

Review of the Minister of Manpower's Circular Letter Number M/5/HK.04.00/V/2025 in Providing Legal Justice for Workers

Vivienne Olivia Siswanto¹⁾ & Moody Rizqy Syailendra²⁾

¹⁾Faculty of Law, Universitas Tarumanagara, Indonesia, email: vivienne.205220132@stu.untar.ac.id

²⁾Faculty of Law, Universitas Tarumanagara, Indonesia, Email: moodys@fh.untar.ac.id

Abstract. *The practice of withholding diplomas often leads to injustice and inequality in workers' positions because diplomas are personal documents that serve as symbols of academic achievement as well as tools for obtaining employment. Therefore, the government issued Circular Letter of the Minister of Manpower Number M/5/HK.04.00/V/2025 as a form of protection for workers from abuse of authority by employers. This study aims to examine the extent to which this circular letter is able to provide legal justice and certainty in the implementation of industrial relations. The method used is normative legal research with a qualitative approach, through a review of laws and regulations, doctrines, and related legal literature. The results of the analysis indicate that this circular serves as an ethical and administrative guideline that strengthens the position of workers, but does not yet have binding legal force because it is not included in the hierarchy of laws and regulations. Therefore, the establishment of stricter regulations at the statutory level is needed to ensure balanced protection between workers and employers. This research is expected to contribute to the reform of labor law so that the principle of substantive justice between workers and employers can be realized.*

Keywords: *Diploma; Justice; Retention; Worker; Protection.*

1. Introduction

Global economic developments in today's business world are increasingly rapid and dynamic, driven by technological advancements, the rapid flow of globalization, and increasing competition. In this era of rapid development, employment law plays a crucial role, serving as the foundation for balancing the interests of workers and employers (Fadil Muhammad (2024), *Employment Law in the Modern Era: Between Rights and Obligations*, Borobudur Law and Society Journal, Vol. 3, No. 4). Amidst the digital transformation that impacts almost all sectors of life, employment regulations not only function as a tool to regulate work behavior, but also as a means of legal protection for parties so that their rights and obligations are protected fairly (Ibid).

The history of labor law in Indonesia itself reflects the nation's long-term social and economic changes. Since colonial rule, the labor system has been structured with a focus on capital

owners, while leaving workers vulnerable and vulnerable to exploitation (Suratman (2015), *Introduction to Indonesian Employment Law*, Jakarta: Rajawali Pers). As public awareness of humanitarian values and social justice grew, a strong push emerged to fight for adequate recognition and protection of workers' rights. This transformation became the starting point for the formation of a modern labor law system in Indonesia, which seeks to position workers as legal subjects with equal dignity and rights to employers (Zaenal Arifin Pujiastuti (2025), *Restorative Justice in Employment Law: A New Path to Protection for Workers*, *Journal Juridisch*, Vol. 4, No. 1).

The relationship between employees and employers should not be viewed solely as an economic contract, but also as a social interaction that requires mutual respect and moral responsibility. This is where the principle of legal justice plays a crucial role in ensuring that workers' rights are not neglected and employers' obligations are not abused. The principle of justice in labor law must strive to create a reasonable balance between economic interests and human values, so that employment relationships can operate harmoniously without creating power imbalances.

It is undeniable that in employment relationships between employers and employees, companies often retain diplomas as a form of assurance of loyalty and compliance during the employment period. This practice is carried out to prevent workers from easily resigning before the end of their contract or to guarantee reimbursement of training costs incurred by the company. This practice of retaining diplomas raises legal issues because diplomas are personal documents with high legal and social value to their owners (Herlambang Perdana Wirataman (2019), *Law and Human Rights in Indonesia*, Yogyakarta: FH UGM Press). This also naturally raises questions about the legitimacy of this practice from the perspective of labor law and human rights.

Employers' withholding of diplomas is not explicitly regulated in Law No. 13 of 2003 concerning Manpower or Law No. 6 of 2023 concerning the Enactment of the Government Regulation in Lieu of Law on the Job Creation Law into Law. This lack of clear regulation leaves the practice in a legal gray area. In the context of the principle of freedom of contract, employers often argue that withholding a diploma is a mutual agreement between the company and the employee. However, in reality, employees tend to have a weaker bargaining position than employers, so such agreements often do not reflect true freedom.

