Criteria for Legal Subject Proficiency in The Sale and Purchase Deed

Ratna Tri Wahyuningsih
Universitas Islam Indonesia
Email: ratnat193@gmail.com

Abstract

The purpose of this study is to analyze the criteria of legal subjects' proficiency in the sale and purchase deed from the perspective of Article 39, paragraph (1) of the Notary Position Law, Article 7, paragraph (1) of the Marriage Law, Article 1 paragraph (1) of the Child Protection Law and Article 1330 of the Civil Code and the legal implications of the sale and purchase deed carried out by subjects who are not legally competent. The method used in this study is a normative legal method with analysis in a literature study on a problem of conflict between Article 39 of the Notary Position Law, Article 7 of the Marriage Law, Article 1 of the Child Protection Law and Article 1330 of the Civil Code. The results showed the criteria for the proficiency of legal subjects on the sale and purchase deed in the Notary Position Law of at least 18 (eighteen) years old or married, in the Child Protection Law states that the child is someone who is not yet 18 (eighteen) years old, the Marriage Law is marriage allowed if both a man and a woman are 19 (nineteen) years old. In addition, the proficiency criteria according to the Civil Code are 21 (twenty-one) years old or married. The implication is that the sale and purchase deed carried out by an incompetent legal subject results in the sale and purchase deed being cancelled because, basically, the validity of an agreement can be fulfilled with subjective conditions that affect the ability to make agreements. The conclusion of the above problem is that there are differences in setting the age limit of proficiency in various laws and regulations such as the Notary Position Law, Child Protection Law, Marriage Law, and Civil Code. The Notary Office Law stipulates that the age limit for proficiency is 18 years. This difference in regulation triggers differences in perception and legal uncertainty in the age limit of being able to perform legal acts, the need for unification of perceptions and harmonization of laws and regulations related to the definition of the age limit of competence and legal implications for the sale and purchase deed carried out by incompetent subjects have revocable consequences on Deeds made can be cancelled at the will of one of the parties who feel aggrieved by the agreement in the sale and purchase deed.

Keywords: Criteria, Skills, Deed of Sale and Purchase.

Introduction

A sale and purchase deed is an authentic deed made before and by an authorized official, namely a notary (Samuel, 2022). A notary is a general official appointed by the government to make authentic deeds, and other authorities are referred to in the Notary Position Law; in making a sale and purchase deed, the Notary is obliged to check the competence of the parties facing it. This is regulated in Article 39 paragraph (1) of the Notary Office Law which states that notaries are obliged to check the identity and ability to act of the parties in making deeds. This provision is intended to fulfill the conditions of a legally valid agreement as stipulated in Article 1320 of the Civil Code.
Juridically, Article 1320 of the Civil Code regarding the agreement determines the existence or absence of an agreement (Justice & Azis, n.d.). That is, the agreement is considered to exist if it meets the requirements of being capable, agreed upon, and a certain thing and causal that is lawful. So that an action in a treaty can have a perfect legal effect, the person who acts at the time the action is performed must have a maturity of mind that is normally able to fully realize his actions and the consequences of his actions. People who are normally able to realize their actions and the consequences of their actions in law are called capable of action. When the person is about to enter into an agreement, there is no need to investigate in advance whether the opponent of the promise is capable of acting or not then by law, a group of persons, referred to in their group of capable, that is, adults is established. The criteria for the proficiency of legal subjects are often a problem, especially related to age and marital status when making agreements before a notary.

Problem Statement
Based on the description in the background above, the following problems can be formulated: what are the criteria for the competence of legal subjects on sale and purchase deeds in the perspective of the Notary Position Law, Child Protection Law, Marriage Law and Civil Code? What are the legal implications for the sale and purchase deed carried out by subjects who are not legally competent?

Research Objectives
The purpose of the study is to affirm the formulation of the problem to be studied, namely, to analyze the criteria for the competence of legal subjects on sale and purchase deeds from the perspective of the Notary Office Law, Marriage Law and Civil Code and to analyze how the legal implications of sale and purchase deeds carried out by subjects who are not legally competent.

Research Methods
In this research method, researchers explain the type of research used normative juridical with a legal approach and a conceptual approach. The source of legal materials for this study uses primary legal sources, namely the Notary Position Law, Child Protection Law, Marriage Law, and Civil Code, while secondary legal material sources are books, scientific journals, and internet media. Data collection techniques in this analysis use literature studies conducted by visiting libraries, reading, studying, and studying books, literature on laws and regulations, and research journals. The data analysis method in this study uses qualitative descriptive.

Results and Discussion
Criteria for the proficiency of legal subjects on sale and purchase deeds in the perspective of the Notary Office Law, Child Protection Law, Marriage Law and Civil Code
A person's ability to perform legal actions requires maturity, and maturity is influenced by age. Article 39 paragraph (1) of Law Number 2 of 2014 concerning Notary Position states that the requirement for a person to be a confronter and authorized to perform legal actions, be at least 18 years old or have been married before and every Notarial Deed must be given a title that is in accordance with the nature of the deed and contains the identity of the parties, place, time and a clear description of the actions attested by the deed."

