

# CHAPTER 1

## BACKGROUND

### 1.1 Background

Children are an inseparable part of the sustainability of human life and the sustainability of the country. In order for every child to be responsible for the sustainability of the state and the nation, he or she must have the widest opportunity to grow and develop optimally, physically, mentally and socially. As an advocate of human rights, the government of the Republic of Indonesia guarantees the protection and implementation of children's rights regulated by various regulations, such as the 1945 Constitution, domestic and international laws and regulations, and the ratification of international conventions. According to Article 28B (2) of The Constitution of the Republic of Indonesia of 1945 (UUD 1945), "Each child has the right to live, grow up, and develop as well as the right to protection from violence or discrimination."

Law No.23 Year 2002 on Child Protection aims to ensure and protect children's rights to ensure their survival, growth and development. Law No.23 Year 2002 includes changes to the definition and scope of child protection, importance of the role of local governments, community, business area and mass media in implementing child protection, increased effectiveness of child protection, and tightened sanctions on perpetrators. Law No.23 Year 2002 is a special law ("*lex specialis*") that facilitates the resolution of cases of

infringement of children's rights. Therefore, Law No.23 Year 2002 refers to issues related to child protection that are regulated by law.<sup>1</sup>

A child means any person under the age of 18<sup>2</sup>, and Article 1 (1) of Law No.23 Year 2002 also specifies that the “child” as a "Child" shall mean a person under eighteen (18) years of age, including unborn”. In addition, every child has the right to be alive<sup>3</sup>. Law No. 23 Year 2002 contains "Rights of Children" which mean those human rights pertaining to children that must be guaranteed, protected and complied with by parents, families, the government and the state. To ensure the rights of children, governments make sure that children survive and develop in the best possible way and are protected and looked after by their parents, or by other people when this is needed also. "Protection of Children" shown in Law No.23 Year 2002 means that “all activities designed to guarantee and protect children and their rights so that they may live, grow, develop and participate optimally in society in accordance with the dignity to which they are entitled as human beings, and so that they may be protected against violence and discrimination”.

According to Article 2 of Law No.23 Year 2002, the Republic of Indonesia guarantees the human rights of children based on Pancasila (the national

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<sup>1</sup> Humas Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak “Press Release : Ruu Tentang Perubahan Atas UU NO.23/2002 Tentang Perlindungan Anak, [“https://www.kemenpppa.go.id/index.php/page/read/29/138/press-release-ruu-tentang-perubahan-atas-uu-no-23-2002-tentang-perlindungan-anak,”](https://www.kemenpppa.go.id/index.php/page/read/29/138/press-release-ruu-tentang-perubahan-atas-uu-no-23-2002-tentang-perlindungan-anak) accessed on 3 February 2021

<sup>2</sup> Oestreich, Joel E. UNICEF and the Implementation of the Convention on the Rights of the Child. *Global Governance*, Lynne Rienner Publishers, vol. 4, no. 2, April-June 1998, pp. 183–98,

<sup>3</sup> Oestreich, Joel E. UNICEF and the Implementation of the Convention on the Rights of the Child. *Global Governance*, Lynne Rienner Publishers, vol. 4, no. 2, April-June 1998, pp. 183–98,

ideology), the 1945 Constitution, which stipulates that the protection of children shall be based upon Pancasila (the national ideology), the 1945 Constitution and the basic principles contained in the Convention on the Rights of the Child, including the following:

- a. Non-discrimination;
- b. The best interests of the child;
- c. The right to life, continuity of life and to develop;
- d. Respect for the opinions of children.

However, child labour is a national problem in Indonesia that requires immediate and sustainable actions. Children should indeed be protected from labour activities that are exploitative, harmful to their physical and mental development, and are an affront to their dignity. The Indonesian government has created a roadmap to eradicate child labour in Indonesia by 2022, but this seems somewhat impossible.<sup>4</sup> According to UNICEF, about 2.7 million children are involved in child labour in Indonesia, half of them under the age of 13.<sup>5</sup> The Central Bureau of Statistics (BPS) revealed in 2009 that the number of Indonesian children in the age group of 5-17 years is 58.8 million, Of the total number, 1.76 million children or 43.3 percent are child labourers, of which 20.7 percent work in

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<sup>4</sup> Global Expat Recruiting. 2021. "Government targets to free Indonesia of child labor by 2022. Can it ?", <https://globalexpatrecruiting.com/government-targets-free-indonesia-child-labor-2022>, accessed on 8 February 2021

<sup>5</sup> Laura Villadiego, "Slow progress in the fight against child labour in Indonesia", Articles of Equal Times, Number 25 April 2018, page 2

the worst forms of labour.<sup>6</sup>

In general, children in this category drop out of school and live a neglected life without proper education, working in various types of labour, including agriculture, farms, fishing, and on the streets, and being exposed to the worst forms of labour without protection<sup>7</sup> Indonesia today is in the midst of a period of development. Unfortunately, this economic advantage does not benefit the entire population. Despite recent economic development, one third of the population of Indonesia continues to live below the poverty line. Therefore, many children still live in poverty, and this poverty pushes children to an unprotected labour market. In Indonesia, demand for child labour exists in various forms, and the attractiveness of institutional education for children in poverty is too weak compared to the working environment and structure that children encounter, which is why child labour exists largely and continuously.

