Jurnal Suara Hukum
Volume 6 Number 2, September 2024
P-ISSN:2656-534X, E-ISSN:2656-5358

Discrimination Related to Labour Age Limitation in Indonesia: A Human Rights and Comparative Law Perspective

Dicky Eko Prasetio[1], Muh. Ali Masnun[2], Arinto Nugroho[3], Denial Ikram[4], Noviyanti[5]

[1234]Faculty of Law, Universitas Negeri Surabaya, Surabaya, Indonesia,
[5]National Dong Hwa University, Taiwan, Province of China

✉Corresponding Author: dicky.23004@mhs.unesa.ac.id

Abstract

The existence of a maximum age limit for job applications in Indonesia presents societal challenges, as it has the potential to engender age-based discrimination, or ageism. This study aims to analyze the ratio decidendi of Constitutional Court Decision No. 35/PUU-XXII/2024, which addresses the maximum age limit for employment applications, while also examining human rights perspectives and legal comparisons related to maximum age limits in job vacancies in Indonesia. This research employs a normative legal methodology, utilizing case analysis, conceptual frameworks, legislative review, and comparative legal studies. The findings affirm that the ratio decidendi in Constitutional Court Decision No. 35/PUU-XXII/2024 concerning age limitations for certain job applications does not constitute discrimination, as age-based discrimination is not yet legislated in Indonesia. The maximum age limit in job vacancies can be classified as a form of ageism, which represents a type of discrimination based on age that should not be applied in the employment sector. Many countries, including Singapore, the Philippines, the United States, and Germany, have legislatively prohibited ageism and various forms of discrimination in job requirements and employment relationships. This study recommends that lawmakers revise the Labor Law to include ageism as a discriminatory practice.

Keywords: *Ageism, Human Rights, Employment, Comparative Law.*

A. INTRODUCTION

Restrictions related to the minimum working age are actually a problem for job seekers in the world, and Indonesia is no exception. Job vacancies in Indonesia often provide minimum and maximum age requirements for certain job vacancies. Generally, the minimum age limit for job vacancies in Indonesia is usually written as 'at least 17-18 years old' or often also added with the provision of 'at least 2 years of experience in the field'. In addition to the minimum age limit, job vacancies in Indonesia also commonly include a maximum age limit in job vacancies. In practice, it is common for job advertisements in Indonesia to include a maximum age limit in job advertisements, such as, 'maximum 30 years of age' (Dora Kusumastuti, Joko Pramono, 2023).

In relation to the minimum age limit for job vacancies in Indonesia, which often lists a minimum age of 17-18 years old, it can actually be understood because 17-18 years old is the age at which people have completed senior high school education or equivalent. This is also supported by the development of the age of adulthood in civil law which refers and sees the current reality, especially in the 21st century, can no longer refer to the provisions of Article 330 of the Civil Code (KUHPer) which mandates that the age of adulthood is 21 years or has been married (Manggin & Khutub, 2024). In its development, in Indonesia through the results of the civil chamber meeting held on 14-16 March 2012, the age of civil maturity is at least 18 years old or married (Tri, 2023). This further confirms that with the affirmation of the age of civil adulthood as 18 years old or married, it can be justified if the minimum age for job vacancies in Indonesia is 17-18 years old because in addition to the age of 17-18 years old a person is considered to have completed studies at Senior High School

or equivalent, also at the age of 18 years old civil law has been considered as an adult age and is ready to carry out work.

Problems related to the age of employment in Indonesia are actually more about the maximum age limit on job vacancies. In Indonesia, there is often a maximum age limit for a person to be able to work in a certain institution, which is usually formulated in the age of 'maximum 30 years'. In general, there is no logical and comprehensive argument why job vacancies in Indonesia often emphasise the age limit of 'maximum 30 years' for job seekers. This is because referring to Article 35 paragraph (1) of Law No. 13 Year 2003 on Labour (Labour Law) confirms that there is an effort for employers to recruit their own workforce. The phrase 'recruit their own' implies that employers have the authority to regulate their own labour requirements, including the maximum age limit of workers to be recruited. This is what actually underlies the majority of job vacancies in Indonesia stating a maximum age of '30 years old' as the maximum age for job seekers to apply for a job vacancy.

The existence of a maximum age limit of '30 years' as the maximum age for job seekers to apply for a job vacancy in Indonesia is what made Leonardo Olefins Hamonangan, who is a private employee from Bekasi City, West Java, then make a judicial review effort at the Constitutional Court (MK) (Kartika, 2024). Leonardo Olefins Hamonangan, as the applicant for the judicial review, felt that the provisions of Article 35 paragraph (1) of the Labour Law, which are editorially 'vague', actually became an 'entry point' for the requirements related to the maximum age limit of '30 years' as the maximum age for job seekers to apply for a job vacancy in Indonesia. In fact, the maximum age limit for job seekers to apply for a job vacancy in Indonesia

should actually be casuistic in accordance with the field of work being applied for along with other relevant considerations, such as special skills possessed by job applicants to the experience possessed by job applicants. This confirms that the provisions of Article 35 paragraph (1) of the Labour Law should be conditionally constitutional as long as the maximum age limit for job seekers to apply for a job vacancy is not discriminatory and there is careful consideration, especially in relation to certain types of work that require consideration of the expertise and/or work experience possessed by job seekers.

The judicial review effort carried out by Leonardo Olefins Hamonangan was finally decided by the Constitutional Court through Constitutional Court Decision No. 35/PUU-XXII/2024 (Constitutional Court Decision on Working Age Limit). The substance of the Constitutional Court Decision confirmed that the Constitutional Court rejected the applicant's petition in its entirety. One of the Constitutional Court's ratio decidendi in rejecting the judicial review petition was that the age limit provision in job vacancies could not be categorised as a form of discrimination. Referring to the provisions of Article 1 point 3 of Law No. 39/1999 on Human Rights (Human Rights Law), discrimination is generally interpreted as exclusion, distinction, harassment, and restrictions, both direct and indirect, on various aspects related to class, social and economic status, ethnicity, race, gender, language, religion, and political beliefs. The provision of Article 1 paragraph 3 of the Human Rights Law that does not include age as part of discrimination is what the Constitutional Court argues argumentum a contrario that age restrictions in job vacancies are actually not a form of discrimination.

