

**HO CHI MINH NATIONAL ACADEMY OF POLITICS**

**TRUONG CHANH DUC**

**IMPROVING THE LEGAL FRAMEWORK FOR THE  
RIGHT TO ESTABLISH LABOR ORGANIZATIONS  
IN ENTERPRISES IN VIETNAM**

**SUMMARY OF THE DOCTORAL THESIS**

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## INTRODUCTION

### **1. Rationale of the Research Topic**

In the context of deep international integration, Vietnam has entered into numerous next-generation free trade agreements (FTAs), such as the CPTPP and EVFTA, committing to upholding labor rights, including the right of workers to establish their own organizations. Although Vietnam has ratified ILO Convention No. 98, it has yet to ratify Convention No. 87, thereby creating a gap between domestic legal regulations and international standards. According to the 1998 ILO Declaration, this right remains a fundamental human right that must be respected and ensured regardless of ratification. The 2013 Constitution and the 2019 Labor Code have initially recognized the possibility of worker representative organizations outside the traditional trade union framework. However, existing legal provisions remain overly general and lack concrete mechanisms for protection and enforcement. The parallel existence of two representative models presents significant challenges in designing a legal system consistent with international practices. From the demands of international integration, legal reform, and human rights protection, the dissertation entitled *“Improving the Legal Framework on the Right to Establish Workers’ Organizations in Enterprises in Vietnam”* has been selected, aiming to contribute meaningfully to both theoretical foundations and practical application.

### **2. Research Objectives and Tasks**

#### **2.1. Research Objective**

The dissertation aims to build a scientific foundation for proposing solutions to improve the legal framework and ensure the effective implementation of the right to establish workers’ organizations in enterprises—distinct from existing trade unions—thereby ensuring legal validity and practical efficiency.

#### **2.2. Research Tasks**

To achieve the above objective, the dissertation focuses on the following specific tasks: Clarifying the theoretical foundation of the right to establish workers’ organizations, its legal nature, and its role in protecting workers and promoting progressive labor relations; Analyzing the current legal framework, particularly the

2019 Labor Code, the Law on Trade Unions, and related legal instruments; Comparing Vietnam's legal provisions with international standards (ILO, CPTPP, EVFTA) and relevant experiences from countries such as Canada, Japan, and Singapore; Proposing legislative, policy, and institutional solutions to substantively, transparently, and effectively guarantee the exercise of this right.

### **3. Research Object and Scope of the Dissertation**

#### **3.1. Research Object**

The research object of this dissertation is the current system of legal norms in Vietnam regulating the right of workers to establish their own organizations within enterprises, and the issues requiring legal reform and improvement.

#### **3.2. Research Scope**

Content scope: Legal provisions, criteria for assessing the degree of legal completeness, practical implementation, and reform solutions.

Temporal scope: From the effective date of the 2019 Labor Code (January 1, 2021) through 2025.

Spatial scope: Vietnamese legal system and comparative experiences from selected CPTPP member countries (e.g., Canada, Japan, Singapore).

### **4. Theoretical Framework and Research Methodology of the Dissertation**

#### **4.1. Theoretical Framework**

The dissertation is grounded in the ideological foundations of Marxism–Leninism, Ho Chi Minh Thought, and the viewpoints of the Communist Party of Vietnam on human rights, the rule-of-law state, and the role of social organizations. It also incorporates selected modern legal and governance theories, including: Natural Rights Theory: Recognizes the right to establish organizations as an inherent and inalienable right that must be protected by the state; Human Rights Theory: Asserts that the law must not only acknowledge rights but also provide effective and equitable enforcement mechanisms; Liberal Theory: Views the right to association as an expression of individual autonomy and a measure of democratic progress in labor law; Labor Relations Governance Theory (Kochan, Dunlop): Considers the right to establish workers' organizations as a fundamental element in the tripartite labor relations system; Social Justice Theory (Rawls): Stresses that the law must protect vulnerable groups and

ensure equal access for all workers to the right to establish representative organizations.

#### **4.2. Research Methodology**

The dissertation employs a combination of qualitative research methods, including analytical, synthetic, historical-logical, comparative, and normative methods, alongside the Human Rights-Based Approach (HRBA).

### **5. Scientific Contributions of the Dissertation**

#### **5.1. Theoretical Contributions**

The dissertation identifies essential conditions for the realization of the right to establish workers' organizations; analyzes the interrelation between this right and the rights to strike, collective bargaining, and dispute resolution; and clarifies the theoretical foundations of human rights law in the field of labor.

#### **5.2. Practical Contributions**

It provides a detailed assessment of the current legal framework and the actual implementation of the right to establish workers' organizations; conducts international comparisons; and proposes specific recommendations for amendments in both substantive legal content and enforcement mechanisms.

