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Legal Protection Against Child Labor As Employers Mine Excavations

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Abstract: Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination. The aim of this research is to determine the penalties for mining entrepreneurs who employ minors and to determine the form of legal protection for minors mining workers. This research is normative legal research with a statutory approach. The types of legal materials used are primary, secondary and tertiary book materials. The research results show that the punishment for mining entrepreneurs who employ minors based on Minister of Manpower Regulation 01/MEN/1987 is punishable by imprisonment for a maximum of three months or a fine of up to Rp. 100,000,- (one hundred thousand rupiah). Forms of legal protection for minor mining workers include: protection of working and rest hours, wage guarantees and social security for occupational safety and health, as well as fair and humane treatment. Protection for child workers in the formal sector is regulated by the Minister of Manpower in his regulation no. Per.01/Men/1987 and its implementing regulations, namely: a) Entrepreneurs are required to report mandatory reporting procedures and forms regulated by the Minister of Manpower; b) For labor inspection employees, when carrying out inspections, they should pay special attention to the protection of child workers, and intensify reporting of the results of analyzing and evaluating inspections. Judging from the form of sanctions, the amount of sanctions in the form of monetary fines should not be stated because the value of money is always changing. A monetary fine of Rp. 100,000,- is not commensurate with a prison sentence of three months nowadays. As an option, a monetary fine equal to the entrepreneur's living costs for three months can be stated.

Keyword: Legal Protection; Underage Child Labor; Mining Excavations.

INTRODUCTION

Indonesia is a legal state that upholds human dignity, so that every human being, both adults and children, should be protected from attempts to employ them in work that degrades human dignity or work that is exploitative because it is inhumane.¹ Efforts to protect labor that can reach all workers, both adult and child workers, especially regarding child labor,

1 J. Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Konstitusi Press., 2006).

have recently received a lot of attention and have become a national and even international issue that must receive serious attention from the government and society, because it has a negative impact on the next generation.²

Children are creatures created by God and the successors of the nation have human rights that are innate to them from birth, namely the right to grow and develop optimally, both physically and mentally. The definition of a child in the Child Protection Law is a person under 18 years of age, including children who are still in the womb. In fact, children need to have their rights protected so that they can obtain a life worthy of their age. Protection against child labor can be seen in fulfilling the rights that children have based on the Child Protection Law, namely the right to worship according to their religion, the right to education, the right to be cared for by their parents, and the right to receive protection.³

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination. Child protection means protecting the potential of human resources and developing the whole person towards a just and prosperous society.⁴ The involvement of children in the field of employment, such as in Indonesia, is increasing. A very prominent aspect in the field of child welfare in general, as well as in terms of child protection in particular, is the problem of working children under working age.⁵

In essence, children should not work because their time should be used to study, play, have fun, be in a peaceful atmosphere, get opportunities and facilities to achieve their goals in accordance with their physical, psychological, intellectual and social development. However, in reality, many children under the age of 18 are actively involved in economic activities, becoming child workers, among others, in the industrial sector due to economic pressure experienced by their parents or other factors.⁶

One of the children's problems that must receive special attention is the issue of child labor. This issue has gone global because so many children around the world enter the workforce at school age. In reality, the issue of child labor is not just an issue of children carrying out work for wages, but is closely linked to exploitation, dangerous work, hampered access to education and hampering children's physical, psychological and social development. Even in certain cases and forms of child labor it has been included as a qualification for children working in the most intolerable form of child labor.⁷

The problem is, if a child under the age of one is allowed to earn a living, what legal protection is given to the child, so that even if he works at a young age, he will be guaranteed that he will not experience things that could cause harm to him. For entrepreneurs who employ children, for certain reasons, employers are obliged to provide legal protection to workers. Fields of work that are not permitted to be carried out by child workers in accordance with the Minister of Manpower Regulation Number: PER-01/MEN/1987 concerning Protection for children who are forced to work include:

² & Kunarso Kunarso. Anik Ifitah, Nanda Romei Puspitasari, Niken Yulianti, Mukhammad Taufan Perdana Putra, "Kesetaraan Gender Dalam Hukum Ketenagakerjaan," *Eksekusi : Jurnal Ilmu Hukum Dan Administrasi Negara* 1, no. 2 (2023), <https://doi.org/https://doi.org/10.55606/eksekusi.v1i2.471>.

