

Normative Juridical Review of Legal Protection of Underage Child Laborers

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ABSTRACT

Exploitation of child labor still occurs in Indonesia. Poverty and weak legal protection of children is one contributing factor. Therefore this paper aims to examine the factors that cause the emergence of child labor, child rights and legal protection for child workers, and prevention of child labor in Indonesia. The results of this study indicate that the occurrence of child labor is influenced by various social factors such as poverty and economic. Protection of child labor has been arranged in the formulation of laws and International Conventions ratified by Indonesia. Various efforts have been made to overcome the problem of child labor, but the government's effort is not maximized as expected.

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I. INTRODUCTION

Indonesia is a state of law based on Pancasila and the 1945 Constitution. Pancasila and the 1945 Constitution are guidelines for every Indonesian citizen that regulate their rights and obligations as citizens. The state is obliged to guarantee the rights and obligations of its constitutional citizens, as Indonesia adheres to the concept of a welfare state governed by the rule of law. This means incorporating the rights and obligations of citizens into the constitution, which in turn obliges the state to recognize, respect and uphold the rights of its citizens, including the realization of these basic rights in real life. One of the human rights that is recognized, fulfilled and protected is the right to work and obtain employment. The right to work and obtain employment is an inherent right of every individual, without discrimination based on gender, ethnicity, religion, race, or social class, either individually or collectively. One particular issue in the realm of workers' rights that requires special attention is child labor.

Since the establishment of the country, Indonesians have realized that work is a basic right of citizens recognized in the 1945 Constitution. Article 27(2) of the Constitution affirms that every citizen has the right to a decent job and livelihood in accordance with human dignity. This is also affirmed in Article 28d paragraph (2) of the Amendment to the Constitution of the Republic of Indonesia Year 1945 which states that "every individual has the right to work, receive remuneration, and be treated fairly and properly in employment relations". This implies the state's obligation to facilitate citizens to obtain work that is decent for humanity. Therefore, careful planning in the field of employment is needed in order to realize the state's obligations.¹

In fact, although there are a number of jobs available, the number is not sufficient to absorb the entire existing workforce. This limited number of jobs makes competition among job seekers very tight as they compete to get a job in order to fulfill their needs. Therefore, the informal sector becomes very attractive to the unemployed because it can accommodate workers without going through a complicated selection process and does not require a high level of education or special skills. Although the informal sector has not been able to provide an adequate level of welfare for workers, it is still one of the options in finding employment. However, this situation also has an impact on the high level of poverty. As a result, many children are forced to drop out of school because they cannot afford to continue their education, which is considered expensive. This situation leads to many children being forced to work to help their families.

Labor is an important element in advancing national development. Changes in the size and composition of the workforce, influenced by population growth and density, create an imbalance between the size of the labor force and the number of job openings available. This situation can lead to high unemployment rates and worsening poverty. This poverty, in turn, can generate social problems in the community, including exploitation and the involvement of children in productive activities. Due to the economic pressure of insufficient families, children are forced to help their parents to increase family income and fulfill daily needs. This phenomenon is related to the culture developed in the community, where working is considered a form of children's devotion to their parents. This drowns out people's awareness of the protection of children's rights, or in this case there is a class bias: because the children are from the poor class, it is justified that the above conditions occur.²

Children are the hope and foundation of parents, the hope of the nation and state who will continue the baton of development.³ As a creation of God Almighty, children have human rights from the beginning of their birth, which cannot be revoked by anyone or any other party. Children's human rights are universally recognized as stated in the 1948 United Nations Charter on Human Rights, the 1944 Philadelphia ILO Declaration, the ILO Constitution, the 1959 United Nations Charter Declaration on the Rights of the Child.⁴ A child's successes and failures through development are permanent. Necessary protection and assistance should be given to children. They should be treated with kindness and affection in a happy family environment. The child should be prepared for a personal life in society and brought up in an atmosphere of peace, tolerance and freedom.⁵

II. RESEARCH PROBLEMS

By looking at this background, there are problems according to the authors that can be raised to become research problems:

1. What are the factors that drive the use of children as workers outside the contractual agreement of a company ?
2. How is the legal protection of child laborers who are minors ?

