

Protection against Child Labour

Meilan Lestari^a, Erlina^b, Monika Melinan^c, Faculty of Law, Universitas Islam Riau, email: meilan@law.uir.ac.id, erlinashmh@yahoo.com, monikamelina@yahoo.com

Children are the greatest mandate and gift given by God Almighty to both parents. Children must be educated, guarded, nurtured, and protected. In children there is an inherent value and dignity as a human. However, a consequence of the demands of the enormous economic needs is that minors become involved in completing economic needs by working. This is what we have to think about together; especially parents and the government. Problems that have occurred need resolution, because children have the right to be protected, guarded and given education without any discrimination.

Key words: *Protection, Labour Children.*

Introduction

Indonesia is a country of law and adheres to the Continental European legal system. Therefore, everything must be based on written law. The current source of labour law consists of statutory regulations. However, the main legal umbrella for manpower affairs in Indonesia is contained in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "Every citizen has the right to work and livelihood and is suitable for humanity".

The law can be interpreted as a legal norm, that is, a norm created by the holder of an authorised authority. Legal norms can be in the form of written legal norms or unwritten legal norms (Wijayanti, 2018). Indonesia is a State of Law, so theoretically the aim of the law is to uphold the existence of a legal system that guarantees legal certainty and protection of people's rights, and implements public welfare (Thamrin, 2017). This is in accordance with the objectives of the State contained in the 1945 Constitution of the Republic of Indonesia paragraph IV (four), which states that the State of Indonesia protects all of the Indonesian people and all of Indonesia's blood spilled, and to promote public welfare, educate the nation's life and participate in implementing world order. This is the responsibility of the State towards its citizens, one of which is to advance and prosper the people by providing opportunities to get jobs so that future survival is guaranteed.

Manpower as a developmental goal, needs to obtain protection in all aspects, including protection for obtaining work inside and outside the country, protection of workers' basic

rights, protection of occupational safety and health, and protection of wages and social security. Thus, it will guarantee a sense of security, peace, fulfillment of justice and the realisation of a prosperous life physically and mentally, in harmony, harmonious and balanced (Marbun, 2010).

The principle of employment development is basically in accordance with the principle of national development, specifically the principle of democracy, that is, every person has an equal right (fair and equitable) to obtain employment. Employment development has many dimensions and links with various parties, namely the government, employers and workers. Therefore, labour development should be carried out in an integrated manner in the form of mutually supportive cooperation (Khakim, 2003).

In accordance with the position and role of the workforce, employment development is needed to improve the quality of the workforce, its participation in development and to improve the protection of workers and their families, in accordance with human dignity (Wijayanti, 2018).

National development is carried out in the context of the development of Indonesian people as a whole and the development of Indonesian society as a whole, to create a prosperous, just, equitable society, both materially and spiritually, based on the Pancasila and the 1945 Constitution of the Republic of Indonesia. Work has a very important role and position as agents and development goals (Wijayanti, 2018).

In the context of increasing national development, progress is needed on all aspects, particularly in the economic field. When viewed from the life of the community at this time there are still many people who live on the poverty line, that cause children to be affected, sometimes because of life's demands cause them to participate in meeting their needs by working.

The involvement of children in economic activities is also due to the encouragement to help ease the burden on parents, work to get respect from the community, as well as the desire to enjoy the fruits of work, which are motivational factors for child labour. However, the biggest reason that encourages children to work is the demands of parents with the aim of getting additional income for the family. Children often cannot avoid being involved in work. The poverty factor is considered as the main driver of children to work (Setiamandani E. D., 2012).

Basically, children should not work, because their time should be used to learn, play, have fun, be in a peaceful atmosphere, get the opportunity and facilities to achieve their goals, according to their physical, psychological, intellectual and social development. However, in reality many children under the age of 18 are actively involved in economic activities (Prajnaparamita, 2018).

Every child has dignity and worth that is upheld, and every child born must have his rights without the child asking. These rights are basic rights that are inherent in human beings and are universal and lasting. Therefore, they must be protected, respected, maintained and must not be ignored, reduced or taken by anyone (Sujana, 2015). Human rights as a gift from God Almighty, are natural rights inherent and possessed by humans as God's gift to human beings in sustaining life on earth (Sujana, 2015).

