



Legal Aspects of Age Discrimination in Job Recruitment: A Normative Analysis of Circular Letter M/6/HK.04/V/2025

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ABSTRACT

Currently, the issue of age limits for labor recruitment is gaining attention. In Indonesia, age restrictions for job applicants are often one of the requirements found in many job openings. This study aims to analyze the legal basis of the Minister of Manpower Circular Letter Number M/6/HK.04/V/2025 in addressing age discrimination in the recruitment process in Indonesia, using a normative legal research approach. The research findings show that from the **Legal Hierarchy Aspect**, the SE M/6/2025 has a fundamental weakness as a legal instrument because it is not included in the legislative framework according to Law No. 12/2011. Its status as an instructional directive limits its enforceability and prevents it from serving as a basis for effective legal claims. From the **Substance Aspect**, its scope is limited to the job vacancy announcement stage, without regulating the selection stage, which is often where disguised discrimination practices occur. The absence of an operational definition of "objective requirements" for age restrictions leads to multiple interpretations that can be exploited by companies. Additionally, there is no complaint mechanism provided in this Circular Letter when violations occur. From a **Comparative Aspect** with international standards, this Circular Letter has not fully accommodated the non-discrimination principle in ILO Convention No. 111 concerning Discrimination in Employment and Occupation. Furthermore, the experiences of other countries show that protection for older workers requires strong and comprehensive legal instruments, not just a circular that serves as a mere recommendation.

Keywords: Legal Aspects, Age Discrimination in Employment, Circular Letter.

INTRODUCTION

In Indonesia, many job vacancies include age requirements for prospective applicants. Companies often impose certain age requirements, both for younger and more senior candidates. While the reasons behind these policies are understandable, such as considerations of experience or physical condition, it is not uncommon for them to be considered discriminatory and have the potential to reduce equal employment opportunities for all age groups (Ardhana et al., 2025).

The issue of age limit requirements in labor recruitment is now increasingly emerging in Indonesia. The beginning of the public conversation on this issue was triggered by an interaction between a follower and TikTok content creator Bunda Corla in November 2023. In the live broadcast session, the follower questioned the age limit policy for job applicants in Germany and compared it with the practice that applies in Indonesia (Ardhana et al., 2025; Bahrudin, 2022; Neve & Soerjoatmodjo, 2019). Mother Corla gave a fairly clear response by stating that in Germany there is no age restriction for job seekers, in contrast to the conditions in Indonesia (PARVEZ, 2023). However, the explanation has not touched on the detailed aspects of the types of job

positions that may have special considerations related to age. The response from this public figure then sparked a wide-ranging discussion about the practice of age discrimination in recruitment, which quickly spread and became a hot topic of discussion on various social media platforms and conventional media (Algae, 2023).

The issue of age restrictions in labor recruitment is not only a concern of the general public, but also attracts the attention of politicians at the national level. In the 2024 election, the pair of presidential and vice presidential candidates Ganjar Pranowo-Mahfud MD specifically included this issue in their campaign agenda. Mahfud MD stated that this issue needs to be studied in depth and regulated through legal instruments, although he admitted that such a legislation process takes a long time. (Rio Feisal, 2024) On the other hand, Ganjar Pranowo affirmed his commitment to review the policy of restricting the age of job applicants. On various campaign occasions, Ganjar often emphasized the basic principle that work is a fundamental right of every citizen. He also revealed that his team received many complaints from the public regarding the practice of age discrimination that is still rampant in the recruitment process (Fadilah, 2024).

The pair of presidential and vice presidential candidates Anies Baswedan-Muhaimin Iskandar also made the issue of age discrimination an important part of their campaign platform. These two figures are unequivocally committed to abolishing the practice of age restriction in labor recruitment. Anies Baswedan in his various campaign speeches emphasized the principle of comprehensive non-discrimination, covering not only age factors but also gender, socio-cultural background, and religion. In Anies' view, all forms of discrimination must be eliminated to create true equality of employment opportunities. He emphasized the importance of implementing uniform recruitment standards in both the government and private sectors, so that there are no more differences in treatment based on the demographic characteristics of applicants. This vision aims to create a more inclusive and equitable employment ecosystem for all levels of society (Eva Rianti, 2024).

The latest data from the Central Statistics Agency (BPS) through the National Labor Force Survey (Sakernas) as of February 2025 shows significant developments in the Indonesian labor market. The number of labor force reached 153.05 million people, an increase of 3.67 million people compared to the same period the previous year. This growth was accompanied by an increase in the Labor Force Participation Rate (TPAK) by 0.80 percentage points, indicating that more and more people of productive age are actively participating in the labor market. In terms of labor absorption, the Open Unemployment Rate (TPT) showed an improvement by 0.06 percentage points to 4.76 percent or equivalent to 7.28 million people. This figure reflects the relative success of various employment policies although it still leaves challenges in creating more inclusive jobs (BPS, 2025).

