

The Government's Responsibility for the Fulfillment of the Right to Education for Child Labour in Working Relationships

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Abstract

The purpose of this study is to analyze the setting of the education right for child labour in working relationships. The method used in this study is empirical normative. The results showed that the regulation of the fulfillment of the education right for child labour in the working relationship have not been maximal, because there is still a legal void in the Employment Law and the absence of synchronization of Law No. 20 of 2003 on the National Education System, Government Regulation No. 48/2008 on Education Funding. The implementation of the 20% education budget has not been achieved so that uneven education is enjoyed. Therefore, a revision of the rules on the fulfillment of educational rights for child labour in an integrated and harmonious working relationship is required.

Keywords: Responsibility, Education rights, Child Labour, Employment Relations

Introduction

Human beings and human rights are two things that are difficult to separate because man since his birth carries integral natural rights in his life conferred by the almighty God (Fattah, 2017)¹. Its existence is so fundamental to human in protecting themselves and the human dignity. It is also used as a moral foundation in associating or connecting with fellow human beings, so that no one can take it away (Endrawati, 2011)².

In human rights law, countries in this case represented by the government are obliged to respect, protect and fulfill human rights in the constitution of their respective countries specific to Indonesia (Sakharina, 2016)³. This obligation is set out in Article 28I of the NRI Constitution of 1945, which determines that the protection, promotion, enforcement, fulfillment of human rights is the responsibility of the state, especially the government⁴. One of the human rights is the right to education as affirmed in Article 28 C paragraph (1) of the 1945 Constitution that everyone has the right to develop themselves through the fulfillment of their basic needs, are entitled to an education and benefit from science and technology, arts and culture in order to improve their quality of life and for the welfare of mankind. Education is the right of all persons as stated in Article 31 paragraph (1) and (2) of the 1945 Constitution that every citizen

is entitled to education and must attend basic education and the government must finance it⁵. The embodiment of educational rights in the Constitution of the NRI year 1945 is spelled out through legislation and various government policies including Law No. 39 of 1999 on Human Rights Article 12 that everyone is entitled to his personal development, obtaining an education and smartening himself⁶. Furthermore, Law No. 20 of 2003 on the National Education System Article 5 that is every citizen is entitled to a quality education. Article 6 paragraph (1) that every citizen aged 7-15 years old shall obtain a primary education⁷.

In order to achieve the objectives of the state of education becomes the main target of the government⁸, therefore through education every citizen is given the rights to be enjoyed fairly without discrimination, specifically for children implicitly affirmed in Article 31 paragraph (2) of the NRI Constitution of 1945 and Article 6 paragraph (1) of Law No. 20 of 2003 on the National Education System, that primary education becomes the main priority of the government and is responsible for funding it especially for citizens who are 7-15 years old connotations in the child⁹, because the child is every person who is less than 0-18 years old¹⁰. Therefore, in terms of national and state life, the child is the future of the nation and the next generation of

national ideals so that every child is entitled to survival¹¹, growth and development, participate and be entitled to protection from violence and discrimination as well as civil rights and freedoms as stipulated in Article 28B paragraph (2) of the NRI Constitution of 1945. One of the human rights of children is the right to growth, especially intellectual development through education that must be fulfilled by the state (Sirait, 2017)¹². Therefore, the state, government and local governments are obliged to conduct education democratically and not discriminatorily through the formulation of policies in the field of child protection and local governments support national policies in the implementation of child protection by building kabupaten / city worthy of children¹³. A form of national commitment is to ratify the Convention on the Rights of the Child which was ratified by the United Nations in 1989 through Kepres No. 36 of 1990 on the Ratification of the Convention on the Rights of the Child Article 28 paragraph (1) KHA 1989, that every child deserves a quality education¹⁴. Law No. 39/1999 on Human Rights Article 60 that every child is entitled to an education and teaching in order to develop their interests, talents and level of intelligence¹⁵. The affirmation in Law No. 20/2003 on the National Education System Article 6 paragraph (1) that as well as every citizen aged 7-15 years shall attend primary education, strengthened in Law No. 35/2014 on Child Protection Article 9 paragraph (1) that every child is entitled to education and teaching. Based on this, each child has the right to get an education and teaching in order to develop his/her personal and intelligence level according to his talents and interests¹⁶. But in reality not all Indonesian children have the opportunity to obtain their rights in the field of education in full, especially children born to poor families or very poor households¹⁷. According to the Education Monitoring Network together with Result International, there are three main issues of education in Indonesia today, namely the quality of education, educational discrimination and insipitable schools (Sudjatmoko, 2010)¹⁸. The quality of education is mainly concerned with the lack of facilities and infrastructure such as the lack of availability of books and decent school buildings, the most affected groups are children living in rural areas with limited facilities and educational opportunities causing the quality of education to be very low¹⁹. The issue of education discrimination, especially concerning the cost

of education, causes uneven education. Education is still dominated by the upper middle class, so that the lower middle class does not feel the education²⁰. Therefore there is a gap between education for the rich and the poor and lastly is the problem of schools that are not child friendly, nowadays the education system is more oriented towards memorization with such a schedule that causes the child not to have time to play so happy to learn to be anxious in some cases there are children trying to kill themselves because they are tired of learning²¹. Even the results of research by educational institutions in Yogyakarta reveal that some children stop attending school and choose to work because the education system is boring²².

