



Reflections on Two Decades of Implementing Trade Union Freedom of Association in Indonesia

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ABSTRACT

Up to now, it has been at least 2 (two) decades of implementation of the right to freedom of association based on Law Number 21 of 2000 concerning Workers' Unions/Labor Unions. Based on data from the Ministry of Manpower in 2020, it was found that since it was ratified on August 4, 2000, the number of workers' unions/labor unions in Indonesia has continued to experience a very significant increase where the number of Confederations continues to grow until now there are 16 Confederations, 114 Federations and 10,748 workers' unions/labor unions recorded at the company level, while the number of workers who are unionized continues to decline. This article begins with a description of the regulation of freedom of association for workers and various problems. This discussion aims to obtain a comparative overview of how positive law in Indonesia regulates freedom of association and various problems and obstacles for workers' unions/labor unions in carrying out their functions. This research is a normative juridical legal research. The discussion shows that the implementation of freedom of association in Law Number 21 of 2000 concerning Workers' Unions/Labor Unions in Indonesia for more than two decades has not been in accordance with the meaning of freedom of association in human rights. Freedom of association in Indonesia is interpreted as the freedom to form workers' unions/labor unions, while the meaning of freedom of association in human rights is the freedom for workers to become or not to become members of a union. This has weakened the trade union movement in Indonesia, which is confirmed by the increasing number of trade union institutions, while inversely proportional to the number of workers who are unionized is decreasing.

Keywords: Freedom of Association, Trade Unions, Implementation

1. Introduction

This article discusses reflections on the implementation of freedom of association for workers in Indonesia following the enactment of Law Number 21 of 2000 concerning Workers' Unions/Labor Unions. Freedom of association, or the term "association" for workers in Indonesia, is regulated in Law Number 21 of 2000 concerning Workers' Unions/Labor Unions. To date, it has been at least two decades since the implementation of the right to freedom of association based on Law Number 21 of 2000 concerning Workers' Unions/Labor Unions. Freedom of association was originally a right inherent in every worker to join or not join a labor union. However, in Indonesia there has been a distortion of understanding and implementation into the freedom to form or not form an institution called a labor union. These two have different impacts at the implementation level. The freedom for every worker to join or not to join a labor union will result in an increase in membership of a labor union, while the freedom to form or not to form a labor union will result in an increase in the number of labor union institutions at the company, federation, and confederation levels.

Based on data from the Ministry of Manpower in 2020, it was found that since its ratification on August 4, 2000, the number of workers' unions/labor unions in Indonesia has continued to experience a very significant increase, where the number of Confederations continues to grow to 16 Confederations, 114 Federations, and 10,748 workers' unions/labor unions at the company level, while the number of unionized workers continues to decline. (Tyagita, 2011). This is illustrated as an inverted pyramid to describe the comparison between the increase in the number of labor unions institutionally compared to the number of workers/laborers who are unionized. Not to mention if we look at the implementation level, we find the fact that the minimum provision of 10 workers who can

establish a labor union organization/labor union has a legal impact for workers who work with a number of workers/less than 10 people cannot establish a labor union organization/labor union, and also often found coercion to join a labor union organization/labor union formed by employers accompanied by threats of intimidation in employment relations (Setiawan, Perdana, Apriani, Pusriansya, & Santoso, 2022).

The discussion in this article begins with an explanation of the regulation of freedom of association for workers and various problems associated with it. This discussion aims to obtain a comparative overview of how positive law in Indonesia regulates freedom of association and the various problems and obstacles for trade unions/labor unions in carrying out their functions. The following description emphasizes the urgency of improving the rules regarding the freedom to establish trade union institutions/labor unions and the freedom for workers to become or not become members/organizers of trade unions/labor unions. This discussion is conducted to understand the development of the recognition and protection of the right to associate for workers in Indonesia, which has been going on for at least 2 (two) decades.

2. Method Research

This research is a legal research that is normative juridical in nature to find solutions to legal issues that arise and provide prescriptions regarding what should be done about it by using secondary data consisting of primary, secondary and tertiary legal materials (Marzuki, 2013). In this study, the author uses legislation and ILO Conventions in the field of trade unions as primary materials, books and journals relevant to trade unions as secondary materials, and language dictionaries as tertiary materials to find the meaning of the terms used.

