



Legal Protection About Phenomenology of Justice Certificate Guarantee While Working

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Abstract. The existence of legal protection regarding the issue of guaranteeing the original certificate in the workplace is still minimal. By sector, one of them is contained in Article 42 of the Regional Regulation of the Province of East Java No. 8 of 2016 concerning Employment Implementation. This legal protection is important as a basis when differences in interests arise in the meaning of the certificate. The purpose of this paper is to find out the meaning of fairness about the importance of a certificate for workers and employers in the workplace. Labor conflicts in the form of human rights violations still often occur between workers who think that the certificate is a human right inherent in workers that can be used as a condition to work elsewhere or continue their studies. Meanwhile, the employer considers holding the certificate is a bond so that workers continue to work at the company and as a form of compensation if workers have problems with the company. The research methodology uses transcendental phenomenology to find out the equality of the meaning of fair interests, it is hoped that the government will make public policies that protect workers nationally. The purpose of the general policy formulation is to reduce the incidence of employment problems, especially the guarantee of the original certificate.

Keywords: Employment Legal Protection · Certificate Guarantee · Public Policy

1 Introduction

Ellora Sukardi, Debora Pasaribu & Vanessa Xavieree Kaliye [1] wrote that employment issues regarding the guarantee of the original certificate have ever reached the court, namely the decision Number 13/Pdt.Sus-PHI/2019/PN Tte. This phenomenon until now, several companies have required job applicants to submit their certificates original when applying for a job as proof of the suitability of the qualifications required by the company.

Scientific discussions about certificate guarantees have actually been carried out by many researchers. The issue of this research is interesting because the detention of certificates by employers is a violation of workers' human rights [2]. There is no national legislation regarding the detention of workers' original certificates, only one sector, namely the East Java Provincial Regulation Number 8 of 2016 concerning the Implementation of Manpower. This regulations do not have binding legal force in general

[3]. Violation by the entrepreneur can be considered as impeding the human rights of workers in seeking income and earning a decent living [4]. Withholding the original certificate belonging to the worker there is still a legal vacuum in the labor regulations. If the legal vacuum persists for a long time, the entrepreneur will ask for a certificate guarantee based on custom and agreement. The written agreement is not strong enough without binding labor law protection [5].

The company still applies the rules for guaranteeing its workers' certificates and is considered normal. This certificate guarantee is applied to certain positions or positions of all types of work. For companies with positions in companies that are given responsibilities such as money, valuables, or company assets, it is necessary to have a bond in the form of a guarantee of the original certificate. Many job seekers feel resigned to the company's conditions, in order to get a job. Certificates are held as official bonds so that employees do not leave the company at will [6]. However, some people think that it is better to quit the job they are applying for than to submit their certificate [7]. The original certificate requested will be kept by the company. The guarantee of the original certificate needs to know the risks that can occur such as being lost, damaged, destroyed when stored by the company. Some of these risks are certainly not desired by workers. This feeling of worry can affect the work atmosphere, the impact will result in a decrease in work productivity because it is not calm at work.

The working relationship that exists between workers and employers is the scope of employment that needs to be regulated so that no party feels disadvantaged in a fair sense. The government's participation in this case the Manpower Office is needed when dealing with employment problems, especially the case of guaranteeing the original certificate. Primabudi, Zaki, Namira Hilda Papuani & Ramdhan Prawira Mulya Iskandar [8] stated that in providing legal certainty and justice regarding labor cases, it is necessary to adapt based on the dynamics of an increasingly complex era.

The formulation of the problem that will be discussed in this paper is how legal protection is for workers when there is a guarantee of an original certificate in the workplace that causes employment problems. If this problem is drawn from the side of the initial trigger, it can be based on justice regarding the meaning of the importance of a certificate as job security.

The purpose of this study is to find out and understand more about the legal protection of workers from labor problems regarding the guarantee of the original certificate while working. The conclusion of the study as a discussion in formulating public policies in the form of fair employment legislation is not only for the benefit of one party in the employment relationship or only certain sectoral areas, but also legal protection that can be used in general.

