

YANGON UNIVERSITY OF ECONOMICS
MASTER OF DEVELOPMENT STUDIES PROGRAMME

**THE ROLE OF THE TRADE UNIONS IN THE LABOR DISPUTE
SETTLEMENT**
(ALL BURMA FEDERATION OF TRADE UNIONS)

YE YINT KHANT MAUNG

MDevS 14 – 22

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ACADEMIC YEAR (2017 – 2019)

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MDevS II - 22

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A thesis submitted in partial fulfillment of the requirements for the Degree of Master of
Development Studies (MDevS)

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This is to certify that this study entitled “**The Role of Trade Unions in the Labor
Dispute Settlement (All Burma Federation of Trade Unions)**”, submitted as a partial

fulfillment of the requirements for the degree of Master of Development Studies has been accepted by the Board of Examiners.

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Abstract

After legalization of trade unions had been done, numerous trade unions were formed and the role of trade union in dispute settlement process was contentious in current labor politics. There were also the unions that don't want to legalize their existence. This research, specifically to such kind of unions, aims to explore why All Burma Federation of Trade Unions (ABFTU)

was organized beyond the current legal structure and what is their role in solving workers disputes in the factory. This would be find out the key challenges of the formation of member unions for trade unionism in basic level by two case studies which are MCE Trade Union and Fu Yuen Trade Union. This research is conducted by eight semi structure in-depth interviews (KII) and one focus group discussion, secondary data of related parties as well. By conducting qualitative analysis, Myanmar Trade Unionism is in the process of developing and in the struggle to be granted for the workers' rights. However, the basic labor unions are under oppressive behavior of factory management. The key challenges for trade union movement are lack of sufficient funds in the stage of turmoil and oppressive discrimination of employers.

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LIST OF ABBREVIATIONS

AB	= Arbitration Body
ABFTU	= All Burma Federation of Trade Unions
AC	= Arbitration Council
AFFM	= Agriculture and Farmers Federation of Myanmar
BOC	= Burmah Oil Company

BSPP	= Burma Socialist Program Party
BWFM	= Building and Wood Workers Federation of Myanmar
CSR	= Corporate Social Responsibility
CTUM	= Confederation of Trade Union of Myanmar
FTUB	= Federation of Trade Unions of Burma
GCBA	= General Council of Burmese Association
GSP	= General System of Preferences
ITF	= International Transport Workers' Federation
IWFM	= Industrial Workers' Federation of Myanmar
MCE	= Myanmar Consumer Enterprise
MGMA	= Myanmar Garment Manufactures' Associations
MICS	= Myanmar Industries Craft and Service Unions Federation
MTLF	= Myanmar Transport and Logistics Federation
MWFM	= Mining Workers' Federation of Myanmar
NRC	= National Registration Card
TCB	= Township Conciliation Body
USDP	= Union Solidarity and Development Party
WCC	= Working Coordination Committee
YMBA	= Young Men's Buddhist Association

Chapter 1

Introduction

1.1 Rationale of the study

With the commence of the Myanmar Democratic transition in 2010 under new democratic U Thein Sein's government, many private media outlets were established, the level of freedom of expression increased. The privatization and liberalization process are implemented and the perspective of international community is also change to the more positive one. Existing scholarship argues about Myanmar's transformation, the changes that are happening and the ones that need to take place such transparency in policies formation, implementation and lack of further objectives in minority management, economic policy, as well as the obstacles to amend the 2008 constitution, etc. After Myanmar had been isolated the last several decades, it turned back again into the international community with this democratization process. One important piece of the process was the effort of Myanmar's new quasi-democratic government to amend the various aspects of legal systems which included labor institutions in order to match with international standards. It can be assumed for the attempts to change the perception of Foreign for releasing in sanctions. Nonetheless Myanmar employers and employees to this day have narrow knowledge related to domestic labor law, international standards of labor regulations and its implications. Without proper regulation and institutions, the dynamic in labor relations holds a disbalance in power in favor of the employer (RFA 2017, April 7). Individual employees lack the time, money, expertise and outside help to utilize the labor laws to their advantage. Even labor regime in Myanmar itself has been shaped by other exogenous actors like foreign governments, International labor organization personnel, transnational corporations as well as domestic capitalists (Arnold & Campbell, 2017). The young labor institutions and lack of widespread knowledge on them are the considerable reasons of it.

With the difficult power dynamic in the labor market the role of trade unions is central to create a balance between the different interest groups. In current Myanmar, there are many kinds of trade unions, according to the government registration lists, there are 2876 unions as the employers, workers, basic, federations and confederations (i.e. basic labor organizations as members of the confederation of trade union of Myanmar (CTUM), action labor right, Solidarity trade union of Myanmar (STUM), Myanmar Industries Craft and Services Unions Federation (MICS), Yaung Chi Oo workers associations, Myanmar Garment Manufacturers Associations (MGMA) and so on) formed by employers, employees and others third parties who support the implication of labor rights and protection of them. Because of these different origins of the trade unions it is apparent that they have diverse agendas and stances on legal reformation, encouragement of labor strike depending on the ways they believe to compromise with factory-owners or the government. The divergence in their objectives and statements on other parties' actions is also reflected in the union's names that are often based in their political and historical background.

For now, CTUM is only one confederation of trade union in Myanmar. They don't encourage the strike of workers, however, following the process of government will be the best approach of them. This union is not worker lead union, it has undemocratic process inside (Arnold & Campbell, 2017). The occurrence at 2013 Myanmar labor conference depicts the perception of workers on CTUM. (Campbell, 2013) All Burma Federation of Trade Union is one of the union which not affiliated with CTUM. According to MICS, most trade unionists are win in disputes resolution process but some loopholes in labor law give chances employer to gain advantages. Most trade unionists were intentionally being fired ostensibly for breaking contract. Actual reason was for inactivating unionism inside factory (Htoon, Mortensen, & Cho, 2019). So that it has the need to find the new approach for Myanmar trade unionism to solve industrial disputes. All Burma Federation of Trade Unions play the new role in current Myanmar labor politics without full accepting on Myanmar current labor regime. By seeing on initiating of such unions will be helped to know another useful alternative to understand Myanmar current labor politics conditions. This research will help to understand the causes of disputes and initiative steps of forming trade unions in given context for welfare of workers outside of existing legal structure by conducting case study research on All Burma Federation of Trade Unions situated in Dagon Seikkan Township.

1.2 Objectives of the study

The research aims to explore why ABFTU was organized beyond the current legal structure and how they solve workers disputes inside factory. This would find out the challenges of establishing basic labor organizations at ABFTU.

1.3 Methodology

The research will be conducted the intensive interviews with the trade union leaders and members. The workers for interviewing and trade union leaders are chosen with referral sampling method from ABFTU advocating committee and member unions and it will be 8 interviews, one focus group discussion. This research assumes the trade union is particular agent for working class to resolve the disputes by the consciousness of particular labor segment or factory. Interviewing on key informants and documents from ABFTU are the sources of data, it was used some secondary data from government officials, media interviews, other existing research and some records of ABFTU. The question this research tries to answer is how ABFTU approach to solve the problem of grass root workers at Dagon Seikan Industrial zone and why they choose the path outside legal structure. The collected data are analyzed qualitatively. This research will consider on the experiences of workers when trade union was being initiated.

1.4 Scope and limitation of study

This research aim to contribute the present understanding of Myanmar trade unionism by researching on one unregistered federation; All Burma Federation of Trade Unions (Yangon) located in Dagon Seikkan Township. The data are obtained from in-depth interviews with key informants, its leaders and the members of the union. In this research it analyzes only on the basic labor organizations which are the members of All Burma Federation of Trade Unions and the trade unionists of ABFTUs, Central Advocacy Committee. Ultimately, we still need to explore about its history when we try to understand the power of trade union. Most of all are established as the agent for negotiation if it has been recognized by employer. So that this might

not be the holistic studies for trade unions, it still need to explore other aspects of that such from the eye of employers.

1.5 Organization of the study

The thesis is structured in five chapters. The first chapter introduced my research objectives and approach, while showing its relevance and limitations. In chapter number two literature on the theory of trade unions will be reviewed as well as studies specifically focusing on the history of trade unionism in Myanmar to embed this thesis into the existing scientific context. Afterwards the third chapter is concerned with the legal and political context of contemporary Myanmar and the current position of ABFTU on problems of the working class. In the fourth chapter, answering the research questions and exploring the formation of trade unions under ABFTU and their approach and challenges on current labor politics will be. The last chapter will state the key findings, conclusion and make suggestions for Myanmar labor organizations and their members to help them overcome the challenges discussed.

Chapter 2

Literature Review

In the literature of industrial relation fields, there has numerous theory and researched items about the trade unionism in Western context. As the developed countries, they have enormous experiences on trade unionism within the debates from both sides of capitalist and socialist arguments and many unionist theory are formed by those experiences. In this chapter, it states about the different concepts on the type of trade unions and its structures in literature, and the brief history of Myanmar trade unionism. Most of them are particularly based on the long continuum of economic and sociological history at American and Britain.

