



Child Labor Protection Based on Indonesian Manpower Act and Human Rights Principle

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Info Article

Received: 17th March 2019

Accepted: 12nd July 2020

Published: 31st July 2020

Keywords:

Child Labor; Legal Protection;
Child Protection; Human
Rights; Manpower Act

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DOI:

10.24843/JMHU.2020.v09.i02.
p.03

Abstract

Child labor in many cases tends to experience various acts of crime and violence, even in the violation of their human rights, such as human trafficking and exploitation. Child labor has been regulated in various laws and regulations, including the Manpower Act. This paper examines three important key issues, namely: first, the legal protection of child labor in Indonesia based on labor and human rights laws, second, an analysis of the child labor protection rules applicable in Indonesia, and third, the emergence of child labor (child labor) in Indonesia. This research is normative legal research, where the study is literature. However, field data on this study were obtained from various related previous research results, both print and online sources. This research emphasized that the prohibition of working or employing children has been regulated in the Manpower Act which is closely related to efforts to protect children's rights, which are also guaranteed protection in Law Number 39 of 1999 concerning Human Rights (Human Rights Act). The principle of child protection not only stipulated on Human Rights Act, but also Indonesian Manpower Act and Indonesia Child Protection Act. However, weaknesses of Manpower Act do not expressly prohibit child labor. In certain occupations, child labor is still permitted on various conditions. But in fact, these requirements are very difficult to control so that many children's rights are violated.

I. Introduction

The position of the child is considered as an important asset, not only in the family but also in the nation and state. Children are also regarded as invaluable assets that are not only seen in terms of social, cultural, economic, political, legal, but also from the perspective of the sustainability of a generation of families, tribes, breeds, and nations. Children are the responsibility of parents and the state because children are agents of national change. Given the importance of the status and position of the child, the child

can have a social, cultural, political, economic, and legal meaning.¹ Therefore, under any circumstances, children must get adequate protection.

The issue of protection for children is not only a matter of education, safety, and health, but in the development of globalization and industrial progress, children are heavily involved in various industrial sectors which ultimately lead to exploitation, slavery, and human trafficking. One problem that has occurred up to now is child labor in various countries including Indonesia.

Child labor has become a public issue and a global commitment has been built to overcome this problem—children who work because it helps the family economy. In response to this, the ILO has adopted more than 15 conventions which are related to or relevant to the problem of child labor. Among the conventions, comprehensive conventions that are highly relevant to the problem of child labor are Convention Number: 138/1973 concerning the minimum age for employment and Convention Number: 182/1999 concerning the worst forms of child labor. Similar to the sound of Article 68 of Law Number 13 of 2003 which states that "employers are prohibited from employing children ..." Article 69 of Law Number 13 of 2003 also mentions "(1) The provisions referred to in article 68 may be excluded for children aged 13 (thirteen) years to 15 (fifteen) years to do light work as long as it does not disturb physical, mental and social development and health. While sanctions that can be imposed on employers employing children according to article 185 of Law Number 13 of 2003 namely, "Anyone who violates the provisions referred to in article 68 of Law Number 13 of 2003 may be subject to sanctions of imprisonment for at least 1 (one) a year and a maximum of 4 (four) years and/or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 400,000,000.00 (four hundred million rupiah)".²

Meanwhile, Indonesia was the first country chosen to participate in the International Program on the Elimination of Child Labor (IPEC) and signed a memorandum of understanding with the ILO in 1992 to lead cooperation under this program. The Government and ILO signed a memorandum on child labor in March 1997 which binds them in an agreement to advance the conditions that allow the government to protect child labor and gradually ban, limit and regulate child labor with the ultimate goal of eliminating it because it can affect child development. Child who become child labors either because they are under the minimum age to work or because they are working in dangerous or illegal conditions, cannot grow and develop optimally. Employers and employers' organizations can play a role in global efforts to combat the problem of child labor in the workplace, they can reduce the risk of work hazards for adolescent workers and they can refuse to employ children. Employers and employers' organizations can lobby for educational and remedial programs and they can help raise

¹ Purnianti, S., & Martini. (2002). *Analisa Suatu Sistem Peradilan Anak*, Jakarta: FISIP UI, pp. 58-59; Setiamandani, E. D., (2012). *Perlindungan Hukum Bagi Pekerja Anak dan Upaya Penanggulangannya*. *Jurnal Reformasi*, 2(2), pp. 74; Kurniaty, R. (2007). *Perlindungan Hukum Terhadap Pekerja Anak Berdasar Hukum Positif Indonesia*. *Risalah Hukum*, 13(2), pp. 34.

² ILO (International Labor Organization). (2017). *Menanggulangi Pekerja Anak di Sektor Rumah Tangga: Panduan Aksi bagi Pekerja Rumah Tangga dan Organisasi Pekerja Rumah Tangga*. Jakarta: ILO, pp. 50-53, retrieved from https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_574467.pdf; also see Law Number 13 of 2003 concerning to Manpower (Indonesian Manpower Act)

public awareness and change the attitude of the community who consider it normal for young children to work.³

