

Child Labor in Vietnam

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Abstract: This article focuses on clarifying the concept of child labour; analyzing the provisions of Vietnamese law on child labour; assessing the current situation of child labor in Vietnam through the results of the National Survey on Child Labor conducted by the Ministry of Labor, War Invalids and Social Affairs (MOLISA) in collaboration with the General Statistics Office (GSO) and the Organization International Labor (ILO) implemented in 2018, announced in 2020; propose some solutions to protect child labor.

Keywords: children, child labor, child labor protection, labor law.

1. Introduction

Children are physically and psychologically incomplete compared to adults. Child labour can lead to serious physical and mental harm and even death to children; reduces the time or even prevents children from going to school, playing and taking care of their health; restricts basic rights, affects children's future. Minimizing child labor, protecting children from risks and exploitative practices, and protecting children's rights are not only the responsibility of the state, functional agencies, and families but also the responsibility of economic organizations, businesses, labor' organizations and employers' organizations.

Children are always protected by international and national laws to a higher degree than adults in all fields, including labor. The United Nations adopted the International Convention on the Rights of the Child in 1989. The International Labor Organization adopted Convention No. 138 on the minimum age for employment in 1973 and Convention No. 182 on prohibition and urgent action to eliminate the worst forms of child labor in 1999. To codify the United Nations Convention on the Rights of the Child and the ILO Convention on Child Labor, many countries have different ways to establish legal documents to protect children. In general, the content that countries' laws often refer to is: the minimum age at which children can participate in labor; working hours; cases, occupations, and jobs that are not allowed to use child labor...

To protect children from labor exploitation, Vietnam has ratified two ILO fundamental conventions related to child labor, including Convention No. 138 on the Minimum Working Age in 1973, Convention No. 182 on the Prohibition and Urgent Action on the Elimination of the Worst Forms of Child Labour in 1999. At the same time, Vietnam has amended, supplemented and promulgated national laws and policies, typically the 2016 Children's Law, the 2012 Labor Code, and the 2019 Labor Code with specific provisions on protecting children from labor exploitation, establishing a strong legal framework, appropriate to the national context and in harmony with international law, especially ILO Convention No. 182. In Vietnamese labor law, child labor is called juvenile labor(minor labor). This 2019 Labor Code sets aside a section (Section 1, Chapter XI) specifically for minor labor, including articles 143, 144, 145, 146, 147. These provisions are important in creating a legal framework to protect child labor. When using child labor, the employer, in addition to implementing general labor provisions, must also implement child labor-specific provisions.

In 2012, Vietnam conducted a national survey on child labor for the first time. The results of the survey are used as a scientific basis for policy making and designing programs to prevent and reduce child labor. These efforts have contributed to effectively solving the problem of child labor in Vietnam recently. However, child labour still exists in various forms that are difficult to detect, control and manage. The task of eliminating child labor in all forms in the context of increasingly deep international integration is a major challenge for Vietnam and many countries, especially implementing sustainable development goal 8.7 of the United Nations, requiring member states to "take immediate and effective measures to eliminate the worst forms of child labour and eliminate child labour in all its forms by 2025." and implement the National Action Plan to implement the 2030 Agenda for Sustainable Development.

In 2018, the Ministry of Labor, War Invalids and Social Affairs (MOLISA) coordinated with the General Statistics Office (GSO), with technical and financial support from the International Labor Organization (ILO) conduct the second national survey on child labor in Vietnam. The survey results help update information and developments on the child labor situation, provide a learning basis and practical evidence for policy making and the development of appropriate and effective intervention programs to prevent and reduce child labor. The results of this survey were announced by Vietnam in December 2020.

2. Theoretical basis

2.1. Concept of children

In international documents and United Nations programs, both concepts "children" and "minors" are used simultaneously. In those documents, the concept of a child is uniformly defined as a person under 18 years old.

Article 1 of the International Convention on the Rights of the Child adopted by the United Nations General Assembly in 1989 stipulates: "For the purposes of this Convention, a child means a person under the age of 18 years, unless the law applicable to the child provides for the age of majority earlier." Rules on the protection of minors deprived of liberty adopted by the United Nations General Assembly in 1990 stipulate: "A minor is a person under 18 years of age".

Convention No. 182 of the International Labor Organization (ILO) on the Prohibition and Urgent Action on the Elimination of the Worst Forms of Child Labour in 1999 stipulates: "In this Convention, the term "children" shall apply to all persons under the age of 18 years."