The implication according to RTEI is the emergence of marginalization of education and marginalized groups are children of poor families, so the implementation of basic and free education as guaranteed in the constitution in fact cannot be enjoyed evenly especially children from economically incapable families so that early on their children are involved in the world of work (Kemenakertrans, 2020)²³. The issue of poverty, lack of opportunities for education, lack of legal protection and lack of effective implementation of laws are the causes of the difficulty of child labour issues. From 2008-2019, the government has tackled child labour by 1346 out of 1,709 child workers, and the government has targeted attracting 9000 Child Labour workers by 2000 (Children's Profile Book 2019)¹³. As a result of the covid-19 pandemic that hit 216 countries including Indonesia became the biggest challenge to realize the program. Covid-19 has an impact on the economic, health and education sectors. In the economic sector, according to ILO data by 2020, there are 25 million workers potentially losing their jobs, 3 million labours in the informal and vulnerable sectors in layoffs and 5.6 million homeless (World Day commemorations, 2020a)³. The condition affects declining household income and has the potential to affect child development, health and education. Education is one of the social problems caused by covid 19 with online learning policy. One of the groups affected by online learning is poor children because of the limited facilities and infrastructure they have¹⁷.

According to UNICEF, 120 million children worldwide are affected by pandemics and 30 percent of

poor families have difficulty learning distances, resulting in 1.6 million dropping out of school (World Day commemorations, 2020b). LPPPA data reveals that as a result of online education policy causing marginalization of education at all levels of education, pialud level there are about 120 million unaffordable children, elementary school level as many as 271 million children and junior high school level of 79 million children (Bapenas, 2020)¹⁴. Poor families are the most vulnerable group, especially the limited online learning packages they have. As a result families become permissive to involve children in the world of work in place of loss of family income. The condition is particularly concern to all parties including the ILO for Indonesia and the East East predicting an increase in the number of child labours who over the past 20 years have managed to reduce child labor by about 94 million. It is necessary to protect the children of low-income families, especially the emergence of family access to credit, debt and urbanization from city to village, because the main epicenter of covid 19 is the vulnerable rural economy, especially farmers and fishermen at risk of children getting stuck in child work (LPPPA, 2020). Whatever the context, the government should not eliminate the obligation of the government to continue to grant the rights of children who are forced to work they are still entitled to protection for their rights as stipulated in several regulations including Article 32 of the Convention on the Rights of the Child that the child has the right to be protected from economic exploitation and from doing any work that may interfere with the child's education, endangering the child's physical, mental, spiritual, moral and social health/development. Article 64 of Law No. 39 of 1999 on Human Rights that every child must obtain protection from economic exploitation activities and any work that endangers him, so as to interfere with education, physical health, morals, social life and spiritual mental life, Law No. 20 of 1999 on the Ratification of ILO Convention No. 138 on Minimum Age for children Allowed to Work in Article 3 paragraphs (1) and (3), the minimum age allowed for occupations that endanger the health, safety, or morale of the child must not be under 18 years of age and the age to perform light work is 16 years. The legal protection of child labour is also stipulated in Law No. 1 of 2000 concerning the ratification of ILO Convention No. 182 of 1999, concerning the Prohibition and Immediate Action for the Elimination of The Worst

Forms of Employment for Children (BPTA) which has been ratified in Law No. 1 of 2000 specifically governing restrictions and prohibitions to involve children in the worst or harmful occupations. The convention also contains norms directly related to the concept of child protection as a worker, determining the steps that must be taken, namely determining the minimum age, proper regulatory work permit regarding working hours. Law No. 13/2003 concerning Employment Article 68, Article 69 paragraphs (1) and (2), Article 70 paragraph (1), which has substantially governed concerning child labor, ranging from the determination of the age limit can work as well as protection of the rights of child labours.

Implicitly the existence of child labour has been guaranteed from some of the most specific regulations in Law No. 13 of 2003 on Employment. But in the implementation is still not maximal, there are still various parties that utilize the weakness of the child to make it a labour with the minimum wage, and give birth to a work system that only prioritizes the advantages of safety, health and educational rights, inevitably still found child workers with long working hours and resulted in neglected right to attend school. A survey by the Indonesian Child Welfare Association in 2018 found that 1.92 million children aged 10-14 worked at least 4-5 hours per day. The association believes this figure is already higher due to higher poverty (Child Labor, 2018). This condition is due to the provisions of Article 69 paragraph (1) and (2) Law No. 13/2003 concerning employment not clearly governing the type of light work, the reference is the Decree of the Minister of Manpower and Transmigration Number Kep-235/MEN/2003 concerning Types of Work that Harm the Health, Safety or Morale of the Child, which in principle prohibits children from working in certain types of work. While the right to attend school for child workers, the reference is not yet clear because the Regulation of the Minister of Women Empowerment and Child Protection No. 5 of 2011 on the Fulfillment of Child Education Rights does not specifically regulate child labor. Then Law No. 20 of 2003 on the National Education System as the basis for the implementation of education has not accommodated the policy of special education services for child labours both regarding the schedule and curriculum. Full day implementation in schools has implications for not maximal child labor adjusting school schedules and working hours. Therefore, the phenomenon of child labor

