Sanctions in Collective Labor Agreements (CLAs) from The Perpective of The Criminal Offense of Union Busting

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Abstract

A Collective Labor Agreement (CLA) is a legal instrument of industrial relations that binds workers and employers in regulating rights, obligations, and workplace rules. One of the crucial provisions in a CLA concerns severe disciplinary sanctions, which in practice may give rise to legal issues when their implementation results in restrictions on workers' freedom of association. This article aims to analyze the provisions on severe disciplinary sanctions in CLAs from the perspective of special criminal law, particularly in relation to the criminal offense of union busting. This research employs a normative legal research method using statutory and conceptual approaches. Primary legal materials include the Collective Labor Agreement for the 2023–2025 period, especially provisions on the basic norms of employment relations and severe disciplinary sanctions, as well as Law Number 21 of 2000 concerning Trade Unions/Labor Unions. Secondary legal materials consist of literature on criminal law and national labor law, as well as international standards on freedom of association and the protection of trade unions. The results of the study indicate that provisions on severe disciplinary sanctions in CLAs that are not systematically interpreted in conjunction with the basic norms of employment relations have the potential to be applied repressively and to hinder trade union activities. Under such conditions, the application of disciplinary sanctions may exceed the scope of industrial relations and potentially fulfill the elements of the criminal offense of union busting. Therefore, this study emphasizes the importance of examining and applying disciplinary sanctions in CLAs in harmony with the basic norms of employment relations and the principles of protection of freedom of association as recognized in national law and international labor standards.

Keywords: Collective Labor Agreement, Disciplinary Sanctions, Union Busting, Special Criminal Law

Introduction

The right to freedom of association is a fundamental right of workers recognized as part of human rights and constitutes one of the main pillars of fair industrial relations.(Indonesia, 1945) Within the national legal system, protection of the right to freedom of association is affirmed through Law Number 21 of 2000 concerning Trade Unions/Labor Unions, which guarantees workers the freedom to establish, become members of, and carry out trade union activities without pressure or intervention from any party.(Perdana, 2021) This protection positions the right to freedom of association as a legal interest of strategic value in maintaining a balance of relations between workers and employers.(Allen, 2016)

In addition to being recognized under national law, the right to freedom of association is also a fundamental principle affirmed in international labor standards.(Wedderburn, 1989) The International Labour Organization (ILO) places freedom of association and collective bargaining as fundamental principles that must be protected from all forms of restriction, whether carried out directly or through internal company policies.(Hughes & Haworth, 2013) Thus, the protection of the right to freedom of association not only has a national dimension but also forms part of a global commitment to creating fair and dignified employment relations.

In the practice of industrial relations in Indonesia, the regulation of the rights and obligations of workers and employers is, among others, set out in a Collective Labor Agreement (CLA). A CLA functions as a legal instrument that regulates in greater detail the implementation of employment relations, including workplace rules and disciplinary enforcement mechanisms.(Mcgregor, 2017) One important aspect of a CLA is the regulation of disciplinary sanctions, particularly severe disciplinary sanctions, which are intended to maintain order and work productivity. Ideally, such sanctions should be applied proportionally and must not conflict with the protection of workers' fundamental rights.

However, in practice, provisions on severe disciplinary sanctions in CLAs are not always implemented in line with these ideal objectives. Sanction provisions that are formulated in general terms and provide broad discretionary authority to company management have the potential to be applied repressively, particularly against workers who are active in trade union activities. This condition reflects a gap between the ideal norm of the CLA as an instrument for balanced industrial relations and the reality of sanction enforcement that may result in restrictions on freedom of association.(Anner, 2012)

This gap becomes a more serious legal issue when viewed from the perspective of special criminal law. Law Number 21 of 2000 not only provides normative protection for the right to freedom of association but also criminalizes any act that obstructs, restricts, or coerces workers in the exercise of their right to freedom of association as the criminal offense of union busting.(Bernstein, 1980) Therefore, the application of severe disciplinary sanctions in a CLA that hinders trade union activities can no longer be regarded merely as an issue of industrial relations or civil labor law, but may potentially fall within the scope of special criminal liability.(Epstein, 2014)

A number of previous studies generally discuss union busting from the perspectives of labor law, industrial relations, or human rights. Meanwhile, studies that specifically position provisions on severe disciplinary sanctions in CLAs as objects of analysis from the perspective of special criminal law remain relatively limited. In fact, internal company norms such as CLAs cannot be separated from criminal law scrutiny when their implementation fulfills the elements of a criminal offense as formulated in statutory regulations and contradicts (Fletcher, 1998)the principles of protection of freedom of association recognized both nationally and internationally.

