

## **Diploma Withholding by Companies in the Perspective of Constitutional Rights to Education and Employment : A Case Study in Surabaya**

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**Abstract.** *This study examines the practice of diploma withholding by companies in Indonesia from the perspective of constitutional rights to education and employment. Diploma withholding, often imposed as a means of ensuring employee compliance, raises fundamental legal issues as it involves the misuse of personal documents containing private data and potentially violates workers' constitutional rights guaranteed under Article 28D paragraph (2) and Article 31 of the 1945 Constitution. Using a qualitative normative legal research method with statutory and case approach, this study analyzes the legal implications of such practices in relation to labor law, the Law on Personal Data Protection, and constitutional guarantees. The findings show that diploma withholding not only undermines legal certainty and fair treatment in employment relations but also contradicts the principle of human dignity protected under constitutional law. The study concludes that diploma withholding should be considered a violation of constitutional rights, requiring stronger regulatory enforcement and constitutional awareness by both state authorities and corporate actors.*

**Keywords:** *Constitutional; Data; Diploma; Education; Protection.*

### **1. INTRODUCTION**

The practice of diploma withholding by companies in Indonesia has become a recurring issue in employment relations. Employers often justify this practice as a guarantee for employee compliance and as a safeguard against potential breaches of employment contracts. However, diploma withholding raises serious legal and constitutional concerns. Diplomas are not merely documents of academic achievement but also personal data that fall within the scope of protection under Law No. 27 of 2022 on Personal Data Protection. Moreover, the practice undermines fundamental rights to education and employment, both of which are explicitly recognized in the 1945 Constitution of the Republic of Indonesia.

From a constitutional law perspective, Article 28D paragraph (2) guarantees every citizen's right to work and to receive fair and proper treatment in employment, while Article 31 ensures the right to education. Diploma withholding therefore creates a

conflict between corporate practices and constitutional guarantees, particularly when it restricts workers' access to job opportunities or further education. The problem is further aggravated by the absence of explicit statutory prohibition, creating a legal vacuum that weakens the enforcement of constitutional rights.

This study situates diploma withholding within the broader discourse of constitutional rights, human dignity, and the rule of law. It also examines the role of personal data protection as a normative foundation for strengthening the protection of workers' rights in Indonesia.

## **2. RESEARCH METHODS**

This study used a qualitative method with a normative juridical approach and case studies to examine the practice of diploma retention by companies in Surabaya from the perspective of personal data protection. A normative juridical approach was chosen to analyze problems based on applicable laws and regulations, especially Law No. 27 of 2022 concerning Personal Data Protection, Law No. 13 of 2003 concerning Manpower, and other related regulations. This approach allows researchers to conduct an in-depth study of legal principles, legal systematics, vertical and horizontal synchronization between laws and regulations, and the effectiveness of the implementation of these regulations in the context of diploma detention. To enrich the normative juridical analysis, this study also adopts a case study method by taking the locus in Surabaya as one of the largest industrial cities in Indonesia. The selection of case study methods allows an in-depth exploration of the phenomenon of diploma detention in a real context, taking into account the complexity and uniqueness of cases in Surabaya. Data collection is carried out through three main techniques: first, the study of documents on laws and regulations, court decisions, company policies, employment contracts, and related legal literature. Second, in-depth interviews with key informants consisting of workers who have experienced diploma detention, representatives of company management, labor supervisors, labor activists, and legal academics. Third, observation of employment practices in several companies that are research samples.

Data analysis was carried out qualitatively using content analysis techniques and legal hermeneutic analysis. Content analysis is used to interpret meaning in laws and regulations and related documents, while hermeneutic analysis helps researchers understand the social, economic, and political context behind the practice of diploma retention and the enforcement of personal data protection laws. To ensure the validity of the data, this study applied source triangulation techniques and methods by comparing data obtained from different sources and collection techniques. This qualitative approach with a combination of normative juridical and case studies allows a comprehensive analysis of the legal and social dimensions of the practice of diploma detention, so as to produce contextual and applicable policy recommendations to address these problems.

## **3. RESULTS AND DISCUSSION**

### **3.1. Patterns and Characteristics of Diploma Holding Practices by Companies in Surabaya**

The results of the study revealed that the practice of holding diplomas in Surabaya is still rampant, especially in the manufacturing, trade, and service industry sectors.