The ILO presents two Conventions on child labour. One is Convention No.138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour. This Convention is a "fundamental" convention, indicating that under the ILO's declaration of fundamental principles and rights, there is an obligation to respect child human rights, promote and realize the abolition of child labour.

ILO Convention No. 182 on the Worst Forms of Child Labour was the first

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<sup>6</sup> ILO, International Labour Standards on Child labour., <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/in dex.htm>, accessed on 8 February 2021

<sup>7</sup> ILO Conventions on child labour (IPEC)., <https://www.ilo.org/ipecc/facts/ILOconventionsonchildlabour/lang--en/index.htm>, accessed on 8 February 2021

ILO Convention to achieve universal ratification. It is also the fastest-approved agreement in ILO history, with most ratifications made within the first three years of its adoption in 1999.

Most countries have adopted legislation that imposes or prohibits severe restrictions on children's employment and labour under the ratification of the current Child Labour Convention. Despite these efforts, child labour continues to exist on a large scale, sometimes in terrible conditions, especially in developing countries.<sup>8</sup>

Recognizing the widespread child labour in Indonesia, especially the worst child labour (WFCL) problem, the Indonesian government has promised to eradicate child labour, especially the worst child labour (WFCL) in Indonesia. This commitment is set out in the ILO Convention No. 138 concerning Minimum Age for Admission to Employment by Act No. 20 of 1999 and ILO Convention No. 182 concerning the Prohibition and Immediate Actions for the Elimination of the Worst Forms of Child Labour by Act No. 1 of 2000 (for simplicity, hereinafter referred to as government adopted ILO Conventions, concerning the Child Labour (CL) and WFCL, into Law No. 23 of 2002 on Child Protection and Law No. 13 of 2003 on Manpower.

According to Article 3 of Act No. 1 of 2000, the worst forms of child labour takes these forms. For the purposes of this Convention, the term the worst forms

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<sup>8</sup> ntions on child labour (IPEC),  
<https://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm>, accessed on 8 February 2021

of child labour comprises:

- a. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b. the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c. the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- d. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 3 (d) of Act No. 1 of 2000 specifies that “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children” is prohibited. The Minister of Manpower and Transmigration Decree No. Kep.235/MEN/2003 concerning Jobs that Jeopardize the Health, Safety and Morals of Children (for simplicity, hereinafter referred to as “Ministerial Decree No.235”) is included in the Annex to the Decree and include work with machines, engines, heavy duty equipment, jobs where there are physical hazards, chemical hazards, biological hazards or that by nature are hazardous. Jobs that harm the moral of children include jobs in bars, discotheques, etc. places that may be used for prostitution, promotion of alcohol, drugs to arouse sexual desire or cigarettes.

Based on Article 2 of Ministerial Decree No.235,

1. Children under 18 (eighteen) years of age shall be prohibited from taking up a job and or being employed in a job that jeopardize the children's health, safety or morals.
2. Types of jobs that jeopardize the health, safety or morals of children are listed under the Attachment to this Ministerial Decision.
3. Literal translation: The types of jobs as referred to under subsection may be reviewed with a Ministerial Decision in accordance with scientific and technological developments.

Based on the above, it can be concluded that children in Indonesia are protected and guaranteed, worst forms of child labour and hazardous work for children under the age of 18 is prohibited.

However, of the 58.8 million Indonesian children aged 5 to 17, 4.05 million, or 6.9 percent, are estimated to be working children. It suggests that there is a larger scope because 1.76 million child workers, or 43.3% of all working children, accommodate children under the age of 10 or under the age of 15 to 17. Among them, about 985,000 or nearly half of the children aged 5-14 are engaged in Hazardous Works, which is prohibited by Law No. 23 of 2002 and Ministerial Decree No.235.

Working environments exposed to dangerous objects (452,658 children), dust or vapor (449,541 children), and extreme cold or heat (353,526 children) are the most common hazards. This age group of child workers are exposed to other

serious hazards, such as fire and gas (115,943 children), chemicals (34,246 children), dangerous heights (32,246 children), as well as carrying heavy loads (31,467 children).<sup>9</sup>

Children, who are child labourers, are vulnerable to the above situations that interfere with their growth and development, and child labour should be eradicated in accordance with the law because the above-mentioned harmful situations, children cannot be protected. Accordingly, Indonesia has enacted several laws and regulations to resolve the serious situation of child labor in Indonesia and eradicate the worst form of child labor. The main focus and discussion of this thesis will be on the implementation of the ILO Convention, an international effort to eradicate child labor and the Worst Forms of Child Labour, and legal analysis of the implementation of Indonesian laws and regulations based on the ILO Convention.