### **6. Structure of the Dissertation**

In addition to the Introduction, Conclusion, and References, the dissertation comprises four chapters with eleven sections:

Chapter 1: Literature review and outstanding issues requiring further research

Chapter 2: Theoretical foundations for improving the legal framework on the right to establish workers' organizations in enterprises

Chapter 3: The current status of legal reforms regarding the right to establish workers' organizations in enterprises in Vietnam

Chapter 4: Perspectives and solutions for improving the legal framework on the right to establish workers' organizations in enterprises in Vietnam

## **CHAPTER 1**

### **OVERVIEW OF RESEARCH ON THE TOPIC AND OUTSTANDING ISSUES FOR FURTHER STUDY**

#### **1.1. Overview of research on the dissertation topic**

In the context of Vietnam's accession to a number of new-generation free trade agreements such as the CPTPP, EVFTA, and RCEP, the rights of workers-particularly the right to establish organizations within enterprises have garnered increasing attention from both domestic and international scholars.

Firstly, domestic research has mainly focused on the role, organizational model, and legal reform of trade unions. Scholars such as Lê Văn Hào, Trần Thị Thu, Phạm Công Nguyên, and Nguyễn Văn Tuyền have published monographs and articles addressing trade unions in the context of international integration. Some master's and doctoral theses have touched upon workers' representative organizations, but they typically subsume these within studies on trade unions, without clearly distinguishing organizations outside the traditional trade union framework.

Secondly, international and collaborative studies especially those by the ILO and UNDP have assessed the feasibility of implementing ILO Conventions No. 87 and 98 in Vietnam. These studies offer a solid theoretical foundation on freedom of association and organizational models in transitional economies, while also highlighting institutional and legal barriers to the formation of independent representative organizations at the enterprise level, particularly within the FDI sector.

However, the majority of these works remain at the level of policy analysis or descriptive assessments. They lack a comprehensive set of legal criteria and have yet to develop an analytical framework that views the right to establish organizations as a human right under both international law and Vietnamese law. Notably, there has been no research adopting an integrated approach combining human rights law, labor relations governance, and institutional reform to construct a theoretical foundation and legislative proposals for this right.

Therefore, this dissertation addresses an urgent and novel academic gap, directly contributing to the underexplored areas of current legal scholarship.

## **1.2. Overview of relevant research findings and issues requiring further study**

### **1.2.1. Summary of Existing Research Findings Related to the Dissertation Topic**

Existing research has underscored the importance of the right of workers to establish organizations within enterprises, particularly in the context of Vietnam's implementation of international labor commitments. Numerous studies approach this right as both a human right and a labor right, analyzing Vietnamese and international legal frameworks on freedom of association, trade union rights, and representative organizations. These works assess the compatibility of national law with ILO Convention No. 87 and provisions under free trade agreements such as the CPTPP and EVFTA.

However, most studies focus on fragmented aspects and lack a systematic approach to legal reform within Vietnam's political and legal institutional framework. There remains a deficiency of research on mechanisms for the exercise of this right, including procedures for the establishment of organizations, protection for workers, and the roles of the State and employers. Furthermore, there is no established set of scientific criteria for evaluating the legal framework's completeness, appropriate organizational models, or the relationship between the right to form organizations and related rights such as collective bargaining, the right to strike, and access to information.

Hence, this dissertation is both theoretically and practically imperative, aiming to address these gaps through the development of a suitable legal model and evaluation criteria for improving the legal framework in the context of international integration.

### **1.2.2. Outstanding Issues Requiring Further Study in the Dissertation**

Prior studies have reached a consensus on the significance of workers' freedom of association and representation within the context of global integration. These works clarify the principles of freedom of association under ILO conventions, analyze policy transitions as Vietnam has joined FTAs, and propose non-union representative models. Nonetheless, several critical issues remain unaddressed: the absence of a comprehensive theoretical framework connecting the right to form organizations with human rights; insufficient analysis of the legal compatibility between Vietnamese law and ILO Conventions No. 87 and 98; limited research on enforcement mechanisms for this right in enterprises, particularly in the FDI sector; and a lack of clear distinction between the concepts of "workers' organizations" and "trade unions."

This dissertation thus concentrates on three core research directions: (i) establishing a theoretical foundation grounded in human rights and international norms; (ii) evaluating the

current legal framework and practical implementation in Vietnam; and (iii) proposing perspectives and solutions to improve the law in line with reform and integration requirements.

### **1.3. Research hypotheses and research questions of the dissertation**

#### **1.3.1. Research Hypotheses**

The dissertation posits the central hypothesis that: the current Vietnamese legal framework governing workers' right to establish organizations within enterprises does not fully guarantee freedom of association in accordance with international standards, particularly ILO Conventions No. 87 and No. 98, due to a lack of legal coherence and an ongoing conflation between trade union roles and independent workers' representative organizations.

Improving the legal framework must be undertaken from a human rights-based approach, with reference to international experiences, while ensuring consistency with Vietnam's specific political and legal context.

#### **1.3.2. Research Questions**

The dissertation seeks to address the following core questions:

What theoretical foundations are essential for recognizing the right of workers to establish organizations within enterprises in Vietnam's legal system?

To what extent does the current Vietnamese legal framework guarantee this right?

What are the shortcomings and their underlying causes?

What legislative experiences from other countries with similar conditions can be referenced?

