

**A COMPARATIVE LEGAL STUDY BETWEEN INDONESIA AND
FRANCE IN PROTECTING CHILDREN FROM
CHILD LABOUR PRACTICES**

PUBLICATION MANUSCRIPT



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APPROVAL PAGE

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**A COMPARATIVE LEGAL STUDY BETWEEN INDONESIA
AND FRANCE IN PROTECTING CHILDREN FROM
CHILD LABOR PRACTICES**

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Abstract

Children are an asset of a country with more privileges than adults and must be protected by the government where they live. Unfortunately, not all children can grow and enjoy their rights because cases of child labor still occur today. Indonesia is a developing country with a high number of child laborers, as evidenced by data in 2018 released from the Central Statistics Agency (*Badan Pusat Statistik*) that in 2017 there were 1.2 million child laborers or 3.06% of the total children aged 5-17 years old. In contrast to Indonesia, France is a country that has succeeded in protecting children from child labor cases which have been proven by the data from the UNICEF Global Database in 2017 which shows the absence of child labor in France. This research made an attempt to compare laws and regulations on underage workers between Indonesia and France by analyzing both countries' similarities and differences in their attempts to protect children from child labor issues. Therefore, through normative legal research and comparative study approach, this study will analyze the legal protection of children in Indonesia and France from child labor practices. The research also proposes a recommendation for the government and related institutions for regulating a better law and regulation to solve the child labor cases in Indonesia. The result of this study shows that Indonesia has made every effort to protect underage workers as has been done by Indonesia, but in practice, France is doing something more comprehensive by categorizing what work can be done by child workers. In this case, Indonesia does not have this categorization.

Keywords: *child labor, France, Indonesia, legal protection*

I. Introduction

Child Labor is a work performed by a child that is likely to interfere his or her education, or to be harmful to his or her health or physical, mental, spiritual, moral or social development¹. Child labor case is not a case that has just emerged but has been around since 1369² and has claimed the rights of children throughout the world to grow and develop. Child labor cases have been happened throughout the world in countries with poor economic, and poor law enforcement background.³

In general, child labor is a serious problem⁴, especially in developing countries with weak economies,⁵ as shown in the Global Database of Child Labor released by UNICEF and updated in November 2017. The data shows not only Indonesia and France, but shows Finland that does not show the existence of underage child labor and Japan which also does not show the existence of underage workers. Similar to Indonesia, Myanmar which is part of ASEAN shows a higher number of child laborers than Indonesia.

¹Athena K. Ramos, 2018, "Child Labour in Global Tobacco Production: A Human Rights Approach to an Enduring Dilemma", *Health and Human Rights Journal*, Vol. 20, No.2, p. 2.

²Joanna Rea, 2017, *Child Labour*, Ireland: Concern Worldwide, p.6

³Ibid, p.11

⁴ Harrison Kwame Golo, Lucy Effeh Attom, Emmanuel Brew, Isaac Eshun, 2018, "Human Rights Issues of Child Labour and Economic Activities: The Way Forward", *American Journal of Social Science Research*, Vol. 4, No.2, Page 2.

⁵Anjana Verma, 2018, "Child Labour: The Effect on Child", *International Journal of Advanced Educational Research*, Vol. 3 No.83, P. 85.

unicef GLOBAL DATABASES [data.unicef.org]

Child labour

Last update: November 2017

Countries	Child labour (%) [*]											
	Total	Male	Sex		Place of residence			Poorest	Second	Wealth quintile		
			Female	Urban	Rural	Middle	Fourth			Richest		
Finland	-	-	-	-	-	-	-	-	-	-	-	-
France	-	-	-	-	-	-	-	-	-	-	-	-
Indonesia	7 x,y	8 x,y	6 x,y	-	-	-	-	-	-	-	-	-
Japan	-	-	-	-	-	-	-	-	-	-	-	-
Myanmar	9 y	10 y	9 y	7 y	7 y	10 y	-	-	-	-	-	-

Notes: - Data not available
x Data refer to years or periods other than those specified in the column heading. Such data are not included in the calculation of regional and global averages.
y Data differ from the standard definition or refer to only part of a country. If they fall within the noted reference period, such data are included in the calculation of regional and global averages.
* Data from the fourth round of MICS (MICS4, 2009–2012) included in the table have been recalculated according to the indicator definition used in MICS3 surveys, to ensure cross-country comparability. In this definition, the activities of fetching water or collecting firewood are classified as household chores rather than as an economic activity. Under this approach, a child would have to be engaged in fetching water or collecting firewood for at least 28 hours per week to be considered as a child labourer.
* Data refer to the most recent year available during the period specified in the column heading.
KFR: Key Findings Report

