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## A Model for Protecting the Right to Education for Child Labour

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### Abstract

This study discusses the threat of working children's right to education. The aim of this research is to identify the regulation of working children in Indonesian laws and regulations and to find an ideal model of protecting the right to education for working children. The method used is normative legal research. Researchers conducted a study of legislation to see the synchronization between legislation. Human rights theory and statutory theory are used as analytical tools to examine research results. The results of this study conclude that first, the government has protected children's rights as stipulated in several laws and regulations. There are clear provisions regarding the rights of working children. Second, the right ideal model to protect the educational rights of working children is to use a circle of protection. The circle of protection is a circle of protection for working children so that their right to education is fulfilled. In the circle of protection there are parties that protect working children, namely the government, parents, employers, and the community.

**Keywords:** Children; Work; Protection; Education

### Abstrak

*Penelitian ini membahas tentang anak yang bekerja terancam hak pendidikannya. Tujuan dari penelitian ini adalah mengetahui pengaturan anak yang bekerja dalam peraturan perundang-undangan di Indonesia dan menemukan model ideal perlindungan hak pendidikan bagi anak yang bekerja. Metode penelitian yang akan digunakan adalah penelitian hukum normatif. Peneliti melakukan kajian perundang-undangan untuk melihat sinkronisasi antar perundang-undangan. Teori hak asasi manusia dan teori perundang-undangan digunakan sebagai pisau analisis untuk mengkaji hasil penelitian. Hasil penelitian ini menyimpulkan, pertama, Pemerintah telah melindungi hak-hak anak sebagaimana diatur dalam beberapa peraturan perundang-undangan. Ada ketentuan yang cukup jelas terkait hak anak yang bekerja. Kedua, Model ideal yang tepat untuk melindungi hak pendidikan anak yang bekerja adalah menggunakan circle of protection. Circle of protection adalah lingkaran perlindungan bagi anak yang bekerja agar hak pendidikan tetap terpenuhi. Dalam circle of protection terdapat pihak-pihak yang melindungi anak yang bekerja, yaitu pemerintah, orang tua, pengusaha, dan masyarakat.*

*Kata-kata Kunci:* Anak; Bekerja; Perlindungan; Pendidikan

## Introduction

This research discusses efforts to find the right legal protection model for child labour in an effort to protect children's right to education. This discussion is necessary because the Indonesian legal system and legal culture provide opportunities for children to work.<sup>1</sup> On the other hand, children have special rights as a child to grow and develop according to their biological conditions and cognitive development, and avoid discrimination.<sup>2</sup> Therefore, the protection of children's rights by the state is very important.<sup>3</sup>

Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that the state provides fair guarantees and equal treatment before the law to everyone. This article can be interpreted that these rights apply to all citizens, either men or women, adults or children. This article is correlated with Article 31 paragraph (1) of the 1945 Constitution which stipulates that getting education is the right of all citizens. In this context, every child has the right to education.<sup>4</sup> The right to education is part of human rights as regulated in Article 60 paragraph (1) of Law Number 39 of 1999 on Human Rights. However, in reality, a lot of Indonesian children are deprived of their rights to education, one of which is because they have to work. It is feared that it will interfere with their psychological and cognitive aspects. This concern is responded in Article 64 of Law Number 39 of 1999 on Human Rights which stipulates that children have the right to protection from economic exploitation and work that are dangerous for them. The protection includes their rights to education, physical health, moral, social life, and mental spirituality.<sup>5</sup>

The aforementioned regulations can be interpreted that the Indonesian government provides protection to children from economic exploitation and

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<sup>1</sup> Nandi Nandi, 'Pekerja Anak dan Permasalahannya', *Geografi Gea*, Vol. 6 No.1, 2016, p. 1-9. <<https://doi.org/https://doi.org/10.17509/gea.v6i1.1731>>.

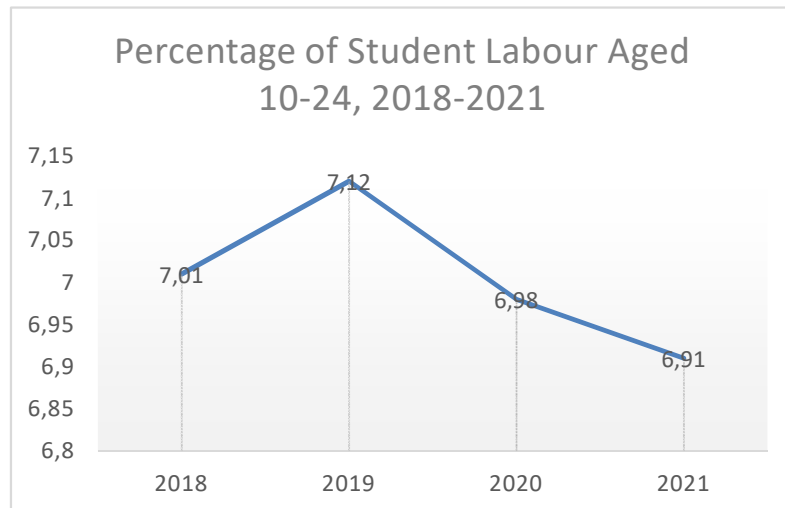
<sup>2</sup> Tresilia Dwitamara, 'Pengaturan dan Implementasi Mengenai Hak Anak yang Berkonflik dengan Hukum di Indonesia (Studi di Pengadilan Negeri Surabaya dan Rumah Tahanan Medaeng)', *Perspektif*, Vol. 18, No.2, 2013, p. 97 <<https://doi.org/10.30742/perspektif.v18i2.118>>.

<sup>3</sup> Beta S Iryani and D.S. Priyatsono, 'Eksplorasi terhadap Anak yang Bekerja di Indonesia Exploitation of Working Children in Indonesia', *Jurnal Ekonomi Dan Pembangunan Indonesia*, Vol. 13, No.2, 2013, p. 177-95.

<sup>4</sup> Cynthia Phillo, Hessa Arteja, and M Faiz Rizqi, 'Perlindungan Hukum terhadap Hak Anak atas Pendidikan Masa Pandemi Covid-19', *Law Review*, Vol. XX, No.3, 2021, p. 5-24.

