

LAW & SOCIAL POLICY | RESEARCH ARTICLE

# Hegemonic Age Restriction Law in Labor Recruitment

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## ARTICLE HISTORY

**Received:** November 10, 2025

**Revised:** February 06, 2026

**Accepted:** February 23, 2026

## DOI

<https://doi.org/10.52970/grlspr.v5i2.1842>

## ABSTRACT

Every individual has the right to decent work and fair employment conditions. However, many Indonesian citizens face difficulties in obtaining employment due to age restrictions imposed during recruitment, despite having adequate skills and productivity. This study aims to analyze the legal politics of age limitations in labor recruitment and examine their implications for employment policies. Using a socio-legal research method, this study combines normative legal analysis with social and non-legal approaches, supported by statutory and legal theory perspectives. The findings indicate that assumptions of lower productivity and higher operational costs often justify age restrictions. Such practices limit employment opportunities and potentially violate constitutional principles of equality and non-discrimination.

**Keywords:** Company, Age Limitation, Labor Recruitment, Employment Rights, Non-Discrimination.

## I. Introduction

Work is a basic need for every individual to meet their life needs. In the practice of recruiting workers, there are often age restrictions set by the Company or the employer. These restrictions will affect employment opportunities for specific age groups, especially older workers. Age restrictions in labor recruitment are a complex issue because they involve legal, economic, and human rights considerations. On the one hand, private companies have specific policies for recruiting workers based on age criteria to improve efficiency and productivity. On the other hand, this policy can give rise to discrimination against certain age groups, such as older workers who are still productive but face limited employment opportunities, or are commonly discriminated against. Ageism is a form of discrimination against people or groups based on age. Ageism involves unfavorable, unfair, and unequal treatment based solely on a person's age (Yuli Fitria, 2021).

In Indonesia, the Labor Law Number 13 of 2003 regulates the minimum age limit for the workforce to protect children from exploitation. Currently, no rule explicitly sets the maximum age limit for job seekers. Thus, many companies set age requirements unilaterally, which can cause legal problems related to labor discrimination. Based on data from the Central Statistics Agency (BPS), in August 2024, there will be 7.4 million 15-year-olds unemployed. In August 2023, the unemployment rate was 7.8%; in August 2022, it was 8.4% in Indonesia. The main challenge faced by specific groups aged 28 and above is the difficulty of finding a new job due to the policy limiting the maximum age for recruitment.



The issue of age limits in labor recruitment has been a public concern since the end of 2023 and has been widely discussed on social media and in the mass media. Many people complain that it is difficult to get a job even though they have skills and talents in their field. This issue has even become a campaign promise for the presidential and vice presidential candidate pairs, numbers 01 and 03, in early 2024. One of the cases that highlights this problem is the application for a material test against Law Number 13 of 2003 concerning Manpower in Article 35 paragraph (1) submitted by Leonardo to the Constitutional Court (MK). The petitioner said the Employment Law does not regulate the principle of equality in the recruitment process, thereby allowing discrimination against certain groups based on factors such as age, gender, and ethnicity. In its decision, the Constitutional Court argued that the maximum age limit for labor recruitment is not a discriminatory ground so long as it is applied for objective and professional reasons. This decision is based on the view that the diversity of employment types and conditions cannot be regulated in a single provision, so the regulation is left to the agency responsible for employment under the Law. (Pitaningtyas, 2024)

The Constitutional Court judge said that it cannot be fully regulated or wholly removed from the restriction; there can be restrictions, but only with rationalization. For example, in the construction sector, thin people can't be included. However, there is a dissenting opinion from constitutional judge M Guntur Hamzah, who argues that the Court should grant the applicant's application in part. Because Article 35, Paragraph (1), can be seen from the perspective of justice, the a quo norm causes legal uncertainty and has the potential to be abused. For example, unreasonable labor vacancy requirements, such as the requirement for attractiveness. Therefore, it is necessary to prohibit employers from including age, attractive appearance, race, skin color, gender, religion, political views, nationality, or ancestry in job vacancy announcements, unless required by Laws and Regulations. As for issue #kabur, it went viral in 2025 and will be a social media issue in early February 2025. This hashtag invites people to leave Indonesia to look for work abroad because of people's disillusionment with economic, social, and justice conditions in Indonesia, the perception that government policies are not on the side of the people, and social injustice. This issue reflects how age discrimination and difficulty in getting a job in the country are.

