



RESEARCH ARTICLE

Guarantee of Requirements Regarding Labor Rights in Vietnam's Labor Relations Laws in the Context of International Integration

Dao Xuan Hoi¹, Tang Thi Thu Trang^{2*}, Kieu Thi Thuy Linh³

¹University of Labour and Social Affairs, Vietnam

²Ho Chi Minh National Academy of Politics, Vietnam

³Vietnam Women's Academy

ARTICLE INFO	ABSTRACT
Received: Jul 17, 2024	In the context of international integration, proposing requirements regarding labour rights in labour relations laws is essential to ensure that current regulations accurately reflect the socio-economic context and align with international standards. This requires continuous adjustment and updating to ensure efficiency and fairness in labour relations, while accurately meeting the needs of both workers and businesses. The refinement and adjustment of labour relations laws also facilitate the implementation of labour agreements and the resolution of labour disputes in a transparent and fair manner. This article examines the theoretical basis of laws concerning legal relations, the basis for establishing requirements for labour relations laws in the context of international integration and subsequently outlines specific demands.
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*Corresponding Author:	
tangthithutrang80@gmail.com	

INTRODUCTION

In each country around the world, labour relations are regulated by the Constitution and specified in various laws and legal provisions such as the Labor Law, the Enterprise Law, the Bankruptcy Law, etc. In the legal system of countries, labour relations laws include provisions concerning the subjects of labour relations, the content of labour relations, and the objects of labour relations.

In Vietnam, labour law is recognized in the Constitution and is specified in various legal documents such as the Labor Code, Civil Code, Civil Procedure Code, Penal Code, etc.

It can be seen that labour relations laws can be understood as a system of legal regulations issued by competent state authorities to govern social relations arising during the establishment, execution and termination of labour relations.

Labor relations laws include regulations that govern the subjects, objects and contents of labour relations. Labor relations laws have the following characteristics in terms of scope of regulation, subjects, sources and sanctions:

Regarding the scope of regulation: it refers to the social relationships that arise during the establishment, execution and termination of labour relations between the subjects involved. Workers are citizens who are entitled to full civil rights and human rights as stipulated by law. Therefore, the

aforementioned social relations are very diverse, involving different authorities, organizations and individuals. In other words, the scope of regulation under labour relations laws is broad. Within the scope of this article, the authors only focus on studying the social relations involving the subjects and the contents of labour relations, which include:

First, the relationship regarding the implementation of labour standards between workers and employers: In this relationship, workers are responsible for fulfilling the commitments in their labour contracts regarding job duties, complying with legal regulations and adhering to the company's rules and discipline during the work process. Employers are responsible for fulfilling the obligations as committed in the labour contracts with the workers, complying with legal regulations in the operation of the business as well as the management and utilization of labour within the company.

Second, the relationship of representation between trade unions and employers: In this relationship, the trade union is an organization that represents the collective of workers, with the rights and responsibilities to represent and protect the legitimate rights and interests of workers. Employers are responsible for facilitating the operation of trade unions, coordinating with and consulting trade unions when making decisions related to the rights and interests of workers, such as: establishing salary scales and payroll, handling labour discipline, etc. In the course of activities, trade unions perform their functions and duties as prescribed by law, without affecting the production and business operations of the enterprise and without harming the assets, rights, and legitimate interests of employers.

Third, the relationship of dialogue and bargaining between workers, their representatives and employers in order to promote harmonious labour relations.

Fourth, the relationship between the parties regarding the resolution of labour disputes: In the course of labour, it is inevitable that conflicts and disagreements will arise between workers and employers regarding rights and interests. Disagreements and conflicts over rights and interests between the two parties in the labour relations, if not mutually resolved, will lead to labour disputes, affecting the rights of both parties. To protect their rights and interests in the event of a labour dispute, each party in the labour relation has the right to request resolution from competent authorities, which creates a relationship between the two subjects in the labour relation and the authority responsible for resolving labour disputes.

