

THE CURRENT LEGAL FRAMEWORK FOR STRIKES IN VIETNAM: REGULATION, CHALLENGES AND REFORM DIRECTIONS

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ABSTRACT

Strikes are an essential instrument of collective labour relations because they enable employees to exert lawful economic pressure when collective bargaining and dispute-resolution mechanisms fail. This article examines the current legal framework governing strikes in Vietnam through a doctrinal analysis of the 2019 Labour Code, Decree No. 145/2020/ND-CP, the 2024 Trade Union Law and Decree No. 129/2025/ND-CP on the allocation of authority under the two-tier local-government model. The analysis clarifies the legal concept and nature of a strike, the conditions under which employees may strike, the competence of representative organizations of employees, the voting and notice requirements, the rights and obligations of the parties, prohibited workplaces, and the rules on unlawful strikes. It finds that Vietnamese law formally recognizes the right to strike but channels it through a narrow and highly regulated procedure linked exclusively to interest-based collective labour disputes. The framework promotes orderly industrial relations and protects public interests, yet its complexity may create a gap between statutory legality and collective work stoppages in practice. The 2025 reallocation of administrative responsibilities from district-level to commune- and provincial-level authorities also requires careful coordination and eventual consolidation in the Labour Code. The article proposes simplifying procedural requirements, strengthening mediation and collective bargaining capacity, improving protection against retaliation, clarifying essential-service restrictions, and developing expedited legal support mechanisms so that strikes can function as a genuine last-resort right within a stable and responsible industrial-relations system.

Keyword: *Strike; Collective labour dispute; Representative organization of employees; Labour Code 2019; Trade Union Law 2024; Vietnamese labour law; Industrial relations.*

1. INTRODUCTION

The right to strike occupies a distinctive position in labour law. It is neither an ordinary contractual right nor merely a form of protest. Rather, it is a collective economic weapon available to employees when negotiation, mediation and other peaceful mechanisms have failed to resolve a conflict of interests. In market economies, the possibility of a strike can rebalance bargaining power between workers and employers, encourage meaningful collective bargaining and prevent unresolved tensions from being displaced into disorderly or violent conflict. At the same time, a strike interrupts production, affects third parties and may threaten essential public interests. For this reason, every legal system must determine not only whether the right exists, but also who may exercise it, for what purposes, under what procedure and subject to which limitations.

Vietnamese strike law has developed within a broader transformation of industrial relations. Rapid industrialization, foreign investment, migration to urban and industrial zones, and the expansion of large manufacturing supply chains have increased the importance of collective bargaining and workplace representation. The 2019 Labour Code, effective from 1 January 2021, modernized the legal architecture for employee representative organizations, collective bargaining and labour-dispute settlement. It retained the right to strike, but placed that right at the end of a structured sequence that begins with an interest-based collective labour dispute and compulsory mediation. The Code therefore treats a strike as a last resort rather than an initial response to workplace dissatisfaction.

The legal framework has continued to evolve after the Labour Code entered into force. The 2024

Trade Union Law, effective from 1 July 2025, confirms the right and responsibility of the Vietnam Trade Union to organize and lead strikes in accordance with law. In parallel, the introduction of a two-tier local-government model required the redistribution of functions previously assigned to district-level authorities. Decree No. 129/2025/ND-CP consequently assigns important strike-related notice and intervention functions to commune-level People's Committees and provincial specialized authorities. These developments make a current reassessment necessary because the text of the Labour Code still refers in several provisions to district-level bodies, while the operative administrative structure has changed.

A further reason for reassessment is the persistent tension between formal legality and industrial-relations practice. Vietnamese law provides a detailed lawful pathway, including a strike ballot, a majority threshold, a written decision and advance notification. These safeguards aim to verify collective consent, facilitate negotiation and allow public authorities to prepare for possible disruption. Nevertheless, the cumulative requirements may be difficult to satisfy where workers lack an effective representative organization, where the legal characterization of the dispute is uncertain, or where the dispute concerns urgent wage, bonus or working-condition demands. Historical studies of labour disputes in Vietnam have repeatedly noted that collective work stoppages often emerged outside the statutory sequence. Although the 2019 Labour Code improved the framework, the underlying policy challenge remains: legal regulation must be sufficiently structured to protect legitimate interests but sufficiently accessible to be used in reality.

