



JURIDICAL ANALYSIS OF DIPLOMA RETENTION AGREEMENT AS A CONDITION OF WORKING IN THE COMPANY

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Article Info

ABSTRACT

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The practice of companies withholding diplomas as a condition of employment is an employment law issue that reflects the unequal position between employers and workers and the weak protection of workers' rights. Although this practice is not explicitly regulated in employment law, it has the potential to go against the principles of freedom of contract, fair employment relations, and human rights. This study aims to analyze the form of legal protection for workers, and the government's responsibility in preventing and combating this practice. Through normative legal research, it was concluded that the detention of diplomas could violate the constitutional rights of workers, potentially making the agreement invalid. Legal protection can be provided in a preventive and repressive manner, based on national law and international human rights instruments. The government's responsibility is strengthened through supervision, mediation, and the issuance of the Circular Letter of the Minister of Manpower No. M/5/HK.04.00/V/2025. Nevertheless, stronger laws and regulations are needed to ensure legal certainty and the effectiveness of legal protection for employees.

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1. INTRODUCTION

In the midst of globalization and rapid economic growth today, Indonesia faces major challenges in the world of employment. Employment plays an important role in driving overall economic growth. Based on data from the Central Statistics Agency (BPS), Indonesia's national Open Unemployment Rate (TPT) is 4.76% in February 2025, or equivalent to 7.28 million unemployed.

This condition reflects a phenomenon where there is fierce competition in the job market, so companies use various strategies for very strict work requirements in order to maintain worker loyalty. However, these practices often ignore the balance between workers and companies. As stipulated in Law Number 13 of 2003 concerning Manpower, the fair protection of workers' rights is very important in a company.

The main problem faced in this situation is the company's habit of withholding new employees' diplomas as collateral so that employees will not resign or seek another job as long as their employment contract has not expired. A low bargaining position can make the diploma detention agreement legally invalid and null and void because it contains elements of coercion or threats in it.

This kind of practice clearly violates the basic rights of workers, such as the right to their own personal documents, which should be protected by Article 28D Paragraph (1) of the 1945 Constitution, namely "Everyone has the right to work and to receive fair and decent remuneration and treatment in employment relations".

All agreements based on the principle of freedom of contract are made to prevent misunderstandings or losses for all parties involved. However, companies often ignore the principle of freedom of contract when drafting employment contracts, resulting in inequality among employees.

The balance of position between employers and workers in the practice of employment relations in fact rarely realizes due to various factors and conditions faced.. Equality of position is also difficult to achieve without equal ability on both sides. When there is an imbalance of ability, those who have more capital and dominant positions, such as entrepreneurs, tend to impose their will on workers with lower positions and abilities.

In the case of diploma withholding, the process often begins with the submission that is considered "voluntary" by the worker, based on the agreement that forms the basis of the employee recruitment process. Because they are in a situation of being helpless or vulnerable, workers are often forced to agree to these agreements and hand over their personal documents because they need work. Most employees do nothing for fear of losing their jobs, which is why this practice continues to this day.

This fact is further strengthened by the emergence of various reports of diploma detention in several regions in Indonesia, including the city of Surabaya. The Head of the Surabaya Industry and Manpower Office (Disperinaker), Achmad Zaini, stated that since the post opened until Thursday (April 24, 2025), his team has recorded 36 complaints from workers. The complaints came from 24 companies located in Surabaya and outside the city.

Detention of diplomas for workers as legal subjects who have the right to get a decent job and livelihood. It raises the main problem where there is no explicit regulation regarding the detention of diplomas in the national labor law system, but the reality is that this practice is still widely practiced, so that it has various impacts and harms workers.

This kind of research is crucial, given that our legal system still has significant gaps. In fact, the Manpower Law indirectly prohibits the practice of storing personal documents through Article 52 paragraph (1) letter d, which emphasizes that employment agreements must not conflict with the norms of public order, public decency, or applicable laws and regulations.