Based on interviews with 50 workers who experienced diploma detention and 15 representatives of company management, several patterns and characteristics were identified that became the main findings of this study. The practice of diploma retention shows a systematic and structured pattern. Diploma withholding usually begins from the recruitment process, where the company requires prospective workers to submit the original diploma as part of the administrative requirements. Based on data collected from the Surabaya City Manpower Office in 2023, at least 73% of manufacturing companies in Surabaya implement this policy. This shows an increase from the previous findings by (Zulkifli, 2024) which recorded a figure of 67%. This increase indicates that although there have been new regulations such as the Personal Data Protection Law, this practice is becoming more widespread. (Ghani et al., 2022) in their research identified that diploma detention has several distinctive characteristics in Surabaya. First, this practice is more applied to workers with secondary education levels (SMA/SMK) to baccalaureate (D3) than workers with higher education levels. Second, diploma detention tends to be applied to operational positions or positions up to the supervisor level, while for managerial positions and above, this policy is rarely implemented. Third, the majority of companies that hold diplomas are companies with more than 100 employees and have a high employee turnover rate (>15% per year).

The results of interviews with management representatives revealed some of the company's main motivations in carrying out the practice of holding diplomas. The dominant motivation is to retain a skilled workforce and prevent a high turnover rate of employees that can interfere with the sustainability of the production process. As one of the manufacturing company's HRD managers put it: "We've invested in employee training, if they suddenly leave after gaining expertise, we'll lose out." Another motivation is to guarantee the loyalty of workers and bind them within a certain period of time, especially for companies that have production process specificities that require specific skills. In terms of the detention mechanism, there are several variations found in this study. There are at least three main mechanisms: (1) indefinite detention until the worker resigns, (2) detention for a certain period of time in accordance with an employment contract (generally 1-3 years), and (3) detention associated with an employment or training bond agreement. This detention mechanism is often formalized in the form of a statement or clause in the employment agreement that must be signed by the worker as a condition for being accepted for employment. The practice of holding diplomas has a significant impact on the mobility and welfare of workers. Data collected from 50 worker respondents showed that 82% had difficulty applying for a better job, 63% were forced to stay in work despite unsatisfactory working conditions, and 47% experienced financial losses in the form of lost opportunities to get a higher-paying job. These findings confirm the results of previous research by (Fuad & Riyanto, 2023) which noted that 78% of workers have difficulty finding better jobs.

**Table 1.** The Impact of Diploma Detention on Workers in Surabaya

No.	Impact Type	Percentage (%)	Concrete Shape
1	Career Mobility Barriers	82%	Difficulty applying for a new job

2	The Force to Survive	63%	Continuing to work in unsatisfactory conditions
3	Financial Losses	47%	Missing out on higher salary opportunities
4	Psychological Impact	56%	Stress and helplessness
5	Barriers to Continuing Education	38%	Unable to apply for further education

*Source: Primary Data of Research Results, 2024*

Interestingly, the practice of holding this diploma has transformed into a kind of "norm" in the world of work in Surabaya. This situation creates a problematic labor culture where actions that actually violate workers' rights are considered normal and even accepted by the workers themselves. As expressed by (Gist-Mackey & Dougherty, 2021), this phenomenon reflects an imbalance in power relations between workers and employers, where workers are in a weak position in negotiating working conditions. Furthermore, this study found that the practice of retaining diplomas also has a correlation with the type of leadership and the company's organizational culture. Companies with autocratic leadership types and hierarchical organizational cultures tend to implement more diploma retention policies than companies with transformational leadership and a more inclusive organizational culture. These findings indicate that the practice of diploma retention is not solely a human resource management strategy, but also reflects the philosophy and values embraced by the company's management.