The idea of freeing children from work is based on the assumption that child labor is vulnerable to exploitation, marginalization, violence, and threatened with physical and mental disruption. But in reality, not all children's work is dangerous and not all children experience bad consequences. Another reason for prohibiting children from working is because work can interfere with children's learning. Many children drop out of school or their learning achievement is reduced because of work, even though children are agents of national change. Thus, should the solution prohibit school children from working or education models that should be adjusted to suit the situation and needs of child laborers. Accordingly, is the solution to prohibiting child labor in all cases, or only prohibiting child labor to the extent that the work is dangerous for children and making rules so that child labor is protected from bad risks that can affect child development. Then, what about the essence that the child also has a fundamental right to himself, for example, "working" as a form of his original right to his right to live in a community, in his nature as a human being.⁴ Meanwhile, the potential dropout rate due to the crisis, based on Bappenas estimates, has increased sharply, from 2.8 million to 8 million per year, and the concern, along with the increasing tendency of school dropouts, is the possibility of increasing school-age children who are forced to work to help family economy.⁵

Legally, Indonesia already has a set of laws and regulations to guarantee the rights of children and reduce the impact of working from children, namely the 1945 Constitution, ratification of ILO Convention No. 138 (The ILO Convention concerning the Minimum Age for Admission to Employment) into Law Number 20 of 1999 concerning Minimum Age for Permission to Work, ratification of ILO Convention Number 182 (the Worst Forms of Child Labor Convention) becomes Law Number 1 of 2000 concerning Violations and immediate actions to eliminate the worst forms of child labor, Law No. 23 of 2002 concerning Child Protection as amended by Law No. 35 of 2014 (Child Protection Act) and Law No. 13 of 2003 concerning Labor (Manpower Act). Although there are a set of regulations that protect child labor, the tendency of the quality of child labor problems from year to year experiences a complexity of development towards the worst forms of exploitative work that endangers the physical, mental, moral, social and intellectual growth and development of children which can adversely affect to child psychological development.⁶

The worst types of work are increasingly found, such as prostituted children, trafficked children, children working in mines, jermal children and others. Since the early 1990s, the issue of street children and children working on plantations has been increase and protested. In 1996 the issue of child prostitution emerged, children who worked in mining, fishermen. Whereas in 1998 the issue of child trafficking for prostitution, child domestic servants and other worst forms of child labor. Some previous researches stated that child labor in many cases often get a variety of exploitation, ranging from

³ Fajar, A. (2016). Buruh Anak: Mampukah Kebijakan Negara Melindungi?. *PUBLISIA: Jurnal Ilmu Administrasi*, 1(1), hlm. 2-3 (1-14); Kim, K. (2017). Pekerja Anak di Bawah Umur. *Online Article*, pp. 12-15.

⁴ Marzuki, P. M. (2012). *Macam-Macam Hak*, Jakarta: Gramedia, pp. 158-160.

⁵ Prinst, D. (2003). *Hukum Anak Indonesia*, Bandung: Citra Aditya Bakti, pp. 62.

⁶ Vandenberg, P. et.al. (2009). *Menghapuskan Pekerja Anak*, Jakarta: ILO, 2009, pp. 23.

physical exploitation, social, economic, to sexual.⁷ In fact, children recognized as agents of change for the nation, therefore their physical, moral and social development greatly influences the growth of children and children who do work can affect the moral development that causes disruption of the physical, moral and social development of the child.⁸

Based on this description, this paper discusses three important key issues, namely: *first*, legal protection of child labor in Indonesia based on labor and human rights laws, *second*, analysis of the rules of child labor protection in force in Indonesia, and *third*, the emergence of child labor in Indonesia.

2. Research Methods

In this research, the authors use this type of library research or, more precisely, normative juridical studies. This is done with the aim of obtaining data, information, theories and opinions of experts obtained from various literatures, magazines, and newspapers as well as through a comprehensive internet media search that has been observed. And this paper uses the method of compilation deduction, which is the mindset taken based on general data that is filtered, processed, then specifically drawn conclusions and compares the legal protection of child labor between labor law and the reality that occurs in society regarding legal protection of child labor.

This research will specifically analyze the legal protection provided by labor laws for working children or child labor. In the Manpower Act there are special protections for working children listed in Article 68 to article 75 that protection will be analyzed with reality in Indonesian society, because the law does not clearly explain the protection of child laborers, because child labor does not there is. The Manpower Act only provides a general description of protection for workers not protection for child laborers or working children, because protection of children is a separate area of law in Indonesia contained in the law. Then, in this Child Law the Law tries to explain how the methods of caring for and educating children and the laws relating to children's activities. At the end of this research, there are a number of suggestions that can be taken into consideration by the community in general and legal instruments in particular to carry out the responsibilities mandated based on rules formally and materially without having to be reduced or even exaggerated because they can affect the development and growth of children.

⁷ Prajnaparamita, K. (2018). Perlindungan Tenaga Kerja Anak. *Administrative Law & Governance Journal*, 1(2), pp. 215-230; Juliana, R & Arifin, R. (2019). Anak dan Kejahatan (Faktor Penyebab dan Perlindungan Hukum). *Jurnal Selat*, 6 (2), pp. 225-234; Muntamah, A. L., Latifiani, D., & Arifin, R. (2019). Pernikahan Dini Di Indonesia: Faktor dan Peran Pemerintah (Perspektif Penegakan dan Perlindungan Hukum Bagi Anak). *Widya Yuridika*, 2(1), pp. 1-12; Andhini, A. S. D. & Arifin, R. (2019). Analisis Perlindungan Hukum Terhadap Tindak Kekerasan pada Anak di Indonesi. *Ajudikasi: Jurnal Ilmu Hukum*, 3(1), pp. 41-52.

