


The Concept of Restitutive Guarantee in Employment Relations: Normative Reconstruction of Training Bonds and Cost Recovery Agreements in Indonesia

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ABSTRACT

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Job training has become a strategic investment in contemporary employment relations, yet the absence of clear regulatory frameworks governing training cost reimbursement in Indonesia generates legal uncertainty and normative tensions between employers and employees. Practices such as training bonds and cost recovery agreements often blur the distinction between legitimate investment protection and restrictions on labor mobility. This study aims to develop a normative reconstruction of training cost reimbursement through the concept of restitutive guarantees. This research employs a normative legal approach, combining statutory, conceptual, and limited comparative analyses, complemented by hypothetical normative illustrations as a normative stress test to assess the legitimacy of workers' financial obligations in structurally asymmetric employment relationships. The findings demonstrate that training cost reimbursement is normatively justifiable only when it is limited to actual, verifiable, proportionate, and unamortized costs, and when it functions as a restitution mechanism rather than a contractual penalty. The proposed concept of restitutive guarantees establishes a coherent legal framework grounded in the principles of proportionality, transparency, and non-coercion. This study contributes to labor law discourse by clarifying the legitimate boundaries of workers' financial obligations and offering a normative model that reconciles employer investment protection with workers' freedom of mobility. It also provides a conceptual basis for future labor law policy development in Indonesia within an internationally relevant framework.



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Introduction

Contemporary employment relations are increasingly shaped by growing demands for skills development, workforce adaptability, and lifelong learning. In this context, job training has become a strategic instrument for enhancing productivity and competitiveness, while simultaneously improving workers' professional capacity. However, the expansion of employer-funded training investments raises critical normative concerns regarding the distribution of risks and benefits, particularly when employment relationships terminate before training benefits are fully internalized (OECD, 2021; World Bank, 2023).

In practice, these risks are commonly managed through contractual mechanisms such as training bonds and cost recovery agreements. While intended to protect employers' investments, these mechanisms often generate normative tensions by blurring the boundary between legitimate cost recovery and restrictions on labor mobility. Existing labor law scholarship highlights that the increasing "contractualization" of employment relations risks undermining the protective function of labor law, especially when contractual obligations are assessed without considering structural inequalities in bargaining power (Davies, 2021).

In Indonesia, this issue is further exacerbated by the absence of a clear and comprehensive regulatory framework governing training cost reimbursement. Practices such as diploma retention, security deposits,

and penalty clauses remain prevalent, despite their questionable legality and potential conflict with worker protection principles (Prawibumi, 2025). This regulatory vacuum creates a dual imbalance: employers lack legal certainty regarding training investments, while workers remain vulnerable to coercive or opaque contractual arrangements.

At the international level, regulatory and policy developments emphasize the need to balance labor market flexibility with worker protection. Instruments such as Directive (EU) 2019/1152 and guidelines from the International Labour Organization (ILO) and OECD stress that training cost recovery mechanisms must be proportionate, transparent, and must not restrict labor mobility. However, these standards remain fragmented and have not been sufficiently developed into a coherent normative legal framework, particularly in contexts characterized by structural asymmetry in employment relations.

Against this backdrop, this article addresses the following research question: how can training cost reimbursement be normatively formulated to ensure legal certainty for employers while safeguarding workers' protection and freedom? This study argues that approaches framing training cost reimbursement as a contractual penalty are inadequate, as they fail to account for the structural nature of employment relationships.

As an alternative, this article proposes the concept of *restitutive guarantees* as a distinct normative legal construct. This concept repositions training cost reimbursement as a limited restitution mechanism based on actual, verifiable, proportionate, and unamortized costs. By doing so, it establishes a clearer boundary between legitimate investment recovery and coercive contractual practices.

The novelty of this study lies in its normative reconstruction of an existing practice into a coherent legal framework grounded in the principles of proportionality, transparency, and non-coercion. By integrating national context with international standards, this article contributes to labor law discourse by articulating the legitimate limits of workers' financial obligations and offering a conceptual foundation for future policy development in employment law.