The Constitutional Court's decision on the Working Age Limit with the ratio decidendi above, which asserts that age limits in job vacancies are actually not a form

of discrimination because age is not confirmed in the Human Rights Law as part of discrimination, is actually an incorrect decision. This is because in its development, the concept of discrimination also accommodates the concept of ageism, which is a form of discrimination related to a person's age. Ageism is usually carried out in the field of job vacancies where in ageism there is a perception and stigma that at a certain age individuals have lost their productivity in working so that at a certain age a job vacancy can be limited to a maximum job vacancy for a certain age (Okun & Ayalon, 2023). The practice of ageism has actually violated human rights, especially with regard to labour rights (Mikołajczyk, 2023). The conception of ageism or a form of discrimination related to a person's age that is usually carried out in the field of job vacancies is actually what has not been considered by the Constitutional Court in the Constitutional Court Decision on the Working Age Limit.

Research that discusses workers' rights, especially in relation to aspects of discrimination for workers, has actually been reviewed and analysed from three previous studies, namely: (i) research conducted by Safira, et. al. (2024) which focuses on the effect of age-based requirements for workers in Indonesia (Shelomita Putri Amelia et al., 2024). The novelty of Safira, et.,al.'s research is that in Indonesia, the age-based requirements for workers is that in Indonesia there is a legal vacuum so that age-based worker discrimination still occurs so that this tends to reduce human rights for workers, especially job seekers. Further research was conducted by (ii) Lestari and Santoso (2024) with the focus of discussion in the form of legal analysis related to the existence of brokers in job recruitment. One of the novelties in Lestari and Santoso's (2024) research is the need for special arrangements so that there are clear guarantees for workers, including law enforcement efforts for brokers who often use certain

conditions to include ‘entrusted workers’ such as age limits to attractive appearance requirements (Lestari & Santoso, 2024). Further research was also conducted by Pitriyani and Aryanti (2024) who analysed ageism practices on female workers. The novelty in Pitriyani and Aryanti's (2024) research is that the practice of ageism on female workers in Indonesia actually occurs due to symbolic violence in both the fields of gender and age on female workers in Indonesia (Pitriyani & Aryanti, 2024). This condition is influenced by the absence of a legal umbrella that is firm and clear to provide legal protection for women workers related to the practice of ageism in the work environment.

From the three previous studies above, the focus of this research, which is related to the perspective of human rights and legal comparisons in other countries related to ageism in job vacancies as a form of discrimination, is actually an original research. This is because this research discusses aspects of discrimination in the form of ageism associated with Constitutional Court Decision No. 35/PUU-XXII/2024 (Constitutional Court Decision on Working Age Limit) as well as with legal comparisons in other countries. The legal comparison related to the age limit in job vacancies as a form of discrimination in this research is carried out with countries in ASEAN, specifically with Singapore and the Philippines as well as Germany and the United States. The comparison with Singapore and the Philippines is because the two countries are countries that are in the same region as Indonesia (namely the ASEAN region) where in general issues related to labour, especially in the aspect of workers' rights have similarities in ASEAN countries. Comparison with Germany and the United States to see how the development of ageism discrimination in European countries (in this case represented by Germany) with the United States where the United States is one of the

countries that initiated the conception of universal human rights, especially with regard to the rights of workers. From this description, this research can be said to be original research because it has never been researched by the three previous studies.

From the description above, the urgency of this research is to analyse and strengthen ageism as a form of 'new discrimination' that has not been regulated in the Human Rights Law. The objectives of this research include: (i) ratio decidendi construction of Constitutional Court Decision No. 35/PUU-XXII/2024 (Constitutional Court Decision on Working Age Limit), (ii) human rights perspective related to the maximum age limit in job vacancies, and (iii) legal comparison in other countries related to age limit in job vacancies as a form of discrimination. This is an effort to answer the problem in this research, namely that ageism has not been affirmed as a form of discrimination in the practice of job recruitment in Indonesia.

This research, which discusses human rights perspectives and legal comparisons in other countries related to ageism in job vacancies as a form of discrimination, is a normative legal research. As normative legal research, this research focuses on analyses based on legal doctrines, legal principles, legal theories, legal concepts, and relevant legal materials (Negara, 2023). Primary legal materials in this research include: The 1945 Constitution of the Republic of Indonesia, Constitutional Court Decision No. 35/PUU-XXII/2024 (Constitutional Court Decision on Working Age Limit), Law No. 13 of 2003 on Labour (Labour Law), as well as various regulations in Singapore, the Philippines, Germany, and the United States related to age limits in the field of job recruitment. Secondary legal materials include journal articles, books, and research results that discuss human rights, labour rights, discrimination, and the concept of ageism. Non-legal materials are legal dictionaries. Analysis of legal

materials is carried out in a qualitative-prescriptive manner in which existing legal materials are analysed according to the formulation of existing problems and then a relevant legal prescription or solution is formulated (Jonaedi Efendi, 2022). The approaches used are conceptual approaches, cases, legislation, and comparative law.

