MODEL OF LABOR DISPUTE RESOLUTION ON CASES OF UNION BUSTING IN INDONESIA AND THE USA

Rissa Afni Martinouva[1], Nurlis Effendi[1], Suhendra Pratama Putra[1], Ria seftika[1], Riansyah[1], M. Maulana Hasan Nuddin[1]
Malahayati University[1]

E-mail: risaafni@malahayati.ac.id[*], suhendraprata0201@gmail.com, riaseftika32@gmail.com, syahrian@gmail.com, Muhammad29042003@gmail.com

Abstrack

This research examines the dispute resolution model concerning cases of union busting in Indonesia and the United States. Dispute resolution is crucial in the context of global industrial relations, considering the differences in legal systems, cultures, and labor policies between the two countries. Through a comparative legal approach, this article analyzes the legal framework in Indonesia and the United States related to union busting. Dispute resolution models, including mediation, arbitration, and litigation, are explored to understand their effectiveness and challenges in each legal context. The study employs references from labor laws, government policies, and recent legal cases to provide deeper insights. The results of this research are expected to serve as a foundation for improving and harmonizing labor dispute resolution systems in Indonesia and the United States, aligning with global efforts to enhance worker protection.
Keywords: Labor Dispute Resolution, Union Busting, Indonesia-America Legal Comparison

A. INTRODUCTION

A trade union or labor union is an organization created from, by, and for workers or laborers. According to Law No. 21/2000 on Trade Unions/Labor Unions, the formation of such organizations can be carried out both within the company and outside the company which is free, open, independent, democratic, and responsible in order to create welfare for workers or workers and their families. The existence of labor unions is considered very important because workers or laborers have the right to organize which is mandated in laws and regulations (heteronomous norms) ranging from international conventions, constitutions, to laws and government regulations. (Aloysius Uwiyono, 2014)

The protection provided by the state to workers related to the right to organize (heteronomous norms) is certainly inseparable from the role of trade unions related to autonomous norms inherent in the legal relationship between employers and workers. This is because employers, who are the initiator for workers to carry out orders, must implement each of these orders without deviating from autonomous norms. Autonomous norms themselves consist of Work Agreements (PK), Collective Labor Agreements (PKB), Company Regulations, customary of law, and company operating rules.(M. Hadi Subhan, 2020)

The large role of trade unions in an employment relationship, especially in relation to the protection of workers, in practice raises concerns for companies. These concerns arise because of the intersection of interests between trade unions and companies, for example, when trade unions organize activities that are considered to be detrimental to the company (M. Nurdin Singadimedja and M. Holy One N. Singadimedja, 2018).

Carrying out associational activities is a manifestation of the right to organize (B. Creighton and S. McCrystal, 2016.). The right to organize is part of human rights (E. Harmon and M. S. Silberman, 2018, N. Yosepin Simbolon and M. Ablisar, 2018). The right to association stems from the idea of freedom of association. There are three human rights according to Article 3 of the UN Charter. Everyone has the right to life, liberty and security of person. Freedom is the third ranked human right according to UN Charter thinking. Freedom is a philosophical concept (L. Fortunati, 2018). It becomes a concept of right when it has been formulated in a regulation. Everyone has the same right to organize. The exercise of such rights must be limited (B. M. Artz, A. H. Goodall, and A. J. Oswald, 2017). So that the use of the right of association does not interfere with and harm each other (R. Griffith and G. Macartney, 2014).

What is a trade union? A trade union is an organization originating from, established by and for workers or laborers who are attached to a company or not to a company, which is free, open, independent, democratic, and responsible for fighting for, defending, and protecting the rights and interests of workers or laborers and improving the welfare of workers or laborers and their families (Article 1 point 1 of the Trade Union Law). Trade unions can be formed within the company or outside the company. A trade union or labor union without a company is a trade union or labor union established by workers or laborers who are not employed in a company (Article 1 point 3 of the Trade Union Law). Based on the definition of a trade union, an analysis of its substance and procedure has been conducted. Substance analysis is divided into two things, namely substance analysis relating to the subject of law and substance analysis relating to the object of law. (Chamdani and Asri Wijayanti, 2023)

