

THE URGENCY OF UPDATING REGULATIONS ON THE PROHIBITION OF DISCRIMINATION IN THE LABOR RECRUITMENT PROCESS: ITS IMPACT ON ECONOMIC GROWTH

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Abstract

This study discusses the urgency of reforming regulations regarding the prohibition of discrimination in the labor recruitment process in Indonesia and its impact on economic growth. Discrimination in recruitment—such as restrictions based on age, gender, physical condition, and religion—remains prevalent despite the existence of various legal instruments prohibiting such practices, including ILO Convention No. 111, Law No. 13 of 2003 on Manpower, and the Circular Letter of the Minister of Manpower No. M/6/HK.04/V/2025. This research employs a normative juridical method with an interdisciplinary approach, combining legal and economic analysis to understand the consequences of discrimination more comprehensively. The findings show that the existing regulations lack sufficient legal force to effectively curb discriminatory practices, as circular letters are administrative in nature and not legally binding. From an economic perspective, discrimination in recruitment creates barriers to human capital accumulation, which ultimately reduces labor market efficiency and hinders economic growth. Therefore, a more stringent and legally binding regulatory reform is needed to ensure equal employment opportunities and promote inclusive economic growth.

Keywords: *discrimination, labor recruitment, labor law, human capital, economic growth*

Introduction

The issue of discrimination in the Indonesian workforce recruitment process has been a long-standing issue and remains unresolved. It is during this recruitment phase that employers often impose unreasonable requirements, even leading to discrimination, which ultimately makes it difficult for workers to find work (Izzati, 2023). Various forms of discrimination occur in this regard, including discrimination based on age, physical condition, gender, and even religion. The 2024 National Labor Force Survey (Sakernas) stated that open unemployment among those aged 35 and over reached 58.95% of the total unemployed in Indonesia (BPS, 2024). The survey showed that a large number of unemployed people are over 35, and this is also related to the fact that many employers in Indonesia impose a maximum age limit for job seekers between 25 and 27 years (Sari & Haryono, 2024). Furthermore, based on data from the Central Statistics Agency in 2020, it was stated that the labor *force participation rate* for people with disabilities was far below that of non-disabled people, with a difference of 20.60-24.11%, and only 46% of the total workforce with disabilities were employed (Rahmi & Rulangi, 2021). Workers with disabilities also generally hold jobs with lower status or positions, such as service and administrative jobs where career development is more limited (Baldrige, *et.al.*, 2016).

Regulations regarding the prohibition of discrimination in the labor recruitment process have actually existed for a long time. In 1999, Indonesia ratified ILO Convention No. 111, which regulates Discrimination in Employment and Occupation, with the enactment of Law No. 21 of 1999 concerning the Ratification of ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation. ILO Convention No. 111 essentially states that every member country that ratifies the convention is obliged to create a national policy aimed at eliminating discrimination in the employment sector. Then the government has also enacted Law No. 13 of 2003 concerning Manpower (hereinafter referred to as "Law No. 13/2003") as amended by Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Laws to Become Laws. In Article 5 of Law No. Law No. 13/2003 states that every worker has an equal opportunity to obtain employment without discrimination. Furthermore, there is Law No. 8 of 2016 concerning Persons with Disabilities, one of the core provisions of which states that in terms

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of employment, persons with disabilities must have the same rights as non-disabled persons, such as equal employment opportunities and career development. Although there are regulations governing the prohibition of discrimination in the labor recruitment process, as explained above, this discrimination problem is still rampant in Indonesia. This has triggered several parties to try to resolve this discrimination problem by submitting a *judicial review application* to the Constitutional Court against the provisions in Article 35 paragraph (1) of Law No. 13/2003, especially regarding the phrase "can recruit the required workforce themselves". The applicants in their petition stated that "it is prohibited to announce job vacancies that require age, attractive appearance, race, skin color, gender, religion, political views, nationality or ancestry" (Heriani, 2025). The decision on this application has been decided by the Constitutional Court as stated in Constitutional Court Decision Number 35/PUU-XXII/2024 (hereinafter referred to as "MK Decision No. 35/PUU-XXII/2024"), which in essence the panel of judges rejected the applicants' application in its entirety. One of the reasons for the rejection was because, according to the panel of judges, age restrictions in the recruitment of workers were not a category that was explicitly prohibited by the provisions of Article 28D paragraph (2) of the 1945 Constitution (Heriani, 2025).