In Vietnam, the concept of "child" is currently regulated in many legal documents and there is no consensus on the defined age and how to call it. Article 1 of the 2016 Children's Law stipulates: "Children are people under 16 years old." The 2015 Civil Code uses the term "minor", according to Clause 1, Article 21 of this Code: "A minor is a person who is not yet eighteen years old". It can be seen that the concept, way of calling as well as the age of children according to the provisions of Vietnamese law is currently not consistent among legal documents. However, the basis for identifying children is based on age.

Thus, from a legal perspective, children are determined by age. The age of children is regulated depending on the country and each field in which the child participates. Within the scope of this article, children are understood as people under 18 years old.

2.2. Concept of child labor

International Labor Organization (ILO) conventions use the term "child labor". According to ILO Convention No. 182, child labor is a worker under 18 years of age.

Countries have different provisions on child labor, for example Slovakia and Sweden define child labor as all people under 18 years of age; Oman Cuprus regulates child labor only to include people from 15 years old to under 18 years old, not all people under 18 years old; China uses the two terms "juvenile labor" and "child labor" simultaneously and has clear provisions to differentiate, that is, "child labor" refers to minors or children under 16 years old (Child Labor Prohibition Law), "minor labor" are people from 16 years old to 18 years old (Labor Law).

It can be seen that international law as well as national laws do not agree on names, but the connotations of the terms "juvenile labor" and "child labor" are basically the same. Take 18 years old as the limit to distinguish from adult labor.

Vietnamese law stipulates that "Minor labors are labor who are under 18 years old" (Clause 1, Article 143 of the 2019 Labor Code).

In this article, child labor is a person under the age of 18, also known as a juvenile worker.

2.3. Child labor protection

Vietnam is the first country in Asia and the second country in the world to ratify the International Convention on the Rights of the Child. Protecting, caring for and educating children is always of concern to the State, families, schools and society. This concern has been institutionalized in the Constitution, legal documents, the national education system and child protection, care and education programs. However, in reality, there is still a situation where a number of children who have been participating in jobs with long working hours, jobs that are at risk of being heavy, toxic, and dangerous, affecting their health, safety, and well-being, their development and learning opportunities is required preventive and intervention solutions to protect children and create a healthy environment for all children to develop comprehensively.

3. Research methods

The article uses the method of document research, analysis - synthesis, and comparison of legal provisions on child labor. The results of the second National Child Labor Survey conducted by Vietnam in November and December 2018, announced in December 2020, were used to assess the current situation of child labor.

Children are protected by law in many relationships (civil, criminal, administrative, labor...). The article is limited to labor relations, including the provisions of the 2019 Vietnam Labor Code on child protection.

4. Research results

4.1. Provision of Vietnamese law on child labour

Similar to other countries in the world, to protect child labor in labor relations, the 2012 Vietnam Labor Code has provisions specifically for child labor (called minor labor in the law), including provisions on the following issues:

On employment of child labour

Vietnamese Labor Law divides children into three age groups and has appropriate protection provisions for each group in the field of employment, specifically:

- *Group of people from 15 years old to under 18 years old:* People from 15 years old to under 18 years old are not allowed to do the following jobs or work in the following workplaces:

Jobs that do not employ labor from 15 years old to under 18 years old: Carrying, and lifting heavy objects that are beyond the physical condition of minors; Producing and trading in alcohol, wine, beer, cigarettes, substances that affect the mind or other addictive substances; producing, using or transporting chemicals, gases and explosives; maintenance and upkeep of equipment and machinery; demolition of construction works; cooking, blowing, casting, rolling, stamping, welding metal; Scuba diving, offshore fishing and seafood fishing; other work harms the physical, mental, and personality development of minors.

Workplaces that do not employ labor from 15 years old to under 18 years old: Under water, underground, in caves, in tunnels; construction site; livestock slaughterhouse; casinos, bars, discos, karaoke rooms, hotels, motels, sauna facilities, massage facilities; lottery business locations and electronic game services; other workplaces harm the physical, mental, and personality development of minors.

- *Group of people from 13 years old to under 15 years old:* People from 13 years old to under 15 years old are only allowed to do light work according to the list issued by the Minister of Labor, War Invalids and Social Affairs.

- *Group of people under 13 years old:* People under 13 years old are only allowed to do art, physical education, and sports work that does not harm their physical, mental, and personal development and must have the consent of the specialized labor agency under the Provincial People's Committee.