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Based on the data from UNICEF above, it is clear that this number is a quite alarming. One of the countries with this alarming number is Indonesia despite the fact that the country should be able to protect the rights of all children to grow well and be protected from all harmful aspects. Not only the data released by UNICEF, according to the results of the Child Labor Survey (SPA) conducted by the Indonesian Statistics Agency (*Badan Pusat Statistik*) in 2009, the number of children aged 10-17 years in Indonesia amounted to around 3.4 million or 10 percent of it is a standard definition that is said to work.⁷ Furthermore, according to the data released by the National Labor Force Survey (SAKERNAS) conducted by the Central Statistics Agency (*Badan Pusat Statistik*) in 2017 showed that an increase of 6.99% had previously decreased the number in 2012-2015⁸.

⁶ X Data refer to years or periods other than those specified in the column heading. Such data are not included in the calculation of regional and global averages. Y Data differ from the standard definition or refer to only part of a country. If they fall within the noted reference period, such data are included in the calculation of regional and global averages. Global Database on Child Labour, UNICEF, from <https://data.unicef.org/topic/child-protection/child-labour/>, accessed on April 6th 2019 at 21:26 PM.

⁷Badan Pusat Statistik, Survey Pekerja Anak Indonesia 2009, Jakarta, Indonesia, 2010, page 27.

⁸Profil Anak Indonesia 2018, Tri Windiarto, Al Huda Yusuf, Ambar Dwi Santoso Setio Nugroho, Siti Latifah, Riyadi Solih, Fera Hermawati, Lukmi Ana Purbasari, Anita Rahmawatiningsih, Indonesia: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak (KPPPA), 2018, page 160.

Even, more worrying is the results of a survey conducted by the Indonesian Central Statistics Agency (*Badan Pusat Statistik*) which shows that the average working hours for these children are 27 hours a week. This case indicated a violation of the Indonesian Labor Law No. 13 of 2003. Even though a child can do work, a child can only do light work and have a limit of working hours in a day or even in a week⁹.

The cause of why underage children work is poverty and lack of education which leads to socio-economic problems¹⁰. This data has also been supported by data from the Central Statistics Agency (*Badan Pusat Statistik*) which shows an 11 to 12% increase during the vulnerable year from 2012-2015¹¹. The problem of poverty, which is one of the main factors in the occurrence of this problem in Indonesia, is influenced by parents who allow and even force their children to work in order to help a minimum family income¹².

The problem of children in Indonesia doing work is a matter of safety and it is also feared that their development will be disrupted¹³. The problem of children in Indonesia doing work is a matter of safety and is also feared that their development will be disrupted¹⁴. The International Labor Organization (ILO) quotes that the worst jobs and environments that could have a bad impact will be

⁹Sabiha Hussain, 2015, A Lost Childhood in the Aroma of Agarbatti: The Case of Female Child Labour in North India”, *International Journal of Sociology of the Family*, Vol. 41, No.1, p. 38.

¹⁰Idris Isyaku Abdullahi, Zaleha Mohd Noor, Rusmawati Said, Ahmad Zubaidi Baharumshah, 2016, “Does Poverty Influence Prevalence of Child Labour in Developing Countries?”, *International Journal of Economics and Financial Issues*, Vol. 6, p. 8.

¹¹Dayang Haszelinna binti Abang Alia, G. Reza Arabsheibani, 2016, *Child Labour in Indonesia*, Universitas Indonesia, Vol. 62, No. 3, p. 4.

¹² Ibid.

¹³Faten Mohammad et.al, 2018, “Relation between Child Labour and Aggressive Behaviour among School Age Children”, *Egyptian Journal of Health Care*, Vol. 9, No.3, p 28.

¹⁴ ibid p 28.

classified as something that is prohibited for minors¹⁵.

Since the Declaration of the Rights of the Child was adopted by the UN General Assembly in 1959, countries have followed and acknowledged the moral obligation to act for the best interests of children. In France, the Child Protection Act has existed since the mid-19th century, more precisely in 1841. The Law was passed to protect children in the workplace. France, which is well aware of the importance of child protection, ratifies the law to provide a child protection system in France¹⁶.

