

The Law on Child Labor: A Correlational Study in Vietnam

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Abstracts

According to the International Labsour Organization (ILO), Vietnam is the first country in Asia and the second country in the world to ratify the United Nations Convention on the Rights of the Child. Among them, are conventions related to child labor such as Convention 138, on a minimum age for employment in 1973 (Convention 138); Convention 182, which prohibits and urgently acts to eliminate the worst forms of child labor in 1999 (Convention 182). During the process of joining conventions on child labor, Vietnam's legal system has been issued, amended, and adjusted to enforce international commitments. However, from the perspective of the conventions on labor children that Vietnam has joined, the national legal system still has shortcomings from the age of labor, occupations that are allowed to use child labor to forms of labor... The article uses the correlational research method, comparing the regulations of the ILO convention with the law regulating child labor in Vietnam and then proposing solutions to improve the Vietnam national law.

Keywords: copyright, three-step test, intellectual property rights, infringement, universities...

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1. Introduction

Child labor or the use of children as workers, in agriculture, fishing, apprenticeships, and factory workers, has been practiced throughout human history but reached its peak during the Industrial Revolution. Poor working conditions included overcrowded and polluted factories, lack of safety regulations, and long working hours became the norm. Child laborers were often deprived of education, perpetuating a cycle of poverty that was difficult to break. 19th-century reformers and labor organizations sought to limit child labor and improve working conditions to uplift the morale of the masses, but it was not until the Great Depression, a time when Americans desperately sought employment, that the long-standing practice of child labor in the United States began to shake (EDITORS, 2009).

The issue of child labor is not only prevalent in underdeveloped countries but also in developed ones. Throughout history, Vietnam has always prioritized children's issues in its policies. The Vietnamese legal system is constantly improving and adapting to the realities of each period, as well as aligning with international standards and conventions on children and child labor. Vietnam is committed to protecting children and creating an environment for their comprehensive development, as demonstrated by its participation in various conventions.

2. Material and Methods

The article examines the regulations on children and child labor according to the ILO Convention that Vietnam has joined, and its correlation with the legal framework in Vietnam. It analyzes, evaluates, and proposes solutions to improve the regulations of Vietnamese laws.

The research is conducted through qualitative research methods, examining the correlation between the ILO Convention's regulations on children and child labor and the regulations within the legal framework of Vietnam. Statistical analysis, expert consultations, and management officials are employed to collect information, including legal documents, research works by relevant authors, and statistical data from relevant sources. These data are systematized, analyzed, synthesized, and evaluated appropriately to provide a basis for solutions to eradicate child labor issues in Vietnam.

3. The theoretical basis of children and child labor

Since its establishment in 1919, the International Labour Organization (ILO) has adopted several conventions addressing the prevention and reduction of child labor. Two of the most important and currently effective conventions are Convention No. 138, concerning the minimum age for employment, 1973 (Convention No. 138), accompanied by Recommendation No. 146; and Convention No. 182, concerning the worst forms of child labor, 1999 (Convention No. 182), accompanied by Recommendation No. 190. Both of these conventions are included in the list of ILO's fundamental conventions. (Organization, n.d.).



3.1 The concept of children and child labor

In international law, children are defined as individuals under the age of 18, unless the applicable national law sets an earlier age of adulthood (Child, n.d.). It can be observed that the regulations regarding the age of children depend on the national laws of the Convention's members, which may set a lower age than 18. For example, in the United Kingdom and Northern Ireland (UK), the Children Act of 1989 is a significant law that provides a legal framework for protecting children and young people who are experiencing or at risk of serious harm to their basic rights. The Act also delineates the responsibilities of local authorities, courts, parents, and the community in ensuring the protection and promotion of children's rights and interests. In UK law, children are defined as individuals under the age of 18 (Legislation, n.d.). Similarly to the UK, according to Article 4 of the Japanese Child Welfare Law, children are defined as anyone under the age of 18 (Translation, n.d.). In contrast, Chinese law strictly prohibits state agencies, social organizations, enterprises, institutions, non-profit non-governmental organizations, and private enterprises from employing child labor, which refers to labor performed by individuals under the age of 16 (Natlex, n.d.). In Vietnam, children are defined as individuals under the age of 16 (Quốc hội Việt Nam, n.d.).