Based on these provisions, the Notary Position Law does not specifically regulate the criteria for legal subject competence in the sale and purchase deed. However, Notaries have the obligation to include the identities of the parties involved in the sale and purchase deed. The identity of the parties in the sale and purchase deed includes the full name, place and date of birth, occupation, and address of the parties; by including the identity of the parties, the Notary can identify whether the parties meet the criteria for the competence of the legal subject or not.
to determine the competence of the legal subject in the sale and purchase deed, the Notary must refer to the provisions of other related laws and regulations, like:

Child Protection Law Number 35 of 2014, concerning Amendments to Law Number 23 of 2002 concerning Child Protection, defines a child as someone who is not yet 18 years old, including children who are still in the womb. Minors do not have the legal capacity to perform legal acts such as buying and selling land or other immovable objects independently. To perform these legal acts, children must be represented by parents or legal guardians in accordance with the provisions of laws and regulations.

Article 7 of Law Number 1 of 1974 concerning Marriage states that a person who has reached the minimum age limit for marriage, namely a man who is 19 years old and a woman who is 16 years old, even though not married, is considered legally capable of carrying out legal acts of buying and selling independently so that in the perspective of Article 7 of the Marriage Law, The criteria for legal subject proficiency in a sale and purchase deed are based on a person's age and marital status. The Notary must ensure that the parties involved in the sale and purchase deed meet this criterion, namely that they have reached the minimum age of marriage or have been married, either with or without dispensation from the Court or other competent officials.

Article 1330 of the Civil Code states that a person who is incompetent to make an agreement is a minor and a person under custody. A person is considered immature if he has not reached the age of 21 years and has not previously married (Article 330 of the Civil Code). People under care are those who are incompetent to manage their own interests due to ignorance, memory pain, or dark eyes.

Notaries must ensure that the parties involved in the sale and purchase deed are legal subjects capable of carrying out these legal acts in accordance with the provisions of applicable laws and regulations. If there is a party that does not meet the criteria for legal subject competence, such as minors or persons under guardianship, then that party must be represented by a parent, guardian, or legal guardian in accordance with applicable regulations.

**Legal implications for sale and purchase deeds carried out by subjects who are not legally competent**

An authentic deed is an agreement of the parties that is binding on those who make it; therefore, if the legal subject commits a legal act must fulfill the conditions for the validity of an agreement, UUJN it has been regulated in article 39 paragraph (1) of Law Number 2 of 2012 concerning Amendments to Law Number 30 of 2004 concerning Notary Position explained about the requirements for a face who can make a deed, that is at least 18 (eighteen) years old or married and capable of performing legal acts. Moreover, The legal conditions of an agreement are regulated in Article 1320 of the Civil Code, the fulfillment of subjective conditions. Subjective conditions are conditions related to subjects who make or enter into an agreement, which consists of an agreement and the ability to perform a legal act.

The terms of validity of the agreement are embodied in an authentic deed. Subjective conditions are listed at the beginning of the deed. The content of the deed is a manifestation of Article 1338 of the Civil Code regarding freedom of contract, which states: "All agreements validly made are valid as law for those who make them. An agreement cannot be revoked other than by agreement of both parties or for certain reasons, such as the incompetence of the legal subject in carrying out the sale and purchase deed agreement. Basically, the validity of a sale and purchase deed is an agreement that is determined by the existence of subjective conditions; then, if the subjective conditions are not fulfilled in an agreement, it can be cancelled (vernietigbaar) as long as there is a request from the aggrieved parties. Notaries, in carrying out their duties and positions, must always act carefully; before making a decision, they must examine all relevant facts based on applicable laws and regulations.
Criteria for Legal Subject Proficiency in The Sale and Purchase Deed
Ratna Tri Wahyuningsih

Conclusion
Proficiency criteria in legal acts There are different settings for the age limit of proficiency in various laws and regulations, such as, in the Child Protection Law, a child who is not yet 18 years old. Under the Marriage Act, a person is allowed to marry if both the man and woman are 19 years old. In the Civil Code, a person is considered an adult to be 21 years old, and the Notary Office Law stipulates the criteria for the age limit of proficiency is 18 years. This difference in regulation triggers differences in perception and legal uncertainty in the criteria for limiting the age of ability to perform legal actions. So, it is necessary to unify perceptions and harmonize laws and regulations related to the criteria for limiting the age of proficiency. The legal implications of the sale and purchase deed carried out by incompetent subject cause consequences to be cancelled due to the non-fulfilment of the subjective conditions in Article 1320 of the Civil Code in the form of competence in making agreements, so that all deeds made can be cancelled at the will of one party who feels aggrieved due to the sale and purchase deed made by an incompetent party.

Bibliography
Ade Suherman Maman and J. Satrio, Legal Explanation of Age Limits: Ability and Authority to Act Based on Age Limits, (Jakarta: National Legal Reform Program, 2010).
G.H.S Lumban Tobing, Notary Department Regulations, (Jakarta: Erlangga, 1999)
Habib Adjie (3), Indonesian Law Thematic Interpretation of Law No. 30 of 2004 concerning Notary Positions, (Rafika Aditama, Bandung, 2008)
Ridwan Khirandy, Indonesian Contract Law in Comparative Perspective, Part One, (Yogyakarta: FH UII Press, 2013)
Law Number 23 of 2002 concerning Amendments to Law Number 35 of 2014 concerning Child Protection
Law Number 1 of 1974 concerning Amendments to Law Number 16 of 2019 concerning Marriage
Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position