

The role of law in Vietnamese trade union operations

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Abstract:

A large-scale sociopolitical group representing the working class and laborers is the Vietnamese Trade Union. It was voluntarily founded and set up in accordance with democratic centralism. Legislators and the representative organization of the Vietnam General Confederation of Labor have long been concerned about how trade unions should legally protect the rights and interests of workers. As a result, understanding the legal relationship inside the trade union operating structure is crucial, particularly in light of the current situation in Vietnam. Over the past 90 years of establishment and development, the Vietnam Trade Union has matured in all aspects, the trade union organization has been strengthened and developed, the number of union members and grassroots trade unions has increased rapidly, and the contingent of cadres has developed in both quantity and quality. Trade unions expand their activities to the non-state economic sector; coordinate more and more effectively with authorities at all levels, organizations and employers, better perform the task of representing, caring for and protecting the legitimate and legitimate rights and interests of employees, promptly solving pressing issues, contributing to building harmonious labor relations, stability and progress in the enterprise.

Keywords: Trade Union, structure, law, labor, Vietnam

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I. Introduction

Article 10 of the 2013 Constitution of the Socialist Republic of Vietnam has affirmed, "The Vietnam Trade Union is a socio-political organization of the working class and of employees established on a voluntary basis, representing employees, taking care of and protecting their rights, lawful and legitimate interests of employees; participate in state management and socio-economic management; participate in examining, inspecting and supervising the activities of state agencies, organizations, units and enterprises on issues related to the rights and obligations of employees; propagating and mobilizing employees to study, improve their professional qualifications and skills, abide by the law, build and defend the Fatherland". Trade unions are members of Vietnam's socio-political system. This is reflected in the relationship with the Party, the State and other socio-political organizations. With the Communist Party, the Trade Union is under the leadership of the Communist Party of Vietnam, a solid support and a link connecting the masses with the Party. With the State, the Trade Union is an effective collaborator, equal and respectful of each other; on the contrary, the State creates legal conditions and facilities for the Trade Union to operate. With other political and social organizations, the Trade Union is a member of the Vietnam Fatherland Front, the nucleus of the Industrial, Agricultural, intellectual, equal, respectful, and mutually facilitated activities (through joint resolutions...)

In fact, the role of the Vietnam Trade Union organization has constantly developed and expanded over the periods. In the period when the country entered a period of integration and development, the role of the Vietnam Trade Union had an impact on a number of fields. *In the field of politics:* Trade unions play a great role in contributing to building and improving the effectiveness of the socialist socio-political system. To strengthen the close relationship between the Party and the people, to ensure and promote the right of ownership of the working people, to gradually improve democracy, to ensure the implementation of the law and for the State to truly be the State of the people, by the people and for the people.

Trade unions participate in building and perfecting economic management mechanisms to eliminate bureaucracy, subsidies, and consolidate the principle of centralization on the basis of democratic expansion. Contributing to consolidating the economic, cultural and scientific and technical achievements achieved in the years of implementing the Party's renewal line. To continue to promote and improve the operational efficiency of all economic sectors in which the State economy plays a leading role, linking and supporting other economic sectors to develop in a way that is beneficial to the national economy and people's livelihood. To step up the industrialization and modernization of the country, bringing the knowledge economy into Vietnam, contributing to rapid integration with the region and the world. Especially, in the condition of a socialist-oriented market economy, it is necessary to promote the activities of economic sectors to ensure that the state economy holds a

key position on the one hand. On the other hand, creating conditions for the private economy to be the driving force and a factor promoting development

In the multi-sector economy, the Trade Union promotes its role in educating workers, officials and laborers to improve the class stance, taking Marxism-Leninism and Ho Chi Minh Thought as the ideological foundation and guideline for all activities. promote the noble values and traditions of national culture and absorb the advanced achievements of human civilization, contributing to building an advanced culture imbued with Vietnamese national identity. Trade unions play a role in building a strong working class in both quantity and quality, constantly improving the level of political enlightenment, organizational discipline, cultural level, science and technology, political vision, etc. it is indeed the core force of the industrial-agricultural-intellectual alliance, the foundation of the great unity of the whole people, a solid basis for ensuring the leadership role of the Party and strengthening the strength of the State.

