THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD (LAW NUMBER 23 YEAR 2002) IN GIVING CHILD PROTECTION OF VIOLENCE TO CHILD LABOUR AS A HOUSEMAID IN INDONESIA

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A Thesis presented to
The Faculty of Humanities President University
in partial fulfillment of the requirements of Bachelor Degree
in Law Major

2015
THESIS ADVISOR RECOMMENDATION LETTER

This thesis entitled “THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD (LAW NUMBER 23 YEAR 2002) IN GIVING CHILD PROTECTION OF VIOLENCE TO CHILD LABOUR AS A HOUSEMAID IN INDONESIA” prepared and submitted by Virta Maria Ngole Wea in partial fulfillment for the degree of Bachelor of Law in The Faculty of Humanities has been reviewed and found to have satisfied the requirements for a thesis fit to be examined. I therefore recommend this thesis for oral defense.

Cikarang, 13th January 2015

Manasye Mahayoni, S.H., M.H.

Advisor
DECLARATION OF ORIGINALITY

I declare that this thesis entitled “THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD (LAW NUMBER 23 YEAR 2002) IN GIVING CHILD PROTECTION OF VIOLENCE TO CHILD LABOUR AS A HOUSEMAID IN INDONESIA” is the best of my knowledge and belief, an original piece of work that has not been submitted, either in whole or in part, to another university to obtain a degree.

Cikarang, 13\textsuperscript{th} January 2015

Virta Maria Ngole Wea
PANEL OF EXAMINERS APPROVAL SHEET

The panel of examiners declare that the tesis entitled “THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD (LAW NUMBER 23 YEAR 2002) IN GIVING CHILD PROTECTION OF VIOLENCE TO CHILD LABOUR AS A HOUSEMAID IN INDONESIA” submitted by Virta Maria Ngole Wea majoring in Law from The Faculty of Humanities was accessed and approved to have passed the oral defense on 2\textsuperscript{th} February 2015, Cikarang, Indonesia.

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ABSTRACT

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THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF
THE CHILD (LAW NUMBER 23 YEAR 2002) IN GIVING CHILD
PROTECTION OF VIOLENCE TO CHILD LABOUR AS A HOUSEMAID
IN INDONESIA

Keyword: child, labour, housemaid

Indonesia is a developed country. Majority, people live with their low economic. Some poor families send their children who are still in school to work. The phenomenon of working children is called child labor. There are some sectors of child labour, such as agricultural, housework, mining, manufacturing, and informal work. In Indonesia, children labour as a housemaid are much requested. The phenomenon of child labour as a housemaid is the biggest sector from child labour. These children are protected by LawNumber 23 Year 2002. The regulation made by state is good enough but law officers do not do their roles firmly. The government and people have not good cooperation for seeking child protection. Some factors influence the law implementation, such as social factors which are poverty, gender discrimination, culture, education, globalization, and the housemaid agency. While legal factor is the law enforcement is not good. Bad treatment to a child labour as a housemaid can interfere his psychology. The child may be fearful, anxious, and unhappy. In fact, as a child in general, they should be
treated according to their age, do not treated under pressure from employers. In terms of education, they work full a day, child labour as a housemaid do not have the opportunity to go to school or take part in courses. The employer sue the child to do a hazardous work without any initiative to protect their health as a child.

2015
ACKNOWLEDGEMENT

Praise to The Lord Jesus Christ for His grace until I finished my research. This research is written to give some information for readers through the research I did about child protection of violence happened to child labour as a housemaid in Indonesia. I made this research as a fulfillment of the requirements of the bachelor degree in Faculty of Humanities, President University.

During the writing of this research, I got helps from several parties, thus I want to thank you for:

1. My father, my mother, both of my sisters, my grand fathers, my uncles, my aunties, and my cousins for the prayer.
2. My thesis advisor, Mr. Manasye Mahayoni for the guidance, all lecturers, and secretariat division from Law Major.
3. Komisi Perlindungan Anak Indonesia (KPAI), especially to Mr. Ipung for the information completed my research data.
4. My friends from Law Major batch 2011 and all friends in President University for the support.
5. All parties who can not be written one by one who give me support in finishing this thesis.

Hopefully, this research gives some benefits for readers who needs some informations.

Viria Maria Ngole Wea
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CHAPTER I

Preliminary

Before I explain the result of my research, these are problem background, research question, research objective, research benefit, and research methods in this Chapter I.

1.1. Problem Background

Indonesia is a country that has high population growth. Indonesia is a developed country, majority, people live with their low economic. To solve this problem many poor families send their children who are still in school to work. The phenomenon of working child is called child labor. Child labour is not include children who do a reasonable job for his age and level of development that allows the child to obtain practical skills and develop responsibility.

Child labor is a child who work on their destructive work.\(^1\) There are many existing employment sectors such as agricultural work which children work in the fields belong to the family or rented land, work in the sphere of housework (as a housemaid) who always forced to work with very long work hours, they work without being given the opportunity to attend school and they are isolated from parents and friends, they also got the risk of violence from employers. Some of them work in mining sector where they work for long hours without any protective equipment and employed in manufacturing sector where children work in factories which are harmful as a work place for children. They also work at

\(^1\) Serikat Pekerja/Serikat Buruh dan Pekerja Anak, Jakarta : Organisasi Perburuhan Internasional, 2009, p.7
informal economy sector such as shining shoes, begging, driving rickshaws, become public transportation conductors, selling newspapers, became a garbage man, and scavenged.

The existence of child labour as a housemaid can be found in almost medium and high class family in big city, especially happened to young couple. In general, the level of children labour as a housemaid are only primary graduation and they are rarely found combined with a work or finish their school until high school graduation. These children were required from villages, coming from poor families, by the dealer or relations. This work makes children do a house work such as washing, caring for children, cooking, and cleaning the house.

According to the Association of Labour Agency of Indonesia (APPSI), majority labours are children. This trend makes APPSI requires children as a housemaid to fulfill demands. Every year, thousands of children labour as a housemaid are distributed and the majority are 15 to 18 years old. The recruitment is done through two pathways, namely line agencies and informal line. Agent pathways have work patterns that the dealer offers jobs to children labour as a housemaid in the villages. After getting children labour as a housemaid, then they are invited into the city, such as Jakarta. Supposedly, children labour as a housemaid get training first, but generally they are taught by the employer.

Child labour as a housemaid works in accordance with the contract made. It is usually valid contract between employer, housemaid, and supplier. If the housemaid or employer do not match, housemaid or employer may request to dealer to change housemaid. Or it can be with a request first from the employer to find another housemaid. After arriving in the city, they are placed by the employer
directly. If the child labour as a housemaid feels comfortable working, then he will work for a long time. But if the child labour as a housemaid does not feel comfort, then child labour as a housemaid will return back home or back to the intermediary or seek a new housemaid.

Children labour as a housemaid feel proud when they are able to buy a farm or buffalo for their parent in the village. They keep to work to help parent’s economy condition. Children labour as a housemaid assume that it is the best alternative, because it does not need higher education, do not need special skills and experience. This work is like daily activities.

In a journal Tinjauan Yuridis Terhadap Permasalahan dan Kebutuhan Pembantu Rumah Tangga Anak by Ubaidillah Kamal, written about apprehension to child labour as a housemaid. There are some of children who should be in a state protection, but they still must do their work as housemaid because of their need of money. They are in the condition which can not fulfill their special protection. Unfortunatelty there are some opinion, especially in middle lower economic people, they think that a child has the same role in family include the role to do a job to fulfill family needs, with formal or informal way. In Indonesia, children labour as a housemaids are much requested. The phenomenom of child labor as a housemaid in Indonesia is the biggest sector from some of child labor sectors.

In 2001 BPS said that the amount of housemaids is 570.059 people and 152.184 children (26,7 %) are housemaids. In 2009 the agency Understanding Children's Work (UCW) reported that there were 2.3 million children in Indonesia.

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who became labours. Based on data from Jaringan Advokasi PRT in 2009 the amount of housemaids are 10 million, 30% are children.\textsuperscript{3} In 2011 ILO estimated for 2012 that minimum 2.6 million housemaids are female, 700.000 are children.\textsuperscript{4} In my visit to KPAI (Komisi Perlindungan Anak Indonesia), I get information about the amount of children who get violation or bad treatment from parties who do not care about children’s life. They are about 3.339 in 2013 and 2.7.37 in 2014. These children include children labour as a housemaid. In general, the children labor as a housemaid in a primary education level and rarely found to combine school and work up to high school graduation. Children labour as a housemaid are recruited from the village, they came from a poor family.

In handling the phenomenon of child labour as a housemaid, International Labour Office explain about the minimum age and type of work which proper to child do.\textsuperscript{5} The Government of Indonesia has ratified ILO Convention Number 138 Concerning Minimum Age Limit To Work to be Law Number 20 Year 1999. Indonesian government has made a declaration of the minimum age requirement to work in Indonesia. It is 15 years old. But the fact, children aged 12-13 years old are still allowed to do various jobs.

The criteria and types of easy work will be determined in more detail by the government. But this convention clearly states that children 18 years old are prohibited to do dangerous works. The exception to this provision is given to children aged 16 until 18 years old and they must get training and adequate with

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\textsuperscript{3} ILO Minta Pembantu Rumah tangga Anak Dihilangkan, http://rakyatsulsel.com/ilo-minta-pembantu-rumah-tangga-anak-dihilangkan.html, 5\textsuperscript{th} November 2015, 5:20 PM
\textsuperscript{5} International Labour Office, Bunga-bunga di atas Padas : Fenomena Pekerja Rumah Tangga Anak di Indonesia, Jakarta : Kantor Perburuhan Internasional, 2004, p. 5
safety equipment. This exception has been granted permission and authorization from the competent authorities of the government, trade unions, and existing employers.

The Government of Indonesia ratified ILO Convention Number 182 on The Elimination of The Worst Forms of Child Labour to be Law Number 1 Year 2000. This law provides the legal framework for a clearer and stronger against child labour problems.

The government issued Presidential Decree Number 59 Year 2002 Regarding The National Action Plan for The Elimination of The Worst Forms of Child Labour where child labour as a housemaid (still referred to as helpers and not workers) is one of some sectors that have been identified as the worst forms of child labour.

Relating to the type of work that endangers the health, safety or morals for children, the government has issued The Decree of the Minister of Manpower and Transmigration Number KEP 235 / MEN / 2003 which is a more detailed explanation regarding the form of hazardous work. A child labour as a housemaid can be defined as any person under 18 years old who do house work for other people.

Because of concerns about safety of children and their rights threatened by this dangerous job even for children who work as a housemaid, then Indonesia has ratified The Convention on The Rights of The Child (Law Number 23 Year 2002).\footnote{Ibnu, Konvensi Hak Anak, http://bappeda.kendalkab.go.id/info-terkini/87-konvensi-hak-hak-anak-kha.html, 14th October 2014, 9.43 AM}
The Convention on The Rights of The Child (Law Number 23 Year 2002) consists of 54 chapters divided into 4 parts. The preamble contains the context of The Convention on The Rights of The Child (Law Number 23 Year 2002), part one (Article 1-41), regulates the rights of the child, part two (Articles 42-45), governs the monitoring and implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002), and part three (Articles 46-54), governs the application of the convention. The Convention on The Rights of The Child (Law Number 23 Year 2002) has two optional protocols, the optional protocol to The Convention on The Rights of The Child (Law Number 23 Year 2002) on The Involvement of Children in Armed Conflict (ratified by Indonesia by Law Number 9 Year 2012) and the optional protocol to The Convention on The Rights of The Child (Law Number 23 Year 2002) on The Children Trade, Child Prostitution and Child Pornography (Indonesia has ratified this optional protocol to the Law Number 10 Year 2012). The Convention on The Rights of The Child (Law Number 23 Year 2002) contains 8 clusters, namely:

Cluster I : Implementation Steps
Cluster II : Definition of Child
Cluster III : Legal Principles of the CRC
Cluster IV : Civil Rights and Liberties
Cluster V : Family Environment and Alternative Care
Cluster VI : Health and Welfare Association
Cluster VII : Education, Leisure and Cultural Activities
Cluster VIII : Special Protection Measures
The rights of the child stated in The Convention on The Rights of The Child (Law Number 23 Year 2002) are related with the right to survival, the right to preserve and maintain the standard of living and the right to the highest health and care as well as possible, rights to have protection (protection from discrimination, exploitation, violence and neglect), rights to grow up, rights to have education, rights to reach the standard of living adequate for physical, mental, spiritual, moral and social, rights to participate, and rights to express opinion.

As the embodiment of the government's commitment to ratify The Convention on The Rights of The Child (Law Number 23 Year 2002), The Government of Indonesia has enacted Law Number 23 Year 2002 on Child Protection on 22nd October 2002, the subject matter of the law contains provisions and principles of The Convention on The Rights of The Child (Law Number 23 Year 2002). Before The Convention on The Rights of The Child (Law Number 23 Year 2002) was ratified, the government has enacted Law Number 4 Year 1979 on Child Welfare. In Law Number 23 Year 2002 has expanded the understanding of a child, that is not the only person who is under 18 years old, such as The Convention on The Rights of The Child, but also include a child who still in the womb.

