EMPLOYING UNDERAGE CHILDREN IN STUDY INTERNATIONAL LAW AND ISLAMIC LAW

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Abstract: *The aim of this research is to provide protection to children who become child labourers. Child protection is all activities to ensure and protect children and their rights so that they can live, grow and develop. In fact, many children are found in various countries as workers or laborers. Therefore the United Nations (UNICEF) and ILO (International Labor Organization) organizations on child labor issued policies on child labour. The ILO has issued legal instruments in the form of conventions which are then ratified in every country to become regulations. The ILO convention aims to completely eliminate all forms of child labour, although this is very difficult to do given the current conditions. Islamic law does not explicitly explain the employment of minors, but Islam provides special protection for children so that they do not lose their rights. Based on the background above, the problem arises how international law efforts to protect child labor and what is the view of Islamic law on child labour. The research method used is normative juridical, namely conducting library research by examining library materials or secondary data as a basis for research by conducting a search of regulations or conventions and literature related to the problem under study.*

Keywords*: Child Labor, International Law, Islamic Law*

Introduction

The habit of employing children is a common behavior in society in various countries. Such behavior generally occurs in lower-class economic societies, where they use child labor to help their parents' work. But there are also situations where children are deliberately employed by their parents to companies with the intention of helping their household's economic burden. This means that poverty is the main driver for children to enter the labor market. However, the reality shows that not all poor people allow their children to enter the world of work. This means that there are other facts, be it social, cultural, demographic or psychosocial factors that influence child labour (Wahyuni, 2017).

Meanwhile, working children are children who do work in the short term, outside of school time, and without exploitation. For example in order to help parents, train responsibility, discipline or skills. In a new report by the International Labor Organization (ILO) and UNICEF say that the number of underage child workers reached 160 million at the start of 2020 or an increase of 8.4 million in the last 4 years (Ernawati, Shohib, & Baharudin, 2021). Then the condition of the corona virus pandemic also threatened more children to become child workers. If big steps are not taken, the figure could rise to 206 million by the end of 2022. Even though the United Nations has designated 2021 as the International Year for the Elimination of Child Labor.

In order to overcome the problem of child labor, the International Labor Organization (ILO) has issued a legal instrument in the form of a convention which can later be ratified by

each country to become a regulation. The convention made by the ILO aims to completely eliminate all forms of child labour. Two conventions were issued: Convention 182 The Worst Forms of Child Labor; which prohibits children from being involved in work that has the potential to worsen their conditions, as well as Convention 138 The Minimum Age for Admission to Employment and Work; which regulates the minimum age for children to work (18 years for heavy work and 13-15 years for light work). Even though there are regulations regarding the protection of child labour, it depends on whether a country has ratified them or not. Because until now, exploitation of children based on economic motives is still found in almost all parts of the world. And the problem of child labor does not only appear in Africa, but also in other continents such as Asia, America, and even Europe.

The United Nations International Organization has called for urgent action to be taken to end child employment by 2025. In an effort to achieve this goal, the International Labor Organization (ILO) and UNICEF are working together to produce a report highlighting the importance of social protection in eliminating child labour. Highlighting the ILO and UNICEF reports allows legislators around the world to increase their serious involvement in protecting children.

Islam has discussed several matters related to labor. Among them are the basic rights of workers in the Qur'an: workers' rights to their wages, rights to wages according to the value of their work, rights to provide for the family, rights to work as their ability, rights to rest periods, rights to violence protection, social security rights, and rewards for long service life, from the employer's point of view several obligations are outlined, including: being kind to workers, building equality with workers, being responsible for the health of workers, being honest in running a business, being responsible in tasks, prohibiting capital accumulation to freeze it for personal gain, prohibiting misuse of wealth , and avoid exaggeration, effective in running a business (Labibah & Wahyu, 2004).

The concept of employing children is always associated with the existence of a business or purpose to gain benefits for certain parties. This effort in some literature is called "exploitation". In relation to this, the effort made has violated children's rights, because it is included in a crime. The pattern of child exploitation that occurs is carried out by certain parties by employing underage children whose purpose is to make a profit. In addition, the pattern of exploitation that occurs is mostly done by the parents themselves in earning a living for the family. In this context, based on economic conditions, the number of children, the education of both children and parents is low, so morale is no longer a problem that must be considered (Mufidah, 2008).