B. DISCUSSION

1. Dispute resolution models in Indonesia and America

Basically, dispute resolution can and is usually carried out using two methods, namely dispute resolution through litigation institutions (through the courts) and dispute resolution through non-litigation (outside the courts). There is no legislation that provides a definition of litigation, but it can be seen in Article 6 paragraph 1 of Law 30/1999 on Arbitration which basically states that disputes in the civil sector can be resolved by the parties through alternative dispute resolution based on good faith by overriding litigation settlement in the District Court. (Rahwati Kusuma, Zaeni Asyhadie, 2023)

Disputes can happen to anyone and anywhere. Parties to a dispute can be individuals, groups or legal entities. Disputes can also be public or private and occur locally, nationally or internationally. A dispute is defined as conflicting behavior between two or more parties that can cause legal consequences so that legal sanctions can be imposed on one of the parties.

The procedure for resolving industrial relations disputes has been regulated in Law No. 2 of 2004 concerning the settlement of industrial relations disputes. There are non-litigation and litigation settlement mechanisms. Four forms of industrial relations disputes can be resolved through a bipartite mediation mechanism or to an industrial relations court. Unlike the non-litigation authority in the form of conciliation or arbitration. Conciliation does not have the authority to resolve rights disputes. Arbitration does not have the authority to resolve rights disputes and employment termination disputes. In legal theory, mediation, conciliation or arbitration are alternative forms of dispute resolution outside the court (Bennett T. 2013), (Krislov J, Moore CW. 1987).

Based on this article 28, normatively, trade union leaders have a legal umbrella to carry out activities related to workers' organizations. Managers are guaranteed not to be terminated either permanently or temporarily (suspension/housing) including demotion in employment.

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Intimidation in the form of mutation/movement to an uncomfortable workplace/not in accordance with the position or even not in accordance with expertise is not permitted. Although the factual facts often still occur, especially when the company is experiencing operational difficulties.

Article 28 point (2) of the Union Law guarantees that union leaders are not allowed to have their wages reduced or not paid because of their position. In many circles this also applies to workers' activities related to their duties as union organizers that require them to leave work.

To strengthen the legal protection of trade union organizers, the provision is strengthened with criminal penalties as stipulated in Article 43 paragraph (1) of the Trade Union Law which reads:

Any person who obstructs or forces workers/laborers as referred to in Article 28, shall be subject to imprisonment for a minimum of 1 (one) year 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);

The criminal provision on the protection of trade union leaders is an enhancement that should minimize opportunities for intimidation of labor activists. Article 43 paragraph (2) of the Trade Union Law states that "Criminal offenses as referred to in paragraph (1) are felonies." The stipulation of this classification shows that intimidation against trade unions is a serious criminal offense, not just a lesser-qualified offense. The prohibited acts mentioned in the above provisions are popularly referred to as Union Busting. (M. Nurdin Singadimedja, M. Holy One N. Singadimedja, 2018)

Change of status from permanent labor to contract labor / outsourcing In Indonesia, dispute resolution can be done through various mechanisms that include legal proceedings and alternative dispute resolution (APS). The following are some of the commonly used dispute resolution methods in Indonesia:

1) Courts: Courts are formal institutions where disputes are resolved, generally related to breach of law or contract. The process involves the parties to the dispute and refers to the applicable laws and regulations.
2) Mediation: Mediation is a dispute resolution method that involves a neutral third party, the mediator, to help the disputing parties reach an agreement. The mediator facilitates communication and negotiation without rendering a decision.
3) Arbitration: Arbitration involves a neutral third party, an arbitrator or panel of arbitrators, rendering a binding decision. The process is faster and private compared to court, and the outcome is final.
4) Litigation: This process involves the disputing parties taking their case to court. The court's decision may be in the form of a lawsuit, suspension, or a binding judgment.
5) Ombudsman: Some sectors, such as the public sector, have ombudsman institutions tasked with resolving disputes between citizens and government agencies or state enterprises.
6) Commission for Settlement of Labor Disputes (KPPU): KPPU is an institution that focuses on dispute resolution in matters of business competition and monopoly.
7) Consumer Dispute Resolution: For disputes involving consumers, institutions such as the Consumer Dispute Resolution Agency (BPSK) or the Consumer Relations Court (PHK) can be accessed.
8) ADR in the Corporate Environment: Many companies are adopting alternative dispute resolution (ADR) mechanisms such as negotiation, mediation or arbitration in their internal policies to resolve disputes efficiently.