Method

This study adopts a normative legal research design aimed at analyzing and reconstructing the normative framework governing the reimbursement of training costs in employment relationships. Rather than conducting an empirical assessment of industrial practices or judicial decisions, the research focuses on formulating a legal construct that balances the interests of employers and employees within structurally asymmetric employment relations.

A statutory approach is employed to examine Indonesia's labor law framework, particularly regulations concerning employment agreements, worker protection, and the principle of freedom of work. This analysis is conducted both textually and systematically to identify regulatory gaps, especially the absence of explicit provisions governing training cost reimbursement, and to assess the internal coherence of existing legal norms.

In addition, a conceptual approach is used to develop the notion of *restitutive guarantees* as a normative legal construct. This approach is grounded in core principles of contract and labor law, including proportionality, transparency, non-coercion, and the protection of weaker parties. It enables a normative reconstruction of existing practices—such as training bonds and cost recovery agreements—within a framework oriented toward substantive justice.

A limited comparative approach is also applied by referring to international labor standards and policy frameworks, including those developed by the International Labour Organization (ILO), the OECD, and the European Union. This comparison does not aim to transplant foreign legal systems, but rather to extract general normative principles that inform the formulation of *ius constituendum* in Indonesian labor law.

To enhance analytical rigor, this study employs hypothetical normative illustrations as a *normative stress test*. These illustrations serve to evaluate the internal coherence and legitimacy boundaries of the proposed concept—particularly in relation to proportionality, transparency, and the amortization of training benefits—within asymmetric employment relationships.

This research deliberately excludes empirical data and jurisprudential analysis to maintain methodological consistency with its normative-conceptual objective. Instead, limited references to international legal trends are used as indicative frameworks for understanding broader developments in labor law discourse.

Through this design, the study aims to produce coherent, measurable, and theoretically grounded normative arguments, contributing to the development of a balanced and internationally relevant framework for regulating training cost reimbursement in employment relations.

Results and Discussion

Result

In normative legal research, findings are derived from the analysis of legal norms, principles, and policy frameworks rather than empirical observation. This study identifies the legal character and legitimate boundaries of training cost reimbursement within employment relationships.

The analysis confirms that job training is widely recognized as a strategic investment in human capital development. However, its sustainability depends on legal certainty regarding the allocation of post-training risks and benefits, particularly in contexts of high labor mobility (OECD, 2021; World Bank, 2023).

International standards consistently indicate that training cost reimbursement should not function as a penalty for termination of employment, but rather as a limited mechanism governed by proportionality and transparency. The International Labour Organization (ILO) emphasizes that such obligations are only legitimate when they do not restrict workers' mobility or create coercive employment relationships. Similarly, European practices—such as payback clauses—demonstrate that reimbursement is typically limited to specific training types, subject to defined time periods, and gradually reduced based on post-training service duration (CEDEFOP, 2024).

In contrast, Indonesian labor law reveals a significant normative gap. There are no explicit provisions regulating the scope of reimbursable costs, the duration of obligations, or the amortization of training benefits. This absence of regulation allows for potentially abusive contractual practices, including disproportionate financial obligations and non-transparent agreements.

Accordingly, the core issue lies not in the existence of reimbursement obligations, but in the absence of a clear normative framework distinguishing legitimate restitution from coercive contractual penalties. These findings establish a strong normative basis for developing a restitutive, limited, and measurable model of training cost reimbursement, forming the foundation for the concept of *restitutive guarantees*.

Discussion

The findings highlight that the legitimacy of training cost reimbursement depends fundamentally on its normative design. In structurally asymmetric employment relationships, financial obligations imposed on workers cannot be justified solely by formal contractual consent, but must be evaluated against principles of worker protection and substantive justice.

The concept of *restitutive guarantees* is proposed to address this gap by repositioning training cost reimbursement as a restitution-based mechanism rather than a contractual penalty. Its legitimacy derives from compliance with core legal principles—proportionality, transparency, and non-coercion—rather than from contractual agreement alone.