To do so, the author will first look at two ILO Conventions, which are ILO Minimum Age Convention, 1973 (No.138) and ILO Worst Forms of Child Labour Convention, 1999 (No.182). And then, the author will look at Indonesian laws Act No. 20 of 1999 on the Minimum Age for Admission to Employment, Act No. 1 of 2000 on the Worst Forms of Child Labour and finally Minimal Decree No. 235 on Hazardous Works, enacted by ratifying aboved two ILO Conventions.

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<sup>9</sup> ILO Conventions on child labour (IPEC),  
<https://www.ilo.org/ipecc/facts/ILOconventionsonchildlabour/lang--en/index.htm>, accessed on 8 February 2021



After all, there is a need for awareness of the current state of child labour in Indonesia and clear legal recognition for eradication of Worst Forms of Child Labour. Both ILO Conventions and Indonesia are primarily aimed at protecting children from the Worst Forms of Child Labour to ensure child's survival, growth and development. Therefore, the Author hopes to help eradicate the Worst Forms of Child Labour through this study by identifying and stating the importance of child protection.

### **1.2 Formulation of Issues**

In regards to the topic of this thesis, the Author will discuss the following formulation of issues:

1. How does ILO convention regulated about child Labour ?
2. How does Indonesia comply with the ILO Convention interms of child labour in Indonesia ?

### **1.3 Research Purposes**

The Author's purpose of writing this thesis is to answer the formulation of issues stipulated above, namely:

1. To know how ILO convention regulates of child labour.
2. To know how Indonesia comply with the ILO Convention interms of child labour in Indonesia.

## **1.4 Research Benefits**

### **1.4.1 Theoretical Benefits**

Theoretically, the Author expects this thesis to imprint awareness of child labor and the worst form of child labor based on the ILO Convention, which are ILO Minimum Age Convention, 1973 (No.138) and ILO Worst Forms of Child Labour Convention, 1999 (No.182). In addition, the Author hopes to strengthen awareness of child labour in Indonesia, logically analyze and identify legislation applied to eradicate 'worst child labour' based on the ILO Convention, and further contribute to Indonesia's growing awareness of child labour.

Ultimately, the Author sincerely hopes that this research will provide more perspective and knowledge on Indonesian law, especially in the field of child human rights, along with the realization and establishment of laws and regulations, and the ministerial decree under the Indonesian laws.

### **1.4.2 Practical Benefits**

Practically, the author hopes that the research will provide an effective solution for Indonesia's project to eradicate child labour, especially the Worst Forms of Child Labour, "ROADMAP TOWARDS A CHILD LABOUR-FREE INDONESIA IN 2022." The Author realize that Indonesia's own strong and effective laws and regulations on child

protection are essential, especially in relation to the worst forms of child labour.

The Author also hopes that the research will be the most necessary and useful suggestion for all Indonesian citizens, especially children and their parents or guardians, and children whose rights are infringed and socially unprotected by child labour. Finally, the research also aims to eradicate the Worst Forms of Child Labour, reducing the number of children working in Hazardous Works, to ensure the protection and guarantee of unprotected children in the field of illegal child labour, and to contribute to the establishment of the relevant legal system.

### **1.5 Framework of Writing**

This thesis is arranged into five main chapters that will ease the readers to understand the discussion of this thesis.

#### **CHAPTER I: INTRODUCTION**

This chapter I consist of the introduction. This chapter I, further divided into five parts, which are background, research question, research purpose and research benefits.

#### **CHAPTER II: LITERATURE REVIEW**

First, the author will explain in detail the definition of children along with legal requirements for child protection. Next, Author will explain the rights of children and child protection in child

exploitation situations based on the UN Convention on the Rights of the Child. Third, the author will explain Indonesia's measures for child labor and child protection based on the UN Convention on the Rights of the Child, including Act No. 20 of 1999 on the Minimum Age of Employment under ILO Convention No. 138, Act No. 1 of 2000 on the prohibition and immediate action to abolish the worst form of child labor based on ILO Convention No. 182, and Ministerial Decree No. 235 on types of occupations that put children's health and safety at risk and the Indonesian government's countermeasures in child labour.

### **CHAPTER III: RESEARCH METHODS**

This chapter will discuss in general about the type of research, the type of data, data analysis technique and the type of research approach. Followed by the types of research, data, data analysis technique and research approach that the Author uses to discuss the issues in this thesis.

### **CHAPTER IV: DISCUSSION AND ANALYSIS**

The fourth chapter will discuss the research problems along with its solution. This chapter will be divided into two further sub-chapters and each sub-chapter will answer the respective research question as stipulated in chapter II of this thesis. The first sub-chapter analyzes How does ILO convention regulated about child

Labour. The second sub-section consists of an analysis of How does Indonesia comply with the ILO Convention interms of child labour in Indonesia.

## **CHAPTER V: CLOSING**

In this last chapter, the Author will explain the conclusion as an answer to the issues that have been analyzed in chapter four. Aside from giving a conclusion, The Author aims to provide legal certainty and protection to all by presenting proposals and recommendations for these issues and possible regulations that will be drafted and re-emerged in the future so that readers can easily understand the government's guidelines and policies on child protections and child labour.