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A Criminal Law Review of the Practice of Withholding Employees' Diplomas in the Workplace as a Form of Collateral

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Abstract: The practice of withholding employees' diplomas as collateral for employment is a common issue in Indonesia. This action has sparked controversy as it is considered a violation of human rights and the Labor Law. This study aims to analyze the criminal law regulations related to the practice of diploma withholding and assess the legal accountability of companies engaging in this practice. The research method used is normative juridical with a literature review approach. The findings indicate that withholding diplomas can be categorized as a criminal offense, especially if done in a way that harms employees or violates their right to seek better employment opportunities. Companies that withhold diplomas may be charged under the Criminal Code (KUHP) for unpleasant acts or embezzlement. This study recommends stronger law enforcement and awareness programs for workers regarding their rights to prevent the practice of diploma withholding.

Keyword: Diploma Withholding, Criminal Law, Labor Law.

INTRODUCTION

The practice of companies holding employees' diplomas as collateral has become a rather complex issue within the realm of labor law in Indonesia. Although this action is often taken with the justification of ensuring employees fulfill their work obligations or as a form of guarantee to prevent employees from leaving the company before their contract ends, it is frequently seen as a form of restriction on workers' rights. According to (Anggraini, 2022) the withholding of diplomas by companies not only involves ownership rights but also indicates an imbalance of power between the employer and the employee, leading to injustice for workers who are required to hand over their diplomas as a condition of employment.

Amidst the rising unemployment rate reported by the Central Statistics Agency (BPS) at 4.82% in 2024, many workers are forced to accept this practice due to limited job opportunities or economic pressures (Badan Pusat Statistik Indonesia, 2024). The average

wage of workers, which stands at around 3.04 million rupiah per month, also reflects the weak bargaining position of workers in negotiating work terms (Badan Pusat Statistik Indonesia, 2024). This situation opens up opportunities for companies to exploit this imbalance by imposing diploma withholding as a condition of employment contracts that workers find difficult to avoid.

Various expert opinions on the impact of diploma withholding also highlight the legal aspects regulating protection for workers. (Chamdani & Indradjaja, 2024) argue that from a criminal labor law perspective, the practice of withholding diplomas can be categorized as a violation of human rights, particularly regarding the freedom to choose employment. This is supported by (Sukaesi, 2022) who states that withholding diplomas violates (Undang-Undang (UU) Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003) , which guarantees freedom and legal protection for workers. In line with this, the Director-General of Human Rights has also paid special attention to this practice, as it is seen as contrary to the principles of social justice and human rights (Oke, 2024).

According to (Idris, 2023) withholding diplomas as collateral also lacks a clear legal basis in labor law, often creating legal uncertainty. When this practice is carried out without a valid legal foundation, there is a risk that the company could face criminal charges, especially if it is proven to obstruct the workers' rights to secure better jobs or improve working conditions. Furthermore, various criminal law literatures emphasize the importance of monitoring and strict regulation of this practice to prevent the abuse of power by companies (Angraeni et al., 2024; Sukardi et al., 2021). In practice, the withholding of diplomas as collateral has been ongoing for a long time and is considered a "tradition" by some companies, particularly in sectors with high employee turnover rates. For example, (Gde Wiryawan, 2021) research found that in some industries, such as hospitality and retail, companies often impose this requirement as part of employment agreements. On the other hand, (Nugraheni et al., 2023) revealed that diploma withholding is often done without any clear official documentation regarding the rights and obligations of the workers, leaving room for companies to violate workers' rights without facing strict penalties. As part of this phenomenon, (Ramanda, 2024) reported that this practice not only leads to social injustice but also hampers workers' mobility in securing better jobs, particularly amidst rising unemployment. Therefore, this issue has become a concern for various parties, from legal, economic, and human rights perspectives.