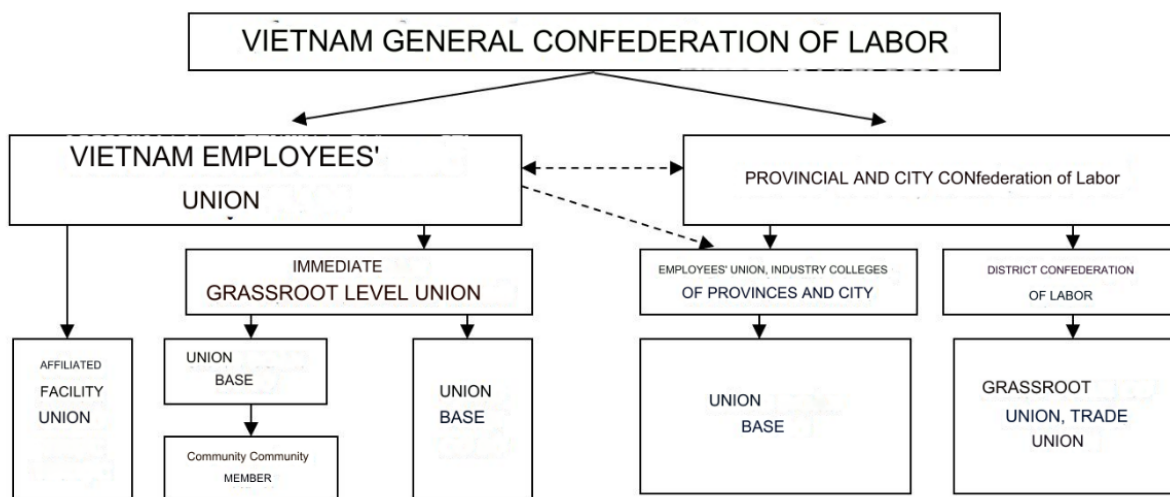
II. Methodology

The contents of the State management of labor include: the formulation and organization of national programs on labor and employment, regimes and policies on labor and society; allocating and using labor resources, inspecting and examining the implementation of labor laws...In the State management of labor, trade unions have the right to:

- Participate in the development of national socio-economic programs
- Right to attend conferences of government agencies at all levels
- Participate in job creation
- Participate in social insurance management

The Vietnam General Confederation of Labor and trade unions at all levels have the right to participate in supervising the State management of labor in accordance with law. The Vietnam General Confederation of Labor has the right to submit draft laws to the National Assembly, participate in inspecting and supervising the implementation of the provisions of the labor law, participate in guiding the implementation of relevant legal documents on labor and within the scope assigned by the State. The local labor confederation shall consult with the authorities at the same level on labor management issues in the locality, participate in inspecting and supervising the implementation of labor law documents. The trade union of the sector goes deep into the economic and technical management of the sector, participates in the development and implementation of policies on labor, salaries, bonuses, training, management and good use of the technical staff of the sector. (fig 1)

Figure 1: Organizational structure of Vietnam's trade union system



Source: Vietnam General Confederation of Labor

Within the scope of its functions, trade unions participate in inspecting the observance of the law on labor contracts, wages, labor discipline, labor protection, social insurance and other regulations related to the rights and interests of employees. During the inspection and supervision, the trade union has the right to request the employer (the head of the agency, unit, organization, etc.) to answer the problems raised, propose measures to correct shortcomings, prevent violations of the law and handle violators. Employers shall, within the ambit of their respective functions, reply to the trade union of the results of the settlement of petitions raised by this organization within the time limit prescribed by law. For problems that have not been solved or cannot be solved, it is also necessary to clearly state the reason. In addition, in necessary cases, the trade union can

organize a dialogue between the labor collective and the employer to solve issues related to the rights, obligations and interests of employees.

When a trade union organization is established in accordance with the Trade Union Law and the Trade Union Charter, the employer must recognize such organization. Employers must cooperate closely and create favorable conditions for trade unions to operate in accordance with the provisions of the Labor Code and the Trade Union Law. Employers must not discriminate on the grounds that employees establish, join or operate trade unions, and must not use economic measures and other tricks to interfere with trade union organizations and activities; must ensure necessary means for the trade union to operate, must spend a certain amount of time necessary for part-time trade union officials to operate and pay (must not be less than 3 working days in a month). For full-time trade union workers, their salaries are paid by the trade union fund, but collective benefits and other benefits are also enjoyed like everyone else in the enterprise.