2 Methods

The transcendental phenomenology methodology chosen by the author to find information on the meaning of justice guarantees the original certificate of the workers and employers. After the meaning is obtained, the writer arranges in a normative description about legal protection for workers. The stages of the phenomenological methodology process are divided into [9]:

- a. Deliberately, this stage is in the form of awareness within the author to dig up information to workers and employers when facing problems with guaranteeing the original certificate. At this stage, there is also an apoche process, namely eliminating all knowledge from the author while working as a labor inspector. This needs to be done so that the information concluded is not made up by the author's point of view. In line with the presentation from Kamayanti¹, she said that the apoche process is a study based on the experience of the informants.
- b. Noema and Noesis in the writing of this paper are the meaning of the fairness of the guarantee of the original certificate based on awareness, experience according to the time and place of certain phenomena. So that this process occurs based on the evidence that exists in the object of the phenomenon.
- c. The intersubjectivity on the part of the author as the one who experienced the incident merged into another person resulting in the position between the two parties being one or the same [10].

3 Discussion

3.1 The Theory of Justice About the Meaning of Certificates Guarantee

In the field of education, there have been many significant developments, one of which is a change in conventional teaching methods [11]. Proof of someone completing the study period is a certificate issued by the school institution. Certificates are individual rights that are sometimes used as collateral. Another example, the object of the guarantee is copyright when the debtor's debt is through the imposition of a fiduciary guarantee but there are obstacles in the regulation and meaning of the value of the guarantee [12]. The key to the problem of guarantee is the meaning of the object of the guarantee. Philosophically, the meaning of fiduciary is the transfer of property rights based on trust or agreement on the ownership of the guaranteed object [13].

Every problem in the working relationship is because one side always wants to get a bigger profit compared to the other person, as well as in the case of guaranteeing the original certificate. Justice can be achieved if the results of a mutual agreement which are based on the achievement of the benefits of all parties. The need for agreed principles of justice for equitable distribution [14]. The balance between rights and the implementation of obligations in the organization is based on determining the benefits and burdens of appropriate and balanced social cooperation. Rawls argues that justice is not only about the ability to get more benefits, but also applies to general problems. Rawls's [15] further thought about the principle of justice in organizations is formed from an agreement between the negotiating parties. The understanding of justice that is applied when the issue of guaranteeing the original certificate can be categorized into:

- a. Fairness in the work agreement which contains the principle of justice comes from the agreement and approval of the worker giving the original certificate to the employer. Those involved will disclose the rights and obligations of the equitable sharing of social benefits. Equal distribution without any difference. The employer must place workers according to the position applied for and can provide guarantees about the

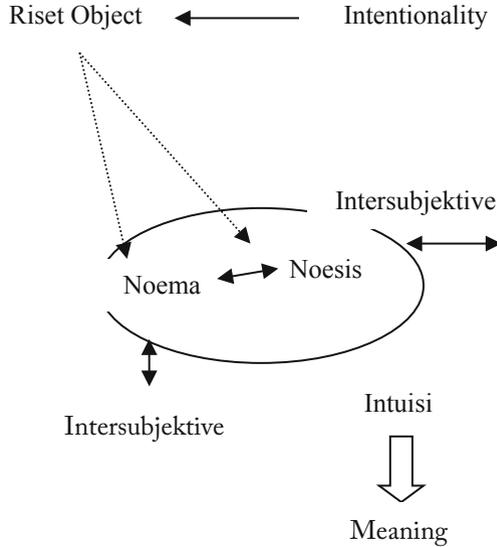


Chart 1. The unit of analysis model in transcendental phenomenology

certificate such as damage, loss. A company that employs someone gets the same treatment regardless of the ability of the worker, whether that is fair.

- b. This second principle can be stated that entrepreneurs will do things to achieve long-term company goals. Entrepreneurs have the authority, responsibility and command to apply the principles of justice in the company. So the guarantee of the original certificate does not have to be applied to all workers, but based on certain positions and positions. Justice is based on the level of position held by workers, the higher the authority, the higher the responsibility, so it is appropriate if the workers' original certificates are placed in the company.

