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The Theoretical Framework for Impact Assessment of the Labor Code on Enterprises

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Abstract---Labor law plays an important role in regulating the relationship between employees and employers. The Labor Code has made more effective adjustments to enterprises to ensure the interests of employers. However, some regulations still do not meet the requirements set out at the current stage. The article researches the theoretical framework to assess the impact of the Labor Code on enterprises to reflect between the legal theory and the actual law implementation. On that basis, the article will propose solutions to improve the provisions of the Labor Code for enterprises to establish a solid legal corridor to ensure the development of enterprises in the current period.

Keywords---employees, enterprises, labor code, labor relations, legal framework.

Introduction

With the purpose of regulating the industrial relations in harmony, stability, and development, the law is considered as an important pedestal that plays an important role in ensuring the balance between the positions of the employees and the employers (DeConinck, 2010; Helm, 2011). Besides, the law creates a solid legal framework for enterprises to operate effectively, ensures the legitimate rights and interests of enterprises, and improves the efficiency of the management

of employers' rights in labor relations (Nikolova & Sinnyovsky, 2019; Pratono & Sutanti, 2016).

In that context, it is necessary to study the theoretical framework to assess the impact of the Labor Code 2019 on enterprises to have an objective view between the recognition in the assessment of the legal situation and the actual law implementation in order to complete the legislation on this issue in the current period (Man et al., 2002; Moore & Manning, 2009).

Discussions

The theoretical framework for impact assessment of the Labor Code on enterprises

The existence of the labor relations is based on the existence of the subjects participating in the labor relations. In particular, the employer is an important party that plays an important role in ensuring a stable and harmonious labor relation (Mohamed & Rosman, 2021). The theoretical framework for assessing the impact of the Labor Code is a system of behavioral rules governing employers and enterprises in relation to employees when participating in labor relations. This is also the scope of the Labor Code:

“The Labor Code sets forth labor standards; rights, obligations and responsibilities of employees, employers, internal representative organizations of employees, representative organizations of employers in labor relations and other relations directly related to labor relations; and state management of labor” (Congress, 2019). The theoretical framework for assessing the impact of the Labor Code is a system of legislation that regulates issues related to the rights and obligations of enterprises and the relationship between enterprises and other subjects in the relationship labor. The theoretical framework for assessing the impact of the Labor Code on enterprises is mainly through groups of legal regulations governing enterprises, including:

- Regulations on representative organizations of employers
- Regulations related to the labor contract
- Regulations related to social dialogue, collective bargaining, collective labor agreement
- Regulations related to salary
- Regulations related to labor discipline
- Regulations related to labor disputes

These contents are throughout the process from the time the labor relation is established, change until the termination of the labor relationship. With the amendment and supplement of the Labor Code (Kolk & Van Tulder, 2004), the theoretical framework for assessing the impact of the Labor Code has changed as follows:

Firstly, the issue of legalizing the representative role of the employer and participating in the construction of labor relations is specifically recognized.

Previously, employer representation was mentioned in many sub-law documents, (Government, 2004). In the context of globalization and international integration,

negotiation and agreement are considered as basic and core contents in labor relations. With that awareness, the representative organization of employers was first recognized in the Labor Code (Amengual, 2010). Specifically, the Labor Code stipulates: “Representative organization of employers means a lawfully established organization which represents and protects the employers’ legitimate rights and interests in labor relations.” (Congress, 2019). This regulation marks an important milestone in changing and raising awareness about employers’ representative organizations in labor relations. The law on employer representation is an effective tool to take on the role of protecting the rights of employers. In the labor relations, the employers tends to maximize their rights. This is implemented through the union of the employers (Buchele & Christiansen, 1999; Chambers, 2020). At the same time, in relation to employee representatives, the employers’ representative organization is also recognized by law as the equality of legal status between the two subjects. On the one hand, the law protects the interests of representatives of the parties in the labor relations. On the other hand, the law also creates a "push" to promote the development of the two-party and tripartite mechanism. Currently, in the national legal corridor, the representative organization of employers is regulated as follows:

First, the law recognizes that the employer has the right to establish, join and operate in the employers’ representative organization, professional organization, and other organization in accordance with the law and its functions of the employer's representative organization (Pidubnyi et al., 2021). The law stipulates that: “*Vietnam Chamber of Commerce and Industry, Vietnam Cooperative Association and other employer representative organizations that are lawfully established shall represent, protect the lawful rights and interests of employers, and participate in the development of progressive, harmonious and stable labor relations*” (Congress, 2019).