Regarding the maximum age limit for job search, Das Sollen in Article 27 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia "Every citizen has the right to work and livelihood that is suitable for humanity" and Law Number 39 of 1999 concerning Human Rights in Article 38 Paragraph (1) and (2) which essentially states that everyone has the right to decent work and fair employment conditions. The reality is that many companies set age limits for employment; this condition actually results in veiled discrimination against workers whose age is considered to have exceeded a specific limit. For example, companies that set requirements for job vacancies by specifying a maximum age of 25-28 or older, even though they actually have the talents/skills and meet all the job requirements. Companies that explicitly set a maximum age limit for workers can hinder employment opportunities for many individuals who are still productive (Amelia, Alzahrah, 2024). This age limit provision can be seen as violating the principles of equality and non-discrimination set out in the Constitution. Every citizen has the right to work without discrimination. Age limit for worker recruitment. Based on this phenomenon, this study aims to examine the legal politics of age restriction in labor recruitment and examine the implications of age restriction policies in labor recruitment (Yanto M.P., 2023)

## II. Literature Review and Hypothesis Development

### 2.1. The right to work as a constitutional right

Work is a basic need for every individual and a means to achieve welfare and a decent livelihood. From the perspective of human rights law, the right to work is not only the right to work, but also includes the right to fair employment opportunities, free from discrimination. The Indonesian Constitution, through Article 27, paragraph (2), of the 1945 Constitution of the Republic of Indonesia, emphasizes that every citizen has the right to work and to a decent livelihood. This provision reflects the state's obligation to ensure equal access to

employment without discrimination. In addition, Law Number 39 of 1999 concerning Human Rights also regulates the right to work in Article 38 paragraphs (1) and (2), which essentially affirms that everyone has the right to decent work and fair employment conditions. Thus, the right to work is a constitutional right and a human right that the state must protect through fair labor policies and regulations.

## 2.2. The Concept of Age Restriction in Labor Recruitment

Age restrictions in hiring are a common practice in the world of work, especially in the private sector. These restrictions are usually outlined as minimum and maximum age requirements in job announcements. In the context of Indonesian labor law, Law Number 13 of 2003 concerning Manpower expressly establishes a minimum working age as a measure to protect children from labor exploitation. However, the law does not explicitly regulate the maximum age limit for job seekers. The absence of a maximum age limit regulation gives companies broad discretion to set age requirements unilaterally. Some legal literature suggests that this condition may create legal uncertainty and open the door to discrimination in the labor recruitment process. Age-based restrictions that are not grounded in objective job characteristics can hinder individuals' access to work, even when they remain productive and possess competencies aligned with the company's needs.

## 2.3. Ageism as a Form of Discrimination in Employment

Ageism is a form of discrimination based on a person's age. Yuli Fitria (2021) defines ageism as unfair, unequal, and detrimental treatment of specific individuals or groups solely because of age. In the context of employment, ageism often manifests as maximum age restrictions on hiring, negative assumptions about the productivity of older workers, and the exclusion of mature workers from the labor market. Some studies show that the assumption that older workers are less productive or have difficulty adapting to technology is a stereotype that does not always align with empirical evidence. Many mature workers still have strong skills, experience, and a strong work ethic. Therefore, the generalization of age restrictions constitutes veiled discrimination contrary to the principles of equality and nondiscrimination in labor law.

## 2.4. Empirical Conditions of Employment and the Impact of Age Restrictions

The problem of age restrictions in labor recruitment cannot be separated from national employment conditions. Data from the Central Statistics Agency (BPS) shows that the number of unemployed in Indonesia remains relatively high, reaching 7.4 million in August 2024. Despite the downward trend compared to previous years, certain age groups still face significant challenges, especially job seekers aged 28 and older. This age group often has difficulty finding new jobs due to the maximum age limit in job vacancies. In fact, in terms of age, they are still classified as of productive age and have relevant abilities and skills. This condition leads to social and economic exclusion of the mature age group, which can ultimately increase structural unemployment.

