

# Criminal Action Avoid Activity of Workers / Workers

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**Abstract:** *The purpose of this study is to find out how criminal law policy and its application both now and in the future in providing protection for the right to freedom of association for workers / laborers. This research method uses the normative judicial approach which is to examine the aspects of the formulation of legal policies and their application to criminal acts to obstruct trade unions. The data source uses primary, secondary and tertiary legal materials and qualitative and argumentative descriptive analysis methods. The results of the legal study explain: 1) The formulation of criminal law policy in Indonesia in protecting the right to freedom of association has been regulated in Law Number 21 of 2000 concerning Trade Unions / Labor Unions, where the Act guarantees workers / laborers to associate, gather and issue opinions as guaranteed in the international covenant on human rights; 2) The application of the law on Trade Union Laws has not been in favor of workers / laborers, this is because of differences in interests and roles assumed by both workers and employers. 3) There has not yet been a draft law that will regulate the more complex protection of freedom of association, the concept of the 2012 Criminal Code does not include the concept of criminal acts against labor rights or criminal offenses in the field of labor. In addition, in criminal acts against Human Rights, it also does not include criminal offenses or the imposition of freedom of association, which in fact is the right of association as part of Human Rights. In order for the legal function to work as a legal institution in the community, it is necessary to have good will, firmness and fairness from the legal apparatus in implementing the laws, especially the Trade Union Law.*

**Keywords:** Crime Act, Union Busting

## 1. Background Problems

A labor union is an organization formed from, by, and for workers / laborers both in the company and outside the company, which is free, open, independent, democratic and responsible for fighting for, defending and protecting the rights and interests of workers / laborers and increasing the welfare of workers / laborers and their families. Trade unions function as a place to accommodate and channel the aspirations of workers in industrial relations. The implementation of the right to freedom of association in the form of a union contains a very strategic value for workers, because by implementing it the right to freedom of association functions as a fundamental right where workers have the right to obtain the rights that should be received by workers. The establishment of a union also means that it can be used as an instrument for workers to demand an increase in wages, participate in forming a collective labor agreement, refuse to terminate employment, bargain collectively and submit other demands.

Since the enactment of Law No. 21 of 2000, workers are given the freedom to form or form trade unions. This opportunity is fully utilized by workers / laborers to form and form unions/workers / labor unions, based on the results of verification carried out by the Ministry of Manpower and Transmigration in 2017, there were 3 Confederation of Trade Unions / Labor Unions, 71 Federation of Trade Unions / Trade Unions with a total membership of 3,405,635 workers.<sup>1</sup>The large number of trade unions established in Indonesia, on the one hand is evidence of the functioning of some of the rights of freedom of association but not in the

full sense. It also needs to be seen how far the rights as a union can be fulfilled, is there an opportunity for union officials to carry out organizational activities in work, is the union involved in wage policies in the company, how much is the bargaining position of the union in conducting dialogue and negotiations with employers and the government, and many more.

Basically workers / laborers have the power to eliminate problems such as low wages, poor health service conditions, work safety and so on. But individually the worker is unable to fight for his rights against the employer in the company where he works due to the influence of the greater power possessed by the employer. Therefore what is needed by workers / laborers is to form workers' organizations.

The presence of workers' organizations is intended to fight for the rights and interests of workers, so that employers are not treated arbitrarily. Related to Article 28 and Article 28E of the 1945 Constitution concerning independence and freedom of association and association and seeing the weakness of the position of workers / laborers in the world of work, the government finally passed legislation that functions to protect the rights of workers / laborers in terms of forming workers' organizations more commonly referred to as Trade Unions / Labor Unions, namely by issuing Law Number 21 Year 2000 Concerning Trade Unions / Labor Unions (State Gazette of the Republic of Indonesia Year 2000 Number 131).

