

Existing Problems and Possible Responses for Labour Rights During COVID-19 Period: From MNEs Responsibility Perspective

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ABSTRACT

In these days of economic globalization, the power held by MNEs is increasing continually, which can even determine the stability of the world economic and the welfare of the whole society. As a major group of employers, the decisions and actions of MNEs affect the welfare of billions of workers. Especially under the COVID-19 pandemic, whether MNEs are under the obligations to further protect the rights and interests of workers constitutes a concerned issue. This paper uses case study with the perspective of comparative law, probing into the legal basis, existing problems and development suggestions of MNEs to assume the responsibility of labor protection under the background of epidemic, and finally puts forward some suggestions for perfecting the legal system of labor protection from three aspects: the perfection of the subject, the legislative reform and the expansion of the connotation of responsibility.

Keywords: COVID-19, labour rights and interests, corporate social responsibility.

1. INTRODUCTION

The COVID-19 virus has evolved into a global public health and economic crisis, which has greatly affected nearly every aspect of social life around the world. The economy is worse than that of the 2008 crisis, quantifying a drop in the GDP by between 2 to 3 points for each month of confinement, causing the loss of more than 195 million jobs. Multinational enterprises(MNEs) and their workers are suffering economic downturn and unreasonable dismissals respectively. It is estimated by ILO that a huge number of jobs would be lost, roughly between 5 million and 25 million. More seriously, the pandemic would see a dramatic drop in labour income, which ranges from USD 860 billion to USD 3, 4 trillion. Taking the U.S. for example, the unemployment rate peaked at an unprecedented level, reaching 14.7% in April 2020, which has ever been seen since 1948. In this case, the government has the primary responsibility to react to those serious economic and social problems, while many corporations have been helping to shore up the health system response. Economic entities from various fields are working with governments to face the

pandemic, which includes MNEs. For instance, Amazon has recognized the importance of taking social responsibility and protecting employees' rights. Specifically, Amazon has launched various initiatives to support employees, help customers and aid community relief, starting to focus on the "triple bottom line" of financial, social and environmental performance, not just profits.

Nevertheless, Amazon put its employees in overloaded and dangerous working conditions since it has obtained permission from the government to continue to operate during the epidemic, which led to protest from workers for higher wages and more sick leaves. It is reported that New York City officials were investigating whether Amazon improperly retaliated against a worker it fired who had been involved in the protest. They suspected Amazon fired the employee for exposing his real working environment on social networks [1]. On November 1, 2020, Derrick Palmer, who worked as a Warehouse Associate of Amazon assert claims for public nuisance and breach of duty to provide a safe workplace as well as failure to timely pay COVID-19relief in violation of New York Labor Law [2]. This has raised concerns about whether there are

more workers working in danger. The Amazon case is far from alone, effective measures and protections for employees are in short, which has an adverse effect on MNEs itself eventually. The case is a reflection of tensions between companies and employees who do not trust their companies during the outbreak. It is common to see that MNEs still do not know what to do, which legal document to follow, and do not do well enough.

2. EXISTING PROBLEMS IN PROTECTION FOR LABOUR RIGHTS

Failure for MNEs to comply with such an obligation has caused extensive attention. For this part, this paper would like to demonstrate the current situation and legal issues of the protection of workers' rights and interests from three aspects.

2.1. *Inexplicit role of MNEs*

Traditionally, it is considered that in public emergencies, the government should bear all kinds of protection obligations. It is the same in the case of the social problems that caused by COVID-19, such as unemployment and lack of medical care. The obligation to protect the rights of individuals from violations by others may be fundamental to the human rights obligations of modern states.

However, the national capacity is limited and the realization of rights requires costs. Based on the reality of epidemic prevention, the government needs to introduce timely policies and measures to promote social stability and the protection of workers' rights and interests. Although in the short term, it will have a certain effect, but problems still exist, such as lack of legal basis and conflict of policy content. Therefore, in order to avoid the dilemma that the lack of legal protection for workers' rights and interests in emergencies, government and enterprises shall assume different responsibilities. States and businesses focus on different purpose and so each has a specific set or responsibilities in their particular field of operations. Absolute state-centralism is difficult to sustain in the present situation. The rise of MNEs suggests the old assumptions about state monopolies on lawmaking and on the hierarchy of that law, and regulatory authority may no longer be useful as a limiting parameter for analysis. The relatively short experience so far with COVID-19 has reinforced the supplementary role of businesses in maintaining the quality of life for diverse populations and communities. When it comes to the protections for workers' rights and interests, it is not enough to rely on the government or its functional departments. As a powerful employer, MNEs assume the minimum legal obligation of providing necessary security for their employees in working place [3]. Also,

it is a reasonable result that MNEs' moves are more directly and effectively.