The congress of workers and public employees is a form of democratic activity of employees to discuss the implementation of the objectives of the production and business plan and the issue of improving the working, living and living conditions of employees. The Director, together with the trade union, is responsible for preparing the content and organizing the congress. Normally, the congress of workers and employees meets twice a year, at least once a year. Through the congress, the labor collective set out directions and measures to carry out production and business, improve life, including training and fostering professional skills for employees.

In order to be able to successfully complete production and business goals, on that basis, improve the lives of employees, trade unions together with employers set out directions, measures and emulation targets to organize and mobilize emulation movements. The purpose of organizing emulation movements is to promote initiatives and exchange experiences to increase labor productivity, work efficiency, save raw materials, and successfully complete the set goals and tasks. For those who directly produce, that goal is reflected in the application of measures to well fulfill labor norms, material consumption norms, etc.; For those working in science and technology, that goal is reflected in measures to well implement research topics to promote scientific and technical progress. For those who do administrative work, that goal is the completion of professional tasks and programs.

In the emulation movement, the director is obliged to provide material conditions for the maintenance of the emulation movement. The trade union has the right to request the director and other relevant professional agencies to solve material and technical difficulties, especially the application of scientific achievements and new initiatives to production. The Trade Union shall coordinate with the employer in organizing the preliminary and summary of the emulation movement; there are rewards for employees with achievements in the movement and fostering good examples. Trade unions have the right to appoint their representatives to emulation committees to organize and direct the emulation movement.

A collective labor agreement is a document signed between the Executive Committee of the grassroots trade union (or the provisional trade union organization) and the director of the enterprise on relevant issues in labor relations. According to Article 69 of the Labor Code 2012, the trade union is one of the two subjects participating in the development of the collective labor agreement. The content of the collective labor agreement includes commitments on working hours, rest time, salaries, bonuses, labor norms, occupational safety, occupational hygiene and social insurance for employees. The State encourages the parties to sign collective labor agreements with provisions that are more beneficial to employees than the provisions of the labor law.

The terms of a collective bargaining agreement can only be formed on the basis of bargaining, voluntary and equal agreements. The employer cannot put forward conditions to force the trade union to sign terms that violate the law. The State, by means of legal instruments to allow trade unions to represent workers in negotiating and concluding collective labor agreements, shows the State's respect for the broadest organization of the working class and workers. With that regulation, the State not only creates conditions for trade unions to perform the most basic function of protecting workers, but also an effective legal method for trade unions to participate effectively and manage enterprises, regulate rights, and prevent conflicts. For trade union organizations, the fact that the labor law stipulates the participation of trade unions in the signing of collective labor agreements shows that the role and responsibility of trade unions are very great in effectively participating in enterprise management, and especially in protecting the legitimate rights and interests of employees.

The Vietnam General Confederation of Labor participates together with the Government in formulating a national program on labor protection, occupational safety and hygiene, developing a scientific research program and formulating a law on labor protection and occupational safety, occupational hygiene. (Article 188 of the Labor Code) The Ministry of Labor, War Invalids and Social Affairs and the Ministry of Health shall promulgate the list of occupational diseases after consulting the Vietnam General Confederation of Labor and representatives of employers.

The Law on Trade Unions also stipulates quite specifically the rights of trade union organizations to inspect and supervise labor protection and comply with the law, including:

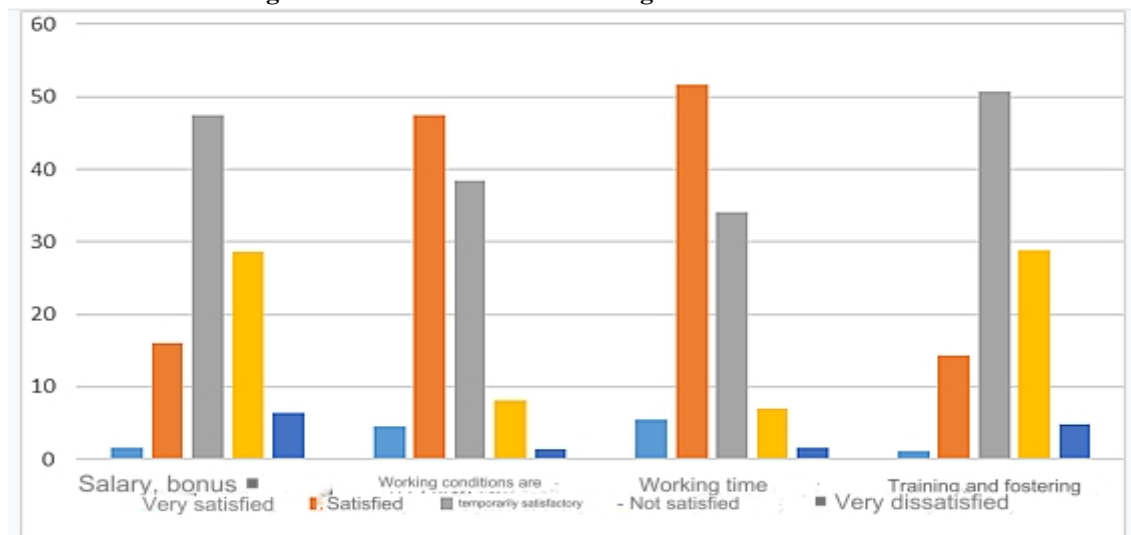
- The right to propose the formulation, supplementation or amendment of labor protection regimes and labor laws with competent agencies of the State.
- The right to monitor the allocation of protective equipment; supervise the implementation of the regime of working hours and rest time of employees; monitor and urge the periodic health checks for employees; propose to the director and responsible agencies measures to remedy and handle violations of occupational safety and hygiene.
- The right to establish labor protection subcommittees at grassroots levels to help the Trade Union Executive Committee promptly grasp the current violations of labor protection, propose recommendations on handling.
- The right to organize dialogues between employers and employee collectives in necessary cases in order to clarify or solve problems raised by labor collectives.

III. Result

Trade unions in creating jobs for workers and intervening when workers lose their jobs

Creating jobs and ensuring that all employees have the opportunity to have jobs is the responsibility of the State, enterprises and the whole society, including trade unions. Trade unions at all levels, from the Vietnam General Confederation of Labor to grassroots trade unions, must cooperate with State agencies and employers in discussing and settling labor relations issues at both macro and micro levels; To have the right to set up employment services, vocational training, social relations, legal consultancy and general welfare establishments for employees and other benefits in accordance with the Law on Trade Unions and the Labor Code. (fig 2)

Figure 2: Comments on the role of grassroots trade unions



Source: Employee opinion survey, Institute for Worker and Trade Union Research, 2022

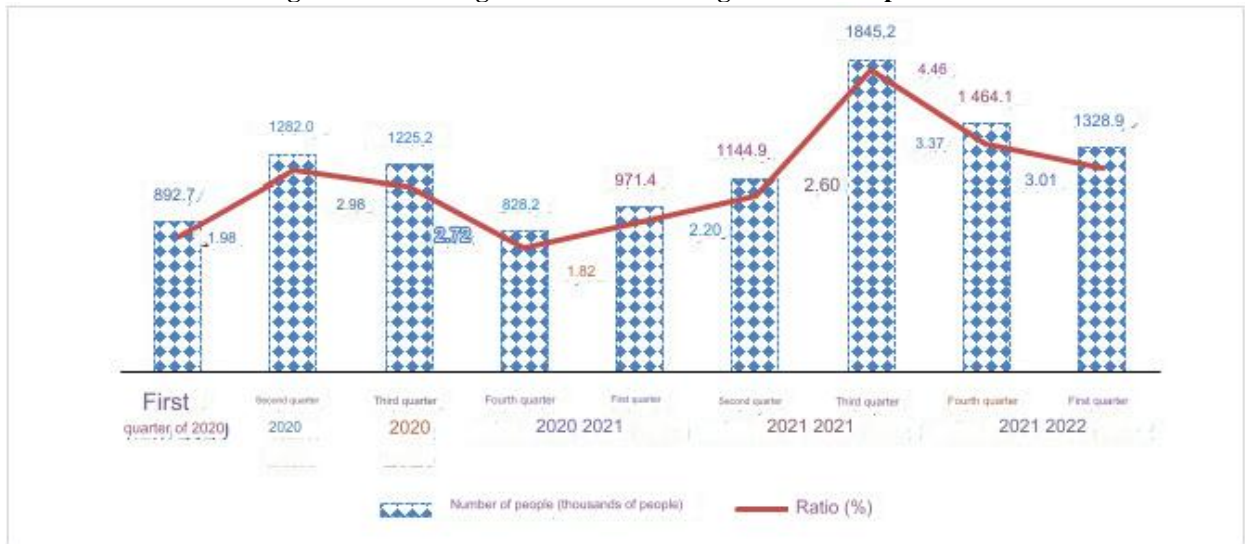
For employees who are working in enterprises with low income or not enough jobs, the trade union is responsible for discussing with employers in many ways to improve skills, retrain jobs, create more jobs, etc. to help employees have more sources of income to ensure their lives. The law also stipulates the rights and obligations of trade unions in protecting employees in the field of termination of labor contracts and job loss.