This article provides an overview of the current law on strikes in Vietnam. Section 2.1 explains the concept, legal nature and functions of a strike and distinguishes it from related phenomena such as individual refusal to work, spontaneous collective stoppages and employer lockouts. Section 2.2 examines the applicable legal framework, including substantive conditions, procedural steps, party rights, unlawful-strike rules, prohibited workplaces, administrative intervention and recent changes in local-government competence. The article then evaluates the principal difficulties and proposes

reform directions. The method is primarily doctrinal, based on current Vietnamese legislation and relevant International Labour Organization standards, supplemented by institutional and policy analysis.

2. OVERVIEW OF THE LAW ON STRIKES IN VIETNAM

2.1. The Concept, Legal Nature and Functions of a Strike

Article 198 of the 2019 Labour Code defines a strike as a temporary, voluntary and organized stoppage of work by employees for the purpose of pressing demands in the process of resolving a labour dispute. The strike must be organized and led by the representative organization of employees that has the right to request collective bargaining and is a party to the dispute. This definition identifies five central characteristics: collective participation, interruption of work, voluntariness, organization, and a dispute-related objective. Each element is legally significant because it separates a protected strike from conduct that may fall outside the statutory regime.

First, a strike is collective. An individual employee who refuses to perform work because of a personal grievance does not thereby conduct a strike; the matter is governed by the employment contract, workplace discipline and the rules on individual labour disputes. A strike reflects a shared claim or bargaining position of a group of employees. The collective dimension also explains why the law assigns a central role to a representative organization rather than allowing any individual to announce a strike on behalf of others.

Second, a strike involves a temporary stoppage of work. Employees do not terminate their employment relationships merely by participating. The employment contracts continue to exist, although participating employees generally do not receive salary or statutory benefits for the period of the strike unless the parties agree otherwise. The temporary character distinguishes a strike from mass resignation. It also means that the objective is normally to influence the employer's bargaining position and then resume work once a settlement is reached or the action is ended.

Third, participation must be voluntary. Coercing employees to join a strike, or preventing non-

participants from working, is prohibited. Voluntariness protects both collective action and individual freedom. It ensures that majority support can authorize the organization of a strike without converting the strike into compulsory participation by every employee. This balance is particularly important in enterprises with diverse occupational groups and different levels of exposure to the disputed issue.

Fourth, the strike must be organized. Under Vietnamese law, organization is not merely factual coordination; it is a legal requirement tied to the status of the representative organization of employees. The organization must have the right to request collective bargaining and must itself be a disputing party. This requirement aims to ensure accountability, a defined channel of communication, and a responsible actor capable of conducting a ballot, issuing a written decision, negotiating with the employer and ending the strike. However, it also makes access to the lawful strike procedure dependent on the existence and practical capacity of a qualifying representative body.

Fifth, the strike must pursue demands within the labour-dispute settlement process. The Labour Code permits a strike only in relation to an interest-based collective labour dispute. Such a dispute concerns the establishment of new working conditions, benefits or obligations through bargaining, rather than the enforcement of rights already fixed by law, an employment contract, a collective bargaining agreement or another binding instrument. A rights-based dispute must be resolved through mediation, arbitration or court mechanisms. The distinction reflects the traditional view that adjudication is appropriate for determining existing legal rights, whereas a strike is a bargaining instrument for creating or improving future terms.

The legal nature of a strike is therefore dual. It is a fundamental collective labour right, but it is also a regulated exception to the employee's contractual duty to work. The legitimacy of the stoppage depends on compliance with statutory conditions. The right is not absolute: restrictions may be imposed to protect the rights of others, national security, public health, public order and essential social interests. Yet restrictions must remain proportionate. If the procedure is so demanding that employees cannot realistically use

it, formal recognition may fail to provide an effective right.

International labour standards provide an important interpretive context. The right to strike is not stated verbatim in ILO Convention No. 87, but ILO supervisory bodies have long treated it as an intrinsic corollary of freedom of association and the right of workers' organizations to organize their activities. Vietnam has ratified Convention No. 98 on the Right to Organise and Collective Bargaining, while Convention No. 87 remains unratified. Even so, the principles of freedom of association, effective collective bargaining and protection against anti-union discrimination remain relevant to the design and evaluation of national strike law.

