

Policy Formulation in Legal Protection of Working Children Outside a Working Relationship

Ujang Charda S
ujangch@unsub.ac.id

Faculty of Law Subang University, Indonesia.

Article Info

Received: 2020-10-14

Revised: 2021-03-21

Accepted: 2021-12-21

Keywords:

Legal protection;

Traditional Knowledge;

Copyrights

Abstract

Legal protection for child labor is still different for children who work for an employer and for children who work for themselves. This is not in line with the principles of legal protection, the goals of labor law, the nature of labor law, and the legal scope of employment. whose goals are not only to protect the interests of workers before, during, and after a period of work, but also to make sure that everyone has a job and can make a decent living for all of humanity without any discrimination in the way work relations are set up and run. The research method is descriptive-analytical with a normative-legal approach through library research and field research, with techniques for gathering data through library research. Then the data were analyzed through a qualitative normative method without using numbers and mathematical formulas. Based on the results of the study, it shows that the regulation of children who work outside of an employment relationship has implications for the responsibility of the state in providing legal protection through planning the formulation of government policies that are not only focused on children who work in an employment relationship, but also on children who work outside of an employment relationship.

I. Introduction

Legal protection for workers is not only directed to adult workers, but also to child labor from other forms of exploitation, violence, discrimination, infringement of children's rights which causes their lives to be neglected and increasingly miserable with the number continuing to increase, meanwhile In general, children's quality of life is decreasing.¹ One form of child exploitation is economy, for example become child labor, street children, such as begging or selling children, child prostitution,

¹ Hamid Abidin, *Menggalang Dukungan Melindungi Anak*, Lembaga Perlindungan Anak Jawa Barat, Bandung, 2004, hlm. 2.

involvement in drug trafficking, and various forms of violence that create suffering for children.²

The phenomenon of child labor that occurs at this time, spread over rural areas, mostly doing work in agriculture, plantation, fishery, mining and economic activities in the family environment.³ Meanwhile, in urban areas it can be found in companies, households (as housemaids or home industry workers or family industries) or on the streets as newspaper sellers, shoe shiners or scavengers.⁴ Some of the work carried out by these children can be categorized as the worst forms of work carried out outside the employment relationship, such as slavery or the like, prostitution or pornography, trafficking in illegal drugs and other addictive substances, as well as work which is the nature or condition of the place of work. which can endanger the health, safety, social, mental, or moral of children which can threaten the development of children's thinking.⁵

So far, child laborers who don't work for an employer have been able to do so because there isn't a Government Regulation (*lex specialis*) that protects child laborers who don't work for an employer. This is a follow-up to Article 75 of Law Number 13 of 2003 on Manpower, and it means that the labor law isn't able to deal with the problem of child laborers who don't work for an employer. In the practice of making laws so far, there has been a trend of making labor law policies that have problems and/or weaknesses. In Law Number 13 of 2003, most of the rules about how to protect children who work are still based on the fact that arrangements are different for children who work for an employer and those who work for themselves. In terms of labor law, it goes against the principle of protection to have different arrangements for people who work inside and outside of an employment relationship.⁶ Besides that too no in accordance with the main objectives of labor law,⁷ the nature of labor law,⁸ nature of employment law,⁹ as well as the scope of employment law which is grammatically formulated as all matters relating to labor before, during, and after the work period.¹⁰ The

² Ujang Charda S., "Perlindungan Hukum Terhadap Tenaga Kerja Anak dari Bentuk-bentuk Pekerjaan Terburuk Dihubungkan dengan Prinsip Tanggung Jawab Negara Hukum", *Disertasi*, Pascasarjana Unisba, Bandung, 2015, hlm. 2.

³ Indrasari Tjandraningsih dan Popon Anarita, *Pekerja Anak di Perkebunan Tembakau*, Yayasan Akatiga, Bandung, 2002, hlm. 4.

⁴ Penjelasan Pasal 75 Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan.

⁵ Lampiran Keputusan Presiden Republik Indonesia Nomor 59 Tahun 2002 tentang Rencana Aksi Nasional Penghapusan Bentuk-bentuk Pekerjaan Terburuk untuk Anak.

⁶ Penjelasan Pasal 3 Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan.

⁷ Pasal 4 Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan.

