

Implications of Storing Original Diplomas on The Security of Employee Documents in A Fixed – Time Work Agreement

Putu Eka Budiyan¹, I Ketut Sukadana², Ni Made Puspasutari Ujianti³

Universitas Warmadewa, Denpasar, Bali, Indonesia^{1,2,3}

E-mail: budiyan43658@gmail.com^{1*}, sukanaketut1966@gmail.com²,
puspa.niwapong@gmail.com³

ABSTRACT

The company maintains original diplomas to prevent employees from leaving their jobs before completing their employment contracts and to build employee loyalty. The formulation of the research problem is, 1. What is the validity of keeping original diplomas by the company for employees in a Specific Time Work Agreement (PKWT)? 2. What are the implications of storing original diplomas for the security of employee documents in a Specific Time Work Agreement (PKWT)? The research method used is the normative legal research method. The research results show that storing original diplomas is said to be legal because the Employment Law does not explicitly regulate the prohibition on storing original diplomas or other documents belonging to employees, but an agreement arises in Article 1320 of the Civil Code in the form of a Specific Time Work Agreement (PKWT). between the company and employees. Storing original diplomas by the company for employees has implications for the security risks of the employee's documents, if the original diploma is lost, damaged or affected by a disaster, there will be no replacement or duplicate for the diploma in question.

Keywords: Employment Agreement, Storage of Original Diplomas, Implications

INTRODUCTION

The Indonesian Constitution (UUD 1945) regulates the rights and obligations of all citizens, including employment rights. Work is considered the main source of income to meet living needs. Roman philosopher Cicero once put forward the principle "The existence of rules always accompanies the existence of human communities". In the legal context, the terms contract and agreement have the same meaning, namely an agreement between two or more parties regarding a matter that has legal implications. Therefore, the use of these two terms contains the same aims and objectives in practice (Richardo Simanjuntak, 2007).

This understanding must also be understood, with the subtitle of Book III of the Civil Code, Chapter II entitled regarding obligations that arise from contracts or agreements which in a certain sense equates the meaning of contracts with agreements as legal acts that have coercive power (Kusuma Hamidjojo, 1998).

Principles in the context of work agreements are a general and abstract basis for thinking. This principle is the basis for the concrete rules that exist in the legal system, which are then realized in the form of statutory regulations and positive legal decisions. To understand legal principles, it is necessary to identify the characteristics contained in concrete regulations. Therefore, legal principles can be interpreted as fundamental

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thoughts that underlie concrete regulations in general. This principle is not always stated explicitly, but is often implied in more specific legal rules or regulations (Sudikno Merto Kusumo, 2007).

It often happens in practice, a diploma is used as one of the requirements for applying for a job, it is used as a complete administrative requirement for continuing education or a higher career, apart from that a diploma also has an important meaning in social life in society which shows that a person has succeeded in pursuing the highest possible education. so that it gets recognition in society (Koespramono Irsan, Armansyah, 2016: 26).

Employment Law Number 13 of 2003 does not explicitly regulate the practice of withholding employee diplomas. However, until now, the practice of withholding diplomas is still commonly found in the employee recruitment process. Some companies still implement a policy of withholding diplomas as one of the conditions for hiring employees. This shows that although it is not explicitly regulated in the Employment Law, this practice still occurs in the world of work in Indonesia (Agustina Ni Ade Darma Pratiwi, 2021).

The practice of withholding diplomas by companies is primarily intended as a form of guarantee, namely the owner's original diploma is used as collateral in the employment agreement between the company and employees. However, the concept of "guarantee" has expanded its meaning. In principle, collateral should refer to tangible objects that are physical, can be transferred, and have a price in the market. However, the diploma does not meet these criteria. Diplomas are not objects that can be transferred. Ownership rights can be transferred or have a measurable market price. Thus, the use of a diploma as collateral is a form of interpretation that is not in accordance with the actual concept of collateral. In other words, there is no economic value that can be associated with the diploma. In the context of the world of work, a diploma is actually used as an inherent requirement (Fuad, 2023).

Based on this description, the author has the desire to carry out research with the title "Implications of Storing Original Diplomas on the Security of Employee Documents in Specific Time Work Agreements (PKWT)".

The issues that arise from the background explanation above are: 1. What is the validity of keeping original diplomas by the company for employees in a fixed-term work agreement (PKWT)? And what are the implications of storing original diplomas on the security of employee documents in fixed-term work agreements (PKWT)?

So, the achievement of this writing is, to find out and analyze the validity of keeping original diplomas by companies for employees in Specific Time Work Agreements (PKWT). As well as to understand and analyze the implications of storing original diplomas on the security of employee documents in a Specific Time Work Agreement (PKWT).

