

THE LEGAL PROTECTION TOWARDS CHILD LABOUR IN AN ATTEMPT TO IMPROVE THEIR WORK SAFETY AND HEALTH

Wiwi Yuhaeni

The Faculty of Law Pasundan University, Indonesia

wiwiyu43@gmail.com

ABSTRACT

In Indonesia there now exist a lot of children who are forced work before their legal age allows so. With the number increasing, these children are mainly employed in the informal sector, which is not well-organized. It is estimated that there are some 2 to 4 million 14 – year-old children who are forced and moral condition. Child labour is almost always associated with poverty that widely prevails. Social welfare system devised by the government has not yet fully met the existing challenges. Protection towards children, which constitutes an important element of social welfare, is actually ensured by both the national and international labour law. The United Nations Organizations dealing with labour is the International Labour Organization, which-since its birth has aimed to solve child labour problems. The problems identified are as follows, how is the legal protection towards children who forced to work, what is the employer's responsibility towards child labour to ensure their work safety and health, and how is the supervision and control conducted by Office of Manpower and Transmigration towards child labour in the attempt to improve their safety and health. Legal protection provided by the government and employer towards children working at the Cibaduyut-based shoe-making industry is lacking, and children's parents or proxiest can not do anything to ensure that the children's rights are fulfilled. The provision of working hours and wages does not conform to the existing labour law. The provision of working hours and wages does not conform to the existing labour law. As far as work break is concerned, some employers grant it to the child labour, while some others don't. While the child labour are at work, the labour law states that day should be supervised by their parents or proxies, but in reality they are only watched by the employer. Supervision and control from the Office of Manpower and Transmigration towards child is apparently inadequate.

Keynote words : Protection, law, child labor, safety, and occupational health

A. INTRODUCTION

In Indonesia there are still many children who are forced to work prematurely unworthily in various forms of work, especially the informal sector that is not organized continues to increase rapidly. Maybe we've seen them begging, hawking newspapers on

the street or scavenging mounds of garbage. These are all forms of child labor that we can see in everyday life. Besides, there are still many children who do the work in disguise. The issue of child labor is a real problem that needs to get our attention. This situation is not only in Indonesia but also around the world.

In the face of this problem, the community does not mean to be silent but just how to find a way out because this problem will be bad for the nation and the country in the future. In Indonesia, according to today's estimates, 14 year-olds are forced to work around 2 to 4 million children. This will have adverse physical, intellectual, emotional, and moral consequences for child labor. The figure does not reveal how the future of someone who is not educated, the future of someone without hope and improvement. By employing children is actually a violation of the rights of children to obtain education, freedom and protection from extortion. The issue of child labor is a problem related to poverty and underdevelopment. Most children work because their families are poor. The social welfare system of the government is inadequate. Many children jump in the job market because there are no fees for school or school fees are too expensive. Lack of educational opportunities, coupled with the lack of legal protection and lack of effective enforcement of laws, caused the problem to become more severe.

Protection of children is an essential element of social justice, manifested not only within the framework of the national labor legislation system, but also internationally. The main body of the United Nations in charge of employment is the international labor organization or ILO since its inception has targeted the prevention of child labor issues. This is done by applying international recommendations and conventions governing minimum limits for work. The conventions that have been ratified by Indonesia include through law No.20 of 1999 on ILO Convention No.138 concerning minimum age to be allowed to work and Law No.1 of 2000 concerning ILO Convention No.182 concerning the prohibition and immediate action to eliminate the worst forms of child labor.

Doing while growing up will disrupt the process of growing itself. The 1989 United Nations Convention on the Rights of the Child specifies the rights of children such as the right to survival, the right to protection, the right to optimal growth and the right to participate. The implementation of development in the era of industrialization with the use of various technologies, the utilization of all possibilities and opportunities by the industrial community in entering the economic globalization as well as development in the economic field directed to the stabilization of the Pancasila economic system as a guideline for the development of a just and highly competitive national economy characterized by The growing diversity of industries throughout the territory of Indonesia. In the economic globalization system some argue that in order to win the competition of the market economy, then what can be successful are companies that are able to make efficiency in order to improve productivity and product quality for the needs of consumers. To be able to perform efficiency and provide the best service, the company must be good at selecting and utilizing the potential of each of the best and continue to conduct research for the development of industrial technology.

