

# JURNAL

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**Submission date:** 01-Jul-2021 05:05AM (UTC+0700)

**Submission ID:** 1614328764

**File name:** 125948332.pdf (197.5K)

**Word count:** 4265

**Character count:** 23304

# Legal Protection of Children Forced to Work

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**Abstract**—This study aims to determine and analyze the forms and legal remedies for legal protection for children who are forced to work. This legal research uses statute approach. The results of the study proved that children who were forced to work due to economic factors had not received maximum legal protection. Lack of data on the presence of children who are forced to work resulted in the decrease of level of supervision and law enforcement. The implication of the research is that the government must immediately create a rule of law or policy that protects children who are forced to work so that their future is guaranteed as qualified citizens.

**Keywords:** legal protection, children who are forced to work, nation's generation

## I. INTRODUCTION

Children are the successor of the nation's struggle who need legal protection [1][2][3]. In the hands of the children, this country will be led. Children are both a mandate and a gift from God Almighty who must always be guarded because they are inherent in their dignity, dignity, and human rights that must be upheld [4][5]. Likewise, in the context of implementing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring their optimal and targeted growth and development [6].

Protection of child labor is constitutionally guaranteed in Article 27 paragraph (2) jo. Article 28 A jo. Article 28 C of the 1945 Constitution. Article 27 paragraph (2) It is the right of every citizen to get a decent job and life based on humanitarian parameters. Article 28A states that every person has the right to live and maintain his life and life. While article 28 B paragraph (2) states that every child has the right to live, grow and develop and get the protection from violence and discrimination. Article 28 C provides that: (1) Everyone has the right to develop himself through the fulfillment of his basic needs, the right to education and to benefit from science and technology, art and culture, in order to improve his quality of life and for the welfare of mankind; (2) Everyone has the right to promote himself in fighting for his rights collectively to build his community, nation and state.

With regard to looking for work, it is not just a socio-economic phenomenon which is simply a link between the availability of job opportunities on the one hand and the number of the workforce on the other [7]. In fact, looking for a job and getting a job is also primarily a means of self-actualization of a human being [8].

Children are the creation of God Almighty [9]. As His creatures whose dignity and honor need to be protected and their right to live, grow and develop according to their nature and fate [10]. All forms of treatment that disturb and destroy basic rights in various forms of inhumane exploitation and exploitation that must be stopped immediately without exception [11].

Why are children so special? They are vulnerable party. After the end of the world war, it turned out that the victims of the war were women and children [12] [13]. After that, there was the convention on children's rights in 1989. All countries in the world pay attention to children.

Data from the Ministry of Manpower and Transmigration noted that 2.3 million children worked out of a total of 8.4 million children. In the context of implementing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring their optimal and directed growth and development.

## II. PROBLEMS

From the description above, two questions are arised as follows:

1. What is the form of legal protection for child laborers who are forced to work?
2. What legal remedies for children who are forced to work if they do not get their rights?

## III. RESEARCH METHOD

This legal research uses a statutory approach. Normative legal research is research based on the law as a unified system of norms[14][15]. The system is linked with the principles of norms,

principles, rules, norms, the rule of law in legislation, court decisions already inkracht van gewisjde, contracts, and doctrine [16][17]. Normative legal research based on the legal problems as a system of norms that are used to provide legal justification for an event occurred [18]. Making the norm as a study center. The statutory approach is intended to examine all legal regulations related to child protection.

#### IV. DISCUSSION

##### 1. A form of legal protection for children who are forced to work

There are three types of protection in an employment relationship, namely:

- Social protection [19]. namely, a form of protection provided by the State [20] [21] in terms of guarantees for social efforts that enable workers / laborers to enjoy and improve their lives as humans in general, and in particular as members of the community [22] and family members.[23]. Social protection is essentially the same as health insurance [24] [25].
- Technical protection, which is a form of protection provided by the State [26] in the field relating to efforts to keep workers / laborers safe from the dangers of work accidents, which consist of work accidents due to work tools or materials they work with [27]. This protection is essentially a guarantee for work accidents..
- Economic protection [28], which is a form of protection provided by the State [29] in relation to efforts to provide workers / laborers with an income sufficient [30] to meet the daily needs of workers and their families [31], including in cases where workers / laborers are unable to work [32] because something against his will [33] [34]. This form of protection is usually referred to as social security. [35] [36][37].

Children who are forced to work must also have social, technical and economic protection [38] [39]. The definition of a child according to Article 1 point 26 of Law 13/2003 on Manpower is everyone who is under 18 (eighteen) years of age. Child Protection[40] is an activity to provide guarantee and protect for children to obtain their rights so that they can live, grow, develop and contribute optimally in accordance with human values, and receive protection from all forms of violence and discrimination. (Article 1 paragraph (2) of Law 35 / 2014 concerning Amendments to Law 3/2002 on Child Protection).

