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THE REQUIREMENTS FOR COMPLETING VIETNAM LAW ON THE RIGHT TO ORGANIZE AND COLLECTIVE BARGAINING

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ABSTRACT

The right to organize and collective bargaining is an essential and core issue in maintaining and developing labor relations. The right to organize and bargain collectively is part of protecting workers' rights and human rights at the level and content of workers' rights, such as employment rights, rights to guaranteed income, and life, which are implemented in reality. Research on the right to organize and collective bargaining and making requirements to improve Vietnamese law on the right to organize and collective bargaining in Vietnam is essential.

KEYWORDS:- freedom of association, collective bargaining, collective labor agreement.

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1. Introduction

In terms of form, laws on the right to organize and collective bargaining can be established at many different levels:- International conventions: The right to organize and collective bargaining is stipulated in a pair of basic conventions, the International Covenant on Civil and Political Rights (ICCPR Convention) (UN, 1966) and the International Covenant on Economic, Social and Cultural Rights (UN, 1966) were jointly adopted by the United Nations General Assembly on December 16, 1966; ILO Convention No. 87 (1948) and Convention No. 89 (1949); Collective Bargaining Convention 154 was adopted at the International Labor Conference in 1981.- Free trade agreements (FTA): New generation FTAs often cite the content of the 1998 Declaration as one of the essential provisions ensuring fair competition based on ethical costs. The CPTPP and EVFTA free trade agreements both reference this Declaration.- Codes of conduct (CoC): Codes of conduct are considered global business ethics standards that businesses must comply with. These standards stem from the goodwill of consumers to ensure that workers participating in the supply chain are treated fairly by ensuring labor rights. In addition to the eight fundamental Conventions, CoCs often cite the content of other conventions, such as labor remuneration, working and rest time, and labor discipline. - At the national law level: National laws must be consistent with international obligations and commitments, especially ILO membership obligations, ratified international

conventions, and signed FTAs. Therefore, national law ensures the implementation of labor rights that the country has committed to or is obligated to implement. Vietnamese law stipulates in the 2019 Labor Code, Laws such as the Trade Union Law and by-law documents on the rights to organize and collective bargaining. Article 65 of the 2019 Labor Code stipulates that "Collectual collective bargaining is a negotiation and agreement between one or more employee representative organizations on one side and one or more employers on the other side or employer representative organizations to establish working conditions, regulate the relationship between the parties, and build progressive, harmonious, and stable labor relations. In addition, the contents of negotiations between the parties in the Labor Relations Labor Code 2019 have stipulated the principles, content, subjects, and processes of collective bargaining (National Assembly, 2019)- Collective labor agreement: Based on national law, representative organizations of workers and employers negotiate and sign a collective labor agreement. Collective labor agreements establish specific labor rights appropriate to each industry and enterprise's specific working conditions. This is considered a source of law, a testament to the exercise of the right to organize and collective bargaining.- Labor contract: Individual labor contracts must not violate the law and the collective labor agreement. Labor contracts establish labor rights for individual employees and employers in labor relations at the workplace. (Industrial Relations newsletter No. 17 - CIRI, 2016) The law on the right to organize and collective bargaining can be understood as a system of legal norms issued and guaranteed by competent state agencies in accordance with international treaties. International standards that the state has signed acceded to or participated in to regulate social relations arising in the process of ensuring the rights of workers and employers to organize and collective bargaining at different levels. Laws on the right to organize and collective bargaining regulate social relations and set requirements when perfecting the law.

2. Requirements when perfecting the law on the right to organize and collective bargaining

In reality, Vietnam is deeply participating in new-generation trade agreements. However, the TPP and Vietnam - EU Free Trade Agreements do not create new international labor standards. Both trade agreements require Vietnam to adopt and maintain its charter and regulations and practice the rights set out in the ILO Declaration on Fundamental Principles and Rights at Work. Vietnam recently with the efforts of the Vietnamese Government and relevant parties, by the end of December 2022, Vietnam has joined 25 Conventions of the International Labor Organization (ILO), including 9/10 Basic Conventions, 3/4 Management Conventions, and 13 Technical Conventions (Vietnam Multilateral Trade Policy Department, 2023). TPP and now CPTPP and the bilateral agreement between Vietnam and the United States require Vietnam to have an obligation to carry out reforms to fully implement basic principles and rights in labor, especially the right to organize and Collective bargaining needs to ensure the following requirements:

2.1. Guaranteed freedom of association

The right to freedom of association originates from the ICCPR Convention. Article 22 of the ICCPR states that everyone has the right to freedom of association with others, including the right to form and join trade unions to protect their interests. The right to freedom of association stipulated in Article 22 of the ICCPR is understood to include three aspects: (i) Establishing new associations, (ii) joining existing associations, and (iii) Operations and administration associations, including finding and mobilizing funding sources.

