

The Mainstreaming of the Concept of Legal Protection for Child Labor in Indonesia based on ILO Conventions

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Abstract

This study delves into the mainstreaming of the concept of legal protection for child labor in Indonesia, drawing insights from the International Labour Organization (ILO) Conventions. Child labor remains a global challenge, impacting the physical, psychological, and social development of children who engage in work during their school years. Beyond mere employment for wages, the issue involves elements of exploitation, hazardous working conditions, and restricted access to education. Certain forms of child labor even qualify as the most intolerable, necessitating urgent attention. The primary objective of this research is to analyze, identify, and compare the legal protection mechanisms for child labor in Indonesia based on the ILO Conventions. Employing a normative legal study methodology,

the research employs a dual approach, combining comparative law study and statute analysis. By scrutinizing the legal protection practices within the context of Indonesian law and international law, the study aims to shed light on disparities, commonalities, and potential areas for improvement. Conducting an in-depth examination without relying on fieldwork, the study utilizes a literature review and document study, drawing on various sources from both online and printed materials. Through this comprehensive exploration, the research seeks to contribute to a nuanced understanding of the mainstreaming of legal protections for child labor in Indonesia. By highlighting key findings, this study aims to inform policy discussions, foster awareness, and facilitate the development of more effective measures to safeguard the rights and well-being of children involved in labor activities in the Indonesian context.

Keywords

Child Labor, ILO Conventions, Legal Protection

I. Introduction

Presently, numerous instances highlight the prevalence of underage children engaged in laborious tasks unsuitable for their age. Despite the government's ongoing advocacy for the 12-year compulsory education program within schools, the reality starkly contrasts this initiative. The compulsory education programs, designed to facilitate the continued education of economically disadvantaged children, are marred by the pervasive presence of

child laborers who remain unable to partake in the educational opportunities provided.¹

The efficacy of these programs is compromised by a combination of factors, including a lack of parental responsibility and harsh economic conditions that exert significant strain on family dynamics, compelling children to forgo education for immediate employment. This distressing scenario is exacerbated by justifications that condone the employment of minors, citing economic hardships, poverty, a perceived absence of coercion (often attributed to the child's violation), reluctance to attend school, and other contributing factors.²

In addition, the burgeoning global concern of child labor has prompted an urgent need for comprehensive examination and scrutiny, with Indonesia standing at the forefront of this multifaceted challenge. In this context, the mainstreaming of the concept of legal protection for child labor, rooted in the International Labour Organization (ILO) Conventions, becomes a pivotal focal point for inquiry and action. As children face the dual demands of education and employment, their vulnerability

¹ Errika Putri Anggriani, "Policy on Reducing Child Labor as the Elimination of the Worst Forms of Child Labor." *Unnes Law Journal* 6, no. 1 (2020): 1-20; Aye Sudarto, Muhamad Bisri Mustofa, and Anas Malik. "Economic Exploitation of Children: Returning Child Labor to the World of Education Through Interpersonal Communication Towards Equal Education." *HUMANISMA: Journal of Gender Studies* 6, no. 2 (2022): 212-225.

² Sarno Setiawan, et al. "Community Empowerment on Establishment of Friendly-Village for Women and Children." *Indonesian Journal of Advocacy and Legal Services* 1, no. 1 (2019): 5-22; Sewitra Bagaskara, and Dyah Lituhayu. "Formulasi Kebijakan Perlindungan Anak di Kota Semarang." *Journal of Public Policy and Management Review* 6, no. 3 (2017): 104-114.

to exploitation and the hindrance of their holistic development underscore the critical importance of robust legal safeguards.³

This study aims to delve into the intricate web of legal frameworks governing child labor in Indonesia, with a particular emphasis on the incorporation and implementation of principles articulated in the ILO Conventions. The escalating number of children entering the workforce, coupled with the nuanced reasons driving this phenomenon, necessitates a comprehensive analysis of the legal landscape. By employing a normative legal study methodology and a dual approach encompassing comparative law study and statute analysis, this research seeks to unveil the intricacies of legal protection practices within both Indonesian and international contexts.