This study was conducted due to the lack of clear consensus regarding the legality of the practice of diploma withholding by companies. Moreover, existing regulations are still limited to labor protection without delving deeply into the criminal aspects. Against this backdrop, this research seeks to explore whether the practice of diploma withholding can be categorized as a criminal act and how the companies involved should be held accountable. Some experts, such as (Pratama et al., 2024), suggest imposing strict criminal sanctions to regulate this practice, while others, like (Hutagalung, 2024) recommend an administrative approach as a solution. This study aims to analyze the criminal law regulations related to the practice of diploma withholding by employees in Indonesia. This research will identify whether this action violates applicable criminal laws and delve into regulations that can serve as a basis for imposing criminal sanctions on companies engaging in such practices. Assess the legal accountability of companies for withholding employees' diplomas. In this regard, the study will explore the extent of the company's responsibility in this practice and whether there is a possibility of criminal sanctions, in line with theories of justice and human rights principles (Angraeni et al., 2024; Jaya et al., 2021). With the results of this research, it is hoped that a more comprehensive understanding of criminal law's position in protecting workers' rights from such unfair practices can be achieved. Additionally, this study aims to encourage the improvement of fairer labor policies in Indonesia.

METHOD

This research uses a normative juridical method with a literature review approach to examine the legal aspects related to the practice of withholding employees' diplomas by companies as a form of employment collateral. In this study, primary legal materials include Law No. 13 of 2003 on Employment and the Criminal Code (KUHP), which contain legal provisions related to workers' rights and company obligations. On the other hand, secondary legal materials, including academic literature such as scientific journals, legal books, and previous studies, provide theoretical and interpretive perspectives on the issues raised, supporting the normative study conducted. This approach provides the basis for the researcher to explore the legal framework governing the action of diploma withholding and the legal implications arising from this practice.

In the context of this research, data is obtained through the review of primary and secondary legal materials, where primary legal materials include official regulations related to employment and criminal law provisions, while secondary legal materials such as reference books and scientific journals offer theoretical support and additional explanations. This analysis is supplemented with tertiary legal materials, such as legal dictionaries and other guides, to help understand and explain technical terms and legal concepts used. This comprehensive approach facilitates the researcher in constructing a systematic analysis to reach valid and objective conclusions.

The data analysis process is carried out through a legal interpretation approach, qualitative analysis, and logical legal reasoning. The legal interpretation technique is used to explore and understand the meaning of relevant regulations and their implications for protecting workers' rights. This analysis is supported by legal reasoning techniques, which play a role in building solid arguments based on legal foundations and collected data, thus resulting in objective and accurate conclusions.

RESULTS AND DISCUSSION

Diploma Withholding as Collateral in the Workplace

The practice of withholding employee diplomas by companies as collateral in employment relationships has become a controversial phenomenon in Indonesia. This practice is often used by companies to prevent employees from leaving their jobs before the end of their contracts or to ensure the return on investment made by the company, such as in training programs. Although common, this practice often lacks a strong legal foundation, and in some cases, it can be considered illegal, particularly if it restricts employees' rights to freely seek other employment or quit their jobs.

(Undang-Undang (UU) Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003), in Article 153, paragraph (1), states: "Employers are prohibited from terminating employment on the grounds of... the employee filing a request or lawsuit for a violation of their rights," which implicitly supports employees' freedom regarding their rights at work. In this case, withholding diplomas that restrict employees' freedom is considered contrary to their right to choose their workplace, as protected by Indonesia's employment laws. Withholding an employee's diploma as a guarantee of their continued employment can be seen as a violation of the worker's freedom to choose a job, in accordance with Article 27, paragraph (2) of (Undang-Undang Dasar (UUD) Tahun 1945, 1945), which states, "Every citizen has the right to work and to live in a manner worthy of humanity." According to research conducted by (F. Putra & Irsyam, 2020), withholding personal documents, such as diplomas, has been shown to decrease job satisfaction and worsen industrial relations because it creates feelings of discomfort and insecurity among employees. This suggests that this practice not only violates the law but also disrupts healthy work dynamics and productivity.

Article 421 of the (Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (KUHP), 2023) and related provisions in (Undang-Undang (UU) Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003) that abuse of power by employers over employees, including withholding diplomas, can be categorized as a legal violation. Research by (Hidayah et al., 2021) emphasizes that actions limiting employees' basic rights, such as the right to change jobs, should be protected by law to prevent abuse of power in the workplace.

(Undang-Undang (UU) Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, 1999) provides an essential foundation for workers' rights to live and work without coercion or pressure. Article 9, paragraph (1), states that everyone has the right to improve their standard of living, which includes the freedom to seek and change employment. Siahaan (2020) argues that human rights at the workplace include protection from actions that restrict employees' access to their personal documents, such as diplomas, because such actions can hinder the freedom of movement guaranteed by law. This view is supported by the National Commission on Human Rights (Komnas HAM), which affirms that withholding diplomas violates workers' human rights.

