

LEGISLATION AS AN EFFORT TO OPPOSE THE EXPLOITATION OF UNDERAGE WORKERS IN THE PERSPECTIVE OF HUMAN RIGHTS

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Abstract

The current phenomenon is often found in children becoming laborers or workers in home industries. Some of the dominant factors causing children to become laborers were found in the field, including family, environmental influences, local potential and recruitment patterns, educational needs and future orientation, and encouragement from the children themselves. Meanwhile, the reason why employers use children as labor is caused by several things, among others, because the child comes personally to the entrepreneur, offers labor, to enter a child laborer generally through informal procedures, the workforce will be easy to manage and obedient when compared to with adult workers or for reasons of pity/pity rather than being neglected to work on the streets where the conditions are very dangerous, it is better to be recruited as workers. The philosophy of prohibiting children from working or employing children as regulated in the Manpower Law is closely related to efforts to protect children's human rights, which are also guaranteed protection in Law No. 39 of 1999 on Human Rights. Provisions that prohibit the employment of children as regulated in the provisions of Article 68 of the Manpower Law are in line with the provisions of Article 52 paragraph (1) of Law No.39 of 1999 concerning Human Rights, which stipulates that every child has the right to protection by parents, family, community and country. Law Number 23 of 2002, Article 1 Paragraph 2 states that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally by human dignity and protection, receive protection from violence and discrimination.

Keywords : Accident Cases, Restorative Justice, Traffic

INTRODUCTION

Indonesia is the State of Law that is contained in the constitution of the 1945 Constitution of the Republic of Indonesia, namely in Article 1 paragraph (3) which reads; "The State of Indonesia is the State of Law". In our constitution, Article 28B paragraph (2) of the 1945 Constitution reads: Every child has the right to survival, growth, and development and the right to protection from violence and discrimination. One of the children's problems that have received explicit attention is the issue of child labor ([Kurniaty, 2010](#)).

The State of Indonesia is a state of law that upholds human dignity and that every human being, both adults and children, should be protected from attempts to employ them in jobs that degrade human dignity or exploitative work because it is inhuman ([ASHILAH, 2022](#)).

Labor protection efforts that can reach all workers, both adult and child labor, especially regarding child labor, have recently been highlighted and have become a national and even international issue that must receive serious attention from the government and the community because it harms the environment for the next generation ([Asrini et al., 2016](#)).

Law Number 23 of 2002, Article 1 Paragraph 2 states:

"Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally by human dignity, and receive protection from violence and discrimination"

The main trigger of the number of minors who become workers in the industrial sector is none other than the motivation or profit-oriented for the owners of capital (NIM, n.d.). Why not because underage child labor from the perspective of the entrepreneur is very profitable because the wages are cheap, there are not many demands, and also relatively obedient in working compared to adult workers (Dirdjosisworo, 2001).

This fact is faced with one of the problems of children that must receive special attention, namely the issue of child labor (Daniswara et al., 2017). This issue has become global because many children enter work at school age. The issue of child labor is not just an issue of children doing work for wages.

However, it is closely related to the exploitation of minors by business actors to be employed in dangerous places or positions that are completely detrimental to the development, protection, care, and protection of children (Rahardjo, 1987). All of this has very serious consequences for the child himself, especially the inhibition of education and physical, psychological, and social development in children.

Juridically, Indonesia already has a set of laws and regulations to guarantee children's rights and reduce the impact on working children, namely the 1945 Constitution, Ratification of the ILO (International Labor Organization) Convention No. 138 in conjunction with Law No. 20 of 1999 concerning the Minimum Age for Allowed to Work, Ratification of ILO (International Labor Organization) Convention Number 182 into Law Number 1 of 2000 concerning Violations and Immediate Actions for the Elimination of the Worst Forms of Child Labor, Ratification of the Convention on the Rights of the Child into Presidential Decree Number 36 of 1990, Law Number 13 of 2003 concerning Manpower, Law Number 23 of 2002 concerning Child Protection was then updated through Law Number 35 of 2014, then amended again by Law Number 17 of 2016.

Even though there is a set of regulations that protect child labor, the tendency of the quality of child labor problems from year to year has grown in complexity towards the worst forms of exploitative work and endangers the physical, mental, moral, social, and intellectual growth and development of children. Syamsudin in his book stated:

"In essence, children should not work because their time should be used to study, play, have fun, be in a peaceful atmosphere, and get opportunities and facilities to achieve their goals through their physical, psychological, intellectual, and social development. However, in reality, many children under 18 have been actively involved in economic activities, becoming child laborers, including in the industrial sector due to economic pressures experienced by their parents or other factors."

METHOD RESEARCH

The method used in this research is normative legal research (juridical normative) that refers to and leads to legal norms and principles and is sourced from the library (library research) and various laws and regulations relating to the protection of underage workers.