What legal solutions should be proposed to improve the law in a manner that is both practically feasible and aligned with Vietnam's orientation toward international integration?

### **Conclusion of Chapter 1**

Through a comprehensive review of domestic and international research, this chapter affirms that the right of workers to establish organizations within enterprises has been approached from multiple perspectives, contributing significantly to the theoretical and practical understanding of the issue. However, critical gaps remain that require further in-depth examination.

From a theoretical perspective, it is necessary to clarify the relationship between this right and related rights such as freedom of association. From a legal standpoint, numerous provisions remain inconsistent with ILO standards, particularly Conventions No. 87 and No. 98. In practice, significant obstacles persist in the enforcement of this right, due to limited



awareness and institutional constraints.

Thus, developing legal reform solutions is an urgent task to ensure the protection of workers' rights and reinforce Vietnam's commitment to international integration. This imperative forms the central focus of the subsequent chapters.

## **CHAPTER 2**

### **THEORETICAL FOUNDATIONS FOR IMPROVING THE LEGAL FRAMEWORK ON THE RIGHT OF WORKERS TO ESTABLISH ORGANIZATIONS IN ENTERPRISES**

#### **2.1. General theory of legal improvement**

##### **2.1.1. Concept and Characteristics of Legal Improvement**

Legal improvement refers to the process of amending, supplementing, replacing, or enacting new legal norms to achieve coherence, consistency, practical relevance, and responsiveness to developmental needs. It is not merely a technical legislative exercise, but also a reflection of strategic reform vision and national responsibility in ensuring human rights and the effectiveness of the rule-of-law state.

Key characteristics of this process include: Clear orientation and well-defined objectives; Influenced by political, economic, and social conditions; Incorporates both continuity and reform; Ensures feasibility in implementation and enforcement.

#### **2.2. The right of workers to establish organizations in enterprises from a human rights perspective**

##### **2.2.1. Concept and Characteristics of Workers' Organizations in Enterprises**

A workers' organization in an enterprise is a voluntary and organized collective entity established to represent and protect the lawful rights and interests of workers. It constitutes a distinct social institution grounded in both human rights and labor rights, characterized by its non-profit nature and independence from employers.

Such organizations serve not only as representatives in collective bargaining and social dialogue but also function as instruments for promoting workplace democracy, improving labor welfare, and mitigating labor conflicts. Their core characteristics include:

Voluntarily established by workers without coercion or employer interference; Operates in accordance with its charter and in compliance with the law; Possesses legal personality and is protected under the law; Entitled to engage in representative activities, dialogue, and collective bargaining.

Workers' organizations are essential components in building harmonious and progressive labor relations, consistent with the model of a modern rule-of-law state and aligned with international integration requirements.

## **2.2.2. Definition, Characteristics, and Content of the Right of Workers to Establish Organizations within Enterprises**

### **2.2.2.1. Definition of the Right to Establish Workers' Organizations within Enterprises**

The right of workers to establish organizations within enterprises is a fundamental human right, enabling workers to freely initiate, join, and operate representative organizations in the workplace without prior approval, based on the principles of voluntariness, equality, and non-interference. This right encompasses three levels: individual rights (freedom of association), collective rights (establishment of independent organizations), and institutional rights (legal recognition, protection, and support). It serves as a normative benchmark for assessing existing legislation and for proposing reforms throughout this dissertation.

#### **2.2.2.2. Legal Characteristics of the Right to Establish Workers' Organizations within Enterprises**

This right is a specialized human right derived from the broader freedom of association and bears five key legal characteristics:

**Combination of Individual and Collective Nature:** While inherently an individual right, its realization requires collective action (i.e., forming an organization), thus ensuring both personal freedom and collective representation.

**Independence from Political–Administrative Systems:** These organizations are self-managed by workers and not subject to state or political party control; they enjoy autonomy within the bounds of the law.

**Protection Against Interference and Discrimination:** Both international and domestic law safeguard workers against interference or discrimination when exercising

this right.

**Facilitation of Pluralist Representation:** This right enables the creation of new representative bodies, breaking the monopoly of a single model and fostering pluralism in labor relations.

**Legal Recognition without Prior Authorization:** The right does not require pre-approval from authorities; only post-formation legal registration procedures apply.

Accurately identifying these legal features is essential for constructing robust legislation that effectively protects the right and ensures compatibility with international standards in the context of labor law reform and modernization.

### **2.2.2.3. Content of the Right to Establish Workers' Organizations within Enterprises**

The right comprises a set of legal entitlements allowing workers to lawfully found, organize, operate, and defend an independent representative institution in the workplace. This right aligns with the State's human rights obligations under modern human rights law and is recognized in ILO Conventions No. 87 and No. 98, the ICCPR, and Vietnamese legal instruments.

