OPERTATION IN REPRESENTATIVE ORGANIZATIONS OF EMPLOYEES UNDER THE CURRENT LAWS OF VIET NAM

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ABSTRACT

Purpose: The purpose of the article is to research the theoretical issues and practical operation in representative organizations of employees under the current laws of Vietnam, based on which the author proposes some recommendations regarding the operation in representative organizations of employees under the current laws of Vietnam.

Theoretical framework: The research employs theories about the organizations of employees under the current laws of Vietnam., regulations on the organizations of employees under the current laws of Vietnam., and mechanisms that apply to the organizations of employees under the current laws of Vietnam.

Design/methodology/approach: The research employs three common methods in legal science research: (1) Legal analysis method; (2) Legal efficiency evaluation method; and (3) Comparative legal method. The above research methods help compare and contrast theories of the organizations of employees under the current laws of Vietnam, and bring out some essential findings.

Findings: Some valuable findings have been revealed such as the formulation and development of the organizations of employees under the current laws of Vietnam, some theoretical issues, and limitations on regulations on the organizations of employees under the current laws of Vietnam.

Research practical and social implications: The article proposes some tasks remaining undone, and further tasks will be fulfilled in the future. The article may support many developments in future research in Vietnam.

Originality/value: The research on the organizations of employees under the current laws of Vietnam has become more and more urgent and very important in Vietnam.

Keywords: Labor, Labor Law, Employees/Employers, Trade Union, Viet Nam.

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Projeto/metodologia/abordagem: A pesquisa emprega três métodos comuns em pesquisa de ciências jurídicas: (1) método de análise jurídica; (2) método de avaliação de eficiência jurídica; e (3) método jurídico comparativo. Os métodos de pesquisa acima ajudam a comparar e contrastar teorias das organizações de funcionários sob as leis atuais do Vietnã, e trazer algumas conclusões essenciais.

Constatações: Algumas descobertas valiosas foram reveladas, como a formulação e desenvolvimento das organizações de funcionários sob as leis atuais do Vietnã, algumas questões teóricas e limitações sobre as regulamentações sobre as organizações de funcionários sob as leis atuais do Vietnã.

Investigação implicações práticas e sociais: O artigo propõe algumas tarefas que continuam por fazer, e outras tarefas serão cumpridas no futuro. O artigo pode apoiar muitos desenvolvimentos em pesquisas futuras no Vietnã.

Originalidade/valor: A pesquisa sobre as organizações de funcionários sob as leis atuais do Vietnã tornou-se cada vez mais urgente e muito importante no Vietnã.

1 INTRODUCTION

Currently, the operation in employees’ representative organizations in Viet Nam is experiencing many challenges and opportunities. These organizations play an important role in protecting the rights and interests of employees.

However, it is not always easy to conduct these activities. There are limitations in financial and organizational capacity, and employees’ participation.

Joining employees’ organizations is a pretty important matter. There have been many studies and reports conducted in Viet Nam in this aspect by Government agencies such as Ministry of Labor, Invalids and Social Affairs (MOLISA) and the Center for Industrial Relations Development (CIRD), along with independent studies by other researchers. These studies focus on freedom of association and participation in employees’ organizations.

Some authors, such as Nguyen Van Binh and Pham Thu Lan, translated and studied the "Freedom of Association - Compendium of principles and decisions of the ILO Committee on Freedom of Association" which provided a system of ILO principles and decisions on freedom of association. This research covers a system of principles and explanations about the act of participation in employees’ organizations, including the establishment of new organizations, membership in existing organizations, and participation in the operation of employees’ organizations. In the Report on ‘Viet Nam Industrial Relations - 30 Years of Development’ (2016) of the Centre for Industrial Relations Development (CIRD) and the ILO - Viet Nam Industrial Relations Project, there were also assessment reports on the development of industrial relations, characteristics of subject matters in the industrial relations, and some behaviors of participation in employees’ organizations. In 2012, Do Quynh Chi wrote a report titled "Employee Participation in Viet Nam" which analyzed a number of cases of participation in employees’ organizations in large FDI enterprises in Viet Nam. This report also mentioned the socio-economic development of Viet Nam from its Reform time (Doi Moi) to present time, as well as the employees’ membership and participation in the operation of employees’ organizations.