This research will present about the condition happened to child labour as a housemaid in Indonesia and the implementation by the government in giving child protection to the child labour as a housemaid.
1.2. Research Questions

Focused on the background as written in previous pages, here some research question:

1.2.1. How are the roles of The Convention on The Rights of The Child (Law Number 23 Year 2002) in giving child protection and what are articles can be used to protect child labour as a housemaid from violence?

1.2.2. How do social and legal factors influence the implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in giving child protection because of violence to child labour as a housemaid in Indonesia?

1.2.3. What are the effects of violations of child protection stated in The Convention on The Rights of The Child (Law Number 23 Year 2002) to child labour as a housemaid in Indonesia?

1.3. Research Objectives

Research objective is to elaborate, to explain, and to answer the problem of research. Some of objective of this research are:

1.3.1. To know the implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in giving child protection because of violence to child labour as a housemaid in Indonesia.

1.3.2. To know social and legal factors influenced the implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in giving child protection to child labour as a housemaid in Indonesia.
1.3.3. To know some effects of violations of child protection stated in The Convention on The Rights of The Child (Law Number 23 Year 2002) to child labour as a housemaid in Indonesia.

1.4. Research Benefit

This research can be read by all people, also hopefully this research could give some benefits for some parties, such as:

1.4.1. For the writer: this research could add some knowledges which had not learned at formal education and make the writer grasp more about the implementation of child protection to child labour as a housemaid in Indonesia.

1.4.2. For readers: this research could give a help to increase people’s awareness of the importance of child protection to child labour as a housemaid in Indonesia, so they can participate directly in daily life.

1.4.3. For the government: this research could give an additional input in striving child protection to child labour as a housemaid in Indonesia.

1.5. Research Method

This part will elaborate about the type, location, material, and process of research making.

1.5.1. Types of research

Research making needs a method to analyze the problem will be written. This research uses normative research method. The normative
method is a method which the research focus on the written law.\textsuperscript{7} The object of study in this research is positive law. While the research approach is statute approach which analyze the law related to legal issue.\textsuperscript{8}

1.5.2. Location

Location will be examined in this research is Indonesia.

1.5.3. Material law and research data

In the sphere of research, include legal research, they are known some of types in research. The difference is based on our point of view. The determination of research types was thought important because there is an connection between type of research with a systematic and method yet data analysis which must be done for all reseach.

1.5.3.1. Law material

Some of materials law used in this research are :

1.5.3.1.1. Primary legal materials

Primary legal materials is a material that has a binding power for each individu. This research uses The Convention on The Rights of The Child (Law Number 23 Year 2002).

1.5.3.1.2. Secondary legal materials

Secondary legal materials give an explanation about primary legal materials, such as : other research result, journals, books, the internet resources, and expert opinion.

\textsuperscript{7} Metode Penelitian Hukum Empiris dan Normatif, http://idtesis.com/metode-penelitian-hukum-empiris-dan-normatif/, 3\textsuperscript{rd} February 2014, 09:14 AM
\textsuperscript{8} Pendekatan dalam Penelitian Hukum, http://ngobrolinhukum.com/2013/12/16/pendekatan-dalam-penelitian-hukum/, 3rd February 2014, 09:20 AM
1.5.3.1.3. Tertiery legal materials

Tertiery legal materials is a material give a clue or explanation for primary and secondary legal materials, such dictionary.  

1.5.3.2. Research data

The primary data used in this research is interview, while the secondary data used in this study are from primary, secondary, and teritary materials. In this research, some data will be obtained by read some of articles of ILO giudance book, The Ministry of Social of The Republic of Indonesia guidance book, and The Ministry of Woman Empowerment and Child Protection guidance book, also some theory about the human rights.

1.5.4. Processing and analysis of data

Processing and analysis of legal materials is the process of searching for documents and other materials that have been collected in order to understand what will be found and can be presented to others clearly. Analysis of legal materials are done by collecting all the legal materials then link it to the problems study.

1.6. Research Systematic

Research systematic elaborates four chapters in this research, they are :

1.6.1. CHAPTER I (Preliminary)

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This chapter is a preliminary contained of some subs chapter which are consists of: problem background, conceptual framework, research objective, and research benefit.

1.6.1.1. Problem background

Problem background explain a reason about the importance of a research, the one which can be seen is from a knolledge development, or answering auestion about the title of research was determined.

1.6.1.2. Conceptual framework

A conceptual framework is an elabouration of problem proposed in concrete and the elabouration must be directional, simple, specific, and formulated in question sentence.

1.6.1.3. Research objective

Research objective is a question about what it will be destined with research was done. So that, the question will be done declaratively, simply, and clearly about what it will be done in research appropriate with type of problem and result which will be reached in legal research. The research could an objective to elabourate, explain, prove, and implement a phenomenom.

1.6.1.4. Research benefit

This research will give some benefits to other party related to the issue discussed in this research. Research contribution is a
question about a possibility research result contribution in specific, wheater for knowledge development or practicaly needs.10

1.6.2. CHAPTER II (Literature Review)

This literature review will elaborate about some concepts used in this research to help explains some definitions written in this research, they are :

1.6.2.1. The Terms of Child Based On The Conventon on the Rights of The Child.
1.6.2.2. The Explanation of Labour and Housemaid.
1.6.2.3. The Concept of Child Labour.
1.6.2.4. The Explanation of Child Labour as A Housemaid.
1.6.2.5. The Concept of Human Rights.
1.6.2.6. The Terms of The rights of The child.
1.6.2.7. The Concept of Child protection.

1.6.3. CHAPTER III (Research Analyst)

1.6.3.1. The Implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in Giving Child protection of Violence to Child Labour as a Housemaid in Indonesia

This chapter will elaborate about the role and elaborate some Articles can be used to protect child labour as a housemaid from violence, also the implementstion of its law, weather it is fit to the law or deviate from the law.

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10 Fisip Unmer Madiun, Bagian Isi Skripsi (BAB I PENDAHULUAN), http://fisipunmermadiun.wordpress.com/2010/02/15/bagian-is-i-skripsi-bab-i-pendahuluan, 13th October 2014, 10:30 AM
1.6.3.2. The Social and Legal Factors Influenced The Implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in Indonesia

This chapter will describe some factors that influence the implementation of the The Convention on The Rights of The Child (Law Number 23 Year 2002) in Indonesia. They are social and legal factors.

1.6.3.3. The effects of Violations of Child protection Stated in The Convention on The Rights of The Child (Law Number 23 Year 2002) to Child Labour as A Housemaid in Indonesia

This chapter will explain about some effects happened to child labour as a housemaid because some bad treatment by unresponsible parties.

1.6.4. CHAPTER IV (Conclusion and Suggestion)

This chapter contains conclusion and suggestion. In conclusion part will conclude the result of this research and in suggestion part will give a suggestion about an idea to strive child protection for child labour as a housemaid in Indonesia.
CHAPTER II

Literature review

Based on this research topic, there are some concepts that will be described, namely:

2.1. The Terms of Child

In The Book of Civil Law, Article 2, paragraph 2, stated that a child in the womb of a woman thought to have been born, if the interests of the child so desire. Thus a child who is still in the womb of his mother already guaranteed to inherit when his father died. Furthermore, when he was born dead then he is considered to have never existed. From chapter II it can be seen that in the womb, their rights have been recognized and protected by law. According to the Law Number 4 Year 1979 about Child Welfare, the child is a potential successor to the ideals of the nation that the basic have been placed by previous generations. In Law Number 23 Year 2002, in Article 1, a "child" is to mean a person under eighteen years old, including a child still in the womb. Ministry Decree of Minister of Social of The Republic of Indonesia Number 15A/HUK /2010 about General Guidelines for Child Welfare Program stated that the child is not yet 18 years old as well as children who are still in the womb.

2.2. The Explanation of Labour and Housemaid

Labour is a man who do his job with responsible to the employer. The relation between the labour and the employer is with an agreement about the
salary.\textsuperscript{11} While a housemaid (PRT) is not considered as a labour because there is no formal agreement or rules in their work relation. A housemaid is entitled to decent working conditions. ILO produced a Convention Number 189 on housemaid. This convention is the protection for housemaids in the world. The existence of the convention as a realization of government commitment and consistency in law in order to provide legal protection against housemaids, an urgent need to ratify and follow up in the field of legislation as Law Number 13 Year 2003 does not provide protection for housemaid.

Until now there has been no legislation specifically regulates housemaid. But Law Number 13 Year 2003 provides a child protection to child labour as a housemaid. The government interpretation to Law Number 13 Year 2003 about labour does not to include housemaids into the legal system concerning working relationship. Although a "worker" is defined in Article 1 as "a person who works for wages or other remuneration forms". The government stated that housemaid can be classified as "work giver", he is not a business entity and thus not a "entrepreneurs" in law. Because housemaids are considered not employed by "entrepreneurs", they are not given the protection provided by the laws of the other workers.\textsuperscript{12}

\textsuperscript{11} C.S.T Kansil, Pengantar Ilmu hukum dan Tata Hukum Indonesia, Jakarta : Balai pustaka, 1986, p. 137
\textsuperscript{12} Fanny Tanuwijaya, Perlindungan Hukum Terhadap Hak Konstitusional Pembantu Rumah Tangga, http://www.academia.edu/4733033/PERLINDUNGAN_HUKUM_TERHADAP_HAK_KONSTITUSIONAL_PEMBANTU_RUMAH_TANGGA, 10\textsuperscript{th} September 2014, 02:00 PM
2.3. The Concept of Child Labour

Child labour is a child who do a work which disturbs their childhood, potential and dignity, and harmful for child physical and mental development. Child labour refers to work done by the children under the minimum age regulated in ILO Convention on The Minimum Age for Employment.\textsuperscript{13} Some of the factors that lead to child labour, among others: economic factors, migration factors, cultural factors, lack of birth registration factors, and social control factors. Some forms of child labour, among others: working in mines, working in the construction field, working on the streets, as prostitutes, as scavengers, and others.\textsuperscript{14}

2.4. The Explanation of Child Labour as A Housemaid

Child labour as a housemaid could be identified as people under 18 years old who do a housework for other people with the purpose to get money. Based on the definition of workers, child labour as a housemaid in the category that everyone who is able to work both inside and outside the employment relations in order to produce services or goods to meet the needs of the community (Law Number 3 Year 1992 about Labour Security).

The Ratification of ILO Convention Number 182 about Worst Forms of Child Labour become Law Number 1 Year 2000 gives legal framework for child labour as a housemaid problems clearly. The government produced The

\textsuperscript{14} Muhammad Saifur Rohman, Pekerja Anak, http://www.slideshare.net/Syairfur_r/makalah-pekerja-anak, 21th September 2014, 01:00 AM
Presidential Decision Number 59 Year 2002 about The Plan of National Action of The Worst Forms of Child Labour which child labour as a housemaid (housemaid not a labour) is the worst forms of child labour. Related to forms of dangerous work in health, safety, and moral. The government also produced Ministry Decree of Ministry of Employment and Transmigration Number: Kep/235/MEN/2003 contained an explanation in detail about the worst forms of work.

2.5. The Concept of Human Rights

Human rights is the rights which belong to each person since he was born which applied along his life and can not be distrubed by others. According to Law Number 39 Year 1999, human rights is a set of rights attached to the nature of human existence as a creature of The Almighty God. This rights is His grace must be respected, upheld and protected by the state, law, government, and everyone for the respect and protection of human dignity. Franz Magnis Suseno said that human rights which belong to a person is not because a giving from other people, so not because of positive law, but because of his dignity as a human. A person has human rights because he is a human. Also Oemar Seno Adji said that human rights is a rights belong to human dignity as a God’s creation which the nature can not be violated by anyone. While Miriam Budiardjo restricts the notion of human rights as human rights that have been obtained and carried along with the birth or presence in the community. In the book Kuliah Ilmu Hakum, human law has two functions, namely human law that is considered valid, if there is a positive law to
the contrary must swept away, and the nature of human law used as a measure to create positive.\textsuperscript{15}

Because of the importance of human rights, some countries in the world are also fighting for human rights for people with charter\textsuperscript{16} such as the famous British Magna Carta. English is often touted as the first country in the world who fight for human rights. The first milestone for the triumph of human rights occurred in the UK. The struggle seems with the various documents state that successfully compiled and validated. Magna Charta was initiated on 15\textsuperscript{th} June 1215 which contains the basic principle limitation of royal power and human rights are more important than the rule of the king. The Charter became a symbol of the emergence of the protection of human rights because he taught that the laws and regulations in rank higher than the king's power. United States is familiar with the Declaration of Independence of The United States, it contains a statement that in fact all nations are created equal degree by The Creator. That all men are endowed by their Creator's rights to life, liberty, and freedom to enjoy the happiness. French also with The Declaration December Droits De L'Homme Et Du Citoyen is a statement of the rights of man and citizen. The statement which was launched in 1789 it launched the right to freedom, equality, and fraternity or solidarity (liberte, egalite, fraternite). In Indonesia, according The Constitution of 1945 in Article 28 A - 28 J, human rights are divided into: personal rights, 

\textsuperscript{15} Djokosoetono, Kuliah Ilmu Negara, Jakarta : IN-HILL-CO, 2006, p.119
\textsuperscript{16} Ni Wayan Dya Diantari, Sejarah Hak Asasi Manusia, https://emperordeva.wordpress.com/about/sejarah-hak-asasi-manusia/, 4\textsuperscript{th} December 2014, 08:35 AM
political rights, legal equality rights, property rights, procedural rights, procedural rights, and social culture rights. 