Against the backdrop of socio-economic challenges, familial responsibilities, and individual choices influencing children's entry into the workforce, understanding the complexities surrounding child labor is paramount. By scrutinizing existing legal frameworks, including the 1945 Constitution and the ratifications of ILO Conventions No. 138 and No. 182, this study endeavors to highlight disparities, commonalities, and potential areas for improvement. Through this exploration, the research aspires to contribute valuable insights that could inform policy discussions, enhance awareness, and ultimately fortify legal measures aimed at safeguarding the

³ Michael J. Dennis, "The ILO convention on the worst forms of child labor." *American Journal of International Law* 93, no. 4 (1999): 943-948; Noguchi Noguchi. "ILO Convention No. 182 on the worst forms of child labour and the Convention on the Rights of the Child." *The International Journal of Children's Rights* 10, no. 4 (2002): 355-369. See also Sharon Bessell, "The politics of child labour in Indonesia: global trends and domestic policy." *Pacific Affairs* (1999): 353-371.

rights and well-being of children engaged in labor activities within the Indonesian landscape.⁴

Furthermore, the complexity of the problems related to child labor has not yet met the spearhead of its solution. This always intersects with labor regulations, human rights, and conflicts with the constitution which always emphasizes children to be protected and protected. However, between *das sein* and *das sollen* in fact not working properly. There are still many children who are not protected by labor rights so that their human rights are taken away and ignored by the employers who employ these children. The International Labor Organization (ILO, International Labor Organization) in 2006 revealed that the number of underage workers in the Asian region was estimated to be 122 million or 64% of the total world child laborers. Indonesia itself, according to the National Welfare survey in 2003, showed that as many as 1,502,600 children aged 10-14 years worked and did not go to school, around 1,612,400 other children aged 10-14 years did not attend school and help at home⁵.

Another major trigger of the abundance of minors being employed as workers is the higher profit factor for the owners of capital. This is due to the lower wages that employers can pay to the minors they employ compared to hiring adults who have to pay more and have many statutory workers' rights. Furthermore,

⁴ See Sharon Bessell, "Child labor in Indonesia." *The World of Child Labor*. (London: Routledge, 2014), pp. 898-903; Tri Sulistiyono, et al. "Legal Protection to Child Labour: The Effectiveness of National Criminal Law and International Law Instrument (A Case Study of Indonesia and China)." *International Journal of Business, Economics and Law* 18, no. 4 (2019): 45-52.

⁵ Mustika Prabaningrum Kusumawati, "Tinjauan Yuridis Perlindungan Hukum Pekerja Anak (Ditinjau dari Sudut Pandang Hukum Ketenagakerjaan dan HAM)." *Literasi Hukum* 3, no. 1 (2019): 39-51.

the exploitation of children for work often used in hazardous environments without proper safeguards and without proper training, care, care and protection⁶.

In the course of nurturing and fostering the growth of their children, parents bear a weighty responsibility encompassing the assurance of physical well-being and holistic development—spanning mental, intellectual, and social dimensions. Regrettably, the reality often diverges from this ideal, particularly for children hailing from economically challenged families. The widespread prevalence of child labor accentuates this dissonance, where children, instead of enjoying the privileges of education and play, find themselves compelled to labor in order to meet basic life necessities.

The challenge of addressing child labor in Indonesia is a complex endeavor, marked by a multitude of factors emanating from the work environment, the nature of the tasks assigned, and the contextual conditions surrounding the children involved. These factors create a formidable barrier to ensuring that children can fully experience a childhood unburdened by the demands of labor. In the face of this challenge, it becomes imperative to unravel the intricate web of influences, considering not only the immediate work environment but also the broader socio-economic dynamics that shape the landscape of child labor in the country. By understanding the multifaceted nature of this issue, effective strategies and interventions can be developed to mitigate the impact of child labor on the well-being and development of

⁶ Saharuddin Daming, and Tirta Aria Tiarani. "Perlindungan Hukum dan Hak Asasi Manusia Terhadap Pekerja Anak di Bawah Umur Pada Industri Rumahan." *Yustisi* 8, no. 2 (2021): 113-130.

the younger generation in Indonesia. Some various issues are highlighted as⁷:

1. Economic factors are often found that the family plays a vital role in the exploitation of children in the family. Economic problems that often occur forced children to have to step in to look for work and did not even hesitate, such as telling children to ask for help on the street, doing sex work, stealing to letting their children lie in order to earn money and even in some groups organized collecting children and trained to be buskers, beggars and so on.
2. The cultural factor in which children's obedience to their parents is often a mindset to be used as a force to force them to become workers early. Without realizing it, parents sweat their own children to do work, if understood in other concepts, culture without forcing to be good When children learn to help their parents so they understand the struggle of parents to make a living for them. However, the reality on the ground is that some parents force their children to earn money.
3. The education factor is the cause due to the low level of education which results in very minimal parental education patterns for their children, people who do not have proper formal education at least have some skills that can be used to survive. Education which is currently considered not to have a solution for their economic problems until someone makes the education unnecessary and only adds to the burden because quality higher education is not cheap and has a lot of

⁷ Wafda Vivid Izziyana, "Perlindungan Hukum Bagi Pekerja Anak di Indonesia." *Legal Standing: Jurnal Ilmu Hukum* 3, no. 2 (2019): 103-115.

costs. This causes many people to think instantly to get money.

4. Social control factor, this phenomenon is the responsibility of the government in handling it. In today's society that tends not to care about the violations of child exploitation that occur, people are increasingly selfish thinking about their own fate. Exploitation of children results in a high crime rate which indirectly spreads in various places, such as making sex workers who make children's associations unhealthy today, contributing to beggars who we don't know is really difficult. Therefore, social control is very important where the more we ignore it, the more cases occur.

In some of the jobs they do as child laborers, they often fall into bad jobs. Many factors arise to be the source of some of these problems. Therefore, the optimal rights for children do not get the opportunity to obtain their rights as a child. Child labor, especially in developing countries such as Indonesia, is a child protection problem to this day.

Indonesia itself, there are rules regarding legal protection for child workers. This is because the problems that often arise in society are so serious that the existing rules are used for the protection of children against child labor where the existing regulations are the result of the ratification of international conventions and also some are regulations made by the Indonesian government. including the 1945 Constitution, Ratification of the ILO Convention No. 138 in conjunction with Law No. 20 of 1999 concerning the Minimum Age to be Admitted to Work, Ratification of the ILO (International Labor Organization) Convention No. 182 into Law No. 1 of 2000 concerning

Violations and Immediate Action for the Elimination of the Worst Forms of Child Labour.⁸

In some cases, the head of the household who works in the informal sector with low income will usually be assisted by his wife and children who will later work in the informal sector. Meanwhile, children who work in the informal sector do not have certainty in activities, wages, and employment security. This can happen because it is caused by the informal sector. Most of them do not have a license or legal umbrella for the business they run. Therefore, the involvement of children in work is one of the problems in the field of employment so that it needs to be a separate concern, especially considering the conditions in which most of the child's work is in the informal sector.⁹

Therefore, in some of the factors above that make the background of child exploitation often carried out in the community, especially in urban areas. So that there is a need for a legal umbrella that can cover all of these exploitations, so that later children can grow and develop and are capable of being responsible for the life of the nation and state, every child needs to get their rights to grow and develop physically guarantees in the growth and development of children, including also mental, intellectual property, and also social life.

The protection of children and child labor has been regulated both in national and international laws, but international values and principles in the protection of child labor

⁸ Organizzazione internazionale del lavoro, and UNICEF. *Child labour: Global estimates 2020, trends and the road forward*. (ILO and UNICEF, 2021).

⁹ Dodi Satriawan, "Pekerja Anak Sektor Informal di Indonesia: Situasi Terkini dan Tantangan ke Depan (Analisis Data Susenas 2019)." *Jurnal Ketenagakerjaan* 16, no. 1 (2021): 1-12.

need to be embodied in a more tangible form. Based on the background as described above, the problems in this study are as follows (1) How to Mainstream Concept of Legal Protection for Child Labor in Indonesia Based on ILO Conventions on Child Labor? (2) How to implement Legal Protection for Child Labor in Indonesia Based on the ILO Conventions on Child Labor? (3) How are the barriers and constraints in Legal Protection for Child Labor in Indonesia Based on the ILO Conventions on Child Labor? (4) What are the solutions to overcome various problems in Legal Protection for Child Labor in Indonesia Under the ILO Conventions on Child Labor?

