

## Practice of Diploma Retention in Industrial Relations: Analysis from the Perspective of Labor Law

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### **Abstract**

*The practice of withholding diplomas by companies in industrial relations in Indonesia is still often found even though it has no legal basis. This withholding of diplomas is generally carried out on the grounds of ensuring the continuity of the employment contract and preventing workers from resigning before the end of the employment period. However, this action is contrary to the basic principles of Indonesian labor law which prioritize freedom of contract, protection of workers' rights, and the right to private property. This study aims to analyze the practice of withholding diplomas in industrial relations and its compliance with the provisions of labor law in Indonesia. The research method used is normative juridical with a statutory approach and a case approach. The results of the study indicate that the practice of withholding diplomas is not in accordance with the provisions applicable in Indonesian labor law, including Law Number 13 of 2003 concerning Manpower and Law Number 39 of 1999 concerning Human Rights. This practice also has the potential to violate human rights guaranteed by the constitution. Workers who experience diploma withholding have several legal remedies that can be taken, such as complaints to the Manpower Office, settlement of industrial relations disputes, and civil lawsuits. This study recommends that the government, companies, and workers improve their understanding and supervision of workers' rights to create fair and just industrial relations.*

## I. Introduction

In the dynamics of industrial relations in Indonesia, employment issues still leave behind various complex and diverse problems. One practice that often occurs but escapes the attention of the public and law enforcement is the withholding of diplomas by companies from their workers. This practice is carried out under the pretext of being a form of guarantee so that workers do not resign before the contract ends or as an effort to secure company investments, such as training costs or job placement.

However, the act of withholding the diploma raises various legal, ethical, and humanitarian issues. A diploma is a personal document that is attached to a person's identity and right to education, so that its withholding without a clear legal basis can be considered a violation of human rights and basic principles of fair employment relations. In the context of Indonesian employment law, this practice is not explicitly regulated and is in fact contrary to the spirit of Law Number 13 of 2003 concerning Employment which upholds the principles of justice, freedom, and partnership between workers and employers.

The practice of withholding diplomas by companies in industrial relations in Indonesia is one of the issues that often raises controversy from both workers and employers. In many companies, withholding diplomas is done as a form of guarantee so that workers do not resign before the end of the contract period. Companies argue that withholding diplomas is necessary to protect the investment that has been made in the process of training and developing workers' skills, as well as to ensure that workers remain committed to working in accordance with what is agreed in the employment contract.

However, on the other hand, this practice is often considered a form of violation of workers' rights, especially those related to the right to freedom of contract and the right to personal documents. According to Indonesian labor law, every worker has the right to freedom to choose a job and no party has the right to withhold a worker's personal documents without a valid basis. Withholding a diploma can cause workers to feel forced to continue working in a company that does not meet their expectations or even be trapped in an unfair employment relationship.

In the world of employment in Indonesia, industrial relations between workers and employers are regulated to create a balance of interests for both parties. However, in practice, there are still actions that are contrary to the principles of fair and just industrial relations, one of which is the practice of withholding diplomas by companies. This withholding of diplomas is generally done as a form of guarantee for the continuation of the employment contract or to prevent

workers from resigning before a certain period of work.

Previous research that examines law enforcement against corruption crimes has been studied and discussed by Wulandari, in 2018 in a scientific legal journal regarding "Legal Protection for Workers against the Practice of Withholding Diplomas by Employers". Wulandari (2018) in her research focuses on: legal protection for workers who experience withholding of diplomas, both preventively and repressively. This study also examines the effectiveness of supervision by the Manpower Office in handling cases like this. This research offers novelty, namely: Your research does not only focus on legal protection, but also analyzes the dynamics of industrial relations as a whole, There is a more comprehensive approach, not only from the normative legal aspect but also the aspects of employment and industrial relations, Potentially involving field data or concrete case studies.

This phenomenon of withholding diplomas raises various legal issues, considering that diplomas are personal rights and are valid evidence of a person's competence. This practice can limit workers' freedom in determining the continuation of their employment relationship and has the potential to violate human rights, especially the right to work freely and without coercion. In the context of Indonesian labor law, this action needs to be examined whether it is in line with applicable laws and regulations, including Law Number 13 of 2003 concerning Manpower and Law Number 39 of 1999 concerning Human Rights.

