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The Relationship between the Authority of the Central Government and Local Government in the Protection of Child Labour in Indonesia

¹Dwi Nur Fauziah Ahmad, ²Irna Rudiana

^{1,2} Faculty of Law, University of Muhammadiyah Tangerang, Indonesia

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Corresponding Author: **Dwi Nur Fauziah Ahmad**

Abstract

This research aims to identify, understand, analyze, and provide an overview of the relationship between the authority of the Central Government and Regional Governments in the protection of child workers in Indonesia. This study is normative juridical research analyzed using qualitative methods and explained descriptively, with data collection techniques in the form of literature studies. The research employs a statutory and conceptual approach. The results of this study indicate that the development of child labor protection in the perspective of positive law in Indonesia began in 1925 during the Dutch colonial era, marked by the birth of Staatsblad 1925 No. 647

Juncto Ordinance 1949 No. 9. Considering the current Manpower Act, the regulation of child labor has evolved compared to previous laws, with international provisions being adopted. Furthermore, in terms of authority and regional autonomy, Regional Governments have the right to self-regulate (self-regelen) and self-manage (self-besturen) their regions. Despite the lack of legal certainty regarding child labor protection at the Central level, Regional Governments can still exercise their authority to protect child workers, as exemplified by Pekalongan Mayor Regulation No. 65 of 2022 on the Protection of Child Workers.

Keywords: Child, Protection of Child Workers, Relationship Central and Local

Introduction

Indonesia, as a country with a vast territory and significant cultural, social and economic diversity, faces various challenges in running an effective government. One of the main challenges is the protection of children's rights, especially in relation to child labour. The issue of child labour is a serious problem that requires special attention from the government, both at the central and regional levels. The protection of child labour is a crucial and complex issue in Indonesia. Working children are often faced with unfit, dangerous working conditions and deprived of their basic rights, such as education and health. Faced with this problem, the central and local governments have a very important role and must work together to implement effective and efficient policies.

In order to address the issue of child labour, the central and local governments have different but complementary roles and authorities. The central government is responsible for formulating national policies, setting child protection standards, and overseeing their implementation. On the other hand, local governments play a role in implementing these policies in accordance with local conditions and needs. In addition, differences in social and economic conditions between regions also affect the effectiveness of child labour protection. Some areas may have higher poverty rates, more limited access to education, or a lack of public awareness about the importance of protecting children's rights. Therefore, a comprehensive strategy and strong synergy between the central and local governments are needed to ensure that child labour protection can be implemented effectively and efficiently throughout Indonesia.

In the context of decentralisation, the authority given to local governments must be matched with adequate capacity and commitment to implement child labour protection policies. The central government needs to provide support, both in the form of regulations, funding and technical guidance, to ensure that local governments can carry out their duties properly. Therefore, the relationship of authority between the central government and local governments in the protection of child labour in Indonesia is very important to be studied and strengthened. This is not only to fulfil the legal and moral obligation to protect children's rights, but also to ensure sustainable and inclusive development for all Indonesians.

Law No. 23/2002 on Child Protection, as well as other laws and regulations, have provided a clear legal foundation to protect children from exploitation and hazardous work. However, implementation in the field often faces various challenges, including a lack of coordination between central and local governments, limited resources, and low levels of public awareness about the importance of child protection. The central government has the authority to set national policies, standards and regulations related to child protection. Through the Ministry of Manpower, Ministry of Women's Empowerment and Child Protection, and other relevant agencies, the central government is responsible for developing and overseeing the implementation of programmes aimed at reducing and eliminating child labour. On the other hand, local governments have an equally important role in implementing these policies at the local level. They are responsible for ensuring that national programmes are implemented effectively, according to local conditions and needs. Local governments also play a role in conducting direct supervision and providing assistance to children involved in hazardous work. The relationship of authority between the central government and local governments in the protection of child labour needs to be clearly regulated so that there is no overlap or vacuum of responsibility. A good synergy between the two levels of government will determine the success of child labour protection efforts in Indonesia. Therefore, it is important to take a closer look at this authority relationship mechanism, the challenges faced, and the solutions that can be implemented to improve the effectiveness of child labour protection in Indonesia.

Library Study

In Law No. 23 of 2002 on Child Protection as last amended by Government Regulation in Lieu of Law No.1 of 2016 on the Second Amendment through Law No. 23 of 2002 on Child Protection (PA Law) in article 1 point 1 states that 'A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb'. The term 'Child' refers to a person who is not yet 18 years old, including children still in the womb. In the Child Criminal Justice System (SPPA) Article 1 point 2. Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a criminal offence.

