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The Assessment of the Labor Code Impact on Labor Relations

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Abstract:

The current Labor Code has made more effective adjustments to individual and collective labor relations, ensuring the interests of labor collectives and employers harmoniously. This article provides an overview to assess the impact of the Labor Code on labor relations and the development of labor relations through the recognition in the Labor Code. The study assesses the role of employee representative organizations and employers' representatives in labor relations and assesses the Labor Code's impact on individual and collective labor relations. This paper is divided into two main parts with applying a qualitative approach to achieve the research objectives. The first part examines the theoretical framework and the reality of the theoretical framework to assess the impact of the Labor Code on labor relations. The second part provides an overview of the issues raised in implementing the provisions of the Labor Code in labor relations to propose solutions to improve the legal corridor for the development of industrial relations.

Keywords: legal framework, Labor Code, labor relations.

劳动法对劳动关系影响的评估

摘要:

现行劳动法典对个人和集体劳动关系进行了更有效的调整,保障了劳动集体与用人单位利益的和谐。本文通过对劳动法的承认来评估劳动法对劳动关系的影响以及劳动关系的发展。该研究评估了雇员代表组织和雇主代表在劳动关系中的作用,并评估了劳动法对个人和集体劳动关系的影响。本文分为两个主要部分,应用定性方法来实现研究目标。第一部分考察了理论框架和理论框架的现实性,以评估劳动法对劳动关系的影响。第二部分概述了在劳动关系中实施劳动法规定时出现的问题,提出了完善劳资关系发展法律通道的解决方案。

关键词: 法律框架、劳动法、劳动关系。

1. Introduction

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From a legal perspective, nowadays, the labor relationship is governed by the Labor Code, and it arises mainly in the labor market formed by the agreements and the interactions of the subjects involved, such as employees, the representative organization of labor, employer, the representative organization of the employer, the state. Accordingly, the relationships can be between two parties and tripartite" (Chi & Van Binh, 2021). By all accounts, each amendment and supplement of the Labor Code will directly impact labor relations and the labor market (Binh Duong University, 2021). In the context of the Labor Code enforcement, this is an opportunity and a challenge for labor relations. Therefore, in the current situation, to develop effective law implementation plans, it is vital to study and evaluate the impacts of labor laws on labor relations.

2. The Reality of the Theoretical Framework for Assessing the Impact of the Labor Code on Labor Relations

According to the legal science in the world, many scientists believe that labor law relations are the unity of three legal relation groups: individual labor law relations, organization labor law relations, and collective labor law relations (Ho Chi Minh City University of Law, 2013). The theoretical framework for assessing the impact of labor law on labor relations has the following contents:

2.1. Legalizing the Labor Relations Construction Role of the Representative Organizations of Employees and Employers

2.1.1. The Representative Organization of Employers

The representative of employers is a core part of the labor relations and the relationship between two or three parties. In labor relations, the organization representatives' effectiveness is the participation level of the organization for employees and the state (Diep, 2020b). From the international law perspective, the organization representatives of employers are recognized in the Freedom of Association and Protection of the Right to Organise Convention (1948) No 87 (OHCHR, 1948). In globalization and international integration, negotiation and agreement are considered the core contents in labor relations. This marks an important milestone in changing and raising awareness about the employers' representative organizations in labor relations.

In labor relations, employers tend to maximize their rights. This is implemented through the union of the employers. At the same time, in relation to employee representatives, the employers' representative organization is also recognized by law as the equality of legal status between the two subjects. On the one hand, the law protects the rights of stakeholders' representatives in labor relations. On the other hand, the law also promotes the development of two-party and

tripartite mechanisms. The Collective Bargaining Council plays an important role in representing bargaining, signing sectoral collective bargaining agreements (Articles 69, Articles 72, 73 of the Labor Code), participates in contributing ideas related to employees' legal policies, participates in the Arbitration Council composition (Article 185 of the Labor Code), conciliates and settles labor disputes (Articles 187, 188 of the Labor Code). The employer's representative organization also has a role in the tripartite mechanism. The employer's representative organization also participates in developing policies, labor laws, and issues related to labor relations. Together with the Government, the employer's representative organization participates in the National Wage Council (Article 92 of the Labor Code) to support the development of labor relations, supervise the law implementation, protects the rights and interests of the employer (Diep, 2020b).