France and Indonesia share the Civil Law system but very different in handling child labor cases. The number of case child labor in France is very minimum¹⁷. This can be seen from the case of minimal exploitation of children in France and government protection of children in their country is guaranteed. One of the strongest evidence with the French government that it strictly protects children from becoming child laborer and is to become one of the countries in 1990 that first signed and supported the ILO Preamble which systematically created a program to tackle child labor. France along with the governments of Germany, Spain, Belgium, and the United States has supported and signed the ILO Preamble which is known as the International Program on Elimination of Child Labor (IPEC)¹⁸.

¹⁵International Labour Organisation (ILO), “What is Child Labor”, from <https://www.ilo.org/ipec/facts/lang--en/index.htm>. Accessed on May 8th 2019.

¹⁶Humanium, “The Protection of Children in France”, from <https://www.humanium.org/en/the-protection-of-children-in-france-2/> , accessed on May 8th 2019 at 22:17 PM.

¹⁷ UNICEF, “Global Database on Child Labour on November 2017”, updated on November 2017. See further at <https://data.unicef.org/topic/child-protection/child-labour/>, accessed December 11th 2018, 19:28 AM.

¹⁸International Labor Organization (ILO), *Global Estimates of Child Labor: Results and Trends*

This is also reinforced by France by applying the child protection law concerned with child labor. This policy is explained in Article L211-1 of France Labor Law. The article explains: Obey to the provisions of the second sentence of Article L. 117-3, children under the age of sixteen may not be accepted or employed in the company and profession mentioned in the first paragraph of Article L. 200 -

1. One of the policies required for all providers of jobs for follows the conditions described, such as:

1. Students in general education can conduct information visits organized by their teachers or, for the last two years of their compulsory schooling, follow the order of observation according to the method determined by the decision;
2. Students who take alternative or vocational education can do, for the last two years of their compulsory school, introductory courses, application period or workplace training in accordance with the terms and conditions applied.

In all the explanations mentioned above, an agreement was made between the student's educational institution and the company. No agreement can be concluded with the company for the purpose of recognizing or employing a student in a place where supervisory authorities have determined that the conditions of work are such that they affect the safety, security, and health or physical or moral integrity of the people present there.

Subject to what is stated in Article L. 117-3 (paragraph 1, 2nd sentence in France Labor Code) children of both sexes may not be employed or accepted in any

2012-2016, Geneva: Alliance, 2017, p. 23.

capacity in the institution mentioned in paragraph 1 Article L. 200-1 before being regularly released from compulsory education. The provisions in France Labor Code (*Code du Travail*) of the preceding paragraph will not prevent students from taking alternative courses from conducting preliminary or vocational training courses for the last two years of their compulsory school. These courses can only be carried out by approved commercial or craft companies or small or medium-sized companies.

As a developing country Indonesia may use France's child protection system as a benchmark in improving our legal system in protecting our children from child labor practices. From the explanations and data that have been explained, it is interesting to make comparison of laws and actions on child protection between Indonesia and France in protecting children as the future generation from exploitation especially for commerce purpose as child labour.

II. Statement of Problem

How do the laws and regulations regulate underage worker protection in Indonesia and France?

III. Research Method

The legal problem above will be researched in a normative legal research with a comparative approach. This research employs the secondary data in form of the primary legal materials namely the relevant laws and regulations in Indonesia and France; the secondary legal material consist of related textbooks, journals, articles, research reports, and child labor database; and tertiary legal materials, dictionaries and encyclopedias. Those secondary data obtained will be analyzed

through a descriptive qualitative methods in a library study.

IV. Results and Discussion

A. Law and the Regulation on Underage Worker Protection in Indonesia

1. Legal Product related to Underage Worker Protection

As a big country in terms of population, Indonesia certainly have many problems, including the problem of child labor. One of the main causes of child labor in Indonesia is closely linked with poverty and other economic problems¹⁹. Indonesian government's efforts in protecting children from child labor practices among others are providing a comprehensive legislation and establishing relevant institutions as follows:

a. Laws

Legal protection for child labor in Indonesia has been realized in the form of the Labor Law No. 13 of 2003 in Chapter X and described in Article 68, Article 69, Article 70, Article 71, Article 72, Article 73, Article 74, and Article 75. Article 68 sub-article 2 of the Law Number 13 of 2003 explains that an entrepreneur is prohibited from employing children.