In order to avoid the employer unilaterally terminating the labor contract with the employee arbitrarily, Article 38 of the Labor Code stipulates that if the employer deems it necessary to dismiss many employees one after another in case of structural or technological changes, the list must be published. based on the needs of the enterprise, skills, family circumstances and other factors of each person to dismiss the workers one after another after discussing and agreeing with the grassroots trade union executive committee in the enterprise.

In cases where the employer is allowed to unilaterally terminate the labor contract, before terminating the contract, the employer must discuss and agree with the grassroots trade union executive committee. In case of disagreement, the two parties must report to the competent agency or organization. After 30 days from the date of notifying the labor agency, the employer has the right to make a decision and must be responsible for its decision. In case of disagreement with the employer, the grassroots trade union executive committee and the employee have the right to request the settlement of labor disputes in the order prescribed by law. When the

employee has the right to suspend the employee in necessary cases according to the law, before deciding to suspend the work, the employer must consult the grassroots trade union executive committee (fig3)

Figure 3: Percentage of workers working in industrial parks



Source: General Statistics Office., 2022

The above procedures are mandatory and must be in place in all cases. Trade unions are obliged to give their opinions and discuss specifically on issues that affect the legitimate interests of employees, and if they are not agreed upon by the employer, they have the right to request the settlement of labor disputes in order to protect the legitimate interests of employees.

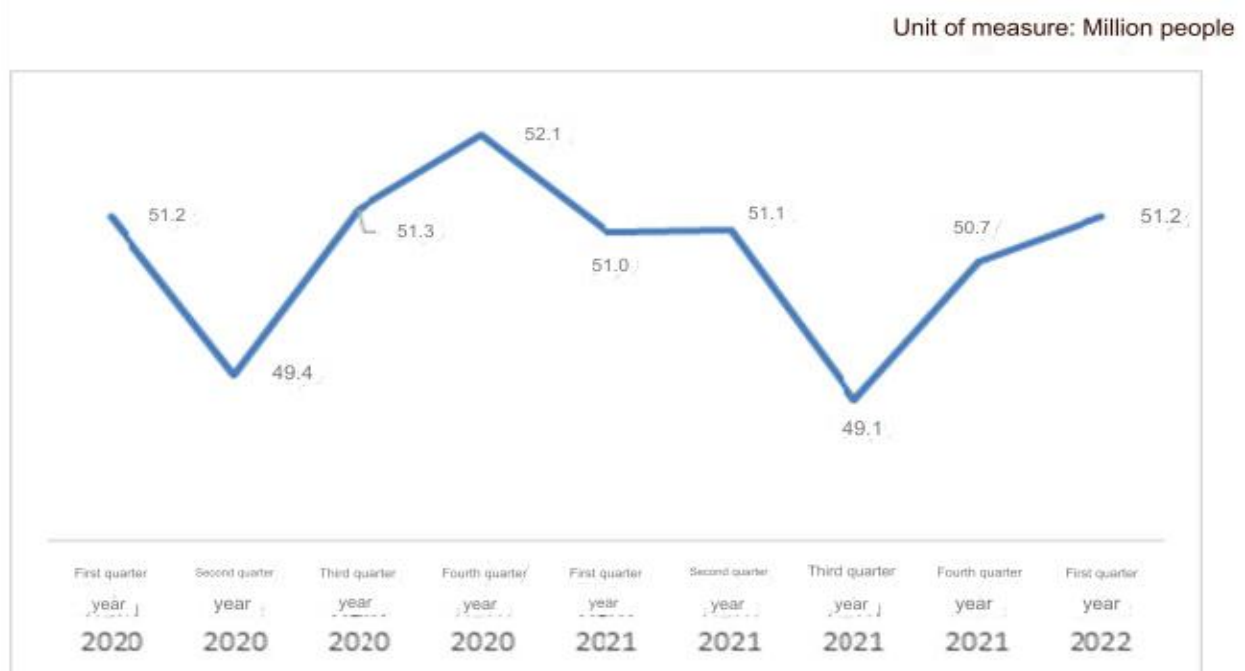
Trade unions with the issue of ensuring wages for employees