## 2.5. Age Restrictions in the Perspective of the Constitutional Court Decision

The issue of age restrictions in labor recruitment has received serious attention in the judicial realm through challenges to the constitutionality of Article 35 (1) of Law Number 13 of 2003 concerning Manpower. In Constitutional Court Decision Number 35/PUU-XXII/2024, the Court held that a maximum age limit for worker recruitment is not necessarily discriminatory so long as it is based on objective and professional grounds. The Court considers that the characteristics and needs of each type of work differ, so it is not possible to regulate work requirements uniformly in a single legal norm. Therefore, further arrangements regarding age requirements are left to sectoral policies and implementing regulations under the law. However, this ruling also raises questions about the limits of objectivity and the potential for employer abuse.

## 2.6. Criticism of Age Restrictions and Dissenting Opinion of Constitutional Judges

The Constitutional Court's decision was not unanimous, as Constitutional Judge M. Guntur Hamzah dissented. In a different opinion, it was stated that Article 35, paragraph (1), of the Manpower Law creates legal uncertainty and has the potential to be abused by employers. Age restrictions that lack objective criteria can perpetuate discriminatory practices in labor recruitment. The constitutional judge is of the view that there should be a strict prohibition on employers including discriminatory requirements in job announcements, such as age, physical appearance, race, skin color, gender, religion, political views, and ancestry, unless expressly permitted by law or regulation. This view aligns with the principles of justice, equality, and nondiscrimination in human rights law.

## 2.7. Social and Political Phenomena of Age Restriction Law

Age restrictions in labor recruitment are also reflected in contemporary social phenomena, one of which is through the viral hashtag #KaburAjaDulu in early 2025. This phenomenon represents the public's disappointment with the difficulty of getting decent work in the country, including due to age discrimination practices. This phenomenon shows that age restrictions not only affect legal matters but also have broad social and political implications. From a legal and political perspective, this condition reflects the need for labor policy reform that is more responsive to the principles of social justice. The state is required to balance the interests of the business world with the protection of citizens' constitutional rights, especially the right to work without discrimination.

## 2.8. Research Relevance

Based on the above literature review, it can be concluded that age restrictions in labor recruitment are complex issues that involve legal, human rights, economic, and political dynamics. The literature shows a gap between legal norms that guarantee the right to work and empirical practices that remain laden with age discrimination. Therefore, this study is relevant to examine the legal politics of age restrictions in labor recruitment and the implications of this policy for the protection of citizens' constitutional rights.

### III. Research Method

This study uses the Socio-Legal Research approach as its primary method to examine the problem of age restrictions in labor recruitment. The Socio-Legal Research approach is a method of legal research that views law not only as a written norm (law in the books), but also as a social reality that lives and is applied in society (law in action). This approach situates law within social, economic, political, and cultural contexts, enabling researchers to understand how law operates, is applied, and has a direct impact on society. The Socio-Legal Research approach is carried out through a combination of normative analysis and non-legal science approaches. Normative analysis examines laws and regulations, legal principles, and court decisions relevant to age restrictions in labor recruitment. Meanwhile, non-legal approaches, such as sociological and empirical methods, are used to examine how companies implement age-restriction policies in practice and their impact on job seekers, particularly certain age groups. Thus, the SocioLegal approach does not eliminate the doctrinal approach, but rather integrates it into the broader framework of analysis. This research is descriptive-analytical, aiming to systematically and factually describe the phenomenon of age restrictions in labor recruitment and to analyze it in light of applicable legal provisions. This approach was chosen because the problems studied are not only legal norms, but also the social realities experienced by job seekers and the policies implemented by companies. In this study, several approaches were used, including:

#### 1. Statute Approach

The legislative approach is used to examine various labor and human rights regulations. This approach involves examining the provisions of the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2003 concerning Manpower, Law Number 39 of 1999 concerning Human Rights, and other relevant laws and regulations. This approach aims to determine whether the age-restriction provisions in labor recruitment practices are in line with the principles of equality, fairness, and nondiscrimination as stipulated in positive law.