2.6. The Terms of The Rights of The Child

In Law Number 23 Year 2002 Article 4 until 9 formulates the rights of the child. Because of it rights related to life can not be ignored in any conditions, include an emergency condition. This is regulated in Law Number 39 Year 1999 which determines the rights of living as basic principle. Next, in Law number 39 Year 1999 Article 53 also formulates legal norm which guarantee the rights of living, continuance of living, growth, and protection. As stated in The Convention on The Rights of The Child (Law Number 23 Year 2002), rights of living, in the discourse of international convention is a universal rights, and known as supreme rights.

Various instruments or international convention which may be referred to understand the right to life as a fundamental right can be referred to Article 2 in The Universal Declaration of Human Rights, and Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Similarly, in a few well known humanitarian law also known several rights should not be revoked under any circumstances, namely the right to life, and the right to physical and moral integrity. This right intended to be protected. While the right to grow lowered into the right of health, education, and the right to expression, and obtain information. In Law Number 23 Year 2002, the derivative of the right to grow is

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manifested in the administration and development of protection in education, health, and social, including religion.\textsuperscript{18}

### 2.7. The Concept of Child Protection

In The Constitution of 1945 in Article 28 part B stated that each children has the right to survival, growth and development and protection of various forms of violence and discrimination. This statement is a national comitment to fullfil and protect the rights of child. This comitment is manifestated in laws and national policy, this dinamicaly children have better condition in their life. Indonesia has ratified The Convention on The Rights of Children as an instrument used to protect children. The Convention on The Rights of Children is a milestone in international law, as in the convention contains some rights of child to be protected by each state ratified. The task of government is to make it happen in the form of policies and programs for the best interests of the child. It outlined by Law Number 23 Year 2002 about Child Protection which expressly provide child protection from all forms of abuse, economic exploitation, violence, and child trafficking. Altough there is no spesific law regulates about protection of child labour as a housemaid, but if see on certain law’s substance and policy can be used as a guideance to give protection to child labour as a housemaid. The view put forward is that the child must be the group of age that is still in a period of growth and development and requires the protection of all parties.

In Law Number 23 Year 2002 on The Child Protection mentioned that there are some implementation of child protection covering religion, health,
education, and social. In Article 59 also regulates the special protection. Government and other state institutions are obliged and responsible to provide special protection to children in emergency situations, children in conflict with law, children from minority groups and isolated, economically exploited children and / or sexual, trafficked children, children who are victims of abuse narcotics, alcohol, psychotropic drugs, and other addictive substances (drugs), child as a victim of abduction, sale and trafficking, child as a victim of abuse both physically and / or mentally, disabled children, and child as a victim of abusement and neglectment. Child in an emergency situation as referred to in Article 59 shall consist of: children who become refugees, child as a victim of violence, child as a victim of natural disasters, and children in situations of armed conflict.

Special protection for children in conflict with the law as referred to in Article 59 covers children in conflict with the law and child as a victim of crime, the obligations and responsibilities of government and society.

Special protection for children from minority groups and isolated as described in Article 59 is done through the provision of infrastructure and facilities to be able to enjoy their own culture, to recognize and enforce their own religion, and use their own language.

Special protection for children who are victims of abuse of drugs, alcohol, psychotropic drugs, and other addictive substances (drugs) as referred to in Article 59, and is engaged in production and distribution, is done through the efforts of surveillance, prevention, treatment, and rehabilitation by the government and society. Each person is prohibited from knowingly placing, let, engage ordered in child abusement, production and distribution of drugs.
Special protection for child as a victim of abduction, children trafficking as referred to in Article 59 is done through the efforts of surveillance, protection, prevention, treatment, and rehabilitation by the government and society. Each person is prohibited from placing, let, do, ask to be conducted, or was involved in the abduction, or trade.

Special protection for child as a victim of violence as defined in Article 59 include physical, psychological, and sexual achieved through efforts: dissemination and socialization of the provisions of laws and regulations that protect child as a victim of violence; and monitoring, reporting, and sanctions. Each person is prohibited from placing, let, do, ask to be conducted, or was involved in the violence.

Special protection for children with disabilities as defined in Article 59 carried out through the efforts: the humane treatment of the child in accordance with the dignity and rights of the child; fulfillment of specific needs; and obtain the same treatment as other children to achieve the fullest possible social integration and individual development. Each person is prohibited from treating children with ignoring their views in a discriminatory manner, including labeling and equality in education for children with disabilities.

Special protection for child as a victim of abuse and neglect as in Article 59 carried out through surveillance, prevention, treatment, and rehabilitation by the government and society. Each person is prohibited from placing, let, involve, involve the child in the situation told abuse, and neglect.
CHAPTER III
Research analysis

In this chapter, my research analysis is divided into three parts: the implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in giving child protection of violence to child labour as a housemaid in Indonesia, the social and legal factors influenced the implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in giving child protection of violence to child labour as a housemaid in Indonesia, and the effects of violations of child protection stated in The Convention on The Rights of The Child (Law Number 23 Year 2002) to child labour as a housemaid in Indonesia.

3.1. The Implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in Giving Child Protection of Violence to Child Labour as a Housemaid in Indonesia

As an answer from the first research question written in chapter one, this chapter will elaborate about the role of Law Number 23 Year 2002 and elaborate some Articles can be used to protect child labour as a housemaid from violence, also the implementation of the law, weather implementation in giving child protection to child labour as a housemaid is appropriate or deviate from the law.

3.1.1. The role of The Convention on The Rights generally for child protection in Indonesia
To make clear about some roles of The Convention on The Rights of The Child (Law Number 23 Year 2002), here are the purpose, objection, and programme of The Convention on The Rights of The Child (Law Number 23 Year 2002) to give a child protection in handling a violence happened to children in Indonesia.\(^\text{19}\)

3.1.1.1. The purpose of child protection based on the ratification of The Convention on The Rights of The Child (Law Number 23 Year 2002):

3.1.1.1. General purpose

The general objective of the protection of children in need of special protection is to promote, ensure, and protect the rights of the child over fulfillment of some need such as survival, growth and development, protection and participation of children.

3.1.1.1.2. Special purpose

There are specific objectives to be achieved:

3.1.1.1.2.1 guarantee and protect children from an emergency situations that are economically and/or sexual, drug victims and engaged in the production and distribution, victims of kidnapping, children trafficking, victims of violence, children with disabilities, and children abusement and neglect that allows them to live with a reasonable,

\(^{19}\) Departemen Sosial RI, Pedoman Perlindungan Anak, Jakarta : Departemen Sosial RI, 2002, p.1
3.1.1.2. increase advocacy and assistance to children in conflict with the law so that children are treated according to their rights and still obtain their rights, and

3.1.1.2.3. recognizes and guarantees the right of children of minority groups to enjoy the culture, religious practice, and use their own language.

3.1.1.2. The objection of child protection based on the ratification of The Convention on The Rights of The Child (Law Number 23 Year 2002).

The objection for the protection of children who need special protection under The Convention on The Rights of The Child (Law Number 23 Year 2002) covers:

3.1.1.2.1. Child in emergency situation

Child in emergency situations include:

3.1.1.2.1.1 Child who are in the refugee camps

The special protection for child as a camps refugees is be done by humanitarian law.

3.1.1.2.1.2. Child as a victim of distrubance

The special protection for child as a distrubance victim is done through the fulfillment of clothing, housing, food, habitation, education, study and recreation, save guarantee, equality, and special
needs for children with disabilities and psicosocial disorders.

3.1.1.2.1.3. Child as a victim of natural disasters

The special protection for child as a victim of natural disasters is done through the fulfillment of clothing, housing, food, habitation, education, study and recreation, save guarantee, equality, and special needs for children with disabilities and psicosocial disorders.

3.1.1.2.1.4. Child in armed conflict situation

The special protection for child in situations of armed conflict is done through the fulfillment of clothing, housing, food, habitation, education, study and recreation, save guarantee, equality, and special needs for children with disabilities and psicosocial disorders. Each person is prohibited to make difficulties to children for military purposes and / or the other and let the children without the protection of life.

3.1.1.2.2. Child in conflict with the law

The child in conflict with the law covers children in conflict with the law and child as a victim of crime is the duty and responsibility of government and society. Special
protection for children in conflict with the law be implemented through:

3.1.1.2.2.1. humane treatment of the child in accordance with the dignity and rights of the child; do not get to torture or cruel treatment or punishment, inhuman or degrading treatment; no child will be torn liberty unlawfully. Arrest, detention, and imprisonment shall be in accordance with the law and is only used as a last resort and for the shortest possible period. Each child is taken away liberty shall be treated with humanity and respect for the dignity of humanity, or segregated from adult prisoners unless it is otherwise considered to be in accordance with the best interests of the child, still have the right to maintain a relationship with a parent or family member, and have the right of access legal aid and other assistance as well as to question the legality of freedom deprivation and get immediate decisions in this regard,

3.1.1.2.2.2. provision of special companion officer since early childhood,

3.1.1.2.2.3. provision of special facilities and infrastructure,
3.1.1.2.2.4. imposition of appropriate sanctions for the best interests of the child; there is no death penalty for persons under 18 years old,

3.1.1.2.2.5. continuously monitoring and recording the progress of children in conflict with the law,

3.1.1.2.2.6. giving assurance to maintain old relationships or family,

3.1.1.2.2.7. protection of identity administration through mass media to avoid labeling, and

3.1.1.2.2.8 children who are victims of criminal acts carried out through a variety of efforts. This efforts including:

3.1.1.2.2.8.1. rehabilitation both within the institution and outside the institution,

3.1.1.2.2.8.2. protection from identity through the news media and to avoid labeling,

3.1.1.2.2.8.3. guarantee the safety of witnesses and expert witnesses are physically, mentally, and socially, and

3.1.1.2.2.8.4. accessibility to obtain information about the progress of the case.
3.1.1.2.3. The special protection for minority and isolated child

This protection is done through facilities and infrastructure provision to be able enjoy their culture, admit and do their religion, and use their language. Each person are prohibited to prevent the child to enjoy their culture, admit their religion, and use their language.

3.1.1.2.4. Special protection for economically and/or sexually exploited child

This protection is an obligation and responsibility of government and people which are:

3.1.1.2.4.1. dissemination and / or sozialitation provisions of laws and regulations relating to the protection of child who are economically and/or sexual exploited

3.1.1.2.4.2. monitoring, reporting, and sanctions,

3.1.1.2.4.3. involvement of various government agencies, companies, trade unions, social organizations, non-governmental organizations, and the community in the elimination of economically and/or exploited children, and

3.1.1.2.4. every person is prohibited to place, let, do, or participate to exploit children.
3.1.1.2.5. Special protection for child as a victim from the abusement of narcotics, psychotropic and other addictive substances (NAPZA)

Each person is prohibited from knowingly placing, let, and engage in child abusement, production, and distribution of this NAPZA. This protection is done through various efforts undertaken by the government, such monitoring effort, preventing effort, maintenance effort, and rehabilitation effort.

3.1.1.2.6. Special protection for children as a victim of abduction and trade

Each person is prohibited from placing, let, and do children trade. The protection of children trade is done through the efforts made by the government, such law enforcement, supervision, protection, prevention, care, and rehabilitation.

3.1.1.2.7. Special protection for children as a victim of violence

This protection is done to make efforts dissemination and socialization provisions of laws and regulations that protect child as a victim of communal violence special protection for child as a victim of violence, as each person is prohibited to place, let, do, do tell of
physical, psychological, sexual and also through monitoring, reporting, and sanctions.

3.1.1.2.8. Special protection for child with disabilities

Each person is prohibited from treating child with a view ignores discriminatory manner, including labeling. Special protection for children with disabilities is done through several efforts, such child treated humanely in accordance dignity and rights of children, fulfillment of the special needs of children, acquisition of equal rights with other children to achieve the fullest possible social integration, and individual development.

3.1.1.2.9. Special protection for child as an abusement and neglected victims

Each person is prohibited from placing, let, involving, encouraging kids in situations of abuse and neglect. This protection is done through several efforts undertaken by the government, such monitoring, prevention efforts, treatment efforts, and rehabilitation.

3.1.1.3. Programmes and activities in giving child protection

Based on the purpose and objection of child protection, these are some of programmes in effort to give child protection, that is direct service for child who need special protection from social environment and some programmes such as:
3.1.1.3.1. Direct service for child who need special protection from social environment programme

This programme is proposed to give service for children needed special protection from social environment caused by bad treatment happened to children. This programme has several executions such as:

3.1.1.3.1.1. Recall

Children are recalled to get a special protection from their family. This recall can be done with humane approaching or with law from authorized institution.

3.1.1.3.1.2. Temporary protection

This protection is proposed for children needed a special protection because of urgent situation or after release from exploitation situation. In this protection programme these are some services: food provision, cloth provision, housing provision, health service, and formally or in formal education provision.

3.1.1.3.1.3. Rehabilitation

This rehabilitation is to return lost children social participation in difficulties situation. The rehabilitation covers health, physic, mental, and
social service activities. The rehabilitation is done based on social institutions and community.

3.1.1.3.1.4. Defense

The defense for child in conflict with the law, so that in the process they still get their rights and are treated according to rights of child. Defense performed starting from the inquiry, investigation, and the process thereafter.

