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ANTI-UNION ACTIONS AGAINST WORKERS AND WEAKNESSES IN LAW ENFORCEMENT IN INDONESIA

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Abstract
Equality before the law or everyone has the same position before the law, this can be seen in the Constitution of the Republic of Indonesia in Article 27 paragraph 1 which reads as follows: "every citizen has the same position before the law and the government is obliged to uphold the law without exception" The right to associate is a Human Right, as stated by Soetandyo Wignjosoebroto who defines human rights as basic rights (Fundamental) that are universally recognized as rights inherent in humans because of their nature and nature as humans. which is stated in article 28 of Law no. 21 of 2000 concerning labor unions, Based on data presented by LBH Jakarta, the majority of layoffs due to anti-association actions end up in the Industrial Relations Court or Bipartite even though steps to report to the Police have also been taken. This shows that the reporting stops at the reporting limit. Of course, it cannot be concluded that every report of anti-association actions will stop. There are still many other variables that must be seen on a case-by-case basis. However, quantitatively, almost all of these reports were not followed up, indicating weaknesses in handling the problem of anti-association acts.
Keywords: Anti-union actions, Law enforcement weaknesses, Labor rights protection

INTRODUCTION

Labor events are like an iceberg phenomenon, which is only visible on the surface but the root of the problem is quite a lot and very complicated.[1] With the enactment of the 1945 Constitution, fundamental rights of citizens and the state's position in this legal framework have been articulated in a rather intricate manner. This includes aspects concerning the right to employment and a decent standard of living in line with human dignity, as elucidated in Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia.[2] One of the tools of the workers' struggle to unite is the trade union. In 1998 the Indonesian Government ratified ILO Convention No. 87 which guarantees workers' freedom to associate. This is a big leap forward and has triggered many new developments in the trade union movement.[3] Our country has ratified the International Labor Organization (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, then the ILO Convention No. 98 concerning the Application of the Basics of the Right to Organize and to Collective Bargaining,[4] this is in line with what is stated in Article 28 E Paragraph (3) of the Amendment to the 1945 Constitution which states that everyone has the right to freedom of association, assembly and expression of opinion.
The definition of this provision is that every citizen, regardless of differences in race, gender, religion, etc., has the right to be part of an organization and utilize the organization for their interests fairly by obtaining protection of freedom of association, assembly, and expression of opinion. Freedom of association is a basic worker's right that has been guaranteed by Article 28 of the 1945 Constitution. To realize this right, every worker must be given the widest possible opportunity to establish and become a member of a labor union, because labor unions function as a means to fight for, protect, and defend the interests and improve the welfare of workers and their families.[5]

[1] Rachmad Syafa'at, "*Gerakan Buruh dan Pemenuhan Hak Dasarnya*: *Strategi Buruh Dalam Melakukan Advokasi",* (Malang: In Trans Publishing, 2008), hlm 2.
[2] Felicia Martheo, Ariawan Gunadi Legal Protection of Company Data and Confidential Documents with Confidentiality Clauses in Employment Agreements and Code of Conduct (Case Study of PT Metindo Perkasa Decision Number 459/Pdt/2019/Pt.Bdg), Unes Law Review, Vol 6, No 2, Desember 2023, hal 5047
[3] Doni Yusra, *Kebebasan Berserikat Bagi Pekerja Yang Dipekerjakan Secara Kontrak* (PKWT), Lex Jurnalica Volume 14 Nomor 2, Agustus 2017 hal 108
[4] Payaman J. Simanjuntak, *Managemen hubungan industrial serikat pekerja,* Cet 5, (Jakarta: Universitas Indonesia publishing, 2019), hal 41
[5] *Ibid* hal 40

The Republic of Indonesia provides guarantees, as regulated in Article 28 of Law Number 21 of 2000 concerning Workers' Unions/Labor Unions[6] which states as follows:
Anyone is prohibited from preventing or forcing workers/laborers to form or not to form, become administrators or not to become administrators, become members or not to become members and/or carry out or not to carry out activities of a labor union/labor union by:
a. Terminating employment, temporarily suspending, demoting, or transferring;
b. Not paying or reducing workers' wages;
c. Intimidating in any form;
d. Conducting an anti-union campaign
Because the right to associate is considered important, there is a criminal article contained in Article 43 paragraph 1 which states

"Anyone who obstructs or forces workers as referred to in Article 28, will be subject to criminal sanctions of at least 1 (one) year and a maximum of 5 (five) years and/or a fine of at least Rp. 100,000,000, - (one hundred million rupiah) and a maximum of Rp. 500,000,000 (five hundred million rupiah)."