From a civil law perspective, a diploma falls into the category of movable property that is privately owned by a person, so that detention without a valid legal basis can be categorized as a form of confiscation or unauthorized possession (R. Subekti (2016), *Principles of Civil Law*, Jakarta: Intermedia). The practice of withholding diplomas often has negative consequences for workers, especially when they want to change jobs or continue their education. Withholding diplomas can hinder access to economic and social rights, as without these documents, workers find it difficult to prove their educational qualifications (M. Faisal Salam, 2021), *Legal Analysis of the Practice of Withholding Employee Diplomas in Private Companies*, *Jurnal Lex Privatum*, Vol. 9, No. 4).

The Ministry of Manpower, through Circular Letter No. M/5/HK.04.00/V/2025 (hereinafter referred to as Circular Letter No. M/5/HK.04.00/V/2025), has provided guidelines regarding the prohibition on withholding diplomas during employment. This circular is essentially intended to strengthen the government's legal position on this practice and protect workers' rights (Ministry of Manpower of the Republic of Indonesia, Circular Letter Number M/5/HK.04.00/V/2025 concerning Retention of Diplomas During the Period of Employment, 2025). However, as a non-statutory legal product, circulars often give rise to debate regarding their binding force in the national legal system.

From a legal justice perspective, the assessment of diploma withholding relates not only to legal aspects but also to the moral and social values inherent in industrial relations. John Rawls' theory of justice emphasizes the importance of a balanced distribution of rights and obligations between those in positions of power and those in positions of weakness (John Rawls (2019), *A Theory of Justice*, Cambridge: Harvard University Press, Revised Edition). In this case, the practice of withholding diplomas may be considered contrary to the principle of distributive justice, as it places a disproportionate burden on workers. Therefore, a comprehensive legal review is needed to examine the extent to which this justice is reflected in employment policies.

Furthermore, withholding diplomas also has implications for harmonious industrial relations. Ideal employment relationships should be based on trust, openness, and equality between employees and employers.¹When employers use diplomas as a means of control, the employment relationship shifts into a coercive and unhealthy one. Such practices contradict the principles of corporate social responsibility, which require humane treatment of workers (Lestari Wulandari (2022), *Harmonious Industrial Relations from an Employment Perspective*, Journal of Law, Faculty of Law, Diponegoro University, Vol. 28, No. 1)

Based on the above description, it is understandable that despite the existence of Minister of Manpower Circular Letter No. M/5/HK.04.00/V/2025, which stipulates the prohibition on retaining diplomas during employment, the practice remains common and raises issues of fairness for workers. This situation prompted the author to further investigate how the legal review of the practice of retaining diplomas in employment relations is reviewed from the perspective of legal justice in Indonesia.

2. Research Methods

The type of research used in this work is normative or doctrinal legal research, namely research that relies on rational analysis based on written legal norms or applicable laws and regulations. According to Peter Mahmud Marzuki, every legal study is essentially rooted in a normative approach because it emphasizes analysis of the principles, norms, and legal doctrines that govern human behavior in society (Peter Mahmud Marzuki (2005), *Legal Research*, Jakarta: Kencana Prenada Media Group). This research is descriptive and analytical in nature, as it aims to systematically and factually describe and explain legal phenomena occurring in social life,

without manipulating the existing facts. The type of data used in this research is secondary data, obtained through a study of various primary and secondary legal materials. The approach in this research is carried out with the intention of collecting theoretical foundations, legal principles, basic concepts, and provisions of laws and regulations that are relevant to the problems discussed. The data collection techniques applied are library research and legal interpretation, which are carried out by reviewing, reading, recording, and elaborating various written sources such as books, scientific journals, legal articles, laws and regulations, and other scientific sources that support theoretical analysis. Meanwhile, the data analysis technique in this research is qualitative, namely by describing the data narratively and descriptively without using statistical calculations. The analysis is carried out through interpretation of legal materials obtained from the results of the literature review, in order to draw conclusions relevant to the main problem that is the focus of this research.

3. Results and Discussion

3.1. Legal Certainty and Power in the Circular Letter of the Minister of Manpower Number M/5/HK.04.00/V/2025 in Regulating the Responsibilities of Business Actors

Legal certainty is a key pillar of the modern legal system, serving as the foundation for stability, justice, and social order. Legal certainty in the employment sector serves to guarantee the protection of the dignity of workers, ensuring that the rights and obligations of both parties can be exercised in a balanced manner (R. Adi Nugroho (2021), *Employment Law and Social Policy in Indonesia*, Jakarta: Prenadamedia). Law is not only interpreted as a control system, but also as a means of strengthening a sense of security and certainty for every legal action by humans and corporations (AH Lubis, (2019), *Legal Protection of Workers from a Justice Perspective*, Journal of Law and Development, Vol. 53, No. 2). This is the background to the issuance of Minister of Manpower Circular Letter No. M/5/HK.04.00/V/2025, which affirms the prohibition on the practice of withholding workers' diplomas as a form of human rights protection and respect for human dignity in the workplace. This circular serves as an administrative guideline that reinforces the principle that industrial relations must be based on justice and equality, not on a dominant relationship between workers and employers.

