

Juridical Analysis of Legal Protection for Workers Against the Retention of Diplomas and Personal Documents in Employment Contracts

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ABSTRACT

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*Legal
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The retention of diplomas and personal documents arises from an imbalance of power between workers and employers and unclear regulatory provisions. This study aims to analyze the regulation of retaining workers' diplomas and personal documents in Indonesia and the legal protection available to workers against such retention stipulated in employment contracts. The novelty of this study lies in its normative examination of the Circular Letter prohibiting the retention of diplomas and/or personal documents and its comparison with practices in other countries. This research employs an empirical normative method using statutory, case, and comparative approaches. Secondary and primary data were collected through literature studies and interviews and analyzed descriptively and qualitatively. The findings indicate that the retention of workers' diplomas and personal documents is currently regulated under Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/5/HK.04.00/V/2025. Although the Circular Letter does not possess legally binding force equivalent to a law, it serves as an implementation guideline and must not conflict with higher-level legislation. Workers whose diplomas or personal documents continue to be withheld after the completion of their employment contracts may pursue legal remedies, including mediation through the Manpower Office. Therefore, the government needs to establish strict regulations and sanctions regarding the retention of diplomas and/or personal documents in the Manpower Law, while the Manpower Office

should monitor employment contracts between workers and employers.

ABSTRAK

Kata Kunci:
Perlindungan
Hukum,
Penahanan
Ijazah,
Kontrak Kerja

Permasalahan penahanan ijazah dan dokumen pribadi berakar pada ketidakseimbangan posisi antara pekerja dan pemberi kerja serta belum jelasnya pengaturan hukum. Penelitian ini bertujuan menganalisis pengaturan penahanan ijazah dan dokumen pribadi pekerja di Indonesia serta perlindungan hukum terhadap pekerja atas penahanan tersebut yang diatur dalam perjanjian kerja. Kebaruan penelitian ini terletak pada kajian normatif terhadap Surat Edaran tentang larangan penahanan ijazah dan/atau dokumen pribadi serta perbandingan praktik di negara lain. Jenis penelitian ini adalah penelitian normatif empiris dengan pendekatan perundang-undangan, studi kasus, dan studi perbandingan. Sumber data menggunakan data sekunder dan data primer yang dikumpulkan melalui studi kepustakaan dan wawancara serta dianalisis secara deskriptif kualitatif. Hasil penelitian menunjukkan bahwa pengaturan penahanan ijazah dan dokumen pribadi pekerja di Indonesia saat ini terdapat dalam Surat Edaran Menteri Ketenagakerjaan Republik Indonesia Nomor M/5/HK.04.00/V/2025. Meskipun Surat Edaran tersebut tidak memiliki kekuatan mengikat seperti undang-undang, surat tersebut berfungsi sebagai pedoman pelaksanaan dan tidak boleh bertentangan dengan peraturan perundang-undangan yang lebih tinggi. Pekerja yang ijazah atau dokumen pribadinya tetap ditahan setelah perjanjian kerja berakhir dapat menempuh upaya hukum, antara lain melalui mediasi pada Dinas Ketenagakerjaan. Oleh karena itu, pemerintah perlu menetapkan pengaturan dan sanksi yang tegas mengenai penahanan ijazah dan/atau dokumen pribadi dalam Undang-Undang Ketenagakerjaan, sementara Dinas Ketenagakerjaan perlu melakukan pengawasan terhadap perjanjian kerja antara pekerja dan pemberi kerja.

1. INTRODUCTION

The practice of withholding workers’ diplomas and personal documents has long been a concern among workers and laborers. Employers commonly retain diplomas to prevent workers from leaving their employment abruptly or without providing proper notice (Amanda Christabel, 2025). Such practices are generally incorporated into employment contracts. Several cases involving the withholding of diplomas and/or personal documents have emerged publicly, including the case involving UD Sentoso Seal in Surabaya, East Java, which attracted significant public attention in 2025 (Manumoyoso, 2025). From a normative perspective, employment contracts between employers and workers are governed by the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata) and Law Number 13 of 2003 concerning Manpower.