<sup>5</sup> Indar Wahyuni, 'Meningkatnya Pekerja Anak (Studi Konsep Masalah)', *Wahana Akademika: Jurnal Studi Islam Dan Sosial*, Vol. 4, No.1, 2017, p. 45. <<https://doi.org/10.21580/wa.v4i1.1478>>.

activities that can interfere with children's development.<sup>6</sup> This is corroborated in Article 761 of Law Number 35 of 2014 on Child Protection which stipulates the prohibition of economic and sexual exploitation of children. The article clearly prohibits the exploitation of children. The facts show that there are children who do not get their rights, namely child labour as illustrated in the following graph.



Source: Central Bureau of Statistics (BPS), Susenas March 2018-2021

The data from the Central Bureau of Statistics above is concrete evidence of child labour. Viewed from the Law Number 13 of 2003 on Manpower, it is clear that children aged 13-15 years are allowed to do light work. However, the results of the census of the Central Bureau of Statistics in March 2021 showed that 1.11% of elementary school students or the equivalent worked. Even 7 out of 100 students were employees or labours. A study conducted by Firman Mansir showed that education was very important for children, so in the future there would be no more exploitation of children who worked on the roadside just to fulfil the needs of their family.<sup>7</sup> A lot of children work during school hours to help their parents. This fact further shows how sad the lives of Indonesian children are. They cannot grow and develop, both socially and emotionally. They have to work at a very young age to fulfil their socio-economic needs.<sup>8</sup>

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<sup>6</sup> Eka Maulia Agustine, Ishartono Ishartono, and Risna Resnawaty, 'Kondisi Pekerja Anak yang Bekerja di Sektor Berbahaya', *Prosiding Penelitian dan Pengabdian Kepada Masyarakat*, Vol. 2, No.1, 2017, p. 1-7 <<https://doi.org/10.24198/jppm.v2i1.13228>>.

<sup>7</sup> Firman Mansir, 'The Urgency of Children Education in Preventing Mass Ignorance in Indonesia', *Jurnal Pendidikan*, Vol. 7, No.4, 2021, p. 189.

<sup>8</sup> Nandi.

The issue of protecting the right to education for child labour is very important to discuss because children have the right to survival, growth, and development. They also have the right to protection from violence and discrimination. Moreover, children must have the right not to be exploited, either economically, physically, or psychologically<sup>9</sup>. Therefore, discussions about children have always been an interesting concern because they are buds, potentials, and younger generation succeeding ideals of nation struggle who have strategic roles, characteristics, and special nature that must be protected.

Researches on child labour have widely been discussed in various journals. These researches presented same issues from different points of view. The article entitled “*Eksplorasi terhadap Anak yang Bekerja di Indonesia (Exploitation of Child Labour in Indonesia)*” has a different focus from this article. The article written by Beta S. Iryani and D. S. Priyarsono showed that there was exploitation of child labour. The education of family head was a factor in the exploitation of children in terms of working hours and access to education. Even in terms of wages, female child labour had a chance of 2,357 times to be exploited compare to male.<sup>10</sup>

Other researches showed that child labour performed various activities and a high prevalence of health problems. Livestock activities provided education to children regarding sustainable agricultural production.<sup>11</sup> Another journal that discussed child labour is *Child Labour in Indonesia: Supply-Side Determinants*. This article focused on the study of determinants of work among children (10-17 years) and investigated the presence of luxury axiom. The results of the research showed that there was a tendency for children to work as they got older, there was a biological relationship with the family head, and where they lived in rural areas.<sup>12</sup> There are matters to note from this study that there was a tendency that the higher the education level of the family head the lower the encouragement for children to work.

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<sup>9</sup> Darmini, ‘Perlindungan Hukum terhadap Eksploitasi Pekerja Anak di Bawah Umur’, *Qanwam: Journal for Gender Mainstreaming*, Vol. 14, No.2, 2020, p. 54. <<https://doi.org/10.20414/qawwam.v14i2.2809>>.

<sup>10</sup> Iryani and Priyatsono.

<sup>11</sup> Anaclaudia Gastal Fassa and Et Al, ‘Child Labour in Family Tobacco Farms in Southern Brazil: Occupational Exposure and Related Health Problems’, *International Journal of Environmental Research and Public Health*, Vol. 18, No.22, 2021, p. 20. <<https://doi.org/10.3390/ijerph182212255>>.

<sup>12</sup> Dayang Haszelinna binti Abang Ali, ‘Child Labour in Indonesia: Supply-Side Determinants’, *Economics and Finance in Indonesia*, Vol. 62, No.3, 2016, p. 162. <<https://doi.org/10.7454/efi.v62i3.555>>.

A journal on "Legal Protection for Child Labour, Study on Provisions of the United Nations Convention on the Rights of the Child" written by Lucia Charlotta Octavina Tahamata showed that the state was responsible for child labour. This is based on the state's commitment to ratify the 1989 Convention on the Right of Child. *De jure*, the international law has been ratified into a national law. However, *de facto*, binding provisions on the protection of children's rights have not been implemented by the state.

Similar researches as described above have differences from this article. The focus of the study in this article is to find a model for fulfilling the right to education for child labour. The article discussed above shows that the problem of child labour is not only a problem in Indonesia. Other countries also have the same problem. Therefore, this research is urgent to conduct to find an ideal model for fulfilling the right to education for child labour. The main focus in this research is on aspects of legal substance and legal structure. Where the current regulations do not provide protection to child participants as well as each authorised institution has not paid attention to child labourers. Currently, each institution or related parties seem to work independently. In addition, in terms of legal culture, the high disparity in economic status is a driving factor in the emergence of child labour. Inadequate regulations governing child labour, a legal structure that is not yet strong, and a legal culture that is still low in relation to children's rights, especially in the right to education, result in the emergence of child labourers who have the impact of overriding their right to education.

### **Problem Formulation**

This article discusses two problems, namely: *first*, what are legal regulations for child labour in accordance with laws and regulations? *Second*, what is the model for protecting the right to education for child labour?