is still an issue and an agenda that continues to be sought solutions. Based on data from lpppa in cooperation with BPS RI in indonesia's children's profile book in 2019 records that out of 79 million indonesian children today, there are about 5.6 million children working especially the age of 10-14 years, out of 5.6 million children who work there are about 52 percent in school, half the rest drop out of school or have never even been to school. The highest child workers are in the countryside with the majority working in the informal sector, particularly in plantations, agriculture and as domestic assistants, presentation of the highest child labour in Papua, NTT, South Sumatra and Sulawesi (Children's Profile Book 2019). Nevertheless, child labour remains and still exists scattered throughout the province the lowest percentage is in DKI. Sakernas 2019 data reports there are about 1.33 percent of 15-17 year olds working in the trade sector and more in urban areas. Child labour is believed to continue to grow as long as poverty has not been alleviated, especially the current state of poverty of the nation tends to remain high, BPS data in 2019 there are 4.7 million poor people in Indonesia and potentially increasing due to covid that is shaking the global economy, especially Indonesia (LPPPA, 2020). The impact of covid 19 on Indonesia based on reports from KPAI in the field of exploitation and traffic revealed that during the pandemic there is a tendency for children to work, among others in East Jakarta there are children working in stalls and restaurants, while in Depok it is found that children work as scavengers in TPS.

Based on the composition of child labour it is concluded that the trend of increasing child labour each year is rationalized to meet the economic needs of poverty-stricken families. Therefore, efforts are needed to increase the role of government, local government and community in the fulfillment of educational rights for children such as the establishment and implementation of more appropriate and consistent regulations as well as the implementation of activity programs aimed at supporting the fulfillment of educational rights for child labour in working relationships.

Method

The type of research used is empirical normative legal research. This means normative research is supported by empirical data. This type of research is adapted to the

formulation of the problems studied, namely the study in the field of law. Legal research with normative legal research types is a legal study that examines written law from various aspects of theory, history, philosophy, comparative law, structure and structure, scope and material, consistency, general explanation article by article, formality and binding power of a law and the language of law it uses, but reviews its application or implementation.

Result and Discussion

The arrangement of fulfillment of the right to education for child labour in the relationship of discussion work begins with several basic concepts, namely:

1. Child Labour and Government Responsibility

In general, the child according to The Minimum Age Convention No. 138 of 1973 is a person who is 15 years of age or under. Meanwhile, in the 1989 Convention on the Rights of the Child, which was ratified by the government through Keppres No. 39 of 1990, it was revealed that the children were those aged 18 and under. Meanwhile, UNICEF defines children as residents between the age of 0 and 18. In Article 1 number 2 of Act No. 4 of 1979 on Child Welfare states that the child is a person who is not yet 21 years old and has never been married. Furthermore Article 1 number 1 of Law No. 35 of 2014 on Child Protection defines that a child who is not yet 18 years old including a child who is still in the womb. Then in Article 1 number 5 of Law No. 39 of 1999 on Human Rights states that the child is every human being aged 18 years and under and unmarried including the child who is still in the womb, the last definition of a child under Law No. 13 of 2003 on Employment that the child is any person under the age of 18.

From some sense of the child, it can be concluded that, the child is those aged 0-18 years. As for this time the child will be in the study period and need more time to socialize with his peers. This will allow the child to develop as they should. But there are also children who decide to work to help their family's economy.

Child labour is children who do work regularly for their parents or for others who need a large amount

of time, by receiving rewards or not. According to Manurung, child labour is those aged 10-14 and they are working at least one hour continuously a week. Referring to the Employment Act child labour is children under the age of 18, children can be employed on the condition of parental consent and work a maximum of 3 hours per day. The Decree of the Minister of Home Affairs and Regional Autonomy No. 5 of 2001 on Child Labour Management in Article 1 defines that child labor is a child who performs every type of work that endangers health and hinders the learning process and growth.

Child labour referred to in this paper is limited to children who do work regularly requiring a certain amount of time by receiving wages or benefits and fulfillment of other rights as set out in the employment relationship. Child labour in this category is mainly minors who work in this type of light work and are not hampered by the right to attend school. Be aware that children who become child laborers have a susceptibility to disturbing situations that must be protected and full of rights, because child labour is a human being who deserves to be respected, upheld by the state, law and government and parents as affirmed in Article 1 number 12 of Law No. 35 of 2014 on Child Protection that the rights of the child are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, governments and countries (Aswanto, 2014).

UNICEF states that the true measure of a nation's achievements is the safety of the child, its well-being, its education and socialization, feelings of pity, being valued and included in the families and communities in which they were born (Sudjatmoko, 2010). The attention to the child world is a measure of the extent to which a society places a child's position in its national development. Therefore, it is not permissible for actions that lead to the loss of children's rights let alone hinder future hopes, including economically disadvantaged children who cannot get an education because they have to work to meet their family's needs.

