REFORMATION OF LAW POLICY ON CHILDREN PROTECTION AGAINST ECONOMIC EXPLOITATION IN INDONESIA

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ABSTRACT
Economic exploitation of children is a rife crime, not least in Indonesia. The forms of economic exploitation range from employing children to child labor, to busking and begging on the streets. Most of these children forced to work by their parents or families to help increase family income. In Indonesia, legal protection for children is regulated in Law No.23 of 2002 junto Law Number 35/2014 on Children Protection against Violence. Unfortunately, these laws have not been able to tackle the economic exploitation of children. In addition to the substantial factor in the law, the ineffectiveness of the implementation of law enforcement caused by the un-synchronization of law enforcement institutions with related protection agencies. This condition exacerbated by the deepening of cultural poverty in poor communities that makes poverty hard to eradicate. The reform of the legal policy on child protection from economic exploitation is carried out by a) poverty alleviation; b) strengthening regulations for the protection of working children, and c) strengthening law enforcement institutions based on John Sullivan’s view.

Keywords: Economic Exploitation of Children, law enforcement, culture, poverty

INTRODUCTION

According to Article 1 Convention on the Rights of the Child (CRC), a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. The same definition is also given by Article 1 number 5 of Law No.39/1999 on Human Rights, child means every human being below the age of eighteen and is not getting married, including a fetus in the womb for the sake of its interest. Those definitions come with the conclusion that children must be protected under law.

Legal protection for children is aimed to ensure that every child gets the right to live and develop and is protected against violence and discrimination. In this case, legal protection is focused on protecting children from economic exploitation. Economic exploitation of children means, taking unjust advantage of children for one’s own advantage or benefit by covering situations of manipulations, misuse, abuse, victimization, oppression or ill-treatment. According to Article 32 of CRC recognizes that every child has the right to be protected from such exploitation, where children should not allow to perform any work that is likely to be hazardous, which interferes with child’s education, or is harmful to the child’s health or physical, mental, spiritual, moral, or social development. If we take the Convention on the Rights of the Child as the basic framework, the economic exploitations are recognized as child labor, child pornography, or the use of children for criminal activities such as drug trafficking.

In Indonesia, children protection toward economic exploitation has been regulated in Article 64 of Law No.39/1999 on Human Right jo. Article 13(1) letter b Law No. 23/2002 on Children Protection against Violence. According to this law, economic exploitation is defined as an act with or without the child consent victims which include but are not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, physical, sexual, reproductive, or internal use against the law of transferring or transplanting organs and/or body tissues or utilize child energy or ability by other parties to get personal benefit materially. Otherwise, sexual exploitations are all forms of utilization of sexual organs or other body organs of the child to obtain benefits, including but not limited to all prostitution and molestation activities.

Based on the definition above it can be concluded that economic exploitation on children has various forms, where the main elements that distinguish an act including as economic exploitation of children or not be seen from the intentions (mens rea) of people who force the children to work. In this case, indicators that can be used to measure whether a child has been exploited economically according to White, include the existence of long working hours, low wages, and endangered children's education. Thus it is known that economic exploitation is a crime caused by child labor.

Although child protection against exploitation has been regulated in such a way, it does not neglect the fact that both laws have not been able to protect children's rights. Those laws are only able to ensnare exploiters who clearly force or exploit children directly. Such conditions cause perpetrators who exploit children indirectly can’t be committed to criminal acts as

1 Article 28B(2) of The 1945 Constitution of Republic of Indonesia
4 Ibid.
regulated in Law No. 23/2002 jo. Law No. 35/2014 on Children Protection against Violence. Besides, the concept of child protection above was negated by Law No. 13/2003 on Employment. Law No.13/2003 opens the opportunity to place children as one of the workers even though the law allows children to work with certain conditions.