Based on these conditions, this research offers novelty by analyzing provisions on severe disciplinary sanctions in CLAs through a special criminal law approach, linking them to the basic norms of employment relations as well as the principles of protection of freedom of association under national law and international labor standards. This research not only positions the CLA as an instrument of industrial relations but also critically examines it within the framework of criminal protection of freedom of association. Accordingly, this study is expected to clarify the juridical boundaries between managerial authority in imposing disciplinary sanctions and the criminal prohibition against practices of trade union suppression.

Based on the internal conditions of the Collective Labor Agreement (CLA) that indicate normative inconsistency and the absence of explicit protection for fundamental workers' rights, this study formulates the following research question:

What are the juridical implications of the lack of explicit regulation regarding mechanisms for the protection of the right to freedom of association in the application of severe disciplinary sanctions (Article 79 of the CLA) concerning the potential restriction or violation of workers' fundamental rights and How should the systematic interpretation of severe disciplinary sanction provisions (Article 79 of the CLA) be linked to the basic norms of employment relations (Articles 5, 6, 7, and 8 of the CLA) to prevent the misuse of managerial authority that potentially violates the right to freedom of association.

Methods

This research employs a normative legal research method by examining written legal norms and relevant legal principles. The study aims to analyze severe disciplinary sanctions in Collective Labor Agreements (CLAs) from the perspective of special criminal law, particularly in relation to the protection of workers' freedom of association.(Posner, 1996)

The approaches applied in this research include a statutory approach and a conceptual approach. The statutory approach focuses on the examination of Law Number 21 of 2000 concerning Trade Unions/Labor Unions and criminal law provisions related to union busting, while the conceptual approach is used to analyze the concepts of special criminal law and criminal liability within industrial relations.

The legal materials consist of primary and secondary legal materials. Primary legal materials include the Collective Labor Agreement (CLA) for the 2023–2025 period and relevant statutory regulations, while secondary legal materials comprise literature on criminal law, labor law, and international legal documents. The analysis is conducted qualitatively through systematic and conceptual legal interpretation to explain the boundaries of managerial authority and the potential for criminal liability arising from union busting practices.

Result and Discussion
Result

The results of the study were obtained through a normative review of the Collective Labor Agreement (CLA) for the 2023–2025 period, with a focus on the structure of internal norms and their juridical implications for the exercise of workers' freedom of association. (Wedderburn, 1989)The analysis is directed at Article 5, Article 6, Article 7, and Article 8 as the basic norms of employment relations, as well as Article 79 as the provision on severe disciplinary sanctions that carries the most significant legal consequences for workers.

Based on the identification of norms, Articles 5 through 8 of the CLA contain the fundamental principles of employment relations, the rights and obligations of the parties, and the framework for the implementation of industrial relations. These articles function as overarching norms that serve as the juridical foundation for all provisions of the CLA. Systematically, these basic norms position workers as legal subjects who possess fundamental rights within employment relations, including the right to engage in fair and balanced industrial relations.(Edwards, 2003)

Furthermore, Article 79 of the CLA regulates severe disciplinary violations along with the types of sanctions that may be imposed on workers. This provision grants company management the authority to impose severe disciplinary sanctions, including termination of employment, on workers deemed to have committed certain violations. From the normative review, the provision on severe disciplinary sanctions is formulated as an internal company norm that is binding in nature and has a direct impact on the continuity of employment relations.

The results of the study indicate that Article 79 of the CLA does not explicitly link the application of severe disciplinary sanctions to the basic norms of employment relations as regulated in Articles 5 through 8 of the CLA. In addition, the regulation of severe disciplinary sanctions does not contain provisions that specifically establish mechanisms for the protection of workers' freedom of association when sanctions are imposed in the context of industrial relations activities.(De Stefano, 2017)

To clarify the results of the normative identification, the characteristics of the regulation of severe disciplinary sanctions in the CLA can be summarized as follows.

