

CHILD LABOR
AS A LEGAL SUBJECT IN WORK AGREEMENT
(An Indonesian case)

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A. Background

Parties in work agreement, entrepreneur or employer and worker or labor, are legal subjects. In order to take competent to do legal action, some requirements are needed by legal subject, especially worker or labor. In general, to make work agreement, legal subject must be adult. It said “in general”, because in some work agreements, maturity is not a requirement. The legal subject, which does not need maturity to make work agreement, is child labor.

Actually, child labor existence is not hoped, or at the least laws and regulations effort to minimize, or if possible to eliminate it. According to the laws and regulations, employing child labor is an exception. A number of requirements, which is obliged by laws and regulations to employ child labor, especially in employment relations, usually create child labor law protection. Minimum age requirement in order a child labor can be employed is an example child labor law protection. Nevertheless, whatever requirement which is obliged by statutory legislation to employer or entrepreneur, which employ child especially in employment relations, it can show fact that a child labor r can do a job. Before working a job in an employment relations, child labor makes work agreement. Making work agreement in the case mean put the child as a party, or in other word, put the child labor as a legal subject.

Child labor as a legal subject in employment relations needs special analysis. It is based on fact that actually every legal subject, especially person as legal subject, must have competent to do legal action.

A problem is how child labor position as legal subject in work agreement. Law issues which can be drawn from the problem is concerning how child labor make work agreement?

B. Analysis

1. Definition of the Child

Law and regulations in Indonesia change from time to time to determine definition of the child. Act Number 12 Year 1948, point d of Article 1 determine that child is male or female person aged less than 14 years old until 14 years old. Act Number 25 Year 1997 concerning Manpower, point 1 of Article 1 determine that child is male or female person aged less than 15 years old. Act Number 13 Year 2003 concerning Manpower determine that a child is every person who is under 18 years old. Both Act Number 12 year 1948 and Act Number 25 Year 1997 are declared as no more applicable. Instead, according to Indonesian positive law, child is every person who is under 18 years old.

Child definition, which the main thing is definition of age range the child by a number of the acts as not apart from legal policy when the acts were drafted and then legalized. The definition was close concerning with the child labor law protection, especially child is in his or her position in an employment relations.

Actually, medical and psychological research have done for a long time to determine about child, but the researches could not give exact numeral about child definition. Nevertheless, numeral range show 16 years old until 18 years old was age which was prime part of mental developing appearing.¹ In 1974 WHO (World Health Organization) decided that aged 10 – 20 years as adolescence.² According to medical science and others related science, such as biology, adolescence is a physical development phase which sexual organs reach their maturity.³ Although positive law in Indonesia does not recognize adolescence, the research result numeral shows its suitability with definition of the child and adult.

¹ Elizabeth B. Hurlock, *Child Development*, McGraw – Hil, Inc., 1978, page 31.

² Sarlito Wirawan Sarwono, *Psikologi Remaja*, Jakarta: Raja Grafindo Persada, 1994, hlm. 9.

³ *Ibid.*, hlm. 6.

2. Legal Subject

Everything which can support or obtain right and obligation is legal subject (Dutch: rechtssubject, Bahasa Indonesia: subjek hukum).⁴ In other word, legal subject is supporter or owner right and obligation. Legal subject concept closely related to legal competence (Dutch: *rechtsbevoegdheid*).⁵ Legal competence is capacity to support right and obligation. Instead, every legal subject has legal competence.

Every person is legal subject (Dutch: *naturelijke persoon*), although there is other legal subject. The other legal subject is legal entity (Dutch: *rechtspersoon*). Both person and legal entity as legal subject have legal competence. Although both person and legal entity have legal competence, it differ each other. Some rights and obligations can only be supported by person as legal subject, for example rights which arise from law concerning person, family law, inheritance law, etc. In other side, there is a requirement which must be owned person as legal subject, in order he or she can observe his or her rights and obligations. The requirement is competent to do legal action (Dutch: *bekwaamheid*; Bahasa Indonesia: kecakapan bertindak menurut hukum).

