

Problematics of law enforcement of union busting criminal action in gorontalo province

Suardi Rais

Abstract

Although freedom of association has been more than a decade old, workers in Indonesia still face enormous challenges in exercising their collective rights. this is inseparable from the problem of law enforcement against anti-union / labor crime. This study aims to explain and analyze how the form of legal protection of trade unions in Law No. 21 of 2000 concerning Trade Unions / Trade Unions and what are the barriers to law enforcement in the imposition of criminal sanctions against union busting perpetrators in Gorontalo Province. The method used in this study is a merger between normative research and empirical research methods. The results of this study indicate that the form of protection and law enforcement against violations or criminal acts against the union that occurred especially in the Province of Gorontalo is still very weak, there has been no decisive action from all law enforcement. The workings of the law are inseparable from the law enforcers themselves, law enforcement against criminal acts of the Anti Trade union basically still encounters several obstacles among which are understanding concepts among law enforcers of Law No.21 of 2000 concerning Trade Unions / Labor Unions and lack of coordination among PPNS Employment investigators and Police Investigators.

Keywords: Law, Enforcement, Union Busting

1. Introduction

Humans as their nature, as individuals or individuals, tend to have a desire to gather with other individuals, or it can be said there is a tendency to form a group. Aristotle named humans as *zoon politicon* (social beings). Like social beings, humans always need the presence of others. No human can live alone because gathering with others is a necessity (Asri Wijayanti, 2012).

Is realized that human nature always wants to live in groups so that in the Basic Constitution we guarantee the existence of freedom of association and assembly, to put forth thoughts verbally and in writing and so on. Association and assembly are the basic rights of Indonesian citizens so that the state, government, or anyone else can not eliminate these basic rights or obstruct people who want to associate and gather. it is expressly stated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) which states that "Everyone has the right to freedom of association, assembly and issuing opinions"

Likewise, workers or laborers as citizens also have an equal position in the law, the right to get a decent living, the right to get a job, to gather in an organization, to express opinions, and to have the right to form or become a member of a trade / labor union.

Author's Information:

Fakultas Hukum Universitas
Ichsan Gorontalo
(suardi.rais@gmail.com)

Article's Information:

DOI:

<https://doi.org/10.35326/volkgeist.v4i2.669>

The right to assemble, organize and associate is part of Human Rights, which is generally regulated in several provisions including Article 20 Universal Declaration of Human Rights, Article 22 of Law Number 12 of 2005 concerning International Ratification of the Covenant on civil and Political Rights, Article 8 of Law Number 11 Year 2005 concerning the International Ratification of the Covenant on Economic, Social and Cultural Rights (International Covenant on Social, Economic and Social Rights Culture), Presidential Decree of the Republic of Indonesia Number 83 of 1998 concerning Ratification of the Convention (Number 87) Concerning Freedom of Association and Protection of the Right to Organize (Convention Number 87 concerning Freedom of Association and Protection of the Right to Organize), Law Number 18 of 1956 concerning Ratification of Convention No.98 of the International Labor Organization Concerning the Endorsement yes Basics of the Right to Organize and Collective Bargaining, Article 28 and Article 28 E of the 1945 Constitution and amendments, Article 24, Article 25 and Article 39 of Law Number 39 of 1999 concerning Human Rights, Law Number 21 of 2000 concerning Trade Unions / Labor Unions and Article 104 of Law Number 13 of 2003 concerning Labor (Septiono, 2013).

Existing conditions in Gorontalo Province, approximately 3,248 companies registered in the Gorontalo Province Manpower and Transmigration Office with a workforce of more than 23,805 people, there are 3 (three) Federation units, 2 (two) non-Confederation Federation units and 1 (one) Confederation unit with a total number of approximately 3,208 workers / laborers who have entered and are registered as members of the trade union / labor union. From this data, it can be concluded that currently in Gorontalo Province there are still a number of 20,597 workers / laborers who are not yet members of the trade / labor union.