Its structure consists of five key groups of rights: (1) **Freedom to Establish Organizations:** Without requiring administrative approval, with flexibility in organizational models, and protection from retaliation or discrimination; (2) **Right to Define Charters, Objectives, and Structure:** Reflecting principles of autonomy and self-governance; (3) **Freedom from Interference:** Safeguards against interference from the State or employers, along with protection against acts of sabotage; (4) **Right to Legal Recognition and Protection:** Including clear legal personality, legitimate representational status, and access to effective remedies; (5) **Freedom of Affiliation:** The right to associate with or remain independent from higher-level organizations without control or penalty.

These are interrelated rights that form the foundation for building democratic workplace representation and serve as indicators of legal adequacy in accordance with international human rights norms.

### **2.2.2.4. Rights Holders of the Right to Establish Workers' Organizations within Enterprises**

From a human rights-based approach, identifying the correct rights holders is a prerequisite for effective protection and implementation. In this context, there are two principal categories: (1) Individual Workers: As affirmed in ILO Convention No. 87 and by countries such as Japan, without distinction based on gender, contract type, or employment status; (2) Groups of Workers: May collectively initiate representative organizations, reflecting the collective essence of the right.

Imposing overly high minimum thresholds for formation may violate the right as defined by international standards.

### **2.2.3. Concept, Characteristics, and Content of the Legal Framework Governing Workers' Right to Establish Organizations within Enterprises**

#### **2.2.3.1. Concept of the Legal Framework Governing the Right to Establish Workers' Organizations within Enterprises**

The legal framework governing the right of workers to establish organizations within enterprises refers to the system of legal norms designed to safeguard workers' freedom of association within the context of modern labor relations. This right is an inseparable component of human rights law, as recognized in international instruments such as ILO Convention No. 87, the ICCPR, and the ICESCR. The legal framework comprises four core elements: (1) recognition of the right as an inherent entitlement, independent of administrative approval; (2) establishment of transparent, fair, and non-discriminatory procedures; (3) delineation of legitimate limitations based on necessity and proportionality; and (4) implementation of effective protective mechanisms against interference, discrimination, or retaliation.

#### **2.2.3.2. Legal Characteristics of the Framework on the Right to Establish Workers' Organizations within Enterprises**

This body of law forms a foundational part of modern labor legislation, reflecting the intersection between human rights and a socialist-oriented market economy. The right embodies a dual nature: both as a fundamental human right and a collective labor right, as enshrined in ILO Convention No. 87 and the ICCPR. The legal framework exhibits five salient characteristics: (1) Worker-Centered: It ensures the genuine exercise of the right to association through clear and non-obstructive procedures; (2) Protection Against Retaliation: It shields workers from any form of

reprisal beginning at the stage of intent to establish an organization; (3) Empowerment-Oriented: It adopts a facilitative approach, enabling workers to exercise their rights rather than controlling them; (4) Adaptability: It is responsive to changes in the modern labor market and allows for a diversity of organizational models; (5) Recognition of Representative Competition: It allows for pluralistic representation while lawfully setting boundaries and ensuring oversight through independent supervisory mechanisms to prevent de facto nullification of the right.

### **2.2.3.3. Substantive Content of the Legal Framework Governing the Right to Establish Workers' Organizations within Enterprises**

The legal framework is a complex body of norms that integrates legal theory, human rights principles, and international legislative practices. Its content can be classified into four principal groups of provisions:

(1) Provisions on Rights Holders and Conditions for Exercising the Right: These identify workers as the primary rights holders, without discrimination based on contract type, gender, ethnicity, or employment status including those in the informal economy. The law should stipulate full legal capacity, reasonable minimum membership thresholds, and founding conditions; establish technical support mechanisms; and protect workers from discrimination or retaliation. Any restrictions must comply with the legality, legitimacy and necessity principles under Article 22.2 of the ICCPR.

(2) Provisions on Procedures for Exercising the Right: These ensure that the right is not subject to prior administrative approval, but may proceed via simple notification or registration mechanisms. The law must specify conditions for establishment, application requirements, and processing timeframes, with clear obligations for administrative bodies to respond transparently. Legal safeguards must also protect against retaliation and clear rules must govern the voluntary merger, division, or dissolution of such organizations.

(3) Provisions Ensuring Effective Exercise of the Right: These guarantee that organizations may operate independently, have the right to collective bargaining and lawful collective action, access to workplaces and workers, and the right to initiate or participate in labor dispute resolution processes.

(4) Provisions on State and Stakeholder Responsibilities: These define the State's tripartite obligations to respect, protect and fulfill the right. They also mandate the provision of free legal remedies and recognize the supportive roles of trade unions, NGOs, and international organizations in promoting implementation and legal reform.

### **2.3. Concept and evaluation criteria for the improvement of the legal framework governing workers' right to establish organizations within enterprises**

#### **2.3.1. Concept of Improving the Legal Framework on the Right to Establish Workers' Organizations within Enterprises**

Improving the legal framework governing the right of workers to establish organizations within enterprises refers to the process of reviewing, amending, supplementing, or enacting new legal norms to ensure that individual workers are able to freely establish, join, and operate independent representative organizations—separate from traditional trade unions—in accordance with international standards and practical needs. This concept is grounded in three core theoretical foundations: Human Rights Theory: Emphasizes the recognition, implementation, protection, and reasonable limitation of rights; Rule of Law Theory: Requires that the law be transparent, stable, and capable of preventing abuse of power; Labor Relations Governance Theory: Highlights the role of law in harmonizing relations among workers, employers, and the state.