Before discussing legal protection for workers when providing certificate guarantees, we conducted research using a phenomenological methodology focusing on meaning not just the meaning of communication language, but also concluding the meaning of justice for certificate guarantees through several stages of the research process. So that we who do research on transcendental phenomenology will be someone who is open to various meaning processes without any desire to evaluate or punish from the information available [16]. The interview in the transcendental phenomenological stage aims to get a lot of information, so the reduction treatment aims at how the subject of the incident gives understanding to the next object [17]. Phenomenology aims to interpret the meaning of events and relates to people's information related to certain situations [18].

The transcendental phenomenological analysis above, if described with a pattern, is as follows [9] (Chart 1).

The information obtained in the above stages can be analyzed that there are differences of opinion about the meaning of certificate guarantee fairness, but these differences

can still be united into agreement if workers and employers give up their respective rights. Workers will understand and know for sure that the company has the right to ask for guarantees for the performance of workers, while employers are also expected to think about the future career of workers if the certificate is withheld by the company.

Informants from the government, namely the Manpower Office of East Java Province, commented on the issue of certificate guarantee issues, "There are indications of issues related to the detention of certificates from complaint letters on employment cases. Bring company money, workers who are not comfortable working in the company, and so on". The information data above indicates that this research is important because the problem becomes a strategic issue in the discussion of legal protection for workers.

3.2 Legal Protection of Employment Concerning Original Certificates Guarantee

Employment cases regarding the guarantee of a certificate as a professional bond in work and guarantees of worker loyalty are currently increasingly occurring in companies. One of the issues raised by the author is the employment case when handling a letter of complaint regarding the guarantee of the original certificate at PT. X. Not infrequently there are companies who question compensation if workers are negligent in their work. The duty to regulate the interests of both parties, both workers and PT. X, in order to realize fair employment conditions, this is what the government carries out in this case the Manpower Office.

One of the government policies contained in the laws and regulations is Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation. Agreement between the company and the employee. The position of workers must obey and inevitably have to go with the flow if they want to be accepted in companies that apply this rule.

In 2016, the government specifically in East Java Province issued a strict and undeniable rule that the act of retaining the original certificate is a Private act. Whatever the reason, this action can take the employer to court in labor law cases.

East Java Provincial Regulation Number 8 of 2016 concerning Employment Implementation, Article 42 that "Employers are prohibited from withholding or storing original documents that are inherent in workers as collateral". Sanctions are regulated in Article 79 paragraph (1) that "Everyone who violates the provisions of Article 35 paragraph (2) and paragraph (3), Article 42 and Article 72 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) months or a fine at most Rp. 50,000,000.00 (fifty million rupiah).

The above rules are clear, that the government is very strict in regulating employment cases that protect workers' original certificates. The existing rules can be used as guidelines in compiling company rules when recruiting workers and serve as regulatory boundaries. But in fact, the problem of guaranteeing a certificate does not only occur in the East Java Province, where there are special regulations. Regions outside the province of East Java also sometimes have this problem. After the standard rule in the form of the East Java Provincial Regulation Number 8 of 2016 concerning the Implementation of Manpower appeared, the regulation became a reference for all forms of employment cases withholding the original certificate. This is no exception for companies that have long withheld their workers' certificates.

Once upon a time, employees of PT. X wrote a letter of complaint on a labor case that had difficulty retrieving the certificate that had been used as collateral. According to the Regional Regulation, the author directly contacted the entrepreneur and at the same time disseminated the labor regulations. As predicted, the entrepreneur is not aware of any provisions governing it. After a few days later, the worker withdrew the employment case report because the case was resolved and the certificate had been returned.