3. Results and Discussion

3.1 Regulations on Freedom of Association for Workers and Various Problems

Talking about freedom of association for workers must begin with an understanding of the ILO Convention Number 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize made in 1948 and ratified in 1998 and the ILO Convention Number 98 of 1949 concerning the Application of the Principles of the Right to Organize and Collective Bargaining made in 1949 and ratified by Law Number 18 of 1956 concerning the Approval of the International Labor Organization Convention Number 98 concerning the Application of the Fundamentals of the Right to Organize and to Collective Bargaining (State Gazette No: 42 of 1956). The ILO Convention Number 87 has regulated in such a way the protection of organizations formed by workers/laborers and ensures that there is no intervention or interference from the state (Firoso, 2019). Protection of freedom of association is not only given to workers' unions/labor unions formed from and by workers/laborers, but also applies at the Federation and Confederation levels (Septiono, 2013). In essence, the protection of freedom of association provided by ILO Convention Number 87 is in the form of freedom for every worker/laborer to establish, become and/or not become a member of an organization that will fight for the interests of workers/laborers, without any interference or restrictions from the state (Ginting, 2019). Meanwhile, ILO Convention Number 98 essentially guarantees freedom for workers/laborers to organize themselves from interference by employers (Nurjanah & Kusniati, 2017).

Since the enactment of Law Number 21 of 2000 concerning Workers' Unions/Labor Unions on August 4, 2000, the hope of implementing freedom of association in a Multi Union manner for workers has been widely opened, whereas previously it adhered to a Single Union, namely the Indonesian Government only recognized 1 (one) legitimate workers' union/labor union, namely the All Indonesia Workers' Union (Elfudlatsani, Isharyanto, & Riwanto, 2019). History records that the Single Union system that was once implemented in Indonesia proved that the principle of independence in workers' unions/labor unions could not be implemented, because they were still influenced by employers, the government, political influences, religious organizations and individual figures (Abustan, 2025). Law Number 21 of 2000 concerning Workers' Unions/Labor Unions has at least tried to guarantee that workers in forming workers' unions/labor unions are based on their free will and without pressure or interference from employers, the government, political parties, and any other party. In addition, the guarantee of freedom for workers in forming institutions called workers' unions/labor unions that are Multi Union is reflected in the regulation of a minimum of 10 (ten) workers as a requirement for the formation of a workers' union/labor union. However, with the freedom to form this workers' union institution, at least in its implementation for 2 (two) decades, it has not been directly proportional to the effectiveness of the implementation of the duties and functions of workers' unions/labor unions in order to realize the welfare of workers who are their members (Nasution, 2015).

In the understanding based on the author's observations, there are at least several things that are internal obstacles for Workers' Unions/Labor Unions in carrying out their duties and functions, namely, firstly, membership that does not reflect "The Most Representative". (Susanto, 2019) The strength of a trade union's bargaining position can be seen from the number of its members. This is certainly an application of the "Most Representative" principle and applies to trade unions at the company, federation, and confederation levels. (Gunarto, 2010). Unfortunately, with the current regulations in force, where a labor union at the company level can be formed with just 10 (ten) workers, it is suspected that this is one of the causes of the large number of labor union institutions in a company, where it can be ensured that the membership of the labor union does not reach more than half of the number of workers working in the company. (Ahmad & Al Ayubbi, 2024). Likewise, at the federation level, which can be established with just 5 workers' unions/labor unions, and at the confederation level, which can be established with just 3 federations without being accompanied by minimum provisions for the existence of both workers' unions/labor unions and federations at the provincial and district/city levels. (Dwi Atmoko, Niru Anita Sinaga, & Selamat Lumban Gaol, 2024).