### **Research Purposes**

This *research* aims at studying various regulations in Indonesia that regulate child labour and finding an ideal model for protecting the right to education for child labour.

## Research Method

This research used normative legal research.<sup>13</sup> Approaches to laws and regulations were used in this research. The research data was obtained from various sources including journals, law and economics books, doctrines, and statistical data from the Central Bureau of Statistics. Data on child labour were obtained from Papua and West Papua Provinces. These two provinces were chosen because they showed high statistics of child labour according to data from the Central Bureau of Statistics (BPS) for 2018, 2019, 2020, and 2021.<sup>14</sup> The model built based on the research is applicable throughout Indonesia. This is based on the study that the existing regulations and related institutions in each region, as well as the legal culture of the Indonesian people have similarities with these two provinces. Data collection techniques were carried out through literature studies and interviews. The analysis method was done by describing the laws and regulations related to children and education. In addition, a systematic analysis of the laws and regulations was carried out. Systematization was carried out both vertically and horizontally. For the interpretation of laws and regulations, grammatical and systematic interpretations were used.

## Results and Discussion of the Research

### Child Labour Data and Problems

Child labour will experience the worst impacts, namely losing the opportunity to go to school. Education is very important to overcome this problem.<sup>15</sup> If children have general skills, they will have intellectual awareness to continue to higher education levels, thereby help them to get better and decent work. Education has a major impact on the quality development and improvement of the next young generation.<sup>16</sup> Therefore, education must be guaranteed and have good quality.<sup>17</sup>

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<sup>13</sup> Depri Liber Sonata, 'Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum', *Fiat Justisia Jurnal Ilmu Hukum*, Vol. 8, No.1, 2014, p. 52 <<https://doi.org/10.25041/fiatjustisia.v8no1.283>>.

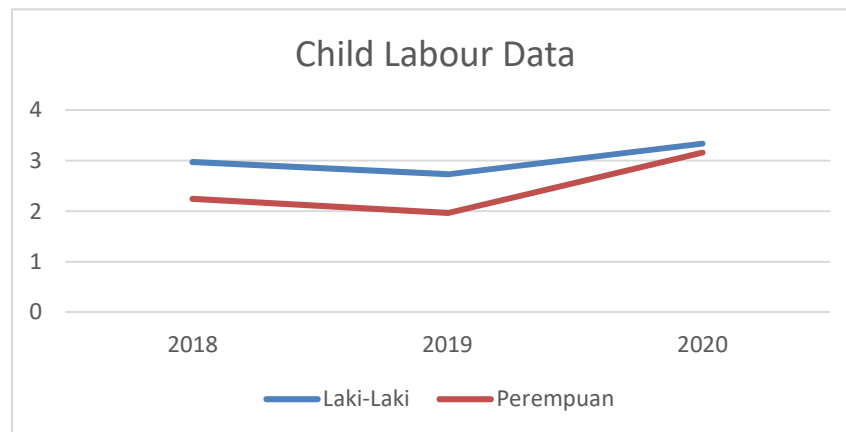
<sup>14</sup> Badan Pusat Statistik, "Persentase Anak Usia 10-17 Tahun yang Bekerja Menurut Provinsi (Persen), 2019-2021", 2022, dalam <https://www.bps.go.id/indicator/6/2008/1/persentase-dan-jumlah-anak-usia-10-17-tahun-yang-bekerja-menurut-provinsi.html>, Accessed on 24-09-2022.

<sup>15</sup> Wahyuni.

<sup>16</sup> Muhandi, 'Kontribusi Pendidikan dalam Meningkatkan Kualitas Bangsa Indonesia', *Mimbar*, Vol. 20, No.4, 2004, p. 478-92. <<https://media.neliti.com/media/publications/156226-ID-kontribusi-pendidikan-dalam-meningkatkan.pdf>>.

Children are forced to do work to fulfil the target of work until the basic rights of children is neglected. In Papua, for example, there are still a lot of children who are forced to drop out of school or even forced by their parents to be involved in earning a living for the daily needs of their family. The involvement of school-age children into child labour is then also utilized by employers. They assume that child labour will be paid less and not cause many occupational issues that have a detrimental impact on companies or places where the children work.<sup>18</sup>

Data from the Central Bureau of Statistics in 2020 showed that 3 out of 100 children aged 10-17 years were child labour. In the last three years, the data showed that the prevalence of male child labour was higher than that of female child labour.



**Source:** Performance Report of the Deputy for Special Child Protection, Ministry of Women Empowerment and Child Protection, 2021

The data above shows an increase in child labour, both male and female. Based on the Performance Report of the Deputy for Special Child Protection at the Ministry of Women Empowerment and Child Protection in 2021, child labour is closely related to poverty<sup>19</sup>. The high prevalence of child labour can harm optimal physical and psychological development of the children.<sup>20</sup> The type of work that children do poses a threat to the growth and development of the children. Data

<sup>17</sup> Dedy Iswanto, 'Pendidikan Bermutu, Perlu Sinergitas', *Balai Besar Penjamin Mutu Pendidikan Provinsi Jawa Tengah*, 2021 <<https://bbmpjateng.kemdikbud.go.id/pendidikan-bermutu-perlu-sinergitas/>>.

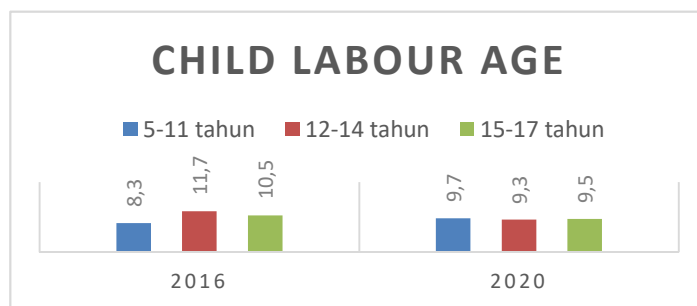
<sup>18</sup> Narasumber Vilita B Lefaan, Hasil Wawancara, Papua, 2022.

<sup>19</sup> Wahyuni.