Law Number 21 of 2000 concerning Trade Unions / Trade Unions (hereinafter referred to as Trade Unions Act) specifically regulates freedom of association of workers / workers. In Article 5 it is said that: "Every worker / laborer has the right to form and become a member of a trade union / labor union". The right to become a member of a trade /

<sup>1</sup> Sumber data dariDirektur Pembangunan Hubungan Industrial, KementerianTenagaKerjadanTransmigrasiRepublik Indonesia, tanggal 15 Mei 2017

labor union is a labor / labor right which was previously guaranteed in Article 28 of the 1945 Constitution.<sup>2</sup>

Trade unions / labor unions are inherent rights for workers / laborers to form or enter trade unions in the company where they work without intervention or influence from any party, as written in the Law on Trade Unions / Trade Unions, namely trade unions / labor unions formed on the free will of the worker / laborer without any pressure or interference from any party.<sup>3</sup> It is also mentioned in Article 2 of ILO Convention No. 87 of 1948: "Workers and employers, without any difference, have the right to establish and according to the rules of their respective organizations, join other organizations of their own choosing without the influence of other parties".<sup>4</sup> The right of association exists, to guarantee the functioning and functioning of labor organizations in defending their members, useful for the fulfillment of workers / laborers' rights.<sup>5</sup>

But the fact is in the field many cases of violations of the rights of workers who are members of a trade union. Based on research over the past five years, for example the Committee for Freedom of Association (KUKB), on behalf of the Head of LBH Case Handling in Jakarta recorded reports of cases of violations of labor rights, criminalization of labor activists and trade union officials continue to occur,<sup>6</sup> and many more cases of violations of freedom of association that occurred and were not revealed. The Committee on Freedom of Association of the International Labor Organization (ILO) Geneva noted, the number of cases of violations of freedom of association in Indonesia that have been reported to the International Labor Organization until 2017 reached six cases. While the Jakarta Office of International Labor Organization received copies of reports or complaints of violations of freedom of association, in 2018 about 58 cases.<sup>7</sup>

This fact is clear that there is a legal tendency to neglect these anti-union crimes. For example, in the case of PT. King Jim Indonesia where the General Manager of the company does not want to negotiate a Collective Labor Agreement and instead lay off workers union officials.<sup>8</sup> Likewise, there are still many cases of union busting that prevent workers from forming unions, intimidation, transferring union officials, sending warning letters, suspension to layoffs, forming rival unions, criminalizing and changing the status of permanent workers

<sup>2</sup>ZaeniAsyhadie, *HukumKerja: Hukum Ketenagakerjaan Bidang HubunganKerja*, (Jakarta: PT. Raja GrafindoPersada, 2007), hlm. 20

<sup>3</sup>Indonesia, *Undang-Undang Tentang Serikat Pekerja/Serikat Buruh*, UU No. 21 Tahun 2000, Pasal 9

<sup>4</sup>Konvensi ILO (*International LabourOrganisation*) No.87 Tahun 1948 Tentang Kebebasan Berserikatdan Perlindungan Hakuntuk Berorganisasi. Konvensiiniiditifikasipadatanggal 9 Juni 1998.

<sup>5</sup>AsriWijayanti, *HukumKetenagakerjaanPascaReformasi*, Edisi 1, Cetakan 1. (Jakarta: SinarGrafika, 2009), hlm. 104

<sup>6</sup>"Ditemukan 49 KasusPelanggaranterhadapHakBuruh 2018", *Kompas.com*.Diakses15 September 2019

<sup>7</sup> *Loc. Cit.*

<sup>8</sup>"Bos Perusahaan Pecat 4 Buruh Yang Tergabung dalam Serikat Pekerja", dalam <http://surabayatribunes.com>. Diakses 12 Desember 2019.

to contract workers. Even though all these modes have been banned by Article 28 of the Trade Union Law.<sup>9</sup>

## 2. Problem Formulation

Based on the description above, the problem formulation in this research proposal is as follows:

- How is the current application of criminal law in providing protection for the right to freedom of association for workers / laborers in relation to Human Rights?
- How can efforts to improve law enforcement against criminal acts prevent future trade union activities?

## 3. Writing Purpose

- To find out and study the current application of criminal law in providing protection for the right to freedom of association for workers / laborers in relation to human rights.
- To find out and assess efforts to improve law enforcement against criminal acts to obstruct future trade union activities?

## 4. Method

### Research Approach

The research method used in this study is the normative judicial approach method. In the juridical normative approach, often the law is conceptualized as what is written in the legislation (law in books).<sup>10</sup> Normative studies in this study conduct textual studies of laws and regulations to explain juridical problems related to the application of law in relation to union busting or criminal acts to obstruct or suppress trade union activities, both from the normative aspect and its application.

