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A Civil Law Perspective on the Practice of Withholding Diplomas Under Employment Contracts

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Abstract

The practice of employers withholding educational diplomas remains prevalent in employment relationships, serving as a form of security to ensure workers fulfill agreed-upon tenure and obligations. This practice raises legal issues due to the power imbalance between workers and employers, as well as the lack of clarity regarding the legal status of a diploma as an object of security under civil law. These issues have gained renewed relevance following the issuance of the Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/5/HK.04.00/V/2025 concerning the Prohibition on Employers Withholding Diplomas or Personal Documents Belonging to Workers or Laborers. This study aims to analyze the legal status of diplomas used as security in employment agreements from a civil law perspective. It employs a normative-empirical legal research method, utilizing both statutory and conceptual approaches. The findings indicate that handing over a diploma to an employer does not automatically transform it into an object of real security (security in rem); this is because diplomas are personal in nature, lack marketable economic value, and cannot be transferred to third parties. Withholding a diploma essentially constitutes the possession of a worker's document based on an agreement, rather than a form of real security recognized under civil law. Consequently, clauses regarding the withholding of diplomas must adhere to the requirements for valid agreements, maintain a balance between the parties, and comply with worker protection regulations.

Keywords: Agreement, Certificate, Civil Law, Employment Contract, Worker

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1. Introduction

Law holds an important position in regulating social life while simultaneously providing guarantees for the rights of every citizen. Indonesia's status as a state based on the rule of law entails that the administration of the state and the relationships that arise within society must be guided by the applicable legal provisions. Law does not merely function as a set of rules governing social behavior, but also serves as an instrument to ensure that every action taken does not disregard the rights and interests of other parties (Selznick, 2019). Therefore, legal protection is necessary as a means of providing legal certainty, ensuring the fulfillment of citizens' rights, and preventing harmful or arbitrary actions.

The protection of citizens' rights constitutes part of the constitutional responsibility that must be fulfilled by the state. Such rights are guaranteed under the 1945 Constitution of the Republic of Indonesia, thereby obliging the state to ensure that every citizen receives treatment and protection in accordance with the law (Elenabella et al., 2025). This is consistent with the objectives of the state as stipulated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, particularly concerning the state's obligation to protect the entire Indonesian nation, promote the general welfare, educate the nation, and contribute to the establishment of a world order based on freedom, lasting peace, and social justice.

In the field of employment, the fulfillment and protection of workers' rights continue to face various challenges (Puannandini et al., 2025). These problems are not only related to the effectiveness of statutory regulations but may also arise from the legal relationship between workers and employers as embodied in employment agreements. A company, as an employer, establishes a legal relationship with a worker following an agreement that gives rise to an employment contract. Pursuant to Law Number 13 of 2003 concerning Manpower, an employment agreement essentially constitutes an agreement between a worker and an employer containing terms and conditions of employment and regulating the respective rights and obligations of the parties. Such an agreement subsequently serves as the basis for establishing an employment relationship between the worker and the employer.

The relationship between workers and companies is essentially a legal relationship arising from an employment agreement. Through such an agreement, the parties express their intention to create rights and obligations that produce legal consequences. Contract law, in principle, grants every person the freedom to determine the content and form of an agreement as desired, provided that it does not conflict with the applicable legal provisions (HS, 2012). In the employment context, an employment agreement serves as the basis for establishing an employment relationship because it contains an agreement concerning the work to be performed, rights, obligations, and other provisions that are binding upon the parties. The subjects of such a relationship consist of the entrepreneur or employer and the worker/laborer as the party performing the work. An employment agreement may be made in writing or orally, provided that it satisfies the requirements prescribed by law.

One of the issues that may arise in employment practices is the requirement for workers to submit their original educational certificates to the company as collateral during the employment relationship. Employers generally use such clauses to ensure that workers fulfill the agreed employment period or to provide security for training costs or certain facilities provided to workers. However, the practice of submitting or retaining educational certificates raises legal issues because it concerns the position of workers within the employment relationship, an individual's freedom to obtain and change employment, the validity of contractual clauses, and the possession and control of workers' personal documents (Fikri, Muhammad, 2023).

