

ESTABLISHING TRADE UNION IN THE CLIMATE CHANGE OF EMPLOYMENT

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Submission date: 30-Aug-2019 01:36PM (UTC+0700)

Submission ID: 1165185091

File name: IJCIET_10_03_123_1.pdf (290.72K)

Word count: 3673

Character count: 19597

2

International Journal of Civil Engineering and Technology (IJCIET)

Volume 10, Issue 03, March 2019, pp. 1270-1276, Article ID: IJCIET_10_03_123

Available online at <http://www.iaeme.com/ijciyet/issues.asp?JType=IJCIET&VType=10&ITType=03>

ISSN Print: 0976-6308 and ISSN Online: 0976-6316

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Scopus Indexed

ESTABLISHING TRADE UNION IN THE CLIMATE CHANGE OF EMPLOYMENT

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ABSTRACT

There is a fact that trade union have not functioned optimally. A conducive atmosphere is needed to build a trade union. When a conducive atmosphere has been established, then the trade union will be able to implement their efforts in improving the quality of industrial relations. Improving the quality of industrial relations is strongly influenced by the condition of labor climate. The labor climate is also influenced by the political form of labor law. The purpose of the research is to analyze the substance and procedure of regulating trade union to improve the quality of conducive industrial relationship in the climate change of worker. The method used in this research is legal normative using statute approach. The result of the study is that there was a mal interpretation on regulating the substance and procedure of trade union to improve the quality of conducive industrial relationship in the climate change of labor. In the substance of the subject matter analysis, there was a a mal interpretation on the status of workers who could form a trade union. In object analysis, there was a a mal interpretation on the regulatory rights setting of the trade union. In procedural analysis, there was a a mal interpretation on regulation of forming procedures and establishing trade union. As a result of the existence of a mal interpretations on substance and procedure, the role of trade union in an effort to improve the quality of conducive industrial relationship in the climate change of labor has not been maximized. The conclusion that could be drawn is that there was a a mal interpretation on regulation of substance and procedure of trade union as the effort to improve the quality of conducive industrial relationship in the climate change of labor has not been maximal yet. The recommendation is to revise the terms of the trade union by adjusting to more open labor climate change.

2

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1270

editor@iaeme.com

Keywords: A mal interpretation; openness, worker's organization

Cite this Article: Asri Wjayanti, Slamet Suhartono, Muridah Isnawati and Mahsun Jayadi, Establishing Trade Union in the Climate Change of Employment., International Journal of Civil Engineering and Technology, 10(3), 2019, pp. 1270-1276

<http://www.iaeme.com/IJCIET/issues.asp?JType=IJCIET&VType=10&IType=03>

1. INTRODUCTION

There is a fact that workers' organizations have not functioned effectively [1]. A conducive atmosphere is needed to build a workers' organization [2]. To create a conducive atmosphere, the state must pay attention to the international labor rights embodied in the application of the ILO Declaration on Fundamental Principles and Rights at Work, and the widespread use of the concept of 'labor standards/ core conventions'. In fact, excessive dependence on principles and not rights, a system that apply principles that are not effectively defined, the ethos of voluntarism in their implementation to the application and enforcement of laws, the decentralization of unstructured and unaccountable responsibilities, and the willingness to accept 'promotionalism' is soft as its core [3]. This declaration became the basis for plurilateral trade negotiations, because international labor standards and special mechanisms should be the basis for monitoring their compliance included in various international policy instruments, such as trade agreement [4].

When a conducive atmosphere has been established, then the workers' organization will be able to implement their efforts in improving the quality of industrial relations [5]. Improving the quality of industrial relations is strongly influenced by the condition of labor climate. The labor climate is also influenced by the political form of labor law [6].

The openness in establishing and forming workers' organizations started in 2001. Eighteen years have passed. There is a dynamic in the implementation of the right to associate in Indonesia. The purpose of the establishment of workers' organizations is often misused by certain persons. Managers of workers' organizations sometimes get excessive facilities from employers [7]. This condition can result in the role of workers organizations in performing their functions which cannot be maximized [8]. Needed to legal aids [9],[10]. From the above description, the question arises whether the regulation of substance and procedures of trade union has been able to become a means to improve the quality of a conducive industrial relations to workers climate change.

2. METHOD

This research is legal research using statute and conceptual approach. Normative legal research is a legal research that places law as the norm system. Legal materials used include primary, secondary and tertiary materials [11]. The norm system consists of principles, norms, laws, court judgments, agreements and doctrines or teachings. The method used in legal research conducted by examining the legal materials as existing library. The main legal research material, namely by analyzing the articles in the legislation relating to the protection of trade union able to become a means to improve the quality of a conducive industrial relations to workers climate change. Analysis of legal materials on the issues under the study is using interpretation or legal construction [5].