II. Method

This legal research adopts a conceptual approach, delving into various theories and cases relevant to the legal protection of child labor as outlined in the International Labour Organization (ILO) Convention on Child Labor. The conceptual approach is instrumental in exploring diverse perspectives and doctrines that permeate and are applied within society, shaping the conceptual framework of legal protection for child labor.

It is crucial to note that normative legal research, in this context, extends beyond the confines of juridical norm research. While juridical norm research typically confines itself to the norms stipulated in legislation, normative legal research, as elucidated by Johnny Ibrahim, takes on a broader scope. Ibrahim defines normative legal research as a scientific research procedure aimed at unveiling truths based on scientific logic from the normative side.

In this context, the normative side is not limited solely to laws and regulations.¹⁰

As expounded by Peter Mahmud, legal research is inherently normative, yet it transcends mere positivist law research.¹¹ The term "*norms*" encompasses more than just positive laws, defined either by politicians in positions of authority as per John Austin or by rulers as per Hans Kelsen. In accordance with this perspective, legal research seeks to ascertain the coherence of legal principles, examining whether the rule of law aligns with legal norms.¹² It further evaluates whether legal norms containing obligations and sanctions adhere to legal principles, ensuring that actions are in harmony with both legal norms and overarching legal principles. This nuanced approach enriches the research by examining not only the statutory dimensions but also the underlying principles and coherence within the legal framework governing child labor protection.

III. The Concept of Legal Protection for Child Labor in Indonesia Based on the ILO Conventions on Child Labor

The international community has shown serious attention to various problems of child labor through an organization called the

¹⁰ Jonaedi Efendi, and Johnny Ibrahim. *Metode Penelitian Hukum: Normatif dan Empiris*. (Jakarta: Prenada Media, 2018).

¹¹ Peter Mahmud Marzuki. *Penelitian Hukum*. (Jakarta: Kencana Prenada Media, 2005).

¹² Brian H. Bix, "John Austin and constructing theories of law." *The Legacy of John Austin's Jurisprudence*. (Dordrecht: Springer Netherlands, 2012), pp. 1-13; Hans Kelsen, "On the Basic Norm." *California Law Review* 47, no. 1 (1959): 107-110.

International Labor Organization (ILO). The ILO or in its Indonesian translation means the International Labor Organization is the United Nations (UN) agency that is globally responsible for developing and supervising international labor standards. The ILO was founded in 1919, as part of the Treaty of Versailles which ended the First World War, to reflect the belief that universal and lasting peace can only be achieved if it is based on social justice.

The ILO continues to promote the creation of opportunities for women and men to obtain decent and productive work in a free, fair, safe and dignified manner. The main objectives of the ILO are to promote rights at work, promote decent work opportunities, enhance social protection and strengthen dialogue to address issues related to the world of work. The ILO is the only UN “tripartite” body that invites representatives of governments, employers and workers to jointly develop policies and programmes. In collaboration with its 181 member countries, the ILO seeks to ensure that these labor standards are respected both in principle and in practice. In terms of child labour, the ILO through its conventions establishes international labor standards for a range of child labor subjects. There are two ILO conventions on child labour.¹³

First, the ILO Convention Number 138 of 1973 concerning the Minimum Age for Admission to Employment. This Convention has been ratified by Indonesia through Law No. 20 of 1999 on Ratification of the ILO Convention No. 138 Concerning Minimum Age for Admission to Employment. Under

¹³ See Giuseppe Nesi, Luca Nogler, and Marco Pertile. *Child labour in a globalized world: a legal analysis of ILO action*. (London: Routledge, 2016).

this convention the minimum age to be allowed to work is 15 years. Countries with economies and educational facilities that are not sufficiently developed can set a minimum age of 14 years.