In the history of the nation, education was important even before the independence of education was used as a means of transformation of the nation even education was used as a means of fighting for the nation. In the new order, education was once the nation's priority

by getting priority in the budgeting of the country as reflected by the construction of presidential instruction elementary schools in various regions including remote areas. In the reform era, education priorities are affirmed in the constitution that education funding is allocated at 20 percent of the state budget and state budget as well as the responsibility of the state to finance 9 years of primary education with the aim of equalization of educational fulfillment for all citizens. However, one of the problems that arises is that the implementation of basic human rights still exists that is not in line with the concept of human rights i.e. the right to access free or free education still contains discrimination. Education today is still dominated by the upper middle class so there are some lower middle class who can not feel education, because this is the gap of education in the city and in the village especially in the border area, so the issue of the quality of education is still dominated in the city and for the upper middle class. Quality education still belongs to the rich, while the poor still have difficulty obtaining quality education due to the high cost of education. As a result, the responsibility of the state in the fulfillment of education for all citizens, especially for children, is still not maximal because the implementation of the education budget by 20 percent for education has not been achieved, as a result of a levy in education that implications the emergence of the phenomenon of dropping out of school and choosing to work. In fact, children should have time to learn, play and interact in err with the conditions they have to be on the street or elsewhere that demand it to work with various risks that must be faced and harm the child's development process.

On that basis, the Indonesian government has committed to addressing dropouts since 1970 by making education a priority with compulsory learning programs for 7-12 year olds nationally. Success achieved with the mandatory 6-year study program motivated the government to improve the compulsory 9-year study program since May 9, 1994. The compulsory 9-year study program is based on the concept of basic education for all, which in essence means the provision of equal access for all children. The goal that this program wants to achieve is to stimulate the educational aspirations of parents/foster carers and children who in turn are expected to increase the work productivity of the population nationally.

This 9-year compulsory learning program is contained in Article 48 of Law No. 35 of 2014 on Child Protection states that the government must hold a primary education of at least 9 years for all children. The reason the government implements a compulsory 9-year study program is that there are more than 805 workforce only educated elementary or less, or junior high school does not end, in addition this mandatory 9-year study program will improve the quality of human resources and can add value to economic growth and mandatory study 9 years will increase the minimum working life from 10-15 years. However, the program did not run optimally, because the dropout rate remained high at 3.01%. Since 2018, Indonesia's Human Development Index has been at 71.39 and one of the basic dimensions of IPM that is still difficult to improve is access to education/knowledge. Related to the IPM component of the educational element used is the average length of school, the expectation of old school. It was found that the average low school length for national IPM is 8.17 years. The level of South Sulawesi Province is 7.95 years. It turns out that the average school length in Indonesia in South Sulawesi province is still less than 12 years old (UNICEF, 2018). The long duration of education coupled with the high cost of education causes some parents to prefer not to send their children. One of the challenges in child care is the high cost of education (Sugianto, 2017). Some studies report that children drop out of school because of low family income to fund education. The phenomenon of children breaking up in Makassar is due to poverty factors, according to Makassar social service data mentioning the number of poor households in Makassar city in 2018 is about 87.90 percent. Economic necessity forces parents to engage their children to meet household needs by ignoring educational rights (Nursita, 2018). So it is natural that in South Sulawesi province the children drop out of school still expected 28 thousand, especially in the midst of the covid-19 outbreak.

According to the Ministry of Education because the cost of education and poverty is the main factor so that children drop out of school should be, then the responsibility of the government is to have to finance as affirmed in Article 53 of Law No. 35 of 2014 on Child Protection that the government is responsible for providing free education and/or assistance or special services for children from disadvantaged families,

displaced children, and children living in remote areas. In addition, it is persuaded to participate in package A and Package B programs, coupled with programs to expand open schools so that the illiteracy eradication movement can be eradicated (Saraswati, 2015). This is in accordance with the mandate in Article 12 of Law No. 39 of 1999 on Human Rights that everyone is entitled to protection for his personal development, to obtain an education, educate himself, and improve his quality of life. However, the implications arising from the progra of package A, B and Package C indirectly perpetuate the culture of dropouts and child labor on the grounds that ahead of exams they are just taking the equality exam to obtain a diploma. So out put more education on a mere formal orientation and ignore the quality of graduates.

Children of package graduates tend to have low skills and competitiveness so that children from families who are not able still find it difficult to obtain an education becomes a powerful way to prosper them-selves in the future. This condition is really concerning, child labour in its position as a child which is the basic capital for national development and the successor of the ideals of the struggle of the nation that will be expected to be able to carry out its duties and responsibilities for the sustainability of the nation and the state, in other words the child is a long-term investment for the planning of the nation going forward should take into account the child as a very important variable. Moreover, Indonesia's child population occupies a third of Indonesia's population is certainly a nation asset that must be prepared from now on through education so that it creates a quality generation (LPPPA, 2019). Therefore, the responsibility of the state in this case is an inevitable in a country that adheres to the concept of the welfare law state, one of the characteristics of the welfare law state is the recognition of human rights, among which is the right of education. So that the improvement and fulfillment of quality education for all citizens without exception especially for children in working conditions is non-bargainable because education is a systematic process of improving human dignity and human welfare, especially creating a better life for child labour in the future.

