

REVIEW ARTICLE

FREEDOM OF ASSOCIATION FOR LABORS IN THE INDUSTRIAL RELATIONSHIP

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ABSTRACT

Law No. 21 of 2000 concerning Labor Unions is established freely, openly, independently, democratically and are also responsible for workers to fight for the interests of workers and their families. Likewise, unions are expected to be able to coordinate the realization of the right to unionize to the fullest. Because everyone is given the right to freely form or participate in membership or become administrators in community organizations in the territory of the Republic of Indonesia. The right of association for workers, as regulated in the International Labor Organization (ILO) Convention Number 87 concerning Freedom of Association and Protection of the Right to Organize. This paper is intended to analyze the concept of freedom of association and the dispute on the industrial relationship.

Keywords: *Right to Association; Labour Rights; Human Rights; Industrial Relationship; Freedom of Association*

INTRODUCTION

The constitution of Indonesia entirely contains all arrangements regarding human rights. One of the human rights guaranteed by the Indonesian constitution in Article 28E paragraph (3), the 1945 Constitution of the Republic of Indonesia is the right to associate and assemble. As a country that was initiated and supported by several organizations and groups that promote independence, Indonesia guarantees the freedom of assembly and association of its citizens in its constitution. The regulation regarding the right to freedom and assembly in the 1945 Constitution of the Republic of Indonesia is contained in Article 28 which reads "*Freedom of association and assembly, expressing thoughts orally and in writing and so on are stipulated by law.*" and Article 28E paragraph (3) which reads "*Everyone has the right to freedom of association, assembly and expression.*"

In Law No. 8 of 1985 concerning Community Organizations (hereinafter referred to as Law No. 8 of 1985) was passed as a regulation to accommodate freedom of association and assembly in the form of community organizations (hereinafter referred to as Ormas) in Indonesia. Apart from being a forum for association, gathering and channeling aspirations or opinions, mass organizations are also a means to achieve the national development goals stated in the Preamble to the 1945 Constitution, namely to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed; promote the general welfare; enrich the life of a nation; and implement a world order based on freedom, lasting peace and social justice.

Workers as citizens have equal status under the law, the right to get a job and a decent living, to express opinions, to gather in one organization, and to establish and become members of labour unions ([Law No. 21 of 2000 concerning Labour Union](#)). The right to become a member of a trade union is an embodiment of workers' human rights which are guaranteed and protected by law ([The 1945 Constitution of Indonesia](#)). To realize this right, workers must be given the widest opportunity to establish and become members of a trade union. Trade unions function as a means to fight for, protect, and defend the interests and improve the welfare of workers and their families ([Charda, 2008](#)). In exercising their rights, workers are required to be responsible for ensuring the interests of the nation and state. Therefore, the use of these rights is carried out within the framework of harmonious, dynamic, and just industrial relations.

The right of association for workers as regulated in the International Labor Organization (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, and ILO Convention No. 98 concerning the Applicability of the Fundamentals of the Right to Organize and Collective Bargaining, have been ratified by our country. so that it becomes part of the Indonesian laws and regulations with the enactment of Law Number 21 of 2000 concerning Trade Unions/Labour Unions. The working community, trade unions,

and entrepreneurs in Indonesia are part of a world community that is heading towards a free market. To deal with these effects, all actors in the production process need to unite and develop a professional attitude. Besides that, workers and trade unions need to realize the importance of the same responsibilities as other community groups in building the nation and state. Thus, trade unions are established freely, openly, independently, democratically, and responsibly by workers to fight for the interests of workers and their families.

Many previous studies have even revealed that the right of association for workers is one of the fundamental human rights that are not only protected by national laws (Human Rights Law) but also various international legal rules (Tyagita, 2011; Nasution, 2015; Septiono, 2013). Even according to Budiono (2016) the right to freedom of association is also one of the constitutional rights protected by the state. However, many studies also state that the rights to freedom of association for workers have not been fully accommodated and in accordance with the principles of fulfilling human rights (Pratiwi, 2021; Nasution, 2015b; Gunarto, 2010).

This study uses a problem approach in an empirical normative way. Legal research, which is based on the main legal material, examines theoretical matters concerning legal principles, legal concepts, views and legal doctrines, regulations and the legal system. Sources of data used in this study are primary data and secondary data, to obtain correct and accurate data in this study, literature study and field research procedures were used. The data obtained is then processed using qualitative descriptive analysis in the form of explanations and descriptions of sentences that are easy to read and understand then conclusions are drawn.

