

Review of Islamic Law concerning underage child labor (Comparative study with Labor Law No. 13 of 2003)

Rifkah Nurul Lutfhiah*, Imam Mahfud, Imam Turmidzi

STAI Binamadani Tangerang

*Corresponding Author: rifkahnurull@gmail.com

Received: 10 January 2022

Accepted: 30 March 2022

DOI: <https://doi.org/10.55942/pssj.v2i3.173>

ABSTRACT

The practice of child labor is currently rife everywhere, not infrequently there are still many companies that employ minors because of budget efficiency, due to low wages, in practice sometimes companies do not provide rights that should be given to child workers. On the other hand, children are the responsibility of parents who should be given their rights and parents must fulfill the responsibility for the gift of children that God has given to provide a living and a good education. This research includes field research, the results of which will be presented descriptively with qualitative analysis. The results of this study indicate that Islam says that children are prohibited from doing work if the work is not based on their own will and is coercion from parents to earn a living, but it is permissible if the work is done according to the child's will and is a type of light work that can be done by children.

Keywords: Child Labor, Islamic Law, Comparative Study, Education, Children

1. INTRODUCTION

In society, humans cannot separate the existence of problems in their daily lives, because humans are social creatures who need each other, providing each other to support their lives. In an effort to meet their own needs, humans cannot do it alone.

In Islam, it is seen that children are entrusted by Allah and must be cared for, especially for parents, not to be ignored, because rights must be fulfilled, and parents need to fulfill their responsibilities as stipulated by Islam. Therefore, basically children have absolute rights that are indisputable. Children are an investment, an indicator of a country's success in achieving future development. The success of children's growth and development will determine the quality of human resources in the future, as well as the generation that will become the nation's successor, so it must be prepared and led from an early age. develop into children. Humans who are physically and mentally healthy become quality resources and are able to face future challenges. In fact, children cannot have fun, be in a peaceful atmosphere, have opportunities and means to achieve goals in accordance with their physical, psychological, intellectual, and social development. Many children under the age of 18 are actively participating in employment activities.

The definition of child labor or work in general is routine, time-consuming work carried out by children for their parents, for other people or for themselves, whether they receive compensation or not. According to article 1 paragraph (26) of Law no. 13 of 2003 concerning Manpower, defines a child as every person under the age of 18 (eighteen) years. Basically, everyone has the same opportunity to get a job and is entitled to equal treatment without discrimination from the employer.

Associated with family poverty or economic incapacity. One of the efforts of poor families to increase family income, apart from involving their wives in community activities, is to use child labor even though they are still minors. In accordance with the wishes of the children themselves, who consciously choose a world "beyond domestic exploitation" over working permanently under the control of their parents. For working children, escaping from the boring and stressful home environment can provide some relief, especially when they can take control of their lives. However, this does not mean that the life of child laborers becomes all-encompassing because they can be relatively free.

According to the preferences of entrepreneurs, they always want to collect as much profit as possible. Whereas in a capitalist system, in any country, entrepreneurs on their behalf want to keep production costs as low as possible, especially workers' salaries.

One of these efforts is carried out by using female or child labor.

Not sure that the problem of child labor in Indonesia will be solved by choosing to do so. In fact, poor families really need their children to work, both to help the family economy and to cover their own lives. As long as these children still have the opportunity to go to school and also children who work do jobs to the best of their ability, this can be justified. This statement actually says that children should be allowed to work, but must be protected from exploitation by those who employ them and their rights must always be respected because, in practice, much child abuse is not only a matter of child labor, but is also exploitative and harmful work. harmful substances that impede access to education and hinder physical and psychological development. and children's society. In some cases and in some forms, child labor is even listed as working children in the most intolerable situations.