3.1.1.3.1.5. Reintegration

Reintegration is the reunification of children with their families and native families, either substitute family if the family did not originally exist. Family surrogate form of adoptive families and social institutions. Strengthening service is needed capitalization for families who have received his son again. While the children are get into social institutions obtain regular service in the social institutions. If necessary, it can be developed into a special social institutions to accommodate and deal with children who need special protection.

3.1.1.3.1.6. Follow-up

This is a follow-up of advanced services to strengthen the child's condition has been achieved in
the new environment, both family and social institutions.

3.1.1.3.2. Support program for children who need special protection from social environment

In order to strengthen the efforts of direct services to children who need special protection and social environment, the necessary supporting programs as follows:

3.1.1.3.2.1. Provision of legal instruments

Legal instruments that are used as a support program for children who need special protection from the social environment such as the socialization of Law Number 23 Year 2002 on Child protection and the development of devices such as the Government Regulation, district regulation, and so on.

3.1.1.3.2.2. Law enforcement

Law enforcement as a support program for children who need special protection from the social environment governed by law enforcement officials to try cases of protection for children who need special protection that originates in the applicable regulations.

3.1.1.3.2.3. Advocacy
Advocacy as a support program for children who need special protection from the social environment is done for all decision-making to the government sectors related to the problem, namely the changes in policies and programs that support the prevention and protection of children who need special protection.

3.1.1.3.2.4. Development of information systems

The development of this information system provides a variety of data and information about child protection that is constantly renewed and various reports of cases of violation of children's rights. The type of information provided covers issues of child protection, directory management bodies and child protection programs, as well as relevant reports.

3.1.1.3.2.5. Training for child protection services providers

Training as a support program for children who need special protection from social, environment is intended to improve their ability to cope with a variety of child protection issues.
3.1.1.3.2.6. Social campaign

This campaign is proposed to people thus they have a response and action for preventing and protecting children needed a special protection. The social campaign is done through socialization and opened through mass media or traditional media.

3.1.1.3.2.7. Parental education

Parental education is done through counseling, guidance, and training for they can enhancing their ability to fulfill the rights of the child and have a response of their environment.

3.1.1.3.2.8. Network development

The network development with government institutions, public institutions, or some colleges has responsibility and role for to protect children needed special protection according to base task and function.

3.1.2. Some Articles of The Convention on The Rights of The Child (Law Number 23 Year 2002) can be used to protect child labour as a housemaid from violence.

In the book of Tinjauan Permasalahan terkait Pekerja Rumah tangga di Asia Tenggara stated that all workers, regardless of status and
occupation, they have the same right to be protected.\textsuperscript{20} According to the ILO Declaration on Principles and Rights at Work year 1998 and the 92\textsuperscript{nd} decision of the trial International Labour Conference in 2004. As a housemaids usually their work is temporarily, so as a result they of lack of attention and not covered in labour laws in that region. Also in the ILO Law Study documented that in 65 countries around the world only found 19 countries have laws or regulations to protect housemaids. It only offer a lower level of protection than formal workers even when there are laws and regulations. Because house work is generally regarded as a continuation of female nature, as well as unpaid work in the family and household, the worker were usually not considered as an economic activity and not considered in regulation and protection as an important subject to be regulated. It ignored the fact that house work is a work often depend on the individual and the good of their employer. Therefore, when they faced abusement, housemaids only have a view opportunity to ask for protection and seek compensation.

Being a housemaid is not regulated as a labour, then The Convention on The Rights of The Child (Law Number 23 Year 2002) is used to protect the rights of children against children who get violation in their life, include child labour as a housemaid along with penalties for those who commit bad treatment to them. In maintaining the rights of workers clearly need the support of all social groups, especially social

\textsuperscript{20} Kementerian Sosial Republik Indonesia, Tinjauan Permasalahan terkait Pekerja Rumah tangga di Asia Tenggara, Jakarta : Kementerian Sosial Republik Indonesia, 2006, p. 11
groups gained from workers too.\textsuperscript{21} John Stuart Mill said that the only purpose for which power can rightfully be exercised over any member of a civilized community against his will is to prevent harm to other.\textsuperscript{22} It is not a mistake when Indonesia using Law Number 23 Year 2002 to seek the protection of children to maintain their right to avoid victimization. The following are some of the rights of children and the explanation that fought though The Convention on The Rights of The Child (Law Number 23 Year 2002) to child labor as a housemaid listed in Chapter III on Law Number 23 Year 2002, such as:

<table>
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<tr>
<th>Law Number 23 Year 2003</th>
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<tbody>
<tr>
<td><strong>Articles</strong></td>
</tr>
<tr>
<td>4 : Every child is to be entitled to live, grow, develop and participate normally in society in accordance with their dignity as human beings, and to be protected against violence and discrimination.</td>
</tr>
</tbody>
</table>

As a child, the child labor as a housemaid has an important period for their growth. In Article 4, 5, 6, 10 regulate the attitude of employers who also have to pay

\textsuperscript{21} Adrian Sutedi, Hukum Perburuhan, Jakarta : Sinar Grafika, Jakarta, 2011, p.19
\textsuperscript{22} Friedmann, Legal Theory, New York : Colombia University Press, 1967, p.46
5 : Every child is to be entitled to possess a name to show their individual identity and status as a citizen.

6 : Every child is to be entitled to practice their religion, to think, and express themselves pursuant to their intellect and age, based upon the guidance of their parents.

<table>
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<tr>
<th>7 (1)</th>
<th>Every child is to be entitled to know their parents, and to be brought up and cared for by their own parents.</th>
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<tbody>
<tr>
<td>7 (2)</td>
<td>Should for any reason the child’s natural parents not be able to guarantee the child's growth and development, or the child has been neglected and/or abandoned then the child may be fostered or adopted as a foster or adopted child by any other person pursuant to prevailing laws and regulations.</td>
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</table>

Rights to be cared by parent

The child labor as a housemaid who work in other people's homes, they remain just as the biological children of their parents have custody. In Articles 7 and 14 can be used to commemorate the employer must not obstruct or separated child and parent relationship to child labor as a housemaid.

14 : Every child is to be entitled to attention to their growth and development as a child to participate as Indonesian citizens, worship, expression, and so on.
be brought up by their own parents except where there is a valid reason and/or legal provision that would require the separation of the child from their parents in the interests of that child. Any such separation should be the last resort.

8 : Every child is to have the right to healthcare services and social security pursuant to their physical, mental, spiritual, and social needs.

9 (1) : Every child is to have the right to an education and training in the context of their personal and intellectual development based upon their interests and talents.

<table>
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<th>Rights to get health and education service</th>
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<td>In Article 8 and 9 are intended for Indonesian children to get health and education service. The employer must understand that housework should not endanger the health of children and working hours must not interfere with their school schedule.</td>
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<th>Rights to have a rest and share time</th>
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<tr>
<td>In Article 11, as a child, child labor as a housemaid also takes a break and time to play and get along with</td>
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11 : Every child is to be entitled to rest and enjoy free time, to mix with other children of their own age, to play, to recreation, and to give expression to their individual

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creativity pursuant to their interests, talents, and intellect for the purposes of self-development. peers. If the employer does not ask a tight schedule for child labor as a housemaid, they would not lose breaks and free time.

| 12 | Every disabled child is to be entitled to rehabilitation, to social assistance, and to have their level of social welfare maintained |
| 17 (1) | Every child whose liberty has been taken away is entitled to receive humane treatment and be housed separately from adults, receive legal aid or any other effective assistance at every stage of the legal process, and defend themselves and to receive a fair trial in an objective and impartial children's court closed to the public. |
| 17 (2) | Every child who is a victim or perpetrator of sexual abuse or who finds themselves having dealings with the law is to be entitled to have their identity kept |

Rights to get defense and legal aid
Rights contained in Article 12, 17, and 18 can be used child labor as a housemaid if there is a problem between the child labor laws as a housemaid with employers. They allowed the state to defend and granted legal aid.
confidential.

18: Every child who is a victim or is suspected of being the perpetrator of a criminal offense is to be entitled to legal and other assistance.

<table>
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<th>13 (1): Every child under the care of their parents, guardians, or any other person who are responsible for the child’s care, is to be entitled to receive protection from the following discrimination, exploitation of an economic or sexual nature, neglect, harsh treatment, violence, and abuse, Injustice, and other forms of mistreatment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 (2): Should a parent, guardian or person responsible for the care of a child subject the child to one of the forms of mistreatment stated in (1) above, they is to be subject to legal penalty.</td>
</tr>
<tr>
<td>Rights to be protected from improper action</td>
</tr>
<tr>
<td>As stated in Article 13, 15, and 16, these rights used to protect the children from children violations.</td>
</tr>
</tbody>
</table>
15 : Every child is to be entitled to protection from the following misuse for political activities, involvement in armed conflict, involvement in social unrest, involvement in events that involve violence, and involvement in war

16 (1) : Every child is to be entitled to protection from abuse, torture, or inhuman punishment under the law.

16 (2) : Every child is to be entitled to liberty pursuant to the law.

Some of the rights above should be sufficient to provide the protection of children in their work, but unfortunately, rules are made not to practice correctly. In the book *Politik Hukum Hak Asasi*, the right to work is worthless if the government and the private sector does not provide good jobs, including the right to education, health, and other. With the chapters as above expected the whole community to fight for the rights of children, including child labor as a housemaid. This important things also discussed by Anthon Freddy in *Wajah Peradilan Kita*, law is not only done by people who work in the field of law such as judges, prosecutors, police, and so on, but the people who work non-law sphere also take in

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23 Suparman Marzuki, Politik Hukum Hak Asasi Manusia, Jakarta : Erlangga, 2004, p.64
participation. So clearly the employer also must pay attention to the
Articles above in the treatment of child labor as a housemaid.

3.1.3. Some efforts by government to implement The Convention on The
Rights of The Child (Law Number 23 Year 2002) to do child protection
for child labour as a housemaid in Indonesia

The data on the number of abusement and exploitation of child
labour as a housemaid cases has yet to show the actual data but only
represents the data of many cases in general. Based on the book Flowers
on the Rock published by the ILO – IPEC, it has provided an overview of
child labour as a housemaid’s life:

3.1.4.1. Violence

Violence is experienced by child labour as a housemaid in
general are very diverse and require different handling and special,
such as physical, psychological, and sexual. Physical violence such
as being kicked, hit, slapped, slammed into the wall, pulling hair,
flushing hot water, ironed, even fatal such as disability, fractures,
etc. Psychic violence as abused, scolded, cursed, insulted, lied to,
etc. Sexual violence as touched, hugged, held sensitive parts
(hands, breasts, thighs, buttocks, shoulders, etc) kiss, spy when
bathing, raped, etc. Common causes of child labour as a housemaid
can not operate a modern household appliances (gas stove, washing
machine, micro wave, vacuum cleaner) because of their ignorance,
as a result of child labour as a housemaid vulnerable to get

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violence. Another reason to work as housemaid is to gain experience in Jakarta.

This work is not considered a profession but only as a stepping stone, so it is often found that over the child do into factory workers or other informal sector. Until now, their existence has not specifically regulated by the authorities. This means that major problem of child labour as a housemaid happened in Indonesia, they are stuck in jobs that do not have signs and labour standards are not clear, without legal protection, without supervision authorities, working without a contract, without a job description, without regulations on working hours, no minimum wage, and no days off. It shows that child labour as a housemaid are in hazardous work situations and conditions are very susceptible to abuse and exploitation.25

3.1.4.2. Child trafficking

Child trafficking is a process of moving the children from the origin to certain work area which is done by the forcible recruitment and / or deception or persuasion to the promise given to hire a decent and big salaries. Furthermore, they are sent to the destination either by transit in a particular area or directly to the destination area inside and outside the country using false documents. With such a process, then the child becomes weak positions, making it very vulnerable to abuse and exploitation such

as unpaid wages for no apparent reason. Children employed as housemaid usually as the initial stages of the work, some cases showed they were forced to work at a worse job like being a whore.

3.1.4.3. Forced Labour

Usually labour often occurs when the child was already in the workplace, and can not leave the job even though they do not like. In addition to facing bad problems, child labour as a housemaid also gain various advantages and experience the good things in his work. These things are as follows:

3.1.4.3.1. Not all employers behave badly, a lot of good employers who also wants his child labour as a housemaid and support to go ahead. For example given the opportunity to continue education, even through college. From various studies indicate that more employers are good employers compared with bad.

3.1.4.3.2. In many households, work in households is the work of a relatively lighter compared to other types of employment - sufficient rest, given a day off per week, spare time is relatively large, eat and a good drink, and health facilities of the employer.

3.1.4.3.3. Although the salary is considered to be small when compared with salaries in other work sectors, but actually the real income of housemaid are often still better
when compared to the formal sector income though. Because of their salary / month fully intact, while a factory worker, must pay for various expenses, so that the remaining income is relatively smaller.

There are some efforts by the government to give child protection, especially for child labor as a housemaid, who had been not treated good by irresponsible parties.

First, criminal sanctions. Based on Law Number 23 Year 2002 in Article 4, children are entitled to live, to grow, to develop and do participate normally in society in accordance with reviews their dignity as human beings, and to be protected against violence and discrimination. Many child labor as a housemaid are treated violence and discrimination because they are easily bullied. This Article is used to avoid violence and discrimination against child labor as a housemaid. This effort is also affirmed in Article 13 (1) which prohibits discrimination, exploitation of an economic or sexual nature, neglect, harsh treatment, violence, abuse Injustice and other forms of mistreatment. And there are Article 16 and 17 are opposed to the child to be treated is not good, if the child is not treated well, states allow children to have legal representation. For those who do violate the child's viability, particularly child labor as a housemaid, there are several Articles of criminal sanctions, such as in Article 77, Article 80, and Article 88.