B. RESULT AND DISCUSSION

1. Ratio Decidendi Construction of Constitutional Court Decision No. 35/PUU-XXII/2024

In relation to the maximum age limit for employment in Indonesia and its relevance to the rights of workers, in the Indonesian context this cannot be separated from the judicial review case conducted by Leonardo Olefins Hamonangan, a private employee from Bekasi City, West Java, which later resulted in Constitutional Court Decision No. 35/PUU-XXII/2024 (Constitutional Court Decision on Working Age Limit) (R. Hidayat, 2024). The judicial review attempt made by Leonardo Olefins Hamonangan is actually based on the fact that the provisions of Article 35 paragraph (1) of the Labour Law which confirms that there is an effort for employers to recruit their own workers. The phrase ‘recruit their own’ implies that the employer has the authority to independently regulate labour requirements, including the maximum age limit of workers to be recruited. This has resulted in many companies in Indonesia setting their own maximum age limit for job applicants. The maximum age limit for job applicants is not based on the relevance of a particular field of work, so there is often uniformity in the maximum age limit for job applicants, which is generally limited to a maximum age of 30 years (Apryani, 2024). This limitation has actually reduced the human rights of job seekers. This is because as mandated by the constitution as affirmed in Article 27 paragraph (2) of the 1945 Constitution of the

Republic of Indonesia, which affirms that every citizen has the right to obtain employment and a livelihood worthy of humanity. The mandate of Article 27 paragraph (2) of the 1945 Constitution does not only mean that every citizen has the right to get a job, but also includes a job that is humane and guarantees a decent livelihood for each individual (Sundari et al., 2022).

The provision of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia essentially places the state in an active role in fulfilling the citizens' right to obtain employment. The active meaning of this is that the state, through various regulations and policies, is obligated to provide various means that facilitate every citizen in obtaining employment along with fair wages, including the recruitment process that ensures aspects of propriety and justice (Pardede, 2022). In implementing the provisions of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the state is also obliged to refer to Article 28I paragraph (2) of the 1945 Constitution, where the state prohibits any form of discrimination and is required to provide legal protection in cases of discrimination, including discrimination in the field of employment. According to the petitioner in the Constitutional Court Decision on the Age Limit for Employment, Article 35 paragraph (1) of the Manpower Law is essentially conditionally in conflict with the provisions of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, because the existence of a maximum age limit for applying for a job may reduce the fulfillment of citizens' rights to obtain employment. Article 35 paragraph (1) of the Manpower Law, according to the applicant, is also in conflict with Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as the existence of a maximum age limit for job applicants is inherently discriminatory. The suitability of an individual for

a job is not solely related to age; there are other factors that must be considered, such as the skills or competencies of the job applicant to fill the offered position, including work experience for the job to be filled.

From the description above, the applicant argues that the provision of Article 35 paragraph (1) of the Labor Law is conditionally unconstitutional as long as it is not interpreted to mean that the efforts of employers to recruit their own workforce must be based on the principle of non-discrimination, which means that there should be no various forms and efforts of discrimination in any form, including age discrimination. From the judicial review efforts mentioned above, the Constitutional Court then decided the case through the Decision on the Age Limit for Employment. In general, the Decision on the Age Limit for Employment rejected the applicant's request entirely, with one dissenting opinion from Constitutional Judge Guntur Hamzah. A dissenting opinion is a differing view from a judge that also has a conclusion differing from the majority opinion of the judges (Prasetio, 2023). The dissenting opinion expressed by Constitutional Judge Guntur Hamzah generally emphasizes that the Constitutional Court should have accepted the applicant's request and asserts that in relation to the organization of job recruitment, any form of discrimination is prohibited, including age limits for applying for certain jobs, unless stipulated in legislation.

Regardless of the dissenting opinion in the Constitutional Court's ruling on the Age Limit for Work, the Court generally rejected the applicant's request for several underlying reasons, commonly referred to as ratio decidendi. Simply put, ratio decidendi is understood as the legal reasoning that a judge uses to decide a case (Mahasina, 2021). In Michael Zander's view, ratio decidendi is the legal proposition

formulated by the judge to resolve a case and is binding, just like the judgment's ruling (Silitonga et al., 2021). This emphasizes that the term ratio decidendi should be distinguished from the term obiter dicta, which is also a legal proposition formulated by the judge to decide a case but is not binding like the court's ruling (Hakiki & Taufiqurrahman, 2023).

Regarding the Constitutional Court's Decision on the Age Limit for Work, the ratio decidendi of the Constitutional Judges needs to be examined and referenced to analyze why the Court rejected the applicant's request. The ratio decidendi of the Constitutional Judges in the Decision on the Age Limit for Work is fundamentally based on several legal arguments presented by the Constitutional Judges in their ruling. First, in the Decision on the Age Limit for Work, the Court refers to two previous rulings, namely Decision No. 024/PUU-III/2005 and Decision No. 72/PUU-XXI/2023, which emphasize that the provisions regarding discrimination are essentially in line with the provisions of Article 1, paragraph 3 of the Human Rights Law and Article 2 of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified through Law No. 12 of 2005, where differentiation related to age cannot be classified as a form of discrimination.

This emphasizes that discrimination, according to the Constitutional Court, is any form of differentiation and/or exclusion based on race, ethnicity, group, class, religion, tribe, gender, language, as well as social and economic status. This means that, by argumentum a contrario, the practice of having a maximum age requirement for job applicants, which constitutes age discrimination, is not classified as discrimination according to the ratio decidendi of the Constitutional Court's decision based on Article 1, number 3 of the Human Rights Law and Article 2 of the ICCPR.

Secondly, the Constitutional Court emphasizes that one of the important orientations in the formulation of the Labor Law is not only the guarantee of workers' rights but also relates to efforts for the development and sustainability of the business world. In this context, the Court views that age restrictions for applying for certain jobs are an effort to ensure the development and sustainability of businesses, and it is only natural for business actors to do so; this is not contrary to the constitution. Thirdly, regarding the right of citizens to obtain decent work for humanity as mandated by Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is essentially related to the existence of fair and transparent mechanisms and procedures for anyone who meets the requirements to register for a job recruitment (Nugroho, Arinto, Ronaboyd et al., 2024). This emphasizes that age restrictions for applying for certain jobs are not actually in conflict with the provisions of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