Besides regulatory issues, the main cause that makes children being forced to work is the economic reason. Poverty is the main reason that force children to work to ensure their life. Also, the lack of parental education and the roots of patriarchal culture are other reasons that force children to take part in working early. Based on the data from the Indonesian National Police-Criminal Investigation Agency, around 2011-2013 there are 205 cases of sexual exploitation and 213 cases of economic exploitation. The number increased into 306 cases of commercial exploitation and 351 cases of economic exploitation (exploitation of child labor) in 2016. Among the forms of economic exploitation carried out were forcing children to beg, selling newspapers, using babies for begging, and forcing children to labor.

The data presented don’t describe the factual data that occur in the field. The problem of economic exploitation of children can be seen as an iceberg phenomenon that appears on the top only, while undetected ones are far many to mention. This is why this research towards this matter becomes substantially important for further.

PROBLEM STATEMENT

This paper only focus to discuss the economic exploitation of children’s cases in Indonesia even though the cases happened widely in other countries. Therefore, the writing of this paper divided into two areas, namely a description of the implementation of law enforcement on the economic exploitation of children in Indonesia and the proposed concept for reforming law enforcement on the economic exploitation of children in the future.

Also, this paper is a kind of normative study that is analyzed using the statutory approach and conceptual approach. The data used are secondary data consisting of of primary legal data in the form of laws and regulations against of economic exploitation of children, secondary legal data in the form of supporting literatures, and tertiary legal data in the form of legal dictionaries and online information. The primary data found in this paper is part of the literature’s citation from the previous research or the related topic paper.

ECONOMIC EXPLOITATION OF CHILDREN IN INDONESIA

Economic exploitation of children in Indonesia analyzed by using Lawrence M. Friedman's legal theory. According to Friedman, according to this matter, there are three important factors in law enforcement, they are: 1) legal structure; 2) legal substance; and 3) legal culture. The structural component is an institution created by the legal system with a variety of functions to support the operation of the system. This component used to portray the problems of law enforcement on implementing legal protection for children from economic exploitation.

The cultural component consists of the values and attitudes that bind the system and determine the place of the legal system in the nation's culture as a whole. This component describes cultural issues, especially the culture of the community that influences the success or failure of legal protection for children from economic exploitation. Lastly, a substantial component is a set of values translated in the form of a legal norm realized in the form of regulations, doctrines, decree, and used by regulators and regulated parties. This component analyzes the problem of law enforcement for children from economic exploitation in terms of relevant regulations.

ECONOMIC EXPLOITATION OF CHILDREN: REGULATORY ISSUES

Firstly, legal arrangements have so far only been able to ensnare those who force or exploit children for economic benefits by using violence or deception. According to Article 88 of Law No.35/2014 on Children Protection against Violence, "every person who violates the provisions referred to Article 76I, is sentenced to a maximum imprisonment of 10 years and/or a maximum fine of Rp 200,000,000.-(two hundred million rupiah) ", Where the provisions referred to Article 76I, "Everyone is prohibited from placing, allowing, committing, committing to do, or participating in economic and/or sexual exploitation of children". Based on the clause of Article 76I above, there are five types of acts that reflecting economic exploitation on children.

The protection paradigm in Law No.23/2002 junto Law No.35/2014 on Children Protection against Violence tends to apply only to perpetrators who are directly proven to have fulfilled the elements of place, allowing, committing, committing to do, or participating in economic and/or sexual exploitation of children. In practice, many cases occur where children exploited