⁸ Theo Huijbers, *Filsafat Hukum*, Kanisius, Yogyakarta, 1995, hlm. 77.

⁹ Ujang Charda S., "Reorientasi Reformasi Model Hukum Ketenagakerjaan dalam Kebijakan Pemerintah", *Jurnal Ilmu Hukum Syiar Hukum*, Vol. XIV No. 1, Fakultas Hukum UNISBA, Bandung, Maret 2012, hlm. 15.

¹⁰ Ujang Charda S., *Mengenal Hukum Ketenagakerjaan Indonesia (Sejarah, Teori & Praktiknya di Indonesia)*, FH UNSUB, Subang, 2014, hlm. 4.

discussion of Labor Law is not only related to the work relationship, but also to people who work outside the employment relationship.¹¹

Research on the legal protection of child labor who works outside of an employment relationship in relation to Article 75 of Law Number 13 of 2003 has not been widely conducted, and if any, it still focuses on research on child labor (working in an employment relationship) with the formulation of different problems, so that the originality of this research can be accounted for. The results of this research are to participate in contributing ideas to the government in designing the concept or draft of a government regulation concerning the handling of child laborers who work outside of an employment relationship.

2. Research Method

This study uses a normative juridical approach, which means that it takes an inventory, reviews, and analyzes the law, and sees it as a set of rules or positive norms in the legal system that control how people live. Specifications This study is a descriptive-analytical study, which means that it will describe the flow of scientific communication and analyze problems that already exist. The results will be presented in a descriptive way. The type of data used is called "secondary data." It includes research materials from libraries, as well as primary, secondary, and tertiary legal materials. Then, the data were collected through a literature review of library books about the problems that were being looked at. The data were then analyzed in a normative-qualitative way.

3. Results and Discussion

1. A Model Approach to Legal Protection for Children Working Outside of an Employment Relationship

The establishment of laws and regulations as a form of state responsibility for children who are employed as labor, is more oriented to the benefit and best interests of children in a series of activities that must be carried out continuously starting from design, formation to implementation in order to protect children's rights. by determining the minimum working age, setting working conditions, and working conditions in the implementation of work protection.

The implementation of the protection of children who are employed as labor is a serious problem, because it is related to not being old enough to work, so that it

¹¹ Koko Kosidin, "Aspek-aspek Hukum dalam Pemutusan Hubungan Kerja di Lingkungan Perusahaan Perseroan (Persero)", *Disertasi*, Program Pascasarjana Universitas Padjadjaran, Bandung, 1996, hlm. 305-306.

can interfere with their future survival as the nation's next generation and according to ILO Convention No. 138 and ILO Convention No. 182, they are included in the group of children who need special protection (children in need of special protection).

The obligation to protect children from harm must be established from the outset, and it must be founded on nondiscrimination, the best interests of the child, the right to life, survival, and development, and respect for children's opinion. This is true even for child laborers who are not employed by a company.¹² In light of these ideas, the best interests of children must take precedence over all other considerations; nevertheless, this should not be interpreted as granting children unrestricted latitude in forming their own thoughts and values. Despite the fact that children may be oblivious to the injustice they are being subjected to, it is the responsibility of adults to protect them from being exploited.¹³

In order for child protection to be carried out properly, it is necessary to adhere to a principle which states that the best interests of children must be viewed as a high priority in every decision concerning children. The principle of the best interests of children is used, because in many cases children are victims, both as economic victims, victims of greed, including victims of ignorance, meanwhile there is no power that can stop children's growth and development.¹⁴ Thus, in this protection, children must be placed as victims economic, political, social, as well as victims of legal policies who need special protection.

In laying down a policy of legal protection for children that is used as a guideline or standard for implementing its protection is an international legal instrument with a multidimensional and multisectoral approach. Thus, children's rights as stated in the Convention on the Rights of the Child are not only the rights of children in difficult or oppressed conditions, so they need to be protected, but also enter the wider area of child welfare, socially, economically, culturally, even political. Therefore, the most urgent issue to be carried out is the intervention measures that are carried out specifically for the category of children who are in difficult conditions, such as child labor who works outside the employment relationship in the worst forms of labour.