In sum, this is a process of comprehensive legal reform aimed at substantively, equitably, and feasibly ensuring human rights in labor relations.

#### **2.3.2. Evaluation Criteria for the Degree of Legal Framework Improvement Regarding the Right to Establish Workers' Organizations within Enterprises**

**Completeness and Transparency:** The law must clearly define the subjects, scope of rights, conditions, procedures, and protection mechanisms. Legal provisions should be systematized, consistent, unambiguous, easily understood, and widely disseminated to workers.

**Coherence and Consistency:** Legal documents must be interconnected and avoid overlaps between laws and sub-law instruments. The competent authorities must be clearly designated, avoiding institutional fragmentation. The legal framework should

align with institutional reform, integration, and digitalization policies.

**Feasibility and Stability:** The legal system must provide a clear roadmap, be practically applicable, and ensure that implementing bodies have sufficient resources. Procedures must be simplified, low-cost, and particularly supportive of vulnerable groups.

**Accessibility:** The legal framework must be user-friendly, employ plain language, ensure simple procedures, offer legal aid and clear response mechanisms. Information and forms must be publicly available through diverse channels.

**Innovation and Responsiveness:** The law must adapt to developments such as the digital economy and informal labor. It should allow for open norms, institutional support, policy experimentation, and the application of technologies (e.g., AI, big data) to create a flexible legal environment.

**Equality and Non-Discrimination:** The right must be universal, covering all workers regardless of gender, ethnicity, or employment type. The law must eliminate indirect barriers and establish supportive mechanisms for disadvantaged groups to ensure substantive equality.

#### **2.4. Enabling factors for improving the legal framework governing the right of workers to establish organizations within enterprises**

The improvement of the legal framework on the right of workers to establish organizations within enterprises must be situated within a broader context of institutional, political-legal, and socio-cultural conditions to ensure feasibility, effectiveness, and systemic coherence.

First and foremost, there must be a clear political will and strong institutional commitment from the State to recognize and protect this right as a fundamental human right.

Second, the legislative process must be organized in a democratic, transparent, and scientific manner, with the substantive participation of workers and relevant stakeholders.

Third, international standards must be fully institutionalized and translated into domestic law in a way that ensures legal compatibility—not through mechanical copying, but in alignment with Vietnam’s internal

institutional conditions.

Fourth, the effectiveness of implementation mechanisms and rights enforcement must be strengthened, particularly through independent oversight institutions and appropriate sanctions adapted to the realities of the modern labor landscape.

Finally, it is essential to promote a progressive legal culture and social awareness, through widespread dissemination of the law and the enhancement of workers' active roles in policymaking processes.

This constellation of enabling factors constitutes an interconnected system that ensures the right of workers to establish organizations is not merely acknowledged on paper, but meaningfully realized in practice

## **2.5. International law and the legal frameworks of selected countries on the right of workers to establish organizations within enterprises and their implications for vietnam**

### **2.5.1. International Legal Framework on the Right of Workers to Establish Organizations within Enterprises**

The right of workers to establish organizations within enterprises is a fundamental human right, enshrined in various international instruments, particularly those adopted by the International Labour Organization (ILO), the United Nations, and the new-generation Free Trade Agreements (FTAs).

The ILO codifies this right in Conventions No. 87 and No. 98, which form the cornerstone for guaranteeing freedom of association and collective bargaining, free from interference by the State or employers. The 1998 ILO Declaration on Fundamental Principles and Rights at Work reaffirmed that these rights are core obligations binding upon all ILO member states, regardless of ratification status.

The United Nations, through the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration of Human Rights (UDHR) and the UN Guiding Principles on Business and Human Rights (UNGPs), likewise recognizes the universality and inviolability of this right. The ICESCR imposes specific legal obligations on states: to refrain from obstructing,



to avoid interference, and to proactively create an enabling legal environment for the exercise of this right.

New-generation FTAs such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Vietnam Free Trade Agreement (EVFTA) require Vietnam to ensure the right of workers to form organizations in line with ILO standards. The CPTPP explicitly allows the establishment of workers' organizations independent from the Vietnam General Confederation of Labour (VGCL), and includes binding dispute settlement mechanisms.

International standards also emphasize the right to freely establish organizations, to operate independently, to engage in collective bargaining, to be protected against discrimination and anti-union practices, and to undertake lawful industrial action. These principles serve as a crucial legal foundation for Vietnam to align its domestic legislation with international best practices.

## **2.5.2. National Legal Frameworks on the Right of Workers to Establish Organizations within Enterprises**

### **2.5.2.1. Experience from Singapore**

Singapore's legal framework governing the right of workers to establish organizations is primarily set out in the *Trade Unions Act*, *Industrial Relations Act*, and *Employment Act*. Under this system, a group of seven or more workers may form a trade union without prior administrative approval, aligning with the principles of ILO Convention No. 87. However, Section 14(f) of the *Trade Unions Act* empowers the Registrar to refuse registration if a similar union already exists, thereby undermining pluralism and freedom of association.