The data obtained in this writing is secondary data. Secondary data is data that the author obtains from research from the literature and documents that are the result and processing of other people who are already available in the form of books, papers, and other documents that are usually provided in libraries or private property. In other words, researchers need to collect data by visiting libraries, study centers, archive centers, or reading many books related to their research.

1. Primary Legal Materials, such as from laws and regulations in particular Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 in conjunction with Law Number 17 of 2016 concerning Child Protection, Law Number 13 of 2003 concerning Manpower, Law No. Law Number 2 of 2002 concerning the Indonesian National Police and Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (MSMEs).
2. Secondary Legal Materials, namely Books, Papers, Articles, Internet.
The approaches used in this legal research are:
 - a. A statutory approach is needed to study further the legal basis by examining laws and regulations related to legal issues.
 - b. The conceptual approach is moving from the views and doctrines that develop in the science of law. Researchers will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issues at hand.

RESULT AND DISCUSSION

A. Factors Causing Child Labor

The cause of children working in the worst forms of work, because poverty is not fully proven true (Imron, 2003). Many other driving factors were found to cause children to work, although these factors are not singular in every child labor, there is certainly one dominant factor in each individual and child working community in particular sectors and areas.

Some dominant factors causing children to become laborers were found in the field, including family, environmental influences, local potential and recruitment patterns, educational needs and future orientation, and encouragement from the children themselves (Rahmania, 2013). Meanwhile, the reason why employers use children as labor is caused by several things, among others, because the child comes personally to the entrepreneur, offers labor, to enter a child laborer generally through informal procedures, the workforce will be easy to manage and obedient when compared to with adult workers or for reasons of pity/pity rather than being neglected to work on the streets where the conditions are very dangerous, it is better to be recruited as workers.

The causes and drivers of child labor problems in Indonesia are the interaction of various factors at the micro to macro level, from economic, social, and cultural factors to political issues. The causes and drivers of work problems are as follows:

1. Poverty

The low-family economy is the dominant factor that causes children to be involved in making a living (Hakim, 2020). Children are often a crucial source of income. In fact many cases, child labor is seen as a survival mechanism to eliminate the unfulfilled pressures of poverty from the parents' work (Suyanto, 2019). The involvement of children in economic activities is also due to the encouragement to help ease the burden on parents, work for the respect of the community, as well as the desire to enjoy the work business, which is a motivating factor for child labor. However, the biggest reason that encourages children to work is the demands of parents to get additional income for the family. Children often cannot avoid being involved in work.

2. Urbanization

Child labor, which is predominantly from rural areas, is also a factor in the emergence of child labor. Rural areas are considered unable to guarantee economic improvement, so many people try their luck in big cities in the hope of earning a higher income without exception, parents who are shackled by economic problems invite their children to be employed, from beggars to factory workers.

3. Socio-cultural

Culturally, they see children as potential families who are obliged to be devoted to their parents. Children who work are considered children who are dutiful and can elevate the dignity of their parents. With a culture like this, the position of neglected children has rights and must be protected.

4. Education

The primary reason for a child to become a worker is their backwardness to get an education. One thing the government can do most is to implement low-cost educational programs and accommodate the specific skill needs of children. It is because children have been "forced" to work by the economic demands of the family. Child wages are one of the sources of family income. With cheap education and providing practical skills, they are expected to no longer think that schools do not provide any benefits and instead make family conditions worse. Innovation is needed to make education acceptable in areas where child labor is located. The education applied must not be the same as the education held in other formal schools, whose parents are considered capable of meeting the daily needs of the family.

5. Production Process Revolutions

The development of the era which also demands technological sophistication makes several companies in performing the production process using advanced technological tools. So, a lot of work that should be done by experts can be completed more quickly with only a very short time being done by a tool. What is left is menial and odd jobs, which turns out to be many children who are taken to work, of course with low wages and minimal job protection guarantees, because they are still considered as children who do not know anything and are required to always obey the rules made by the company where they work.

Weak supervision and limited institutions for rehabilitation

The existence of regulations to protect active work and balanced with the implementation of these rules. So there may be many problems that arise in child labor that cannot be resolved by law enforcement officials (Suyanto & Hariadi, 2003).

B. Aspects of Legal Protection for Child Labor

According to the Big Indonesian Dictionary (KBBI):

"Protection is a method, process, and act of protecting. Meanwhile, the law is a regulation made by the government or that applies to everyone in society (the State)."

In the opinion of Soedjono Dirdjosisworo:

"The understanding of the law can be seen from eight meanings, namely law in the sense of rulers, officers, attitudes or actions, a system of rules, values, legal order, legal science, and legal discipline."