A worker whose certificate is guaranteed at PT. X, at the beginning of work submits the original certificate in exchange for receiving work. For him, he is willing to submit the original certificate as long as he gets a job. He doesn't think about the future impact of his career, according to him. "It doesn't matter if I give you a certificate, the main thing is that I can work, let alone work in Malang City. I've been looking for work everywhere but here I was accepted, so if the job requirements are that, I'll give you the original certificate." At first glance, the bargaining position of the informant to refuse to submit the original certificate does not exist, but the worker should also think about if he is not free to resign from work there. PT. X is currently described by the leadership, namely "Before the guarantee of certificates, many employees were easy to change jobs, mas, the reason was because there were job offers on the other hand, some were because they moved house or didn't even say they suddenly didn't come to work. It's a loss that we have been trained to work in certain positions, after being smart, they come out". Information from another businessman stated that "If marketing or collectors who bring consumer money continue to run, how come". From the employer's point of view, the requirement for a certificate guarantee is a good strategy to maintain employee loyalty.

Employment Agreement according to Law Number 13 of 2003 concerning Manpower is an agreement between a worker and an entrepreneur or employer that contains the terms of employment, rights, and obligations of the parties. Prior to the enactment of the Manpower Act, provisions regarding work agreements were subject to Article 1601 a of the Private Code which provides the understanding that a work agreement is an agreement in which one party, namely the worker, binds himself to work for the other party, namely the employer, for a certain period of time by receiving wages. The contents of the work agreement, namely the subject matter, strictly speaking, the work agreed upon, must not conflict with the provisions in the law on public order or with the morals of the community.

Actually the entrepreneur PT. X is aware of the special terms of a work agreement for a certain time or a contract, such as his statement that "*Actually, it's a pity that workers don't move if I hold my certificate, after several complaints they asked for a certificate and I opened up the labor regulations. A few days ago I was also called by the Department of Manpower so I knew it was against the rules, so I changed the terms and conditions for recruiting employees. Now if you are accepted to work here, sign the agreement in front of a notary. The contents of the written agreement, if you leave, you will be penalized.*"

From the explanation above, we can see that the agreement is a tool to obtain a set of rights and obligations so that the parties have a legal basis in carrying out their actions. However, lately we often find that in work agreements there are clauses that require the detention of certificates for the duration of the employment contract, the detention of certificates is carried out as a guarantee of professionalism at work, the original

certificates of workers are used as guarantees for the employment contract between the company and the worker. The word guarantee in development undergoes an expansion of interpretation, which basically guarantees objects are something that has material properties, can be transferred and has economic value. However, none of these three elements lead to a certificate because the certificate cannot be transferred or is personal and has no economic value.

The function of a certificate in the world of work is only as an attached condition that we have graduated in the world of education. The company's employment contract agreement with the employee, because the contract already has consequences. The threat of punishment or penalty in wages is actually enough without having to withhold a certificate.

According in Article 1320 of the Private Code, there are several things that need to be considered in making an agreement, at first glance they are almost the same as the requirements in Article 52 paragraph (1) of Law Number 13 of 2003 concerning Manpower and Law No. 11 of 2020 concerning Job Creation, namely:

- a. Agree is that the two legal subjects who enter into the agreement must agree on the main points of the agreement that is entered into. Whatever is desired by one party is also desired by the other one, so they want the same thing reciprocally.
- b. Capable of making an agreement, the legal subject (person) who makes an agreement must be competent according to law. In principle, every person who is growing up or mature and in sound mind is capable according to the law. People who are not capable of making an agreement according to Article 1330 of the Private Code are minors, those who are placed under guardianship, women in matters determined by and everyone to whom the law has prohibited making certain agreements.
- c. Regarding a certain thing, what is meant by a certain thing is something that is agreed upon. The type of goods intended in the agreement must at least be determined.
- d. A lawful cause because in Dutch it is called *oorzaak*, or in Latin *causa* means the contents of the agreement. So what is meant by the cause or cause of an agreement is the content of the agreement itself.

The four conditions above can be divided into subjective conditions (agree and capable) and objective conditions (regarding a certain thing and a lawful cause). If the subjective conditions are not met or one or the parties are under pressure or coercion, the agreement can be canceled, the legal basis used in the cancellation of the agreement is Article 1321 Jo. Article 1323 of the Private Code.