While the legal protection of trade unions from threats or prohibitions to gather and associate from workers / labor partners, in this case employers are regulated further in Law Number 21 of 2000 concerning Trade Unions / Trade Unions. Such actions are commonly known as Union Busting or the suppression of trade unions. The term Union Busting, according to Juanda Pangaribuan, was originally used in the world of industrial relations in the United States, which refers to efforts to deceive trade unions for the benefit of employers or co-optation treatment of trade unions. this practice is considered bad and is an unhealthy labor practice (Juanda Pangaribuan, 2012)

The *a quo* provision Article 28 of RI Law Number 21 of 2000 concerning Trade Unions states that "anyone is prohibited from obstructing or forcing workers / laborers to form or not form, become an administrator or not become an administrator, become a member or not become a member members, and / or running or not carrying out activities of trade unions / labor unions in a manner;

- a. Terminate employment, suspend, demote, or make a transfer;
- b. Not paying or reducing workers' wages;
- c. To intimidate in any form;
- d. Carry out campaigns against the formation of trade unions / labor unions "

Then further on in Article 43 of RI Law No. 21 of 2000 concerning Trade Unions/Trade Unions states that "(1) Anyone who blocks or forces workers / laborers as referred to in article 28, shall be subject to sanctions of imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) a year and/or a fine of at least Rp.100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 500,000.00.00

(five hundred million rupiah), and (2). The criminal act referred to in paragraph (1) constitutes a criminal offense ”

When referring to the a quo provisions, it is clear that these provisions are solely to protect all workers / workers from the arbitrariness of employers, but in reality union busting actions still often occur among workers / laborers, this is in line with the authors' findings of the practices union busting practices are carried out by some companies in Gorontalo Province. The forms of violations committed by some companies as from the results of this study from year to year can be seen in table 1 below:

Table 1. Different Forms of Violations of Freedom of Association

Year	Form of violation
2017	<ol style="list-style-type: none"> 1. Obstruct the establishment of trade unions 2. Refuse invitation to negotiations 3. Criminalization 4. Mutation
2018	<ol style="list-style-type: none"> 1. Mutation 2. work termination 3. Criminalization 4. Warning letter
2019	<ol style="list-style-type: none"> 1. Mutation 2. layoffs of management and members 3. Skorsing 4. Denying the validity of Trade Unions 5. Criminalization

Source: Primary Data, processed

From the picture above, from year to year various forms of violations against trade unions / labor unions can be seen, and the forms of violations that occur are almost the same from year to year, for example discrimination / intimidation of workers, mutations to layoffs and criminalization in which the company is has occurred mainly against members of Trade Unions and violations of existing rules but to date there has been no further action than law enforcement.

This law enforcement problem departs from the understanding of law enforcers who believe that this problem is a dispute problem involving industrial relations actors so that it is more appropriate to be solved through industrial relations disputes. this is inseparable from the provisions of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes which divides the types of industrial relations disputes into four namely, Perselisiah rights, interests, disputes between trade unions in one company and termination of employment.

Based on the description above, the problem formulation in this research is how is the form of legal protection for trade unions in Law No. 21 of 2000 concerning Trade Unions / Trade Unions and what are the barriers to law enforcement in the imposition of criminal sanctions against union busting actors in Gorontalo Province.

2. Method

Based on the formulation of the problem and objectives to be achieved in this study, the type of research used is normative legal research (Soerjono Soekanto dan Sri Mamudji, 2011), namely by examining the legal rules, legal theories and legal materials related to issues to be discussed. In addition to the type of normative legal research, this study also uses the type of empirical legal research, which examines the realities that occur in the research field. Data collection techniques used in this study is to use field research (field research). In addition to field research, library research is also used, namely studying and studying books, scientific journals and electronic media (internet browsing). In addition, in gathering the research data needed, interviews are also carried out, that is the method or technique of collecting data obtained directly from competent informants related to the problems the author studies.

In accordance with the problems to be answered and the objectives to be achieved in this study, the data collected both primary and secondary data were analyzed qualitatively, then described to answer the problems in this study..

