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## Age Restriction for Job Application from a Human Rights Perspective

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**Abstract:** Age restriction in applying for a job becomes an essential issue when it causes discriminatory consequences for job seekers, especially if it is caused by the provisions of Article 35 paragraph (1) of Law Number 13 of 2003 concerning Manpower which is considered vague so as to provide a legal loophole for discriminatory actions in providing employment opportunities by employers. The purpose of this study is to examine the vagueness of norms in Article 35 paragraph (1) of the Manpower Law and human rights issues in limiting the age of applying for a job. Examining the problems from the existing laws and doctrines, this research uses normative research methods with the focus of the study is on the norms governing the age restriction of job applications in terms of human rights perspectives and concepts. The results show that the purpose of Article 35 paragraph (1) does not provide an opportunity for discrimination but as a form of flexibility related to determining labor needs. The age limit for applying for a job is not a violation of human rights when viewed from the perspective of the main principles of human rights. The determination of age limit criteria is not specifically regulated and is not prohibited by positive legal provisions in Indonesia so that it cannot be said to be a form of discrimination in providing employment opportunities.

**Keyword:** Age Restrictions; Human Rights; Employment.

### INTRODUCTION

The condition of human resources (HR) in Indonesia today is still inversely proportional to the availability of job vacancies, this can be seen from the statistical data presented by the National Central Statistics Agency (BPS) regarding the open unemployment rate in Indonesia which is at 4.82% (Badan Pusat Statistik, 2024a) as of February 2024. Even though it has decreased by 0.63% from 2023, this figure is still quite high for Indonesia, which has the fourth highest population in the world, namely 278.82 million people (Mutia Annur, 2024).

Recently there has been a lot of discussion regarding job vacancies available in Indonesia which require age as one of the criteria that must be met by job seekers. The average age listed in job vacancies is in the age range of 22-25 years, in other words the

maximum age to apply for a job is 25 years for a person. *fresh graduated* (Mailoa, 2024). It is rare to find job vacancies that do not require age as one of the criteria. This is certainly considered as one of the obstacles to someone getting a job which is also indirectly said to be one of the factors causing the high unemployment rate in Indonesia.

Limiting the maximum age for applying for a job is even considered a form of discrimination which results in unequal opportunities given in applying for a job, this was stated in a petition for judicial review at the Constitutional Court submitted by Leonardo Olefins Hamonangan (Kartika, 2024). The law that is requested to be reviewed regarding the age limit for applying for work is Law Number 13 of 2003 concerning Employment (hereinafter referred to as the Employment Law) where the provisions of Article 35 paragraph (1) provide an opportunity for employers to determine their own criteria for employment. required is considered a vague norm so that it can also be interpreted as a justification for age criteria in job vacancies (Kartika, 2024).

Age discrimination or also known as *ageism* according to Rodin & Langer in Social Psychology, Prejudice and Discrimination is prejudice or discrimination carried out against someone based on their age (Putri et al., 2024). Issues *ageism* This is a form of discrimination associated with age restrictions for applying for jobs which means that everyone does not receive the same treatment when applying for jobs because of their age. The constitution clearly stipulates that everyone has the same right to obtain work and a decent living (Article 27 paragraph (2)), this right is part of human rights regulated in Article 28D paragraph (2), so *ageism* This is considered a form of discrimination or violation of human rights (HAM).

The age limit for applying for jobs in Indonesia has recently become popular compared to the availability of job vacancies abroad where age is not an obstacle to getting a job. Even women who are 50 years old can still get a job easily as long as they can do the job well, unlike in Indonesia which requires a maximum age so that applying for relatively easy types of work is also very difficult if the age is not within the required criteria. Therefore, age restrictions for applying for jobs are very fraught with issues of discrimination because they do not provide equal opportunities for job applicants based on the age limit. This needs to get the government's attention because it is considered to have violated human rights, especially as it is also one of the reasons why the unemployment rate in Indonesia has not decreased.

The provisions of Article 35 paragraph (1) of the Manpower Law are considered to provide a legal loophole that can be exploited by job providers to select workers with relatively young age limits and does not provide equal opportunities for people who are still productive to get work on the grounds of "necessary labor." or needed." The provisions of Article 35 paragraph (1), which are said to be vague, also cause certain groups of certain ages to be prevented from occupying careers or positions that they should be able to obtain. Padmo Wahjono stated that laws can violate human rights and can be divided into 2 (two) types, namely: violating in the sense of eliminating them completely, and violating in the sense of inadequately providing facilities for the proper implementation of human rights (hindering implementation). He also added that the laws in question can be divided into 2 (two) groups, namely: those that organize state life (state administration/politics), and those that organize social welfare (Rini, 2018).