Article 69 of the Law of the Republic of Indonesia Number 13 of 2003 explains in the first point that: Provisions as referred to in Article 68 can be excluded for children aged 13 (thirteen) years up to 15 (fifteen) years to do light work as long as they are not disrupt the development of physical, mental and social health of children. While in paragraph 2, it is explained that the employer who

¹⁹ Faten Mohammad Saad Mohammad Ridwan, et.al, *Relation between Child Labour and Aggressive Behavior among School Age Children*, Egypt: Egyptian Journal and Health Care, 2018,Page 38.

employs a child in light work must fulfil the following requirements:

- 1) Written permission from parents or guardian.
- 2) Work agreement between parent and guardian.
- 3) The maximum working time is 3 (three) hours a day.
- 4) Performed during the day and does not interfere with school time.
- 5) Occupational Health and Safety.
- 6) The existence of a clear working relationship, and
- 7) Receive wages in accordance with applicable regulations.

In addition to the Law No. 13 of 2003, the Law No. 23 of 2002 concerning Child Protection is also made to strengthen Indonesian law in protecting children from all forms of exploitation. In 2012 the Indonesian government also issued the Law of the Republic of Indonesia No. 10 of 2012 concerning the Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Then in 2014 the Government of Indonesia replaced and strengthened the Law Number 23 of 2002 with the Law Number 35 of 2014 concerning changes in Child Protection. This law also provides a new perspective in the criminal justice system where children who commit criminal acts will be treated as "victims" who are entitled to protection and confidentiality.

Not only that, Indonesia has supported the International Labor Organization by forming a ratified law such as; the Law Number 19 of 1995 concerning Ratification of the ILO Convention No. 105 Regarding the Abolition of Forced Labor, the Law No. 20 of 1995 concerning Ratification of the ILO Convention No.

138 Regarding Minimum Age for Entry into Employment and the Law. No. 1 of 2000 concerning Ratification of the ILO Convention No. 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. From several laws that have been created by Indonesia as aforementioned, Indonesia also plays an active role in the international world in combating these child protection cases in collaboration with UNICEF and ILO (International Labor Organization).

b. Other Legislation

When reviewing regulations relating to the protection of underage workers in Indonesia or understanding the contents of the labor law, basically every child is prohibited from working²⁰. However, gradually, children are allowed to work with a minimum age and strict protection²¹. The regulations governing the protection of children and child labor are listed in as follows:

- 1) The Presidential Decree No. 59/2002 of 2002 concerning the National Action Plan for the Elimination of the Worst Forms of Work.
- 2) The Presidential Decree No.12 of 2001 which established the National Action Committee (KAN) for the Elimination of Child Labor in Indonesia.
- 3) The Presidential Decree Number 77 of 2003 concerning the Indonesian Child Protection Commission.
- 4) The Presidential Regulation of the Republic of Indonesia Number 61 of 2016

²⁰ Derry Angling Kesuma, 2015, "Pekerja Anak, Upaya Implementasi Konvensi Hak Anak di Indonesia, Faktor penyebab dan Metode Pencegahannya", *Lex Librum: Jurnal Ilmu Hukum*, Vol.2, No.1, Page 6.

²¹ Azzahra Soraya Bilhaq, 2018, "Pengaruh Sertifikasi Kakao terhadap Penurunan Praktik Perbudakan Anak oleh Petani Kakao di Pantai Gading", *Journal of International Relations*, Vol.4, No.1, page 3.

concerning the Indonesian Child Protection Commission.

- 5) The Presidential Regulation of the Republic of Indonesia Number 33 of 2018 concerning Amendment to the Presidential Regulation Number 75 of 2015 concerning the National Action Plan for Human Rights 2015-2019.
- 6) The Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: KEP.253 / MEN / 2003 concerning Types of Work that Endanger the Health, Safety or Moral of Children.

c. The Established Institution

In addition to the above law, the Indonesian government has established the Indonesian Child Protection Commission (KPAI) and the Human Rights Commission (KOMNAS HAM) which ensures all children in Indonesia get their rights. Not only by presenting the Indonesian Child Protection Commission (KPAI), but also established the Human Rights Commission (KOMNAS HAM).

2. The Requirement for Underage Worker

What makes underage workers do not have the right to protect their health and safety? Based on an investigation from the Human Rights Watch which has investigated underage workers in Indonesia, it has been found that many underage workers have stopped attending school and working in the tobacco farming sector²². In order to solve the poverty in their families, children with the status of underage workers stop going to school and working to help the economy of their family²³.