From the three ratio decidendi of the Constitutional Court Judges in the Decision on the Age Limit for Employment mentioned above, it is fundamentally based on the view that the age restriction for applying for certain jobs is not, in essence, a form of discrimination. This is because, textually, Article 1 number 3 of the Human Rights Law and Article 2 of the ICCPR do not explicitly state that age-based restrictions are categorized as a form of discrimination. In this context, it can be seen that the Constitutional Court (MK) is more textualist or, in other words, exhibits a more judicial restraint regarding the meaning of discrimination that is the focus of the Constitutional Court's Decision on the Age Limit for Work. Conceptually, referring to Robert Posner's perspective, judicial restraint can be understood as the court's cautious attitude, tending towards textualism regarding the wording of a law in order to

maintain the existence of the principle of separation of powers (Carle, 2024). In the context of the Constitutional Court's Decision on the Age Limit for Work, it can be observed that the Court tends to exhibit judicial restraint as it fully adheres to and complies with the provisions of Article 1, paragraph 3 of the Human Rights Law and Article 2 of the ICCPR, which do not categorize age restrictions as part of discriminatory practices.

2. Maximum Age Limits in Job Vacancies in Indonesia: A Human Rights Perspective

The provisions regarding the maximum age limit in job vacancies in Indonesia are indeed relevant to the concept of human rights, particularly concerning the rights of workers (Hamid et al., 2022). In the development of the concept of human rights as articulated by Karel Vasak, workers' rights can essentially be classified as part of the second generation of human rights, which emphasizes the protection of cultural, social, and economic aspects (Domaradzki et al., 2019). The main characteristic of second-generation human rights is the active role of the state in ensuring the fulfillment of these rights (Pramono, 2020). Therefore, in terms of wording, second-generation human rights are formulated with the term "right to," which has a positive connotation where the state plays a significant role in realizing them (Izzati, 2022). This is different from first-generation human rights, which tend to be formulated passively and are based on the phrase "freedom from."

Workers' rights, which are part of human rights, are also affirmed in Article 23 paragraph (1) of the Universal Declaration of Human Rights (UDHR), which states that everyone has the right to work, including entering into work under fair and proportional conditions. Article 23 paragraph (2) of the UDHR further emphasizes that in various employment activities, whether in the recruitment process, employment agreements, the execution of work relationships, remuneration, or termination of employment, these must be conducted fairly and proportionally, and discrimination is prohibited. Although the UDHR has made it clear that discrimination is prohibited in employment law relationships, it does not

specify what is meant by discrimination or its parameters. Other arrangements related to the guarantee of workers' rights are essentially formulated in Article 22, paragraph 1 of the ICCPR, which states that the fundamental right of workers is to form trade unions, and the state must facilitate and encourage the establishment of such trade unions along with guarantees of their rights. An important aspect of the ICCPR is related to regulations concerning discrimination. Article 26 of the ICCPR emphasizes that there is a prohibition against discrimination in any form, such as discrimination based on race, ethnicity, religion, color, gender, language, national origin, wealth, social status, and other statuses. The phrase "other statuses" in Article 26 of the ICCPR essentially underscores that the concept of discrimination embraced by the ICCPR is inherently open, meaning it accommodates various views and concepts regarding discrimination that may evolve in society (Hammar, 2022). The provisions of Article 26 of the ICCPR also clarify that discrimination should not only be understood textually, encompassing only discrimination based on race, ethnicity, religion, color, gender, language, national origin, wealth, and social status, but also, with the inclusion of the phrase "other statuses," it opens the door to various other forms of discrimination that may develop in society (Suberry & Bodner, 2024).

The ICCPR in the Indonesian legal system actually holds a strong position, especially after it was ratified through Law No. 12 of 2005. The ratification makes the ICCPR not just an international convention, but a part of positive law in Indonesia (Dicky Eko Prasetio, 2022). This emphasizes that the ICCPR's view, which holds that discrimination is open or can evolve according to societal developments, with the phrase "other status" in Article 26 of the ICCPR, indeed reinforces that in positive law in Indonesia, there is also an accommodation of the view that the concept of discrimination is open or can develop in line with societal changes. The interpretation that the concept of discrimination is open, as stated in Article 26 of the ICCPR, is actually different from the provisions on discrimination as emphasized in Article 1, paragraph 3 of the Human Rights Law. Referring to Article 1, paragraph 3 of the Human

Rights Law, discrimination is understood as any form of exclusion, restriction, and harassment based on race, ethnicity, group, class, religion, tribe, gender, language, as well as social and economic status. This clarifies that according to the Human Rights Law, discrimination is limited or closed, only relating to discrimination based on race, ethnicity, group, class, religion, tribe, gender, language, and social and economic status. If read textually, the provisions of Article 1 number 3 of the Human Rights Law indeed align with the provisions of Article 2 of the ICCPR, which mandates a limited or closed understanding of discrimination. However, if one reads the provisions of the ICCPR carefully with a systematic interpretation based on a deep reading and understanding of each article in the ICCPR, it becomes clear that Article 26 of the ICCPR reinforces that the concept of discrimination is inherently open or can evolve according to societal developments. This is evidenced in Article 26 of the ICCPR by the phrase "other status," which opens the door to various forms of discrimination that may arise in society. This emphasizes that based on a systematic interpretation, the ICCPR essentially adopts a concept of discrimination that is open or can evolve in accordance with societal developments.

Regarding Article 1 number 3 of the Human Rights Law, which adopts a closed or limited conception of discrimination, to analyze whether the concept of discrimination upheld in positive law in Indonesia, it is necessary to examine it from two perspectives: first, the historical perspective. Historically, it can be seen that the Human Rights Law was enacted in 1999, which is socially and politically related to the reform movement, one of whose demands was a more precise and just guarantee of human rights (T. Hidayat et al., 2022). With such a historical background, the enactment of the Human Rights Law in 1999 was more of an effort to accommodate and facilitate the specific regulation of the guarantee and protection of human rights. This indicates that if there were further developments in the conception of human rights, it would be possible because human rights laws are essentially general in nature (*lex generalis*) (Hasani & Halili, 2022). Secondly, from the perspective of legal principles regarding the

differences between the ICCPR, which essentially accommodates an open view of discrimination, and the Human Rights Law that textually accommodates a closed or limited view of discrimination, it follows that based on the principle of lex specialis derogate legi generalis, the applicable view is the open view of discrimination as upheld by the ICCPR, which has been ratified in Law No. 12 of 2005. Furthermore, if we refer to the ratification process of the ICCPR in 2005, then based on the principle of lex posterior derogat legi priori, which means that a new rule with the same substance overrides an old rule, it can be concluded that positive law in Indonesia endorses the concept of open discrimination as upheld by the ICCPR, which has been ratified in Law No. 12 of 2005 (Nurfaqih, 2020).