Then reaffirmed in Article 43 paragraph 2 which states
"The criminal act as referred to in paragraph (1) is a criminal act of crime"[7]
In the formulation of the article it is very clear that anti-union acts are a crime. Indeed, ideally the relationship between employers and workers is an Industrial Relationship that is expected to be harmonious, dynamic, and fair[8]
The general function of law is the formation of behavior in society to connect to a set of goals through people who have influence in it. However, its specific functions are usually very diverse. For example, law seeks to enforce primary rules in society, establish an institution (institution) or regulate a process. The message in the law usually shows one or more legal functions, which are usually presented in an abstract form but the essence is in the realm of reality (concrete). The characteristic of legal norms is the existence of external coercion in the form of legal threats for violators, usually in the form of physical sanctions that can be enforced by state apparatus.[9]
However, in practice, workers' freedom to associate often faces serious challenges, one of which is that it is sometimes threatened by employers, employers assume that the existence of labor unions is only a disruption to business operations and often criticizes the policies and decisions of company management which according to workers are contrary to normative provisions. The threats that are often faced by labor union activists are lower salaries, demotions, transfers, even unilateral termination of employment, and so on.[10] Based on research and data collection by LBH Jakarta, in the period 2016 - 2020 there was an increase in the number of complaints related to labor criminal cases in 7 Workers' Unions/laborers and Legal Aid Institutions spread across 8 regions, with a total of 81 complaints and 16,146 justice seekers. From this data, the type of criminal act that is most often reported is violations of the provisions on the obligation to fulfill a living wage, both wages below the UMP (Provincial Minimum Wage) standard, unpaid wages, remaining wages underpaid to unpaid overtime wages. Until now, almost no employers who have committed violations have been successfully brought to court. One of the obstacles is the slow response from the police and some are directed to the Industrial Relations Court (PHI), because it is considered not to contain criminal elements.[11]
This condition seems as if the criminal provisions of anti-union actions cannot be implemented. Meanwhile, from the labor union side, the report is only limited to reporting, the rest of the further investigation is the domain of the authorized officers.[12]
Based on the above, it is clear that there is a horizontal conflict between laws that results in difficulties and ambiguity in enforcing criminal law against anti-union actions, that in reality law enforcement against union actions contained in Article 28 of Law Number 21 of 2000 has not been able to be carried out properly, resulting in the basic rights of workers not being protected and not being able to provide a sense of justice for workers.

Problems

[6] Abdul Khakim, *Dasar-Dasar Hukum ketenagakerjaan Indonesia, (*Bandung: PT Citra Aditya Bakti, 2009), hal 222-223

[7] Indonesia, *Undang-undang Nomor 21 Tahun 2000 tentang Serikat Pekerja, (Lembaran Negara Republik Indonesia Tahun 2000 Nomor 131, Tambahan Lembaran Negara Republik Indonesia Nomor 3989)*, Pasal 43 ayat 1 dan 2

[8] M. Saleh dan Lilik Mulyadi, *Seraut Wajah Pengadilan Hubungan Industrial Indonesia,* (Bandung: Citra Aditya Bakti, 2012), hal 10.

[9] Mella Ismelina Farma Rahayu, Kebebasan Pers dalam Konteks KUHP Pidana: Menyoal Undang-Undang sebagai Fungsi Komunikasi, Jurnal MEDIATOR, Vol. 8 No.1 Juni 2007

[10] Asrul Paduppail, dkk**, "**Penegakan Hukum Terhadap Perusahaan Yang Melanggar Ketentuan Pasal 28 Huruf A Undang-Undang Nomor 21 Tahun 2000 Tentang Serikat Pekerja/Serikat Buruh", *Jurnal Lex Suprema*, volume III no 1, 2021

[11] Lembaga Bantuan Hukum Indonesia, *Kertas Kebijakan Urgensi Pembentukan Sub Direktorat Khusus Pidana Ketenagakerjaan di Kepolisian RI*, (Jakarta : LBH Jakarta 2020) hal 15

[12] Yogo Pamungkas, Efektifitas Union Busting Sebagai Tindak Pidana Kejahatan, jurnal Trijurnal, Volume 1 no 2 (2019)

Based on the description that has been presented above, the problems that will be discussed in this Journal are as follows:

"What weaknesses arise in implementing law enforcement against anti-association actions?"

Method

This study employs a normative juridical approach with a descriptive legal analysis method. The normative juridical approach examines laws and regulations related to freedom of association and legal protection for workers, particularly in the context of anti-union actions in Indonesia. The legal sources used include national regulations such as Law No. 21 of 2000 on Trade Unions/Labor Unions, as well as international legal instruments such as ILO Conventions No. 87 and No. 98. In addition, this study also analyzes court decisions related to anti-union cases to understand the implementation and effectiveness of law enforcement in protecting workers' rights. The descriptive approach is used to illustrate the legal phenomena occurring, both in terms of policies and practices in the field, to identify weaknesses and obstacles in enforcing laws against anti-union actions.

DISCUSSION

In the analysis of the problems above, the author will describe several weaknesses that arise in the implementation of law enforcement against anti-association actions and relate them to the theory of legal protection and the theory of the legal system in order to find answers to the problems in this scientific writing. Some of the weaknesses that arise are as follows:[13]
According to the Legal System theory of Lawrence M. Friedman, as a legal system of the social system, law includes three components, namely:
1. Legal substance, is the rules, norms and real behavior patterns of humans who are in the system including products produced by people who are in the legal system, including the decisions they issue or new rules they compile;
2. Legal structure, is a framework, a part that remains, a part that provides a kind of form and limitations to all law enforcement agencies. In Indonesia, the structure of the legal system includes institutions or law enforcers such as advocates, police, prosecutors and judges; and
3. Legal culture, is the state of mind of the system and social power that determines how the law is used, avoided or misused by society

Anti-union actions, as stated in Article 28 of Law No. 21 of 2000 concerning labor unions, and Article 43 paragraphs 1 and 2, fall within the realm of criminal labor law, because Article 43 paragraph 1 provides a criminal threat to acts that violate the provisions of Article 28 of Law No. 21 of 2000 concerning labor unions, this can be seen in the formulation of the article which reads

"Anyone who obstructs or forces workers/laborers as referred to in Article 28, will be subject to criminal sanctions of at least 1 (one) year and a maximum of 5 (five) years and/or a fine of at least Rp. 100,000,000, - (one hundred million rupiah) and a maximum of Rp. 500,000,000 (five hundred million rupiah)."