2.1 Literatures on the definition of trade unions

The definition of trade union is trade unions (labor unions) are the organizations formed by employees for purpose of using their collective strength to improve compensation, benefits, and working conditions through bargaining; to bring fairness to the workplace through the provision of due process mechanisms; and to represent the interests of workers in the political process. Economists have traditionally viewed unions as functioning as labor market monopolies. The interference of trade union in perfectly competitive and well informed market mechanism happens inefficiencies and some negative impacts on unexperienced labor. It is a common view to trade union which intends only for the improvement of wages even within open economy by monopolizing labor supply and not interesting on the rate of production occupied as by Marshallian analysis. That is partially same with orthodox theoretical framework of trade unions in market economy. The standard view of trade unions is that they are formed for the purpose of improving the material welfare of members, mainly by raising wages above the competitive wages level. Workers are unionized because they have more risk if they individually deal.

The happening of efficiencies loss by trade union, only in assumption of perfect competitive market and fully informed, also be determined by the density of that trade union; membership, power control on supply of labor. Therefore, the membership of trade unions need to relatively large to the total pool of labor supply. The monopolistic power is became from threat of labor withdrawal and the strikes. So it is still not clear about the impacts and role of trade unions within imperfectly competitive markets duet to the orthodox framework what is in assumption of perfect competitive market situation. But we need to appreciate the important of labor union in the enhancement of precarious condition of workers.

On the other hand, there are also some argument that trade union can lead to the efficiency not only for workers and its members, but also for the firms specifically for the case of enhancing productivity rate. That is called agency theory. That argued the trade unions are efficiently work as the agent between factory owner and employees for the interest of both. In the definition of interest, this is depend on the constraints as law, macro-economic situation and political process. Reid (1987) developed the hypotheses which construct the agency role of trade union in work-place. These roles for employee's agent are information and contract service, governance and voice of working class (note that, the analysis is based on the American Industrial development). They also discuss about other roles of trade union for factory owners, government in the context of United States.

In classic definition of trade union is come from Webb (1894), trade union was defined as 'a continuous association of wage earners for the purpose of maintaining of improving the conditions of their employment, change the words "their employment" to "their working lives" in second edition' (Webb 1894:1). Webb wanted to explain trade union had not always contemplated a perpetual continuance of the capitalist wage-system. At some point, it had aspiration towards a revolutionary change. Enterprise-based (Basic Labor Organizations) and so-called staff associations meet the aspects of the Webb's criteria. Union formed by employers was not able to be define as trade union accordingly. Perlman (Perlman, 1928) concerned about the theory of labor movement based on American context and Webb tried to generalize the labor movement theory by asking firstly the reaction of Marxism. Marx argued that "he, Karl Marx, was convinced by his own philosophical argument that the working classes would ultimately prevail in society, relatively little of his work is concerned with how the material lives of

workers had been, could be, or even, should be, improved.” However, his definition of trade union is very much fitted into US context and it encapsulate that the essential nature of unions is trying to maintain and improve the conditions and working lives of members. It is impossible to operate entirely only in the worke related sphere as a trade union. Other classic theorist are Veblen (1904) and Tannenbaum (1951), drawing on ideas from Durkheim(1893), they stated the existence of unions is to counter dislocation and alienation caused by such processes. The fundamental role of union is to produce a sense of belongingness and solidarity among workers and to enhance this relation as an end in themselves. (Gospel, 2008)

The union as an absolute economic organization, such ideas became from the writing of (Dunlop, 1944), the argument he made, and ultimately economic purpose of trade unions was to obtaining the possible highest wages and subject to the constraint of not putting too many member out of work. This theorists see union as the tools for optimizing of the combination of wages and employment (Gospel, 2008). Ross (Ross, 1948) contested and suggested about union that the best way to see the union is just the organization with leaders and members because they were not able to calculate rightly about such calculations. Leader would attempt to protect his role and member would also consider about their condition comparing with other workers’. This suggests that unions are not optimizers in some economic way, but they are satisficers in a more political sense in that they seek to satisfy their members and deliver fair and comparable terms and conditions (Gospel, 2008). This statement underestimates the power of trade union as the partial role in initiating the social changes.

Another argument, Michels (Michels, 1911 (1955 edn)) promoted the idea that especially within voluntary organization, such as unions, all organizations – no matter how democratic their original intentions – eventually come to be ruled by a powerful entrenched minority that, when necessary, will act illegitimately to squelch internal opposition and divert the organization’s goals in order to maintain its power, the radical purpose of unions. It is a form of majority tyranny regardless of fundamental vulnerable rights of minorities: non-members of union. But the considerable things in this is that the objectives of unions is always depended on the workers’ grievances or precariousness. The unions which organized by the actual votes or participation of workers inside factory are not able to be misguided.

Afterward Lester (1958) stated that Michel's suggestion may be right particularly in very first time of forming trade union, when it get late that will be transformed into more stability, respectability and partnership (Lester, 1958). His argument is based on the historical evolution of American Trade Unionism. However, it is still useful definition for understanding about the trade unionism of the developing countries as the presumption of trade union the agent of both sides for conflict resolution between Union and Employers.

From the 19th century onwards, it had the very important perspectives on trade union through the prisms of class relations, revolutionary and radical politics, as the transformational tool of society Marx and Engles (1848) argued that the trade union as the very first outcome of antagonistic relation between proletariats and capitalists. The capitalist exploitation prompted organizing of trade union for pursue of labor right, their welfare. Their weakness was a limited unions consciousness, they still needed to be conscious about precariousness of working class. There never enough to struggle only with capitalist wage system. Other followers of Marx and Engles were difference based upon either full or partial accepting of that trade union definition.

In 1902, Lenin argued that trade union, by themselves, could develop amongst workers only a limited, trade union consciousness (Kelly, 2012). This was, along dominant in Communist countries, subsequently accepted that unions could play a role in bringing about transformation, but once Communism was established, their role was to promote workers' interests subject to party control and to act as a transmission mechanism between the party and the workers. These views of unions contrast strongly with other left-wing notions of unions such as those espoused by syndicalist type theorists who believed that what unions should be about was direct action, from the bottom up, which would encroach on management control and establish workers' control (Gospel, 2008). (Sorel 1908; Gramsci 1921-6) Gramsci theorized the trade union as a human institution, born under the reign of capitalism, without a specific definition, except as imposed upon it in a historical sense by the workers who comprise it. Gramsci also pointed out about the insufficient form of Collective bargaining, as Gramsci called it 'Industry legality', because it is negotiated victory over capitalist. It was remained the tasks to transform or revolt the ideological hegemony of bourgeois which controlled the workers', their leaders', mind and heart. By contrast to these revolutionary type notions of unions, and reverting back to a broad typification of most of the other theories referred to above, a dominant perspective on unions in

the West has been of a liberal-pluralist kind. According to this view, democratically-based unions are a fundamental feature of industrial societies of a liberal, pluralist, and democratic kind. Their essential role, be it economic or social or moral, is to provide checks and balances at work. Indeed, in the broader political economy, unions reflect the existence of such liberal notions and also more widely provide important national checks and balances which are fundamental to liberal societies. (Gospel, 2008)

Of course, in practice, unions may face in a number of directions and there can be mixtures of different types of unions within a country. Hence, unions may focus on the market, but may also wish to play a broader role in society. Market unions cannot ignore the political context. Equally, class-orientated unions must deliver economic benefits to members if they are to attract and keep large numbers of ordinary workers in membership. An important caveat here is that, though some of these types can be combined within the one union, combining all three different types is well-nigh impossible within any one organization. However, all three different types may co-exist (albeit uneasily) within one country.

The academic resources that related to trade unionism in Myanmar is relatively rare because it is a very new structure for Myanmar Industrial Relation and the awareness of this issues within Burmese scholar is little although there were many published report and concerning articles. Even there was CTUM formed since 1991, the basic levels understanding to trade union is complex and influenced by so many subjective history and norms, personalities as well. But how do we extract the usable definition fitted in Myanmar Situation. This is exactly relied on historical and social context of Myanmar.

The assumptions that perfectly competitive markets, well-informed-situations are very unrealistic for the experience of Myanmar current situation.

The research which analyzes working condition in Korean wholly own garment enterprises in Myanmar and joint business discovered the inhumane situation of workers. It also explore excessive overtime problems, illegal payment and deduction and retrench workers or implicitly threaten for the reason of joining trade unions, other as child labor problems. The implication of law and enforcement of it is considerably bad and it still need the mechanism that effectively solved it.

2.2 Advantages of Trade union

Unions first emerged in the 19th century as significant political movements. During a time when wages were low, hours were long and safety regulations were virtually non-existent, employees organized to address these issues. In short, unions enabled workers to gain input and decision-making power where management once held universal authority.

For employees, being unionized offers several advantages. Unionized workers experience much more job security than their non-unionized counterparts, because the union makes the final decision about disciplinary action or termination. They also can file grievances — complaints — with their union representatives, who then take them up with management on their behalf. Unions are meticulous when it comes to working conditions, in order to ensure a safe, friendly working environment.

Unionized employees also can expect steady raises and benefits, such as health coverage, sick leave and paid vacation time, to name a few. The exact nature of monetary compensation and coverage varies based on the collective agreement, which is reviewed and negotiated upon expiration.

A significant advantage for managers is that collective agreements with unions establish a set agreement that cannot be disputed until the contract expires. This makes the costs associated with pay and benefits more predictable. Turnover is also less common, since employees generally enjoy the safety, security and lucrative compensation that unions bring. In turn, employee training is more likely to be a worthwhile investment.