The emphasis is that in positive law in Indonesia, the concept of discrimination adopted is an open concept, meaning that discrimination is not only related to discrimination based on race, ethnicity, groups, religion, tribe, gender, language, and social or economic status, but can also evolve in accordance with developments in society. This is related to discrimination as Article 26 of the ICCPR adds the phrase "other status," which emphasizes that the conception of discrimination can indeed evolve according to practices and developments in society. The development of discriminatory practices upheld by positive law in Indonesia, as emphasized in Article 26 of the ICCPR, indicates a flawed line of reasoning by the Constitutional Court judges in the ratio decidendi of the Age Limit Decision. The argument presented by the Constitutional Court judges in the Age Limit Decision is fundamentally based on a limited and closed concept of discrimination, as outlined in Article 1, paragraph 3 of the Human Rights Law and Article 2 of the ICCPR. Regarding Article 2 of the ICCPR, it seems that the Constitutional Court judges have not comprehensively read the provisions of the ICCPR because, although Article 2 of the ICCPR textually states that discrimination is limited, a systematic interpretation in conjunction with Article 26 of the ICCPR actually clarifies that the ICCPR accommodates open discrimination. Therefore, discrimination cannot be

understood textually, but rather contextually, and can evolve in accordance with practices and developments in society.

From the description above, it can be concluded that the ratio decidendi of the Constitutional Court's decision on the Age Limit for Employment, which states that the maximum age limit in job vacancies in Indonesia is not discrimination because it refers to Article 1, number 3 of the Human Rights Law and Article 2 of the ICCPR, is that age differentiation is not actually a form of discrimination, is indeed not accurate. The existence of age limits, particularly concerning the maximum age limit in job vacancies in Indonesia, is essentially a form of discrimination and a violation of human rights, especially the rights of workers related to guarantees against discrimination in job recruitment. The maximum age limit in job vacancies in Indonesia is generally permissible as long as it aligns with the type of work and takes into account various aspects comprehensively, including the skills and experience of the job applicants. The issue arises when almost all job vacancies in Indonesia state that the maximum age limit for applicants is 30 years, without taking into account considerations related to the type of job and various aspects comprehensively, including the skills and experience of the job applicants. This essentially emphasizes that the maximum age limit in job vacancies in Indonesia, which is not balanced with comprehensive considerations covering the type of job, the skills of the applicants, and their experience, is in fact a form of age discrimination in the realm of job opportunities.

Discrimination in the realm of job vacancies, manifested through the imposition of a maximum age limit for applying to a certain field of work without a comprehensive consideration that includes the type of job, the applicant's skills, and the applicant's experience, is part of the evolving concept of discrimination that is subsequently known as ageism. Ageism is generally understood as a form and act of discrimination based on age, such as the view that older age is unproductive and unskilled in work, as well as the perspective that younger individuals are considered inexperienced in carrying out certain actions (Ng et al., 2022). The

term ageism was first introduced by Robert N. Butler, initially relating to the discrimination experienced by older individuals with various negative stigmas and perceptions in the workplace (Goldman & Higgs, 2021). Ageism, like other concepts related to discrimination, can also occur in various aspects of human life. Specifically regarding ageism, it mostly occurs in the workplace in the form of the assumption that older workers are considered less meticulous and even deemed unproductive in carrying out certain tasks (Burn I, Firoozi D, Ladd D, 2023).

Referring to the concept related to ageism as a form of discrimination based on age, the existence of job vacancies in Indonesia that require a maximum age limit in general, without considering the type of job, the skills of the job applicants, and the experience of the job applicants, can indeed be categorized as a form of age-based discrimination or ageism. Therefore, the Constitutional Court's Decision on the Age Limit for Work should grant the applicant's request conditionally unconstitutional regarding Article 35 paragraph (1) of the Labor Law, which states that in job recruitment, discrimination in various forms is prohibited, one of which is discrimination based on age or ageism.

3. Age Limits in Job Vacancies as a Form of Discrimination: A Comparative Legal Perspective

The practice of having an age limit in job vacancies in Indonesia is actually quite common, and generally, the maximum age limit for job openings in Indonesia is set at 30 years. Since there is no clear and well-thought-out reasoning behind why the age limit in job vacancies typically requires a maximum of 30 years, this can be categorized as age discrimination or ageism. Although age discrimination has not been specifically regulated in legislation regarding discrimination, such as in the UDHR, ICCPR, and the Human Rights Law, which do not specifically address ageism, it can be concluded that ageism is indeed part of the discriminatory practices that exist in society.

The developments regarding age discrimination in job vacancies have indeed been accommodated in various regulations in other countries. Referring to the perspective of comparative law, it can be seen that several countries have indeed regulated and classified ageism as a form of discrimination. The comparison of laws related to age limits in job vacancies as a form of discrimination in this study is conducted with countries in ASEAN, specifically Singapore and the Philippines, as well as Germany and the United States. The comparison with Singapore and the Philippines is due to the fact that both countries are in the same region as Indonesia (i.e., the ASEAN region), where, in general, issues related to employment, particularly in terms of workers' rights, have similarities among ASEAN countries. The comparison with Germany and the United States aims to examine the developments regarding age-based discrimination (ageism) in European countries (represented here by Germany) and the United States, which is one of the countries that advocates the concept of universal human rights, particularly concerning workers' rights. If we refer to Peter De Cruz's perspective, then the legal comparison in this research is micro in nature because it compares the substance of legal regulations in Indonesia with those of other countries and does not focus on macro comparisons based on the legal systems adopted by each country (Peter De Cruz, 2015).