⁸ Vandenberg, P. et.al, *Ibid.*; also see Muslina. (2016). Pekerja Anak di Bawah Umur Menurut UU No. 13 Tentang Ketenagakerjaan (Studi di Gampong Alue Bu Kec. Peureulak Barat). *Thesis*, Jurusan Akhwal Syakhshiyah Institut Agama Islam Negeri (IAIN) Zawiyah Cot Kala Langsa, pp. 7-9; Mahasin, Z. Z., Naziah, F. & Arifin, R. (2020). Wage Problems in Indonesia in the Human Rights Perspective (Case of Inappropriate Wages for Pot Workers in Tangerang). *The Indonesian Journal of International Clinical Legal Education*, 2(1), pp. 1-14.

3. Result and Discussion

3.1 Arrangements, Limitations and Framework for the Definition of Child Labor

Law 13 of 2003 Article 1 Item 26 Number concerning Manpower confirms that what is referred to as a child is every person under the age of 18 years. What is meant by a child is every person under the age of 18, except for those who determine the age of adulthood is reached earlier under the law. Children need protection because they are immature individuals physically, mentally, and socially. Because of conditions that are vulnerable to development, when compared with adults children are more at risk of exploitation, violence, neglect, and others. As people often say, children are a major asset for the future of the nation as a whole. Above all, the lives of children around the world at this time are no better for each other. Threats to children today, both physical, mental, and social threats are more serious than in the past. According to Law Number 13 Year 2003 Article 1 Item 3 Regarding Employment, the so-called Worker is any person who works for a wage or other forms of remuneration. Child labor is a child (under the age of 18) who works in all forms of work carried out up to the age limit stated in the norms set by the International Labor Organization (ILO) for one type of work. The work does not disturb the growth and development of children.⁹

The presence of children in the family is a human resource in the future, therefore children need to be protected in order to grow and develop into a reliable human being, physically, spiritually, and socially. But not all children can grow and develop naturally due to various obstacles such as poverty. In poor families, it often happens that children do not go to school or drop out of school because they have to work to help parents to meet family needs. Poverty is generally cited as the main factor causing child labor. In many developing countries, poor education system is one of the factors causing children's entry into the world of work. Other factors that encourage the emergence of child labor are factors originating from socio-economic, cultural and family aspects, legal instruments, supervision and implementation, weak demand, income levels in certain economic sectors/regions and declining industrial relocation and causing children to participate in the process family economy and cause stunted child growth.¹⁰

Child labor is like two sides of a coin, on the one hand it helps the family economy for the survival of the child and his family but on the other hand it can hamper the child's growth and development process. Therefore, it seems that the government in acting seems to be still stereotyped, which means that it does not forbid nor allow it, nor does it protect children from exploitation.¹¹ Government efforts to protect child labor from

⁹ Indonesian Manpower Act

¹⁰ Prinst, D. (2003). *Op.Cit.*, p. 112; Judge, Z. (2016). Kedudukan Anak yang Berhadapan dengan Hukum Selaku Tindak Pidana (Studi Kasus: 123/PID.SUS.PN.JKT.TIM). *Lex Jurnalica*, 13(1), pp. 51-66.

¹¹ Ariyanti, T. (2016). Pentingnya Pendidikan Anak Usia Dini bagi Tumbuh Kembang Anak (The Importance of Childhood Education for Child Development). *Jurnal Dinamika Pendidikan Dasar*, 8(1), pp. 50-58; Perdana, A. (2010). Pertumbuhan dan Perkembangan Serta Faktor yang Mempengaruhinya. *Online Article*, https://www.kompasiana.com/andre_manutd/550042d8a33311d372510659/pertumbuhan-dan-perkembangan-serta-faktor-yang-mempengaruhinya-kd-2

exploitation include the enforcement of Law Number 20 of 1999 concerning minimum age restrictions for child laborers aged 15 years. In addition, regulations relating to child labor are Law Number 4 of 1979 concerning Child Welfare, which states the meaning of Child Welfare as a way of life and livelihood of children that guarantees the growth and development of children naturally, spiritually, physically, and social. Legislation governing child protection, Law Number 23 Year 2002 which states, "Every child has the right to live, grow, develop, and participate appropriately in accordance with human dignity and dignity and get protection from violence and discrimination".¹²

Even though the government is not strict about banning child labor, the various laws and regulations can show that the government is responsible for protecting child labor from work that can endanger health, mental, spiritual, and social development or interfere with children's education. Regulation of the Minister of Manpower Number PER/01/MEN/1987 which contains Protection for Children Forced to Work. It is stated in Article 4 which regulates that children who are forced to work are children under the age of 14 (fourteen) years. Employers who want to employ children to work are obliged to fulfill conditions such as, not providing work at night, providing wages in accordance with the provisions of applicable wage arrangements, and so on. Paragraph 2 of Article 4 states that children who are forced to work must obtain permission from their parents or parents. This is to ensure that the child really does have to work if something happens, so the employer cannot be blamed as a whole because he has received permission from the parent or guardian of the child who was forced to work.¹³

ILO Convention Number 138 contains the Minimum Age for Permission to Work (International Labor Organization Convention Number 138 Concerning Minimum Age for Admission to Employment) regulates that any type of work or work that is due to its nature or environmental conditions in which it requires work to do something that might endanger a child's health, safety or morals should not be carried out by children under the age of 18. With the ratification of this convention it is obliged to make national policies designed to ensure the effective abolition of child labor and increase the minimum age of children to be allowed to work gradually to a level that is compatible with the full physical and mental development of the child. Law Number 20 Year 1999 Concerning Ratification of ILO Convention Number 138 which states the age for working as follows: (1) The minimum general age is 15 years, where the age of 15 years is the age of compulsory education, (2) The minimum age for light work (13 years), work which does not affect the child's psychological development, (3) Minimum age for hazardous work (18 years), work which may be dangerous.¹⁴