¹² Muhamad Joni & Zulchaina Z. Tanamas, *Aspek Hukum Perlindungan Anak dalam Perspektif Konvensi Hak Anak*, Citra Aditya Bakti, Bandung, 1999, hlm. 105.

¹³ *Ibid.*

¹⁴ *Ibid.*, hlm. 106.

Children who work outside of an employment relationship are one of the workforce that generally have limitations, including :¹⁵

1. Child laborers are children who work, either as wage laborers or as family workers.
2. Child labor is children who work in the formal and informal sectors with various statuses of employment relationships.

These limitations give rise to various opinions regarding child labor and at least conceptually there are three approaches in viewing the problem of child labor that can be used as an effort to overcome and at the same time empower child labor, namely:¹⁶

1. The party with the principle that child labor should be abolished (abolitionist) with the assumption that a child should not work, because at a relatively young age he must go to school and play.
2. Parties who argue that child labor must be protected (protectionist) with the assumption that children as individuals have economic rights to work, therefore their rights as workers must be guaranteed through labor regulations as applicable to adults.
3. Those who argue that child labor must be empowered with the assumption that it departs from the recognition of children's rights and supports efforts to strengthen child labor so that they understand and are able to fight for their rights.

The three approaches are motivated by different assumptions, such as the abolitionist approach which appears based on the assumption that a child should not work because he has to go to school and play, while the second view appears based on the fact that a child as an individual has the right to work. Therefore, his rights as labor must be guaranteed through labor regulations as applies to adult workforce, so as to avoid acts of abuse and exploitation. Meanwhile, the latter approach also departs from recognizing children's rights and supporting efforts to strengthen child labor so that they understand and fight for their rights.

The most widely believed and difficult approach is the approach to eliminating child labor by prohibiting children from working. Many countries and international institutions adopt this approach, the ILO for example issued a

¹⁵ Indrasari Tjandraningsih & Popon Anarita, *Pekerja ... Op. Cit.*, hlm. 2.

¹⁶ Indrasari Tjandraningsih, *Pemberdayaan Pekerja Anak : Studi Mengenai Pendampingan Pekerja Anak*, Yayasan Akatiga, Bandung, 1995, hlm. 7.

policy aimed at eliminating child labor by issuing ILO Convention No. 182 concerning the Elimination and Immediate Action for the Worst Forms of Child Labour,¹⁷ but according to experts it is not realistic, because most of the child labor arises due to poverty. This approach will only have an impact in the form of wider poverty as well as denying the economic rights of children.

Two approaches that are very likely to be applied in Indonesia are the protectionist approach and the empowerment approach, because it seems very realistic from the point of view of child labor, these approaches when combined will offer protection and provide room for recognition of the rights of a child. children, both as workers and as children. The combination of the two approaches in another perspective is to humanize child labor by creatively combining child labor with providing education, health and welfare services.¹⁸

The protectionist approach appears based on the view that children as individuals have the right to work as workers which must be guaranteed through labor regulations as applicable to adult workers, so as to avoid acts of abuse and exploitation. In the author's view, this second approach does not prohibit children from working, because work is part of the most basic human rights of children.

However, the legislation should still be able to ensure the implementation of children's fundamental rights to be able to work and earn a living wage. The power of parents, extended family, and communities (much less the state) is no longer a determining factor in their children's success in life; rather, all of these groups—along with the state—now have a responsibility to ensure that every child has the opportunity to find gainful employment and support themselves. No laws are permitted under this theory that use children as pawns in the pursuit of adult economic, social, political, cultural, and legal interests, as seen from the children's own parents, their own families, their communities, and their own countries.¹⁹

Meanwhile, the empowerment approach also departs from the recognition of children's rights and supports efforts to strengthen child labor so that they understand and are able to fight for their rights. In the author's view, this

¹⁷ Konvensi ILO Nomor 182 diratifikasi oleh Undang-Undang Nomor 1 Tahun 2000.

¹⁸ Agusmidah, "Tenaga Kerja Indonesia, Perdagangan Manusia (*Human Trafficking*) dan Upaya Penanggulangannya (Sudut Pandang Hukum Ketenagakerjaan)", Makalah disampaikan dalam acara *Dialog Interaktif tentang Tekad Memberantas Perdagangan Perempuan dan Anak dengan Memberi Advokasi Penegakan Hukum Melalui UU No. 21 Tahun 2007*, diselenggarakan oleh IKA FH USU, Medan, 30 Agustus 2007, hlm. 11.