Child labor is part of human resources plays an important role in a production process. No matter how small the role played by child laborers, its existence and position must still receive attention and protection. Efforts to provide protection for child labor in an employment relationship are the implementation of the government should pay attention to the protection of work and to pay attention to the safety of the worker especially the child worker and also aim either directly or indirectly to protect the entrepreneur in order to be able to develop well because the health-guarded workers and guaranteed their safety in carrying out the work will encourage the maintenance of ability and dedication Cultivate his discipline in doing the work. Implementation of occupational safety and health at work (the company) is conducted jointly by the management or management of the company and all workers. In the execution of the

leadership or administrators can be assisted by the safety and health officers from the workplace / company concerned.

Many child laborers who work in the shoe industry sector such as Cibaduyut shoes industry that is located in the city of Bandung and Bandung Bandung regency West Java. According to the data, children who are forced to work in the Cibaduyut shoe industry sector are around 200 people. Working in industry requires dominant activities to manage raw materials, machinery, equipment and other processes undertaken in the workplace, producing a useful product for the community. The use of technology in addition to positive impacts not infrequently cause adverse effects, especially if not managed properly.

Industrial relations and workers' protection, especially in occupational safety and health (K3), is aimed at the independence of companies to implement the requirements of OSH independently through the improvement of the role of the Occupational Safety and Health Supervisory Committee (P2K3) to achieve zero accidents. In the implementation of K3 needs to be done a real step to follow the development of science and technology, among others through:

- a. Completion of regulations and technical standards.
- b. Guidance on the safety and health of the Ministry of Manpower and Transmigration, to employers and workers on new matters.

The occupational safety and health program as part of the employment program should help solve the employment problem, at least helping maintain existing business and health opportunities. In line with the need for the lives of children who are forced to work, they must have legal protection, necessitating the regulation of certain norms that can ensure the safety and health of the child laborers. This is due to the physical, mental, intelligence, and emotions that are different from the adult worker.

From the above issues, the author can put forward the problem identification as follows:

1. What is the legal protection of child laborers working in the shoe industry sector in improving occupational safety and health?
2. How is the employer's responsibility to child laborers working in the shoe industry sector in ensuring occupational safety and health?
3. How is the guidance and supervision carried out by the Office of Manpower and Transmigration of child laborers working in the shoe industry sector in improving occupational safety and health?

B. ANALYSIS

Legal Protection against Child Labor Working In the Shoe Industry Sector in Improving Occupational Safety and Health

As has been described earlier that the "child" should not work because the child is the successor to the ideals of the nation and the hope of the nation. Working with a child while growing up interferes with the child's own growth process. According to the 1989 United Nations Convention on the Rights of the Child, specify the rights of children such as: the right to survival, the right to protection, the right to optimal growth and the right to participate. But in reality there are still many children who are forced to work because of economic problems. They work for themselves, for their parents even for their brothers. According to estimates of children who are forced to work primarily at the age of 14 years, approximately 2 to 4 million children.

Children as workers in the production process have limited ability, unlike the case with adult workers. Therefore, in carrying out its work requires protection both from government and employers. Employment protection can be done well by increasing the recognition of human rights, physical and technical and social and economic protection

through the norms applicable in the work environment. Employment protection covers considerable aspects of protection of safety, health, maintenance of moral work and treatment in accordance with human dignity and religious morals, especially protection of child labor because physical and mental labor of child is different from adult worker. Speaking on occupational safety and health as referred to in Law No.1 Year 1970, it can be stated that work safety has a wide scope including work security which aims to guarantee the creation of working calm. The provision is one of the obligations of employers to ensure the safety of workers. In accordance with article 1602-w of the Civil Code which states: "The entrepreneur is obliged to organize and maintain rooms, tools or tools and provide guidance until workers are protected against harm to the soul, honor and possessions."

