

## Effectiveness of Criminal Sanctions Against Union-Busting Actions by Media Companies

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### ABSTRACT

This research explores the enforcement of criminal sanctions against union-busting practices in Indonesia, with a particular focus on the conflict between the CNN Indonesia Workers' Solidarity (SPCI) and PT. CNN Indonesia. Employing a juridical-normative approach, the study reviews legal frameworks such as Law No. 21 of 2000 on Trade Unions and the Indonesian Criminal Code, while drawing comparisons with labor court rulings in Belgium, Germany, and France. The findings reveal that, although Indonesia's legal system formally classifies union busting as a criminal act, its implementation remains ineffective due to the dominance of civil or bipartite settlements that rarely impose real sanctions. The research emphasizes the need for stronger institutional commitment and a more proactive role from law enforcement bodies to safeguard workers' rights and ensure corporate accountability. Strengthening these measures will help harmonize Indonesia's labor law with international standards promoted by the International Labour Organization (ILO).

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## 1. INTRODUCTION

The fulfillment of workers' rights is often taken lightly by companies, especially regarding capital ownership and power relations. As a result, obligations that should be fulfilled in accordance with the Collective Labor Agreement are not properly implemented. An example of this is the fulfillment of mandatory salary payments as stipulated in the agreement and/or employment contract. However, if a company has constraints that necessitate salary deductions or payment delays, then a discussion or new agreement regarding salary payments must be held. If there are employee rights that the company cannot fulfill, the relevant management has a separate responsibility to account for them. It is not uncommon for companies that initiate discussions to use their power to coerce or pressure workers into complying with the decisions of company executives. Companies

consider workers to be a vulnerable group whose voices or desires do not need to be fulfilled [1].

One of the rights that workers should have, but which often becomes a new “threat” to companies, is the right to form a labor union. Looking back at the history of labor unions, the formation of labor unions, or what is internationally known as Union Busting, first appeared in England in 1864. The development of labor unions spread from the national level to the regional level, and eventually succeeded in covering the international sphere. One of the pinnacles of this development was the formation of the International Labor Organization (ILO) in 1919. The ILO focuses on international labor issues, and its main principles are the protection and implementation of the principle of freedom of association, upholding the principles of social justice, and efforts to eradicate poverty. The ILO also has a principle of social justice contained in its opening preamble: “Whereas universal and lasting peace can be established only if it is based upon social justice”. This principle distinguishes the ILO from other agencies or organizations under the United Nations [2].

The ILO standard for establishing legal regulations and realizing freedom of association prioritizes guarantees for the formation of labor unions, including the fulfillment of organizational rights as outlined in ILO Conventions 87 and 98 of 1948. In order to respect and implement the objectives of the ILO, Indonesia has ratified these conventions. Oppenheim's opinion on the function of ratification as final approval and binding the agreement is outlined in his book: Ratification is the term for the final confirmation given by the parties to an international agreement signed by their representatives [3]. Although an agreement is signed immediately after mutual agreement on the actions of the authorized representatives, its binding force is usually suspended until ratification is given. This is in line with what Strake said about international law, which states that: Agreements have various names, some of which indicate differences in procedures or greater or lesser levels of formality. Therefore, in addition to the term “agreement” itself, the following titles are also given: (r) Convention ... and so on [4].

The ratification was then implemented through Presidential Decree of the Republic of Indonesia Number 83 of 1998 concerning the Ratification of the Convention (No. 87) on Freedom of Association and Protection of the Right to Organize. In addition, Law No. 21 of 2000 on Labor Unions, Articles 3 and 4, grants every worker the right to join a labor union and to form an independent labor union. However, Article 28E paragraph (3) of the Constitution of the Republic of Indonesia states that every person has the right to form, unite, and express their opinions freely through organizations or associations. Furthermore, as stated in Article 104 of Law Number 13 of 2003, it is a fundamental right of every worker to form and participate in a labor union [5].

The ratification of various international conventions and regulations in Indonesian legislation is an important foundation for ensuring the protection of freedom of association in Indonesia [6]. The previous paragraph describes efforts to provide protection against union busting. Union busting refers to obstacles created by companies and/or capital owners who feel threatened by the existence of labor unions. The forms of union busting are clearly explained in Article 28 of Law Number 21 of 2000 or the SP Law. Some of the recurring forms are actions such as work delays, temporary suspensions, demotions, and transfers. In

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addition, intimidation and non-payment or reduction of employees' wages are forms of obstruction aimed at campaigning against the formation of workers' or labor welfare [7].