On the use of child labour

Vietnamese law requires employers to only employ children in jobs that are suitable for their health to ensure the development of physical, mental, and personal health. When using child labor, the employer is responsible for taking care of the employee in terms of work, health, and learning during the working process; must have the consent of the father, mother or guardian; Must make a separate monitoring book, recording full name, date of birth, current job, results of periodic health checks and present it when requested by a competent state agency; must create opportunities for underage labor to receive cultural education, vocational education, training, fostering, and improving vocational skills.

For people under 15 years old, when using, the employer must also arrange working hours that do not affect the study time of people under 15 years old; must have a health certificate from a competent medical examination and treatment facility certifying that the person under 15 years old is fit for work and organize a periodic health check at least once every 6 months; ensure working conditions, safety, and occupational hygiene appropriate to age.

For each age group of children, the employer arranges the corresponding working hours, specifically: For people under 15 years old, working hours must not exceed 04 hours in 01 day and 20 hours in 01 day per week, and at the same time, do not work overtime or work at night. For people from 15 years old to under 18 years old, working hours must not exceed 08 hours in 01 day and 40 hours in 01 week, they can work overtime or work at night in a number of occupations and jobs according to the list issued by the Minister of Labor, War Invalids and Social Affairs.

4.2 Current situation of child labor in Vietnam

Vietnam is the first country in Asia and the second country in the world to ratify the International Convention on the Rights of the Child. Vietnam has issued many legal documents related to children's rights and has programs to protect, care for and educate children.

To have a national database on child labor, Vietnam has twice conducted a national survey on child labor (in 2012 and 2018). Investigations have collected a lot of information about the current situation of child labor in the country such as: scale, working hours, school attendance...

The second national survey on child labor was conducted by Vietnam in November and December 2018 with a sample size of 38,280 households nationwide in 2,552 investigation areas. The survey results collected

information from 29,192 children aged 5-17 years old. The following are some of the results of the second National Child Labor Survey:

Regarding the scale of child labor:

According to the results of the Second National Survey on Child Labor announced by Vietnam in December 2018, the whole country had 1,031,944 children aged 5-17 identified as child labor, accounting for 5.4% total number of children 5-17 years old.

In terms of gender, in Vietnam, male child labor accounts for a higher rate than female child labor. Of the 1,031,944 child labor, nearly 59% are male children and over 41% are female children.

In terms of living area, the majority of child labor in Vietnam live in rural areas, accounting for over 84%; Urban areas have less than 16%.

The above results show that Vietnam's child labor rate is at a low average compared to other region and the world. According to the Report "Global Estimates of Child Labor: Results and trends, 2012-2016", ILO, 2017, in 2016, the rate of child labor in the world was 9.6% and in the Asia-Pacific region is 7.4%. According to Mr. Chang Hee Lee, Director of ILO Vietnam, the rate of child labor in Vietnam is about 2% lower than the average rate of the Asia and Pacific region.

Regarding the weekly working hours of child labor:

Estimates from the survey show that out of a total of 1,031,944 child labor, there are 352,385 children working 40 hours/week or more (accounting for 34.2% of the total number of child labor), exceeding the maximum weekly working hours specified in the Labor Code.

Table 1: Working time per week of child labour

The weekly working hours	Total number (people)	Percentage (%)	Gender		Age group		
			Male	Female	5-12	13-14	15-17
General	1,031,944	100.0	100.0	100.0	100.0	100.0	100.0
≤ 5 hours	111,380	10.8	9.7	12.4	17.3	8.0	3.6
5 - ≤ 20 hours	330,131	32.0	31.1	33.3	65.0	35.2	15.4
20 - ≤ 40 hours	218,966	21.2	20.6	22.2	13.5	37.2	20.3
> 40 hours	352,385	34.2	36.5	30.8	3.2	17.1	58.7
Not determined	19,082	1.8	2.1	1.3	1.0	2.5	2.0

Source: Ministry of Labor, War Invalids and Social Affairs (MOLISA) in collaboration with the General Statistics Office (GSO) and the International Labor Organization (ILO), National Survey on Child Labor 2018, announced in December 2020

The majority of child labor who work more than 40 hours/week are in the age group of 15-17 years old (58.7%) and there is not much difference between boys and girls. However, among child labor working more than 40 hours/week, there are still nearly 12% of children under 15 years old. This is a matter of concern and requires measures to prevent.