### **3.2 Juridical Analysis of Diploma Detention Practices in the Perspective of the Personal Data Protection Law and Employment Regulation**

The practice of withholding diplomas by companies in Surabaya, when analyzed from a juridical perspective, presents complex legal problems. In the context of Law No. 27 of 2022 concerning Personal Data Protection (PDP Law), a diploma is a form of protected personal data. Article 1 number 1 of the Personal Data Protection Law defines personal data as "data related to a person who is identified or can be identified separately or in combination with other information either directly or indirectly through electronic and/or non-electronic systems." Diplomas, which contain personal information such as name, place of birth, academic grades, and other identification, clearly fall under the category of protected personal data. Referring to Article 65 paragraph (1) of the Personal Data Protection Law which states: "Every Person deliberately unlawfully obtains or collects Personal Data that is not his/her Personal Data with the intention of benefiting himself or others resulting in losses to the Personal Data Subject shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of Rp50,000,000,000, 00 (fifty billion rupiah)." In the context of diploma detention, it is necessary to conduct an in-depth analysis of the elements in the article. The concept of "unlawful" in the practice of withholding diplomas can be interpreted as an act that is contrary to the right of the data subject (worker) to possess and control his or her documents. (Yuniarti, 2022) emphasized that "unlawful" in the context of diploma detention can be interpreted as an act that is not based on legitimate legal authority and harms the rights of workers as data subjects. Furthermore, the concept of

"unlawful" in the Personal Data Protection Law includes not only violations of the provisions of the law (against the law in the formal sense) but also violations of the principles of propriety and justice in society (against the law in the material sense).

"Data subject losses" in the context of diploma detention manifest in various forms, ranging from hampered career mobility, being forced to survive in sub-ideal working conditions, to material losses in the form of loss of opportunities to earn higher income. As found in this study, 47% of respondents reported financial losses due to diploma withholding. This figure confirms the element of loss as referred to in Article 65 of the Personal Data Protection Law. Meanwhile, the element of "benefiting the actors" is reflected in the company's motivation to retain the workforce and prevent employee turnover, which in turn provides economic benefits for the company. This interpretation is in line with the view (Widiyanto & Lunaraisah, 2024) which emphasizes that profits are not always in the form of direct financial, but can also be in the form of non-financial benefits such as the company's operational stability and reduction in recruitment costs. From the perspective of Law No. 13 of 2003 concerning Manpower, the practice of holding a diploma is contrary to the spirit of Article 31 which emphasizes the right of workers to develop work competence, and Article 38 paragraph (2) which stipulates that in the event of termination of employment, employers are obliged to provide workers' rights in accordance with laws and regulations. Although it does not explicitly regulate the detention of diplomas, the Labor Law adheres to the principle of protection of workers' fundamental rights, including the right to own and control personal documents.

Furthermore, in the context of East Java Provincial Regulation Number 8 of 2016 concerning the Implementation of Manpower (East Java Provincial Regulation, 2016), Article 42 paragraph (1) emphasizes that "Every worker/laborer has the same opportunity without discrimination to get a job". The practice of withholding diplomas is directly contrary to this provision because it creates barriers for workers to obtain new job opportunities. In addition, Article 66 paragraph (2) of the Regional Regulation states that "The Provincial Government and the Regency/City Government shall supervise the implementation of employment in accordance with their authority." This provision provides a legal basis for local governments to supervise and take action against practices that violate workers' rights, including the detention of diplomas. From a jurisprudence perspective, cases over the detention of diplomas that have been decided by courts in Indonesia generally favor workers. For example, the Central Jakarta District Court Decision Number 47/Pdt.G/2022/PN.Jkt.Pst which ordered the company to return the worker's diploma and pay compensation. This decision emphasizes that the detention of diplomas is a form of unlawful act that harms citizens' constitutional rights. However, there are significant challenges in law enforcement against the practice of diploma detention. The main challenge is the lack of effective monitoring mechanisms and strict sanctions. Although the Personal Data Protection Law has established severe criminal sanctions, its implementation is still not optimal. This is partly due to the limited resources and capacity of labor supervisory institutions, as well as the lack of legal awareness among workers regarding their rights.

### **3.3 Implications of the Practice of Diploma Detention and the Enforcement of the Personal Data Protection Law on the Indonesian Constitutional System**

The phenomenon of diploma detention and the urgency of enforcing the Personal Data Protection Law have wide implications for the Indonesian constitutional system, especially in the context of protecting citizens' constitutional rights and the implementation of the rule of law. As a country based on the law (*rechtsstaat*) as stated in Article 1 paragraph (3) of the 1945 Constitution, Indonesia is obliged to ensure the protection of human rights, including the right to own personal data. The practice of holding diplomas that is still rampant reflects the gap between normative and empirical aspects in the Indonesian constitutional system. (Koswara, 2022) calls this phenomenon a "sleeping law", where there is a misalignment between law in books and law in action. This gap not only shows a deficit in law enforcement but also raises fundamental questions about the effectiveness of the constitutional system in protecting citizens' constitutional rights.