The responsibility of the government is essentially the obligation as a stakeholder to be responsible in protecting, enforcing and advancing the human rights of citizens. The government must be accountable to its

people because the government in carrying out various legal actions that are set out in legal instruments such as laws, policies and decisions and certainly cause legal consequences both general and special (Kattharilda, 2013). The existence of government or state accountability is an inevitable in a country that adheres to the concept of a legal state, one of the characteristics of the state of law is the recognition of human rights. In the concept of international human rights law, the responsibility of the state is closely related to the rights that have an international nature, actions and actions that give rise to the responsibility of the state including violations of international treaties relating to contractual obligations and liability due to losses to citizens of other countries. Breach of duty can be acts or omissions (Ardhiwisastra, 2003).

Referring to the theory of human rights law and the doctrine of public law firmly shows that the enforcement and fulfillment of human rights is the responsibility of the government. Therefore, the enforcement and protection of the human rights of normative citizens is imposed on the state that is fully implemented by the government as the trustees of the constitution of the country. One of the mandates of the constitution as stated in the Opening of the Constitution of the Republic of Indonesia is the mandate to educate the nation through the educational process. Education as part of economic, social and cultural rights has been guaranteed recognition of the rules of international law. This rule is legally binding on the country that has ratified it (Mudyahardjo, 2015). Education as a constitutional right in Indonesia is not separated from the adoption process arising through international treaties both the Convention on the Rights of the Child, The International Covenant on Economic, Social, and Cultural Rights was subsequently abbreviated as ICESCR which was accepted through UN General Assembly Resolution No. 2200 A (XXI), 16 December 1966, the Covenant was declared effective on 3 January 1976 and signed by 153 countries. The ratification of some international instrument has the consequence that such international treaties have normative powers to apply as a rule of law, therefore, requiring further implementation in national law. One of the basic rights that has been recognized and guaranteed in the international instrument is the right to education as affirmed in Article 13 of ICESCR that each country of participants of this covenant recognizes

everyone's right to education should be directed at the full development of human personality and awareness of self-respect, and strengthen respect for human rights and basic freedoms. Furthermore, the state of the covenant recognizes that to exercise that right fully where primary education should be compulsory and freely available to everyone.

Further affirmed in Article 2 paragraph (1) of the Covenant of Civil and Political Rights ratified by Indonesia in Law No. 10 of 2005 reads that every country must respect and guarantee the rights of individuals, in the event of the non-existence of the relevant rules, the state shall make local rules, even if necessary to perform bilateral or multilateral treaties, and each country is obliged to demonstrate good faith to comply with the provisions of international law both material law and procedural law.

Indonesia is one of the countries that has ratified the ICCPR Covenant and the ICESCR Covenant respectively in Law No. 11 of 2005 for ICESCR and Law No. 10 of 2005 for the ICCPR, bringing the consequence that the Indonesian government must carry out its obligations in a positive way based on the principle of achieving results and the principle of the implementation of covenant instruments that have been ratified in the form of requiring the country to protect, fulfill, advancing and respecting human rights both civil and economic, social and cultural rights. The obligation to fulfill the state's actions in the form of facilitating the fulfillment of such rights by properly incorporating in the legal system, administration, finance, legal process, promotion and other actions that can support the fulfillment of such rights, among others the act of provision in this case the state is asked directly to provide assistance or services for the realization of such rights. The obligation of the state to protect is the most basic obligation and not only to protect the human rights from violations committed by the state, but also against violations or actions committed by other entities or parties that would interfere with the protection of such human rights, so that the state is required to take appropriate action so as to prevent outside parties from intervening in terms of enjoying those rights.

The consequence of the above three obligations is that the state in this case the government is required

to take certain actions to carry out the fulfillment of a right and obligation to achieve certain goals specific to educational rights. Thus, the country is obliged to carry out its international obligations in fulfilling its educational rights to the maximum based on existing resources. The absence or lack of resources is not an excuse not to carry it out. The realization of the implementation of the commitment of the *ecoosob* covenant is to require the state to create a specific action plan or program for the fulfillment of human rights based on the application of effectiveness principles in its territory and/or within its jurisdiction. One of the Indonesian government's programs is to commit to achieving the Sustainable Development Goal (SDG's) program by 2030. One of its main targets is Indonesia's decent children in 2030 (LPPPA, 2019). The government's commitment proves that the fulfillment of the right to education is a fundamental effort of the state that places education as one of the functions of the state including advancing public services in this case education services as part of the constitutional right of citizens as a manifestation of the purpose of the state in the Opening of the NRI Constitution of 1945 the fourth paragraph that is to educate the life of the nation, which is then spelled out in various regulations, specific regulations regarding the fulfillment of the right to education for children who are forced to work.

2. Analysis of Education Rights Fulfillment Arrangements for Child Labour in Working Relationships

Education under Law No. 20 of 2003 on the Education System is a conscious effort to prepare students through guidance, teaching and training activities for their future roles. The goal is to educate the nation and develop Indonesian people as a whole, virtuous worker that have knowledge and skills. On that basis, education is an important component in life so that the fulfillment of education can be realized evenly then the foundation of education arrangements is needed for the sustainability of education in Indonesia.

