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## **Legal Security for Persons with Bipolar Disabilities in Entering Into Agreements**

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**ABSTRACT**

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This research aims to examine and understand the certainty of people with bipolar disorder in making agreements. This research is normative legal research because research examines law as a norm related to legal certainty for people with bipolar disabilities in making agreements. The research method used is the normative juridical method, which is a type of research used to examine the application of norms or legal norms enforced in positive law or laws still in force and have the power to bind legal subjects. The results of this research show that there is no legal certainty for people with bipolar disabilities to enter into agreements because there are no strict and adequate regulations that regulate them. Article 433 of the Civil Code is no longer in harmony with Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities and Law Number 8 of 2016 concerning Persons with Disabilities.

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### **INTRODUCTION**

The ongoing COVID-19 (coronavirus disease 2019) pandemic has tremendously impacted lives and increased the number of people with severe mental illness, including bipolar disorder. In the explanation of Article 4 paragraph (1) letter (c) of the Law on Persons with Disabilities, a person with mental disabilities is "a person who experiences intelligence disorders (thinking function), emotional and behavioral disorders, such as schizophrenia, bipolar, depression, anxiety, and mental disorders. Personality and developmental disabilities that affect social interaction abilities are called autism and hyperactivity. Article 32 of the Law on Persons with Disabilities states that "persons with Disabilities can be declared incompetent based on a district court determination".

People with bipolar disorder have 3 phases of mood swings, namely the normal phase, the depression phase, and the mania phase (excessive happiness). Most of the time, they can show normal behavior (normal phase) and, at other times, mental disorder behavior (depression and mania phase). One of the severe challenges in dealing with people with bipolar disabilities is recognizing the level of awareness of the actions of people with bipolar disabilities when taking legal action. People with bipolar disabilities with phases of mania or depression may find it easy to identify and assess their responsibility because they are similar to people with mental disabilities. However, in the normal phase, an in-depth study is needed regarding how to apply legal certainty to the acting skills of people with bipolar disabilities.

### **RESEARCH METHODS**

The research approach method that the author will use is normative juridical, a type of research used to examine the application of norms or legal norms enforced in positive law or laws that are still in force and have the power to bind legal subjects. Legal research is carried out by examining library materials or secondary data.

### **RESULTS AND DISCUSSION**

Gustav Radbruch defines the "principle of legal certainty" as a basis in the fundamental law value. In essence, this principle says that laws must be made clearly in written form. According to Gustav Radbruch, there are 4 meanings of legal certainty:

1. Law is legislation (gesetzliches)
2. The law is reality because it is based on facts (tatsachen)
3. Facts must be formulated in the most precise way possible
4. Positive law must not be easily changed

Gustav Radbruch also stated that legal certainty is one of the law's goals. Every law and statute should ideally be made to provide legal certainty for every person or citizen because, with legal certainty, it will provide legal protection in the form of protection of everyone's rights. Legal subjects have rights and obligations in carrying out legal acts. However, this only applies to legal subjects who are competent and have legal authority. According to the Law on Persons with Disabilities, because they are legal subjects, persons with disabilities have the same rights and obligations as others. However, this does not mean they can directly exercise their rights and obligations. Some people with disabilities have abilities, but not all of them can, so in some cases, a person with disabilities can be represented by another legal subject. A legally incompetent person, according to the Law on Persons with Disabilities, is a person who is not an adult or under guardianship, and the concepts and criteria used in the Law on Persons with Disabilities are the same as those used in the Civil Code. Suppose a person with a bipolar disorder disability is categorized as a person with a mental disability. In that case, a person with a bipolar disorder disability may be declared legally incompetent because they fall into the category of people who must be under guardianship. So, it is necessary to determine the criteria for being competent to act for a person with bipolar disorder as a legal subject so they can be declared competent/incompetent in agreeing. An agreement is a source of engagement which provides rights and obligations for the parties to the agreement. It shows that an agreement creates an obligation or performance from one party to another who is entitled to that performance.

In everyday life, various agreements are found. They start from employment agreements, debt and receivable agreements, house rental agreements, and cooperation agreements. An agreement can be interpreted as a legal event in which two or more parties agree to do or not do something, giving rise to a legal relationship. Based on Article 1320 of the Civil Code, there are four legal requirements for an agreement according to law: agreement, skill in making an agreement, subject matter, and lawful causes. The first and second conditions are subjective because they relate to the parties agreeing.

Meanwhile, the second and third conditions are objective. If subjective conditions are not met, then the agreement can be cancelled. Meanwhile, the agreement is considered null and void if the objective conditions are unmet.