³ Anik Ifitah, ed., *Hukum Keluarga Islam*, Juli 2023 (Sada Kurnia Pustaka, 2023).

⁴ Nashriana, *Perlindungan Hukum Pidana bagi Anak di Indonesia*, Raja Grafindo Persada, Jakarta, 2011, hal.1.

⁵ Puji Purnamawanti & Iskandar Zulkarnaen, *Permasalahan Hukum Tentang Tenaga Kerja Anak Di Indonesia*, Lex Jurnalica/ Vol. 2 /No.1/ Desember, 2004, hal. 29-30.

⁶ Syamsuddin, *Petunjuk Pelaksanaan Penanganan Anak yang Bekerja*, Departemen Tenaga Kerja Republik Indonesia, Jakarta, 1997, hal.1.

⁷ Muhammad Joni dan Zulechaina Z, Tanamas 1999. *Aspek Hukum Perlindungan Anak dan Perspektif Konvensi Hak-hak Anak*, Citra Aditya Bakti, Bandung, 1999, hal.8.

1. Do not employ children in mines, underground, underground holes, ground level, places where metal minerals are extracted, and other excavated materials in underground holes or tunnels, including water.
2. Do not employ children in places or carry out work that could endanger workplace morality, safety and health.
3. Do not employ children in closed indoor factories that use machine tools.
4. Do not employ children in road, bridge, waterworks and building construction work.
5. Do not employ children in loading, unloading, moving goods at ports, docks, ship classes, stations, places of stopping and unloading goods as well as goods storage or warehouses.

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 Labor (ILO Convention No. 182 concerning violations and immediate action to eliminate the worst forms of child labor). In Indonesia, in the field of employment, there are provisions that prohibit or limit the use of child labor. In Article 68 of Law No. 13 of 2003 concerning Employment, it is stated that entrepreneurs are prohibited from employing children, and the provisions in this Article contain exceptions to Article 69 of Law No. 13 of 2003 concerning Employment states that children aged between 13 (thirteen) years to 15 (fifteen) years can do light work as long as it does not interfere with their physical, mental and social development and health.

In general, child workers do not receive adequate protection both from a legal and social perspective, this is due to the condition of children who are forced to work, sometimes only as additional labor in the production process (economic exploitation) and in general they are not bound by work agreements, because of the conditions Working children do not possess the formal skills (skills) that must be fulfilled in order to protect themselves. Apart from that, children are also considered not old enough to enter into a work agreement.

Employers prioritize child labor as an economic factor, not its human and/or social side and in turn they are treated like adult workers but receive much lower wages. Thus, entrepreneurs who employ children do not look at the productivity aspect, but rather emphasize the economical aspect of their output (low wages, obedience and not demanding too much). From this we can see a reflection of the incomparable crimes against humanity, because there is denial of children's rights and denial of child protection, this is basically the destruction of the next generation of a nation. There are various obstacles and problems that still occur, one of which is the problem of legal protection, especially for child workers. For this reason, it must be emphasized through various forms of protection, especially child protection.

Thus, based on the background above, problems can be formulated, namely: 1) what are the sanctions for mining entrepreneurs who employ children; and 2) what is the form of legal protection for child labor as mining excavation workers.

METHOD

This research is legal research. Legal research is a process of discovering legal rules, legal principles and legal doctrines, in order to answer the legal issues faced.⁸ The problem approaches in this research include: statutory approach, conceptual approach.