3. Form of Legal Protection for Trade Unions in Law No. 21 of 2000 concerning trade unions / labor unions

Freedom of association or union formation is one of the basic human rights of every Indonesian citizen protected by the 1945 Constitution of the Republic of Indonesia and also Republic of Indonesia Law No. 39 of 1999 concerning Human Rights. The position of the right to associate as a human right of every citizen makes that right cannot be revoked or reduced arbitrarily either by the state, the government, or other citizens.

Provisions regarding trade unions in general can be seen in Article 104 of RI Law No. 13 of 2003 concerning Manpower and specifically in RI Law No. 21 of 2000 concerning Trade Unions / Labor Unions. The definition of Trade Unions according to Article 1 number 1 of the Trade Union Law is "A trade union / labor union is an organization formed from, by, and for workers / laborers in the company or outside the company, which is free, open, independent, democratic and is responsible for fighting for, defending and protecting the rights and interests of workers / laborers and improving the welfare of workers / laborers and their families. "

Based on the provisions of Article 1 number 1 in the Trade Union Law if related to the provisions of Article 3 of the same law, then one of the principles of a Trade Union is free, which means that the Trade Union in exercising its rights and obligations is not under the influence or pressure from any party, including business people. In addition, the Trade Unions also have an independent principle which means that the Trade Unions in establishing, running and developing an organization are determined by their own strength not controlled by other parties outside the organization. The Workers' Association also has a democratic principle which means that Trade Unions in forming organizations, electing officials, fighting for and exercising organizational rights and obligations are carried out in accordance with democratic principles).

The practice of union busting or union suppression, is a practice in which companies or employers try to stop the activities of trade unions in the area of the company. The efforts of these companies and entrepreneurs take various forms using a variety of methods and reasons, from using legal, illegal, and even hiring consultants to carry out the practice of union busting.

Whereas in Article 28 of RI Law 21 of 2000 it is regulated that "anyone is prohibited from obstructing or forcing workers / laborers to form or not form, become an administrator or not become an administrator, become a member or not become a member and / or run or not run union / labor union activities by:

1. To terminate employment, temporarily lay off, demote a position, or make a transfer;
2. Not paying or reducing workers' wages;
3. Doing whatever intimidation;
4. Carry out campaigns against the formation of trade unions / labor unions;

Furthermore, Article 43 of RI Law 21 of 2000 regulates sanctions against violations of Article 28, it is explained that:

1. Anyone who obstructs or forces a worker / laborer as referred to in Article 28, is subject to a maximum of 1 (one) year imprisonment and a maximum of 5 (five) years and / or a fine of at least Rp.100,000,000, 00 (one hundred million rupiah) and a maximum of Rp.500,000,000.00 (five hundred million rupiah).
2. The criminal act referred to in paragraph (1) constitutes a criminal offense.

Protection of freedom to form trade unions / labor unions is also based on the purpose and function of the union / labor union itself. as stated by one of the members of the Indonesian Metal Workers Union Federation (FSPMI), Mr. Zulkarnain, said that "basically the right to freedom of association embodied in the form of trade unions in industrial relations has two main functions. First, it functions to protect workers by contributing to setting minimum standards on wages, occupational health, social security and working hours for workers. Second, regulating the working relationship between employers, workers, and the government by setting regulations in the form of a Collective Labor Agreement (KKB), with the aim of changing the role of workers from the original as an object into work partners in the production process ".

In practice, the activeness of workers in trade union activities is the first weapon used to fight for workers' rights and to elevate their positions in line with employers. the methods adopted through trade unions, are usually done by submitting demands on employers when negotiating collective labor agreements, strikes to fight for workers' rights, methods, and conducting demonstrations and statements of solidarity with fellow workers under pressure and or treatment that are not good from a businessman. Thus it can be concluded that the right to form and become a member of a trade / labor union is one form of respect for human rights. But what happens in Gorontalo province When the restrictions / barriers to trade union activities occur the state does not take a meaningful attitude, labor inspector employees who have the obligation to conduct supervision in accordance with applicable laws and regulations, also do not take action to stop the restrictions and barriers barriers to the occurrence of restrictions and barriers to association activities. Employee inspectors who receive reports of restrictions and / or barriers to union activities only call the company, and do not take any meaningful action for the protection of trade / labor unions. Often they think workers / laborers are too flexible in demanding their rights, and are far-fetched in demanding what constitutes workers' rights.