The concept of child labor is based on ILO Convention No. 138 which describes the most comprehensive international definition of the minimum age for employment, referring directly to “economic activity”¹⁴. In full, the ILO convention no. 138 specifies the minimum age range below which children are not allowed to work. Children under the age of 13 may not be employed. Children 13-15 years old may be employed if they do light work that is not dangerous and does not interfere with their educational activities. b Children under 12 years of age in countries where the economy and educational facilities are less developed are not allowed to work. As for countries whose economy and educational facilities are not sufficiently developed, it is not allowed to employ children under the age of 12. Working children 12 - 14 years old are considered child labours, unless they do light work.

Second, ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (WFCL). This convention, adopted by acclamation in 1999, provides details on the worst forms of child labor in which children under 18 years of age cannot be involved. The Convention also requires States to take immediate and effective steps to ensure the prohibition and elimination of the

¹⁴ Siti Faridah, and Laila Afiyani. " Child Labor Issues and Relations with Human Rights [Isu Pekerja Anak dan Hubungan dengan Hak Asasi Manusia]." *Lex Scientia Law Review* 3, no. 2 (2019): 163-176.

worst forms of child labour¹⁵. Indonesia itself has ratified the ILO Convention No. 182 with Law Number 1 of 2020 concerning Ratification of the ILO Convention Number 182 Concerning the Prohibition And Immediate Action For Elimination Of The Worst Forms Of Child Labor (ILO Convention Number 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor).

- a. In the conventions and laws mentioned above, the term “worst forms of child labour” contains the following meanings:

All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, bonded and slave labor and forced or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflict;

- b. The use, procuring or offering of children for prostitution, for the production of pornography, or for pornographic performances;
- c. The use, supply or offering of children for illicit activities, in particular for the production and trade of drugs as regulated in the relevant international agreements;
- d. Work which by its nature or the environment in which it is carried out may endanger the health, safety or morals of children.

Two ILO conventions on the issue of child labor have been ratified by Indonesia. This shows that Indonesia as part of

¹⁵ Eka Maulia Agustine, Ishartono Ishartono, and Risna Resnawaty. "Kondisi Pekerja Anak yang Bekerja di Sektor Berbahaya." *Prosiding Penelitian dan Pengabdian kepada Masyarakat* 2, no. 1 (2017): 1-7.

the international community and a member of the ILO has given serious attention to the problem of child labor. With this ratification, Indonesia provides support and at the same time binds itself to the two ILO conventions above, is committed to, and complies with all forms of regulations in the convention.

Slavery that occurs against children is a social, economic, and human problem that has become the spotlight in the world. There are more than 200 million children who have become workers to be able to meet the needs of their families. From year to year, the number of child laborers has decreased. This is inseparable from the role of an international organization, namely the ILO, which has become the main driver behind this progress. In order to be able to provide protection to child workers, the following are the relevant ILO Conventions.¹⁶

IV. ILO Convention No. 138 Concerning the Minimum Age for Admission to Employment

Children are the generation that will continue and run the Indonesian nation. For this reason, children must be prepared from an early age to become a generation that is strong, tough, independent, physically and mentally healthy, and has quality human resources so that they are able to face the challenges of changing times. Every child in Indonesia has the right to live, grow and develop as regulated in Article 4 of Law Number 23 of 2002 concerning Child Protection. In addition to the right to live, grow

¹⁶ See Ben White, Rebecca Elmhirst, and Ratna Saptari. "Constructing child labour: Attitudes to juvenile work in Indonesia, 1900-2000." *Labour in Southeast Asia: Local processes in a globalised world* (2004): 77-105.

and develop, children also have the right to be protected from violence and discrimination.

It is one of the conventions that protect children's rights which was approved at the 58th International Labor Conference on 26 June 1973 in Geneva. For ILO member countries that have ratified this Convention, they are required to set a minimum age limit to be allowed to work. The main points of this convention are:

1. ILO member states that ratify this Convention are obliged to establish national policies to eliminate the practice of child labor and increase the minimum age for admission to work.
2. For jobs that endanger the health, safety, or morals of children, efforts must be made not to be less than 18 (eighteen) years, except for light work, not to be less than 16 (sixteen) years.
3. The ILO member states which ratify this Convention are obliged to establish a minimum age for admission to work, rules regarding working hours, and establish penalties or sanctions to ensure its implementation.
4. ILO member states which ratify this Convention are obliged to report on its implementation.