Salary is the main income of an employee. The role of trade unions in ensuring wages for workers. The Vietnam General Confederation of Labor shall be consulted by the Government before deciding and announcing the general minimum wage, the regional minimum wage and the sectoral minimum wage and the trade union shall have the right to supervise the employer in paying wages to employees not lower than the minimum wage prescribed by the State. In case the employer deducts salary, the employee must be informed of the specific reason and before deducting, the employer must discuss with the grassroots trade union executive committee. If there is a deduction, it must not exceed 30% of the monthly salary.

Trade unions with labor discipline issues and labor discipline handling

Labor discipline is reflected in the internal regulations of the enterprise issued by the employer. However, employees are the main subjects who have to implement that internal regulation. Trade unions, as representatives of labor collectives, have the right to participate in commenting on the development of draft labor regulations. The Labor Code stipulates that before promulgating labor regulations, employers must consult the Executive Committee of the grassroots trade union. The executive committee of the grassroots trade union is also consulted when the employer stipulates the annual leave schedule. Although the handling of labor discipline is under the jurisdiction of the employer, because the handling of labor discipline is an important matter related to the employment honor of employees, and at the same time to protect the legitimate interests of employees and improve the effectiveness of education of violators, labor law stipulates that when considering discipline, it is mandatory to present the involved parties and must have the participation of the grassroots trade union executive committee in the enterprise. In case the employer issues a decision to dismiss or unilaterally terminate the labor contract for a member of the grassroots trade union executive committee, there must be an agreement with the grassroots trade union executive committee. If the employer issues a decision to dismiss or unilaterally suspend the labor contract for the Chairman of the grassroots trade union executive committee, there must be an agreement with the immediate superior trade union organization. (fig 4)

Figure 4: Labor and employment growth by period



Source: General Statistics Office., 2022

The issue of improving the material and spiritual life of employees is not only the responsibility of employers but also the responsibility of trade unions at all levels, especially the grassroots trade union executive committee, which directly takes care of and protects the interests of employees. Trade unions have the right and responsibility to master the family economic situation of their organizational members in the enterprise so that they can take measures to help them spiritually and materially. Grassroots trade unions together with employers take care of cultural life, physical training and sports activities, organization of rest, tourism, etc. for employees, especially the issue of creating funding sources and arranging time for all employees to enjoy these rights every year. The Trade Union coordinates with the employer in using the unit's collective welfare fund to be implemented openly and democratically in improving the material and spiritual life and taking care of the health of employees. In certain cases, trade unions in State enterprises also have the right to inspect or suspend the use of this fund if it is found that the use of the fund is for wrong purposes or not in accordance with the resolutions of the workers' and employees' conferences. The Vietnam General Confederation of Labor also has the authority to participate with the government in the formulation of the Social Insurance Charter, the establishment of the system of social insurance organizations, the formulation of regulations on the organization and operation of the social insurance fund (Article 186 of the Labor Code). Local and grassroots trade unions participate together with authorities at all levels and employers in implementing and supervising the implementation of social insurance regimes promulgated by the State.