The practice of age discrimination in the recruitment process creates a variety of adverse systemic impacts. On the one hand, senior workers with qualified competencies are often disqualified simply because they are considered to be "above the ideal age limit". On the other hand, young people who do not have long experience are considered "too raw" for various strategic

positions. This paradoxical condition not only harms individuals, but also creates inefficiencies at the macroeconomic level when potential human resources are eliminated from the job market simply because of demographic considerations. The social impact of this age-based recruitment policy is quite serious. The work environment becomes less diverse when companies tend to be homogeneous in the age composition of their employees. In fact, various studies show that teams with balanced generational variations actually show more optimal performance through a combination of youth innovation and the wisdom of senior workers. Ironically, although Indonesia's Labor Law expressly prohibits discrimination in employment, its implementation in the field is still not optimal in protecting the rights of job seekers from this age-discriminatory practice (Ardhana et al., 2025).

Indonesia's legal framework has actually guaranteed the principle of equality in the right to work. Our Constitution through Article 27 Paragraph (2) of the 1945 Constitution explicitly states the fundamental right of every citizen to obtain a decent job and life (Indonesia, 1945). This regulation is strengthened by the Employment Law No. 13 of 2003, especially Articles 5 and 6, which affirms the prohibition of all forms of discrimination in employment opportunities. Nevertheless, there is a significant gap between this ideal legal guarantee and the reality of recruitment practices on the ground. Many companies, both openly and covertly, still make age one of the main selection criteria. This kind of policy is clearly contrary to the spirit of non-discrimination that is the basis of various labor regulations in Indonesia.

The practice of age discrimination in the Indonesian world of work is generally manifested through the establishment of rigid maximum age limits by various organizations. This phenomenon is especially seen in entry-level vacancies which often limit applicants to the age range of 25-27 years, even though in fact many younger candidates meet the qualifications. The banking industry, as a concrete example, even applies a maximum limit of 21 years for certain positions, a policy that automatically eliminates potential candidates who are slightly older (Ardhana et al., 2025).

Job seekers who exceed the company's age limit often face systemic barriers, both in the form of formal policies and veiled age bias in the recruitment process. This creates significant challenges for individuals in obtaining jobs according to their competencies, so it is not surprising that protests against this kind of practice are increasingly emerging. On the other hand, businesses defend age-restriction policies with efficiency arguments – they argue that age criteria help simplify the selection process by quickly identifying candidates who are assumed to be the most suitable for a particular position (Ardhana et al., 2025), then in May 2025 the Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/6/HK.04/V/2025 was issued concerning the Prohibition of Discrimination in the Labor Recruitment Process. Based on these problems, several questions arise, how is the legal force of the Circular Letter of the Minister of Manpower in the regulatory hierarchy, whether it is able to overcome age discrimination in the formal and informal sectors and the juridical weaknesses of this legal instrument

Previous research has shown that age restrictions often hinder employment opportunities for individuals who are older or younger than the criteria set by the company (Yhudin et al., 2025). Although the Employment Law has regulated the prohibition of discrimination in employment, its implementation in the field is still not optimal, especially in terms of age restrictions. This creates a gap that results in inequity in employment opportunities. As this issue grows, important questions arise about the extent to which the Circular Letter of the Minister of Manpower No. M/6/HK.04/V/2025 is able to overcome age discrimination in labor recruitment and how it stands in the Indonesian legal hierarchy.

The gap in this research lies in the limited studies that examine the role of instructional law, such as the Circular, in overcoming age discrimination in the context of job recruitment. This research aims to fill this gap by conducting a normative legal analysis of the Circular Letter of the Minister of Manpower No. M/6/HK.04/V/2025, in order to assess its effectiveness in overcoming age discrimination and analyze existing weaknesses. The novelty of this research lies in the approach used to analyze legal instruments that do not have binding power, as well as compare them with international standards that govern the principle of non-discrimination.

The main objective of this study is to analyze the legal position of the Circular Letter of the Minister of Manpower in the Indonesian legal system, evaluate its effectiveness in addressing age discrimination in the formal and informal sectors, and to identify the juridical weaknesses of this instrument. This research is expected to contribute to the development of a more inclusive and equitable labor policy, as well as be the basis for regulatory changes that can reduce discrimination in the labor recruitment process in Indonesia.