RESULTS AND DISCUSSION

Legal Sanctions for Mining Entrepreneurs Who Employ Children

In any job, there is the possibility of non-compliance with statutory provisions carried out by employers/companies, which often even leads to work accidents. If it falls into the realm of a company that employs children and a work accident occurs to a child, of course

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2008, hal. 35.

the company is responsible for this.⁹ Apart from that, the company is responsible for work where accidents are entirely borne by the company on the grounds that the workers do not have the ability to compensate for the losses suffered by the company.¹⁰

Furthermore, entrepreneurs/companies who employ children not based on the provisions of statutory regulations may be subject to sanctions in the form of administrative sanctions or criminal sanctions. Administrative sanctions given include warnings, written warnings, restrictions on business activities, freezing of business activities, cancellation of approvals, cancellation of registration, temporary suspension of part or all of production equipment, and revocation of permits. This administrative sanction is given if employers/companies discriminate in employment, especially against child workers.

That companies that employ children may be subject to sanctions as stated in Article 185 of the Manpower Law. The sanctions contained in Article 185 of the Manpower Law state that the company's action of employing children is a criminal act, which will be charged with imprisonment and/or fines, namely imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 400,000,000.00 (four hundred million rupiah). That the provisions contained in this Article are sanctions which are in line with the meaning that sanctions are in the form of punishments that are forceful in nature to provide a deterrent effect for a violation that has been committed, bearing in mind that the sanctions contained are quite severe, meaning that you will be behind bars for 1 year or even four years, this punishment will result in discomfort in the form of physical pain, suffering, and also loss of valuables and/or pay a fine of IDR 100,000,000.00 (one hundred million) or a maximum fine of up to IDR 400,000,000.00 (four hundred million). In this article, the use of the word and/or is a form of sanction which can be a choice of one or both, including imprisonment and a fine. It is the judge's decision to impose what kind of sanctions. This sanction is the government's effort to create public order, in the form of retaliation so that perpetrators are deterred and do not commit their crimes again and as a lesson so that people do not commit crimes as stated in this article.

Forms of Legal Protection for Child Labor as Mine Excavation Workers

Legal protection is a guarantee of rights and obligations for humans in order to fulfill their own interests and in relationships with humans.¹¹ In other words, legal protection is an illustration of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace.

Phillipus M. Hadjon believes that there are 2 (two) types of legal protection, namely preventive legal protection and repressive legal protection. Preventive legal protection, that the law prevents disputes from occurring. This function is expressed in the form of preventive regulations which are basically a benchmark for every action that society will take, covering all aspects of human action. Repressive legal protection is in the nature of overcoming or restoring conditions as a result of previous actions.¹²

Talking about child protection, there are at least 2 (two) aspects involved in it. The first aspect relates to statutory and regulatory policies that regulate child protection. The second aspect relates to the implementation of the statutory policy. Regarding the first aspect,

⁹ Eko Donianto, 2012, *Tanggung Jawab Pengusaha Kapal Motor Ikan Terhadap Pekerjanya Akibat Terjadinya Kecelakaan Kerja (Studi Di Kuala Mempawah Kabupaten Pontianak)*, Vol 01, Nomer 01, <http://jurnal.untan.ac.id/index.php/jmfh/article/view/1803>.

¹⁰ Udiana, I Made, 2018, *Industrialisasi dan Tanggungjawab Pengusaha Terhadap Tenaga Kerja Terlibat Hukum*, cet. ke-1, Denpasar: Udayana University Press, hal. 33.

¹¹ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, (Yogyakarta, 2000).hal. 42

¹² Hadjon M Philipus, 1994, *Pengkajian Ilmu Hukum Dogmatik (Normatif)* Fakultas Hukum Universitas Airlangga, Surabaya, hal. 2.

to date there is sufficient legislation to regulate matters relating to child protection. The second aspect is whether with the availability of various legislative instruments regarding children's rights, efforts to realize children's rights and efforts to eliminate practices that violate children's law and ignore children's rights as desired can be ended.¹³

Efforts to protect workers, including child workers, include the following aspects:

1. Legal protection, namely if statutory regulations in the field of employment can be implemented which require or force employers to act in accordance with these laws and are actually implemented by all parties concerned.
2. Economic protection, namely protection related to efforts to provide workers with an income sufficient to meet the daily needs of them and their families.
3. Social protection, namely protection related to community efforts whose aim is to enable workers to experience and develop their lives as humans and as members of society.
4. Technical protection, namely protection related to efforts to protect workers from the dangers of accidents arising from or related to occupational safety and health.¹⁴

In Indonesia, in the field of employment, there are provisions that prohibit or limit the use of child labor. Article 68 of Law No. 13 of 2003 concerning Employment states that entrepreneurs are prohibited from employing children. And the provisions in this article contain an exception to Article 69 of Law No. 13 of 2003 concerning Employment, children aged between 13 (thirteen) years to 15 (fifteen) years can do light work as long as it does not interfere with their development and health. physical, mental, social.

