

The Role of Government in Promoting Harmonious, Stable and Progressive Industrial Relation in Vietnam



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ABSTRACT : The government is an essential partner in the 3-party mechanism of industrial relations in Vietnam, coordinating and facilitating the effective operation of representative organizations and employers' representative organizations. Simultaneously, through the tripartite dialogue mechanism at national and provincial levels, it promptly resolves recommendations from employers and employees, thereby promoting industrial relation development. However, the current model of government management organization on industrial relation from the central to local levels is not consistent; Government management functions on labor and industrial relations are still dispersed; The force for the government management of labor and industrial relations is still thin, the capacity of the staff has not met the requirements. Therefore, the article describes the role of government in industrial relations in Vietnam, thereby offers some solutions to enhance the role of the government in promoting harmonious industrial relations, stable and progressive in Vietnam

KEYWORDS : government, industrial relation

1. INTRODUCTION

According to Clause 6 Article 3 of the Labor Code of Vietnam 2012, the industrial relation is the social relations arising in hiring, using the labor, and paying wages between the employee and the employer. More specifically, Clause 5, Article 3 of the Labor Code 2019 governments that the Labor Code is a social relations arising in the hiring, employment, and payment of wages between the employees, the employers, the representative organizations of the parties, home agencies authorized country. Thus, wherever and whenever the industrial relation appears, there and then obviously appear the subject of such industrial relation. Therefore, the core content of the VGCL is about the actors and all the interactions between them. Specifically, the issues of the VGCL are the individuals or organizations that participate in the interaction process in the VGCL at different levels such as national, local, industry and enterprise. There are 3 subjects involved in this relationship: (1) the employee and the organization representing the employee; (2) Employers' representative organizations; (3) Government. In this article's scope, the author only mentioned the role of the government (the third subject) in industrial relation.

2. THE ROLE OF GOVERNMENT IN PROMOTING HARMONIOUS, STABLE AND PROGRESSIVE INDUSTRIAL RELATION IN VIETNAM

2.1 The government plays the role of formulating and submitting to the National Assembly for approval laws and ordinances and organizing the implementation of legal provisions :

In Industrial relation, the government plays the role of constructing, submitting to the National Assembly for approval laws, ordinances, and organizing legal regulations. Over the past years, Vietnam has formed a relatively synchronous system of laws governing labor and industrial relation, including Labor Code, Trade Union Law, Employment Law, Vocational Education Law, Social Insurance Law, Safety Law labor hygiene, in particular, the 2012 Labor Code, with 39 Decrees and 38 Circulars guiding, has many adjustments on industrial relation in the direction of clearly defining the rights and responsibilities of each party in the labor contract conclusion, enhancing the role of trade unions, especially the Communist Youth Union and the direct superior grassroots level in the industrial relation, strengthening information sharing dialogue between parties at the workplace, expanding the scope of negotiation, signing linking CBA at the enterprise group level, sectoral level, reinforcing the role of institutions involved in resolving the labor union ... thereby, creating more favorable conditions for the parties within the business to establish the contents of the labor plan associated with practical requirements (Center for Industrial Relations Development Support, 2019). By the time of its revision in 2019 (applied from January 1, 2021), this Code has codified many

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contents according to international standards, especially the contents of the Industrial relation, which are considered a breakthrough with a fundamental transition from an industrial relation model designed based on a representative organization of employees (unions) to a model of an industrial relation with more than one representative organization of persons, according to which the contents of the labor contract Labor, dialogue, wages, collective bargaining agreements, labor dispute resolution, and strikes have all been revised. However, the current labor law system still has some shortcomings and problems under the assessment of some experts such as:

In terms of regulations on the protection of the rights and interests of employees: the content of the adjustment to industrial relation in the Labor Code and some guiding documents are not close to the experimental conditions leading to problems in the implementation process, shown in the number of regulations on agreed conditions in labor contracts, workplace dialogue, general education, resolution of labor disputes and strikes. Or as for social insurance, the regulations on the employer's responsibility in the refund are clear, but the sanction is not strong enough, making the employee at a disadvantage when implementing the registration procedure to enjoy unemployment benefits.

In terms of consistency with several Laws and Decrees, which have been enacted in recent years, such as the 2015 Penal Code, the Enterprise Law and the Investment Law of 2015, the 2015 Civil Procedure Code and specialized laws. Separated from the Labor Code (the Law on Employment 2013, the Law on Vocational Education 2014, the Law on Social Insurance 2014, the Law on Occupational Safety and Hygiene 2015), the Labor Code is still incomplete in relevant regulations to labor disputes, union activities.

In summary, over the past years, Vietnam has built a system of labor laws and regulations on industrial relation in the direction of reforming labor market institutions, including industrial relation institutions. However, due to the limitations of thinking and institutions, the current legal system is not completely synchronous, supportive, transparent and consistent to ensure a competitive labor market freedom and equality for both labor supply and demand sides. Therefore, the labor market has not yet developed; there are many contradictions in industrial relation.

