

FRAMEWORK OF CHILD LABORERS LEGAL PROTECTION IN MARGINAL COMMUNITIES

Asri Wijayanti*, Nur Azizah Hidayat*, Achmad Hariri*, Sudarto* and Umar Sholahuddin*

Children are the next generation of the nation who have the right to grow and develop. Their primary needs are to play and learn. In fact, some of them are forced to work to support their family needs. This study aims to provide a framework for the provision of legal protection for child labor in marginal communities through the identification of causal factors and the risks of child labor and the tracking of child labor protection rules. This is a legal research using socio legal approach. The results of this research are first, the existence of poverty factor, social culture, education, urbanization and change of production process causing child labor in marginal communities. The risk of child labor is the disruption of physical, emotional and social development of children. Secondly, legally there is already a legal instrument that provides legal protection for children who have worked in the 1945 Constitution jo. Law No. 4/1979 jo. Act 39/1999 jo. Act 1/2000, jo. Law 23/2002 Jo. Law 13/2003, jo. Presidential Decree No. 59/2002. The legal means of protection for child labor in marginal communities has not been effective because it is influenced by factors to support family needs. Third, the framework of providing legal protection for child labor includes four phases of mapping, planning, implementation and monitoring of the legal protection of child labor. The framework for the provision of legal protection for child labor in marginal communities is expected to be an alternative solution to the reduction and elimination of the number of child labor. The conclusion drawn from this research is that the rule of law for the protection of child labor in marginal communities requires the active participation from the community to participate in the planning of the protective movement of child labor in the form of concrete actions to reduce and eliminate the number of child labor in the surrounding environment to zero child labor by the use of the strategy to return children to school.

Keywords: Child Labor, Legal Protection, Zero Child Labor Program, marginal communities

INTRODUCTION

Background

Children are the next generation of the nation. In their hands, depends the hope and the future of the nation to be real. Labour protection is indispensable for marginal communities. Sustainable development seems to be a matter of intertemporal equity between present and future generations. They are weak human being. They need legal protection for their inability or immaturity from their parents or guardians.¹ They have the right to grow and develop and should be given according to the development of their soul. Their primary needs are to play and learn. The right to grow and develop, of course, can not be enjoyed by children who work or are forced to work.

* Faculty of Law, University Muhammadiyah of Surabaya, E-mail: asri.wijayanti@fh.um-surabaya.ac.id

The right to grow and develop, not yet fully enjoyed by children in marginal communities around the world, including Indonesia. Data from the International Labor Organization (ILO) shows that the number of children in child labor globally is 168 million children. More than half of them, 85 million, are in dangerous jobs. Asia and the Pacific still have the largest number, which is nearly 78 million or 9.3% of the child population. They work on agriculture (98 million), services (54 million) and industry (12 million).²

Facts that occur in Indonesia, in 2014, there are 1.7 million child laborers who mostly work in the informal sector. In Surabaya, there are still 51,799 people from over 15 years old working³. School participation rate (APS) for 2012-2013, for 7-12 years age is 99.10%. For the age of 13-15 years is 97.69%, For the age of 16-18 years is 64.14%.⁴ It is expected that by the year 2022, the age of school children reaches 100%. In contrast, child labor is expected to reach zero by 2022 through a zero child labor program. Through this program, Indonesia is expected to be free from child labor by 2022 with a strategy to return children to school.⁵ The program targets an initial 3 years from the International Program on the Elimination of Child Labor in 2025.⁶

The problem of child labor in marginal communities is very important to find the solution further for the purpose in marginal communities.. Currently, the problem of child labor is experiencing rapid development. It is becoming firstly a regional and national problem to the concern of the international debates. The 16th Asia and Pacific Regional Meeting (APRM) on 6-9 December 2016, resulted in a declaration for governments, workers and employers' organizations in the region to do more to promote growth, social justice and decent work. This includes child labor. Currently child protection concerns on June 12, 2017 which is a World Day against Child Labor (WDAFL) emphasized in child labor in disaster areas and conflict-affected areas⁷ The importance of providing legal protection for Child labor in marginal communities, it is necessary to conduct a study about the causing, risk, and rule of law factors.

Efforts to address the problem of child labor should be sought for interventions aimed at ending child labor without hurting children. Well-planned but poorly designed policies can exacerbate the poverty in which these working children live, even lead to hunger⁸.

Problem

From the above description comes the research problem of how do the legal framework of providing protection for child labor in marginal communities?

Research objectives and benefits

To provide a framework for the provision of legal protection for child labor in marginal communities through the identification of causal factors and the risks of child labor and the tracking of child labor protection rules

METHODOLOGY

This research is a legal research and using socio legal approach.