RESEARCH METHODS

This study adopts a normative juridical approach (normative legal research) as the main methodological framework. Essentially, this approach focuses on the analysis of various written legal documents and relevant regulatory materials. The main characteristic of normative law research is its doctrinal nature, where law is understood as a system of norms that needs to be studied textually and conceptually.

RESULTS AND DISCUSSION

Hierarchically, the position of the Circular Letter of the Minister of Manpower is outside the formal framework of the legislative order according to Law No. 12/2011. Hans Kelsen's theory of the hierarchy of norms (*stufentheorie*) explains that the validity of a norm depends on higher norms, forming a pyramidal superordination-subordination relationship. In this context, the SE Minister is outside the pyramid of formal norms so that it has limited binding power (Jimly Asshiddiqie and M. Ali Safa'at, 2006). According to Hans Kelsen, legal norms are arranged hierarchically like a tiered pyramid. This means that legal norms at the lower level are applicable, sourced, and based on higher norms. Meanwhile, these higher norms are also sourced and based

on higher norms, and so on until they reach the top of the hierarchy, namely the Basic Norm (Grundnorm). Therefore, the formation or abolition of a law can only be carried out by institutions that have authority based on higher legal norms. Thus, the lower legal norms (*Inferior*) must be formed in accordance with and based on higher legal norms (*Superior*). In the end, the law becomes tiered and layered to form a hierarchy. (Aziz Syamsuddi, 2011). The Circular Letter of the Minister of Manpower No. M/6/HK.04/V/2025 is actually not included in the hierarchy of formal legal norms, but only an internal guideline within the relevant agencies. The legal position of this circular has been affirmed in the Supreme Court Decision No. 48P/HUM/2016 which states that the circular does not have binding power like the product of laws and regulations. The legal impact of this status is the absence of significant sanctions for violators, and the inability of the circular to be used as a strong legal basis in lawsuits, including by workers who claim to have experienced discrimination.

In terms of substance, the Circular Letter of the Minister of Manpower No. M/6/HK.04/V/2025 regulates several important matters related to the principle of non-discrimination in labor recruitment, taking into account the latest developments in the field of employment. The main points are:

- a. The right to decent work, Every citizen has the right to a job and a humane life.
- b. Prohibition of discrimination, the Company is prohibited from implementing discriminatory practices in the recruitment process, regardless of its form.
- c. Age-specific provisions: Age restrictions in recruitment are only allowed if:
 - 1) The job or position objectively affects a person's ability to carry out tasks; and/or
 - 2) Does not reduce or eliminate employment opportunities for certain age groups.
- d. Protection for persons with disabilities, prohibition of discrimination and age requirements also apply equally to workers with disabilities.

Based on the author's analysis, the Circular Letter has several fundamental weaknesses. **First**, the scope is limited only to the stage of announcing job vacancies, without regulating the selection stage, which is often a place for covert discrimination practices. **Second**, the absence of an operational definition of an "objective requirement" for age restrictions gives rise to multiple interpretations that can be misused by companies. **Third**, there is no complaint mechanism regulated in this Circular Letter when a violation occurs.

Normatively, the Circular Letter of the Minister of Manpower No. M/6/HK.04/V/2025 has not fully adopted the protection standards as stipulated in ILO Convention No. 111 on Discrimination in Employment. Article 1 paragraph (1) of the convention defines discrimination more comprehensively, including:

- a. Any form of discrimination, exclusion or preference based on race, color, sex, religion, political opinion, nationality or social background that results in the reduction or elimination of equality of opportunity and treatment in employment and position.

b. This provision is expanded to include any form of discrimination, exclusion, or other preference that has the impact of a reduction or loss of equality of treatment and employment opportunity (Murni et al., 2022).

ILO Convention No. 111 establishes a comprehensive obligation for member states to eliminate discriminatory practices throughout the employment cycle, from the pre-employment (recruitment) stage to during employment. As a country that has ratified this convention through Law No. 21 of 1999, Indonesia has taken steps to harmonize by issuing Law No. 13 of 2003 concerning Manpower. In particular, Article 5 of the Labor Law expressly guarantees the principle of equal employment opportunities without discrimination for all job seekers (Murni et al., 2022).