'Child Labour' as described in the background. In essence, the Government has attempted to prohibit business actors from employing children as stipulated in Article 68 of Law No. 13 2003 on Labour as amended by Government Regulation in Lieu of Law No. 2 Year 2022 (Labour Law). However, the prohibition is not absolute as Article 69 paragraph (1) of the Labour Law provides exceptions for children to be employed, namely (i) children aged between 13 years and 15 years to do light work as long as it does not

interfere with physical, mental, and social development and health. The Labour Law provides strict requirements for employers to employ children in light work.

One of the requirements of the rule of law is the protection and guarantee of human rights. Article 32 paragraph (1) of the Convention on the Rights of the Child states that state parties recognise the right of the child to be protected from economic exploitation from performing any work that is likely to be hazardous or to interfere with the child's education or to endanger the child's health or physical, mental, spiritual, moral or social development. The Labour Law explains that anyone is prohibited from employing and involving children in the worst forms of labour.

Ideally, the state government cannot reach or interfere in local government affairs. The implementation of regional autonomy has been guaranteed in the constitution of the republic of Indonesia through Article 18 paragraph (2) of the 1945 Constitution which explains that local governments regulate and manage their own government affairs through the principles of autonomy and assistance tasks. However, as has been explained, regional autonomy carried out in the constitutional system in Indonesia is not absolute and can be limited by the presence of laws as stipulated in Article 18 paragraph (5) of the 1945 Constitution.

Indonesia itself tends to be relevant to the Agency Model theory because the relationship between the centre and the regions in the Regional Government Law is regulated in such a definitive and detailed manner. This also supports the research argument in the background of this research problem where the space for local governments is limited through Permendagri 90/2016 and Kepmendagri 050-5889/2021 which have formulated detailed policies and activities that become the benchmark for regional work plans.

Research Methods

Before discussing the forms of child labour protection, the research first identifies the percentage of children aged 10-17 years who work by province (Percent). Data obtained based on data centre from BPS, it can be seen that as of 2023, West Sulawesi province has the largest percentage of contributors to children aged 10-17 years who work with a weight of 5.61% and DKI Jakarta is the lowest province contributing to the percentage of children aged 10-17 years who work with a weight of 0.58%. Globally, the Ministry of Women's Empowerment and Child Protection in Press Release No. B-003/SETMEN/H: B-003/SETMEN/HM.02.04/1/2024 explained that the data obtained from BPS regarding the number of child labourers in 2019 was 0.92 million, 2020 was 1.33 million, 2021 was 1.05 million, and 2022 was 1.01 million. The proportion of child labour is more prevalent in rural areas than urban areas and 22 out of 34 provinces in Indonesia have a proportion of child labour above the national figure.

Table 1: Percentage of Child Labour by Province in Indonesia

S. No	Nama Provinsi	Persentase Anak Usia 10-17 Tahun yang Bekerja Menurut Provinsi (%)		
		2021	2022	2023
1.	Aceh	1,39	1,01	1,03
2.	Sumatera Utara	4,83	4,02	3,97
3.	Sumatera Barat	2,64	2,48	2,68
4.	Riau	2,87	2,04	2,22
5.	Jambi	1,86	1,57	1,94
6.	Sumatera Selatan	2,76	2,72	2,33
7.	Bengkulu	1,94	1,79	1,88
8.	Lampung	3,56	2,48	2,49
9.	Kep. Bangka Belitung	3,3	2,97	3,04
10.	Kep. Riau	0,97	1,87	1,99
11.	DKI Jakarta	0,82	0,61	0,58
12.	Jawa Barat	1,6	1,82	1,89
13.	Jawa Tengah	2,26	2,41	2,25
14.	DI Yogyakarta	2,06	1,69	1,75
15.	Jawa Timur	2,01	1,51	1,56
16.	Banten	1,07	1,9	1,85
17.	Bali	3,7	4,04	4,19
18.	Nusa Tenggara Barat	4,74	4	3,86
19.	Nusa Tenggara Timur	4,49	5,12	5,1
20.	Kalimantan Barat	3,5	3,19	1,8
21.	Kalimantan Tengah	3,52	2,31	2,29
22.	Kalimantan Selatan	2,95	2,06	1,91
23.	Kalimantan Timur	2,2	1,79	1,64
24.	Kalimantan Utara	5,66	4,15	3,96
25.	Sulawesi Utara	2,98	1,72	1,81
26.	Sulawesi Tengah	5,12	3,96	4,18
27.	Sulawesi Selatan	5,33	4,32	4,29
28.	Sulawesi Tenggara	6,46	4,11	3,86
29.	Gorontalo	4,28	6,78	5,37
30.	Sulawesi Barat	5,5	6,31	5,61
31.	Maluku	2,49	2,87	2,99
32.	Maluku Utara	2,12	2,45	2,59
33.	Papua Barat	3,81	2,82	3,07
34.	Papua	3,25	4,5	3,83
35.	Indonesia	2,63	2,44	2,39