2.2. *Lack of regulations*

MNEs are active social partners, what MNEs do really matters. Nevertheless, as a matter of fact, MNEs ignored their roles in the whole society during the pandemic. It can be attributed to the lack of regulations both in domestic law and international law. On the one hand, domestic law includes the host state and the home state of MNEs. It is common to see that in order to attract more international investment on the basis of a more lax regulatory regime, states may use their legislative power to establish "regulatory havens" [4]. Thus, MNEs may be not under too many compulsory obligations so that in the scenario of the COVID-19, there is less responsibility for MNEs in different aspects which includes protections for labour rights. Basically, rules concerning these issues are ambiguous, which means there is lack of specific requirement for MNEs. For instance, Foreign Investment Law of the People's Republic of China provides that employees of a foreign-funded enterprise shall establish a trade union and conduct trade union activities according to the law to protect the lawful rights and interests of employees [5]. The provision roughly mentions the general obligation for MNEs to undertake to protect the labour rights. Nevertheless, it failed to provide more detailed rules for MNEs to implement such obligation. Thus, it leads to an unreasonable consequence that the provision is in fact meaningless. More importantly, there is no clarified responsibility for MNEs to assume once they breach the obligation. In this case, the regulation regarding labour right protections for MNEs is not powerful. It is an example of domestic regulation in host state, similar consequence could also be found in other countries. To summarize, regulations under the host states are lack and ambiguous, which could not have an effect on the activities of MNEs.

With regard to the home state law, generally, the impacts of laws and regulations under the home state are limited. It is because the regulations from the home state may be exclusively within the territorial jurisdiction. In this regard, operations of MNEs in the foreign countries may be not fully under the control and regulation of the home state. Even though under some circumstance, the home state may extend to apply its laws extraterritorially, there may be no effective regime to enforce MNEs to protect labour rights. The reason for this is that the home state may seek to protect its strategic interests by imposing less obligations or responsibilities for its own multinational corporate.

Meanwhile, effective and enforced rules in the international law are of lack. As is acknowledged, most of the international law is soft law, which has no legal bindings on states. Initially, the outbreak of COVID-19

is of a sudden and the disease spread so fast, so there is no existing rules or regimes to apply. Though in the wake of the public health emergency, the United Nations and ILO followed to issue a wide range of legal documents to provide guidance for states, it takes time for national policy makers to legislate the domestic rules. In the very beginning of the pandemic, work rights and interests were not under great consideration. As the health crisis has morphed into a full-blown economic and employment crisis, large-scale, coordinated and comprehensive labour rights responses are in need [6]. In fact, the UN and ILO as well as other international organizations reacted quickly by publicizing a collection of declarations and guidance. Nonetheless, the most important thing is that those legal documents has no legal binding on states, the observation is on the basis of voluntary. States may have moral obligation but rather international obligation to act in conformity with those rules, and the fact is states tend to take measures on their own.

2.3. Inappropriate responses of MNEs

The responsibility of MNEs is now facing the uncertain consequences and voluntary implementation. In the Amazon case, the company promised to expand offline delivery services to provide better services to individuals affected by the epidemic, but the move aroused dissatisfaction among employees, which, while also a way for companies to assume social responsibility in the outbreak, did not appear to be implemented in a way that involved employees. Wrong policy is designed to distract employees from unhygienic conditions and high-risk situations. Amazon could have taken employee participation and security into account when designing expanded grocery distribution services but it failed to do so. What MNEs have done today could only meet the lowest standard of the law, which means those enterprises are only in accordance with the requirements by which they are forced to do. These external legal regulations are developed outside the corporation and showed few results based on current performance. Some MNEs, such as Amazon, do have internal codes. However, most MNEs do not establish an effective mechanism for workers to deal with practice and resolve complaints. Only unilateral formulation of policies exists and workers are not included in the policy-making process. Critics argued that management would sooner cover up abuses than expose them to public scrutiny. The demand for independent monitoring and verification, independent of corporate control, became irresistible [7].

The deep-seated reasons for this phenomenon are that MNEs do not fully understand the social responsibility they should bear. The protection of workers' rights not only refers to the responsibility of workers for the life and health of workers during the

production work for enterprises, but also includes every aspect of the employment, appointment and removal of enterprises, as well as the process of salary distribution. In the current diversified development of employment forms, the implementation of unified provisions for different levels of workers has resulted in the substantive imbalance of worker protection. Less attention has been paid to the demands of different levels of workers.

3. PERFECTION FOR MNEs TO LABOUR PROTECTION

3.1. Developing MNEs' collaborative role

It is the government that has the primary responsibility to safeguard the human lives. However, as the health crisis are more and more becoming an economic crisis, even a human rights crisis. As the most positive actors in the society, the enterprises including MNEs are under the responsibility to protect the livelihoods.

Social responsibility is the theoretical basis for enterprises to take supporting measures for the economy and the labour market. Since MNEs conduct their business activities around the world, they have strong power to make trans-boundary impact and make essential change. The theory of social responsibility provides that corporations assume responsibilities and support measures that far more than mandated by law. In fact, many corporations have been helping to shore up the health system response in the pandemic. For instance, manufacture corporations are working on manufacturing masks and ventilators by shifting or adding new production lines. The effort paid by businesses and corporations to step up to the challenge cannot be denied. Also, they are expected to support more on their workers since they undertake social responsibilities not only as a corporation but also as an employer.

