

RECONSTRUCTION OF LEGAL CAPACITY AS LEGITIMATE TERMS OF AGREEMENT OF SAVING FOR CHILD IN THE BANK AS IMPLEMENTATION JUSTICE IN LAW OF CIVIL LAW

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ABSTRACT

Purpose of the research is know and analysis: (1) cause rule of legal capacity as terms of saving agreement by child in the bank one did 'nt give protective yet; (2). Rule of saving one ideal as term of saving agreement by child in the bank. This research use doctrinal approach metode and indoctrinal approach metode. The souch data in the research are primer data and secunder data. Saving act in the bank is human right such as the child. Dues of the child (saving independent) arose from the urg their selve because they receive doctrine in education. A research said there are one hundred twenty third of student of one hundred fourty of student said have the urg saving independent in the bank. The research view interest very much to students as many as 87,23% of total respondent students. Due of the child such as saving independent is blocked by law practice in the banking because determinate in the law number 10 year 1998 concerning the change of the law number 7 year 1992 concerning the banking did 'nt set clearly yet. The banking interprete rule terms saving one written in the law number 10 year 1998 concerning the change of the law number 7 year 1992 concerning the banking normative. It's mean the banking still use determinate in KUHPerdata article 1320 as general term a agreement. Indonesia is law state such as inserted in constitutional 1945. Legitimating Indonesia as law state have the impact that all attitude have to relevance by law. Similarly act such as saving in the bank. The law Number 10 year 1998 concerning change of the law Number 7 year 1992 concerning the banking gives definition account saving as follows: "account saving is savings who can talked accord agreement of parties only, but it can't talked with cek, bilyet, giro ect". The definition of account saving upon explains implicitly that terms of agreement of saving surrender parties (pay attention of sentence "according specialist term by parties"). The sentence upon is norm blanked should facilitate the child for saving independent according of the best interest of the child principle. But the banking decided use the general law about legal capacity one forbidden the child saving independent. The law one forbidden the child saving independent is going to give impact such as is blocked protective of law to interest child are for live, grow and develop for prepare the future their selve. Salving independent by the child are growth and development psychologically. According a research by Child and Youth Finance International said "the human one saving since child period is better than the human didn't save since child period. It's mean attitude saving is going to become the child find best growth and the best psychological development

Keywords: relevance of legal capacity, terms of saving agreement, the child, bank.

Introduction

Indonesia is a law state such as inserted in constitutional 1945 of Indonesia. Such is the understanding of the nation Indonesia in address every issue life. The understanding continues to be held firm as amanah of the constitution of Indonesia. As law state, then the entire act should be set by the law. Law is meant here is the law of laws or norms that have dipostifkan in building regulations. This understanding is owed to the determination of rules about what can and cannot, one of which the determination of the rules on the conditions to be met by the parties to be and / or are conducting the agreement if the agreement is about to declared invalid before the law. The rules on the validity of this agreement the terms stipulated in the Law of Civil Law (Civil Code) Articles 1320, which declared the agreement invalid if they meet four conditions and one of them is for the parties legally competent. The Civil Code itself is a statutory legacy of Dutch colonial designed and ratified in 1800. During this period of social changes caused by technological progress has not been much to contribute to the change in people's attitude toward the law. At the time of proficiency as a condition of lawful agreements made at that time would still be relevant to behavior or habits of society at that time, so every action in terms of the agreement affected the flow of normative-dogmatic entirely still follow the terms stipulated by the law makers. Legal capacity to make an agreement is a principle set forth in the legislation. According to legal positivism, when provisions have been enacted such provision has absolute enforcement or should not be violated. This theory only accepts the law as there,¹ that is in the form of existing regulations.