From a policy perspective, strikes serve several functions. They provide leverage in collective bargaining, reveal unresolved workplace problems, create incentives for employers to negotiate seriously and enable workers to express collective preferences. The possibility of lawful industrial action can also promote social stability by channeling conflict through known procedures. Conversely, uncontrolled stoppages may generate uncertainty, damage property or disrupt essential services. A sound legal framework should therefore neither romanticize nor suppress strikes. Its objective should be to make peaceful, representative and proportionate collective action possible while encouraging settlement before disruption occurs.

In summary, Vietnamese law conceptualizes a strike as a carefully controlled final stage of an interest-based collective dispute. The concept is consistent with the view that strikes should be collective, purposeful and organized. The principal question is not whether regulation is legitimate, but whether the present combination of organizational, substantive and procedural conditions produces an accessible and effective mechanism.

2.2. The Current Legal Framework for Strikes in Vietnam

The present framework is formed primarily by the 2019 Labour Code, Decree No. 145/2020/ND-CP detailing labour conditions and industrial relations, the 2024 Trade Union Law, and Decree No. 129/2025/ND-CP on the division of authority under the two-tier local-government system. Administrative sanctions under Decree No.

12/2022/ND-CP and the general rules on civil, administrative and criminal liability may also apply where parties commit prohibited acts. These instruments must be read together because the Labour Code establishes the substantive right and core procedure, while later legislation specifies institutional responsibilities and implementation details.

The first substantive condition is that the dispute must be an interest-based collective labour dispute. Under Articles 195 and 196 of the Labour Code, mediation by a labour mediator is mandatory before the dispute may proceed to arbitration or a strike. If mediation succeeds, the written record is binding in a manner comparable to an enterprise collective bargaining agreement. If mediation fails, is not commenced within the statutory period, or a party fails to comply with a successful mediation record, the parties may jointly request the Labour Arbitration Council to resolve the dispute, or the representative organization of employees may initiate the strike procedure.

Arbitration is consensual rather than compulsory. Once the parties have jointly requested arbitration, however, the representative organization may not call a strike while the arbitral process is pending. A strike becomes available again if an arbitral tribunal is not established within the prescribed period, if it fails to issue a decision on time, or if the employer does not implement the arbitral decision. This design encourages voluntary adjudicative settlement without allowing one party to use arbitration merely to delay industrial action indefinitely.

The second condition concerns the organizer. Only the representative organization of employees that is entitled to request collective bargaining and is a party to the dispute may organize and lead the strike. The 2024 Trade Union Law expressly includes organizing and leading strikes among the functions of the Vietnam Trade Union. The Labour Code's broader terminology also recognizes representative organizations of employees at the grassroots level. In legal theory, this plural formulation supports worker representation beyond a single organizational form. In practice, the availability of a lawful strike still depends on whether an organization has legal status, bargaining competence, internal decision-making capacity and sufficient independence to represent the employees concerned.

The third condition is compliance with the procedure in Articles 200 to 202. The process has three stages: conducting a survey, issuing a strike decision and notice, and commencing the strike. Before the decision is made, the representative organization must survey either all employees or the members of its management board. The survey asks whether the participants agree with the strike and presents the proposed time, place, scope and demands. It may be conducted by ballot, signature collection or another method. The organization determines the timing and method but must notify the employer at least one day in advance and must avoid disrupting normal business operations during the survey.

A written strike decision may be issued only when more than fifty per cent of the persons surveyed agree. The decision must record the survey result, the starting time and venue, the scope of the strike, the employees' demands, and the name and address of the representative of the organizing body. At least five working days before the intended start, the decision must be sent to the employer and the competent state authorities. If the employer has not accepted the demands by the stated starting time, the strike may proceed.

The notice requirement has been affected by the reform of local government. Article 202(3) of the Labour Code refers to the district-level People's Committee and the provincial labour authority. Since the two-tier model no longer operates district-level administrations, Article 68 of Decree No. 129/2025/ND-CP provides the operative allocation: the strike decision is sent to the employer, the commune-level People's Committee and the provincial specialized authority responsible for internal affairs and labour functions. Related provisions assign the receipt of temporary-workplace-closure notices and the initial handling of procedurally defective strikes to commune-level authorities. This is a practical solution, but the inconsistency between the wording of the Code and the new administrative structure should eventually be resolved through legislative amendment rather than left indefinitely to implementing decrees.