THE RIGHT TO ASSOCIATION: FROM TIME TO TIME THE INDONESIAN CONSTITUTION

A. During the 1945 Constitution

In early 1945, the Indonesian Independence Business Investigative Agency (hereinafter referred to as BPUPKI) was formed to investigate Indonesia's independence efforts, including drafting the 1945 Constitution (hereinafter referred to as the 1945 Constitution) as the State Constitution of the Republic of Indonesia. During the second session of BPUPKI, Drs. Moh. Hatta suggested that the right to voice, association and assembly be mentioned in the constitution, so that people's sovereignty is more secure and thus, the government cannot act arbitrarily and violate these rights. Furthermore, after Indonesia's independence, the 1945 Constitution of the Republic of Indonesia was ratified which contains provisions regarding the right to freedom of association and assembly in Article 28 which reads "Independence of association and assembly, express thoughts

verbally and in writing and so on are stipulated by law." From the formulation of the article, it is further explained through the text of the explanation of the 1945 Constitution that the formulation in Article 28 regulates the position of the population.

From the formulation of the explanation, freedom of association and assembly is only for residents of the State of Indonesia, which in Article 14 of the Law of the Republic of Indonesia Number 3 of 1946 concerning Citizens and Residents of the State (hereinafter referred to as Law No. 3 of 1946), explains that Included in the Indonesian population are:

1. Every person who is domiciled within the territory of the State of Indonesia for 1 consecutive year;
2. a woman in marriage, whose husband has legal status as a resident of the State of Indonesia;
3. a child who is not yet 21 years old and unmarried, if the father or guardian has legal status as a resident of the State of Indonesia;
4. children up to the age of 21 years domiciled within the territory of the State of Indonesia; and
5. children who are before the age of 21 but are married and domiciled in the territory of the State of Indonesia.

Therefore, in this case the recognized rights of association and assembly are only Indonesian citizens and residents of the State of Indonesia, while foreigners can be recognized and guaranteed the rights of association and assembly if they fulfill the provisions stipulated in Article 14 of Law no. 3 of 1946. However, the principle of the right to freedom or freedom of association recognized in Article 28 of the 1945 Constitution does not provide a clear and direct constitutional guarantee, but only states that such freedom will be stipulated by law. because at that time they were still in an unfavorable situation, even in the early post-independence period there was an event known as the "*Bersiap period*", which made it increasingly impossible for foreigners to establish organizations to realize freedom of association and assembly.

B. During the Constitutional Period of the United States of Indonesia

The explanation of human rights in the RIS Constitution is quite different from the formulation contained in the 1945 Constitution. In the RIS constitution, it places more emphasis on regulating human rights. The emphasis on human rights guarantees in the RIS Constitution has historically been heavily influenced by the existence of the Universal Declaration of Human Rights. In the context of basic rights, namely freedom of association and assembly, the RIS Constitution also contains regulations regarding this matter. The regulation is contained in Article 20 which reads "The right of the population to freedom of peaceful assembly and assembly is recognized and only needs to be guaranteed in statutory regulations."

Based on this article, the human rights regarding freedom of association and assembly that are carried out peacefully are recognized in the RIS Constitution,

The regulation regarding the position of the population is contained in Article 6 of the RIS Constitution, which states that what is included in the term resident is anyone who resides in Indonesia according to the rules established by federal law. Meanwhile, at the time of the RIS Constitution, the federal laws governing the population had never been realized. This causes uncertainty about anyone other than RIS citizens who are recognized and guaranteed freedom of association and assembly. The absence of legal rules governing the position of the population and guarantees of legal protection for the implementation of freedom of association and assembly during the RIS Constitution are quite reasonable (Joeniarto, 1984). This is because the RIS Constitution is a provisional constitution.

C. During the Return to the 1945 Constitution

The re-enactment of the 1945 Constitution in 1959, caused the existence of human rights contained in the contents of the Indonesian Constitution to become undeveloped, especially regarding freedom of association and assembly during the New Order era, there were many human rights restrictions on citizens and residents in freedom of association, assembly, and express opinions (Putra, 2015, p. 212). This caused the population to feel that their rights to freedom of association and assembly were not protected due to the minimal protection of human rights by the government and the repressive actions carried out by the New Order regime (Putra, 2015, p. 213). Then the government issued Law N. 8 of 1985, it can be said, Law no. 8 of 1985 is a further rule made by the government as an implication of one of the implementations of Article 28 of the 1945 Constitution which reads "*The freedom of association and assembly, expressing thoughts and writings and so on is stipulated by law.*"

THE FREEDOM OF ASSOCIATION AS A LABOUR RIGHTS

In the history of the development of an integrated human rights struggle starting in England with the formulation of human rights in the Magna Carta charter in 1215, the petition of rights in 1628, the Habeas Corpus Act in 1679 and the Bill of Rights in 1689, followed by the Act of Settlement in 1701. The development that occurred in England was then followed by America by formulating the Virginia Bill of Rights and the Declaration of Independence in 1776. Further developments occurred in France which was pioneered by JJ Rousseau and Lafayette in 1798. This struggle gave birth to *La Declaration des Droits de l'Homme et du Citoyen*. The culmination of the struggle finally gave birth to The Universal Declaration of Human Rights (Nasution, 2004, pp. 100-101).