Although there have been many studies on how employees participate in organizations and their characteristics inside and outside Viet Nam, there has been no complete and systematic study on the operation in these employees’ organizations in Viet Nam. In particular, there has been no study showing the trend where there are many employees’ representative organizations in one enterprise. Before the Labor Code 2019 took effect, employees could only establish or join grassroots trade unions under the Viet Nam General Confederation of Labor.
Therefore, there have been no researches conducted on the operation of employees’ representative organizations in a competitive context.

This shows the necessity of studies on the participation in representative organizations of employees in Viet Nam. This research focuses on analyzing aspects that need improving and proposing solutions and evaluating the effectiveness of these activities.

2 THEORETICAL FRAMEWORK

According to Article 22 of the International Covenant on Civil and Political Rights (ICCPR), everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his/her interests. The right to freedom of association in Article 22 of ICCPR refers to three main aspects: (1) the establishment of new associations, (2) the participation in existing associations (membership), and (3) the operation and administration of associations, including seeking for and mobilizing funding sources (Department of Legal Affairs - Ministry of Labor, Invalids and Social Affairs, 2017). The operation of employees’ representative organizations is one of three aspects of the right to freedom of association, and is also a right guaranteed by the provisions of the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR). This is considered one of the fundamental rights of employees, which helps protect their interests and ensure the fairness in industrial relations.

Thus, Employees can participate in activities of representative organizations that they have established or participate in. This can include the participation in decision making, participation in the organizations’ activities, participation in fighting for individual and organizational rights, and even participation in organizational leadership.

Forms of activities in a representative organization include the participation in the development of the organization's charter and operating principles, participation in the organization's activities, and participation in the organization's fight against employers.

Firstly, the participation in the development of the organization's charter and operating principles. Employees are members of a trade union and have the right to participate in the process of formulating the charter and operating principles of the organization they join. During this process, it is important to ensure that the charters and principles developed comply with national laws. (Fullagar, C., Clark, P.F., Gallagher, D.G., and Gordon, M. E., 1994). The participation in the development of the organization's charter and principles may include the
registration of the charter with public authorities. The ratification or approval by public authorities shall merely verify the legality of such charter, and shall not interfere in the process of drafting and ratification of the charters by the employees’ representative organization. Participating in decision-making of the representative organizations is also one act of employees. This action demonstrates the proactiveness and respect for their own role in the decisions and ratification of agreements of the trade union organization.

Secondly, the participation in organization’s operation includes developing work agendas, voting, attending meetings, capturing information about trade union’s agreements, and participating in activities to support the trade union. The first act in an employees’ representative organization involves carrying out legitimate activities aimed at protecting the professional interests of the organization (Julian Barling, Clive Fullagar, E. Kevin Kelloway, 1992). This requires employees not to be completely dependent on agencies holding power and ensures that employees' activities do not affect the rights of other members. Therefore, activities in employees’ representative organizations should be limited to the professional and occupational activities of employees. In addition, it is necessary to ensure that employees are not involved in political activities and do not abuse of rights and benefits of the organization, which are beyond the actual functions of the organization. It is necessary to differentiate activities in an employees’ representative organization aiming at protecting the interests of the organization and related to activities within the organization from employees’ acts of taking advantage of the organization to gain personal benefits. Participating in the organization’s operation appropriately with the goal of protecting and improving employee rights is an important part of building strong solidarity and a fairer and more equitable working environment.

Thirdly, the participation in the organization's fights. Participating in organization’s fights includes a variety of acts. First, employees can participate in proposing the organization's demands. In addition, they can participate in different forms of fights such as strikes, sit-ins, demonstrations, and similar activities. Participation and leadership in the fights of employees’ representative organizations are an essential need in industrial relations. They aim to protect the rights of employees and resolve collective industrial disputes without having to comply with requests from employers or public authorities. Expressing opinions and protesting for the rights, interests and lives of trade union members are also considered legitimate acts of fights (Clive Fullagar & Julian Barling, 1989). Acts of fights also include the representation of an employee by an officer of the organization in situations of dispute or litigation. In addition, employees can boycott as an act of struggle. A boycott involves the trade union, where trade union
members continue to work without opposing the employers, but rather, they boycott in response. Employees can also participate in the fight by participating in trainings organized by employees’ representative organizations. Strikes are an important part of the fight to promote and protect the socio-economic benefits of employees. However, strikes should only be related to economic and professional interests, strikes should not be purely political in nature and should be decided in advance through negotiation. It should be noted that employees shall not be able to participate in strikes or lead strikes in cases prohibited or restricted by national laws. For example, strikes shall not be applicable to civil servants exercising authority on behalf of the State, in the public service sector, or in the essential service sector. Participating in the organization's fight is one way for employees to protect and improve their rights and interests. However, it is necessary to comply with specific regulations and conditions to ensure effective and legitimate fighting.