Aspects regulated by law no. 13 of 2003 (hereinafter referred to as the Manpower Act) regarding the legal protection of child labor are contained in the provisions of Articles 68 to 75 of the Manpower Law no. 13 of 2003. Regulation Article 68 prohibits employers from employing children. The philosophy of prohibiting children from working or using children as regulated in the labor law is actually closely related to efforts to protect human rights which are also guaranteed in Law no. 39 of 1999 on Human Rights. The provisions prohibiting the use of child labor as regulated in article 68 of the Manpower Law follow the provisions of article 52 paragraph 1 of the Human Rights Law no. 39 of 1999, which states that everyone's children have the right to be protected by their parents, their families, society and the state.

2. LITERATURE REVIEW

a. Islamic Law

Rules will be guidelines consisting of arrangements as orders and refusals which are commitments and privileges. Laws that apply to goods, plants and living things are regulations that are specifically committed and are only simple arrangements.

The researchers propose that Islamic rules are a way of life with respect to non-stop prohibited activities. This assessment is far different from what has been conveyed by fiqh researchers who say that Islamic law is all activities that must be equipped with Islamic law.

Meanwhile, Hasby A.S. expressed his desire to think about Islamic rules that all efforts made by a Muslim to incorporate Islamic rules that exist today. For this situation, Hasby also explained that Islamic regulations will continue to live according to existing regulations. The definitive goal of Islamic regulation is to truly understand the benefit of the ummah itself.

According to the description above, it can be understood by the author that Islamic law is a guideline that becomes a reference

for humans in living life in the form of orders or prohibitions from Allah SWT on something that gives rise to rights and obligations, where the purpose of Islamic law is formed to create the benefit of the people.

Regulation has the ability to carry out requests to the community, with the aim that the purpose of law is society in the eyes of the community, where society consists of two components, namely physical and mental or mind and heart, then the law in Islam is separated. be 3 (three):

- 1) I'tiqadiy law, namely specific beliefs that must be accepted in order to be valid by every mukallaf.
- 2) Rule of khuluqiy, which is obligatory for every mukallaf to have a great person and a terrible person. This khuluqiy rule is to direct the development of the amukallaf individual.
- 3) Amaliy rules, especially laws relating to the deeds of mukallaf which direct the issue of love (human relations with God) and mu'amalah (human relations with humans and humans with the universe).

The motivation behind the rules shown by the Qur'an is for people to achieve something useful and not to cheat as the Qur'an proves (Q.S. 2:30, Q.S. 3:104), in a hadith explained by Bukhari-Muslim, the Prophet SAW said: "Young people are like butterflies of paradise". In the Qur'an and hadiths that discuss children as above, and actually there are many more in various verses or hadiths of the Prophet, it shows how much Islam focuses on children. Or vice versa as a whole, Islam views that children have a vital position or ability, both for their own nation, society, and state

b. Child Labor

The division of labor between adults and young people in each cycle of creation and the process of using it is very different, both in terms of the work approach and the innovations used. a job is to run a business that is determined to get paid or benefits within one hour of the week.

Basically the thought of working or not working is only recognized by age restrictions. Each country has a certain age limit for each specialist. The reason for this age restriction is so that the definition given can describe the actual reality. Each country chooses an alternative age limit, due to the different working conditions in each country.

Based on Law Number 13 of 2003 Article 1 number 26 which states that the definition of a child is every person under the age of 18 (eighteen) years. According to Law Number 35 of 2014 Article 1 number 1 concerning Child Protection, it is stated that the definition of a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. It is explained in Article 330 of the Civil Code, that minors are those who have not reached the age of 21 years and have not been married before. So a child is every person who is not yet 21 years old and unmarried. If a child is married before the age of 21 and then divorced or left by her husband before the age of 21, then she is still considered an adult, not a child. This definition is different from the understanding contained in Law Number 4 of 1979 which states that a child is someone who has not reached the age of 21 years and has never been married.