Second, the law recognizes the authority of the representative organization of employers to participate in labor relations from the following angles:

- Participating in the formulation of policies and laws on labor related to the legitimate rights and interests of employees and employers in labor relations. Collecting, synthesizing opinions, participating with state management agencies in formulating policies and laws on labor related to the legitimate rights and interests of employees and employers in labor relations.
- Participating in the process of formulating and implementing programs to prevent and resolve labor disputes; assessing the implementation of measures to prevent and settle labor disputes. Coordinating the implementation of action programs to prevent and settle labor disputes; assessing the implementation of measures to prevent and settle labor disputes.
- Participating in the development of a national report at the request of the Government on the implementation of the International Labour Organization Conventions, which are ratified by the Socialist Republic of Vietnam relating to the rights and legitimate interests of employees and employers in labor relations;
- In labor relations, the employers’ representative organization and the

employee's representative organization will jointly share information, consult, discuss and exchange ideas on issues related to the rights, interests, and concerns of parties in the workplace to enhance understanding, cooperation as well as working toward a mutually beneficial solution (Diep, 2020a), (Dorssemont, 2017).

Secondly, the theoretical framework for impact assessment of the Labor Code on enterprises from the perspective of employment contracts

To begin with, the current law stipulates the core contents related to the suspension and termination of employment contracts as a legal basis for enterprises to exercise their management rights when engaging in labor relations. The Labor Code stipulates two types of employment contracts, (Congress, 2019) and the form electronic labor contract, (Congress, 2019) to create flexibility in the process of enterprises exercising their management rights. Electronic labor contracts play an important role for employers and employees in the Industry 4.0. The impact of the fourth industrial revolution has affected the labor relations between employers and employees. In particular, the issue of employment and the narrowing of labor relations as well as the replacement of human personnel by technological means are increasingly posed to the labor law system with appropriate adjustments. Among them, the electronic employment contract is considered a reasonable and timely record, meeting the requirements set out in the current period (Otakhonova, 2021).

Electronic labor contract will help to save time, effort and costs between employers and employees in the process of establishing labor relations. This method helps businesses increase the accuracy of information and reduce the time of the signing process compared to traditional labor contracts. Electronic labor contracts are conducted by using cyberspace and virtual technology to transmit information in the fastest way, thereby helping to cut unnecessary procedures in the process of entering into traditional labor contracts. Besides, the parties will also keep the electronic labor contract in a simple, convenient and compact way (Diep, 2020b).

In addition, the law also allows enterprises to perform the role of management by stipulating that the employer have the right to temporarily assign an employee to perform a work which is not prescribed in the employment contract (Congress, 2019) in the event of sudden difficulties such as natural disasters, fire, major epidemics, implementation of preventive and remedial measures for occupational accidents or diseases, electricity and water supply failures, or for reasons of business and production demands (Widana et al., 2020).

At the same time, when terminating the labor contract, the enterprise is not required to inform the employee in advance in the following cases: i) The employee is not present at the workplace after the time limit specified in Article 31 of this Labor Code; ii) The employee quits his/her fails to go to work without acceptable excuses for at least 05 consecutive working days (Congress, 2019).

In order to create favorable conditions for enterprises in arranging, arranging jobs, and operating production and business activities, the Labor Code stipulates that enterprises are entitled to sign multiple fixed-term employment contracts with elderly people, (Congress, 2019) and foreigners working in Vietnam (Congress, 2019).

Thirdly, the theoretical framework for impact assessment of the Labor Code on enterprises from the perspective of dialogue at the workplace, collective bargaining, and collective labor agreements.