In the Southeast Asian region (ASEAN), Singapore can be said to be one of the countries pioneering regulations related to the prohibition of ageism as a form of discrimination, particularly concerning employment. In 2024, Singapore has announced the Workplace Fairness Legislation Law (WFL Law), which includes a prohibition on ageism as a form of discrimination in the workplace (Chih & Chang, 2024). The enactment of the WFL Law in Singapore is essentially just a matter of time, as it is scheduled to be approved by the end of 2024. In addition to the ratification of the WFL Law, Singapore has also implemented various policies to ensure that ageism, as a form of discrimination, does not occur in the workplace, such as the Fair Consideration Framework (FCF) policy, which opens job opportunities for all

demographics and ages, with job requirements tailored to the type and field of work (Yan, 2023). Before proposing the WFL Law in July 2022, Singapore already had regulations aimed at anticipating ageism practices in the workplace, referring to the Retirement and Re-employment Act (RRA), which emphasizes that there is a prohibition on dismissing workers solely based on age, and Singapore is committed to affirming that the minimum retirement age for workers is 63 years (Xu et al., 2023). This indicates that Singapore has indeed accommodated the notion that ageism is a form of discrimination, particularly in the workplace.

Efforts to prevent ageism, which is a form of discrimination in the workplace, are also being undertaken by the Philippines, particularly since the enactment of Republic Act No. 10911, commonly known as the Anti-Age Discrimination in Employment Act, which was officially passed in 2016 (Aguilar et al., 2022). Substantively, this Anti-Age Discrimination in Employment Act prohibits the inclusion of maximum age requirements in job vacancies, mandates equal treatment for all workers regardless of age, social status, economic standing, or race, and includes provisions for strict measures to prevent and address forced retirement imposed by employers on employees. From the two examples of Southeast Asian countries (ASEAN), namely Singapore and the Philippines, it can be concluded that both countries, in addition to accommodating ageism practices as a form of discrimination in the workplace, have also formulated specific legislation to address and prevent ageism in the workplace.

Similar to the legal policies in Singapore and the Philippines in tackling and preventing ageism in the workplace, the United States can be said to be a pioneer in establishing specific laws that protect workers from age-based discrimination. Efforts to protect workers from age discrimination in the United States were established with the creation of The Age Discrimination in Employment Act of 1967 (ADEA), which was enacted in 1967. This law fundamentally asserts that there is legal protection in the United States for workers aged 40 and over against ageism practices in the workplace (Harootyan, 2021). The United States also

emphasizes in the ADEA that there are strict penalties for employers who engage in ageism, both during recruitment and throughout the legal relationship between the employer and the employee.

In Germany, the regulations related to the General Act on Equal Treatment (commonly known in Germany as AGG) were enacted on August 18, 2006. In Section 10 of the General Act on Equal Treatment, it is emphasized that there is a prohibition related to discrimination based on age (Bunt et al., 2020). However, referring to Section 10 of the General Act on Equal Treatment, differentiation based on age can be made in the field of work, such as when there is a job vacancy or in employment law relations as long as there are objective, rational and proportional reasons so that a distinction can be made in the field of work. certain. This is also confirmed in Section 20 of the General Act on Equal Treatment which confirms that special differentiation in a job such as differentiation based on race, age, religion and the like can be said to be relevant and legally valid if it is carried out objectively, rationally and proportionally, and taking into account four parameters, namely (Fossati et al., 2024): (i) has a goal that is justified by law such as preventing damage or certain risks or other goals that are comparable to this, (ii) accommodating the security and privacy of each individual, (iii) special distinctions are made with a purpose that is justified according to law and are not made based on certain sentiments, and (iv) special distinctions such as religion, for example, are permitted as long as they guarantee the religious rights and freedom of each individual. What is substantially important in the General Act on Equal Treatment is that if there are distinctions based on race, age, religion and the like and they are not carried out objectively, rationally and proportionally, then every person who is disadvantaged can file a civil lawsuit.

Referring to the legal comparisons with various countries mentioned above, including Singapore, the Philippines, the United States, and Germany, it can be said that the legislation in Indonesia has not yet accommodated aspects of ageism or discrimination based on age, particularly in the field of employment. Therefore, this research recommends the need for a

revision of the Labor Law by emphasizing the prohibition of various forms of discrimination, from job vacancy announcements to the establishment of employment relationships, particularly concerning ageism or discrimination based on a person's age.

C. CONCLUSION

The construction of the ratio decidendi in Constitutional Court Decision No. 35/PUU-XXII/2024 (Constitutional Court Decision on Age Limit for Employment) essentially emphasizes that the age limitation for applying for certain jobs is not, in fact, a form of discrimination. This is because, textually, Article 1 paragraph 3 of the Human Rights Law and Article 2 of the ICCPR do not explicitly state that age-based restrictions are categorized as a form of discrimination. In this context, referring to the ratio decidendi of the Constitutional Court in its decision, the Court exhibits a more judicial restraint approach that emphasizes the textual meaning of discrimination without understanding the evolving concept of discrimination that includes differentiation and/or restrictions based on age as a form of discrimination.

From a human rights perspective, it can be concluded that the maximum age limit in job vacancies in Indonesia can indeed be categorized as a form of ageism, which is a type of discrimination based on age in the field of employment. The Constitutional Court's ruling on the Age Limit for Employment has not accommodated ageism as a form of discrimination based on age because the Court does not fully understand the provisions of the ICCPR, which has been ratified into positive law in Indonesia through Law No. 12 of 2005. Based on a systematic interpretation of the ICCPR, it actually adopts a perspective on discrimination that is open to accommodating the developments of discrimination occurring in society, including recognizing ageism as a form of discrimination based on an individual's age.