Fourthly, the participation in leadership of the representative organization. Participating in leadership of the representative organization can be in many forms, such as: Taking leadership positions in the organization at different levels; Taking on the functions of officers; Leading working groups within the organization; Representing employees in the enterprise and influencing employees’ rights and interests, working conditions and economic performance of the enterprise; Freely running for representative positions and electing his/her representatives; and Developing organizational structure. In their representative organization, employees have the right to build the organizational structure by running for leadership positions or electing people they trust for leadership positions of that organization. Employees and their organization jointly determine the conditions for the election of the organization's leadership representatives, as well as the terms and tenures of that structure in the organization. They also decide on their own the number of leaders and the organizational structure of the representative organization. Employees and their organizations also reserve the right to self-determine the eligibility and conditions of a trade union official. In putting these regulations in place, they are accountable to ensuring equality and non-discrimination.

3 LITERATURE REVIEW

Opertation in Representative Organizations of Employees Under the Current Laws of Viet Nam


4 METHODOLOGY

This study mainly used literature review and secondary data research methods. This method was used to study on the thematic topic to enlighten theoretical aspects about the operation of employees’ organizations; analyze the current status of legal regulations on the participation in employees’ organizations in Viet Nam and make recommendations to improve the laws.

5 RESULTS AND DISCUSSION

5.1 ACTUAL OPERATION IN EMPLOYEES’ ORGANIZATIONS

According to the above analysis, activities in the employees’ organizations can include participating in developing charters and operating principles, participating in the organizations’ activities, and participating in the fights, and participating in the leadership/management unit of the employees’ representative organizations. In recent years, the participation in the operation of employees’ organizations has mainly been reflected through the participation in the activities of grassroots trade unions under the Viet Nam General Confederation of Labor.
Operation in trade unions is also reflected via requests for trade unions to participate in enterprises’ activities related to the exercise of trade unions’ rights and to provide comments on decisions related to employees, payroll, salary deduction, bonuses, working hour, rest hour, labor regulations, labor discipline, labor contract, termination of labor contract, material liabilities (National Assembly, 1994) (National Assembly) (National Assembly, 2019). Employees also participate in representative organizations in collective negotiations, participate in employees’ decisions, and attend employees’ conferences. According to the Viet Nam General Confederation of Labor, the rate of employees’ conferences is much higher among State-owned enterprises than private enterprises. While 93.87% of state-owned enterprises organize annual employees’ general meetings, that rate in private sector is only 60.27% (Do Quynh Chi, 2012).

According to the research team of the Thuongmai University, employees’ participation in the decision-making process in the grassroots trade unions remains quite limited. This participation is mainly reflected in decisions on personnel made by the executive committee, with 84.93% of (surveyed) employees reporting that they used to participate in this kind of decision. Some reasons explaining this situation include employees' shyness and hesitation in expressing, trade union activities often following the direction of senior trade unions or of businesses’ leaders, and trade unions’ lack of financial independence (Thinh, Nhan, Xuan & et al., 2018). Normally, employees participate more actively in organized movement activities and activities related to the care for employees' rights and interests by the trade unions independence (Thinh, Nhan, Xuan & et al., 2018). Some grassroots trade unions also organize dialogues, develop collective labor agreements, and provide trainings on occupational safety and hygiene to attract employees’ involvement (Thinh, Nhan, Xuan & et al., 2018), however, the number of participants is still small.

