

Implementation of Enforcement on the Occurrence of Union Busting

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Abstract. The existence of the Labor Union is needed as an effort to fight for the rights of workers who are reduced or lost. Legal protection has been provided by the state for the guarantee of the right to unionize in the Labor Union Act. This study aims to analyze the legal rules governing the rights of labor unions. This legal research uses a normative juridical approach with a statute approach related to law enforcement on the occurrence of union busting. The results of the study showed that there are regulatory restrictions as the indication that a union busting crime has occurred. Actions to hinder or coerce related to the implementation of the right to associate in a certain way must be examined conditionally. Examining the substances (subject-object) and procedures for an act of obstructing or coercing the implementation of the right to unionize results in the non-fulfillment of the criminal element due to insufficient evidence. The conclusion obtained is that there is not enough evidence for the alleged criminal act of union busting; or it can be risen to a general perception that there is no guarantee of legal protection for union busting. The resulting recommendation is that it is necessary to conduct a study to provide a broad elaboration or interpretation of the formulation of Article 28 jo. 43 Labor Union Act.

Keywords: Union busting · Right to association · Evidence

1 Introduction

Like a broomstick, the presence of labor unions for the current conditions, is very much needed in Indonesia [1]. Broom sticks are tools for cleaning yards, yards, or roads, broom sticks are widely used by housing, offices or janitors which are made from sticks from tree fronds, sticks used can come from coconut or sugar palm fronds. Broom sticks are typical Indonesian household stuff. The broomstick became a symbol of a bond between workers to unite in trade unions and become strong to fight for the rights that were violated [2, 3]. The presence of the Labor Union is needed as an effort to fight for the rights of workers who are reduced or lost [4, 5].

Many efforts have been taken by trade union officials. Often these efforts are collided with regulations related to the regulation of right to unionize [6, 7]. Legal protection has been provided by the state for the guarantee of the right to unionize in the Labor Union

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Law and its implementing regulations [8]. Many of the actions taken by labor union administrators in exercising their right to unionize are hindered by employers or other parties. The act of interfering with the activities of the right to organize is a form of union busting [6, 9]. Unfortunately, not all complaints about union busting can proceed to the criminal investigation process [10].

This study aims to analyze the legal rules governing labor union rights related to union busting from the point of view of substance (legal subject, legal object) and procedures.

2 Research Method

This legal research [11] uses a normative juridical approach [12, 13] with a statute approach related to law enforcement on the occurrence of union busting [14].

3 Results and Discussion

Carrying out association activities is a manifestation the right to unionize [15]. The right to unionize is part of human rights [16, 17]. The right to unionize comes from the idea of freedom to unionize. There are three human rights according to Article 3 of the United Nation Charter. Everyone has the right to life, liberty and security of person. Freedom is the third rank of human rights according to United Nation Charter thought. Freedom is a philosophical concept [18]. It becomes a concept of rights when it has been formulated in a rule. Everyone has the same right to unionize. The implementation of similar right should be restricted [19]. So that the use of the rights to unionize does not interfere and harm to each other [20].

Article 2 of the ILO Convention Number 87 Freedom of Association and Protection of the Right to Organise Convention affirms, "Workers and employers, without distinction whatsoever, shall have the right to establish and subject only to the rules of the organization of their own choosing without previous authorization ". ILO Convention Number 87 of 1948 was followed by ILO Convention Number 98 of 1956 concerning The Application of Principles of The Right to Organize and to Bargain Collectively. Article 2 ILO Convention Number 98 year 1956 confirms, "Workers' and employers' organisation shall enjoy adequate protection against any acts of interference by each other's agents of members in their establishment, functioning or administration". These two ILO conventions affirm the right of workers to associate or organize.

Freedom of association, assembly, expressing ideas both orally and in writing, obtaining work and a decent living for humanity, and having the same position in law is the right of every citizen [21, 22]. In order to realize freedom of association, workers or laborers have the right to form and develop trade unions [23] or labor unions that are free, open, independent, democratic and responsible. The management of the labor union must take responsibility for carrying out its functions according to their rights and obligations.

The right to become a member of a trade union or labor union is a basic right of workers or labor which has been guaranteed in Article 28 E paragraph (3) of the 1945 Constitution. Every person shall have the right to the freedom of association, to assemble and to express opinions. In order to realize this right, every worker or laborer must be given the widest opportunity to establish and become a member of a trade or labor union

[24, 25]. Trade or labor unions function as a means to fight for, protect, and defend the interests and improve the welfare of workers or laborers and their families. In using this matter, workers or laborers are required to be responsible for ensuring the wider interests, namely the interests of the nation and the state [26]. Therefore, the use of these rights is carried out within the framework of harmonious, dynamic, and equal industrial relations [27].