Law Number 13 of 2003 concerning Manpower explicitly prohibits children from working, in Article 68 which reads that employers are prohibited from employing or

¹² Wismayanti, Y. F. (2017). Kondisi Sosial Pekerja Anak (Assesment Tentang Pekerja Anak di Pesisir Pantai Cumpat dan Nambangan, Bulak Banteng Kota Surabaya). *Jurnal Penelitian dan Pengembangan Usaha Kesejahteraan Sosial*, 11(1), pp. 36-46

¹³ Minister of Manpower Regulation Number PER/01/MEN/1987 Concerning Protection of Children Forced to Work

¹⁴ International Labour Organization Convention Nomor 138 Concerning Minimum Age For Admission to Employment

giving work to children. Because children have vulnerabilities in physical, mental and social health that can affect their development. In Article 69 which states that children aged 13 to 15 years may do light work as long as it does not interfere with the child's physical and physical development and mental health. In Article 70 which states that children can do work in a place that is part of the education or training curriculum which is endorsed by an authorized official with a minimum age of 14 years. The fact that occurs states that there are still many domestic workers who are not suitable for children because they are forced to work since they are 12 (twelve) years old and even less, and they even suffer from poor working conditions or economic exploitation, as well as discrimination against gender differences.¹⁵

3.2 Child Labor in Indonesia

Child labor is a separate phenomenon that occurs in Indonesia in terms of employment. Directly or indirectly the existence of child labor has contributed to the economy. But on the other hands the existence of child labor actually limits the rights of the child itself because work is not an obligation of a child. Ida Bagoes Mantra asserts that work is to carry out an activity to produce or help produce goods or services with a view to earning income in the form of money and or goods, within a certain period of times. Then it can be seen that the purpose of work is to earn income in the form of money and or goods to meet the necessities of life.¹⁶

The existence of child labor is a complex and longstanding phenomenon starting from European countries and then developing countries in the world including Indonesia. This is caused by several factors such as the condition of the child himself, his family background, the influence of parents, culture and environment. At first glance the reasons that cause why children at an early age are already involved in productive activities and even forced to drop out of school are mostly due to economic factors. It can be imagined that a family whose economic life is always full of shortcomings, of course it is natural for children not to continue school and then forced to become involved as a worker to make money as father and mother.¹⁷

Reasons for poverty as well as high levels of unemployment cause children to choose to work to help their parents make money. Meanwhile, children who work in factories are caused by high labor demand and the willingness of children to be paid cheaply. This is a very vulnerable situation for children to experience exploitation.¹⁸ Manurung (1998) as quoted by Ernanto (2016) states that the involvement of children in economic activities - both in the formal and informal sectors - raises the potential for exploitation. In line with this statement, almost every study of child labor proves that they are vulnerable to harmful actions and easily exploited. The existence of Article 32 of the Convention on the Rights of the Child which states that child laborers are entitled to

¹⁵ Indonesian Manpower Act

¹⁶ Mantra, I.B. (2003). *Demografi Umum*. Yogyakarta: Pustaka Pelajar, pp. 76-77.

¹⁷ Ayu, C. P. & Bachtiar, N. (2017). Analisis Faktor-Faktor Mempengaruhi Pekerja Anak di Sumatera Barat. *Thesis*, Padang: Faculty of Economics Universitas Andalas, pp. 54-57.

¹⁸ Suyanto, B. (2010). *Masalah Sosial Anak*, Jakarta: Kencana, pp. 61-63.

protection from work that endangers physical, mental, spiritual, moral, social development and interferes with their education cannot reduce violations of children's rights.¹⁹

Children involved in the production sector are actually not only due to mere economic motives, but also come from cultural factors and habits. In rural areas in general, as well as in disadvantaged family environments, the habit of involving children to work, both inside and outside the room, which is seen as a routine in the life of a child. As one of the processes and necessities that must be passed by a child when he gets older and has a provision for household life in the future. Working from an early age is considered as learning towards maturity. Several studies related to child labor prove that the following factors are a factor of children's involvement in several sectors²⁰, as follows:

a. *The economy*

Low family economy is a dominant factor that can cause children to be involved in earning a living. Children are often an important source of income or family backbone to support their families. In working children are seen as a mechanism for survival (survival) in order to eliminate the pressure on poverty because of the unmet needs of the work of parents.

b. *Motivation*

Children who are involved in family economic activities are sometimes lacking so there is encouragement to work. Get respect from the community who work to ease the burden on parents, as well as the desire to enjoy the results of hard work, which are motivational factors for children to work. Getting additional income for the family is also a motivating factor for a working child. Children are often unable to avoid being able to get involved in work because they have feelings or a desire to help and make their parents proud.

c. *Culture*

Working children can not be separated from the reality that already exists in the local community, involving a child as a source of family livelihood that obliges him to serve both parents. Children work and can make parents happy at an early age are considered to be devoted to their parents. There is a culture and the position of children who have rights that should be maintained so as not to be ignored.

¹⁹ Ernanto, B.S. (2016). Pekerja Anak di Tempat Pembuangan Sampah (Studi Deskriptif Kehidupan Pemulung Anak di Tempat Penampungan Akhir Benowo Surabaya). *Jurnal Mahasiswa Universitas Airlangga*, pp. 3-4.