Dialogue at the workplace is the sharing of information, consultation, discussion, and exchange of ideas between employers and employees or employee representative organizations on issues related to rights, interests, and concerns in the workplace in order to enhance understanding, cooperation, and joint efforts toward a mutually beneficial solution (Johnstone, 2020). With a view to ensuring the maintenance of labor relations, the Labor Code recognizes that the time for dialogue at the workplace is longer than the previous regulation and specifies cases in which dialogue is held at the workplace (Congress, 2019). Collective bargaining and collective labor agreements play an important role in labor relations (Doellgast & Benassi, 2020). Collective bargaining enables employers' and workers' representative organizations to negotiate and reach an agreement to establish working conditions and regulations on the relationship between the parties (Dickens, 2000). Through collective bargaining, the parties will build progressive, harmonious, and stable labor relations. In particular, a collective labor agreement is considered as the "Law" of an enterprise (Ministry of Labor - Invalids and Social Affairs, 2017). The content that the parties bargain and negotiate in the collective labor agreement plays a particularly important role for enterprises and labor collectives.

On the one hand, a collective labor agreement is a basis for giving rise to the collective labor law relationship as well as arising the rights and obligations of the collective of employees and enterprises. The collective labor agreement is also the basis for settling labor disputes arising between the employees' collective and the employer. The implementation of the collective labor agreement contributes to cohesion and the ability to fulfill responsibilities between the parties involved in the labor relations. Therefore, the current law clearly stipulates the collective bargaining procedures, (Congress, 2019) as well as the failed collective bargaining and the issue of dealing legal consequences, (Congress, 2019); expand and diversify forms of collective bargaining agreements (Schnabel et al., 2006). In the present stage, for places where many enterprises participate, the law allows the parties to multi-enterprise collective bargaining may request the People's Committee of the province where they are headquartered (or a province they choose if they are headquartered in different provinces) to establish a collective bargaining council. In order to ensure the effective implementation of collective bargaining and collective labor agreements in places where many enterprises are located, the law stipulates that the competent authority shall decide to establish a Collective Bargaining Council; the composition of the Collective Bargaining Council; the participation of the representative organizations of employers and employees in collective bargaining where there are many enterprises.

Fourthly, the theoretical framework for impact assessment of the Labor Code on enterprises from the perspective of salary and labor discipline

A salary is a price of labor power and depends on the impact of objective laws of the market economy. A salary also ensures the performance of many functions, in which the problem of reproduction and accumulation of labor power is considered the basic function (Plasman et al., 2007). For this reason, the law allows enterprises not to send their salary scales and payrolls to competent state agencies, which limits the participation of the State in regulation and intervention in salary matters of enterprises. At the same time, the Labor Code also stipulates that some central employer representative organizations are entitled to participate in the National Salary Council to develop and plan policies and laws on wages for employees. The Representative organization of employers has comments to contribute to the legal system on wages, issues related to industry minimum wages, regional minimum wages as well as wages applied in different industries. enterprise can have opinions to contribute to the legal system of salaries, issues related to the industry minimum wages, the regional minimum wages as well as the wages applied in enterprises. In addition, the Labor Code also creates an open mechanism for enterprises in the process of drafting and promulgating labor regulations, flexibly stipulating the registration of internal labor regulations (Congress, 2019) in the direction of expanding competence, decentralizing the authority to register labor regulations: *“The provincial labor authority may authorize a district-level labor authority to process an application for registration of internal labor regulations in accordance with this Article.”* (Congress, 2019).

Fifthly, the theoretical framework for impact assessment of the Labor Code on enterprises from the perspective of labor disputes

The Labor Code specifically stipulates three types of labor disputes (Congress, 2019); stipulate that representative organization of employers shall cooperate with competent state agencies in giving instructions and assisting the parties during the process of labor dispute settlement (Congress, 2019); stipulates the role of the Labor Arbitration Council; stipulates that the employer representative organization participate in the Labor Arbitration Council, (Congress, 2019) with the purpose of conducting the settlement of labor disputes to protect the legitimate rights and interests of employers and employees, ensuring the maintenance of harmonious, stable and developed industrial relations.

