

# Legal Protection and Control for Child Workers

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**ABSTRACT**--his study aims to determine the legal protection and control of child labor. Children are the generation who will become the nation's successors, so they must be prepared and directed early to grow and develop into children who are physically and mentally healthy, advanced, independent and prosperous to become quality resources. The research method used is the normative juridical approach, analytical descriptive research specifications. Data sources used are secondary data types that contain primary legal materials, secondary legal materials and tertiary legal materials, data collection used is secondary data collection through library research, qualitative normative data analysis methods. Research Results Child laborers still exist, both child workers in the formal and informal sectors are mostly dominated in rural areas, who work as domestic servants, factories, shop assistants, farm laborers, etc. Child labor is caused by poverty and lack of education. Legal protection for child labor is already in the legislation but in its implementation it is not in accordance with applicable regulations because it is still difficult to record child labor and thus more optimal supervision is needed.

**Keywords:** legal protection, control, child labor

## I. INTRODUCTION

Children are the generation that will be the nation's successors, so they must be prepared and directed early on so that they can grow and develop into children who are physically and mentally healthy, advanced, independent and prosperous to become quality resources and can face obstacles in the future. Children in the stages of a child's life cycle before they get a special role and protection, along with the preparation for adult life.

One of the problems of children receiving special attention is the issue of child labor. This issue has gone global because so many children around the world have come to work at school age. In reality, the issue of child labor is not merely an issue of children carrying out work for a living, but is very closely connected with exploitation, dangerous work, obstructed access to education and impedes children's physical, psychological and social development. Even in certain cases and forms of child labor, it has entered the qualifications of children who work in the most intolerable situations.[4]

Essentially 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 in accordance with their physical, psychological, intellectual and social development. But in fact many children under the age of 18 years who have been actively involved in economic activities, become child workers, among others in the industrial sector due

to economic pressures experienced by their parents or other factors.[5]

In general, child laborers lack adequate protection both in legal and social terms, this is due to the condition of children who are forced to work sometimes only as additional labor in the production process, which in general they are not bound by work agreements, due to formal requirements (skills) which must be fulfilled in the context of protection not possessed by working children, children are also deemed not old enough to enter into work agreements.

Child labor is categorized as children who do work that has the nature or intensity that can interfere with their education or dangerous again their safety, health and growth. They work long hours at low wages, work every day, separate from family and lose the opportunity to enjoy education. Such child labor can cause permanent harm to the child and violate the laws and regulations.

Child labor in the formal sector which includes semi-public private companies or state-owned companies of various scales, children may be employed as permanent, seasonal or daily workers, novice workers with or without employment contracts, and children accompanying their parents working in several location and sometimes told to help his parents.

The informal sector which includes various types of traditional, unstructured businesses, family businesses and generally unregistered. Children can be found working as wage workers, beginner workers, unpaid workers and work contracts, domestic helpers, homeworkers or subcontractors.

The development of increasingly complex social problems is also pushing child labor into the worst types of work, child labor is a problem for all parties and is multi-sectoral, so the child labor prevention policy is a cross-sectoral policy and is a long and sustainable process, therefore efforts This needs to be carried out continuously, and integrated by all parties, namely the government, social organizations, non-governmental organizations and all groups and walks of life together.

According to data from the Central Statistics Agency for three years in a row, the dominance of child labor remains in rural areas. In 2018 the rate of child labor will be 3.2 percent. This means that there are 550 thousand child laborers out of a total of 17.2 thousand children aged 5-17 years. While the rate of child labor in cities is 2.18 percent. This indicates, from 19.8 thousand children aged 5-17 years, there were 431.8 thousand child workers in urban areas. Central Java is the province with the highest percentage of child labor in Java, at 1.5 percent, followed by West Java, with a proportion of 1.42 percent.[10]

One aspect regulated by Law No. 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Act) is concerned with legal protection of wages, and welfare of child workers listed in the provisions of Article 68 through the provisions of Article 75 of the Manpower Act. The provisions of Article 68 stipulate that employers are prohibited from employing children. The philosophy of prohibiting children from working or employing children as regulated in the Manpower Act is actually closely related to efforts to protect children's rights, which are also guaranteed protection in Law No. 39 of 1999 concerning Human Rights. Provisions that prohibit child labor as stipulated in the provisions of Article 68 of the Manpower Act, in line with the provisions of Article 52 paragraph (1) of Law no. 39 of 1999.[9]

Children with conditions that are not as strong as adults, of course can be a weakness for children in the world of work, because with the physical weakness of the child can position themselves to be treated poorly from coworkers who are far more physically strong compared to the child's self. With these conditions, then the child should be given more protection from adults in the workplace, so that the formulation of the problem that can be concluded is how about legal protection and supervision for child labor?