As happened in Gorontalo, there has been an anti-union practice (union busting) where in the company discrimination / intimidation has occurred against its main workers towards union members and even layoffs occurred by the company. Indra Hasan, one of the Trade Union members who was laid off, said that "on August 4, 2016,

Kacab Mr. Muh Yahya and HRD Nurwahidah summoned members who entered the Trade Union one by one intimidating by saying that what they did would affect the contract. work where the work contract will not be extended again and ordered to make a resignation letter from the union and then the next day they are given a format that has been prepared by management to be followed by rewriting and signing by all employees who are administrators and union members. And they both also frighten workers with criminal threats”.

However, if we refer to Article 153 paragraph (1) of RI Law No. 13 of 2003 concerning Manpower Employers are prohibited from carrying out layoffs if based on the following reasons:

1. The worker / laborer is unable to come to work due to illness according to the doctor's statement as long as the time does not exceed 12 (twelve) months continuously;
2. Workers / laborers are unable to carry out their work because they fulfill obligations to the state in accordance with the provisions of the applicable legislation;
3. Workers / laborers perform worship that is ordered by their religion;
4. The worker / laborer is married;
5. Female workers / laborers who are pregnant, giving birth, conceiving or breastfeeding their babies;
6. Workers / laborers have blood ties and / or marriage ties with other workers / laborers in one company, unless stipulated in a work agreement, company regulations, or collective labor agreement;
7. A worker / laborer establishes, becomes a member and / or caretaker of a trade union / labor union, the worker / laborer carries out the activities of the union / labor union outside working hours, or within working hours according to the employer's agreement, or based on the provisions stipulated in the work agreement , company regulations or collective labor agreements;
8. The worker / laborer who complains the employer to the authorities regarding the conduct of the entrepreneur who commits a criminal offense;
9. Due to differences in understanding, religion, political affiliation, ethnicity, skin color, class, gender, physical condition, or marital status;
10. Workers / laborers in permanent disability, illness due to work accidents, or illness due to work relationships according to a doctor's certificate whose recovery period has not been confirmed.

Law enforcement and legal protection efforts for trade unions / labor unions in Gorontalo Province are still weak. The police who have the obligation to carry out investigations and investigations, do not carry out their obligations properly, so that many reports of the occurrence of crimes against restrictions / barriers to trade union / youth workers activities are countered by the issuance of SP3 (letter of termination of investigation).

The application of criminal sanctions against companies that violate the above provisions has never been applied to criminal sanctions in particular in Gorontalo Province. However, if we look at the facts, it is clear that so many criminal acts occur against trade unions. the same as the case by several companies but there is no follow-

up from law enforcers, especially PPNS Investigators at the Department of Manpower and Policing. In fact, there is an understanding of some investigators who say this is not the realm of criminal law, this is still the realm of Private law, not to mention cases that are this happens most often by way of mediation, courtship in the Industrial Relations court.

4. Barriers to Law Enforcement in the Imposition of Criminal Sanctions Against Union Busting Actors in Gorontalo Province

There are three institutions responsible for upholding the rights of trade unions / labor unions in Indonesia, namely the Manpower Office, the police and the IRC. Manpower is the first line of defense to uphold workers' rights in Indonesia. In addition to mediating disputes between trade unions and management, they are also responsible for labor inspection. The supervisory investigators at Disnaker have the authority to issue warnings for employers to comply with labor laws when they find violations of the legal provisions for which there are sanctions

Of all the forms of crime that are explicitly stated in the law but none of them reach the realm of prosecution, it is precisely what Satjipto Rahardjo said distinguishes the term law enforcement from the use of the law, further added he stated:

" Law enforcement and legal use are two different things. People can enforce the law to provide justice, but people can also enforce the law to be used for the achievement of other goals or interests. Upholding the law is not exactly the same as using the law ".