Second, the rules outside the Law Number 23 Year 2002. Indonesian government has ratified ILO Convention 138 concerning
Minimum Age Number Limit to Work to be Law Number 20 Year 1999. The government also issued Presidential Decree Number 59 Year 2002 regarding The National Action Plan for The Elimination of The Worst Forms of Child Labour. These rules can be used to protect the child labour as a housemaid from the unproper work aged and the worst forms for they can work comfortably.

Third, the institute related with child protection. In Article 21 states that the state and the government responsible and accountable for respecting and guaranteeing the human rights of every child. The government also responsible and accountable to make the infrastructure and facilities in giving child protection. There a regulation about Komisi Perlindungan Anak to do child protection eveyctively by The Government of Indonesia which is regulated in Chapter XI in Law number 23 Year 2002. In 2003 the government established as an institution KPAI. Some problems related to child labor as a housemaid can also be assisted through KPAI.

Although we have not yet have regulation specific about child labour as a housemaid, but our government and peole have an obligation to do some efforts to do child protection. There is good news, government take an action to reduce child labour in Indonesia. In 2012 government targeted to recall 10.750 children labour from 84 cities in 21 province in order to support Program Keluarga Harapan (PPA-PKH) 2012. In 2011, this recall got 3.032 children had facilitated education. Muhaimin

Iskandar, Ministry of Labour and Transmigration, said the target is Indonesia free from child labour in 2020. These things are government’s effort to give care about child protection, because by allowing children employed, children are in unsafe situation, they get bad treatment from the employer.


The phenomenon of child labour as a housemaid are inflicted by some factors. Here some factors influenced the implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002), divided into social factors and legal factors.

3.2.1. Social factors

To manage the public with a law, it is necessary to understand about the social situation in the community itself because the society is so complex and amorphous, it is difficult to grasp. Some of social factors inflicted the implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in giving child protection to child labour as a housemaid in Indonesia are:

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29 Joel S. Midgal, State in society, New York : Cambridge University press, 2001, p. 103
3.2.1.1. Poverty

Poverty is one of the reasons parents send their children to work in the city. This condition is then used by the agents (brokers) to recruit children in rural areas to work in cities. The existence of the agency thrives in poor villages where the population does not have a chance to get an education and a job. The agents tried to influence families to send children to the cities to work as a housemaid. Transportation and other costs is handled by the agent. Parents are usually happy to send their children, and they believe their children will get a good job and employer. So the parents wish their children could send remittances.

3.2.1.2. Gender discrimination

People still posit men are in higher status than woman. Woman feels poverty, some housework, voice neglectment, rights violation as a human, and limitation of education and training. Some cases about girl was under aged married. This condition make girl in difficult position and vulnerable to exploitation, include housework and sexually exploitation.

3.2.1.3. Culture

This is an example of culture which is a factor of the existing child labour as a housemaid. In Java there is known a concept called ‘ngenger’ meaning that a child is dropped off to relatives or extended family in the city is seen as more developing. Or deposited in the family who does not have filiation but is
committed to assist the child. In ‘ngenger’ ways, that child is warranted to get living cost and education better than before to supply their future. As a reward, this child do some of hoseworks. This tradition also applied in some ethnics, such as Batak, Minang, Bugis, and Madura which known in other terms.

3.2.1.4. Education

Every year there are millions children in Indonesia aged 15-18 years old who have completed junior high school, but can not proceed or not accommodated in high school. As well as children who have dropped out of school, they are who not complete their education in junior high occupy the workforce. Housework is one of job sector that do not require educational qualifications and high skill, this job can accommodate and receive them in high quantities.

3.2.1.5. Globalization

In the globalization era, economic regime has given a variety of ease of access and entry of foreign products into the country, and technology transfer have also enabled the mobility of people from one place to the other, including the movement of people from rural to urban areas. It is not expected the regulation required by globalization can not be adapted to a country's negative impact on society, such as unemployment, lost wages, and rising social costs that make poor families. The emergence of job competition and weak commodity prices produced in developing
regions which have a demand for cheap labour, include child labour.

3.2.1.6. The agent

Many agents who prefer to employ children, the reason is children are more manageable, not being rebel, being natural, without pregnant leave, without maternity leave, easily to be lied, and the wage is cheaper than the adult housemaid.

3.2.2. Legal factors

Law is an attribute which important in regulating human life. Law contains a person's rights and obligations that must be met to organize one's relationship with other people or society. Satjipto Rahardjo in his book *Ilmu Hukum* said that law is a human creation whichy in a guidance of human’s behavior which a reflection from human’s will about how people directed.\(^{30}\) The Law Number 23 Year 2002 made and ratified by Indonesia is a reflection of people's awareness of how the Indonesian people should be developed and directed to treat children well.

In the sociology science, society can be understood through the social system, which will happen friction against other communities because of changes in the society. In this case, the law have a role to determine and regulate the status and role of the community, including the rights and obligations.\(^{31}\)

Law number 23 Year 2002 has some obstacles that make the imlementation of rule have not be done well. The implementation of Child

\(^{30}\) Satjipto Rahardjo, *Ilmu Hukum*, Bandung : Citra Adiya Bhakti, 1996, p.18

\(^{31}\) Munir Fuady, *Teori-teori dalam Sosiologi Hukum*, Jakarta : Kencana, 2013, p.190
protection Law (Law number 23 Year 2002) in Indonesia is still very difficult.\textsuperscript{32} Adwin T., General Secretariat of Child Protection Legal Aid said that socialization of the child protection by the government is still lack of attention. Government seemed not seriously, especially for sexual violence involving sexual exploitation of under aged child. The law officers related to the problem of child abusementment such police, prosecutors, and judges have an interest here. The police generally will handle lazy about the case happened to child who come from low economic people because the police wants the money to handle the case. Therefore child cases can not be a object of money.

The contents of the Law Number 23 Year 2002 itself actually take a digest from Law Number 23 Year 2002 in western countries. The ratification of the outside most of the content can not be applied in Indonesia. Law Number 23 Year 2002 in western, it is a reflection of western culture which is actually different from the culture of Indonesia. Thus, automatically Law Number 23 Year 2002 from the west was not suitable when applied in Indonesia. In addition it was difficult was the people of Indonesia in various location, there are also things that cause people do not obey the law. As written in the book \textit{Hukum Dalam Ruang Sosial}, there is a definition of the new law,\textsuperscript{33} which is the local people are not always compatible with a system which is not created from their location. Because of that this local people do not always obligate the law which they thought not consort.

\textsuperscript{32} Pelita, Banyak Kendala Penerapan UU Perlindungan Anak, http://www.pelita.or.id/baca.php?id=28551, 10\textsuperscript{th} November 2014, 10:15 AM
\textsuperscript{33} Bernard L. Tanya, Hukum Dalam Bidang Sosial, Yogyakarta : Genta Publishing, 2010, p.159
From the interview with Mr. Ipung, Data and Information Center officer of KPAI (Komisi Perlindungan Anak Indonesia) on January 2015, Indonesia is not enough good at implement good governance principle. For example, BPS do not continually to collect data about the amount of child labour as a housemaid in Indonesia every year, while to make a policy, government need a data related to problem to decide what policy suitable to make.

3.3. The Effects of Violations of Child Protection Stated in The Convention on The Rights of The Child (Law Number 23 Year 2002) to Child Labour as A Housemaid in Indonesia

Although The Convention on The Rights of The Child (Law Number 23 Year 2002) was ratified in order to child protection in Indonesia, unfortunately there are still some existing violations. In this case the employer’s treatment of child labor as a housemaid is deviate from The Convention on The Rights of The Child (Law Number 23 Year 2002). According to the National Commission of Human Rights (Komnas HAM), the law enforcement in Indonesia is still lack of various aspects of human rights, one of which is labor rights. It is very sad for child labor as a housemaid. According to data obtained from The Ministry of Women Empowerment and Child protection, there is no positive impact happened to child being child labour as a housemaid. These are some negative impacts to child labour as a housemaid that is classified into three effects:

34 Fulthomi, Siti Aminah, Uli Parulian Sihombing, Metode Pembelajaran hak Asasi manusia, Jakarta : ilrc, 2010, p.1
3.3.1. Psychological effect

Human life took some needs to run his activities. Not only material needs, humans also have a psychological need to support survival. Child psychology is a branch of psychology that studies the changes and development of the physical structure, behavior, and mental functioning human beings who started since conception until late death. Child psychology as a science that studies the similarities and differences of psychological function though the study of how the process of children thinking, has a similarities and differences, and how a person's personality changed.

As stated in Law Number 23 Year 2002, the community and the country possessed child protection roles, one of which in the case of child psychology. This is important, because basically the child can not understand about their own lives, then as people who are more mature and better understood, society and the state should support the development of child psychology, without exception to child labor as a housemaid. But unfortunately children who work as a housemaid not get support for their psychological development for the workplace and the type of work they do. There is some violations against Article 4, 6, 11, and 13 by action form employer to child being child labour as a housemaid where in these Articles guaranteed some rights to live normally like other children, doing their lives according their age, has spares time to play and get protection from people near them.

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Such as the lack of opportunities for children to play. Children who has been working as child labour as a housemaid is in unhappy condition if he has no time to play with his friends. Their playing time are very short. They can only play when go to market or meet with friends there. Though playing with their frinds is very important for children. Because through play, children can learn to socialize with the environment. Child labour as a housemaid rarely get enough rest. They work an average of almost 18 hours every day, with no days off, and leave. Child labour as a housemaid can rest, like sleeping or watching TV and recreation, if the employer went out of the house. Child labour as a housemaid can also experience psychological distress in social interaction. It is influenced by their background as child domestic and emotional stress they experienced in which they are still an early age had to face employers who are adults, especially child labor as a housemaid must take care of the baby from employer. Because of age gab and the pressure from employers of child labour as a housemaid rarely or not to participate actively to express opinions or ideas when they have different needs so that child labour as a housemaid are made to feel uncomfortable. In fact, people living in self-awareness, self nexus which is typically present in, where communication is an important thing in the life of man's existence. When child labor as a housemaid reluctant to not issue their opinion, unfortunately not established a communication link between the employer and the child labor as a housemaid. The most severe is the rights of child labour as a

36 Zudan Arif, Memahami Hukum, Jakarta : Rajawali press, 2011, p.16
housemaid are excluded and are not met, the impact on child labour as a housemaid can not grow with a good and reasonable, psychological needs can not be met if the material needs no support.

3.3.2. Intelligence effect

According to Indonesian dictionary word ‘pendidikan’ is derived from the word ‘didik’ and got the suffix ‘pe’ and the suffix ‘an’, then this word has meaning or how to process or act of educating. By definition language education is the process of changing attitudes and code of conduct of a person or group of people in a mature business manusiamelalui teaching and training efforts. Basically, the notion of education (Law Number 20 Year 2003) is a conscious and deliberate effort to create an atmosphere of learning and the learning process so that learners are actively developing the potential for him to have the spiritual strength of religious, self-control, personality, intelligence, noble character, and skills needed him and society.

As a child in usual, child labor as a housemaid also need education from school or from other places. Education is very important for a child's life, because in early age is a good time for children to absorb a wide range of some knowledges. Education to acquire knowledge can be obtained from anywhere. For example, as written in point 3.3.1, children need time to play, with a children's playground can also be a knowledge with games that they do and the game that can sharpen the intelligence of children. With the knowledge their future can be guaranteed. If the future of Indonesian children is not guaranteed, the country also had a negative
impact that will be a lot of unemployment in the future. With the increasing number of unemployed, it can decrease the country's economy. It is also a neglectment the importance if Article 9 which stated the rights of the child to get education to all children in Indonesia, no exception to child being child labour as a housemaid.

In terms of formal education, for child labor as a housemaid who worked while doing school, they do not have much time to do homework or studying for school exams. Also informal education obtained outside of school, child labor as a housemaid did not have much time to play, read a children's book, and they do not have enough charge to participate course. The lack of learning opportunities and access to education and training of child labour as a housemaid rarely, just during work and never even get access to learning sidelines working time, although there is a permit granted by the employer only three hours at night after they finished doing homework or until the employer to return to home.

3.3.3. Health effect

In addition to psychological and educational needs, there is a very important requirement for humans, namely health. Health is the most important requirement, because if people do not have good health, it is not convenient to carry out human life activities. Health harassment is most common among children and the elderly. At an early age, children should be given adequate nutrition because at an early age is the body is experiencing a period of rapid growth, especially for bone growth and brain development. This is explained in Article 8 that children must get
health care. The health care is not for children who get sick, but also for sickness preventive. But unfortunately even when a child is sick employer also indifferent to finance a doctor's care for his child labor as a housemaid.

Child labor as a housemaid is not too concerned by the employer about the food they get. Not only of food, health problems that occur against child labor as a housemaid also because of the type of work they do. There are some chores that endanger the health of children who do that for example they cook stove which shortens their bodies to reach the height of the stove. Aslo when they clean the bathroom or clean other room with chemie liquid which can damage their skin and hard smell which not good for their lungs.
CHAPTER IV

Conclusion and Suggestion

Finally, to end this research paper, this chapter will elaborate about conclusion and suggestion.