Then the above is strengthened and emphasized by the formulation of article 43 paragraph 2 which firmly states that acts that violate article 28 of law number 21 of 2000 as a crime with the formulation of the article which reads as follows
(1). "The criminal act as referred to in paragraph (1) is a criminal act of crime"[14]
Based on the formulation of the two articles above, we can clearly say that anti-union acts fall into the realm of criminal labor law. As stated in chapter 2 of this study according to W.L.G. Lemaire: Het strafrecht is samengesteld uit die normen welke geboden en verboden bevatten en waaraan (door de wetgever) als sanctie straf, d.i. een bijzonder leed, is gekoppeld. Men kan dus ook zeggen dat bet strafrecht bet normmen stelsel is, dat bepaalt op werke gedragingen (doen of not-doen waar handelen verplicht is) and onder werke omstandigheden recht met straf reageert and waaruit deze straf bestaat (meaning, criminal law consists of norms containing obligations and prohibitions that (by the legislators) have been associated with a sanction in the form of punishment, namely a special suffering.
Thus, it can also be said that criminal law is a system of norms that determine which actions (doing something or not doing something where there is an obligation to do something) and under what circumstances the punishment can be imposed, and what punishment can be imposed for these actions,[15] then Employment crimes refer to

[13] Anonim, "Teori Sistem Hukum Dari Lawrence M.Friedman", www.sribd.com , 4 oktober 2022

[14] Op Cit, Indonesia, *Undang-undang Nomor 21 Tahun 2000 tentang Serikat Pekerja, (Lembaran Negara Republik Indonesia Tahun 2000 Nomor 131, Tambahan Lembaran Negara Republik Indonesia Nomor 3989)*, Pasal 43 ayat 1 dan 2

[15] P.A.F Lamintang, Dasar-dasar hukum Pidana Indonesia, Bandung: Sinar baru, 2011, hlm.1

violations of employment law regulations that can result in criminal sanctions for the perpetrators.[16] The application of sanctions must be based on evidence of a causal relationship between the act committed and the results that occur.[17] Based on this, if we relate it to the legal system theory stated by Lawrence M. Friedman, one of the components of the legal system theory is the substance of law which is the rules, norms and real behavior patterns of humans who are in the system including products produced by people who are in the legal system, including the decisions they issue or new rules that they clearly formulate, we can conclude that anti-association actions as stated in articles 28 and 43 of Law no. 21 of 2000 concerning labor unions have legal substance as criminal law, because they contain criminal sanctions and prohibitions contained in the article.

Then if we discuss the second component of the legal system theory, namely the legal structure, which is a framework, a part that remains, a part that provides a kind of form and limitation to all law enforcement agencies if related to this research, the author will discuss it as follows.

Anti-union actions as discussed in the previous section fall into the realm of criminal law on employment, then the law enforcers who are authorized in this case are the Indonesian Republic Police and labor inspectors, as the author has discussed in chapter 4 of this study, that if there has been a violation of the provisions of laws and regulations, then the authorized official will conduct an investigation. In criminal cases in the field of employment, the authorized officials to conduct investigations are the police and government agencies responsible for the field of employment.

What is meant by Investigator according to Article 1 paragraph (2) of the Regulation of the Chief of the Indonesian National Police Number 6 of 2010 concerning Management of Investigations by Civil Servant Investigators, states that Investigators are Officials of the Indonesian National Police or certain Civil Servant Officials who are given special authority by law to conduct investigations.

What is meant by Civil Servant Investigators according to Article 1 paragraph (3) of the Regulation of the Chief of the Indonesian National Police Number 6 of 2010 concerning Management of Investigations by Civil Servant Investigators, states that Civil Servant Investigators, hereinafter abbreviated as PPNS, are certain Civil Servant Officials who are given special authority by law to conduct investigations of criminal acts in accordance with the laws that are the legal basis for each and in carrying out their duties are under the coordination and supervision of the Police Investigators.[18]

The Labour Law or UUK emphasizes that the institution that has the authority to enforce labor crimes (Investigation and Prosecution) is the Manpower Supervisory Officer (PPK). According to Article 176 of the UUK, PPK/PPNS has the competence and independence to guarantee the implementation of labor laws and regulations. To maintain this competence and independence, the UUK stipulates that the appointment of PPK is determined by the minister or appointed official.[19] Thus, it is clear that in terms of the legal structure as stated in the theory of the legal system stated by Lawrence M. Friedman, the law enforcement officers for labor crimes are the police and Manpower Supervisory Officers. Then if we discuss the third component, namely Legal Culture, which is the state of mind of the system and social power that determines how the law is used, avoided or misused by society, logically, Anti-union actions should be resolved through settlement with the criminal law system, but in fact there has been avoidance by society which forms a new legal culture as stated in chapter 4 of this study, there are several cases that are actually resolved through the industrial relations court, even though the industrial relations court does not have the competence to decide on criminal acts in the field of employment.