The current situation of the theoretical framework for impact assessment of the Labor code on enterprises

The Labor Code has institutionalized the Party's view on developing a socialist-oriented market economy, including the labor market. The current law has created a legal corridor that regulates the rights of enterprises when participating in labor relations; recognizing the role of enterprise management in the implementation of labor relations; recognizing the role of the employers' representative organization in regulating industrial relations; recognizing the role of enterprises in the issues related to dialogue at the workplace, collective bargaining; collective labor agreements; recognizing mechanisms to resolve labor disputes to ensure the interests of enterprises when labor disputes occur, etc.

In general, the current legal regulations have created a foundation for enterprises to exercise their rights when participating in labor relations. The regulations on enterprises participating in industrial relations are relatively complete, synchronous, throughout since the establishment, change or termination of the labor relationship. From there, these regulations have affirmed the position of enterprises in an equal relationship with employees and labor organizations. This creates a legal corridor to protect the rights of enterprises in the direction of recognizing the equality of legal status of enterprises with employees as well as ensuring harmonious interests between enterprises and employees. At the same time, these regulations are getting closer and closer to International Labour Standards and International Labor Conventions. However, besides the results achieved, the theoretical framework for assessing the impact of the Labor Code also has certain limitations.

Firstly, there are limitations in the regulations on legalizing the representative role of enterprises (Diep, 2020a).

The current law stipulates: “*The central-level organizations representing employers provided in this Decree which are the Vietnam Chamber of Commerce and Industry, the Vietnam Cooperative Alliance and the Vietnam Association of Small- and Medium-Sized Enterprises*” (Government, 2014). The regulation of three organizations representing employers in three different areas has not yet created a consensus on the representative subject. For international employers' organizations, the criteria for a representative organization of employers to join the International Organisation of Employers (IOE) are:

- Being the most representative organization of employers or the majority of employers;
- Being a voluntary organization, independent and free from outside interference;
- Representing and defending the Principles of Entrepreneurship.

Meanwhile, the current Vietnam law on the representative organization of employers does not correlate with representative organizations of employees and international representative organizations of employers.

Secondly, the current regulation of three business representative organizations is the regulation of scope, in which an organization only represents its members. However, it is also difficult for members of the same organization to have their rights protected and participate in a two- or three-party mechanism effectively. Meanwhile, the law stipulates that the representative organization of employers has a role of representation in many areas such as collective bargaining, signing sectoral collective bargaining agreements, and collective bargaining council (Congress, 2019); participating in dispute settlement (Congress, 2019); participating in the composition of the Labor Arbitration Council (Congress, 2019); participating in the National Salary Council (Congress, 2019). This affects the role of the representative of the employer in practice.

Thirdly, in the two-party mechanism, especially the tripartite mechanism, the representative organization of employers plays a very important role. However, the current regulation will make the process of implementing the role of enterprises

affected to a certain extent. The role of collective bargaining, signing sectoral collective bargaining agreements or moving towards signing a specialized labor agreement and promoting a harmonious, stable and sustainable industrial relationship will have certain limitations (Diep, 2019a). In fact, at present, Vietnam has only signed a sectoral collective bargaining agreement for the Vietnamese textile and garment in order to facilitate and promote the signing of collective labor agreements in a number of other sectors throughout the country.

Fourthly, there are limitations in establishing the role of enterprises in the two-party mechanism and the tripartite mechanism. The interaction between enterprises and employees in the two-party mechanism is not specific. Besides, the current law does not clearly stipulate the position, the role and the function of enterprises participating in the tripartite mechanism as well as the participation of enterprises and representative organizations of employers in each area and industrial relations field.

Fifthly, there are some limitations in the provisions on the common legal corridor for enterprises to operate such as: i) The regulations on the subjects directly entering into electronic labor contracts are not clear, especially the supportive subjects, which transmit data messages to employers and employees, have not been specified. The law has not yet regulated the issue of signing electronic labor contracts as authorization for groups of employees or regulating the case of signing multiple electronic labor contracts for retired employees. The practical application of this problem has many limitations and shortcomings that need to be adjusted specifically. In addition, there are still limitations in regulating cases where the employer or employee commits deceitful acts in entering into an electronic labor contract, the employee acts dishonestly, or the employer conceals the violation by entering into an electronic labor contract, (Diep, 2020b); ii) Limitations in flexible recognition for enterprises when holding dialogues at the workplace, collective bargainings for many groups of enterprises, collective bargainings on an industry or national scale; iii) Limitations in stipulating the coordination relationship between enterprises and employees as well as between employers' representative organizations and employees' organizations in the fields of labor relations; iv) Limitations in stipulating a mechanism to ensure effective enforcement of the enterprises' rights when participating in industrial relations.