Table 1. Characteristics of the Regulation of Severe Disciplinary Sanctions in the CLA

Normative Element	Description
Basic CLA norms	Articles 5–8
Function of basic norms	Foundation of employment relations
Sanction provision	Article 79
Type of sanctions	Severe disciplinary sanctions up to termination of employment
Authority to impose sanctions	Company management
Protection of freedom of association	Not explicitly regulated
Normative consequences	Direct impact on employment status

Based on Table 1, it can be seen that the regulation of severe disciplinary sanctions in the CLA has a standalone normative position and is not explicitly formulated in direct connection with the basic norms of employment relations. This condition indicates a potential internal inconsistency within the CLA that may give rise to legal implications in its application.

Discussion
Juridical implications of the lack of explicit regulation regarding mechanisms for the protection of the right to freedom of association in the application of severe disciplinary sanctions (Article 79 of the CLA) concerning the potential restriction or violation of workers' fundamental rights

This discussion commences by outlining the nature and legal consequences of the normative vacuum in Article 79 of the Collective Labor Agreement (CLA) (Sachs, 2007), which regulates severe disciplinary sanctions concerning the protection of the right to freedom of association.

The absence of an explicit clause directly linking the application of severe disciplinary sanctions (Article 79) to the principle of protecting the right to organize (Cameron, 2003)(as contained in Articles 5–8 of the CLA and Law No. 21 of 2000 concerning Trade Unions) creates a significant legal loophole. Substantively, this gap increases the risk that disciplinary sanctions may be camouflaged as routine disciplinary enforcement, while their true objective and impact are to impede trade union activities.

Article 79, as the instrument regulating the most serious legal consequence (Termination of Employment/PHK), transforms into an absolute authority devoid of a clear normative counterbalance, placing the protection of fundamental rights under the unilateral discretion of company management. Procedurally, the lack of a specific due process mechanism for cases involving trade union activists eliminates the burden on the company to proactively demonstrate that the sanction imposed is entirely unrelated to trade union activity.

Although the CLA constitutes a binding collective agreement, it holds a subordinate legal position (lex inferior) compared to the Labor Law and the Trade Union Law (Law No. 21 of 2000) as the lex superior. Law No. 21 of 2000 imposes a positive obligation upon the state and all parties to protect the right to organize, even under the threat of criminal sanctions (union busting). The absence of explicit protection norms within the CLA indicates that the CLA fails to maximally implement the protective duty mandated by the higher law (Blokker, 2000)The implication of this contradiction is serious: if the application of Article 79 results in the termination of a union official without a strong disciplinary basis, this directly contravenes the spirit of protecting freedom of association, potentially rendering the CLA provision null and void (batal demi hukum) to the extent that its application violates the Law.

The normative vacuum within Article 79 of the CLA not only creates an internal problem but also directly identifies and qualifies the forms of violation of the right to organize that may arise.

The non-transparent application of severe disciplinary sanctions facilitates the practice of subtle discrimination. Workers or union officials may be subjected to harsher sanctions (unequal treatment) compared to non-union workers for equivalent offenses. Furthermore, the lack of explicit protection generates a chilling effect among workers fear of establishing or being active in a trade union due to apprehension of being targeted by repressive disciplinary sanctions. This condition constitutes a violation of fundamental rights as it practically nullifies the exercise of that right due to the fear induced by the ambiguous sanction norm.

If severe disciplinary sanctions are applied with the intent or effect of restricting the right to organize, the issue definitively shifts from the domain of civil labor relations to the domain of special criminal law. The imposition of sanctions (Termination of Employment or severe suspension) that hinders a union official from carrying out their duties may fulfill the elements of "obstructing, restricting, or coercing" in the context of union busting (Article 43 of Law No. 21 of 2000). The heaviest juridical implication is the transfer of liability from civil/industrial damages to criminal liability against the individual management or the corporate entity itself, for knowingly utilizing a valid CLA instrument for a purpose that violates criminal law.

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The absence of explicit protection in the CLA also has implications for Indonesia’s commitment to international standards.