²² Human Rights Watch, *Hazardous Child Labour on Indonesian Tobacco Farms*, See further at <https://www.hrw.org/video-photos/video/2016/05/24/hazardous-child-labor-indonesian-tobacco-farms> accessed on April 19th 2019 at 22:42 PM

²³ Maulana Mukhlis, 2015, "Prioritas Strategis Penghapusan Bentuk-Bentuk Pekerjaan Terburuk

This clearly violates the Article 68 of the Manpower Act No. 13 of 2003 which states that employers are prohibited from employing a minor. In addition, according to an investigation conducted by the Human Right Watch has found that underage workers must even stop going to school to help their parents. From this it can be seen that this has violated the Article 69 of the Manpower Act No. 13 of 2003 which explains the provisions that a child is allowed to work if he gets permission from his parent or guardian, with a maximum working time of 3 hours a day and is carried out during the day and does not interfere with school time. The explanation of these requirements is as follows:

a. The Article 69 of Law Number 13 2003

- (1) Provisions as referred to in Article 68 may be excluded for children aged between 13 (thirteen) to 15 (fifteen) years to do light work as long as it does not interfere with physical and mental health and development.
- (2) Entrepreneurs who employ children in light work as referred to in paragraph (1) must meet the following requirements:
 - a. Written permission from parents or guardians;
 - b. Employment agreement between the employer and parents or guardians;
 - c. Maximum working time of 3 (three) hours a day;

Untuk Anak di Provinsi Lampung Dalam Perspective Time Matrix Management”, *Wedana: Jurnal Kajian Politik dan Birokrasi*, Vol.1, No.2, page 230.

- d. Carried out during the day and does not interfere with school time; Occupational Health and Safety;
- e. A clear working relationship; and
- f. Receive wages in accordance with applicable regulations.

The provisions referred to in paragraph (2) letters a, b, f, and g are excluded for children who work in the family business.

Furthermore, the Article 70 and the Article 71 of the Law No. 13 of 2003 explains that a child is allowed to work if it aims for education and training that is included in their curriculum section with a predetermined age and aims to develop their talents and interests.

3. Provisions on Prohibition of Child Labor

When employing a minor, an employer who provides work is required to fulfill and guarantee his/her safety and protection in the workplace. Therefore, the Government of Indonesia regulates the provisions concerning the prohibition of work carried out by underage workers.

The Article 74 of the Law No. 13 of 2003 explains that an employer or anyone is prohibited from employing children or employing underage workers at the place of work or giving the worst jobs. The explanation in the Article 74 of the Law No. 13 of 2003 states:

- (1) Anyone is prohibited from employing and involving children in the worst jobs.
- (2) The worst jobs referred to in paragraph (1) include:
 - a. All works in the form of slavery or alike;

- b. All works that uses, provides, or offers children for prostitution, the production of pornography, pornographic performances, or gambling;
 - c. All works that utilizes, provides, or involves children for the production and trade of alcoholic beverages, narcotics, psychotropic substances, and other addictive substances; and
/ or
 - d. All works that endangers the health, safety or morals of children.
- (3) The types of work that endanger the health, safety or morals of the child as meant in paragraph (2) letter d, are stipulated by a Ministerial Decree.

4. The Applicable Sanction

Sanctions that will be enforced for employers who are known to violate the law and employ a child under the age of 18 years will receive sanctions in the form of a minimum prison sentence of 1 year and a maximum of 4 years, and a fine of at least Rp. 100,000,000 (one hundred million rupiah) and a maximum Rp. 400,000,000 (four hundred million rupiah).

B. Laws and Regulation on Underage Worker Protection in France

France is a unitary republic with a semi-presidential government system with a civil law system. A system similar to Indonesia, these two countries are countries of Civil Law inspired by the Roman Law system by writing in a collection, codified and not made by a judge. But even though France has

similarities with Indonesia, including the legal system as well as the Law governing employment in its country, the performance of the French government is considered better than Indonesia in tackling underage child laborers exploited in their countries, this is evidenced by the UNICEF Global Database on November 2017 shows that France has no issues or cases of underage workers who are still exposed to exploitation in their country²⁴.

This fact has become a trigger for the researcher to explore the applicable legislations and institutions in France in protecting children from child labor practices.

1. Legal Product related to Underage Worker

a. Laws

Nationally, France enforces the protection of children's rights and prohibits a minor from working because a child should be able to play, study and do activities they like with the aim of growing up like normal children should, but in some cases a minor is allowed to do a job. In French law, for the prohibition of minors from working, the provisions of underage workers and their rights and protections are stipulated in the French Labor Code (*Code du Travail*) which has codified in 2007. Most relevant provision on child labor are found in Article L3161-1, L3162 to L3162-3, L3163-1 up to L3163-3, L3164-6 to L3164-8 and L3164-3. Under the French labor law (*Code du Travail*) Article L3161-1 defines a young worker as someone who works under the age of 18.