In Article 1 number 2 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations, the types of Industrial Relations Disputes are divided into:

a. Rights Disputes are disputes that arise due to non-fulfillment of rights, due to differences in implementation or interpretation of provisions of laws and regulations, work agreements, company regulations or joint work agreements.

b. Interest Disputes are disputes that arise in employment relations due to the lack of agreement of opinion regarding the creation and/or changes to the terms of employment stipulated in the work agreement, or company regulations, or joint work agreements.

c. Disputes over Termination of Employment are disputes that arise due to the lack of agreement regarding the termination of employment by one of the parties.

d. Disputes between trade unions/labor unions are disputes between trade unions/labor unions and other trade unions/labor unions in only one company, due to the lack of agreement regarding membership, implementation of rights, and obligations of the labor union.[20]

[16] Mario, Mompang L Panggabean dan Binoto Nadapdap, "Politik Hukum Pidana dan Proses Penegakan Hukum Pidana Terhadap Tindak Pidana di Bidang Ketenagakerjaan" (2021) 7: Special Issue Jurnal Hukum To-ra, 192-205.

[17] Abdullah Sulaiman, Hukum Ketenagakerjaan/Perburuhan, (Yayasan Pendidikan dan Pengembangan Sumber Daya Manusia: Jakarta, 2019)

[18] Sahala aritonang, Tindak pidana dibidang ketenagakerjaan, Jakarta, 2020, Permata aksara, hal 137

[19] Maimun, Hukum Ketenagakerjaan Suatu Pengantar, (Jakarta: PT. Pradnya Paramita, 2004)h. 102

[20] https://repositori.uma.ac.id/bitstream/123456789/905/5/118400155_file5.pdf

The industrial relations court only has the 4 authorities mentioned above and does not have any authority in criminal labor matters, but cases of anti-union actions that are legally substantive fall into the realm of criminal labor, which have law enforcement tools, namely the police and labor inspectors, are brought into the realm of the industrial relations court which clearly does not have the competence to deal with these issues, we can see this from several examples of decisions that the author has outlined in chapter 4, namely the following:[21]

a. To determine whether or not there is an anti-union action, it must first be determined by a final and binding criminal case decision. This legal principle can be found in Decision Number 27/Pdt.Sus-PHI/2015/PN.Pal, where the worker filed for cancellation of the PHK on the grounds of rejecting the transfer, with the argument that the transfer carried out was an anti-union action.
b. The employer is able to prove that the worker has been absent, thus the PHK carried out can be qualified as resignation and not because of the eradication of the labor union. This legal principle is found in Decision Number 152/Pdt.Sus PHI/2015/PN.Bdg
c. The court canceled the transfer and PHK actions carried out by the employer, because the worker was registered as a member of the PKB negotiating team that had been agreed upon by both parties and the transfer was carried out during the negotiations. The mutations carried out are considered to violate the provisions of Article 28 letter a of Law Number 21 of 2000. This legal principle is found in Decision Number 408 K/Pdt.Sus/2011.
d. The termination of employment carried out by the employer was carried out without going through a bipartite process, so that the termination of employment was canceled by the court. This legal principle is found in Decision Number 5 PK/Pdt Sus/2013 where the employer terminated the employee on the grounds that the employee had been absent due to participating in union activities.
e. The termination of employment carried out by the employer was based on a Collective Labor Agreement that had expired, so that the termination of employment was canceled by the court. This legal principle is found in Decision Number 59 PK/Pdt.Sus.PHI/2017 where the employer terminated 3 employees who were union administrators and the employees sued for the cancellation of the termination of employment.
f. The cancellation of the termination of employment was appropriate and correct because the termination of employment was carried out by the employer in connection with the employee's activities in carrying out their duties as union administrators. This legal principle is found in Decision Number 87 K/Pdt.Sus.PHI/2014 where workers filed a lawsuit against employers who prohibited workers from entering the workplace and carried out unilateral layoffs, after workers asked employers about workers' rights.

Based on the above, it is clear that there is an ambiguity in the resolution of the dispute. Anti-union actions which are clearly the realm of criminal law for employment but are forced into the realm of industrial relations court law which results in the difficulty of achieving justice for workers. Justice can only be understood if it is positioned as a condition that is intended to be realized by law. Efforts to realize justice in the law are a dynamic process that takes a lot of time. This effort is often dominated by forces that fight within the general framework of the political order to actualize it.[22] As a result, a new legal culture is formed and is a deviation from the theory of the legal system stated by Lawrence M. Friedman, the author will analyze the cause of this as follows,

First, the limitative nature of article 28 which opens up room for ambiguity, as the author has discussed in part 1 of this chapter, article 28 of Law Number 21 of 2000 concerning labor unions provides limitations on the way criminal acts are carried out (modus operandi), namely by:

a. Terminating employment, temporarily suspending, demoting, or transferring;
b. Not paying or reducing the wages of workers/laborers;
c. Intimidate in any form;
d. Conduct a campaign against the formation of trade unions/labor unions

In the article there are 2 parts, the first is the prohibition section marked with the words "everyone is prohibited", to discuss the fragment of the word "everyone". In the fragment of the word "everyone" is always paired with the word "obligatory", for example: "Everyone is obliged to maintain the cleanliness of their home environment", then, in this provision there is an order to oblige an action, and if violated, sanctions will be imposed. Likewise, for the fragment of the word "anyone" is always paired with the word "prohibited", for example: "Anyone is prohibited from littering", then in this provision there is an order not to be allowed to do an action, and if done, sanctions will be imposed. Thus it can be concluded that the fragment of the word "anyone" is the opposite of the action of the fragment of the word "everyone".