Thus job security in doing the work is the responsibility of the entrepreneur. The purpose of the holding of job security is preventive and repressive, in the sense of preventive entrepreneurs first provide or meet the equipment that can guarantee job security and repressive in case of accident the entrepreneur is obliged to overcome and compensate the workers suffered. The government's concern on child labor in addition to providing safety and health protection as well as protection of the work environment, workplace, the nature of work, working time and rest periods and the age limit of children who are forced to work. In doing a job between employers and workers must enter into an employment agreement. The employment agreement is governed by Article 1601 Civil Code, that: "A work agreement is an agreement whereby a worker relates himself to work on the other side of the employer for a certain period of time, receiving a wage."

Child laborers working in Cibaduyut shoes center, "no agreement with their parents / guardians", they (child laborers) come and work, there is also they just help his brother or his friends and eventually they continue to work. As stated earlier that the

child laborers working in Cibaduyut shoes industry center are not based on the employment agreement between the entrepreneur and his / her parents / guardian. This shows that between employers and child labor there is no "employment relationship", which means there is no rights and obligations between child laborers and employers, such as the obligation of child laborers to work under the leadership of the employer or no relationship is limited, The time of the employment relationship in accordance with the employment agreement or the time is terminated not promised for a certain time or indeterminate.

In Cibaduyut shoe industry center, child laborers do not have written permission from their parents or guardians. This is contradictory to Article 69 Paragraph (2) sub a Law No.13 of 2003 concerning Manpower, which states that: "Employers who employ children in light work shall have written permission from their parents or guardians." They (workers) work there who get permission from their parents or guardians but not written, and some are not getting permission from anyone.

To do these jobs child laborers get wages from the company. Implementation of wages in shoe companies Cibaduyut, paid every once a week where for sol work between Rp.40.000,00 to Rp. 50.000,00 per week, for the kenek sol part between Rp. 30,000.00 up to Rp. 37,500.00 per week and for finishing between Rp.20.000,00 to Rp. 27.500,00 per week. Against child labor, the employer pays from the minimum wage for the work of sole Rp. 40.000,00 per week, job kenek sol Rp. 30.000,00 per week and finishing work Rp. 20.000,00 per week. If we look at the Ministry of Manpower and Transmigration Decree no. Kep-20 / Men / 2000 for Regional Minimum Wage City / Regency Bandung Rp. 270.000,00 per month means Cibaduyut shoe companies do not perform wages as they should. Especially for child workers who are paid a minimum of the wages. Whereas child labor has the same rights as adults. In Cibaduyut shoe companies in the workplace on average, it can be said enough ventilation. Workers, especially child laborers work in

open space but the risk is that they will get sunlight in the afternoon while those who work in the room certainly do not get the sun sting. If it is related to Article 3 paragraph (1) of Law No.1 of 1970 sub j and k, it is said that one of the conditions of occupational security is that of: "Conducting good temperature and humid air and holding sufficient air". The circumstances of ventilation in these companies are in accordance with the mandate contained in the articles and paragraphs of the law. For child labor, performed on land in a well-covered or open space. Child laborers in doing their work together in a closed or open space with an adult worker so are not separated. Under the provisions of the law between child labor and adult workers should be separated. This provision is contained in Article 72 and Article 73 of Law no. 13 of 2003.

Child laborers and adult workers work together in a closed / open space, so far there is no problem meaning there is no case leading to a disgraceful act such as adult workers committing acts of sexuality to children. Similarly, employers do not employ children in activities other than those associated with the shoe-making process. This activity is in accordance with what is mentioned in Article 74 paragraph (1) of Law No.13 of 2003, states that anyone is prohibited from employing and involving children in the worst jobs, covering all the work: "Forms of slavery and the like, utilize, Provide or offer for prostitution, the production of pornography, pornographic or gambling performances, involving liquor, narcotics, psychotropic substances, and other addictive substances, endangering the child's health, safety and morals ".