### Research Specifications

This research can be seen from several angles such as:

- In terms of its nature, this research is a descriptive study. Descriptive research aims to describe precisely the nature of an individual, a particular condition, symptom or group, or to determine the frequency of a symptom.<sup>11</sup> In writing this thesis, it describes the violations or criminal acts related to union busting.
- From the point of view, this research is perspective research. Perspective research is intended to get suggestions on what needs to be done to overcome certain problems.<sup>12</sup> It is associated with this thesis, because it discusses the case of a criminal offense blocking the trade union activities.
- From the point of view. This research is a problem solution research. Problem solution research aims to provide solutions or suggestions for solving the

<sup>9</sup>"Kasus Pelanggaran Hak Berserikat", dalam [www.hukumonline.com](http://www.hukumonline.com). Diakses 12 Desember 2019.

<sup>10</sup>AmiruddindanZainalAsikin, *PengantarMetodePenelitianHukum*, (Jakarta: Rajawali Press, 2006), hlm. 118.

<sup>11</sup>Sri Mamudij, et al., *MetodePenelitian Dan PenulisanHukum*, Jakarta :BadanPenerbitFakultasHukumUniversitas Indonesia, 2005), hlm. 4.

<sup>12</sup>AmiruddindanZainalAsikin, *op. cit.*, hlm. 28.

problem.<sup>13</sup> Namely how the formulation of criminal law policies in protecting the right to freedom of association for workers / laborers in Indonesia.

- 4) From the point of application. This research is a problem focused research. Problem-focused research is a study that connects pure research with applied research.<sup>14</sup> In this study the problems examined are based on theory or seen the relationship between theory and practice.<sup>15</sup> The problem that is the focus of this paper is to analyze policies on the application of criminal law in Indonesia in protecting the right to freedom of association for workers / laborers in force today and in the future.

## 5. Method of Collecting Data

Normative legal science research is the study of legal materials, which are sourced from secondary data. Secondary data sources consist of primary legal materials, secondary legal materials and tertiary legal materials.<sup>16</sup>

- 1) Primary legal material is authoritative meaning it has authority. Primary legal material consists of legislative regulations, official records or minutes in making laws and judges' decisions, including:
  - a) Law Number 21 of 2000 concerning Trade Unions / Labor Unions.
  - b) Criminal Code (KUHP)
  - c) Judge's decision ever issued related to union busting case.
- 2) Secondary legal materials are used to help understand various legal concepts in primary legal materials, analysis of primary legal materials is assisted by secondary legal materials obtained from various journal sources, books, papers and scientific works of criminal acts obstructing trade unions.
- 3) Tertiary legal material is needed to explain things in terms of explaining the meanings of words from primary legal materials and secondary legal materials, especially legal dictionaries.

## 6. Analysis Method

Analysis of the data above uses descriptive qualitative and argumentative analysis methods. Description in the form of a description of legal materials as they are then continued with an evaluation in the form of an evaluation of the legal materials. These legal materials are interpreted by legal interpretation methods, both grammatical interpretations, systematic interpretations, authentic interpretations, which are then analyzed based on relevant legal theories and doctrines related to the problem.<sup>17</sup>

## 7. Research Results and Discussion

- 1) Policy Formulation of Criminal Law in Indonesia in Protecting the Right to Freedom of Association for Workers / Laborers

- 2) The freedom to associate, gather and express opinions within the scope of the union is a fundamental human right and guaranteed by international law and conventions on human rights. Article 1 of Law Number 39 Year 1999 concerning Human Rights states that: "Human Rights are a set of rights inherent in the nature and existence of human beings as God's creatures and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity and dignity. " Freedom of opinion is a fundamental human right (HAM). In addition to gaining international recognition through the Universal Declaration of Human Rights (UDHR) in 1948, Indonesia is also nationally very firm in including the freedom of speech award in the 1945 Constitution (UUD 1945). The development of recognition and guarantee of human rights gave rise to the concept of rights that cannot be revoked / reduced fulfillment under any circumstances (non derogable rights) and rights that can be restricted or reduced fulfillment (derogable rights). Rights in the type of 'non derogable', are absolute rights that cannot be reduced or restricted in fulfillment, even in an emergency.<sup>18</sup>