2.1.2. The Representative Organization of Employees at the Grassroots Level

In legal science, labor representation is understood as "an organization or individual (on the basis) legally established or recognized. It has a legal personality and can represent the labor collectively to solve problems in the labor process relating to the rights and interests of the labor collective. In order to protect labor's rights and labor's interests, along with building labor relations harmony, stability, and development" (Diep, 2015). The employee representative organization is the basic labor representation form performing the function of protecting the rights of employees. According to Comparative research, the model of representative labor organization at the grassroots level is widely and effectively applied in several countries such as Korea and Japan.

From the perspective of practical law, compared to the 2012 Labor Code (Hung, 2013), the current Labor Code has a more specific definition of the employee representative organization (Clause 3, Article 3 of the Labor Code). With this approach, the employer's representative organization is a specific social being at the root level. It is regulated by the Law, being an independent institution of labor law, with basic characteristics: (i) Expressing the specific rights of employees is "the right to establish and join representative organizations of all employees in the labor relations"; (ii) Reflecting the employee's free and voluntary will; (iii) An institution recognized by law as a legal power and has mechanisms to ensure its implementation.

In the context that Vietnam has joined new-generation of the Free Trade Agreements such as The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Free Trade Agreement between Vietnam and the European Union (EVFTA). This requires Vietnamese law to comply with the labor commitments, including regulations on allowing more employee representative organizations to be established and workers' organizations to connect with each other

(Ha & Anh, 2020). Therefore, the Labor Code stipulates that the representative organization of employees can be shown in two forms: (i) Trade Union and; (ii) Organization of employees at the enterprise. Therefore, at the root level or, more specifically, at the enterprise, employees can establish, join, and operate in two types of organizations representing workers' interests: trade unions and organization of employees at the enterprise (Nhunh & Yen, 2020). Thus, compared to the 2012 Labor Code (Hung, 2013), the new Labor Code has a breakthrough change, from adjusting trade union organizations to adjusting trade unions and workers' organizations registered with state agencies, which do not belong to the Vietnam General Confederation of Labor (2011). Comparative research shows that this article of the Labor Code is compatible with the developed countries' laws in the world, such as those of Germany, Austria, Belgium, Denmark, France, Italy.

2.2. The Theoretical Framework for Assessing the Impact of the Labor Code on Individual Labor Relations

The individual labor relationship is reflected through the relationship between the employee and the employer established based on a labor contract. The law recognizes the specific form of establishing individual labor relations through two basic aspects:

Firstly, adding cases considered as labor contracts to the Labor Code. This is a new adjustment signaling a breakthrough of the Labor Code on labor contracts. According to this provision, any employment agreement has three characteristics: (i) the work to be done; (ii) the Salary; (iii) the management and administration of the employer (then the work is still considered as an employment contract even if it can be done in any form or has any name). This additional provision has solved the practical problems arisen over the years. They are the verbal labor contract, service contract, collaborator contract, contributor contract, consulting, agency contract, etc. These forms are used to evade obligations on social insurance, health insurance, and employee unemployment insurance. The employer violates or dodges the law to save labor costs. This is expressed through the data of people participating in compulsory social insurance compared to the number of salaried (13.1 million versus 22.5 million, equaling 58.2%, (Ministry of Labor, Invalids and Social Affairs, 2018). On the other hand, this regulation can manage the new employment relationships that are different from the traditional ones that have appeared in industrial revolution 4.0, such as Grab, Uber, etc.

Secondly, the Labor Code stipulates two types of labor contracts and the form of electronic labor contracts (Viet An Law, 2019) to create flexibility in establishing the labor relations in industrial revolution 4.0. The electronic labor contract plays an important role in the employers and the employees' relations. The

impact this revolution has affected the labor relations between employers and employees. In establishing labor relations, electronic labor contract helps save effort, costs, and time for employers and employees (Diep, 2020a).

2.3. Theoretical Framework for Assessing the Impact of the Labor Code on Collective Labor Relations

Collective labor relations are reflected through dialogues at the workplace, collective bargaining, and collective bargaining agreements.