This issue has become increasingly important to examine because not all workers possess an adequate understanding of the legal rights inherent in their employment relationships. One aspect related to this issue concerns proprietary rights. Proprietary rights (*zakelijk recht*) are rights that grant a person direct authority over an object and may be asserted against any party. The regulation of proprietary rights is principally contained in Book II of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*). Meanwhile, Article 499 of the Indonesian Civil Code defines an object (*benda*) as every good and every right that may become the subject of ownership rights. This provision demonstrates that the object of legal protection is not limited to objects possessing economic value, but also includes objects or documents that possess legal value and function for their owners.

From the perspective of property law, an educational certificate owned by a worker may be regarded as movable property under the possession and ownership of the person concerned (Bagenda et al., 2025). Such status grants the certificate owner the authority to store, use, possess, and protect the document from control by another party without a legally justifiable basis. Therefore, the issue of the submission of educational certificates should not be viewed solely from the perspective of the employment relationship but should also be examined in relation to the principles of contract law, particularly the principles of good faith and reasonableness (Kolopaking, 2021).

The principle of good faith (good faith) is one of the fundamental principles in contract law. This principle is expressly stipulated in Article 1338 of the Indonesian Civil Code (KUHPerdata), which provides:

"All agreements lawfully concluded shall apply as law to the parties who conclude them. Such agreements may not be revoked except by mutual agreement of the parties or for reasons determined by law. Agreements must be performed in good faith."

According to Subekti, good faith in the formation of an agreement is related to the honesty of the parties, namely the existence of trust that each party does not conceal any circumstances or particular intentions that may cause harm to the other party (Sinaga, 2024). This principle is not only required at the time an agreement is concluded but must also serve as the basis for its implementation. In the context of diploma retention, the use of such documents as a means of compelling workers to remain employed or obstructing workers when they intend to terminate their employment relationship may be questioned if its implementation is contrary to the principles of honesty and balance of interests between the parties. In addition to the principle of good faith, the assessment of such a contractual clause must also take into account the principle of reasonableness (*kepatutan*).

The principle of reasonableness, as referred to in Article 1339 of the Indonesian Civil Code, provides:

"An agreement is not only binding with regard to matters expressly stipulated therein, but also with regard to everything which, according to the nature of the agreement, is required by reasonableness, custom, and law."

This provision demonstrates that the binding force of an agreement is not solely determined by the clauses explicitly included by the parties. The implementation of an agreement must also

take into consideration reasonableness, customary practices, and applicable statutory provisions. Accordingly, the existence of a clause requiring the submission of a diploma in an employment agreement cannot be assessed solely on the basis of whether or not the worker has consented to it. Such consent must be examined comprehensively, particularly where the worker is in a weaker bargaining position and the submission of the diploma is imposed as a condition for obtaining or retaining employment.

The application of these principles is essentially necessary to establish a balanced employment relationship between employers and workers. An employment agreement should serve as an instrument providing certainty regarding the respective rights and obligations of the parties, rather than as a means of placing one party in a disadvantageous position. Therefore, every clause agreed upon within an employment relationship must be implemented reasonably, on the basis of a valid agreement, while continuing to take into account the rights and interests of both parties.

The practice of employers retaining original diplomas is generally based on the company's interest in retaining workers for a certain period. A company may consider the presence of a worker to be an important component of the continuity of its business activities, particularly when the worker occupies a position considered strategic. From the company's perspective, retaining a diploma may be regarded as an effort to prevent workers from leaving the company suddenly, which could disrupt productivity and business operations. However, from the worker's perspective, such action has the potential to restrict the worker's freedom to determine employment choices and obtain work that corresponds to their abilities. Therefore, such practice must be placed within legal boundaries so that the interests of the company do not override the fundamental rights of workers (Nadhia Apriana, Nihaya Lila Utami, 2020).