RESULTS OF RESEARCH AND DISCUSSION

Child labor in marginal communities is a form of human rights violation. Child labor has been shown to inhibit the development of children, potentially causing life-long physical or psychological damage. The facts show a strong relationship between household poverty and child labor. Poor families become one of the reasons children work.

The existence of cases of child labor which is considered burdensome and does not provide protection, then several ILO conventions regulate it. The minimum age convention, 1973 (No. 138) of the basic conventions sets minimum general age for entry into employment or work at age 15 (13 for light work) and minimum age for hazardous work at age 18 (16 under certain strict conditions) . The Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, 1999 (No. 182). Convention No. 182 has been ratified in Law No. 1 of 2000 on the Prohibition and Immediate Action of the Elimination of the Worst Forms of Child Labor.

In the global concept, the childhood of today is based on the concept that all children are entitled to child protection, preparation and development for all children. Against children should not be given treatment to do a bad job. The worst forms of child labor, defined in the ILO convention on the worst forms of child labor, 1999 (No. 182).

There should be an attempt to eliminate any action included in the treatment of doing a bad job for the child in marginal communities. To create a legal framework for legal protection for child labor in marginal communities, two steps of analysis are needed: identification of factors and risks of child labor as well as the analysis of relevant legal instruments.

Factors that influence the child labor in marginal communities

Child laborers are workers who are not yet 18 years of age (article 1 number 26 of Law 13/2003). Factors contributing to child labor include economic incapacity of the family (poverty), social culture and parental education, urbanization, and changes in production processes.

The first factor is the economic incapacity of the family (= poverty) which influences the emergence of child labor in marginal communities. As a result work activities are low, less nutrition, health care is reduced. Malnutrition results in reduced work capacity, fatigue, susceptibility to accidents and illness. Low parental income causing the child was forced to follow the footsteps of his parents to work even without having the skills. Some are forced to work to support family needs. Child laborers work as beggars and become part of street children.⁹ Child laborers

work as beggars and become part of street children. Many child laborers are in informal enterprises, such as in shoe factories in Parakan village, sub district Ciomas, Bogor regency, West Java. The average working time is more than 40 hours per week. Sometimes the child laborers are overtime until late at night until 23:00 pm with a break time at 17:30 to 19:00 wib with wages Rp 60.000,00-Rp120.000,00¹⁰. Child labor cases are also found on Jermal.¹¹ Work on the Jermal is very heavy. Especially on child labor, will feel a heavy burden in carrying out his work. Although child labor can help the family economy, for the sake of survival, this should be avoided seeing that it came with the greater harm than its benefits.¹².

The second factor is socio-culture. The presumption that children who work and help parents are dutiful children. Devoted children to the parents when they come to earn income to support the needs of the family. This resulted in the child's right to protection to become less noticeable.

The third factor is poor parental education. It will affect the pattern of thinking that does not consider the importance of education. The presumption of the cost of education is expensive resulting in the choice of parents falling on the child should stop school. Girls do not need to get a high education. Girls are not the breadwinners of the family, so there is no need to get a high education. This tradition makes the emergence of child labor.

The fourth factor is urbanization. Moving from village to town. Urbanization aims to find a better job. The assumption of 0.25" in manpower. This resulted in the absence of rough labor needs. Child labor is an option for this position.¹³

In addition to identifying factors causing the emergence of child labor and the risks or negative impacts on the existence of child labor, namely inhibition of physical development of children, inhibition of emotional development of children, lack of self confidence and hampered the success of children's education.

The first risk is the child's physical development. Insufficient age to do the job and forced will cause negative things. Age of children when working at least will experience a negative risk of inhibition of physical development. Possible injuries or defects caused by scratches, cuts, strikes, bumps or the possibility of contracting infectious diseases due to lack of cleanliness of the workplace conditions.

The second risk is the delay of emotional development. The arbitrary treatment and abusive actions of the employer will affect the child's emotional development which then becomes angry or vengeful. Circumstances can not retaliate for arbitrary acts causing deep feelings of disappointment in the child.

The third risk is lack of confidence. Lack of children to socialize to fellow friends and community. There is a sense of inferiority about going into the new environment. As a result, the feeling of lack of confidence appears.

The fourth risk is the delay of success of children's education.¹⁴ The spirit of learning and achievement is relatively more difficult to achieve when child labor

is depleted to work. So the existence of factors that cause child labor, will lead to negative risks for children. Factors contributing to child labor in marginal communities include family economic disability, social culture and parental education, urbanization, and changes in production processes, Risks or negative impacts on the existence of child labor, namely the inhibition of physical development of children, the inhibition of emotional development of children, lack of self trust and hampered of the success of children's education.