12 Lawrence Friedman, American Law, London: WW Norton and Company, pg.5-7. Friedman describes the three factors as follows: the structure of a legal system consists of elements of this kind: the number and size of courts, their jurisdiction, and modes of appeal from one court to another, how the legislature organized, what procedures the police department follows, and so on; substance, by this meant the actual rules, norms, and behavior pattern of people inside the system; legal culture, by this we mean social attitudes toward law and legal system, their beliefs, values, ideas, and expectations. The original statement also can be read at Naibaho, N. 2011. Human Trafficking in Indonesia: Law Enforcement Problems, Indonesia Law Review. Vol.1. No.1. pg.86.
indirectly. This condition occurs in children who indoctrinated to work on the grounds of helping parents from an early age, so children are accustomed to working without knowing that work is not their primary task as a child. Furthermore, indoctrination or efforts to order children to work not accompanied by pressure, violence, or deception, but come from children's will to help parents' economy protected from various kinds of article snares in Law No. 23/2002 jo. Law No. 35/2014 on Children Protection against Violence. These conditions often hamper the investigation process due to the lack of evidence to prove the case. In this case, the family is one of the perpetrators who have the highest possibility of carrying out acts of children's economic exploitation in the field of financially supporting the family.

Secondly, the asynchronous spirit of child protection against acts of economic exploitation between Law No.23 of 2002 jo. Law No. 35 of 2014 on Children Protection against Violence to Law No. 13 of 2003 on Employment. Law No. 23 of 2002 jo. Law No. 35 of 2014 on Children Protection against Violence is centered on a paradigm to protect children's rights to support child development so that it does not tolerate the exploitation of children. Unfortunately, this paradigm is negated by Article 69 of Law No. 13 of 2003 on Employment that provides an economic exploitation gap for children by allowing children to work with certain conditions.

Article 69 of Law No. 13 of 2003 states that children aged 13 to 15 do light work as long as it does not interfere with their physical, mental, and social development and health. The businessman who wants to employ children must meet the following requirements: a) written permission from parents or guardians; b) work agreements between businessman with parents or guardians; c) maximum working time of 3 hours; d) working hours during the day and do not disturb school time; e) occupational safety and health; f) clear employment relations and g) receive wages by applicable regulations. The purpose of Article 69 is that children shall work under their parent's or guardians' permission. Thus this article indirectly provides a gap for parents or guardians who indeed intend to have the child to work.

ECONOMIC EXPLOITATION OF CHILDREN: LAW ENFORCEMENT

Law enforcement to protect children from acts of economic exploitation can only be effective if the family sector, law enforcement institutions, educational/religious institutions, child protection institutions, and the community work together in synergy. To uphold legal protections for children, the Government of Indonesia has formed an independent regulatory body called the Indonesian Child Protection Commission (KPAI). In carrying out its duties, KPAI is independent without being interfered with by primary institutions that have the authority to provide protection and oversee children's rights. Therefore in practice, KPAI accepts all complaints relating to violations of children's rights, including cases of economic exploitation of children.

Complaints addressed to KPAI are then filtered to provide follow-up forms of appropriate handling. If the complaints are fulfilling elements of violations of children's rights, the KPAI can continue to report the complaints to the police. Conversely, if the complaints can be resolved by KPAI itself, there is no need to forward the report to the police. KPAI can provide assistance and guidance to children or families to protect children's rights.

Furthermore, the economic exploitation of children in Indonesia takes several forms outlined in the previous discussion. The crime tends to be related to other exploitation like sexual exploitation and child trafficking in persons. Therefore in some cases, the crime of economic exploitation does not only apply as a single criminal offense but becomes the cause of the other criminal acts that accompany it. In this case, it is often difficult to investigate the existence of sexual exploitation and child trafficking. These happen because traffickers are increasingly adept at hiding trade motives, which makes it difficult for the police because of the lack of child trafficking experience. This condition exacerbated by the limited number of personnel and budget provided during the investigation process, resulting in many disclosing cases of child trafficking. By not disclosing cases of child trafficking, it can lead to the unfolding of economic exploitation of children cases.

Besides, many economic exploitations cases not revealed in the investigation due to a lack of evidence. That is due to the lack of witnesses who are willing to give witness to the case. Most of the witnesses did not wish to give witness for several reasons such as a) the hearing process was complicated and took a long time; b) there is no safety guarantee for the witness from every kind of threat; c) less care from the agencies to the witness so that the witness becomes scared or reluctant to deal with the law enforcement agencies; d) the reasons for time and costs are specific obstacles for the witness to deal with the law enforcement agencies.