Singapore has not ratified ILO Convention No. 87, which results in a conditional guarantee of the right to organize. The dominant role of the National Trades Union Congress (NTUC) effectively the sole influential confederation has led to a "soft monopoly" that restricts representational competition and organizational independence. Although some protections exist, such as the prohibition of discrimination against union members under Section 82(1) of the *Employment Act*, these are mostly post-facto safeguards that do not address the

vulnerability of workers during the critical founding phase of unionization. Moreover, eligibility restrictions based on age and legal status (Section 20 of the *Trade Unions Act*) raise concerns about equitable access to the right to associate.

#### **2.5.2.2. Experience from Japan**

Japan enshrines the right to organize in Article 28 of its Constitution and in the *Trade Union Act of 1949*, which unequivocally affirms workers' rights to form, join, and operate trade unions without interference. Japan has ratified both ILO Conventions No. 87 and No. 98. Acts of interference are deemed “unfair labor practices” and fall under the jurisdiction of the Labor Relations Commission. The legal framework ensures this right through robust institutional mechanisms that are impartial, effective, and non-discriminatory including for informal workers. However, the enterprise union model prevalent in Japan limits the representational reach of unions, particularly for non-regular workers, highlighting the need for structural reforms to align union representation with the realities of the modern labor market.

#### **2.5.2.3. Experience from Australia**

Australia has developed a comprehensive legal framework to safeguard the right to establish workers' organizations through the *Fair Work Act 2009*, which fully incorporates ILO Conventions No. 87 and No. 98 into domestic law. The formation of unions does not require administrative permission, and all acts of obstruction are strictly prohibited and subject to oversight by the *Fair Work Commission* and the *Fair Work Ombudsman*. Australian law provides strong protection for freedom of association through clear non-discrimination provisions, effective adjudicatory mechanisms, and dynamic legal reform. This model is considered exemplary for countries seeking to improve their labor law systems in line with international standards.

#### **2.5.3. Lessons and Implications for Vietnam**

International Experiences and Their Reference Value for Improving Vietnamese Law on the Right of Workers to Establish Organizations within Enterprises

From the comparative analysis of models in Singapore, Japan, and

Australia, six key lessons can be drawn to guide Vietnam's legal reform in ensuring the right of workers to establish organizations within enterprises:

Ensure clear legal recognition of the right to establish organizations, independent of administrative approval processes, to guarantee substantive freedom of association as exemplified by Japan's constitutional provision (Article 28) and Australia's Fair Work Act 2009.

Establish an independent and specialized enforcement body (such as the Fair Work Commission in Australia, the Industrial Arbitration Court in Singapore, or the Labor Relations Commission in Japan) to ensure effective implementation and redress for violations.

Incorporate legal protections against retaliation and discrimination in domestic legislation, consistent with ILO Conventions No. 87 and No. 98, including remedies such as compensation, penalties, and access to independent adjudication.

Expand access to this right to all categories of workers, regardless of employment status or work arrangements, thereby ensuring universality and inclusiveness.

Maintain a flexible and responsive legal reform mechanism, capable of adapting in a timely manner to social changes and shifts in labor market structures as demonstrated by Australia's dynamic approach.

Avoid tendencies toward "soft monopolies" and administrative overreach in the organization of labor representation. Instead, ensure a competitive, diverse, and independent legal environment for worker representative organizations to flourish.

### **Conclusion of Chapter 2**

Chapter 2 has provided a comprehensive theoretical foundation for the legal framework governing workers' organizations within enterprises. It clarified the core concepts, characteristics, functions, and influencing factors in the process of legal improvement including the guiding orientations of the Communist Party, the capacity of legislative actors, cultural traditions, and international integration.

In addition, the chapter synthesized international legal experiences from

Singapore, Japan, and Australia, and distilled key lessons applicable to the Vietnamese context.

These theoretical insights establish a foundational framework to guide the examination of Vietnam's current legal framework and the formulation of policy and legislative recommendations in the subsequent chapters.

### **CHAPTER 3**

#### **CURRENT STATUS OF LEGAL REFORM ON THE RIGHT TO ESTABLISH WORKERS' ORGANIZATIONS IN ENTERPRISES IN VIETNAM**

This chapter provides a comprehensive analysis of the current status of legal reform related to the right of workers to establish organizations within enterprises in Vietnam. The assessment is grounded in the ideological foundation of Hồ Chí Minh, the imperatives of international integration, and the ongoing process of labor law reform.

##### **3.1. Achievements in Improving the Legal Framework on the Right to Establish Workers' Organizations in Enterprises and Their Underlying Causes**

###### **3.1.1. Achievements**

Vietnam has made considerable progress in improving the legal framework concerning this right:

###### **3.1.1.1. Regarding the right-holders and conditions for exercising the right:**

The 2019 Labour Code explicitly recognizes the right of workers to freely establish representative organizations within enterprises, expanding beyond the previous limitations tied to the Vietnam General Confederation of Labour. This provision affirms the individual right of workers and the organizational independence of such entities.