In the context of legal protection of child labor, as explained in Article 1 paragraph (1), (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection:

1. A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb
2. Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination.

Furthermore, as explained in Article 68 which states, "entrepreneurs are prohibited from employing children" so that according to the above, according to the author, someone aged 18 years or under is still considered a child so they still need to receive protection from violence and discrimination and are also prohibited. to employ children, whether entrepreneurs or others.

The Convention on Children's Rights was ratified by the UN General Assembly on November 20 1989, a year later, in 1990 Indonesia ratified this convention through Presidential Decree Number 36 of 1990, Protection of children from economic exploitation is part of the right to survival. Thus, exploitation of children is strictly prohibited, especially in the case of employing children, including denying the child's survival.

However, Article 69 paragraph (1) states: "The provisions as intended in Article 68 may be exempted for children aged between 13 (thirteen) years to 15 (fifteen) years from carrying out light work as long as it does not interfere with physical development and health. , mental and social". With this in mind, in this law there is an exception, namely that children aged 13-15 years are allowed to do work. In this case, this means that a child is allowed to work provided that their physical, mental and social health is not disturbed.

However, an entrepreneur who wants to employ children aged 13-15 years of course must meet the following requirements:

¹³ Wahyudi S., 2002, *Beberapa Permasalahan Pelaksanaan Perlindungan Anak dan Peran Forum Perlindungan Anak Bangsa*, Makalah dalam rangka Hari Anak Tahun 2002, Pusat Penelitian Wanita (Puslitwan) Unsoed Tanggal 31 Januari 2002, hal.1.

¹⁴ Asikin Zaenal, 1993, *Dasar-dasar Hukum Perburuhan*, Raja Grafindo, Jakarta, hal. 76.

1. Written permission from parents or guardians;
2. Employment agreement between the entrepreneur and parents or guardians;
3. Maximum working time is 3 (three) hours;
4. Done during the day and does not interfere with school time;
5. Occupational Health and Safety;
6. There is a clear working relationship;
7. Receive wages in accordance with applicable regulations; And
8. The 3 provisions as intended in paragraph 2 letters a, b, f, and g are excluded for children who work in their family business.

However, there are many children who go to work at school age and sometimes their working time is more than 3 hours as determined by this law, and there are also many children who work but their school time is disrupted so that the exceptions mentioned in this law are arbitrary. to carry out a review of the age exceptions for children who are allowed to work.

How can all these rights be fulfilled, whereas many children who work sometimes do not comply with the laws and regulations so that the children's rights are not fulfilled. Children's rights can be seen in the provisions stipulated in Law Number 23 of 2002 concerning child protection, namely as follows:

1. Every child has the right to live, grow and develop and participate appropriately in accordance with human dignity, as well as protection from violence and discrimination;
2. Every child has the right to a name as personal identity and citizenship status;
3. Every child has the right to worship according to his religion, think and express himself according to his level of intelligence and age under the guidance of his parents;
4. Every child has the right to know that their parents are being raised and cared for by their own parents;
5. Every child has the right to obtain health services and social security in accordance with their physical, mental, spiritual and social needs;
6. Every child has the right to receive education and teaching in the context of personal development and level of intelligence in accordance with his or her interests and talents, especially for children who have excellence also have the right to receive special education;
7. Every child has the right to express and have his opinion heard, receive, seek and provide information according to his level of intelligence and age for the sake of his development in accordance with the values of decency and propriety; And
8. Every child has the right to rest and utilize free time, socialize with children of the same age, play, have recreation according to their interests, talents and level of intelligence for the sake of self-development.