2.3 Disadvantages of Trade Union

The disadvantages of labor unions for employees are fairly low compared to the benefits; however, the negative aspects can be serious. For example, if management and union representatives cannot reach an agreement, strike is a serious concern. Keep in mind that non-unionized workers can strike as well, but the lack of a collective bargaining stage can cause this to happen at any time, rather than during a negotiation. All employees must go on strike if the

majority of employees vote in favor of it. This can lead to serious financial hardship. Employees who express a desire to return to work or attempt to cross picket lines suffer social consequences, causing them to be ostracized as "scabs".

Unions can be frustrating for managers, especially if their relationship with the union is not amicable. This can result in an "us versus them" mentality, resulting in frivolous grievances or unreasonable resistance to management decisions, such as discipline or termination. Essentially, this aspect that is advantageous for employees is a serious obstacle for managers. Even when disciplining or terminating an employee is justifiable, her union will make every effort to prevent this. Lockouts also are an issue of concern. Unlike strikes, lockouts are limited to unionized organizations and they are initiated by management. Their purpose is to force employees to agree with an offer. Naturally, employees will see this as coercion, further aggravating an already strained and volatile situation. Union contracts also make it difficult to make necessary adjustments when business conditions change, such as laying off workers or cutting hours when revenues fall.

2.4 Types of Trade Unions

From the conventional view on trade unions, there classified as craft (or) occupational, industrial, general and enterprise (Basic Labor Organizations in accordance with Myanmar Labor Organization Law). Craft or occupational based unions are organized based on types of work they done. The used term, occupational is especially for white collar or professional workers. Industrial union is formed through industries and all workers at work, vertically up and down. For example, here might be sea or mine or as such. By contrast, general unions organize by the workers all kinds of occupational, industrial and enterprise coverage. Enterprise unions established within specific enterprise, factory for the enhancement of working conditions or as a tool of transmitting mechanism between workers and employers.

Another differentiation of trade union was that open type union and closed type union. Open union seek to form openly for the purpose of strong memberships and wide coverage in representing the labor forces. Closed union is with restriction on membership and specifically organized in predetermined boundary.

Richard Hyman (Hyman, 2001) classified the trade unionism into three forms; Market-oriented, Class-oriented and Society-oriented. Market-oriented is based on business trade

unionism by Sidney and Beatrice Webb over a century ago. First, there are market-orientated unions where unions are essentially economic actors pursuing economic goals. Under this model, unions seek to improve the welfare. According to this model, unions essentially tend towards a sort of business union model. Second, there are class-orientated unions. Such unions are deemed to be vehicles of class struggle and their role is to promote working class interests and the transformation of society in a revolutionary direction. Third, there are society-orientated unions. Here unions may be seen essentially as social actors or social partners, engaged in a social dialogue and operating in a social democratic context. Their role is to strengthen the voice of workers in the broader society and act as a force for social, moral, and political integration.

Chapter 3

Legal and Political Context of Myanmar

3.1 Brief History of Myanmar Trade Unionism

According to the Burmese literature on Myanmar Trade unionism, specifically written by Thakhin Lwin, he wrote some paragraphs about the very initiative step of Labor movement within Myanmar boundary. The very first Burmese labor movement was that Indian and Burmese workers organized the association of railways servants by 1897. It was not by the social activism of them, but just the consequences of establishing “Amalgamated Society of Railways

Servants of India and Burma (Myanmar)”. Two main causes were that Burma (Myanmar) was part of India in that time and 90 percent of railways workers were Indian. (Lwin T. , 2012) There was any labor activism as forming labor unions or associations around even at the commencing of First World War 1914. But American workers’ protests at oilfields (Yanangyaung) of Burmah Oil Company (BOC), monopolized firm, had significant impact on the labor activism of Burma (Myanmar). Lwin argued that such movement prompt to be another protests of 200 registrars of this company. Another notable things was that the labor activism in India effectuated the movement of Indian workers world in Burma (Myanmar). There was not any bold communication between General Federation of Trade Unions (UK) and Burmese workers’ movement. (Lwin T. , 2012)

However, the genuine labor activism in Myanmar (Burma) was commenced with nationalist struggle for independence and widespread notion of patriotism promoted by Young Men’s Buddhist Association (YMCA) and later General Council of Burmese Association (GCBA). After 1920 Ninth GCBA conference at Mandalay, Executive committee members U Myo Nyunt established the very first labor union, Burma Oilfield workers Association in 1921. He was the very first leader for workers movement in Burma (Myanmar). (Lwin T. , 2012)

Trade unions first developed in the 1920s in reaction to the widespread use of immigrant Indian and Chinese labor and union activities subsequently became closely linked to nationalist politics, with many strikes in the 1945–48 period. Following independence in 1948 (which led to the emigration of most non-Burmese workers), trade union rights granted in 1926 under British rule were incorporated in the constitution. In 1955 Burma ratified ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organize, 1948). Unions were active both politically and industrially and although in 1961 the total membership of the 173, mainly one-shop, registered unions then in existence was put at only 64,000 of an urban labor force of one million, there were many unregistered unions. In 1964, however, Gen. Ne Win abolished all trade unions, under the Law Defining the Fundamental Rights and Responsibilities of the People’s Workers. In 1968 Ne Win set up a new system for workers’ representation, consisting of local workers’ councils at factory and township level, and a central *Asiayone* (union) presided over by the Minister of Labor and controlled by Burma Socialist Programme Party (BSPP) officials. The primary task of the workers’ councils was to ensure labor discipline and explain

government policies and targets. During August and September 1988 a general strike was in force throughout Yangon (Rangoon) and other areas of Myanmar (Burma) in support of demonstrators' demands for the installation of a democratically elected government. The Armed Forces took control of the country on September 18 and ordered a return to work. The new regime dissolved the previous government-controlled union structure and passed a Law on the Formation of Associations and Organizations, effectively banning the formation of any labor organization without official approval. In 1998 the ILO Conference condemned the government for its continuing failure to observe Convention No. 87. In response the Foreign Ministry announced that it would "cease participation in activities connected with Convention 87". In addition to internal controls, the government requires that Burmese seamen working on foreign ships do not participate in any activities of the International Transport Workers' Federation (ITF). Burma has not ratified Convention No. 98 (Right to Organize and Collective Bargaining, 1949) and collective bargaining is not practiced. The Central Arbitration Board, set up to resolve labor disputes, has not functioned since 1988. In the public sector the government sets wages and in the private sector market forces generally apply. Myanmar's human rights violations and use of forced labor have attracted intense criticism from unions and human rights organizations. In 1989 the United States suspended Burma's eligibility for trade concessions under the Generalized System of Preferences (GSP) programme, pending steps to afford its labor force internationally recognized worker rights. In 1997 Burma's trade benefits on its exports to the EU were canceled. In 1998 an ILO Commission of Inquiry found the regime guilty of "widespread and systematic" use of forced labor on a massive scale, including transportation of supplies for the military, and the building of roads, railways and bridges. In June 1999 the ILO Conference agreed to suspend Burma from receiving ILO technical assistance or attending ILO meetings due to its "flagrant and persistent failure to comply" with Convention 29 on forced labor. This move, seen as amounting to the de facto exclusion of Burma from the ILO, was greeted by the ICFTU as "an unprecedented move in the annals of this agency". In response the government said it would "cease participation in activities connected with Convention 29." In May 1999, the SPDC passed Order 1/99, requesting SPDC officials not to exercise their rights to using "voluntary labor" contained in the 1914 Village Act. The regime claimed this ended the use of forced labor. Yet the use of forced labor is believed to have increased in border regions since 1998 when the regime required military commanders to become more self-sufficient logistically. Forced labor

(including forced child labor) has also been used for the construction of civilian infrastructure such as roads, the reclamation of land for agriculture, and harvesting. Despite frequent reports by the ILO citing continued forced labor and human rights abuses, the SPDC refuses to cooperate with the international labor movement on workers' rights. A Federation of Trade Unions of Burma (FTUB) is reported to work underground, but its scale and effectiveness is low level and largely restricted to information gathering for advocacy purposes. (ICTUR, 2005)

During the parliamentary period from 1948 to 1962, many workers had relative freedom and were able to organize freely. Some major parties organized their own class and mass organization in order to get support from the masses. In return of this support, many worker join the trade union led by ruling parties or politicians exercising their political muscle would supportive to them. (Lwin K. S., Understanding Recent Labour Protests in Myanmar, 2015) Accordingly Myanmar labor activism was intimately related to the political behaviors of given historical incidences. So workers who employed by the governing party has more chances to be successful in disputes, in contrast, workers who affiliated with opposition party has almost no chance to win the arbitration. (Lwin K. S., The Evolution of Labor Politics in Post-Colonial Myanmar, 2013)

Under military rule since 1962, workers in Myanmar were prohibited from organizing trade unions and any disputes solving mechanism was existed before. This period was realized as the time of repression for trade unions and all other political organizations. This restraint became stricter after 1988 with 88 uprising against military rule. Most political activists including trade unionist fled to foreign countries and labor activism was ceased.