###### **3.1.1.2. Regarding procedures for establishment:**

The current legal framework clearly stipulates the procedures for establishing workers' organizations, defining the registration process and the legal rights and obligations of the organization upon formal recognition. These improvements aim to reduce legal barriers while ensuring transparency and consistency in implementation.

###### **3.1.1.3. Regarding safeguards for operation and enforcement:**

New legal provisions emphasize protecting workers' organizations from

discrimination and interference by employers. The State has also strengthened the legal protection of trade union activists, as well as the right to collective bargaining and lawful strike action.

#### **3.1.1.4. Regarding responsibilities of the State and stakeholders:**

The law now clearly defines the State's duties in supporting and supervising the enforcement of workers' rights, the employer's role in facilitating organizational activity, and the responsibilities of trade unions and relevant institutions.

#### **3.1.2. Contributing Factors**

These achievements result from four key factors: (1) Vietnam's strong international integration commitments and ratification of core ILO Conventions; (2) the Communist Party's orientation toward building a socialist rule-of-law state; (3) the proactive legislative and policy reform efforts of the National Assembly and the Government; (4) the internal demands arising from the labor market and workforce under conditions of market-oriented economic development.

### **3.2. Limitations in improving the legal framework on the right to establish workers' organizations in enterprises in vietnam and their causes**

#### **3.2.1. Limitations**

Despite recent progress, the current legal framework still reveals several inadequacies:

##### **3.2.1.1. Regarding right-holders and conditions for exercising the right:**

Certain legal provisions remain vague or insufficient regarding the criteria for recognizing workers' organizations particularly in delineating between lawful organizations and those deemed to violate legal norms. Restrictions such as background checks or criminal record requirements for founding members may unduly limit the exercise of this right.

##### **3.2.1.2. Regarding procedures for establishment and operation:**

The law lacks clear provisions for recourse in cases where registration applications are denied or delayed. Procedural mechanisms still leave room for administrative abuse, potentially used to stall or obstruct the formation of workers' organizations.

##### **3.2.1.3. Regarding enforcement and operation:**

The protection mechanisms for workers engaging in trade union activities remain insufficient. Sanctions against discriminatory practices are relatively weak, while access to information, funding, and technical support for newly established organizations remains limited. These constraints undermine the viability and sustainability of workers' organizations outside the official trade union system.

#### **3.2.1.4. Regarding responsibilities of the State and stakeholders:**

The coordination among state agencies responsible for managing workers' organizations lacks clarity, and there is no consistent framework for decentralizing administrative responsibilities between central and local authorities. Technical support from the State and social organizations for nascent workers' organizations remains largely absent.

#### **3.2.2. Underlying Causes of the Limitations**

The above limitations are rooted in several factors: (1) the persistence of traditional legal thinking that has yet to adapt to the diversification of workers' representative models; (2) concerns about political and social stability in allowing organizations outside the established trade union system; (3) inadequate resources and institutional capacity for legal enforcement; and (4) the lack of integrated databases, legal information systems, and legal education programs to effectively support workers in exercising their rights.

### **Conclusion of Chapter 3**

Chapter 3 analyzes the development and current status of the legal framework governing the right to establish workers' organizations in enterprises in Vietnam. It highlights that the State has formally recognized and ensured the implementation of this right through a relatively comprehensive legal system. However, notable shortcomings remain, including delayed issuance of guiding regulations, vague legal provisions, superficial enforcement mechanisms, and insufficient access to legal information among workers. These limitations necessitate a critical assessment to provide a scientific basis for proposing legal reforms that align with the country's development and international integration requirements.

## **Chapter 4**

### **PERSPECTIVES AND SOLUTIONS FOR IMPROVING THE LEGAL FRAMEWORK ON THE RIGHT TO ESTABLISH WORKERS' ORGANIZATIONS IN ENTERPRISES IN VIETNAM**

#### **4.1. Perspectives on Legal Reform**

This chapter establishes the foundational perspectives for improving the legal framework on the right to establish workers' organizations in enterprises. These include: strictly adhering to the Party's and State's policies on human rights and civil rights; ensuring constitutionality, legality, coherence, and consistency in the legal system; linking legal reforms with requirements for international integration, modernization of labor relations, and sustainable socio-economic development; and balancing human and civil rights with the interests of the State, society, and workers' collectives.

#### **4.2. Legal Reform Solutions**

##### **4.2.1. Amending and supplementing the Labor Code**

Revise and supplement relevant provisions of the 2019 Labor Code to clarify the right to establish workers' organizations, ensuring legal transparency and consistency. Specifically, Article 170 should be amended to broaden the scope of eligible subjects, introduce anti-discrimination provisions, and enhance the feasibility of procedural implementation.

##### **4.2.2. Enacting a Law on Workers' Representative Organizations**

Develop and adopt a standalone law on workers' representative organizations, detailing the types, eligibility criteria, establishment procedures, functions, powers, and legal responsibilities of such organizations.