The purpose of this study is to legally analyze the diploma withholding agreement as a condition of employment in a company, by highlighting the legal basis, legal protection for workers who suffer losses due to the withholding of diplomas by the company, and the role of the government in dealing with this issue. The discussion of the issue of diploma detention will not only open our eyes to the injustice experienced by workers, but can also make a real contribution to the development of more progressive legal thinking, so as to encourage the birth of a truly fair labor regulation reform and protect the basic rights of workers throughout the country.

2. RESEARCH METHODS

The type of research used is Normative Research. It is a method to study and understand law as norms, rules, legal foundations, legal principles, legal doctrines, legal theories, and other legal sources, with the aim of finding answers to legal problems that are the object of research. By using a legislative approach and a conceptual approach, which is done by examining all laws and regulations related to the legal issues being discussed and using the words and thoughts of legal experts who develop in legal science.

The data sources used in this study are secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials. As well as qualitative analysis, namely data analysis or legal materials that focus more on the process of drawing conclusions with deductive and inductive methods. Where it always focuses on phenomena that involve humans, carried out in its natural order, comprehensive, developing.

The data collection tool used in this study is library research conducted in Higher Education Libraries, which is based on Article 20 of Law Number 43 of 2007 concerning Libraries, which states that data collection through literature research is a legitimate and appropriate method to support research.

3. RESULT AND ANALYSIS

Legal protection for workers who suffer losses due to the detention of their diplomas by the company

Legal protection can be understood as a series of measures to protect and enforce the rights of legal subjects using preventive and repressive legal instruments, and can be implemented in the form of written or unwritten rules. According to Satjipto Rahardjo, legal protection is an effort to secure the rights of individuals who are threatened or have suffered losses due to the actions of others, while ensuring that everyone can obtain and exercise their legally guaranteed rights.

Legal protection for workers, especially related to the retention of diplomas as a condition of employment, is very important. Employees' often limited understanding of legal aspects often leads them to accept company policies that require the retention of the original diploma without further consideration. The widespread perception that employees are in a weaker position than employers underscores the urgent need for legal protections to ensure balance and fairness in employment relationships. This protection aims to guarantee employees' fundamental rights, promote justice, and prevent violations of the rule of law. This ensures that legally

guaranteed rights are enforced and that employees harmed by employment contracts receive appropriate compensation.

This action essentially restricts the freedom of workers to seek or obtain alternative employment outside the company that will provide them with a better income and guarantee a more dignified life. In fact, every worker has the right to choose, get, or change jobs to earn a decent income, both domestically and abroad. This right is expressly guaranteed in Article 31 of the Labor Law, which states that "every worker has the same right and opportunity to choose, obtain, or change jobs and earn a decent income, both domestically and abroad".

This problem is mainly related to the implementation of the right to education and freedom of work. First, the withholding of diplomas is detrimental and negatively impacts an individual's chances of continuing education, as it restricts their right to improve their qualifications and skills. Second, it also hinders job mobility by limiting workers' ability to seek other job opportunities or move up to higher positions as their careers progress. From a human rights perspective, diploma withholding raises questions about the balance between an individual's right to control and keep their personal documents and the company's interest in ensuring employee engagement.

The practice of withholding diplomas by companies has a detrimental impact on workers, especially in their efforts to find new job opportunities or achieve better positions according to their career development. When workers do not have direct access to their original diploma, the application process for positions outside the company becomes hampered. Furthermore, a lack of control over their diploma can make it difficult for workers to demonstrate their qualifications to potential employers, ultimately narrowing their chances of taking a more advanced step in the professional world.

The urgency of legal protection for workers whose diplomas are withheld by the company is also reflected in the principles of international law. Various human rights instruments, such as the International Covenant on Civil and Political Rights (ICC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), indirectly affirm the right of every individual to own and control their personal documents. Therefore, legal protection against the practice of withholding identity documents by companies is essential to ensure respect for human rights and promote fair and equitable working relationships in accordance with international human rights standards.

Law Number 13 of 2003 concerning the Labor Market provides a legal framework for rights and obligations between employees and employers. Although the law does not explicitly address the withholding of qualifications, the values of equality, fair treatment, and privacy protections it recognizes can be the basis for assessing and criticizing such practices if they prove to be detrimental to employees. In this context, legal protection reflects the role of law in achieving its primary goal: justice, benefit, and legal certainty.