It is not all person can observe his or her right and obligation. A group of person is regarded not competent to do some his or her rights and obligations. The group is called *personae miserabilis*. They are:

1. person who is under age;
2. person who is under guardianship;
3. wife who obey *Burgerlijke Wetboek*.

No general regulation is concerning with maturity. Something which exist is regulation concerning with maturity in each area of the law. Act Number 1 Year 1974 concerning Marriage determine that child who is under 18 years old or have never got married is under authority of his or her parents along they are not drawn from parent's authority (article 47 subsection 1). Article 47 subsection (2) determines that parent represents the child concerning all legal action, both in or outside court. HIR (*Herzien*

⁴ Hans Kelsen, di dalam buku *General Theory of Law and State*, New York: Russel and Russel, 1973, page 93. Hans Kelsen menegaskan bahwa "*The concepts of a legal person is another general concept used in the presentation of positive law and closely related to the concepts of legal duty and legal right*".

⁵ Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*, Yogyakarta: Liberty, 1988, hlm. 54, dan N.E. Algra, dkk., *Kamus Istilah Hukum Fockema Andreae*, Jakarta: Bina Cipta, 1983, hlm. 453.

Indonesia Reglement), article 1 subsection (1) point *c juncto* subsection (4) determine that child who is under 15 years old can not be heard his or her explanation as a witness at court. According to the Act Number 23 Year 2002 concerning Child Protection, child is person who is under 18 years. Act Number 3 Year 1997 concerning Child Court determines that child person who is in naughty child case aged 8 years old, but under 18 years old and have not married. The age limit in this act establish whether anyone that committed crime is reviewed and decided at court session in child court or not. Beside that, article 330 BW determines that not yet adult is person who is under 21 years old and has never married. Conclusion can be drawn from article 47 Act Number 1 Year 1974. First, child who is under 18 years old or has never married is under parent's authority. Second, parent represents child in doing legal action, both in or outside court. Conclusion based the article will be connected child labor position as legal subject. This will be analyzed in next subchapter.

3. Child Labor as A Legal Subject

Now, Act Number 13 Year 2003 concerning Manpower is part of positive law in Indonesia, and, can be said that it is important legal sources in manpower scope. One of a lot of areas which is stipulated in the act is about child labor.

Article 1 point 26 the act determines that child is every person who is under 18 years old. If Act Number 12 Year 1948, Act Number 25 Year 1997, and Act Number 13 Year 2003, especially on child definition, are compared, will be found understanding like next proposition. Article 1 subsection (1) point d Act Number 12 Year 1948 constitute that child is a boy or girl who is 14 years old and less than it.

The three acts do not allow child to do work. Article 2 Act Number 12 Year 1948 constitutes that child is not allow to do work. Article 95 subsection (1) Act Number 25 Year 1997 and article 68 Act Number 13 Year 2003 constitute that entrepreneur is not allow to employ children for work. Exemption from what is stipulated under Article 68 may be made for the employment of children aged between 13 years old and 15 years old for light work to exempt that the job does not stunt or disturb their physical, mental and social developments. Entrepreneurs who employ children for light work must meet the following requirements: (a) the entrepreneurs must have written permission from the

parents or guardians of the children, (b) there must be a work agreement between the entrepreneur and the parents or guardians, (c) maximum working time three hours a day, (c) conducting during the day without disturbing school time, (d) occupational safety and health, (e) a clear employment relations, and (f) receive wages in accordance with the prevailing provisions.

4. Conclusion

Under Act Number 13 Year 2003, entrepreneurs are not allowed to employ children. But, there is an exemption. Entrepreneurs who employ children for light work must meet 7 requirements. One of the requirements is a work agreement between the entrepreneur and the parents of guardians of the children.