While the factors that influence law enforcement are stated by Soerjono Soekanto, there are 5 things that affect whether or not law enforcement is effective. This is what the writer tries to synchronize between the provisions of existing laws and the existing authority over law enforcers with the existing reality, so the writer refers to the theory raised by Soerjono Soekanto above. Whereas in the author's observations based on direct observations in the field, the author saw several factors that caused ineffective law enforcement related to anti-union crime (union busting) or protection of workers' rights in forming trade unions as follows:

a. Different Conceptions Of Understanding Among Law Enforcement.

In accordance with research found that unions also criticize the performance of the police, although not as much as the Manpower Office. One member of the union who was laid off Noval Mabunga said, "On average, trade unions no longer trust the police because they favor employers more than workers". The main reason given for the police's impartiality, however, is that they completely refuse to deal with this problem because they consider this problem to be the Disnaker domain. according to those who see the police negatively. Some participants observed that when unions reported cases, the police deliberately stalled, but when management reported workers, they acted very quickly.

Understanding the different concepts of law enforcement becomes one of the factors in obstructing law enforcement. Therefore, in addition to the rule of law, a role is also needed, there are still many violations of the role of law enforcement, especially at the investigation level. Not a new thing, if for labor criminal cases involving legal protection for workers' management or activists, the officers appear to be stuttering and are hesitant to implement the existing legal provisions. This is unavoidable because there are still many in the public perception that work cases are the civil sphere that begins to emerge when an employment agreement is made. When one of the parties in

this case is the employer does not want to be bound in a working relationship with his workers (in this case coincidence is a union manager), then it is natural if termination of employment is done. Even if there are lawsuits, they are considered to enter the realm of civilization through a lawsuit in the labor court (M . Nurdin Singadimedja dan M . Holy One N . Singadimedja, 2018)

Likewise with the concept of Union Busting from the court, as said at the beginning that there was a dialectical process among law enforcers. if examined further from several court decisions, the Court makes the rule of law that mutations cannot be carried out if there are restrictions agreed upon in the Collective Labor Agreement. Such restrictions may hinder a company from conducting its business in the most efficient manner. Therefore, employers need to be careful not to include the assignment and transfer issues in the Collective Labor Agreement, and remain the full authority of the entrepreneur (Priamoko, 2019)

The application of criminal sanctions against companies that violate the above provisions has never been applied to criminal sanctions in particular in Gorontalo Province. However, if we look at the facts, it is clear that so many criminal acts occur against trade unions. the same as the case by several companies but there is no follow-up from law enforcers, especially PPNS Investigators from the Department of Manpower and Policing. In fact, there is an understanding of some investigators who say this is not the realm of criminal law, this is still the realm of Private law, not to mention cases that are this happens most often by way of mediation, courtship in the Industrial Relations court.

Throughout the search for the author there are two cases that have actually been carried out in accordance with criminal provisions as regulated in Law No.21 of 2000 concerning Trade Unions / Trade Unions until the court's ruling. the two cases are:

- a. the case that was sued and sentenced to prison for 1 (one) year 6 (six) months is the General Manager of PT. Jim Jim Indonesia, namely Ir Fathoni Prawata, on June 23, 2011 trade union organizer Agus Waluyo cs by Yoyok Human Recourses Development Manager . Indoprata was reported to the police for voicing their aspirations and fighting for the normative rights of nearly 700 (seven hundred) employees in the form of: (1) unclear employment contracts and normative rights that followed; (2) protest over improper food allowances of Rp. 1,250 / day; and (3) inadequate transport allowance due to changes in route imposed by the governor;
- b. Another Union busting case, the Medan High Court's Decision in Case Number 125 / Pid / 2014 / PTMDN, in that decision the Defendant was convicted for having laid off workers union management without reason and without a letter of dismissal; Decision of the Supreme Court at the Review level in case Number 130 / PK / Pid.Sus / 2015, the Defendant was convicted because he was proven to request that MJ witnesses not be active in activities to be held by Trade Unions, even the Defendant threatened to lay off all employees who became trade union members, and impose sanctions on some employees who are active in trade unions ”(M . Nurdin Singadimedja dan M . Holy One N . Singadimedja, 2018)

From the two examples of cases above it becomes an example that it is not impossible that criminal law enforcement processes are carried out against violations of article 43 paragraph (1) jucto article 28 of Law number 21 of 2000 concerning Trade Unions / Trade Unions.

b. Lack of Coordination among Investigators.