3.2 Illustrating about current condition

Since 2011, the Myanmar transformation was initiated in accordance with 2008 constitution by new democratic government leaded by Union Solidarity and Development Party. As one aspect of political transformation, Myanmar workers were also relatively freed from restrictions of decade ago repressive government. Many labor law reformation were implemented by new government On 21 November 2011, USDP government revoked the 1964 defining the fundamental rights and responsibilities of the People's workers (Lwin K. S., Understanding Recent Labour Protests in Myanmar, 2015). It enacted the new labor organization

law (2012), aiming at protecting the rights of workers and promoting good workplace relations (The Labor Organization Law, 2011), by repealing of trade union act (1926). Meanwhile, they revoked the Trade Disputes Act of 1929 by enacting the new settlement of labor disputes law (2012).

Support by global unions and the international trade union federation for the survival of the Federation of Trade Unions in Burma (FTUB) within Thailand. Some global unions argued that FTUB worked well for nurturing Burma Trade union movements. (Campbell, 2013) After trade unions became legal, and union leaders from FTUB (later CTUM) in exile could return to the country. By 2013 there were already 670 registered factory unions. In 2015 the Confederation of Trade Unions of Myanmar (CTUM) was officially recognized as the only trade union confederation in Myanmar. By October 2016 CTUM has 8 federations with 783 factory unions as members, representing roughly 70.000 workers. Member federations include the Agriculture and Farmers Federation of Myanmar (AFFM), the Building and Wood Workers Federation of Myanmar (BWFM), the Industrial Workers' Federation of Myanmar (IWFM), Mining Workers' Federation of Myanmar (MWFM), Myanmar Transport and Logistics Federation (MTLF) as well as Public Sector and Education Sector Unions. Some of them are affiliated with global unions. Not all union federations are members of CTUM. Important other federations are the Agriculture and Farmers' Federation Myanmar (AFFM/IUF) or the Myanmar Industries Craft and Services Unions Federation (MICS), which might form a second confederation in the future. (Zajak, 2017) In addition, there are also labor rights organizations active in Myanmar, which work independently of trade unions. Unions are involved in a range of activities, including labor disputes. The rise in labor disputes is linked to greater freedom of expression and association rights, with trade unions in Myanmar helping workers with their problems through legal claim-making. CTUM and its members don't encourage strikes. By law, the right to strike is only given after the decision of the arbitration body, not during arbitration, to pressure employer into the decision. But there are other reasons for unions to prefer legal-institutional means. Unions aim to establish themselves as a credible actor in the emerging industrial relations landscape in Myanmar, which is difficult if they are too confrontational. In addition, international organizations and donors put friendly pressure on them to solve disputes through dialogue and arbitration rather than through open conflict. More fundamentally, trade unionists also believe that they can achieve more through participatory channels within the

emerging institutions, especially arbitration, than through strikes which are always hard for workers to sustain and risky. Workers come to trade union in industrial zones and register as union members when they have a problem. They seek support from unions in solving the problem. This troubleshooting approach is also called “hot shopping”, when workers choose a trade union less for political or ideological reasons or general questions of democratic representation, but for urgent complaints including unpaid wages, forced overtime work, being dismissed, harassed or even sexually abused. (Zajak, 2017) According to him, the formation of trade union was begun from the grievances happening at work place. Most of the trade unionist, the participants in this research, also accepts this statement. They have any piece of knowledge about trade unions or labor organizational law or other disputes process. They came into that by hoping to get a help from third party. (Interview with workers from Dagon Seik Kan)

There have not much way which trade union can help in accordance with the law in certain emergency condition as sacking out the workers of one day notice, workers capacity building and negotiations without collective bargaining. However, the first granted way is to try to mediate or facilitate negotiations inside factories. In order for negotiations to work, legal capacity training programs for workers are crucial. In those trainings workers not only learn about their rights (e.g. that forced overtime is illegal), but also that it is their right to make claims vis-à-vis management. Workers could then use the Workplace Coordination Committee (WCC), consisting of workers and management, to communicate their complaints, accordingly to the Labor disputes settlement law. Whether this works also depends on the presence of union and worker leaders who are respected and able to negotiate with management. Ideally, disputes are solved by negotiating and signing a list made up of workers’ demands. To outsiders, mainly the international community, such negotiations are framed as collective bargaining. But this doesn’t really exist in Myanmar. The Workplace Coordination Committee (WCC) is not per se an instrument for worker participation and the implementation of the law inside the factory. WCCs remain contested as their independence from management cannot be taken for granted. Still, they are a first and important step towards realizing workers’ rights; an important source of self-empowerment for workers and a first step towards collective bargaining at the shop floor level in the future. Management can use WCCs to govern workers and enforce their own interpretation of the law. Furthermore, global brands can use WCCs as an indicator for worker representation and freedom of association in their legal compliance and CSR programs. As WCCs can be

completely disintegrated from trade union structures or real worker representation, they can also become an effective means for management to bypass unions. But at some factories, it also can be formed quasi-unions worked by moral economy of workers from the management side. Even though discussion about such unions are involved in this, however, it should not be able to assume as the worker representing trade unions.

Complaints in front of the Arbitration Council If no agreement is reached, then the complaint can be brought forward to arbitration. As in many other cases in Myanmar, international agencies, in this case the ILO, played a crucial role in designing and establishing a new institution based on experiences in other countries. (Zajak, 2017)

The process started with enterprise level coordination, Working Coordinating Committee (WCC). When there is a dispute individually or collectively inside factory, it is front of WCC for negotiation process. If there is no precise decision or resolution for the sake of acceptable condition for both sides, it will be continued to Township Conciliation Body (TCB). If it is not, it will be moved up to state or regional arbitration body (AB) and ultimately to the national Arbitration Council (AC).

The Arbitration Council is also important as there is no functioning labor court and a lack of capable labor lawyers. Trade unions are important in the whole process of arbitration as they help workers by explaining the procedure, formulating complaints, filling out the paper work or searching for proof of the claim. For example, one common issue of conflicting interpretations is about the termination of work. While management argues that the worker left, the worker complains about being fired. Trade unions also have a say in the Arbitration Council consisting of five representatives of the tripartite bodies: the Ministry of Labor, employers' organizations and labor groups. The representatives of labor were newly nominated in mid-2016. (Zajak, 2017)

3.2 Formation of Trade Unions under law

In this law, workers is defined as “Worker means a person who relies on his labor to engage in economic activity or to generate a livelihood, including a daily wage earner, temporary worker, worker engaged in agriculture, domestic worker, government employee and apprentice,

but does not include the Defense Services personnel, member of the Myanmar Police Force or member of the armed organizations under the control of the Defence Services.”

For employers, “Employer means a person who carries out by hiring one or more worker on wages of mutual consent in any trade under the relevant employment agreement, including a person who manages, supervises and administers directly or indirectly and is responsible to pay wages to the worker. This expressions include the legal managerial agent of the employer.”

For Labor Organizations, “Labor Organization means the Basic Labor Organization, Township Labor Organization, Region or State Labor Organization, Labor Federation and Myanmar Labor Confederation formed under this Law.”

In the process of formation of labor organization law, there are some obligatory criteria to form legally under this law. These characteristics are workers must attain the age prescribed by any respective existing law to work in any trade and activity. Therefore, some laborer under the age limited, they are not able to join the labor organization legally. But, they can get positive effect from the labor organization. They, members of labor organization have full autonomy for belonging or resigning from such. However, there must have 30 workers to organize as trade union, if not, the workers need to establish it by affiliating with other workers of other trade of same nature. (The Labor Organization Law, 2012) In such a case, 10% of all of the workers in workplaces seeking to form a basic labor organization together must vote in favour of the organization. Votes are collected by signature. Township Labor Organizations may be formed by at least 10% of all of the Basic Labor Organizations in the township within the same sector. Regional or State Labor Organizations may be formed by at least 10% of all of the Townships Labor Organizations in the township in the same sector. Labor Federations are formed by at least 10% of all Regional or State Labor Organizations the same sector or activity. (Judd, Checkley, & Kazlauskas, 2017). Finally, Labor Confederations may be formed by at least 20% of all Myanmar Labor Federations. All labor organizations have the rights to carry out their task independent form any other stake holders under their own names and seals. Registered organization have the right to sue and may be sued. (The Labor Organization Law, 2012)

Labor organizations have the right to draw up themselves their constitutions and rules, elect the representatives, and organize their activities, management and programmes without interference. They can operate freely negotiate with employers, or employers’ organizations,

with a view to reaching collective agreement, submit formal demands to the employer, and negotiate with a view to reaching agreement with employers when the rights provided for under the law are not upheld. Joining workers and their employer in discussions with the Government about worker's rights or interests contained in the labor law is essential right of such organizations. Engaging in industrial action, including strikes, in accordance with the relevant laws is one of the means to get industrial legality in production relation. However, they are granted by this, on the other hand, the law like Article 19 – peaceful strike halt that. In chapter IX of labor law, it was written in article 37 as follows.

“The employer desirous of locking-out the public utility service or service which is not included in the public utility service shall inform the starting day and period of lock-out of the work in accord with the stipulation, at least 14 days in advance before the lock-out to the relevant township labor organization and relevant conciliation body and lock-out the work only after receiving the permission of the relevant conciliation body.”