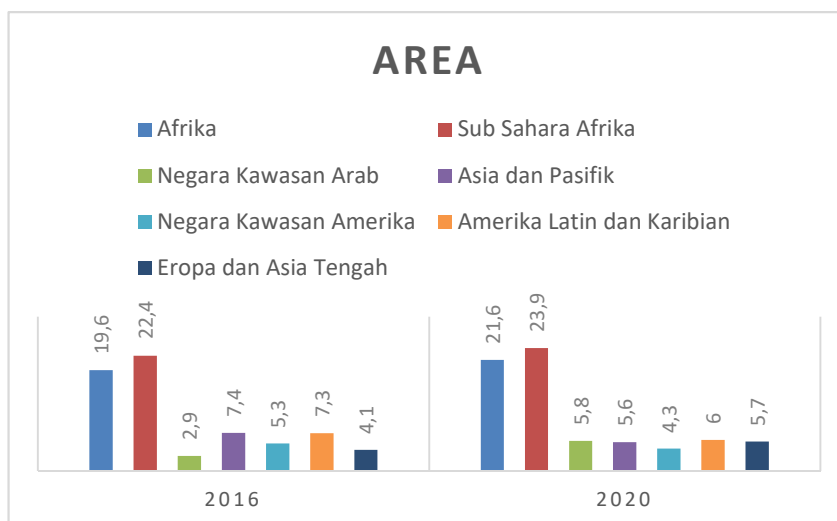
<sup>20</sup> The Ministry of Women Empowerment and Child Protection, *Performance Report of the Deputy for Special Child Protection at the Ministry of Women Empowerment and Child Protection in 2021*, Jakarta, 2021.

from the ILO and UNICEF in 2021 showed that child labour aged 5-17 years who work in a dangerous work environment was quite high.<sup>21</sup>

Data on child labour in the world is also quite alarming. The International Labour Organization and UNICEF reported data on child labour between 2016 and 2020, as follows.<sup>22</sup>



Source: ILO and UNICEF, 2021



Source: ILO and UNICEF, 2021

Child labour becomes a global problem based on the above data.<sup>23</sup> Other countries also have the same problem. As in Indonesia, there are also a lot of cases of child labour. The following data were obtained by the researchers from the Papua and West Papua Provinces.

<sup>21</sup> International Labour Organization and UNICEF, *Child Labour: Global Estimates 2020, Trends and The Road Forward*, 2021.

<sup>22</sup> UNICEF.

<sup>23</sup> Elfri Juri Pardede and Mbina Pinem, 'Analisis Bentuk Pekerjaan Anak dan Faktor Penyebab di Kecamatan Medan Belawan', *Jupii: Jurnal Pendidikan Ilmu-Ilmu Sosial*, Vol. 13, No.1, 2016, p. 83. <<https://doi.org/10.24114/jupii.v8i1.5123>>.



Table 1.  
Amount of school-age child labour in Papua (Mimika and Asmat) 2021 – 2022

Education Level	Number of Child Labour	Status (average)
Elementary School	30 - 55 children	Child Labour (drop out of school)
Elementary School	20 - 50 children	Child Labour (in school)
Junior High School	20 –50 children	Child Labour (drop out of school)
Junior High School	50 – 100 children	Child Labour (in school)
Senior High School	50 – 150 children	Child Labour (drop out of school)
Senior High School	50 – 150 children	Child Labour (in school)

Source: Results of Interviews with facilitators of Indonesia Lebih Baik Foundation, specifically in the field of education and Sa Perempuan Foundation Papua 2022

Table 2.  
Amount of school-age child labour in West Papua  
(Sorong Selatan-Teminabuan-Kais) 2019-2020

Education Level	Number of Child Labour	Status (average)
Elementary School	50 children	Child Labour (drop out of school)
Elementary School	30 children	Child Labour (in school)
Junior High School	50 children	Child Labour (drop out of school)
Junior High School	35 children	Child Labour (in school)
Senior High School	65 children	Child Labour (drop out of school)
Senior High School	25 children	Child Labour (in school)

Source: Results of Interviews with facilitators of Indonesia Lebih Baik Foundation, specifically in the field of education and Sa Perempuan Foundation Papua 2022

The data contained in the table above is sufficient to show the number of children who work. Based on the data, it can be seen that child labourers are not only those who are in secondary school, child labourers are also elementary school students. This is of course a serious homework for all parties, especially the local governments of Papua Province and West Papua Province. With so many school children working, of course, their opportunity to get a proper education like children who do not work is different. Where they have to divide their time between work and school.

Children are more interested in working than go to school. Statements by school-age children as workers that choosing to work and earn money is coercion or being asked by their parents to help their family's economic life. There are even

children who are willing to replace their parents' positions at work because their parents are unable to work or are sick. In addition, there are non-dominant reasons such as they want to try to work, follow their friends, or the lure of employers.<sup>24</sup>

The law stipulating school-age child labour has not been effective in providing a deterrent effect for employers or adults coercing directly or indirectly their children to earn money (lihat Tabel 2). The results of the data obtained also showed that the number of child labour with drop out of school status far more commonly occurred. This means that the right to education for school-age child labour is not given or not properly obtained by children as workers.

Some children have unconsciously feel comfortable with working. They think being able to make money is an achievement. Thus, the picture of going to school and playing with peers of the same age as well as getting guidance from educators is no longer a longing or a focus. There are also a lot of children who feel proud of their achievements to make money from work misuse the money they earn for things that lead to deviant behaviour. For example, buying cigarettes, aibon glue, mixed alcohol, playing online games, renting PS, or spending the money for unnecessary things, just to vent their wander or curiosity about things they usually see from adult relationship in their workplace.<sup>25</sup>

There are various types of work for child labour in Indonesia. They cover various work such as labours, beggars, sex workers and others. Child labour in textiles and footwear is the worst problem for developing countries and countries who have a role as a 'producing' country.

Table 3. Average Amount of Income Earned by School-age Child Labour:  
West Papua (South Sorong – Teminabuan – Kais) 2019 – 2020

Education Level	Type of Work	Income (average)
Elementary School	Labour (contractor for oil palm companies, luggage/loading for ship transportation, infrastructure building project)	IDR 10,000 – IDR 50,000/day
Elementary School	Seller, culinary industry, trade	IDR 20,000 – IDR 100,000/day

<sup>24</sup> Vilta B Lefaan.