In the process of resolving labour disputes, labour arbitrators and courts rely on legal regulations in the field of labour, as well as legal agreements between the parties, to issue accurate judgments and decisions that protect the rights and interests of both parties in the labour relation. Both parties in the labour relation are responsible for complying with the judgments and decisions made by labour arbitrators and courts in resolving labour disputes.

Regarding the subjects: Labor relations laws involve two subjects in the labour relation, including both individual labour relations and collective labour relations.

Workers are the subject of protection, ensuring that their rights in the labour relation are fully realized in practice. Workers are a party in the labour relation; they must perform their duties and comply with the company's rules and regulations as committed in the labour contract.

Employers are the active and proactive party in the labour relation, with the right to manage and direct their workers. Employers have the responsibility and obligation to fulfill the commitments made in the labour contract with the workers, comply with legal regulations on recruitment and employment of workers as well as the management and operation of the business such as the Investment Law, the Enterprise Law, the Labor Law, etc.

Regarding the sources of labour relations laws: The Constitution regulates fundamental issues that serve as the basis for all other branches of law. All legal provisions regarding labour relations must not contradict the Constitution.

The Labor Law is one of the important sources of labour relations laws. To protect and ensure that the rights of workers are realized in practice, the Labor Law stipulates labour standards, minimum benefits that workers are entitled to, mandatory, minimum or maximum limits that employers must adhere to, prohibitions against certain actions by employers, and regulations concerning the responsibilities of authorities and organizations in safeguarding workers' rights, etc.

In addition to the aforementioned legal documents, there are also legal documents in specific areas related to labour relations, such as the Trade Union Law, Employment Law, Civil Law, Administrative Law, Criminal Law, etc.

Regarding sanctions: Like other branches of law, the sanctions in labour relations laws include disciplinary sanctions, administrative sanctions, civil sanctions, and criminal sanctions.

RESEARCH METHODS

The research built on common research methods in the law sector in Viet Nam such as: empirical legal analysis, empirical legal assessment, and comparative legal research. This article cites the following references: General Assembly resolution 2200A. (1966). International Covenant on Civil and Political Rights; International Labour Organization. (1930). C029 – Forced Labour Convention; (1930). C029 – Forced Labour Convention; (1948). C087 – Freedom of Association and Protection of the Right to Organize Convention; (1949). C098 – Right to Organize and Collective Bargaining; (1951). C100 – Equal Remuneration Convention; (1957). C105 – Abolition of Forced Labour Convention; (1958). C111 – Discrimination (Employment and Occupation) Convention; (1973). C138 – Minimum Age Convention; (1973). C138 – Minimum Age Convention; (1976). C144 – Tripartite Consultation (International Labour Standards) Convention; (1999). C182 – Worst Forms of Child Labour Convention.

BASIS FOR ESTABLISHING LABOUR RIGHTS REQUIREMENTS UNDER LABOUR RELATIONS LAWS IN THE CONTEXT OF INTERNATIONAL INTEGRATION

Given the reality that Vietnam is deeply integrating into new-generation trade agreements, although the CPTPP and the EU – Vietnam Free Trade Agreement do not establish any new international labour standards, both agreements require Vietnam to adopt and maintain in its statutes, regulations, and practices the rights outlined in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work. These fundamental principles and rights include:

- Freedom of association and the effective recognition of the right to collective bargaining, as reflected in ILO Conventions 87 (International Labour Organization, 1948) and 98 (International Labour Organization, 1949).
- The elimination of all forms of forced or compulsory labour, as reflected in ILO Conventions 29 (International Labour Organization, 1930) and 105 (International Labour Organization, 1957)
- The effective abolition of child labour, as reflected in ILO Conventions 138 (International Labour Organization, 1973) and 182 (International Labour Organization, 1999)
- The elimination of discrimination in respect of employment and occupation, as reflected in ILO Conventions 100 (International Labour Organization, 1951) and 111 (International Labour Organization, 1958).