What is a trade union? A trade union or labor union is an organization that comes from, is established by and for either enterprise-bound or enterprise-free workers or laborers which is free, open, independent, democratic and responsible to fight for, defend and protect the rights and interests of workers or laborers and improve the welfare of workers or laborers and their families (Article 1 point 1 of the Labor Union Act). Trade unions can be formed inside the company or outside the company. An enterprise-free trade union or labor union is a trade union or labor union that is established by workers or laborers who do not work in a company (Article 1 point 3 of the Labor Union Act).

Based on the definition of labor unions, an analysis on its substance and procedures has been carried out. Substance analysis is divided into two things, namely substance analysis related to legal subjects and substance analysis related to legal objects.

Analysis of the substance of legal subjects, with an emphasis on legal subjects who are bound by the right to unionize. The subject of law is the bearer of rights and obligations. Legal subjects consist of individuals and legal entities. Several questions arise regarding the substance of the existing legal subjects in the implementation of the use of labor union rights. Who can form a trade union? Those who can form a labor union are workers with a minimum number of ten people. Every worker or laborer has the right to form and become a member of a trade union or labor union. A trade union or labor union is formed by no less than 10 (ten) workers or laborers (Article 5 Labor Union Act).

Trade unions or labor unions are given a broad definition in the labor union act [28]. This definition gives the meaning that it can be interpreted that a person can become a member of a labor union inside the company or outside the company. This broad definition of the meaning of a labor union needs to be scrutinized and analyzed if a worker becomes a member of a labor union outside the company. It is questionable whether labor unions outside the company can fight for the rights of workers outside the companies they represent who have different types of business.

The legal relationship that has been created from the freedom of association on the basis of a bond to be able to represent or organize [29, 30]. The trade union administrator will have the right to take care of matters related to the industrial relations of his trade union members. The power of attorney agreement forms the basis for the implementation of legal relations between labor union officials and members. The next question is related to legal relations. On the basis of what agreement is the legal relationship between the parties to the trade union formed? The legal relationship between the parties in the labor union is formed on the basis of an agreement to grant power of attorney. In principle, workers give power to union officials to fight for their interests.

Is the right to form a trade union absolute and unconditional? Not. There are certain conditions that must be met by workers if they are going to form a labor union. What are the conditions for forming a trade union? There are two conditions for forming a labor union, namely material conditions and formal requirements. Workers can form a

labor union if they meet the material requirements, namely accepting Pancasila as the basis of the state and the UUD 1945 as the constitution, and having principles that do not conflict with Pancasila and the UUD 1945. Trade unions or labor unions, federations and confederations of trade unions or labor unions accept the Pancasila as the state ideology and the UUD 1945 as the constitution of the Unitary State of the Republic of Indonesia. Trade or labor unions, federations and confederations of trade unions or labor unions have statutory bases that do not run against the Pancasila and the 1945 Constitution (Article 2 Labor Union Act). In addition, it also has a purpose as its formulation. Trade or labor unions, federations and confederations of trade or labor unions aim to protect, defend the rights and interests of, and improve the welfare of workers or laborers and their family, as is proper (Article 4 paragraph (1) Labor Union Act).

Workers can form a labor union if they meet the formal requirements, namely:

1. Minimum number of 10 people in one company
2. have a number of proof of registration of notification of establishment to the government agency responsible for local manpower affairs.
3. attach a list of names of forming members; Statutes and bylaws; composition and name of the management as completeness of the notification (Article 5 in conjunction with Article 18 paragraph (1) of the Labor Union Act.

Is a permit required to form a trade union? No, the formation of a labor union only requires registration with the local Manpower Office. Upon its establishment, a trade or labor union, a federation or a confederation of trade or labor unions shall give a written notification to the local government agency responsible for manpower affairs for the sake of record keeping (Article 18 Paragraph (1) Labor Union Act).

Can trade unions form unions? Yes, they can. Trade or labor unions have the right to form and have membership in a federation of trade or labor unions. A federation of trade or labor unions is formed by no less than 5 (five) trade or labor unions (Article 6 Labor Union Act). Can trade union federations form a union federation? Yes, they can. Federations of trade or labor unions have the right to form and have membership in a confederation of trade or labor unions. A confederation of trade or labor unions is formed by no less than 3 (three) federations of trade or labor unions (Article 7 Labor Union Act).