Based on the Consideration of the Law of the Republic of Indonesia Number 23 Year 2002 concerning the Protection of Children, children are the mandate and gift of God Almighty, which inheres dignity as a whole human being. Children are the budding potential, the younger generation to succeed the ideals of the struggle of the Nation, and have a strategic role and special characteristics and traits that guarantee the continuity of the existence of the Nation.

Based on the foregoing, that in order to enhance national development, it is necessary to increase the dam in the legal sector; one of which is the protection of children. Children are the future of the nation which must be protected because their inherent dignity as human beings is in accordance with Article 4 of Law No. 23 of 2002 concerning Child Protection, that every child has the right to be able to live, grow and develop, participate appropriately, in accordance with human dignity, and receive protection from violence and discrimination.

Discussion

As a human being who has a life and responsibility for himself and the people around him/ her, we are required to work so that survival can continue to run, both work that is undertaken alone or working on others. The work that is carried out by itself means to work on capital and one's own responsibility. Whereas working for other people means to work by relying on others who give orders and send them, because he/she must submit and obey others who give the job (Asikin, 2004).

Based on Article 1 number (4) of Law Number 13 of 2003 concerning Manpower, the employer is an individual, entrepreneur, legal entity, or other bodies that employ workers by paying wages or other forms of remuneration. Work is a necessity for survival; by working we get income to make ends meet and those who do work are called labour. Based on Article 1 paragraph (2) of Law Number 13 Year 2003 concerning Manpower, it states that: a worker is any person who is able to do work to produce goods and / or services both to meet their own needs and for the community. "In big cities we often see children working to fulfill their lives caused by the demands of the economy that is so big, because of work they must be willing to lose their childhood, which is a period where they have to learn and play which is their right. This has a major impact on children's lives and development. This is based on the 1945 Constitution of the Republic of Indonesia Article 28 B paragraph (2), which contains, every child has the right to survival, growth and development and is entitled to protection from violence and discrimination.

Based on Article 9 paragraph (1) of Law number 23 of 2002 concerning Child Protection, every child is entitled to education and teaching in order to develop his personality and intelligence level according to his interests and talents.

Children are a mandate given by God Almighty to both parents, who must be cared for, nurtured, educated according to their potential. Anank is not just a biological descendant of a person but is entrusted by God Almighty, which must be maintained for his existence and survival. Thus, the responsibility of parents towards children is not only a personal or human responsibility, but also a transcendental responsibility between humans and God (Supeno, 2010).

The role of parents is very important. Parents are not just the party that causes the existence of children, but they are also the holder of the mandate. The role of the mother is not only to become pregnant, give birth and breastfeed, but also with the father, she also bears the title of household head. Furthermore, both have a role as a generation printer. Therefore, they act as caregivers, nurses and educators. (Chomaria, 2010)

Based on Chapter X, Article 45 of Law Number 1 of 1974 concerning Marriage, "Both parents are required to maintain and educate their children as well as possible." According to Law Number 35 Year 2014 Article 1 number 1 regarding child protection, it is stated that the understanding of a child is someone who is not yet 18 years old, including children who are still in the womb. Whereas according to Law Number 4 of 1979 concerning Child Welfare, it states that a child is someone who has not reached the age of 21 years and has never married.

Economic poverty has created a lot of child labour. Parents are forced to mobilise their children as workers to help the family economy. At this point comes the emergence of vulnerability, because children can change roles from just helping to become the main breadwinner (Setiamandani E. D., 2012).

Child labour is limited and protected by law, where children are not allowed to be employed by employers unless they are 13 (thirteen) to 15 (fifteen) years old, in accordance with Article 69 paragraph (1) of Law Number 13 Year 2003 which states that: the provision referred to in Article 68 can be excluded for children aged between 13 (thirteen) years to 15 (fifteen) years to do light work as long as it does not interfere with physical, mental and social development and health. It can be concluded that children under 13 (thirteen) years may not be employed. Legal protection for child labour can be done in a preventive and repressive manner. Preventive legal protection is a legal protection that is preventive from the occurrence of uncertain events. This form of preventive protection is done by limiting the types of work that may or may not be done by the child worker, through the determination of certain requirements for employers who employ children (Endrawati, 2012). This can be seen from the provisions of Article 69 paragraph (2) of Law Number 13 Year 2003 concerning Manpower, stipulating that:

Employers who employ children in light work, as referred to in paragraph (1), must meet the requirements:

1. Written permission from a parent or guardian;
2. Work agreements between employers and parents or guardians;
3. Maximum work time of 3 (three) hours;
4. Performed during the day and does not interfere with school time;
5. Occupational safety and health;
6. There is a clear working relationship, and;
7. Receive wages in accordance with applicable regulations.