V. Implementation Legal Protection for Child Labor in Indonesia Based on the ILO Conventions on Child Labor

Children who work in a type of work that has the nature of the work or because of the conditions that accompany or stick to that work when the work is carried out can cause harm to children,

injure children physically, mentally and/or sexually, exploit children, or making a child no longer receive an education is the definition of child labor based on the International Labor Organization (ILO)¹⁷. After 77 years of Indonesia's independence, the problems related to child labor have not been resolved. The results of a child labor survey in Indonesia as of March 2017 show that children aged 10-11 years are still employed in the formal sector amounting to around 14.5 thousand, such as children aged 12-14 years amounting to 146.1 thousand and children aged 12-14 years. 15-17 years amounted to 1.05 million. They are workers who have no education at all. Regardless of this category, around 692 thousand children still work to help their parents but still receive education.

The State of Indonesia, which is a member of the United Nations, is required to ratify the conventions issued by other United Nations apparatuses that it has approved. Like the Convention made by the International Labor Organization (ILO), because the Indonesian state agreed to the ILO Convention, the Indonesian state was obliged to ratify the Convention. These conventions are the ILO Convention No. 138 regarding the minimum age to be allowed to work and the ILO Convention No. 182 concerning the prohibition and action for all the elimination of the worst forms of child labour.

To achieve optimal results, the Indonesian government has issued various regulations that can regulate child protection, relating to the fulfillment of child labor rights. The legal instruments that regulate legal protection for the rights of child workers are as follows:

¹⁷ ILO - IPEC, *Serikat Pekerja/Serikat Buruh dan Pekerja Anak*. (Jakarta: Organisasi Perburuahan Internasional, 2009).

***Law No. 20 of 1999 concerning Ratification
of ILO Convention No. 138 regarding the
Minimum Age to be Admitted to Work***

With the establishment of ILO Convention No. 138 of 1973 concerning the Minimum Age to be Allowed to Work is a manifestation of the seriousness of international institutions in dealing with child labour. The State of Indonesia as a member of the United Nations (UN) and the International Labor Organization (ILO) highly appreciates, upholds, and strives to implement the decisions of these international institutions. The convention must be considered in accordance with the desire of the Indonesian people to continuously uphold and improve the implementation of children's basic rights in the life of society, nation and state. Therefore, on 7 May 1999, the Indonesian government: ratified the ILO Convention in the form of Law No. 20 of 1999 concerning Ratification of ILO Convention No.

The main content of this Convention states that:

- 1) To be able to establish a national policy to abolish the practice of child labor and increase the minimum age for admission to work is mandatory for ILO member States which ratify this Convention.
- 2) Strive not to be less than 18 (eighteen) years for jobs that endanger the health, safety or morals of children, and not less than 16 (sixteen) years for light work.
- 3) It is obligatory to establish a minimum age to be allowed to work, rules regarding working hours, and establish penalties

or sanctions to ensure its implementation for ILO member States which ratify this Convention.

- 4) It is mandatory to report its implementation for IL member States which have ratified this Convention.

In accordance with what is attached to Law no. 20 of 1999 concerning Ratification of ILO Convention No. 138 concerning the Minimum Age to be Permitted to Work, the Government of the Republic of Indonesia has stated that the minimum age to be allowed to work is 15 (fifteen) years. However, there are several other provisions in the Convention concerning the minimum age for a child to be able to work with various exceptions, namely:

1. Article 3 paragraph (1) because of its nature or because of the environmental conditions in which the work must be carried out may endanger the health or morals of children, they must limit the minimum age to be allowed to work, the age must not be less than 18 (eighteen) years.
2. Article 3 paragraph (3) on the condition that the health, safety, and morals of the child concerned are protected and that the child has received special vocational lessons or training regarding the branch of activity concerned may allow a child aged 16 (sixteen) years to be able to work.
3. Article 7 paragraph (I) has stated that in national laws or regulations, permits or can allow the employment or work of children aged 13-15 years in light work on condition that:
 - a) May it be harmless to the health and development of the child;
 - b) It should not be an obstacle for children to continue to attend school lessons, attend vocational orientations or

justified training programs because children can benefit from the lessons they receive.