The issue of diploma retention continues to be found in practice and has even attracted public attention in several cases. One such case occurred in Surabaya when the Deputy Mayor of Surabaya, Armuji, conducted an unannounced inspection at CV Sentosa Seal in the Margomulyo area. The action was taken after a former worker reported that his diploma was still in the possession of the company even though he had resigned. In the incident, the company did not provide a response when approached, and access to the company premises was also closed. The matter subsequently developed into a legal case after a former worker with the initials DSP

reported the matter to the East Java Regional Police (Hiliwilo, Nijam, 2025). Following the report, the East Java Regional Police summoned the owner and management of CV Sentosa Seal on April 24, 2025, to provide information concerning the alleged retention of the diploma.

When examined in light of Law Number 13 of 2003 concerning Manpower, there is no specific provision expressly regulating the prohibition of employers from retaining workers' diplomas. This situation requires the issue to be analyzed by relating it to the general provisions of contract law. In principle, a clause agreed upon by a worker and an employer may have binding legal force if it is formed on the basis of valid consent (Kalman, K., Jalianery, J., 2025). Such consent must be given freely and must not arise from coercion (*dwang*), mistake (*dwaling*), or fraud (*bedrog*). Furthermore, the performance of the agreement must also be based on good faith. Consent may be expressed explicitly or demonstrated through conduct indicating a meeting of the parties' minds.

Accordingly, the existence of a clause concerning the submission of a diploma in an employment agreement cannot automatically be deemed valid merely because the worker has given their consent. Freedom of contract indeed provides the parties with the opportunity to determine the contents of an agreement, but such freedom remains subject to limitations and must be exercised by taking into account the law, reasonableness, and the principles of contract law (Pratama et al., 2024). Therefore, the assessment of diploma retention practices must consider not only the existence of formal consent but also the process through which the agreement was formed, the balance of the parties' positions, the purpose of submitting the diploma, and the consequences imposed on the worker. Such an approach is necessary to ensure that freedom of contract is not used as a basis for legitimizing clauses that, in their implementation, cause harm to workers or disproportionately restrict their rights.

The regulation concerning the submission or retention of diplomas as a requirement in employment relationships has been further addressed through Minister of Manpower Circular Letter Number M/5/HK.04.00/V/2025. The circular letter establishes limitations on the practice of using workers' diplomas or personal documents as security in employment relationships. Several provisions regulated under the circular letter include:

1. Prohibition on employers requiring workers' diplomas or personal documents as employment security. The documents concerned include original documents belonging to

workers, such as diplomas, competency certificates, passports, birth certificates, marriage certificates, and Motor Vehicle Ownership Books (BPKB).

2. Prohibition on employers taking actions that may restrict workers' opportunities to obtain more decent employment (Atallah & Suherman, 2025). This provision is intended to ensure that an employment relationship does not become a means of restricting workers' freedom to develop their careers.
3. Obligation of prospective workers and workers to understand the contents of the employment agreement before agreeing to it. Particular attention must be given to clauses regulating the submission of diplomas or personal documents as requirements or security in an employment relationship.
4. Submission of diplomas or competency certificates under certain legally permissible circumstances. Such submission may only be made if certain requirements are fulfilled, namely:
   a. the diploma or competency certificate was obtained through education and training financed by the employer and based on a written employment agreement; and
   b. the employer is responsible for maintaining the security of the stored document and must provide compensation to the worker if the diploma or competency certificate is damaged or lost.

When these provisions are compared with previous employment regulations, there appears to be a difference in the regulation of diploma retention. Previous employment legislation did not contain specific provisions expressly prohibiting employers from retaining workers' diplomas, whereas Minister of Manpower Circular Letter Number M/5/HK.04.00/V/2025 provides specific clarification concerning this practice. This condition demonstrates a difference in the regulatory character between legislation and ministerial circular letters in responding to the issue of diploma retention in employment relationships.

From the perspective of the hierarchy of laws and regulations, statutes have a higher legal position than ministerial circular letters (Anggriani et al., 2023). Nevertheless, the substance of the circular letter may be understood as a form of governmental administrative policy intended to provide guidance to employers while strengthening the protection of workers. Its issuance also

reflects the state's efforts to ensure the fulfillment of workers' rights as part of the constitutional rights of citizens as guaranteed by the 1945 Constitution of the Republic of Indonesia.