Freedom of speech (English: Freedom of speech) is freedom that refers to a right to speak freely without any censorship or restrictions but in this case it is not included in the case for spreading hatred. Can be identified with the term freedom of expression which is sometimes used to indicate not only the freedom of verbal speech, but, on the act of seeking, receiving and whatever part of the information or idea is being used. Although freedom of speech and freedom of expression are closely related to freedom, they are different and not related to the concept of freedom of thought or freedom of conscience.<sup>19</sup>

Freedom of speech is an important element in democracy. In fact, in the first session of the United Nations in 1946, before the adoption of the Universal Declaration on Human Rights or treaties adopted, the UN General Assembly through Resolution No. 59 (I) had stated beforehand that "the right to information is a fundamental human right and standard of all freedom declared 'holy' by the United Nations.<sup>20</sup>

Based on this, then if there is a violation that prevents obstruction, or even the suppression of trade unions is a violation of human rights, so the state must be present to protect it.

The criminal acts of obstruction or the imposition of the right to freedom of association are not clearly regulated in the Criminal Code. However, the formulation of crimes against the independence of people in the Criminal Code can be used to ensnare perpetrators of criminal acts of deprivation of the right to freedom of association. Crimes

<sup>13</sup>Sri Mamudji. Et al., *op. cit.*, hlm. 5.

<sup>14</sup>ibid

<sup>15</sup>ibid

<sup>16</sup>Peter Mahmud Marzuki, *Op.Cit.*, hal.97

<sup>17</sup>Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: MandarMaju, 2008), hal. 27

<sup>18</sup> Lembaga Studidan Advokasi Masyarakat. "Kebebasan Berekspresi", (Jakarta: Elsam, 2013), hlm. 1

<sup>19</sup>International Covenant on Civil and Political Rights.

<sup>20</sup> Tony Yuri Rahmanto. 2016. Kebebasan Berekspresi Dalam Perspektif Hak Asasi Manusia: Perlindungan, Permasalahandan Implementasinya di Provinsi Jawa Barat. *Jurnal Hak Asasi Manusia*. Vol 7 No 1. Hal. 48.

against the independence of people are regulated in the Second Book of the Criminal Code, Chapter XVIII, namely Article 335. The Criminal Code does not provide understanding and boundaries regarding "force" or coercion, violence or unpleasant treatment. He did not stipulate any further regarding this matter so that he could interpret it using scientific interpretation which could use various literatures such as dictionaries, books, expert statements and jurisprudence. In practice, the application of article 335 of the Criminal Code by the Supreme Court will emphasize the interpretation of "coercive elements" as the main elements that must be present in a series of unpleasant acts. The element of coercion, according to the Supreme Court, is not always translated in the form of physical coercion, but can also be in the form of psychological coercion.

In Article 28 of Law Number 21 Year 2000 Concerning Workers' Organizational Rights, it is stated: "Anyone is prohibited from obstructing or forcing workers / laborers to form or not form, become an administrator or not become an administrator, become a member or not become a member and / or To carry out or not to carry out trade / labor union activities by:

- 1) Conduct termination of employment, temporarily lay off, demote office, or make a transfer;
- 2) Not paying or reducing workers' wages;
- 3) To intimidate in any form;
- 4) Conduct a campaign against the formation of trade unions / labor unions. "

Provisions regarding criminal sanctions are regulated in Chapter XII concerning Sanctions, namely:

#### Article 43

- (1) Anyone who obstructs or forces a worker / laborer as referred to in Article 28, shall be subject to a minimum of 1 (one) year imprisonment and a maximum of 5 (five) years and / or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp.500,000,000.00 (five hundred million rupiah).
- (2) The criminal act referred to in paragraph (1) constitutes a criminal offense.