4.1. Conclusion

Based on research analysis, there are some conclusions are elaborated into three points about the implementation, legal and social factors, and some effects for child worked as housemaid because of child protection neglectment of Law Number 23 Year 2002.

4.1.1 The implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in giving child protection of violence to child labour as a housemaid in Indonesia

The implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) about violation of child labour as a housemaid in Indonesia is not good enough because the government and people have not good coorporation for seeking child protection, especialy to child labour as a housemaid. The regulation made by state is good enough, but law officers do not doing their roles firmly and not all provinces in Indonesia are established the foundation or commission to facilitate child as a victim of violence, inculde child labour as a housemaid.

The employer do not care about the rights and protection of the child. The employer just sue them to work and work and pay them. The
employers do not want to know if the child needs. The Convention on The Rights of The Child (Law Number 23 Year 2002) can be effective if the government and the community care and do with full awareness of the importance of child protection for child labour as a housemaid.

4.1.2. The social and legal factors influenced the implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) in giving child protection because of violence to child labour as a housemaid in Indonesia.

The implementation of The Convention on The Rights of The Child (Law Number 23 Year 2002) is influenced by some factors divided into social factors and legal factors. Social factors are poverty, gender discrimination, culture, education, globalization, and the housemaid agency. While legal factor is about the law enforcement which have not fullfil the striving child protection to child labour as a housemaid.


There are some effects of violations of child protection to child labour as a housemaid, such as psychology effect, education effect, and health effect. Bad treatment to a child labour as a housemaid can interfere his psychology. The child may be fearful, anxious, and unhappy. In fact, as a child in general, they should be treated according to their age, do not treated under pressure from employers.
In terms of education, they work full a day, child labour as a housemaid do not have the opportunity to go to school or take part in course. Become child labour as a housemaid also do not have the money to finance their education needs. Their salary saved to fulfill their daily needs and their families in the village.

Health problems are also serious issue for child labour as a housemaid. Their body is not strong enough against the disease, they should do a work which can interfere with their health as a child. Parents from poor family backgrounds do not think about this incident, also employers do. The employer sue the child to do a hazardous work without any initiative to protect their health as a child.

4.2. Sugestion

Based on the problem analyzed in this research, I give a suggestion that need to be conveyed in order to seek the child protection to child labour as a housemaid. My suggestion is the negation of child labour as a housemaid. In my opinion, better child labor is prohibited, because basically as a child, they do not have an obligation to get money.
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REPUBLIC OF INDONESIA LAW
NUMBER 23 OF 2002
ON
CHILD PROTECTION

BY THE GRACE OF ALMIGHTY GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering:

a. The Republic of Indonesia guarantees the rights of all its citizens, including the protection of the rights of a child, as part of the protection of overall human rights;

b. A child represents a gift and a blessing from Almighty God, with each individual child being entitled to the dignity and respect accorded to human beings;

c. A child represent those who will advance the hopes of the national struggle, and have a strategic role, special characteristics, and unique position in ensuring the continued existence of the nation and the State in the future;

d. So that each child will be able to properly carry out this role, they must be afforded the greatest possible opportunities to optimally develop and grow physically, mentally and socially, and to develop high moral values. Therefore, it is essential that protection be afforded to a child and that their welfare and well-being be cultivated through guarantees that their rights will be protected and that they will not be subjected to discriminatory treatment;

e. In order to provide for the protection and welfare of a child, institutional and legislative support is required;

f. The prevailing laws only provide for specific aspects of the rights of a child, and do not address the overall need for the protection of a child;

g. Based upon the considerations set out in paragraphs a, b, c, d, e, and f above, it is deemed necessary to enact a Law on the protection of a child.

In view of:

1. Articles 20, 20A (1), 21, 28B (2), and 34 of the 1945 Constitution;

2. Law Number 4 of 1979 on Children's Welfare (Official Gazette of the Republic of Indonesia 1979 Number 32, Supplement to the Official Gazette of the Republic of Indonesia Number 3143);

3. Law Number 7 of 1984 on the Convention on the Elimination of all Forms of Discrimination against Women (Official Gazette of the Republic of Indonesia 1984 Number 29, Supplement to the Official Gazette of the Republic of Indonesia Number 3277);

4. Law Number 3 of 1997 on the Children's Court (Official Gazette of the Republic of Indonesia 1997 Number 3, Supplement to the Official Gazette of the Republic of Indonesia Number 3668);

5. Law Number 4 of 1997 on the Disabled (Official Gazette of the Republic of Indonesia 1997 Number 9, Supplement to the Official Gazette of the Republic of Indonesia Number 3670);
6. Law Number 20 of 1999 on the Ratification of ILO Convention number 138 on the Minimum Age for Admission to Employment (Official Gazette of the Republic of Indonesia 1999 Number 56, Supplement to the Official Gazette of the Republic of Indonesia Number 3835);

7. Law Number 39 of 1999 on Human Rights (Official Gazette of the Republic of Indonesia 1999 Number 165, Supplement to the Official Gazette of the Republic of Indonesia Number 3886);

8. Law Number 1 of 2000 on the Ratification of ILO Convention Number 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (Official Gazette of the Republic of Indonesia 2000 Number 30, Supplement to the Official Gazette of the Republic of Indonesia Number 3941).

With the Approval of:
THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA

DECIDES:

To Enact:
A LAW ON CHILD PROTECTION

CHAPTER I
DEFINITIONS

Article 1
The following definitions is to apply in this Law:
1. A "Child" is to mean a person under eighteen (18) years of age, including a child still in the womb;
2. "Protection of A child" is to mean all activities designed to guarantee and protect a child and their rights so that they may live, grow, develop, and participate optimally in society in accordance with the dignity to which they are entitled as human beings, and so that they may be protected against violence and discrimination;
3. "Family" is to mean the smallest unit in society and is to consist of a husband and wife, or husband, wife and child, or father and child, or mother and child, or a family consisting of blood relations in a straight line up to and including the third degree;
4. "Parent" is to mean a natural father and/or mother, or stepfather and/or stepmother, or adoptive father and/or mother.
5. "Guardian" is to mean a person or body that acts in loco parentis to a child;
6. "Neglected/Abandoned Child" is to mean a child whose reasonable needs, whether physical, mental, spiritual or social, are not fulfilled;
7. "Disabled Child" is to mean a child who suffers from a physical or mental disability that interferes with their normal growth and development;
8. "Gifted Child" is to mean a child that is blessed with exceptional intelligence, potential and/or a gift;
9. "Adopted Child" is to mean a child over whom rights have been assigned by his parents, lawful guardians, or such other persons as may have
responsibility in respect of the child’s upkeep, education and upbringing to adoptive parents pursuant to a decision or ruling of the court;

10. "Foster Child" is to mean a child who has been placed in foster care with an individual or institution for the purpose of guidance, upkeep, education, and healthcare due to the fact that one or both of the child’s parents are unable to guarantee the child’s proper development and growth;

11. "Parental Rights" is to mean the rights of a child’s parents to care for, educate, maintain, develop, protect, and ensure the growth and development of a child in accordance with the child’s religion, talents, and interests.

12. "Rights of A child" is to mean those human rights pertaining to a child that must be guaranteed, protected and complied with by parents, families, the government, and the State;

13. "Society" is to mean individuals, families, groups, and charitable and/or community organizations;

14. "Counselor" is to mean a social worker who has professional competence in his respective field;

15. "Special Protection" is to mean protection of a child in emergency situations, a child who find themselves in contact with the law, a child from minority and isolated groups, a child being economically or sexually exploited, child victims of the misuse of narcotics, alcohol, psychotropic substances and other addictive substances, child victims of kidnapping, a child that are sold, child trafficking, child victims of physical, sexual and/or mental violence, disabled children, child victims of abuse, and neglected/abandoned children;

16. "Person" is to mean an individual person or corporation;

17. "Government" is to mean both the Central Government and the Local Government.

CHAPTER II
PRINCIPLES AND OBJECTIVES

Article 2
The protection of a child is to be based upon Pancasila (the national ideology), the 1945 Constitution, and the basic principles contained in the Convention on the Rights of the Child, including the following:

a. Non-discrimination;

b. The best interests of the child;

c. The right to life, continuity of life and to develop;

d. Respect for the opinions of a child.

Article 3
The protection of a child is intended to guarantee the rights of a child in order that they may live, grow, develop, and participate to an optimal level in society in accordance with their dignity as human beings, and that they will be protected against violence and discrimination so as to ensure the moral values and well-being of Indonesian children.

CHAPTER III
RIGHTS AND OBLIGATIONS OF A CHILD

Article 4
Every child is to be entitled to live, grow, develop and participate normally in society in accordance with their dignity as human beings, and to be protected against violence and discrimination.

Article 5
Every child is to be entitled to possess a name to show their individual identity and status as a citizen.

Article 6
Every child is to be entitled to practice their religion, to think, and express themselves pursuant to their intellect and age, based upon the guidance of their parents.

Article 7
(1) Every child is to be entitled to know their parents, and to be brought up and cared for by their own parents.
(2) Should for any reason the child’s natural parents not be able to guarantee the child's growth and development, or the child has been neglected and/or abandoned then the child may be fostered or adopted as a foster or adopted child by any other person pursuant to prevailing laws and regulations.

Article 8
Every child is to have the right to healthcare services and social security pursuant to their physical, mental, spiritual, and social needs.

Article 9
(1) Every child is to have the right to an education and training in the context of their personal and intellectual development based upon their interests and talents.
(2) Every child, as stated in (1) above, particularly disabled children who are entitled to receive special-needs education meanwhile gifted children are entitled to receive special education.

Article 10
Every child is to be entitled to speak and have their opinions heard, receive, seek and impart information pursuant to their intellect and age for the purposes of their self-development in accordance with norms of morality and propriety.

Article 11
Every child is to be entitled to rest and enjoy free time, to mix with other children of their own age, to play, to recreation, and to give expression to their individual creativity pursuant to their interests, talents, and intellect for the purposes of self-development.

Article 12
Every disabled child is to be entitled to rehabilitation, to social assistance, and to have their level of social welfare maintained.

Article 13
(1) Every child under the care of their parents, guardians, or any other person who are responsible for the child’s care, is to be entitled to receive protection from the following:
   a. Discrimination;
   b. Exploitation of an economic or sexual nature;
   c. Neglect;
   d. Harsh treatment, violence, and abuse;
   e. Injustice; and
   f. Other forms of mistreatment.
(2) Should a parent, guardian or person responsible for the care of a child subject the child to one of the forms of mistreatment stated in (1) above, they is to be subject to legal penalty.

Article 14
Every child is to be entitled to be brought up by their own parents except where there is a valid reason and/or legal provision that would require the separation of the child from their parents in the interests of that child. Any such separation should be the last resort.

Article 15
Every child is to be entitled to protection from the following:
   a. Misuse for political activities;
   b. Involvement in armed conflict;
   c. Involvement in social unrest;
   d. Involvement in events that involve violence; and
   e. Involvement in war.

Article 16
(1) Every child is to be entitled to protection from abuse, torture, or inhuman punishment under the law.
(2) Every child is to be entitled to liberty pursuant to the law.
(3) The arrest, detention, or criminal prosecution of a child may only be undertaken pursuant to the prevailing laws and regulations and only used as a means of last resort.

Article 17
(1) Every child whose liberty has been taken away is entitled to:
   a. Receive humane treatment and be housed separately from adults;
   b. Receive legal aid or any other effective assistance at every stage of the legal process; and
   c. Defend themselves and to receive a fair trial in an objective and impartial children's court closed to the public.
(2) Every child who is a victim or perpetrator of sexual abuse or who finds themselves having dealings with the law is to be entitled to have their identity kept confidential.

**Article 18**

Every child who is a victim or is suspected of being the perpetrator of a criminal offense is to be entitled to legal and other assistance.

**Article 19**

Every child is to have the following obligations:

a. To respect their parents, guardians, and teachers;

b. To love their family and the community, and to respect their friends;

c. To love the homeland, the nation, and the State;

d. To practice their religion in accordance with its teachings;

e. To uphold noble values and ethics.

**CHAPTER IV**

**OBLIGATIONS AND RESPONSIBILITIES**

**Part One**

**General**

**Article 20**

The State, Government, community, the family, and parents are to all be responsible and accountable for protecting a child.

**Part Two**

**Obligations and Responsibilities Of the State and Government**

**Article 21**

The State and the Government are to be responsible and accountable for respecting and guaranteeing the human rights of every child irrespective of ethnicity, religion, class, sex, culture or language, legal status, sequence of birth, or physical and/or mental condition.

**Article 22**

The State and the Government are to be responsible and accountable for putting in place infrastructure and facilities designed to provide protection for a child.

**Article 23**

(1) The State and the Government are to guarantee the protection, maintenance and well being of a child with respect to the rights of parents, guardians, and any other person responsible for the care of a child under the law.

(2) The State and the Government are to oversee the protection of the child.

**Article 24**

The State and the Government are to guarantee that a child is allowed to voice their opinions based upon their age and intellectual development.
Part Three  
Obligations and Responsibilities of the Community

Article 25  
The obligations and responsibilities of the community in protecting a child are to be realized through the role of the community in providing protection for a child.