9) Customary or Community Courts (through Adat): In some parts of Indonesia, there are still traditional dispute resolution systems through customary or community courts that are recognized by the government.

The choice of dispute resolution method usually depends on the type of dispute, the relationship between the disputants, and the parties' preferences. Some disputes may be more suitable for resolution through mediation or arbitration, while others may require a formal litigation approach. Efforts are ongoing to improve the effectiveness and accessibility of the various dispute resolution mechanisms in Indonesia.

At the same time, the use of private forms of dispute resolution in mediation, arbitration, and new forms of dispute resolution is hybridized among disputants who can choose (and are willing) to do so. leaving the formal justice system (both in major commercial and private family matters) has resulted in a growing demand for the privatization of justice, impacting access to justice in many areas of legal dispute resolution. These consequences include making access to some forms of private dispute resolution difficult for those who cannot afford it and suggesting that, with mass exits from the formal system by those who can afford to 'litigate' elsewhere, there is less interest in the justice system. services and reforms. In addition, in recent years consumers and employees have been subjected to contractual commitments to mandatory arbitration, endorsed by the US Supreme Court, that virtually eliminate choice as to where to resolve certain disputes. All these claims are strongly opposed by practitioners, judges and experts of the American legal system. (J Resnik, 1995)

Courts in the United States disagree on whether agreements to negotiate in any context are enforceable (Vestar Development II LLC, 2001 and Copeland, 1992) a court in the same federal district ruled that an agreement 'to use best efforts to reach an agreement', constitutes an enforceable agreement (Thompson, 1979).

Dispute resolution in America involves a variety of methods, and these many options allow the parties involved to choose the approach that best suits their needs and desires. Here are some of the common dispute resolution methods in America:

1) Negotiation: This is a direct process between the parties involved in a dispute to reach an agreement without involving a third party. Negotiation often provides flexibility in finding a solution that satisfies all parties.
2) Mediation: Mediation involves a neutral third party, the mediator, who helps the parties to reach an agreement. Although the mediator provides advice and guidance, the final decision remains with the disputing parties.
3) Arbitration: Arbitration is a process in which a neutral third party, the arbitrator, decides a dispute based on the evidence and arguments presented by the parties to the dispute. The arbitrator's decision is binding and enforceable like a court judgment.
4) Litigation: This is a formal process through the courts, which involves disputing parties presenting their case to the court. The court will issue a binding judgment, and this process adheres to established rules of law.
5) Alternative Dispute Resolution (ADR): In addition to mediation and arbitration, there are other ADR methods, such as expert evaluation, conciliation negotiation, and mini-trials, which can be used to resolve disputes without involving the courts.
6) National Labor Relations Board (NLRB): In the context of industrial relations, the NLRB plays an important role in handling labor disputes and protecting the rights of workers in America. The NLRB can facilitate mediation or issue rulings regarding industrial relations violations.

It is important to note that each dispute resolution method has its own advantages and disadvantages. The choice depends on the complexity of the dispute, the relationship between the parties, and the expected outcome. A combination of methods may also be used in an effort to achieve an effective resolution.

Additional information on dispute resolution in the Americas includes:

1) Class Action Lawsuits: In some cases, large groups of individuals with similar claims may join in class action lawsuits. This allows individuals with small claims to jointly sue the company or party in question, strengthening their position in negotiations.
2) Online Dispute Resolution (ODR): In the digital age, ODR is becoming increasingly popular. It involves online dispute resolution using technology, including virtual meetings, online discussions, and dispute resolution platforms that can be accessed through the internet.
3) Work Tribunal or Internal Arbitration Board: Some companies have internal systems, such as labor tribunals or arbitration boards, to resolve disputes between employees and the company without having to involve external parties or courts.Federal and State Regulations: The American legal system consists of federal and state laws. Some disputes may involve federal regulations, such as the Civil Rights Act or the National Labor Law, while others may relate to specific state law regulations.
4) Pretrial Settlements: Before reaching trial, parties to a dispute often seek a pretrial settlement through negotiation or mediation to avoid the costs and time involved in a trial.
5) Implementation of International Human Rights and Labor Rights Law: In some cases, workers' rights and dispute resolution may be based on human rights norms and international labor rights treaties, such as those in the International Labor Organization (ILO) conventions.