#### 2. Conceptual Approach

A conceptual approach is used to examine legal concepts relevant to this research, including legal politics, discrimination, the right to work, and ageism. This approach is carried out by examining the opinions of relevant legal experts and academics to obtain an in-depth theoretical understanding as a basis for analyzing the problems being studied.

#### 3. Case Approach

The case approach is used by examining the Constitutional Court Decision Number 35/PUU-XXII/2024 concerning the Age Limit for Workers. This decision was analyzed to understand the Constitutional Court's legal considerations regarding age restrictions in labor recruitment, as well as its implications for the protection of citizens' constitutional rights.

#### 4. Sociological Approach

A sociological approach examines how laws are applied and how they influence people's lives. This approach is carried out through the collection of empirical data, such as interviews with the Samarinda City Manpower Office and companies in Samarinda City. This approach aims to examine the actual practice of age restrictions in workforce recruitment, as well as stakeholders' views on the policy.

The sources of legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are legal materials that have authority and binding force, which include the Constitution of the Republic of Indonesia in 1945, Law Number 39 of 1999 concerning Human Rights, Law Number 13 of 2003 concerning Manpower, Constitutional Court Decision Number 35/PUU-XXII/2024 concerning the Age Limit of Labor, International Labour Organization (ILO) Convention Number 162 of 1980 concerning Older Workers, as well as empirical data in the form of interviews with the Samarinda City Manpower Office and companies in Samarinda City. All of these primary legal materials serve as the basis for analyzing the age restriction policy in labor recruitment from a positive legal and constitutional law perspective.

The secondary legal material in this study is in the form of literature that provides explanations, analyses, and interpretations of primary legal materials. Secondary legal materials include law books, dissertations, theses, scientific articles, legal journals, and results of previous research relevant to age restrictions, labor discrimination, and labor law politics. Secondary legal materials strengthen legal arguments and provide a theoretical framework for research analysis. Meanwhile, tertiary legal materials provide additional instructions or explanations to primary and secondary legal materials, including the Legal Dictionary, the Great Indonesian Dictionary, legal encyclopedias, and other relevant reference sources, which are used to clarify the terms and concepts used in research.

The data collection technique in this study was conducted through literature review and field research. Literature studies are conducted by collecting and examining primary, secondary, and tertiary legal materials related to research topics to gain a theoretical and normative understanding of age restrictions in labor recruitment. The field research was conducted through interviews with the Samarinda City Manpower Office and companies in Samarinda City, to collect empirical data on labor recruitment practices, the reasons for implementing age limits, and the views of relevant parties on age discrimination.

The collected data and legal materials are analyzed qualitatively by interpreting them in a systematic, logical, and argumentative manner to address the formulated research problems. In the formulation of the first problem, the analysis is focused on the legal politics of the maximum age restriction in labor recruitment. The analysis shows that the age restriction policy is influenced by political, economic, and social factors, as well as by the normative vacuum in Article 35, paragraph (1), of the Manpower Law. Therefore, a change in norms is needed to prohibit including age requirements in job vacancy announcements, unless expressly specified by laws and regulations. In the formulation of the second problem, the analysis is focused on the implications of age restrictions in labor recruitment. The results of the analysis show that the age restriction has implications for the violation of citizens' constitutional rights as stipulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, causes discriminatory treatment, and has an impact on the psychological condition of job seekers. This research was carried out for a period of more than six months from the issuance of the Certificate of Approval of the Thesis Title. The research stages include preparing the research design, collecting data, analyzing data, preparing the research report results, administering final exams, and publishing the research results. The research was conducted in Samarinda City, with a focus on the Manpower Office agencies and companies that are the objects of the research.