Part Four  
Obligations and Responsibilities of Families and Parents

Article 26  
(1) Parents are to be responsible and accountable for:
   a. Care, maintenance, education, and protection of the child;
   b. Ensuring the growth and development of the child in accordance with the child’s capabilities, talents, and interests; and
   c. Preventing the marriage of children.

(2) In the event that the parents are absent or their whereabouts unknown, or for any other reason the parent is unable to fulfill their obligations and responsibilities, then the obligations and responsibilities as stated in (1) above may be assigned to family pursuant to prevailing laws and regulations.

CHAPTER V  
STATUS OF A CHILD

Part One  
Identity of the Child

Article 27  
(1) Every child must be given an identity from birth.
(2) An identity as stated in (1) above is to be stated in a birth certificate.
(3) The issue of a birth certificate is to be based on a declaration by a person who witnessed or assisted the birth.
(4) In the event that the particulars of a child's birth are unknown, and the whereabouts of the child’s parents are also unknown, then the issue of the child's birth certificate is to be based on a declaration by the person who found the child.

Article 28  
(1) The issue of a birth certificate is the responsibility of the Government and is to be performed at the lowest level of the village or sub-district.
(2) The birth certificate as stated in (1) above must be provided no later than thirty (30) days after the application.
(3) The birth certificate as stated in (1) above is to be free of charge.
(4) The procedures and requirements for the issue of a birth certificate as stated in (1) above are to be regulated in law.
Part Two
A child born of an International Marriage

Article 29

(1) In the case of a child born of a marriage between a citizen of the Republic of Indonesia and a foreign national, the child is entitled to take the citizenship of either their father or mother in accordance with prevailing laws and regulations.

(2) In a case where a marriage as stated in (1) above ends in divorce, the child is to be entitled to choose, or may be ordered by a court, to be brought up by one of their two parents.

(3) In a case of divorce as stated in (2) above where the child is not capable of making such a decision, and the child's mother is a citizen of the Republic of Indonesia, then in the interests of the child and at the request of the mother, the government is required to provide the child with citizenship of the Republic of Indonesia.

CHAPTER VI
PARENTAL RIGHTS

Article 30

(1) In the event that parents as stated in Article 26 of this Law neglect their obligations, then supervisory measures may be put in place or parental rights may be revoked.

(2) In order for supervisory measures to be put in place or parental rights to be revoked as stated in (1) above, a ruling of the court is required.

Article 31

(1) One of the parents, a blood sibling, or a family member up to the third degree may submit an application to the court for a ruling on the revocation of parental rights or the putting in place of supervisory measures should there be sufficient grounds for such action.

(2) Should one of the parents, a blood sibling, or a family member up to the third degree not be able to lodge an application as stated in (1) above, then an authorized official or institution may do so.

(3) A court order as stated in (1) above may appoint an individual or a Government/community institution to act as guardian for the child.

(4) An individual who is to serve as the guardian of a child as stated in (3) above must be of the same religion as the child.

Article 32

An order of the court as stated in Article 31(3) of this Law is to, at the minimum, provide for the following:

a. There is to be no severance of relations between the child and their biological parents;

b. The child's parents are to continue to be required to pay for the maintenance of the child; and

c. The period of time for which parental rights are revoked.
CHAPTER VII
GUARDIANSHIP

Article 33
(1) In the event that a child's parents are legally incompetent or their whereabouts are unknown, then an individual or an institution that meets the requirements may be appointed to serve as the guardian of the child.
(2) In order for a child to be placed under guardianship as stated in (1) above, a court order is required.
(3) A guardian as stated in (2) above must be of the same religion as the child.
(4) In the interests of the child, a guardian as stated in (2) above is required to manage the assets of the child.
(5) The requirements and procedures for the appointment of a guardian as stated in (1) above is to be further regulated in Government Regulations.

Article 34
A guardian who has been appointed based upon a court order as stated in Article 23 of this Law is to be entitled in the best interests of the child to represent the child both in and out of court and to undertake legal acts on behalf of the child.

Article 35
(1) In a case where a court order on guardianship has yet to be issued, the assets of the relevant child may be managed by the Trustee of Estates (Balai Harta Peninggalan), or any other institution that has authority for this purpose.
(2) The Trustee of Estates or any other institution as stated in (1) above is to act as the guardian of the child to represent the best interests of the child.
(3) The administration of an estate as stated in (1) and (2) must be based on a court order.

Article 36
(1) In the event that an appointed guardian subsequently is found to be legally incompetent or to have abused their position as guardian, then their status as guardian is to be revoked and another person is to be appointed, based upon an order of the court, to act as the child's guardian.
(2) In the event of the death of the guardian, another person is to be appointed based on a court order to act as guardian.

CHAPTER VIII
FOSTERING AND ADOPTION

Part One
Guardianship

Article 37
(1) The fostering of a child is to be provided for in the case of a child whose parents are unable to guarantee their proper physical, mental, spiritual, and social development.
(2) The fostering of a child as stated in (1) above is to be undertaken by an institution that is authorized for this purpose.

(3) In the event that an institution as stated in (2) above is founded upon religious principles, a child being fostered must be of the same religion as the religion that forms the basis of the relevant institution.

(4) In the event that a child is fostered by an institution that is not founded upon religions principles, then regard must be given to the religion of the child.

(5) The fostering of a child by an institution may take place within or outside the institution.

(6) An individual who wishes to participate may do so through an institution as stated in (3), (4), and (5) above.

**Article 38**

(1) The fostering of a child as stated in Article 37 of this Law is not to discriminate based on the ethnicity, religion, class, sex, culture, language, legal status, sequence of birth, or physical and/or mental condition of the child.

(2) The fostering of a child as stated in (1) above is to involve the guidance, care, maintenance, and education of the child on a continuing basis, and the provision of assistance with costs and/or other facilities, in order to guarantee the physical, mental, spiritual, and social growth and development of the child, without affecting the religion of the child.

**Part Two**

**Adoption**

**Article 39**

(1) The adoption of a child may only be carried out in the best interests of the child and be based upon local custom and the provisions of the prevailing laws and regulations.

(2) The adoption of a child as stated in (1) above is not to sever the blood relationship between the adopted child and their biological parents.

(3) Candidate adoptive parents must be of the same religion as the child who is to be adopted.

(4) The adoption of a child by foreign nationals is only permitted as a last resort.

(5) In a case where the background of a child is unknown, their religion is to be taken to be the same as that of the majority of inhabitants in the area where the child is found.

**Article 40**

(1) Adoptive parents are required to inform an adopted child about their background and biological parents.

(2) The provision of the information as stated in (1) above on the child’s background and biological parents is to consider the readiness of the child to receive this information.

**Article 41**
The Government and the community are to provide guidance and to exercise oversight with respect to the adoption of a child.

The procedures regarding the guidance and oversight stated in (1) above are to be regulated in Government Regulation.

CHAPTER IX
PROTECTION OF CHILDREN

Part One
Religion

Article 42
(1) Every child is to receive protection so that they may practice their religion.
(2) Until such time as a child may make their own decision, their religion is to be that of their parents.

Article 43
(1) The State, community, the family, parents, guardians and social institutions are required to ensure the protection of the child's right to practice their religion.
(2) The protection of a child's right to practice their religion as stated in (1) above is to include the right to receive guidance and instruction in their religion.

Part Two
Health

Article 44
(1) The Government is required to provide facilities and make efforts to ensure comprehensive healthcare for a child so that every child may obtain optimal healthcare from conception.
(2) The provision of comprehensive healthcare facilities as stated in (1) above is to be supported by a community role.
(3) The provision of comprehensive healthcare facilities as stated in (1) above is to include promotional, preventative, curative, and rehabilitative efforts both in regards to basic and referral healthcare services.
(4) The provision of comprehensive healthcare facilities as stated in (1) above are to be provided free of charge for families of limited means.
(5) The implementation of (1), (2), (3), and (4) above is to be in accordance with prevailing laws and regulations.

Article 45
(1) Parents and family members are responsible for maintaining the health of the child from conception.
(2) In the event that the child's parents and family members are incapable of fulfilling their responsibilities as stated in (1) above, then the Government is to be fully responsible for this.
(3) The responsibility of the Government stated in (2) above is to be subject to the provisions of any prevailing laws and regulations.

**Article 46**

The State, the Government, the family, and the parents are to endeavor to ensure that a child is borne free of life threatening or incapacitating diseases.

**Article 47**

(1) The State, the Government, the family, and the parents are to be responsible for protecting a child against transplantation of the child’s organs in the interests of any third party.

(2) The State, the Government, the family, and the parents are to be responsible for protecting a child against the following:

a. The removal of the child's organs and/or body tissues contrary to the health of the child;
b. The trafficking in the organs and/or body tissues of a child; and

c. Medical research using a child as the subject of research without the permission of the parents and prioritizing the best interests of the child.

**Part Three**

**Education**

**Article 48**

The Government is required to provide a minimum of 9 (nine) years basic education for all children.

**Article 49**

The State, the Government, the family, and the parents are responsible for providing the widest possible opportunities for a child to obtain an education.

**Article 50**

Education as stated in Article 48 of this Law is to focus on the following objectives:

a. Developing the behavior, personal capacities, talents, intellectual and physical capabilities of the child so that they may achieve their full potential;
b. Developing respect for human rights and freedoms;
c. Developing respect for elders, cultural identity, language and values, the national values of the place where the child lives and the place where they originated, and respect for cultures that are different from their own;
d. Preparing the child to lead a responsible life; and
e. Developing a sense of respect and love for the environment.

**Article 51**

A physically and/or mentally disabled child is to be given the same opportunities to receive and have access to both normal and special education.
Article 52
A gifted child is to be given the opportunity to receive and have access to special education.

Article 53
(1) The Government is responsible for providing free education, or assistance, or special services to a child from families of limited means, a neglected and/or abandoned child, and a child who lives in a remote area.
(2) The responsibility of the Government as stated in (1) is to also include encouraging the community to be actively involved.

Article 54
A child attending school must be protected against violence and abuse from teachers, school managers, and schoolmates both in schools and in other educational institutions.

Part Four
Social Development

Article 55
(1) The Government is required to ensure the maintenance and care of a neglected and/or abandoned child, whether in the context of an institution or outside of an institution.
(2) The provision of maintenance and care as stated in (1) above may be undertaken by community organizations.
(3) In ensuring the provision of maintenance and care for a neglected and/or abandoned child, the Government institutions and community organizations, as stated in (2) above, may collaborate with other relevant parties.
(4) With regard to the maintenance and care of a neglected and/or abandoned child as stated in (3), oversight and supervision is to be performed by the Minister of Social Affairs.

Article 56
(1) In performing the duties of maintenance and care, the Government is to make efforts to ensure that a child can:
   a. Participate;
   b. Express their views and thoughts in accordance with their conscience and religious beliefs;
   c. Receive both oral and written information in accordance with their age and development;
   d. Organize and associate;
   e. Have sufficient time to rest, play, enjoy recreation, express their creativity, and engage in artistic expression; and
   f. Have recreational facilities that meet health and safety requirements.
(2) The efforts stated in (1) above is to be modified to take into account the child's age, capabilities, and surroundings in order that the child's development is not obstructed or otherwise interfered with.
Article 57
In the event that a child is neglected due to the failure of their parents to exercise their responsibilities for any reason, then an institution as stated in Article 55 of this Law, the family or an authorized officer may submit an application to the court for an order declaring the child as neglected.

Article 58
(1) An order of the court as stated in Article 57 of this Law is to state the place/institution where the neglected child is to be accommodated and cared for.
(2) The Government or other authorized institution is to be required to provide the places/institutions as stated in (1) above.

Part Five
Special Protections

Article 59
The Government or an authorized State institution is to be responsible and accountable for providing special protections to a child in an emergency situation, a child who finds themselves in dealings with the law, a child from a minority and isolated group, a child who finds themselves being exploited economically or sexually, a child who is traded, a child who becomes the victim of the misuse of narcotics, alcohol, psychotropic substances and other addictive substances, a child who is the victim of kidnapping, sale and trafficking, a child who is the victim of both physical and/or mental violence, a disabled child, a child who is the victim of abuse, and a neglected/abandoned child.

Article 60
A child who finds themselves in an emergency situation as stated in Article 59 above is to include:
a. A Refugee child;
b. A child who is the victim of a social disturbance;
c. A child who is the victim of a natural disaster; and
d. A child who finds themselves in the midst of an armed conflict.

Article 61
The special protections to be afforded to a refugee child as stated in Article 60(a) of this Law is to be in accordance with humanitarian law.

Article 62
The special protections to be afforded to a child who is the victim of social disturbances and natural disasters, and a child who finds themselves in the center of an armed conflict as stated in Article 60(b), (c), and (d) in this Law is to be provided through:
a. Meeting the basic needs of a child with respect to food, clothing, shelter, education, healthcare, learning and recreation, social security, and equality of treatment; and
b. Meeting the special needs of a child who is disabled or who suffers from psychological problems.

**Article 63**

All persons is to be prohibited from recruiting and/or equipping a child for military or similar purposes and from placing the life of a child in danger.

**Article 64**

(1) The special protections to be afforded to a child who finds themselves in contact with the law as stated in Article 59 of this Law is to include a child who finds themselves in conflict with the law or who is the victim of a criminal act. This special protection constitutes an obligation and responsibility of both the government and the community.