²⁴ UNICEF, "Global Database on Child Labour", See further at <https://data.unicef.org/topic/child-protection/child-labour/>, Accessed at April 6th 2019 on 21:26 PM.

b. Other Legislations

Besides *Code du Travail*, the Government of France has also created some government regulations of decree that regulate the provisions of workers under age in France among other are as follow:

- 1) The Prime Minister Decree No. 2013-914 of 11 October 2013 on the Derogation Procedure Provided for in Article L. 4153-9 of the Labor Code for Young People under the Age of Eighteen. This Decree explains the protection of young people (underage worker) in their workplaces with restrictions that have been contained in the explanation for the protection of the rights of underage workers.
- 2) The Prime Minister Decree No. 2015-444 of 17 April 2015 on amendment of Articles D.4153-30 and D. 4153-31 of *Code du Travail* (Labor Code) ensuring employers and companies are subject to the labor code, ensuring the recruitment and professional training of young people under the age of eighteen by observing Council Directive 94/33 / EC dated June 22, 1994 concerning the protection of young people in the workplace.
- 3) **The Law No. 2016-297 of March 14th, 2016 Relative to the Protection of the Child.**
- 4) **The Prime Minister Decree N 2017-96 of January 27, 2017 amending the Composition of the National Council for the Protection of Children.**

c. The Established Institution

Nationally, France has an independent institution called *Défenseur des Droits République Française* which has to protect and ensure that every child gets his rights protected. Not only that, but the French government also created the Ministry of Justice known as the Chancellor. The Chancellor serves as the Secretariat General and the Inspectorate General of Judicial Services²⁵.

2. The Requirements for Underage Worker

France has stipulated that a child under the age of 18 may not work, and an employer may not employ a child under the age of 16 which as stipulated in Article L6222-1 Code du Travail as follows:

No person may be involved as an intern unless he was at least sixteen years old when he was twenty-nine years old at the beginning of his internship. However, young people who are at least 15 years old can start an apprenticeship contract if they justify completing the first cycle of secondary education.

Young people who reach the age of fifteen before the end of the calendar year can be registered, under school status, at a vocational high school or at an apprenticeship training center to begin their training, under conditions determined by decision In the State Council.

Furthermore, a worker under the age of 16 is permitted to work in an artistic field or any job related to the world of entertainment as long as permission is given and approval is given by administrative authorities. Provisions for the work have

²⁵ Anonym, “*Le Défenseur des Droits*”, See further at <https://www.defenseurdesdroits.fr/fr/institution/organisation/defenseur> , accessed on April 26th 2019 at 23:50 PM

been regulated in the French Labor Code (*Code du Travail*) Article L 7124-1 as follows:

A child under the age of sixteen may not, without prior individual authorization, granted by the administrative authority, be engaged in any capacity whatsoever:

1. In a show business, sedentary or itinerant;
2. In a film, radio, television or sound recording company;
3. To exercise a manikin activity within the meaning of Article L. 7123-2;

3. The Provision on Prohibition of Work for Underage

The provisions describe the duration of underage workers and what work should not be done for underage workers as described in the French Labor Code (*Code du Travail*). Underage workers are not employed in actual work that exceeds eight hours a day and thirty-five hours a week. This has been regulated in Code du Travail Article L3162-1 which has been in effect since 2019 by subtracting from the first paragraph, for certain activities determined by the decision of the State Council, when the collective work organization justifies it, it can be abolished:

1. Within a working period, the thirty-five hours is the limit for ideal working time;
2. Within a working period, eight hours is the daily working limit. Where the overruns provided for in 1 and 2 are applied:
 - a. The rights to have eight hours rest period if the minor ask for it daily.

- b. Each overtime and each increase will result in an equivalent compensation remaining.

In addition, Article L3162-3 has also explained the effectiveness in working as follows:

Night work is prohibited for underage worker. For young employees of commercial companies and people from the show, reductions can be given, specifically, by labor inspectors. The *Conseil d'Etat* decision also stipulates a list of sectors whose characteristics can be used as a reason for abatement. An extended agreement or collective labor agreement or company or establishment agreement can determine the conditions under which this authorization can be granted in this sector. No exceptions are given between midnight and 4 am, depending on the urgent cases as regulated in Article L. 3163-3. Deductions for employing children under the age of sixteen can only be given in the case mentioned in Article L. 7124-1 in entertainment, film, radio, and television or sound recordings.