Based on the foregoing there are exceptions, namely for children who work in the family business, things that are in letters a, b, f, and g, are not necessary. Employers who violate the requirements for light work scope for child workers may be subject to a minimum of 1 (one) year imprisonment and a maximum of 4 (four) years and / or a minimum fine of Rp 100,000,000 (one hundred million rupiah) and a maximum of Rp. 400,000,000 (four hundred million rupiah) (Hukum.com, 2016).

Law number 23 of 2002 concerning Child Protection, substantially and principally also contains the concept of legal protection of children as a whole, which aims to create or realise the best life for children who are expected to be the successors of the nation's ideals, which are potential, resilience, have nationalism which is imbued with noble morals and Pancasila values, and has a strong will to safeguard the unity and integrity of the Nation and State (Endrawati, 2012).

Based on Article 2 of Law Number 23 Year 2002 concerning Child Protection, the implementation of child protection is based on Pancasila, and based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child include:

1. Non-discrimination;
2. The best interests of the child;
3. Right to life, survival and development; and,
4. Appreciation of children's opinions.

Children's rights are part of human rights that must be guaranteed, protected and fulfilled by parents, families, communities, the state, government and regions (Article 1 paragraph 12 of Law Number 35 Year 2014). Children, like adults, have basic human rights. However, because of their needs, their rights need to be considered and treated specifically. Children's rights conventions are designed to uphold and safeguard children's rights. The children's rights include the right to survival, the right to growth and development, the rights to be protected, and the rights to participate.

Child protection aims to guarantee the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violence and discrimination, for the realisation of quality, morally noble and prosperous Indonesian children (Article 3 Law Number 23 of 2002).

In this corridor, actions against children are not justified that can hinder a child's growth and development (Ghufron, 2001). For child workers, in fact they would choose to go to school or play with friends rather than live life as child labour. In this regard, the rights possessed by children, namely as stipulated in Law Number 4 of 1979 Chapter II Article 2 to Article 9, regulates children's rights to welfare, strengthened in Law Number 35 of 2014 in Chapter III Article 4 to Article 18 as follows:

1. Right to Welfare, Care, and Guidance

Children have the right to welfare, care, and guidance based on love both in their families and in special care to grow and develop properly. Referred to as care, are various efforts made to children who do not have parents and neglected children, and children who experience temporary disabilities as a substitute for parents or family in order to grow and develop properly, both spiritually, physically and socially. It is explained in Article 1 number 32 of Government Regulation Number 2 of 1988.

a. Right to Service

Children have the right to service to develop their abilities and social life in accordance with the culture and personality of the nation to become good and useful citizens. Explained in Article 2 paragraph 2 of Law Number 4 of 1979.

b. Right to Environmental Protection

Children have the right to life protection from the environment which can harm or hinder natural growth and development. Explained in Article 2 paragraph 4 of Law Number 4 of 1979.

c. Right to First Aid

In a dangerous situation, it is the child who is first entitled to be helped, given assistance and protection described in Article 3 of Law Number 4 of 1979.

d. Right to Get Care

Children who do not have parents are entitled to care by the State, or persons, or other bodies. It is explained in Article 4 paragraph 1 of Law Number 4 of 1979. Thus, children who do not have parents can grow and develop naturally both physically, spiritually and socially.

E. Right to Assistance

Children who are unable to have the right to receive assistance, so that the family can grow and develop properly. Explained in Article 5 paragraph 1 of Law Number 4 of 1979.

In addition to the rights described above, there are also rights that should be obtained by child labour as stipulated in Law No. 13 of 2003 concerning labor, which include:

2. Right to get a Decent Salary

Child labourers must get a salary that is in accordance with applicable laws and regulations, so that employers are prohibited from paying less than the minimum wage stipulated by the local government; as stipulated in Article 90 paragraph 1 of Law Number 13 Year 2003. If the employer promises payment of wages lower than the minimum wage, the agreement is null and void by law governed in Article 91 paragraph 2 of Law Number 13 of 2003.