This universal declaration contains 30 articles on human rights which are broadly grouped into: personal rights, economic rights (property rights), social and cultural rights. Political rights and legal rights, which include rights of legal quality and procedural rights. The United Nations Declaration on Human Rights does not have legally binding force, but only serves as a guideline, recommendation or moral obligation for countries in the world to implement human rights in their respective countries in accordance with the intent and content and objectives of the Declaration (UDHR, 1948).

Another term as put forward by Philipus M. Hadjon, in the English literature uses the term "natural right" and in Dutch the term "*rechten van den mens*", while in the Indonesian language literature there are terms, such as natural rights and basic rights (Hadjon, 1987), human rights (Marsudi, 2001). Human rights are essentially basic rights that are inherently inherent in every human being since birth. This understanding implies that human rights are a gift from God to His servants. Considering that human rights are a gift from Allah, then no body can revoke these rights from the hands of their owners. Likewise, no one is allowed to seize it, and no power can bind it.¹

Judging from the level of recognition of the rights mentioned above, human rights in general have obtained the scale of international recognition, while basic rights are related to the recognition of national law and become legislation. The recognition of national law can be in the form of a constitution and can also be in the form of other laws and regulations contrary to the grouping of human rights referred to this paper is limited to the group of personal human rights and socio-economic rights, as referred to in the provisions of Article 23 of the 1948 United Nations Declaration on Human Rights. Article 23 determines as follows:

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to unemployment protection.
2. Everyone without any discrimination has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration which ensures an existence worthy of human dignity for himself and his family, and is provided for, when necessary, by other means of social protection.
4. Everyone has the right to form and join trade unions to protect his interests.

Philosophically, the nature of freedom (including the right to freedom of association) lies in the human ability to self-determination. Freedom is existential

¹ Almost the same meaning is also stated in the Decree of the MPR RI Number: XVII/MPR/1998 concerning Human Rights which is described in the attachment to this decree in the form of a human rights text at number I letter D point 1 which states: "Human rights are rights as a gift from God Almighty. The Supreme Being, which is inherent in human beings, is natural, universal and eternal, related to human dignity. Furthermore, in Article 1 number 1 of Law Number 39 of 1999 concerning Human Rights, it states: "Human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His grace that must be respected, upheld, and protected by the state, law and government, and everyone for the sake of honor and protection of human dignity.

because it is something that unites with humans, meaning that includes their existence as humans. Freedom is an ability to give meaning and direction to life, as well as the ability to accept or reject the possibilities and values that life offers to humans (Dister, 1996, p. 51). The understanding of the value of freedom is increasingly realized when experiencing non-freedom. He felt that something was missing from him, something that should be a part of his life. In essence, everyone will feel free as far as he is dealing with society and other individuals. Seeks to pursue one's own goals which are often directly or indirectly undermined by social goals (Nasution, 2004, p. 101).

The international community recognizes the existence of a number of ILO conventions, referred to as "*core conventions*" which are conventions on basic workers' rights. The convention is one side of workers' human rights, which must be respected and implemented by all member countries. Indonesia has ratified all nine conventions. This process is an effort to protect workers' human rights, apart from declarations and conventions, but also in the form of conventions, such as the 1966 International Covenant on Civil and Political Rights as the First-Generation Covenant (Chotidjah, 2002).

The right to work is not only socio-economic rights but are also fundamental human rights (Chotidjah, 2002). The development of the concept of human rights is associated with the concepts of the right to work and the right in work, it can be seen from the existence of international arrangements in the following matters:

1. Freedom from slavery and similar practices is contained in The Slavery Convention of 1926 and its amendments through the Protocol Amending the Slavery Convention of 1953.
2. Freedom from forced and compulsory labour, contained in the Forced Labor Convention (Number 29) of 1930.
3. *The Right to free employment services*, contained in the Convention (Number) of 1919 concerning Unemployment; Convention (Number 88) of 1948 concerning the Organization of the Employment Service, Convention (Number) of 1949 concerning Free-Charging Employment Agencies.
4. The Right to employment is contained in the 1948 UNDR, ICESCR, and the African Charter of Human and Peoples Rights.
5. *The Right to Protection of Employment*, contained in the Convention (Number 158) of 1982 concerning the Termination of Employment at the Initiative of the Employer.
6. *The Right to Protection against unemployment*, contained in the ILO Convention (Number 168) of 1988 concerning Employment and Protection against Unemployment.

With these national and international developments, there has been a very basic change of view in the field of manpower, especially with regard to the basic rights of workers. So that the new paradigm that forms the basis for the development of labor politics is the right to association and workers' human

rights, democratization of trade unions, and the expansion of job opportunities while still paying attention to the gender aspect of workers.

CONCLUSION

In this explanation a form of freedom for workers to associate in industrial relations, that Law Number 21 of 2000 provides space and guarantees legal protection for workers to form and become members of trade unions/labor unions as an organizational forum in the context of fostering working relations between workers and employees. entrepreneurs in order to create peace of mind and peace of mind in business. Freedom of association for workers has sociological and political implications, namely that the demands of trade unions do not only demand normative matters, and the proliferation of trade unions can allow conflicts or disputes between trade unions to occur with one another.

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