

Factors Affecting Legal Development- Evidence from Vietnam's Trade Union Law

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Abstract:

Purpose: The purpose of this study is to analyze the factors that influence the process of building trade union legislation. A law that is important in regulating current labor relationships in Vietnam

Methodology: meta-study of methods of document analysis and use of comparative evidence in the legal documents of the state of Vietnam related to trade unions

Results: A meta-study of the main factors, the position of each factor and the scope of influence in law-making and the implementation of trade union law in Vietnam

Conclusion: Study suggests groups of policy solutions to develop trade union laws in Vietnam

Key words: law, trade unions, vietnam

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1. Introduction

First of all, legal development is a type of social design, consisting of building for society a "drawing", a framework, model, contributing to the shaping and orientation of society according to a certain system of conventions. legal development activities are essentially the creation of legal regulations - the rules of behavior - to influence social relations, making them follow the framework that society wants. These frameworks will provide a code of conduct, model the behavior of members of society, refrain from performing or being compelled to perform certain acts, or will behave like this and not otherwise. creates frameworks for changing behaviors that tend to hinder development (especially the behavior of public servants) and vice versa.

Legal development comes from the needs of society, in regulating social relations. This need for adjustment, along with rights and interests, largely coincides with the wishes of individuals and groups in society. Legal development activities are not only in the general operation of society, but with the legal is built proactively, "first-hand", "prevention" of society in the process of adjustment, also shows social orientation.

Legal development is operated by diverse materials from life, subject to many dimensions from different aspects and factors in society. From common factors such as: economy, politics, culture, society, international context, legal consciousness, historical traditions to direct factors such as organization, capacity, skills, drafting techniques, scope, nature, objects of adjustment ...

Legal development, in turn, also has a strong impact on social aspects. It is not only a mainstream activity contributing to creating a legal basis for the adjustment and orientation of social relations, but also a system of corresponding social information expressed through the content and mode of

adjustment of legal. Legal development contributes to the normization of other social norms such as ethics, customs, customs, rules of political and social organizations, diversifying ways and increasing the effectiveness of regulating social relations.

The Constitution of the Socialist Republic of Vietnam affirms that "Trade unions are socio-political organizations of the working class and of workers together with State agencies, economic organizations, social organizations to care for and protect the rights of cadres and workers, officials and other workers; participate in state and social management, participate in inspection and supervision of the activities of State agencies and economic organizations; educating cadres, workers, officials and other workers to build and protect the Fatherland" (Pham, 2018)

Trade unions are broad socio-political organizations of the working class and of workers, established on a voluntary basis, members of the political system of Vietnamese society, under the leadership of the Communist Party of Vietnam; representing cadres, civil servants, workers and other workers (here as collectively referred to as employees), together with state agencies, economic organizations, social organizations to take care of and protect the legitimate and legitimate rights and interests of employees; participate in state management, socio-economic management, participate in inspection, inspection and supervision of the activities of state agencies, organizations, units and enterprises; propagating and mobilizing workers to study and improve their professional qualifications and skills, obey the law, build and protect the socialist Fatherland of Vietnam. (Article 1 of the Trade Union Law 2012)

As such, trade unions are professional socio-political organizations, the largest mass organization of the working class and the working people. Trade unions appear when workers are aware of collective strength and take care to protect their own rights. The trade union was originally just one that was created to fight and limit the exploitation of employers, not one with as much power as it is today. The development of trade unions is associated with the growth of the working class, with the development of industry, industry and the association of employers. It is in that development that trade union activities are also promoted and gradually occupy an important position in the system of social organizations, as well as in the lives of workers. From being recognized only in a narrow range, today trade unions have been recognized within the whole of society.

The promulgation of the Trade Union Law is an objective necessity, meeting the activities of trade unions in the process of national development. Despite this, formulating existing trade union laws is a difficult task due to the rapid development of various types of enterprises, the diversity of industrial relations and the requirement to effectively enforce trade union rights; the functions and tasks of trade unions are broad, spread out, lack of concentration, have definitely affected the quality and effectiveness of trade unions in the field of representation, protecting the legitimate and legitimate rights and interests of workers.

In Vietnam, the participation of society in legal development is recognized in Article 28 of the 2013 Constitution, concretized in Article 5 of the Law on Promulgation of the 2015 legal document "ensuring publicity and democracy in receiving and responding to opinions and recommendations of individuals, agencies, organize in the process of developing and promulgating legal documents." The mechanism of social participation in legal development not only ensures the rights of citizens, in order to attract and promote the creative capacity of the people but also increases the State's responsibility in the process of creating legal products to meet social needs and serve people.