2.3.1. Dialogue at the Workplace

In the science of labor law, dialogue at the workplace is the direct exchange between the employer and the employee or between the collective labor representative and the employer to share information and enhance the appreciation between the employer and the employee to ensure the implementation of democratic regulations at the grassroots level in the workplace (Hai & Yen, 2014). Although the 2012 Labor Code had determined "dialogue" in the workplace (Hung, 2013), an official definition to explain this term had not yet been formed from the practical law perspective. Therefore, to resolve these shortcomings, Clause 1, Article 63 of the 2019 Labor Code has added the concept of dialogue at the workplace (Viet An Law, 2019). This concept has generalized the form, the subject, the content, and the purpose of dialogue at the workplace, creating a theoretical basis to stipulate rights and obligations of the parties in the dialogue at the workplace; showing the agreement with the related provisions in the Labor Code such as collective bargaining; collective labor agreement. With a unified understanding, it will better ensure the ability to enforce the regulations on dialogue at the workplace and business establishments.

2.3.2. Collective Bargaining and Collective Labor Agreements

Collective bargaining and collective labor agreements play an important role in collective labor relations. Collective bargaining helps the employer's representative organization and the employee's representative organization negotiate and reach an agreement to establish working conditions and regulations on the relationship between the parties (Diep, 2019a). The parties will build progressive, harmonious, and stable labor relations through collective bargaining. In particular, the collective labor agreement is considered the employer's law. The negotiated contents in the collective labor agreement between parties play a particular role for the employer and the labor collective. The collective labor agreement's implementation supports and improves the responsibilities among the parties in the labor relations (Diep, 2014). Therefore, the Labor Code has added provisions allowing the establishment of a collective

bargaining model in the context of many representative workers' organizations. This is a new and unprecedented issue in Vietnam. Through consultation with ILO experts, it is recommended that the principle for a workers' representative organization to exercise the right in bargaining must guarantee a certain level of representation. The collective bargaining results should not be too low because they will be valid for all employees in the enterprise. From practical law, Article 68 of the Labor Code stipulates that an enterprise may have many representative organizations. However, only one collective bargaining agreement is carried out by most employee representative organizations, reaching a minimum percentage of union members who are the enterprise employees. However, the Labor Code does not stipulate the union members' minimum ratio to the total number of employees of the enterprise so that the representative organization of employees has the right to collective bargaining, but the Government holds the right to regulate this issue.

In general, the amended and supplemented contents of the Labor Code on dialogue at work, collective bargaining, and collective labor agreements are agreeable with the requirements of ILO Convention No. 98 (International Labour Organization, 1949) and the transition context of the labor relations system from one representative organization of employees (trade union) to many representative organizations of workers according to the commitments of the CPTPP Agreement.

3. Issues of the Implementation Process of the Labor Code 2019 on Labor Relations

In general, the legal provisions of the Labor Code have created a platform for employees and employers to exercise their rights in labor relations. The employee and employer management provisions are comparatively complete, synchronous, and in force throughout the labor relationship's establishment, change, or termination. From thence, the positions of the employees and their representative organization at the grassroots level are affirmed. This creates a legal framework to protect the rights and interests of the parties in the labor relations to recognize the equality of legal status and ensure the harmonious interests between the employer and the employee. At the same time, these regulations are getting closer to international labor standards and international labor conventions. However, analyzing the theoretical framework for assessing the impact of labor law on labor relations still has limitations that need to be improved as follows:

3.1. The State Soon Promulgates the Law on Labor Relations

This is important legislation recognizing the personal labor relationship between employees and employers; the collective labor relationship between the labor collective and employers; the relationship

between the employees' representative organization and the employers' representative organization; the tripartite relationship between the state, employers, and employees; the operational mechanisms of labor relations; the mechanisms to ensure the implementation of labor relations, the measures to ensure the implementation of labor relations and the role of state management agencies in labor relations (Diep, 2019b). The implementation of the Labor Relations Law will meet the conformity with the legal corridors of countries in the world and the trend of globalization.¹

3.2. The State Promulgates Specific Provisions on the Employer's Representative Organization

At present, the fact that the Labor Code stipulates three employers' representative organizations is the regulation of scope. It means that the organization represents its members. However, it is also difficult for members of the same organization to have their rights protected and participate in a two-party or three-party mechanism effectively. Therefore, in the author's opinion, in the coming time, the Government and the Ministry of Labour, Invalids and Social Affairs should enact specific legislation on the employer's representative organization: (i) Clearly define the position, role, and function of the employer's representative organization in the establishment and implementation of labor relations; (ii) specifically regulate on the employer's representative organization in dialogues and collective bargaining at an enterprise level, sectoral level, and national level; (iii) More specifically stipulate the rights and responsibilities of employers in establishing and joining their representative organizations to protect the rights and the interests of employers (Diep, 2020b).