A hypothetical normative illustration clarifies this framework. Where an employer funds specialized training with measurable and verifiable costs, reimbursement may be justified only for the unamortized portion of those costs if the worker leaves before the benefits are fully internalized. Crucially, such obligations must be proportionate, transparently defined from the outset, and must not restrict the worker's freedom to terminate employment. This demonstrates that investment protection can be achieved without transforming reimbursement into a coercive mechanism.

This analysis further confirms that without clear normative limitations, reimbursement mechanisms risk shifting from restitution to disguised penalties. Therefore, restitutive guarantees require strict boundaries, including limitations on eligible costs, reasonable repayment periods, and measurable amortization mechanisms based on post-training service.

The proposed framework aligns with broader developments in labor law, which critique the excessive contractualization of employment relationships. By restricting reimbursement to tangible and unamortized investments, restitutive guarantees function as a corrective mechanism that preserves the protective character of labor law.

At the same time, the framework acknowledges potential risks of abuse in contexts of unequal bargaining power. To prevent such risks, normative safeguards—particularly transparency, proportionality, and clear limitation of obligations—are essential. From a risk allocation perspective, restitutive guarantees offer a balanced model: they allow partial recovery of employer investment while preserving workers' mobility as a fundamental principle.

Importantly, restitutive guarantees are not a universal solution applicable in all contexts. Their legitimacy must be assessed based on the nature of training, cost structure, and employment conditions.

Without such contextual differentiation, the mechanism risks undermining its restitutive function and reverting to a restriction on labor mobility.

Thus, the primary theoretical contribution of this study lies in defining the legitimate limits of workers' financial obligations within asymmetric employment relationships. By reframing training cost reimbursement as a matter of restitution rather than contractual sanction, this study advances labor law discourse and provides a coherent normative foundation for more equitable regulatory frameworks.

From a legal policy perspective, restitutive guarantees offer a structured approach to regulating training cost reimbursement. Rather than prohibiting such mechanisms or leaving them entirely to contractual discretion, this framework supports proportionate and transparent regulation, ensuring alignment between employer investment protection and workers' freedom of mobility.

Conclusion

This study demonstrates that the absence of explicit regulation on training cost reimbursement in Indonesian labor law creates legal uncertainty and disrupts the balance of interests within employment relationships. In such conditions, practices such as training bonds and cost recovery agreements develop without clear normative boundaries, risking a shift from legitimate investment protection to coercive mechanisms that undermine worker protection.

The findings confirm that the core issue does not lie in the existence of reimbursement obligations, but in the lack of a coherent normative framework governing their design and limits. By employing a normative legal approach—supported by statutory, conceptual, and limited comparative analyses, as well as hypothetical normative illustrations as a *normative stress test*—this study proposes the concept of *restitutive guarantees* as a normative reconstruction of training cost reimbursement.

Restitutive guarantees redefine reimbursement as a limited and principled mechanism, confined to actual, verifiable, proportionate, and unamortized costs, and implemented in a transparent and non-coercive manner. This framework clearly distinguishes legitimate restitution from contractual penalties, thereby reaffirming the protective function of labor law in structurally asymmetric employment relationships.

The main contribution of this study lies in articulating the legitimate limits of workers' financial obligations through a coherent and measurable normative framework grounded in international labor standards. It demonstrates that the protection of employer investment and the preservation of workers' mobility are not inherently contradictory but can be reconciled through proportionate legal design.

From a legal policy perspective, the findings highlight the need for limited and structured regulation of training cost reimbursement in Indonesian labor law. Such regulations should define eligible cost categories, establish reasonable repayment periods, and incorporate transparent and measurable amortization mechanisms to ensure that reimbursement functions as a tool for legal certainty rather than a restriction on labor mobility.

This study is limited by its normative-conceptual focus and does not examine empirical practices or jurisprudential developments. Future research is therefore recommended to explore the practical implementation of restitutive guarantees in employment contracts and dispute resolution, in order to assess how the proposed framework operates within real-world labor relations.

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