In the context that the Trade Union Law (2012) needs to be adjusted a number of provisions to promptly institutionalize the constitution, the identification of factors affecting the development of trade union laws can contribute to the development of legal decisions and policies affecting behavior, the rights and interests of those affected by the law.

2. Methodology

Research methods are the principles and ways of scientific activity that aim to achieve objective truth on the basis of scientific proof. This study uses documented overview methods on the basis of scientific approaches.

The principle of objectivity in scientific research requires the examination of things and objects of study as it is, without adding, not fabricating. For the state and the law it is required to study them as they already exist in objective reality, In real relationships. (Reiss & Sprenger, 2014)

The principle of considering things holistically is a very important requirement to shed light on the nature of the state and the law. Since the state and law are two phenomena that are particularly related to all phenomena of the upper architecture as well as infrastructure, failure to understand the relationship between them will lead to a one-sided, distorted perception of their nature. (research & 2010, n.d.) Some scholars, when studying the state and the law, separate these two phenomena from infrastructure, so it is impossible to scientifically explain their nature and basic characteristics. (Venable et al., 2012)

To clarify the nature of the state and the law also requires a specific historical perspective, attaching them to certain stages of development. (Maguregui et al., 2008) emphasized: *"In science it is important to consider how each problem from a certain point of view has appeared in history, what major stages of development it has gone through, and stand from the point of view of that development* so that you have become what it has become now."

In addition to the above general research methods, state and law reasoning also uses their own methods for research. Private methods are often used to solve certain tasks during research, to explain, evaluate and conclude on certain specific problems of the state and law on the basis of the application of common methods.

The method of analysis and synthesis is a widely used method, often in the process of researching the state and law. Analysis is a method of dividing the whole or a complex problem into simpler parts, aspects, and elements for studying and clarifying the problem. For example, in order to be able to solve the problems of the state, reasoning must "separate" it into more specific issues such as characteristics, functions, forms ... for research (Smith et al., n.d.) . Or in each of those big problems it's broken down into smaller problems for deeper analysis. (Trost, 1978)

The method of scientific abstraction plays a very important role in the theory of the state and the law. Scientific abstraction is the method of thinking on the basis of separating the common from the private, temporarily removing the individual in order to keep the common. By abstraction we can overcome outward, random, transient, unstable phenomena in order to reach the inevitable, substantive and stable common. (Years & 1983, n.d.) As a theoretical science, it is the task of building a general knowledge system with a system of concepts, categories and basic theories, state and law reasoning must necessarily use the method of scientific abstraction. The method of scientific abstraction and one of the specific methods of reasoning about the state and the law.

The Comparative Method (Lancaster et al., 2014) is a research method applied in various scientific fields including state and law reasoning. Applying a comparative method to research that can detect similarities and differences of state and legal phenomena that have existed historically; at the same time analyzing the causes of such uniformity and difference (Merkel et al., n.d.) . By comparing the knowledge system in the theory of the state and the law obtains objectivity and science. (Green, 1988)

3. Results and findings

In the current conditions in Vietnam, there are many new factors, affecting many dimensions on trade union law-making activities. Problems with economic management mechanisms; the status of the employee; diversity of employers; the renewal of the system of trade union organization, international integration and the impact of the 4th scientific revolution (4.0 The above factors set out the requirement in the work of building the law on trade unions to renew themselves strongly and comprehensively to affirm their position in society and the political system.

Economic management mechanism

Since 1986, there have been many economic sectors in Vietnam, including the state, private and mixed economies. Private sectors make the appearance of private enterprises (including FDI enterprises). The need to protect the rights and interests of workers in new labor relations. Therefore, trade union law-making must be renewed to meet new needs (Studies & 2012, n.d.)

The new management mechanism with a variety of forms of ownership entails many employers and management methods. The business mechanism according to the principles of market economy, accounting and autonomy parallel exists with the "state management mechanism", orders, focus ... it still exists as a legacy of the old management mechanism in some state-owned enterprises. Labor-based distribution has been more clearly affirmed, in fact the dominant mode of distribution, but interacts with the mode of distribution by ownership. Accordingly, the interests of each subject are different and there may be collisions. The mechanism of operation of the Trade Union accordingly, both affected by the influence, must overcome the problems arising in the interaction of the new mechanism and the old mechanism.