II. RESEARCH METHODS

This research is normative juridical research, which is research focused on examining the application of rules or norms in positive law.⁶ Normative juridical, which is an approach that uses a positivist conception of legis. This concept views law as synonymous with written norms made and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and detached from real community life.⁷ In a short definition, Normative Legal Research or also called library law research is: "Legal research conducted by examining library materials or mere secondary data."⁸

III. RESULT AND DISCUSSION

1. First Research Problem Discussion

The common view in society that poverty is the only reason why children are involved in working activities is not entirely true. There are various other factors that can encourage children to work, although not all of these factors apply to every working child. However, it is certain that there is one factor that is dominant in every individual or community of working children in a particular sector and region. Some of the dominant factors causing children to become laborers found in the field include family, environmental influences, local potential and recruitment patterns, educational needs and future orientation, encouragement from the children themselves.⁹

Employers have several reasons for employing children as labor. One of them is because the children come to the employers themselves and offer their labor. In addition, the recruitment of child labor is generally done through unofficial procedures. Children as laborers are easier to manage and more obedient than adult laborers. Another reason is compassion for children who may be neglected and working on the

streets, which is very worrying, so it is better to recruit them as workers.

Based on the reasons already mentioned, the main factor that encourages employers to employ children is the ability to provide lower wages compared to adult labor. Considerations in minimizing production costs and economic principles are rational reasons for employers to recruit children as workers. Although there is an impression of social motives among these employers, as if they want to help unemployed children by providing work and income opportunities. However, this motive is actually just a pretext, as this way the employers gain legitimacy from their environment in employing children. According to Boudhiba, wages can be used as an indicator of exploitation.¹⁰ The negative connotations of exploitation often associated with children's work seem to discourage many people from discussing the issue of child labor. Especially among the middle class, the view that children should only focus on playing and learning makes work considered a parental duty.

One common form of exploitation is related to work remuneration or wages. Children tend to receive low or no wages, even though they perform the same type of work as adult workers. This shows that the amount of wages received by child labor is not determined by the type of work they do, but rather by their status as children. In the structure of society, children are in a subordinate position under adults. This local social structure is an important factor in understanding the phenomenon of economic exploitation of children.

The subordinate position that includes power relations between adults and children applies in all aspects of life, including in economic activities. Therefore, the phenomenon of economic exploitation is viewed in a broader context, not only limited to economic aspects, but also includes social, political and cultural aspects in the local environment.

2. Second Research Problem Discussion

In terms of labor protection, Law Number 13 Year 2003 is expected to provide protection in the field of labor which can be seen from 3 (three) aspects, namely: aspects of social protection, economic protection and technical protection. This is in line with the opinion of Iman Soepomo who divides the protection of labor including child labor into 3 (three) types, namely: economic protection, social protection, and technical protection (work safety). As well as in Law No. 13 of 2003 regulates if minors who experience exploitation or forced labor by parents without the will of the child's conscience can be subject to criminal sanctions in the form of imprisonment for a maximum of 4 (four) years and a maximum fine of 400 million.

Article 68 of Law No. 13/2003 states that employers are prohibited from employing children, except for light work under certain conditions. These conditions include that the work must not interfere with the child's physical, mental and social development and health. In addition, there must be written permission from parents or guardians, a work agreement between the employer and parents or guardians, a maximum working time of three hours, carried out during the day without disrupting school time, paying attention to occupational safety and health, and a clear working relationship. In addition, children must receive wages in accordance with applicable regulations. This shows that in this policy, children's work must consider the ability and condition of the child.

For the handling and elimination of the problem of child labor outside employment relations, it is necessary to make efforts and social actions by paying attention to the dimensions of prevention, protection and elimination or known as 3M, namely preventing, protecting and eliminating. Therefore, these dimensions must be elaborated in the preparation of action plans to eliminate the worst forms of child labor, both nationally and locally in the regions.

Thus, the role of the state through the Department of Labor, Department of Social Affairs, Department of Education, and other relevant departments becomes very important, including local governments. Similarly, child protection institutions such as the Child Rights Commission and child protection foundations are expected to play an intensive role in addressing the issue of children involved in employment.

IV. CONCLUSION

Due to the lack of formal jobs, many people work in the informal sector. Although the informal sector has not been able to provide adequate welfare for workers, it remains one of the employment options. This situation has led to a high poverty rate. As a result, many families have children who drop out of school because they cannot afford to continue their education, which is quite expensive. This situation causes many underage children to be forced to work to help their families, as well as weak law enforcement and public legal awareness in the prevention, control and elimination of child labor. Law enforcement in an effort to protect child labor needs to be approached structurally, substantially and culturally in an effort to implement legal protection action programs against child labor.

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