Based on the above descriptions, the author is of the opinion that the word "whoever" is an order not to do an act, if taken in the context of article 28 of law no. 21 of 2000 concerning labor unions, the first part contains the prohibition to hinder or force workers/laborers to form or not to form, become administrators or not to become administrators, become members or not to become members and/or carry out or not to carry out activities of labor

[21] Nugroho Eko Priamoko, "Memposisikan Union Busting", www.hukumonline.com 3 oktober 2022

[22] Ahmad Sudiro, Konsep Keadilan dan Sistem Tanggung jawab Keperdataan dalam hukum udara, jurnal hukum ius quia iustum no. 3 vol. 19 juli 2012, hal 440

unions/labor unions. Then the second part of the article is the method or modus operandi in article 28 of law no. 21 of 2000, there are only 4 methods used, limited to terminating employment, temporarily dismissing, demoting, or transferring, not paying or reducing wages of workers/laborers, carrying out intimidation in any form, conducting anti-formation campaigns for labor unions/labor unions. These four things, according to the author, are limitations or limits on how the law can be enforced so as to provide legal protection to workers. In fact, as discussed in the previous section, anti-union actions that exist today have developed a lot and seem unable to be accommodated by Article 28 of Law No. 21 of 2000 concerning labor unions.

If we relate it to the Theory of Legal Protection stated by According to Prof. Dr. Sudikno Mertokusumo, SH., the law functions as a protection of human interests.[23] In order for human interests to be protected, the law must be implemented.[24] In enforcing the law there are three elements that must always be considered, namely: legal certainty, utilization, and justice.[25]

The first element, Legal certainty is a Justiciable protection against arbitrary actions, which means that someone will be able to obtain something that is expected in certain circumstances. The law is tasked with creating legal certainty because it aims to maintain public order.[26] The nature of the limitations in the method section contained in the formulation of Article 28 of Law No. 21 of 2000 has caused legal uncertainty because it cannot ensnare the method of carrying out anti-association actions that are not contained in the formulation of the article, the perpetrators of anti-association actions will easily take cover behind **Nullum delictum, nulla poena sine praevia lege poenali,** namely **there is no punishment without a regulation that first mentions the act in question as a legal event and which contains a punishment that can be imposed for the event.**[27]

The second element, benefit must be present in the implementation of law and law enforcement for the benefit of society.[28] Do not let it be because the law is implemented or enforced that unrest arises in society. In this regard, with the legal uncertainty that arises from the limitative nature of Article 28 of Law No. 21 of 2000 concerning labor unions, it causes unrest because it cannot be enforced optimally.

The third element, justice must be considered in the implementation or enforcement of the law.[29] As a result of the legal uncertainty and causing unrest as explained above, it is clear that justice as a goal will not be felt by victims of anti-association actions.

Thus, we will find that the limited nature of the method section contained in the formulation of Article 28 of Law No. 21 of 2000 has become one of the obstacles that have emerged in the implementation of law enforcement against anti-association actions.

Second, the methods or modus operandi outlined in Article 28 of Law Number 21 of 2000 concerning labor unions Some fall into the legal realm of the industrial relations court, the first method, namely termination of employment, is an area that can be examined by the industrial relations court so that ambiguity arises which causes the victim in this case the worker to choose to submit the problem to the industrial relations court, however, because the industrial relations court does not have the authority to decide on criminal labor cases, the industrial relations court only decides cases in normative matters, there is even no uniformity in the decisions handed down in trying cases of anti-union actions submitted to the industrial relations court, for example, the cancellation of layoffs is appropriate and correct because the layoffs were carried out by the employer in connection with the existence of workers' activities in order to carry out management duties as administrators of the labor union. This legal principle is found in Decision Number 87 K / Pdt.Sus.PHI / 2014 where workers filed a lawsuit against the employer who prohibited workers from entering the workplace and carried out unilateral layoffs, after workers asked the employer about the rights of workers. The consequence of the cancellation of the termination of employment carried out by the employer due to anti-union actions means that the position between the worker and the employer has been restored to its original state, so that the initial evidence in the enforcement of criminal law on employment, namely the termination of employment, has been dropped, so that even though the act is declared guilty by the industrial relations court, criminal law enforcement cannot be carried out against it. However, in practice, the industrial relations court requests that the settlement of anti-union criminal cases be resolved first through the criminal justice system. To determine whether or not there are anti-union actions, it must first be determined by a criminal case decision that has permanent legal force. This legal principle can be found in Decision Number 27/Pdt.Sus-PHI/2015/PN.Pal, where the worker filed for the cancellation of the termination of employment on the grounds of rejecting the transfer, on the grounds that the transfer carried out was an anti-union action. From the above, it is confirmed that the Industrial Relations Court is unable to state firmly that the act is an anti-union act, this happened because from the

[23] Prof. Dr. Sudikno Mertokusumo, SH., *Mengenal Hukum*, (Yogyakarta Liberty, 2003), hlm. 160
[24] ibid
[25] Ibid
[26] Ibid
[27] Yuda Meizar Pratama Sopandi, mengenal-asas-legalitas-dalam-hukum-pidana-di-indonesia/ https://dntlawyers.com/
[28] Op, Cit, Prof. Dr. Sudikno Mertokusumo, SH., *Mengenal Hukum* hal 161
[29] *Ibid*

beginning the parties had brought the problem of anti-union acts into the realm of Industrial Relations so that the resolution was limited to Industrial Relations Settlement.[30]

If related to the type of industrial relations dispute that accompanies it, anti-union acts in the form of terminating employment can be disguised in the category of PHK disputes while temporarily dismissing, demoting, or transferring, not paying or reducing workers' wages, carrying out intimidation in any form, conducting anti-union campaigns can be disguised as disputes over rights and interests. In such a position, anti-union acts are often positioned as Industrial Relations Disputes rather than criminal acts. In fact, Anti-Union Criminal Acts are included in the realm of labor crimes, which are Premium Remedium, namely criminal law enforcement can be said to be the only thing that can be done, there is no other alternative as a basis or foundation for enforcing a Criminal Labor Law.[31] Thus, we will find that the method or modus operandi stated in the formulation of Article 28 of Law No. 21 of 2000 has become one of the obstacles that have emerged in the implementation of law enforcement against anti-association actions.