Article 421 of (Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (KUHP), 2023), which regulates abuse of power by individuals in authoritative positions, particularly when used to pressure others, may be relevant in cases of diploma withholding. If the withholding of diplomas is done without consent and causes psychological or economic pressure on the employee, it can be seen as an abuse of power by the company. Furthermore, based on the principle of freedom of contract, employment relationships should be based on voluntary agreement without coercion. Any withholding of diplomas accompanied by threats to the employee's job status can be categorized as a violation of contractual freedom. According to (A. A. Putra et al., 2024) the freedom to choose employment and the freedom to work are rights guaranteed by Article 27, paragraph (2) of (Undang-Undang Dasar (UUD) Tahun 1945, 1945), which states, "Every citizen has the right to work and to live in a manner worthy of humanity."

The principle of freedom of contract in employment relationships asserts that employees have the right to choose their jobs without coercion. According to the social contract theory explained by (Shaffa & Abdullah, 2023) a healthy employment relationship is one built on mutual trust and without coercion, including the use of diplomas as collateral. Based on this study, any practice of withholding diplomas that prevents employees from voluntarily terminating their employment relationship is a violation of the principle of contractual freedom guaranteed by civil law.

Criminal Sanctions for the Practice of Withholding Diplomas

Companies that withhold employees' diplomas to pressure them into staying in their jobs can face criminal sanctions, in accordance with criminal law principles that protect workers' rights. According to Article 368 (1) of (Undang-Undang (UU) Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, 2023) coercion through methods such as threats or creating fear among employees can be categorized as unlawful conduct. This article states: "Anyone who, with the intent to benefit themselves or others unlawfully, forces another person with violence or threats of violence to give something of value, which wholly or partly belongs to that person, or to incur debt or forgive a debt, shall be punished with imprisonment for a maximum of nine years." If a company uses an employee's diploma as a guarantee without a valid agreement or consent from the employee, this action can be seen as coercion that violates criminal law.

The company may be held accountable for withholding employees' diplomas as it infringes upon human rights and the right to work. According to (Jaya et al., 2021)

withholding diplomas contradicts human rights principles, particularly the right to freedom of work. Furthermore, the National Commission on Human Rights (Komnas HAM) affirms that withholding diplomas violates human rights, as outlined in (Undang-Undang (UU) Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, 1999). Article 9 (1) states: "Everyone has the right to live, defend their life, and improve their living standard." Article 38 (2) adds: "Everyone has the right to work and choose a job in accordance with their interests and talents." These provisions support the argument that withholding diplomas violates the fundamental rights of individuals, who are free to seek and choose employment without any obstruction.

The practice of withholding diplomas not only violates employees' rights but also carries serious legal consequences for companies. In several cases, courts have ruled that withholding diplomas constitutes a violation of workers' rights, and companies that engage in this practice may face administrative or even criminal sanctions. In Industrial Relations Courts, rulings related to termination of employment due to diploma withholding have strengthened employees' rights to reclaim their documents. In practice, withholding diplomas may result in criminal sanctions under Article 368 of (Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (KUHP), 2023), which addresses coercive acts aimed at unlawfully benefiting a party. According to (Widjaja, 2022) coercion through threats involving diploma withholding has been recognized by the court as an unlawful act. This study highlights that such practices can have serious consequences for companies, as they may be viewed as attempts to coerce employees, violating their freedom and human rights.

Courts in Indonesia have handled several cases of diploma withholding, and some rulings have stated that this action violates (Undang-Undang (UU) Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003) and contradicts Article 3 (1) of (Undang-Undang (UU) Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, 1999). This indicates that companies that withhold diplomas are at risk of facing both criminal and administrative sanctions, emphasizing the importance of respecting workers' rights in Indonesia. Rulings issued by the Industrial Relations Court regarding diploma withholding cases have reinforced legal protection for employees' rights. For instance (Moudy Maulidia Barnini, 2023), the panel of judges deemed diploma withholding as an action contrary to the principles of fair labor practices, causing both material and moral harm to the employee. Based on the analysis of this case, it was revealed that diploma withholding can serve as grounds for employees to sue companies for violating fundamental labor rights.