2.2 The government plays a vital role in inspecting and examining the observance of the labor law in Vietnam :

Currently, labor inspection and industrial relation are established at the Ministry of Labor, Invalids and Social Affairs with the Departments of Labor, Invalids and Social Affairs in provinces and cities. The whole industry now has nearly 500 inspection officers and labor inspectors, also in charge of inspecting other industry activities. Every year, labor inspectors conduct inspections from 3,000 to 5,000 cases/year, administratively handling tens of billion VND for enterprises that violate the law (Ministry of Labor - Invalids and Social Affairs, 2018). However, the industrial relation relationship between the employee and the employer still has many uncertainties and inequities when there are many shortcomings in the inspection, examination, and supervision of the implementation of the labor law such as:

In terms of quantity and quality of the inspection force: it can be seen that not only the shortage of staff and implementation staff is faced, but this force also has to undertake multiple fields such as labor inspection, real implementing legal policies on labor, implementing policies for people with meritorious services, children, implementing anti-corruption, applying a one-stop-shop mechanism in receiving citizens, resolving complaints. Therefore, It is difficult to have a human resource with good qualifications in many fields. On the other hand, professional staff still have limited capacity, so the supervision is only on general issues, not deep, and supervision effectiveness is not high.

Law enforcement inspection, inspection and supervision have been heavily influenced in resolving cases, and there is no mechanism to resolve problems systematically.

The contingent of cadres in charge of government management on industrial relation is insufficient and weak. Specifically, according to Mr. Nguyen Huu Hung - Ministry of Labor, Invalids and Social Affairs, there still exist two main limitations of the contingent of cadres working on government management of industrial relation: i) Firstly, lack of - In the system of agencies. Currently, there is almost no full-time staff in government management on industrial relation. Additional capacity is difficult due to downsizing. The ability to set up a support system through a couple of mediators, labor arbitrators, has not been done yet; ii) Secondly, weak - Very few cadres are professionally trained; mostly activities concurrently in many fields; no practical experience, especially knowledge about industrial relation in the new context.

2.3 The government plays a supporting role in the development of industrial relation :

The support for the development of industrial relation by the Government of Vietnam remains weak. Although the organizations to support the development of industrial relation (Labor Relations Committee, National Wage Council, National Committee for Occupational Safety and Hygiene) are formed, the main activities of these organizations are This organization only focuses on supporting the development of a number of policies and supports several localities to build and implement the PDP development project, not yet directly support the subjects of industrial relation at the enterprise, especially the trade

union.

3. SOME SOLUTIONS TO ENHANCE THE ROLE OF THE GOVERNMENT IN PROMOTING LABOR RELATIONS IN VIETNAM

3.1 Perfecting the labor law institution to create a complete legal framework for harmonious and progressive industrial relation according to international standards

The first and incredibly important role of the government in industrial relation is institutional preparation. To improve the institutional capacity in the new integration period, the government needs to reform to "internalize" to ensure compliance with commitments and reform to make the best use of opportunities.

The CPTPP and EVFTA agreements require Viet Nam to respect and promote the 1998 ILO Declaration. Therefore, the government should quickly ratify Convention No. 87 on freedom of association according to the 1998 ILO Declaration. On that basis, the government continued to improve the Labor Code and issued regulations concretizing the law in the spirit of conventions 98 and 87: The Government does not interfere with the freedom of establishment of the industrial relation of employees and employers, allowing employees at grassroots to establish and join their own representative organizations freely. This has been codified in the Labor Code in 2019. However, to implement the new points in this Code, the Government's strong participation is still needed. Specifically, the government should focus on the following issues:

Firstly, it is necessary to issue documents / circulars detailing employees' organizations' establishment in enterprises. When issuing this document, attention should be paid to the following contents:

- i) Recognizing the employees' rights to freely establish their own representative organizations;
- ii) Specifying the participants of the labor representative organization for the labor collective;
- iii) Specifying which subjects have the right to establish employees' organizations in the enterprise; establishment process and procedures;
- iv) Prescribing the legal status of the employee's organization at the enterprise;
- v) Regulations on the organizational structure of the employee's organization at the enterprise;
- vi) Stipulate the role of the employee's organization at the enterprise; the relationship of the employee's organization at the enterprise with the employer; the relationship of the employee's organization at the enterprise with the direct superior grassroots trade union; the relationship of the employee's organization at the enterprise with the competent government management agencies;
- vii) Provisions on the relationship, cross-linkage between the employees' organizations at the enterprise and the industry trade union and trade unions according to territorial structure;
- viii) Regulations on employees' organizational enforcement mechanism at the enterprise; inspection and supervision mechanism of this organization in practice.

Second, perfecting regulations on union organization under the Vietnam General Confederation of Labor.

To ensure the implementation of the CPTPP Agreement, when Vietnam recognizes the employee's organization at the enterprise, the law needs to supplement the regulations on the employee representative organization as follows:

- i) Specifying the role and position of the grassroots trade union in the new context when Vietnam implements the CPTPP Agreement;
- ii) Stipulating the relationship between the grassroots trade union organization and the representative organization of the employer and the employer in the industrial relation;
- iii) Prescribing the responsibility and relationship of the representative of the labor collective of the grassroots trade union with the direct superior trade union at the grassroots level;
- iv) Stipulate a mechanism to ensure the role of the grassroots trade union and the direct superior grassroots trade union;
- v) Regulations on independence in operations of the grassroots trade union. Recognition of the grassroots trade union's financial income separated from the income from the employer's fund.