Following the Constitutional Court Decision No. 35/PUU-XXII/2024, which essentially stated that the age requirement in the recruitment of workers is not contrary to the constitution, the Minister of Manpower of the Republic of Indonesia, in May 2025, issued a Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/6/Hk.04/V/2025 concerning the Prohibition of Discrimination in the Manpower Recruitment Process (hereinafter referred to as "Circular Letter of the Minister of Manpower No. M/6/Hk.04/V/2025"), the provisions of which are in line with the Constitutional Court Decision No. 35/PUU-XXII/2024. In the Circular Letter of the Minister of Manpower No. M/6/Hk.04/V/2025, it is stated that age requirements in the recruitment process of workers are only permitted if a job has characteristics that significantly affect a person's ability to carry out the job. With the Constitutional Court Decision No. 35/PUU-XXII/2024 and Circular Letter of the Minister of Manpower No. M/6/Hk.04/V/2025, employers should only be able to apply age limit requirements to certain jobs that are more suitable for workers of a certain age.

Discussions surrounding discrimination in the workforce recruitment process are not only related to legal aspects, but also impacted by the economic aspects of this issue. Discrimination in the workforce recruitment process can be interpreted as a barrier to entry for human capital (Hansson & Wallin, 2022). *Human capital* is defined as "the skills, knowledge, and experience of a person or group of people, seen as something valuable that an organization or country can make use of" (Oxford Learner's Dictionary, 2025). Simply put, human capital *can be defined as the economic value that can be generated by a worker's skills* (Kenton, et.al., 2025). *Barriers* to entry for human capital will have a negative impact on the economy because human capital is one of the sources of economic growth (Hsieh, et.al., 2019). Hsieh et. al. (2019) in their research also made a similar point, stating that barriers to human capital have a significant impact on economic growth, thus justifying the need to focus on forms of discrimination that affect human capital. These opinions emphasize that discrimination in the employment sector, particularly during the recruitment phase, also has a negative impact on economic growth.

Based on the above background, the author will focus on researching how the regulation regarding the prohibition of discrimination in the labor recruitment process should be regulated, in order to minimize the occurrence of similar cases in the future, and also explain the negative impact on economic growth if this problem is not immediately addressed. Most previous studies examining this issue, have focused more on the implementation and effectiveness of the Circular Letter of the Minister of Manpower No. M / 6 / Hk.04 / V / 2025 (See Imroni, 2025; Razani, 2025), so the author sees an urgency and novelty from this research, namely integrating it with economic aspects to create a new, more complete insight.

Research methods

In this study, the author uses a normative juridical research method with an interdisciplinary approach, which according to Setya Yuwana Sudikan (2015), an interdisciplinary approach is an approach that integrates two or more disciplines to produce a complete analysis of the problem being studied. The discipline or approach used in this study is the legal aspect approach, which is carried out by conducting a literature study and analyzing applicable regulations such as Law No. 13/2003 as amended by Law No. 6 of 2023 concerning the Enactment of Government Regulations in Lieu of Laws into Laws which contain regulations on discrimination in the field of employment, as well as approaches from non-juridical disciplines related to law, in this case, economics. An economic aspect approach is needed to answer the economic impacts that may arise if this problem is left unchecked, because issues regarding employment are basically related to economic aspects, so that this research can be more complete.