Vietnam has ratified 6 out of 8 fundamental conventions. After the conclusion of TPP negotiations, Vietnam ratified Convention No. 98 and is in the process of drafting a plan to ratify two Conventions

on freedom of association, the right to collective bargaining, and the elimination of forced labour. The TPP, now the CPTPP, and the U.S.-Vietnam bilateral trade agreement require Vietnam to carry out reforms to fully implement the Fundamental Principles and Rights at Work, ensuring the following requirements:

PROPOSAL FOR REQUIREMENTS REGARDING LABOUR RIGHTS IN LABOUR RELATIONS LAWS IN THE CONTEXT OF INTERNATIONAL INTEGRATION

a. Guarantee the right to freedom of association

The right to freedom of association originates from the International Covenant on Civil and Political Rights (ICCPR). Article 22 of the ICCPR (General Assembly resolution 2200A, 1966) stipulates: 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 interests. The right to freedom of association, as stipulated in Article 22 of the ICCPR, is understood to encompass three aspects: (i) establishing new associations, (ii) joining existing associations, and (iii) operating and managing associations, including seeking and mobilizing funding sources. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. Subsequently, this is also reflected in ILO Convention No. 87. The right of workers to freely establish and join trade unions, as stated in Article 2 of Convention 87, is understood to be very broad. (International Labour Organization, 1948). Besides the right to establish, join, or refrain from forming or joining a trade union, workers also have the freedom to decide whether their organization will join or associate with other organizations.

This is one of the topics with numerous complaints and petitions submitted by workers' organizations to the ILO's supervisory mechanisms. Drawing from the cases received and reviewed by the Committee of Experts, the Committee has consistently issued decisions affirming that: The existence of an organization in a specific occupation should not constitute an obstacle to the establishment of another organization, if the workers so wish. The right of workers to establish organizations of their own choosing implies, in particular, the effective possibility to create if the workers so choose more than one worker's organization per enterprise.

To achieve this, workers must have the freedom to establish or join organizations of their choice.

Since the enactment of the Labor Code in 1994, there have been over 5,500 strikes across the country. All of these strikes were spontaneous, with no exceptions (Thu vien phap luat, n.d.). This primarily means that no strikes were organized by trade unions, and furthermore, none of the strikes followed the legal procedures established by law. The foundation of the modern labour relations system in a market economy is representative trade unions, which are organizations of workers, formed by workers and for the benefit of workers. There is a need to modernize trade unions based on the principle of freedom of association if we want an effective labour relations system in Vietnam.

b. Guarantee harmonious labour relations that benefit all parties

International experience and global comparative studies indicate that an effective labour relations system will provide benefits for all parties involved.

Firstly, research and experience show that effective social dialogue enables businesses and governments to make better decisions based on the information obtained. When the worker voice is conveyed by their representatives and unions through regular dialogue mechanisms, it enhances the quality, relevance, and effectiveness of business decisions. It also assists the Government in making

decisions by allowing it to receive regular feedback and suggestions from representatives of workers and employers. This, in turn, is beneficial for both businesses and governance.

Secondly, an effective labour relations system creates a stable and predictable environment for businesses and the modern economy since conflicts between employers and workers can be managed in an orderly manner through collective bargaining and social dialogue to find common solutions to issues. This benefits businesses and society.

Finally, numerous studies indicate that an effective and comprehensive collective bargaining system contributes to a fairer distribution of income at the societal level. This is a critically important function of labour relations that we need to consider seriously. Deeper integration into the global economy tends to widen the gap between different economic sectors and increase volatility within a society, which can threaten social cohesion and the long-term sustainability of economic development. An effective collective bargaining mechanism can minimize the negative effects of globalization and maintain social harmony. Effective labour relations are beneficial for globalization and society.