Meanwhile, according to the 1989 United Nations Convention on the Rights of the Child and the ILO Convention Number 182

of 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, a child is an individual under the age of 18 years. Meanwhile, according to R.A. Kosnan, Children are young people in age, young in soul and journey of life because they are easily influenced by their surroundings.

3. DISCUSSION

The work of minors has recently become a phenomenon that is being talked about everywhere. Especially since the monetary crisis hit Indonesia, and the number of poor people increased, this phenomenon has become more and more normal. Many children must continue to take part in their young lives to play and learn, at work. Children who should be in school, are in inappropriate places, such as the business sector, terminals, red lights, and some even work in building construction.

Children spoil potential opportunities for a brilliant future. Because the time that should have been spent on the mental formation and strengthening of humans to get ready for what's in store for the next generation, is really only being spent where adults should be involved. These young people have portrayed themselves as adults working to earn money to help their families. They lost their freedom as children. The variables that cause the shortage of minors are:

1. Financial elements.
2. Own will
3. Environmental Factors

Analysis of the Review of Islamic Law Regarding Underage Workers

In studying Islamic law regarding underage workers, the author will be guided by the rules in the Al-Quran and Al-Hadith. In Islam, the position of the child as a gift in marriage is also a gift from God that must be cared for and guarded with full responsibility. In this position the child is one of several purposes of marriage, namely the purpose of reproduction and regeneration. In several sources from the texts of the Qur'an (Al-Shura (42): 11) and the Sunnah it has been described that one aspect of marriage is reproduction (giving birth to offspring).

Allah SWT says in the letter At-Tahrim verse 6 which reads:

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا فُؤَا أَنفُسِكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ
وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ
مَا يُؤْمَرُونَ ﴿٦﴾

Meaning: *O you who believe, protect yourselves and your families from the fire of hell whose fuel is people and stones; guardians of the angels who are harsh, harsh, and do not disobey Allah in what He commands them and always do what is commanded.*

The verse emphasizes that there is a recommendation to take care of the family (including children), in order to avoid the torment of hell fire, harm and misery. On the other hand, a quality family (especially children) should be built, both in faith, piety and intellectually. This shows that parents are obliged to educate their children seriously, in order to protect their offspring for their future, so as not to give birth to a weak generation as the above verse warns.

In Islam, a minor has a special position, he has not been burdened with many obligations, in fact he has rights that must be given to him by the people who are responsible for him. Among the rights possessed by minors are the right to be given a living, the right to get an education, to have a good future, and to protect their assets. In Islam, children have rights that must be fulfilled by parents, lest parents neglect responsibility for the gift that Allah has given, namely in the form of children to be given their rights.

An overview of Islamic law regarding working hours can be seen based on the hadith below:

وَلَا تُكَلِّفُوهُمْ مَا يَفْلِحُهُمْ، فَإِنْ كَلَّفْتُمُوهُمْ فَأَعِينُوهُمْ

Meaning: *"Do not burden them (slaves), and if you give them a task, help them."* (Narrated by Bukhari)

The Compilation of Islamic Law (KHI) can be interpreted as follows: Article 98 KHI paragraph (1) that as far as possible for young children who are allowed to be alone or are adults who are 21 years old, the child is not really intellectually disabled or has never used children under age. So that the activity of employing minors is clearly against the standards of *maslahah dharusiyah*, in particular endangering the existence of minors, and furthermore the demonstration of double treatment of minors which results in the inhibition of the future development of children.

In Islamic law, children's work is rejected based on *maslahah mursalah* which endangers children's lives and endangers offspring as a substitute for family and state. Minors should still get good attention and training from their parents, not work that is detrimental to their children. It is the duty of the guardian to provide support. Guardians are prohibited from leaving children without providing a living. So not meeting the needs of children is an obstacle to *Syara'* (Islamic law). The idea of prohibiting the use of children in Islam based on not collecting the work needs of children in conditions of living, physical and mental danger is refuted. The author concludes based on the explanation above that children are actually not allowed to work because it is the responsibility of both parents to fulfill the rights and obligations to the child until the child is 21 years old and able to live independently and if the work done is not in accordance with his abilities and is an encouragement/ coercion from parents to work. However, in the case of children who work based on their own wishes and the work is done according to the child's ability.