Research Results and Discussion

First, the author will explain the definition of discrimination and how it occurs in the workforce recruitment process. Discrimination can be defined as the act of treating someone differently and unfairly based on factors such as gender, race, religion, age, or other characteristics (Ananta, *et.al.* , 2024). Furthermore, referring to Article 1, number 1 of ILO Convention No. 111 concerning Discrimination in Employment and Occupation (in the Indonesian version), it states that:

“ For the purposes of this Convention the term "discrimination" includes:

- a) any distinction, exclusion or preference on the basis of race, color, sex, religion, political belief, nationality or origin which has the effect of eliminating or reducing equality of opportunity or treatment in employment or occupation.*
- b) any other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as determined by the member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies .”*

From this definition, it can be understood that discrimination in general is an act that treats others differently (unfairly) based on a person's background (SARA and other aspects). If the concept of discrimination is linked to the employment aspect, then discrimination can actually occur from the pre-employment, work, to post-employment stages, but in this study the author will focus on discrimination that occurs at the pre-employment stage (recruitment process). In Article 1 number 1 letter b of ILO Convention No. 111, it is expressly stated regarding discrimination that is closely related to the pre-employment stage, namely any distinction, exception, or priority that can eliminate or reduce equal employment opportunities. The key word that can be taken from this definition is the existence of an act that can reduce or even eliminate employment opportunities for someone.

Regarding the phenomenon of discrimination in the recruitment process, as mentioned in the Introduction section above, the government has actually attempted to regulate it through legislation. Regulations regarding the prohibition of discrimination in the employment sector should be carried out by the government, as a consequence of the ratification of ILO Convention No. 111 concerning Discrimination in Employment and Occupation, as stipulated in Law No. 21 of 1999 concerning the Ratification of ILO Convention No. 111 Concerning Discrimination In Respect of Employment and Occupation. In fact, the Indonesian government has regulated the employment sector long before ratifying ILO Convention No. 111. Asri Wijayanti (2015) in her description of the development of employment law in Indonesia, stated that before the formation of Law No. 13/2003, employment regulations were regulated in separate regulations, so that Law No. 13/2003 is the first employment law regulation that regulates almost all aspects of employment in a comprehensive and modern manner.

The basic provisions governing the prohibition of discrimination against workers who wish to obtain employment are regulated in Article 5 of Law No. 13/2003, which reads as follows:

“ Every worker has the same opportunity without discrimination to get a job. ”

It is important to emphasize the use of the concept of "workforce" in Article 5 of Law No. 13/2003. Article 1, number 2 of Law No. 13/2003 states that:

" Workforce is any person who is able to do work to produce goods and/or services to meet their own needs or those of the community. "

From this definition, it can be concluded that anyone who is still considered capable of performing work to meet their own needs and those of the community can be categorized as a workforce. This is closely related to discrimination based on the age of the workforce, age restrictions on job seekers, can cause the loss of job opportunities for workers whose age has exceeded the maximum qualification limit required (Pangestu, 2024). If this article is implemented properly, everyone who can still be categorized as a workforce, regardless of their age, still has the right to the opportunity to obtain the same job as workers who are still under or 25 years old. Likewise, regarding all kinds of backgrounds of workers, including gender, ethnicity, race, religion, political affiliation, and others, should not be made requirements in workforce recruitment. This is emphasized in the explanation of Article 5 of Law No. 13/2003, which states that:

" Every worker has the same rights and opportunities to obtain work and a decent living without distinction of gender, ethnicity, race, religion and political sect according to the interests and abilities of the worker concerned, including equal treatment for people with disabilities. "

Furthermore, regarding the basis on which employers can carry out independent recruitment of workers, this is regulated in Article 35 paragraph (1) of Law No. 13/2003, which states that:

" Employers who need workers can recruit the required workers themselves or through a job placement agency. "

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According to Leonardo Olefins Hamonangan, as the applicant in *the Judicial Review* of the article, he stated in section B number 4 the reasons for his application that (MK Decision No. 35/PUU-XXII/2024):

“Article 35 paragraph (1) of Law Number 13 of 2003 creates legal uncertainty due to its ambiguity. The lack of clear guidelines can lead to different interpretations in practice, which in turn can result in legal conflicts between employers and workers or between employers and regulators.”