Working long hours (more than 40 hours/week) seriously affects children's health. Due to their immaturity and inexperience, developing bodies, limited health and flexibility, children are more vulnerable and exposed to more physical risks than adults; especially when working too many hours. At the same time, participating in work and working long hours negatively affects children's school attendance.

Regarding the school attendance status of child labor:

Of the total 1,031,944 child labor, nearly half are still continuing to go to school, 48.6% have dropped out of school and 1.4% have never gone to school. The proportion of female children still in school is higher than that of male children.

Table 2: School attendance status of child labor

School attendance status	Total number	Percentage	Gender		Age Group		
			Male	Female	5-12	13-14	15-17
Nationwide	1,031,944	100.0	100.0	100.0	100.0	100.0	100.0
In school	515,794	50.0	45.9	55.9	89.1	59.7	23.1
No longer in school	501,095	48.6	53.0	42.2	8.9	38.8	75.8
Never attended school	15,055	1.4	1.1	1.9	2.0	1.5	1.1

Source: Ministry of Labor, War Invalids and Social Affairs (MOLISA) in collaboration with the General Statistics Office (GSO) and the International Labor Organization (ILO), National Survey on Child Labor 2018, announced in December 2020

The older they are, the more likely child labor are to drop out of school. The rate of child labor aged 5-12 who do not go to school is nearly 9%, increasing to 38.8% in the 13-14 age group and increasing to 75.8% in the 15-17 age group.

Children who work often have no time to study, play, and entertain themselves, have a high risk of dropping out of school, have slow mental development, lack confidence, and have difficulty integrating into society... Working early causes many children to lack social knowledge and have to be exposed to aspects early, while their awareness is still limited. Therefore, many children have become entangled in the cycle of labor and violating the law. This is one of the causes of social problems, greatly affecting the quality of national human resources.

Regarding child labor doing heavy, harmful, and dangerous work:

Of the total 1,031,944 child labor, there are 519,805 children aged 5-17 who are identified as child laborers doing heavy, harmful, and dangerous work, accounting for 2.7% of the population of children aged 5-17 and accounts for nearly 50.4% of the total number of child laborers in the country.

Table 3: Child laborers doing heavy, harmful, and dangerous work by urban and rural areas

Area	Total number	Percentage compared to children aged 5-17 (%)	Percentage of child labor (%)	Percentage of child labor doing heavy, harmful, and dangerous work (%)				
				Gender		Age group		
				Male	Female	5-12	13-14	15-17
Nationwide	519,805	2.7	50.4	67.2	32.8	11.6	17.6	70.8
Urban	94,994	1.4	58.8	61.1	38.9	10.0	18.4	71.6
Rural	424,811	3.3	48.8	68.5	31.5	11.9	17.4	70.7

Source: Ministry of Labor, War Invalids and Social Affairs (MOLISA) in collaboration with the General Statistics Office (GSO) and the International Labor Organization (ILO), National Survey on Child Labor 2018, announced in December 2020

Children doing heavy, harmful, and dangerous work will risk negatively affecting their physical and mental development, causing harm to their health, safety, and morality.

5. Recommendations

Through analyzing the provisions of Vietnamese law on child labor, it shows that regulations specifically for children have been issued relatively fully, creating a legal corridor to protect children. The content of those regulations is basically consistent with international standards on child labor. However, there are some regulations that are not consistent with practice.

The national survey on child labor in Vietnam shows that although the issue of child labor has received attention from the Vietnamese government and has been codified in legal documents, in reality there are still some shortcomings. the number of working hours per week for children is higher than prescribed by law, many child labor do not go to school or have to drop out of school, child labor are working in occupations that are at risk of being banned from employing children, and have a high rate of harmful working conditions... Hard, harmful, dangerous, overtime, and even illegal work causes physical and mental harm, hinders learning, and negatively impacts children's development. The Government of Vietnam has been developing a roadmap to implement Sustainable Development Goal (SDG) 8.7 and the Program to prevent and reduce child labor in the period 2021-2030. Therefore, more specific actions are needed to minimize the above situation.

To overcome the above shortcomings in order to protect child labor in labor relations, the following solutions should be synchronously implemented:

First, improve the provisions of the law on children and child labour

The concept of children

Vietnam needs to unify the concept of children between laws such as the Children's Law, the Labor Code, and the Civil Code. Because there are inconsistent and unclear regulations on children's ages in legal documents causing many difficulties and inadequacies in state management in the field of child protection, care and education. More than 25 years ago, Vietnam officially became the first country in Asia and the second country in the world to ratify the International Convention on the Rights of the Child. At the same time,

Vietnam is also one of the few countries in the world that has enacted laws on children (Law on Protection, Care and Education of Children, 1991; Law on Children, 2016). However, Vietnam is the only remaining country in ASEAN and one of the few countries in the world that has not raised the legal age of children to 18.