ILO Conventions No. 87 (Freedom of Association) and No. 98 (Collective Bargaining) expressly mandate the protection of workers and union officials from prejudicial acts. Article 79, when not equipped with a clear safeguard, makes the company vulnerable to complaints lodged with the Committee on Freedom of Association (CFA) of the ILO. This can strengthen findings that the CLA, in practice, is used for purposes contrary to fundamental ILO principles, which in turn reflects the state's failure to ensure compliance with international labor standards.

The systematic interpretation of severe disciplinary sanction provisions (Article 79 of the CLA) be linked to the basic norms of employment relations (Articles 5, 6, 7, and 8 of the CLA) to prevent the misuse of managerial authority that potentially violates the right to freedom of association.

Systematic Interpretation is a method of legal interpretation that requires a norm (in this case, Article 79 of the CLA) to be understood as an integral part of the overall normative system of the CLA and must not contradict higher norms or the basic norms within that system.

Articles 5, 6, 7, and 8 of the CLA, which contain the Basic Principles of Employment Relations, the Rights and Obligations of the Parties, and the Framework for Industrial Relations, function as the fundamental norm (lex fundamentalis) or normative umbrella for all CLA provisions.

These basic norms juridically limit the scope and purpose of the application of all articles, including Article 79. Article 79 is only legitimately applied insofar as its purpose is the enforcement of discipline and productivity, and it must not be used for any other purpose that violates the fundamental workers' rights recognized in Articles 5–8.

Articles 5–8 affirm the balance of interests and the protection of workers' human rights, including the right to organize (Weiler, 2004). Therefore, Article 79 must be read as subordinate to these principles.

The systematic interpretation model is applied to ensure that the imposition of severe disciplinary sanctions does not become an instrument for suppressing trade unions. The interpretation of Article 79 must employ a teleological approach (interpretation based on the legal objective) and proportionality.

The legal objective of sanctions (Article 79) must be limited strictly to maintaining work order, safety, and productivity, and not to respond to or punish legitimate trade union activities (such as authorized strikes, lobbying, or internal criticism).

The sanction imposed must be proportionate to the severity of the disciplinary offense. If the alleged disciplinary offense is not commensurate with the severest sanction (Termination of Employment), especially if the worker concerned is a union official, this constitutes a strong indication of a hidden intent to bust the union.

To prevent the misuse of managerial authority, the application of severe disciplinary sanctions against trade union activists must be supported by a strict doctrine of proof.

Dual Burden of Proof: The company is not only obligated to prove that the worker committed the disciplinary violation (Sykes, 1988) (the positive element of Article 79) but is also obligated to convincingly prove that the sanction is entirely unrelated to legitimate trade union activities (the negative element).

The sanction must pass a non-discrimination test. Management must demonstrate that non-union workers who committed similar offenses also received equivalent sanctions. Failing this, the application of the sanction violates Articles 5–8 and potentially fulfills the elements of union busting under special criminal law.

Systematic interpretation must be translated into clear limitations to restrict managerial discretion.

Article 79 must be equipped with strict procedural safeguards, based on the principle of due process reinforced by the basic norms of the CLA.

Mandatory Pre-Sanction Internal Audit: An internal audit or joint committee (involving union representatives) must be mandatory for reviewing cases involving union officials before severe sanctions are imposed.

It is advisable to add an explicit clause to Article 79 stating: "The application of this sanction shall not be used to obstruct, restrict, or coerce workers in exercising the right to freedom of association as regulated in Article 5 of the CLA and the applicable Law."

Through systematic interpretation, the role of Articles 5–8 is strengthened as a protective mechanism. If a conflict arises between Article 79 and Articles 5–8 in practice, Article 5–8 (the protection of fundamental rights) must be prioritized (the principle of favor laboratoris). This ensures that managerial authority to discipline will never supersede the prohibitions of criminal law and workers' human rights.

The regulation of severe disciplinary sanctions in a Collective Labor Agreement (CLA) cannot be understood merely as a civil industrial relations norm. From the perspective of special criminal law, internal company norms may still be subject to criminal scrutiny if their application fulfills the elements of a criminal offense as formulated in statutory regulations. Special criminal law functions to protect certain fundamental legal interests, one of which is workers' freedom of association as guaranteed by Law Number 21 of 2000 concerning Trade Unions/Labor Unions.