¹ The legal term as their quoted from the article entitled positivism and the separation of law and morals by H. L. A Hart in R.M. Dworkin, an introduction to legal philosophy. tr. Yudi Santoso, Cet. I. Yogyakarta: Merkid Press. 2013, p 25

Legal positivism do not want law studies in the perspective of non-law as an ethical, sociological, political, and so forth.² The Conception positivism no place enactment of a law of nature, avoid the matter of assessment and also no place for customary law that live and thrive in society, simply viewing the law as *dasollen* / juridical regardless of *das sein* / social reality. If the principle of acting prowess made as a condition for enforcement of a law, this principle should not be and unlawful for crises. This means, that arrangements are made without regard to this principle which has been included in Article 1320 of the Civil Code must be complied with, break it is a betrayal of the Act. Understand the absolute observance of the provisions of the legislation is affected by law enforcement in the deontological ethics. Ethics deontologis an ethical way of thinking which bases itself on the principle or objective norms that are considered to be applicable in any circumstances³ When the deontological ethics or the categorical imperative applied to proficiency as a condition of lawful agreement, it thus raises doubts the relevance of skills to act as one of the conditions the validity of the agreement to the entire agreement. Laws that give priority to the written rules alone will have difficulty in interpretation and application. Interpretation and application of the law cannot be separated from human behavior.

Early codifying European law at the age of maturity to be declared legally competent is 21 years old. When the Netherlands to Indonesia benchmark 21-year being the size of a person prowess as set out in Articles 330 *Burgerlijk Wetboek* that minors are those who have not even aged 21 years or have never been married. Articles 1330 provides guidance *Burgerlijk Wetboek* who should not be made an agreement was one of them a child. Kids here means a person who has not attained the age of 21 years or have never been married before. Determining the age of 21 years as a benchmark maturity proficiency level because at the time of maturity of the new person's psychology occurs generally around the age of 21 years. But with the enactment of laws protecting children, the concept of maturity starts at the age of 18 years. It is somewhat strongly influenced by the complexity of the needs of children who have transformed the way a person's psychological maturity.

In reality, not all the agreements in today's era of progress is still relevant to the concept Articles 1320 of the Civil Code. One example of such an agreement is an agreement to save closed by minors during school (junior high and high school) where the agreement for today has been common practice for children aged under 18 years. Based on the pre-study conducted by the author on September 23, 2014 at Bank BTN UNS branch found that children who are students can close a savings agreement called the savings champion. According to Customer Service BTN a student is allowed to close a savings agreement champion without represented by a guardian or parent, with direct and set their signatures include parental consent. The identification as a condition of the bank administration equipment is a student card of the depositor.

By law, people who are not proficient in the law to take legal actions relating to civil rights and obligations must be represented by a guardian, in order to represent the legal interests of the incompetent person.⁴ Fact or *dassein* described above will certainly lead to new problems if the law does not want to get out of the text. Although the *faqih* (jurist) agreed that the action violates the terms of the agreement prowess is simply implies that the agreement can be canceled in terms of the agreement remain in effect as long as there is no cancellation from the immature. In Article 1331 of the Civil Code in principle covered by a treaty which has not proficient by conjecture Act can be prosecuted only on the basis *penbatalannya* not competent when closing the agreement.

Legal capacity are absolutely linked with maturity under suspicion legislation aims to provide justice that has not been capable (according conjecture law), but in the days ahead is now no longer possible enforced rigidly / absolutely no view of other factors. When prowess applies the categorical imperative (coercion unconditional) as an obligation, then what about the child who has reached the cognitive skills more quickly than other children. Children who have been working for economic crush, they basically have a conversation. Similarly, children who live in the environment of indigenous peoples, they have grown faster because of habituation in its environment.

Child is a legal subject whose interests should be protected by law. this means the interests of the child as a legal subject should be carried out without hindrance. The other side will be profitable for banks by increasing the absorption of funds / capital from the public bank that will strengthen the nation's economic progress as well. Definition of very concrete skills have only a narrow scope of enforceability only be able to embrace their adult by law only conjectured. This situation is a legal problem to be solved since its existence became a barrier right one subject banking law and slow the economy, not the law exist for economic support!. Law should be born to stimulate the economy. By opening this barrier (kids free savings) would facilitate also the child according to conjecture law to obtain rights or justice.