The author believes that there are two possible consequences if the Law on Persons with Disabilities categorizes a person with a bipolar disability into the category of persons with mental disabilities while the concept of incompetence to act remains used in the Civil Code and the Law on Persons with Disabilities. First, as long as they are adults and not under guardianship, a person with a disability is considered a legally competent person. It is because people with bipolar disabilities are legal subjects who must be recognized. Second, the Elucidation to Article 4 of the Law on Persons with Disabilities defines people with bipolar disabilities as people with mental disabilities. It is because, generally, a person with a mental disability is considered a mentally disturbed person (feeble-minded) and insane, so they are considered an incompetent person because they must be placed under guardianship. These are consequences that may arise in the future. Thus, every legal action that is planned and carried out will have legal consequences, whether it is cancelled or void by law. The consequences of annulment, whether because it is null and void by law or after a demand for annulment, have the same consequences, namely having no (desired) legal consequences. The law does not regulate systematically the consequences of cancellation. In principle, the consequences of cancellation are retroactive and return to their original state. However, restoring the situation before the legal action occurs is difficult because an achievement has been enjoyed, whether it is doing something or enjoying the results (rent, buying and selling money, etc.). In Book III, section 8, Chapter IV, Articles 1446 to Article 1456 of the Civil Code regarding the nullity and annulment of agreements, only regulate, in simple terms, some of the nullities. In 1446 of the Civil Code, there is a provision that agreements made by incompetent people can be null and void by law, even though there is an axiom that states that in order for a legal act to be considered correct, it must fulfil three conditions:

1. The legal action must be correct.
2. The circumstances of the occurrence must be correct.
3. The intent and purpose of the person doing it must be correct.

So, if a person with a bipolar disability performs a legal action in terms of agreeing if it fulfills the three conditions mentioned above, namely the legal action, the circumstances that occurred, and the intent and purpose are correct, the agreement is not void or annulled by law.

According to Habib Adjie, there are no parameters for knowing someone has a mental disability unless the family or another party notifies the Notary. Before making a deed before a notary, the presenter consults with the Notary to obtain advice on the best way to protect both the presenter and the Notary.

Someone who has a mental and/or intellectual disability that is not permanent and is in a competent condition can still choose to use a pardon scheme, assistance, or even other methods that are widely known and used outside the domain of civil law. Therefore, decisions made by legal subjects in the civil domain depend on the personal interests of the individual concerned. The court must determine or appoint truly capable guardians who can be responsible for needs that will not harm the guardian, such as involving experts in the field of disability

for individuals with permanent mental and/or intellectual disabilities after rigorous evidence provides a solid basis to determine whether people with Bipolar disabilities are legally incompetent.

According to article 32 of the Law on Persons with Disabilities, what is meant by "incompetent" is a person who is not yet an adult and/or under guardianship. Apart from that, it can be concluded and interpreted the explanation of Article 32 as follows: a person with a disability who meets the adult age standard under the law and is not under guardianship is considered capable of acting within the law. The Constitutional Court (MK) has decided to grant partial material review of Article 433 of the Civil Code (KUHPerdata) with Constitutional Court Decision No.93/PUU-XX/2022, which reads "Article 433 of the Civil Code is contrary to the Law The Constitution of the Republic of Indonesia of 1945 and has no binding legal force as long as the words "dumb, brain-sick or dark-eyed" are not interpreted as "are part of people with mental disabilities and/or intellectual disabilities," and as long as the words "must" are not interpreted as "can," so that the provisions of Article 433 of the Civil Code in full become "Every adult, who is always in a state of stupidity, brain disease or dark eyes, is a person with mental disabilities and/or intellectual disabilities, can be placed under guardianship, even if he is sometimes able to use his mind. An adult may also be placed under pardon for his extravagance."

According to Article 33 of the Law on Persons with Disabilities, in conjunction with Articles 436 to Article 446 of the Civil Code, the decision or decree in question must be genuinely based on legal facts obtained in the trial, including the most important thing is the results of examinations by authorized experts as well as information and/or evidence from doctors, psychologists and/or psychiatrists. Constitutional Court Decision No.93/PUU-XX/2022 still maintains that the existing guardianship institutions in Article 433 of the Civil Code are an effort to provide legal protection for people with mental disabilities and/or intellectual disabilities.

## CONCLUSION

Legal certainty for people with bipolar disabilities in legal action under agreements is still a continuous challenge. People with Bipolar Disabilities who experience non-permanent disabilities can choose to use a pardon scheme, assistance, or even other schemes that have long been used outside the domain of civil law. Therefore, decisions made by legal subjects in the civil domain depend on the individuals' interests. People with bipolar disabilities do not need to be cared for as long as they grow and mature according to the limits of their maturity, except for agreements made by people with bipolar disabilities, especially in the manic and depressive phases of bipolar disorder, when they cannot participate in the decision-making process due to their mental disorder, they are subject to a court order of pardon.

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