Third, the obstacles that arise in law enforcement against anti-union actions are the absence of a time element that must be taken by workers against anti-union actions, namely the wording of Article 28 of the Trade Union Law also has weaknesses. The phrase "becoming a member or not being a member and/or carrying out or not carrying out trade union/labor union activities" does not contain a time element. This results in the ambiguity of norms and difficulty in proving according to the normative-juridical school of thought. Meanwhile, law enforcers in dealing with concrete cases always start by analyzing the elements in order to find evidence until it is stated as preliminary evidence and one of the bases for determining someone as a suspect. What is meant by the absence of a time element is what if workers are already prohibited from becoming members of a trade union/labor union at the time of recruitment by management? Oddly enough, the explanation of the wording of this article is officially written quite clearly. the settlement process at the police level is as follows:

1. Police Report
2. Investigation
3. Investigation
4. Commencement of Investigation
5. Witness Examination
6. Expert Statement
7. Examination of Suspects

From the seven processes at the police examination level, it is very difficult to determine when the case can go to court to be tried under criminal law, this is in contrast to what is in the industrial relations court, which decides cases with a time limit, 180 days the case must be resolved to the cassation stage so that it becomes certainty for justice seekers, in addition, workers are also bound by a time period, for example if the anti-union action is carried out by terminating employment, then the worker makes a police report, and continues to drag on for up to 1 year, then the worker loses his right to file the case with the industrial relations court, this is because the industrial relations court provides a period of 1 year for workers who object to the termination of employment carried out by the employer as stated in Article 82 of Law Number 2 of 2004 concerning industrial relations courts states:

Lawsuits by workers/laborers regarding termination of employment as referred to in Article 159 and Article 171 of Law Number 13 of 2003 concerning Manpower, may be filed only within a period of 1 (one) year from the receipt or notification of the decision from the employer. Thus, we will find that the absence of the time element stated in the formulation of Article 28 of Law No. 21 of 2000 has become one of the obstacles that have emerged in the implementation of law enforcement against anti-union actions. Fourth, the obstacle that has emerged in law enforcement against anti-union actions is the pattern of approach to enforcing criminal labor law carried out by labor investigators is not quite right, regarding this the author will analyze it as follows, if we pay attention in chapter 4 the author has outlined data regarding the history of the development of labor law in Indonesia with the development of labor law in the United States, in terms of history both have relatively the same history, labor unions are often considered a threat to employers, so that conflicts between labor unions and employers often cannot be avoided, as a result it is felt necessary for an institution to mediate in problems between labor unions and employers, in Indonesia the institution is the labor inspector, while in the United States it is the National Relations Labor Board (NRLB) as stated in Article 3 of the Wagner Act (Wagner Law) which states

Sec. 3. (a) The National Labor Relations Board (hereinafter called the “Board”) created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is continued as an agency of the United States

Section 3. (a) The National Labor Relations Board (hereinafter called the “Board”) created by this Act prior to its amendment by the Labor Management Relations Act of 1947, is continued as an agency of the United States empowered to prevent unfair labor practices as stated in section 10 of the Wagner Act which states

[30] Op, Cit, Yogo Pamungkas, Efektifitas Union Busting Sebagai Tindak Pidana Kejahatan, jurnal Trijurnal, Volume 1 no 2 (2019)

[31] Anonim, “Ultimum Remedium Dan Primum Remedium Dalam Sistem Hukum Pidana Indonesia”, www.indonesiare.co.id/id/article, 3 oktober 2022