## II. RESEARCH METHOD

The research method is a way to achieve a goal. In this connection, the following steps are taken in their application:

1. Research Type  
In accordance with its level, this type of research is a type of Normative juridical research, which is looking for data that is used by sticking to juridical aspects.[2] This was done to get a clear picture of child labor from the perspective of labor law, while its sociological application in society.
2. Research Specification  
To complete this research, the writer uses descriptive analytical research specifications, meaning that the writer only describes the objects which are the main problems regarding child labor from the perspective of labor law, and how to solve them, so that a solution to all problems faced and a research can be obtained can be expected. who can be trusted scientifically.
3. Data Sources  
In this study, the type of data used is a type of secondary data consisting of:
  - a. Primary legal material [3]
    - 1)1945 Constitution
    - 2)Law Number 23 of 2002 concerning Protection of Children;
    - 3)Law Number 35 of 2014 concerning Amendments to Law 23 of 2002 concerning Child Protection
    - 4)Law Number 13 of 2003 concerning Manpower;

5)Regional Regulation Number 9 of 2007 regarding the Establishment of the Action Committee for the Elimination of the Worst Forms of Child Labor;

6)Central Java Gubernur Regulation Number 23 of 2008 concerning Provincial Action Plans for the Elimination of the Worst Forms of Child Labor in Central Java Province

- b. Secondary legal materials, namely materials that are closely related to primary legal materials and can help analyze and understand primary legal materials such as books / literature, research results, and the work of the legal community.
  - c. Tertiary legal materials, namely materials that provide information about primary and secondary legal materials such as dictionaries, newspapers, clippings, magazines, websites as supporting data.
4. Data Collection Method  
In order to obtain the expected data, in conducting this research, data collection was carried out by secondary data research, through library research.
  5. Data Presentation Method  
The data obtained after being grouped according to the problem, then analyzed qualitatively then presented in a systematic and descriptive manner in accordance with the existing problems.
  6. Data Analysis Method  
The analytical method used is qualitative normative, carried out by discussing or outlining the problems or laws and regulations or theories that apply, to find out child labor.

## III. FINDINGS AND DISCUSSION

### A. Legal Protection

The definition of child labor is children aged 4 to 18 years who work in various fields of sustainable work and take up most of their time as children so they cannot go to school like other children normally.[6]

As for the knowledge or understanding limits on children, there is still controversy because it is always changing. Law Number 13 of 2003 concerning Manpower Article 1 number 26 states the meaning of children is every person under the age of 18 (eighteen) years. Meanwhile, according to the United Nations contained in the Standard Minimum Rules for the Administration of Juvenile Justice intended for children are those aged 7 years to 18 years or above, as stated below This make for a wide variety of ages coming under definitions of "juvenile", ranging from 7 years to 18 years or above.[7] Meanwhile, in accordance with Law No. 20 of 1999 (Ratification of ILO Conventions, No. 138 of 1978) concerning the minimum age to be allowed to work, stipulating the minimum age for work is not to be less than the age of graduating that is not less than 15 years.

The issue of child labor must receive special attention, because in reality the issue of child labor is not

merely an issue of children carrying out work with low wages, compliance but very closely attached to exploitation, dangerous work, obstructed access to education and hampered the physical, psychological and social development of children. In fact, in certain cases and forms, child labor has entered the qualifications of children who work in the most intolerable form of child labor.

In Indonesia, four forms of child labor can be identified, namely:

1. Child labor as a domestic servant, is the work most often forgotten. Although physically working at home is safer and less dangerous, it is most vulnerable to exploitation and difficult to protect. They are often paid very low or not even paid, their conditions are often entirely dependent on the employer and do not take into account their rights as children.
2. Child laborers as laborers in the market, they work wandering in traditional markets with their work as pelvic laborers, transporting vegetables or fruit, they tend to with poor physical hygiene and health.
3. Child laborers on the streets, children who work at crossroads, on city buses, train stations and terminals doing work such as busking, hawking, shoeshine, and their behavior displays wild, emotional, irritable and very few are still in school.
4. Sea laborers / jermal children, children who work in various fishing locations, shelters, auctions and fish processing.[7]

In terms of qualifications / classification of work, which are allowed to be done by children who are forced to work are:

1. Light work, which is work that if done does not interfere with mental, physical, educational and social development in growth and development.
2. Art work is work carried out in order to channel children's talents and interests.[11]

Many jobs have a negative impact on children's development, work that is not dangerous for adult workers can be very dangerous for children. There are three aspects of children's growth and development that can be threatened by work, namely:

1. Physical growth, including overall health, vision and hearing power, because they release too much stamina which must be maintained until adulthood;
2. Emotional growth, including self-esteem, family ties, feelings of being loved and accepted by the environment, can also be gradually lost or hampered;
3. Cognitive growth is inhibited, including the ability to read, write, count and acquire other knowledge needed for normal life.[11]

Children who work can affect the growth and development of children, these effects can be in the form of physical abnormalities (vision / vision); malnutrition; reduced stimulation for emotional, social, moral and ethical development; reduced opportunities for recreation, rest, fatigue; the influence of those adult workers.