Article 1321 states that no agreement has the power if it is given by mistake or obtained by coercion or fraud and Article 1323 states that coercion carried out against a person who entered into an agreement results in the cancellation of the agreement in question, also if there is coercion carried out by an unauthorized third party. In the agreement made using this basis the agreement should be cancelled.

Other articles that can be used as the basis for the cancellation of an agreement are Article 1335 of the Private Code and Article 1337 of the Private Code, Article 1335 of the Private Code states that an agreement without cause, or made based on a false or prohibited cause has no power. Article 1337 states that a cause is prohibited if the cause is prohibited by law or if the cause is contrary to decency or public order. Halal, such as

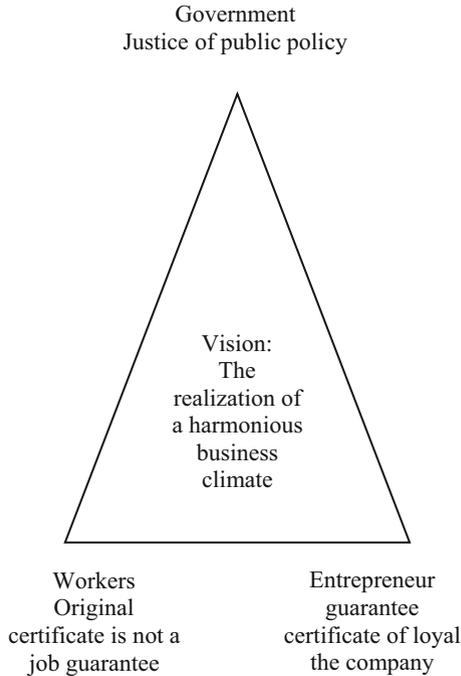


Chart 2. Parties in Industrial Relations

the detention of a worker's certificate by the company, the agreement can be canceled because it does not have legal force, and is a violation of human rights committed by the company with workers.

Guaranteed certificate by the company is a violation of human rights. Based on reason, humans have the freedom to decide their own behavior or actions. Besides, to compensate for this freedom, humans have the ability to be responsible for all actions taken. These basic freedoms and basic rights are called human rights which are inherent in humans by nature as a gift from God Almighty. The state, government, or any organization has the obligation to recognize and protect human rights for every human being without exception, this means that human rights must always be the starting point and goal in the implementation of community life, nation and state. The obligation to respect human rights is reflected in the Preamble to the 1945 Constitution of the Republic of Indonesia which animates the entire article in its body.

Public policy on employment means a series of plans in carrying out something for the needs of workers and employers, which are implemented by the government [19]. The relationship between several parties in public policy on employment can be seen in Chart 2.

The government's vision is to create a harmonious business climate and industrial relations. The form of public policies issued by the government can be in the form of binding legal regulations (*juridischvorm*), for example laws, government regulations, governor regulations, regional regulations, and others. Public policy related to employment is a concept that goes through stages.

Based on the explanation above, there are several rights that are owned by everyone, one of which is the right to work and a decent living. Nowadays, it is very difficult to get a job, the number of workers and the employment field is not balanced, causing pressure for workers because they need work to continue their life. This is a good opportunity for the company, the position of the company has the upper hand so that sometimes the company acts arbitrarily to workers, one of which is in making work agreements.

Article (1) number 1 of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights states that rights are a set of rights that are inherent in the nature of humans as creatures of God Almighty and are gifts that must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity.

The definition of the above rules means that everyone, including workers, has the most essential rights that must be respected by anyone, whether it is related to the detention of certificates carried out by the company. Workers have the right to use their certificates without having to be detained by the company, if the company makes a detention it is a violation of rights, a violation of rights in article (1) number 6 of the Republic of Indonesia Law no. 39 of 1999 concerning Human Rights is every act of a person or group of people including state apparatus, whether intentional or unintentional or negligence which unlawfully reduces, hinders, limits and or revokes the human rights of a person or group of people guaranteed by law. Workers do not have to worry if they will not get a fair and correct legal solution, based on the applicable legal mechanism.