B. Formulation of the problem.

How relevant legal capacity as a condition of lawful agreement in the era of advanced and complexity of the needs of children?

C. Discussion

1. Relevance legal capacity For Legal Terms of Agreement In the Era of Advanced and Complexity Needs Children

² H. Lili Rasjidi and Thania Rasjidi-base- basic philosophy and Theory of Law, Citra Aditya Bakti. Bandung, 1981, p. 81

³ Tanya L. Bernard, in the Light of Conduct for Law Enforcement, Genta Publishing, Yogyakarta, 2011, p 12

⁴ Imma Indra Dewi W, "Implementation of Civil Rights and Obligations of Persons Not Proficient In Sleman Law", articles on Pulpit Journal of Law, No. 3 Vol. 20, October 2008, p. 560

Understanding the relevance is not likely to be found in legal theory, even though the relevance of the term is commonly used by legal practitioners and academics. This is because relevance is the study of science communication. In this section the authors will describe things in terms of relevance. Introducing the concept of contextual effects and discusses the variety of various effects such as contextual implication, kontradiksi, and reinforcement. As a note that the impact of contextual very important for the depiction of the process of understanding. Interpret utterances not only include the identification of assumptions expressed explicitly: he crucially includes the completion of the addition of the consequences of this assumption to a set of assumptions that have been processed. The concept is very important for the impact of contextual relevancy characteristics, the greater the greater the impact of contextual relevance.⁵ Essentially the relevance of an article of law was the deconstruction of the text to the progression of meaning. Therefore relevance cannot be separated from the perspective of semiotics.⁶ At any legislation contains a sentence which is commonly known as the language of the law. At any legislation have certainly created the transmission of communication so that everyone is able to understand that such legislation contextual impact for users.

It is important to remember the law is, the laws drawn up in the form of legal language that cannot be separated from the symbols or signs. In order to apply the law then everyone has to make sense of each symbol is tangible in the language of the law. This meaning later gave birth to a communication and success or failure is measured from the relevant communication or not the communication. Relevant here can be interpreted as having contextual impact, the greater the impact of contextual increasingly relevanlah the communication. When the relevant theory was taken up by the law, the articles of the legislation is a means of communication because they contain legal language in the form of commands, prohibitions, or suggestion. Irrelevant whether the regulation is determined by the impact of contextual owned by these regulations. Contextual impact is impact felt by the public as users of regulations. Contextual impact would be created if these regulations give justice as ideals of law in general.

1. Justice in Law

Regarding the definition of what constitutes justice is never satisfactory. It is caused by an ideal of justice and is a classic problem that limits very relative. In fact, everyone has their own perception of what they consider to be justice, so the highly subjective nature. The lack of conformity in making sense of justice encourages people to formulate and define the appropriate background knowledge and experience of each.⁷ Latif⁸ pointed out that the word literally means a straight fair, balanced, so that fairness means treating everyone with the principle of equality (principle of equal liberty), without discrimination based on subjective feelings, differences in ancestry, religion and social status.

Rawls⁹ conceptualize justice as fairness containing the principles that free men and rational wishes to develop its interests should receive an equal footing at the moment will start and it is a fundamental requirement for them to enter their associations wills. Then Aristotle¹⁰ approaching the issue of justice in terms of equality. This approach requires that the resources in the world are given on the basis of equality to members of the community or the State. Laws should keep the division thus always guaranteed and protected from rapes against Sheikh Izzuddin thinker Ibn Salam Abdis Egyptian-born Islamic law in his essay the rules of Islamic law give an explanation about the fair. Sheikh Izzuddin explained that measure granting a living with a lot-at least intent will include the fair, which will be closed in spite of the portion received hajatnya different, because closing the lavatory (requirement) is the most important purpose of giving a living. Likewise in the division of property public good¹¹