The requirement to submit a diploma in an employment relationship must also be viewed from the principles of equality and non-discrimination in industrial relations. A diploma is essentially a document demonstrating the level of education, competence, or qualifications possessed by an individual. Its primary function is to serve as evidence of the education that a person has completed, enabling them to obtain employment appropriate to their qualifications or to pursue further education at a higher level. Accordingly, treating a diploma as security in an employment relationship has the potential to shift the primary function of the document (Mustafa Lutfi, 2013).

Diploma retention may also affect workers' freedom to develop their professional and academic capacities. When a diploma is held by an employer, workers may experience difficulties in using the document to obtain other employment opportunities or pursue further education. Such circumstances may ultimately restrict workers' mobility and reduce their opportunities to advance their careers or obtain employment that is more compatible with their competencies.

2. Problem Formulation & Method Research

The problem addressed in this research arises from the continuing practice of employers withholding employees' diplomas as a form of security in employment relationships. Although the Minister of Manpower of the Republic of Indonesia has issued Ministerial Circular Letter Number M/5/HK.04.00/V/2025 concerning the Prohibition of Withholding Diplomas or Personal Documents of Workers or Laborers by Employers, in practice, issues remain regarding the use of diplomas as security in employment agreements. This condition raises legal questions concerning the legal status of diplomas as objects of security from the perspective of civil law, as well as the validity of using diplomas as security in employment agreements.

This research employs a normative-empirical legal research method, also referred to as applied law research. This method is used to examine positive legal provisions derived from both legislation and agreements, as well as to examine the implementation of such provisions in practice in relation to specific legal events. Accordingly, this research is not solely oriented toward examining legal norms but also seeks to establish a connection between normative provisions and their implementation in practice.

This research employs a statutory approach and a case approach. The statutory approach is conducted by identifying, examining, and analyzing various regulations relevant to the subject matter of the research in order to obtain a relevant legal basis. Meanwhile, the case approach is employed by examining cases related to the legal issues under investigation, particularly cases that have been examined and adjudicated by courts and have acquired permanent legal force (inkracht van gewijsde).

In addition to these two approaches, this research also applies a conceptual approach to obtain an understanding of the legal concepts and principles relevant to the research problem. This approach is carried out through an examination of the views of legal scholars, legal doctrines, as well as relevant literature and scholarly works. The use of the conceptual approach is intended to strengthen the analysis of legal norms and provide a theoretical foundation for explaining the issues that constitute the subject matter of this research.

3. Analysis and Discussion

The Legal Status of Withholding Diplomas Under Employment Contracts from a Civil Law Perspective

T The legal relationship between workers and employers essentially falls within the domain of private law, arising from an employment relationship. Such a relationship is established through an employment agreement, which serves as the basis for the parties to exercise their respective rights and perform their respective obligations. An employment agreement contains various provisions concerning the work, rights, obligations, and requirements to be fulfilled by both workers and employers. Through such an agreement, an employment relationship is established that is legally binding upon both parties. An employment relationship itself refers to the relationship between an employer and a worker or employee based on an employment agreement and containing the elements of work, wages, and instructions. Therefore, an employment relationship not only indicates the legal positions of the parties but also reflects the employer's obligation to provide wages and the worker's obligation to perform the agreed work. Accordingly, the performance of work by a worker essentially constitutes the implementation of the employment agreement entered into with the employer.

The validity of an agreement must first be assessed based on whether the requirements stipulated by law have been fulfilled. Article 1320 of the Indonesian Civil Code (*Kitab Undang-*

Undang Hukum Perdata) stipulates four requirements that must be fulfilled for an agreement to have legal force, namely the existence of the parties' consent, legal capacity to enter into an obligation, the existence of a specific object as the subject matter of the agreement, and a lawful cause that does not contravene the law. These four requirements are essentially classified into subjective and objective requirements. Consent and legal capacity constitute subjective requirements relating to the parties entering into the agreement. If one of these requirements is not fulfilled, the agreement may, in principle, be subject to annulment. Meanwhile, a specific object and a lawful cause constitute objective requirements. Failure to fulfill any of the objective requirements renders the agreement null and void by operation of law because, from the outset, it does not satisfy the requirements prescribed by law (Vijayantera, 2017).