#### IV. Results and Discussion

The legal politics of age restrictions in recruitment reflect the direction of the country's legal policy as it balances the interests of the business world with the protection of workers' rights. Based on the 1945 Constitution of the Republic of Indonesia, every citizen has the right to a decent job and livelihood. However, the absence of a clear maximum age limit in labor regulations provides room for companies to set age requirements unilaterally. The Constitutional Court Decision Number 35/PUU-XXII/2024 emphasizes that age restrictions cannot be considered discriminatory if they have a rational basis in relation to the needs of the job. However, the Court also reminded that the restriction must be objective, proportionate, and not eliminate employment opportunities for the productive age group. A different opinion from Constitutional Judge M. Guntur Hamzah emphasized the need for an explicit ban on age criteria in job vacancies to prevent discrimination from the recruitment stage. Politically, this policy shows an imbalance between economic orientation and social justice values. The state has not fully fulfilled its protective function for workers' rights, so labor policy remains more focused on company efficiency than on labor protection. Based on the results of an interview conducted with Mr. M. Reza Pahlevi, S.H., M.H., Head of Industrial Relations, Work Conditions, and Social Security of Samarinda City (26/02/2025). He said that skilled workers usually earn higher salaries. Workers who provide their skills add value to the company, so the company pays higher salaries as compensation for their skills. Meanwhile, small companies will find it challenging to compete for quality labor, leading them to impose strict age restrictions on hiring.

Large companies with substantial capital, advanced technology, and strong appeal will more easily attract workers with high standards by offering sufficiently high salaries, and they also have the breadth to set age limits unilaterally to get the best workforce. Small companies face significant challenges in attracting qualified workers due to the limited funds and facilities they can offer. Therefore, small companies often set stricter maximum age limits to attract workers who are considered still potential and can be trained to meet the company's needs. They also tend to be unable to compete with large companies, so they lose the labor recruitment battle. Small and medium-sized companies set age limits for job vacancies based on cost-efficiency considerations aimed at minimizing company expenses.

In the Constitutional Court's Decision Number 35/PUU-XXII/2024 concerning the age limit, the Court rejected the application for material testing related to Article 35 paragraph (1) of Law Number 13 of 2003 concerning Manpower. The Court thinks that determining the age limit for labor recruitment is neither absolutely prohibited nor absolutely permitted. However, it must be based on the specific needs of the type of work and on reasons that are proportionate and relevant. There may be restrictions according to the Constitutional Court. However, with rationalization, for example, in the construction sector, it is impossible for

people with small and thin bodies to be included in construction. In the same decision, there was a different opinion from Constitutional judge M. Guntur Hamzah. He argued that the applicant's application should be granted in part. He proposed that Article 35, paragraph (1) of the Manpower Law be amended by adding a provision prohibiting employers from including conditions such as age, physical appearance, race, skin color, gender, religion, political views, nationality, or ancestry in the announcement of job vacancies, unless the Laws and Regulations have regulated it. According to him, this step prevents discriminatory practices in the labor recruitment process. The age restriction is directly contrary to the principles of equality and non-discrimination guaranteed in Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The right to obtain decent work is a fundamental right that should not be limited by age, provided the individual has the competence and ability to work. The practice of age discrimination (ageism) causes reduced access to employment for the age group of 30 years and above, even though they are still in the productive age range. In international law, this practice is also contrary to ILO Convention No. 111 on Discrimination in Occupation and Position, as well as Convention No. 162 on Elderly Workers. As an ILO member country, Indonesia has an obligation to align its national policies with these non-discriminatory principles.

Economically, young workers are often considered more profitable than older workers because they are more productive and cost less in terms of salaries and social security contributions. From a company's economic point of view, it is a cost-efficiency strategy to maximize profits. According to the CV, the company's primary goal is to achieve maximum profit. Autolamp Champion Bong Wen Khan, as the head of the company (07/05/2025), engaged in auto parts, explained that people under 30 are more productive. Thus, many companies impose a maximum age limit on worker recruitment. However, government regulations explicitly do not require it in practice, and they screen job applicants based on age, assuming that younger workers are cheaper. Even at a relatively old age, with more work experience, physical conditions will also decrease productivity.