The law is not merely written legislation and officials are also law enforcers. As is understood by the general public who do not know what the law is. However, the law includes things that already live in the community. In addition, the law also has a coercive power that is recognized and enforced in social life. In essence, there is a relationship between legal subjects and legal objects that are protected by law and give rise to obligations. The rights and obligations arising from this legal relationship must be protected by law. So, community members can feel safe in carrying out their interests. In this case, it shows that legal protection can be interpreted as a guarantee or a certainty that someone gets what has become the rights and obligations so that the person concerned feels safe.

In enforcing the law, there are 3 (three) elements that must always be considered, namely:

1. Legal certainty (Irechtssicherheit),
2. Benefits (zweckmassigkeit),
3. Justice (gerechtigkeit)

In the opinion of Satjipto Raharjo:

“Legal protection is to protect human rights that have been harmed by others. And that protection is given to the community. So that they can enjoy all the rights granted by law”.

The principles of legal protection for the Indonesian people are based on Pancasila as the ideological foundation and the philosophical basis of the State. The principles that underlie legal protection for the people are based on Pancasila, namely:

1. The principles of legal protection for the people against the form of government action are based on the concept of recognition and protection of human rights.
2. The principle of the rule of law, the second principle that underlies legal protection for the people against government actions, is the principle of the rule of law.

Thus, legal protection can be interpreted as all the government's efforts to ensure legal certainty to protect citizens. So that their rights as a citizen are not violated, and those who violate them can be subject to sanctions according to applicable regulations.

Based on Article 1 paragraph (1) of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 in conjunction with Law Number 17 of 2016 concerning Child Protection, that:

“Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb”

The laws and regulations in Indonesia are indeed not uniform in determining how to be considered a child. However, each of these differences in understanding depends on the situation and conditions in a view which can be questioned later. Child labor is a term for employing young children in the term of child labor can have the connotation of exploiting children for their labor. With an undersized salary or consideration for their personality development in a child's safety and health.

According to the opinion of Bagong Suyanto and Sri Sanituti Hariadi:

“The notion of child labor is as children who do routine work for their parents or for themselves who need a large amount of time to receive rewards or not”

In this case, it can be concluded that children are allowed to work, namely children who are at least 13 (thirteen) years old to 15 (fifteen) years old. It is only permitted to do light work as long as it does not interfere with physical, mental, and social development and health and must have certain conditions by Law Number 13 of 2003 concerning Manpower.

Children are also human and therefore respecting children's rights is the same as respecting human rights (Ceswara & Wiyatno, 2018). Human rights or more precisely human rights are rights that are inherent in the nature and existence of humans, natural and natural as creatures of God Almighty (Siringoringo, 2019). Rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, family, society, government, and also the State. Human rights are a set of principles that arise from values that then emerge into the rules that govern all human behavior in a relationship with fellow human beings. As part of social life, children are the heart of human rights. Unfortunately, the facts show that children are part of a vulnerable group to the occurrence of an act of violence. This vulnerability occurs because the result children are claimed to be weak humans. It is because the age of the child and the factors of psychological and mental maturity of this child make him often marginalized in making a policy.

Legal protection for children is all efforts made to create a condition so that children can carry out their rights and obligations for the development and growth of children naturally, physically, mentally, and socially.

In this case, child protection can be divided into 2 (two) parts, namely:

“First, child protection is juridical, which includes protection in the field of public law and civil law. Second, child protection is non-juridical in nature, which includes protection in the social, health, and education fields.”

What is meant by child protection itself is all efforts aimed at preventing, rehabilitating, and empowering children who experience acts of abuse, exploitation, and neglect to ensure the survival and growth of children naturally, both physically and socially.

Based on Article 2 of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 in conjunction with Law Number 17 of 2016 concerning Child Protection, that:

“The implementation of child protection is based on Pancasila and is based on the 1945 Constitution of the Republic of Indonesia and the principles of the Convention on the Rights of the Child, including a. non-discrimination; b. the best interests of the child; c. the right to life, survival and development; and d. respect for children's opinion

Child protection is the embodiment of justice in a society thus child protection must endeavor in various fields of state and social life. Efforts to conduct guidance, development, and protection of children need the role of the community. Either through child protection institutions, religious institutions, non-governmental organizations, community organizations, social organizations, the business world, mass media, or educational institutions ([Oliviawan & Jumailah, 2021](#)).

CONCLUSION

The occurrence of child labor is influenced by various social factors such as poverty, urbanization, socio-culture, education, changes in the production process as well as weak supervision and lack of institutions for rehabilitation. However, in reality, the majority of children's involvement in work is driven by poverty or economic factors. Protection for children as workers has been regulated in several formulations of laws and international conventions that have been ratified by Indonesia. Currently, Indonesia has a policy on the protection of child labor and their rights. Various efforts have been made to overcome the problem of child labor, but in general, the government's attempts have not run optimally. The implementation of laws and regulations has not matched expectations and reality.

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