The philosophical foundation of education in Indonesia is *pancasila*, as affirmed in Article 2 of Law No. 20 of 2003 on the National Education System that the national education based on *pancasila* and the NRI Constitution 1945, this confirms that national development seeks among others the establishment of

pancasila people as human development of high quality and able to be independent. While the cornerstone of the education juridical point of rejection is the NRI Constitution of 1945, clearly contains about the main purpose of the implementation of education in Indonesia is to educate the life of the nation, this means that education can free people from all shackles. As a manifestation of the country's purpose in smartening the nation, departing from the philosophy of education arrangements in Indonesia namely *pancasila* and NRI Constitution in 1945, the implementation of education becomes the responsibility of the state and should be enjoyed by all citizens without exception specific to children. Children are the buds, potential and the next generation of the struggle ideals of a nation that has a role and has special characteristics and traits that ensure the continuity of the existence of the country to a better future.

Thus, education as a child's human right, the right of children to obtain an education has been guaranteed and recognized from various countries both on a global scale and on a national scale. On a global scale, the right to education is guaranteed in the Universal Declaration of Human Rights of 1948 in Article 26 paragraph (2) affirming that education aims to strengthen the universal humanitarian relationship, as well as education directed at the development of personality. The next development is the 1989 United Nations Convention on the Rights of the Child affirming that the rights of the child are inherent in the child and are human rights, so that the state cannot escape responsibility for the provision of rights to the child. Children's rights under the Convention on the Rights of the Child are grouped into 4 (four) categories including the right to survival, the right to protection, the right to growth and the right to participate (Djamil, 2013). The Convention was reviewed by Indonesia in Presidential Decree No. 36 of 1990. In KHA 1989 it is stated that the child has the right to obtain an education as stipulated in Article 28 paragraph (2) that there must be a guarantee that the school discipline is carried out in a manner that is in accordance with the human dignity of the child and in accordance with this convention without violence. Furthermore, the International Covenant on Economics, Social and Culture in 1966 known as the *ekosob* covenant of the *Ekosoc* Covenant contains 5 categories of rights: the right to employment, the right to social security, the right to a decent life, the right to

education and the right to cultural participation. Education as part of the ecosoc right is stipulated in Article 13 and 14 of the covenant which is essentially that the state of the covenant participant recognizes everyone's right to education. The Government of Indonesia ratified the Ekosob Convention in Law No. 11 of 2005. The next concrete efforts of countries in fulfilling children's right to education are held in an International Agreement on May 26, 2004 in Bangkok that agreed on the need to improve access and quality of education through a child-friendly learning environment, promote systematic programs and capacity building and school-based management and build more effective partnerships and collaborate with other countries in an effort to achieve quality education from a comprehensive perspective. UNESCO emphasizes that all children should have access to quality primary education and recommends the need to focus on improving the quality of education through social, emotional and physical development as well as children's academic attainment, the issue of educational discrimination should be limited, governments and non-governmental organizations should collaborate in efforts to achieve friendly and equitable learning for all children.

Further development of the idea of promoting and fulfillment of the right to education for children can be found in the Millennium development Goals established in September 2000 as a form of commitment from UN member states to create an environment conducive to the development and alleviation of poverty. Hasyim (2000) stated this millennium declaration contains 8 points, namely: Eradicating poverty and poverty, realize basic education for all, Promote gender and women's equality, lower maternal mortality rate, improve maternal health, ighting HIV and AIDS, malaria and other diseases, and ensuring environmental sustainability

The arrangement and guarantee of the right to education in a global level carries consequences for the countries of the participants to conduct the adaptation process in their respective national laws, including the Government of Indonesia. The arrangement of the fulfillment of the right to education for children still refers to the principles of international and national legal instrumen among others must be based on Pancasila especially social justice syllaby for all Indonesians, as well as based on the principles of the Convention on the

Rights of the Child i.e. non-dskriminasi, best interests for the child, the right to life, the right to survival and development and the appreciation of the child's opinion.

In the national level, the arrangement of the fulfillment of the right to education for children is concretely set out in the constitution article 31 of the NRI Constitution of 1945 which is the right of every citizen, and citizens are entitled to basic education and the government must finance it. Law No. 39/1999 on Human Rights Article 60 that every child is entitled to an education and teaching in the framework of personal development in accordance with his interests, talents and level of intelligence. Furthermore, Law No. 35 of 2014 on Child Protection mentions the rights of children including the right of every child to obtain education and teaching in the framework of his personal development and his level of intelligence according to his interests and talents.

The policy of fulfillment of the basic rights of children is further affirmed in Law No. 20 of 2003 on the National Education System Article 6 paragraph (1) that every citizen aged 7-15 years old must attend primary education, Article 11 paragraph (2) that the government and local government shall guarantee the availability of funds for the implementation of education for every citizen aged 7-15 years. Then it published Government Regulation No. 59 of 2019 on the Coordination of Child Protection in Article 6 that monitors the implementation of the fulfillment of children's rights to fulfillment of civil rights and freedoms, family environment and alternative parenting, fulfillment of health rights and fulfillment of educational rights. Furthermore, the Regulation of the Minister of Women and Child Protection No. 5 of 2011 on the Policy of Fulfillment of Children's Education Rights, in particular implements Article 11 paragraph (1) of Law No. 20 of 2003 on the National Education System which requires governments and local governments to provide services and facilities and ensure the implementation of quality education for every citizen without discrimination (See Regulation of the Minister of Women Empowerment and Child Protection, 2011). The core of the Government Regulation and Regulation of the Minister of LpPPA does not require children aged 18 years and under not to attend primary and secondary education. The policy philosophy is explicitly related to child labor to get an

education like other children. Child labour is a child aged 18 and under who is forced to work due to poverty and economic inequality. The expected condition is the implementation of articles in national and international legal instruments along with the principles contained therein, so that it can be realized district / city worthy of children with assessment indicators is the accreability of basic education for all citizens without exception, high educational participation at every level of education or low dropout rate and can create child-friendly schools.