The second is the minimal realization of member contributions. (Fx. Hastowo Broto Laksito, Waluyo Slamet Pradoto, & Santoso Budi Nursal Umar, 2025). The strength of a workers' union/labor union must be accompanied by strong organizational finances. (Munir & Ilham, 2022b). A trade union/labor union organization generally obtains funds from member contributions deducted from the wages they receive. The amount is of course further regulated in the Articles of Association/Bylaws of the trade union/labor union. In addition, it is also common for trade unions/labor unions to obtain funds from other legitimate businesses that do not conflict with applicable laws and regulations, such as selling attributes, publishing educational books, paid implementation carried out by organizational apparatus, and so on. (Maulidya & Hidayat, 2020) However, members' commitment and discipline in paying dues are considered very low. This is at least based on members' reluctance to set aside a portion of their wages to be deposited as membership dues, and even the desire to change union membership when membership dues are increased. This is suspected to be due to at least two things: the lack of perceived benefits of organization from organizational officials to members, and the lack of clarity in financial accountability reports. (Ibrahim, 2017).

Thirdly, there is a lack of understanding and skills among trade union administrators in terms of knowledge and understanding of statutory regulations. (Asyhadie, Hadi Adha, & Kusuma, 2022). Trade union officials, whether at the company, federation, or confederation level, are the most crucial element in carrying out the duties and functions of the union itself. Therefore, the capacity of trade union officials is non-negotiable. It is crucial for trade union officials to know and understand current labor regulations and to have the skills to implement them in the field. Unfortunately, many trade union officials still neglect to improve their knowledge and rely solely on demonstrations and strikes as strategies to resolve their labor issues.

Fourth is the lack of organizational skills among trade union activists. (Nayla Putri Abdullah, 2024). Today, the condition of labor unions is faced with the fact that labor union institutions are increasing in number but union membership is decreasing. This is at least partly due to the lack of ability of labor union activists in organizing and recruiting new members. Today, labor unions predominantly function as "firefighters" when industrial relations disputes arise among their members. Fifth, the unpreparedness to differ/immaturity in unionization. Differences must be addressed as a blessing from the Almighty that complements and colors the Indonesian labor union movement. However, today, labor union activists still predominantly lack the readiness and maturity to deal with differences. This is reflected in the many internal conflicts within a labor union resulting from not being elected on the momentum or agenda for the election of a chairman and/or general chairman of a labor union.

The sixth thing is the vulnerability of a trade union institution. The fragmentation of trade unions is greatly influenced by several factors, namely weak conflict management where trade unions as institutions are unable to resolve and/or reduce internal conflicts. (Adawiyah, Multazam, & Phahlevi, 2017). In addition to these factors, another influencing factor is the ease of establishing labor union institutions. The plurality of labor union institutions actually makes it difficult to unite within the context of the labor movement in Indonesia, especially based on the economic motives of labor union activists who want to be kings in a small pond rather than small fish in a large pond. The final obstacle is the minimal participation of female members in organizational activities, membership, and management. The involvement and participation of female members in the world of labor unions is still considered very minimal. This can be seen at least in the minimal number of female workers in organizational activities, membership, and management. The dominance of "masculinity" in the world of labor unions is very visible to this day, as is the regulation of labor union activities that is not based on consideration of women's interests. In addition to the internal obstacles mentioned above, there are also external obstacles for labor unions in carrying out their duties and functions, namely (Mulyono & Purnomo, 2022):

1. There are still many companies that are reluctant to accept the existence of trade unions/labor unions in the company and also do not understand the importance of trade unions/labor unions;
2. The government also considers that trade unions are an anti-government movement, this creates a big obstacle for relations between trade unions and the government;
3. The public accuses trade unions of contributing to inflation in the country, because of their demands for improved working conditions and requirements, fair wages, the need for adequate food and drink, clothing, housing, sick care and education.
4. Collective Bargaining Agreements (CBAs) also apply to non-union workers. Current Indonesian labor regulations stipulate that collective bargaining agreements (CBAs) apply not only to union members but also to non-union workers. This has resulted in many free-riding workers enjoying union benefits even though they haven't actively participated in the CBA process. The CBA process is neither cheap, easy, nor quick.

The existence of the above obstacles is certainly one of the causes of the obstruction of trade unions/labor unions in carrying out their duties and functions, whereas in entering the industrial era 4.0 the existence of trade unions/labor unions is needed as a partner of employers in realizing harmonious, dynamic, just and sustainable industrial relations in terms of protecting workers from the inability to fight for their aspirations individually, considering that the position of workers is very weak, motivators in building democracy, negotiators in negotiations and actors in maintaining work quality, such as working conditions and work requirements (wages, welfare, social security, safety and work accidents), as a means of communication, and to create work peace, as well as neutralize elements from outside the company environment that can disrupt production stability.