Concerning witness and victim protection, in Indonesia itself has another independent regulatory agency named the Protection of Witness and Victim Agency (LPSK). LPSK, following its name, has to protect witnesses and/or victims from a criminal case. In terms of child protection, LPSK prioritized to help the victims to get restitution. The restitution used to help children maintain their trauma healing both physically and mentally. Unfortunately, the existence of LPSK doesn't optimally use by the community considering the small number of requests for protection for child victims. Based on LPSK data, in 2017 there were 104 applications for child protection (cases of sexual assault). The number increased to 264 requests in 2018 for the same cases. If noted, this amount only covers protection against sexual violence cases that are not in the category of economic

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1 Naibaho, N. Op.Cit.pg.91.
2 Naibaho, N. Ibid pg.92.
3 Ibid.
5 Ibid.
6 Ibid.
7 Ibid.
8 Ibid.
9 Ibid.
10 Ibid.
11 Ibid.
12 Ibid.
13 Ibid.
14 Ibid.
15 Ibid.
16 Ibid.
17 Ibid.
18 Ibid.
19 Ibid.
20 Ibid.
21 Ibid.
22 Ibid.
23 Ibid.
24 Ibid.
25 Ibid.
26 Ibid.
The main problem of economic exploitation is poverty. According to Irwanto, poverty and the emergence of child labor are often used as propositions whose truth is obvious though how the linkages between these two variables have not proven. The economic exploitation of children begins when parents take advantage of the innocence and helplessness of children to get money, not trying to do other economic activities that can help meet the family's economy. In this regard, Bonger argues that some poor families resort to illegal means to obtain material if the income they receive is legally inadequate, which then shows that poverty drives people to commit crimes. Based on Bonger's argument above, we know that the economic exploitation of children is an illegal method taken by some parents or families to obtain money or materials.

In addition to the poverty factor, the low level of education of parents is also a reason to exploit children. Most parents do not know and understand the rights of children that must be fulfilled so without feeling guilty about sending children to work. In this condition, the child is placed as a living maid but slowly changes to become the primary breadwinner through indoctrination conducted by their parent or family.

Such conditions occur in children who live on the banks of Gajahwong River, Yogyakarta City, Yogyakarta Special Region Province, where children are required to work as scavengers, buskers, and beggars after school from street children. The condition repeated so that the children are unconsciously exploited indirectly by their parents or family. Begging, busking, and scavenging then develops into habits that are hard to lose because the results of the street work can meet their daily needs.

Not only in Yogyakarta, but a similar case also occurred in Banda Aceh City, Aceh Province. Most children employed in formal sectors such as factories, construction, plantations, agriculture, mining, fishermen and fish auctions, or informal sectors such as beggars, scavengers, and newspaper messengers. Their parents let their children work so they can contribute 20-25% of family income. The reason parents employ children on the streets (read: begging) is that they do not have decent work or they do not get as much money as their children when begging. Parents see that sending their children to become beggars provides its benefits. These conditions indicate the intentions of parents by delegating their responsibilities to work for their children.

The negative impact of these actions is that children become accustomed to work and assume that work is usual for children their age. In the long run, the effects of exploitation carried out indirectly will result in children experiencing both physical and mental disorders. Physical disorders refer to children's health conditions that tend to easily expose to diseases that affect the child's physical growth. Besides, vulnerable children also experience workplace accidents that not infrequently result in injury to the nervous system, weakening of the five senses, and even potentially contracting sexual diseases (STIs / HIV / AIDS) caused by sexual exploitation.
Meanwhile, in terms of mentality, children tend to grow into individuals who are unable to interact with their social environment. Children find it difficult to collaborate with others and even a crisis of confidence. The worst thing that happens is that children are unable to distinguish right from wrong because they grow up in harsh situations. If these conditions continue to occur it will affect the lives of children as adults.