3. DISCUSSION

Establishing trade union is a form of implementation of the right to associate. the Universal Declaration of Human Rights (UN Charter) shall be no compulsion to become or not a member of any associations or unions. The peaceful of world can be achieved when the two things are fulfilled, namely equality (without discrimination) and freedom. The principle of non-discrimination is stipulated in Article 2 of the UN Charter. The principle of freedom is governed by Article 3 of the UN Charter, "Everyone has the right to life, liberty and security of person. These three basic rights are both tiered. The right to life occupies the highest position. The right to liberty is under its right of liberty. The right to security of person is under the right of life and the right to liberty. The three positions of the rights can mean the right of freedom only be restrictive when there is a violation on the right to a life.

Freedom of association has become one of the rights that has been agreed by the civilized countries to be implemented in their respective countries. This is set forth in the Declaration in international labor institutions set forth in ILO Convention No. 87 jo. ILO Convention No. 98. In addition, there is still an explanation in the ILO's conventions, recommendations and decarations. There are 7 Conventions and 10 ILO Recommendations governing the right to associate.

The regulation of the workers' organization nationally begins with the provisions of Article 28 of the 1945 Constitution, namely freedom of association and assembly, issuing of verbal and written thought and so on which is stipulated by law. This provision has been added to Article 28E Paragraph (3) of the 1945 Constitution, namely that every person has the right to freedom of association, assembly, and expression. the workers' organization are conceptualized by the 1945 Constitution as a right. Implementation of Article 28E Paragraph (3) of the 1945 Constitution, so far regulated in the Act number 21 Year 2000 concerning on Trade Union / Labor Union.

The right to associate was divided into two, namely the right to establish trade union and the right to negotiate. It was equired certain conditions in Act 21/2000 to establish trade union or workers' organizations, namely: having the minimum number of 10 persons in one company (Article 5 paragraph (1)); accepting Five Principles as the basis of the state and the 1945 Constitution as the constitution (Article 2 paragraph (1)); having principles that are not contradictory to Five Principles and the 1945 Constitution (Article 2 paragraph (2)); having objectives as per formulation (Article 4 paragraph (1)); having number of evidence of recording of notification of establishment to the Government agency in charge of the field of local manpower (Article 18 paragraph (1)) and listing names of the constituent members, articles of association and bylaws; composition and name of the management as the completeness of notice (Article 18 paragraph (1)).

Negotiations can be made after the Union is formed. The meaning of negotiation may be made prior to the occurrence, during and after the expiration of industrial or labor relationship. The right to negotiate held by the Trade Union must be guaranteed by the State in the rule of law. Collective bargaining rights are exercised by the Trade Union and are manifested in a collective bergaining. Negotiations between Trade Unions and employers should be performed voluntarily. Unfortunately, the act no 21/2000 limits only the legitimate Trade Union (in the sense that it already has a record number of registration) that can negotiate with employers for the establishment of a Collective Labor Agreement (CLA).

The workers' organization, federations and confederations of trade unions aim to provide protection, defense of rights and interests, and promote appropriate welfare for workers and

their families. Not all of those functions are carried out by workers' organizations [12]. Practically, there is a deflection of trade union functions. There are organizational leaders of workers who perform dual functions in running their organizations. As if to fight for the interests of workers, but on the other hand also still carry on the mission of employers with bad faith.

Climate change of labor is strongly influenced by the politics of law in Indonesia. The concept of employment was originally private. This is reflected in the enactment of Law Number 22 Year 1957. There is quasi labor justice through the Regional Industrial Relations Dispute Settlement Committee (P4D) and the Central Industrial Dispute Settlement Committee (P4P). Labor lawsuits can be delivered verbally. The officer who formulates then becomes written. As time goes by, politics of employment is restored as a private concept. This is evident in the period of the enactment of Law Number 2 Year 2004. The Procedural Law used in the Industrial Relations Court (IRC) is a civil procedure law (Article 57 of Law Number 2 Year 2004). While people are not ready for the employment politics change. It is not easy for the public, especially unskill labor, to undergo the trial process at the IRC. The existence of a formal defect may result in an unacceptable lawsuit (niet ontvankelijke verklaard). The number of cases of labor losers in the IRC poses a minor or negative view with the public opinion of "IRC as a labor grave), so that workers' demands appear on Mayday as " Disband IRC ".

The regulation of workers' organizations still seems inconsistent. The analysis of these rules will be divided into two groups: substance and procedural analysis. In analyzing the substance and procedure of the workers' organization will be related to its role whether it has been able to become a means to improve the quality of conducive industrial relations to labor climate change. The regulation of workers' organizations still indicates a a mal interpretation.

The substance regulation of workers' organizations is divided into the analysis of legal subjects and legal objects. Building a workers' organization must begin with the establishment of the organization. The establishment of a workers' union organization is a right not a responsibility. Every citizen has the right to form a labor organization. When a person/group of people has a desire to form a union, it is the time when the law begins to provide protection. No party shall block or ban. Conversely, if there is a citizen who does not want to form an organization then he also can not be forced to join. So the right to form a workers organization has a positive and negative meaning.

How is it practiced in Indonesia? Article 1 Sub-Article 1 of Law Number 21 Year 2000 states: "Trade unions are organizations formed from, by and for workers both in companies and outside companies which are free, open, independent, democratic, and is responsible for advocating, defending and protecting the rights and interests of workers and improving the welfare of worker⁵ and their families". From that provision the phrase to be analyzed is "... .. an organization formed from, by, and for workers both at companies and outside companies" This provision is a mal interpretation because it contains multiple interpretations.