(2) The special protections to be afforded to a child who finds themselves in contact with the law as stated in (1) above is to include the following:
   a. Ensuring humane treatment of a child in accordance with the dignity and rights of the child;
   b. The early assignment of counselors to help the child;
   c. The provision of special infrastructure and facilities;
   d. Ensuring the imposition of appropriate penalties in accordance with the best interests of the child;
   e. Continuously monitoring and recording the development of a child who finds themselves in dealings with the law;
   f. The provision of guarantees relating to the protection of the relationship between a child and their parents or family;
   g. Ensuring that the child's identity is not published in the mass media and preventing stigmatization of the child.

(3) The special protections to be afforded to a child who is the victim of criminal offenses as stated in (1) above is to include the following:
   a. Rehabilitation efforts of both an institutional and non-institutional nature;
   b. Ensuring that the child's identity is not published in the mass media and preventing stigmatization of the child;
   c. Providing physical, mental, and social safety guarantees to victims and expert witnesses;
   d. Ensuring access to information regarding any developments of the legal case.

**Article 65**

(1) The special protection to be afforded to a child from minority and isolated groups as stated in Article 59 in this Law is to cover the provision of infrastructure and facilities in order that such a child may enjoy their own culture, practice their own religion, and speak their own language.

(2) All persons is to be prohibited from preventing a child as stated in (1) above from enjoying their own culture, practicing their own religion, and speaking their own language without prejudicing the child’s access to social and cultural development.
Article 66
(1) The special protection to be afforded to a child who has suffered economic or sexual exploitation as stated in Article 59 in this Law constitutes an obligation and responsibility of the government and community.
(2) The special protection to be afforded to a child who has suffered exploitation of a type stated in (1) above is to include the following:
   a  The dissemination and/or socialization of the laws and regulations relating to the protection of a child from economic or sexual exploitation;
   b  Monitoring, reporting, and the imposition of penalties; and
   c  The involvement of various government agencies, companies, labor unions, and non-governmental, and community organizations in the effort to eradicate the economic and/or sexual exploitation of a child.
(3) All persons is to be prohibited from permitting, undertaking, ordering to be undertaken, or participating in the exploitation of a child as stated in (1) above.

Article 67
(1) The special protection to be afforded to a child who becomes the victim of the misuse of narcotics, alcohol, psychotropic substances, and other addictive substances as stated in Article 59 in this Law, or who are involved in the production or distribution of these substances, is to include the supervision, prevention, care, and rehabilitation efforts on the part of both the government and the community.
(2) All persons is to be prohibited from permitting, undertaking, ordering to be undertaken, or participating in the exploitation of a child through the misuse, production or distribution of addictive substances as stated in (1) above.

Article 68
(1) The special protection to be afforded to a child who becomes the victim of kidnapping, sale or trafficking as stated in Article 59 above is to include the supervision, protection, prevention, care, and rehabilitation efforts on the part of both the government and the community.
(2) All persons is to be prohibited from permitting, undertaking, ordering to be undertaken, or participating in the kidnapping, sale or trafficking in a child as stated in (1) above.

Article 69
(1) The special protection to be afforded to a child who is the victim of violence, including physical, psychological, and sexual violence, as stated in Article 59 of this Law is to include the following:
   a  The dissemination and/or socialization of the laws and regulations relating to the protection of a child from violence;
   b  Monitoring, reporting, and the imposition of penalties.
(2) All persons is to be prohibited from permitting, undertaking, ordering to be undertaken, or participating in the type of violence stated in (1) above.
Article 70
(1) The special protection afforded to disabled children as stated in Article 59 of this Law is to include the following:
   a Ensuring the humane treatment of a child in accordance with their dignity and rights as a child;
   b Meeting the special requirements of the child;
   c Ensuring that the child enjoys the same treatment as other children regarding their social integration and personal development.
(2) All persons is to be prohibited from discrimination against a disabled child, including their stigmatization, and is to be required to ensure equality of educational opportunities for a disabled child.

Article 71
(1) The special protection to be afforded to a child who becomes the victim of mistreatment and neglect as stated in Article 59 of this Law is to include supervision, prevention, care and rehabilitation efforts on the part of both the government and the community.
(2) All persons is to be prohibited from permitting, undertaking, ordering to be undertaken, or participating in the mistreatment or neglect of a child as stated in (1) above.

CHAPTER X
ROLE OF THE COMMUNITY

Article 72
(1) The community has the right to the broadest opportunity to play a role in the protection of a child.
(2) The role of the community as stated in (1) above involves individuals, child protection agencies, community and charitable institutions, non-governmental organizations, educational institutions, religious institutions, businesses, and the mass media.

Article 73
The role played by the community is to be regulated by prevailing laws and regulations.

CHAPTER XI
COMMISSION FOR THE PROTECTION OF INDONESIAN CHILDREN

Article 74
An independent Commission for the Protection of Indonesian Children is to be established by this Law for the purposes of improving the effectiveness of efforts to protect a child.

Article 75
(1) The Commission for the Protection of Indonesian Children is to consist of a Chairperson, 2 (two) Deputy Chairpersons, 1 (one) Secretary, and 5 (five) members.
The members of the Commission for the Protection of Indonesian Children is to consist of representatives of the government, religious figures, community figures, charitable organizations, community organizations, professional associations, non-governmental organizations, businesses, and community groups that are involved in the protection of a child.

The members of the Commission for the Protection of Indonesian Children as stated in (1) and (2) above is to be appointed and removed by the President, based on the advice of the House of Representatives of the Republic of Indonesia, for individual terms of 3 (three) years and may be reappointed for 1 (one) additional term.

Further provisions regarding the organizational structure, working procedures, and financing of the Commission for the Protection of Indonesian Children is to be regulated through Presidential Decree.

Article 76
The Commission for the Protection of Indonesian Children is to have the following duties:

a. Undertaking the socialization of all the laws and regulations involved in the area of child protection, the collection of data and information, receiving community complaints, and conducting studies, monitoring, evaluation and supervision with respect to the protection of a child's rights;

b. Submitting reports, advice, inputs, and other considerations to the President in respect of the protection of the rights of a child.

CHAPTER XII
CRIMINAL OFFENCES

Article 77
Every person who deliberately commits one of the following acts:

a. Discriminating against a child so that the child experiences either material or psychological loss with the result that the child's social functions are impaired; or

b. Neglecting a child with the result that the child falls ill or suffers physically, mentally or socially;

is to be subject to a term of imprisonment of not more than (5) five years and/or a fine of not more than Rp. 100,000,000 (one hundred million Rupiah).

Article 78
Every person who knowingly and deliberately exposes a child to an emergency situation as stated in Article 60 of this Law, or knowingly and deliberately allows a child to find themselves in dealings with the law, a child from a minority and isolated group to be mistreated, a child to be exploited economically or sexually, a child to be traded, a child to become the victim of the misuse of narcotics, alcohol, psychotropic substances, and other addictive substances, a child to become the victim of kidnapping, sale and trafficking, a child to become the victim of violence as stated in Article 59 of this Law, knowing that such a child needs help and must be assisted, is to be subject to a term of imprisonment of not more than 5
Article 79
Every person who adopts a child in contravention of the provisions set out in Article 39(1), (2), and (4) of this Law is to be subject to a term of imprisonment of not more than 5 (five) years and/or a maximum fine of Rp. 100,000,000 (one hundred million Rupiah).

Article 80
(1) Every person who commits an act of violence or threatens violence against, or tortures a child, is to be subject to a term of imprisonment of not more than 3 (three) years and 6 (six) months, and/or a maximum fine of Rp. 72,000,000 (seventy-two million Rupiah).
(2) Should a child as stated in (1) above be seriously injured, then the perpetrator is to be subject to a term of imprisonment of not more than 5 (five) years and/or a maximum fine of Rp. 100,000,000 (one hundred million Rupiah).
(3) Should a child as stated in (2) above die, then the perpetrator is to be subject to a term of imprisonment of not more than 10 (ten) years and/or a maximum fine of Rp. 200,000,000 (two hundred million Rupiah).
(4) The punishments provided for in (1), (2), and (3) above is to be increased by one-third should the perpetrator be a parent of the child.

Article 81
(1) Every person who through the deliberate use or threat of violence forces a child to engage in sexual intercourse with him/her or with other people is to be subject to a maximum term of imprisonment of 15 (fifteen) years and a minimum term of 3 (three) years, and a maximum fine of Rp. 300,000,000 (three hundred million Rupiah) and a minimum fine of Rp. 60,000,000 (sixty million Rupiah).
(2) The punishments set out in (1) above is to also be applicable to any person who employs tricks, lies or deception to persuade, or who encourages, a child to engage in sexual intercourse with him/her or with some other person.

Article 82
Every person who uses violence or the threat of violence to force, or who employs tricks, lies or deception to persuade, or who encourages, a child to engage in indecent behavior, or who allows such indecent behavior to occur, is to be subject to a maximum term of imprisonment of 15 (fifteen) years and a minimum term of 3 (three) years, and a maximum fine of Rp. 300,000,000 (three hundred million Rupiah) and a minimum fine of Rp. 60,000,000 (sixty million Rupiah).

Article 83
Every person who trades in, sells, or kidnaps a child either for their own purposes or for sale is to be subject to a maximum term of imprisonment of 15 (fifteen) years and a minimum term of 3 (three) years, and a maximum fine of Rp.
300,000,000 (three hundred million Rupiah) and a minimum fine of Rp. 60,000,000 (sixty million Rupiah).

Article 84
Every person who illegally conducts an operation involving an organ or the body tissue of a child in the interests of a third party for their own gain or the gain of some other person is to be subject to a term of imprisonment of not more than 10 (ten) years and/or a maximum fine of Rp. 200,000,000 (two hundred million Rupiah).

Article 85
(1) Every person who trades in the organs and/or body tissues of a child is to be subject to a term of imprisonment of not more than 15 (fifteen) years and/or a maximum fine of Rp. 300,000,000 (three hundred million Rupiah).
(2) Every person who contravenes the law by taking the organs and/or body tissues of a child without having regard to the health of those children, or medical researchers who use a child as subjects of research without the permission of their parents, or who do not prioritize the best interests of the child involved, is to be subject to a term of imprisonment of not more than 10 (ten) years and/or a maximum fine of Rp. 200,000,000 (two hundred million Rupiah).

Article 86
Every person who uses tricks or lies to persuade, or encourages, a child to convert to another religion against their free will even though the perpetrator knows or should know that the child in question is not sufficiently intellectually developed or responsible enough to make such a choice, is to be subject to a term of imprisonment of not more than 5 (five) years and/or a maximum fine of Rp. 100,000,000 (one hundred million Rupiah).

Article 87
Every person who contravenes the law by recruiting and equipping a child for military purposes as stated in Article 63 of this Law, or who misuses a child by involving them in political activities, or in an armed conflict, or in a social disturbance, or in a violent event, or in a war as described in Article 15 of this Law, is to be subject to a term of imprisonment of not more than 5 (five) years and/or a maximum fine of Rp. 100,000,000 (one hundred million Rupiah).

Article 88
Every person who economically or sexually exploits a child for their own gain or the gain of some third party is to be subject to a term of imprisonment of not more than 10 (ten) years and/or a maximum fine of Rp. 200,000,000 (two hundred million Rupiah).

Article 89
(1) Every person who deliberately allows a child to become involved, involves, or orders the involvement of a child in the misuse, production or distribution of narcotics and/or psychotropic substances is to be subject to the death
penalty, or life imprisonment, or a term of imprisonment not exceeding 20 (twenty) years and a minimum term of 5 (five) years, and a maximum fine of Rp. 500,000,000 (five hundred million Rupiah), and a minimum fine of Rp. 50,000,000 (fifty million Rupiah).

(2) Every person who deliberately allows a child to become involved, involves, or orders the involvement of a child in the misuse, production or distribution of alcohol or other addictive substances is to be subject to a term of imprisonment not exceeding 10 (ten) years and a minimum term of 2 (two) years, and a maximum fine of Rp. 200,000,000 (two hundred million Rupiah) and a minimum fine of Rp. 20,000,000 (twenty million Rupiah).

Article 90
(1) Should any of the criminal offenses provided for in Articles 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89 of this Law be committed by a corporation, then the criminal penalties is to be imposed upon the management and/or the corporation.

(2) Only fines may be imposed upon a corporation subject to the provision that any fines imposed is to be increased by 1/3 (one-third) over the amount of the fines provided for in (1).

CHAPTER XIII
TRANSITIONAL PROVISIONS

Article 91
Upon the entry into force of this Law, all other laws and regulations that do not conflict with the provisions of this law is to remain in force.

CHAPTER XIV
CONCLUDING PROVISIONS

Article 92
No later than one (1) year after the coming into effect of this Law, the Commission for the Protection of Indonesian Children is to have been established.

Article 93
This Law is to enter into effect on the date of enactment. In order that every person knows of this law it is hereby ordered that the enactment of this Law is to be published in the Official Gazette of the Republic of Indonesia.

Approved In Jakarta,
Dated 22 October 2002
PRESIDENT OF THE REPUBLIC OF INDONESIA,
Sgd.
MEGAWATI SOEKARNO PUTRI
Enacted In Jakarta,
Dated 22 October 2002
STATE SECRETARY OF THE REPUBLIC OF INDONESIA,
Sgd.
BAMBANG KESOWO

OFFICIAL GAZETTE OF THE REPUBLIC OF INDONESIA OF 2002
NUMBER 109