Employees joining the trade unions’ leadership and operation are often those holding important positions in the enterprises, such as team leaders, line leaders or people responsible for the work, performance and managers at different levels. They have significant power and influence over their team members and are often involved in resolving employees' problems and disagreements (Do Quynh Chi, 2012). Companies, for example Piaggio and Canon, have chosen team leaders to be the representatives of the employees. Recently, there has been an increase in the active and enthusiastic participation of employees in the leadership of trade unions. They actively participate in running for and electing members of the grassroots trade unions’ executive committees, although they often take this role concurrently in addition to their regular jobs, and are trusted by their co-workers (90% take the role concurrently).
Employees are willing to take over positions in the trade unions, such as group leaders, executive committee’s members, chairpersons or vice chairs (25% of employees voluntarily join the trade union leadership) (Thinh, Nhan, Xuan & et al., 2018). They actively participate in trade union leadership because they feel honored to be trusted and elected by their colleagues, as well as have the opportunity to express their views and protect employees' rights and benefits.

Regarding participation in the fights of trade unions, reality shows that fighting often take place outside the trade unions, while the formal trade unions often focus on organizing such activities as movements, sports, culture and protection. According to the assessment of the Thuongmai University’s research team, employees participate in strikes and collective work stoppages spontaneously without the leadership of the trade union (Thinh, Nhan, Xuan & et al., 2018). According to statistics from 1995 to 2017, there were over 6,000 strikes and collective work stoppages in more than 40 provinces and cities, most of which were illegal (Centre for Development of Industrial relations, Project Industrial relations in Viet Nam - ILO, 2016).

5.2 EVALUATION ON THE PARTICIPATION IN GRASSROOTS EMPLOYEES’ ORGANIZATIONS

In the Viet Nam context, activities in representative organizations have been specifically demonstrated through activities in grassroots trade unions under the Viet Nam General Confederation of Labor. The Labor Code 2019 has opened up an opportunity to have many employees’ representative organizations in an enterprise. However, previous experiences from the participation in trade unions can also provide valuable lessons for the future. There are a number of characteristics and reasons in terms of employees’ participation of trade unions in Vietnamese enterprises.

- Firstly, trade union activities are often less about fighting and protecting, instead focusing on movement, competition and uniting activities.

Activities such as negotiation, bargaining, fighting and protection, which are the core activities of representative organizations, are not conducted regularly or if they are, usually they are only perfunctory, reducing the attraction of participation in trade unions to employees. However, reality also shows that the number of employees joining trade unions in the FDI sector is often very high and accounts for the majority. This shows the notable characteristics of employees in the FDI sector, as well as the awareness level of employees in the FDI sector, these can be factors based on which suggestions and recommendations could be made future.
improvement. They can provide a basis for developing trade union activities in FDI enterprises and promoting employees’ participation.

- **Secondly, there is a group of employees who particularly have a sense of trade union spirit, and they show interest and wish to participate in leadership roles in trade unions.**

  The main reasons are their conditions i.e. positions and capacity which are outstanding better than the majority of other employees, as well as their fighting spirit, and their feeling of being honored and respected if they can represent others. These people have the potential to become the core force to develop the uniting movements and employees’ organizations among employees. If they are facilitated and encouraged, they can advance to become leaders of employees’ organizations, act more effectively, and better protect the rights and interests of employees. With appropriate support, these passionate trade union leaders can play an important role in building an equitable, fair and prosperous environment for workers. At the same time, their influence and leadership can also inspire other employees to participate and proactively promote union activities.

- **Thirdly, the participation in fighting activities of employees’ representative organizations remains limited in forms and is often perfunctory.**

  Contents directly related to employees' rights and interests, which were regulated by laws, have not received adequate attention from employees. There are many psychological reasons behind this, such as shyness and hesitation in confrontation, as well as hesitation to mention individual interests, these remain major barriers to fighting.

  Lack of funding and capacity to act within limited time also affects the efficiency, performance and income of employees. The representative organization's finance is also experiencing difficulties, limiting their activities. This results in the representative organization's reliance on external financial sources, partially hindering and limiting the representative organization's operation.

5.3 **RECOMMENDATIONS**

In the new industrial relations situation, after the Labor Code 2019 was issued, there have been many new regulations to ensure the right to organization of employees. One of the notable points is that the regulations allow organizing more than one employees’ organization within an enterprise. This is an important progress in the history of Viet Nam's industrial relations and creates many new opportunities as well as challenges. However, in reality, in terms of participation in employees’ organizations, there have not been many cases related to
the establishment of representative organizations other than trade unions. Therefore, it is currently not possible to summarize and draw lessons learnt. However, the experience from the participation in trade unions in previous periods can still provide some valuable recommendations for the new situation.