¹⁹ Idrus Affandi, *Pendidikan Anak Berkonflik Hukum (Model Konvergensi Antara Fungsionalis dan Religious)*, Alfabeta, Bandung, 2007, hlm. 19.

protection approach and empowerment approach should be the basis for Indonesia, especially in line with the spirit and essence of regional autonomy.

In addition to the abolitionist approach, protection, and empowerment in providing legal protection for child labor, it must be seen from the supply side, that poverty is the main cause of driving children to work for the survival of themselves and their families which can come from the will of themselves and their parents. Due to the inability of parents to provide basic needs to children, they are forced to work, because there is no choice to meet the needs of themselves and their families, so it is found that employing children as labor is one way to improve family income.

In poor households, allowing children to enter the labor market is a strategy to minimize the interruption of the flow of household income and reduce the impact of family members losing their jobs. In the poor category, households usually do not have assets that can be sold and do not have a network to borrow money, and losing their job is a threat to the survival of the family. Therefore, it becomes clear why child labor is more common in poor families.²⁰

Then viewed from the demand side, that by employing children is considered a second breadwinner and willing to be paid cheaply, so that the entrepreneur as the owner of the company can multiply his profits. From the demand side, the involvement of working children cannot be separated from the influence of the economic principle, that a company will have the motto of issuing the smallest capital but generating the maximum profit.²¹ One aspect that needs to be considered is that employers will try to get cheap labor by employing children, because child labor is seen as cheaper and will not do things in the sense that it is easier to control.²²

Thus, the entrepreneur places more emphasis on child labor as an economic factor which in turn is treated the same as adult workers, but with a much lower wage. On the other hand, entrepreneurs who employ children do not see the aspect of productivity, but tend to emphasize the aspect of economical output (low wages, compliance and less demanding).²³ From this, it can be seen that the role of entrepreneurs as mirror employers for crimes against humanity is

²⁰ Nunung Nurwati, "Pengaruh Kondisi Sosial dan Ekonomi Keluarga Terhadap Motivasi Pekerja Anak dalam Membantu Keluarga di Kabupaten Cirebon, Jawa Barat", *Jurnal Kependudukan Padjadjaran*, Vol. 10, No. 2, FISIP Unpad, Bandung, Juli 2008, hlm. 114.

²¹ *Ibid.*

²² Agusmidah, "Tenaga Kerja Indonesia ...", *Op. Cit.*, hlm. 12.

²³ *Ibid.*

incomparable, 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.²⁴

The role of the private business world in its growth gives more roles to legal entities/corporations ²⁵as legal subjects, especially those that develop with the existence of crimes involving corporations as legal subjects of criminal acts due to the influence of the rapid development of the national business world. ²⁶ Because corporations in the modern world have an important role in economic life, namely as employers, producers, price makers, users of divisions, and others.²⁷

2. Policy Formulation in the Regulation of Children Working Outside the Employment Relationship

The welfare state plays an increasingly important role in ensuring the provision of a minimum standard of social services for its residents by providing these services on a universal, comprehensive, responsive, and corporatist basis. After proof of market failure in capitalist countries and state failure in socialist countries became available, this concept was seen as a form of state participation in improving people's wellbeing.²⁸

Issues in the welfare state's employment system stem from the dynamic between employees and their government. The work relationship involves more than just the two parties directly involved. It is now a problem between the two parties and the state, which is called industrial relations.²⁹ which is influenced by the situation and condition of the state, both from the economic, social, political, defense and security aspects, and even culture.

The entry of the state in the regulation of employment relations, means that it is not merely a civil relationship but has been intervened with public law, namely state administrative law and criminal law. This is due to the many affairs in the implementation of working relations related to the public interest and government interference in private affairs.³⁰ This, according to Philipus M.

²⁴ *Ibid.*

²⁵ Muladi & Dwidja Priyatno, *Pertanggungjawaban Korporasi dalam Hukum Pidana*, STHB, Bandung, 1991, hlm. 21.