4. Article 7 paragraph (2) allows national laws or regulations to be able to employ children who are at least 15 (fifteen) years old to do light work but with the provision that they have not completed compulsory school education.
5. Article 8 has certain conditions, which in this Article allows for an exception to the prohibition of working under a predetermined minimum age. This exception can be made in an individual case such as a child who participates in an art performance, becomes a model, and other activities carried out to develop the interests and talents of the child.

***Law No. 1 of 2000 concerning Ratification of
ILO Convention No. 182 concerning the
Prohibition and Immediate Action for the
Elimination of the Worst Forms of Child
Labour***

On June 17, 1999 the international community through the 87th (eighty-seven) International Labor Conference in Geneva established the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. The establishment of this convention was encouraged by the Convention on the Rights of the Child and the ILO Convention no. 138 of 1973 concerning the Minimum Age to be Allowed to Work which will later complement each other in efforts to eliminate the worst forms of

child labour. And as a form of its seriousness in protecting child labor, Indonesia established Law no. 1 of 2000 concerning Ratification of ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

In Article 2 of this Convention defines "The term child shall apply to all persons under the age of 18" which means that the term child means all persons under the age of 18 (eighteen) years and prohibits children under that age from engaging in the worst forms of work. Article 3 of this Convention also states that the worst forms of child labor itself contain the following meanings:

1. All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, bonded labour, and slavery and forced or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflict;
2. The use, procuring or offering of children for prostitution, for the production of pornography, or for pornographic performances;
3. The use, procuring or offering of children for illicit activities, in particular for the production and trade of drugs as regulated in the relevant international agreements;
4. Work which by its nature or the environment in which it is carried out may endanger the health, safety or morals of children.

In the era of regional autonomy, in order to be able to tackle and protect child labour, a Minister of Home Affairs and Regional Autonomy No. 5 of 2011 concerning Handling Child Labor (PPA). One of the main contents in it is to carry out a

countermeasures against child labor by eliminating, reducing and protecting child labor under the age of 15 (fifteen) years in order to avoid the bad effects of heavy and dangerous work, so that it can interfere with growth and development. physical, mental, and intellectual¹⁸.

Convention on the Rights of the Child in conjunction with Presidential Decree No. 36 of 1990

After one year of acceptance of the Convention on the Rights of the Child on November 20, 1989 by the United Nations (UN), Indonesia, which co-signed the ratification of this convention in New York, United States of America on 26 January 1990. The Convention on the Rights of the Child was issued by the international community in order to address a problem of children's rights which have not yet been regulated by existing international Human Rights Law (HAM) instruments. The Convention on the Rights of the Child has become an instrument capable of complementing other human rights instruments by highlighting the more specific and distinctive characteristics of children's rights inherent in every child, such as the right to play, the right to obtain basic education, and the right to be able to grow and develop properly.

¹⁸ Eka Tjahjanto, "Implementasi Peraturan Perundang-Undangan Ketenagakerjaan Sebagai Upaya Perlindungan Hukum Terhadap Eksploitasi Pekerja Anak". *Thesis*. (Semarang: Universitas Diponegoro, 2008).

The convention is an intentional treaty that is legally binding on countries that have ratified the treaty. Therefore, the convention can be said to be international law. The consequences for a country that has ratified an international treaty such as the Convention on the Rights of the Child, according to Syahmun AK, are as follows:

1. Formulate/state or reaffirm the existing rules of international law
2. Change / improve or delete existing intentional legal rules, to regulate future actions
3. Forming new international law rules that did not exist before.

The Convention on the Rights of the Child consists of 54 (fifty-four) articles which are based on legal materials governing children's rights and the mechanism for implementing children's rights by participating countries that ratify the Convention on the Rights of the Child. 14 Indonesia has ratified the Convention on the Rights of the Child 1989 through Presidential Decree No. 36/1990. In 2002, the Indonesian government issued Law No. 23/2002 on Child Protection. Child protection as a further effort in protecting children's rights. The protection of children's rights is also guaranteed in the 1945 Constitution of the Republic of Indonesia, in article 28B paragraph (2) which reads that every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination.