However, due to the limited cost of education funding and poverty of the nation that is still difficult to alleviate, the implementation of the regulation is not optimal in the reality that there are still many citizens who can not have primary education, especially children of poor families have to quit or drop out of school because of the cost of expensive education. As a result, the phenomenon of dropping out of school is inevitable, of course, a violation of the basic rights of children who have been guaranteed both in the constitution and in the instruments of international law that have been ratified by the government (Waluyadi, 2009).

In reality the issue of child labour is not just an issue of children doing work with wages, but vulnerable to exploitation, dangerous work, inhibited access to education and inhibits the physical, psychic and social development of the child (Joni, 1999), of course contrary to the provision stipulated in Article 64 of Law No. 39 of 1999 on human rights that every child is entitled to protection from economic exploitation activities and any work that endangers him, so as to interfere with his education, physical, moral, social and mental life. If the child is forced to work then a work agreement is required in the form of a working relationship. Working relationships are very helpful for child labour especially ensuring clarity of the type of work charged to the child so that the child can be protected from acts of economic exploitation that can hinder the fulfillment of the rights of child labours especially concerning the right to attend school. On that basis, The Employment Act Articles 69 paragraphs (1) and (2) affirm that the provisions referred to in Article 68 may be excluded for children aged 13 to 15 to do light work as long as it does not interfere with development and physical, mental and social health. Article 69 paragraph (2) that employers who employ children in light work as referred to in paragraph (1)

shall be qualified including written permission from a parent or guardian, employment agreement between the employer and the parent/guardian, maximum working time of 3 hours, carried out during the day and does not interfere with school time, occupational health and safety, the absence of a clear working relationship and receiving wages in accordance with the applicable provisions. Article 70 paragraph (1) that a child may perform work in a workplace that is part of an educational or training curriculum authorized by an authorized official. Article 70 paragraph (2) of the child in question is at least 14 years old. Article 71 paragraph (1) the child can do work to develop his talents and interests. Paaal 74 paragraph (1) that the government can make efforts to combat children working outside the working relationship. As well as the Decree of the Minister of Manpower No. 235/2003 in article that a 15-year-old can do a job unless it is harmful to the child. On that basis, the existence of child labour and its rights has been guaranteed from regulation and the government is legally responsible for fulfilling it. But in its implementation is still less maximal, still found child labours with minimum wage, a work system that only prioritizes profit over safety, health and educational rights. A survey by the Indonesian Children's Welfare Association in 2018 found that 1.92 million children aged 10-14 working at least 4-5 hours per day could potentially be hampered by schooling rights. This association believes this figure is already higher due to higher poverty especially in the midst of covid-19 (Child Labor, 2018). According to the authors' observations, this is due to several factors, namely the absence of costs, mostly child labor due to poverty factors, so the cost of education that should be provided by the government and the state does not meet it. Then the time constraints caused child labour to work to meet the needs of daily life, most of child labours work with long working time causing education rights to be neglected. The last is the low willingness to study. This condition is caused by a school environment that is not conducive, an education system that is less attractive to children so prefers to work than school. The results of the Institute of Education survey in Jogja against tobacco companies reported that the reason respondents worked was largely because the education system was boring and considered unattractive.

Various child labour issues as outlined earlier, realized that the phenomenon of child labour is still

difficult to resolve because from the point of view of subtransi law realized that Law No. 13 of 2003 on Employment is not yet clearly regulated regarding the type of light work and provisions regarding the right to attend school, so there is still a legal void. Then a provision requiring employers to report employees above 5 is not appropriate because it has the potential to be a loophole for employers to hire minors without a working relationship on the grounds that the number of workers under 5 is of course contrary to Article 74 of the Employment Act which prohibits the hiring of children without a clear employment relationship. Then the ambivalent attitude of the government that shows an unequivocal attitude in dealing with child labor, the government prohibits hiring children and expects all children to go to school on the other hand the government can not shy away from the fact that there are still many poor families. So the Employment Law looks not so firm especially in Article 68 which prohibits the hiring of children whereas in Article 69 paragraphs (1) and (2) allow with some conditions. The condition caused the optimal fulfillment of children's educational rights even at the age of 18 still not fulfilled. Menakertrans has conducted a company investigation to provide protection assistance for child labor in order to learn, protecting children to be returned to their habitat as children to attend formal education in order to speed up the withdrawal of child labor. However, these efforts are still less maximal due to the provisions in Article 176 of the Employment Law concerning the employment watchdog, as well as Presidential Regulation No. 21 of 2010 concerning the Establishment of Employment Supervision Unit unit is still not effective in carrying out supervisory duties to the company due to the spread and the number is not comparable to the number of companies. In South Sulawesi Province the real condition of the supervisor's spread has not been evenly distributed, currently only reaching about 12 districts / cities by dividing the surveillance area into 5 regions. Each region has 8 functional supervisors supervising 4-5 districts with the number of companies above 100 of course ineffective supervision.