Based on this background, this study aims to analyze the practice of withholding diplomas in industrial relations from the perspective of labor law in Indonesia. In addition, this study will examine the relevant legal basis, identify potential violations of workers' rights, and provide recommendations for solutions to these detrimental practices.

## **2. Research Method**

This study uses a normative legal research method, namely legal research conducted by examining primary and secondary legal materials. The approaches used are the statute approach and the case approach. The primary legal materials used include Law Number 13 of 2003 concerning Manpower, Law Number 39 of 1999 concerning Human Rights, and other relevant laws and regulations. Secondary legal materials consist of literature, legal journals, articles, and previous research results related to industrial relations and protection of workers' rights. Data analysis is carried out qualitatively, by interpreting existing legal provisions to find answers to the formulation of the problems that have been set.

### 3. Results and Discussion

#### **The practice of withholding diplomas by companies in industrial relations in Indonesia**

The practice of withholding diplomas in industrial relations is the action of a company that withholds formal educational documents belonging to workers (usually original diplomas) as a guarantee or binding tool so that workers continue to work at the company, or as a form of security for certain work agreements (for example, fixed-term work contracts, training, or education funding).

In industrial relations practices in Indonesia, the withholding of diplomas by companies is often used as a form of security for employee work commitments. This withholding is usually done on the grounds of preventing workers from resigning before the end of the contract or as a form of guarantee for training investments that have been provided by the company. This practice is often found in sectors such as hospitality, aviation, education, and the outsourcing industry.

Contrary to the Principles of Industrial Relations. Industrial relations in Indonesia are based on the principle of partnership, namely balanced cooperation between workers and employers. Law No. 13 of 2003 concerning Manpower, Article 102 "Employers and workers are required to create harmonious, dynamic, and equitable industrial relations. Analysis: Withholding of diplomas shows an imbalance of power between companies and workers, and ignores the principles of voluntariness and equality.

Instead of creating loyalty, this practice can actually cause: Workers' discomfort and fear, Decreased work motivation due to psychological pressure, and Workers feel forced, not professionally bound. Withholding a diploma can become: Rights disputes, because they involve personal documents of workers, Interest disputes, if related to the employment contract system and guarantee arrangements, and Termination disputes, if workers want to quit but their diplomas are withheld.

The practice of withholding diplomas can also increase the risk of arbitrariness or exploitation of workers by employers in carrying out their work. Withholding diplomas by employers certainly makes it difficult for the workers themselves, where workers do not hold important documents from the results of their studies that they have obtained with great difficulty for years while studying (Sukardi, Pasaribu, & Kaliyee, 2021).

Some of the reasons why companies withhold diplomas: As a guarantee that workers will not resign before the contract period ends, To avoid losses after the company has incurred training costs, To form control over employees, especially in the outsourcing, manufacturing, or household sectors, and To prevent "piracy" by competing companies.

Basically, the withholding of diplomas by companies does not have a firm legal basis in Indonesia. Law Number 13 of 2003 concerning Manpower does not regulate or legitimize the act of withholding workers' personal documents, including diplomas. In practice, withholding of diplomas is often done through work contract clauses or agreements outside of formal contracts, thus creating an unequal bargaining position between workers and employers.

This can result in a legal vacuum regarding whether or not a diploma can be withheld. As a result of this legal vacuum, employers withhold workers' original diplomas as a condition for workers to be accepted to work based on customs that occur in the world of work and on the basis of freedom of contract (Azhar, & Priyono, 2019).

This phenomenon creates injustice in industrial relations, because workers are forced to continue working even though there may be violations of rights or dissatisfaction with working conditions. By withholding certificates, companies indirectly limit workers' freedom to change jobs or improve their standard of living, which is contrary to the basic principles of employment and human rights.

In addition, the practice of withholding diplomas has the potential to violate the provisions of Law Number 39 of 1999 concerning Human Rights, especially Article 9 paragraph (1) which states that everyone has the right to live, maintain life and improve their standard of living. Diplomas as personal documents should be in the possession of their owners, and their use for work purposes should be limited to verification, not hostage-taking.

In the context of industrial relations in Indonesia, the practice of withholding diplomas by companies is a form of inequality in employment relations that is contrary to the principles of justice, partnership, and workers' human rights. This practice has no legal basis and can cause serious industrial conflicts. Although this practice is common, workers' awareness to fight for their rights is still low, coupled with weak supervision from related agencies. As a result, this practice is often considered commonplace, even though legally and morally it clearly contradicts the principles of labor protection.