Through this research, it will be studied in more depth whether age restrictions in applying for jobs are indeed a human rights violation that occurs due to the blurring of norms in Article 35 paragraph (1) of the Manpower Law or whether it is actually not a human rights violation. Similar research has been carried out by Shelomita Putri Amelia, et al which was published in a journal TERANG: Journal of Social, Political and Legal Studies with the title "The Influence of Age Requirements on Job Opportunities for Workers in Indonesia" (Amelia et al., 2024). The difference lies in the specifics of the issue being studied, the author's article focuses on a human rights perspective while the other journal article discusses the influence of age requirements. Another article discussing age restrictions is entitled

“*Ageism as Symbolic Violence against Women in the Workplace*” written by Pitriyani, Tutin Aryanti in the Indonesian Journal of Sociology, Education and Development (IJSED) (Aryanti, 2024), however, this article was written in the realm of Sociology, not Law, and the focus is on gender issues, so it is basically different from the author's article.

The aim of writing this article is to examine Article 35 paragraph (1) of the Manpower Law and analyze the issues *ageism* and discrimination in age restrictions for applying for jobs seen from a human rights perspective.

## METHOD

Based on the legal issue studied, namely the ambiguity of norms in Article 35 paragraph (1) of the Manpower Law, this research uses normative legal methods. Apart from testing an applicable norm or regulation, this research also focuses on research using library materials so that judging from its characteristics, this research is normative research (Irwansyah, 2020). The approach used is the statutory regulation approach (*statute approach*) by reviewing the rules related to the issues discussed, the conceptual approach (*conceptual approach*) by examining concepts, principles and doctrines to dissect the legal issues discussed (Nurhayati et al., 2021) and Analytical Approach (Irwansyah, 2020) (*analytical approach*) by examining the meaning of principles, rules, systems and juridical concepts to find the meaning contained in Article 35 paragraph (1) of the Manpower Law.

## RESULTS AND DISCUSSION

### Regulations for Determining Labor Criteria in Indonesian Positive Law

Before discussing the regulation of labor criteria, it is necessary to understand the meaning of labor and employers as related parties so that the discussion is comprehensive. In the Manpower Law Article 1 number 2, labor is regulated as every person who is able to carry out work to produce goods/services both to meet their own needs and those of society. It should be understood that the workforce referred to has a broader meaning than workers/laborers, this understanding is in line with the opinion of several experts, including Payaman Simanjuntak, who provides the understanding that labor includes workers/laborers who are bound by an employment relationship and workers who have not yet work, then S. Mulyadi argued that labor (*man power*) is basically the population of working age or productive age (15-64 years) (Prajnaparamita, 2018). Meanwhile, employers are individuals, entrepreneurs, legal entities, or other bodies that employ workers by paying wages or other forms of compensation (Article 1 number 4 of the Manpower Law).

In order to obtain or recruit workers, employers will usually issue announcements called job vacancies to screen the required workforce. In the job vacancy, the employer explains the criteria or requirements needed for workers to become workers. As explained previously, one of the criteria that usually appears in job vacancies is the age requirement which then develops as an issue of human rights violations because it is considered discrimination, known as *ageism* because it provides a relatively young age limit, namely the most dominant range between 18 – 35 years. This means that those over 35 years of age are not given the opportunity to apply for the job, while those over 35 years of age are still of productive age or working age. Regarding the issue of human rights violations, it is necessary to pay close attention to the regulations regarding determining labor criteria, whether they are in accordance with applicable regulations or whether they violate regulations.

The first regulation that must be looked at is the Employment Law as the umbrella for employment law in Indonesia. The Manpower Law does not specifically regulate the provisions for determining labor criteria in an article, but this does not mean that the norms are empty. Determination of labor criteria seen in the provisions of Article 35 paragraph (1) tends to provide freedom for employers in determining labor recruitment based on the needs of the employer. This means that employers have the freedom to determine the

criteria/requirements that workers must fulfill in order to become workers as required by the employer. The freedom granted by the Manpower Law is not unlimited freedom because the provisions of other articles regulate several things which serve as guidelines, including:

- a. Article 5 is to provide equal treatment and opportunities to workers without discrimination. This article is one of the foundations for determining the required labor criteria as regulated in Article 35 paragraph (1);
- b. Article 39 paragraph (2) is an effort to expand employment opportunities both inside and outside the employment relationship where this is pursued by the government and society together. The meaning is that this provision gives responsibility to the community, in this case employers, to pay attention to matters to support the expansion of employment opportunities, which means that determining criteria should not limit opportunities for workers;
- c. Article 68, it is prohibited to employ children. Employers are prohibited from employing children (anyone who has not reached productive age) meaning that the criteria for determining labor must ensure that employers do not recruit children as workers.