²⁶ *Ibid.*, hlm. 4.

²⁷ *Ibid.*, hlm. 8.

²⁸ *Ibid.*

²⁹ Pasal 1 angka 16 Undang-Undang Nomor 13 Tahun 2003.

³⁰ Toto Tohir Suriaatmadja, "Aspek Perlindungan Hukum dalam Hukum Ketenagakerjaan", *Makalah Seminar Nasional yang Diselenggarakan Program Doktor Ilmu Hukum Pascasarjana UNISBA*, Savoy Homann Bidakara Hotel, Bandung, 23 November 2013, hlm. 2.

Hadjon, is that employment law is a functional discipline, because it has a mixed character, namely public law and private law, ³¹ or according to Aloysius Uwiyono, being at a crossroads is needed as an approach capable of creating accommodative labor law.

The change in employment law from being private to public has the consequence that the employment relationship in the field of labor law is no longer merely a relationship between individuals, but has involved parties outside the workforce and employers, namely the state. ³² State intervention in the field of labor law in the field of regulation is marked by the making of laws and regulations that have brought fundamental changes, namely making the nature of labor law double (private and public).³³ Thus, in essence all regulations in the field of manpower are to provide protection to the workforce as a weak party, against the employer/employer.³⁴

The government as a related party in the employment relationship is expected to play a neutral role in order to provide protection to workers and at the same time maintain a sustainable production process. According to Aloysius Uwiyono, that the functions of the government in the employment relationship include the following:³⁵

1. Develop/make regulations/policies.
2. Supervise the implementation of regulations
3. Give service.
4. Organizing courts and taking action against violations of laws and regulations.
5. Industrial relations development.

Thus, employment law has prominent public law characteristics, causing labor law to contain provisions that are coercive, ³⁶ and only with government intervention can labor laws be enforced considering that the position of the

³¹ Philipus M. Hadjon & Tutiek Sri Djatmiati, *Argumentasi Hukum*, UGM Press, Yogyakarta, 2005, hlm. 41.

³² Agusmidah, *Hukum Op. Cit.*, hlm. 10-11.

³³ *Ibid.*

³⁴ Aloysius Uwiyono et.al., *Asas-asas Hukum Perburuhan*, RajaGrafindo Persada bekerjasama dengan FH-UI, Jakarta, 2014, hlm. 80.

³⁵ *Ibid.*, hlm. 70.

³⁶ Hari Supriyanto, *Perubahan Hukum Privat ke Hukum Publik : Studi Hukum Perburuhan di Indonesia*, Universitas Atmajaya, Yogyakarta, 2004, Hlm. 73.

workforce has a weak bargaining power. The factors that cause changes in the nature of labor law in Indonesia from private law to public law are as follows:³⁷

1. Restrictions on individual freedom.
2. Changes in the government's view, that the employment field is part of the general public as a whole.
3. Changes in law as a result of changes in human thinking.
4. The view that a legal relationship is a relative unity.

The form of state intervention in the employment field which is marked by the establishment of Law Number 13 of 2003 is the answer to preventive legal protection. This function is outlined in the form of existing regulations which are basically a benchmark for every action that will be taken by the community, covering all aspects of human action. This preventive nature according to Law No. 13 of 2003, the state in this case the government has the task of manpower planning, expanding job opportunities, coaching, and supervising.

In addition to preventive protection, the government is repressive in legal protection of workers must act as a recovery or overcoming the situation as a result of previous actions. Government intervention in the field of employment regarding wages is getting stronger over time, resulting in changes in the nature of work agreements between workers and employers. The legal relationship between the two parties, which was originally a civil relationship, then shifted to a public relationship.

Law Number 13 of 2003 concerning Manpower, in addition to making regulations on restrictions and prohibitions, also makes provisions on countermeasures that are specifically (*lex specialis*) aimed at children who work outside the employment relationship as formulated in Article 75, that the government is obliged to make efforts to overcome children who work outside the employment relationship are further regulated by a Government Regulation.

The meaning of the provisions of Article 75 of Law Number 13 of 2003 concerning Manpower is to prohibit children from working in sektor informal as stated in the explanation, that the handling of children who work outside the employment relationship is intended to eliminate or reduce children who work outside the employment relationship. However, this meaning is not followed up

³⁷ *Ibid.*

immediately, planned, integrated, and coordinated with the relevant agencies with the issuance of Government Regulations.

