

HOLDING EMPLOYEE DIPLOMAS: LEGAL IMPLICATIONS AND WORKERS' RIGHTS CONCERNS

Didiek Wahyu Indarta¹, Lailatul Mutmainnah¹, Cindy Swastika Rahmania¹

¹Bojonegoro University, East Java, Indonesia

*Corresponding Author: Lailatul Mutmainnah (lalawota4821@gmail.com)

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ABSTRACT

The detention of diplomas is carried out under the pretext that employees do not resign before the contract period ends. However, this action raises legal problems because it has the potential to violate the basic rights of workers, especially the right to private property and freedom of work. This is because every individual has the constitutional right to maintain ownership of the assets he or she legally acquires, including the results of work or income that are part of his or her personal property. If the policies or actions of the company, the government, or other parties limit or even confiscate part of the property without a clear and fair legal basis, then this can be considered a violation of the principle of non-deprivation of property without due process. This study aims to examine the practice of diploma retention from the perspective of employment law based on Law Number 13 of 2003 concerning Manpower, as well as examine its legal implications for companies and workers. The research method used is normative juridical, with a legislative approach. The results of the study show that there is no strict provision in Law Number 13 of 2003 that allows the retention of diplomas by companies. On the contrary, the practice is contrary to the principle of protection of workers' rights regulated in the law and contrary to the principles of legal certainty and justice. Workers have the right to be actively involved in the process of drafting employment agreements through joint deliberation with employers, as stipulated in Article 52 of the Manpower Law. Diploma detention can be categorized as a form of violation of the law and the company can be subject to administrative or criminal sanctions if proven to be detrimental to workers. To overcome this, stronger and integrated law enforcement mechanisms are also needed, such as increasing the capacity and authority of labor supervisors, the establishment of special units to deal with violations of workers' rights, and the application of strict administrative and criminal sanctions against violating companies.

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INTRODUCTION

Developments in the business world in Indonesia are growing rapidly and also have strong competitiveness. Therefore, to achieve a *Goals* In this development and competitiveness, a company will be able to get a profit and then provide services to *Stakeholders* as much as possible by reducing production costs. And the support needed by the company is of course from various factors, including human resources, technology, and skills. The main goal of a company is human resources that have quality and quantity, so that a company can achieve its success in accordance with the company's targets. And the main obligation of a company is to pay attention to or fulfill the rights and needs of each of its employees so that it will result in increased employee performance.¹

In the world of employment in Indonesia, the relationship between employers and workers should be based on the principles of justice, equality, and respect for human rights. Article 28D of the 1945 Constitution states that everyone has the right to fair and decent remuneration and treatment in employment relations. The Unitary State of the Republic of Indonesia guarantees, protects and fulfills the rights of its citizens through its constitution, namely the 1945 Constitution. Some of them are the right to legal certainty and the right to proper protection in employment relations, as stipulated in Article 28 paragraph (1) and paragraph (2) of the 1945 Constitution which reads as follows: (1) Everyone has the right to fair legal recognition, guarantee, protection, and certainty as well as equal treatment before the law. (2) Everyone has the right to work and to receive fair and decent remuneration and treatment in employment relationships".²

However, in practice, there are still various problems related to violations of workers' rights, one of which is the practice of withholding diplomas by companies. The detention of diplomas by companies is generally carried out under the pretext that workers do not resign before the contract period ends, or as a form of supervision over worker loyalty. In fact, this action can legally be categorized as a violation of the basic rights of workers, because a diploma is a personal document that is the property of an individual and should not be used as a tool of pressure or guarantee by the company. The protection of the workforce aims to ensure the fulfillment of the basic rights of workers or laborers, as well as to ensure equal opportunities and fair treatment without discrimination of any kind. The ultimate goal is to create welfare for workers and their families, while still taking into account the dynamics and development of the business world.

To prevent discriminatory treatment of workers or laborers, it is necessary to have a work agreement that is the basis for regulating rights and obligations between workers and employers. Based on Article 1 number 14 of the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower, an employment agreement is defined as an agreement between a worker and an employer or employer that contains provisions regarding the terms of employment as well as the rights and obligations of each party. In general, a mandatory employment agreement includes provisions that regulate employment relations, including the rights and obligations of both the worker and the employer. Regarding the definition of an employment agreement, there is also another view that states that an employment agreement is an agreement made between an employer and a worker, which generally contains conditions that must be met by both parties

¹ ANANDA MUHAMAD TRI UTAMA, "TINJAUAN TENTANG PENAHANAN IJAZAH PEKERJA OLEH PENGUSAHA PADA PT. GARUDA EKSPRESS NUSANTARA SEBAGAI JAMINAN KERJA" 9 (2022): 356-63.

² Mochamad Rifki Hidayat, "Kepastian Hukum Pemenuhan Upah Karyawan Dalam Pembagian Harta Pailit," *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 1 (2021): 155-67, <https://doi.org/10.29303/ius.v9i1.873>.

reciprocity, in accordance with their respective rights and obligations.³ In this case, the state also has the responsibility to provide protection to the workers, because without their presence, the company's operations will not run well and contribute to development. Even so, the existence of workers will be meaningless without the participation of entrepreneurs and companies. Therefore, there is a relationship of mutual dependence between the two parties. On the other hand, the government also plays an important role in this relationship. The role of the government is to prepare regulations that are able to accommodate the interests of all parties, so as to create harmonious industrial relations.⁴

Law No. 13 of 2003 concerning Manpower as the main legal umbrella in regulating industrial relations in Indonesia does not explicitly mention the prohibition of the detention of diplomas, but various articles in the law affirm the importance of protecting workers' rights, including the right to legal certainty, fair treatment, and respect for private property rights. The practice of withholding diplomas is also contrary to the principles of labor protection contained in the Constitution and a number of other laws and regulations, such as the Human Rights Law and the Civil Code. Therefore, an in-depth legal study is needed to assess the extent to which the practice is contrary to Law No. 13 of 2003, as well as to formulate legal solutions that can protect workers' rights fairly and proportionately. Through this review, it is hoped that a strong legal basis will be found to encourage the cessation of the practice of diploma withholding, as well as a reference for workers, companies, and law enforcement officials in resolving labor problems wisely and fairly.