Union busting aims to weaken workers' position or bargaining power in bipartite negotiations with companies because, from an economic perspective, workers are considered to be in an unbalanced position compared to employers in terms of power and influence over the company's development. As a result, workers have little chance of fighting for their rights without a forum or organization. These worker organizations exist to strive for and realize their economic and social aspirations without political interference or power [8].

A closer look at the suppression of labor unions in Indonesia reveals the case of union busting that led to clashes at PT Gunbuster Nickel Industri (PT GNI). According to the Tempo news website, the conflict between SPN (Serikat Pekerja Nasional or National Workers Union) and PT. GNI began shortly after SPN was officially recognized by the Manpower Office in May 2022 [9]. Union busting began when the company dismissed three core administrators, prompting a response from union members. Bipartite efforts were made on July 28 and September 14, 2022, but the company was reluctant to respond to the invitation. As a form of protest, a work stoppage was held from September 22 to 24, 2022, accompanied by a notification of their intention to carry out the work stoppage to the North Morowali Police on September 19. Several crucial demands were included, such as the cessation of unclear wage cuts and the reinstatement of core union officials to work at PT. GNI, as well as compensation for workers who died while on duty. However, it is unfortunate that the signing of the CBA by both parties was conducted in the presence of the Head of the Morowali Utara Regency Labor and Transmigration Office, along with an Industrial Relations Mediator from the Central Sulawesi Province Labor and Transmigration Office, which included approval for the termination of employment for the union leaders and members involved in the dispute [10].

News about union busting is circulating again, this time involving the media company PT. CNN Indonesia [11]. These actions are considered to constitute union busting, such as unilateral layoffs carried out via email, termination of work access, such as office email, and the WhatsApp group being abruptly shut down on August 31, 2024, even though SPCI (CNN Indonesia Workers Union) Chairman Taufiqurrohman said that this was still a form of employee dispute with the company [12] with the unilateral layoffs and the closure of access to 14 SPCI members, alleged violations. One form of obstruction to the formation of a labor union is PT. CNN Indonesia also complies with Article 28 of the SP Law and the International Labor Organization (ILO) Convention No. 87 of 1984 concerning Freedom of Association and Protection of the Right to Organize, as well as ILO Convention No. 98 of 1949 concerning the Right to Organize and Collective Bargaining [13].

Against this background, this scientific article was written with the title "THE APPLICATION OF CRIMINAL SANCTIONS AGAINST COMPANY UNION BUSTING" as a form of fulfillment of the Final Assignment for the Bachelor of Law Program, Faculty of Law, Jakarta Veteran National Development University, which has the following problem formulation:

- a. How are union-busting actions regulated under criminal law in the Indonesian labor law system?
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- b. Do the actions of PT. CNN Indonesia against workers in the CNN Indonesia worker solidarity case: do the elements of union busting referred to in the legislation apply?

## 2. METHOD

The research presented in this scientific article applies a legal-normative method with a primary focus on the application of current legal regulations in Indonesia. This article reviews Law Number 21 of 2000 on Labor Unions, which includes regulations applicable to cases of union dissolution. It also reviews Criminal Code Law Number 1 of 1946 and Number 1 of 2023, which provide alternative penalties for dealing with such issues. The approach applied is a comparative analysis through the comparison of elements and legal consequences for cases of union busting in Indonesia and three European countries, namely Belgium, Germany, and France [14].

The sources of information include primary data in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2003 concerning Manpower, Law Number 21 of 2000 concerning Labor Unions, Law Number 1 of 1946 concerning the Criminal Code, and Law Number 1 of 2023 concerning the Criminal Code. The use of secondary sources includes the Decision of the Cour Constitutionnelle dated April 2, 2009 (number 64/2009), the Decision of the Liège Labor Court, Arlon division, dated June 23, 2020, the Decision of the Brussels Labor Court (in French), dated March 2, 2020, research findings, works from the fields of law and academia, textbooks, and news websites that will be collected and compiled through library research [15].