3.2 Between the Freedom to Form a Trade Union/Labor Union Institution and the Freedom to Become or Not Become a Member/Manager of a Trade Union/Labor Union

Human Rights are rights inherent in every individual human being as a creature of God Almighty and must be respected, upheld, and protected by the state, government, and every person. This is according to the opinion of C. De. Rover who stated that human rights are legal rights that every person has as a human being, which are universal and owned by everyone, whether rich or poor, male or female and John Locke stated that human rights are rights that are given directly by God the Creator as something that is natural, and therefore no power whatsoever can revoke these human rights. (Munir & Ilham, 2022a). The Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966 as ratified by Indonesia in Law Number 12 of 2005 have guaranteed the right to freedom of association, which is a right that cannot be interfered with by anyone. (Aragon, 2022). In addition, the right to associate has been clearly and firmly stated as a human right held by workers/laborers as regulated in Article 39 of Law Number 39 of 1999 concerning Human Rights.

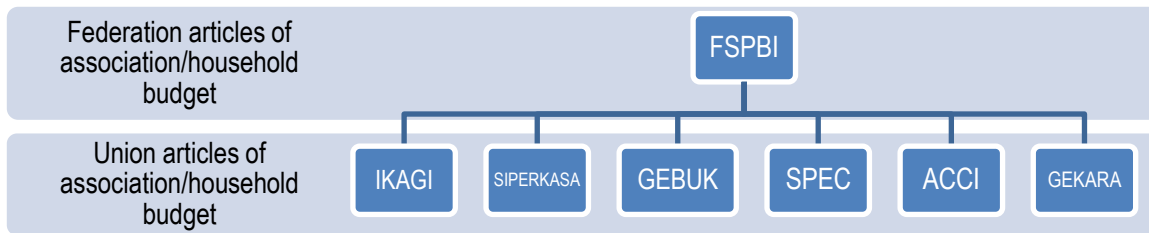
Based on this provision, freedom of association covers 2 (two), namely the right to form an organization as an institution, and the right to join or not join an organization. (Junius Fernando, Pujiyono, Rozah, & Rochaeti, 2022). With the regulation of the protection of the right to associate in laws and regulations, it is hoped that it will develop positively along with the realization of the values of justice for workers/laborers, as stated by John Rawls, namely that justice (fairness) is defined as a condition where everyone agrees to the principles of freedom and rational equality. (Risfa Izzati, 2022). Freedom for workers/laborers to form trade unions/labor unions, whether at the company, federation, or confederation level, has been regulated in Law Number 21 of 2000 concerning Workers' Unions/Labor Unions, namely: (Kusuma, 2023)

1. To form a Workers' Union, it must be done by at least 10 (ten) workers.
2. A federation can be formed by at least five Trade Unions.
3. The Confederation is formed by at least three Federations.
4. A worker is only allowed to be a member of one Trade Union.
5. Workers who hold certain positions in a company are prohibited from becoming officials of the Workers' Union in that company, if this position could give rise to the possibility of a conflict of interest between the employer and the workers.
6. A Trade Union can only be a member of one Federation, and a Federation can only be a member of one Confederation.

Once a labor union has been formed, it must be registered with the local Manpower Office. This registration includes the board of directors, a list of members, and the union's articles of association and bylaws. In practice, there are at least two models for establishing a labor union based on the validity of the articles of association and bylaws. (Kuruville & Li, 2021). The first model refers to the provisions in the SP/SB Law on the formation of a