Sixthly, the law does not provide for the form of an electronic labor contract, and there are no sample terms for employers and employees to apply in practice. In addition, the issue of electronic labor contract management has not been foreseen by the law. Moreover, the regulations on sanctions for violations of electronic labor contracts by employers and employees are still "open".

Recommendations

The theoretical framework for assessing the impact of the Labor Code on enterprises has established a solid foundation for enterprises when participating in industrial relations such as i) Legalizing the representative role of enterprises and participate in building harmonious, stable, and developing industrial relations; ii) Stipulating in the direction of expanding and protecting the rights of enterprises when entering into labor contracts, terminate the labor contract,

dialogue at the workplace, collective bargaining, collective labor agreements, salaries; labor discipline and labor dispute resolution. These are the basic legal foundations for determining the rights and obligations of enterprises, and also the basis for protecting enterprises when participating in the labor market. In general, the theoretical framework for assessing the impact of the Labor Code 2019 on enterprises has inherited the advantages of the 2012 Labor Code, while amending and supplementing new regulations in many areas of labor relations with enterprises. On that basis, the current law recognizes the enterprises' freedom of agreements, the flexibility in participating in the labor market of enterprises, limits the role of the State's intervention in enterprises, and restricts the state management role of state management agencies in charge of labor in the process of enterprises establishing labor contract relations with employees. The theoretical framework for assessing the impact of the Labor Code has ensured the flexibility of enterprises in the labor market, offered the best protection for the rights of enterprises, enhanced the feasibility and the responsibility of enterprises in relation to employees. However, it is also recognized that there are still some limitations in the theoretical framework for assessing the impact of the Labor Code on enterprises. Therefore, completing the theoretical framework for assessing the impact of the Labor Code in the current period needs to address the following issues:

Firstly, specifying issues related to legalizing the representative role and building harmonious, stable industrial relations of enterprises in the direction of: i) Additional clearly defining positions, roles, and the function of the employers' representative organization in establishing and conducting industrial relations; ii) Specifying the representative organization of employers in the dialogue and collective bargaining at the enterprise level, the sectoral level, and the national level; iii) legislate the rights, obligations, and responsibilities of the employer's representative organization in industrial relations, more specifically stipulate the rights and responsibilities of the employer in establishing and joining a representative organization representation to protect the legitimate rights and interests of the employer (Diep, 2020a).

Secondly, establishing a legal corridor to ensure that enterprises can effectively exercise their legal status: i) The State should quickly issue guiding regulations related to electronic labor contracts. The early promulgation of regulations on electronic labor contracts helps employers and employees have a basis for uniform application in practice. (Diep, 2020b) and at the same time promotes the important role of electronic labor contracts in the industrial revolution 4.0; ii) Specifying the legal status of enterprises in relation to employees and the role of enterprises in two-party and tripartite mechanisms; iii) Completing relevant regulations such as collective labor agreements, salaries, labor protection equipment, labor discipline, and labor dispute settlement.

Thirdly, the State soon promulgated the Law on Industrial Relations

This is important legislation recognizing the personal labor relationship between employees and employers; the collective labor relationship between the worker's collective and employers; the relationship between the employees' representative organization and the employers' representative organization; the tripartite relationship between the State, employers, and employees; the operational