Generally, regulations regarding the age of children among countries that are members of the ILO Convention may vary depending on the laws of each country. However, from the ILO Convention's perspective, age is essential in determining whether a person is a child or an adult. This is because physical development enables a worker to perform strenuous tasks, and the level of physical development differs in each country due to various factors. Therefore, the criteria for age depend on each country and may have different regulations.

Within the framework of its regulations, the ILO also introduces the concept of child labor. According to this concept, child labor is generally understood as work that deprives children of their childhood, potential, and dignity, while also being harmful to their physical and mental well-being (Organization, n.d.). The legal regulations in Vietnam do not explicitly define what constitutes child labor. However, based on the understanding derived from the ILO conventions and referencing the provisions of the Law on Children in 2016, child labor can be understood as work performed by individuals under the age of 16 that involves dangerous tasks harmful to their physical and mental well-being, work that undermines their morals and deprives them of opportunities for social interaction. This includes work that prevents them from attending school by taking away their chances for education, forcing them to drop out early, or requiring them to combine excessive work with their studies.

The mentioned tasks include those that subject children to physical, psychological, or sexual abuse; working underground, underwater, at dangerous heights, or in restricted spaces; operating dangerous machinery, equipment, and tools or involving manual handling and heavy lifting; working in unhealthy environments, such as exposure to hazardous substances, agents, or processes, or harmful levels of temperature, noise, or vibration; working under particularly difficult conditions, such as long hours or night shifts, or work in which children are unlawfully confined on the employer's premises.

3.2 Identifying criteria for determining child labor

Based on the content of the concept of children and child labor from the perspective of international law (including Convention No. 138 and Convention No. 182) and national laws such as the Law on Children in 2016 and the Labor Code in 2019, as well as related documents, child labor can be identified through the following criteria:

Firstly, the worst forms of child labor, as defined by Convention No. 182, include all forms of slavery or similar practices such as the sale and trafficking of children, debt bondage, and forced labor, including the forced recruitment of children into armed conflicts; using, procuring, or offering children for prostitution, pornography production, or pornographic performances; using, procuring, or offering children for illegal activities, particularly for the production and trafficking of drugs as outlined in international agreements; and any work that is likely to harm the health, safety, or morals of children. According to the provisions of the Labor Code in 2019, the worst forms of child labor can be understood as prohibited labor practices such as discrimination in employment, labor exploitation, forced labor, sexual harassment at the workplace, and the exploitation of apprenticeship or vocational training for profiteering, labor exploitation, or the coercion, enticement, or forceful induction of learners or trainees into illegal activities. Additionally, children have the right to be protected in all forms and not to be subjected to labor exploitation; they should not engage in work before the designated age or beyond the regulated working hours, or perform hazardous, harmful, or dangerous tasks as determined by the law; they should not be assigned to work or be in environments that negatively affect their personality and comprehensive development.

Secondly, types of work and working hours are categorized by age groups: According to Article 2, Paragraph 3 of Convention No. 138, the minimum age for employment of children is not less than 15 years or the age at which compulsory education ends. Comparing this with the provisions of Article 3, Paragraph 1 of the Labor Code in 2019, the minimum age for employment is also 15 years, except for cases of child labor, which



are further classified into age groups (those aged 15 to under 18; those aged 13 to under 15; those under 13). Additionally, according to Civil Law, an adult is defined as a person who is 18 years of age or older, while a minor is someone who has not reached the age of 18 (Nam, n.d.). From the aforementioned regulations, it is possible to classify the age groups of child labor.

Children under 13 years old, who have not reached the age of 13, are only allowed to engage in artistic, physical, and sports-related activities that do not harm their physical, intellectual, and personal development. Even child labor performing these activities is still prohibited if there is no consent from the specialized labor agency under the provincial People's Committee and if the working hours exceed 20 hours per week.