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provisions of the State or Territorial statute applicable to the determination of such cases by such agencies are inconsistent with the corresponding provisions of this Act or has received a construction inconsistent therewith.
Article 10. (a) The Board shall have the power, as herein provided, to prevent any person from engaging in any unfair labour practice (set forth in section 8) affecting trade. This power shall not be affected by any other means of adjustment or prevention which have been or may be established by agreement, statute or otherwise: Provided that, the Board shall have the power by agreement with any agency of any State or Territory to assign to that agency jurisdiction over any case in any industry (other than mining, manufacturing, communications and transport except of a predominantly local character) even though such case may involve a labour dispute affecting trade, unless the provisions of the law of the State or Territory applicable to the determination of such case by that agency are inconsistent with the corresponding provisions of this Act or have received a construction inconsistent therewith.
The National Labor Relations Board (NRLB) in practice has the authority to decide whether an event is included in an act or action of unfair labor practice, it can be said that the NRLB uses a repressive approach to a labor case, we can see this from several NRLB decisions as follows
In May 2024, the NLRB ruled that Apple illegally questioned workers about union issues and confiscated union flyers at its World Trade Center store in New York City in 2022, affirming the findings of an administrative judge in 2023.[32] Then In June 2024, the NLRB found that Station Casinos had committed "extensive coercive and unlawful violations," including discriminatory job assignments and threatening workers with dismissal for supporting the union, and that these actions "stemmed from a carefully designed corporate strategy that was carefully designed at all times." steps to interfere with the free choice of employees" to join the Culinary Workers Union or not.[33] And there are many others that the author has outlined in chapter 4 of this study, what needs to be underlined is the pattern of approach to the case carried out by NRLB using a repressive approach, going straight to the point of the case, deciding and even ordering the disputing parties so that the resolution of unhealthy labor cases, in this case anti-union actions are quickly handled and resolved.
Now the author will compare it with Indonesia, in Indonesia what is meant by Civil Servant Investigator according to Article 1 paragraph (5) of the Republic of Indonesia Government Regulation Number 43 of 2012 concerning Procedures for Implementing Coordination, Supervision and Technical Guidance for Special Police, Civil Servant Investigators and Forms of Self-Security, states that Civil Servant Investigators, hereinafter abbreviated as PPNS, are certain Civil Servant Officials who, based on statutory regulations, are appointed as investigators and have the authority to conduct criminal investigations within the scope of the laws that form their respective legal basis. What is meant by Civil Servant Investigator according to Article 1 paragraph (12) of the Regulation of the Minister of Manpower of the Republic of Indonesia Number 33 of 2016 concerning Procedures for Manpower Supervision, states that Civil Servant Investigators for Manpower, hereinafter referred to as PPNS Manpower, are Manpower Supervisors who are given special authority by law to conduct investigations into labor crimes.[34]
Operational Mechanism of Manpower Supervision Manpower supervision in its duties to supervise the implementation of general and comprehensive manpower regulations as well as to collect materials needed for the study of the creation of manpower regulations in the future is carried out through operational mechanisms,[35] which include:
1. Preventive educative Is a supervisory activity by conducting direct coaching in the field for both employers and workers. The coaching carried out is directed so that employers and workers can know, understand labor laws and regulations and how to implement these regulations. Coaching can be carried out by holding counseling in companies, disseminating regulations (through brochures for example), providing explanations to workers or employers who come to consult with the labor inspection work unit, providing explanations/instructions when conducting inspections in companies and workplaces.
2. Non-judicial Repressive Carried out after coaching and counseling have been carried out but violations still occur. Here the supervisory officer who finds the violation gives a written warning in the form of an inspection note containing a warning. Carried out after coaching and counseling have been carried out but violations still occur.

[32] *Antonio Pequeño IV, (May 6, 2024).* "U.S. Labor Board Rules Apple Illegally Interrogated Staff And Confiscated Union Flyers". Forbes. Archived *from the original on May 6, 2024. Retrieved May 9, 2024.*

[33] *Matthew, Seeman, (June 18, 2024).* "Labor board says Station Casinos violated labor law, issues bargaining order for union". KSNV. Archived *from the original on June 18, 2024. Retrieved June 25, 2024.*

[34] Op Cit, Sahala aritonang, hal 142

[35] Op, Cit, Khakim, A. (2014). Dasar-Dasar Hukum Ketenagakerjaan Indonesia. Jakarta: Citra Aditya Bakti.

Here the supervisory officer who finds the violation gives a written warning in the form of an inspection note containing a warning.[36] This warning note must meet the following requirements:

a. There is a legal basis, meaning that there are regulations that have been seriously violated by the company.
b. There is a time limit in this case between the issuance of a warning and the implementation which is required to have a reasonable time period for the employer to prepare everything. The time period is given considering the severity of the violation. If the violation is in the category of serious violations, the time period can be quite long, conversely for minor violations, a shorter time period is usually given.
c. Employers are required to report the implementation to the local Manpower Office. If the warning is ignored, there will be follow-up from the inspecting office, namely a second to third warning. If after the third warning the employer still does not carry out his obligations, the third step is taken, namely judicial repression, namely: Judicial repression Supervisory employees are employees appointed by the Minister of Manpower to supervise employment provisions. Thus, supervisors are Civil Servants within the Ministry of Manpower

Then the implementation of the investigation by the PPNS Ketenagakerjaan will be carried out as follows:

a. Repressive Justice (Pro Justitia) action is the final step in the process of enforcing labor law (ultimum remidium).
b. Carried out by the PPNS Ketenagakerjaan in accordance with its authority
c. The labor supervision process has been carried out optimally
d. Must be supported by good and correct administration in accordance with the provisions[37]

In summary, the above mechanism can be explained as follows:

a. The labor inspector conducts an examination of the alleged labor crime that occurred.
b. The labor inspector provides a warning in the form of an inspection note.
c. The labor inspector ensures the implementation of the inspection note that has been issued.
d. If the Inspection Note is not implemented after the final warning is given, the labor inspector makes a report on the alleged labor crime.
e. Based on the report, the investigator makes an incident report to conduct an investigation into the criminal violation.

Regarding this, we can clearly see that labor investigators in examining criminal cases of anti-union actions still use non-judicial repressive mechanisms, labor inspectors place criminal acts of anti-union actions as ultimum remedium, even though criminal acts of anti-union actions are not the last resort but an effort that must be enforced first in order to fulfill the sense of justice of the victims because these actions are categorized as crimes.