Currently, the practice that is often encountered in the world of employment is that companies or employers require their employees to submit the original diploma within a certain period of time according to a predetermined agreement. A diploma itself is an official document or securities that proves that a person has completed a certain level of education, and is legally the personal property of an individual. Generally, when someone applies for a job, there are general and specific requirements that must be met, and one of the special requirements that is often proposed by companies is the submission of an original diploma. The purpose of this policy is to avoid potential losses that may arise as a result of the employee's actions, such as unilateral resignation or other violations. On the other hand, this policy can be considered contrary to the human right to obtain decent work. If referring to the provisions in the Manpower Law, namely Law of the Republic of Indonesia Number 13 of 2003 and its derivative regulations, there is no rule that explicitly regulates the retention of original diplomas by companies. This condition creates a legal vacuum related to the validity of the practice of holding diplomas. In addition, in some cases, it was found that the company committed a default on the employment agreement, such as not returning the funds that the worker should have received, but still withholding the diploma for certain reasons.⁵

The issue of companies withholding workers' diplomas needs to be explored further because it is a form of violation of the basic rights of labor protected by Law Number 13 of 2003 concerning Manpower. This practice limits workers' freedom in making career choices, finding better jobs, and even quitting unsuitable jobs. Although not explicitly mentioned in the law, the withholding of a diploma can be categorized as a form of forced labor and exploitation because it creates an unhealthy dependence between workers and companies. In addition, this practice

³ RIZKY NAAFI ADITYA and TINA MARLINA, "Perlindungan Hukum Terhadap Tenaga Kerja Yang Ijazah Nya Dijadikan Jaminan Oleh Perusahaan Pemberi Kerja (Studi Penelitian Di Disnaker Kota Cirebon)," *Hukum Responsif* 11, no. 1 (2020): 35-45, <https://doi.org/10.33603/responsif.v11i1.5022>.

⁴ SAIFUL ANNAS, "TINJAUAN HUKUM TERHADAP PENAHANAN IJAZAH SEBAGAI SYARAT KERJA MENURUT KUHPERDATA DAN UNDANG-UNDANG NOMOR 13 TAHUN 2003 (STUDY DI CV. MATRIX CAKRA NEGARA)," *Ayan* 15, no. 1 (2024): 37-48.

⁵ Wayan Ardi Indra Jaya, Anak Agung Sagung Laksmi Dewi, and Ni Made Puspasutari Ujianti, "Akibat Hukum Penahanan Ijazah Oleh Badan Usaha Ditinjau Dari Perspektif Hukum Perjanjian," *Jurnal Interpretasi Hukum* 2, no. 3 (November 2021): 656-61, <https://doi.org/10.22225/juinhum.2.3.4170.656-661>.

has a social and economic impact on workers, as they have difficulty obtaining other jobs without these important documents. Law enforcement in cases like this is also still weak due to the lack of strict provisions, so it is necessary to conduct an in-depth legal study to fill the regulatory gap and provide more concrete protection for workers. Exploration of this issue is also important to increase public awareness of labor rights and encourage the birth of fair, transparent, and oriented policies for the protection of human rights in the world of work.

This study shows the urgency to research more deeply the practice of diploma withholding by companies that have not received adequate legal attention until now. Previous studies are generally still descriptive and normative, without specifically exploring legal loopholes in Law No. 13 of 2003 that can be used by companies to legitimize the practice. In addition, previous studies have not provided much comprehensive juridical analysis regarding how the practice of withholding diplomas can be qualified as a form of labor rights violation, and have not offered concrete solutions from the perspective of labor law and human rights. This research is here to fill this gap by providing an in-depth and systematic legal analysis of the practice of withholding diplomas as a form of violation of workers' rights based on Law No. 13 of 2003. This research will also contribute an argumentative framework and a more progressive legal interpretation of existing provisions, as well as offer new policy recommendations or regulations that can clarify the prohibition of the practice of withholding diplomas in the work environment. Thus, this research not only strengthens the theoretical aspects of labor studies, but also has a practical contribution to worker protection and labor law reform in Indonesia. From this description emerges a formulation of the problem, namely whether the detention of diplomas by the company without a valid reason is a violation of the rights of workers, and what is the legal position of the worker if the diploma is withheld by the company without a valid reason, and what are the rights of workers that can be fought for in such a situation, as well as what are the legal consequences for companies that withhold diplomas without legitimate reasons. and how administrative or criminal sanctions can be applied in the case.

METHODS

The research method used in this study is the normative juridical method, which is a legal research approach that focuses on the study of applicable legal norms, both written in laws and regulations and those listed in relevant legal literature. This approach is used to examine problems theoretically based on positive legal principles that govern the relationship between workers and employers in Indonesia. This study specifically aims to examine the legality of the practice of holding diplomas by companies from the perspective of labor law, by referring to the provisions in Law Number 13 of 2003 concerning Manpower and other implementing regulations that regulate labor rights and obligations. The data sources in this study are secondary data obtained through library research, which includes primary legal materials such as laws, government regulations, and secondary legal materials in the form of legal textbooks, scientific journals, academic articles, and other literature sources that are relevant to the problem being studied. The analysis method used is qualitative analysis, which is carried out by focusing on the systematic interpretation of existing legal norms, both through legislative approaches and legal doctrines, in order to understand the legal position of the action of withholding diplomas by companies.