Before and during the strike, negotiation remains possible. Article 203 allows the parties to continue bargaining or jointly request mediation or arbitration. The organizing representative body may withdraw the strike decision before the strike, terminate the action while it is in progress,

and request the court to declare the strike lawful. The employer may accept all or part of the demands, temporarily close the workplace where necessary to maintain operations or protect assets, and request the court to declare the strike unlawful. These rights emphasize that the strike is part of an ongoing dispute-resolution process rather than an end in itself.

The Labour Code also protects individual choice and guards against retaliation. Employers and other actors may not obstruct the exercise of the right to strike, compel participation, prevent non-participants from working, use violence, damage property, disrupt public order, or exploit the strike to commit unlawful acts. In particular, an employer may not terminate employment, discipline, transfer or otherwise retaliate against employees or strike leaders because they prepared for or participated in the strike. These protections are indispensable. A lawful procedure has little value if workers reasonably fear dismissal or punishment for using it.

The economic consequences are allocated in Article 207. Employees who join the strike generally receive no salary or other statutory benefits for the period of non-work unless the parties agree otherwise. Employees who do not participate but cannot work because of the strike are entitled to work-suspension pay and other lawful benefits. This distinction reflects the principle that strikers bear the immediate economic cost of their chosen action, while non-participants should not lose income simply because the workplace is affected.

A strike is unlawful in six principal circumstances. It is unlawful if it does not arise from a case permitted by Article 199; if it is not organized by a competent representative organization; if the statutory procedure is violated; if the dispute is being resolved by a competent body or person; if the strike occurs at a prohibited workplace; or if it proceeds after a competent authority has ordered postponement or cancellation. The breadth of these grounds shows that legality depends on both substance and procedure. Even where workers' demands are understandable, a defect in organization, timing, notice or dispute classification may lead to an unlawful-strike finding.

Strikes are prohibited at workplaces where they may threaten national security, national defence,

public health or public order. Decree No. 145/2020/ND-CP contains the government list and provides mechanisms for resolving disputes in such workplaces. The policy rationale is legitimate because interruption of genuinely essential services can endanger life, safety or the basic functioning of society. Nevertheless, international labour principles favor a narrow definition of essential services and effective compensatory mechanisms, such as rapid and impartial arbitration, for workers deprived of the right to strike. Vietnamese law should therefore ensure that the list is periodically reviewed and that restrictions are based on the actual consequences of interruption rather than the general economic importance of an enterprise.

The President of the provincial People's Committee may postpone or cancel a strike where it threatens serious damage to the national economy or public interests, or threatens national security, defence, public health or public order. Implementing rules regulate the procedure and the treatment of employees' interests. Such emergency authority is understandable, but it must be exercised transparently, with written reasons, a clear factual basis and access to review. Vague or overly broad intervention standards could undermine the predictability of the right.

The current framework also provides an administrative response to strikes that do not comply with the required sequence. Under the reallocated competence introduced in 2025, the chairperson of the commune-level People's Committee coordinates with the trade union and relevant agencies to meet the employer and the representative organization, assist the parties in resolving the dispute, restore normal operations and guide them toward the proper legal procedure. This conciliatory approach is preferable to treating every defective stoppage solely as misconduct. It recognizes that an unlawful procedure may still reveal a genuine collective grievance requiring prompt dialogue.

Despite these positive elements, the framework faces several practical challenges. The first is procedural density. Employees must correctly classify the dispute, complete mediation, determine whether arbitration has been requested, act through a qualified representative organization, conduct a valid survey, reach the statutory majority, prepare a detailed decision and serve multiple notices. Each step has a

legitimate purpose, but their cumulative effect may make the procedure too slow or technically demanding for urgent workplace conflicts. A minor error can transform otherwise peaceful industrial action into an unlawful strike.

The second challenge is representational access. The law assigns responsibility to a representative organization of employees, but not every workplace has an organization that is sufficiently established, trusted and capable of undertaking complex legal steps. Workers may then resort to informal leaders or spontaneous action. Reform should preserve organizational accountability while providing a lawful pathway for employees in workplaces where no qualified organization is functioning. Options include expedited support by higher-level trade unions, temporary elected strike committees subject to safeguards, or a statutory mechanism allowing employees to request official facilitation of representation.

The third challenge is the distinction between rights-based and interest-based disputes. In practice, collective demands often combine both elements. Workers may claim unpaid contractual benefits while simultaneously seeking higher allowances, new bonuses or revised production norms. If the dispute is characterized incorrectly, the strike may be unlawful. Labour mediators and local authorities should issue prompt, reasoned guidance on classification, and the law should allow mixed disputes to be separated without invalidating the entire collective process.