In the fact interest of individuals and groups always conflicting. The fighting that will to make the conflict. The presence of the law is needed in order to maintain the peace. Thus different with the terms of the law that determine the rules of the public, then to generalize all people. Justice is a subjective, individual, and not generalize, in this case justice demanding every case weighed theirslef.¹² The diversity of the meaning of the justice, influential on an effort to interpret the act or not. Said such as it may a behaviour by a group is considered to be fair, but for other groups judged instead. In connection with it, Ismail¹³ explained that effort that can be done was brought the ruling the law in the sense of justice to be lived by the people in order to practice can contribute to the creation of order. Radbruch¹⁴ states that laws only have meaning as a law if it is the realization of justice. The

⁵ Dan Sperber, Deirdre Wilson. *Theory of Relevance: Communication and Cognition*, Reader Student, Yogyakarta, 2009, p. 175

⁶ Anthon Freddy Susanto, *Semiotics of Law: From Deconstruction Towards Progressivity Text Meaning*. Reflika Aditama, Bandung, 2005, p 23

⁷ Karl Briton, *Philosophy And Meaning of Life, Primasophie*, Yogyakarta, 2003, p 24

⁸ Yudi Latif, *State Plenary: historicity, rationality and actuality of the Pancasila*, PT. Gramedia Pustaka Utama, Jakarta, 2001, pp 584-585

⁹ Rawls in Satjipto Rahartjo, *Satjipto Rahartjo, Law*, revised edition, PT Citra Aditya Bakti, Bandung, 1991, p.164-165

¹⁰ *Ibid*

¹¹ Sheikh "Izzuddin Abdis Ibn Salam, *Rule-Rule Islamic Law, mold-1*. Imam Ahmad Ibn trans Nizar, Nusa Media, Bandung, 2011hlm 93

¹² Sudikno Mertokusumo, *know the law: a introduction*, Edition V, Cet IV, Liberty, Yogyakarta, 2006, p. 161

¹³ Nurhasan Ismail, *Perkembangan Land Law Indonesia: an economic approach: Political*, dissertation, Graduate School of UGM, Yogyakarta, 2006, pp 41-41

¹⁴ A. Gunawan Setiardja, *Dialectics of Moral Law and Community Development In Indonesia*, cet I, Canisius, Yogyakarta, 1990, p. 41-42

basic values of justice is human dignity. By Keraf¹⁵ said that justice is always related to respect for the dignity and rights inherent in human beings. On the other hand Sudikno Mertokusumo¹⁶ explained that law is not synonymous with justice. The rule of law is not always realize justice. Because the law creating the general rules that bind all people and therefore general in nature, whereas to meet the justice of events to be seen *secra casuistry*.

Enforcement of the law is influenced strongly by factors outside the law. this can be seen as an example in Article 1365 of the Civil Code. The value contained in terms unlawfully is change. Before 1919 "unlawful" defined narrowly (HR June 10, 1910), while since 1919 interpreted widely (HR January 31, 1919) while the editors of article 1365 Civil Code until now has not changed. The expansion of the meaning of article will show the public that the tort was not limited to legislation alone but see sense of justice or the norms of social life. Thus the application of the law does not see the law juridical alone but see also in sociology and philosophy. In the application or enforcement in Indonesia, in accordance with Article 5 (1) of Law Number 48 Year 2009 regarding Judicial Power, states that judges and constitutional judges shall explore legal values and the sense of justice in society. Laws exist and develop for existing and also the development of values in the society outside the law. When the values of unlawful denied that they have no influence on the formation of the law, then there is only a spectacle¹⁷ comedy is not funny. Like a guy who only ran my busy *ngeluskan* certain body parts, and underestimate even deny other parts of the body. Other body parts were thrown away, abandoned as if not hers because it is not the same as body d, this is a tragedy that so-called tragedy of self-mutilation was heartbreaking.¹⁸