Protection of vulnerable groups. One reason for the age restriction on the workforce is the protection of children and the elderly. Many companies consider age when recruiting or retaining workers because they assume labor productivity can decrease with age. Basically, this policy is to prevent the exploitation of children in the world of work, which can interfere with their education and development. A child under 15 should not work because they are too young. Basically, those under 15 have not yet reached full maturity, according to the Tio Company Manager CV. Anugerah Jaya (14/03/2025) appeared, engaged in distribution services. This company provides an age limit for the job desk so that the company admin can look for people who are computer smart, if for sales who have experience, so that they know what stores need the goods, and if the driver certainly has a driver's license according to the vehicle, and if the company prioritizes those under 30 years old. Younger people are fresher and better at computers. Occupational health and safety. Age can affect a person's physical and mental ability to do work. Older people are usually less healthy and less able to handle heavy work. As people age, their physical capacity tends to decrease, including muscle strength and endurance. These conditions can affect the effectiveness and safety of doing work.

Article 35, paragraph (1), of Law Number 13 of 2003 concerning Manpower (as amended by Law Number 11 of 2020 concerning Job Creation) provides that employers have the right to determine specific conditions in the announcement of job vacancies. However, this article does not expressly prohibit the inclusion of age limits; in fact, it opens the door for companies to set discriminatory age requirements, even without a rational basis or specific work needs. This indecisiveness is what makes age-based discriminatory practices still often occur covertly and are considered normal in the world of work. The absence of an explicit prohibition against age discrimination also has implications for weak legal protections for job seekers of productive age who are classified as "older", such as those aged 35 years and above. In fact, in various international instruments, such as the ILO Convention No. 111 on Discrimination in Employment and Occupation, discrimination based on age has been considered a violation of the principle of equal opportunity in employment. Indonesia, as part of the international community, should adopt these values into its national law.

The state is obliged to guarantee every individual's access to employment without discrimination, including on the basis of age. This means that if a person has the ability and qualifications but is rejected only because of age, then his constitutional rights are not fulfilled. A maximum age restriction in employment may violate citizens' constitutional rights. The rights regulated in the 1945 Constitution are constitutional rights; they constitute a form of protection of citizens' rights against state actions, as formulated in the second amendment text of the 1945 Constitution. This provision regarding human rights is constitutionally guaranteed. Aging results in unfavorable, unfair, and unequal treatment simply because of one's age. Ageism is already banned in various countries. This prohibition is based on the understanding that age is a poor predictor of performance and is often unrelated to employability. This age restriction has a significant negative impact on contract and female workers (Shlomita Putri Amelia, 2024). According to Darity and Goldsmith in 1996, who stated that losing a job has a direct influence on a person's mental state. "In various psychological literatures, it has been studied that after job loss come symptoms of low job satisfaction, depression, low self-esteem, unhappiness, and even suicide. This arises because of decreased income; job loss is one of the most significant factors for a person experiencing stress to the point of depression (Dewi Kirana, 2024). Individuals who are addicted often experience emotional distress due to financial instability and feelings of anxiety about their future lives. The inability to meet the needs of life independently can trigger prolonged stress, thus having an impact on a person's mental health. This continuous stress can develop into anxiety and even depression if not handled properly. This psychological stress not only affects mental health, but also physical health, because prolonged stress can decrease the body's immune system and trigger various diseases.

## V. Conclusion

Based on the results and discussion above, the conclusions of the research are as follows:

1. Political, economic, and social factors influence the legal politics of the maximum age limit in labor recruitment. Politically, this policy is shaped by the power and interests relationship between the government and business actors, where large companies exert greater influence, leading regulation to be more in favor of industrial efficiency than labor protection. From an economic perspective, young workers are considered more productive and cost-efficient than older workers. Socially, age restrictions are meant to protect vulnerable groups such as children and the elderly, given that productivity and health can decline with age. However, this policy must be implemented fairly, without discrimination, while still protecting the human rights of all prospective workers.
2. The implication of the maximum age restriction in the workforce on the fundamental rights of citizens is a violation of constitutional rights because it is contrary to the fundamental right of citizens to get a decent life as stipulated in the 1945 Constitution in Article 27, paragraph (2). The treatment of limiting the maximum age in the recruitment process without a professional and fair reason is classified as a form of discrimination against groups based on age, commonly called Ageism. The psychological impact on individuals who are unemployed or have difficulty getting a job can be prolonged emotional stress due to financial instability and feelings of anxiety about future life.

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