Such a culture is not impossible that will be passed on by these children in the future. Oscar Lewis in the Cultural Poverty Theory states that poverty can arise as a result of the values or culture embraced by the poor, such as lazy, easy to surrender to fate, and lack a work ethic. Such conditions lead to the emergence of structural poverty in the form of external factors that prevent someone from having difficulty accessing resources. The above view illustrates that basically, poverty occurs not because of the inability of a person to work but the inability of social systems and structures in providing opportunities and access for someone to work. This condition is known as structural poverty.

Structural poverty causes poverty to grow institutionalized, giving rise to a culture of poverty. The culture of poverty among the poor then forms the vicious circle of poverty, which is an endless cycle of poverty that is grown from within the poor. In other words, people intentionally impoverished systematically to depend on their fate in certain groups. Dependency (dependency ratio) will be high because these impoverished groups tend not to get access to proper education so that it falls in the brink of ignorance and socio-cultural underdevelopment. Such conditions, indirectly placing the label “pulp” is underestimated by other groups of society. As a result, poverty becomes a permanent attribute that is difficult to be released from the poor and is the main reason why the poor continue to commit illegal acts (read: economic exploitation of children) to make a living.

REFORMATION ON CHILDREN PROTECTION AGAINST ECONOMIC EXPLOITATION

Based on the description in the first discussion, we know that each sub-discussion of the economic exploitation of children’s regulatory aspect, law enforcement aspect, and community culture aspect, have their problems, where the main problems caused by poverty. Therefore the solution to tackle the economic exploitation of children refers to efforts to reduce poverty, strengthen the regulation of economic exploitation of children, and strengthen law enforcement to eradicate acts of economic exploitation of children.

Firstly, poverty alleviation. Poverty is a problem that is not easy to solve in almost all countries least in Indonesia. Poverty is a problem that involves various aspects of life as economic, political, and social-psychological. In Indonesia, poverty alleviation efforts are directed at the community both personally and in groups with the aim of empowerment that divided into three clusters. Cluster I in the form of groups is focused on reducing the burden of life and improving the quality of life in meeting food, health, and education needs, such as the provision of assistance for Community Health Insurance, Poor Rice Distribution, financial or educational support. Cluster II is in the form of improving the capabilities of the poor carried out by implementing the National Program for Community Empowerment in Mandiri. Cluster III aims at empowering community groups such as Small and Medium Enterprises Sized (SMEs) development programs, and people's business credit.

The programs mentioned are a picture of poverty alleviation efforts undertaken by the government. Poverty alleviation is not enough to rely on programs from the government. Poverty alleviation needs to be supported by the efforts of the community itself to be free from the shackles of poverty. This effort by reconstructing poverty theology and building awareness of collectivity. Reconstruction of the theology of poverty is an effort to build self-awareness that poverty is not a God-given condition that cannot be changed (taqdir). Everyone must have a work ethic and enthusiasm to change their conditions for the better.

Meanwhile, building collectivity awareness is a teaching of socialism to share with the needy, in other words applying cooperation. This condition is an implementation step of the application of the Pancasila economic system. Mubyarto stated that the rational basis for the implementation of the Pancasila economic system refers to efforts to build a national economy following the ideology of the nation and ways to develop alternative economic knowledge and education based on the value system, socio-culture, and real economic life of the Indonesian people. The spirit of collectivity must be raised in every individual of Indonesian society as a form of awareness to move forward together.