## 3. RESULTS AND DISCUSSION

### 3.1. Criminal Law Provisions Against Union Busting in the Indonesian Labor Law System

Legal provisions regarding the protection of labor unions, including their members, those involved in them, and bipartite negotiations. Starting with the highest constitution in Indonesia, the 1945 Constitution of the Republic of Indonesia, specifically Article 28E, paragraph (3), it states that every citizen has the right to form associations, assemble, and express their opinions. Through this article, Indonesia declares that everyone has the right to freedom of association, assembly, and expression, as explained in more detail in its derivative regulations[4]. In other words, workers can form their own union or group to fight for their rights. Because they are in a vulnerable position, it is very difficult for workers to act alone if their rights are violated by the company [16]. The International Labor Organization (ILO) also regulates these labor unions. ILO Convention No. 87 of 1948 and ILO Convention No. 98 of 1949 explicitly affirm that freedom of association and the right to collective bargaining are the basic rights of every worker [7]. These rights give workers complete freedom to form new labor unions or join existing ones, according to their individual wishes. Indonesia then ratified this provision through Presidential Decree No. 83 of 1998, which is listed in State Gazette No. 98, as a form of ratification of ILO Convention No. 87 [17].

Furthermore, broader protection is provided in Law No. 21 of 2000 concerning Labor Unions (SP Law), which recognizes the right of every worker to establish and join a labor

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union. This is stated in Articles 3 and 4, which affirm workers' freedom to organize. This regulation is further clarified in Article 5, paragraph (1) of the same law, which states that every worker or laborer has the right to form and become a member of a labor union. In addition, Law No. 13 of 2003 concerning Manpower, through Article 104, also strengthens the guarantee of workers' rights to form and participate in labor union activities. Furthermore, Law Number 21 of 2000 in Article 29 regulates the obligation of employers to provide opportunities for members and administrators of labor unions to participate in organizational activities during their working hours, in accordance with the provisions stipulated in the collective labor agreement, which must include the types of activities, the procedures for their implementation, and regulations regarding paid and unpaid activities [18].

Conflicts regarding the suppression of labor unions are almost always common, even in the corporate environment [19]. Therefore, state intervention is needed to handle such cases due to the imbalance of power. Labor law is public in nature, and the state is involved in the settlement of civil cases marked by certain provisions and/or in compelling circumstances [20]. One form of state intervention in labor cases, or cases related to workers, is legal protection against union busting. As stated in Article 1 paragraph (3) of the 1945 Constitution, which affirms that "Indonesia is a state based on the rule of law," Indonesia is obliged to guarantee legal certainty and justice for workers as a vulnerable group [21].

Criminal law has the principle of *ultimum remedium*, which holds that criminal law is the last resort labor unions may pursue after civil efforts, such as bipartite negotiations, have been rejected [22]. Therefore, criminal law in this case is seen as a retributive measure that requires the state to intervene in investigating and prosecuting forms of union busting, as described in Article 28 of the Trade Union Law [23]. Despite the legal guarantees, union busting still occurs frequently [24]. This law, through Article 43 in conjunction with Article 28, stipulates that any person who forces workers or takes any action aimed at preventing or forcing workers to join or not join a labor union, or to form or not form a labor union, is subject to criminal sanctions in the form of imprisonment for one to five years and/or a fine of between one hundred million and five hundred million rupiah. Such acts are categorized as criminal offenses [25].

However, in addition to the Trade Union Law, Law Number 1 of 1946 concerning the Criminal Code can also be used as an alternative if there are elements of public incitement and/or unpleasant acts, or to protect legitimate trade unions (especially those that are registered with the Manpower Office). Two articles can be used as alternatives to Article 43 in conjunction with Article 28 of the Trade Union Law, namely Article 160 and Article 335 of the Criminal Code [26].

In addition to the provisions in the Trade Union Law, the Criminal Code also provides alternative articles that can be used to prosecute perpetrators of union busting. For example, Article 160 of the Criminal Code states that anyone who openly incites others to commit a criminal act, whether verbally or in writing, against the law or against official orders, shall be punished with a maximum imprisonment of six years or a fine. This article can be used as an alternative if it is proven that the company incited the union busting that occurred at PT. CNN Indonesia. However, the old Criminal Code did not regulate corporate

crimes, so it remains unclear who should be prosecuted under the incitement article. In the new Criminal Code, namely Law Number 1 of 2023 concerning the Criminal Code, Article 47 of the latest Criminal Code, namely Law Number 1 of 2023, states that corporate crimes are committed by managers or parties who have functions within the organizational structure, or by other parties acting on behalf of the name and interests of the corporation, either individually or jointly [20].