The age group from 13 to under 15 years old is only allowed to engage in specific types of work (69 types of work) as stipulated in Appendix II of Circular No. 09/2020/TT-BLDTBXH dated November 12, 2020, issued by the Ministry of Labor - Invalids and Social Affairs, which provides detailed regulations and guidelines for the implementation of certain provisions of the Labor Code regarding child labor (Circular 09/2020). According to this, the list of permissible light work for this age group includes artistic performances, sports activities, software programming, traditional crafts such as pottery glazing, shell cutting, paper making, making palm leaf hats, hat decoration, weaving mats, etc., as well as handicrafts such as embroidery, wood carving, making horn combs, making folk paintings, etc. Additionally, within this age group, compliance with working hours is also required.

In the age group from 15 to under 18 years old (adolescent labor), regarding work, adolescent workers will be considered child laborers if they engage in arduous, hazardous, and dangerous tasks that are prohibited for this age group. Such tasks include carrying, lifting, or transporting heavy objects beyond the physical capacity of the adolescent; the production, sale, and business of alcohol, beer, tobacco, drugs affecting the mind, or other addictive substances; the production, use, or transportation of chemicals, gases, explosives; equipment maintenance and repair; demolition of construction works; metal forging, casting, rolling, pounding, welding; diving, offshore fishing, marine products; and other work that can harm the physical, intellectual, and personal development of adolescents (Nam, 2019). Regarding working hours, even when performing the aforementioned tasks, the age group from 15 to under 18 years old will still be considered child labor if the working hours exceed 8 hours in one day and 40 hours in one week.

Third, regarding the workplace. Article 147 of the 2019 Civil Law Code of Vietnam stipulates that all age groups of minors will be considered child laborers if they work in places where the use of minors is prohibited, such as underwater, underground, in caves, in tunnels; construction sites; slaughterhouses; casinos, bars, nightclubs, karaoke rooms, hotels, guesthouses, steam rooms, massage parlors; lottery businesses, electronic gaming services; other workplaces that can harm the physical, intellectual, and personal development of minors. Additionally, Circular 09/2020, provides detailed regulations on workplaces that can harm the intellectual and personal development of minors, and workplaces that involve exposure to hazardous and harmful factors outside the permitted limits according to national standards and technical regulations on occupational hygiene. These factors include electromagnetic fields, vibration, noise, temperature, silica dust, non-silica dust, cotton dust, asbestos dust, coal dust, talc dust; various types of substances, radiation; X-ray radiation, harmful substances, and other harmful radiation; exposure to disease-causing microorganisms; working for more than 4 hours per day in confined, cramped workspaces, tasks that require kneeling, lying down, or bending over; working at heights or hanging more than 2m above the working surface; steep terrain over 300; work in holes deeper than 5m; work in prisons or mental hospitals.

In general, from the perspective of the ILO Convention, the criteria for child labor primarily rely on criteria such as the worst forms of labor, age, working hours, and workplace. However, in Vietnam, there are currently no specific criteria for child labor. The delineation between child labor and child participation in labor is challenging but needs to be clearly defined in legal regulations and have clear criteria (phů, 2018). A positive signal is that the International Labour Organization (ILO), in collaboration with the Ministry of Labour - Invalids and Social Affairs and with the support of the US Government, has developed training materials on the prevention and reduction of child labor in Vietnam. These materials also identify criteria similar to Convention 182. This is a positive indication for the issuance of regulations that are in line with international standards and norms.

4. Causes and Consequences of Child Labor

4.1 Causes of Child Labor

There are numerous factors leading to the issue of child labor worldwide, with some less developed and developing countries having a high prevalence of child labor (Organization, n.d.). Arising from a combination of internal and external factors:

The internal causes stem from within the family, such as poverty, unemployment, parental divorce, illness, and more. The external causes are related to societal factors, including a deficient education system, difficult access to schools, and economic crises that prevent a significant portion of children from attending school. This situation is not confined to underdeveloped countries; it occurs worldwide. Children are engaged in weaving,



cutting, and polishing stones, assembling shoes, cutting and sewing clothes, mining for precious metals like diamonds, gold, and silver, working in sugarcane fields, harvesting fruits, and coffee, livestock farming, drug trafficking, and engaging in prostitution (Silk & Meron Makonnen, 2013).