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In case of strikes, accordingly to labor law, strike is legal if it is organized by a union; the majority of the union's members voted in favor of it; the respective labor federation (an umbrella organization of unions within a specific sector) allows it; and the employer and relevant conciliation body (a body set up at township level to mediate between employers and workers) have been informed three days in advance. (Myanmar Times, n.d.). A strike must be aimed at forcing an employer or an employer's organization to enter into a collective labor agreement or obtain concessions from the employer in work-related issues. Strikes held in order to support a general political agenda would be illegal. Internationally, it is a common concept that strikes must be the last resort. This concept does not seem to have taken root in Myanmar yet (Myanmar Times, n.d.). Only after the dispute has gone through the arbitration body may the union call a strike. This is one of the big challenges workers in the disputes face at legal process. Even though it is allowable for employers, it is by no means the same with for workers. Workers in

certain “essential” sectors (water, electricity, firefighting, health, tele-communication) are not allowed to strike. Staff at public utilities must inform the conciliation body at least 14 days in advance and keep a minimum level of service during a strike. But in this research, the trade unions which are always pursue for the new approach to resolve labor disputes without considering the labor law but in fair, quick and immediate cost of threat to employers.

3.3 Structural and Institutional Analysis of Myanmar Labor Politics

After new quasi-democratic government take the power in 2012, relaxation of the sanctions regime was very first step to them for resolving the problems in every aspects of countries. At that time ILO Governing Body approved a mission of senior staff to Myanmar in May 2012 (Henry, 2015) relating to trade union. Especially it was for issues of the FTUB, Federation of Trade Unions Burma, and leaders be allowed to return to country and that removing the black list of them. It was very initial steps for Myanmar modern labor politics. But in the case of law, there was very controversial in granting on Freedom of Association and forming independent organization because there needed many bureaucratic stages in legalization of union and about the setting of restrictive process for registration of national union (Henry, 2015). It has already stated in the chapter 2 of this.

According to the interviews with basic labor organization in Dagon Seikkan Township, it confirm that the bureaucratic mechanism stagnated the legalization process of trade union in every possible way. For instance, there are a number of workers who are under age limitation working for various reasons however they don't get the right to join the union independently, if they involve as union members, chief registrar reject the legal documents of union formal recognition. Ma Lei Lei Cho who is trade unionists from Myanmar Consumer Enterprise Factory stated that *“At the time we tried to register our trade union, labor office asked the personal information and the documents we didn't have and documents that were difficult to attain, even a recommendation letter from the factory. For that reasons, we had to remove a number of members from the list of member workers.”* But other experiences was like rejection by it of lacking precise address and having National Registration Card (NRC) is in process. Most workers don't have National Registration Card in hand due to losing it by different reasons and conditions. Later, ministry issued about accepting registration unless holding NRC. Another chance for employer to repress unionization within factory was that requirement of recognizing

letter from employer to union and its members. Even though some unionists argue that they, employer have such obligation to do such confirmation for employees of working inside factory (Myo, 2019), it was one of big obstacles for unionization of basic labor organization. The spread of personal information about trade unionists make them to more vulnerable condition. On the one hand, it was the effective tool for employer to oppress implicitly the trade unionists within factory as discrimination and intended manner for resigning themselves.

The law enacted by previous Thein Sein government for labor dispute settlement process (second revision) give the chance to cease labor activism inside their factory by cash in state because the penalty for ignoring the decision of arbitration council charging 1,000,000 Myanmar kyats as. Being sacking out of workers for union formation was illegal in accordance with current labor law. But, employer have full consistency to do such thing legally. The lack of labor court will be another important problem for Myanmar labor relation. Another considerable thing is the role of moral economy in current Myanmar industrial relation. It is very important item for understanding about advocacy of trade union and unionist movements. The moral economy means that the existence of patron-client relation in Myanmar industrial relation as informal institutions. It is able to be weak the spirits of trade unionism at present time. It is considerable one fact in trade union advocating track.

Chapter 4

Analyzing the experience of ABFTU

In this part, this will be consider on the reason of forming trade unions, legally or illegally, particularly for All Burma Federation of Trade Unions and some of its member unions. The condition before the disputes it could escalate conscious of workers to form union or learn about their right grated by the law, will be considered in this part and it will try to answer the research question why this federation not to be follower of labor law and key challenges for them. To understand clearly about the reasons and phenomena, institutional analysis of labor law and dispute settlement process will be concerned in the first place. Afterward, the cases of Fu Yuen Garment factory trade union, and Myanmar Consumer Enterprise factory would be considered for deep understanding of ABFTU's approach to modern labor disputes regardless of formal procedures in labor disputes settlements law, 2012. (Currently being revise and update but still need the ratification of Pyi Thu Hlutaw)

4.1 All Burma Federation of Trade Union (ABFTU)

All Burma Federation of Trade Union; ABFTU, is formed by 2017 May 1 for the purpose of protection of labor rights and widespread advocating about it among working class especially at Dagon Seikkan Industrial Zone. According to the central committee member who was one of the founding member of it, Ko Kyaw Myo (Myo, 2019) said that there is 14 trade unions under this federation.

Table 3.1 Member Unions of ABFTU

Name of trade Unions	Members
1. Nilar Stars trade union	More than 30
2. Dagon Seikkan (Garment factory) union	145-50 / 600
3. KGG Garment Co.,Ltd union	Less than 1,200
4. Fu Yuen Garment Co.,Ltd union	140
5. Bar Lar Lar (<i>No register</i>) union	More than 30
6. Di Fread Thrist (<i>No register</i>) union	More than 30
7. Shwe Myanmar (Cooling factory) union	More than 30
8. Popular (Plastic) union	More than 30
9. Rainbow (MCE) soups union	60/ 300
10. Houng Shine (Cooling factory) union	More than 30
11. ASI (Cooling factory) union	More than 30
12. Beautiful (Wood) union	More than 30
13. MPM union	More than 30
14. MMM union	More than 30

Sources: Interview with ABFTU (There is no records for the exact number of trade union members within factory.)

Almost all of this unions are established when they faced struggles in their industrial relation and they finally know that they need to be in solidarity and collective bargaining is more efficient than individual bargaining. On the other hand, there are other unions which are organized by employers and other third parties. Why they are organized this unions; in some specific factory and their cases will be considered in the next chapters.

Each unions has their own story for formation and belonging to ABFTU. The another important feature of it was that they organized at first for basic labor organization and then they formed Federation of it, bottom- up formation of union by member workers consents. It is not

same with other federation. Their approach to union is they want to be worker controlled federation, not like another federation or confederation; implemented and controlled by other outside workers, for instance, unionist activists from NGO or INGO supported organization. Most of trade unions organize top-down approach to union formation. Even though they had trade unions congress firstly around 2013, they had been split by different approach to problem solving based on their perception on the state. Other affiliated workers, trade unionist leaders were favor in negotiating process under the law enacted in 2012. The end of this approach is by no mean for satisfaction and welfare of workers in the struggle because of time consuming process and insufficient time for rent and file works but for the tranquility of industrial relations inside factory and their maximum exploitation for workers labor. That is one of the reason of forming such federation separated from mainstream Myanmar trade unionism. They chose not to register as a federation accordingly labor organization law though, most of the member unions register (or) attempt to get form-7 of labor organization law.

The basic mission of ABFTU when it had been agreed on organizing are as followed.

1. Main objective is to be freed workers form any form of exploitation by mean of radical way, war approach.
2. To get full benefit for our labor as wide as it can.
3. To overthrow any form of discrimination as Racial or gender
4. To get social security and other requirement
5. To have opportunity to learn vocational or other kind of knowledge along the time of working
6. To promote and defense for the interest of working class
7. To lead rightly in the disputes of workers right
8. To establish trade unions and long last standing of them.
9. To build working class united
10. Being under one umbrella for protesting, revolting trade unions. (Informal translation)

The formation of All Burma Federation of Trade Union (ABFTU) is bottom-up approach and the supporting of rank and file workers within factory is crucial for operating it. The worker control trade union is the emergent need for current labor politics due to lack of understanding the underground condition of workers in high level policies makers. According to the history of trade union movement, after lasting of decades over decades, the influences of government through institutional framework over unionist movement make the condition which unionist leader has deserving history and it decide his or her role in current organization as the consequence of his hard work in the past or his wide knowledge about unionism around the world or having famous name regarded about unionist movement. But in actual, current trade unionists especially from ABFTU don't allow that kind of situation. Because the problem worker faced is able to be known by being landless workers at present frame. So its experience can show why we need new approach to disputes and why we should unite under one umbrella. The cases stated in this part will show why their own approach make preferable condition and oppressing behavior of domestic capitalist on workers in researched factory will be considered. Understanding the nature of forming union outside legal structure, at least need to be registration only for the granted situation of it and acceptable for other non-member workers hoping to become members will be contextually stated.

4.2 MCE Trade Union (Myanmar Consumer Enterprise. Ltd/ Detergent)

The life of this union is not as long as other unions. It was attempted to organize basic labor organization (MCE) within factory by 2018 August. The unionists didn't know widely about the current labor law, about the right to form basic labor organization and their entitlement for being workers accordingly to legal frame. Leader of the union stated that *"I had not known about my legal entitlements and my rights before. However, at the time of beyond my tolerance, I tried to solve the problem (oppressive behavior of employers) myself"* One day before the effort to join with ABFTU, the union leader had been discriminated by the management due to rejecting overtime characterized as obligatory; interviewee answered that *"When overtime is not as a participatory work, I decided myself whether I should do the overtime or not."* The important thing was that union leader even didn't understand at that time about what are the laborer's right according to international norms or Myanmar legal frame work, the force which

make her to find the way to solve the problem or to get protection from the state was that the feeling of injustice in the work place. They used the words “*intended behavior of oppression*” in the interview. Almost all of workers inside factories had not been receiving any sufficient compensation for overtime or any legal protection of it. The main reason of this, as the reasoning of union, is that lack of knowledge about their entitlement. Workers also have considerable difficulties for government like being worker under age limitation, lack of NRC and being ruled by moral economy enormously. At time conducting of focus group discussion, it stated as “*One of security accused as one who did not understand about gratitude because we got the money and job from factory owner. If he did not do like that, we even did not get the chance to work.*” That’s the cultural hegemonic idea within the understanding of Myanmar Trade Unionism.