According to Article 68 of Law No.13 of 2003, "Employers are prohibited from employing children", but according to Article 69 paragraph (1) it states that: "Prohibition of child labor except for children between 13-15 years for light work as long as it does not interfere with the development And physical, mental and social health ". In Cibaduyut shoes industry center, the nature of the work done by child laborers is not physically and mentally harmful. The nature of this work is in accordance with Article 69 Paragraph (1)

of Law No.13 of 2003, where child labor is 13-15 years old, only if the center of the shoe is said to be "child labor" not only aged 13-15 years but also aged 12, 16, 17 and 18 years and do the nature of the work.

Regarding the type of work for child labor, it is categorized as not disturbing physical, mental and even social. The jobs they do such as sol, kenek sol and finishing. Although the child laborers in doing their work does not interfere physically and mentally but when pengesolan is to attach / use of basic materials with the topics using glue / adhesive from chemicals, of course will disrupt health. According to the Decree of the Minister of Manpower and Transmigration No. KEP-235 / MEN / 2003, regulating "Types of Occupations that Endanger the Health and Safety of Children", work performed on hazardous working environments includes: "Jobs that contain physical and occupational hazards containing chemicals".

With respect to the worker (child labor) both entering and employing the worker, the employer shows and explains the conditions, hazards, all security and protective equipment as well as guidance in the prevention of occupational injury, fire prevention although not all of them in the company are provided firefighter This is to improve business, safety and health. This exercise is one of the obligations of the entrepreneur, as set forth in Article 9 paragraph (1) and (3) of Law No.1 Year 1970 concerning Occupational Safety. In some firms there has been a fire with a small scale, meaning that fire events can be overcome by spilling water with a few buckets or sacks burlap water then thrown into the overflow of fire. So it's no wonder the firefighters have only a few companies. According to Article 3 paragraph (1) sub b of Law No.1 of 1970, that: "Employers must do security work such as preventing, reducing and extinguishing fires". Besides the problem of fire is also a problem tool work. In Cibaduyut shoe companies the average storage of work tools is poorly maintained. Based on research in the field, tools such as nails, glue / adhesive as well as materials such as leather for making shoes or

sandals are stored irregularly, should be separately in order to facilitate the process of working. Certainly this situation is contradictory to Article 3 paragraph (1) sub m of Law No.1 Year 1970, that: "Employers must hold harmony between workers, work tools, environment, ways and work processes.

Similarly with the use of protective equipment / personal protective equipment, the child laborers at the time of work there are wearing masks / respiratory protective devices and some are not using, so there are also wearing gloves / hand protective equipment is also not wearing it. Personal protective equipment is not perfectly able to protect the body, but it can reduce the severity that may occur. This control * 8 should remain integrated and as a complement to technical controls and administrative control. This protective device, as well as set forth in Article 13 and Article 14, paragraph c of Law No.1 of 1970, states that: "The obligation to enter the premises, for any person shall comply with all safety instructions and use the required personal protective equipment and management obligations To provide for free, all personal protective equipment required by the workforce is under his command and to provide for any other person entering the workplace ".

Responsibility of Entrepreneurs on Child Labor Working in the Shoe Industry Sector in Ensuring Occupational Safety and Health

Against sick child labor, the entrepreneur is responsible if it means that the sick worker is asked to seek medical treatment or go to the nearest doctor or Puskesmas. Not as mandated by labor legislation checks health periodically and employers appoint a special doctor. The provision is set forth in Article 8 paragraph (2) of Law No.1 Year 1970, that: "The Board is obliged to inspect all the workers under its leadership, periodically to the Doctor who is appointed by the employer and justified by the Director"

In Cibaduyut shoe companies, for workers including child workers who have occupational accidents or work-related illness, employers are not followers of the Social Security Program of Labor or Jamsostek as stipulated in Act No.3 of 1992, because according to Government Regulation no. 14 In 1993, an employer employing at least 10 (ten) employees or paying wages to all his workforce is at least Rp. 1,000,000.00 (one million rupiah). While Cibaduyut shoe companies have not been able to provide that much wages even though the workers are more than (ten) people.