In employment practice, competition for employment opportunities has also encouraged some companies to impose certain requirements on prospective workers (Dewi Kemala Sari, 2025). One such requirement is the submission of an original diploma as security during the employment relationship. This practice is generally included in employment agreements or contracts and made one of the conditions that must be fulfilled by workers. In fact, as stipulated in Article 1 point 15 of Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower, an employment relationship is a relationship between an employer and a worker or employee based on an employment agreement and containing the elements of work, wages, and instructions.

The submission or retention of diplomas by employers is often justified on various grounds, including ensuring that workers fulfill the agreed employment period or serving as security for the performance of the contract (Perkasa, Mahesa, 2026). This practice has also developed because previously there were no specific and explicit statutory provisions regulating the prohibition of employers retaining workers' diplomas. This condition created room for the emergence of diploma-retention practices within employment relationships. The issue subsequently received increasing public attention due to various complaints from workers on social media as well as cases occurring in several regions. One case that attracted attention occurred in Surabaya, where an employer was allegedly retaining the diplomas of 108 workers and was subsequently designated as a suspect. In addition, a similar practice was found at iLuFA Distribusindo (168 iLuFA) in Central Java, a company engaged in the distribution of mobile phone accessories. The company's

employment agreement contained a provision requiring workers to submit their diplomas as security in order to work for the company.

The emergence of these various issues demonstrates the need for clearer guidelines concerning the legal position of diplomas in employment relationships. In order to provide legal certainty and protection to workers, the Ministry of Manpower of the Republic of Indonesia, on May 20, 2025, issued Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/5/HK.04.00/V/2025 concerning the Prohibition of the Retention of Diplomas and/or Personal Documents of Workers/Employees by Employers. The circular letter was issued in response to the continued practice of retaining workers' diplomas and personal documents within employment relationships.

Based on the author's interview with Rifai, Head of the Division of Industrial Relations Development and Manpower Supervision at the Manpower and Transmigration Office of Central Sulawesi Province, it was explained that a circular letter has an administrative character and essentially functions as a guideline in the implementation of governmental duties. A circular letter does not have the same legal status as legislation that generally binds the public and contains provisions concerning sanctions. According to Rifai, a circular letter primarily serves to provide direction, clarification, and guidance regarding the implementation of a particular policy. Nevertheless, the issuance of the circular letter demonstrates the government's position in providing protection to workers against the practice of retaining diplomas and personal documents within employment relationships.

The Circular Letter of the Minister of Manpower essentially provides several directions. First, employers are prohibited from making diplomas or personal documents of workers a requirement or security for obtaining employment. Second, employers are prohibited from taking actions that may hinder workers from obtaining opportunities for more decent employment. Third, prospective workers and workers are advised to carefully read and understand the entire contents of the employment agreement before agreeing to it, including provisions relating to the submission or retention of diplomas. These provisions demonstrate that the existence of a diploma-related clause in an employment agreement cannot be separated from the principle of protecting workers' interests, considering that workers are generally in a relatively weaker bargaining position within the employment relationship.

Nevertheless, the Circular Letter of the Minister of Manpower still provides room for the submission of diplomas under certain circumstances where there are legally justifiable reasons and interests. Such circumstances concern diplomas obtained by workers through educational or training programs financed by the employer. The submission of a diploma under such circumstances must be based on a written employment agreement. In addition, the employer is obliged to ensure the security of the submitted diploma and is responsible for providing compensation if the diploma is lost. Accordingly, the submission of a diploma cannot be carried out freely merely on the basis of the employer's wishes, but must satisfy certain conditions and requirements that protect the interests of workers.

In the author's view, the issuance of Circular Letter of the Minister of Manpower Number M/5/HK.04.00/V/2025 constitutes an important step in providing direction concerning the practice of using diplomas as security in employment relationships. However, from the perspective of contract law, the existence of a clause requiring the submission of a diploma must still be assessed based on the requirements for the validity of an agreement, the balance of the parties' positions, and the purpose and cause of such clause. The freedom of the parties to determine the contents of an agreement does not mean that it grants employers unlimited authority to impose every requirement upon workers. Clauses contained in employment agreements must remain consistent with applicable legal provisions and must not contravene the principle of protecting workers' rights. Therefore, the inclusion of a diploma as security in an employment agreement needs to be examined more critically, particularly to determine whether such a clause is legally justifiable or instead creates an imbalance in the contractual relationship between workers and employers.