However, if there are certain urgent conditions, the provisions in Articles L3163-1 and L3163-2 can be revoked. This is explained in Article L3163-3 as follows:

In very urgent cases, if adult workers are not available, the provisions of Articles L. 3163-1 and L. 3163-2 may be revoked for young workers aged sixteen to eighteen years old or passenger work that is intended to prevent accidents that will occur or to correct the consequences of accidents. An equivalent period of compensation is given to them within three weeks.

Underage workers in France are not permitted to work in hazardous environments and hazardous work which can have a negative physical and moral impact. Everything is set in the French Labor code (*Code du Travail*) as follows:

- a. It is forbidden to assign young people to work that expose them to pornographic or violent acts or representations on Article D4153-16 Labor code (*Code du Travail*).
- b. It is forbidden to expose them to hazardous chemical agents in Article D. 4153-17 French Labor Code (*Code du Travail*).
- c. It is forbidden to expose them to group 4 and group 3 biological agents according to the French Labor Code in Article D 4153-19.
- d. It is forbidden to expose them to mechanical vibrations according to the French Labor Code in Article D. 4153-20 and it specifies the vibrations levels which should not be exceeded according to Article R. 4443-2.
- e. Exposure to ionizing radiations, artificial optical radiation is forbidden however an exemption is possible according to the French Labor Code Articles D. 4153-21 and D. 4153-22.
- f. Exposure to hyperbaric conditions is prohibited however an exemption is possible according to the French Labor Code in Article D. 4153-23.
- g. Exposure to hazards of an electrical nature is forbidden according to the French Labor Code in Article D. 4153-24.
- h. Exposure to risks of collapse is forbidden according to the French Labor Code in Article D. 4153-25.

- i. Driving mobile work equipment is forbidden according to the French Labor Code in Article D. 4153-26 and D. 4153-27.
- j. Works requiring the use of work equipment are forbidden however an exemption is possible according to the French Labor Code in Articles D. 4153-28 and D. 4153-29.
- k. Temporary work at height is forbidden according to the French Labor Code (Articles D. 4153-30, D. 4153-31 and D. 4153-32.
- l. Works using pressure vessels are forbidden however an exemption is possible according to the French Labor Code in Articles D. 4153-33 and D. 4153-34.
- m. Working in contact with melted glass or melted metal is forbidden however an exemption is possible according to the French Labor Code in Article D. 4153-35.
- n. Exposure to extreme temperatures is forbidden according to the French Labor Code in Article D. 4153-36.
- o. Working in contact with animals is forbidden according to the French Labor Code in Article D. 4153-37.

4. The Applicable Sanction

This labor code also explains the criminal provisions if violating negligence or not fulfilling the rights for underage workers will be subject to fines. This is discussed in Article R3165-1 as follows:

Failure to comply with the provisions of Articles L. 3162-1 and L. 3162-2 ,

relating to the hours of work of young workers, is punishable by the fine for contraventions of the fourth class, pronounced as many times as there are employees affected by the offense.

In violations of class 4 (four), violators who break the rules are required to pay a fine of 135 € and a maximum fine of 750 €. The rate of the fine in force due to the Public Treasury, depends on the delay of payment of the fine. The fine may be reduced or increased and the amount of the fine is indicated on the notice of contravention or the minutes drawn up by the police force.

The violations may not only required to pay fines, but also may be subject to imprisonment as described in Article 132-9 French Penal Code as follows:

Where a person who has already been definitively sentenced for a crime or for an offense punishable by ten years' imprisonment by the law, commits within ten years of expiry or prescription of the previous sentence, an offense punishable by the same penalty, the maximum of imprisonment and fine is doubled. When a person who has already been definitively sentenced for a crime or for an offense punishable by ten years' imprisonment by the law, shall, within five years from the expiration or prescription of the previous sentence, an offence punishable by a term of imprisonment of more than one year and less than ten years, the maximum imprisonment and fine is doubled.

C. A Comparison between Indonesia and France legal Regime in Protection of Underage Workers

1. The Similarities between Indonesian and French Law in the Protection of Underage Workers

With the explanation above, it can be concluded that Indonesia and France have laws, legislation and independent institutions that protect and ensure that every child gets their rights so that they are not exploited in any form including underage workers. From the explanation above, we can see the similarities between Indonesia and France in regulating and protecting underage workers as follows:

1. Indonesia and France have similarities where the two countries do not allow minors to work. As stated in Article D4153-15 of the French Labor Code (*Code du Travail*) and the Labor Law of the Republic of Indonesia Number 13 of 2003 in Article 68. However, both countries allow minors to work as long as they follow the conditions specified and have been explained. The French government has regulated it in Article L4153-1 of the French Labor Code (*Code du Travail*), while the Indonesian government has regulated it in Article 69 of the Law No. 13 of 2003.
2. The two countries have similar institutions which are tasked with protecting and ensuring that every child in their country get their rights. Indonesia has the Indonesian Child Protection Commission (*Komisi Perlindungan Anak Indonesia*) as a form of the results of the Act with the aim of child welfare and protection, while France has an independent institute working to protect children's rights namely, *Défenseur des Droits Republique Francaise* (Advocate

Rights of the French Republic)²⁶.