Legal protection instruments for child laborers in marginal communities

The legal instruments of protection for child labor in marginal communities is the rule of law that provides protection to child labor. It is universally governed by the Convention on the Rights of the Child and the ILO Convention No. 182. Nationally, the protection of law against child labor is regulated in the 1945 Constitution and its implementing regulations.

Universally, children's rights are protected by the Convention on the Rights of the Child (OHCR) of the General Assembly resolution 44/25 United Nations dated November 20, 1989 and entered into force on 2 September 1990. The working children have been protected by The Prohibition and Immediate Action For the Elimination of the Worst Forms of Child Labor, in ILO Convention No. 182. ILO Convention NO. 182 has been ratified in Act No. 1 of 2000 (Statute Book of 2000 No. 30, Supplement to Statute Book No. 3941).

Article 2 OHCR, states that:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.¹⁵

From these provisions it can be seen that the child is fully protected from the state for his rights without discrimination. The principle of non-discrimination is Article 2 Universal Declaration of Human Rights (UDHR), namely: everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, Political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. The principle

of non-discrimination should be applied to the basic human rights rights consisting of the three levels set forth in Article 3 UDHR, ie everyone has the right to life, liberty and security of person.

Within the national scope, the legal instrument is stated in Article 28b paragraph (2) of the 1945 Constitution, that is, every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. This provision is further elaborated in Article 52 jo. Article 58 of Act 39/1999, on Human Rights, namely:

Article 52, that is, every child is entitled to protection by parents, family, community, and country. The right of the child is a human right and for the benefit of the child's right is recognized and protected by law even from the moment of the womb.

Article 58, that is, every child has the right to obtain legal protection from all forms of physical or mental violence, neglect, ill-treatment and sexual harassment during the upbringing of a parent or guardian, or any other party responsible for the child's care. In the case of a parent, guardian or caregiver performs any form of physical or mental abuse, neglect, ill-treatment, and sexual harassment including rape, and / or killing of a child who should be protected, penalties shall be liable.

Child protection is formulated in the provisions of Article 1 number 2 of Act No. 35 of 2014 on the Amendment of Law Number 23 Year 2002 on Child Protection, which is all activities to guarantee and protect the Children and their rights in order to live, grow, develop and participate optimally in accordance with the dignity and dignity of humanity, Protection from violence and discrimination.

It is the obligation of the Government and the Regional Government to provide facilities and to carry out comprehensive health efforts for the Children so that each Child shall obtain an optimal health degree from the moment of the womb. Provision of facilities and the implementation of comprehensive health efforts are supported by the participation of the community (Article 44 of Act 35/2014).

For child labor, it is specifically protected in article 3 ILO Convention No. 182 (Ratified in Act No. 1 of 2000). The worst forms of child labour as a matter of urgency. **The worst forms of child labour** comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Against children is not allowed to perform the worst work, which consists of all forms of slavery or slavery-like practices such as the sale and trafficking of children, debt bondage, and serfdom and forced or 0.25 circumstances in which the work is performed may harm the health, safety or morals of children.¹⁶

Act No. 1/2000 is described in Presidential Decree no. 59/2002 on the National Plan of Action for the Elimination of the Worst Forms of Child Labor. Presidential Decree No. 59/2002 describes the 13 worst forms of child labor, as follows: prostituted children working in mining, working as pearl divers, working in the construction sector, working on jermal, working as garbage collectors, Involved in production and activities using explosives, working on the street, working as domestic servants, working in the home industry, working on logging, processing and transporting timber, working on plantations, and working On industries and other types of activities that use hazardous chemicals.

This provision is further elaborated in Articles 68 - 74 jo. Article 185 of Act 13/2003 on Manpower, i.e. employers are prohibited from employing children, except for children between the ages of 13 (thirteen) years and 15 (fifteen) years for light work to the extent that they do not interfere with the development and physical, mental and physical health Social (Article 68, 69 paragraph (1)).

The requirement of light work is to have written permission from a parent or guardian; Employment agreement between the employer and the parent or guardian; Maximum working time of 3 (three) hours; Done during the day and does not interfere with school time; occupational Health and Safety; The existence of a clear working relationship; Receive wages in accordance with applicable provisions (Article 69 paragraph (2)) and a workplace separate from adults (Article 72).

This requirement is exempted if a child working on his or her family business (Article 69 paragraph (3)) undertakes work in the workplace that is part of an educational or training curriculum authorized by an authorized official who is at least 14 years of age and has K3 protection (article 70).