-On employment of child labour

In addition to general protection regulations for child labor, the 2019 Labor Code divides children into three age groups (group of people from 15 years old to under 18 years old, group of people from 13 years old to under 15 years old and group of people under 13 years old) to have some additional protection regulations for each group. Such division is necessary, however, the age group should be adjusted to be more appropriate, that is: group of people from 16 years old to under 18 years old, group of people from 13 years old to under 16 years old, group of people under 13 years old. Based on that adjustment, the group of children protected in Article 145 and Clause 1, Article 146 of the 2019 Labor Code is expanded, not only protecting the group of labor from 13 years old to under 15 years old but also protects the entire group of labor from 15 years old to under 16 years old. This will be more consistent with the regulations on age considered a child in the 2016 Children's Law.

- On the use of child labour

The 2019 Labor Code does not have regulations on working hours specifically for child labor, child labor still in school and child labor no longer in school. Therefore, it is necessary to research and supplement regulations on appropriate working hours for child labor who are still in school (studying while working) and child labor who are no longer in school. For child labor who study while working, to ensure that labor have time to participate in study, working hours should only be regulated and must not exceed half of the working hours of child labor who are no longer in school..

At the same time, the 2019 Labor Code does not have regulations for cases of child labor performing multiple labor contracts. In the case of multiple labor contracts, if for each job, children work the maximum prescribed number of hours, they may work all day, with no time to rest, seriously affecting their health and study. Therefore, in this case, it is necessary to stipulate that the total working time of labor contracts must not exceed the working hours specifically prescribed for child labor groups.

For child labor working in the fields of art and performance, preparation time before performing is not counted as working time. Meanwhile, the preparation work is very elaborate and takes a lot of time for children. Therefore, it is necessary to regulate preparation and practice time before the performance as well as children's working time.

The labor discipline forms in the 2019 Labor Code that are generally applied to all labor, including child labor, are unreasonable. If children violate against labor discipline, their discipline should be aimed more at education than at deterrence or punishment. Therefore, in addition to the forms of labor discipline according to current regulations, it is necessary to add a form of warning discipline applicable to child labor.

Second, strengthen compliance with child labour laws.

Raise awareness and responsibility of society towards children and child labour.

Limited awareness is one of the fundamental causes leading to the problem of children working hard, in toxic and dangerous conditions, and violating the law on child labor. Therefore, it is necessary to communicate, educate, and mobilize society to raise awareness and responsibility for preventing and minimizing violations of child labor laws for relevant subjects such as:

governments at all levels, sectors, organizations, employers, society, parents and children.

Strengthen propaganda and legal education on child labor prevention, to improve legal understanding of child labor in communities, families and employers; At the same time, mobilize and take measures to support poor families so that children do not have to work to make a living.

Disseminate and mobilize all classes of people to seriously comply and implement the Party and State's regulations on child protection, and at the same time strengthen inspection, review, and timely intervention and assistance. when detecting cases of children forced to work illegally. In addition, it is necessary to strengthen the leadership of party committees and the direction of governments at all levels regarding the protection and care of children in general and child labor in particular.

Fight against violations of child labor laws.

Encourage activities to fight, detect and denounce cases of illegal use of child labor, promoting the role of organizations, communities and society in preventing the use of child labor.

Strengthen supervision to prevent and solve the situation of children having to work early and have to do hard work; Strengthen the implementation of inspection and examination to detect early and strictly and

promptly handle cases of violation of the law on the use of child labor; take decisive intervention measures to help poor children get out of the working environment.

There needs to be stronger sanctions against employers who use child labor illegally; attach family responsibilities to cases where children working early affects their learning and physical and intellectual development; clearly determine the legal responsibilities of organizations and individuals at fault in allowing violations of labor laws on the use of child labor to occur.

6. Conclusion

In Vietnam, children have been protected by labor law through provisions specific to child labor regarding employment, labor contracts, and labor use. However, those provisions are not complete, some provisions are not appropriate, and need to be researched and completed to contribute to better and more comprehensive protection of children in labor relations. Solving the problem of child labor, especially protecting children from hard, toxic, and dangerous forms of labor, requires close connection, cooperation, and coordination of all partners in the society.

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