Analysis of the practice of withholding employee certificates as collateral in the employment relationship at PT. X is reviewed legally and normatively. In this chapter, the authors provide responses related to practices that are actually seen from the perspective of labor inspectors, which based on the provisions of violations of Human Rights (HAM) and Labor Law can harm employees as weak parties. However, it is undeniable that there are strong factors from the company behind in making this policy. Therefore, seriousness is needed in efforts to reconstruct strict laws and regulations in order to create a progressive and dignified business world without any party being harmed.

Forms of legal protection for workers are preventive and repressive [20]. This legal vacuum is used as an excuse for employers to bind workers, so that a worker cannot change jobs before the end of the employment relationship [21]. The law can strictly regulate the settlement of this employment case [22]. The repressive legal process is then carried out at the agency authorized to make Case Reports (BAP) regarding articles that are violated from the rules of a country [23]. The formation of the Indonesian state consists of three elements, namely the existence of territory, the existence of citizens, and the existence of a sovereign government formulating public policies to regulate the state and recognition from other countries as a declarative form [24].

The author assumes that if the meaning of wage justice from the workers and employers is the same and the solution is so that neither the workers nor the employers are

harmed, then the work agreement is signed with a notary. The notary collective agreement is a strong rule if one of the violations gets a sanction in the form of payment of compensation to the injured party. The agreement signed by a notary has been implemented at PT. X, so that if the worker leaves the job before the contract period ends due to personal desire, the worker pays the remaining wages during the time out until the contract period expires to the company.

Workers no longer think about guaranteeing a certificate anymore, but are responsible for paying a certain amount of money as a consequence of a penalty to the injured party, namely the company. On the other hand, if the entrepreneur terminates the employment relationship before the contract period ends, the employer is obliged to pay compensation to the worker.

Article 52 paragraph 1 of Law Number 13 of 2003 concerning Manpower, there are several things that underlie the making of a work agreement, namely the agreement of both parties, the ability or ability to carry out an unlawful act, the existence of the agreed work, and the agreed work does not conflict with order. General, decency, and applicable laws and regulations.

The whole series of discussions, contains conclusions from the discussion on the problems that have been raised by the author, so as to clarify the answers to the problems studied. The discussion of the main problems in the introductory chapter is the result of the compiler's thoughts based on the analysis of primary and secondary data obtained for the development of the implementation of the duties of the labor inspector for both theoretical and practical terms in order to achieve the benefit of the workers and the company based on the applicable labor regulations.

4 Conclusion

The obligation to submit the latest original certificate as a work bond while working in the company and settlement of trade receivables. Efforts to protect labor law related to the case of detention of certificates are through Law Number 13 of 2003 concerning Employment of Jo. Law Number 11 of 2020 concerning Job Creation Jo. Regional Regulation of East Java Province Number 8 of 2016 concerning Employment Implementation. This legislation is intended so that the practice of holding a certificate as a guarantee in this employment relationship has a clear legal umbrella, the rights and obligations of the parties are guaranteed for the achievement of the progress of the business world that aims for the benefit. So anyone, who terminates the employment relationship before the employment contract ends, is obliged to pay as a penalty to the injured side.

For workers, in the future to read more fully and understand the purpose of a work agreement. Don't be forced to sign an agreement that has burdensome conditions, and if you want to apply for a job, it would be better to first find information about the track record of the prospective company. For companies, company regulations are guidelines for working conditions and company rules and regulations, so it is necessary to write in detail about violations of trade receivables. For the government, efforts to reconstruct the labor law must be implemented immediately, *ubi societas ibi ius*, where there is a community, there is law. Therefore, the law must always develop according to the need to be able to accommodate various developing problems. Employment laws and regulations

must regulate guarantees in employment relations, both certificates and other goods. In order to achieve good labor protection and treatment without discrimination for the sake of achieving the progress of the business world. The Department of Manpower needs to disseminate information to companies so as not to withhold certificates because it is a violation of human rights and a Private offense. All parties concerned, whether it is the Department of Manpower, companies and workers, should be guided by labor regulations as a form of solution in maintaining working relations without holding a certificate.

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