For a child may undertake work to develop his or her talents and interests, provided that under the direct supervision of a parent or guardian; Working time of at most 3 (three) hours a day; And the conditions and working environment do not interfere with physical, mental, social, and school development (Article 71).

There is a prohibition against employing and involving children in the worst forms of labor, that is, all employment in the form of slavery or the like; any employment that exploits, provides, or offers a child for prostitution, pornographic production, pornographic performances, or gambling; Any employment that utilizes, provides, or involves a child for the production and trade of liquor, narcotics, psychotropic substances, and other addictive substances; And / or all work that endangers the health, safety or moral of the child (Article 74). This provision has the same content as the ILO Convention No. 182.

Violation of Article 68, article 69 paragraph (2) is a criminal offense. It may be imposed for a minimum of 1 (one) year and 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 (four hundred million rupiahs). From the above provision it can be seen that the legal protection for child labor has been available, but it can not be effective because it is influenced by factors to meet family needs.

Legal framework for the provision of legal protection for child laborers in marginal communities

The provision of legal protection for child labor must be by concrete action. There are 3 actions that can be done:

1. Preventative activities aimed at eliminating the occurrence of events / cases of the worst forms of child labor through patrolling/patrolling activities, safeguarding both open and closed to places/areas and time / time considered vulnerable to the occurrence of events /case.
2. Repressive means activities aimed at conducting investigations and investigations by authorities authorized against the perpetrator to be submitted to the Prosecutor.
3. Pre-emptive activities are intended to neutralize and eliminate the factors that affect the emergence of the worst forms of child labor through guidance, counseling, enlightenment, and face to face with the perpetrators and victims of children concerned, parents, religious leaders/community and educators (Attachment of Presidential Decree 59/2002).

The legal framework for the provision of legal protection for child labor in marginal communities includes four phases of mapping, planning, implementation and oversight. The stage of mapping and planning is a preventive measure. Mapping can be done by reviewing the challenges for the implementation of the provision of legal protection for child labor by basing the cause and risk factors of child labor. Some challenges for the implementation of the elimination of the worst forms of work are:

1. The lack of accurate and up-to-date data and information on child labor on the scale (number of child laborers), location, type of work, conditions of employment, and impact on children.
2. Unavailability of information on the worst forms of child labor.
3. Limited capacity and experience of the Government, non-governmental organizations, and various other parties in efforts to eliminate the worst forms of child labor.
4. Weak coordination of various parties related to the elimination of the worst forms of child labor both at central and regional (provincial and district / city) levels.

5. Low of knowledge, awareness, and community awareness in the elimination of the worst forms of child labor.
6. Inadequate legal instruments and enforcement required in the elimination of the worst forms of child labor.
7. The absence of an integrated and comprehensive policy in the context of elimination of the worst forms of child labor (Attachment of Presidential Decree 59/2002).

Planning can be considered as a consideration of the Philippine program towards the zero child labor program in 2022 through the Philippine Child-Child Labor (PPACL) program that uses child-focused action, rights-based approach, results-based management, gender-responsiveness, Cultural sensitivity, sustainable development, children and youth participation, good governance, decent work for all, community development, inter-agency, tripartite and multi-sectoral collaboration¹⁷

Implementation and monitoring can be done with a repressive action exercised through coordinated oversight among states/regional institutions. Operations or raids may be carried out by the state through the apparatus concerned. There is a violation of crime against child labor, then law enforcers must implement and apply sanctions based on legislation.

At this stage can also be done pre-emptive action. In consideration that the interest in studying in school is higher than the interest of the child to work, Brazil which has applied Federal Escola Bolsa (cash assistance depends on attendance at school). This subsidy is targeted to increase the attendance rate of children in schools so as to reduce the number of child laborers. Although the program is less successful (only 40% of poor children (10-15 years old) attend school for cash assistance) because the value is less than the wages he / she earns per day when the child is working or challenge staff to think creatively about how to make money to donate to child labor protection programs. Islamic methods can be emulated, for example Jogokariyan mosque in Yogyakarta which provides food / breakfast and pocket money for children who worship in the mosque began the time of praying Fajr with congregation, following study after Dawn until school time almost arrived. There is a character education of the importance of learning widely, covering the formal (school) and informal (mosque) aspects.

The four phases of mapping, planning, implementation and monitoring of the legal protection of child labor. The framework for the provision of legal protection for child labor in marginal communities is expected to be an alternative solution to reduce and eliminate the number of child laborers.

CONCLUSSION

The conclusions drawn from this study are that the rule of law for the protection of child labor in marginal communities requires the active role of the community to

participate in the planning of the protective movement on child labor in the form of concrete actions to reduce and eliminate the number of child laborers in the surrounding environment.

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