If examined, Article 35 paragraph (1) of Law No. 13/2003 does not explicitly regulate what requirements are prohibited in the recruitment of workers, so that requirements are often found that basically contain discrimination. In the Constitutional Court decision No. 35/PUU-XXII/2024, one of the reasons for the Panel of Judges of the Constitutional Court in rejecting the application was because there was a previous Constitutional Court decision, namely the Constitutional Court Decision No. 070/PUU-II/2004, which stated that discrimination can only be said to exist if there is different treatment without any reasonable grounds to make that difference (MK Decision No. 35/PUU-XXII/2024).

In fact, if things that are actually different are treated uniformly, it will cause injustice (MK Decision No. 35/PUU-XXII/2024). In the Constitutional Court decision No. 35/PUU-XXII/2024, there was a *dissenting opinion* from Constitutional Justice M. Guntur Hamzah, who stated that when viewed from the perspective of justice (*sense of justice*), Article 35 paragraph (1) of Law No. 13/2003 has the potential to be misused, so it requires confirmation (*lex stricta*) (MK Decision No. 35/PUU-XXII/2024). It was further stated that age requirements in job vacancies can be justified if certain jobs do require certain physical abilities, jobs that require certain experience or education (MK Decision No. 35/PUU-XXII/2024). In essence, Constitutional Justice M. Guntur Hamzah stated that the requirements in workforce recruitment must be focused on the principles of *minimum degree of maturity and experience*, which prioritize the competence, maturity, and experience of the workforce.

In developing regulations regarding the prohibition of discrimination in the workforce recruitment process, the Ministry of Manpower has issued Circular Letter of the Minister of Manpower No. M/6/Hk.04/V/2025. Essentially, the circular prohibits employers from discriminating on any basis in the workforce recruitment process. Furthermore, age requirements are specifically regulated, specifically in Point 3 of the circular, which states:

“Age requirements in the workforce recruitment process can only be implemented if there are special interests with the following provisions:

- a. for jobs or positions that have characteristics or traits that significantly affect a person's ability to carry out the work; and/or
- b. must not result in the loss or reduction of opportunities to obtain employment.”

If examined closely, the legal principles governing the age requirements in the circular are not significantly different from those stated by Constitutional Justice M. Guntur Hamzah in his *dissenting opinion* on Constitutional Court Decision No. 35/PUU-XXII/2024. Essentially, age requirements may be applied to certain types of work that are more suitable for workers of a certain age. This is in accordance with *the doctrine of reasonable classification*, which states that differential treatment of certain groups may be carried out if the differentiation has a clear reason and purpose (Bafna, 2021). Therefore, according to the author, the rules contained in the Circular Letter of the Minister of Manpower No. M/6/Hk.04/V/2025 can emphasize that discriminatory treatment in the workforce recruitment process is in principle prohibited. Specifically, discrimination based on age can be carried out if a particular job is more suitable for workers of a certain age, due to a clear and reasonable reason and purpose.

The issuance of the Minister of Manpower Circular Letter No. M/6/Hk.04/V/2025, can be a new hope for the community, because the government has shown its firmness in minimizing discriminatory practices in the workforce recruitment process. However, if we refer to the provisions of Article 7 in conjunction with Article 8 of Law No. 12 of 2011 concerning the Formation of Legislation, it can be seen that the Minister's Circular Letter is basically not a statutory regulation, the Circular Letter is classified as a policy rule (*beleidsregel*) issued from the discretionary authority (*fries ermsen*) of government officials. Policy rules are not statutory regulations (*regeling*) or decisions (*beschikking*). Policy rules function as guidelines, instructions, or explanations in carrying out tasks (Utomo, 2025). Similarly, the Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/5/Hk.04.00/V/2025 Concerning the Prohibition of Withholding Diplomas and/or Personal Documents of Workers/Laborers by Employers, is internal and vertical, meaning it only binds the targeted government institutions/officials (Governors, Regents/Mayors, and other stakeholders) (Utomo, 2025). So even though the Minister's Circular Letter does not have binding legal force, it can encourage employers to improve ethical standards and compliance with employment laws (Utomo, 2025).