The submission of original diplomas to companies as part of employment requirements is still found in employment practices. Under certain circumstances, companies treat diplomas as a form of security provided by workers pursuant to an agreement contained in the employment contract. Such practice essentially results in the temporary possession of workers' documents by the company for a predetermined period. The implementation of such provisions cannot be separated from several considerations that serve as the reasons for companies adopting them.

First, the imbalance in the positions of companies and workers. The availability of employment opportunities, which is not always proportional to the number of job seekers, results in increasingly intense competition for employment. This condition places companies in a

relatively stronger position during the worker recruitment process. In such circumstances, companies have greater discretion to determine employment requirements, including incorporating provisions concerning the submission or retention of diplomas into employment agreements. Meanwhile, workers who need employment tend to have more limited opportunities to negotiate the requirements established by the company.

Second, diplomas are used as a means of ensuring that workers fulfill their obligations under the employment agreement. A company may view the retention of a diploma as an instrument to encourage workers to perform their obligations until the employment relationship ends. However, the use of an object as security must, in principle, take into account the characteristics of objects that may be encumbered as security. An object that can generally serve as security possesses economic value and allows the transfer of rights to another party. If such characteristics are applied to diplomas, a legal issue arises because a diploma is not designed as an object possessing economic value or as an object whose ownership may be transferred in the same manner as property commonly used as security.

Third, the company's efforts to reduce the risks arising from high employee turnover. Repeated employee turnover may have consequences for a company, particularly in terms of the time, costs, and resources required to recruit and train new workers. Based on these considerations, some companies use diploma-retention clauses in the hope that workers will remain in the employment relationship until the agreed period has expired. Thus, the retention of diplomas is positioned as one means of reducing the possibility of workers leaving the company before the end of the agreed employment period.

rom the perspective of civil law, a diploma may be regarded as a tangible object that is under the possession and ownership of an individual. Nevertheless, the characteristics of a diploma differ from those of objects that generally have economic value and may be transferred. When an original diploma is handed over to a company pursuant to an agreement, what essentially occurs is the transfer of physical possession of the document, rather than the transfer of ownership rights over it. Therefore, the company merely obtains possession of the diploma for the agreed period and does not acquire the right to use or transfer the diploma as its own property. In practice, such possession is intended to ensure that employees continue to perform their employment relationship in accordance with the agreed provisions.

The practice of retaining diplomas is generally found in employment relationships established through Fixed-Term Employment Agreements (Perjanjian Kerja Waktu Tertentu/PKWT) or contractual employment systems. The agreement concerning the handover of a diploma does not arise suddenly but rather develops through a series of processes preceding the implementation of the agreement. In the theory of contract formation, there are three stages that need to be considered, namely: (Harianto, 2016)

a. The pre-contractual stage, namely the stage at which the parties make an offer and acceptance;
b. The contractual stage, namely the stage at which a meeting of minds is reached between the parties, thereby giving rise to an agreement; and
c. The post-contractual stage, namely the stage involving the performance of the agreement that has been mutually agreed upon.

When these three stages are associated with the practice of diploma retention, the process may begin at the pre-contractual stage. At this stage, the employee submits an application for employment, and the company makes a job offer subject to certain requirements. One of the requirements that may be stipulated is the obligation to submit the original diploma to be retained during the employment period. Accordingly, the acceptance of an employee is not merely related to the company's willingness to employ an individual, but also to the employee's consent to the conditions established by the company.

At this stage, a difference in the positions of the parties can be observed. The company has the authority to determine whether an applicant will be accepted for employment, whereas the employee is in the position of a party seeking employment. If the employee does not agree to the requirement to submit the original diploma, the company may choose not to proceed with the recruitment process. This situation demonstrates that the absence of agreement regarding employment conditions may cause the contract formation process not to proceed to the subsequent stage.