²⁰ Iryania, B. S. & Priyarsono, D. S. Eksploitasi terhadap Anak yang Bekerja di Indonesia (Exploitation of Working Children in Indonesia). *Jurnal Ekonomi dan Pembangunan Indonesia*, 13(2) pp, 177-195; Nopan. (2017). Tenaga Kerja Anak : Benturan antara Hak Dasar Manusia terhadap Aturan Hukum Positif. *Research Report*, Kendari: Universitas Haluoleo, pp. 1-30; Zulfikar, F. E. (2018). *Analisis Faktor-Faktor yang Mempengaruhi Pekerja Anak di Bawah Umur Pada Sektor Informal di Kota Makassar* (Doctoral Dissertation, Faculty of Economics and Islamic Business, Universitas Islam Negeri Alauddin Makassar), pp. 86-88; Sugiyani, E. (2009). *Perlindungan Hak Bagi Pekerja Anak Melalui Program Pendidikan Literacy Class di Yayasan Pemerhati Sosial Indonesia*. *Thesis*, Jakarta: Faculty of Da'wah and Communication Universitas Islam Negeri Syarif Hidayatullah, pp. 56-59.

3.3 International Human Rights Principle for Child Labor Protection: Theories and Concept

November 20, 1959 the general session of the United Nations Convention on the Rights of the Child an international convention regulating the civil, political, economic, social, and cultural rights of children. Broadly speaking, this declaration contains 10 (ten) principles of children's rights, namely the right to protection, opportunities and facilities that enable them to develop healthily and naturally in a free and beneficial condition, have a name and nationality from birth, including adequate nutrition, housing, recreation, and health services, education, care, and special treatment if they are disabled, grown and raised, in an atmosphere of love and security as far as possible under the care and responsibility of their own parents to get an education, and in terms of accidents/disasters, including those who receive protection and help obtain protection from all forms of child-wasting, cruelty and bullying and acts that lead to discrimination.

The principles contained in the child rights convention as follows:

1) The principle of non-discrimination.

This means that all rights recognized and contained in the Convention on the Rights of the Child must apply to every child without any distinction. This principle is contained in Article 2 paragraph (1) of the Convention on the Rights of the Child, namely:

“Participating countries will respect and guarantee rights applied in this convention for every child in their jurisdiction without discrimination in any form, regardless of race, color, sex, language, religion, political views or other views, national, ethnic or social origin, ownership status, disability or not, birth or other status whether from the child himself or from a parent or legal guardian “. Article 2 paragraph (2) contains provisions that, States parties will take all necessary steps to ensure that children are protected from all forms of discrimination or punishment based on the status, activities, opinions expressed or beliefs of parents, legal guardians or family member”.

2) The best principle best interest of the child.

Article 3 paragraph (1) contains provisions that, in all actions involving children carried out by government social welfare institutions or legislative bodies, the best interests of the child must be the main consideration (Article 3 paragraph (1)).

3) The principle of the rights to life, survival and development

Article 6 paragraph (1) contains provisions that, States parties recognize that every child has an inherent right to life. Article 6 paragraph (2) contains provisions that, participating countries will guarantee to the maximum extent the survival and development of children

4) The principle of respect for the views of the child

Children's opinions, especially when it comes to things that affect their lives, need to be considered in every decision making. This principle is contained in Article 12

paragraph (1) of the Convention on the Rights of the Child, namely: States parties will guarantee that children who have their own views will have the right to express their views freely in all matters affecting children, and those views will be respected according to the age and maturity level of the child. The obligation of the participating countries to implement the Convention on the Rights of the Child, is intended as an engagement of the State party to the international treaty. Child rights conventions, binding on participating countries to guarantee the implementation of children's rights (enforcement of children right), and giving birth to or forming children's rights as part of national legal rules that bind the territory and people of Indonesia

3.4 Arrangements for the Protection of Child Labor in Indonesia in the Context of Protection of Human Rights

There is no specific regulation to protect children who work in Indonesia, but there are some laws that are used as a basis for protecting children who work in Indonesia wisely, such as Law Number 20 of 1999 which contains the Ratification of ILO Conventions Number 138 which explained the Minimum Age Allowed for Work in 1973. The Convention is adopted from the ILO general conference or ILO Convention No. 138 Concerning the Minimum Age for Admission to Employment of the Abolition of Forced Labor on June 26, 1973 and was ratified by Indonesia through the Law Number 20 of 1999. The convention listed in the fourth paragraph of its preamble, which was carried out to establish a general text on the age restrictions allowed to work. Previously, there was already a formula regarding the minimum age to be allowed to work, but the formula was different for each work sector and type.

In guaranteeing protection for children as workers, the convention contains various principles including: (a) The principle of abolition of child labor which, formulated in Article 1, states that each member deigns to take national policy in ensuring the abolition of child policy as workers. In addition, each member is required to raise the minimum age allowed to work to a level that is in accordance with the children's physical and mental development needs so that their development is not disrupted. (b) The principle of protection, in article 2, contains the minimum age for work when he is 15 years old. Age 15 years is adopted from the age of compulsory schooling. Article 2 states that in the territory of ILO member countries, no person under the specified age is permitted to work or enter work in an office. It also explains the prohibition to work with heavy equipment that is in the territory of the country. Article 3 states that the convention for the form of work that can endanger the health, safety, or morals of children, can be done by someone who has an age limit not less than 18 years. In this article it is also stated that the types of hazardous work must be determined by national legislation. In addition, permission must be obtained from parents or guardians of children who want or are forced to work in formal or informal fields.