*The next problem is about proving that the act of terminating employment, transfer, not pay or reduce wages as referred to in Article 28 aims to prevent or force workers / laborers in association. This requires the expertise of the investigator in assessing the action whether there is a connection with the activities of the trade union / labor union, bearing in mind that it is very rare or even impossible for the employer to state the reason for the action because the relevant worker / laborer becomes a member or participates in a union's activity / union laborers.*

*Criminal provisions in Law Number 13 of 2003 concerning Labor relating to the protection of the right to freedom of association are contained in the following provisions:*

#### Article 143

- (1) Anyone cannot prevent workers / laborers and trade / labor unions from using the right to strike legally, orderly, and peacefully.

- (2) Anyone is prohibited from arresting and / or detaining a worker / laborer and the management of a trade union / labor union that is conducting a legal, orderly and peaceful strike in accordance with the applicable laws and regulations.

#### Article 144

For strikes carried out in accordance with the provisions referred to in Article 140, employers are prohibited from:

- a) Replacing striking workers / laborers with other workers / laborers from outside the company; or
- b) Provide sanctions or countermeasures of any kind to workers / laborers and union officials / labor unions during and after a strike.

#### Article 185

- a) Anyone who violates the provisions as referred to in Article 42 paragraph (1) and paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143, and Article 160 paragraphs (4) and (7), are subject to a maximum of 1 (one) year imprisonment and a maximum of 4 (four) years and / or a fine of at least Rp 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 400,000,000.00 (four hundred million rupiah);
- b) The criminal act referred to in paragraph (1) constitutes a criminal offense.

#### Article 187

- a) Anyone who violates the provisions referred to in Article 37 paragraph (2), Article 44 paragraph (1), Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 Paragraph (2), Article 79 Paragraph (1) and Paragraph (2), Article 85 Paragraph (3), and Article 144, are subject to imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and / or a fine of at least Rp 10,000,000.00 (ten million rupiah) and a maximum of Rp 100,000,000.00 (one hundred million rupiah).
- b) The criminal act referred to in paragraph (1) constitutes a criminal offense.

Law of the Republic of Indonesia Number 9 of 1998 concerning Independence Expressing Public Opinions

#### Article 18

- (1) Anyone with violence or threat of violence obstructs the right of citizens to express their opinions in public who have fulfilled the provisions of this Law shall be sentenced to a maximum imprisonment of 1 (one) year.
- (2) The criminal act referred to in paragraph (1) is a crime. Criminal provisions in Law Number 9 of 1998 to guarantee and provide protection for the freedom of freedom of every citizen to express opinions, thoughts, ideas both oral and written in public. The law only protects the exercise of the right to freedom of expression in accordance with the prevailing legislation, namely submitting a written notification to the police, carried out in an orderly manner, maintaining security and public order, respecting the rights of freedom of others and so on.

Based on the description above it can be clarified that protection against criminal acts or the suppression of trade unions or by the term union busting is regulated in Law Number 21 Year 2000 concerning Trade Unions / Trade Unions (Trade Union Law) especially in Article 28 and Article 43 paragraph (1) Trade Union Law. The provisions of this article are broadly understood as the law regarding unions.

For those who commit prohibited or forced things as stated in Article 28 of the Law on Trade Unions, it can be said that they have committed a crime, then these will be subject to sanctions as regulated in Article 43 paragraph (1) of the Trade Union Law.

## 2. Policy on the Implementation of Criminal Law in Indonesia in Protecting the Right to Freedom of Association for Applicable Workers / Workers

In industrial relations the legal protection of the existence of trade unions must be one of the pillars. Law Number 21 of 2000 concerning Trade Unions / Trade Unions (hereinafter referred to as Trade Unions Act) states that the existence of trade unions has a function as a means of fighting for, protecting and defending interests and improving workers' welfare, but still within a broader framework, namely the interests of the nation and state. For unions to be effective in carrying out their functions, the law must provide a series of protections, one of which is protection from union busting actions.

The term union busting was originally used in the world of industrial relations in the United States, which in Indonesian is translated as suppressing trade unions. This term refers to efforts to deceive trade unions for the benefit of employers or treat co-optation of trade unions. This practice is considered bad and is an unfair labor practice or unfair labor practice.