Furthermore, the contractual stage is characterized by the attainment of a meeting of minds between the employee and the company. At this stage, the parties have agreed upon the employment relationship and the conditions accompanying it, including provisions concerning the company's possession of the original diploma for a specified period. Such an agreement may be

set forth in a written contract and become part of the terms governing the employment relationship. If diploma retention is included as a contractual clause, the content of such clause must remain subject to the applicable legal provisions and must not conflict with employees' rights.

Meanwhile, the post-contractual stage is the stage in which the agreed contract begins to be performed. In the context of diploma retention, such performance begins with the employee handing over the original diploma to the company as previously agreed. During the period of possession, the company is obliged to safeguard the document and must not use it for any purpose beyond the agreed objective. Once the employment relationship ends or the agreed retention period has been fulfilled, the diploma should be returned to the employee in the same condition as when it was initially handed over.

In practice, employment relationships are also frequently established through standard-form contracts. A standard-form contract is an agreement in which most or all of its provisions have been prepared in advance by one party, leaving the other party generally with only the choice of accepting or rejecting those provisions. In employment relationships, this arrangement may create problems when employees do not have an adequate opportunity to negotiate particular clauses, including clauses governing the submission or retention of diplomas.

In civil law, security generally relates to efforts to provide certainty to a party entitled to obtain the performance of an obligation (Rachman et al., 2021). he existence of security is intended to provide assurance if the obligated party fails to perform its obligations as agreed. Accordingly, security serves to strengthen the certainty of the performance of an obligation while simultaneously protecting the interests of the entitled party.

The provisions concerning general security can be found in Article 1131 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/KUHPerdata), which stipulates that all assets belonging to the debtor, whether movable or immovable, existing or to be acquired in the future, constitute security for all of the debtor's obligations. Furthermore, Article 1132 of the Indonesian Civil Code provides that such assets, in principle, constitute joint security for creditors, while taking into account preferential rights granted under statutory provisions. Based on these provisions, civil law recognizes the concept of general security arising directly from the debtor's entire assets. In addition, there is also specific security imposed upon particular objects through security institutions regulated by legislation (Darus, 2016).

In this context, a distinction must be made between an object that can be physically possessed and an object that can legally be used as security. A diploma is an official document issued by an educational institution as evidence that an individual has completed education at a particular level. The document serves an evidentiary function concerning an individual's educational history and qualifications. Physically, a diploma constitutes a tangible object and may therefore be categorized as movable property within the concept of objects under civil law. However, the existence of a diploma is not solely related to its physical form, but also to the information and evidentiary rights attached to the individual whose name appears on the document.

This characteristic means that a diploma cannot be equated with an object that possesses economic value and may be freely transferred. The value of a diploma primarily lies in its administrative and evidentiary function in relation to the educational qualifications of its holder. A diploma is also personal in nature because it cannot lawfully be used to establish another person's educational qualifications. Therefore, although a company may possess the physical diploma pursuant to an agreement, such possession does not automatically make the company its owner or grant it the right to transfer the diploma to another party.

In employment relationships, companies that require the submission of diplomas generally base such policies on several interests, including retaining employees until the expiration of the contractual period, preventing premature resignation, ensuring reimbursement of costs incurred for training, and anticipating potential losses arising from the employee's failure to fulfill their obligations. From the company's perspective, retaining a diploma is considered capable of encouraging employees to comply with the terms of the employment agreement.

However, if a diploma is placed as an object of security, it is necessary to examine whether the document possesses the characteristics required of an object of security (Wiryawan, 2021). In principle, an object of security must have value that can be economically assessed, be transferable in accordance with legal provisions, and provide a benefit to the creditor if the obligation is not fulfilled. Furthermore, the use of an object as collateral security must have a clear legal basis within the legal system governing security interests.

These characteristics are not fully present in a diploma. A diploma does not possess inherent economic value that would allow it to be lawfully traded. A diploma also cannot be transferred to another person so as to replace the original holder as the individual who completed

the relevant education. Accordingly, the retention of a diploma is more appropriately understood as the possession of an employee's document pursuant to an agreement, rather than as the creation of a security interest under the security institutions recognized in civil law.