The pandemic is an ever important time to take a pro-active stance on reputation management. In the present, particularly in post COVID-19 era, corporations as well as the world level MNEs are supposed to focus on employment, workers' rights and social dialogue, which is called on by ILO as a human-centred recovery. By contrast, inappropriate actions such as large-scale layoffs may dent the reputation, which may influence the corporation in the long run. Thus, in the pandemic and even post COVID-19 era, MNEs are expected to drive a proactive approach to benefit the rights and interests of their workers.

Then, as demonstrated above, the government has the primary responsibility to provide personal protective equipment, test and vaccine; corporations are in a collaborative role to support the government.

Comfortingly, pharmaceutical companies are working with governments to increase vaccine. Still, this is far from enough. Cooperation with government departments as well as social dialogue have been a theme of the post COVID-19 era. The United Nations calls on all businesses and corporations to provide financial and technical support to governments by contributing to the COVID-19 Solidarity Response Fund.

3.2.Modification on the legal regulation

In the second part of the essay, it has been pointed that regulation in the legal perspective is not sufficient for two reasons. Firstly, rules in domestic law are in lack, and secondly, regulations from international law have no legal bindings on states. In reaction to those problems, actions in legal system must be taken. The domestic law is regarded as hard law, which is enforced more efficiently and has profound effect on the whole society. In this sense, both the host state law and the home state law are in need of amplifying and amending. The home state is required to assume more responsibilities to regulate its entities because of national jurisdiction. Moreover, under the legal logistic, the regulation from the home state is much more direct and effective. On the other hand, the host state plays an important role as well. Since the MNEs are conducting their business activities in the territory and within control of the host state, regulations in host state are also of crucial importance. Albeit the COVID-19 crisis was all of a sudden, as it has lasted for more than years, states are in enough time to enforce their domestic law. Especially in the post pandemic era, brand new social problems gradually come out, which is in need to be solved in the perspective of law. Further, for the international law, with the nature of failing to bind any state, it is commended that the UN could contribute more since it is the most powerful organ in the world. Some legal documents are expected to be released to call upon more countries.

3.3.Further multiple protections

The company's approach ignores the mental health of employees who have to go to work during the pandemic. The connection between work and mental health and preventing ill health is a global concern seriously emphasized by international organizations, such as the World Health Organization and the International Labor Organization [8]. Workers are psychologically stressed, afraid of infection, fired for absenteeism, and the attendant financial problems. If the psycho-social safety of the workers is not considered and improved, it may reduce the quality of services and products, and increase accidents [9]. With the development of society, the protection of labor rights and interests should not only be limited to the material

level, but more on psychological feelings. In addition to protecting the wages of employees during the epidemic and providing a safe working environment, it is also crucial to protect the mental health of employees, which is also a part of workers' right concerning life and health.

It is not difficult to see that the existing MNEs-related labor rights protection system is still very immature. After all, the creation of a regulatory framework does not mean that voluntary initiatives are not important. Indeed, the law is only one of a range of factors that influence corporate behaviour. The theories of corporate power and its role of rule makers further support the argument that companies, especially MNEs, are expected to do more than the law literally requires [10]. Firstly, for the basic purpose of survival, MNEs are supposed to work closely with governments and workers' organizations to urgently co-create policy responses to avert the immediate risk of thousands of business closures and millions of job losses. Then, for the stabilization, MNEs are at the forefront of ensuring a safe return to workplaces, with a specific focus on occupational safety health at work. Last but not least, for the recovery, MNEs should build relationships nurtured with governments to help drive sustainable re-booting of national economies and jobs markets, in presenting solutions for supporting wages, safeguarding jobs and for ensuring loans for employers. Till now, some technical measures taken by MNEs are highly praised, for instance, they supply financial packages, wage subsidies and credit schemes and facilitate remote working on a massive scale and putting the health and well-being of staff front and centre. Even better, they supplies through the manufacture and distribution of PPE and medical equipment. Certainly, more sufficient measures can be taken such as taking a proactive stance on equality and inclusion and youth employment, providing flexible working opportunities and driving public or private sector partnerships.

As the health crisis has morphed into a full-blown economic and employment crisis, MNEs will need to be at the forefront of helping national economies and labour markets to reboot and adapt to the post-COVID world, working with governments to develop the right incentives for employers to retain existing staff identifying short and longer term skills needs.

4. CONCLUSION

Economic globalization is currently at a fast pace, MNEs are more likely to be the employer. In the era of global business, workforce may easily be in a powerless position due to the lack of regulation and other potential problems. With more power to make impact on government and other stakeholders, MNEs are expected to contribute more. Especially in the post COVID-19 era, continuing protection for labour rights is demanded.

MNEs are the heart of economic globalization, their actions are of weight. There is no easy way for the MNEs to readily provide the perfect amount of support to their employees. Every path forward is fraught. This paper presents just a few of the ways that the MNEs could more effectively use existing intermediaries to help the survive of their labours during this unprecedented shock. It is necessary to carry out cooperation between governments and enterprises internationally and recreate the principle of labour protection in the future.

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