RESEARCH METHODS

Research methods are the methods used to collect research data and compare it with established standards (Arikunto, 2010). In this study, the approach used is normative legal research. This method aims to produce new arguments by analyzing legal sources such as statutory regulations and court decisions (Atmadja & Budiarta, 2018). Normative legal research focuses on studying written law from various points of view, but does not discuss aspects of its application or implementation in practice. This approach allows researchers to explore and analyze various aspects of written law in

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depth, without involving field studies or application of the law in real cases (Abdurrahmat Fathori, 2016: 105).

The method used is a legal approach in two ways, namely a method that focuses on written legal analysis and a method that examines legal concepts. The legislative approach involves a comprehensive analysis of all legal regulations related to the legislative problems faced (Peter Mahmud Marzuki, 2011: 93). Meanwhile, the conceptual approach refers to the use of legal regulations and incentives that exist in legal science to explain ideas and provide an interpretation of the legal picture that fits the problem being discussed (Bambang Sunggono, 2003: 42).

RESULTS AND DISCUSSION

A. The Validity of Keeping an Original Diploma by The Company for Employees in A Certain Time Work Agreement (PKWT)

The state government system confirmed in the 1945 Constitution is based on law (*rechtsstaat*). This constitution regulates the rights and obligations of all Indonesian people, including regarding employment. In the Civil Code, Article 1320 states that for the validity of an agreement, four main elements are required, including: "1. Mutual agreement without coercion: Both parties voluntarily agree to be bound by the agreement, 2. Legal competence: The parties have the legal authority to make the agreement, 3. Specific object of the agreement: Involves the provision or implementation of something clear, 4. Legitimate purpose: The content and intent of the agreement must comply with existing laws and procedures.

A work agreement refers to an agreement drawn up between an employee and an employer, which regulates certain types of work and the compensation that will be received as compensation for that work (Djumaldji, 2006: 8). In the context of a Specific Time Work Agreement (PKWT), the recording process has an important purpose. This registration functions as a preventive protection mechanism for workers' rights. This means that before the work agreement is ratified with the signatures of both parties, workers must receive legal protection from the Manpower Service (Ikhwan Fahrojih, 2015: 63).

This legal basis provides confirmation that both workers and employers are guaranteed legal protection in Indonesia. Legal protection is a fundamental aspect of the legal system. This concept includes actions to maintain and restore the civil rights of parties that are legally recognized (Sulistianingsih, 2023). In the context of Employment Law, its scope is broader than just regulating employment relations, which includes aspects outside the direct employment relationship. It is important for all parties to pay attention to this, including the government's role as a third party that provides protection when a party suffers a loss. Therefore, legal protection efforts in the field of employment are intended to ensure equality and the right proportion between the rights and responsibilities of all interested parties.

According to the context of Civil Law, a diploma is seen as a valuable object that has value and is tied to a person's ownership rights. Diplomas are classified as movable and tangible objects (Libertus Jehani, 2011). Its tangible nature comes from its physical form which can be felt by the five human senses. Meanwhile, the category of movable objects is based on their ability to be moved or changed hands. However, it should be noted that even though a diploma can be physically moved, its value and main function remains closely linked to its original owner (Asri Wijayanti, 2014: 55).

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According to the context of Employment Law, employment relations are defined as interactions between workers and employers that are based on contracts. This agreement includes work provisions that outline the responsibilities and privileges of each party involved. For archiving purposes, companies with good intentions can use a copy of the Specific Time Work Agreement (PKWT), which has legal force equivalent to the original document. However, it is important for both parties to pay close attention to the contents of the agreement or contract to be agreed. Although the principle of freedom of contract does not explicitly prohibit the practice of withholding diplomas, there is often an unequal position between employers and workers in this regard. This situation can arise because there are parties who intentionally or mistakenly interpret the application of the principle of freedom of contract in the employment agreement. As a result, even though it does not formally violate the law, this practice can cause injustice to workers who are forced to hand over their diplomas to the company.

The process of reaching an agreement is important for all parties to carry out negotiations seriously and openly. A valid agreement must be free from all forms of coercion, no matter how small. If an element of coercion is found in the process of reaching an agreement, then the agreement can be considered to contain "contradictio in terminis" or conflict within itself. As a result, this kind of agreement can be canceled based on applicable law. This principle emphasizes the importance of voluntariness and freedom of will in making a valid and legally binding agreement (Sudargo Gautama, 1978).