In the context of legal politics, that the formation of a Government Regulation as mandated by Article 75 of Law Number 13 of 2003 concerning Manpower is the use of law as a means to manipulate society through government policy scenarios (in this case the executive) in order to achieve state goals or community aspirations. Indonesia. Thus, the role of law is generally divided into two, namely the static role as a tool for maintaining public order and security, and the dynamic role as law which acts as a tool for social engineering.³⁸

Given the foregoing, it is clear that action must be taken regarding children who work outside of an employment relationship, specifically the creation of a Government Regulation to regulate children who work outside of an employment relationship and are subsequently separated from their work as required by Article 75 of Law Number 13 of 2003 concerning Manpower. minors engaged in employment relationships subject to Articles 68–74. These provisions, epistemologically, are not in accordance with the scope of labor law concerning all matters relating to labor before, during, and after the work period.³⁹ This is constitutionally contrary to Article 27 paragraph (1) of the 1945 Constitution, which places citizens equally before the law. Therefore, employment law has a wider scope than labor law which only concerns work within an employment relationship.

Meanwhile, Law Number 13 of 2003 bears a big name, namely the "Manpower Act", meaning that the scope of its regulation is comprehensive, both within and outside the relationship, the regulation of which is not regulated separately and with different standards. In such a construction, there has been a dichotomy between children who work in an employment relationship and children who work outside of an employment relationship, so that theoretically it is contrary to the scope of the study in labor law, because it has discriminated against legal protection for children who are employed, even though both are also do the job.

without exception, and Article 28B paragraph (2) of the 1945 Constitution, that every child has the right to survival, growth, and development and the right to protection from violence and discrimination. Meanwhile, the tendency is for children who work outside of an employment relationship, the qualifications are the worst forms of work, with the forms of work as buskers, beggars, scavengers, housemaids and so on.

³⁸ *Ibid.*, hlm. 23-24.

³⁹ Pasal 1 angka 1 Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan.

No distinction should be made in terms of protection between children who work in an employment relationship and children who work outside of an employment relationship, as the core of protecting children is to prioritize what is in their best interests. However, the level of protection for young laborers who work outside of an employment connection is unregulated by Law Number 13 of 2003 regulating Manpower, leading to varying legal interpretations.

Therefore, as long as it is in the best interest of the child, the provisions of Articles 68 to 74 of Law Number 13 of 2003 concerning Manpower must also be addressed to children who work outside of an employment relationship. In addition, the regulation of child labor only who works in an employment relationship does not solve the problem as a whole, because it only solves in one sector. For this reason, the government must immediately issue a government regulation mandated by Article 75 of Law Number 13 of 2003 concerning Manpower which can function as a *lex specialis* in further regulation of children who work outside of an employment relationship and at the same time as a technical guide for carrying out legal orders. -law.

Government regulations that are made as the character of legal products are focused on responsive legal characters seen from the manufacturing process, function, and in terms of interpretation. Even though it is centralized in the sense that state institutions, especially those with executive power, have more control over it, the process of making it participatory shows that it is open to as much community participation as possible through social groups and individuals. Taking into account how they work, government rules that are responsive are aspirational. This means that it has things in it that are generally in line with the hopes or wishes of the people it serves. This means that the legal product can be seen as a crystallization of the will of the community. However, from an interpretation point of view, government regulations with a responsive character don't give the government much room to make decisions. itself through different rules and limited options, and even then, it only applies to things that are really technical.

Due to the lack of a corresponding government regulation, Article 75 of Law No. 13 of 2003 on Manpower has not been put into effect. However, this provision is formally the key entry to minimize and, simultaneously, the entry point for the government to step elimination of children who work outside the employment relationship.

Forming government regulations as an implementation of Article 75 of Law Number 13 of 2003 concerning Manpower, the aspect of legal protection is pro children who work outside the employment relationship which must be

provided from the time of designing and forming the law until its implementation. Therefore, in its design and formation, the primary parties who will be affected by the resulting regulations must be intensely involved, so that there should not be a single word or punctuation mark that can weaken or eliminate the protection of the regulated object. In addition, the sincerity factor with the orientation of the common good will be a very fundamental element in producing a good and moral government regulation.