Theoretically, the concept of legal certainty was put forward by Gustav Radbruch as a combination of justice, utility and certainty in every legal norm (Gustav Radbruch (2018), *Legal Philosophy*, Oxford: Clarendon Press) This means that good laws must not only be fair and beneficial, but also be consistently and predictably applied. Minister of Manpower Circular Letter No. M/5/HK.04.00/V/2025 embodies this principle by providing clarity for businesses regarding permissible boundaries in managing employment relationships. Through this circular, the government seeks to prevent legal irregularities by companies, who often use internal policies as a pretext to withhold workers' diplomas (M. Faisal Salam (2021), *Legal Analysis of the Practice of Diploma Retention*, Jurnal Lex Privatum, Vol. 9, No. 4).

Circulars are often a topic of discussion in legal circles because their legal force has not been formally recognized in the composition of statutory regulations according to Law No. 12 of 2011

concerning the Formation of Statutory Regulations. However, in the theory of administrative law, circulars have internal binding power and are interpretative in nature for the implementation of public policy. This view is in line with the thinking of Philipus M. Hadjon, who emphasized that a new administrative decision or action has legitimate value if it comes from an authorized official and still respects a higher legal order. Therefore, the legal force of Circular Letter of the Minister of Manpower Number M/5/HK.04.00/V/2025 stems from the minister's attributive authority as the administrator of government affairs in the employment sector. Therefore, the circular can function as soft law, providing moral and administrative support for business actors (R. Santosa (2021), *The Normative Power of Circular Letters*, *Ius Quia Iustum Law Journal*, Vol. 28, No. 3).

Furthermore, the legal certainty in the circular also emphasizes the responsibility of business actors to protect workers' rights to diploma ownership. The practice of withholding diplomas has created an unequal bargaining position between workers and employers, which ultimately contradicts the principle of freedom of contract as stipulated in Article 1320 of the Civil Code. In the view of modern employment law, employers cannot use the employment relationship as a justification for limiting workers' personal rights (N. Indrawati (2023), *The Principle of Freedom of Contract in Employment Law*, *De Jure Journal of Law and Policy*, Vol. 25, No. 2). The circular provides assurance that every business actor is obliged to conduct industrial relations based on the principle of fair treatment, without using economic power as a means of coercion. In this way, legal certainty is not only normative but also serves as a corrective measure against inhumane labor practices (T. Mahendra (2022), *Legal Aspects of Withholding Worker Diplomas*, *Rechtsvinding Journal*, Vol. 13, No. 1).

The legal force of a circular cannot be separated from the principle of *res judicata pro veritate habetur*, which means that every decision of an authorized official is considered valid and correct until it is legally revoked (Peter Mahmud Marzuki (2020), *Introduction to Legal Science*, Jakarta: Kencana) Based on this principle, ministerial circulars have legitimate administrative force as long as they do not conflict with higher-level regulations and are issued within their legal authority. The binding power of circulars lies in their function as operational guidelines for public officials in implementing state policy. Therefore, in employment practice, circulars can be used as an administrative basis to reprimand, direct, or impose moral sanctions on business actors who do not comply with labor protection provisions.

The responsibility of business actors in the context of this circular is not only an administrative obligation, but also a moral and social one (L. Mahendra (2021), *Ethics and Responsibilities of Business Actors*, *Indonesian Journal of Law and Business*, Vol. 15, No. 1). According to John Rawls' view of justice, the relationship between workers and employers should be built on the principle of fair equality of opportunity, where everyone has the right to receive fair treatment without discrimination. Thus, businesses are required not to exploit economic power imbalances as a means of oppressing workers. The circular provides guidance to ensure these responsibilities are carried out within a clear and transparent legal framework. The

implementation of these responsibilities also reflects corporate ethics that support the implementation of good corporate governance in the employment sector.