The presence of Law No. 27 of 2022 concerning Personal Data Protection is actually a manifestation of the principle of the welfare state adopted by Indonesia, where the state has the responsibility to protect its citizens not only from physical threats but also from various forms of exploitation, including the exploitation of personal data. In this context, the enforcement of the Personal Data Protection Law on the practice of holding diplomas is a test for the state's commitment to implementing a fair government. The implications of the practice of holding diplomas are also seen at the state institutional level. Weak coordination between state institutions responsible for enforcing labor laws and protecting personal data has resulted in the practice of continuous diploma withholding. Effective law enforcement requires a multi-institutional coordination mechanism involving not only the Ministry of Manpower but also the Ministry of Communication and Information as the authority responsible for the protection of personal data, as well as local governments that have the authority to supervise employment in their territories. At the ideological level, the practice of withholding diplomas reflects a value contest between economic interests (business interests) and the protection of human rights. In this context, the state is faced with the dilemma of balancing the interests of economic growth and the investment climate with the protection of citizens' constitutional rights. (Venkateswaran & Phillipose, 2025) identifies that developing countries such as Indonesia tend to experience tension in balancing these two aspects, with a tendency to prioritize economic considerations in policy-making.

Regarding the enforcement of the Personal Data Protection Law, there are significant challenges in its implementation, especially related to institutional capacity and resources. The establishment of a Personal Data Protection Institution as mandated in the Personal Data Protection Law is an important step, but its effectiveness will depend heavily on the independence, authority, and resources owned. (Ayiliani & Farida, 2024) emphasizes the importance of strong and independent supervisory institutions to ensure effective enforcement of the Personal Data Protection Law. From the perspective of access to justice, the practice of diploma detention reveals structural barriers for workers to obtain justice. Lack of legal literacy, high litigation costs, and fear of retaliation from employers are factors that make workers reluctant to take legal routes. This situation creates what is called (Mercury et al., 2024) as "unreachable justice", where the law normatively provides protection but is practically difficult to

access for those in need. Furthermore, the phenomenon of diploma detention also has implications for the legitimacy of the Indonesian constitutional system in the eyes of citizens. When a state fails to protect the constitutional rights of its citizens, including the right to personal data protection, public trust in state institutions can decline. This trust deficit can in turn affect political stability and the sustainability of national development.

(Mishra et al., 2022) in their study found that countries with strong enforcement of personal data protection laws have higher levels of public trust in state institutions. These findings underscore the importance of effective enforcement of the Personal Data Protection Law, not only to protect the rights of individuals but also to strengthen the legitimacy of the constitutional system as a whole. From the various implications above, the enforcement of the Personal Data Protection Law on the practice of diploma detention requires an integrated approach that involves not only legal aspects but also social, economic, and political aspects. Structural reforms in the labor supervision system, strengthening institutional capacity, and increasing legal awareness among workers and employers are steps that need to be taken to address this problem comprehensively.

#### **4. CONCLUSION**

The practice of holding a diploma in Surabaya is still rampant, especially in the manufacturing, trade, and service sectors with a significant increase from 67% to 73%. This practice has a systematic pattern that starts from recruitment and is mainly applied to second-educated workers up to D3 in operational positions to supervisors. The company's main motivation is to retain a skilled workforce and prevent employee turnover. The impact on workers is particularly detrimental, with 82% experiencing career mobility barriers, 63% being forced to endure unsatisfactory working conditions, and 47% experiencing financial losses. From a juridical perspective, this practice is contrary to Law No. 27 of 2022 concerning Personal Data Protection because diplomas are protected personal data. The detention of diplomas also violates the spirit of the Manpower Law and the Regional Regulation of East Java Province concerning the Implementation of Manpower. This phenomenon reflects the gap between normative and empirical aspects in the Indonesian constitutional system, weak coordination between law enforcement agencies, and structural barriers for workers in obtaining justice. This situation has the potential to reduce public trust in state institutions and affect the legitimacy of the constitutional system as a whole

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