When the person who become leader of trade union tried to solve her problem; it was being shouted out by supervisors and management level, it was submitting the letter of disputes to township arbitration council. On the other hand, Management personnel also held the meeting to move her to another position where it was not suitable for. Union Leader stated that “*After I knew about, I decided to work if that orders came from the factory owner directly, if not, I wouldn’t. Because management sometimes want to oppress workers than factory owners*” Finally she accepted the new work and she tried to be fit in that place. The condition of nothing to choose made her and other workers like her to try as much as they can to fit in such working condition. One member of that union stated that “*we are divided from union workers and non-union workers. Non-union worker have more chance to get promotions and to be called for overtime.*” But her meeting with member of ABFTU Central Advocacy committee would be the very first step to form the trade union within factory to protect labor right and to fight for their legal entitlement of being experienced workers inside factory, contrasted to other supervisors and workers affiliated to management personnel.

The attempt for registration was commenced from 2018 August, time of starting second Fu Yuen factory strike. Leader of the union stated that “*Because of asking again and again for the required information, our process of registration was delayed.*” They have been rejected several time and being removed the members from 90 workers to 60 workers by the reason of lacking precise address and lacking NRC. After facing several forms of rejection, they got finally their recognition letters on April 15, 2019. That union seem to very young one in the context of

Myanmar trade unionism. But the leaders and general secretary have the informal role before getting legal recognition for advocating and leading in the process of problem solving. Currently, they tried to get their legal entitlement by the negotiation with their employers. They even haven't received yet their compensation for experiences (emolument) until today. (Union, 2019) If there is a question for that issues, the answer will be that it is absolutely depended on consciousness of factory workers about their legal right and their being exploited condition. Ko Kyaw Myo argued that *“the level of grievances describe the movement of workers within factory. If the oppression is relatively low rather than their struggle in actual life, they are able to keen on that situation. If not, dispute is leaded”* The condition stated above will lead to make consideration on the legal consciousness of factory workers and ruling of the embedded norms “safety first”, in other words moral economy within specific factory.

For the time being, there are 60 formal union members of 601 workers at MCE factory union. Working coordinating committee is planned to form accordingly to 2012 labor law. However, on the other hand, the role of trade unionists within factory promoted by rank and file workers to the agency role. They have got to represent such workers for their problems within work place, no matter how much it is big or small. When the question leads to confirm their agency role, they, trade unionists at MCE factory confidently said that they meet and discuss about their demand for grass root workers. (Union, 2019) By considering on membership density, it could be reasonable to state the power of this trade union is relatively lower than other union having high density. Despite the fact that the informal influence of Trade Union to other workers and the recognition of other workers upon them provoke the confident condition of representation and negotiation with management personal, face to face with leaders. So, ruling of moral economy was in the both side of two parties; employer and unionists.

One of the workers consider about the kinship of their employer what employer is their benefactor for their well-being. Forming trade union or other antagonistic behavior to employer will be ungrateful. (Union, 2019) This statement cover to prove the role of moral economy in Myanmar labor industrial relation. Theses patronage relationship have monumental role to find the very causes of labor dispute in contemporary Myanmar.

Frightening of workers to join union is partially through the implicit threats of employers on their benefits. Some aspects of industrial relation in Myanmar give the employer arbitrary

power to decide which employer can get overtime work and overtime fee. [It is because granted wages for employee by the minimum wages law 2018 was not fully sufficient for workers. For that reason, being choose for overtime work and getting more wages form overtime would be very grateful thing for workers] Two leaders of this trade union have not been chosen for overtime task since started time of trade union movement. (Union, 2019) It is a kind of discrimination on trade unionists. They still endeavor to do this dangerous work for their career for the purpose of bequest the spirit of trade union to next worker generation of trade union.

So some usual disputes about working condition and relating to overtime were solved in the very initial stage with compromising face to face between Trade Union leaders and management personnel. The trade unionist from ABFTU, central advocating committee member argued that the targeted point for workers especially for trade union movement is employer. The reason is that disputes came from happening conflict to employer for demanding worker rights accordingly from current labor regime. (Union, 2019) Leader of ABFTU considers that as winning the employer will be that winning in all part of struggle they faced. The approach to dispute that even the mediating of state don't be accepted due to time consuming and bureaucratic system. The nature of strike is absolutely hinged on time, circumstance and situation of disputes. The movement it made was unintentionally occurrence for dispute settling itself. However, disputes from MCE were solved mostly by their first stage due to negotiating of trade unionists.

4.3 Fu Yuen Union (Garment factory)

The problems this union faced are relatively enough to understand the garment factory disputes with complex criteria to consider. This factory union was very famous for their strike to factory owner and management for firing them without proper reasons in August 2018. It caused many controversial answers and arguments to current labor politics debate. Its long protest to the factory management and government, asking for urgent new settlement approach to their disputes and discovering the oppressive behavior of employers provoked their role in the modern trade unionism of Myanmar. Their second strike was resolved by mediating of Yangon regional government and finally resolved.

One of the founder of Fu Yuen trade union said that *“unionists faced many discrimination from supervisors directly or indirectly along after formation legally.*

Nevertheless, being there as a trade unionists and fighting for their existence is very essential for the trade unionism in Myanmar.” It was the critical point leader of Fu Yuen Factory trade union mentioned both for their union and national union movement. (Union, 2019)

Fu Yuen union was being organized around 2016 after having knowledge about their right to form trade union within factory by discussing with ABFTU. This union was formally organized and recognized by 28th February 2017 with 30 members and seven executive committee members. The fundamental reason for forming such union was for breaking employment contract, however Employment contract was applied since 2015 inside factory, that employers were being command to work the task outside of contract and dictating urination time of women workers for maximum three times a day. Leader of that union argued that *“The injustice we have suffered was severe comparing to other factories. We always tried to find the way to just such injustice. Before meeting with ABFTU, we even didn’t know about our right for leave and compensation by Myanmar Labor Law. We even hadn’t heard about (WCC) working coordination committee.”* So founding basic labor organization was the good path to get worker consciousness in Fuu Yuen Factory. Trade unionists started their advocating mission to workers when the preparation of organization was commenced. Trade unionists talked and persuade for taking part of union formation and to support as well.

When the organizing the union was in process, before getting form-7 (recognition letter from Government), trade union leaders have demanded their needs to employers and being wrongness. Their conflict was commenced at that time. Leader of that trade union stated about the condition of such time that *“Factory management personnel always tried to halt their unionized movement and discriminate the unionist leader in various way.”* After receiving official recognition letter, the situations were wore and wore and worst. They often investigated every advocating steps of union inside factory from non-union workers. The members of trade unions and leaders face many threats like being don’t allowed to promotion, increase salary and overtime. Many workers whoever he or she is in initial training period or probation period who are directly or indirectly related to union leader will be suck out ostensibly for other reasons, but for having relation with trade union. (Swe, 2019) By the time of recruiting workers, they will be asked for the name of trade union leaders, they will not get the job if they know union leader name. So employers or management of factory ever searches to overthrow the spirit of trade

union inside factory. They built sound system inside factory lunch apartment for making noises when union leader commenced their advocacy. The main motivation for unionists is also to maintain such spirit even in the sacrifice way.

After organizing trade union successfully, they had two strikes; in 2017 and 2018. The causes of happening such strikes were of breaking of legal entitlements; illegal removing of seniority benefits and firing of trade union founders; thirty workers. Workers were conscious about their conditions what were worst rather than other garment factories inside Dagon Seikkan industrial zone. So they comparatively argued to administration of factory for their demands to get experienced pension compensation and bad working condition and reformation of WCC. Sacking out of trade unionists without proper reasons illustrated the oppressive conditions trade unionists faced. By any possible mean, trade unionists are oppressed in Fu Yuen industry for instance setting sound boxes at lunch rooms to stop giving speech to join union.

One member of trade union stated that *“The time ever we demanded for our rights (very ease and allowable demands for example like to have enough toilets in factory), they refused or neglected our voices. We could not anything”*. When the question about perception of employers to trade unions is asked, all unionists agree on that every employer of them don't want to allow easily in the process of demanding their legal rights. Even easy allowable tasks for employer that asking to work only in 8 hours and if working time was more than 8 hours pay overtime fee were not successful in fact. In the consciousness of workers, it is that every supervisors and employers try to exploit the labor of laborer in every possible way.

In Myanmar minimum wages law as a loophole, the initial training period three months, workers may be compensated at no less than 50% of the position's full wage. The probation period, next three months, workers may be compensated at no less than 75% of the position's full wage. Most of the factory give the wages according to this provision. So the side of administration has six months times to pay full wages granted by law. During this period, Factory management have many plans to nature the mindset of employees for the purpose of increasing overwhelming of moral economy in given department. Managers and supervisors persuade with promotion and threaten with sacking out of them; that is legal action. This is the threat to the associational power of trade union.