### **Compliance of the practice of withholding diplomas by companies with the provisions of employment law in Indonesia**

Normatively, the practice of withholding diplomas by companies in industrial

relations in Indonesia has no valid legal basis. Withholding diplomas is contrary to the principles stipulated in Law Number 13 of 2003 concerning Manpower. The main principle in Indonesian labor law is the existence of an employment relationship based on the protection of basic workers' rights, including the right to freedom of work, agreement, equality between workers and employers, and the right to be treated fairly in the workplace.

In Law Number 13 of 2003 concerning Employment, employment relations are based on the existence of a work agreement which is carried out with the principles of free agreement, free will and equal position between employer and employee. Withholding a diploma, in practice, is a form of indirect coercion that binds workers to continue working, thus contradicting the principle of freedom of contract which is the basis of the employment relationship.

In addition, the practice of withholding diplomas can be categorized as a violation of workers' personal property rights. A diploma is a personal document attached to an individual as proof of educational qualifications, and cannot be used as collateral without a valid legal basis. There are no provisions in national employment regulations, including Government Regulation Number 35 of 2021 or other derivative regulations, that allow companies to withhold workers' personal documents for any reason.

Furthermore, this practice has the potential to violate human rights as guaranteed in Law Number 39 of 1999 concerning Human Rights, and Article 28D paragraph (2) of the 1945 Constitution concerning the right to work and receive fair and appropriate remuneration and treatment in employment relations.

The practice of withholding diplomas by companies is not in accordance with the provisions of labor law in Indonesia and in principle violates the basic rights of workers. The following is an analysis of its compliance with applicable legal provisions:

- a. Inconsistency of Diploma Retention Practices with Employment Law.  
Contrary to Law No. 13 of 2003 concerning Employment

Article 6: "Every worker/laborer has the right to receive equal treatment without discrimination from employers."

Article 9 paragraph (1): "Every worker has the right to obtain and/or improve and/or develop work competencies in accordance with their talents, interests and abilities."

Analysis:

Withholding a diploma limits workers' rights to change jobs, study further, or develop themselves.

- b. Violating Ownership Rights (Civil Code)

A diploma is a document that belongs to the worker personally, not to the company.

Article 1977 of the Civil Code: "Anyone who takes possession of another person's property without the right is obliged to return it."

Analysis:

Withholding a diploma can be considered an unlawful act (PMH) if it is done without a valid basis.

c. Potentially Enters the Criminal Realm (KUHP)

If the withholding of a diploma is accompanied by threats, pressure, or is used to obstruct workers' rights, it can be qualified as:

Article 368 of the Criminal Code (Extortion)

Article 372 of the Criminal Code (Embezzlement)

d. Violating the Principle of Freedom of Work

Affirmed in the Constitution (UUD 1945):

Article 27 paragraph (2): "Every citizen has the right to work and a decent living for humanity."

Article 28D paragraph (2): "Everyone has the right to work and receive fair and appropriate compensation and treatment in employment relationships."

Analysis:

Withholding of diplomas has the potential to violate these basic constitutional principles.

e. Supreme Court Decisions and Jurisprudential Practice

Several court decisions and legal expert opinions state that:

The retention of diplomas as a guarantee of employment has no strong legal basis and violates the principle of justice in industrial relations.

Example:

Supreme Court Decision No. 1614 K/Pdt/2005 which confirms that the retention of personal documents without a legal basis is an unlawful act.

The practice of withholding diplomas by companies is not in accordance with the provisions of employment law in Indonesia, because: It is not regulated as the employer's authority in the Employment Law, It is contrary to the basic rights of workers, It has the potential to be an unlawful act (civil or criminal), and It can be sued or reported through legal channels.

From these various perspectives, the withholding of diplomas is not only contrary to the principles of employment, but also violates the principles of justice, private property rights, and the right to freedom of work as regulated in

the Indonesian national legal system. Thus, the practice of withholding diplomas is legally unjustifiable in industrial relations in Indonesia and should be a basis for workers to demand their rights through the industrial relations dispute resolution mechanism.