Through this approach, it is hoped that the research can provide a comprehensive understanding of the extent to which the practice of withholding diplomas by employers can be categorized as actions that are contrary to the principles of labor protection. In addition, this study also aims to develop strong juridical arguments as a basis for assessing the legality of the action, as well as to identify the legal implications that arise for both workers and companies. Thus, the results of this study are expected to contribute to the development of labor law

discourse in Indonesia and become a reference in efforts to enforce workers' rights guaranteed by law.

RESULTS AND DISCUSSION

Legal Ramifications for Unjustified Diploma Withholding: Potential Administrative and Criminal Sanctions

Developments in the business world in Indonesia are getting faster and more competitive. For the realization of goals in growth and competition, the company must achieve profits while providing the best service to stakeholders by reducing production costs. Companies need support from various elements, including the quality of human resources, technological advancements, and competencies or skills. The main factor that is the company's goal is from human resources, because humans play a role in the company's success. The company's main responsibility is to ensure the fulfillment of the rights and needs of employees, in order to encourage optimal improvement in their performance. Every worker has the right to protection in carrying out their work. Based on Law No. 13 of 2003 Article 86 paragraph (1), it is stated that workers or laborers are entitled to protection that includes: a) occupational safety and health; b) protection of moral and ethical values; and c) treatment that respects human dignity, dignity, and religious values. According to Darwan Prints' view, what is meant by rights is something that should be accepted by a person based on his position or position, while obligation is something that must be given or carried out by a person because of the role or responsibility he has.⁶ Law No. 13 of 2003, according to Kusmana, not only focuses on the protection of individual workers' rights, but also includes the protection of collective rights in society which ultimately gives birth to various obligations. Thus, the legal protection provided to workers does not only emphasize the individual aspect, but also considers the communal or group dimension as a whole.⁷

With efforts to improve the quality of labor by the company, employers have an obligation to meet certain standards that are usually listed in collective bargaining agreements. There is a problem that arises from the employment agreement between the employer and the worker, this usually occurs in a contract one-sided made by the company and this can potentially harm the worker, for example the obligation to submit the original diploma as collateral during the contract period, so that it can be an obstacle in the development of the worker's career. In the Manpower Law, namely Law of the Republic of Indonesia Number 13 of 2003 and its implementing rules, there are no provisions that specifically regulate the practice of holding original diplomas. The absence of the regulation creates a legal vacuum regarding the validity of the action. As a result, many employers take advantage of this loophole to withhold the original diploma of the worker as one of the requirements in the recruitment process, on the grounds that it follows common practices in the world of work and is based on the principle of freedom of contract⁸

According to Treitel, in the British legal system, the principle of freedom of contract refers to two main principles. First, the law basically does not set limits on the terms that can be

⁶ Ivana Trixie et al., "Implementasi Hak Para Pekerja Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan (Analisis Kasus PT Livatech Elektronik Indonesia)," *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2000-2008.

⁷ Joupy G.Z. Mambu, "ASPEK PERLINDUNGAN HUKUM TERHADAP PEKERJA WANITA (Menurut Undang-Undang Nomor. 13 Tahun 2003)," *De Jure: Jurnal Hukum Dan Syar'iah* 2, no. 2 (2010), <https://doi.org/10.18860/j-fsh.v2i2.2975>.

⁸ Analisis Yuridis, Penyerahan Ijazah, and Sebagai Jaminan, "DALAM MELAKUKAN HUBUNGAN KERJA" 3, no. November (2024).

agreed upon by the parties to a contract. In other words, the parties have the freedom to formulate the content of the agreement according to their wishes, although this freedom is still subject to certain legal provisions that govern the terms of the validity of the agreement. Second, in general, no one can be legally compelled to make a treaty. This means that each individual has the freedom to choose whether to make an agreement and with whom the agreement is made. In the United States, the concept of freedom of contract is understood as the right of an individual to voluntarily make or reject a legal commitment related to his or her personal interests, including employment agreements. This includes the right to self-determine the terms of the contract through a negotiation or bargaining process, as well as the right to accept or reject contract offers from other parties. Meanwhile, in the classical doctrine of contract law in France, freedom of contract is closely linked to the principle of the free will of the contracting parties, emphasizing that agreements are born from consent given voluntarily without coercion.⁹

Workers have the right to be actively involved in the process of formulating an employment agreement through joint deliberation with the employer, as stipulated in Article 52 of the Labor Law. All matters related to the implementation, fulfillment of needs, and financing of the agreed employment agreement are fully the responsibility and obligation of the employer to implement it comprehensively.¹⁰ The company's actions in Withholding of a diploma without the employee's consent or without a valid reason can hinder its workers from finding work outside the company that can provide higher salaries and be able to fulfill their lives compared to where they currently work. Every worker has the right to have the freedom to determine, obtain, and change the type of work, and the right to an appropriate income, both in Indonesia and abroad, as stated in Article 31 of Law No. 13 of 2003 concerning Manpower.¹¹ There is nothing in this law that authorizes companies or employers to withhold, store, or control workers' personal documents, such as diplomas, or other important documents, either explicitly or implicitly, as a prerequisite in the recruitment process, or as a form of guarantee during the employment relationship between the worker and the company. Such actions are not only contrary to the principle of protection of workers' rights, but can also be categorized as violations of the law that harm workers' freedom and personal property rights.