Legal Review of underage workers based on the Manpower Act no. 13 year 2003

In Law Number 13 of 2003 concerning Manpower, a child is anyone who is under the age of 18 (eight years). This means that they have not been able to meet their own needs, this is where the duty of parents, guardians, the government, and the

state to carry out their rights and obligations. However, in reality there are still many children who have not received their rights so that they have to work to make ends meet. Both the needs of his parents or others.

4. CONCLUSIONS

In Islamic law, children are essentially the responsibility of parents and parents are obliged to provide maintenance for the child until the child is 21 years old, provided that the child is not physically and mentally disabled. Islam says that children are prohibited from doing work if the work is not based on their own will and is a coercion from parents to earn a living, but if the work done is light work that can be done by children and without coercion from parents then it is permissible. In accordance with the 2003 Manpower Law that minors can do work on the condition that the work is not dangerous if done by children, while the type of work carried out by children is a type of light work that is allowed and not dangerous if employed by children.

REFERENCES

- Abdul Wahab khallaf, Ilmu Ushul Fiqh (Semarang: Dina Utama Semarang 1994)
- Badan Pusat Statistik, 2016
- Bagong Suyanto, Masalah Sosial Anak, Jakarta: Kencana, 2010
- C.S.T. Kansil, Pengantar Ilmu Hukum Dan Tata Hukum Indonesia, Jakarta: Balai Pustaka,1989
- CST Kansil. Pengantar Ilmu Hukum dan Tata Hukum Indonesia, Balai Pustaka, Jakarta, 1989
- Dadan Muttaqien, Cakap Hukum: Bidang Perkawinan dan Perjanjian, Yogyakarta: Insania Citra Press,2006, hlm. 1
- Dumairy, Perekonomian Indonesia (Jakarta: Erlangga, 1997), hlm. 27.
- Imam Soepomo, Pengantar Hukum Perburuhan, cet. Ke 13, Djambatan, Jakarta, 2003
- Islam, I. I. D. H. Bab I Istilah-Istilah Dalam Hukum Islam A. Pengertian Hukum, Syari'at Dan Fiqih.
- Mansur Umar, Kiat Penulisan Skripsi bagi Mahasiswa.
- Muhammad Joni dan Zulechani Z, Aspek Hukum Perlindungan Anak dan Perspektif Konvensi Hak-hak Anak, (Bandung: Citra Aditya Bakti, 1999)
- Muktie A. Fadjar, Tipe Negara Hukum, Bayumedia Publishing, Malang, 2005
- Mulyadi S. Ekonomi Sumber Daya Manusia. (Jakarta: PT Raja Grafindo Persada, 2003). hlm. 138
- Oktaviana Dwi Saputri dan Tri Wahyu Rejekiningsih, Analisis Penyerapan Tenaga Kerja (Gramedia Pustaka,2007), hlm. 5
- Pandji Putranto, Berbagai Upaya Penanggulangan Pekerja Anak, (Jakarta: Rajawali Press,1995)
- Subekti dan Tjitrosudibio, Kitab Undang-Undang Hukum Perdata, (Jakarta : PT. Pradnya Paramita, 2002), hlm 90
- Suroto, Strategi Pembangunan dan Perencanaan Kesempatan Kerja (Yogyakarta : Gadjah Mada University Press, 1992)
- Susanto, Kriminologi (Yogyakarta: Genta Publishing, 2011), h. 87
- Aulia, G. (2021). Tinjauan Yuridis Terhadap Pekerja Anak. Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam.
- Avianti, Annisa et. al. Peranan Pekerja Anak di Industri Kecil Sandal terhadap Pendapat Rumahtangga dan Kesejahteraan Dirinya di Desa Parakan. Kecamatan Ciomas, Kabupaten Bogor, Jawa Barat. Jurnal. Fakultas Ekologis Manusia. 2013
- Emmy, Sugiyani. Perlindungan Hak Bagi Pekerja Anak Melalui Program Pendidikan Literacy Class. Jurnal di Publikasikan Yayasan Pemerhati Sosial Indonesia. (2000)
- Muhammad Saifur Rohman, Jurnal Pekerja Anak, (Probolinggo: Universitas Panca Marga, 2013), hlm 6
- Netty Endrawati, "Faktor Penyebab Anak Bekerja dan Upaya Pencegahan", Jurnal Ilmiah Hukum Hukum Refeksi Hukum, FH UKSW, Salatiga,2019
- Netty Endrawati, Faktor Penyebab Anak Bekerja dan Upaya Pencegahannya (Study Pada Pekerja Anak Sektor Informal di Kota Kediri), Jurnal: Ilmu Hukum Refleksi Hukum (April 2011)
- Sari, T. P., Jiuhardi, J., & Amali, S. (2019). Studi tentang pekerja anak di bawah umur di kota samarinda. Jurnal Ilmu Ekonomi Mulawarman (JIEM)
- Satjipto Raharjo, , Jurnal Masalah Hukum, 2018, hlm. 49
- Sholihah, Hani. "Perlindungan Anak dalam Perspektif Hukum Islam." Al-Afkar, Journal For Islamic Studies 1.1, January, 2018
- Solehuddin, S. (2013). Pelaksanaan Perlindungan Hukum terhadap Pekerja Anak yang Bekerja di Bidang Konstruksi (Studi di Proyek Pembangunan CV. Karya Sejati