Factors of Lack of Coordination between Labor PPNS Investigators and Police Investigators. In the Criminal Procedure Code the investigator's words or terms are the Officials of the Indonesian National Police and certain Civil Servants who are given special authority by law. Criminal investigations in the field of employment carried out by the Civil Servant Investigator (PPNS) of Manpower in carrying out their investigations are regulated in Article 9 paragraph (1) Perkap. No. 6 of 2010 concerning the management of investigations by PPNS. Based on Article 182 paragraph (1) of the Manpower Act, the investigation process in manpower is carried out by the PPNS of Manpower and Transmigration in coordination with the police, by promoting the principle of transparency, effectiveness and efficiency. The investigation process by the PPNS Employment is carried out with the existence of a Criminal Act of Employment by the labor inspector (PPK), then the PPNS sends a notice of the commencement of the investigation (SPDP) to the police. After the PPNS completes an investigation then makes a Minutes of Investigation (BAP), then it is delegated to the Public Prosecutor (JPU) through the Police. After the prosecutor accepts and states it is complete, it is transferred to the court for trial.

Weak law enforcement and the slow process of investigation by the Labor PPNS and the Police, in following up violations of labor norms / criminal acts, especially in Gorontalo Province, one of which is the lack of coordination between PPNS Labor investigators and POLRI investigators. as stated by a member of the police investigator who said that Disnaker officials rarely submit the minutes of examination (BAP) needed by the police to be submitted to the prosecutor even though when violations or criminal acts, the police must review the evidence first which will then be submitted to public prosecutor ".

4. Conclusion

Workers in Indonesia still face great challenges in exercising their collective rights. Workers who form trade unions face harassment and intimidation from employers, and even after successfully establishing a new union, union officials face many ongoing obstacles from employers in carrying out their activities and sometimes even being laid off. However, the form of protection and law enforcement against violations or criminal acts against the union (Union Busting) that occurred, especially in the Province of Gorontalo is still very weak, there has been no decisive action from all law enforcement. The workings of the law are inseparable from the law enforcers themselves, law enforcement against criminal acts of the union (union busting) basically still encounters several obstacles among which is the understanding of the concept among law enforcers of Law No.21 of 2000 concerning Trade Unions / Trade Unions and lack of coordination between Labor PPNS investigators and Police Investigators.

References

- Asri, W. (2012). *Synchronization of Labor Law with ILO Conventions - Analysis of Freedom of Association and the Elimination of Forced Labor in Indonesia*. Karya Putra Darwati.
- Juanda Pangaribuan. (2012). *Various Constitutional Court Decisions in the Field of Labor Law Completed with Legal Reviews*. Muara Ilmu Sejahtera Indonesia.
- M . Nurdin Singadimedja dan M . Holy One N . Singadimedja. (2018). Certainty of

Legal Protection for Trade Union Managers from Union Busting Actions. *Jurnal Hukum Positum*, 3(1), 104–116.

Priamoko, N. E. (2019). *Position Union Busting*.

<https://www.hukumonline.com/berita/baca/lt5c651b0083d77/memposisikan-union-busting-oleh--nugroho-eko-priamoko?page=5>

Septiono, A. (2013). Criminal Law Policy in the Protection of the Right to Freedom of Association for Indonesian Workers / Workers. *Law Reform*, 8(2), 20.

<https://doi.org/10.14710/lr.v8i2.12422>

Soerjono, S. & Sri, M. (2011). *Normative Legal Research*. Rajawali Pers.