The detention of diplomas can be considered as a form of coercion or restriction of workers' freedoms, which is contrary to the principle of protection of workers' normative rights as stated in Article 6 and Article 88 of the Labor Law, which emphasize the importance of fair treatment and protection of workers' welfare. Forced labor is a form of coercion on a person to perform a job or service under pressure in the form of a threat of punishment, where the individual does not have full freedom to voluntarily consent to the work. Work carried out without one's own will can be accompanied by various forms of sanctions, such as threats of violence, delay in payment of wages, and detention of workers' personal documents. Documents such as birth certificates, diplomas, ID cards, and passports withheld by employers can be a means of pressure that makes workers feel unable to quit their jobs or look for other job opportunities, so this can be categorized as a form of forced labor.¹² Therefore, if the company withholds a diploma without written consent or a clear legal reason, the action can be categorized as a form of violation of property rights and the right to freedom of work. A person does not have complete freedom to choose the type of work that suits his talents and interests if the diploma as a supporting document is still in the possession of another party. In addition, Law

⁹ Andita Putri Nabila and Gunawan Djayaputra, "Urgensi Pelaksanaan Kebebasan Berkontrak Dalam Merumuskan Perjanjian Guna Mewujudkan Keadilan Bagi Para Pihak," *UNES Law Review* 6, no. 2 (2023): 4072-80, <https://doi.org/10.31933/umesrev.v6i2.1246>.

¹⁰ Putu Cantika Adisti et al., "PERJANJIAN KERJA WAKTU TERTENTU" 12, no. 03 (2024): 658-68.

¹¹ RIZKY NAAFI ADITYA and TINA MARLINA, "Perlindungan Hukum Terhadap Tenaga Kerja Yang Ijazah Nya Dijadikan Jaminan Oleh Perusahaan Pemberi Kerja (Studi Penelitian Di Disnaker Kota Cirebon)," *Hukum Responsif* 11, no. 1 (2020): 35-45, <https://doi.org/10.33603/responsif.v11i1.5022>.

¹² Pagita Tarigan, "Skripsi Pagita Dewi Tarigan 1806200321 (Hukum Pidana) (1)," 2022.

Number 13 of 2003 concerning Manpower does not contain provisions that specifically regulate the practice of holding diplomas by companies. Therefore, there is a need for regulations at the regional level or regional regulations (perda) in each province to provide a clearer and stronger legal basis in protecting workers' rights to their personal documents.¹³

The protection of workers' rights has not been fully realized until now, because various obstacles are still often encountered in the field. One of the main obstacles is the regulatory factor, where although there are various regulations that regulate employment relations, there are still many loopholes in their implementation that allow violations to occur. In addition, cultural factors are also a challenge, both in terms of workers, employers, and law enforcement officials. Employers often do not fully understand the importance of the role of workers in supporting business sustainability, so that the interests of workers do not receive the protection they deserve. On the other hand, workers are also often unaware of the importance of the role of employers in employment relations and tend to show a low level of awareness of their obligations. Law enforcement officials have not been able to carry out their duties optimally, with still many procedural violations and inconsistencies in actions with applicable regulations. In addition, although theoretically the position between workers and employers is considered equal, in practice there is often a power imbalance, where the employer's position is more dominant and workers who need work are in a weak position, so they are forced to accept various conditions proposed without negotiation. This imbalance often causes labor conflicts that can even end up at the green table. No less important, the company's limitations in fulfilling workers' rights—whether for financial, management, or resource reasons—are also an inhibiting factor in realizing ideal protection for the workforce.¹⁴ The government should pay attention to the interests of all parties involved in employment in a balanced manner in order to provide fair protection, so that employment relations can be maintained and run properly.

Worker's Legal Status Amid Valid Diploma Withholding: Defensible Rights and Protections

The practice of withholding the original diploma belonging to the worker by the employer has no basis in the applicable laws and regulations. However, these practices are often carried out based on developed habits, both as a general practice that applies in society in the world of work, and as a habit that is carried out repeatedly in a certain company environment. Over time, the custom was considered a norm that binds the parties in an employment relationship, even though it is not stated in writing in formal legal provisions.¹⁵ Detention of a diploma by a company without a valid legal basis is an act of Unlawful and contrary to human rights principles, especially the right to private property. In the context of Indonesian employment law, there are no provisions in Law Number 13 of 2003 concerning Manpower as well as its derivative regulations that justify the practice of withholding diplomas by employers as a condition for recruitment, job security, or other reasons. Thus, the detention of the diploma by the company has no legal basis and can be categorized as Civil Unlawful Acts.

If referring to the principle of agreement in an employment agreement in accordance with Article 52 paragraph (1) of Law No. 13 of 2003, the employment agreement must be made on the basis of the agreement of both parties, the ability or ability to perform legal acts, the existence of the agreed work, the work does not conflict with public order, morality, and laws and regulations. If the detention of the diploma is not included in a valid agreement and is carried out unilaterally, the action is contrary to the principle of agreement on which the employment

¹³ Benedictus Satrio Wibowo, Achmad Busro, and Anggita Doramia Lumbanraja, "Legitimasi Penahanan Ijazah Pekerja Dalam Perjanjian Kerja Waktu Tertentu (PKWT)," *Notarius* 14, no. 2 (2021): 738–46, <https://doi.org/10.14710/nts.v14i2.43725>.

¹⁴ Engku Fiboda et al., "Jurnal Rectum PERLINDUNGAN HAK ASASI TENAGA KERJA DALAM HUKUM," *JURNAL TEKNOLOGI INDUSTRI*, no. 13 (2024): 247–54.