The legal system for regulation and management in the new mechanism is also formed. About 600 laws and laws relating to trade unions and organizations were born. In particular, "there are 10 types of legal provisions related to trade union activities in FDI enterprises (including Law, Ordinance, Decree, Circular, Directive, Regulation, Decision, Charter, Resolution of the Executive Board of the Vietnam General Confederation of Labor and the Enterprise Collective Labor Agreement) related to 6 issuers (National Assembly, The Government, ministries, The Vietnam General Confederation of Labor, the Hanoi Federation of Labor and parties in industrial relations in FDI enterprises). Understanding and applying the law becomes a requirement of trade union officials (employees) at the grassroots level. (Ming, 2015)

Trade unions participate in state management, such as: contributing to the stability and development of enterprise production; ensuring employment and income of employees; monitor and urge the full implementation of insurance, taxes... The equal status of the Trade Union and the right to information about enterprises of employees become objective requirements, not only in the protection of workers' rights but also in the function of participating in management.

The process of international integration, Vietnamese enterprises and trade unions must also approach and participate in the implementation of a series of new issues. Enterprises interested in labor

productivity; Rights and benefits of employees; international standards and conventions, such as ISO, corporate social responsibility. (Chen, 2012). Trade unions well solve the issue of social consensus, two-party and trilateral relations, handle industrial relations conflicts ... The international nature is gradually cleared through the increasing requirements from the market in terms of management, labor, environment ... Both businesses and unions. This is also a "pressure" and also a push for the construction of the law on trade unions on the port day to be completed, contributing to the whole country to build a democratic, fair and civilized society.

The position of workers in the period of international development and integration

The process of innovation has changed the relationship between workers and trade unions. The positive trend is the closer relationship between the rights and interests of members and the implementation of the labor protection function of the Trade Union in resolving industrial relations situations. The opposite direction is whether the law on trade unions protects its member rights and interests and whether the trade unionists really trust to delegate responsibility to the Trade Union as the representative of its rights. (Studies & 2012, n.d.)

Both of the above directions are affected by the requirement to promote CNH, THE OS, specifically the requirement for technological innovation, management methods, cultural qualifications, skills to access regional and world markets ... Accordingly, Vietnamese workers are gradually familiar with the trend of socializing production, intellectualizing labor, globalizing commodity standards ... Many Vietnamese enterprises participate in the simple segments of global production (electronic assembly, textiles, garments, seafood processing ...) which also appears a great demand for labor that does not require high skills. Therefore, there is still a fairly large percentage of employees who simply participate in a modern production process. This is especially true for the group of businesses involved in the assembly segment. In such enterprises, besides the group of knowledgeable, skilled and experienced workers, the grassroots trade union has a section of trade unionists who have not yet shaped the industrial labor style, have not yet made the habit of coordinating work in the organization. (Snow, 2020).. They are simple labor groups, fairly monotonous work, high labor intensity, low income, causing this group of workers to sometimes react beyond the necessary. The complexity of trade union management has also increased.

Along with the industrial labor style, Vietnamese workers also gradually changed their habits and behaviors in industrial relations. From strictly obeying orders, complying with plans and organizations, employees turn to industrial labor style, considering the quality and progress of production, internal regulations, collective labor agreements and higher as the brand of enterprises, national industrial brands are the values of professional culture. Issues arising from labor relations are also resolved by legal means, with measures of negotiation, dialogue or litigation, pressuring employers to achieve legitimate benefits for employees. (Chen, 2012)

Diversity of employers

Employers are one of the "two sides" of industrial relations in enterprises and are partners of the current Trade Union. The NDG was different in many ways. In terms of nationality, besides the traditional group of Vietnamese managers, the management team is a foreigner and the group representing employers are non-Vietnamese CEOs. Proficient use of foreign languages to be able to dialogue and discuss with partners is quite high and specific to the grassroots employees.

There are other situations in the past. In the 1990s, labor relations were primarily fully exercising the rights ensmity ensmity of laws, labor contracts, collective labor agreements. In recent years, issues

related to interests have emerged more and make up the majority of collective labor disputes. Collective labor disputes over interests arising in practice are diverse, even if the parties in labor relations do not violate legal provisions or collective labor agreements. These issues emerge from real-life situations that, with already, no longer fit the legal framework. Since then, there have been disagreements between the employers and the employees. Often the employees ask employers to give them the benefits they think they deserve: bonuses, raises... While the employer believes that he/she has fulfilled its obligations and commitments. (Poetry & 2005, n.d.)

