants that live in Dutch Indie is allowed to adopt boy, but not girl. Chinese man, that is married or ever married and does not have boy during the marriage may adopt a boy. The adoption of the boy is allowed because of the importance of boy in Chinese family history. In 1963, Jakarta Court made a landmark decision that allow adoption of a girl based on the consideration that adoption is made not only for heredity purpose but also for the interest of the adopted child. The content of the court decision that terminates the legal relation of the adopted

child with his legitimate parents, or guardian and creates new legal relation of the adopted child with the adoptive parent. This means that after adoption took place the adopted child become the legitimate child of the adoptive parent. Further legal consequences proves that the adoptive father shall be the legal father that will represent and be responsible for the acts of the adopted child.

Talking of the adopted child, under the Child Protection Law, adoption cannot take place before the adopted child is being fostered by the future adoptive parent following the permit to foster the child. Fostering the child does not change any legal status of the child. The legal status of the child remains with the legitimate parent or guardian, which means that in front of the law, the legal capacity of the child is still with the legitimate parent or guardian. The fostering parent is responsible for the care, growth, and development of the fostered child. Since the child is living with the fostering parent, any unlawful conducts of the child shall be the responsibility of the fostering parent.

In view of Child Welfare Law, it is interesting that according to the law that child is any person that has not reach the age of 21 years old and has never married. The content is the same as the one regulated in ICC. However when it must be read in accordance with the Marriage Law, it can be said that child may not be same as minors. Child refer to the Child Welfare Law is about child that need special attention on his/ her welfare. Please also note that the Child Welfare Law also mentions about the function of adoption for the interest of the child, that must be regulated by a Government Regulation. The GR54 can be also said as the implementation of the Child Welfare Law.

With respect to Employment Law, there are several specific provisions that allow children to work under employment terms:

1. Article 69 paragraph (1) the Employment Law that allowed children between 13 to 15 years old to do easy work/ job as long as it does not interfere with the development and physical health, mental health and social health of the child;
2. Article 70 paragraph (1) and (2) the Employment Law that allow at least 14 years

old children to work in a place which become part of the education and training curriculum;

3. Article 71 paragraph (1) and (2) the Employment Law that allow children to work to develop their talent and interest under the direct supervision of their legitimate parents/guardians.

Those provisions, except Article 71 of Employment Law, do not clearly specify as whether the children have their own capacity to sign the employment contract, or the legitimate parent/ the guardian has to represent the children. In such events, the representations that were made by the legitimate parents/guardians can be seen as the violence to the Child Welfare Law and Child Protection Law, that prohibits any kinds of acts that may not in the interest of the children. In such, that the employment contract is made with the child with no legitimate parents/ guardians, will article 1449 ICC applied?

#### IV. CONCLUSION

Findings and analysis proved that there are many laws that regulate children. Among all there are two laws that simply not inline in determining the concept of legal statuses of children. In view of legal capacity, there are minors that are declared incapable, however the law itself provide a practical approach to determine the meaning of incapability. Based on the different conception on legal status of children, in connection with the minors' capacity, it can be said the different of the legal status does not have many impacts to the capacity of the children to act. The responsibility lies with the legitimate parents/guardians as well as factual guardians.

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