Laws should be able to keep abreast of the times, able to answer the changing times with all the basic therein, and able to serve the community by leaning on the aspects of morality and human resources law enforcement itself.¹⁹

For enforcement of the law, then the law²⁰ has a point (point of view) as the bases of law enforcement point of departure. Laws made without a point of view, cannot be called a true law but only a collection of clauses contains the commands and prohibitions alone²¹ At the point of view that contained the philosophy of life and contains wisdom about the "how do you think about the human and the human coexistence."²² ON thr point, So to review Understanding the law Operates Whole, understanding NOT Stop ON Beep The text of the Act, but Must Understand The foundation of philosophical, sociological and juridical, BECAUSE existence of legal system of a society is closely related to System Life 'society, so that the law is a mirror of Civilization A society.²³

Acting prowess is one of the requirements to make arrangements²⁴ but understand the implementation of proficiency as a condition for the validity of the agreement certainly does not stop with just reading the text uu only. In practice in the field there is a treaty override provisions of Article 1320 of the Civil Code in the second point, concerning competence to act by the parties within the law ', ie saving agreement that committed by persons under suspicion immature legislation. In the agreement the parties entered into an agreement are children who are still attending school (secondary school) that they have not reached the age of maturity that the implications they have not had the capacity to act.

The essence of this discussion is not about whether or not the people but the loss is essentially²⁵ is the meaning of the actual legal situation. Legal-formal legal thought that was driven by legal positivism does not recognize the philosophical foundation and sosiologis. sehingga make rigid law. In Islamic legal theory problems muamalat (relation between human beings) are allowed to perform outside the text interpretation texts (Qur'an and Hadith). Such interpretation is known as the theory of Ijtihad.²⁶ In theory Ijtihad jurist (faqih) is given the authority to interpret the text to obtain Zanny level law (law approaching absolute truth). According to Ibrahim Hose²⁷ Ijtihad for the talented jurist wide open on the grounds that the laws of the sources of law (nass) is limited, while human activity is not limited, it is impossible to restore is not confined to a limited. Based on the above, it is very important the role of legal principles and the rule of law in the application of the law as Fiqiyah rules (rule of Islamic law) that

¹⁵ Faturrachman, Justice Perspective of Psychology, Faculty of Psychology UGM-Reader Student, Yogyakarta, 2002, p 20

¹⁶ Sudikno Mertokusumo, *Op Cit*, p 80

¹⁷ Bernard L. Tanya, Yoan N. Simanjuntak, Mark Y. Hage, Legal Theory Strategy orderly people across space and time, Cet. IV, Genta Publishing, Bantul, 2013, p, 204

¹⁸ *Ibid*

¹⁹ Satjipto Rahartjo, *OP. Cit.* p.. 228

²⁰ J. Pajar Widodo, *Menjadi Hakim Proresif*, Indept Publishing, Bandar Lampung, 2013, p. 14

²¹ *Ibid*

²² Satjipto Rahartjo, *Kepastian Hukum*. (Bahan bacaan mahasiswa PDIH, Semarang, UNDIP,2006) dalam J. Pajar Widodo, *ibid*

²³ *Ibid*

²⁴ Republik Indonesia, *KUHPerdata*, Buku III, Pasal 1320

²⁵The theory of the nature of a very broad and very banyak.luasnya amount equal to the extent of the problem was the object of philosophical inquiry, which is all that exists and that there may be. Itself means the actual situation. The nature of things is the actual state of things, not a temporary state that is always changing. See H. Juhaya. S. Praja, *Op. Cit*, p. 19

²⁶ H. Juhaya S. Praja, *Op. Cit.* p 69. See also Ibrahim Hosen, *Is that Ijtihad*, Scientific Studies, Jakarta, 1987, p.7

²⁷ *Ibid*

states "where there is a benefit, then there is the law of the Creator". The rule of law is focused on the benefit of the legal assessment (public interest) man and treats people as human beings. It cannot be denied that applying the law against any action was more or less influenced by one's own understanding of the law.