In the world of work, employment contracts play a crucial role in regulating the relationship between employees and employers. According to Article 52 letters b and d of Law Number 13 of 2003, an employment contract must meet several conditions to be legally valid, one of which is "the ability or skills to carry out legal actions." However, when it comes to children, this regulation becomes complex because children are considered legally incompetent to make employment contracts according to Article 1330 of the Civil Code. This raises significant issues regarding child protection in the context of employment.

Article 52 letter b of the Employment Law states that one of the conditions for a valid employment contract is "the ability or skills to carry out legal actions".¹⁵ Meanwhile, under civil law, children who have not reached the age of 18 are considered legally incompetent to make contracts.¹⁶ This condition makes employment contracts involving children invalid and

¹⁵ Law Number 13 of 2003 concerning Employment.

¹⁶ Civil Code (Kitab Undang-Undang Hukum Perdata).

potentially detrimental to these children, as they do not have the capacity to fully understand the implications of the agreements they make.

Article 52 letter d of the Employment Law also emphasizes that the agreed work in an employment contract must not conflict with public order, morality, and applicable laws and regulations.¹⁷ Therefore, employment contracts involving children must not only consider the legal competence of the child but also take into account public order and morality. Given that children are considered incapable of working according to these standards, employment contracts involving them can be declared null and void by law.

Law Number 23 of 2002 concerning Child Protection mandates the obligation to provide protection to children based on four main principles: non-discrimination, the best interests of the child, the right to survival and development, and respect for the child's opinions.¹⁸ These principles are crucial in the employment context, as they provide a legal foundation to protect children from exploitation and hazardous work.

1. Non-Discrimination

This principle emphasizes that children should not be exploited or used for personal or group gain. This protection aligns with the Convention on the Rights of the Child regarding child exploitation.

2. The Best Interests of the Child

The government and society must prioritize the best interests of the child in all actions affecting them.

3. The Right to Survival and Development

This right ensures that children are protected to grow and develop in a safe and healthy environment.

4. Respect for the Child's Opinions

Children have the right to participate and express their opinions in decision-making processes, especially when it concerns matters affecting their lives.

The Employment Law prohibits employers from employing children in work that endangers their health, safety, or morals. Violations of these provisions can result in imprisonment ranging from 2 to 5 years and/or fines ranging from 200 million to 500 million rupiahs.¹⁹

Legal protection for children in the context of employment contracts is crucial to prevent exploitation and ensure the best interests of the child. The Employment Law and the Child Protection Law provide a clear legal framework to protect children from invalid employment contracts and hazardous work. Therefore, implementing these principles should be a priority for the government and society to ensure that children can grow and develop in a safe and supportive environment.

CONCLUSION

There are 2 (two) types of sanctions for mining entrepreneurs who employ children in the Labor Law, namely administrative sanctions and criminal sanctions. Administrative sanctions given can take the form of warnings, written warnings, restrictions on business activities, freezing of business activities, cancellation of approvals, cancellation of registration, temporary suspension of part or all of the means of production, as well as revocation of permits and threats to entrepreneurs or companies, while criminal sanctions can be subject to imprisonment at most short 1 year and maximum 4 years and/or a fine of at least Rp. 100 million and a maximum of Rp. 400 million. Form of legal protection. Forms of legal protection for child labor are regulated in Articles 68 to 75 of the Manpower Law. Basically,

¹⁷ Law Number 13 of 2003 concerning Employment.

¹⁸ Law Number 23 of 2002 concerning Child Protection.

¹⁹ Law Number 13 of 2003 concerning Employment.

Article 68 of the Manpower Law prohibits employers from employing children, however there are exceptions for: (1) aged between 13-15 years to do light work as long as it does not interfere with the child's physical, mental and social development and health; (2) written permission from parents or guardians; (3) work agreement between the entrepreneur and parents or guardians; (4) maximum working time of 3 (three) hours; (5) carried out during the day and does not interfere with school time; (6) occupational safety and health; (7) the existence of a clear working relationship; and (8) receive wages in accordance with applicable regulations.

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