Next, the author will discuss discrimination in the workforce recruitment process from an economic perspective. In this discussion, the author will build on previous research conducted by economists who also addressed the issue of discrimination in the workforce recruitment process. Erika Hansson and Ebba Wallin (2022),

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in their study entitled *Discrimination: A Threat to Economic Growth*, attempt to describe how discrimination can reduce incentives to develop human capital in various sectors of society, and thus, how human capital barriers can affect economic growth. This study was conducted using the Neoclassical Growth Model method, which is a derivative of the Mankiw, Romer, & Weil, 1992 model (Hansson & Wallin, 2022). The approach used is to incorporate discrimination factors in the form of "human capital barriers" into the Swedish economic growth model (Hansson & Wallin, 2022). Prior to this research, previous research had found a positive relationship between human capital and economic growth, while discrimination, which creates barriers to human capital, had not been discussed in depth (Hansson & Wallin, 2022). According to Hsieh et al. (2019), when considering the economic impact of discrimination, discrimination in the labor market and human capital attainment are often the most influential. Furthermore, according to Strenze (2013), efficient talent allocation can be considered a situation where everyone is placed in a position where they can perform optimally. This condition is impossible to achieve when many workers face human capital barriers in the form of discrimination. These two opinions also serve as the reason and basis for Erika Hansson and Ebba Wallin (2022) to examine this issue in more depth using the Neoclassical growth model method as mentioned above. The following are some of the main points from the research results of Erika Hansson and Ebba Wallin (2022):

1. The discrimination rate (τ) decreased by 46% from 1965 (0.54) to 2015 (0.19).
2. The largest decline occurred in 1990–1995, coinciding with social reforms such as parental leave and childcare that increased women's labor force participation.
3. The model estimates that the decline in discrimination accounted for about 43% of the growth in output per worker in Sweden over the period.
4. The empirical model shows results consistent with actual data, confirming that reducing discrimination increases economic efficiency by allowing for a more optimal allocation of talent.

The conclusion of Erika Hansson and Ebba Wallin's (2022) research states that discrimination against certain groups (in this study, women) creates barriers to human capital accumulation, thereby reducing efficiency and economic growth. Therefore, this research demonstrates that discrimination is not only a social issue but also a crucial factor in economic growth.

Conclusion

Discrimination in the workforce recruitment process remains a serious problem in Indonesia, despite being regulated by various national and international legal instruments. While the Minister of Manpower's Circular Letter No. M/6/HK.04/V/2025 represents a positive step in strengthening the prohibition on discrimination, the circular is not legally binding on all employers. Consequently, discriminatory practices such as restrictions on age, gender, and physical condition are still common. From an economic perspective, such discrimination leads to inefficient labor allocation and creates barriers to human capital development. These barriers have direct implications for declining productivity and national economic growth. Therefore, regulatory reforms are needed, including binding legal norms and clear sanctions for perpetrators of discrimination in labor recruitment. These reforms are expected to create a fairer labor market, increase workforce participation, and encourage sustainable and inclusive economic growth.