Literature Review

1. Children

Children according to the World Health Organization (WHO) are the ages from being in the womb to the age of 19 years. Meanwhile, Article 1 of the Convention on the Rights of the Child states that children are all people under the age of 18, unless otherwise stipulated by the law of a country. All children have all the rights set forth in this Convention. Then in Article 2 states, Children's rights apply to all children without exception. Children must be protected from all kinds of discrimination against themselves or discrimination caused by the beliefs or actions of parents or other family members. According to the Convention on the Rights of the Child (KHA), a child is any person under the age of 18, including a child who is still in the womb. The KHA regulates the various rights of the child but leaves it to the State to decide who is meant by a child and at the same time allow the State to determine the age of majority in the child (Astuti, 2018).

Islamic law determines the definition of a child seen from the signs on a person whether that person is an adult or not. This means that a person is declared an adult if he already has the signs of an adult as determined in Islamic law (Simatupang & Faisal, 2018)

2. Child Labour

The definition of child labor or labor in general is children who do work routinely for their parents, for other people, or for themselves which requires a large amount of time, whether receiving compensation or not. In Article 7 of ILO Convention Number 138 it is understood that work that can be done by children aged between 13 years and 15 years is work that is not dangerous to the health and development of children, and does not become an obstacle for them to be able to continue attending school lessons or attending orientation. vocational or training programs (Budiono, 2011).

3. International Law

International law is the part of law that regulates activities on an international scale. Initially, international law was only defined as behavior and relations between countries, but in the development of increasingly complex patterns of international relations this understanding then expanded so that international law also concerns the structure and behavior of international organizations and to a certain extent, multinational corporations and individuals.

4. Islamic Law

As quoted from the journal Mardani that the word Islamic law is not found at all in the Qur'an and legal literature in Islam. What is contained in the Qur'an are the words shari'ah, fiqh, Allah's law and those that are rooted in it. The words Islamic law is a translation of the term "Islamic Law" from Western literature. In the explanation of Islamic law from Western literature, the definition of Islamic law is found, namely: the entire book of Allah which regulates the life of every Muslim in all its aspects. From this definition the meaning of Islamic law is closer to the notion of sharia (Mardani, 2008).

Methodology

This paper uses the normative legal research method, which focuses on the study of legal norms. The type of research used in this writing is library research. Library research means research using written documents as data, and the data sources used in this research include primary legal materials and secondary legal materials. Primary legal material is legal material that binds or makes people obey the law, including legal products which are the subject of study and legal products as a means of criticism. Secondary legal materials include explanations of primary legal materials in the form of expert doctrines found in books, journals and on websites.

Result and Discussion

1. International Law and Protection of Child Labor

Cases of child labor have existed since the early 19th and early 20th centuries. Children in their social life are sometimes forced to work to make ends meet. Various kinds of children's backgrounds have to work. Juridically, working children are called child workers. Child labor is a term for employing young children. The term child labor has the connotation of the exploitation of young children for their labor, with small salaries or consideration for their personality development, safety, health and future prospects (Pohan & Harisman, 2017).

According to UNICEF, things that cause exploitation of child labor can come from family poverty, parents and children who are illiterate, economic and social conditions of the family. Another reason for using underage child labor is because the wages for children are

much lower than the wages of adults, because children are considered easier to control than adults.

Child labor in general can be defined as children who do work routinely for their parents, (including for) other people, or for themselves which requires a large amount of time, whether receiving compensation or not. This includes work that interferes with a child's schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely, or requiring them to try to combine school attendance with excessively long and strenuous work (Anwar & Latukaisupy, 2021).

In order for child protection to be carried out properly, it is necessary to adhere to a principle which states that the best interests of children must be seen as paramount of importance (obtaining high priority) in every decision concerning children. The principle of the best interest of the child is used in many ways that children are "victims", including victims of ignorance because of their developmental age. In addition, there is no force that can stop a child's growth and development. If this principle is ignored, then society will create humans who are out of control and worse in the future (Joni & Tanamas, 1999).

In simple terms, the word protection has three elements, namely the existence of a protecting subject, the existence of a protected object, and the existence of legal instruments as an effort to achieve this protection. Etymologically protection in the Big Indonesian Dictionary comes from the word protect, which in this context means to save or give help to avoid danger. Referring to the CRC (Convention on the Rights of the Child) and the ILO (International Labor Organization) Convention, what is called child labor is actually those who are under 18 years of age. Apart from working alone and helping the family, in certain communities-for example in the agricultural, fishing, and craft industries-children are usually taught to work from an early age. In many cases, among poor families, children usually work to increase their family or household income. There are various forms of employment relations applied to child labour. As laborers, children receive rewards or wages for their work. For child workers who are apprentices, some are paid and some are not paid. Meanwhile, as family workers, children are generally not paid (Suyanto, 2016).