This means that law enforcement against anti-union actions does not require other procedures in its enforcement efforts, Criminal Labor Law and Industrial Relations Court Law stand alone and are not interdependent on one another. In the concept of criminal law enforcement in general, there is an assumption that criminalization of perpetrators of criminal law violations is a means of Ultimum Remedium, which means that criminal law is the last tool to impose sanctions on perpetrators of violations of a legal norm. Although the concept of Ultimum Remedium is not a principle and is not standardized in statutory regulations, it is often used as a guideline for many groups, especially criminal law enforcement officers.

The enforcement of criminal labor law against anti-union actions is not dependent on the enforcement of civil law (PPHI), or state administrative law through the Labor Inspectorate. There are several reasons why the enforcement of criminal labor law stands alone and does not have to go through the process of enforcing civil law through the settlement of industrial relations disputes (PPHI) and the administrative sanction process through the Labor Inspectorate, namely, first, that the purpose of criminal punishment in the Labor Law contains two objectives, namely in addition to being a means to restore the rights of workers/laborers violated by employers, also to restore a situation where there is a violation of labor law by employers.[38]

In addition, there is also a provision in Article 189 of Law Number 13 of 2003 concerning Labor which states that "Criminal sanctions in the form of imprisonment, confinement, and/or fines do not eliminate the obligation of employers to pay rights and/or compensation to workers or workers/laborers". Article 189 of the Manpower Law provides the meaning that criminal sanctions and civil sanctions stand alone without eliminating or having to precede one another.[39]

Thus, one of the characteristics of criminal labor law against anti-union acts is Independent of other areas of law, which means that criminal labor law is not subordinate to the field of civil law, and is not subordinate to the field of state administrative law. So that the enforcement of criminal labor law against anti-union acts does not have to be preceded by the enforcement of the field of civil law, such as lawsuits to the industrial relations court, and does not have to be preceded by the enforcement of state administrative law, such as supervisory notes from labor inspectors.

[36] Agusmidah. (2001). Fungsi Pengawasan Pemerintah Terhadap Perlindungan Buruh Perempuan pada Perusahan Industri di Kabupaten Deli Serdang. Tesis. Medan, Sumatera Utara: Program Pascasarjana Universitas Sumatera Utara

[37] Chromeextension://efaidnbmnnnibpcajpcglclefindmkaj/https://usupress.usu.ac.id/images/buku/DISKURSUSHUKUM.pdf

[38] Anonim, "Pemidanaan Terhadap Pengusaha Yang Melanggar Hak Buruh" tersedia di *www. news.unair.ac.id,* 3 Oktober 2022

[39] Ibid

Thus, from the results of the comparison above, we will find that the pattern of approach in resolving criminal cases of anti-association actions has in fact become one of the obstacles that have emerged in the implementation of law enforcement against anti-association actions.

Of the four obstacles above that the author has analyzed if associated with the theory of law enforcement put forward by According to Satjipto Rahardjo, Law Enforcement is an effort to realize legal ideas into reality,[40] Satjipto Raharjo is of the view that in general we are still fixated on conventional law enforcement methods, including the legal culture that is carried out with a liberal character and has a liberal culture that only benefits a small number of people (Privileged Few) above the "suffering" of many people. To overcome this imbalance and injustice, we can take firm steps (Affirmative Action). This firm step is by creating a different law enforcement culture, namely a collective culture. Changing individual culture to collective in law enforcement is indeed not easy. The four obstacles that have emerged in law enforcement have clearly contradicted the theory of law enforcement mentioned above, because not only are they difficult to enforce or seem to be impossible to implement, but they have also damaged a legal system with the existence of a new legal culture as a form of public avoidance of the legal system which in fact has obstacles as discussed above.

CONCLUSION

That in the discussion of the problem, after the author analyzed and linked it to the theory of the legal system and the theory of law enforcement, it has been found that Article 28 of Law Number 21 of 2000 concerning labor unions has 4 obstacles in the process of enforcing the law, namely its limitative nature, the method or modus operandi that is stated in the area of legal authority of the industrial relations court, the absence of a time element in the article, and the last is the wrong pattern of approach in law enforcement, these things actually make workers as justice seekers try a new space to seek justice, namely by including cases of anti-union actions which are in fact criminal labor cases into industrial relations court (PHI) cases which have absolutely no authority over criminal labor cases, from the above it can be found that the fact that anti-union actions currently, which are stated in Article 28 of Law Number 21 of 2000 concerning labor unions, have obstacles in the implementation of their law enforcement, which causes ambiguity to arise as an effort to avoid the existing legal system due to the frustration of the workers workers as seekers of justice in cases of anti-union actions, Article 28 of Law Number 21 of 2000 concerning labor unions has clearly failed to provide legal protection to workers in exercising their basic rights.

In terms of providing definite legal protection to workers affected by anti-union actions, the regulators, namely the House of Representatives together with the government, can immediately revise Law Number 21 of 2000 concerning labor unions, so that workers can directly feel the legal protection of existing regulations.

For law enforcers, both the Indonesian Republic Police and labor investigators must change their approach to cases of anti-union actions, anti-union actions are a crime as stated in Article 43 paragraph 2 of Law Number 21 of 2000 concerning labor unions so that enforcement under criminal law does not require other legal efforts and cannot be positioned as ultimum remedium, it is hoped that with the change in approach, workers who are victims will get legal certainty and legal protection from anti-union actions.

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[40] Satjipto Raharjo, *Penegakan Hukum Suatu Tinjauan Sosiologis*, (Yogyakarta, Penerbit Genta Publishing, 2009) hlm, 12

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