Can workers become members of a trade union federation? Can workers become members of the trade union confederation? These two questions often arise in the practice of resolving industrial relations disputes. Workers can become members of a trade union, but individual workers cannot become members of a trade union federation. Individual workers also cannot become members of a trade union confederation. Members of a labor union are individual workers, but members of a federation of trade unions or a confederation of trade unions cannot work individually (Article 6 in conjunction with Article 7 Labor Union Act). In practice, it is often the case that the Federation or Confederation of labor unions represent workers individually where the worker is not a member of any trade union. The representative only uses a power of attorney. This practice is unacceptable. Trade union administrators can carry out their functions if there is a previous legal relationship based on the realization of the right to associate. It is

more appropriate¹ if the representative is based on a general power of attorney agreement. Workers who are not members of any trade union can give power of attorney to individuals, not to labor union administrators. The use of representatives on trade union officials must comply with the provisions of the trade union law.

The second analysis is an analysis of the substance of the legal object which emphasizes on the legal object that is bound by the right of association. The legal object in the implementation of the right of association is the right to form a labor union and the right to bargain. Several questions arise regarding the substance of the existing legal object in the implementation of the use of labor union rights. The legal object of the right of association is manifested in the implementation of the functions² of a labor union.

What is the function of a trade union? Trade or labor unions, federations and confederations of trade or labor unions shall have the following functions:

- a. As a party in the making of a Collective Labour Agreement and the settlement of an industrial dispute;
- b. As workers or laborers' representative in cooperation institutes in the area of manpower in accordance with the union's hierarchy or level;
- c. As a structure to create industrial relations that are harmonious, dynamic, and uphold justice according to valid national statutory rules and regulations;
- d. As a structure to channel aspirations in defense of the rights and interests of its members;
- e. As the planner of, the actuator of, and the party that is responsible for a strike in accordance with valid national statutory rules and regulations;
- f. As workers or laborers' representative in striving for the ownership of shares in the enterprise (Article 4 paragraph (2) Labor Union Act).

When can trade unions carry out their functions? Trade unions⁴ can carry out their functions from the moment they receive a registration number. A trade or labor union, federation and confederation of trade or labor unions that has a record number has the right to:

- a. Negotiate a collective labour agreement with the management;
- b. Represent workers or laborers in industrial dispute settlements;
- c. Represent workers or laborers in manpower institutions;
- d. Establish an institution or carry out activities related to efforts to improve workers or laborers' welfare.
- e. Carry out other manpower or employment-related activities that do not run against valid national statutory rules and regulations.

The exercise of the rights shall be carried out in accordance with valid national statutory rules and regulations² (Article 25 Labor Union Act).

How do labor unions perform their functions? The form of a labor union in carrying out its functions must be based on the principle of good intention¹. The existence of a labor union in a company is as an employee's partner. There is an obligation to give a written notification to the employee on the number of proof of registration that the union was formed. Unfortunately, this obligation is not accompanied by sanctions. In

practice, there are labor unions who deliberately do not notify the formation and notify in written form on the number of proof of registration on the formation of a labor union to the employee that the union was formed. Employers do not know if their company has form a labor union. This condition must be stopped immediately. The use of the right to unionize must be carried out within the framework of harmonious, dynamic, and just industrial relations.

Can one person force another to exercise the right of association? Association is conceptualized as a right. Not conceptualized as an obligation. Association is conceptualized as a right to mean that there is no coercion to exercise the right of association. This compulsion means both positive and negative. The positive meaning means that no one should prohibit or prevent someone from exercising their right to associate if that person has the intention to form and become a member of a labor union. On the other hand, the right of association also has a negative meaning if a person does not want to form or become a member of a labor union, then no one may force him to form or become a member of a labor union.

Can a person prevent another person from exercising the right to unionize? A person cannot prevent another person from exercising the right to unionize. The parameter as an act of preventing or forcing others to exercise the right to unionize is union busting. Union busting equals with suppressing of the unions. This term refers to efforts to deceive trade unions for the benefit of employers or treat co-optation of trade unions. This practice is considered bad and is an unhealthy or unfair labor practice.

How does the state guarantee legal protection for the actions of one who has hindered or forced others to exercise the right to unionize? The state guarantees legal protection for the actions of one who has hindered or forced others to exercise the right of unionize by setting the parameters of a criminal act upon the fulfillment of the elements of union busting.

Everybody is prohibited from preventing or forcing a worker or laborer from forming or not forming a trade union or labor union, becoming union official or not becoming union official, becoming union member or not becoming union member and or carrying out or not carrying out trade or labor union activities by:

- a. Terminating his employment, temporarily suspending his employment, demoting him, or transferring him to another post, another division or another place in order to discourage or prevent him from carrying out union activities or make such activities virtually impossible;
- b. Not paying or reducing the amount of the worker or laborer's wage;
- c. Intimidating him or subjecting him to any other forms of intimidation;
- d. Campaigning against the establishment of trade or labor unions (Article 28, Labor Union Act).