*Regarding the implementation, it is necessary to promote communication about the roles of employees' organizations, ensure funding, improve organizational and leadership capacity, encourage employees’ participation and create a dynamic environment for employees’ activities in employees’ representative organizations.*

- Strengthen propaganda and education on employees' rights and interests. This is very important to create proper awareness and attention of employees. It is needed to organize propaganda programs, seminars, and trainings to introduce about their rights and interests, including labor rights and social rights.

- Develop and maintain a stable funding source for the operation of representative organizations. To operate effectively, representative organizations need sufficient funding to carry out activities such as counselling, training, and protecting employees' rights and interests. It is needed to seek for support from organizations and individuals interested in employees' rights and interests.

- Improve organizational and leadership capacity of representative organizations. Trainings and technical supports help leaders and members of representative organizations better understand employees' rights and interests and how to protect them. This also helps increase their ability to organize and carry out fighting activities.

- Encourage employees’ participation and contribution in the activities of representative organizations. Create favorable conditions for employees to participate in the activities of representative organizations, such as establishing trade union chapters in enterprises. Encourage trade union members, offer them with opportunities to participate in management roles and provide feedbacks and ideas.

- Create a healthy and safe environment to promote freedom of speech and trade unions’ activities. Protect the right to freedom of organization and participation in fighting activities is core to trade unions. Creating an environment that allows employees to freely express their opinions, participate in decisions and promote union activities is an important goal.

*Regarding law improvement, it is necessary to ensure equality among employees’ organizations, and between employees’ organizations and trade unions in participating in*
negotiations, bargaining and protecting legitimate rights and interests of employees in the enterprises.

Ensuring this means ensuring healthy competition among different employees’ representative organizations in the enterprises. To ensure equality of employees’ organizations and to ensure healthy competition among employees’ representative organizations in the enterprises, the following measures and principles can be applied:

− Respect the right to freedom of assembly and freedom to establish organizations: Ensure that all employees’ organizations have the right to freedom of assembly, freedom to establish and operate as allowed by the laws. This ensures equality and diversity in the forms of employees’ organizations and encourages healthy competition among representative organizations.

− Ensure the right to participate in bargaining and negotiation: Ensure that employees’ organizations have the right to participate in the bargaining and negotiation process with industrialists or businesses. Provide representative organizations with the necessary rights and resources to conduct effective bargaining and negotiation on employees' rights and interests.

− Provide information and documents: Ensure that employees' organizations are provided with the necessary information and documents to participate in bargaining and negotiation, including information about the financial situation, labor conditions, policies and regulations of enterprises.

− Ensure equity and non-discrimination: Ensure that all employees’ organizations are treated fairly and without discrimination in the process of negotiation, bargaining, and protection of rights and interests of employees. Do not prioritize or favor any one representative organization over others.

− Improve organizational capacity: Support and encourage employees’ representative organizations to improve their organizational capacity, including bargaining capacity, legal capacity and management skills. This enhances the healthy competition among employees’ representative organizations and ensures their effective representation of employees' rights and interests.

These measures would ensure equality among employees’ organizations and encourage healthy competition, while protecting the legitimate rights and interests of employees in the enterprises.
6 CONCLUSION

Based on the theories on the operation of employees’ representative organizations and the current situation in Viet Nam, we can draw the following conclusions. The operation in employees’ representative organizations is protected by international regulations and Viet Nam’s laws. Operating in a representative organization helps employees freely express their opinions, enjoy their rights, negotiate on working conditions, protect their interests and ensure equity in the working environment. However, practical situation in Viet Nam shows that the operation of these organizations still faces many limitations, for example, trade union activities are often less combative and protective, and instead often focus on movements, emulation and uniting; there is a special group of employees who particularly have a sense of trade union spirit and they show interest and wish to participate in leadership roles in the trade unions, the participation in fighting activities of employees’ representative organizations remains limited in forms and is often perfunctory. Based on that, the research also makes recommendations on the organization of implementation and law improvement.

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