The relevance of the discussion in the Law

In general, the sense of relevancy is a match. Relevant is relevant, useful directly (dictionary Indonesian). Relevance means that regard, the relationship (dictionary Indonesian). From this sense, the relevance of Article legislation should be based on the suitability or usefulness relationship between that article with the application of the regulation to the facts. In other words there is a match between the data and *dassein dassollen*.

To explain the suitability or fitness of a rule of law with the following practices can be seen in the legal sense, according to experts or schools of legal theory

1. Theory of history

The core thesis of Savigny it can be realized in his own words as follows:

"During the early days where authentic history evolved, it was found that already obtain legal permanent character, which is typical for the people concerned as well as language, behavior and its constitution. No, this phenomenon has no terms / special skills and tendencies of a particular nation, indivisible by nature and just seemed to be different from the nature / character in our view.

What holds it all together into a whole is a shared belief rather than the nation. Awareness countryman because of the need bathiniah mengeksklusifkan other nations who do not have the same origins, the law grew up with the growth of the nation (people) and be strong with the strength of the nation and eventually die when a nation loses the nationality. So the conclusion of this theory is that all the legal origin formed by the way, although not entirely appropriate, such as customs rules, the language that was formed initially he progressed through the customs and beliefs of the people, then the science of law; so everywhere by forces internal working quietly, not through arbitrary whim of legislators"²⁸

More short Madzhab of historical advanced by Karl Friedrich von Savigny states' laws are not made, but he grew and developed together with the community (*rechts das wird nicht gemacht es ist und wird mit dem volke*) Therefore the law was born out of community spirit that accommodates people²⁹

Departing from this understanding, there will be no static law but the law will always be dynamic with the times according to community needs. at this stage that the law will be confronted with relevant or irrelevant. Law dynamic will remain relevant to the development of the community. Kotekstual law will have an impact in the sense that what is proposed by the law will be fully implemented by the community, it is because the law is in line with the needs of contemporary society. Legal capacity as a condition of lawful agreement as set forth in Article 1320 of the Civil Code is no longer relevant. The data given above shows explicitly that skill irrelevant as a condition of the agreement valid when applied to all *perjanjian*. According to Dan Sperber and Deirdre Wilson stated that an assumption is considered relevant when the impact of contextual assumptions, the more impact the more relevanlah contextual assumptions / information. When the relevant theory is taken up by the law, then the relevance of an article of the legislation seen from its contextual impact. This means that the legislation on the article must be equal to the application in the empirical world because conformity is what makes him relevant

Agreements savings in banks such as savings "savings" at Bank BRI and savings "Champion" at Bank BTN allows the customer has not capable to seal the agreement. The soul of the nation (*volgeist*) is expressed by Von Savigny is the local values practiced by the people of a nation. Acting skills are cognitive skills (mind) whose existence is strongly influenced by the psychology of the individual in society of a nation. legal capacity in terms of psychology will be faster growth through technological development for encouraging children's cognitive technology to find out everything that has to offer such technology.

Another impetus came from the world of education both in schools or in media technology. Children's education at the school level always insert material saving advantages. At this stage the child in the learner's own ability to manage finances from an early age, and education positive response by banks that allow children to save without a parent representative.