Viewed from a comparative legal perspective, ageism as a form of discrimination based on a person's age, particularly in the field of employment, has indeed become a focus in various countries such as Singapore, the Philippines, the United States, and Germany. The four countries have even specifically regulated in their legislation regarding ageism and prohibited ageism as well as various other forms of discrimination in job vacancy requirements and in employment legal relationships. In Germany, even when there are discriminatory practices of various kinds in job vacancy requirements and in employment legal relationships, any individual who is harmed can file a civil lawsuit in court.

The recommendation from this research is that the Constitutional Court's Decision on the Age Limit for Work should conditionally grant the applicant's request regarding Article 35 paragraph (1) of the Labor Law, which states that discrimination in various forms, including age discrimination or ageism, is prohibited in job recruitment. Furthermore, lawmakers (in this case, the Government and the Parliament) need to revise the Labor Law to include ageism, which is a form of discrimination based on a person's age, as an act that falls under discrimination that contradicts human rights and is prohibited from being applied in job vacancy requirements as well as in employment legal relations.

REFERENCES

Aguilar, M. G., Fonacier, R., Duldulao, A., Pangilinan, S. M., Paz, J. M., & Cruz, S. (2022). Diversity and Employees' Challenges in the Workplace: The case in selected resorts in Calamba City, Laguna, Philippines e. *Journal of Global Awareness*, *3*(2), 1–26. https://doi.org/10.24073/jga/3/02/08

Apryani, N. W. E. (2024). Age Restriction for Job Application from a Human Rights Perspective. *Journal of Law, Politic, and Humanities*, *4*(5), 1850–1857. https://creativecommons.org/licenses/by/4.0/

Bunt, D., van Kessel, R., Hoekstra, R. A., Czabanowska, K., Brayne, C., Baron-Cohen, S., & Roman-Urrestarazu, A. (2020). Quotas, and Anti-discrimination Policies

Relating to Autism in the EU: Scoping Review and Policy Mapping in Germany, France, Netherlands, United Kingdom, Slovakia, Poland, and Romania. *Autism Research*, *13*(8), 1397–1417. https://doi.org/10.1002/aur.2315

Burn I, Firoozi D, Ladd D, N. D. (2023). Stereotypes of older workers and perceived ageism in job ads: evidence from an experiment. *Journal of Pension Economics and Finance*, *22*(4), 463–489.

Carle, S. D. (2024). The Failed Idea of Judicial Restraint: A Brief Intellectual History. *Law and Social Inquiry*, *49*(1), 569–592. https://doi.org/10.1017/lsi.2023.66

Chih, J., & Chang, M. (2024). *A New Era of Equality: Singapore's Upcoming Workplace Fairness Legislation*. https://www.mayerbrown.com/en/insights/publications/2024/09/a-new-era-of-equality-singapores-upcoming-workplace-fairness-legislation.

Dicky Eko Prasetio, A. I. (2022). Judicial Activism dalam Pengujian Konstitusionalitas Undang-Undang Ratifikasi. *Negara Hukum*, *13*(2), 258.

Domaradzki, S., Khvostova, M., & Pupovac, D. (2019). Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse. *Human Rights Review*, *20*(4), 423–443. https://doi.org/10.1007/s12142-019-00565-x

Dora Kusumastuti, Joko Pramono, M. S. W. (2023). Equitable Legal Formulation in the Regulation of Retirement Age Limits on Private Workers Based on Pancasila Values. *Indian Journal Integrated Research*, *3*(2), 1–5.

Fossati, F., Knotz, C., Liechti, F., & Otmani, I. (2024). The Gender Employment Gap among Refugees and the Role of Employer Discrimination: Experimental Evidence from the German, Swedish and Austrian Labor Markets. *International Migration Review*, *58*(1), 147–172. https://doi.org/10.1177/01979183221134274

Goldman, M., & Higgs, P. (2021). Ageism: A health humanities approach. *University of Toronto Quarterly*, *90*(2), 71–79. https://doi.org/10.3138/utq.90.2.01

Hakiki, Y. R., & Taufiqurrahman. (2023). The Idea of Structuring National Legislation Based on The Ratio of Decidendi & Obiter Dictum Constitutional Court Decision. *Jurnal Konstitusi*, *20*(1), 78–99. https://doi.org/10.31078/jk2015

Hamid, A., Aldila, M. R., & Intan, A. M. (2022). The urgency of labor law for informal sector workers in the welfare state concept: An evidence in Indonesia. *International Journal of Research in Business and Social Science (2147- 4478)*, *11*(6), 528–541. https://doi.org/10.20525/ijrbs.v11i6.2036

Hammar, R. K. R. (2022). Exploring the Intersection of Common Law and Criminal Justice System: Implications for Protecting Freedom of Speech in Indonesia. *International Journal of Criminal Justice Sciences*, *17*(2), 299–311. https://doi.org/10.5281/zenodo.4756126

Harootyan, B. (2021). Hidden Dimensions of Ageism in Employment and the Weakening of the Age Discrimination in Employment Act. *Public Policy & Aging Report*, *31*(4), 129–132.

Hasani, I., & Halili, H. (2022). Human Rights and Constitutionality Issues of Blasphemy Law in Indonesia. *Jurnal Konstitusi*, *19*(2), 406.

https://doi.org/10.31078/jk1927

Hidayat, R. (2024). *Uji Materi Batasan Usia Pelamar Kerja Kandas, Hakim Konstitusi Guntur Dissenting*. Retrieved from: https://www.hukumonline.com/berita/a/uji-materi-batasan-usia-pelamar-kerja-kandas--hakim-konstitusi-guntur-dissenting-lt66a9abfa87375/.