Vietnam-based on the results of a survey conducted by the Ministry of Labor, War Invalids and Social Affairs (MOLISA) in collaboration with the General Statistics Office of Vietnam (GSO), with technical and financial support from the International Labour Organization (ILO), carried out a national investigation on child labor. The results have revealed several factors contributing to the issue of child labor: Parental perception that practical work is essential for a child's development, leading parents to be willing to allow their children to work. However, the nature of these jobs often exceeds a child's capabilities; Many parents find satisfaction in the income earned by their children through child labor; Family crises, such as divorce, force some children to drop out of school and engage in work to support their families; Rapid urbanization has led to strong migration waves, especially in major cities like Hanoi and Ho Chi Minh City. This has resulted in children from impoverished families having to work; Gender inequality and the persistence of the "male superiority" mindset in society lead to some girls leaving school early to work. Furthermore, the policies and regulations aimed at preventing and reducing child labor still have shortcomings. Their implementation in practice is less effective, focusing mainly on formal sectors while child labor remains more prevalent in informal sectors (Ministry Of Labour, 2018).

Many countries around the world also conduct investigations into child labor, and the results often point to poverty as the primary reason that compels children to work. Faced with the pressure to provide food, shelter, and repay their parents' debts, some children have no choice but to engage in labor to support their families. However, some children are forced into labor against their will and subjected to slavery. Other factors influencing whether children have to work or not include barriers to education and inadequate enforcement of laws protecting children (Legislation, n.d.). When parents' incomes are insufficient to support their families, children are compelled to work to ensure food and contribute to the family's upkeep.

4.2 Consequences of Child Labor

Child labor despite some benefits such as skill development, financial support for families, and reduced labor costs, has significant and long-term consequences. It directly harms the well-being of children and has negative impacts on families and nations.

Regarding education and physical well-being, children being forced to leave school to work or combine work with education can affect their right to education and reduce their capacity to learn. Physically, the consequences of early labor make many children more vulnerable to physical injuries compared to adults. Tasks like carrying heavy loads or working at heights and underwater increase the risk of workplace accidents for children, as they lack the necessary knowledge and skills for these jobs.

In terms of psychology and cognition, according to some studies in the Journal of Nursing Research in the United States, child labor hurts the ability to attend school and the physical, emotional, and cognitive development of children (Mohammed, 2019). The lack of experience and emotional immaturity in children leads to a reduced ability to recognize and evaluate potential risks and make appropriate decisions related to the type of work and associated hazards. Depression, despair, shame, guilt, low self-esteem, and anxiety are some of the horrifying psychological effects of child labor, increasing the risk of developing mental illnesses and engaging in antisocial behaviors, especially when children are exposed to exploitative labor situations such as slavery, prostitution, drug trafficking, or other illegal activities.

Furthermore, child labor imposes negative effects on national competitiveness, adversely impacting the quality of the labor force. It hinders poverty reduction and national development processes. It creates a labor force with limited education, and low skills, and becomes a burden on society as a whole.

5. The current situation and some solutions to improve child labor laws in Vietnam

To provide an updated overview of the child labor situation in Vietnam and establish a strong evidence base for policy development and the design of appropriate and effective intervention measures to prevent and reduce child labor, Vietnam conducted two National Child Labor Surveys (the first in 2012 and the second in 2018). These surveys were carried out through the collaboration of the Ministry of Labor, War Invalids and Social Affairs (MOLISA) and the General Statistics Office (GSO) of Vietnam, with technical and financial support from the International Labor Organization (ILO).

5.1 The current legal framework regulating child labor in Vietnam

The survey results reveal that more than 1 million children in the age group of 5-17 are engaged in child labor, accounting for 5.4% of the child population in this age group. Among these child laborers, over half are involved in hazardous work, and half of them do not attend school, with 1.4% having never been to school.