Secondly, reinforce the law. Law reinforcement is done by synchronizing the substance related to the economic exploitation of children’s regulations between Law No.23 of 2002 junto Law Number 35 of 2014 on Children Protection against Violence to Law No. 13 of 2003 on Employment. Where the arrangements in Law No.13 of 2003 on Employment that allow
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28 Ibid.
31 Economic aspects refer to the lack of resources that can be used to meet the needs of life and improve the welfare of a community. The political aspect refers to the view of poverty in terms of low access to power. This political aspect influences the formation of structured poverty. Finally, the social-psychological aspect of looking at poverty is the lack of networks and social structures that support in placing opportunities for increasing productivity: Elis and Suharto on Umami, U. 2013.Cara Pandang dan Upaya Pemerintah dalam Mengurangi Kemiskinan, Jurnal Pembangunan Wilayah dan Kota. Vol.9. No.4. pg.347.
32 Ibid. pg.350.
34 Pancasila economy is a market economy that refers to the Pancasila ideology, which means the mechanism of operation of the Pancasila economy based on real data on the Indonesian economy and the actions of economic actors that are moralistic, socio-nationalistic, and socio-democratic. Pancasila economics describes real terms of the obvious behavior of Indonesian people who are homo socius, homo ethicus, and homo economicus in an economic system based on the principle of kinship. Hastangka, 2007. Refleksi Kritis atas Konsep Ekonomi Mubyarto. Bachelor Thesis Faculty of Philosophy, Gadjah Mada University. pg.78.
the work carried out by minors under their performance limits and ensure to offer protection against economic exploitation, health, and safety risks. Also, the government needs to oversee the procedure for the submission of working conditions proposed by parents or guardians of children, where the potential implementation of economic exploitation of children begins with the filing of the work permit. Granting permission to work by parents or guardians can be based on reasons to help meet the needs of families in which there is a hidden intention to exploit their children. Besides being potentially exploited by parents or family, children have the potential to be exploited by the company/factory where they work. Furthermore, state board members need to record the type of light work that can be done by children. Thus if it found that children work outside of the light work determined by the government, then the child must be protected.

Thirdly, strengthening law enforcement. Strengthening law enforcement referred to is reinforcing the law in terms of law enforcement institutions. There are three fundamental elements affect the police performance in the field, such as a) law enforcement institutions along with various supporting facilities and infrastructure and institutional work mechanisms; b) work culture related to its police members, including regarding the welfare of its police members; c) a set of regulations that support both institutional performance and those regulating legal material that used as work standards.

Based on the paragraph above, we know that to obtain the implementation of systemic law enforcement is necessary to synchronize aspects of carrying capacity, the welfare of the police, and a decisive set of regulations. If we pay close attention to the carrying capacity and police's prosperity, it can help improve the performance of law enforcement officials to prevent the economic exploitation of children. Therefore we need a managerial reconstruction of the bureaucratic law enforcement apparatus which, according to John Sullivan, can be fulfilled by a) well motivation; b) well education; and c) salary.\(^\text{37}\) Firstly, well motivation refers to one's motivation to devote oneself to law enforcement. From the start, a law enforcer must know and be motivated that the implementation of law enforcement is both a challenge and an arduous task. Secondly, well education means that a law enforcer should meet specific education standards so that in addition to formal education, non-formal education also needed to be related to legal knowledge. Thirdly, the salary of a law enforcement salary must be considered so that in carrying out their duties, law enforcers can carry it out properly, law enforcement officials not charged with the costs of carrying out their duties.

CONCLUSION

Based on the description, we can conclude that the problem of economic exploitation of children's implementation dominated by poverty that causes parents or closest relatives to exploit children for specific purposes. The exploitation carried out by making children work as factory workers or earn money on the streets by becoming beggars, scavengers, and newspaper sellers. The above conditions occur because of the lack of synchronization of the spirit of child protection between Law No.23 of 2002 jo. Law Number 35/2014 on Children Protection against Violence to Law No. 13/2003 on Employment, the weak law enforcement of economic exploitation of children, and the root culture of poverty by the poor.

The methods used to reform legal policies towards protecting children from economic exploitation are focused on three things: firstly, alleviating poverty internally (from within the poor) and externally (government assistance programs); secondly, strengthening regulations by specifying the types of work that can be done by children and limiting the age of children who are allowed to work at least 15 years with specific requirements; and thirdly, strengthening law enforcement by law enforcers by increasing the support of infrastructure, welfare, and education of its members following the ideas of John Sullivan.

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