mechanisms of industrial relations; the mechanisms to ensure the implementation of industrial relations, the measures to ensure the implementation of labor relations and the role of State management agencies on industrial relations, (Diep, 2019c), etc. The implementation of the Industrial Relations Law will meet the conformity with the legal corridors of countries in the world and the trend of globalization. Currently, in the world, many countries have promulgated the Law on Labor Relations to regulate the relationship between the parties, the issue of agreements, labor representatives and employers' representatives and labor disputes, etc. (Thailand Industrial Relations Act 1975; Malaysia - Industrial Relations Act 1967; The National Labor Relations Act of 1935, as amended in 1947 of the US; Macedonia Labor Relations Act of 2007; South Africa's 1995 revised Labor Relations Act of 2002; Jamaica's 1975 Labor Relations and Disputes Law; Indonesia's Labor Relations Law; Newzeland's 1973 Labor Relations Law). In which, some countries have developed a Labor Code but still have a Single Act Law to further regulate this issue, such as Malaysia (The Union Law, The Labor Code); Indonesia (The Human Resources Law); Singapore (The Law on Trade Unions) (Diep, 2015).

Fourthly, the State should ratify basic international conventions

Basic international conventions include Conventions No. 87 and No. 98 on freedom of association and collective labor agreements; the Conventions No. 29 and No. 105 on the abolition of forced and compulsory labor; the Conventions No. 138 and No. 182 on the abolition of child labor; the Conventions No. 100 and 111 on the elimination of discrimination in employment and occupation. Currently, Vietnam has ratified 7 of the 8 basic conventions mentioned above. Among these conventions, Vietnam has not yet ratified Convention No. 87 on Freedom of Association. When ratifying these international conventions, Vietnam should pay attention to the conformity of the provisions of the Convention with the socio-economic and political conditions of Vietnam.

Fifthly, in addition to perfecting the law on Industrial Relations, the State needs to improve the role and functions of the Department of Industrial Relations and Wage, the National Labor Relations Board, and the Center for Industrial Relations Development in regulating the relationship between employees, labor collectives and employers.

In order for the industrial relations to develop harmoniously, stably, and sustainably, it is necessary to enhance the role of the Enterprise Reform Advisory Board, the role of employers' representative organizations, the role of the employees' representative organization. It is necessary to establish the relationship of the representative organization based on equality of legal status among the subjects in the industrial relations as well as strengthening the construction of a national database on industrial relations and especially the management of industrial relations records for multinational companies, groups of companies, and economic groups. In addition, it is necessary to expand the implementation of the project on industrial relations development (Diep, 2019b).

The requirements set forth in the improvement of the law on the theoretical framework for assessing the impact of the Labor Code must be carried out in a comprehensive and synchronous manner in order to basically convey the legal norms on the theoretical framework for assessing the impact of the Labor Code on

enterprises, which is feasible to ensure the effective operation of enterprises in building harmonious and stable labor relations basic transmission of legal norms on the theoretical framework for assessing the impact of the Labor Code on enterprises, which is feasible to ensure the effective operation of enterprises in building harmonious and stable industrial relations.

Conclusion

Researching and assessing the impact of the Labor Code on enterprises that have inherited the advantages of the 2012 Labor Code, and at the same time amending and supplementing new regulations in adjusting the rights and obligations of enterprises. The article has analyzed in an overview the impact assessment of the Labor Code in the following aspects: i) Legalizing the role of the representative organization of the employer's representative organization in labor relations; ii) Analysis of the theoretical framework for assessing the impact of the Labor Code on labor contracts; iii) Analysis of the theoretical framework to assess the impact of the Labor Code on the issues of dialogue at the workplace, collective bargaining and collective bargaining agreements; iv) Analysis of the theoretical framework to assess the impact of the Labor Code on the issue of wages and labor discipline; Analysis of the theoretical framework to assess the impact of the Labor Code on the issue of labor disputes. The study has systematized and analyzed the above-mentioned groups of issues through the analysis and assessment of new points according to the current labor law. On the basis of that analysis, the study points out the limitations and inadequacies and makes some recommendations and proposes solutions to improve the legal regulations on enterprises in labor relations.

Policy suggestions and legal solutions to ensure the flexibility of labor relations in the labor market; to best protect the rights of the parties in the labor relations; Ensure the feasibility, enhance the responsibility of enterprises in relation to employees. The solutions proposed in the article are the basis for the next research direction when analyzing and evaluating the relationship between the employer's representative organization and the employee's representative organization in the employment relationship; How to build harmonious, stable and developing labor relations.

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