The first interpretation is that: "Trade unions⁷ e organizations that are formed from, by and for workers in the enterprise, which are free, open, independent, democratic and accountable to defend, defend and protect the rights and interests and increase the welfare of workers and their families; the second interpretation is that: "Trade unions are organizations that are formed from, by, and for workers outside the company which are free, open, independent, democratic and accountable to fight, defend and protect rights and interests and increase the welfare of workers and their families, for example fighting for wages and labor disputes.

The above provisions then cause some problems: can an outsourced workers become member of a labor organization in their workplace? (There is a bias of who is actually an employer of outsourced workers). There is a difference between the rule of law (legal dogma) and legal theory. Rule: the employer is a service company which provides labor. The legal theory: the employer is the one who gives the order of work).

Is the company obliged to become a member of the employers' association? This is related to the permission of a company to be able to outsource. Association is another term of organization. Association is a concrete form of the existence of the right to associate. It has been described that association is a right not a duty [13]. So no one should be obliged to join the association. This country has excessive interference. The obligation to become a member of the Employers' Association is an option. The flow of production and determination of basic work is the right of the employer and is not the right of the State.

In object analysis, there is also a mal interpretation on the right to negotiate in workers' organizations. Collective bargaining rights are part of a three-dimensional concept that includes the rights to organize, bargain and strike [14]. The right to organize means the right to exercise the organization and is protected against anti-union action. The right to negotiate is made by the Trade Unions during industrial relations. The right to strike is a right that can be exercised as a last resort if the negotiation fails [15].

Article 140 of Law Number 13 Year 2003 on the condition of strike shall be at least within 7-working days before strike is executed. Workers and trade unions shall give a written notification to employers and agencies in charge of local employment. Notification as referred to in paragraph (1) shall at least contain: time (day, date, and hour) begins and ends the strike; strike place; the reasons and causes for having to strike; and the signature of the chairman and secretary and or the respective chairman and secretary of the union / labor union as the party in charge of the strike.

From that condition there is no limit to how many days the strike can be executed. In practice strikes have been executed by workers / unions are different; from one day until the fulfillment of the demands. It is a show of force of the workers more than the employers. Employment law is in charge of providing balanced protection between employers and workers. The form of protection for workers is the fulfillment of welfare. The form of protection against employers is the creation of market mechanisms. These two poles are sought in harmony in the form of agreement, either by win-win solution or PKB. Along with the development of the labor climate towards the era of the free market, the question remains: still need someone who will work abroad to meet the complicated requirements? While foreign workers who come to Indonesia almost unconditional. For example there are still many seafarers working Indonesian ship whose rights are differentiated compared to sailors from other countries [16].

The right to establish trade unions is without any struggle since it is a right. While the right to negotiate must be undertaken seriously. There are real actions from employers and unions. It is necessary to reformulate how the State presents in effective monitoring on the right to negotiate. The provision of correct information from the parties prior to the negotiation of PKB is needed for the purpose of effective communication. It takes concrete steps to confirm the initial information on the subject of negotiation. The openness of the employer on the products and its production process has now become a necessity to increase turnovers of the company. Again, there is still no regulation in Indonesia.

In procedural analysis, there is a mal interpretation on regulating procedures in establishing workers' organizations. As a result of the existence of a mal interpretations on substance and procedure, the role of workers' organizations in their efforts to improve the

quality of conducive industrial relationship in the climate change of labor has not been maximized.

4. CONCLUSION

Freedom of association has become one of the rights that has been agreed by the civilized countries to be implemented in their respective countries. There is a mal interpretation on regulating the substance and procedure of rights of association. The right to associate was divided into two, namely the right to establish trade union and the right to negotiate. The right to establish trade unions is without any struggle since it is a right. While the right to negotiate must be undertaken seriously. There are real actions from employers and unions. Negotiations can be made after the Union is formed. The meaning of negotiation may be made prior to the occurrence, during and after the expiration of industrial or labor relationship. The workers' organization, federations and confederations of trade unions aim to provide protection, defense of rights and interests, and promote appropriate welfare for workers and their families. Climate change of labor is strongly influenced by the politics of law in Indonesia. The concept of employment was originally private. While people are not ready for the employment politics change. It is not easy for the public, especially unskill labor, to undergo the trial process at the IRC. The existence of a formal defect may result in an unacceptable lawsuit. The substance regulation of workers' organizations is divided into the analysis of legal subjects and legal objects. A mal interpretation in the analysis of legal subjects is a state that requires employers to become members of associations that need outsourcing workers. A mal interpretation in the analysis of legal objects is the limit of the number of days that can be strike. A mal interpretation on regulating the substance and procedure of trade union which resulted in efforts to improve the quality of conducive industrial relationship in the climate change of labor has not been maximized.

ACKNOWLEDGEMENTS

Thank's for Ministry of Research, Technology and Higher Education of the Republic of Indonesia

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