In contrast to the mechanisms in ASEAN countries such as Singapore, it has a comprehensive legal framework through *Employment Act* which expressly prohibits discrimination based on race, sex, religion, age, or marital status. The government actively ensures equal employment opportunities through structured oversight and pro-inclusivity policies, including incentives for companies that implement fair recruitment practices (Dharmalinga, 2024). The government has taken steps to ensure that all workers are treated fairly and equally, and have equal opportunities to thrive and contribute in the workplace (Nur Az'zahra Maheswari & Wiritanaya, 2024). Malaysia: adopting a hybrid approach by relying on *Employment Act 1955* and *Industrial Relations Act 1967* to resolve employment disputes through mediation, arbitration, and litigation as a last resort. However, the country does not yet have a specific anti-discrimination law, so employment equality policies rely more on voluntary guidelines and corporate initiatives (Nur Az'zahra Maheswari & Wiritanaya, 2024). Thailand: regulating worker protection through *Labour Protection Act* with a structured dispute resolution system and a tripartite approach. However, the implementation of anti-discrimination policies is still non-mandatory, depending on employer awareness and the role of trade unions that need to be strengthened to ensure fairness in the workplace (Nur Az'zahra Maheswari & Wiritanaya, 2024).

Progressive legal theory offers a dynamic perspective that emphasizes law as a living instrument for achieving substantive justice (Harahap, 2016; Pangestu, 2024; Ravana, 2010). The essence of progressive law lies in its ever-evolving nature, adaptive to social change, and oriented towards morality-based public service (Satjipto Rahardjo, 2006). As the originator of this theory asserts that law should be a tool for humanizing human beings, not the other way around – an anthropocentric view that rejects rigid formalism and the status quo. In the employment context, this approach encourages flexible interpretations of regulations to protect workers from discrimination, focusing on substantive fairness rather than mere formal compliance. Rahardjo emphasized that the ultimate goal of progressive law is to create a just and prosperous life, where the law functions as a moral institution that makes society happy, not just a rigid and unscrupulous system of norms (Ananta et al., 2024; Syaputra, 2016). Progressive law has the main goal of protecting society in achieving ideal legal ideals, while opposing the establishment of a static legal system. This theory rejects the view of law as a mere rigid technical instrument without consideration of human values, but affirms that law must function as an institution based on

morality. originator of this theory, "Law is an institution that aims to realize a just, prosperous, and happy human life." This statement reflects the core philosophy of progressive law that emphasizes three fundamental aspects: the concept of law as a means of renewal, the function of law as a protector of society, and the purpose of law to create real well-being for humans. In this perspective, the law must not stop at its formal form alone, but must continue to move dynamically to answer the needs of justice in society (Satjipto Rahardjo, 2006).

Progressive law is a dynamic and ever-evolving school of legal thought, emphasizing that legal science is always in the process of formation (*Legal science is always in the making*). As a liberation movement, this approach is fluid and constantly seeks more advanced truths, born out of concern about the low contribution of law in overcoming various crises in Indonesia, including legal crises. This theory brings together three fundamental elements – certainty, justice, and utility – in a harmonious unity, with the understanding that overly rigid laws will create injustice. According to Bernard L. Tanya, progressive law is a legal project based on unremitting concern to continue to improve the legal system for the good of the nation (Moh. Mahfud M.D., 2013). The foundation lies in a man of conscience, not in the rule of law alone (Satjipto Rahardjo, 2004). Progressive law is essentially a liberating law - both in the way of thinking and acting - so that it is able to flow naturally to serve humanity and humanity, without engineering or narrow partisanship, with the ultimate goal of creating justice and prosperity for all people.

In the context of the Circular Letter of the Minister of Manpower No. M/6/HK.04/V/2025 shows the government's efforts to respond to discriminatory practices in the labor market. However, without reinforcement in the form of higher regulations and clear enforcement mechanisms, these efforts are merely symbolic. This SE has not fully accommodated the principle of non-discrimination in ILO Convention No. 111 on Discrimination in Employment and Occupation and also the experience of other countries shows that the protection of elderly workers requires a strong and comprehensive legal instrument, not just a circular that is an appeal.

CONCLUSION

Based on a comprehensive analysis of the Circular Letter of the Minister of Manpower No. M/6/HK.04/V/2025 and related regulations, this study concludes: From the Aspect of the Legal Hierarchy, SE M/6/2025 has a fundamental weakness as a legal instrument because it is not included in the level of laws and regulations according to Law No. 12/2011. Its instructional status causes limitations in law enforcement and cannot be used as a basis for an effective lawsuit, From the Substance Aspect its scope is limited only to the stage of job vacancy, without regulating the selection stage which is often the place of covert discriminatory practices, the absence of an operational definition of the "objective requirement" for age restriction gives rise to multiple interpretations that can be abused by the company, the absence of a complaint mechanism set out in this Circular Letter when a violation occurs, From Comparative to International Standards This SE has not fully accommodated the principle of non-discrimination in ILO Convention No. 111 concerning Discrimination in Occupation and Occupation and also the experience of other

countries shows that the protection of elderly workers requires a strong and comprehensive legal instrument, It is not just a circular letter that is an appeal.

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