Third, complete the regulations on the representative organization of the employers

According to current law, employers' representative organizations include: Vietnam Chamber of Commerce and Industry; Vietnam Union of Cooperatives and Vietnam Association of Small and Medium Enterprises.

Accordingly, the representative organizations of employers play a significant role in the industrial relation, such as:

- i) Participate in developing legal policies on labor related to the legal rights and interests of employees and employers;
- ii) Preventing and resolving labor disputes; evaluate the implementation of measures to prevent and settle labor disputes;
- iii) Participate in developing national reports at the request of government management agencies on the implementation of the ILO Convention related to the legal rights and interests of employees and employers;

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Therefore, when recognizing the organization of employees at the enterprise, the government also needs to amend and supplement regulations on the representative organization of employers in the direction:

- i) Issue a unified document on the representative organization of the employer;
- ii) Regulate the representative organization of the employer corresponding to the representative organization of the labor collective;
- iii) Recognize organization representing employers by industry, by industry, by territory to ensure enforcement when participating in industrial relations.

Fourth, complete regulations on the right to collective bargaining.

The current law stipulates that the content of collective bargaining includes both enterprise and sector collective bargaining. However, due to each enterprise's different characteristics, each different level of collective bargaining will have different contents. Therefore, the law needs to specify collective bargaining content according to the level scope of collective bargaining.

Besides, the current law has not specified in-depth collective bargaining

3.2 Improving the capacity of Government management on industrial relation towards strengthening the government management of industrial relation while effectively implementing policies to support industrial relation development

In the new integration context, the government management of industrial relation must have synchronous changes from management thinking to organizational structure, assignment of functions, duties, staffing, and staff capacity.

In terms of thinking, government management of industrial relation in the integration period requires compliance with the principle of respecting the freedom of employees and employers. Government management function, not necessarily the appointment of exclusive organizations representing employees (such as the Vietnam Trade Union) and employers (such as VCCI or the Vietnam Cooperative Union) to interfere in the construction process. Industrial relation in enterprises. The function of proper government management means the scientific development of principles of standards for industrial relation (in accordance with ethical, social, and human health standards) and system organization monitoring to ensure that businesses use labor-management following those regulations, protecting the actual interests of all employees. Government management of industrial relation should ensure effective implementation of both management and support functions, and at the same time, ensure consistency and effective governance between central and local levels. In law enforcement, it is necessary to pay attention to prevention rather than letting problems arise before solving it. The government needs to proactively support enterprises and employees in regulating industrial relation to minimize strikes and extreme actions on the part of the employee; Supporting employees and enterprises to be aware of international labor standards that Vietnam has committed to when implementing the CPTPP and EVFTA also helps employers avoid labor violations.

In terms of organization-personnel, strengthening the capacity to implement commitments, especially on freedom of association, it is necessary to renew industrial relations. The government should assign or set up a government management agency to receive and register workers' organizations; ensure the right to strike and the right to negotiate by law; effectively protect trade union officials and employees of the employee's representative organizations from unequal treatment from the part of the employer; support parties in the industrial relation to implement dialogue, negotiation and resolution of labor disputes through conciliation, arbitration; training, providing technical assistance, improving the capacity of subjects. In order to better perform the role of supporting industrial relation, along with strengthening labor inspectorate activities, there is a need for staff to provide conciliation and resolution of labor disputes as well as training for employees and employers.

Specific organizational-personnel measures include:

Strengthen organization and government management activities on industrial relation from the central to local levels. Government management agencies of labor (central and local) must arrange specialized staff to manage the representative organization of employees and manage and support the development of industrial relation.

Clearly define the tasks, management skills, and support of industrial relations for government management staff; clearly define the job position, organize training, and provide professional training for specialized staff to manage and support industrial relations in government management agencies. There is a transparent performance evaluation policy regime—additional staffing for full-time industrial relation staff (mediator and arbitrator).

Enhance the labor inspector; requirements for inspectors, mediators and arbitrators are knowledgeable about Vietnamese labor law and international standards, requirements on professional ethics. Neutrality and impartiality should be emphasized. The labor inspector's role is to inform-persuade-enforce and ensure compliance with the rules outlined in labor standards (wages, working conditions, occupational safety and health) and social insurance programs. The number of inspectors required by the ILO should be increased.

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Improve operational efficiency of the institutions of the National Wage Council and Industrial relation Committee. The National Wage Council should be supplemented with duties and have more academic research community members as independent researchers to criticize the parties' plans to choose the best option to advise the government. The Industrial relation Committee should ensure a tripartite mechanism and develop recommendations for ILMP development instead of just propaganda and dissemination of the law. Organize the development of scientific standards for industrial relation, with scientists' participation, recruitment, and training of professional civil servants to both participate in building standards. This, and at the same time, monitor and supervise the requirements of businesses to comply.

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