International legal arrangements on child labour:

1. The International Labor Organization (ILO) works actively with the United Nations and other multilateral institutions in developing policies and programs that support the creation of decent work opportunities as a cornerstone of efforts to reduce and eradicate poverty. International labor standards and the United Nations recognize that social protection is part of human rights. In addition, well-planned social security systems will improve economic performance so as to help increase their competitiveness. The ILO is committed to assisting countries in extending the reach of social protection to all groups of people and in improving working conditions and safety at work.

International Labor Organization (ILO) Convention on the Protection of Child Labor (Nur, 2015) stated that basically child workers, even if they are notified to work for certain reasons, are still considered prohibited child labour. Hazardous work that harms a child physically, mentally or morally, or because of the nature of the work is dangerous.

a. ILO Convention No. 138 of 1973 concerning Minimum Age for Admission to Work.
b. ILO Convention No. 182 Concerning the Prohibition and All Actions for the Elimination of the Worst Forms of Child Labor.

The main points of this convention state that all children (under the age of 18) must be protected from the worst forms of child labor and require member states to take steps to eliminate the worst forms of child labor and forced labor as mentioned above (Nur, 2015).

According to the International Labor Organization, examples of work defined as 'child labour' are when children are in:

1. The work is dangerous and there is an element of exploitation of the child which can damage them mentally, physically, socially or morally for the child;
2. Unreasonable jobs where these children have to earn money to support their families;
3. Work that interferes with their school activities;
4. Jobs that make them lose the opportunity to go to school so that they have been deprived of their personal rights to activities;
5. Jobs that require them to leave school before the school time ends, or before the time is up;
6. Jobs that require them to stay in school but also have to work with excessive force and work with great responsibility;
7. Work that is dangerous for the safety of children both for their mental and physical safety, and
8. Jobs that employ children at a relatively young age, namely under 12 years.

2. UNICEF *(United Nation Children's Fund)*

UNICEF was built in order to care for children around the world and work on solving problems such as violence against children. UNICEF supports the idea that in order for a child to have a strong future, they need quality beginnings. Since then, other ideas regarding ways to protect children have been implemented, including establishing a special institution that deals with children. UNICEF has a five-year program that focuses on practical ways to realize children's and women's rights. Their needs are analyzed in the form of a report issued at the beginning of the program cycle.

Meanwhile, regional offices guide this work and provide technical assistance to country offices as needed. Management, organizational administration, and overall policy making take place at headquarters. Specialized offices include the Supply Division, based in Copenhagen, which provides essential items such as vaccines to children in developing countries. UNICEF's financial reports are submitted annually to the General Assembly and reviewed by the Fifth Committee and the Advisory Committee. Then, the Executive Board will oversee the programs run by UNICEF and support them, in accordance with the policy guidelines of the General Assembly and the Economic and Social Council. The Council also ensures that UNICEF is responsive to the needs and priorities of its member countries, so that it can be said that UNICEF is a centralized organization and carries out its duties according to predetermined rules (Anwar & Latukaisupy, 2021).

Even though international law has issued various regulations regarding child labor and its protection, there are still obstacles in its implementation. This can be due to the circumstances and situation of the country concerned which can influence the creation of child labour.

1. Islamic Law Regarding Child Labor

The term work in Islam does not solely refer to seeking sustenance to support oneself and family by spending time day or night, from morning to evening, continuously tirelessly, but work includes all forms of practice or work that have elements of goodness and blessings for themselves, their families and the surrounding community and the country (Sa'adah, Syafrudin, & Busthomi, 2019) In addition, work is an activity that receives social support and the individual itself. Social support can be in the form of community appreciation for the work activities that are occupied.

In an Islamic perspective, every individual is required to seek good, lawful and clean sustenance so that the sustenance obtained from this job is acceptable to Allah SWT. Fortune is given by Allah to all His creatures, because Allah is the guarantor or giver of sustenance.

Everyone is encouraged to try and endeavor to get the sustenance (Khairil, AM, & Bustamam, 2020)

The definition of a child in Islamic law is called ath-thifl. Abu Haitsam said, a child is called a thifl from the time he is born from his mother's womb until he reaches puberty. Islam pays great attention to children and gives them rights that their father and mother must fulfill. These rights include the following (Alfaqi, 2015) :

1. Getting mother's milk. This is the living that a father must give to his child. That is, a father is required by religion to provide someone who can breastfeed his child. He has to pay someone to breastfeed his child if his wife doesn't want to breastfeed him or is unable to breastfeed him.
2. Getting Care, Namely educating children and taking care of all the needs of children.
3. Get a good education, namely by providing good guidance to children to develop religion and morality within themselves and their environment (association)

This study explains the concept of child employment. Some opinions state that children are allowed to do a job because childhood can be considered as the age of education. Namely for the development of their skills because some children are able to carry out some types of tasks better than older people, especially simple tasks.