An agreement that has not been included in the Law refers to the creation of a new type of agreement that is not included in the category of agreement with the name (*nominat*) and is not in accordance with the contracts regulated in the Civil Code. This kind of agreement is called an anonymous contract (*innominat*) (Satrio, 1993). In the context of withholding diplomas, because there are no specific regulations in the Employment Law, employers often rely on the company's SOP (Standard Operating Procedure) as a legal basis. This practice is based on the principle of freedom of contract, filling the existing legal vacuum (Wayan Ardi Indra Jaya, 2021). The principle of *pacta sunt servanda* (agreements must be kept) emphasizes that agreements involve the parties involved. This means that the obligations formalized in the agreement must be carried out in good faith. However, the application of this principle in the context of diploma retention requires considering the balance of interests and protection of workers' rights.

B. Implications of Storing Original Diplomas on The Security of Employee Documents in Certain Time Work Agreements (PKWT)

In the Civil Code, Article 1338, it is stated that: "Every agreement prepared based on legal provisions has binding force like a law for the parties who agree to it. Cancellation of a contract cannot be carried out by one party alone, but requires the agreement of both parties or must be in accordance with applicable legal provisions. One of the important concepts in contract law is the Principle of Freedom of Contract, also known as "Freedom of Contract". However, the application of this principle in practice often takes the form of a standard agreement offered by the company. This situation creates a "take it or leave it" condition, where the employee has a limited choice to accept the terms or reject the agreement in its entirety. An interpretation like this could create an imbalance in the bargaining position between companies and

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workers, which has the potential to reduce the true essence of freedom of contract (Dewi Hendrawati, 2011).

The essence of the recruitment and selection process is the organization's efforts to find prospective workers who can help achieve the company's goals. The selection process for prospective employees generally includes several stages, including: 1) Experience evaluation: Selectors consider the candidate's background experience, which can help in position placement and predict the ability to adapt to the job offered, 2) Written exam: Aims to assess knowledge and information that the applicant has. Exam material is adapted to the specific needs of the job to be filled. 3) Interview: This is a formal and in-depth dialogue to evaluate the applicant's suitability for the position offered. This process helps assess whether applicants can be accepted or not to join the organization (Anggie Elisa Widya, 2021).

A diploma reflects a person's academic capacity and is used to obtain employment or continue their education to a further level. A diploma has value when applied to find work in accordance with the field of study stated in it. Therefore, it is important to understand that the role of a diploma is not as a guarantee, but as proof of individual competence (Mustafa Lutfi, 2013).

Service bond contracts generally include provisions regarding penalties and withholding educational certificates as collateral to prevent employees from resigning before fulfilling the commitments stated in the agreement. If the employee decides to quit before completing his obligations and is unable to pay the specified compensation, then the academic documents used as collateral will remain in the hands of the employer (Bagijo¹ & Santoso, 2023).

The aspect of legal protection is considered crucial because every country that is formed will establish regulations to regulate its citizens. Legal protection is a guarantee given to legal subjects, both in the form of preventive and repressive instruments, written or oral. This can be interpreted as a manifestation of the usefulness of the law itself, which aims to realize justice, order, certainty, usefulness and peace (Wirjo Prodjodikoro, 1983).

In the context of diploma retention, worker protection can be carried out through internal agreements between workers and employers when drawing up work contracts (Moch. Isnaeni, 2016). However, if workers refuse to retain their original diplomas, the consequence is the possibility of not being accepted to work at the company (Mochammad Faisal Salam, 2009).

The implication of keeping original diplomas by the company for employees is an administrative requirement when applying for a job. This is to ensure that employees remain working at the company for the long term, not just to develop their career path. This has an impact on workers' rights, especially the right to decent work. Storing original diplomas serves to guarantee employment agreements between companies and employees. The definition of collateral is that ownership can be transferred and has resale value. However, ownership of the diploma cannot be transferred and has no resale value. This action can be detrimental to employees if the original diploma is lost, damaged or affected by a disaster.

CONCLUSION

The retention of original diplomas by companies for employees can be considered legal because the Labor Law does not explicitly prohibit it, and this is usually regulated in a Specific Time Work Agreement (PKWT) which refers to the provisions of Article

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1320 of the Civil Code. Companies may retain diplomas as an administrative requirement for job applications, with the aim of preventing employees from using the company simply to advance their careers elsewhere, which could result in the loss of valuable labor and reduced business productivity. However, this storage poses document security risks, such as loss, damage, or disaster without duplicates. Therefore, it is recommended that companies look for alternative solutions to prevent risks without withholding original documents, and the government needs to monitor and handle related cases firmly and design policies in the Labor Law to protect workers from potential losses.

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