Article 79 of the CLA, which grants broad authority to company management to impose severe disciplinary sanctions, must be interpreted systematically by referring to the basic CLA norms as regulated in Articles 5, 6, 7, and 8. These basic norms function as juridical boundaries that determine the direction and objectives of the application of all CLA provisions. If severe disciplinary sanctions are applied without due regard to these basic norms, their application may exceed the purpose of enforcing work discipline and shift into an instrument of control that suppresses freedom of association.

In the context of special criminal law, Law Number 21 of 2000 expressly qualifies acts that obstruct, restrict, or coerce workers in the exercise of their right to freedom of association as the criminal offense of union busting. Therefore, the application of severe disciplinary sanctions that results in the obstruction of trade union activities can no longer be positioned merely as an internal company matter. If such sanctions are imposed with the intent or effect of restricting trade union activities, they may juridically fulfill the elements of the criminal offense of union busting.

From the perspective of the theory of criminal liability, an act may be punished if it fulfills the elements of conduct, fault, and unlawfulness. The application of severe disciplinary sanctions that causes workers to lose opportunities to carry out trade union activities may fulfill the element of an unlawful act if it is carried out with awareness or at least with knowledge that it will result in restrictions on freedom of association. In this regard, the normative legitimacy of the CLA does not automatically eliminate the unlawful nature of the act if its application contravenes higher-ranking criminal law provisions.

The absence of explicit regulation in the CLA regarding mechanisms for the protection of freedom of association in the application of severe disciplinary sanctions increases the risk of deviation. Sanction norms that are not accompanied by clear limitations and oversight mechanisms are prone to selective application, particularly against workers who are active in trade union activities. This condition demonstrates a strong point of intersection between managerial authority in employment relations and the criminal prohibition against practices of trade union suppression.

In line with the objectives of criminal law policy, the criminalization of union busting is intended to provide a deterrent effect as well as effective protection for freedom of association. Accordingly, every internal company norm, including disciplinary sanction provisions in the CLA, must be interpreted and applied cautiously so as not to conflict with this protective objective. Interpretations that disregard the basic CLA norms and the protection of freedom of association may undermine the effectiveness of special criminal law in preventing union busting practices.

Thus, this discussion emphasizes that Article 79 of the CLA must be understood as an integral part of the overall system of CLA norms. The interpretation and application of severe disciplinary sanctions must be carried out systematically by referring to Articles 5 through 8 as the basic norms of employment relations. If sanction provisions are applied repressively and result in restrictions on freedom of association, juridically this may give rise to criminal legal consequences in the form of qualification as the criminal offense of union busting from the perspective of special criminal law.

Conclusion

Based on the results of the research and discussion, this study concludes that the regulation of severe disciplinary sanctions in Collective Labor Agreements (CLAs) cannot be viewed merely as a civil norm of industrial relations. Such provisions, particularly those regulated in Article 79 of the CLA, have broader legal implications because they directly affect the continuity of employment relations and the position of workers as legal subjects.

The study finds that Article 79 is not systematically linked to the basic norms of employment relations set out in Articles 5, 6, 7, and 8 of the CLA. This lack of normative integration creates the potential for the application of disciplinary sanctions that disregard the protection of workers' rights, including the right to freedom of association. Under certain circumstances, the imposition of severe disciplinary sanctions that obstruct trade union activities may exceed the scope of industrial relations regulation and potentially fulfill the elements of the criminal offense of union busting.

From the perspective of special criminal law, Law Number 21 of 2000 explicitly criminalizes acts that obstruct, restrict, or coerce workers in exercising their freedom of association. Accordingly, disciplinary sanctions in CLAs must not only be assessed based on their normative validity within industrial relations, but must also be subjected to strict scrutiny under special criminal law to prevent their misuse as instruments of union suppression.

Recommendations

This study recommends that future research further examine disciplinary sanction provisions in CLAs by adopting comparative and empirical approaches, including cross-company or cross-sector analysis, to better identify patterns and risks of union busting practices. Further studies are also encouraged to explore the role of law enforcement authorities and labor supervisory institutions in enforcing criminal provisions related to union busting. Such research is expected to strengthen scholarly contributions to special criminal law and labor law, while supporting the development of fair and balanced industrial relations.

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