Returning to Criminal Code No. 1 of 1946, Article 335 of the old Criminal Code states that if a person commits an act that violates the law by forcing another person to do, not do, or allow something to happen with threats of violence or unpleasant treatment, that individual may be subject to a maximum imprisonment of one year or a certain fine [7].

However, similar to Article 160 in the previous paragraph, there is no “who” responsible for criminal acts in corporations. Therefore, two articles in the old Criminal Code can be adjusted, namely Article 219, which regulates criminal acts of incitement in general, and/or Article 448 of the new Criminal Code, which updates the regulations on criminal acts of incitement and coercion. Furthermore, the fulfillment of the elements of Article 48 of the Criminal Code of Law No. 1 of 2023 explains that a corporation can be held criminally liable if a company (corporation) can be considered responsible for a criminal act, if the crime is closely related to its operations. This means that the crime was committed as part of the company's official activities, or that benefits were provided to the company illegally. Furthermore, a company is also considered guilty if the unlawful act is tacitly accepted or approved as company policy. More importantly, a company will be held liable if it fails to take preventive measures to ensure that all its activities comply with the law, even when the company is aware of and deliberately allows the criminal act to occur [14].

### **3.2. Elements of Union Busting Actions by PT. CNN Indonesia is against the workers in the CNN Indonesia workers' solidarity case**

Companies are often unaware that they are about to take, are taking, or have even taken actions that have the potential to divide a labor union within their workplace. The excuse of spreading company members to cover up the pretense of rejecting labor unions is not uncommon in these companies. Taking an example from abroad, large-scale union busting occurred at a company that owns a large supermarket chain in the United States, Royal Ahold NV. Ahold carried out union busting by splitting up members through transfers to areas that adopted anti-union systems in Pennsylvania. However, Ahold clearly engaged in union busting and violated the demands of workers represented by Federatie Nederlandse Vakbeweging (FNV), a Dutch labor union federation. FNV was involved because this was not the first time Ahold had engaged in union busting at its company [13].

Returning to the case of PT. CNN Indonesia, the Chairman of the CNN Indonesia Workers' Union, Taufiqqurohman, explained the forms of union busting carried out by PT. CNN Indonesia at that time. Quoted from the AJI website, Taufiqqurohman explained the forms of union busting. These included the issuance of termination letters on August 28, the day after the SPCI was legally and officially registered with the South Jakarta City Administration's Manpower, Transmigration, and Energy Agency, which is the authority responsible for registering and supervising labor unions in the region. In addition to the

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layoffs issued to the union leaders, CNN Indonesia's management also systematically campaigned for an "Anti-Union Movement" within the company. CNN Indonesia's management requested the signatures of all employees, without exception, in every department, both television and online, containing a rejection of the SPCI. In fact, the SPCI was formed due to management's negligence in paying BPJS Ketenagakerjaan (Social Security Administration Agency for Employment) contributions and arrears, as well as in making unilateral salary deductions. As a result of these issues, the SPCI filed a report with the Metro Jaya Regional Police regarding union busting by PT. CNN Indonesia [9].

In the SP Law, the forms of union busting themselves are outlined in the Trade Union Law. In this regard, Law Number 21 of 2000, specifically Article 28, prohibits anyone from obstructing or coercing workers in exercising their right to form a trade union or not, to become a member or administrator of an organization, and to carry out or not carry out organizational activities. Violations of this provision may include temporary suspension from work, demotion, transfer, delay or reduction in wage payments, intimidation, and campaigns to form a labor union [4].

However, in reality, there are many forms of union busting. Companies engage in union busting, consciously or unconsciously, or indirectly through gradual, systematic weakening efforts. In the journal Effectiveness of Union Busting as a Criminal Offense, 13 forms of union busting are identified as prevalent within companies. Among them are:

1. Employers or companies try to stop employees from forming labor unions, saying that unions are places of rebellion that disrupt the work environment.
2. Intimidation happens because companies think unions are a form of betrayal, so union leaders and/or members do not get paid bonuses or even get fired.
3. Transferring union members with the aim of dividing and weakening the union.
4. Issuing periodic warning letters, ranging from mild reprimands to dismissal or termination of employment;
5. Suspending members when they engage in activities related to the labor union (regular meetings);
6. Layoffs or termination of employment are still rampant, such as PT. CNN Indonesia, which laid off 14 members of the PT. CNN Indonesia labor union;
7. Forming rival labor unions (Yellow Unions) that are given easy access to carry out activities and recruit members with the aim of weakening the main labor union.
8. Engineering the formation of a new chairperson when the old labor union chairperson is successfully dismissed and/or unilaterally transferred.
9. Refusal to negotiate a collective labor agreement (PKB).
10. Offering the best positions on the condition that the employee must leave the labor union;
11. Criminalization with accusations of unpleasant actions and defamation.
12. Pitting the union against the workers by the company.
13. Preparing strategies to weaken the union for large companies using their power, where the company knows that workers are a vulnerable group [1].

Based on the elements described above, it is clear that PT. CNN Indonesia has engaged in union-busting practices, but the case resolution has been hampered by reporting issues. Law enforcement officials, in this case, are rarely or even completely unaware that

union busting is a criminal offense punishable by fines and/or imprisonment. The investigation, examination, and resolution of the case should be continued immediately. Even if the case does not go to trial and is resolved through restorative justice, the police must remain involved as the party overseeing the agreement's implementation. Unfortunately, most cases are referred to the Industrial Relations Court (PHI) or internal bipartite negotiations between the company and the labor union, and the decision only reinstates the dismissed workers without any compensation [14].

Following the example of labor courts in Europe, anti-labor-union disputes are resolved by providing compensation and restoring workers' rights, both individually and as union members. In the 2020/06/23/Trib.Trav.Liège ruling: the Liège Labor Court decided on June 23, 2020, that Madam G, a union member, filed a lawsuit against Agence Locale pour l'Emploi (ALE), a company. The company was found guilty of terminating employment as a form of union busting, in the form of discrimination against its union activities [16]. The court ruling required the company to reinstate the dismissed workers without prior notice and to pay them one year's gross salary, calculated based on the total income received by employees before taxes and other deductions, such as BPJS contributions, allowances, bonuses, and overtime pay.

In Belgium, the Constitutional Court issued Decision No. 64/2009, April 2, 2009 (2009/04/02-Cour-Const-nr.-64-2009.) on judicial review of Belgian Law 10/05/ 2007 on the prevention of discrimination, which was filed by two national labor unions, CNE and LBC-NVK, represented by their members, because the law did not protect workers from discrimination due to union membership, which was contrary to the Belgian Constitution (Articles 10–11 on equality) and international conventions (ILO, ECHR). Although the substantive review of the law was rejected, the court acknowledged that protection against discrimination based on belief and union activities must be guaranteed through labor laws contained in internal company regulations. If a violation is proven, the affected worker must be compensated in the amount of one year's salary.

Finally, the Brussels Labor Court (French-speaking) ruling of March 2, 2020, concerning a female worker who applied for union leave (*congé syndical*) but was dismissed prematurely (*prématurément*), led the French labor court to determine that there had been union busting in the form of prejudice and/or alleged discrimination against union activities. However, it is unclear how the court determined the worker's compensation.

Indonesia can apply the above sanctions without referring the case to the Industrial Relations Court (PHI), with the police as the supervisory authority for the implementation of the decision. Thus, the state can still intervene, with the support of the police, to perform supervision and complaint functions if the company fails to fulfill its obligations.

#### **4. CONCLUSION**

The results of the analysis presented show that PT. CNN Indonesia's actions in the form of union busting meet the criteria for criminal offenses as stipulated in Article 28 of Law Number 21 of 2000 concerning Labor Unions. Thus, the company is subject to criminal sanctions under applicable regulations. PT. CNN Indonesia's responsibility for violating the right to freedom of association is stipulated in Article 43 of the Trade Union Law. However,

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weak law enforcement, due to power relations and legal blindness, has resulted in the case being transferred to Industrial Relations Settlement, without effective criminal sanctions or legal certainty for workers. Therefore, the state's implementation and presence in prosecuting corporate crimes of union busting needs to be carried out consistently to provide a deterrent effect and guarantee workers' freedom of association rights [7].

The government needs to strengthen coordination between labor institutions and law enforcement agencies so that every report of union busting can be processed legally, not just through mediation. The enforcement of criminal articles must be carried out openly and fairly without bias towards corporations. On the other hand, companies also need to foster a culture of dialogue that respects the right to organize and make labor unions partners in creating a better, healthier, more productive, and socially just work environment.

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