In Article 24 of the Convention on the Rights of the Child 1989, there are several steps for participating countries that must be carried out in implementing the fundamental right to life for children, namely: to implement reducing infant and child mortality rates, providing necessary health services, especially

health services, eradicating diseases and deficiencies. nutrition, including in the context of health services before and after childbirth for mothers, obtaining and accessing education and getting support for basic knowledge about health and nutrition, developing preventive health care, guidance for parents and family planning counseling, and taking action to eliminate traditional practices that are prejudiced against health services and the development of international cooperation¹⁹.

VI. Barriers and Constraints in Legal Protection for Child Labor in Indonesia Based on the ILO Conventions on Child Labor

Barriers to Legal Protection for Child Labor in Indonesia Based on ILO Conventions on Child Labor with relevant stakeholders and depending on the level at which collective bargaining takes place. Some possibilities include:

- 1) Not all companies or workplaces that have cooperation agreements ratify the ILO. Where there is no agreement between the ILO or the government and the company, that the company will not employ children below the minimum age established by relevant ILO law or standards.
- 2) Indirect employment relationship (ie, through suppliers, subcontractors). What is very difficult to monitor by legal

¹⁹ Resa Surya Utama, and Dwini Handayani. "Pekerja anak di Indonesia: Peran penawaran dan permintaan ketenagakerjaan." *Jurnal Ekonomi Kuantitatif Terapan* 13, no. 1 (2020): 145-157.

entities and the government is that there is no agreement, so that there is not an exclusive monitoring system that depends on the trade unions.

- 3) The difficulty of monitoring the involvement of trade unions/labor unions. The limited knowledge of the community and the limitations of monitoring in certain areas make it difficult to tackle child labor that occurs in remote areas.
- 4) Lack of school facilities for children of workers/laborers and children in remote areas of Indonesia which are still far from proper transportation and inadequate school facilities.
- 5) Indonesia's less stable economic condition, there are still many social inequalities and the difficulty of employment which results in the increasing number of child laborers due to the economic needs of families that urge children to work to help their parents.

In addition, the obstacles faced in the implementation of overcoming child labor are through the efforts made by the ILO and the Indonesian government in overcoming the economic problems of parents who still have less income or are even unemployed, they still experience several obstacles and some even do not work well, it is because of a lack of willpower. parents in participating in eliminating child labor in Indonesia. from economic assistance experienced several obstacles and shortcomings in its implementation such as assistance for parents in Micro Credit for women (single mothers) and in government policies in the form of unfair regulations and product feasibility certification both at the center and the regions²⁰.

²⁰ Siti Fijriah Nursiam, "Peranan International Labour Organization (ILO) Melalui International Programme on The Eliminating of Child Labour

VII. Conclusion

The study concludes that the issue of child labor in Indonesia is poised to escalate into a more intricate challenge if left unaddressed. The escalating number of children entering the workforce daily underscores the urgency of legal safeguards. Without robust legal protection, there is a heightened risk of exploiting children's human rights, exacerbating poverty rates in both rural and urban areas. The decision of children to engage in labor often stems from socio-economic necessities and individual desires, making it imperative to comprehensively address the multifaceted reasons behind their involvement. It is crucial to acknowledge that Indonesia has established legal frameworks to protect child workers. These regulations, stemming from the ratification of international conventions and government enactments, include the 1945 Constitution, the ratification of the International Labor Organization (ILO) Convention No. 138 through Law No. 20 of 1999 concerning the Minimum Age for Admission to Work, and the ratification of ILO Convention No. 182 through Law No. 1 of 2000 dealing with Violations and Immediate Action for the Elimination of the Worst Forms of Child Labour. The existence of these regulations underscores the gravity of societal concerns and the commitment to safeguarding children from exploitative labor practices. The imperative for protection is underscored by the pursuit of children's health and the assurance of their rights, aligning with the International Labour Organization's Conventions on Child Labor. As such,

(IPEC) dalam Menanggulangi Pekerja Anak di Indonesia." *Global Political Studies Journal* 1, no. 1 (2017): 1-24.

reinforcing and enforcing these legal measures becomes paramount in order to secure the well-being of children and create a foundation for their healthy development within the Indonesian context.

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