Legal protection for child labor is regulated in Articles 68 - 75 of Law 13/2003. There is a prohibition for employers to employ children, except for children between 13 (thirteen) and 15 (fifteen) years of age to do light work as long as it does not interfere with their development and physical, mental and social health.

There are conditions to be able to employ children in light work, namely: there is a written letter containing permission from a parent or guardian to do the job; a work contract made by an entrepreneur with the parent or guardian of the child doing the job; the maximum working time for child workers is 3 (three) hours; work is done by the child during the day and does not interfere with the child's time to study at school; guaranteed safety and health at work [41]; there is a working relationship that clearly regulates rights and obligations; receive wages for work that has been done in accordance with applicable regulations.

There are conditions that are exempted for children who work in business, carried out by their families.. Entrepreneurs who violate the requirements for the scope of light work for child labor, may be subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and / or a fine of at least IDR 100,000,000 (one hundred million rupiah) and a maximum of Rp. 400,000,000, - (four hundred million rupiah).

Children who are at least 14 years old can perform a job in a workplace where the job is part of the education or training curriculum approved by the competent official. with the following conditions: a. children who do work are provided with clear provision on procedures for carrying out work as well as guidance and supervision in carrying out work; and b. given a guarantee

Children can do work to develop their talents and interests. There are rules for child workers who work to develop their talents and interests according to the objectives of the type of child work. The purpose of having certain conditions is that efforts to develop children's talents and interests do not get generally hindered. provided that: work performed by children must be work under the direct supervision of a parent or guardian; working time that can be done by children, a maximum of 3 (three) hours a day, and; be in a working condition and environment that does not interfere with the child's development in terms of physical, mental, social, and school time..

Employers who violate these requirements will be subject to a sanction of imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and / or a fine of at least Rp.10.000.000,- (ten million rupiah) and a maximum of Rp.100.000.000, - (one hundred million rupiah).

Children are considered to be working when they are in the workplace, unless it can be proven otherwise. If the child is employed together with adult workers / laborers, the child's workplace must be separated from the work place of adult workers / laborers.

The worst limitation of child labor is all work that is slavery in nature; all jobs that contain elements of exploiting the weak condition of the child; provide, or offer children to engage in prostitution, work in the production of pornography, do pornographic shows, or engage in other forms of gambling; all types of work that contain elements of utilizing, providing, or involving children in the production and trade of alcoholic beverages, narcotics, psychotropic substances and other addictive substances; and / or doing all work that endangers the safety, health or moral development of child.

Based on the Decree of the Minister of Manpower and Transmigration Number 235 / Men / 2003 as follows: Types or forms of work which consequently may endanger the safety and health of children: Work related to machinery, aircraft, installations and other equipment.

The work includes manufacture, assembly, installation of maintenance and repair operations;

- Machines.[42] Machine tools, such as drilling machines, lathes, cutting machines, grinding machines and scrap machines. Production machines, such as knitting machines, weaving machines, packing machines, sewing machines and bottle filling machines.
- Plane. Steam planes, such as boilers and steam vessels. Hot fluid airplanes, such as water heaters and oil heaters .. Refrigeration planes and carbide gas generating planes .. Lift and transport aircraft, such as lift taps, transport tape, escalators, gondolas, forklifts, and loaders. Power aircraft, such as diesel engines, turbines, gas combustion engines, and power generation planes.
- Heavy equipment, such as tractors, rock breakers, asphalt mixing graders and pile machines.
- Installations such as pressure pipe installations, electrical installations, fire fighting installations, and power lines.
- Other equipment, such as furnaces, smelters, elevators, and scaffolding.
- Pressure vessels, steel bottles, stockpile vessels, transport vessels and the like.

Work carried out in a hazardous work environment. The work includes:

- Work that contains physical hazards
- Work underground, underwater, or in a narrow confined space with limited ventilation (confined space), for example, wells and tanks.
- Work carried out at a height of more than 2 meters.
- Work using or in an environment where there is a voltage above 50 volts.
- Work that uses electric and / or gas welding equipment.
- Work in a work environment with temperature extremes of humidity or high wind speeds.
- Work in a work environment where noise or vibration levels exceed the threshold value (TLV).
- The work of handling, storing, transporting and using radioactive materials.
- Work that produces or in a work environment where there is a danger of ionizing radiation.
- Work carried out in a dusty work environment.
- Work carried out and may present a hazard of electricity, fire, and / or explosion.

Chemical jobs

- Work carried out in a work environment where there is exposure to hazardous chemicals.
- Work in handling, storing, transporting and using chemicals that are toxic, explosive, flammable, flammable, oxidizing, corrosive, irritant, carcinogenic, mutagenic, and / or transporting pesticides.