### **Legal measures that workers can take to deal with the practice of withholding diplomas.**

If the company does not return the diploma, the worker can sue the company on the basis of an unlawful act or report to the police on charges of embezzlement as regulated in Article 372 of the Criminal Code. Embezzlement is the act of taking someone else's property (partially or in whole) where control of the property already exists with the perpetrator, but that control occurs legally. For example, a situation where a person obtains ownership of an item because the owner has entrusted it to them, or a situation where a person obtains ownership of an item because it is part of their duties or responsibilities, such as a luggage storage officer (Pratama, Ariady, Aziz, & Pananda, 2024).

In the case of a worker's diploma that is not returned by the company, the resolution can be done through mediation by discussing the solution taken so that a clear point will be found from the company's intention to still withhold the worker's diploma and the worker can get his diploma back. However, in cases of mediation that do not find a common ground, legal action can be taken against the company that withheld the diploma for the violations committed (Putri, Rahmayani, & Suryamizon, 2023).

In Law Number 13 of 2003 concerning employment, "Article 136 paragraph (1) states that solutions to modern relations problems must be resolved for employers and workers/laborers or trade unions/labor unions with considerations in order to reach an agreement (2) If the solution through deliberation to reach an agreement as written in paragraph (1) does not agree, then employers and workers/laborers or trade unions/labor unions will negotiate modern relations problems through modern relations debate solutions directed by law." (Agustin, & Wahjoeno, 2023).

The flow of resolving disputes over withholding diplomas is that first, if an industrial relations dispute occurs, it is mandatory to attempt to resolve it first through bipartite negotiations through deliberation to reach a consensus. Then, the dispute resolution through bipartite must be completed no later than 30 working days from the date the negotiations began. If within 30 days one of the parties refuses to negotiate or does not reach an agreement, the bipartite negotiations are considered to have failed (Aditya, & Marlina, 2020).

Furthermore, if bipartite negotiations fail, one or both parties register their dispute with the local agency responsible for labor affairs (in this case the Manpower Office) by attaching evidence that efforts to resolve the dispute through bipartite

negotiations have been made after receiving the recording from one or both parties. The local agency responsible for labor affairs is required to offer the parties to agree to choose a conciliation settlement or through arbitration. Then if the parties do not choose the suggestion to resolve the dispute through conciliation or arbitration, the agency responsible for labor affairs delegates the dispute resolution to a mediator. And this mediator is tasked with mediating and has the obligation to provide written recommendations to the disputing parties to resolve the dispute, after the settlement process through conciliation or mediation does not reach an agreement, one of the parties can file a lawsuit with the industrial relations court (Zulkifli, 2024).

Withholding of diplomas by employers is an action that is not legally justified in Indonesia, unless there is written consent from the worker and even then it must not conflict with the principles of justice and freedom of work. Workers who experience the practice of withholding diplomas by companies have a number of legal remedies that can be taken to protect their rights. These efforts include administrative mechanisms, settlement of industrial relations disputes, and civil legal remedies.

- a. Complaints to the Manpower Office. Workers can file complaints with the local Manpower Office. Based on the function of labor supervision as regulated in Law Number 23 of 2014 concerning Regional Government, the Manpower Office has the authority to conduct inspections and take action against companies that commit labor violations, including the practice of withholding workers' personal documents.
- b. Settlement of Industrial Relations Disputes (PPIH). If the complaint does not produce results, workers can take the matter to the Industrial Relations Dispute Settlement path as regulated in Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes. This process includes bipartite stages (negotiations between workers and employers), tripartite (mediation by the labor office), to settlement through an industrial court institution.
- c. Civil Lawsuit. In addition to the employment path, workers can also file a civil lawsuit with the District Court on the basis of an unlawful act (*onrechtmatige daad*) based on Article 1365 of the Civil Code. The act of withholding a diploma without a legal basis can be qualified as an act that violates rights and causes losses to the worker.
- d. Involvement of the National Human Rights Commission. Given that the practice of withholding diplomas has the potential to violate human rights, workers can also report such actions to the National Human Rights Commission (Komnas HAM) to obtain protection and recommendations for action against the company concerned.

In carrying out these legal efforts, workers are advised to obtain legal assistance

from labor unions, legal aid institutions (LBH), or legal consultants so that the lawsuit submission process can be carried out effectively and in accordance with applicable legal procedures.

