



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 124/PUU-XXII/2024**

Concerning

Age-Based Discrimination (Ageism) in Employment Recruitment

- Petitioners** : Leonardo Olefins Hamonangan, et al.
- Type of Case** : Judicial Review of Law Number 13 of 2003 concerning Labor (Law 13/2003) and Law Number 39 of 1999 concerning Human Rights against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : According to the Petitioners, Article 135 paragraph (1) of Law 13/2003 and Article 1 number 3 of Law 39/1999 are contrary to the 1945 Constitution because they give rise to ageism or age-based discrimination and perpetuate such discrimination in job vacancies, thereby violating the constitutional rights of job seekers
- Verdict** : To dismiss the Petitioners' petition in its entirety
- Date of Decision** : Thursday, January 2, 2025
- Overview of Decision** :

Whereas the Petitioners are individual Indonesian citizens. Petitioner I is unemployed and currently seeking work; Petitioner II is an online driver with uncertain income and without any guarantees or employment benefits; and Petitioner III does not yet have a permanent job. The Petitioners explained that in their efforts to find work they would be discriminated due to their age as they got older.

With respect to the Court's authority, because the Petitioners petition for constitutionality review of the norms of law, *in casu* Article 35 paragraph (1) of Law 13/2003 and Article 1 number 3 of Law 39/1999 against Article 27 paragraph (2), Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

Regarding the legal standing of the Petitioner, the petition of the Petitioners is essentially questioning the constitutionality of the phrase "may recruit the required workforce themselves" in the norm of Article 35 paragraph (1) of Law

13/2003 and the norm of Article 1 number 3 of Law 39/1999 which are being petitioned for review, because both provisions violate the rights of the Petitioners as job seekers. The losses suffered by the Petitioners as a result of the phrase “may recruit the required workforce themselves” in Article 35 paragraph (1) of Law 13/2003 and Article 1 number 3 of Law 39/1999 arise because these provisions allow companies (prospective employers) to set or create their own unreasonable recruitment requirements, such as stipulating criteria related to physical attractiveness, below-standard wages, or age.

According to the Petitioners, this phrase is contrary to Article 27 paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia because the phrase in the norm being petitioned for review because it does not prohibit the use of age as a criterion in worker recruitment. Likewise, Article 1 number 3 of Law 39/1999 is contrary to Article 27 paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia because it does not treat age-based distinctions as a form of discrimination. Whereas regardless of whether or not the arguments of Petitioners I to Petitioner III are proven, with respect to the unconstitutionality of the phrase "may recruit the required workforce themselves" in Article 35 paragraph (1) of Law 13/2003 and Article 1 number 3 of Law 39/1999 being petitioned for review, the Court is of the opinion that Petitioner I to Petitioner III (hereinafter referred to as the Petitioners) have the legal standing to act as Petitioners in the petition *a quo*.

Whereas, the Petitioners petition for the Court to give a new interpretation to the phrase “may recruit the required workforce themselves” in Article 35 paragraph (1) of Law 13/2003. According to the Petitioners, the said phrase should be interpreted as “the employers who require workers may recruit them directly or through a job placement agency, but are prohibited from announcing job vacancies that specify requirements based on age, physical appearance, race, skin color, gender, religion, political views, nationality, or ancestry, unless otherwise provided by statutory regulations.” The Court is of the opinion that such *petitum* cannot possibly be granted. Because the Court is of the view that every type of work has its own particular characteristics and specializations, performing such work requires technical skills and specific conditions that vary from one type of job to another.

As the party that designs the work, the employer is the one who best understands the abilities or qualifications needed and must be met by the workers who will perform that work. The work in question refers to formal employment, jobs created by employers (including companies, institutions, and organizations), and not informal work or self-employment created by the workers themselves. Therefore, it is reasonable that, in the context of recruitment/employment, the employers have the right to determine the qualifications required of prospective workers, particularly the abilities or skills that are directly related to the job.

The Petitioners also argued that, as job seekers, they require equality in competing for employment opportunities. In response to the argument *a quo*, the Court emphasized that this principle is already regulated and guaranteed by the 1945 Constitution of the Republic of Indonesia and Law 39/1999, which emphasized the provisions contained in Article 28D paragraph (2) of the 1945 Constitution. Article 38 paragraph (1) of Law 39/1999 provides that “Every citizen, according to their talents, skills, and abilities, has the right to decent work.” Furthermore, paragraph (2) also stipulates that, "Every person has the right to freely choose work

they prefer and has the right to fair working conditions.”