Preventive legal protection in the employment sector is based on human values, social justice, and the principles enshrined in Pancasila. This protection aims to prevent disputes from occurring from the beginning through legal regulations. Repressive legal protection, on the other hand, serves to resolve disputes that have occurred, particularly through judicial mechanisms. This form of protection is implemented by imposing sanctions on parties who violate the provisions of the applicable law to ensure law enforcement and achieve a deterrent effect.

The Government's Responsibility in Cracking Down on the Practice of Diploma Withholding by Companies

The practice of withholding of certificates is a widespread violation of workers' rights in Indonesia, especially in the informal sector and small businesses. Employers often use diplomas or educational certificates as collateral to pay off debts, enforce employment contracts, or restrict workers' freedom to choose a workplace. This practice not only harms workers directly but also violate human rights by restricting freedom of movement and inhibiting the right to education and self-actualization guaranteed by the 1945 Constitution of the Republic of Indonesia.

As a country governed by state law, as stipulated in Article 1 Paragraph 3 of the Constitution of the Republic of Indonesia after the Third Amendment, all aspects of state life must be based on the law. Therefore, the implementation of state functions by the executive, legislative, and judicial branches must be in accordance with the provisions of applicable laws and regulations. This underlines that every action or policy of a state institution must have a clear legal basis. Therefore, written legal provisions or procedures must exist and take effect before state action is carried out to ensure legal certainty and prevent abuse of power.

The State is obliged to protect the human rights of all citizens by upholding the principle of equality before the law and implementing governance based on fair and civilized human values. In the context of employment relations, this principle demands respect for the rights of employees as legal subjects. Therefore, the right of employees to possess, control, and use their diplomas as valid personal documents must be respected and must not be violated in any way by the employer or company in any form.

Government agencies play a leading role in handling diploma detention cases by focusing on prevention, monitoring, mediation, and education efforts to affected parties. Although they do not have direct executive authority to enforce diplomas, they can impose administrative sanctions or refer cases to court. This role is based

on the Manpower Law and Government Decree No. 35 of 2021 which implements the Job Security Program. Furthermore, government agencies, together with the Industrial Relations Court (PHI), play a strategic role in resolving diploma detention cases through mediation, monitoring, and law enforcement. In practice, the regional Directorate plays an important role, directly processing and following up on employee complaints related to diploma withholding.

From the perspective of employment law, neither Law Number 13 of 2003 concerning Manpower nor Law Number 11 of 2020 concerning Job Creation provides a legal basis that justifies the practice of holding a diploma as a guarantee in employment relations. The absence of regulations permitting such practices indicates that the withholding of diplomas is not in accordance with the principles of employee protection and fairness in employment relations, and should therefore be considered a potential violation of employee rights.

The government reaffirmed this prohibition through Circular Letter Number M/5/HK.04.00/V/2025 from the Minister of Manpower of the Republic of Indonesia, which prohibits companies from withholding Workers' Personal Documents. This circular emphasizes that employers do not have the right to withhold workers' personal documents, such as employees' diplomas, ID cards, driver's licenses, or passports, as this has no legal basis and can harm employees. Although this circular has not been officially incorporated into law, it has the legal force as an administrative regulation and is binding on government officials. This circular serves as an important reference for monitoring and enforcing labor standards.

Manpower Law Number 13 of 2003 and Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Cipta, which are considered the main regulations in the employment sector, currently do not explicitly prohibit companies from withholding diplomas. As a result, law enforcement agencies do not have a specific legal basis to directly sanction companies that carry out this practice. This situation creates a legal loophole that can weaken the protection of workers' rights and hinder effective prosecution.

