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# Workers Protection in Working Agreements: A Case of Employee's Diploma Certificate on Company's Custody as a Warranty

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**Abstract:** Working agreement is an agreement between the parties which includes rights and obligations of both the employees and the employers, if either party is incapable or incompetent of committing a legal act, then the working agreements may be canceled. Otherwise, if it made without the works as the contracted are contrary to public order, morality, and applicable legislation, the agreements were canceled by law. Each party has to agree and not be forced, it has to be clear so there is no misunderstanding in the future. The working agreements ideally to protect all the interests of the involving parties. In the working agreements, some companies are requiring the employees to deposit their diploma as a job warranty. The reason about the policy of holding the employee's diploma as a warranty for time work agreement, where often the employees feel uncomfortable working with the company and then quit before the expiration of the working agreements. That could harm the company, in order to employees last longer at least until the expiration of working agreements. However, the policy was not considered to provide the protection to employees even it is disadvantageous to employees party and has no juridical basis for its implementation. That is breaking the 1945 Constitution on Human Rights "that everyone has the rights to find a decent job and to earn a decent living" and Act no. 13 of 2013 on Manpower. The Method used is normative law based on the essential elements also the main objective of the law is justice, benefit, and legal certainty for employees through working agreements with companies in order to create a working relationship which based on Pancasila's Industrial relation.

**Keywords:** Workers Protection, Working Agreement, Diploma Held-in custody

## 1. Introduction

The working relationship started with the working agreement which was bind to both employees and employers which contain rights and obligations of parties. Working agreement in Dutch called *arbeidsovereenkomst* in acts no.13 of 2003 on manpower, article 1 paragraphs (14) provides the meaning that " working agreement shall be an agreement between workers or labor and entrepreneurs or employers which contain working requirements, rights, and obligations of parties". The working agreement has nature to be forcing which means the requirements in working agreement on labor law shall obey or follow by working agreement that determined by employer and employees shall not be contrary with the agreement that made by employer and labor union on his company. Similarly, working agreement shall also not be contrary to company rules that made by the employer. According to Soepomo, a relationship between employee and employer, where this working relationship occurs when there is a working agreement between both parties.

They are binding to an agreement, in one hand the employees are willing to work with salary and employers are hiring employees and giving the salary. Often occurs termination of employment with reasons employees disobeyed the company rules. This fact merely it said had disobeyed company rules. The responsibility of employees for disadvantages that caused by that, generally limited to disadvantages that occur because of the deliberate acts or them negligence. Deliberate means if the acts or do not acts intend to disadvantage another interest (employer) which happen because lack of carefulness so disadvantages employee's interest. Further, working agreement on a company ideally protects all parties interest which included in an agreement because an agreement should be made



based on the deals between both parties, an agreement requiring employees to deposit their diploma as job warranty. The reason of policy for hold the employee's diploma as warranty especially for the employees on certain working time agreement with reason that the employee felt uncomfortable working on a company then decided to resign before the expiration of working time agreement. That would be a disadvantage to a company, that's one of the things that encourages the company to make policy about diploma held during the time of contract in order to employees stay longer at least until the expiration of the working agreement. But this policy has no judicial basis even could be said contrary to the constitution. To understand and establishes an agreement, then parties should be filling the legal requirements of agreement according to article 1320 civil code and article 52 acts no.13 of 2003 on manpower consist of deals from both parties that establish an agreement between company and employee, there is capability from employer and employee to make an agreement. If one of the requirements are not filled or parties that made an agreement is under pressure or being forced, the agreement may be canceled. As stated in the provisions of article 1321 which read "No agreement is of any value if granted by error, obtained by duress or by fraud".

Furthermore, there were certain things and lawful causes. If made without a promised job and contents of the agreement are contrary to legislation, public orders, and morals, then the agreement is null and void. Meanwhile, company rules are the rule made by one party which was the employer which contains provisions of job requirements and a company code of conduct. Based on the above description, the worker or employee diplomas held by fast food companies in Pekanbaru, such as Boga Group which running Japanese restaurant *Sushi Tei* is violating the 1945 constitution on human rights that every citizen shall have the right to work and to earn a human livelihood.

## **2. Research Methods**

This study's using an observation and library research to support data accuracy and seek the clarity about job's requirements on diploma held as warranty for company in fast food company in Pekanbaru. Therefore this study implement a descriptive analytics approach within to reveals the findings. The Object of Research was several Fast food company in Pekanbaru which does holding into custody their workers diploma as job warranty. The location of Research taken place in of Pekanbaru, Riau Indonesia

## **3. Discussion**

### *3.1 Workers Protection in Working Agreement:*

There are several items this study tries to discuss especially in the part of the agreement not only on its legal requirements but also based on the principles of the agreement, which are:

#### *3.1.1 Principle of Freedom of Contract*

Freedom of contract indirectly regulated on article 1338 paragraph (1) Civil Code, which emphasized that all legally-made agreements act as the law to those who made the agreement. Freedom of contract is a reflection of the development of free market concept pioneered by Adam Smith with his classical economic theory based his thought on natural law. The same thing became the basis of Jeremy Bentham thought known as utilitarianism. Utilitarianism and classical economic theory laissez faire considered to complete each other and equally alive the liberal thought modernsilitis. Terms and conditions in contract/agreement for certain time finally would violate fair and reasonable rules. In situation mentioned above could apply in relationship between employee and employer who made an agreement, which then cause the negative things means that party who has strong bargaining position can force his/her will on the weak party, and the strong party gains advantage from that act. The principle of Pacta Sunt Servanda emphasized as written in article 1338 paragraph (1): "all legally executed agreements shall bind the individuals who have concluded them by law. they cannot be revoked otherwise than by mutual agreement, or pursuant to reasons which are legally declared to be sufficient. They shall be executed in good faith".

### 3.1.2 Principle of Good Faith

The principle of good faith means that the execution of agreement cannot be contrary with decency and justice. In article 1338 paragraph (1) explained that “Agreement shall be executed in good faith”. This article is based on the principle of good faith.

### 3.1.3 Principle of Decency

The principle of decency is poured in article 1339 civil code, which related to the provisions of agreement contents required by decency based on the nature of an agreement. Which an agreement should contain appropriate binds by all parties related to the agreement and not contrary to applicable law. Working agreement with the company that applies the agreement clause about diploma held would strengthen company position in achieving its target, on the employees side, would gain disadvantages caused by losing the valuable document that proves he/she has gone through certain educational level and could use the diploma as the main requirement to get better job. On Manpower acts there is no law that the company to hold its employee's diploma, there are only working contract could be made based on the deals that fulfill legal requirements of the agreement which regulated in article 52 Acts no.13 of 2003. According to J. Satrio was allowed, as long there was a deal between employee and employer. The deal between employee and employer usually poured on working agreement which binds employee and employer on working relationship. Diploma held by the company was allowed as long employees agreed and still bind to working relationship. The agreement should be made by parties based on the principles of agreement. Using the principles in order to create stability and maintain the rights of parties before the agreement binds the parties. There was some reason fast food company in Pekanbaru and done by one of the fast food company which is Boga Group that running *Sushi Tei* which bind its employee in working agreement that held their diploma which are. 1. The diploma is considered as the employee's commitment to work; 2. So the employees not easy to resign from their job; 3. If the employees have done something that could disadvantage the company, the employees should bear the disadvantages; 4. For the security of a company, so the employees do not leak the company's secret.

On the legislation that related to manpower firmly there is no prohibition on holding employees diploma. A lot of companies done this as warranty for employers considering a lot of the employees resign before the expiration of their time working agreement. This working agreement deemed inappropriate and unfeasible because the employees felt not free about their diploma certificate, also often when did the job, employees felt insecure and wanted to resign and seek a decent job as contained in the 1945 constitution.

### 3.2 Settlement on Employees who Resign before the End of Working Agreement

On the working agreement, clauses explained that the first party which is the company has the rights to termination of working relationship to the second party which is the workers if workers as the second party disobey the agreement which is contrary to company rules and or applicable law in Indonesia. The most important element in the agreement is the contents, because of it self-made by parties. so the agreement cannot be unilaterally canceled. If conflict or dispute did by employees resign from the company because felt uncomfortable and want to get a better job, while the agreement/contracts were not over, then first could make a settlement effort like mediation to the company where employees should have been resigned nicely and gave resignation letter. Based on this, companies whose has professional management doesn't hold the diploma because they already have balanced work system between company and employees. Normally companies only ask to show the original diploma for adjustment with given copy, as well another document. Besides, companies could add other warranties in form of some amount of money which both parties agreed.

#### 4. Conclusion

Protection of workers in working agreement on diploma held as warranty for an employer in the fast food company in Pekanbaru. On Manpower Acts there is no rule that suggests companies to hold its employee's diploma, there is working contract are only working contract could be made based on the deals that fulfill legal requirements of the agreement which regulated in article 52 Acts no.13 of 2003. There was some reason fast food company in Pekanbaru, and done by one of fast food company which is Boga Group that running *Sushi Tei* which bind its employee in working agreement that held employees diploma which are, its considered as the employees commitment for work, employees not easy to resign from their job, If the employees done something that could disadvantage the company, the employees should bear the disadvantages, For the security of company, so the employees not leak the company's secret.

Settlement to employees who resign before the end of working agreement according to the agreed time of working. The most important element in the agreement is the contents, because of it self-made by parties. so the agreement cannot be unilaterally cancelled. If conflict or dispute did by employees resign from the company because felt uncomfortable and want to get the better job, while the agreement/contracts were not over, then first could make a settlement effort like mediation to the company where employees should have been resigning nicely and gave resignation letter.

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