In the context of the difficulties currently faced by the Petitioners in obtaining the jobs they seek, these challenges cannot be separated from the following conditions: *First*, the number of available jobs is generally not proportional to the number of job seekers. *Second*, each job has different characteristics, requiring specific technical skills or worker qualifications, and not all workers possess the same level of technical ability or meet the same conditions needed to perform a particular job. Therefore, from the employer’s perspective, a selection process is necessary to identify prospective workers who are capable of performing the job, thereby enhancing the employer’s (or company’s) productivity.

In a situation where there remains an imbalance between the limited number of available jobs and the large number of job seekers, eliminating or standardizing job requirements would essentially only shift the problem from the Petitioners (as job seekers) to other job seekers who would then be unable to compete with the Petitioners. This assessment does not mean that the Court is indifferent or unwilling to understand the Petitioners’ circumstances, rather, the Court seeks to illustrate the logical consequences of the existing disparity between the number of workers and the demands of the labor market, an undeniable reality in today’s workforce.

In this regard, because the main issue raised by the Petitioners essentially concerns the difficulty of obtaining employment, the Court considers that state intervention is necessary, as the right to work is part of economic, social, and cultural rights whose fulfillment requires state involvement. Therefore, the state must open or create as many job opportunities as possible that align with the average qualifications of job seekers in Indonesia, however not by eliminating differences in job standards or requirements, nor by standardizing such requirements across all types of work. At the same time, the active role of citizens remains important, including through efforts to creatively create their own employment opportunities.

With respect to the state’s obligation to provide legal protection to every individual, as argued by the Petitioners, the Court is of the opinion that protection in the form of equalizing or standardizing requirements for all job seekers is inappropriate. Because such measure would effectively “force” the employers to accept workers whose qualifications may not meet the specific needs of a particular job, as has been emphasized, “the placement of workers must be carried out based on the principles of openness, freedom, objectivity, fairness, and equality without discrimination” [*vide* Article 32 paragraph (1) of Law 13/2003]

The Petitioners also question the constitutionality of the norm of Article 1 number 3 of Law 39/1999, which they believe does not provide protection against ageism. The Court is of the opinion that differences in treatment within the job recruitment process, *in casu* age-limit requirements, cannot automatically be regarded as a form of discrimination that violates the principle of equality in human rights. The Court finds that Article 1 number 3 of Law 39/1999 clearly defines discriminatory actions as distinctions based on religion, tribe, race, ethnicity, group, class, social status, economic status, gender, language, or political beliefs, and does not include distinctions based on age. This means that the use of age-limit requirements in job recruitment is more closely related to the objective needs of employers and tailored to the specific characteristics of particular jobs. Requirements such as age limits are generally applied to ensure that prospective employees possess the specific competencies or qualifications needed to perform

their duties effectively and efficiently. Therefore, the use of age requirements cannot automatically be regarded as a discriminatory act as referred to in Article 1 number 3 of Law 39/1999.

Pursuant to such legal considerations, the Court considers that the phrase "may recruit the required workforce themselves" in the norm of Article 35 paragraph (1) of Law 13/2003 and Article 1 number 3 of Law 39/1999 provides recognition, guarantees, protection, and fair legal certainty, and equal treatment before the law, with respect to the right to decent work and a livelihood for humanity as regulated in Article 27 paragraph (2), Article 28D paragraph (1), and Article 28I paragraph

(2) of the 1945 Constitution, and not as argued by the Petitioners.

Accordingly, the Court passes down a decision which verdict states to dismiss the Petitioners' petition in its entirety.

Dissenting Opinion

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

Whereas I remain consistent in my dissenting opinion, which I previously stated in Decision Number 35/PUU-XXII/2024, with the additional explanations above and presented with improved structure. Accordingly, once again, the petition of the Petitioners should have been granted in part, and the Court should have provided a new interpretation to the norm of Article 35 paragraph (1) of Law 13/2003 that the phrase "*may recruit the required workforce themselves*" is conditionally unconstitutional and contrary to the 1945 Constitution if it is not interpreted as "prohibited from announcing job vacancies that specify requirements based on race, skin color, gender, religion, political views, nationality, ancestry, age, or physical appearance, unless otherwise provided by statutory regulations". Accordingly, the Article *a quo* reads in full "the employers who require workers may recruit them directly or through a job placement agency, but are prohibited from announcing job vacancies that specify requirements based on race, skin color, gender, religion, political views, nationality, ancestry, age, or physical appearance, unless otherwise provided by statutory regulations". Therefore, in my opinion, the Petitioner's petition should be partially granted.