Work containing biological hazards

- Work that is exposed to germs, bacteria, viruses, functions, parasites, and the like, for example, work in a clinical laboratory environment, tanning skin, and washing sap / rubber.
  - Work in the slaughter, processing and packaging of animal meat.
  - Jobs that are carried out in livestock companies, such as milking, feeding livestock, and cleaning stables.
  - Work in a silo or warehouse where agricultural products are stored.
  - Beasts breeding work.

Work that contains hazardous properties and conditions

- Construction work on buildings, bridges, irrigation or roads.
- Work carried out in a wood processing company.
- Manually lifting and transporting loads above 12 kg for boys and over 10 kg for girls.
- Jobs in locked work premises.
- Fishing work carried out offshore or in deep sea waters.
- Work carried out in isolated and remote areas.
- Work on the ship.
- Work carried out in disposal and processing of waste or recycling of used goods.
- Work carried out between 18.00 to 06.00.

#### Types of work that endanger children's morale

- Employment in a bar, discotheque, karaoke, billiard, cinema, massage parlor or a location that can be used as a place of prostitution.
- Work as a model for the promotion of liquor, sexuality stimulants, and or cigarettes.

Employers who are proven to have employed and involved children in the worst forms or types of work, can be subject to criminal sanctions in the form of imprisonment of between 2 (two) years to 5 (five) years and / or a fine of between Rp. 200,000,000. - (two hundred million rupiah) to Rp. 500,000,000. - (five hundred million rupiah).

The government has an obligation to provide protection to children. It is not only employers or employers who have the obligation to provide protection for child labor. The government has an obligation to carry out an action as a concrete effort to provide protection for overcoming children who work outside of an employment relationship. The purpose of holding these countermeasures is to eliminate or reduce the number of children who work outside working relationships. Such countermeasures must be carried out according to plan, in a systemized suitability and coordinated with the related institutions.

Poverty is a kind of "biggest pressure" causing children to work in dangerous sectors. Poverty gives birth to child labor and then perpetuates poverty, injustice and discrimination [43] [44]. Children who enter the labor market become laborers, labor is a rationalization to meet the economic needs of families affected by poverty. This constellation becomes the legitimacy of employing children, even with exploitative work, low wages and dangerous jobs [45] [46]. The condition of child labor is very dilemma, on the one hand children work to

contribute to family income, but on the other hand they are vulnerable to exploitation and human rights violations [47].

Indicators of child exploitation can be seen from: first, long working hours; secondly, low wages with equal work with adult workers; third, an uncomfortable work situation, "noisy, smelly, stuffy and hot and unsafe; fourth, there is no insurance and health services. adequate; and fifth, there are no playing facilities [48].

Legal protection and legal certainty for children are joint responsibility between parents and the Government because children who work in principle are not allowed because they are not yet old enough and the law prohibits this unless there is permission from their parents or guardians, and the work carried out is not contrary to statutory regulations. - invitation [49].

KPAI has the authority to supervise, receive complaints, conduct mediation, and provide reports to other parties. This commission is independent, based in Jakarta, and if necessary the Government can form a Regional Child Protection Commission or similar institution that is authorized to supervise the fulfillment of children's rights in the regions. This commission consists of 1 chairperson, 1 deputy chairperson and 7 commission members representing government elements, religious leaders, community leaders, community organizations and community groups. The term of office of Commission members is 5 (five) years and thereafter can be appointed one term of office. The Commission works to supervise the implementation of the fulfillment of children's rights, provide policy formulations for the fulfillment of children's rights, and collect information on the protection of children's rights (Article 78 of Law 35/2014).

- To supervise the implementation of the fulfillment of children's rights, the Indonesian Child Protection Commission was formed.
- Receiving complaints from the public regarding the alleged violation of children's rights.
- Every child or parent who feels their child's rights have been violated can complain to the Indonesian Child Protection Commission. The Commission will take steps to ensure that the child's rights will be restored, and the perpetrator will receive action in accordance with the violation he committed.
- resolve disputes regarding children's rights through mediation. The choice of mediation is to seek agreement between parties while still considering the best interests of the child as the main consideration. This media is carried out by maintaining the privacy and good name of

the child, and still taking into account the best interests of the child;

- Providing reports to other parties, particularly the police, regarding allegations of violations of children's rights. This last message plays a very important role. The commission has the authority to report to certain state institutions or the police if there are allegations of violations of children's rights. If the violations occurred systematically and were widespread, then the Commission could take an active stance in advocating for the rights of these children.

## V. CONCLUSION

The research results prove that children who are forced to work due to economic factors have not received maximum legal protection. Lack of open data on the existence of children forced to work causes the level of supervision and law enforcement to be less than optimal. The implication of this research is that the government must immediately make legal rules or policies that protect children who are forced to work in order to guarantee their future as a generation of quality nation.

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