¹⁵ Akhmad Zulkifli, "TINJAUAN YURIDIS PRAKTEK PENAHANAN IJAZAH" 12, no. 2337 (2024).

relationship is based. With this in mind, if the diploma is withheld without a valid reason, the worker remains in strong legal standing as the legal owner of the document, the company does not have the legal right to withhold the diploma, and such action can be considered a form of violation of the rights of the worker. In legal terms, a diploma is a personal document that is attached to the owner and can only be stored or controlled by another person with the valid consent of the owner. If the diploma is withheld without approval or a clear legal reason, then the action can be categorized as an unlawful act (*onrechtmatige daad*) as stipulated in Article 1365 of the Civil Code (KUHPperdata).

The fulfillment of the rights of workers or laborers is a responsibility inherent in the obligations of employers in employment relations. On the contrary, the main obligation of the worker or laborer is to carry out the duties given by the superior in a disciplined manner and in accordance with the provisions of the predetermined working time. Workers or laborers have a number of rights that must be fulfilled in employment relations.¹⁶ These rights include: the right to earn wages or salaries; the right to decent work and income in accordance with humanitarian principles; the right to freely choose and change jobs according to their interests, talents, and abilities; the right to obtain training and skills development to enhance professional skills; the right to protection of occupational safety and health, as well as treatment that upholds human dignity and is in line with religious values; the right to establish and join a trade union; and the right to enjoy annual leave as a form of fulfilling rest needs. As a form of appreciation for the work services provided, workers or laborers have the right to receive wages, various forms of benefits, and other social security. They also have the right to rest time, leave, and space to fight for their interests and rights, either directly or through representative organizations such as labor unions or trade unions. In addition, workers or laborers are entitled to various forms of protection, which include limiting working hours so as not to exceed applicable provisions, including the right to weekly rest time and annual leave; protection of occupational safety and health; guarantee of freedom of association and negotiation with entrepreneurs; as well as protection of the right to continue to receive income even if they are unable to carry out their work.¹⁷

In a situation where the diploma is illegally withheld, the worker has a number of rights that can be fought for, namely the worker has the right to demand the return of the diploma because it is a personal document that cannot be used as a guarantee of employment.¹⁸ This is in line with the principle of protection of private property rights in civil law. Withholding of a diploma can hinder workers in finding or changing jobs, which is a violation Article 31 of Law No. 13 of 2003, which guarantees the freedom of workers to choose and get decent work. Workers have the right to report the company to Manpower Office Local. Komnas HAM (if it is considered that there has been a human rights violation). Industrial Relations Court if the administrative efforts are unsuccessful. Furthermore, workers should also not be forced to stay employed or stay in the company because their important documents are withheld. It can be considered a form of psychological pressure or coercion that violates legal norms. If the withholding of a diploma results in material loss (e.g., loss of job opportunities), the worker can sue compensation through civil channels, based on the principle unlawful acts.

¹⁶ Engku Fiboda et al., "Jurnal Rectum PERLINDUNGAN HAK ASASI TENAGA KERJA DALAM HUKUM," *JURNAL TEKNOLOGI INDUSTRI*, no. 13 (2024): 247-54.

¹⁷ Muhamad Azhar and Ery Agus Priyono, "Pelanggaran Hak Tenaga Kerja Melalui Penahanan Ijazah Sebagai Jaminan," *Law, Development and Justice Review* 2, no. 2 (2019): 361-73, <https://doi.org/10.14710/ldjr.v2i2.6453>.

¹⁸ Nurhotia Harahap, "Hak Dan Kewajiban Pekerja Dalam Undang-Undang Ketenagakerjaan," *Jurnal Al-Maqasid* 6, no. 1 (2020): 16.

Legal consequences for companies that withhold diplomas without a valid reason, and Administrative or criminal sanctions that can be applied

Companies that are proven to have withheld employee diplomas can be subject to various legal sanctions, both administrative, civil, and criminal. Based on the Job Creation Law, violations of labor norms can be subject to administrative sanctions by employment agencies after an inspection. The sanctions include written reprimands, the implementation of business activities, the temporary freezing of part or all of production equipment, and the freezing of business licenses. In addition, aggrieved employees have the right to file a civil lawsuit with the court to demand the return of their diplomas and seek compensation for both material and immaterial losses experienced.¹⁹ This lawsuit refers to the principle of unlawful acts according to Article 1365 of the Civil Code (KUHPerdata), which states that every unlawful act that harms another person means that the perpetrator compensates for the loss. Under certain conditions, selected diplomas can also be threatened as a criminal act, such as confiscation or extortion, as stipulated in Article 368 paragraph (1) of the Criminal Code. If it is proven that there is an element of coercion in the remote diploma, the company can be subject to a criminal penalty with a maximum prison sentence of nine years. By Therefore, the practice of withholding diplomas is not only contrary to employment norms, but can also violate criminal law more broadly. With this, the practice of withholding diplomas not only has the potential to hinder employees' career development, but can also hinder them from obtaining basic rights as human beings. In cases where the diploma remains withheld by the company even though the employment relationship has ended, the first step that can be taken is through a reconciliation process or an informal approach. However, if the company still refuses to return the diploma, the employee has the right to take legal action, either through a civil lawsuit on the basis of unlawful acts or by reporting alleged embezzlement as stipulated in Article 372 of the Criminal Code (KUHP).