An employment contract constitutes an agreement between an employer and a worker that establishes the rights and obligations of the parties, thereby serving as an instrument for ensuring legal certainty in the implementation of those rights and obligations (Farida, 2020). An employment contract must satisfy the requirements for the validity of an agreement stipulated in Article 1320 of the Indonesian Civil Code, namely consent, legal capacity, a specific subject matter, and a lawful cause. The requirement of consent means that an agreement must be entered into freely and without coercion or undue pressure (Budiyo, 2020). Although employment contracts contain agreements between employers and workers, their terms are frequently determined unilaterally by employers, leaving workers with limited opportunities to negotiate the contractual clauses (Kusbianto & Silalahi, 2020).

The problem is that a considerable number of companies continue to include clauses requiring workers to surrender their diplomas as security for the employment relationship. This practice creates various legal problems and weakens workers' bargaining positions within industrial relations (Anggraini, 2022). Consequently, workers are placed in a vulnerable position, making requirements concerning the withholding of diplomas and/or personal documents difficult to avoid because of their immediate need to obtain employment. The withholding of diplomas stipulated in employment contracts is inconsistent with fundamental legal principles and may infringe upon property rights and human rights (Ventia et al., 2025). Such clauses may also conflict with the principle of freedom of contract and may, under certain circumstances, be subject to annulment or declared legally ineffective. In practice, the withholding of diplomas creates unequal industrial relations, psychological pressure, and barriers to workers' occupational mobility (Syaharani et al., 2025).

Employment contracts containing diploma-withholding clauses continue to impose one-sided and disproportionate conditions that tend to disadvantage workers. This finding is consistent with research by (Pratama et al., 2024), which indicates that diploma-withholding policies are intended to prevent newly recruited employees from leaving the company without prior notice, thereby avoiding potential moral and material losses to the employer. The practice of withholding diplomas and/or personal documents is also inconsistent with the principles of Pancasila-based industrial relations, which seek to create a secure and comfortable working environment for workers and

thereby contribute to productive processes and improved welfare ([Arifuddin Muda Harahap, 2020](#)).

Based on the foregoing, it is important to examine the legal protection available to workers against the withholding of diplomas and personal documents in employment contracts. This study aims to analyze the legal framework governing the withholding of diplomas and personal documents from workers in Indonesia and to examine the legal protection available to workers against the withholding of diplomas and personal documents stipulated in employment contracts.

2. RESEARCH METHOD

This study employs a normative-empirical legal research method. Normative-empirical legal research examines the application of legal rules and norms in relation to their implementation in practice ([Rianto Andi, 2021](#)). The research employs statutory, case study, and comparative approaches. The study utilizes both secondary and primary data. Secondary data are essential for normative legal research and are obtained through the examination of primary, secondary, and tertiary legal materials ([Latif, 2025](#)). Secondary data were collected through literature research involving the examination of relevant legal and academic materials. Primary data were collected to complement the secondary data through interviews with research informants. The informants consisted of academics specializing in contract law and employment law. The data were analyzed using qualitative descriptive analysis through four stages: data collection, data reduction, data presentation, and conclusion drawing.

3. RESULTS AND DISCUSSION

An employment contract constitutes a legal instrument underlying the industrial relationship between workers and employers. As an agreement, an employment contract is subject to Article 1320 of the Indonesian Civil Code, which establishes four requirements for a valid agreement: the consent of the parties, legal capacity to enter into an agreement, a specific subject matter, and a lawful cause. The requirement of consent means that an agreement must be concluded without coercion, fraud, or mistake. The requirement of legal capacity refers to the legal ability of the parties to perform a legal act, generally requiring that they have reached the age of majority and are not under guardianship. The requirement concerning a specific subject matter means that

the content of the agreement must be sufficiently clear and must not contravene the law. In the context of employment contracts, this includes the agreed work and the respective rights and obligations of the parties. The requirement of a lawful cause means that the purpose of the agreement must comply with the law, morality, and public order. An agreement that contravenes these requirements may be declared legally void. An employment contract is important for both workers and companies before an employment relationship commences. Such a contract must be concluded without violating legislation, public order, morality, or accepted standards of conduct and must comply with the principle of freedom of contract. The principle of freedom of contract allows parties to determine the content, form, and terms of an agreement provided that these do not conflict with legislation, public order, or morality.