Since 2009, the ILO, in collaboration with the International Finance Corporation (IFC), has been implementing the Better Work program to promote alignment with national laws and the ILO's standards in garment factories. Currently, the Better Work Vietnam covers 360 garment factories, employing nearly half a million workers in the industry. (Better Work, n.d.). There has been a significant improvement in compliance regarding non-discrimination and the implementation of collective bargaining. An impact assessment of Better Work indicates that factories participating in the program have now become preferred suppliers in the global supply chain, meaning they have better opportunities for successful business. The consultations from the Better Work help enhance labour productivity and improve employee retention. According the same study, profits increased by more than 7% in factories where workers reported improved working conditions. A 5% improvement in factory compliance results in a 10% increase in worker income and a 3% improvement in worker health. In short, improving working conditions and enhancing compliance benefits workers, businesses, and society as a whole.

c. Guarantee tripartite consultation

This content is derived from Convention 144 (International Labour Organization, 1976). Convention No. 144 on tripartite consultation to promote the implementation of international labour standards, adopted in 1976, is one of the four governance conventions (also known as priority conventions) of the ILO. Vietnam has been a party to this convention since 9 June 2008.

The content of Convention 144 covers three main issues, namely:

Firstly, the Convention defines the responsibilities of the State in operating procedures which ensure effective consultations between the government and representatives of workers and employers (Article 2). The State's responsibility here includes not only establishing the aforementioned processes and procedures but also ensuring the necessary conditions for the practical implementation of those processes and procedures (Article 4).

Secondly, the Convention establishes regulations and principles for identifying the representative organizations of workers and employers that have the right to participate in the consultation mechanism with the government according to the aforementioned processes and procedures. These include: Enjoying the right of freedom of association, the representative organizations involved in the consultation mechanism can be the most representative organizations of employers and workers (Article 1); The representatives of employers and workers shall be freely chosen by their representative organizations (Article 3.1); Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken (Article 3.2).

Thirdly, the content of consultations between the government and the representative organizations of employers and workers focuses on matters related to the implementation of international labour standards (Article 5).

d. Guarantee compliance with other labour standards

These labour standards are specified in various conventions, such as Convention 138 (International Labour Organization, 1973) on Minimum Age for Admission to Employment, which was adopted on 6 July 6 1973 and ratified by Vietnam on 24 June 2003, containing 18 articles. States that ratify the Convention commit to "pursue a national policy to ensure the effective abolition of child labour and to progressively raise the minimum age for employment or work to an age at which young people can fully develop physically and mentally." Convention No. 182 (International Labour Organization, 1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was adopted on 1 June 1999, and ratified by Vietnam on 19 December 2000, containing 16 articles. The Convention requires member states to immediately eliminate the four worst forms of child labour, including: All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. The term "child" in the Convention shall apply to all persons under the age of 18. Convention No. 29 (International Labour Organization, 1930) is one of the eight fundamental conventions of the ILO. It was adopted by the ILO on 28 June 1930, and came into force on 1 May 1932. Vietnam ratified the Convention No. 29 in 2007. The core standards mentioned in ILO Convention No. 29 include: Definition of forced or compulsory labour (Article 2); The obligation of countries to suppress the use of forced or compulsory labour in all its forms within the shortest possible period (Article 1). Conditions for the use of forced or compulsory labour pending its abolition, or in emergency situations (Articles 10-21).

CONCLUSIONS

In the context of international integration, participating in and complying with international treaties makes it essential to propose requirements regarding workers' rights in Vietnam's labour relations laws. The refinement and adjustment of labour relations laws also facilitate the implementation of labour agreements and the resolution of labour disputes in a transparent and fair manner as well as safeguard the workers' rights. The four proposals on requirements regarding the rights of workers in labour relations laws within the context of international integration are in line with the regulations set forth in the international treaties that Vietnam has participated in and is likely to participate in.

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