Presidential Decree No. 36 of 1990 which mentions the Ratification of the 1989 Convention on the Rights of the Child or Convention on The Rights of the Child After the Universal Declaration of Human Rights (UDHR) or Universal Declaration of Human Rights (UDHR) which was coined, after five years later activists of Rights Human rights through with member states urging that the UN is willing to give an agreement to guarantee the protection of children's rights, because children are the nation's assets that will be agents of change and determinants of national life. The

convention that came to be known as the Convention on the Rights of the Child sparked after seeing that it appeared that DUHAM did not necessarily protect the dignity and dignity of children as human beings. The Convention on the Rights of the Child was ratified by the United Nations General Assembly on November 20, 1989, which later in 1990 Indonesia ratified this convention through Presidential Decree Number 36 of 1990.

Under UNICEF, legal materials regarding children's rights in conventions can be grouped into four categories of children's rights, namely: (a) The right to survival, the right to preserve and maintain life and the right to obtain the highest standards of health and care that is as well as possible for the workers. (b) The right to protection, is the rights of children in the Convention on the Rights of the Child which includes protection from acts of violence, discrimination and neglect for children who do not have families for refugee children and children displaced in places that are not livable. (c) The right to growth and development, are the rights which encompass all education and the right to achieve an adequate standard of living for the child's mental, spiritual, physical, moral and social development. Education is very important and influences children's development. (d) The right to participate, namely the rights which include the right to express opinions in all matters affecting the development of children such as socializing and opinion.

Through an explanation, it can be seen that protecting children from exploitation is indeed part of the right to survival (survival rights). To determine the steps taken, among others: (a) The determination of the minimum age for a work permit. (b) Appropriate regulations regarding working hours and conditions of work are established. (c) Appropriate punishment or sanctions are determined if the violation is committed. This policy is intended to ensure its effective implementation. What is meant by the state is as the person in charge of protecting children who must be able to take policies both legally and socially and carry out international cooperation in plans to protect children's rights from economic exploitation. Children who take part in work affairs are more susceptible to exploitation.

Law Number 13 of 2003, which explains manpower. Found in Article 68 of the formula for protecting children as workers in the Act, which reads "employers are prohibited from employing children", article 185 explains the criminal formulation for those who violate the provisions of article 68 with threats of one to four years in prison and/or a fine of Rp 100,000 .000 to Rp. 400,000,000. Regarding the formulation for the prohibition of exploitation which includes a prohibition on hiring or involving children in hasty or strenuous work which can affect the child's developmental capacity and growth, it is stipulated on article 74. Violations of this provision are regulated in article 183 which contains criminal offenses threatened with imprisonment of two to five years and/or fines of between Rp. 200,000,000 and Rp. 500,000,000. Article 75 also regulates the protection of children who work outside the employment relationship, which requires the government to take measures to prevent children working outside the employment relationship also stipulates that prevention efforts are regulated further in government regulations governing labor laws.

In detail, the rights of children—in this case child labor—in Act Number 13 of 2003 concerning Manpower can be seen through table 1 as follows.

Table 1 Child Rights in Indonesian Manpower Act

Article	Article Related to Children's Rights
1 par. (26)	Child is every person under the age of 18 (eighteen) years.
68	Employers are prohibited from employing children.
69 par. (1)	The provisions referred to in Article 68 are excluded for children aged between 13-15 years to do light work as long as they do not interfere with physical and mental health and development.
69 par. (2)	Employers who employ children in light work must meet the requirements: <ol style="list-style-type: none"> a. written permission from parents or guardians; b. employment agreement between the employer and parents or guardians; c. maximum working time of 3 (three) hours; d. carried out during the day and does not interfere with school time; e. occupational Health and Safety; f. a clear working relationship; and g. receive wages in accordance with applicable regulations.
69 par. (3)	The provision referred to in paragraph (2) letters a, b, f, and g are excluded for children who work in their family businesses.
70 par. (1)	Children can do work in the workplace that is part of the education or training curriculum that is authorized by an authorized official.
70 par. (2)	Children as referred to in paragraph (1) must be at least 14 (fourteen) years old.
70 par. (3)	Work as referred to in paragraph (1) can be carried out with the following conditions: <ol style="list-style-type: none"> a. given clear instructions on how to carry out the work as well as guidance and supervision in carrying out the work; and b. given occupational safety and health protection.
71 par. (1)	Children can do work to develop their talents and interests.
71 par. (2)	Entrepreneurs who employ children as referred to in paragraph (1) must fulfill the following requirements: <ol style="list-style-type: none"> a. under the direct supervision of a parent or guardian; b. maximum working time is 3 (three) hours a day; and c. working conditions and environment do not interfere with physical, mental, social, and school time development.
72	In the case of children being employed together with adult workers / laborers, the workplaces of children must be separated from the workplaces of adult workers / laborers.
73	Children are considered to work when they are at work, unless proven otherwise.
74 par. (1)	Anyone is prohibited from employing and involving children in the worst jobs.
75 par. (1)	The government is obliged to make efforts to tackle children who work outside of work relations.
185 par. (1)	Anyone who violates the provisions referred to in Article 42 paragraph (1) and paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143, and Article 160 paragraph (4) and paragraph (7), are subject to a

	maximum of 1 (one) year imprisonment and a maximum of 4 (four) years and / or a fine of at least Rp 100,000,000.00 (one hundred million rupiah) and a maximum of Rp 400,000. 000.00 (four hundred million rupiah).
185 par. (2)	The criminal act referred to in paragraph (1) constitutes a criminal offense.

