



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 35/PUU-XXII/2024**

**Concerning**

**Discrimination in Applying for Employment**

<b>Petitioner</b>	: Leonardo Olefins Hamonangan, S.H.
<b>Type of Case</b>	: Judicial Review of Law Number 13 of 2003 concerning Manpower (Law 13/2003) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	: Article 35 paragraph (1) is contrary to Article 28D paragraph (1) of the 1945 Constitution
<b>Verdict</b>	: To dismiss the Petitioner's petition in its entirety
<b>Date of Decision</b>	: Tuesday, 30 July 2024
<b>Overview of Decision</b>	:

The Petitioner is an individual Indonesian citizen holding a status of private employee who feels that his constitutional right as guaranteed in Article 28D paragraph (2) of 1945 Constitution has been violated by the application of Article 35 paragraph (1) of Law 13/2003 because such application has resulted in many companies in Indonesia establishing job requirements that prevent the Petitioner from getting an employment. The requirements include work experience and the age limit.

Regarding the Court's authority, because the Petitioner petitions for a judicial review, *in casu*, for Law 13/2003 against the 1945 Constitution which is under the Court's authority, therefore pursuant to Article 24C paragraph (1) of 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Judicial Power Law, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing, regardless of whether or not the Petitioner's arguments regarding the unconstitutionality of the norm of Law 13/2003 for which the petition is being reviewed are proven, in his qualifications as an individual citizen of Indonesia he has described his constitutional rights which he believes are violated by the application of the norm of the law for which the petition is being reviewed, namely the norm of Article 35 paragraph (1) of Law 13/2003. Such presumption of constitutional loss is specific and actual or at least potential in nature. Therefore, the presumption of constitutional loss as described by the Petitioner has a causal relationship (*causal verband*) with the application of the legal norms being petitioned for review. Therefore, if the *a quo* petition is granted, the constitutional loss as described will not occur and will no longer occur. Thus, regardless of whether or not the unconstitutionality of the norm being reviewed is proven, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo*

petition.

Regarding the constitutionality review of Law 13/2003 as argued by the Petitioner, upon careful examination of the Petitioner's petition and the written/documentary evidence submitted by the Petitioner, the Court considers the Petitioner's petition as follows:

1. Whereas work has a very important meaning in human life, therefore everyone needs work. Work is one source of income to meet the living needs of a person and his/her family. Therefore, the right to work is a basic human right that is inherent in a person and must be upheld and respected;
2. Whereas in relation to the Petitioner's argument questioning the issue of discrimination in obtaining employment, it is important for the Court to reaffirm its decisions related to discrimination that have actually been defined by the Court, including in the Constitutional Court Decision Number 024/PUU-III/2005 which was pronounced in a plenary session open to the public on 29 March 2006 which was quoted again, among others, in the Constitutional Court Decision Number 72/PUU-XXI/2023 which was pronounced in a plenary session open to the public on 30 August 2023;
3. Whereas the Court has emphasized that Article 1 number 3 of Law Number 39 of 1999 is categorized as discriminatory if there is a distinction based on religion, tribe, race, ethnicity, group, class, social status, economic status, gender, language and political beliefs. In other words, the definition of discrimination does not include age limit, work experience, and educational background;
4. Whereas the Petitioner based the constitutionality review of his petition on Article 28D paragraph (2) of 1945 Constitution which regulates the rights of every citizen to work and receive fair and appropriate compensation and treatment in employment relations, therefore, according to the Court, it is not related to discrimination in obtaining employment. Regarding employment without discrimination, Law 13/2003 in the considerations letter d has substantially confirmed, "that protection of workers is intended to guarantee the basic rights of workers/laborers and guarantee equal opportunities and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while still paying attention to developments in the business world." Therefore, the placement of workers must be regulated in such a way that the basic rights and protections for workers are fulfilled and at the same time must also take into account the needs of the business world in order to create a condition that is conducive to the development of the business world. To support this, the placement of workers is carried out based on the principles of openness, freedom, objectivity, fairness and equality without discrimination, and the workers must also be put in the right positions according to their expertise, skills, talents, interests and abilities while paying attention to dignity, human rights and legal protection [*vide* Article 32 paragraph (1) and paragraph (2) of Law 13/2003]. Therefore, any employer determining certain requirements such as age limit, work experience, and educational background, is not acting in a discriminatory manner. Moreover, the regulation regarding the prohibition of discrimination against workers has been expressly stated in Article 5 of Law 13/2003 which states, "Every worker has the same opportunity without discrimination to obtain employment."

Whereas pursuant to all the descriptions and legal considerations above, according to the Court, the norm of Article 35 paragraph (1) of Law 13/2003 as argued by the Petitioner has been proven not to be in conflict with Article 28D paragraph (2) of the 1945 Constitution. Therefore, the petition of the Petitioner is legally unjustifiable.

The Court subsequently passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety.

## **Dissenting Opinion**

Regarding the *a quo* decision of the Court, there is a dissenting opinion from the Constitutional Justice M. Guntur Hamzah which states the following:

The Court should be able to partially grant the Petitioner's petition. by providing an interpretation of Article 35 paragraph (1) of Law 13/2003 that the phrase "*to recruit the required workers themselves*" is conditionally unconstitutional and in conflict with the 1945 Constitution to the extent that it is not interpreted as "*prohibited from announcing job vacancies that require certain age, attractive appearance, race, skin color, gender, religion, political view, nationality or ancestry, unless otherwise specified by statutory regulations.*". Therefore, the *a quo* Article reads in full "*Employers who need workers are able to recruit the required workers themselves or through worker placement agencies are prohibited from announcing job vacancies that require certain age, attractive appearance, race, skin color, gender, religion, political view, nationality or ancestry, unless otherwise specified by statutory regulations.*". Therefore, in my opinion, the Petitioner's petition should be partially granted.