According to Mufidah, one of the Islamic psychologists stated that even with the excuse of helping parents in earning a living, allowing children to work is not justified (Mufidah, 2008).

According to Maslahah Mursalah, the conditions for underage children who work hard have drawbacks such as neglecting children's schools and children's rights not being fulfilled. Therefore, in maslahah mursalah there is a basic principle of protection that can protect human rights to avoid possible violations of the rights of minors, namely the principle of "maslahah dharuriyah". Maslahah Dharuriyah is a potential problem in the foundation of human life, which if abandoned, then life is ruined, damage is rampant, slander arises, and great destruction (Ernawati et al., 2021).

Basically Islamic law does not regulate the employment of minors, but when we look at history, namely during the time of the Prophet sallallaahu 'alaihi wasallam who was invited by his uncle, Abu Talib, to go to Sham in a trade caravan, he joined the trade with his uncle. Then it can also be seen when the Prophet sallallaahu 'alaihi wasallam, still a child, began to try to earn a living by tending goats.

In connection with the Prophet's efforts to herd goats and trade with his uncle for the purpose of seeking sustenance, there is an important lesson.

1. Allah "beautified" the personality of the Prophet Muhammad shallallahu 'alaihi wasallam, with the care of his uncle. So Rasulullah shallallahu 'alaihi wa sallam tried his best to lighten some of the burden of living from his uncle.
2. It was very easy for Allah to prepare the Prophet sallallaahu 'alaihi wa sallam from the beginning of his life, all the means of life and luxuries that could be sufficient so that there was no need to bother. However, divine wisdom requires us to know that the best human possessions are those that he earns from his own efforts.

Then the story of Caliph Umar bin Khattab who met a child who worked as a goat herder. One day Caliph Umar bin Khattab toured his village area. On the way, Umar saw a little slave tending dozens of goats. In his mind, Caliph Umar wanted to test the intelligence of the little goat herder. Umar then approached the slave and expressed his intention to buy a goat that the boy herded. In the mind of Caliph Umar, the child will surely release one tail to sell to him. However, unexpectedly the little boy gave the answer that he could not sell the goat without the knowledge of his employer (Al Jauzi, 1998). From this story it can be seen that the employment of minors existed in the time of the Prophet and his companions.

In Islam, minors have a special position, they are not yet burdened with many obligations, instead they have rights that must be given to them by those who are responsible for them. Among the rights possessed by minors are: (a) The right to be provided with adequate maintenance by their parents according to the child's needs, whether in the form of food, drink, clothing, or anything else that is needed to help with their physical growth and maintenance, (b) The right to education, according to Islamic teachings, a person is called shalih and shalihah if he carries out his obligations to Allah SWT and to all mankind. In this regard, parents are obliged to educate their children, both boys and girls so that they are able to carry out their obligations to Allah SWT and to fellow human beings, (c) have the right to a good future. And (d) their assets are protected.

It can be said that the act of employing children can result in non-fulfillment of the child's life needs and is a violation of the parents' obligation to care for children because children are a mandate entrusted by God to them. Islamic law prohibits employing children on the basis of maslahah mursalah which can endanger the child's life and endanger the next generation of the family and nation (Ernawati et al., 2021).

Conclusion

Cases of child labor have existed since the early 19th and early 20th centuries. Children are sometimes forced to work to make ends meet. Even though international law has issued various regulations regarding child labor and its protection, there are still obstacles in its implementation. This can be due to the circumstances and situation of the country concerned which can influence the creation of child labour. The International Labor Organization (ILO) Convention on the Protection of Child Labor states that basically, even though child workers are declared to work for certain reasons, they are still considered prohibited child labour.

Islamic law has not explicitly explained the employment of minors. Employing minors is tantamount to tyranny. Islam states, even with the reason of helping parents in earning a living, allowing children to work is not justified, because employing children can result in non-fulfillment of the child's life needs and is a violation of the parents' obligation to care for children because children are a mandate entrusted by God to them. . The reason Islam forbids employing children is based on maslahah mursalah which can endanger the child's life and endanger the next generation of the family and nation. Maslahah mursalah there are basic principles of protection that can protect human rights to avoid possible violations of the rights of minors.

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