Depending on each field and scope of operation, trade unions have the right to directly participate with employers or authorities at the same level in settling complaints and denunciations of employees or as legal representatives of the employee collective, protecting the legitimate interests of employees who complain, denounce to competent agencies of the State for consideration and settlement. Grassroots trade unions have the right to appoint their representatives to the composition of the grassroots labor conciliation council, appoint members to the list of labor arbitration councils or participate in court proceedings. The grassroots trade union executive committee is the one who decides the strike after it has been approved by the collective of workers by secret ballot or signature. After the strike, the grassroots trade union executive committee has the right to apply to the court to request the conclusion that the strike is legal. In addition, the Law on Bankruptcy of Enterprises also stipulates that in case an enterprise fails to pay salaries to employees for three consecutive months, the representative of the trade union or the representative of the employee where there is no trade union organization shall apply to the court where the enterprise is headquartered to request the settlement of the declaration of bankruptcy of the enterprise.

IV. Discussion and conclusion

The activities of Trade Unions at all levels in recent years are gradually adapting to the changing needs of labor relations, but the Trade Union organization is still inexperienced, has not met the increasingly complex requirements of regulating labor relations in the process of developing the market economy and the adjustment of the law. In order to better implement the role of the Trade Union in protecting the rights and interests of employees, the cohesion between the law and the Trade Union organization should focus on the following issues.

Trade unions do not appear as intermediaries, but must be representatives of one party, playing the role of a party directly participating in labor relations. Trade unions regulating and stabilizing labor relations must take the development of enterprises and socio-economy as the ultimate goal. Workers must ultimately rely on the development of the enterprise and the socio-economy. Therefore, in the process of the Trade Union representing employees in handling labor relations, it is necessary to think about the interests of the enterprise. When requesting the protection of employees' interests, it is necessary to consider the actual situation and the endurance of the enterprise. Trade unions regulate and stabilize labor relations on the basis of taking *the provisions of law* as the standard. The regulation and stability of labor relations shall be implemented through the regulation of law. The process of Trade Union regulating and stabilizing labor relations must be based on compliance with the State's labor law. This is the requirement of the law for Trade Unions to regulate and stabilize labor relations, as well as the legal basis for Trade Unions to rely on to regulate and stabilize labor relations.

Trade unions regulate and stabilize labor relations on the basis of agreement as the main method. Supervise and urge the good implementation of labor contracts at enterprises and proactively negotiate, negotiate, sign and well implement collective labor agreements and strengthen the organization of dialogues between employers and employees in enterprises. In order to properly implement the direction and implementation of negotiation and signing of collective labor agreements, it is necessary to first of all focus on thoroughly grasping the resolution of the Presidium of the General Confederation of Trade Unions on renewing, improving the quality of negotiations, signing and implementing collective labor agreements and developing plans to implement the resolution to trade unions at all levels.

Strengthen the direction and guidance of grassroots trade unions to promote propaganda and education on the implementation of labor law in labor unions. Actively urge and coordinate with employers to well maintain the opening of employee conferences in accordance with the government's regulations. Improve the capacity of the Trade Union at the grassroots level and the Communist Party in dialogue, consultation and negotiation activities. When establishing a new trade union directly superior to the grassroots in the area of labor relations, it is necessary to first study and clearly define that the partner of the trade union must be the representative of the employer (if there is no representative of the employer, the trade union organization should not be formed). Trade unions that well regulate and stabilize harmonious labor relations have the conditions to perform their political functions and tasks well, and only then can they perform the task of being a "bridge" connecting the Party and workers.

In short, in labor relations, trade unions are representatives to protect the legitimate rights and interests of employees. When the labor law stipulates that trade unions together with State agencies, economic organizations and other social organizations take care of and protect the interests of employees, participate in inspecting and supervising the implementation of the provisions of the labor law, the rights of trade unions are concretized to different degrees. In practice, the implementation of the application of the above provisions of the labor law also depends on many factors, including the factor belonging to the practical operation capacity of the trade union organization itself.

Ethical Statement

No animals were used in this study; thus, no ethical approval is required.

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Declaration of Conflict of Interest

The author declares no conflict of interest.

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