##### **4.2.3. Improving the system of implementation guidelines**

Issue subordinate legal instruments (e.g., decrees, circulars) to provide detailed guidance on administrative procedures, registration dossiers, organizational charters, financial regulations, and operational protocols to ensure practical enforceability.

##### **4.2.4. Strengthening legal safeguards for the right to organize**

Establish legal provisions to protect workers from interference or retaliation for participating in or advocating for the formation of organizations. Introduce both

administrative and criminal sanctions for violations.

#### **4.2.5. Restructuring enforcement agencies and oversight mechanisms**

Amend the Law on Inspection and related legal texts to enhance the capacity of labor inspection authorities. Develop an inter-agency coordination mechanism involving the Ministry of Labor–Invalids and Social Affairs, the Vietnam General Confederation of Labor, and judicial bodies.

#### **4.2.6. Developing human resources and legal awareness**

Implement a national program to raise legal awareness among workers, employers, and relevant public officials. Invest in training qualified personnel with professional competence and ethical standards to support workers in organizing.

#### **4.2.7. Institutionalizing mechanisms for dialogue and multilateral consultation**

Establish mandatory consultation mechanisms with stakeholders in the legal and policy-making process to ensure substantive participation from workers, employers, and independent experts.

#### **4.2.8. Ensuring legal stability amid institutional reforms**

Revise regulations on trade unions and workers' organizations to align with the ongoing restructuring of the political-administrative apparatus. Clearly define transitional responsibilities and the legal succession of rights and obligations of workers' organizations during restructuring processes.

### **Conclusion of Chapter 4**

Improving the legal framework for the right to establish workers' organizations in enterprises is an objective and urgent requirement in the process of building a socialist rule-of-law state in Vietnam. The perspectives and solutions proposed in this chapter are not only feasible but also aligned with the country's international integration commitments and the practical needs of modern labor relations. Measures such as amending and supplementing the Labor Code, enacting a separate law on workers' representative organizations, refining implementation guidelines, strengthening rights protection mechanisms, and enhancing enforcement capacity represent concrete steps toward a legal framework that is coherent, transparent, and effective.



At the same time, the institutionalization of international labor standards and the fulfillment of global integration commitments provide a solid legal foundation for the operation of workers' representative organizations, contributing to the construction of harmonious and stable labor relations. Accordingly, law is not merely a regulatory instrument, but a foundational pillar for the protection of human rights, the promotion of sustainable development, and the enhancement of national governance capacity in the era of renovation and deep international integration.

## **CONCLUSION**

This dissertation has comprehensively analyzed the theoretical foundations, international legal standards, comparative foreign experiences, and the current legal framework in Vietnam regarding the right to establish workers' organizations in enterprises, with the aim of proposing legal reforms consistent with the country's development and integration needs.

First and foremost, this right represents an objective necessity associated with the evolution of modern labor relations and serves to protect the legitimate interests of workers. From the perspective of international law particularly ILO Conventions No. 87 and No. 98 it is affirmed that the State must respect the right to freely establish organizations, refrain from interference, and ensure organizational independence.

Experiences from countries such as Canada, Japan, and Singapore emphasize the importance of legal flexibility, expansion of the scope of rights holders, and the establishment of effective collective bargaining mechanisms. In contrast, Vietnam's legal framework still reveals shortcomings, including a lack of detailed guidance, regulatory overlaps, and insufficient mechanisms to safeguard the right.

Accordingly, improving the legal framework must be undertaken in a comprehensive manner across legislation, institutional design, and enforcement. The ultimate goal is to develop a modern, substantive labor law system aligned with international standards and capable of ensuring the genuine exercise of workers' rights.

**LIST OF AUTHOR'S PUBLICATIONS  
RELATED TO THE DISSERTATION**

1. Truong Chanh Duc (2023), "Law on the Right to Establish Labor Organizations in Enterprises - A New Perspective on Trade Union Rights in Socialist Vietnam," *Journal of Law on Human Rights*, ISSN 2615-899X, 5(34), pp. 60-70.
2. Truong Chanh Duc (2024), "Factors Ensuring Legal Reform on the Right to Establish Labor Organizations in Enterprises in Vietnam Today," *Journal of Law on Human Rights*, ISSN 2615-899X, (39), pp. 63-70.
3. Truong Chanh Duc (2024), "Law on the Right to Establish Labor Organizations in Enterprises in Vietnam - Limitations, Deficiencies, and Solutions," *Journal of Prosecutorial Science*, ISSN 2354-063X, 03(75), pp. 38-47.
4. Truong Chanh Duc (2024), "Legislation in Selected Countries on the Right to Establish Representative Labor Organizations in Enterprises - Lessons for Vietnam," *Journal of Prosecutorial Science*, ISSN 2354-063X, 04(76), pp. 47-53.
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6. Truong Chanh Duc (2024), "Legislation on the Right to Establish Labor Organizations in Enterprises in Selected Countries: Experiences for Vietnam," *Journal of State Management*, ISSN 2354-0761, 31st year, (345), pp. 117-121.