Based on the analysis above, it can be concluded that the practice of withholding employees' diplomas as a guarantee by companies contradicts the principles of labor and criminal law in Indonesia. Withholding diplomas without the employee's consent can be categorized as a form of coercion that violates (Undang-Undang (UU) Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, 2023) and (Undang-Undang (UU) Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003), particularly concerning workers' fundamental rights. Companies engaging in this practice may face criminal sanctions under Article 368 of (Undang-Undang (UU) Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, 2023) as well as administrative sanctions as stipulated in labor regulations. Considering all relevant legal aspects, companies must respect employees' rights by refraining from using diplomas as guarantees without consent, as this not only violates workers' rights but also exposes the company to potential legal consequences.

CONCLUSION

Based on the analysis above, the practice of withholding employees' diplomas in Indonesia can be categorized as a serious violation of criminal law. This action not only infringes upon the fundamental rights of employees guaranteed by the 1945 Constitution but

also contradicts the provisions of Law No. 13 of 2003 on Manpower, which grants every worker the right to obtain important documents, including diplomas. Therefore, withholding diplomas by companies should be seen as a form of violation that requires strict sanctions.

In this regard, it is crucial to identify the legal accountability of the company for withholding employees' diplomas. A company can face criminal sanctions if it is proven to withhold diplomas unlawfully, which can be considered harmful and a violation of justice principles and human rights. The theory of justice mandates that every legal violation should have proportional consequences to create a deterrent effect for other companies. Therefore, there is a need for stricter law enforcement and awareness campaigns for companies regarding workers' rights to prevent unlawful diploma withholding practices in the future.

It is recommended that the government and related institutions enforce stricter legal measures against companies that engage in withholding diplomas. This includes the formulation of clear regulations regarding the sanctions that can be imposed on such practices. Additionally, there should be intensive socialization efforts to educate employees about their rights, including the right to educational documents. By raising legal awareness among workers, it is hoped that they can protect themselves from such detrimental practices and take appropriate legal actions if necessary.

REFERENCE

- Anggraini, S. D. (2022). Perlindungan Hukum Pekerja Atas Penahanan Ijazah Yang Dilakukan Pengusaha. *Jurnal Kajian Konstitusi*, 2(1), 74. <https://doi.org/10.19184/jkk.v1i3.25599>
- Angraeni, N., Bunga, D., Citranu, C., & Aris, A. (2024). *HUKUM PIDANA: Teori Komprehensif*. PT. Sonpedia Publishing Indonesia.
- Badan Pusat Statistik Indonesia. (2024). Tingkat Pengangguran Terbuka (TPT) sebesar 4,82 persen dan Rata-rata upah buruh sebesar 3,04 juta rupiah per bulan. <https://www.bps.go.id/id/pressrelease/2024/05/06/2372/tingkat-pengangguran-terbuka--tpt--sebesar-4-82-persen-dan-rata-rata-upah-buruh-sebesar-3-04-juta-rupiah-per-bulan.html>
- Chamdani, C., & Indradjaja, N. (2024). *Hukum Ketenagakerjaan: Perlindungan Hukum Upah Pekerja/Buruh Atas Upah Minimum Paska Keluarnya Undang-Undang Cipta Kerja Dalam Perspektif Pidana Ketenagakerjaan*. CV WIDINA MEDIA UTAMA. <https://repository.penerbitwidina.com/publications/583630/>
- Gde Wiryawan, I. W. (2021). Aspek Pidana Dari Menahan Ijazah Pekerja Sebagai Jaminan Dalam Perjanjian Kerja. *Jurnal Magnum Opus*, 4(2), Article 2.
- Hidayah, D. U., Siregar, L. M. V., Purba, M. T. E., & Rostina, C. F. (2021). Pengaruh Kepemimpinan, Disiplin Kerja, Dan Motivasi Terhadap Kinerja Karyawan Badan Penyelenggara Jaminan Sosial (BPJS) Ketenagakerjaan Medan. *Warta Dharmawangsa*, 15(3), Article 3. <https://doi.org/10.46576/wdw.v15i3.1352>
- Hutagalung, R. M. (2024). Perlindungan Hukum terhadap Penahanan Ijazah Pekerja Waktu Tertentu oleh Perusahaan (Studi Kasus Putusan Nomor 13/Pdt.Sus-PHI/2019/Pn.Tte) [S1, Universitas Kristen Indonesia]. <http://repository.uki.ac.id/14890/>
- Idris, M. (2023). Perusahaan Tahan Ijazah Karyawan, Bagaimana Aturan Hukumnya? <https://money.kompas.com/read/2023/03/04/091339326/perusahaan-tahan-ijazah-karyawan-bagaimana-aturan-hukumnya>
- Jaya, W. A. I., Dewi, A. A. S. L., & Ujianti, N. M. P. (2021). Akibat Hukum Penahanan Ijazah Oleh Badan Usaha Ditinjau Dari Perspektif Hukum Perjanjian. *Jurnal Interpretasi Hukum*, 2(3), 656–661.