For this reason, the formation of such government regulations must provide a spiritual atmosphere in a direction that can encourage and fill all elements in the national legal system to work in accordance with the ideals of the nation, state goals, legal ideals, and legal rules that are packaged in the direction of legal politics. Indonesian national. Thus, the establishment of a Government Regulation concerning the Legal Protection of Children Working Outside an Employment Relationship is one of the basic policies that determine the direction, form, and content of the law to be formed⁴⁰ at the same time a statement of the will of the state authorities regarding the direction of legal development to be built.⁴¹

In this regard, the Draft Government Regulation Draft mandated by Article 75 of Law Number 13 of 2003 concerning Manpower, the proposed content includes:

- a. General requirements.
- b. The worst forms and types of child labour.
- c. Prevention, prevention, and rehabilitation.
- d. Elimination of the Worst Forms of Child Labor Outside of an Employment Relationship.
- e. Programs for the Protection of Children Working Outside the Worst Form of Employment.
- f. Guidance and supervision.
- g. Accompaniment.

⁴⁰ Padmo Wahjono, *Indonesia Negara Berdasarkan atas Hukum*, Ghalia Indonesia, Jakarta, 1986, hlm. 160.

⁴¹ Moh. Mahfud MD, *Politik Hukum di Indonesia*, LP3ES, Jakarta, 1998, hlm. 13.

h. Community participation.

i. Financing.

j. Closing.

In connection with the description above, regarding the protection of child labor, there are at least 2 (two) related aspects in it, namely:

- a. Aspects related to the policies of the laws and regulations governing child protection, and aspects related to the implementation of these statutory policies. Regarding the first aspect, until now there have been sufficient laws governing matters relating to the protection of child labor, although there are still technical regulations that have not been followed up, such as the Government Regulation governing child labor outside the mandated employment relationship. by Article 75 of Law Number 13 of 2003 concerning Manpower.
- b. The second aspect is whether the availability of various instruments of law on children's rights has automatically made efforts to realize children's rights and efforts to eliminate unlawful practices against children who are employed and neglect of children's rights as referred to in paragraph (1). is required to be terminated.

These two aspects are material for thinking that requires smart efforts and hard work in overcoming the problem of child labor in Indonesia as the "great mission of the nation" in building quality, independent, and competitive human resources as an answer to the "great vision of the nation", namely protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, and educate the nation's life. This hard work certainly requires political will and a strong commitment from the state and all components of the nation with a strategy and work program that is concrete, integrative, comprehensive, fast, and precise towards a country free of child labor who works outside of employment relations in other forms. worst job.

4. Conclusion

Article 75 of Law Number 13 of 2003 which mandates the government to take action against children who are employed with further technical instructions will be regulated through a Government Regulation which has not yet been issued. Thus, law enforcement efforts in the context of juridical protection of children, Law No. 13 of 2003 focuses on protecting children who are bound by work relations, while for children who work outside of a legal working relationship,

Law No. 13 of 2003 has not been protected. . Therefore, it is proposed that the policy formulation contains content, including: General provisions, The worst forms and types of child labor, Prevention, mitigation and rehabilitation, Elimination of the Worst Forms of Child Labor outside of Employment Relations, Programs- Program for the Protection of Children Working Outside of an Employment Relationship in the Worst Forms of Work, Guidance and Supervision, Mentoring, Community Participation, Financing, and Closing Provisions.