3. Right to get Suitable Work Time

Article 69 of Law No. 13/2003 has provided exemption provisions which allow it to be 13 to 15 years old, work hours may not be more than 3 hours, carried out during the day, do not disturb the school time, written permission from parents or guardians, there are work agreements with parents or guardians, and are paid according to statutory regulations. If the employer violates Article 69 of Law Number 13 of 2003, criminal sanctions may be imposed as regulated in Article 185.

4. Right to get enough Rest and Leave

In Article 79 paragraph 1, it has been explained that the employer is obliged to provide time off and leave to workers. Apart from that, each worker must obtain at least 12 days for annual leave, but with the condition that the worker must have worked for at least 1 year or 12 months in a company. In Article 79 paragraph 2 of Law Number 13 of 2003 concerning Labour, entitled workers who are entitled to 12 days of annual leave, are workers who have worked for a minimum of 1 year at the company.

5. Right to Education

According to Article 9 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning child protection, every child has the right to receive an education and teaching in the context of his personal development and intelligence level according to his interests and talents. In addition, every child is also entitled to get protection in the education unit from sexual crimes and violence committed by educators, educational staff, fellow students, and or other parties.

In addition, Article 69 paragraph 2 letter d of Law No. 13/2003, also explains that employers who employ children for light work must be carried out during the day and this does not interfere with school time. There is also the right to work safety and health. Pursuant to Law Number 13 of 2003, it has regulated all matters relating to employment, starting from wages, hours of work, maternal rights, leave, to occupational safety and health. Based on Article 74 in

this Law it is clearly stated that anyone is prohibited from employing and involving children in the worst jobs that can endanger the health, safety, or morals of children.

Thus, from the explanation above, it can be concluded that in increasingly modern times many child labourers do not know what kind of protection they should get, not only the protection they must obtain, but also the things that become the rights and obligations of a child. Work is not something that is prohibited; but for child labor there must be a limit which can be done and which should not be done. Before employing children or child workers who register at a company or at work, there must be socialisation so that child labour knows their rights and obligations, this does not only apply to child labourers, but people who employ child labour must also know what are their rights and obligations.

Thus, it is also necessary to find out what are the principles of Child Protection, namely:

1. Children cannot fight alone

One of the principles used in protecting children is that children are the main capital for the survival of human beings, the nation and family, for that their rights must be protected. Children cannot protect their rights themselves, as many parties influence their lives. The state and society have an interest in seeking to protect the rights of children.

2. The best interests of the child

In order for child protection to be carried out properly, the principle that states that the best interests of the child must be seen as of paramount importance (obtains the highest priority) in any decision that experiences many stumbling blocks.

In the above case it is explained that it is very necessary to know the principles of children. In addition, the factors of child labour must be known. The involvement of children in the productive sector is actually not just because of economic motives, but also because of habits and cultural factors. In rural areas in general, especially in poor family environments, the habit of involving children in work activities, both at home or outside the home is considered as a rite in a child's life circle, as a necessity and a process that must be passed before growing up into the future household life.

In many sectors, children are involved in working because of several underlying factors, namely:

a. Economic factors

The low family economy is the dominant factor that causes children to get involved in earning a living. Children are often a very important source of income. Even in many cases child labor is seen as a survival mechanism to eliminate poverty pressures that are not met from the work of parents. (Suyanto, 2003)

Economic factors are the dominant factor as the majority of children whose parents work for a small and uncertain income. Such conditions force children to work without choosing to and sorting out the types and risks of work, with the important hope that they will be able to obtain additional income to help parents, or at least to help meet their own needs, and if possible, also to help their family.

b. The Parent Factor

The poverty factor is considered as the main driver for children to work. Economic poverty has created a lot of child labour. Parents are "forced" to mobilise their children as workers to help the family economy. At this point comes the emergence of vulnerability, because children can change the role of "just helping" to becoming the main breadwinner. Child labour is not only caused by poverty, but also causes "impoverishment", meaning that children who work and do not enjoy education will still live in conditions of poverty in the future. Further consequences are that the next generation will remain poor and uneducated.