Anyone who has committed a crime against which the elements of union busting have been fulfilled, in accordance with the provisions of Article 28 of the labor union Law will be subject to criminal sanctions. Everybody who bars or forces workers/laborers as referred to under Article 28 is subjected to a sentence of no less than 1 (one) year and no longer than 5 (five) years in jail and or a fine of no less than Rp100,000,000

(one hundred million rupiahs) and no more than Rp500,000,000 (five hundred million rupiahs) (Article 43 of the Labor Union Law).

Procedural analysis with an emphasis on the evidence used to determine an act that meets the elements of union busting [29]. Several questions arise regarding the existing procedures in the implementation of the use of labor union rights regarding the existence of union busting or not. Is there sufficient evidence that a union busting occurred? Union busting as a criminal act, so the limitation of sufficient evidence is the existence of at least two valid pieces of evidence. The evidence in the criminal procedure code consists of witness statements, expert statements, letters, indications and statements of the defendant (Article 184 of the Criminal Procedure Code).

The witness's testimony must be about a criminal event that was heard, seen and 3 experienced by mentioning the reasons for his or her acquaintance (Article 1 number 27 of the Criminal Procedure Code). Expert testimony is a statement from someone who has special expertise on the things needed to clarify a criminal case for the purposes of examination (Article 3 number 28 of the Criminal Procedure Code). The letter must be made on the basis of an oath of office or confirmed by an oath consisting of:

- a. Minutes and other letters in an official form prepared by an authorized public official or made before him, containing information about events or circumstances that he heard, saw or experienced, accompanied by clear and unequivocal reasons for the statement;
- b. A letter made according to the provisions of the legislation or a letter made by an official recognizing things that are included in the management for which he is responsible and which is intended to prove something or a situation;
- c. A statement from an expert containing an opinion based on his expertise regarding a matter or situation that is officially requested from him;
- d. Another letter that can only be valid if it has something to do with the contents of other evidence (Article 187 Criminal Procedure Code).

Indications are actions, events or circumstances which due to their conformity either with one another or with the criminal act itself indicate that a criminal act has occurred and who the perpetrator is (Article 188 paragraph (1) of the Criminal Procedure Code). The defendant's statement is what the defendant stated in court about the actions he had committed or which he himself knew or experienced himself (Article 189 paragraph (1) of the Criminal Procedure Code).

What are the procedures for an alleged union busting crime? The procedures for an alleged union busting crime must be submitted to a labor inspector's employee. If there is sufficient evidence of an alleged labor infraction, it can proceed to the judicial process. Union busting as an employment crime cannot be directly investigated by police investigators.

Before the labor inspection employee states that there is sufficient evidence of an alleged labor violation, an inspection is carried out to seek information and clarification to both parties (employers and workers). This is where evidence is often found stating that the alleged act of union busting is 1 not proven. Cases of complaints regarding alleged acts of obstructing or forcing to carry out or not carrying out trade or labor union activities by terminating the employment relationship to the chairman of the labor union management

in a company. The chairman of the labor union is considered absent from work by the employee due to his or her absence. Based on the previous fact that he already had a second warning letter for an infraction of work discipline and the repetition on the same wrongdoing; absence from work 4 days in a month, then his employment was finally terminated. The information given by the workers was that they were unable to come to work because they were invited by the local Manpower Office. Based on the two different information, the Collective Labor Agreement related to the provision of facilities for the implementation of freedom of association was examined. Article 8 of the Collective Labor Agreement states that:

- a. Employers can grant dispensation of 2 working days in 1 month to the management of Labor Union with maximum of 2 persons per selected work unit to keep of meetings, seminars, education and tasks related to organizational activities as long as it does not interfere with the smoothness operation of the company.
- b. If the management's activities exceed 2 working days in 1 month, then they must obtain permission from the HR Division, and do not interfere with the smoothness operation of the company.

On the basis of this conditional examination, it was concluded that the termination of employment for the chairman of the labor union was related to purely an infraction of work discipline, not union busting.

4 Conclusion

The conclusion obtained is that there is not enough evidence for the alleged criminal act of union busting. As if it comes with a general perception that there is no guarantee of legal protection for union busting enforcement.

The resulting recommendation is that it is necessary to conduct a study to provide a broad elaboration or interpretation on the formulation of Article 28 jo. 43 Labor Union Act.

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