So, in other words, based on the Manpower Act, children's rights are fully protected by the state. The government in this case is also required to make efforts to tackle children who work outside of work relationships with countermeasures that are planned, integrated, and coordinated with relevant agencies. Examples of children working outside of work relationships are shoeshine children, children of newspaper sellers, and many other child workers. Work relations are relations between employers and workers based on work agreements, which have elements of work, wages, and orders.²¹

In further analysis, but in the same context, the Manpower Act has emphasized that the State has set a minimum age limit for child labor, has stipulated that children must be avoided from hazardous working conditions, etc. But the issue of implementation is a very different problem. At least, there are three approaches in looking at the problem of child labor, namely abolition, protection, and empowerment. The abolition approach bases its thinking on that every child must not work in any condition, because children have the broadest rights to go to school and play and develop themselves optimally. While the protection approach bases its thinking on guarantees for civil rights namely that as human beings and as citizens each child has the right to work. And the empowerment approach is basically a continuation of the protection approach, which seeks empowerment of child workers so that they can understand and be able to fight for their rights. Basically, the ILO is supported by several countries, including Indonesia, which continuously seek an abolition or elimination approach to all forms of child labor.²²

Conditions that are very detrimental such as being paid cheaply, are vulnerable to exploitation, are vulnerable to work accidents, are vulnerable to arbitrary layoffs, and have the potential to lose access and opportunities to develop themselves, giving rise to new obligations for the state to provide protection to children who are forced to work, and that working children must be provided protection through labor regulations so that they obtain their rights as workers as adults and so that they are protected from all forms of exploitation and abuse.²³

²¹ Gunawan, I. M. H., & Jayantiari, I. G. A. M. R. (2016). Perlindungan Hukum Terhadap Tenaga Kerja Berkaitan Dengan Adanya *Non-Competition Clause* dalam Sebuah Perjanjian Kerja. *Kertha Semaya*, 04 (01) pp 81-90.

²² For more comprehensive, please see Kusumaningrum, S. (2002). Tentang Tenaga Kerja Anak retrieved from <https://www.hukumonline.com/klinik/detail/ulasan/cl918/tentang-tenaga-kerja-anak/>

²³ *Ibid.*

4. Conclusions

The problem of child labor is almost like an iceberg phenomenon. Complexity at the base of the problem is not apparent, whereas actualization on the surface in the form of acts of exploitation against children also appears only slightly. Community culture which is more likely to be patriarchal and structurally poverty creates a permissive climate for child labor in Indonesia. The limited study and attention to the conditions of child labor in Indonesia contributed to the destabilization of child labor. With this condition, child protection programs are needed to ensure the physical, mental and social development of a child. Efforts to protect working children have been regulated in the formulation of several international laws and conventions that have been ratified by the state in general. Indonesia has various policies on child protection that are generally well established, in the full sense and have a complete policy foundation, but there are no specific regulations specifically for providing protection to working children. The involvement of children in the production sector is actually not just an economic motive, but motivational factors as well as cultural factors are also included in the motive. But in fact the involvement of children in work, mostly driven by economic factors. Matters that can be suggested to the Government of Indonesia are the need to formulate a law specifically regulating the protection of children as workers. This law should open publicly-regulated public spaces to actively participate and participate in monitoring the state in order to provide legal protection for children from exploitation as workers. Because children are the responsibility of parents and the nation and agents of national change, legal protection for children needs to be upheld.

References

Books

- Mantra, I. B. (2003). *Demografi Umum*. Yogyakarta: Pustaka Pelajar.
- Marzuki, P. M. (2012). *Macam-Macam Hak*. Jakarta: Gramedia.
- Prinst, D. (2003). *Hukum Anak Indonesia*. Bandung: Citra Aditya Bakti.
- Purnianti, S., & Martini. (2002). *Analisa Suatu Sistem Peradilan Anak*. Jakarta: FISIP UI.
- Suyanto, B. (2010). *Masalah Sosial Anak*. Jakarta: Kencana.
- Vandenberg, P. dkk. (2009). *Menghapuskan Pekerja Anak*. Jakarta: ILO.

Journals

- Andhini, A. S. D. & Arifin, R. (2019). Analisis Perlindungan Hukum Terhadap Tindak Kekerasan pada Anak di Indonesi. *Ajudikasi: Jurnal Ilmu Hukum*, 3(1): 41-51.
- Ariyanti, T. (2016). Pentingnya Pendidikan Anak Usia Dini bagi Tumbuh Kembang Anak (The Importance of Childhood Education for Child Development), *Jurnal Dinamika Pendidikan Dasar*, 8(1): 50-58.
- Ernanto, B.S. (2016). Pekerja Anak di Tempat Pembuangan Sampah (Studi Deskriptif Kehidupan Pemulung Anak di Tempat Penampungan Akhir Benowo Surabaya). *Jurnal Mahasiswa Universitas Airlangga*.
- Fajar, A. (2016). Buruh Anak: Mampukah Kebijakan Negara Melindungi?. *PUBLISIA: Jurnal Ilmu Administrasi*, 1(1): 1-14.
- Gunawan, I. M. H., dan Jayantiari, I G. A. M. R. (2016), Perlindungan Hukum Terhadap Tenaga Kerja Berkaitan Dengan Adanya *Non Competition Clause* dalam Sebuah Perjanjian Kerja, *Kertha Semaya*, 4(1): 81-90.