3.3. Supplementing Regulations Allowing Parties to Establish the Labor Representative Organizations

The State needs to supplement regulations allowing parties to establish the labor representative organizations for foreign workers and employees working for individuals and households to i) Ensuring the trade union rights of foreign workers; ii) Meeting the requirements of international economic integration and globalization process; iii) Creating a strong connection between foreign workers and Vietnamese

¹ Nowadays, many countries have promulgated the Law on Labor Relations to regulate the relationship between the parties, the agreement issues, labor representatives and employers' representatives, labor disputes (Law on Industrial Relations of Thailand 1975; Law of Industrial Relations of 1967 of Malaysia; The National Labor Relations Act of 1935 amended in 1947 of US; Law of Labor Relations of 2007 of the US; South Africa's 1995 revised Labor Relations Act of 2002; Jamaica's 1975 Labor Relations and Disputes Law; Indonesia's Labor Relations Law; Newzeland's 1973 Labor Relations Law). Some countries have developed Labor Code but still have a Single Act Law to adjust this issue further, such as Malaysia (Union Law, Labor Code), Indonesia (Human Resources Law), Singapore (Law on Trade Unions) (Diep, 2015).

workers and building a harmonious, stable and progressive labor relationship.

3.4. Specifying Regulations on Electronic Labor Contracts

The Labor Code has not specified the management of the process of signing labor contracts in general and the process of signing electronic labor contracts in particular, especially signing electronic labor contracts in the form of authorization for employees' groups or signing many electronic labor contracts for retired employees. At the same time, regulations on penalty for breach of electronic labor contracts by employers and employees are still lacking. Therefore, in the author's opinion, in the coming time, the state needs to provide specific regulations on the management of electronic labor contracts and sanctions for the violations of the electronic labor contracts by the parties in the labor relationship.

3.5. Enhancing the Role of the Authorities Supporting Labor Relations Enforcement

Besides perfecting the law on labor relations, the State needs to improve the role and function of the Department of Labor Relations and Wages, the Labor Relations Committee, the Centre of development of labor relations supporting in regulating the relationship between employees, the labor collective, and the employer (Diep, 2019c).

4. Conclusion

The study assessed the impact of the Labor Code on labor relations, which inherited the advantages of the 2012 Labor Code (Hung, 2013), amended and supplemented new regulations in many fields of industrial relations.

The article has analyzed in an overview the impact assessment of the Labor Code in the following aspects: i) Legalizing the labor relations construction role of the representative organizations of employees and employers; ii) Analyzing the theoretical framework to assess the impact of the Labor Code on individual labor relations, analyzing the relationship between individual labor contracts and labor relations; iii) Analyzing the theoretical framework to assess the impact of the Labor Code on collective labor relations, analyzing issues of dialogue at the workplace, collective bargaining, and collective bargaining agreements. The study has systematized and analyzed the three groups of issues mentioned above by analyzing and assessing new points according to the current legislation. Based on that analysis, the study points out the inadequacies, makes some recommendations, and proposes solutions to improve the legal provisions on labor relations.

The policy suggestions and legal solutions given in the article recognize the freedom of agreement of the parties in the labor relations, the flexibility in

participating in the labor market, and limit the intervention role of state management agencies on labor in establishing labor relations. The study has proposed solutions to improve the law that ensures the flexibility of labor relations in the labor market:

- To best protect the rights of the parties in the labor relations;

- Improve the responsibility of the employer in the relationship with the employee.

The solutions proposed in the article are the basis for the next research when analyzing and evaluating the connection between the individual and collective labor relations and building a tripartite mechanism in the development of labor relations.

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