Then there are still regulations that are harmonious, especially Law No. 20 of 2003 on the National Education System as the basis for the implementation of education has not accommodated the policy of special education services for child labours. Even the policy of full day

enforcement has implications on the fulfillment of the right to education for child labour is not maximal because child labour is increasingly difficult to divide time between work and school. Technical provisions of Law No. 20/2003 on the National Education System include Government Regulation No. 19/2005 on National Standards of Education, Government Regulation No. 47/2008 on Compulsory Learning, Government Regulation No. 48/2008 on Education Funding and Government Regulation No. 17/2010 on The Management and Implementation of Education of Basic Education Programs 9 Years. In fact, 20% of the allocation of education budgets in the state budget and state budget in the implementation of 85% of the provincial/regency/city government is unable to allocate 20% of its BUDGET for education, thus affecting the less optimal education units, lack of facilities and infrastructure of learning resources as well as increasing dropout rates due to the cost of education that is difficult to reach especially in the midst of the covid-19 outbreak potentially dissingena and hiring children due to the economic difficulties of parents (Limpo, 2018). The government's role in improving education during the pandemic includes legal protection of poor families in the form of social assistance, suppressing poverty, preventing children from entering the workforce, maintaining the quality of education, affirmative efforts to catch up with learning and improving children's access to health and nutrition services. Strategic programs are human resources development formed through good education, regulatory simplification, economic transformation and infrastructure development.

The realization of a 12-year compulsory learning program is not relevant to the provision stipulated in the National Education System Act which still adheres to the mandatory 9-year study program as affirmed in Article 6 paragraph (1) of the National Education System Act that every citizen aged 7-15 years old must attend a basic education. There needs to be a revision in Article 6 paragraph (1) of Law No. 20 of 2003 on the National Education System Jo Article 2 decree of the Minister of Education and Culture of the Republic of Indonesia No. 0306/U/1995 on the Implementation of Compulsory Learning of Primary Education 9 years to 12 years, then it is necessary to increase the mandatory age of study to 7-18 years. In order to make the compulsory 12-year study program necessary clear coordination between the

government and the local government so that there is no reason to correct the uneven access and quality of education. In addition, menakertrans's efforts in order to attract school-age child workers are facilitating the implementation of training for child workers in BLK, PPA-PKH by referring to Permenakertrans No. 36 of 2016 on the Implementation of Internment in the Country especially mentioned that the internment participants are job seekers of the minimum age of 17 years. However, government policy clearly does not involve National Tripartite institutions. As a result it can be read that the rules of this apprenticeship program are very dry protection against interns from misguided practices that make apprentices become pure workers without being changed and without obtaining their rights as labours as stipulated in the legislation. Article 22 of the Employment Law expressly states that apprenticeships carried out without going through an apprenticeship agreement between participants and employers made in writing are deemed invalid the status of apprentices to be pure workers and employers should be punished. However, the weak regulation of ministers in protecting apprentices due to provisions regarding the rights and obligations of participants and employers within a certain period of time is not regulated more firmly the provision stipulated in the law causes the company to still mushroom by practicing interns instead of apprentices, which of course is very beneficial to the company because participants are not paid or paid. This condition is especially vulnerable, especially in times of covid 19 children labour has the potential to work longer working hours.

The most appropriate step taken by the government is to immediately fill the legal void in Law No. 13 of 2003 on Employment, especially arrangements related to the type of light work and the policy of fulfillment of school rights for child labours. Currently the reference refers to the Decree of the Minister of Manpower and Transmigration on The Type of Light Work as well as the Decision of the Minister of Child Support and Protection on the Fulfillment of Child Education Rights. The right approach according to the author's frugality that can be used in looking at the problem of child labor is the approach of protection of the rights of the child, especially the child as an individual and citizen is entitled to work because work is part of the human rights by not ignoring the other basic rights that are the right

of education It is the responsibility of the government to strive for the fulfillment of the right to work for the child in addition to the right to attend school through the issuance of separate laws related to the fulfillment of the rights of child labours to obtain an integrated and harmonious education with the regulations that Related.

Conclusion

The regulation stipulated in Article 69 paragraph (1) and (2) of Law No. 13 of 2003 on Employment that basically allows underage labours as long as labours' rights are fulfilled, including the right to attend school, is completely ineffective because the Employment Law does not specifically regulate the right to attend school, resulting in a blurring of work norms. In addition, there is no synchronization between the relevant regulations, especially Law No. 20 of 2003 on the National Education System on education service-specific policies for child workers in working relationships, so that the rights of children in obtaining education are far from expected. Therefore, special regulations are required that regulate child labour in the form of separate laws regarding the fulfillment of the educational rights of child workers that are innocent and harmonious with the relevant regulations.

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