4.5 Financial Process of Basic labor organizations as a challenge

According to labor organization law, trade union has to take the membership fees no more than two percent of their basic salary. The calculation of it was 2880 kyats in accordance with current minimum wages law. ABFTU haven't accepted any form of donation with chain; donated for some specific purpose. They run their activities by funding of their members and monthly membership fees, 10000 kyats by member unions and other domestic independent donors. It was sufficient when there was not any remarkable disputes or special occasion. So from the financial perspective, ABFTU freely exists from chains which has possibility to shape them.

MCE trade union collects 2000 kyats to members of central executive committees and collects 500 kyats to ordinary members of unions. Fu Yuen trade union collect 1500 kyats for every rank and files workers. When it is in chaos, there will be always insufficient fund for the activities. At that time, ABFTU and its supporters help to fill the financial gap.

4.4 The Approach of ABFTU to Labor disputes

ABFTU tried to solve the problems within very initial stages of disputes by negotiation inside factory. When workers face the problems, their demands collectively or individually have been sent to factory administration and to township reconciliation body. But they waited for one week, sometimes it depends on the will of workers and then if administration neglects the disputes, trade unionists commence their advocacy and preparation to make strike as the last resort for resolving. ABFTU thinks it is the best tool to make threat to employer. Because they worried for losing their profits by the attempts of workers. The first reason of choosing this track is time consuming functions of legal dispute settlement process [the time frame of disputes settlement process will be stated in appendices] and it has a considerable possibilities for rejecting the decision of Arbitration council by factory administration as the loopholes of law in dispute settlement.

According to WE generation reports in 2018, other federation and trade unions network occasionally faced the difficulties in founding of trade unions. Such difficulties were especially firing unionist workers for the reasons of breaking EC contracts and management of the factory is always ready to repress these movements. Even in the only one federation, MICS has 284

workers being fired for unionists' movements. This union also did not trust on the arbitration process of government.

ABFTU also agreed on that their disputes happened in their industrial zone were mostly two reasons about factors relating to the trade unionism, specifically basic labor organizations and factors relating to improving wages or compensation. But in rare cases, employers even rejected on easy tasks to fill workers' demands like needing to work within the time 8 hour limitation. In some factories like, such as KGG and MCE factory Union, there have an agency role of the union for workers in disputes settlements. The clear example of it was the Dagon Seikkan Garment factory union due to unnecessary condition of WCC within factory and peaceful negotiation process with employers for working condition and workers' satisfaction. Whenever there is a feasibility to be dispute, it will be solved by union negotiation with factory administration. Factory owner presumed that law as the tool to control and to reduce lost by trade union movements of labor democratic politics.

According to ABFTU leader, about eighty five or ninety percent of disputes by ABFTU helped fully or partially, individually or collectively were end with satisfaction of workers. In the case of closing Ever Green factory, workers got advantages beyond legal entitlement from mediation of ABFTU in Township arbitrary council. So we can conclude that this approach is entirely base on threat of cost to employer by collective bargaining or potentiality of strike. The historical evidences, triumphs of strikes, happening within these two-three years of ABFTU made milestones to get their mission in the long term.

Within this framework, threat of cost and reasonable compromising techniques will be the best approach of ABFTU to the labor disputes. So, the reason why ABFTU choose the approach outside legal structure was the time consuming functions of legal process, unrecognized manners of government and factory management, and ineffective process of disputed settlement process. The challenges they faced were that the oppressive behavior of employers and overwhelming rule of moral economy within factory.

In Myanmar minimum wages law as a loophole, the initial training period three months, workers may be compensated at no less than 50% of the position's full wage. The probation period, next three months, workers may be compensated at no less than 75% of the position's full wage. Most of the factory give the wages according to this provision. So the side of

administration has six months times to pay full wages granted by law. During this period, Factory management have many plans to nature the mindset of employees for the purpose of increasing overwhelming of moral economy in given department. Managers and supervisors persuade with promotion and threaten with sacking out of them; that is legal action. This is the threat to the associational power of trade unions.

Chapter 5

Conclusion

5.1 Findings

The reasons why All Burma Federation of Trade Unions (ABFTU) has unwillingness to register and be in line with the settlement process government promoted are that they perceive the problems are happening by the oppressive behavior of employers and their unwillingness to obey the law or to recognize the labor law. In order that they, as ABFTU, will try to negotiate at first peacefully in the current institution, if not success, their last resort will be “threat of cost to employer”. It could be found out in the case study of unionist movement in Fu Yuen factory. Since there is a plan to establish the union, the employer try not to successfully organize and advocate the workers until now. Threat of cost to employers mean that any kind of attempt to stop the production process and making loss for the employer. If it was in the legal structure, that would not be able to apply such way to demand their rights or to solve their problems by employer due to illegal. Another contemporary trade union federation or confederation are more moderate than ABFTU in such disputes settling approach.

For Fu Yuen Union, when they initiated the formation of trade union by reasoning on controlling even in their biological process, they hadn't know about their entitlements from labor law yet. Also for the MCE Union, the struggles they face, particularly trade unionists, feeling of injustice make to find the way enhancing their current stages to more comfortable one. So the feeling of unfairness upon the judgments of employer upon workers was the very first force for organizing trade union or initiating labor activism in ABFTU. But the workers are always afraid of being marginalized due to their unionist attempts.

According to the qualitative research stated above, ABFTU clearly saw the drawback of operating as registered union within current labor politics. The workers especially around ABFTU don't believe on the resolution power of labor law and other third parties as NGO, INGO, ILO and so on. The process of ABFTU express the necessary condition of workers lead union in current Myanmar unionism. It found out the approach to disputes resolution of ABFTU was fully oriented to enterprises' management. Moreover, it shows the consequences of time consuming frame of legal dispute settlement process (bureaucratic process) as striking was dominant strategy for workers. But explicitly finding is that ABFTU didn't believe on such process and their main weapon to enhance their welfare is "War", it means that they will fight by any possible means to attain their end radically.

Their key challenges will be only in facing with sophisticated employers and in financial process. Some employers like Fu Yuen and another kinds of them discriminate directly or indirectly to workers resigning themselves at last. As the biggest weakness in the law, second revision of dispute settlement law 2014, insufficient penalty for disobeying the decision of arbitration council is prominent problem current government should consider as priority.

The union spirit in current Myanmar is solely base on the feeling of unfairness (injustice) on themselves and it always need one problem to initiate organizing of trade unions. In the case of ABFTU, MCE and Fu Yuen, the trade unions movement started from industrial injustice.

5.2 Suggestions

For trade unionists, it needs to be worker controlled union for more understanding about the sources of disputes occurrences and to get potential for their innovative advocating paths. In

Myanmar current context, already registered big trade unions play crucially their role as policies initiating body. That would not be acceptable for rank and file workers. So the approach of ABFTU to Trade Union organization will be best suited one for current labor politics. Other workers should try to form trade unions first and afterwards to form federation and confederation and so on.

According to the research, to break down the effectiveness of moral economy within factory, it must be strong in solidarity and know the objectives of their organization fully. Another way, they ought to use another different channel effectively for promoting consciousness of working class for instance, using social media for effective flow of influence. They should reconsider on their advocacy techniques for their unionist movement especially within factory. That would be very helpful for improving their class consciousness and to hinder the modern oppressive behavior of employers. By making more voices on legal reformation and discovering of employer's oppressive behavior, workers can overcome such cumbersome fence.

The process of financial aid accepting from other domestic or foreign donors should be reconsider by the basic labor organization and such federation because of needing to get strong financial power in the organization. On the one hand, the policy of avoiding influence by financial supports will be kept in place. The third party, confederation, federation and other supporters also need to reconsider on their supporting way. Most of the time, the challenges Myanmar trade unions faces are implicitly or explicitly related to the financial issues.

For the side of government, it needs to confirm full complying of factories on current labor law as freedom of association and it should have one third party to confirm for labor right and implementation of legal requirement within industrial zones.

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APPENDIX 1: LEGISLATIVE PROVISIONS FOR LABOR DISPUTE RESOLUTION IN MYANMAR

The Settlement of Labour Dispute Law (SLDL) was promulgated on March 28, 2012, repealing the 1929 Trade Dispute Act. Its implementing rules, the Settlement of Labour Dispute Rules, were issued on April 26, 2012, and an amendment to the law, Law Amending the Settlement of Labour Dispute Law, came into effect on September 30, 2014.¹²⁶ The SLDL was enacted to safeguard the rights of workers and to facilitate the resolution of disputes “fairly, rightfully and quickly” (Preamble). The SLDL defines disputes as follows (Sec. 2):

» **Dispute:** “labour dispute or disagreement between an employer or employers or employer organization which represents them and a worker or workers or the labour organization which represents them in respect of employment, working, termination of a worker or workers and in respect of working or service including pension, gratuity, bonus and allowances or compensation for work related grievance, injuries, accidents, deaths or occupational diseases or in respect of any other matters of worker including worker’s holiday, leave” [Art. 2(m)].

» **Individual dispute:** “rights dispute between the employer and one or more workers relating to the existing law, rules, regulation and by-law; collective agreement or employment agreement” [Art. 2(n)].