<sup>25</sup> Vilta B Lefaan.

Junior High School	Labour (contractor for oil palm companies, luggage/loading for ship transportation, infrastructure building project)	IDR 25,000 – IDR 150,000/day
Junior High School	Seller, culinary industry, trade	IDR 25,000 – IDR 150,000/day
Senior High School	Labour (contractor for oil palm companies, luggage/loading for ship transportation, infrastructure building project)	IDR 50,000 – IDR 200,000/day
Senior High School	Seller, culinary industry, trade	IDR 30,000 – IDR 200,000/day

Source: Results of Interviews with facilitators of Indonesia Lebih Baik Foundation, specifically in the field of education and Sa Perempuan Foundation Papua 2022

Table 4. Average Amount of Income Earned by School-age Child Labour: Papua (Mimika and Asmat) 2021 – 2022

Education Level	Type of Work	Income (average)
Elementary School	Labour (contractor for oil palm companies, luggage/loading for ship transportation, infrastructure building project)	IDR 25,000 – IDR 100,000/day
Elementary School	Seller, culinary industry, trade	IDR 20,000 – IDR 50,000/day
Junior High School	Labour (contractor for oil palm companies, luggage/loading for ship transportation, infrastructure building project)	IDR 30,000 – IDR 150,000/day
Junior High School	Seller, culinary industry, trade	IDR 30,000 – IDR 150,000/day
Senior High School	Labour (contractor for oil palm companies, luggage/loading for ship transportation, infrastructure building project)	IDR 50,000 – IDR 300,000/day
Senior High School	Seller, culinary industry, trade	IDR 30,000 – IDR 150,000/day

Source: Results of Interviews with facilitators of Indonesia Lebih Baik Foundation, specifically in the field of education and Sa Perempuan Foundation Papua 2022.

The data above shows the income of working children. It can be seen that there is a difference in the amount of wages for children who are in primary

school, middle school, and senior high school. This difference in wages shows that the higher the level of education, the greater the wages earned.

Poverty is the main reason why children start working.<sup>26</sup> Data from ILO (2004) and UNESCO (2005) showed that poverty was the deepest root cause behind this. Among various sectors, the purpose of child labour is to help increase household income. In the manufacturing sector, one of the factors that encourage children to work is the availability of opportunities to earn direct income by becoming labour. Whereas in a small industrial sector, the need for adult labour is a factor why children are attracted to work.<sup>27</sup> Asra<sup>28</sup> stated that 35 percent of parents in Indonesia would suffer immediate impacts if their children stop working, and decline in household income was the main impact. Most of the child labour work because of pressure from weak economic conditions of the family.<sup>29</sup>

Children have reasons why they have to work. Their reasons are documented that more children are asked by their parents. Various reasons are raised by parents, ranging from the problem of economic limitations, lack of income, and parents who do not have a steady income. Thus, children are seen as a substitute opportunity to fulfil household needs, in any ways. Another reason is the interest in seeing other friends who already work at their age, with the same condition that there is a request and coercion from the family that also requires them to work. Such conditions trigger the latest patterns and trends for school-age children who can work and earn money. Instead, it is seen as a “pride”.

An important aspect in education quality is the social development of children. However, apart from education, there are other factors such as social, cultural, and demographic factors that also influence children's social development and their involvement in the world of work. A culture that prioritizes household affairs over children's education can disrupt children's

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<sup>26</sup> Meirina Nurlani, 'Perlindungan Hukum bagi Pekerja Anak: Tinjauan Perspektif Keadilan dan Kesejahteraan Anak', *Jurnal Kajian Pembaruan Hukum*, Vol. 1, No.1, 2021, hlm. 107. <<https://doi.org/10.19184/jkph.v1i1.23397>>.

<sup>27</sup> D Nachrowi Muhidin and Salahudin A., *Masalah Pekerja Anak dalam Perekonomian Global. Widjojo Nitisastro 70 Tahun: Pembangunan Nasional: Teori, Kebijakan, dan Pelaksanaan*, Fakultas Ekonomi Universitas Indonesia, Jakarta, 1997.

<sup>28</sup> Abuzar Asra, *Nature and Extent of Child Labour in Indonesia*, Geneva, ILO, 1994.

<sup>29</sup> Asra.

school activities and encourage them to work.<sup>30</sup> In fact, a small industrial system whose workplace is integrated with home can affect the involvement of children into the world of work. The activities in the small industrial centres directly or indirectly encourage children to participate in industrial activities as workers, both as labour and family worker.

The impact of the school-age child labour is that they drop out of school. However, some school-age children may continue their study while working. The challenge is certainly far more severe, due to the increasing burden or responsibility that must be completed at their age and busy life as students. Thus, there are cases such as school-age children whose achievement decline or they are no longer focused on lessons. Thus, their rights to education and play are not fulfilled properly. They are also at risk of being mistreated.<sup>31</sup> It is even possible that the level of crime committed by school-age children who are also workers increases significantly.

Low education and child labour are two mutually sustainable factors.<sup>32</sup> Low education makes children difficult to get a job with a decent wage. This is even more difficult for a female worker.<sup>33</sup> Therefore, those with low education usually live below the poverty line. This is one of the biggest drivers that lead to the involvement of children into the world of work. Low education means that children do not have skills needed to find higher-paid jobs.<sup>34</sup>

### **Legal Regulations for Working Children in Review of Indonesian Labour Laws and Regulations**

Protection is all activities to guarantee and protect children who are forced to work to continue their education/schooling so that they can grow and develop optimally so as to improve their quality of life. For this reason, the state needs to provide security guarantees for working children so that they do not interfere

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<sup>30</sup> Nachrowi, Hardius Usman, and Nachrowi Djalal, *Pekerja Anak di Indonesia: Kondisi, Determinan dan Exploitasi (Sebuah Kajian Kuantitatif)*, Gramedia Widiasarana Indonesia, Jakarta, 2004.