In essence, children should not work because their time should be used for learning, playing, having fun, being in a peaceful atmosphere, getting the opportunity and facilities to achieve their goals in accordance with their physical, psychological, intellectual and social development. But in reality many children under the age of 18 years who have been actively involved in economic activities, become child workers, among others in the industrial sector due to economic pressures experienced by their parents or other factors.

Legal protection is included in the legal system, Law Number 13 of 2003 concerning Manpower has provided the protection of the parties, as can be seen in the statement of giving a maximum sentence of 2 (two) years and/or a maximum of 5 (five) years and / or a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 500,000,000.00 (five hundred million rupiahs) whoever employs and engages children in the worst jobs.

Efforts to protect workers, including child labor, include aspects of:

- a. Legal protection, which is protection in the form of laws and regulations in the field of labor that requires or forces the employer to act in accordance with these laws and is actually carried out by all parties concerned.
- b. Economic protection, which is protection relating to efforts to provide workers with an income sufficient to meet their daily needs for themselves and their families.
- c. Social protection, which is a protection relating to social enterprises whose purpose is to enable workers to enjoy and develop their lives as humans and as members of the community.
- d. Technical protection, which is a protection relating to efforts to protect workers from the dangers of accidents caused or related to occupational safety and health.[1]

The existence of child labor is still largely supported by the attitude of employers who want to accept children as workers in their companies. This condition shows that in Indonesia clearly and expressly prohibits child labor, it cannot be carried out responsibly. The number of poor families with a number of children who need jobs that provide income to sustain their lives makes the law impossible to implement correctly and decisively.

In employing children who are forced to work, it is determined that one form of the rights of children who are forced to work is the right to education. In this case, the most important thing is that child labor must be given the opportunity to get an education, not to be given an education. Therefore, one of the best ways is not to employ children more than 4 hours / day, because with the time available child labor will have the opportunity to get education/go to school.

Protection for child workers in the formal sector, namely:

- a. Entrepreneurs are required to report the procedure and form of the report regulated by the Ministry of Manpower and Transmigration,
- b. For labor inspectors to conduct special examinations, pay special attention to protecting child labor, and to intensify reports from the results of analyzing and evaluating examinations.

Child labor in the informal sector is more numerous but legal protection is not reached through Minister of Manpower and Transmigration Decree Number KEP-235 / Men / 2003 of 2003 Types of Work that Endanger the Health, Safety or Moral of Children, because child labor in the informal sector is not there is clarity of work relations between workers and employers / employers. To deal with child protection in the informal sector through Minister of Women and Child Empowerment Regulation No. 4 of 2012 concerning the Guidelines for the Establishment of a Regional Technical Implementation Unit for Women and Children Protection.

Thus it can be seen that what is meant by a legal protection system for child labor is a unit consisting of:

1. Legislation as an element that regulates the interaction between child labor and employers and between employers and the government;
2. The Government, in this case the Regional Service which handles labor and existing law enforcement agencies, as an element that has the authority to enforce legal protection so that conflicts do not occur between child laborers and employers, or the enforcement of justice in the event of a conflict;
3. Child labor and employers / employers, as elements that always interact in the process of economic activities that can cause conflict. This third element (child labor and employer / employer) is more considered as an object of the legal system, so the child labor legal protection system consists only of the first element (legislation) and the second element (government) as the mechanical control of the operation of legal protection in the system .

Child labor as working children or children who carry out work in an employment relationship with employers also have the right to receive protection as children do in general.

There are two kinds of legal protection, namely preventive legal protection and repressive legal protection. Preventive legal protection, that the law prevents disputes, this function is set out in the form of preventative regulations which are basically a benchmark for every action to be taken by the community, covering all aspects of human action. Repressive legal protection is to overcome or restore the situation as a result of previous actions.

The government has a legal protection system for child labor with a set of laws and regulations both as a preventive legal protection and repressive legal protection for child labor with UPTD PPA as the responsibility for the implementation of the protection system for child labor.