It is important to note that the American legal system is very dynamic, and new practices may develop over time. The choice of dispute resolution method will largely depend on the specific context of the dispute, the preferences of the disputants, and the legal rules in effect at the time.

As one New York court observed, it is possible to impose a definite and certain obligation to negotiate in good faith, but 'even when asked to interpret a clause in a contract expressly stating that a party must use its best efforts, it is clear that a set of guidelines by which a party's best efforts can be measured is essential to the enforcement of the clause.' (Jillcy Film Enters, 1984)

2. Barriers to the settlement of union busting cases in Indonesia and the U.S.

Given the importance of workers' organizations, the existence of trade unions is important and even a basic right of workers that should not be hindered by anyone. Regarding trade unions, this has now been accommodated in Law No. 21/2000 on Trade Unions/Labor Unions. According to the law, trade unions are defined as organizations formed from, by and for workers/laborers, both in companies and outside companies, which are free, independent, democratic and responsible in order to fight for and protect the rights and interests of workers/laborers and their families.

As a basic right, there should be no anti-union actions. The policy of freedom of association has been strengthened by Law Number 21 of 2000. Under this law, the requirements for establishing a trade union are simplified. Trade unions can be formed by at least ten people

and workers do not need to ask permission from the company in advance, but simply notify the company by attaching proof of registration from the agency in charge of labor.

Although the law makes it easy to form trade unions, it is not easy for workers to exercise their rights. Some of the obstacles to exercising the right to organize and unionize come from the management of the companies where workers work. Several cases of industrial relations disputes that led to suspension and termination of employment, for example, often began when workers tried to establish trade unions or carry out trade union activities in the company. The word "suppression" in this study is equated with anti-union actions. Thus, even though formal legal instruments have accommodated the prohibition against union busting, in practice union busting still occurs. (Ari Hernawan and Murti Pramuwardhani dewi, 2013).

Trade Unions according to Law No. 21/2000 on Trade Unions are organizations formed from, by and for workers/laborers, both inside and outside the company, which are free, independent, democratic and responsible, in order to fight for and protect the rights and interests of workers/laborers and their families. From this definition, it can be seen that the role of trade unions to guard the interests of workers is strategic (A. Ridwan Halim and Sri Subiandini Gultom, 2003).

Law No. 21 of 2000 states that every worker has the right to form and become a member of a trade union and that it is not compulsory. Indonesia does not recognize a kind of close agreement where workers must be members of a workers' organization to obtain employment (Halili Toha and Hari Pramono, 2004).

The negative attitudes and perceptions of company management towards trade unions and the legal norms that still restrict the space for trade unions to move make union busting an opportunity to occur. This is even more difficult to stop because trade unions are often trapped in fanaticism, making it difficult to unify perceptions about union busting.(YW. Sunindia and Ninik Widiyanti, 2003, p.: 9)

In Law No. 2/2004 on Industrial Relations Dispute Resolution, there are two main roles of trade unions as a forum for workers in the industrial relations dispute resolution system, namely as legal counsel for workers and as Ad hoc judges from trade unions (TURC Team, 2007, p.: 7). The legal right of trade unions to act as legal counsel to litigate in the Industrial Relations Court on behalf of their members is in line with Law No. 21 on Trade Unions/Labor Unions, particularly Article 25 paragraph (1) letter b (Surya Tjandra, 2008, p.: 91).

The right to organize for workers is guaranteed by Article 28 of the 1945 Constitution. Trade unions function as a forum to protect and fight for the interests of workers and improve their welfare. Workers and trade unions are responsible for exercising this right to create harmonious and equitable industrial relations.

Although Indonesian laws and regulations protect the right to form trade unions, there are still many violations of this right by both companies and individuals. Anti-union campaigns are easily carried out in Indonesia, such as in Karawang, the largest industrial area in Southeast Asia. Such campaigns are carried out by employers or certain parties for the sake of personal or group interests, as employers often consider unions to hinder production targets and company profits. (Aang Ruhaedin, Muhammad Gary Gagarin Akbar, Sartika Dewi, 2013)

The resolution of union busting cases in the United States has a number of barriers that can affect their successful resolution. Some of these barriers involve legal, organizational, and social factors.

common obstacles:

1) Power Inequality: The company or employer usually has more resources and power than the union. This can create inequality in the settlement process, especially if the employer has a tendency to utilize their legal and financial resources.
2) Lengthy Legal Process: Lengthy and complicated legal processes can be a serious obstacle in resolving union busting cases. Courts and regulatory bodies take a long time to decide such cases, which can be difficult for workers and unions.
3) Ineffective Labor Laws: Some critics argue that labor laws in the United States do not adequately protect workers' rights, especially in cases of union busting. There are certain restrictions that can limit a union's ability to fight against union busting.
4) Anti-Union Sentiment: There is an anti-union attitude in some industry sectors and in some regions of the United States. Employers may try to capitalize on this sentiment to hamper union organization efforts and hinder the resolution of disbarment cases.
5) Third Party Interference: Some employers may use third parties or anti-union consultants to hinder unionization efforts. Acts of intimidation or anti-union campaigns can be a significant obstacle.
6) Lack of Sanctions that Discourage Busting: Some critics argue that sanctions against union busting in the United States are not harsh enough. Without significant sanctions, employers may feel freer to engage in union busting.
7) Legal Uncertainty: Sometimes, unclear or changing interpretations of the law can create legal uncertainty in union busting cases, which makes it difficult for unions and workers to forecast

In the American context, there are several obstacles to resolving union busting cases. While America has a strong legal framework to protect the rights of workers and unions, some challenges remain:

1) Company Anti-Union Tactics: Some companies may use anti-union tactics, including threats, firings, or delays in the contract negotiation process, to dampen union support.
2) Slow Legal Process: The legal process related to union busting in America can take a long time. Although the National Labor Relations Board (NLRB) is responsible for handling union busting cases, it can take several years before there is a final decision.
3) Inequality of Power at the Negotiation Level: Although labor unions are protected by law, there is an inequality of power in contract negotiations. Some large companies may have an advantage in resources and can use this power to control the outcome of negotiations.
4) Changing Political and Legal Influences: Changes in government policy or legal interpretation can affect union protections. Significant political changes or shifts in regulatory approaches can create uncertainty for unions.
5) Anti-Union Culture in Some Sectors: Some sectors or industries in America may have a culture that is less supportive of unions. This can create barriers for unions to grow and protect the rights of their members.
6) Conflicting Regional and Industry Interests: In enforcement cases involving large companies with regional or national interests, conflicts of interest can be complex and complicate resolution.
7) Abuse of Contract or Freelance Employee Status: Some companies may tend to use contract or freelance employees to reduce union impact. This can be an obstacle as unions may not have the same protections against union busting for this type of work.

8) Anti-Union Approaches in Information Campaigns: Prior to a union election, companies may conduct information campaigns that are anti-union in nature, spreading inaccurate information or scaring workers away from supporting the union.
9) Limitations in Remediation of Dismissal Suits: While the NLRB can order the reinstatement of wrongfully dismissed workers, this process may be less effective in restoring the employment relationship and restoring trust.
10) Dismissal of Workers Who Actively Support the Union: Sometimes, companies may dismiss workers who actively support the union, and this can be a serious obstacle to the union's efforts to gain support.

Efforts continue to be made by unions, labor rights activists, and regulatory bodies such as the NLRB to overcome these barriers. Awareness-raising, advocacy, and policy changes can be instrumental in overcoming the challenges of resolving union busting cases in America.

C. CONCLUSIONS

Settlements and barriers to union busting in Indonesia and the US demonstrate the complexity in legal dynamics and organizational culture. Although both countries have diverse settlement mechanisms, challenges such as power inequality, slow legal processes, and anti-union tactics remain obstacles. Increased legal awareness and the active role of settlement bodies are key to creating a fairer work environment in both countries.

In Indonesia, diverse settlement methods provide flexibility, while challenges such as power inequalities remain obstacles. In the US, the structured system and protection of workers' rights have been highlighted, although anti-union tactics and the slow pace of legal proceedings are obstacles. Increased legal awareness and the role of settlement institutions are essential to creating a fair work environment in both countries.

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Chamdani1 and Asri Wijayanti2(B) 1 Wijaya Putra University, Surabaya, Indonesia 2 Law Department, University Muhammadiyah Surabaya, Surabaya, Indonesia asri.wijayanti@fh.um-surabaya.ac.id

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