Furthermore, the security institutions recognized under Indonesian law, such as pledge, fiduciary security, and mortgage rights, each have their own objects, characteristics, and mechanisms as determined by legislation. There is no provision that specifically places a diploma as an object of a proprietary security interest. Therefore, the use of the term "diploma security" in an employment agreement needs to be understood critically. The submission of a diploma to a company does not automatically create a security right comparable to security institutions recognized by law; rather, it constitutes an agreement concerning the possession of a document belonging to the employee.

Accordingly, the primary issue in the practice of diploma retention is not merely whether an agreement exists between the employee and the company, but also concerns the legal status of the diploma, the limits of the company's authority to possess such document, and the compatibility of the diploma-retention clause with the principles of contract law and labor law. The agreement between the parties must remain within the framework of applicable law, meaning that freedom of contract cannot be used as a basis for justifying every form of control over an employee's personal documents.

In the author's view, the practice of retaining diplomas in employment relationships cannot be justified solely on the ground that it has been agreed upon by the employee and the employer in an employment agreement. Although freedom of contract provides the parties with the opportunity to determine the contents of an agreement, such freedom remains subject to legal provisions and the principle of balance between the parties. In practice, the employer's position tends to be stronger because the employer has the authority to determine employment requirements, whereas employees are often in a position of needing employment and therefore have limited opportunity to reject the requirement to submit their diplomas. Therefore, a diploma-retention clause should be assessed not only on the basis of the existence of consent but also on the basis of its substance and the legal consequences arising from it (Muh Syafaat, Muhammad Ikbal, 2026).

In the author's view, a diploma is also inappropriate to be classified as an object of a proprietary security interest under civil law. Although a diploma is a tangible object that can be physically possessed, it has a personal character, does not possess economic value that can be lawfully traded, and cannot be transferred to another person. Accordingly, the submission of a diploma to a company essentially creates only physical possession of the document and does not give rise to a proprietary security right comparable to a pledge, fiduciary security, or other security institutions.

Thus, according to the author, the use of a diploma as "security" in an employment agreement is more appropriately regarded as an agreement concerning possession of the document rather than as a proprietary security interest recognized under civil law. The issuance of Circular Letter of the Minister of Manpower Number M/5/HK.04.00/V/2025 further demonstrates an effort to provide protection to employees against the practice of diploma retention. However, because the circular letter is administrative in nature, the validity of a diploma-retention clause must still be assessed in relation to the provisions of contract law, the characteristics of objects that may serve as security, and the principles of balance and protection of employees' rights.

4. Conclusion

The inclusion of a diploma as collateral in an employment agreement needs to be assessed based on the provisions of contract law and labor law. An employment relationship is indeed established through an agreement between the employee and the employer; however, the freedom of the parties to enter into an agreement is not absolute. In practice, employers often require employees to submit their diplomas to ensure that employees fulfill the agreed-upon employment period or obligations. However, the imbalance in bargaining power between employees and employers means that such clauses need to be examined more critically. The issuance of Minister of Manpower Circular Letter Number M/5/HK.04.00/V/2025 demonstrates the government's policy which, in principle, prohibits employers from requiring employees to provide diplomas or personal documents as a condition or guarantee for obtaining employment, with certain exceptions relating to educational or training costs financed by the employer.

From the perspective of civil law, a diploma is not appropriately categorized as an object of security interest. Although it is physically a tangible object that can be possessed, a diploma has a personal nature and its primary function is to serve as evidence of the educational qualifications

of its holder. A diploma does not have an economic value that can be lawfully traded and cannot be transferred to another party; therefore, it does not meet the characteristics of an object commonly used as collateral. Accordingly, the submission of a diploma to an employer pursuant to an agreement does not create a security interest recognized under property law, such as a pledge, fiduciary security, or mortgage, but merely grants possession of the document to the employer. Therefore, a clause providing for the retention of a diploma must continue to comply with the requirements for a valid agreement, the balance of the parties' positions, and the provisions concerning employee protection. The retention of a diploma solely to prevent an employee from resigning or changing employment cannot be equated with a security interest recognized under civil law.

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