Some large companies implement a diploma retention policy for new employees who attend the Management Trainee program or high-cost training. The goal is to prevent employees from leaving abruptly which can harm the company both financially and morally. This policy is implemented on the basis of mutual agreement by prioritizing the principle of mutual benefit or the principle of mutualism. This practice is considered reasonable and reasonable, especially since not all employees are subject to the policy.²⁰ This policy is generally applied selectively and not comprehensively to all employees, but is focused on individuals who work in departments or positions that have significant responsibility for the management of company funds and financial transactions on a large scale. These positions include Sales, Finance, Accounting, Cashier, Field Collector, Audit, and Procurement. Employees in this field are considered to have a higher potential risk related to abuse of authority or financial loss, so the withholding of diplomas is seen as a preventive measure aimed at strengthening work commitments and maintaining the company's operational integrity.

Furthermore, there are a number of companies that run a project-based work system with clients, where the sustainability and completion of the project are the main responsibility of the company in accordance with the agreement that has been agreed. In such a situation, the retention of employee diplomas is considered an important preventive measure to maintain labor commitment during the project period. This is because the departure of employees in the middle of the project process not only has the potential to disrupt the smooth operation of the project, but can also cause significant financial losses and reduce the company's credibility and reputation

¹⁹ Tanggungjawab Perusahaan Atas Perbuatan, Tanggungjawab Perusahaan Atas Perbuatan Karyawan Yang Mengakibatkan, and Mhd Arief Akbar Surahman, "IURIS STUDIA: Jurnal Kajian Hukum Kerugian Terhadap Orang Lain (Studi Putusan NO. 206/PDT/2014/PT.SBY)" 2, no. 3 (2021): 613-23.

²⁰ Reynaldi Febrian Akbar, "Pertanggungjawaban Perusahaan Terhadap Pekerja / Buruh Yang Melakukan Kelalaian Kerja" 2, no. 8 (2024): 1001-14.

in the eyes of clients. Therefore, many companies include special provisions in employment contracts stating that employees are willing to hand over their last education diploma to be withheld as a form of guarantee for their loyalty and responsibility during the period of employment according to a mutually agreed contract.²¹ In addition, it has been agreed that in the event of a violation of these provisions, sanctions will be imposed in the form of compensation in the form of economic or financial value, which have been described in detail in the relevant article. Therefore, it is very important for prospective employees to carefully understand the rules regarding the withholding of diplomas by the company they are applying to. If the clause regarding the detention of diplomas is not listed in the employment contract, then the act of withholding a diploma by the company has no valid legal basis because it is not regulated in writing in the employment agreement. However, if the company has included a clause to withhold the diploma in the employment contract and the applicant agrees to it, then the applicant should remain proactive by asking questions or negotiating regarding the storage and protection mechanism of their diploma by the company. In addition, it is also important for applicants to know the steps that the company will take in the event of an unexpected situation, such as a natural disaster, that could cause damage or loss of a diploma. The goal is to ensure that the company has a responsibility in compensating for any losses that may arise as a result of the incident.²²

The problem of diploma detention is closely related to the content of the employment contract agreed between the employee and the company. The act of withholding a diploma by the company is allowed as long as it has the approval of the employee and the employment relationship is still ongoing. As long as the provision is clearly written in the employment contract and has been agreed by both parties, the practice is considered valid. This is based on the autonomous nature of the employment contract, which allows the parties to agree on various things as long as it is in accordance with the principle of freedom of contract. Recently, more and more companies have implemented the practice of withholding employee diplomas during the validity period of the employment contract. Although there is no legal provision that explicitly gives the company the authority to withhold the original diploma of the worker, in fact this practice is quite often encountered in the company's operations. In practice, the retention of the original diploma by the company often occurs for the reason of ensuring that employees continue to carry out their obligations according to the employment contract, for example a three-year working period. This action is intended to maintain employee commitment to the employment agreement, ensure workforce stability, and protect the company's investment in the training and human resource development process. However, the detention of the diploma has also attracted criticism because it is considered a violation of Human Rights, especially in terms of restrictions on individual freedom²³.

To reduce the risks associated with the policy of withholding diplomas by companies, preventive and remedial measures need to be implemented. For one, companies may consider using a more open and flexible approach in determining the terms of employment agreements. For example, the company may choose to withhold a copy of the diploma instead of the original, or review whether the retention of the diploma is actually required in the employment agreement. This way, permanent employees can easily access their original diplomas and prove their

²¹ Agustinus. J. Sahetapy, "Pelaksanaan Kontrak Kerja Antara Pekerja Dengan Perusahaan (Studi Pada PT. Wahana Kencana Mineral (WKM) Halmahera Timur)," *Jurnal Sains, Sosial Dan Humaniora (Jssh)* 1, no. 2 (2022): 107-11, <https://doi.org/10.52046/jssh.v1i2.1411>.

²² Dicky Satria Pratama et al., "Analisis Hukum Mengenai Penahanan Ijazah Karyawan Oleh Perusahaan," *Indonesian Journal of Law and Justice* 1, no. 4 (June 2024): 10, <https://doi.org/10.47134/ijlj.v1i4.2628>.

²³ I Made Chossy Narayanan and I Wayan Novy Purwanto, "Tinjauan Yuridis Terhadap Hubungan Kerja Tindakan Penahanan Ijazah Pekerja Oleh Perusahaan Berdasar Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan," *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 2, no. 4 (July 2023): 34-51, <https://doi.org/10.55606/jhpis.v2i4.2310>.

qualifications at any time.²⁴ In addition, companies must ensure that the practice of retaining diplomas is in line with applicable legal provisions, including those related to human rights, employment, and personal data protection. Compliance with these legal principles is important to avoid potential legal problems and reduce the risk of lawsuits from employees and third parties. In addition to the legality aspect, companies also need to uphold ethical values and social responsibility in implementing these policies.²⁵ Upholding the human rights of every individual and implementing fair and respectful employment practices will provide far-reaching benefits, not only for employees, but also for the company's reputation and positive image. By implementing an approach that emphasizes respect for individual rights and creates a balanced working relationship, companies can create a work environment conducive to professional growth, strengthen the spirit of inclusivity, and contribute to the creation of sustainability in the world of employment.