From a national legal perspective, Minister of Manpower Circular Letter No. M/5/HK.04.00/V/2025 serves as an administrative policy that strengthens the implementation of the law. According to Bagir Manan, the circular letter is a form of *beleidsregel* (normative policy) that provides interpretation of the implementation of the law (Bagir Manan (2020), Indonesian Positive Law, Yogyakarta: UII Press) This means that circulars serve as a bridge between general legal norms and technical practices in the field. In this regard, Circular Letter No. M/5/HK.04.00/V/2025 provides clarification on articles in the Manpower Law that have not been specifically regulated regarding the prohibition on withholding diplomas. Therefore, this circular strengthens legal certainty by providing clear direction for businesses in conducting employment relationships.

The legal validity and certainty of a circular also depend on its effectiveness in implementation. If business actors and labor inspectors do not share a common understanding of the circular's contents, the goal of achieving legal justice will be difficult to achieve. In practice, this effectiveness depends on inter-agency coordination and business actors' legal awareness in complying with administrative norms (MR Siregar (2023), Legal Awareness of Business Actors Regarding Employment Policies, *Jurnal De Lega Lata*, Vol. 8, No. 3). The success of law enforcement does not only depend on written normative provisions, but also on the level of awareness and legal culture of the community, which are determining factors in its implementation (Nindyo Pramono (2022), Legal Culture and Regulatory Effectiveness, *Journal of Law and Social Affairs*, Vol. 11, No. 2). This shows that the legal force of the new circular will be meaningful if it is supported by a strong collective legal awareness.

Thus, Circular Letter of the Minister of Manpower Number M/5/HK.04.00/V/2025 can be viewed as a legal instrument that strengthens the principles of certainty and justice in industrial relations in Indonesia. The circular provides clear direction for business actors to carry out their legal responsibilities humanely and ethically. From an administrative law perspective, the strength of the circular lies in the legitimacy of the issuing official and the consistency of its implementation in the field. Therefore, the existence of this circular symbolizes the state's presence in upholding substantive justice in the world of work while emphasizing the role of law as a means of social protection for every worker.

Establish Limitations and Provisions in the Diploma Submission Process to Protect Workers' Rights from Potential Abuse by Companies

In the employment law system, the handover of a diploma is often used as a symbol of trust between workers and employers, but in practice it often results in unilateral control of workers' personal documents (R. Subekti (2016), *Principles of Civil Law*, Jakarta: Intermasa). Some companies still use workers' diplomas as a means of restraining them from leaving their jobs before their contracts expire, even though such actions disregard humanitarian values and contradict the principle of human rights protection. Diplomas serve as authentic proof of a

person's educational qualifications and may not be transferred or withheld without legal basis. In this regard, the government has a responsibility to ensure that company administrative policies do not violate workers' dignity. Establishing legal boundaries is essential to balance employers' economic interests with workers' fundamental rights.

The working relationship between employers and employees must essentially be based on the principles of balance and justice. In practice, companies still require the submission of diplomas as a form of control to prevent workers from leaving their jobs before the end of their contracts. This practice lacks a clear legal basis and has the potential to violate an individual's right to ownership and dignity over their personal documents. Modern labor law prioritizes the protection of workers' rights, which cannot be reduced through contractual agreements. Therefore, clear regulations regarding the limits of diploma submission are needed to prevent practices that are detrimental to workers.

Law No. 13 of 2003 concerning Manpower does not contain explicit provisions governing the transfer or retention of diplomas by companies. This absence of regulations leaves room for wide interpretation and can be exploited by employers to create unilateral policies under the guise of employment agreements. According to the theory of legal protection, as outlined by Philipus M. Hadjon, the state has a moral and constitutional responsibility to ensure that every citizen is protected from the possibility of abuse of power by the authorities. The awarding of diplomas without a legal basis can be categorized as a form of structural inequality in employment relations that needs to be strictly regulated by employment regulations.

In response, Minister of Manpower Circular Letter No. M/5/HK.04.00/V/2025 was issued to affirm the government's legal position on the practice of retaining diplomas during employment. This circular serves as an administrative guideline for employers and labor agencies in enforcing employment protection norms. While not as strong as a law, the substance of the circular reflects the government's moral responsibility to ensure fair and humane treatment for workers. The existence of this circular also serves as a preventive measure against the misuse of workers' personal documents as a company control tool.