In order to resolve disputes, the law-making work of trade unions must gather legal facts, develop arguments for effective negotiation... also from the fact, when the need for benefits frequently appears and is acknowledged, it will tend to gradually become a right. This is the role that contributes to the construction and improvement of the law of the Trade Union but is little talked about. Foreign partners (including employers and employees) also often bring the traditions of their companies and culture into Vietnam, including things that are not suitable for Vietnamese workers (Nguyen, 2012). Therefore, there are many collisions due to cultural differences. Understanding the culture of partners to seek similarities in behavior and contribute to building harmonious industrial relations is also a natural requirement for our employees today. Therefore, the development of trade union laws must take into account legal support, bargaining skills and encourage the improvement of the capacity of trade union officials at all levels. (Hiru Chi, 2010)

Innovation of the union organization system

For the domestic trade union system, the organization and operation of our trade unions is gradually shifting from "tower shape" to combining with "network". The organization tower is a 4-level trade union with the characteristics of superiors making decisions and directives; subordinates enforce. The advantage is focus, unity, but the disadvantage is that the information from top to bottom must go through many levels, leading to not timely. Policy: Superior trade unions "towards the grassroots" jointly solve problems and renew the leadership method from administrative direction to direct and regularly support and create conditions for grassroots trade unions to actively perform their tasks. This direction of organizational innovation is being implemented. The strengthening of capacity, rights and relative independence status for grassroots trade unions is forming a "network" where each eye has a specific position and role. (*Vietnam General Confederation of Labour*, n.d.) (Figure 1)



Relations with the world's trade unions and trade unions in each country are also wider, more multilateral and diversified. Actively integrating, willing to be friends and a reliable and responsible partner with international friends is also the foreign policy strategy of Vietnam Trade Union (Sciences & 2021, n.d.) . Many experiences of trade unions in some areas that we are still surprised, such as: globalization, handling the problems of industrial relations in the market mechanism... They have been exchanged and learned. New ways of doing things, new concepts of sustainable employment, corporate social responsibility, collective labor agreements, negotiations between the two sides... are important grounds for the work of building trade union laws to ensure reasoning and practicality, meeting the activities of Vietnamese trade unions in the current conditions. (Pham, 2018)

The process of industrialization, modernization and international integration poses many problems for Vietnam Trade Union. Some foreign corporations and enterprises have many trade unions and consider trade unions as a policy counterweight to the state and counterweights to employers, when entering Vietnam can carry different concepts. The Convention of the International Labour Organization (ILO), of which Viet Nam is a member, has a provision on "Freedom of Association"; The Trans-Pacific Partnership (CPTPP) has a provision to commit to "trade union freedom", while our country is

maintaining a unified and unique trade union system, the Vietnam General Confederation of Labor. It's a problem to take care of, find a solution. In particular, cptpp will make the phenomenon of "trade union competition" and trade unions are now forced to renew themselves if they do not want to become "second choice".

Commenting on this situation, many views said that if the Trade Union operates effectively, boldly fights, speaks up for the voice and legitimate pressing of workers, then the newly born trade unions will join the Vietnam Trade Union organization, creating more strength for the Vietnamese trade union organization. On the contrary, if the trade union operates superficially, ineffectively, does not fight for the rights of workers or fights ineffectively, the organizations of the newly born trade union will not join the Vietnam Trade Union. They will unite themselves to protect the rights of workers. At that time, surely the current trade union was just a form, without real power. This is a huge challenge.

From the above factors, the work of building the law on trade unions sets urgent requirements, which are:

The Trade Union Law must be strongly renewed, applied from grassroots trade unions to the Central. The law on trade unions ensures that the operation of the grassroots trade union must be truly "molted", in order to meet the requirements set out in the new situation.

Trade union law must aim to improve the capacity of employees. The current mechanism of cumulation of the grassroots employees has also revealed many shortcomings. Professionalizing the staff is an important suggestion from practice.

The trade union law must be a tool to support trade union activities, help trade unions fulfill their functions, affirm their position in society and the political system of our country as the common responsibility of the Party, State and other social organizations.

Inshort, under the current conditions, the union is the representative to protect the legitimate rights of workers. When the law stipulates that trade unions together with State agencies, economic organizations and other social organizations take care of and protect the rights of workers, participate in inspecting and supervising the implementation of the provisions of law, the rights of trade unions are concretized to different levels. In practice, the implementation of the above provisions of the Trade Union Law also depends on many factors, including the practical capacity of the trade union itself. Therefore, trade union law development needs to adhere to the practical factors that are arising, contributing to strengthening and improving the effectiveness of trade unions in the political system in Vietnam.

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