References

- Agusmidah, "Tenaga Kerja Indonesia, Perdagangan Manusia (*Human Trafficking*) dan Upaya Penanggulangannya (Sudut Pandang Hukum Ketenagakerjaan)", Makalah disampaikan dalam acara *Dialog Interaktif tentang Tekad Memberantas Perdagangan Perempuan dan Anak dengan Memberi Advokasi Penegakan Hukum Melalui UU No. 21 Tahun 2007*, diselenggarakan oleh IKA FH USU, Medan, 30 Agustus 2007.
- _____, *Dilematika Hukum Ketenagakerjaan Tinjauan Politik Hukum*, Sofmedia, Medan, 2011.
- Aloysius Uwiyono et.al., *Asas-asas Hukum Perburuhan*, RajaGrafindo Persada bekerjasama dengan FH-UI, Jakarta, 2014.
- Edi Suharto, *Kebijakan Sosial sebagai Kebijakan Publik*, Alfabeta, Bandung, 2008.
- Hamid Abidin, *Menggalang Dukungan Melindungi Anak*, Lembaga Perlindungan Anak Jawa Barat, Bandung, 2004.
- Hari Supriyanto, *Perubahan Hukum Privat ke Hukum Publik : Studi Hukum Perburuhan di Indonesia*, Universitas Atmajaya, Yogyakarta, 2004.
- Idrus Affandi, *Pendidikan Anak Berkonflik Hukum (Model Konvergensi Antara Fungsionalis dan Religious)*, Alfabeta, Bandung, 2007.
- Indrasari Tjandraningsih, *Pemberdayaan Pekerja Anak : Studi Mengenai Pendampingan Pekerja Anak*, Yayasan Akatiga, Bandung, 1995.
- _____, dan Popon Anarita, *Pekerja Anak di Perkebunan Tembakau*, Yayasan Akatiga, Bandung, 2002.
- Koko Kosidin, "Aspek-aspek Hukum dalam Pemutusan Hubungan Kerja di Lingkungan Perusahaan Perseroan (Persero)", *Disertasi*, Program Pascasarjana Universitas Padjadjaran, Bandung, 1996.
- Moh. Mahfud MD, *Politik Hukum di Indonesia*, LP3ES, Jakarta, 1998.
- Muhamad Joni & Zulchaina Z. Tanamas, *Aspek Hukum Perlindungan Anak dalam Perspektif Konvensi Hak Anak*, Citra Aditya Bakti, Bandung, 1999.
- Muladi & Dwidja Priyatno, *Pertanggungjawaban Korporasi dalam Hukum Pidana*, STHB, Bandung, 1991.
- Neni Sri Imaniyati, *Hukum Ekonomi & Ekonomi Islam dalam Perkembangan*, Mandar Maju, Bandung, 2002.

- Nunung Nurwati, "Pengaruh Kondisi Sosial dan Ekonomi Keluarga Terhadap Motivasi Pekerja Anak dalam Membantu Keluarga di Kabupaten Cirebon, Jawa Barat", *Jurnal Kependudukan Padjadjaran*, Vol. 10, No. 2, FISIP Unpad, Bandung, Juli 2008.
- Padmo Wahjono, *Indonesia Negara Berdasarkan atas Hukum*, Ghalia Indonesia, Jakarta, 1986.
- Philipus M. Hadjon & Tutiek Sri Djatmiati, *Argumentasi Hukum*, UGM Press, Yogyakarta, 2005.
- Theo Huijbers, *Filsafat Hukum*, Kanisius, Yogyakarta, 1995.
- Toto Tohir Suriaatmadja, "Aspek Perlindungan Hukum dalam Hukum Ketenagakerjaan", *Makalah Seminar Nasional yang Diselenggarakan Program Doktor Ilmu Hukum Pascasarjana UNISBA*, Savoy Homann Bidakara Hotel, Bandung, 23 November 2013.
- Ujang Charda S., "Reorientasi Reformasi Model Hukum Ketenagakerjaan dalam Kebijakan Pemerintah", *Jurnal Ilmu Hukum Syiar Hukum*, Vol. XIV No. 1, Fakultas Hukum UNISBA, Bandung, Maret 2012.
- _____, *Mengenal Hukum Ketenagakerjaan Indonesia (Sejarah, Teori & Praktiknya di Indonesia)*, FH UNSUB, Subang, 2014.
- _____, "Perlindungan Hukum Terhadap Tenaga Kerja Anak dari Bentuk-bentuk Pekerjaan Terburuk Dihubungkan dengan Prinsip Tanggung Jawab Negara Hukum", *Disertasi*, Pascasarjana Unisba, Bandung, 2015.

Peraturan Perundang-undangan :

- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan.
- Keputusan Presiden Republik Indonesia Nomor 59 Tahun 2002 tentang Rencana Aksi Nasional Penghapusan Bentuk-bentuk Pekerjaan Terburuk untuk Anak