In industrial relations, however, workers frequently have weaker bargaining power than employers. Consequently, workers' consent cannot always be regarded as entirely free because it may arise from economic necessity. International literature emphasizes that consent in employment contracts often exists within a grey area between genuine choice and coercion and therefore cannot automatically legitimize exploitative practices ([Niezna & Davidov, 2023](#)). This indicates that clauses allowing employers to withhold diplomas may potentially violate the principle of freedom of contract underlying Indonesian private law. The withholding of diplomas also restricts workers' ability to change employment and seek better employment opportunities. Psychologically, such practices may also adversely affect workers and potentially reduce productivity because of the pressure associated with the retention of their diplomas or personal document.

The withholding of workers' diplomas continues to occur in various regions of Indonesia. Based on the authors' investigation, several cases involving the withholding of diplomas have been identified. One such case involved an administrative worker at Restu Ibu Hospital in Balikpapan, who reported being unable to retrieve the original diploma retained by the hospital as security to prevent resignation before the completion of a specified employment period ([Utami et al., 2020](#)). Such conduct places workers in an unequal position because educational documents constituting personal property are used unilaterally by employers as an instrument of control without a clear legal basis.

Another case that attracted public attention in early 2025 involved the withholding of diplomas from employees of UD Sentoso Seal in Surabaya, East Java. Forty-four former employees reported the alleged withholding of their diplomas to the East Java Regional Police ([Manumoyoso, 2025](#)). The case arose after the former employees reported the company for retaining their original diplomas. Initially, the former workers submitted complaints to the Surabaya City Government. The Deputy Mayor, together with officials from the Ministry of Manpower, conducted an inspection. Subsequently, the company's warehouse was sealed because it did not possess a Warehouse Registration Certificate (Tanda Daftar Gudang or TDG). The measures undertaken by the Surabaya City Government to provide legal protection included legal assistance, monitoring the case through the police reporting process, and facilitating the reissuance of educational certificates for affected workers.

A similar case occurred in Sidoarjo, East Java, involving PT Tedmonnindo Pratamasemesta. Thirteen former workers reported that they were required to pay IDR 6.5 million to retrieve their diplomas withheld by the company. The management argued that the withholding had been based on the workers' voluntary agreement. However, the workers stated that they had surrendered their diplomas under pressure and without a clear mechanism for retrieving them. Following mediation facilitated by the Sidoarjo Regency Manpower Office, the company eventually agreed to return the workers' documents ([Herawati, 2025](#)).

These cases demonstrate that the practice of withholding diplomas and/or personal documents remains prevalent in Indonesian employment relationships. They also indicate that diploma withholding frequently occurs within unequal and potentially exploitative employment relationships. This finding is consistent with Wibowo et al., who argue that clauses allowing the withholding of diplomas may be legally void because they undermine the principle of freedom of contract ([Wibowo et al., 2021](#)).

The authors identify several patterns of violation in cases involving the withholding of diplomas and/or personal documents. One common pattern is the unilateral imposition of an obligation requiring workers to surrender their diplomas and/or personal documents. Such clauses are frequently contained in employment contracts drafted unilaterally by employers, leaving workers with only the choice of accepting or rejecting the contractual terms. This creates an imbalance in the legal position of the parties.

A clause allowing the withholding of diplomas and/or personal documents may fall within the doctrine of abuse of circumstances (*misbruik van omstandigheden*) where one party exploits the other party's vulnerability or inability to negotiate in order to obtain an unfair contractual advantage. Such circumstances may constitute grounds for seeking the annulment of an agreement before a court. Employment contracts containing such clauses may also be characterized as unconscionable contracts, namely agreements containing unfair or unreasonable terms that substantially favor one party and undermine principles of fairness ([Hermansyah, 2022](#)).

Article 1338 paragraph (1) of the Indonesian Civil Code establishes the principle of freedom of contract by providing that a legally valid agreement shall bind the parties as law. This provision recognizes the freedom of parties to determine the content and form of an agreement and to select the parties with whom they contract. However, in employment relationships, employers and workers rarely occupy equal bargaining positions, resulting in unequal bargaining power. Workers generally have weaker bargaining positions than employers because of their need for employment. Consequently, workers may accept conditions imposed by employers, which may appear voluntary but are not necessarily the product of equal negotiation. This demonstrates the absence of genuine equality in the bargaining process. Standardized employment contracts that are prepared without meaningful worker participation may cause the principle of freedom of contract to operate in a manner that disregards statutory protections and produces coercive contractual conditions. Under these circumstances, the state has an important role as regulator and protector in promoting social justice. State intervention through legislation and public policy is necessary to safeguard workers' fundamental rights and prevent contractual arrangements that exploit structural inequalities between employers and workers.