The exercise of this right is not subject to any restrictions, except in cases prescribed by law, and these restrictions are necessary in a democratic society in the interests of national security, public safety, and order to protect the public health or personality, or the rights and freedoms of others. This does not prevent lawful restrictions on persons in the armed forces and police. (Ministry of Labor, War Invalids and Social Affairs, 2017) Next, it is expressed in ILO Convention No. 87. The

right of workers to freely establish and join trade unions as stipulated in Article 2 of Convention 87 is understood very broadly. In addition to the right to establish, join, or not to establish or join a trade union, employees also have the freedom to decide whether their organization will join or associate with other organizations. This means that an established trade union cannot be a barrier to establishing another trade union, both at the enterprise and higher levels. This is one of the topics with many complaints and grievances sent by workers' organizations to the ILO's monitoring mechanisms. Stemming from the cases that the Committee of Experts has received and considered, the Committee has repeatedly made decisions affirming that a trade union organization in a specific industry does not prevent the establishment of a trade union. Establish another trade union if that is the wish of the employees. The right of workers to establish trade unions of their choosing implies the possibility of establishing more than one workers' organization within an enterprise if workers so choose. Workers must be free to form or join the organization of their choice. This is a significant change for workers and the Vietnam General Confederation of Labor, employers, and the Government. Employers may have to deal with non-VGCL employee organizations in the workplace, and the Government will have to develop an effective system to certify these organizations as representative organizations of workers participating in collective bargaining and other collective actions in labor relations. We need to modernize unions according to the principle of free association to have an effective industrial relations system in Vietnam. (Chang Hee Lee, 2016)

2.2. Ensure harmonious labor relations that benefit both parties

International experience and global comparative studies show that an effective industrial relations system benefits all stakeholders:

Research and experience show that effective social dialogue helps businesses and governments make better-informed decisions. It also helps the Government make decisions when it receives regular feedback and suggestions from representative workers and employers' organizations, which is good for both business and management.

An effective industrial relations system creates a stable and predictable environment for business and the modern economy. Conflicts between employers and employees can be handled quickly and orderly through collective bargaining and social dialogue to find standard solutions to problems. This is good for business and good for society.

Many studies show that effective and inclusive collective bargaining systems contribute to more equitable income distribution at the societal level.

We need to consider this essential function of labor relations seriously. Effective collective bargaining mechanisms can mitigate the adverse effects of globalization and maintain social harmony. Effective labor relations are good for globalization and society.

2.3. Ensure consultation with three parties

This content comes from Convention 144. Convention No. 144 on tripartite consultation to promote implementing international labor standards adopted in 1976 is one of four governance conventions (also known as the priority convention) of the ILO. Vietnam joined this Convention on June 9, 2008. The content of Convention 144 includes three main issues: First, determine the State's responsibility in carrying out procedures to ensure adequate consultation between the Government and representatives of workers and employers (Article 2). The State's responsibility here is to devise the processes and procedures mentioned above and ensure the necessary conditions for implementing the processes and procedures in practice (Article 4). Second, the regulations and principles

determine which representative organizations of workers and employers have the right to participate in the consultation mechanism with the Government according to the processes and procedures mentioned above. In the context of freedom of association, Representative associations and organizations participating in the consultation mechanism may be the most representative organizations of employers and employees (Article 1). Employer and employee representatives will be freely selected by their representative organizations (Article 3.1); Employers and employees are equally represented in all structures to conduct consultation (Article 3.2). Third, the content of consultation between the Government and representative organizations of employers and employees focuses on contents related to the implementation of international labor standards (Article 5) (ILO, 1976). 2.4. Ensure compliance with other labor standards. These labor standards are regulated in many conventions, such as Convention 138 on Minimum Age Regulations for Employment, passed on July 6, 1973, and Vietnam ratified on June 24, 2003, with 18 articles. States that ratify the Convention commit to "pursue a national policy which shall ensure the effective abolition of child labor and the gradual raising of the minimum age for employment or employment to the age at which minors can fully develop physically and mentally" (ILO, 1973). Many other standards need to be considered.

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