Children should not do work. This prohibition is absolute without exception, so for whatever reason the child may not carry out work in an employment relationship with the employer or employer. This prohibition is the most basic preventive protection that can firmly stop the emergence of child labor or child labor. However, the law was apparently not properly implemented or not implemented with full responsibility. It is said that it cannot be applied properly because in reality there are so many children whose parents cannot afford it. If the law cannot be implemented properly, it means that the law has juridical defects. It is said not to be applied with full responsibility because if the government really wants to enact the Act then the Republic of Indonesia which has abundant natural resource potential will really be able to overcome the economic weaknesses of its people. To enact the law it is necessary to follow up with concrete efforts, such as the strict implementation of the 9-year compulsory education accompanied by the granting of scholarships and or freeing basic education costs for children from underprivileged families.

### *B. Supervision*

Labor Inspection is carried out by labor inspector employees who are competent and independent to ensure the implementation of labor laws and regulations stipulated by the Minister or appointed official. Labor inspection is carried out by a separate work unit in the agency whose scope of duties and responsibilities is in the field of manpower in the central government, provincial government, and district / city government which is regulated by a Presidential Decree. The labor inspection work unit as referred to in the provincial and district / city governments must submit a report on the implementation of labor inspection to the Minister whose procedures for submitting the report are determined to the Ministerial Decree. Provisions regarding the appointment requirements, rights and obligations as well as the authority of the labor inspector as referred to in accordance with applicable laws and regulations.[11]

The continued practice of exploitation against child labor shows that the functions and authority of supervisory employees have not been properly implemented, so violations committed by employers continue to occur and the implementation of child labor protection is neglected. In accordance with their authority Supervisory employees have the right to take action against any violations accompanied by the provision of criminal sanctions, but to date no employer who has carried out exploitation actions has been brought to court to take legal responsibility.

This has an adverse effect on employers' compliance in implementing labor regulations, especially regarding the protection of child labor. Because even though the employer committed violations, he was never given guidance, let alone imposed criminal sanctions, so that employers will

always commit violations repeatedly and legal protection against child labor has never been realized. If this condition is allowed to occur, repressive protection will never be carried out and exploitation of child labor will continue.

The state, government, community, family and parents are responsible for the implementation of child protection. The state and the government have the obligation and responsibility to respect and guarantee the human rights of every child regardless of ethnicity, religion, race, class, gender, ethnicity, culture and language, birth order of children, and physical and / or mental conditions. The state and the government have the obligation and responsibility to provide support for infrastructure and facilities in the implementation of child protection. The state and government guarantee the protection, care and welfare of children by taking into account the rights and obligations of parents, guardians or other people who are legally responsible for children. The state and government oversee the implementation of child protection.

Thus, those responsible for protecting children (and child workers) can be grouped into three groups: (1) the State and the government; (2) Society; (3) Family and parents. The state and the government have provided infrastructure and facilities in the form of a set of laws and institutions that are authorized to implement, enforce and oversee the implementation of the existing protection system. But in reality there are still quite a lot of child workers whose conditions are exploited and have not received the proper protection.

The community as the second group responsible for the protection of child labor, mainly the employers themselves and the PPA working group formed by the government. The absence of reports on child labor from companies that employ children shows that employers / employers who employ children do not carry out their responsibilities to uphold the legal protection system for child labor. As for the PPA working group, its responsibility to participate in enforcing the protection of child labor laws has not been proven. The absence of concrete work actions from a group of PPA's work contributes to the exploitation of child labor.

Families and parents should be responsible for not employing their children in meeting the economic needs of the family. Parents should be able to choose another way out in meeting the economic needs of the family, for example by joining a transmigration program that has been proven to change the welfare level of transmigrants.

From the explanation above, it can be seen that the development of legal protection for child laborers is not well implemented. The role of the state, government, society, family and parents to be responsible for the implementation of child labor legal protection needs to be developed so that it becomes a reality so that there is no longer exploitation of child labor.

#### IV. CONCLUSION

Child laborers have not received the proper protection, aspects of legal protection, aspects of economic protection, aspects of social protection, and aspects of technical protection have not been given to child workers who are entitled to get it. The existing child labor legal protection system is dualistic and legally flawed. Violations of law committed by employers do not get legal action as they should, due to the non-implementation of the functions of the labor inspector. The implementation of the Convention on the Rights of the Child of new child laborers in the form of granting protection rights to acts of violence. The Convention on the Rights of the Child as one of the child labor protection systems cannot yet be fully implemented because there are still violations of the right to the survival of children, the right of child development, the right to education, the right to obtain health care guarantees and the right to participate. There is still exploitation of child labor, in the form of full-time work at an early age, too much time spent working, inadequate wages, lost opportunities to obtain or access education. There is no legal process against employers who violate children's rights so that they do not get any criminal sanctions and give employers the opportunity to commit similar violations. In the implementation of Supervision conducted by the Department of Manpower and Transmigration has not reached its maximum. This is due to the lack of data available at the Manpower and Transmigration Office, because companies and individuals who employ child labor have never reported.

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