In the United States the prohibition of conducting union busting is regulated in the National Labor Relations Act 1935, which among others prohibits employers from carrying out actions in the form of:

- 1) prevent workers from acting to protect the rights provided for in the Act,
- 2) obstruct the formation of workers' organizations,
- 3) discriminating against workers with the aim of not engaging in trade union activities,
- 4) discriminating against workers for filing claims with the competent authority,
- 5) refuse to negotiate with trade unions which are legal representatives of their workers.<sup>21</sup>

Whereas, in Indonesia, protection against union busting actions is regulated in the Trade Union Law specifically Article 28 and Article 43 paragraph (1). The provisions of the article are broadly understood as the law regarding union busting.

Workers generally use the concept of union busting as a defense against disciplinary actions such as layoffs imposed by employers on them. Where workers who happen to be union officials are laid off for striking and anarchic acts of fence destruction.

## 3. Policy Formulation of Criminal Law in Indonesia in Protecting the Right to Freedom of Association for Future Workers / Workers

This research attempts to present and provide input regarding the concept of impending criminal law policy. Until now, there has not been a draft law that will regulate the more complex protection of freedom of association, the concept of the 2012 Criminal Code Law does not include the concept of criminal acts against labor rights or criminal offenses in the field of labor, while specific criminal acts others, such as corruption, narcotics misuse, environmental crime, shipping crime, etc., are included in the Criminal Code concept. In addition, in criminal acts against Human Rights, it also does not include criminal offenses or the imposition of freedom of association, which in fact is the right of association as part of Human Rights. For this reason, this section will discuss the concept of the Criminal Code in 2012 and the comparison of laws in other countries, namely in Ukraine and the Republic of Armenia.<sup>22</sup>

Considering that the formulation of a criminal offense against freedom of association does not yet exist in the 2012 Criminal Code concept, then in this case the relevant criminal act is sought, namely:

### Article 576

- a) To be imposed with a maximum imprisonment of 2 (two) years or a maximum fine of Category III, every person who: a. unlawfully forcing others to do, not do, or allow something by using violence, or some other act or threat of other actions, to do, not do or allow something either for that person or for others; or; b. Forcing others to do, not do or allow something with a threat of libel or written libel.
- b) The makers of criminal offenses as referred to in paragraph (1) letter b can only be prosecuted for complaints from people affected by criminal acts.

### Ukraine

#### Article 170.

- Preclusion of legal activities of labor unions, political parties, and non-governmental organizations. Willful preclusion of legal activities of labor unions, political parties, and non-governmental organizations or their organs,
- Shall be punished by correctional labor for a term up to two years, or imprisonment for a term up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

<sup>21</sup>Kelly, Matthew A., *Labor and Industrial Relation – Terms, Laws, Court Decision, and Arbitration Standard*, (Baltimore: The John Hopkins University Press, 1987), hal.107.

<sup>22</sup>Sumber data KUHP dan Undang-Undang di Republik Armenia dan Ukrainadari [www.legislationline.org](http://www.legislationline.org), diakses tanggal 12 Desember 2012

Criminal provisions of Article 170 not only provide protection for trade unions but also political parties and other community organizations, meaning that the people's right to organize, express opinions and creativity is truly protected and what is interesting is that the criminal provisions prohibiting freedom of association are contained in the Criminal Code, whereas in other laws such as the Law on Community Organizations (Civic Association Law in Ukraine) regulates in more detail the rights, obligations, protections and things that are prohibited by community organizations, but does not include criminal provisions in this law .

#### Article 174.

*Compulsion to participate in a strike or preclusion from participation in a strike. Compulsion to participate in a strike or preclusion from participation in a strike, by violence or threats of violence or any other unlawful actions shall be punishable by a fine up to 50 tax-free minimum incomes, or community service for a term of 100 to 240 hours, or arrest for a term up to six months, or restraint of liberty for a term up to three years.*

The criminal provisions of Article 174 above, emphasize the protection of workers' rights to strike which is actually the right of trade unions to organize and carry out strikes. The formulation of the above criminal provisions, acts that are prohibited and could be threatened by criminal actions are the act of forcing or preventing someone from following or not following a strike, with violence or threat of violence or with other unlawful acts. This means that the right of individuals to join or not to strike, the right to strike is carried out with full freedom of everyone to choose with responsibility.