Occurrence of accidents in the workplace is largely due to human factors and a small part due to technical factors. To ensure workplace safety and health, as well as sources of production and production processes, it is necessary to apply the Occupational Safety and Health Management System undertaken by employers / firms and all workers as a whole. The Occupational Safety and Health Management System is part of the Occupational Safety and Health Management Standard set out in Regulation of the Minister of Manpower no. Per. 05 / MEN / 1996.

According to Article 3 Paragraph (1) of Regulation of the Minister of Manpower No.Per.05 / MEN / 1996, it is explained that: "Any company employing 100 or more workers and or potentially harms the characteristics". For the implementation of OHS Management System is performed by the audit body appointed by the Minister of Manpower and its implementation in cooperation with the Regional Office of the Ministry of Manpower and Transmigration.

Cibaduyut shoe companies to implement the OHS Management System have not been able to because they are small and medium entrepreneurs and workers-less than 100 workers and who must implement the Occupational Safety and Health Management System that is big companies. Children work time in the daytime and do not interfere with school and some work after school, time until late afternoon, they work until 4 or 5 hours. This implementation is not in accordance with Article 69 paragraph (2) of Law

Number 13 Year 2003, in which the paragraph states that: "Employers who employ children in light work must meet the requirements of such, maximum working time of 3 hours a day and carried out during the day don't disturb school ".

Against such child laborers who provide rest and also who do not provide rest. In fact, "rest" is needed once the workers, especially against workers who are easily tired. The productivity of work * 9 in the company is influenced by various factors either directly or indirectly. The level of physical noise of workers affect the psychological condition. Work-related fatigue decreases or productivity lows. Working atmosphere that is not supported by the conditions of a healthy work environment, comfortable, safe and safe will trigger fatigue in the worker.

Rest periods given to workers by employers as stated in Article 79 paragraph (2) sub a Law No.13 of 2003, that: "Rest of work hours, at least 1/2 hours after working for 4 hours continuously And the break time does not include working hours ". This provision indicates that employers are required to provide rest at least 1/2 hour after working for 4 hours, and to child labor under this provision has been doing work for 3 hours. Based on the analysis in the field, working children who work in the company there are getting rest and some are not getting rest, the average rest time of 1/2 hour. The entrepreneurs are against the child laborers who are feeding and some are not feeding. Entrepreneurs who feed or not in legislation there is no regulation may be just the wisdom of a humanitarian company.

Against child laborers engaged in work there should be direct supervision of their parents or guardians. This is contradictory to Article 71 Paragraph (2) sub (a) of Law No.13 of 2003, that "Employers who employ children are obliged to present their parents or guardians for supervision". The reality in the field of "supervision" is carried out by the entrepreneur or his management.

Guidance and Supervision conducted by the Office of Manpower and Transmigration of Child Labor Working in the Shoe Industry Sector In Improving Occupational Safety and Health.

Guidance and supervision made by the Office of Manpower and Transmigration of Bandung City / District in these companies, before conducting coaching, held a first data about the number of child laborers, after which they are waiting for the budget usually in April, just plunge into the field.

Cibaduyut shoe companies are more dominant in the area of Bandung City therefore supervisory officers from the Office of Manpower and Transmigration of Bandung is more active than the Department of Labor and Trasmigrasi Bandung regency.

Handling, guidance and supervision by the Office of Manpower and Transmigration of Bandung to child labor in shoe companies Cibaduyut for the District of Bojongloa Kidul the largest in the villages.

Guidance and supervision on safety work in collaboration with Hiperkes and Safety Bandung. *Hiperkes* as a Technical Implementation Unit and is a working area of West Java in accordance with Minister of Manpower and Transmigration Decree No.137 / MEN / 2001 on Organization and Working Procedures Technical Implementation Unit within the Ministry of Manpower and Transmigration.