<sup>31</sup> Dina Mardiyanti and others, 'Bekerja, Baik Atau Buruk Bagi Kesehatan Anak?', *Inovasi*, Vol. 16, No.1, 2020, hlm. 167-77 <<https://journal.feb.unmul.ac.id/index.php/INOVASI/article/view/7070>>.

<sup>32</sup> Nachrowi, Usman, and Djalal.

<sup>33</sup> Luis Marnisah, 'Analisis Tingkat Pendidikan dan Kemampuan Tenaga Kerja Perempuan terhadap Terjadinya Diskriminasi Upah Pada Sektor Industri Sedang di Kota Palembang', *Jurnal Kajian Gender dan Anak*, Vol. 12, No.1, 2017, hlm. 1-8.

<sup>34</sup> Marnisah.

with their main obligation to study (school). Because only through the learning process can someone improve their competence. Do not let the younger generation of Indonesia, from childhood to adulthood, forever become laborers in their own country.

The legal basis governing the problems of working children can be found both at the international and national levels. At the international law level, regulations that should be noted are the ILO core standards and CRC. In addition, there are also Indonesian laws that reflect efforts of Indonesia to meet these international standards.

The regulation of labour and child labour is stipulated in several government laws and regulations. Article 68 of Law No. 13 of 2003 on Manpower stipulates that employers are prohibited from employing children. However, in the same law, Article 69, it can be excluded for children aged 13-15 years. Protection for children as labour in criminal terms has been stated in Articles 183, 185, and 186 Law No. 13 of 2003 on Manpower. Whereas from a civil perspective, there is one condition of an employment agreement that requires employers to enter into an agreement with parents/guardian of the child.<sup>35</sup> This certainly provides legal certainty related to wages and clarity of employment relationship between employers and child labour.

Indonesia already has a set of laws and regulations to guarantee children's rights and reduce the impact of child labour, including the 1945 Constitution, ILO No. 138, ILO No. 182, Child Labour Regulations based on Child Protection Law No. 23 of 2022 as amended into Law No. 35 of 2014, Law No. 13 of 2003 on Manpower, Decree of the Minister of Manpower and Transmigration No. 235/MEN/2003 on types of work that endanger health, safety, or moral of children.

Legal protection for child labour in the Law No. 13 of 2003 on Manpower is related to legal protection of wages and welfare of child labour included in the provision of Articles 68 to 75. Article 64 and 65 of the Law No. 39 of 1999 on Human Rights describes the efforts of protection already regulated by the

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<sup>35</sup> Kementerian Ketenagakerjaan, "Keputusan Menaker Nomor KEP.115/MEN/VII/2004 Tentang Perlindungan Bagi Anak Yang Melakukan Pekerjaan Untuk Mengembangkan Bakat Dan Minat", 2004 <https://jdih.kemnaker.go.id/katalog-290-Keputusan-Menakertrans.html>, Accessed on 24-10-2022.

government. Child Labour Protection is also contained in Law No. 4 of 1979 on Child Welfare, as described in Article 1.<sup>36</sup>

Indonesia became a member of the ILO in 1950, and since then Indonesia has ratified 18 conventions. Indonesia was the first Asian country to ratify all the fundamental conventions, the most important ILO key standards to ensure justice in the labour sector, and one of which was "Effective Abolition of Child Labour".<sup>37</sup> By ratifying the convention, the state has the responsibility to submit reports at regular times, and the reports must show the state's efforts to implement the standards stated in the convention.

There are two ILO conventions on child labour, namely Convention No. 182 – Worst Forms of Labour Convention 1999, and Convention No 138 – Minimum Age for Admission to Employment.<sup>38</sup> These two conventions have been signed and ratified by Indonesia. The Convention No. 182 covers all children under the age of 18 and the 'worst types of child labour' including slavery, prostitution, use of children for illegal activities and work that is likely to endanger the health, safety or morals of the children. The Convention No. 138 describes the youngest age to work, and this age depends on the type of work load.

Indonesia's relationship with the ILO has been quite strong and transparent, as can be seen from its responsiveness to comments of The Committee of Experts on the Application of Conventions and Recommendations (CEACR).<sup>39</sup> One of the suitable examples is direct request of the CEACR in 2013 regarding Indonesia's efforts to implement "The Worst Forms of Child Labour Convention" 1999. In this case, the CEACR requests results and data from governments such as the National Action Plan on the Elimination of the Worst Forms of Child Labour, and a

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<sup>36</sup> Article 1 paragraph 1A of Law 4/1979 Child welfare is a life and livelihood of children that can guarantee their growth and development properly, both spiritually, physically and socially. Article 64 Law 39/1999 "Every child has the right to obtain protection from economic exploitation activities and every job that endangers himself, so that it can interfere with education, physical health, morals, social life, and spiritual mental." Article 65 Law 39/1999 "Every child has the right to obtain protection from exploitation and sexual harassment, kidnapping, child trafficking, and from various forms of narcotics, psychotropic substances, and other addictive substances."

<sup>37</sup> Other general principles include: Freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, and elimination of discrimination in respect of employment and occupation.

<sup>38</sup> These two conventions are the main conventions according to the ILO Declaration on fundamental principles and rights at work 1998.

<sup>39</sup> CEACR is the ILO agency monitoring the implementation of convention ratified by states.

description of the trend in the worst types of child labour. In addition, there is a demand to prevent child labour in the footwear sector.<sup>40</sup>

Another body concerned with this matter is the CRC, which requires state governments to ensure the protection of children from exploitation.<sup>41</sup> The CRC also emphasizes the “child-centred approach” on education,<sup>42</sup> and that the primary goal for education is the development of nature, interests and abilities of each child, by recognizing that every child has a unique and different way of learning. In terms of education quality, the CRC shows that the school curriculum must have a strong relationship or conformity to the child's social, cultural, environmental and economic context.<sup>43</sup>

There are already 12 laws at the domestic level concerning child labour that occurred as a result of ratifying the ILO conventions and the CRC.<sup>44</sup> The law covers topics such as child protection<sup>45</sup>, support for families<sup>46</sup>, development of children's interests<sup>47</sup>, and child welfare<sup>48</sup>. It is clear that regulations concerning child labour and education obligations are already written in international and domestic laws. However, the implementation of the regulations has not been fair and consistent. This affects the education system quality in Indonesia.<sup>49</sup>

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<sup>40</sup> The ILO's first comments on footwear industry and child labour in Indonesia are in articles 6 and 7.