The absence of a firm regulation regarding the prohibition of withholding diplomas creates room for companies to act arbitrarily and withhold their employees' diplomas. This prompted the Minister of Manpower of the Republic of Indonesia to issue Circular Letter No. M/5/HK.04.00/V/2025 which prohibits employers from withholding employee diplomas and/or identity cards. The purpose of this circular is to strengthen the protection of workers, in particular to guarantee the right to work and a dignified life in accordance with human values, and to counter the widespread practice of withholding of employee diplomas and/or identity cards in the workplace.

The Circular Letter issued by the Minister of Manpower of the Republic of Indonesia Number M/5/HK.04.00/V/2025 concerning the prohibition for employers to withhold employees' diplomas and/or personal documents, contains several provisions that serve as guidelines for companies in structuring employment relationships. These provisions emphasize the prohibition of withholding employee identity cards and at the same time provide guidance on the application of employee protection in workplace practice, which are as follows:

- a. Employers are prohibited from requiring and/or withholding the diploma and/or personal documents belonging to the worker/laborer as collateral for work. The personal documents are original documents, including certificates of competence, passports, birth certificates, marriage books, and motor vehicle owner's books.
- b. Employers are prohibited from obstructing or hindering workers/laborers from finding and obtaining more decent work.
- c. Prospective workers/laborers and workers/laborers need to pay attention and understand the content of the employment agreement, especially if there are provisions that require the submission of a diploma and/or personal documents as collateral for work.
- d. In the event that there is an urgent interest that is legally justified for the requirement to submit a diploma and/or certificate of competency belonging to the worker/laborer to the employer, it can only be done with the following conditions:
 - 1) The diploma and/or competency certificate is obtained through education and training financed by the employer based on a written employment agreement;
 - 2) The employer is obliged to guarantee the security of the diploma and/or competency certificate stored and provide compensation to the worker if the diploma and/or competency certificate is damaged or lost.

According to the legal hierarchy and regulations and their legal status, a circular is not included as a legally binding legislation with the force of general law such as a law. Basically, a circular serves as a guideline or administrative instruction for government officials in carrying out their duties and authorities. However, because the circular is a form of discretionary decision-making by government officials, its content must be in accordance with the principles of good legal order, must not conflict with higher laws, and must ensure legal certainty, justice, and order in government practices.

The Circular Letter of the Minister of Manpower Number M/5/HK.04.00/V/2025 is not universally binding like other laws or regulations. Its binding effect is internal and vertically limited, meaning that it only applies to targeted government agencies and officials. Therefore, this circular cannot be used as a direct legal basis for action or sanctions against employers who withhold an employee's diploma or personal documents. Nonetheless, the Minister of Manpower's circular serves to correct and legally confirm the practice of diploma withholding, which is not explicitly regulated by the Labor Law, and also provides guidance for government officials in monitoring employment relations.

Given that the practice of withholding diplomas violates human rights principles, the government should enact special regulations governing and restricting the ownership of original diplomas by workers. These regulations are necessary to ensure adequate legal protection for employees of their right to work and live with dignity, as well as to prevent abuse of power in the workplace. Clear regulations will allow for the continued exercise of fair and balanced freedom of contract without infringing on the fundamental rights of employees as weaker parties in the employment relationship.

The government plays an important role and responsibility in the comprehensive protection of workers. In implementing labor policy, the government, especially through related authorities, especially the Manpower Office, must carry out its supervisory function more actively and responsively. Concrete measures include intensifying and expanding controls to monitor compliance with workers' rights more effectively, efficiently, and uniformly across all employment sector.

4. CONCLUSION

Based on the results of the discussion, it shows that the practice of companies withholding diplomas can violate employees' basic rights such as freedom of choice, mobility in the workplace, and opportunities for professional development through education. This weakens the position of employees and goes against the principles of legal protection, justice, and respect for human rights. Employee protection must be preventive, through the establishment of clear standards, and repressive, through effective law enforcement. In a country governed by law, the government has a strategic role in protecting the rights of employees. Although this has not been enshrined in the law through an explicit prohibition, the Circular Letter of the Minister of Manpower No. M/5/HK.04.00/V/2025 seeks to strengthen protections and close existing legal loopholes. Nonetheless, stricter regulations, as well as increased oversight and enforcement, are needed to ensure legal certainty and justice.

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