Based on the analysis in the field, the guidance and supervision of the Office of Manpower and Transmigration of Bandung / City against child labor in shoe companies Cibaduyut still less, as for the findings in the field as follows:

- A. Based on interviews Manpower and Transmigration Office of Bandung held guidance and supervision to the field 3 months but the reality is done only 6 months or once a year.
- B. Due to the ILO's Cleanliness and Sanitation Order Project, the Municipal Manpower and Transmigration Office conducted guidance and supervision once a month, during 2002-2004.

C. At the time of recording / registering of child laborers working in the company, they only look at data from the ILO (K3 Committee), it shows that their work is perfunctory that the ILO (K3 Committee) should get data from the Manpower and Transmigration Office of Bandung.

One of the tasks of the government in this case the Office of Manpower and Transmigration City / Regency Bandung not only supervise but also enforce the implementation of legislation in the field of employment. As stated in article 1 paragraph (32) of Law no. 13 of 2003, that: "Labor inspection is the activity of supervising and enforcing the implementation of the laws and regulations in the field of manpower".

Such supervision is one of the preventive policies to detect as early as possible the occurrence of violations in the field of occupational safety. One of the elements that must play a role in improving welfare, occupational safety and health is the element of labor inspection.

C. Conclusion

Legal protection by employers and the government in improving the safety and health of child laborers working in the Cibaduyut shoe industry center is lacking and the efforts of child laborers represented by their parents / guardians to undertake a lack of rights, the right as a worker does not exist.

Responsibility of employers in terms of employment, wage and rest periods of child labor is still contrary to the prevailing laws and regulations. According to legislation at the time of working children must be supervised by their parents / guardians, the reality in the field of direct supervision carried out by employers or by administrators.

Guidance and supervision made by the Office of Manpower and Transmigration City and Bandung regency of working children working in the center of Cibaduyut shoes industry is still lacking.

Suggestion

1. The Office of Manpower and Transmigration of the City / Regency of Bandung shall jointly deal with the child laborers working in the Cibaduyut shoe companies. Both the Manpower and Transmigration Office need to be more proactive, not to pursue the OH3 Program OHS activities (K3 Committee) and need to provide knowledge on making "employment agreements" against entrepreneurs. Employers need to be selective for child labor and need to pay more attention to work processes such as work environment, safety equipment / personal protective equipment, workspace, how to use personal protective equipment and tools or tools should be neat to facilitate the process of work activities.
2. Working hours and rest periods on child labor should be paid more attention by the company as well as the Office of Manpower and Transmigration of Bandung City / Regency should hold counseling about work time and rest period in accordance with applicable laws and regulations. Employers should pay close attention to the "wages" of both child labor and adult and should be attempted in wage payments approaching the Minimum Wage Regional Regulations of the City / County.
3. The guidance and supervision of the Office of Manpower and Transmigration of city and district on child labor needs to be further improved.

D.REFERENCES

1. Hadi Setia Tunggal, Konvensi Hak-hak anak (Convention on the right of child), Harvarindo, Jakarta, 2000.
2. Rony Hanitijo Soemitro, Metode Penelitian Hukum, Ghalia, Indonesia, Jakarta, 1985.
3. Serjono Soekanto, Pengantar Penelitian Hukum, Universitas Indonesia (UI-Press), Jakarta, 1986.
4. Sri Warjiyati, Hukum Ketenagakerjaan Keselamatan Kerja dan Perlindungan Upah Pekerja Wanita, Tarsito, Bandung, 1998.
5. Sugeng Budiono, A.M., Jusuf, R.M.S., dan Adriana Pusparini, Hiperkes dan Kesehatan Kerja; Bunga Rampai (Hygiene Perusahaan, Kesehatan Kerja dan Keselamatan kerja), Badan Penerbit, Universitas Diponegoro, Semarang, 2003.
6. Zaenal Asikin, dkk, Dasar-dasar Hukum Perburuhan, PT. Raja Grafindo Persada, 1993.