» **Collective dispute:** “dispute between one or more employer or employer organization and one or more labour organization over working conditions, the recognition of their organizations within the workplace, the exercise of the recognized right of their organizations, relations between employer and workers, and this dispute could jeopardize the operation of the work of social peace. This expression includes a rights dispute or interest dispute” [Art. 2(o)].

Under this law, four forms and levels of labour dispute resolution bodies shall be formed with the following mandates:

» **Workplace Coordinating Committee (WCC):** shall be established in any trade in which more than 30 workers are employed, with a view to negotiate and concluding collective agreement (SLDL Sec.3). The mandate of the Coordinating Committee is, upon receiving request and complaint from the worker or labour organization or the employer over their grievances, to negotiate and settle such grievances within five days from the day of the receipt of the request [Sec.6(a)].¹²⁷

WCC is composed of two representatives of workers and two representatives of the employer. Worker representatives shall be nominated by each of the labour organizations if they exist, otherwise they shall be elected by the workers.

If there exists in the same undertaking both labour organization representatives and elected worker representatives, the employer shall not use the existence of elected representatives to undermine the position of the labour organization concerned or their representatives.

In the case where a settlement cannot be reached, the employer or worker may complain to the relevant Conciliation Body (SLDL Rules Sec. 9);

» **Township Conciliation Body (TCB):** the Region or State Government shall form the Conciliation Body in the townships within the Region or State to determine the type of dispute whether it is individual or collective dispute which is complained or received and conciliate within the stipulated period in accordance with the stipulations so as to settle the dispute (SLDL Secs.10-12). The TCB consists of 11 members: one representing the relevant Region or State Government; 3 representatives elected by the employers or employer organizations; 3 representatives elected by workers or the labour organizations; 1 department representative of the relevant township level; 2 distinguished persons trusted and accepted by employer and the labour organizations; and a person assigned duty by the Ministry as the Secretary (Sec.10). The

Township Conciliation Body shall conciliate the case within three days, not including the official holidays, from the day of knowing or receipt of such dispute (SLDL Sec. 24(a)); if the case cannot be settled within three days, the conciliation can be continued if both parties so request (SLDL Rules 11(b)). In a case where no settlement has been reached, the parties to an individual dispute can apply to the competent court (SLDL Sec. 23); while a collective dispute shall be referred to the relevant Arbitration Body (SLDL Sec. 25);

» **Dispute Settlement Arbitration Body (SLDL Chapter IV):** the Ministry shall, with the approval of the Union Government, form the Dispute Settlement Arbitration Body in the Region or State. Its mandate is to make decision on the collective dispute handed over by the Conciliation Body (SLDL Sec. 27). The AB consists of 11 members: 1 person assigned by the relevant Region or State Government; 3 persons selected from the nomination list submitted by the employer organizations; 3 persons selected from the nomination list submitted by the labour organizations; 1 departmental representative selected by the relevant Region or State Government; 2 distinguished persons trusted and accepted by the employers or relevant employer organizations and the labour organizations; and 1 person assigned duty by the Ministry as the Secretary. The Arbitration Body shall make decisions on the collective dispute within seven days, not including the official holidays, from the day of receipt of such dispute and send the decision to the relevant parties within two days, not including the official holidays (SLDL Sec. 27). If it is a decision which concerns with an essential services or public utility service, the copy shall be sent to the Minister and relevant Region or State Government (ibid). In the case where either party is not satisfied with the decision of the Arbitration Body, application to the Arbitration Council for its decision may be made by both parties within 7 days, not including the official holidays, from the day of receipt of such decision or the unsatisfied party may carry out a lock-out or strike (Sec. 28). In respect of the essential services, any relevant party who is not satisfied with the decision of the Arbitration Body shall apply to the Arbitration Council within seven days, not including the official holidays, from the day of receipt of such decision (Sec. 29). The decision of the Arbitration Body shall come into force on the day of decision if both parties agree with the decision (Sec. 34); The relevant parties may agree to amend the decision of the Arbitration Body after three months from the day of coming into force; in such circumstances, the new agreement shall supersede the relevant part of the Arbitration decision (Sec. 36); » **Dispute Settlement Arbitration Council (SLDL Chapter V):** the Ministry shall, with the approval of the Union Government, form the Dispute Settlement Arbitration Council for hearing the accepted disputes and cause to decide (Sec. 21(b)). The Arbitration Council consists of 15 members: 5 persons selected by the Ministry of Labour; 5 persons selected from the nomination list submitted by the employer organizations; 5 persons selected from the nomination list submitted by the labour organizations. Upon receiving a case, the Arbitration Council shall form and assign duty to a Tribunal to try the case and make decision (Sec. 30). A Tribunal consists of three members representing each of the three parties. The Tribunal shall make decision on the collective disputes within fourteen days, not including the official holidays, from the day of receipt of such dispute (7 days in the case of essential services); and send the decision to the relevant parties within two days, not including the official holidays (Sec. 32). The decision of the Tribunal shall be deemed as the decision of the Arbitration Council, and such decision shall come into force on the day of its decision (Sec. 35). The relevant parties may agree to amend the

decision of the Arbitration Council after three months from the day of coming into force; in such circumstances, the new agreement shall supersede the relevant part of the Arbitration decision (Sec. 36);

» **Courts (SLDL Section 23):** A party to the individual dispute who is not satisfied with the conciliation by the Conciliation Body may apply to the competent court in person or by the legal representative. The decisions of the Arbitration Council are appealable to the Supreme Court, under Art. 296(a)(v) of the Constitution.

APPENDIX 2: LABOR DISPUTE SETTLEMENT MECHANISM

Process	Types of disputes	Steps	Composition	Mandate
<p>1. Mandatory workplace negotiation</p> <p>(Enterprises with less than 30 workers)</p> <p>Mandatory workplace negotiation through Workplace Coordinating Committee (Enterprises with more than 30 workers)</p>	<p>Individual or collective</p>	<p>Grievances brought to the employer for negotiation (Arts. 3-7) <i>5 days</i></p> <p>The employer sends the record of settlement to the TCB if requested (Art. 6(b)) <i>no timeframe</i></p> <p>The employer shall submit list of WCC members and submit to TCB (Rules 6) <i>14 days</i></p> <p>Grievance brought to the WCC for negotiation and settlement (Art.6(a)) <i>5 days</i></p> <p>The employer shall submit the record of settlement to the TCB (Rules 7) <i>7 days</i></p>	<p>WCC</p> <p>4 members:</p> <ul style="list-style-type: none"> • 2 from employer • 2 from unions or elected by workers 	<ul style="list-style-type: none"> • Settling grievance • Negotiation/collective agreement • Promoting good labor relations • Negotiating a contract on the conditions of employment, safety and health and productivity
<p>2. Conciliation (Township)</p>	<p>Voluntary conciliation for individual disputes</p> <p>Mandatory conciliation for collective disputes</p>	<p>Disputes brought to the Township Conciliation Body (TCB) (Art. 9) <i>No timeframe</i></p> <p>The TCB determines the type of dispute whether individual or collective (Art. 12) <i>No timeframe</i></p> <p>The TCB conciliates the dispute within 3 days and concludes mutual agreement in case of successful conciliation. (Art. 24)</p>	<p>Township Conciliation Body</p> <p>11 members:</p> <ul style="list-style-type: none"> • 3 from government • 3 from employers • 3 from unions • 2 distinguished persons / public interest 	<ul style="list-style-type: none"> • Determining the type of disputes whether individual or collective • Conciliating the dispute • Concluding a case of successful conciliation
	<p>Collective disputes</p>	<p>The TCB refers non-conciliated collective disputes to Arbitration Body (Arts. 25-26) <i>2 days</i></p>		

3. Arbitration Body (Region/State)	Collective disputes	<p>The AB forms a branch-body consisting of 3 members and holds a hearing; after the hearings submit the case to the AB (Rules 15-16).</p> <p>The AB makes decision within 7 days and sends the decision to the relevant parties within 2 days (Art. 27)</p> <p>If the arbitration cannot be concluded within the timeframe, the AB shall request to the AC to extend the time (Rules 15(a)).</p>	Region/State Arbitration Body. 11 members: <ul style="list-style-type: none"> • 3 from government • 3 from employers • 3 from unions • 2 distinguished persons / public interest 	A branch-body of 3 members will hear the case and send them back to the AC for making.
	Collective disputes	Referral to the AC (Art.2 8) 7 days		
	Collective disputes	The parties may request the AB to re-explain the unclear facts in the decision (Rules 27) 7 days		
4. Arbitration Council (National)	Collective disputes	<p>A Tribunal is formed (Art. 30), settles the collective dispute (Art. 31) within 14 days and sends the decision to the parties within 2 days</p> <p>In respect of essential services, a Tribunal is formed (Art. 30), settles the collective dispute within 7 days (Art. 32) and sends the decision to the parties within 2 days</p>	Arbitration Council. 15 members: <ul style="list-style-type: none"> • 5 from government • 5 nominated by employers • 5 nominated by unions 	A Tribunal consisting of 3 members will hear the case and send the decision. The decision of the Tribunal is deemed final of the AC.
TOTAL DURATION				

		The parties may request the Tribunal to re-explain the unclear facts in the decision (Rules 27) 7 days		
		If the decision requires employer to pay damages to the worker (for termination, dismissal or lock-out), the payment shall be made within 30 days (Rules 26)		