The above has been explained that the factors that cause a child to work are due to economic factors and parental factors.

Conclusion

Based on the explanation above, the authors conclude that:

1. The child is the greatest mandate and gift given by God Almighty to both parents, where the child must be educated, guarded, nurtured and protected, because in the child attaches dignity as a whole human being, but because of the demands of economic needs which are so large, resulting in underage children being involved in meeting economic needs by working. Children are also not the ones who have the full right to think about the economy because the economic problem is entirely the property of parents. Parents have a great obligation in educating, maintaining and protecting and providing comfort for children.
2. Factors that make children work because of economic problems are not something that should be considered by children, because the only ones that have the right to think about this are only parents, because parents are obliged to provide for the family. All economic problems can still be discussed and looked for a way out, not even making children work to help earn a living. Children also need education, especially a child who is still in his teens who really needs an education and protection.
3. If a person makes his own child work or even the company that employs him, he/she must be informed about the rights and obligations; from the work hours of the child, rest time and time off to the distribution of salary to be received by the child later. Because children also have laws that govern children, children also have the right to human rights. Children also have the right to proper treatment. Even though the status is only a child, the child is also a human created by God that must be guarded and protected.



REFERENCES

A. Books

- Asikin, Z. (2004). *Fundamentals of Labor Law*. Jakarta: PT. Raja Grafindo Persada.
- Chomaria, N. (2010). *Abusing Children Unconsciously*. Solo: Aqwam.
- Endrawati, N. (2012). *Legal Protection of Child Labor in the Informal Sector*. *Legal Dynamics*, 12.
- Ghufron. (2001). *Problematic Child Labor*. Semarang:
- Puspa Swara. *Hukum.com*, P. (2016). *Protection of Child and Women's Workers*. *Labor Law*.
- Khakim, A. (2003). *Introduction to Labor Law Based on Law Number 13 Year 2003*. Bandung: Citra Aditya Bakti.
- Marbun, R. (2010). *Don't want to be laid off just like that*. Jakarta: Transmedia Reader.
- Prajnaparamita, K. (2018). *Child Labor Protection*. *Administrative law and Governance*, 114.
- Setiamandani, E. D. (2012). *Legal Protection for Child Labor and Mitigation Efforts*. *Revormasi*, 75.
- Sujana, N. (2015). *Legal Status of Overseas Children*. Yogyakarta: Aswaja Pressindo.
- Supeno, A. (2010). *Criminology of Children*. Jakarta: PT. Gramedia Main Library.
- Suyanto, B. (2003). *Child Labor and Continuing Child Education*. Surabaya: Airlangga University Press.
- Thamrin. (2017). *Legal Protection of Indonesian Workers*. Pekanbaru: Alaf Riau.
- Wijayanti, A. (2018). *Post-Reform Labor Law*. Jakarta: Sinar Grafika.

B. Statutory Regulations

The 1945 Constitution of the Republic of Indonesia;
Law Number 23 of 2002 concerning Child Protection;

Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection;

Law Number 1 of 1974 concerning Marriage;



C. Journals and Articles

Endrawati, N. (2012). Legal Protection of Child Labor in the Informal Sector. *Legal Dynamics*, 12.

Kausarian, H., Sri Sumantyo, J. T., Kuze, H., Aminuddin, J., & Waqar, M. M. (2017). Analysis of polarimetric decomposition, backscattering coefficient, and sample properties for identification and layer thickness estimation of silica sand distribution using L-band synthetic aperture radar. *Canadian Journal of Remote Sensing*, 43(2), 95-108.

Kausarian, H., Sumantyo, J. T. S., Kuze, H., Karya, D., & Panggabean, G. F. (2016). Silica Sand Identification using ALOS PALSAR Full Polarimetry on The Northern Coastline of Rupert Island, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 6(5), 568-573.

Kausarian, H., Batara, B., Putra, D. B. E., Suryadi, A., & Lubis, M. Z. (2018). Geological Mapping and Assessment for Measurement the Electric Grid Transmission Lines in West Sumatera Area, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 8(3), 856-862.

Prajnaparamita, K. (2018). Child Labor Protection. *Administrative law and Governance*, 2.

Setiamandani, E. D. (2012). Legal Protection for Child Labor and Mitigation Efforts. *Revormasi*, 2.