CONCLUSION

Based on the results of the analysis of the formulation of the problem that has been discussed, it can be concluded that the company's action of withholding an employee's diploma without a clear and legitimate basis is a violation of workers' rights. Law Number 13 of 2003 concerning Manpower does not give companies the authority to withhold personal documents belonging to workers, including diplomas, because this is contrary to the principles of protection and justice in employment relations. In this case, the legal position of workers is still protected by laws and regulations that guarantee workers' rights to ownership of personal documents, freedom of work, and fair and humane treatment. Workers have the right to request their diplomas back, either through non-litigation efforts such as mediation with the Manpower Office, or litigation efforts through civil or criminal law channels if they suffer losses due to the detention. Meanwhile, companies that withhold diplomas without a valid reason can be subject to legal sanctions. The legal consequences include administrative sanctions from employment agencies, such as written reprimands, temporary suspension of business activities, and revocation of permits. If it is proven that there is an element of coercion, fraud, or abuse of power, then the company can also be subject to criminal sanctions in accordance with the provisions of the Criminal Code (KUHP). Therefore, the practice of withholding diplomas is not only contrary to employment norms, but can also violate criminal law more broadly. With this, the practice of withholding diplomas not only has the potential to hinder employees' career development, but can also hinder them from obtaining basic rights as human beings. In cases where the diploma remains withheld by the company even though the employment relationship has ended, the first step that can be taken is through a reconciliation process or an informal approach. However, if the company still refuses to return the diploma, the employee has the right to take legal action, either through a civil lawsuit on the basis of unlawful acts or by reporting alleged embezzlement as stipulated in Article 372 of the Criminal Code (KUHP). However, the effectiveness of these legal remedies is often constrained by weak law enforcement mechanisms, ranging from the lack of labor supervision, the slow dispute resolution process, to the lack of partiality towards workers in practice. Therefore, stronger and integrated law enforcement mechanisms are needed, such as increasing the capacity and authority of labor supervisors, the establishment of special units to deal with violations of workers' rights, and the application of strict administrative and criminal

²⁴ Fuad and Ontran Sumantri Riyanto, "PERSPEKTIF HAK ASASI MANUSIA TERHADAP PENAHANAN IJAZAH ASLI DALAM PERJANJIAN KERJA OLEH PERUSAHAAN," *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia* 2, no. 1 (September 2023): 65-79, <https://doi.org/10.37631/jrkhm.v2i1.18>.

²⁵ Ferdiansyah Putra and Muhamad Dicky putra Irsyam, "Tinjauan Yuridis Penahanan Ijazah Sebagai Jaminan Dalam Hubungan Kerja," *Jurnal Ilmu Hukum* 4, no. 2 (2020): 34-41.

sanctions against violating companies. With a more effective mechanism, the protection of workers' rights can be carried out in real terms and not just normative on paper.

REFERENCES

- Adisti, Putu Cantika, Fakultas Hukum, Universitas Udayana, Kadek Agus Sudiarawan, Fakultas Hukum, and Universitas Udayana. "PERJANJIAN KERJA WAKTU TERTENTU" 12, no. 03 (2024): 658-68.
- ADITYA, RIZKY NAAFI, and TINA MARLINA. "Perlindungan Hukum Terhadap Tenaga Kerja Yang Ijazah Nya Dijadikan Jaminan Oleh Perusahaan Pemberi Kerja (Studi Penelitian Di Disnaker Kota Cirebon)." *Hukum Responsif* 11, no. 1 (2020): 35-45. <https://doi.org/10.33603/responsif.v11i1.5022>.
- . "Perlindungan Hukum Terhadap Tenaga Kerja Yang Ijazah Nya Dijadikan Jaminan Oleh Perusahaan Pemberi Kerja (Studi Penelitian Di Disnaker Kota Cirebon)." *Hukum Responsif* 11, no. 1 (2020): 35-45. <https://doi.org/10.33603/responsif.v11i1.5022>.
- Akbar, Reynaldi Febrian. "Pertanggungjawaban Perusahaan Terhadap Pekerja / Buruh Yang Melakukan Kelalaian Kerja" 2, no. 8 (2024): 1001-14.
- ANANDA MUHAMAD TRI UTAMA. "TINJAUAN TENTANG PENAHANAN IJAZAH PEKERJA OLEH PENGUSAHA PADA PT.GARUDA EKSPRESS NUSANTARA SEBAGAI JAMINAN KERJA" 9 (2022): 356-63.
- ANNAS, SAIFUL. "TINJAUAN HUKUM TERHADAP PENAHANAN IJAZAH SEBAGAI SYARAT KERJA MENURUT KUHPERDATA DAN UNDANG-UNDANG NOMOR 13 TAHUN 2003 (STUDY DI CV. MATRIX CAKRA NEGARA)." *Ayaz* 15, no. 1 (2024): 37-48.
- Azhar, Muhamad, and Ery Agus Priyono. "Pelanggaran Hak Tenaga Kerja Melalui Penahanan Ijazah Sebagai Jaminan." *Law, Development and Justice Review* 2, no. 2 (2019): 361-73. <https://doi.org/10.14710/ldjr.v2i2.6453>.
- Fiboda, Engku, Eduardus E S Kusuma, Firdi Hardana, and Asmak Ul. "Jurnal Rectum PERLINDUNGAN HAK ASASI TENAGA KERJA DALAM HUKUM." *JURNAL TEKNOLOGI INDUSTRI*, no. 13 (2024): 247-54.
- . "Jurnal Rectum PERLINDUNGAN HAK ASASI TENAGA KERJA DALAM HUKUM." *JURNAL TEKNOLOGI INDUSTRI*, no. 13 (2024): 247-54.
- Fuad, and Ontran Sumantri Riyanto. "PERSPEKTIF HAK ASASI MANUSIA TERHADAP PENAHANAN IJAZAH ASLI DALAM PERJANJIAN KERJA OLEH PERUSAHAAN." *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia* 2, no. 1 (September 2023): 65-79. <https://doi.org/10.37631/jrkhm.v2i1.18>.
- Harahap, Nurhotia. "Hak Dan Kewajiban Pekerja Dalam Undang-Undang Ketenagakerjaan." *Jurnal Al-Maqasid* 6, no. 1 (2020): 16.
- Hidayat, Mochamad Rifki. "Kepastian Hukum Pemenuhan Upah Karyawan Dalam Pembagian Harta Pailit." *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 1 (2021): 155-67. <https://doi.org/10.29303/ius.v9i1.873>.