Hidayat, T., Luthviati, R. D., & Jenvitchuwong, S. (2022). Disharmonization of Supreme Court Regulations in Material Judicial Rights. *Journal of Human Rights, Culture and Legal System*, *2*(3), 149–166. https://doi.org/10.53955/jhcls.v2i3.34

Izzati, N. R. (2022). Deregulation in Job Creation Law: The Future of Indonesian Labor Law. *Padjadjaran Jurnal Ilmu Hukum*, *9*(2), 191–209. https://doi.org/10.22304/pjih.v9n2.a3

Jonaedi Efendi, P. R. (2022). *Metode Penelitian Hukum Normatif dan Empiris*. Kencana.

Kartika, M. (2024). *Pemohon Persoalkan Diskriminasi Rekrutmen Tenaga Kerja*. Retrieved from: https://testing.mkri.id/berita/pemohon-persoalkan-diskriminasi-rekrutmen-tenaga-kerja-21615.

Lestari, A. D., & Santoso, I. B. (2024). The Problematic Of The Rise Of Brought In Private Company Workforce Recruitment And Its Legal Analysis. *Jurnal Ilmiah "Advokasi," 12*(1), 145–165. https://www.worldometers.info/world-

Mahasina, M. W. R. (2021). Ratio Decidendi Of Religious Court Judges On Rejection Of Applications For Interfaith Marriage Prevention. *Istinbath : Jurnal Hukum*, *18*(1), 1–14. https://doi.org/10.22146/jmh.16245.2

Manggin, & Khutub, M. (2024). Analisis Ketidaksesuaian Batas Usia Dewasa dan Konflik Normatif Antara Hukum Pidana Materiil dan Hukum Perdata di Indonesia (Studi Putusan Kasasi Nomor 897 K / PID / 2019). *UNES Law Review*, *6*(2), 7439–7449.

Mikołajczyk, B. (2023). Addressing ageism in Polish ageing policy – critical remarks. *Research on Ageing and Social Policy*, *11*(1), 77–103. https://doi.org/10.17583/rasp.11226

Negara, T. A. S. (2023). Normative Legal Research In Indonesia: Its Origins And Approaches. *ACLJ*, *4*(1), 5.

Ng, R., Chow, T. Y. J., & Yang, W. (2022). The Impact of Aging Policy on Societal Age Stereotypes and Ageism. *Gerontologist*, *62*(4), 598–606. https://doi.org/10.1093/geront/gnab151

Nugroho, Arinto, Ronaboyd, I., Rusdiana, E., & Prasetio, Dicky Eko, S. Z. (2024). The Impact of Labor Law Reform on Indonesian Workers : A Comparative Study After the Job Creation Law. *Lex Scientia Law Review*, *8*(1), 67–108.

Nurfaqih, I. (2020). Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum. *Legislasi Indonesia*, *16*(3), 305–325.

Okun, S., & Ayalon, L. (2023). And What About Self-Ageism? "Inner Work" as a Fifth Strategy for the Eradication of Ageism. *Journal of Aging and Social Policy*,

1(1), 1–17. https://doi.org/10.1080/08959420.2023.2226294

Pardede, S. (2022). Employment Law Industrial Revolution Perspective 4.0. *International Asia Of Law and Money Laundering (IAML)*, *1*(1), 47–56.

Peter De Cruz. (2015). *Comparative Law in a Changing World*. Taylor & Francis Group.

Pitriyani, & Aryanti, T. (2024). Ageisme sebagai Kekerasan Simbolik pada Perempuan di Tempat Kerja. *Indonesian Journal of Sociology, Education, and Development*, *6*(1), 121–145.

Pramono, A. (2020). Settlement of Industrial Relations Disputes and Termination of Work Relations according to the Applicable Legislation. *Walisongo Law Review (Walrev)*, *2*(2), 169. https://doi.org/10.21580/walrev.2020.2.2.6671

Prasetio, D. E. (2023). Ius Constituendun Legal Standing Bagi WNA Terkait Proses Judicial Review di Mahkama Konstitusi dalam Perspektif HAM. *Hunila*, *2*(1), 125–138.

Shelomita Putri Amelia, Aurelya Putri Alzahrah, & Dewi Safira. (2024). Pengaruh Persyaratan Usia Terhadap Peluang Kerja Bagi Tenaga Kerja Di Indonesia. *Terang : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum*, *1*(3), 66–75. https://doi.org/10.62383/terang.v1i3.363

Silitonga, A. B., Syahrin, A., Mulyadi, M., & Putra, M. E. (2021). Analisis Ratio Decidendi Penjatuhan Pidana Mati Terhadap Pelaku Tindak Pidana Narkotika Yang Rumusan Pasalnya Tidak Ada Ancaman Pidana Mati (Studi Putusan No. 241/Pid.Sus/2019/Pn.Tjb). *Iuris Studia: Jurnal Kajian Hukum*, *2*(35), 410–422. https://doi.org/10.55357/is.v2i3.155

Suberry, A., & Bodner, E. (2024). Psychological Well-Being and Self-Aging Attitudes Moderate the Association between Subjective Age and Age Discrimination in the Workplace. *Behavioral Sciences*, *14*(9), 742. https://doi.org/10.3390/bs14090742

Sundari, E., Alvindo, G., Munthe, D., & Tamatjita, E. N. (2022). A Dynamic Pancasila'social Justice Implementation In The Indonesian Labor Law Development. *Journal of Legal ,Ethical, and Regulatory Issues*, *25*(2), 1–15.

Tri, M. (2023). Penetepan Terhadap Batas Usia Dewasa Menurut Peraturan Perundang-Undangan Di Indonesia. *Jurnal Ilmu Hukum*, *11*(1), 1–11.

Xu, J., Mehta, K. K., & Wan, D. (2023). Lived experiences of the adjustment of older employees to re-employment in Singapore: A Bourdieusian perspective. *Journal of Sociology*, *59*(1), 36– 53. https://doi.org/10.1177/14407833211018854

Yan, T. (2023). The Foreign Talents Issue in Singapore. *Journal of Education, Humanities and Social Sciences*, *19*(1), 33–39. https://doi.org/10.54097/ehss.v19i.10948.