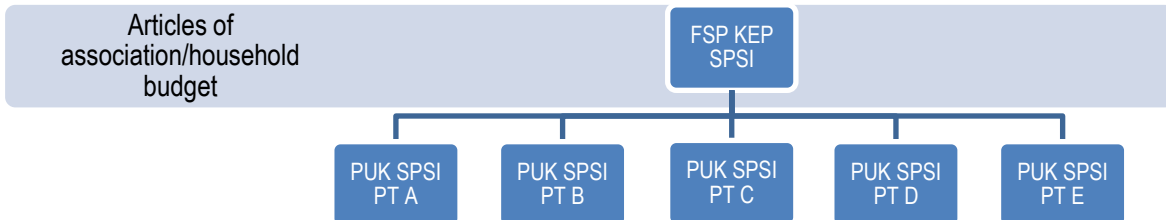
company-level trade union/labor union initiated by 10 (ten) workers and having its own articles of association/bylaws, such as the Garuda Indonesia Cabin Crew Association (IKAGI) which is a labor union consisting of cabin crew who have an employment relationship with PT. Garuda Indonesia, Tbk. IKAGI together with the Gapura Angkasa Workers Union (SIPERKASA), the Catering Workers Movement (GEBUK), the Soekarno-Hatta Airport Cleaner Workers Union (SPEC), the Citilink Cabin Crew Association (ACCI), and the Airport Workers Movement (GEKARA) on September 19, 2019 declared the formation of the Federation of Indonesian Airport Workers Unions (FSPBI).

Chart 1.The First Model for the Formation of a Workers' Union/Labor Union Based on the Validity of the Articles of Association/Bylaws



The second model is found where the federation of trade unions/labor unions initiates the formation of trade unions/labor unions at the company level, which in this case is reflected in the validity of the articles of association/bylaws of the federation of trade unions/labor unions which also apply to trade unions/labor unions at the company level. For example, as stipulated in Article 49 paragraph (1) of the Articles of Association of the Federation of Chemical, Energy, and Mining Workers Unions of All Indonesia (FSP KEP SPSI) which not only applies at the level of the trade union federation, but also to trade unions at the company level.

Chart 2The Second Model for the Formation of a Workers' Union/Labor Union Based on the Validity of the Articles of Association/Bylaws



The situation is different if we try to examine more deeply the freedom of association, which is defined as the freedom to become or not to become a member of a workers' union. Freedom of association in Indonesia as regulated in Law Number 21 of 2000 concerning Workers' Unions/Labor Unions predominantly only regulates the freedom to form a workers' union/labor union institution. This can be understood by referring to the provision that at least 10 (ten) workers must form a Workers' Union, but this cannot be done if a worker works in a company with a total number of workers less than 10 (ten). The provisions of Article 5 paragraph (2) of Law Number 21 of 2000 concerning Workers' Unions/Labor Unions have negated the right to associate in the form of becoming or not becoming a member of a workers' union/labor union as a right inherent to every worker.

Regarding this matter, as far as the Author knows, there is no regulation that regulates how a worker who works with a number of workers less than 10 (ten) people can become a member of a trade union organization, even though in fact the right of every worker to become a member of a trade union has been guaranteed in the SP/SB Law. Despite the absence of regulations that regulate it, it can be found that at the implementation level many trade unions have accommodated this matter. For example, the Federation of Chemical, Energy, and Mining Workers Unions of All Indonesia (FSP KEP SPSI) has regulated in such a way that membership is not only limited and limited to workers who have formed a Work Unit Management, but also accommodates membership per worker to be able to join at the Central Management, Regional Leadership, and Branch Leadership levels.

4. Conclusion

Based on the discussion above, it shows that the implementation of freedom of association in Law Number 21 of 2000 concerning Workers' Unions/Labor Unions in Indonesia for more than two decades has not been in accordance with the meaning of freedom of association in human rights. Freedom of association in Indonesia is interpreted as the freedom to form workers' unions/labor unions, while the meaning of freedom of association in human rights is the freedom for workers to become or not to become members of a union. This has weakened the trade union movement in Indonesia, which is confirmed by the increasing number of trade union institutions, while inversely proportional to the number of workers who are unionized is decreasing. Considering that the indicator of the implementation of freedom of association is the increase in the number of workers who are members of a trade union, and the strength of a trade union lies in the number of members, Law Number 21 of 2000 concerning Workers' Unions/Labor Unions needs to be revised to realize the goal of freedom of association itself. Amendments to Law Number 21 of 2000 concerning Workers' Unions/Labor Unions are needed to further emphasize and guarantee the rights of every worker to become or not become a member of a trade union, and change the requirements for forming a trade union institution in such a way that it is no longer sufficient to only have a minimum agreement of ten workers. In addition, it is also necessary to limit the number of trade unions at the company level so as not to hinder the process of negotiating Collective Bargaining Agreements (CBAs) in the company.

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