The Manpower Law does not specifically determine/regulate matters to determine the criteria/requirements for job vacancies created by employers as long as there are no statutory regulations that determine otherwise. This also means that the Manpower Law provides an opportunity for regulations under it to stipulate special provisions that are adapted to certain situations and conditions, for example, Berau Regency Regional Regulation Number 8 of 2018 concerning Protection of Local Workers which requires employers, especially companies, to make efforts to fill vacancies. work with at least 80% local workforce according to the required requirements and qualifications (Article 20 paragraph (1) (Susmiyati & Susanti, 2019). If it is regulated in such a way, it means that there are special things that must be included in determining the criteria for workers, one of the criteria being that they must be local residents. Of course, these arrangements have been adjusted to the situation and conditions in Berau Regency.

Another law that needs to be taken into account is Law Number 40 of 2007 concerning Limited Liability Companies, in Article 1 number 3 it is regulated that Limited Liability Companies (PT) are given social and environmental responsibilities by the State to participate in sustainable economic development. One of the things on the agenda for sustainable economic development is creating prosperity and improving the standard of living of the Indonesian people (Yorisca, 2020), this indirectly relates to overcoming the problem of unemployment so that PT can be said to also be responsible for reducing the unemployment rate. With the imposition of large responsibilities, the provisions of Article 35 paragraph (1) of the Manpower Law are actually a natural consequence to accommodate the continuity of PT as an employer.

It does not specifically regulate the procedure for determining labor criteria by employers, but only provides guidelines which limit it as a form of flexibility in the Employment Law in responding to the challenges of situations and conditions which may very well differ in the territory of the Unitary State of the Republic of Indonesia. Nor can it be said to be giving freedom to employers to determine employment criteria that are discriminatory in nature because there are still limitations in determining employment criteria according to what has been described.

### **Age Restrictions for Applying for Jobs Seen from a Human Rights Perspective**

In general, it can be known that human rights (HAM) are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government and every person. for the sake of honor and protection of human dignity as regulated in Law Number 39 of 1999 concerning Human Rights (hereinafter referred to as the Human Rights Law). On the

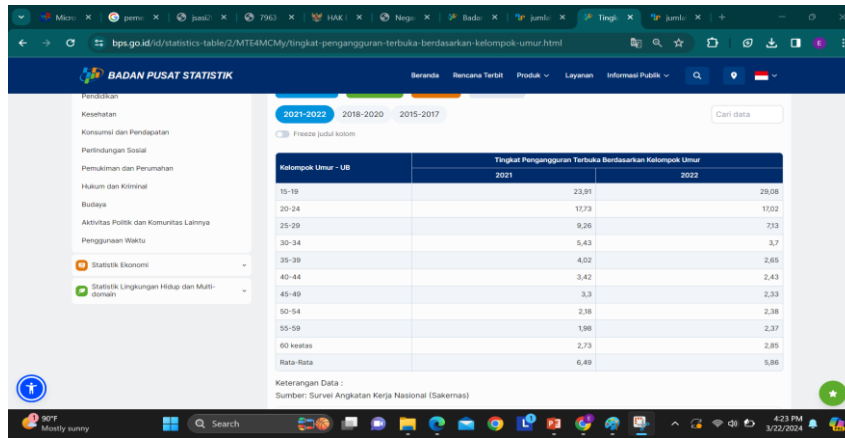
other hand, *Universal Declaration of Human Right* (UDHR) provides an understanding of human rights as freedom and equality of rights and degree/dignity obtained from birth as regulated in Article 1. From these two provisions, there are at least several things which are the main elements in human rights, namely: the right to life, the right not to be persecuted, freedom and equality without discrimination. From these points it appears that discrimination is one of the main elements that must be considered in the implementation of human rights (Maylani et al., 2022).

Human rights theoretically have principles that serve as a guide in ensuring their implementation and protection. Internationally recognized human rights principles include (Erika & Suryaningsi, 2022): universal, equal, non-discriminatory, *inalienable* (cannot be revoked), *interrelated* (connected to each other), *interdependent* (interdependent), and *indivisible* (cannot be divided). Of these principles, some related to the legal issues discussed are as follows:

- a. The principle of equality means that everyone is born free and has equal human rights. In the principle of equality, this is known as existence **affirmative action** (positive discrimination) which occurs when someone from a different place is treated asynchronously, because if the service is the same there will certainly be a gap (Erika & Suryaningsi, 2022). This affirmative action requires the same treatment in the same situations and conditions but different treatment for different situations and conditions.
- b. The principle of non-discrimination is to give equal treatment to everyone without discriminating in terms of ethnicity, ethnicity, religion, race, ethnicity, social status, skin color, ideology and so on (Hamidah, 2021).
- c. Positive Obligation to Protect Certain Rights, namely that the State must not deliberately ignore rights and freedoms. On the other hand, the State is assumed to have a positive obligation to actively protect and ensure the fulfillment of rights and freedoms (Ilyasa, 2020).