#### **4. Conclusion**

The conclusions of this study are as follows:

- a. The practice of withholding diplomas by companies in industrial relations in Indonesia is an action that is not in line with the basic principles of national labor law. Although often done on the grounds of ensuring the continuity of work or as a form of securing the company's investment in workers, this practice is contrary to the principles of freedom of contract, the right to private property, and the principle of protecting workers' rights.
- b. The withholding of diplomas does not receive legal legitimacy from Law Number 13 of 2003 concerning Manpower, nor from other laws and regulations governing employment relations in Indonesia. Furthermore, the practice violates human rights as guaranteed in Law Number 39 of 1999 concerning Human Rights and the 1945 Constitution.
- c. Workers who experience diploma withholding have various legal remedies, starting from complaints to the Manpower Office, settlement through industrial relations dispute mechanisms, civil lawsuits on the basis of unlawful acts, to reporting to the National Human Rights Commission. These efforts are important to uphold workers' rights and encourage the creation of fair, equal, and dignified industrial relations.

#### **5. Recommendation**

Based on the conclusions that have been outlined, there are several recommendations that can be used as a reference to improve the practice of withholding diplomas in industrial relations in Indonesia:

- a. For the Government

**Improving Supervision and Law Enforcement:** The government through the Manpower Office and related institutions needs to improve supervision of the practice of withholding workers' personal documents by companies. The government also needs to strengthen law enforcement by imposing strict sanctions on companies proven to have carried out this practice, in order to create a deterrent effect.

**Drafting Stricter Regulations:** The government should consider drafting more explicit regulations that prohibit companies from withholding workers' diplomas or personal documents. This aims to provide clearer legal protection to workers and prevent abuse.

b. For Companies

**Comply with Applicable Regulations:** Companies need to comply with applicable labor laws and avoid the practice of retaining workers' diplomas or personal documents. Alternatively, companies can utilize other legitimate and legally binding guarantee systems to bind workers' commitments.

**Formulation of Fair Internal Policies:** Companies are advised to formulate fair and transparent internal policies regarding workers' obligations during the contract period, without involving retention of personal documents. Clear and legitimate arrangements can reduce the potential for disputes in the future.

c. For Workers

**Increasing Legal Awareness:** Workers need to increase awareness of their rights, especially those related to personal documents. This is important so that workers can take the right steps if they experience rights violations, including withholding of diplomas.

**Joining a Trade Union:** Workers are advised to join a trade union that can provide legal support and advocacy in cases of workers' rights violations, including withholding of diplomas by companies. Trade unions play an important role in protecting workers' rights and fighting for justice in the workplace.

### References

- Aditya, R. N., & Marlina, T. (2020). Perlindungan Hukum Terhadap Tenaga Kerja Yang Ijazah Nya Dijadikan Jaminan Oleh Perusahaan Pemberi Kerja (Studi Penelitian Di Disnaker Kota Cirebon). *Hukum Responsif*, 11(1).
- Agustin, D., & Wahjoeono, D. (2023). Perlindungan Hukum Bagi Pekerja Atas Permintaan Ijazah Asli Oleh Perusahaan Sebagai Jaminan. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 3(1), 178-190.
- Azhar, M., & Priyono, E. A. (2019). Pelanggaran Hak Tenaga Kerja Melalui Penahanan Ijazah Sebagai Jaminan. *Law, Development and Justice Review*, 2(2), 361-373.
- Pratama, D. S., Ariady, M. W. A., Azis, M. Z., & Pananda, M. Z. U. (2024). Analisis Hukum Mengenai Penahanan Ijazah Karyawan oleh Perusahaan. *Indonesian Journal of Law and Justice*, 1(4), 10-10.
- Putri, F., Rahmayani, N., & Suryamizon, A. L. (2023). Kewajiban Perusahaan Terhadap Pengembalian Ijazah Pekerja Setelah Perjanjian Kerja Berakhir. *Sakato Law Journal*, 1(2), 240-248.
- Sukardi, E., Pasaribu, D., & Kaliye, V. X. (2021). Penahanan Ijazah Pekerja oleh Pemberi Kerja dalam Perspektif Teori Keadilan Bermartabat. *Law Review*, 20(3), 270-410.
- Zulkifli, A. (2024). Tinjauan Yuridis Praktek Penahanan Ijazah Pekerja Oleh Pemberi Kerja Dalam Kesepakatan Perjanjian Kerja. *Wasaka Hukum*, 12(2), 52-69.