2. The law according Jhering³⁰

Jhering stated that law is partly the soul of nation indeed, meanwhile, the rest of it is the result of the adoption from external elements as a result of interaction with other nations. The law of germany itself is not pure anymore. The reception of law of germany has get rid almost all the old law of germany so that the original law becomes unclear by influence of the law of Romawi very much. According Jhering the law of germany are law building as a result of fusion the interest that exploit the elements from out itself that useful for it. The explanation it can be known the law will have impact of konstektual in the

²⁸ Teguh Prasetya & Abdul Halim Barkatullah, *Philosophy, Theory, and Legal Studies*. Jakarta. PT. King Grafindo Persada. 2012, P. 273-274

²⁹ <http://hukum.bunghatta.ac.id/tulisan.php?dw.19>

³⁰ Bernard L. Tanya, Yoan N. Simanjuntak, Markus Y. Hage, *The theory of law strategy is orderly human traffic space and generation*. Genta Publishing. Yogyakarta, 2013, hlm 97-99.

meaning there are relevance of contents of article and implementation in fact is created by fusion the customs of society then it become as dogmatic law. In the custom of society there are interests lucky each other. This is what recognized by Jhering as the law, so the law form of combined interests that it is practiced daily and lucky each other, certain the useful interests that become the custom will be chosen as the law. In the presumption of the laws age of adult is evaluated by general opinion only it means the age of adult is decided by based on the sample. it means in the specialist case legal capacity that is connected by the maturity will become irrelevant with the presumption of the law.

The children who gain the maturity will get rights as adult do-example: saving independently. By them, saving is implementation the early awareness to manage financial independently, this is motivated also by education in the school them and sphere around. In Jhering opinion the child saving custom and bank custom receive child saving are fusion the interest that useful, so that legal capacity as legitimation terms of agreement don't create a relevance because the legal capacity have no impact of kontekstual as terms of agreement.

3. Law according DHM. Meuwissen.

DHM Meuwissen stated that, law is not indication neutral, which it is the free imagination result of human, but there are in note relevance on problems and the society development. On one side, the law can be explained by help social factors; on another side social indicate can be explained by the law help.³¹ Legal capacity as one of legitimate of term of agreement should follow social development also. Legal capacity which always is adjusted by the maturity should follow social development. Age of maturity which is become legal capacity dimension certain it have changed. On early formation the book laws of civil law age of adult is 21st year such as in article 330 the book laws of civil law is dimension which suitable. Currently, the technology have grown up and change structure of society become to grow earlier. This development stimulate maturity of child grow earlier because almost of facilitate-news, film, game. It can be accessed by them. This Facilities stimulate to grow up of child maturity early.

D. Conclusion and Advices

1. Conclusion

1. Soul of nation (volgeist) will not loose in interaction of society. Legal capacity can't be dimension by laws forever because legal capacity arises in customs of society which it has been fusion by society. In adat society community the manurity don't evaluate on dimension the age but it evaluate on base skill look for the income and posture of body, and phycology.

2. On society development currently which it stimulate by grow up the technology arise variant law interest. The complexities of interest arise from person inlegal capacity according laws-child. Saving independently on child is the education to them early for set financial as supplies them carry out the work world. This is the interest or rights which should be protected by law. Child has worked as laborer doesn't think that saving is a education access only but it has become a necessary evil of financial to a child. Whereas at another side a bank is state institution which keep a fund very much for grow up economy of nation.

Both parties (child and bank) have an interest each other. The interest they meet in a agreement. They are collected together by illegal to legal capacity as legitimate terms agreement.

2. Advices

The explanation above, writer give advice follow:

- a. The term of legal capacity should be added abstract term (have blanked norm) so that it can gain legal capacity external presumption of the laws
- b. Legal capacity should be evaluated not age only, but urgent pay attention customs of society which relevance suitable. This point become legal capacity is not rigid and it can be valid forevermore
- c. To protect certainty of law urgent does done revision book laws of civil law relevant of three advices above.

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³¹ DHM. Meuwissen, *carry out the Law* in Journal Pro Justitia, year XII No. 1. January.1994, P. 67, in teguh Prasetyo & Abdul Halim Barkatullah, *Filsafat, Teori, dan Ilmu Hukum*. PT. Raja Grafindo, Jakarta, P. 162

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