- Moudy Maulidia Barnini, A. (2023). Akibat Hukum Perusahaan Tutup Bagi Pekerja (Analisis Putusan Pengadilan Hubungan Industrial Pada Pengadilan Negeri Bandung No. 224/Pdt.Sus-Phi/2021/Pn.Bdg) [Skripsi, Universitas Indonesia]. <https://lib.ui.ac.id>
- Nugraheni, E., Sholahuddin, A., & Widjajani, R. (2023). Increasing Socialization of Employment Administration Detention of Diplomas as Job Security: A Case Study of Detention of Diplomas as Job Security. *International Journal of Research in Social Science and Humanities (IJRSS)* ISSN:2582-6220, DOI: 10.47505/IJRSS, 4(7), Article 7. <https://doi.org/10.47505/IJRSS.2023.V4.7.6>
- Oke, V. (2024). Dirjen HAM Soroti Praktik Penahanan Ijazah Tenaga Kerja oleh Perusahaan—Kompasiana.com. <https://www.kompasiana.com/valkyrie22/66b8be4e34777c1e4d6f25b2/dirjen-ham-soroti-praktik-penahanan-ijazah-tenaga-kerja-oleh-perusahaan>
- 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. <https://doi.org/10.47134/ijlj.v1i4.2628>
- Putra, A. A., Samudra, T. G., Ragil, Priyatama, L., Adriaman, M., Fauzi, V. F., Pratama, A., Nofrizal, Fadhlansyah, H., Friska, Putri, D. R. A., Edwin, & Fadhlurrahman, A. (2024). Metode Penulisan Artikel Hukum. Yayasan Tri Edukasi Ilmiah.
- Putra, F., & Irsyam, M. D. P. (2020). Tinjauan Yuridis Penahanan Ijazah Sebagai Jaminan Dalam Hubungan Kerja. *Justice Pro: Jurnal Ilmu Hukum*, 4(2), Article 2. <https://doi.org/10.53027/jp.v4i2.108>
- Ramanda, A. M. (2024). Jumlah Pengangguran Indonesia Capai 7 Juta di 2024. GoodStats Data. <https://data.goodstats.id/statistic/jumlah-pengangguran-indonesia-capai-7-juta-di-2024-dU2oR>
- Shaffa, S. Z., & Abdullah, M. N. A. (2023). Analisis Faktor Yang Mempengaruhi Penyerapan Angkatan Kerja Pada Sektor Industri Di Jawa Barat. *SABANA: Jurnal Sosiologi, Antropologi, Dan Budaya Nusantara*, 2(1), Article 1. <https://doi.org/10.55123/sabana.v2i1.1835>
- Sukaesi, D. (2022). Perlindungan Hukum Terhadap Pekerja Akibat Penahanan Ijazah Oleh Perusahaan Di Kota Pekanbaru Berdasarkan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan [Diploma, Universitas Lancang Kuning]. <https://repository.unilak.ac.id/3385/>
- 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.
- Undang-Undang (UU) Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, Pub. L. No. 1 (2023).
- Undang-Undang (UU) Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, Pub. L. No. 13 (2003).
- Undang-Undang (UU) Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, Pub. L. No. 39 (1999).
- Undang-Undang Dasar (UUD) Tahun 1945 (1945).
- Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (KUHP), Pub. L. No. 1 (2023).
- Widjaja, G. (2022). Indonesia's omnibus law in the international context: Review of legal and human rights publication journals. *Linguistics and Culture Review*, 64–76. <https://doi.org/10.21744/lingcure.v6nS3.2005>