- Iryania, B. S. & Priyarsono, D. S. (2017). Eksploitasi terhadap Anak yang Bekerja di Indonesia (Exploitation of Working Children in Indonesia), *Jurnal Ekonomi dan Pembangunan Indonesia*, 13(2): 177-195.
- Judge, Z. (2016). Kedudukan Anak yang Berhadapan dengan Hukum Selaku Tindak Pidana (Studi Kasus: 123/PID.SUS.PN.JKT.TIM), *Lex Journalica*, 13(1): 51-66.
- Juliana, R. & Arifin, R. (2019). Anak dan Kejahatan (Faktor Penyebab dan Perlindungan Hukum). *Jurnal Selat* 6(2), 225-234. DOI: <https://doi.org/10.31629/selat.v6i2.1019>
- Kurniaty, R. (2007). Perlindungan Hukum Terhadap Pekerja Anak Berdasar Hukum Positif Indonesia, *Risalah Hukum*, 13(2):25-44.
- Mahasin, Z. Z., Naziah, F., & Arifin, R. (2020). Wage Problems in Indonesia in the Human Rights Perspective (Case of Inappropriate Wages for Pot Workers in Tangerang). *The Indonesian Journal of International Clinical Legal Education*, 2(1), 1-14. <https://doi.org/10.15294/ijicle.v2i1.37326>
- Muntamah, A.L., Latifiani, D., & Arifin, R. (2019). Pernikahan Dini Di Indonesia: Faktor dan Peran Pemerintah (Perspektif Penegakan dan Perlindungan Hukum Bagi Anak). *Widya Yuridika* 2(1), 1-12. DOI: <https://doi.org/10.31328/wy.v2i1.823>
- Prajnaparamita, K. (2018). Perlindungan Tenaga Kerja Anak. *Administrative Law & Governance Journal*, 1(2), 215-230. <https://doi.org/10.14710/alj.v1i2.215%20-%20230>
- Setiamandani, E. D. (2012). Perlindungan Hukum Bagi Pekerja Anak dan Upaya Penanggulangannya, *Jurnal Reformasi*, 2(2): 74-81.
- Wismayanti, Y.F. (2017). Kondisi Sosial Pekerja Anak (Assesment Tentang Pekerja Anak di Pesisir PantaiCumpat dan Nambangan, Bulak Banteng Kota Surabaya), *Jurnal Penelitian dan Pengembangan Usaha Kesejahteraan Sosial*, 11(1): 36-46.

Thesis/Dissertation

- Ayu, C.P., & Bachtiar, N. (2017). Analisis Faktor-Faktor Mempengaruhi Pekerja Anak di Sumatera Barat, *Thesis*, Padang: Faculty of Economics Universitas Andalas.
- Muslina. (2016). Pekerja Anak di Bawah Umur Menurut UU No. 13 Tentang Ketenagakerjaan (Studi di Gampong Alue Bu Kec. Peureulak Barat), *Thesis* Jurusan Akhwal Syakhshiyah Institut Agama Islam Negeri (IAIN) Zawiyah Cot Kala Langsa.
- Sugiyani, E. (2009). Perlindungan Hak Bagi Pekerja Anak Melalui Program Pendidikan *Literacy Class* di Yayasan Pemerhati Sosial Indonesia, *Thesis*, Jakarta: Faculty of Da'wah and Communications Universitas Islam Negeri Syarif Hidayatullah.
- Zulfikar, F. E. (2018). *Analisis Faktor-Faktor yang Mempengaruhi Pekerja Anak dibawah Umur pada Sektor Informal di Kota Makassar* (Doctoral dissertation, Universitas Islam Negeri Alauddin Makassar).

Legislation

- Indonesian Manpower Act, Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan
- Undang-Undang Nomor 20 Tahun 1999 Tentang Pengesahan ILO Convention No. 138 Concerning Minimum Age for Admission to Employment (Konvensi ILO No. 138 Mengenai Usia Minimum Untuk Diperbolehkan Bekerja
- Undang-Undang Nomor 1 Tahun 2000 tentang Pelanggaran dan Tindakan Segera Penghapusan Bentuk-Bentuk Pekerjaan Terburuk untuk Anak (Konvensi ILO Nomor 182 *the Worst Forms of Child Labour Convention*

Keputusan Presiden Nomor 36 Tahun 1990 Tentang Pengesahan Convention on the Rights of The Child (Konvensi Tentang Hak-Hak Anak)
Peraturan Menteri Tenaga Kerja Nomor PER/01/MEN/1987 Tentang Perlindungan Bagi Anak Yang Terpaksa Bekerja
Peraturan Menteri Tenaga Kerja Nomor PER/01/MEN/1987 Tentang Perlindungan Bagi Anak Yang Terpaksa Bekerja

Others

- Kim, K. (2017). Pekerja Anak di Bawah Umur, *Online Article*, retrieved from https://www.academia.edu/29728759/Pekerja_Anak_di_Bawah_Umur
- Kusumaningrum, S. (2002). Tentang Tenaga Kerja Anak, retrieved from <https://www.hukumonline.com/klinik/detail/ulasan/cl918/tentang-tenaga-kerja-anak/>
- ILO (Organisasi Perburuhan Internasional). (2017). *Menanggulangi Pekerja Anak di Sektor Rumah Tangga: Panduan Aksi bagi Pekerja Rumah Tangga dan Organisasi Pekerja Rumah Tangga*. Jakarta: ILO.
- Nopan. (2017). Tenaga Kerja Anak: Benturan antara Hak Dasar Manusia terhadap Aturan Hukum Positif, *Research Report*, Kendari: Universitas Haluoleo, from https://www.academia.edu/7504654/Tenaga_Kerja_Anak_benturan_antara_hak_dasar_manusia_terhadap_aturan_hukum_positif
- Perdana, A. (2010). Pertumbuhan dan Perkembangan Serta Faktor yang Mempengaruhinya, *Online Article*, 15 November, https://www.kompasiana.com/andre_manutd/550042d8a33311d372510659/pertumbuhan-dan-perkembangan-serta-faktor-yang-mempengaruhinya-kd-2