The International Labor Organization (ILO) has introduced numerous action programs aimed at eradicating child labor issues that have occurred and are ongoing worldwide. The flagship action program in 2021 is the



International Year for the Elimination of Child Labor (ILO, n.d.). As an active member of the ILO, Vietnam has taken, is taking, and will continue to implement strong and practical actions to fulfill international commitments. One of the pressing issues is the need to review and revise the regulations governing child labor and child labor in the national legal framework. Overall, Vietnam has made efforts to establish and gradually improve the system of regulations related to children and child labor. However, from the perspective of ILO Conventions and accompanying recommendations, there are still some shortcomings in Vietnam's regulations concerning children and child labor, such as the following:

First, concerning the minimum age of children engaged in labor: According to Article 2 of Convention 138, the minimum age for admission to employment should not be less than the age at which compulsory schooling ends and, in any case, not less than 15 years of age. However, the Convention allows for exceptions in the case of member countries with less developed economies and educational conditions. After consulting with relevant parties regarding the use of child labor, these countries may determine the minimum age for labor to be 14 years during the initial phase. When compared to Regulation 09/2020, Vietnam stipulates that adolescents aged from 13 to less than 15 can engage in light work (Appendix II, Category 12). Vietnam's regulation of the minimum age for labor does not align with the provisions of Convention 138. Even though it involves light work, jobs such as gardening, shellfish shucking, rice vermicelli making, painting handicrafts, and livestock herding are tasks with high labor intensity, and unfavorable weather conditions, and can significantly impact the health, education, and leisure time of children.

Second, concerning the principle of equal pay for equal work: The principle of equal pay for equal work is addressed in Recommendation 146, which specifies equal pay for work of equal value without discrimination based on location or gender. This principle is also acknowledged in the legal system of Vietnam. Specifically, employers must ensure equal pay without gender discrimination for workers performing work of equal value (Nam, n.d.), which aligns with ILO Conventions and Recommendation 146. However, current legal provisions related to wages are outlined in the Labor Code of 2019 and Decree 38/2022/NĐ-CP, dated June 12, 2022, which stipulate the minimum wage for workers under labor contracts. According to these regulations, the minimum wage varies by region, ranging from VND 3,250,000 (Region IV) to VND 4,680,000 (Region I) (phủ, 2022). Nevertheless, child labor contracts are a special type of labor contract, and the specific regulations regarding their wages have not been defined. Employers typically negotiate wages with the child's parents, legal guardians, or the child directly. This leads to inequalities in labor relationships, and the protection mechanism lacks specifics regarding wage rates for different age groups and specific job types, especially for child labor in nonformal sectors.

Third, regulations regarding the industries employing child labor and the prohibition of child labor are also defined in related documents such as the Child Law of 2016, the Labor Code of 2019, and Circular 09/2020. In general, there have been breakthroughs in legislating for the care and protection of children and child labor, meeting the need to enhance laws for child protection in line with international commitments. However, when compared to ILO Conventions and accompanying recommendations on child labor, there are some shortcomings in Vietnam's regulations concerning industries employing child labor and prohibiting child labor. According to Appendix III of Circular 09/2020, the list of work that may harm the physical and mental development of minors includes 69 jobs primarily related to chemical industries and heavy industries. However, it does not cover the agricultural sector, aquaculture, or areas near rivers and coastal regions, which are also hazardous due to the use and operation of dangerous equipment like plows, combines, feed mills, etc. Furthermore, Section IV of Circular 09/2020 specifies a list of workplaces that may harm the physical and mental development of minors. It includes places with dangerous environmental factors, exposure to disease-causing organisms, heights, deep pits, etc. However, it does not address places such as nightclubs, karaoke bars, and massage parlors, despite the substantial employment of child labor in these areas, often working hourly. These are also environments where many social issues occur, and child labor is exposed to various risks by working daily in complex and sensitive environments.

Fourth, regarding monitoring, inspection, and addressing violations: According to ILO Convention 138, together with Recommendation 146, member countries are required to establish mechanisms and measures for protecting and monitoring the working conditions of children, as well as to have sanctions for violations. In the current Vietnamese context, the inspection, monitoring, and handling of child labor violations fall under the jurisdiction and responsibilities of the Labor Inspectorate of the Ministry of Labor, War Invalids, and Social Affairs. Vietnam does not have an independent agency for monitoring and supporting child labor, and addressing issues where children are subjected to exploitation and labor in poor conditions in various sectors, including nightclubs, massage parlors, beer bars, labor on fishing vessels, and household chores, presents significant challenges in terms of inspection and enforcement.