Legal regulations regarding the handover of diplomas must pay attention to the principles of proportionality and justice as regulated in Article 28D paragraph (1) of the 1945 Constitution. Diplomas are civil rights that are inherent in individuals so that their control by other parties must be based on valid law and with a clear time limit. If there are no provisions that expressly prohibit it, the practice of withholding diplomas has the potential to violate the basic rights of every individual to feel safe and protected, as guaranteed in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, employment law needs to provide concrete guidelines that guarantee that company policies do not violate workers' human rights.

From a labor administration perspective, the submission of diplomas should only be possible in the context of document verification during recruitment (Dwi Ratna Ningsih (2023), *Employment Policy in Indonesia from the Perspective of Legal Protection for Workers*, Indonesian Journal of Legislation, Vol. 20, No. 2). After the administrative process is complete, the document must be

returned to its owner as a form of respect for personal rights. The Ministry of Manpower, through labor inspectors, has the authority to take action against companies proven to have withheld diplomas beyond a reasonable time limit. This step is intended to create a fair balance between the company's interests and the basic rights of workers, so that employment relationships can be established without any elements of coercion or exploitation.

Labor supervision, as stipulated in Article 176 of Law No. 13 of 2003 concerning Manpower, plays a crucial role in ensuring that work standards are implemented in accordance with the law. However, supervision in Indonesia still faces challenges due to the limited number of supervisors and low levels of case reporting by workers (F. Rahardjo (2023), *Labor Supervision in Indonesia: Challenges and Solutions*, Jurnal Yustisia, Vol. 9, No. 3). Collaboration between local governments, trade unions, and legal institutions is needed so that the monitoring mechanism can run more optimally. Increasing the capacity of supervisory officers is also necessary so that any violations such as withholding of diplomas can be dealt with professionally.

In addition to legal instruments and oversight, increasing public legal awareness also plays a significant role in preventing workers' rights violations. Many cases of diploma withholding occur because workers lack understanding of their basic rights or fear of losing their jobs. One such incident that surfaced in 2025 occurred at the Mitra Lima Wijaya Savings and Loans Cooperative in Lumajang, where approximately 35 to 40 employee diplomas, including those belonging to former employees who had resigned in 2015, were found to be still held by the cooperative. This practice is known to be part of an internal company procedure, whereby a diploma is used as collateral in the recruitment process. This practice ultimately sparked a strong public reaction and widespread media attention, as it was deemed to violate workers' fundamental rights and contradict the values of fairness that should underpin employment relationships.

Legal regulations regarding the awarding of diplomas also need to be linked to developments in personal data protection law. Law No. 27 of 2022 concerning Personal Data Protection affirms that every individual has the right to control their personal data and prohibit others from storing it without permission (R. Simanjuntak (2023), *Personal Data Protection in Indonesian Law*, Jakarta: Sinar Grafika). In the context of employment, diplomas are considered personal data with significant legal and social value. Integrating employment law and personal data protection law is a strategic step to prevent future misuse of employee documents.

Considering the overall existing regulations, it can be concluded that the transfer of diplomas in employment relationships still requires more specific and binding legal arrangements. While Circular Letter of the Minister of Manpower No. M/5/HK.04.00/V/2025 provides an important moral and administrative basis, it is not yet legally sound. Therefore, the government needs to consider establishing a ministerial regulation or revising the law that explicitly regulates the limitations and sanctions for violations of diploma withholding (D. Anggraini (2024), *Government Policy in Realizing Legal Justice for Workers*, Journal of Legal Reform, Vol. 9, No. 2). It is hoped that strengthening these regulations will provide balanced legal justice for workers and create more humane and ethical industrial relations.

4. Conclusion

Based on the analysis, it can be concluded that Circular Letter of the Minister of Manpower Number M/5/HK.04.00/V/2025 plays a strategic role in providing policy direction regarding the practice of withholding diplomas by companies during employment. This policy affirms the government's position in rejecting the practice of withholding diplomas, which has the potential to violate basic workers' rights and create an imbalance of power between employers and employees. However, the implementation of this circular letter still depends on the commitment of labor supervisory agencies, company legal awareness, and firm enforcement of regulations in the field to ensure the value of legal justice is truly realized. Furthermore, an analysis of the legal justice aspect indicates that protection of workers' rights needs to be further strengthened through legally binding regulations, not merely administrative recommendations. The principle of substantive justice demands a balance between the interests of employers and workers' rights to prevent abuse of power that harms either party. Therefore, the issuance of Minister of Manpower Circular Letter No. M/5/HK.04.00/V/2025 should be seen as an initial step towards establishing more concrete legal norms in the Indonesian employment system.

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