Interviews with academic informants further reinforce this finding. Before the introduction of explicit regulation, the practice of withholding workers' diplomas in Indonesia was generally based on workplace customs or incorporated into individual employment agreements and collective labor agreements. Under Law Number 13 of 2003 concerning Manpower and its implementing regulations, there was no specific provision expressly regulating the withholding of diplomas. This situation created a legal vacuum concerning whether employers were legally permitted to retain workers' diplomas. As a

result of this regulatory gap, companies could withhold workers' diplomas as a condition of employment based on workplace practices and contractual arrangements (Utami et al., 2020). An employment contract is an agreement between a worker and an employer that establishes employment conditions and the rights and obligations of the parties.

A clause permitting the withholding of a diploma may arguably be considered legitimate where the employer has made a substantial contribution to the worker's education, for example by financing the worker's university education, provided that the arrangement is based on a clear written agreement. However, where such a clause is imposed unilaterally without a clear legal basis and causes harm to the worker, the practice may potentially constitute an unlawful act under Article 1365 of the Indonesian Civil Code. Such a clause remains legally effective until it is lawfully annulled by a court, even where the agreement is alleged to contain a defect of consent. This condition further weakens workers' legal positions and demonstrates the need for clearer and more effective legal protection.

From a practical perspective, interviews with practitioners specializing in employment law indicate that many companies do not report their employment agreements to the relevant Manpower Office, particularly employment agreements under fixed-term employment arrangements (Perjanjian Kerja Waktu Tertentu or PKWT). This lack of reporting reduces the effectiveness of governmental supervision because the authorities do not receive information regarding the contents of employment agreements or the rights and obligations established therein.

From a regulatory perspective, prior to 2025, there was no explicit national regulation prohibiting employers from withholding workers' diplomas under Indonesian manpower legislation or the Job Creation Law. East Java had adopted a specific local regulation, namely East Java Provincial Regulation Number 8 of 2016, Article 42, which prohibits employers from withholding workers' original documents. However, the regulation is regional in scope and therefore does not have nationwide applicability.

This regulatory gap was subsequently addressed through Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/5/HK.04.00/V/2025 dated 20 May 2025. The Circular Letter expressly prohibits employers from withholding workers' diplomas or personal documents, except in circumstances involving education or training financed by

the employer pursuant to a written agreement. The Circular Letter therefore represents an important development in strengthening the protection of workers' rights, although its legal character remains administrative and does not have the same legal force as legislation.

Nevertheless, from a juridical perspective, a ministerial circular letter is not included among the formal types of legislation recognized under Law Number 12 of 2011 concerning the Formation of Laws and Regulations. Utomo argues that a circular letter constitutes a form of administrative policy rule (*beleidsregel*) that primarily operates as an administrative instrument and binds governmental officials or subordinate institutions internally (Utomo, 2025). Accordingly, a circular letter cannot generally serve as a binding legal basis applicable to the general public, including private-sector employers (Pattinasarany, 2022). In practice, a circular letter functions primarily as an administrative guideline and does not itself provide a sufficient legal basis for imposing sanctions on parties that violate its provisions.

Therefore, although the substance of Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/5/HK.04.00/V/2025 demonstrates the state's commitment to protecting workers, its implementation requires stronger legal foundations. Several studies have recommended that this policy be elevated into a ministerial regulation or incorporated into statutory amendments so that it possesses binding legal force and can be enforced effectively (Inggiz et al., 2019). In this context, comparative analysis with Qatar and Taiwan is relevant. The experience of Qatar demonstrates that the kafala system historically granted employers substantial power over migrant workers, including the practice of retaining migrant workers' passports. This created unequal employment relationships and contributed to conditions conducive to exploitation (Regueiro, 2022). Although the Qatari government has stated that it has reformed the system, reports by the International Labour Organization (ILO) and Amnesty International indicate that the practice of retaining personal documents continues in less visible forms. Even following regulations prohibiting passport retention, some companies reportedly continued the practice without significant legal consequences (International, 2020). This demonstrates that the existence of regulations alone is insufficient to protect workers' rights unless accompanied by a strong legal foundation and effective institutional enforcement.