5.2 Some solutions to improve child labor policies in Vietnam

As an active member of international relations, Vietnam has made adjustments to its legal system in recent years



to adapt to changes in international relations. The overall labor situation and child labor, in particular, have seen legislative advancements. However, through the examination of provisions in line with ILO Conventions, it is possible to identify some policies aimed at eliminating child labor. Specifically, these policies include:

First, regarding the minimum working age, it is necessary to specify that in no case should the minimum working age be less than 14 years old to align with Convention 138 and Recommendation 146. Amendments should be made to the age provisions set out in Article 145(3) of the 2019 Labor Code. These adjustments should ensure that employers do not recruit or use individuals under 14 years old for work, except for artistic, physical, and sports-related activities that do not harm physical, intellectual, or personal development. When employing individuals under 14 years old, the consent of the specialized labor agency under the provincial People's Committee should be obtained. Raising the minimum working age as described above is in line with Convention 138 and Recommendation 146, which aim for member states to gradually increase the minimum working age to 16 years old.

Second, the equal pay principle and the list of industries: In labor relations between children and employers, wages are often determined through agreements between the employer and the child, their parents, guardian, or the child directly. The principle of equal pay is reflected in the 2019 Labor Code and related documents, adjusting various aspects of these relationships. The core relationship exists between the employer and the child worker. The term "child worker," as stated in the 2019 Labor Code, encompasses all categories of workers in society. However, as mentioned earlier, child labor relationships have specific characteristics related to job types, working hours, and rest periods. As a result, there is a need for regulations specifying minimum wages based on the industry and the age of child labor to ensure fairness. This would serve as a tool for regulating wage issues, preventing discrimination against child labor, and reducing inequality in labor relations. Furthermore, there is a need to supplement regulations related to industries that prohibit the use of child labor. This means that regarding Sections III and IV of Circular 09/2020, the list of industries and workplaces that need adjustment and additional information should include tasks related to the agricultural sector. Vietnam, as an agricultural-based economy, is increasingly focusing on agricultural development. Modern agricultural production is increasingly replacing traditional labor with machinery and equipment. Consequently, agriculture often involves regular contact with machinery, which is hard to avoid. Thus, the agricultural and aquaculture sectors should be added to the list of prohibited child labor industries in Circular 09/2020. Additionally, areas that prohibit child labor, such as nightclubs, karaoke bars, and massage parlors, should also be added to Section IV of Circular 09/2020 as workplaces that harm the physical, intellectual, and personal development of minors.

Third, the mechanism for monitoring, inspecting, and handling child labor violations: As an active and responsible member in international relations, Vietnam should consider and adopt ILO recommendations regarding child labor. It is essential to establish a comprehensive monitoring and inspection mechanism that operates consistently from central to local levels, forming a unified network. At the grassroots level, the creation of offices for disseminating information and providing legal advice on child labor, at the community level (communes, wards, and townships), serves as the most effective means of monitoring child labor issues in various regions across the country. At the district and provincial levels, specialized labor inspection teams for child labor, under the authority of the Ministry of Labor, War Invalids and Social Affairs, should be established. With this monitoring and inspection mechanism, there is a unified approach from the central government down to the local level to promptly detect, provide assistance, and penalize child labor issues in line with ILO recommendations and international commitments on child labor that Vietnam has adhered to.

6. Conclusion

Throughout its historical journey, the issue of children has been of particular concern in Vietnam and is enshrined in the country's Constitution, the supreme law of the land, stating that "children are protected, cared for, and educated by the State, family, and society; they are entitled to participate in child-related matters. It is strictly forbidden to infringe upon, abuse, maltreat, abandon, exploit child labor, and engage in other acts that violate children's rights." Indeed, the process of improving national legal regulations concerning minimum working age, equitable remuneration, and mechanisms for monitoring and supervising child labor helps to enhance Vietnam's legal framework and align it with international standards, all in line with Vietnam's objectives for protecting and nurturing children and creating a conducive environment for comprehensive physical and mental development.

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