REFERENCES

- Ananta, Z. D., Astuti, A. P., Rahayu, P. A., Ibrahim, M. J., & Anshori, M. I. (2022). Memahami Tindakan Diskriminasi di Tempat Kerja: Perspektif Hukum dan Etika. *Trending: Jurnal Ekonomi, Akuntansi dan Manajemen*, 2(3), 107-117.
- Badan Pusat Statistik. (2024). *Tingkat Pengangguran Terbuka Berdasarkan Kelompok Umur*. <https://www.bps.go.id/id/statistics-table/2/MTE4MCMY/tingkat-pengangguran-terbuka-berdasarkan-kelompok-umur.html>
- Bafna, S. V. (2021). *Doctrine of Reasonable Classification*. *International Journal of Law Management & Humanities*, 4(4), 3958-3964.
- Baldrige, D., Beatty, J., Konrad, A., & Moore, M. (2016). *People with disabilities*. In R. Bendl, I. Bleijenbergh, E. Henttonen, & A. J. Mills (Eds.). Oxford: Oxford University Press.
- Hansson, E., & Wallin, E. (2022). *Discrimination: A Threat to Economic Growth* (Master Thesis). Department of Economics, School of Economics and Management, Lund University, Sweden.
- Heriani, F. N. (2025). *MK Tolak Uji Materi Terkait Syarat Batas Usia dalam Proses Rekrutmen Tenaga Kerja*. <https://www.hukumonline.com/berita/a/mk-tolak-uji-materi-terkait-syarat-batas-usia-dalam-proses-rekrutmen-tenaga-kerja-lt6780f09112fc8/>

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- Hsieh, C.-T., Hurst, E., Jones, C.I., and Klenow, P.J. (2019). The Allocation of Talent and U.S. Economic Growth. *Econometrica*, 87(5), 1439–1474.
- Imroni, A. (2025). *Kebijakan Publik Dalam Memberikan Keadilan Bagi Masyarakat Tentang Aksesibilitas Pekerjaan Dan Kesempatan Kerja*. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(3), 2230-2236.
- Izzati, N. R. (2023). *Diskriminasi Usia Dalam Lowongan Pekerjaan: Bagaimana 'Ageism' Merugikan Pekerja, Terutama Pekerja Kontrak dan Perempuan*. <https://Theconversation.Com/Diskriminasi-Usia-Dalam-Lowongan-PekerjaanBagaimana-Ageism-Merugikan-Pekerja-Terutama-Pekerja-Kontrak-DanPerempuan-199603>
- Kenton, W., Catalano, T. J., & Li, T. (2025). *What Is Human Capital?*. <https://www.investopedia.com/terms/h/humancapital.asp>
- Oxford Learner's Dictionaries. (2025). *Definition of human capital noun from the Oxford Advanced Learner's Dictionary*. <https://www.oxfordlearnersdictionaries.com/definition/english/human-capital>
- Pangestu, G. R. R. I. (2024). *Analisis Pembatasan Usia (Ageism) Pencari Kerja dalam Prespektif Hak Asasi Manusia (HAM)*. *Proceedings Series on Social Sciences & Humanities*, 17, 250–253.
- Rahmi, I., & Rulangi, R. (2021). *The Challenges and Supports for Career Development of Persons with Disabilities during the COVID-19 Pandemic*. *Proceedings of the 3rd Annual International Conference on Social Sciences and Humanities*, 25-33.
- Razani, A. F. D. (2025). *Efektivitas Kebijakan Pemerintah dalam Menghapus Diskriminasi Usia pada Proses Rekrutmen Pekerjaan di Indonesia: Studi Kasus Surat Edaran Kementerian Ketenagakerjaan di Indonesia*.
- Sari, A. S., & Haryono, D. W. (2024). *Diskriminasi Usia Maksimum Sebagai Syarat Awal Bekerja Dalam Perspektif Hak Asasi Manusia*. *Cermin : Jurnal Penelitian*, 8(2), 675-685.
- Strenze, T. (2013). *Allocation of talent in society and its effect on economic development*. *Intelligence*, 41(3), 193 - 202.
- Sudikan, S. Y. (2015). *Pendekatan Interdisipliner, Multidisipliner, dan Transdisipliner Dalam Studi Sastra*. Surabaya: Universitas Negeri Surabaya.
- Utomo, D. S. (2025). *Kedudukan Surat Edaran Menteri Ketenagakerjaan Tentang Larangan Penahanan Ijazah Dalam Hukum Positif Indonesia*. *Jurnal Supremasi : Jurnal Ilmiah Ilmu Hukum*, 15(2), 1-17.
- Wijayanti, A. (2009). *Hukum Ketenagakerjaan Pasca Reformasi*. Jakarta: Sinar Grafika.