Regarding age restrictions in applying for jobs which are specified in the labor criteria which are usually included in job vacancies, it is necessary to first examine the related human rights aspects. The right to obtain work is regulated in the 1945 Constitution of the Republic of Indonesia, including in Article 27 Paragraph (2), Article 28D Paragraph (2), Article 28H Paragraph (2) which was then reduced to Article 38 Paragraph (1) to Paragraph (4) of the Human Rights Law. The governing international instruments are *International Covenant on Social, Economic dan Cultural Rights (ICSECR)* Articles 6 and 7 (Ardianto & Farisi, 2021). In general, all these provisions require the fulfillment of the right to work, the provision of equal opportunities as well as legal protection and justice as well as welfare for everyone in terms of work. The fulfillment of these rights by the State is reflected in the formation of the Employment Law which aims to provide protection for workers in obtaining and carrying out a job. However, the provisions of Article 35 paragraph (1) are considered to provide gaps in different interpretations, resulting in actions that are considered discrimination in providing employment opportunities, namely age restrictions. Age restrictions in applying for jobs are considered not to provide equal opportunities for everyone to get a job and tend not to look at the competence and experience they have so that it appears to violate human rights principles or can be said to be a violation.

Analyzing the facts presented through National BPS data, the number of open unemployed is based on age group, the first position is occupied by the 15-19 year age group, namely 25.77% with the following data (Badan Pusat Statistik, 2024b):



Source: Badan Pusat Statistik  
**Figure 1. Open Unemployment Rate by Age Group, 2021-2023**

From this data, it can be seen that the age group with the highest unemployment rate is in the most productive age group, namely the 15-35 year age range. Meanwhile, for the age group over 35 years, the unemployment rate tends to be much lower. To overcome this, of course the government can issue policies that have a positive impact on national economic development, including implementing the Employment Law. Under these conditions, labor absorption which is more focused on the 15-35 year age group is a natural thing, moreover, this can be categorized as affirmative action to overcome unemployment. It can also be categorized as a positive obligation to protect certain rights, in this case what is meant is the age group with the highest unemployment rate. However, the State does not make specific regulations considering that there are no laws and regulations that require and/or prohibit job application requirements, so that the age restrictions required for job vacancies are purely the needs of employers.

According to Theodor son & Theodor son, discrimination is unequal treatment of individuals, or groups, based on something, usually categorical, or distinctive attributes, such as based on race, ethnicity, religion, or membership of social classes. This term is usually used to describe an action by the dominant majority in relation to a weak minority, so that it can be said that their behavior is immoral and undemocratic (Fulthoni, 2009). Age restrictions or *ageism* as a form of discrimination If we examine it, basically all existing laws and regulations in Indonesia prohibit acts of discrimination. Article 28G paragraph (2) of the 1945 Constitution of the Republic of Indonesia regulates that "Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment", furthermore the Human Rights Law regulates in Article 1 point 3 that,

“Discrimination is any restriction, harassment or exclusion that is directly or indirectly based on human differences on the basis of religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs, which results in the reduction, deviation or elimination of recognition, implementation or use of human rights and basic freedoms in both individual and collective life in the political, economic, legal, social, cultural and other aspects of life.”

There is no mention of age as an indicator of discrimination. In line with the Constitutional Court Decision Number 35/PUU-XXII/2024, that basically acts of discrimination are not related to age limits, work experience and educational background. Legal protection for the right to obtain equal opportunities in employment and not be discriminated against is also regulated in Article 5 of the Employment Law which was discussed previously.

This is different from discrimination which is based on differences in wage payments for the same job, although wages are not included in the category of forms of discrimination, differences in wage payments for the same job are a violation of the right to receive wages, meaning that rights will be reduced as a result of the difference in payment (Radha & Uwiyono, 2023). The age limit for applying for jobs cannot be interpreted as a violation of human rights because it does not violate the main principles of human rights and cannot be categorized as an act of discrimination. This is analyzed using the laws and regulations that apply in Indonesia as well as those that apply internationally and jurisprudence.

## CONCLUSION

In Indonesian positive law there are no provisions that specifically regulate or prohibit the determination of labor criteria that must be determined by employers. The provisions of Article 35 paragraph (1) are a form of flexibility provided by the Manpower Law as a consequence to support employers in carrying out social, economic and environmental responsibilities. The age restriction required when applying for a job does not constitute discrimination by employers because it does not violate the main principles of human rights and does not fall into one of the categories of forms of discrimination. There are no regulations that require or prohibit age limits in employment criteria.

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