<sup>41</sup> Art 32(1) CRC reads: “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”

<sup>42</sup> General Comment No. 1 of Article 29(1) of the CRC explains that school curricula must conform to children's social, cultural, environmental and economic context.

<sup>43</sup> UNICEF. 2012. "Back to school in Polman." Accessed on 4 September 2022. [http://www.unicef.org/indonesia/reallives\\_18701.html](http://www.unicef.org/indonesia/reallives_18701.html).

<sup>44</sup> The laws can be accessed at: [http://www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_country=IDN&p\\_classification=04&p\\_origin=COUNTRY&p\\_sortby=SORTBY\\_COUNTRY](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=IDN&p_classification=04&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY).

<sup>45</sup> Law concerning Child Protection No. 23/2002)

<sup>46</sup> International Labour Organization, *The Realization of Activities for the Reduction of Child Labour to Support Hopeful Family Program of 2012 (Decree of the Minister of Manpower and Transmigration No. 7/2012)*, 2012 <[https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_isn=95242&p\\_lang=en](https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=95242&p_lang=en)>.

<sup>47</sup> Organization.

<sup>48</sup> Law No. 4/1979 concerning Children's Welfare

<sup>49</sup> According to Nachrowi, the education system quality is highly dependent on the implementation of 3 aspects: financial resources, policies and finances and policies., p 7.



## The Model for Protecting Rights to Education for Child Labour

### 1. Education System and Quality in Indonesia

Child labour has a negative impact on schools, and low or no education at all can result in continuous child labour.<sup>50</sup> The research of Jones suggested developing countries to invest in the basic education system, because it has been proven that the increase in human resources is in the field of education. In addition, education is one of the main themes that emerged at CRC.<sup>51</sup> Education should be something that must be accessible and also a tool that can be used to improve the quality of life.

The education system is even regulated nationally in Law No. 20 of 2003 on National Education System. This law regulates the education system in Indonesia, emphasizing that the implementation of education must adhere to several principles, including education should be carried out in a democratic and fair manner and not discriminatory by upholding the values of human rights, religious, culture, and nation plurality with a systematic unity and an open and multi-meaning system. In addition, in its implementation the education system must also be in a process of civilizing and empowering students that lasts for a lifetime by setting an example, building will (intentions, desires), and developing students' creativity in a learning process through developing a culture of reading, writing, and counting for all citizens and empowering all components of society through participation in the implementation and quality control of education services.<sup>52</sup>

Reflecting on regulations applicable in the law concerning national education system, it has guaranteed the basic rights of children in this country, when at their learning age, they must be forced to earn a living by being exploited.<sup>53</sup> The law concerning national education system should provide protection, become an umbrella for school-age children that must be involved as workers in all types of work, with or without coercion. Every child should be

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<sup>50</sup> Hadi Utomo and others, *Profil Anak Indonesia 2021* (Jakarta: Kemen PPA, 2021).

<sup>51</sup> Jones, Daniel Suryadarma, and Gavin W, *Meeting the Education Challenge. In Education in Indonesia*, England, Cambridge University, 2013.

<sup>52</sup> Law Number 20 of 2003 concerning the National Education System – Human Rights Reference". *referensi.elsam.or.id* (in English). Accessed on 09-05-2022.

<sup>53</sup> Agustine, Ishartono, and Resnawaty.

empowered through educational institutions contained in each level of regional, national, and international regulations.

The importance of quality education has been described as the most important factor in efforts to stop the problem of child labour. However, quality is something that is difficult to measure. The education quality measurement system of UNESCO is comprehensive, and consists of two indicators, namely<sup>54</sup>: cognitive and also emotional and mental abilities.

Both of these indicators are related to the way of teaching and the capacity of students to learn, as these indicators can affect the duration of their education and attendance rates.<sup>55</sup> The first indicator is the one usually prioritized in education as an educational goal. This can be seen from the capacity to study, test results, and so on. The second aspect refers to the role of education to encourage creative and emotional development of students. This is more difficult to determine because it cannot be measured quantitatively, but it can be seen if there is an attempt to emphasize the importance of creativity, self-declaration, equality and cultural values. Emotional and mental abilities should be taken into account when policy is made because education is a qualitatively determined process, rather than just use the amount of students or test scores.

Different countries use different approaches to building emotional and mental abilities. They are usually adjusted to local culture of each region. On a global scale, international law also has rules in which values regarding the development of children's nature, talents, and physical abilities must be protected<sup>56</sup>, and these aspects are a major part of the education quality.

## **2. An Ideal Model for Handling Child Labour in Fulfilling their Rights to Education**

Children with status of workers, either those who are in school or dropped out of school, will often be found, both at village, city/regency and even provincial scales. Therefore, the phenomenon of the rise of school-age children while working still needs to be considered by the government and