In the context of child protection, Indonesia has adopted the international provisions of ILO No. 138 and ILO No. 182 related to child protection into the PA Law. Based on the general explanation of the PA Law, it can be understood that a child protection effort needs to be implemented as early as possible, namely from the fetus in the womb until the child is 18 (eighteen) years old with the obligation to provide protection to children based on the principles of a) nondiscrimination; b) the best interests of the child; c) the right to life, survival, and development; and d) respect for children's opinions. The PA Law itself divides types of child protection into 2 forms, namely general protection such as protection for worship, providing health facilities so that children have a comprehensive degree of health and special protection given to children, including, in emergency situations, dealing with the law, from minority groups and isolated and economically and/or sexually exploited.

Based on the literature study research obtained by the research, it can be understood that the discussion of the development of child labour protection arrangements in the perspective of Indonesian positive law has existed since 1925 during the Dutch colonial period marked by the birth of Staatsblad 1925 No. 647 Juncto Ordinance 1949 No. 9 which regulates the Restriction of Work of Children and Women where in Staatsblad aquo was also followed by the birth of Staatsblad No. 87 of 1926 concerning restrictions on Children and Young People working on ships which was the

beginning of the formation of child labour protection regulations in Indonesia. Furthermore, the research found that in 1948 when the birth of the Law No. 12 of 1948 on Labor Principles, child protection has begun, marked by a child being prohibited from doing work. This was also followed by the birth of Law No. 4 of 1979 on Child Welfare. The development of child labor protection can also be seen through international commitments on 20 November 1989 through the United Nations (UN) convention which is an advancement regarding the protection of child labor in Indonesia. Furthermore, the development of child labor protection itself.

Results and Discussion

1. Historically, the development of child labour protection in Indonesia dates back to 1925 during the Dutch colonial period, marked by the issuance of Staatsblad 1925 No. 647 in conjunction with Ordinance 1949 No. 9 which regulates the Restriction of Child and Women Work. The development of child labour protection can also be seen through international commitments on 20 November 1989 through the UN convention. The Indonesian Constitution through Article 28B paragraph 2 explains in general that every child has the right to survival, growth and development and the right to protection from violence and discrimination. Looking at the current Labour Law, the regulation of child labour

according to the research has progressed compared to previous laws where international provisions have been adopted. However, the Labour Law should be expected to be able to emphasize an abolitionist approach is not absolute. Furthermore, sociological factors in Indonesian society, such as poverty and low parental education, are the main causes of child labor exploitation.

2. That the constitutional mandate of Article 18 Paragraphs (2) and (5) of the 1945 Constitution of the Republic of Indonesia states that the Regional Government has the authority to regulate and manage its own government affairs according to the principles of autonomy and assistance tasks provided by the widest possible autonomy. One of the important things in centre-region relations is the division of authority. The link between authority and regional autonomy is that authority implies self-regulating and self-managing powers (self besturen). In terms of facilitating the implementation of local government, as previously explained, principles such as the principles of decentralisation, deconcentration, and assistance tasks (medebewind) are needed. Regarding labour affairs and empowerment of child protection and women, these affairs are in mandatory government affairs that are not related to basic services. Regardless of the lack of legal certainty regarding the protection of child labour in KKNPPKD contained in Kepmendagri 050-5889/2021 or Kepmendagri 900.1.1.15.5-1317/2023, the principle of *lex superior*, Local governments should still be able to exercise their authority to implement child labour protection. This can be seen from the implementation of Perwalkot Pekalongan 65/2022, which is a manifestation of regional decentralisation and the implementation of regional autonomy for the sake of commitment to the protection of child labour in the region and the creation of legal certainty for the organs responsible or implementing the protection of child labour.

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