#### 2. Armenia

Protection of the right to freedom to form organizations and carry out organizational activities is regulated in the Constitution and Criminal Code of the Republic of Armenia. Article 25 of the Constitution of the Republic of Armenia states:

*Everyone has the right to create an association, trade union, or political party, as well as to be a member thereof. Limitations are placed only on police officers and those serving in the military. No one can be forced to become a member of an association.*

The criminal law policy in the Republic of Armenia to provide protection for the right to freedom of association, is clearly regulated in the Criminal Code (Criminal Code of the Republic of Armenia, 2003) specifically in Articles 155 and 161, as follows:

- 1) *Article 155. Forcing to refuse from participation in a strike or forcing to participate in a strike. Forced participation in a strike or forced hindrance to the participation in a legal strike by means of violence or threat of violence, is punished with a fine in the amount of 200 to 400, or with arrest for the term of up to 2 months.*

- 2) *Article 161. Hindrance to the right to establish associations (non-governmental organizations or trade unions) or parties, or hindrance to their activities. Hindrance to the right to establish associations or parties, or hindrance to their legal activities or intervention, is punished with a fine in the amount of up to 100-300 minimal salaries, or with arrest for the term of up to 1 month. The same act which caused essential breach of the rights or legal interests of the association or party, is punished with a fine in the amount of 200-400 minimal salaries, or arrest for up to 2 months.*

Based on the example of legal protection of trade union activities of the two countries of Ukraine and Armenia above, where the Act provides protection for trade unions but also political parties and other community organizations, to organize, express opinions and be truly protected and attractive is a criminal provision which obstructs freedom of association as stated in the Criminal Code.

Meanwhile, in Indonesia the enforcement of labor law norms is still considered to be very weak and many are complained particularly by trade unions (SP) and trade unions (SB). Many employers in Indonesia violate labor norms and laws, and are not responded to by civil service and police investigators.<sup>23</sup>

## 8. Conclusion

The formulation of criminal law policies in Indonesia in protecting the right to freedom of association has been regulated in Act Number 21 of 2000 concerning Trade Unions / Trade Unions. Article 28 of Law Number 21 of 2000 concerning Workers' Organizational Rights, states: "Anyone is prohibited from obstructing or forcing workers / laborers to form or not form, become an administrator or not become an administrator, become a member or not become a member and / or run or not carrying out union / labor union activities. by: 1) terminating employment, suspending employment, demoting or mutating; 2) Not paying or reducing workers' wages; 3) To intimidate in any form; Carry out a campaign against the formation of trade unions. "The formulation of the criminal law policy on trade unions is in accordance with the international covenant on civil and political rights, namely the right to freedom of association and union.

Meanwhile, the provisions regarding criminal sanctions, Article 43 of the Trade / Labor Law, states:

- 1) Anyone who obstructs or forces a worker / laborer as referred to in Article 28, shall be subject to a minimum of 1 (one) year imprisonment and a maximum of 5 (five) years and / or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp.500,000,000.00 (five hundred million rupiah).
- 2) The criminal act referred to in paragraph (1) constitutes a criminal offense.
- 3) Although the Trade Union Law has set criminal sanctions for anyone who commits a criminal act against a trade union, but from labor law cases involving trade

<sup>23</sup> Timboel, "Penegakan Hukum Ketenagakerjaan Masih Lemah", dalam <https://www.beritasatu.com>, Diakses 15 Desember 2019.

unions, the application of the law has not been sided with many workers / laborers, this is due to differences the interests and roles assumed by both workers and employers. For example, in the trial process there are dialectical differences between the legal concepts regarding union busting that are understood by workers and those understood by employers.

- 4) Until now, there has not been a draft law that will regulate the more complex protection of freedom of association, the concept of the 2012 Criminal Code Law does not include the concept of criminal acts against labor rights or criminal offenses in the field of labor, while acts Other specific crimes such as corruption, narcotics misuse, environmental crime, shipping crime, etc., are included in the Criminal Code concept. In addition, in criminal acts against Human Rights, it also does not include criminal offenses or the imposition of freedom of association, which in fact is the right of association as part of Human Rights. In contrast to the formulation of criminal law in other countries such as Ukrainian and Armenia, where in the two countries the country has provided protection for trade unions to organize, express opinions and have creativity and are truly protected and included in the criminal law books.



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