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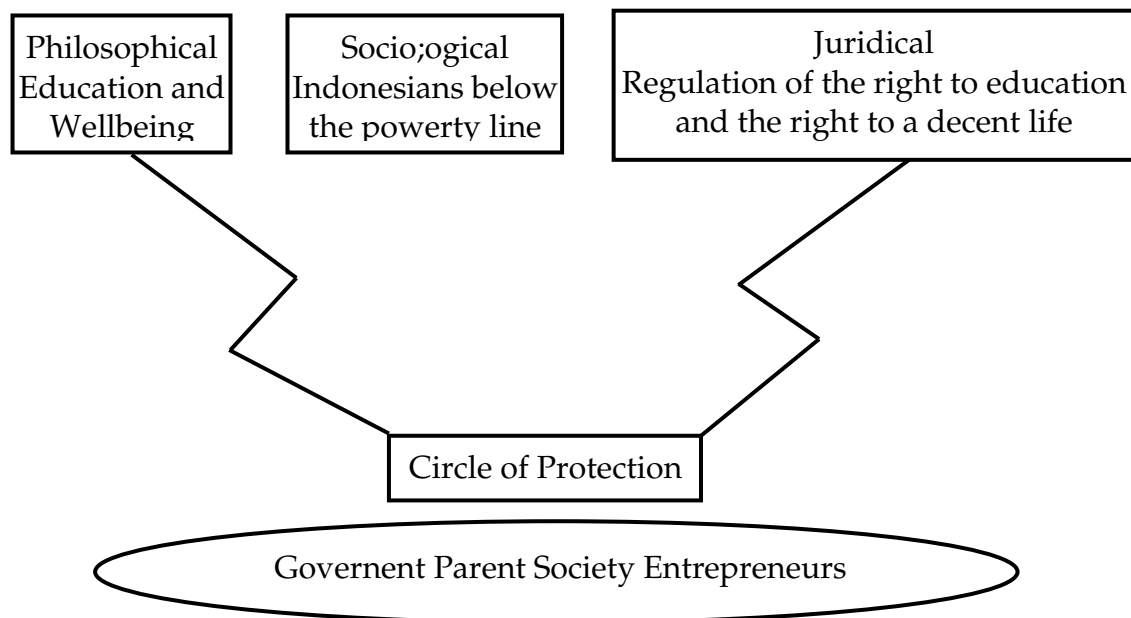
<sup>54</sup> Agustine, Ishartono, and Resnawaty.

<sup>55</sup> UNESCO.

<sup>56</sup> CRC Article 29,1(a) reads: States Parties agree that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

educational institutions when formulating the latest appropriate policies in providing protection of the right to education for child labour. An ideal model in protecting the right to education for child labour can be done with the circle of protection model. This model is a protection model for working children so that they still get the right to education. This model requires collaboration between the government, parents, communities and employers. The model offered includes studies from philosophical, sociological and juridical aspects. This model is the result of the researcher's study in finding ways to overcome working children so that they still get the right to education.

**Picture 1. Circle of Protection Model**



The Circle of Protection Model is a model that was initiated in dealing with child labour cases in obtaining their right to education. This model requires all parties, including the government, parents, communities and employers to collaborate in dealing with working children. These four parties must collaborate with each other in order to create and implement policies that are made for the benefit of children with the principle of non-discrimination. The government as a policy maker must make policies that are best for children by involving related parties in making policies, including parents. Parents are important to give permission for their children to work. Parents must understand that children are not adults who have responsibilities like adults

who have to earn a living. The main task of children is to learn, not to earn a living. The community must participate in controlling the policies made by the government. At the same time, be pro-active if you find child exploitation. Employers must also protect children's rights and pay attention to the work environment for children. Through this model, it is hoped that cases of working children can be suppressed and even if there are children who work, they can still get their education rights.

This model is not only applicable to Papua and West Papua. Although the data shown is from these two provinces, in terms of legal substance, legal structure, and legal culture, all regions in Indonesia can use this model in handling cases of working children so that they can still get their rights as students.

In terms of current conditions, Indonesia is a developing country with a low level of education below Singapore, Malaysia and Thailand. Indonesia needs smart and capable human resources for the progress of Indonesia. With the case of children working at school age, it is a problem that should be resolved immediately. Through the model developed, it is hoped that the number of working children can be reduced. Then, even if there are children who work, their educational rights can still be obtained properly.

The criteria of decent work for children should take into account the following.

1. This work is usually done by children from an early age.
2. The work is of interest to children.
3. The work is based on child's abilities.
4. The work fosters creativity and fits child's world.
5. The work is done outside of school/study hours of children.

**a. Support from the Government, Parents, and Schools**

- 1) Making clear regulations regarding the age limit for child labour (17 years); Child-friendly forms of work (government/school library staff, book publishing, advertising/multimedia, catering/salon services); determining the amount of hourly wages (the distribution is based on the standard UMR (Regional Minimum Wage) of the city/regency of

the child labour); duration of working time (a maximum of 3 hours per day and 12 hours per week).

- 2) The principles of child protection, non-discrimination, and the best rules for children must be clearly stated in the laws and regulations.
- 3) The existence of a child labour supervisory agency, either establishing a separate institution or becoming part of a sub-unit of existing government institutions, for example in the Ministry of Woman Empowerment and Child Protection (PPPA) or Indonesian Child Protection Commission (KPAI).
- 4) Involving active participation of parents/guardians in supervision, for example occasionally accompanying children at work.
- 5) Regulating the obligations of parents in the education of child labour.
- 6) Involving schools in supervision

**b. Support from Employers**

- 1) Providing a "Child-Friendly" place to work.
- 2) Providing staff who serve as mentors/companions while the child is working.
- 3) Registered as a recipient of health insurance and occupational safety insurance.
- 4) The work is done by children after school hours are over and not at night.

**c. Support from Community**

- 1) Community plays an active role in supervising companies that employ children.
- 2) Community works with child protection social institutions to protect the rights to education for child labour.

**Conclusion**

The government, parents, and community must have a strong sensitivity in seeing the potential and future of children. As the next generation, children have the right to get protection from all forms of exploitation, including in the economic sector. For child labour, the government has protected children's rights

as regulated in several laws and regulations. There are clear provisions regarding the rights of child labour. However, the existing regulations do not adequately explain the type of work that is suitable for children.

Government tries to protect the rights of child labour by determining the age limit of the child and involving the child's parents. Light work for children means work that directly or indirectly interferes with the basic rights of children, such as the rights to get adequate rest, not to be exploited, to education, and not to do work that is physically and psychologically draining for the children.

The right ideal model to protect the right to education for child labour is to use a circle of protection. The circle of protection means a circle of protection for child labour that the right to education is still fulfilled. In the circle of protection there are parties who protect children, namely the government, parents, schools, entrepreneurs, and communities. These five parties are obliged to protect the right to education for child labour. All of them work simultaneously to guide, protect, and supervise. Based on this research, it is suggested that the government and community have an obligation to protect children's rights and provide protection and welfare for them.

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