The fourth challenge concerns institutional capacity. Mediation is a mandatory gateway, so the accessibility, independence and professional competence of labour mediators are crucial. Arbitration councils must also be capable of forming tribunals and issuing credible decisions within the statutory time limits. If these institutions are weak, workers and employers may view the formal process as a delay rather than a solution. Investment in specialized training, case-management systems, multilingual support in industrial zones and stable funding is therefore as important as statutory reform.

The fifth challenge is the transition to the two-tier local-government system. Commune-level authorities are now closer to workplaces and may respond rapidly, but many communes will need legal expertise and industrial-relations experience to handle complex strikes. Clear coordination

protocols are needed among commune authorities, provincial internal-affairs agencies, trade unions, police, mediators and employers' organizations. Standard forms, digital notice channels and an integrated reporting system would reduce confusion and ensure consistent practice across provinces.

Several reform directions follow from this analysis. First, the Labour Code should be amended to align institutional references with the current local-government structure. Second, the strike procedure should be simplified without removing core safeguards. Electronic voting, secure digital signatures and online notice should be expressly recognized. The required content of decisions should be standardized, and harmless technical defects should not automatically invalidate a strike where collective consent and adequate notice are clear.

Third, Vietnam should strengthen protection against anti-strike retaliation through rapid interim remedies, effective reinstatement and meaningful sanctions. The burden of proof should be adjusted where adverse action closely follows lawful strike participation. Fourth, access to pre-strike legal advice should be institutionalized. A representative organization should be able to obtain an expedited, non-binding opinion from a labour authority or mediator on dispute classification, procedural compliance and competent recipients of notice.

Fifth, restrictions on prohibited workplaces and administrative postponement should be periodically reviewed for necessity and proportionality, with robust alternative dispute-resolution guarantees. Sixth, aggregate data on collective disputes, ballots, notices, settlements, court determinations and administrative interventions should be published. Transparent data would enable evidence-based reform and help identify whether the statutory pathway is genuinely used.

Ultimately, the law should seek to transform the strike from an exceptional event surrounded by procedural risk into a credible last-resort component of collective bargaining. A usable strike right does not necessarily increase strikes. On the contrary, when both parties know that lawful industrial action is possible, they may have stronger incentives to negotiate and settle before a stoppage occurs.

3. CONCLUSION

Vietnamese law formally recognizes the strike as a temporary, voluntary and organized collective stoppage used to press demands in an interest-based collective labour dispute. The 2019 Labour Code establishes a coherent sequence based on compulsory mediation, optional consensual arbitration, collective consultation, majority approval, a written decision and advance notice. It also regulates the rights of the parties, protects non-participants, prohibits retaliation and violence, identifies unlawful strikes, and safeguards national security, public health and public order.

The framework has important strengths. It treats the strike as part of collective bargaining and dispute resolution, requires demonstrable employee support, provides identifiable leadership and keeps negotiation open throughout the process. The 2024 Trade Union Law reinforces the institutional role of trade unions, while Decree No. 129/2025/ND-CP adapts strike-related administrative responsibilities to the two-tier local-government model. These reforms show a continuing effort to modernize industrial relations and maintain social stability.

However, effectiveness depends on accessibility. A lawful right that can be exercised only through a highly technical and lengthy procedure may not channel real workplace conflict. The restriction to interest-based disputes, the dependence on a qualified representative organization, the risk created by minor procedural defects, uneven mediation capacity and the transition of authority to commune-level institutions all require further attention. The gap between statutory design and collective action cannot be closed by sanctions alone; it requires trusted representation, credible bargaining and responsive dispute-resolution institutions.

Future reform should therefore simplify the procedure while preserving democratic consent and adequate notice; strengthen mediation, arbitration and representative organizations; provide rapid remedies against retaliation; clarify mixed disputes and essential-service restrictions; digitize ballots and notifications; and amend the Labour Code to reflect the current administrative structure. With these improvements, the right to strike can operate as intended: a responsible last resort that supports effective collective

bargaining, protects workers' legitimate interests and contributes to progressive, harmonious and stable labour relations in Vietnam.

4. ACKNOWLEDGEMENTS

The author would like to thank TNU - University of Sciences for its academic support in the preparation of this article.

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