Taiwan, by contrast, demonstrates a more systematic approach to protecting migrant workers, although challenges remain. Taiwan has established standard employment contracts for migrant workers and provides relatively clear administrative sanctions against recruitment agencies and employers that retain personal documents or engage in other unethical practices. Through the Employment Service Act and Labor Standards Act, Taiwan regulates employers' obligations concerning personal documents and provides administrative penalties for violations. Taiwan has also strengthened oversight through cooperation with civil society organizations and the establishment of complaint hotlines ([Secretariat, n.d.](#)).

Drawing on the Taiwanese approach, Indonesia should strengthen the prohibition through a higher-level regulatory instrument, such as a ministerial regulation or statutory amendment, so that the prohibition against diploma withholding can be enforced more effectively. A combination of administrative mechanisms, legal sanctions, and participation by independent supervisory institutions is therefore important for Indonesia to prevent the prohibition from becoming merely declaratory without effective enforcement mechanisms ([Sundrijo & Safitri, 2023](#)).

Legal protection for workers affected by the withholding of diplomas can be understood from two principal dimensions: preventive and repressive protection. Preventive protection is provided through regulations expressly prohibiting clauses that allow the withholding of documents, whether at the regional regulatory level concerning employment administration or through national legislation. Repressive protection is provided through the industrial relations dispute resolution mechanism established under Law Number 2 of 2004. This mechanism is conducted progressively, beginning with bipartite negotiations between workers and employers, which must be attempted within a maximum period of 30 working days. If no agreement is reached, the parties may proceed to mediation or conciliation facilitated by the Manpower Office or choose arbitration if mutually agreed. If these mechanisms fail to resolve the dispute, the matter may be submitted to the Industrial Relations Court (Pengadilan Hubungan Industrial or PHI) at the relevant District Court.

This mechanism is also supported by academic informants, who stated that workers retain the right to pursue legal remedies where coercion is established in relation to a diploma-withholding clause. Accordingly, workers who suffer harm are not limited to negotiation mechanisms but may also utilize

formal legal procedures recognized under Indonesian law to obtain restoration of their rights. Where workers experience the withholding of diplomas, effective supervision and legal protection are essential to prevent employers from forcibly retaining such documents. If employers require verification of workers' educational qualifications, less restrictive alternatives should be used, such as certified copies of diplomas or allowing workers to present the original documents for verification and immediately return them thereafter.

From a human rights perspective, the practice of withholding workers' diplomas may conflict with Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which guarantees everyone's right to private property. Alvin Berry Dika argues that the withholding of diplomas constitutes a human rights violation because it may restrict workers' ability to pursue better employment opportunities (Dika, 2021). This view is reinforced by Berkey, who emphasizes that corporations have obligations not only to refrain from exploitative practices but also to actively promote fair working conditions. Accordingly, employers should recognize that educational certificates and personal documents are closely connected to workers' autonomy, professional mobility, and access to employment opportunities (Berkey, 2024).

4. CONCLUSION

The regulation governing the withholding of workers' diplomas and personal documents in Indonesia is currently addressed through Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/5/HK.04.00/V/2025. However, the Circular Letter does not possess the same binding legal force as legislation. It primarily functions as an administrative implementation guideline and must not conflict with higher-level laws and regulations. Workers whose diplomas or personal documents are withheld under employment contracts may pursue legal remedies when such documents are not returned after the employment relationship ends. Such remedies may include mediation facilitated by the local Manpower Office. Workers and employers should understand the applicable legal framework governing the withholding of diplomas and personal documents so that employment agreements do not contain clauses that violate applicable laws and so that the legal interests of both parties are adequately protected. The government should establish explicit and enforceable regulations governing the withholding of diplomas and/or personal documents, including appropriate sanctions,

preferably through amendments to employment legislation. The Manpower Office should also strengthen supervision of employment contracts between workers and employers, including through systematic monitoring and evaluation based on the registration of employment contracts with the relevant Manpower Office.

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