

CHAPTER TWO

LITERATURE REVIEW

A. The Concept of Children

A child is a successor to the generation of each married couple who has been legitimate and has the right to be protected. It was concluded that they were still in the womb until they are 18 years old.¹ As an individual and successor to the nation, children certainly have different rights than adult.² Children's rights tend to be more special³ because they are the next generation of the nation. Each child's rights have also been regulated in the Act, including:

1. According to the Law No. 35 of 2014 regarding to the Law No.23 of 2002, the basic concept or understanding of a child in article 1 (one) is a child who has not reached the age of 18 (eighteen) year. The article reads: A child is a person who is not 18 (eighteen) years old, including a child who is still in the womb.
2. According to the Civil Code Article 330, a child is explained as someone who is not even 20 years old and has not been married before. If the marriage is dissolved before they are even twenty-one years old, then they will not return to immature status.⁴

¹ Law No.23 of 2002 Article 1 Paragraph 1. And Law No. 35 of 2014 Article 1 Paragraph 1

²Lorenza B. Fontana and Jean Grugel, 2016, "To Eradicate or to Legalize? Child Labor Debates and ILO Convention 182 in Bolivia", *Global Governance*, Vol. 21, No.1, p. 66.

³Susan Shepler, 2016, "Sierra Leone, Child Soldiers and Global Flows of Child Protection Expertise", *Berghahn Books*, p.243.

⁴ CHAPTER XV. Immature and Guardianship. (Not Applicable For Foreigners Non-Chinese, For Immature, Applicable Provisions of Sub-National IA Foreign Classes, which Contain the Same Provisions as Provisions of Article 330 of the First and Second Paragraphs of the Civil Code). PART 1 Immature.

3. According to the explanation of the French Civil Code defines "child" in the term "minor" as "an individual of both sexes who have not reached the age of eighteen years". The latest changes aim to develop bigger ones.
4. According to article 2 of the ILO Convention in 1999, a child is someone under the age of 18 (eighteen). It is explained in the article: "For this Convention, the term child is all persons under the age of 18." While in 2000, Indonesia issued the Law No. 1 of 2000 concerning the ratification of the ILO Convention for the Elimination of the Forms of Child Labor as proof of Indonesia which adheres to Pancasila and upholds the social justice and human dignity, including the rights of children born and live in Indonesia.⁵
5. The ILO Convention Number 138 of 1973 on the minimum age for being allowed to work is a basic foundation for child labor and the minimum for the worker is 18 years old.
6. Meanwhile based on the understanding and concept of children in general according to The Convention on the Right of the Child in 1996, a child is someone under the age of 18 (eighteen) years, except if based on the law that has been applied to children in each country with the age limit that has been listed is younger. The Convention on the Right of the Child has recognized the basic rights of children that must be accepted by every child

⁵ Law No. 1 of 2000 concerning the ratification of ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Article 1.

and also regulates how a state that has become a party to the Convention sets regulations to give to children the rights and protection they deserve.

From the explanation above, it can be concluded that a child can be categorized as a child as many as they are still in the womb until they have reached the age of 18 (eighteen) years old.

B. The Concept of Worker

In essence, a worker is someone who does a job and service to generate wages in the form of money or goods to meet their needs, family or community.⁶ This is also explained in the Employment Act in Chapter 1 of the general provisions in articles 2 and 3. In articles 2 and 3, it is explained that labour is anyone who is capable of doing work to produce goods or services to meet his own needs by receiving wages or compensation other. Besides from that, the understanding of workers can be interpreted as the same workforce as workers in general.⁷

The concepts of workers in more details are as follows:

1. The International Labour Standards on child labour has issued Minimum Age Convention, 1973 (No. 138 which has been ratified. This basic convention sets the general minimum age for entry into employment or work at 15 years (13 for light work) and minimum age for hazardous work at age 18 (16 under certain strict conditions). This gives the possibility of initially establishing a general minimum age of 14 (12 for light work) in

⁶Mary Austin, 2017, *Citizenship and Democratization in Southeast Asia*, Natherland: BRILL

⁷ Aloysius Uwiyono, Siti Hajati Hoesin, Widodo Suryandono and Melania Kiswandari, *Asas-Asas Hukum Perburuhan* (Depok, Jakarta: PT Raja Grafindo Persada, 2014), page 32.

regions where the economy and educational facilities are not sufficiently developed.

2. According to The 14th ICLS adopted by the Resolution concerning International Classification of Status in Employment (ICSE), known as ICSE-93m describes the concept of workers, including:
3. Employees, who get a basic remuneration not directly dependent the revenue of the employer - among whom countries may need and be able to distinguish "employees with permanent contracts" (including "regular employees").
4. Employers, who hold self-employment jobs (i.e. whose remuneration depends directly on the (expectation of) profits derived from the goods and services produced) and engage one or more person to work for them as 'employees', on a continuous basis.
5. **Own-account workers**, who hold self-employment jobs and do not engage 'employees' on a continuous basis.
6. **Members of producers cooperatives**, who hold self-employment jobs in a c-operative producing goods and services, where the members take part on an equal footing in making major decisions concerning the cooperative;
7. **Contributing family workers**, who hold self-employment jobs in an establishment operated by a related person, with a too limited degree of involvement in its operation to be considered a partner;

8. **Workers were not classifiable by status**, for whom insufficient relevant information is available, and/or who cannot be included in any of the preceding categories.⁸

⁸ILO, *Current Guidelines*, See further at <https://www.ilo.org/global/statistics-and-databases/statistics-overview-and-topics/status-in-employment/current-guidelines/lang--en/index.htm> , Accessed at April 7th 2019 on 23:20 PM.