- I Made Chossy Narayanan, and I Wayan Novy Purwanto. "Tinjauan Yuridis Terhadap Hubungan Kerja Tindakan Penahanan Ijazah Pekerja Oleh Perusahaan Berdasar Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan." *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 2, no. 4 (July 2023): 34-51. <https://doi.org/10.55606/jhps.v2i4.2310>.
- J. Sahetapy, Agustinus. "Pelaksanaan Kontrak Kerja Antara Pekerja Dengan Perusahaan (Studi Pada PT. Wahana Kencana Mineral (WKM) Halmahera Timur)." *Jurnal Sains, Sosial Dan Humaniora (Jssh)* 1, no. 2 (2022): 107-11. <https://doi.org/10.52046/jssh.v1i2.1411>.
- Jaya, Wayan Ardi Indra, Anak Agung Sagung Laksmi Dewi, and Ni Made Puspasutari Ujianti. "Akibat Hukum Penahanan Ijazah Oleh Badan Usaha Ditinjau Dari Perspektif Hukum Perjanjian." *Jurnal Interpretasi Hukum* 2, no. 3 (November 2021): 656-61. <https://doi.org/10.22225/juinhum.2.3.4170.656-661>.
- Mambu, Joupy G.Z. "ASPEK PERLINDUNGAN HUKUM TERHADAP PEKERJA WANITA (Menurut Undang-Undang Nomor. 13 Tahun 2003)." *De Jure: Jurnal Hukum Dan Syar'iah* 2, no. 2 (2010). <https://doi.org/10.18860/j-fsh.v2i2.2975>.
- Perusahaan Atas Perbuatan, Tanggungjawab, Tanggungjawab Perusahaan Atas Perbuatan Karyawan Yang Mengakibatkan, and Mhd Arief Akbar Surahman. "IURIS STUDIA: Jurnal Kajian Hukum Kerugian Terhadap Orang Lain (Studi Putusan NO. 206/PDT/2014/PT.SBY)" 2, no. 3 (2021): 613-23.
- Pratama, Dicky Satria, Muhammad Wendy Alpiyanur Ariady, Muhammad Zulfikar Azis, and Muhammad Zacky Umar Pananda. "Analisis Hukum Mengenai Penahanan Ijazah Karyawan Oleh Perusahaan." *Indonesian Journal of Law and Justice* 1, no. 4 (June 2024): 10. <https://doi.org/10.47134/ijlj.v1i4.2628>.
- Putra, Ferdiansyah, and Muhamad Dicky putra Irsyam. "Tinjauan Yuridis Penahanan Ijazah Sebagai Jaminan Dalam Hubungan Kerja." *Jurnal Ilmu Hukum* 4, no. 2 (2020): 34-41.
- Putri Nabila, Andita, and Gunawan Djayaputra. "Urgensi Pelaksanaan Kebebasan Berkontrak Dalam Merumuskan Perjanjian Guna Mewujudkan Keadilan Bagi Para Pihak." *UNES Law Review* 6, no. 2 (2023): 4072-80. <https://doi.org/10.31933/unesrev.v6i2.1246>.
- Tarigan, Pagita. "Skripsi Pagita Dewi Tarigan 1806200321 (Hukum Pidana) (1)," 2022.
- Trixie, Ivana, Mikael Alvaro, Christopher Matthew, Heaven McLaren, and Dinda Arista Putri. "Implementasi Hak Para Pekerja Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan (Analisis Kasus PT Livatech Elektronik Indonesia)." *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2000-2008.
- Wibowo, Benedictus Satriyo, Achmad Busro, and Anggita Doramia Lumbanraja. "Legitimasi Penahanan Ijazah Pekerja Dalam Perjanjian Kerja Waktu Tertentu (PKWT)." *Notarius* 14, no. 2 (2021): 738-46. <https://doi.org/10.14710/nts.v14i2.43725>.
- Yuridis, Analisis, Penyerahan Ijazah, and Sebagai Jaminan. "DALAM MELAKUKAN HUBUNGAN KERJA" 3, no. November (2024).
- Zulkifli, Akhmad. "TINJAUAN YURIDIS PRAKTEK PENAHANAN IJAZAH" 12, no. 2337 (2024).