Kabupaten Sampang) (Doctoral dissertation, Brawijaya University).

Tanjung, W. H. (2019). Analisa hukum Islam terhadap pekerja anak di bawah umur dalam pasal 68-75 Undang-Undang nomor 13 tahun 2003 tentang ketenagakerjaan (Doctoral dissertation, IAIN Padangsidempuan).

Zahra Firdausi. Hubungan Pekerja Anak Dengan Pencapaian Pendidikan dan Tingkat Kesejahteraan Rumah Tangga. Jurnal. Institut Pertanian, 2019.

Undang-Undang No.13 Tahun 2003 Tentang Ketenagakerjaan

Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Pasal 1 angka 26.

Undang-Undang Nomor 13 Tahun 2003 tentang Tenaga Kerja.

Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak Pasal 1

Undang-Undang Nomor 4 tahun 1979 Tentang Kesejahteraan Anak Pasal 1

<https://quran.kemenag.go.id/surah/66>

<https://tesishukum.com/pengertian-hukum-islam-menurut-para-ahli/>

<https://www.djkn.kemenkeu.go.id/artikel/baca/12773/Memahami-Metode-Penelitian-Kualitatif.html>

<https://tesishukum.com/pengertian-hukum-islam-menurut-para-ahli/>

Hari Harjanto Setiawan & Adhani Wardianti, Pekerja anak, diakses dari <https://rumahkita2010.wordpress.com/2010/03/08/pekerja-anak/>,

Lenny N. Rosalin, Kabupaten/Kota Layak Anak Untuk Mewujudkan Indonesia Layak Anak, <http://www.kotalayakanak.org>

<https://ideproposalskripsi.blogspot.com/2019/05/wawancara-metode-pengumpulan-data-penelitian.html>

<https://smkbanisaleh.sch.id/2020/04/16/mengembangkan-minat-dan-bakat/>

<https://idcloudhost.com/pengertian-observasi-pengertian-fungsi-tujuan-dan-manfaatnya/>

<https://sambiroto.ngawikab.id/2020/11/dokumentasi-pengertian-dan-reduksi-pemaknaannya-kini/>