In addition to matters relating to the efforts and actions of each country, internationally Indonesia and France also have many similar contributions in fighting and ending child labor, both in each country and throughout the world. One of the actions taken by Indonesia and France is to ratify the ILO Convention No.138 on the Minimum Age Convention. Indonesia ratified the ILO Convention No.138 in the Law No. 20 of 1999 concerning the ILO Convention Ratification No.138 Concerning Minimum Age for Admission to Employment. France on the other hand also ratified the ILO Convention No.138 Concerning Minimum Age for Admission to Employment²⁷. These two countries are members of the International Labor Organization (ILO) that support the eradication of child labor which is still a large-scale case in the whole world. France is a member of the ILO since June 28th 1919 and Indonesia has been a member since May 12th 1950.

2. The Differences between Indonesian and French Law in the Protection of Underage Workers

1. Regulation

Despite having the same legal system and protection of underage

²⁶ Anonym, “*Le Défenseur des Droits*”, See further at <https://www.defenseurdesdroits.fr/fr/institution/organisation/defenseur> , accessed on April 26th 2019 at 23:50 PM

²⁷ International Labour Organization (ILO), *Natlex Database of National labour, Social Security and Related Human Rights Legislation*, See further at https://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p_lang=en&p_country=FRA , accessed on April 28th 2019 at 22:33 PM

workers, Indonesia and France still have striking differences. The French Labor Code differs from Indonesian Labor Law, not only in the recruitment and dismissal system but also in the detailed explanation of each Article. The difference in labor law protection between the two countries refers to:

- a. Sector or any type of work that may be carried out by underage workers during holidays where a worker should be able to rest during holidays.
- b. Curfew for underage workers and duration of work for underage workers.
- c. Types of work that should not be carried out in detail for underage workers.

2. Actions

As we know, France has nationally revised directives from the EU into national law. France also follows the standards of an FTA (Free Trade Agreement) signed by the European Union and this agreement is more focused on employment with reference to the ILO Convention.

France with its actions has also been increasingly mobilized to promote children's rights, recognition of their testimony and respect for their best interests since the signing of the protocol on November 20th 2014 in the UN which established a procedure whereby someone who said they were victims of the Convention's violations or protocols can speak to the Committee on the Rights of the Child. With this commitment, which is part of efforts for the welfare of children and respect for their needs, in

accordance with the 2015-2015 child protection roadmap, which was presented at the Council of Ministers by the Minister of Children's Affairs on August 19th²⁸.

Meanwhile, Indonesia is different from France which takes steps to adopt and direct EU law towards their national laws. However, Indonesia has taken a big step by ratifying the ILO Convention No.138 regarding the Minimum Age Convention as a form of agreement and concrete action to support the International Labor Organization.

V. Conclusion and Recommendation

A. Conclusion

Indonesia and France have a legal protection system that protects their rights and ensures that underage workers are not exploited. However, even though Indonesia has its system which is useful for reducing and preventing child labor, the actions taken are not entirely effective. This is evidenced by a large number of child laborers and the data that has been shown in the previous explanation. In contrast to Indonesia, France has taken concrete action by protecting children and underage workers so that there is no exploitation of underage workers and has been proven by the availability of UNICEF data in 2017.

²⁸France in the United Kingdom, "France to Ratify UN Children's Rights Protocol", See further at <https://uk.ambafrance.org/France-to-ratify-UN-children-s-rights-protocol> , accessed on May 21st 2019 at 00:21 PM.

B. Recommendation

From what has been explained, the researcher suggests numbers of recommendations for the Indonesian government to tackle and prevent children from being exploited in this country:

First, Indonesia needs to follow some of the things that France is doing in protecting children by tightening regulations by providing alternatives to sectors of work that can be recommended for children in Indonesia if they want to do work.; Second, the Indonesian government has to supervise every sector of work which is suspected of employing underage children with dangerous conditions, such as in tobacco industries.

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