

AGEISM IN THE WORKPLACE AND POTENTIAL LEGAL PROTECTION IN INDONESIA

Fransisca Fitriana Riani Candra*, Rosalinda Chandra Yulianita**

Faculty of Law, Gadjah Mada University

Jl. Sosio Yustisia Bulaksumur No.1, Special Region of Yogyakarta, Indonesia

E-mail: fransisca.fitriana.r@mail.ugm.ac.id*, rosalandachandrayulianita1996@mail.ugm.ac.id**

Article	Abstract
Article History: Submitted: September 2024 Reviewed: October 2024 Accepted: October 2024 Published: October 2024 Keywords: Ageism; Age Discrimination; Inclusive Workplace.	<i>This research will focus on ageism or age discrimination in in the workplace setting. In Indonesia, there has not yet been specific attention given to combat age discrimination, one of which is proven by the considerations of judges in Constitutional Court Decision Number 35/PUU-XXII/2024. Regulations in Indonesia, as well as their implementation, also do not sufficiently promote equal treatment regardless of age. Therefore, this research will analyze the urgency, challenges, and propose potential legal protection to promote anti ageism in Indonesia by comparing anti-age discrimination regulations in other countries and examining rulings related to age discrimination. This research employs normative legal research with comparative approaches. Ultimately, the findings aim to inform policymakers and stakeholders about the importance of addressing ageism and fostering an inclusive workplace.</i>

A. Introduction

Labor Force or individual aged 15 years and older in Indonesia, as published by Central Bureau of Statistics (BPS is 149.38 million people¹. Among this labor force, there is an unemployment rate of 4.82% as of February 2024. This percentage increased to 5.2% in April 2024, marking the highest rate compared to seven other ASEAN countries, namely the Philippines (5.1%), Brunei Darussalam (4.9%), Malaysia (3.5%), Vietnam (2.1%), Singapore (1.9%), and Thailand (1.1%)².

The government plays an important role in establishing regulations and providing protection for workers, as stated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (“the 1945 Constitution”), which declares that every citizen has the right to a job and a decent livelihood. Employment in Indonesia is regulated by Law No. 13 of 2003 on Manpower (“the Manpower Law”) and its amendments under Law No. 6 of 2023 on the Establishment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as

¹ Central Bureau of Statistics, “Official Statistical News No. 36/05/Th. XXVII, May 6, 2024: Indonesia's Employment Situation February 2024”, bps.go.id, accessed on 6 May 2024.

² International Monetary Fund, *World Economic Outlook—Steady but Slow: Resilience amid Divergence* (Washington, DC: International Monetary Fund, 2024), 36.

Law (“the Job Creation Law”). Article 5 of the Manpower Law also stipulates that every worker has equal opportunities without discrimination to obtain employment.

This age limits requirement causes difficulties for the Indonesian workforce in finding jobs³. Abel’s research provides example of job vacancies from 43 companies that set maximum age specifications⁴. Leonardo Olefins Hamonangan, who felt disadvantaged on the age limit settings, submitted a judicial review to the Constitutional Court. Leonardo argued that Article 35 paragraph (1) of the Manpower Law contains discrimination provisions against workers as it is stated that employers may recruit workers themselves or through labor placement agencies. According to his petition, this article should be supported by Article 28D paragraph (2) of the 1945 Constitution that regulates the right of everyone to work and receive fair and proper treatment in employment. Unfortunately, Article 35 paragraph (1) of the Manpower Law provides companies with the discretion to set their own job vacancy requirements. This has led to a perceived justification for job postings to include conditions such as maximum age limits, work experience, minimum education, gender, and other criteria.

Age discrimination or ageism will be the focus of this research, particularly in the labor sector. The urgency of discussing it lies in its profound impact on human rights. Age-based restriction in employment is violation of the fundamental right to work and equal opportunity⁵. It also have negative impact on the economy and society⁶. Therefore, age discrimination should not be considered *prima facie* less serious than other type of discrimination⁷ and human right violations. However, up until now ageism is not as widely addressed in both international⁸ and national regulation. The International Convention still regulated ageism in broad general provisions⁹. Age in International Covenant on Civil and Political Rights (“ICCPR”) Article 26

³ Asrifia Ridwan and MH Ismail, “Identifikasi Kebijakan Ketenagakerjaan Pada Generasi Y dan Generasi Z tentang Syarat Maksimal Usia Kerja di Indonesia”, *Jurnal Tata Sejuta* 10, no. 2 (September 2024): 289, <https://doi.org/10.32666/tatasejuta.v10i2.654>.

⁴ Abel Parvez, “Formulation of Age Discrimination Legislation in National Labor Law as Protection for Workers” (Undergraduate Thesis, Undergraduate Program Faculty of Sharia and Law Syarif Hidayatullah State Islamic University Jakarta, 2024).

⁵ Ni Wayan Ella Apryani, “Age Restriction for Job Application from a Human Rights Perspective”, *Journal of Law, Politic, and Humanities* 4, no. 5, (July 2024): 1854, <https://doi.org/10.38035/jlph>.

⁶ Maria Manuela Jacob Cebola, *et. al*, “Worker-Related Ageism: A Systematic Review of Empirical Research”, *Ageing & Society* 43, no. 8 (October 25, 2021):1910, <https://doi.org/10.1017/s0144686x21001380>.

⁷ Stuart Goosey, “Is Age Discrimination a Less Serious Form of Discrimination?”, *Legal Studies* 39, no. 3 (Juni 27, 2019): 535, <https://doi.org/10.1017/lst.2019.7>.

⁸ Liat Ayalon and Clemens Tesch-Ro`mer, “Taking a Closer Look at Ageism: Self- and Other-Directed Ageist Attitudes and Discrimination”, *European Journal of Ageing* 14, no. 1, (January 5, 2017): 1, <https://doi.org/10.1007/s10433-016-0409-9>.

⁹ Gerald L. Neuman and Abadir M. Ibrahim, "When is Age Discrimination a Human Rights Violation?", *Harvard Human Rights Journal* 36, no. 2 (September, 2023): 227, <https://journals.law.harvard.edu/hrj/wp-content/uploads/sites/83/2023/12/36HHRJ223-Neuman-Ibrahim.pdf>.

being recognized as an “other status”, which in full wording such article mention that the protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status¹⁰. It is a significant advancement that the United Nations (UN) encourages all countries to adopt the principles of protection for older persons as outlined in the United Nations Principles for Older Persons of December 16, 1991 (“UN Principles”). It can be interpreted as the UN's acknowledgment that the protection of human rights should not only cover discrimination based on gender, ethnicity, race, religion, skin color, and political affiliation as adopted by Indonesia's Manpower Law, but shall also encompass age discrimination. Relevant principles in the context of protection from age discrimination in the workplace states at the principle number 2 UN Principles which is older persons should have the opportunity to work or have access to other income-generating opportunities and number 18 which older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability, or other status, and be valued independently of their economic contribution.

Although age discrimination law originated from employment law and primarily for the protection of middle-aged and older workers, but it is now expanding from employment to other fields of private and public action, from older workers to all age groups, and from direct to indirect discrimination¹¹. Young employees could experience discrimination in the form of not being included in meetings because age is considered too young or the ideas they offer are ignored because of age¹². Therefore, restricting the challenge of reducing ageism only to the situation of older people might itself be implicitly ageist, particularly given the high number of age discrimination against younger people¹³. The existing regulations in various countries need to be reviewed to determine whether those provide protection against age discrimination for all age groups or if those only focus on certain age groups.

Several other studies, besides Abel's, have addressed the topic of age discrimination. Gema Ramadhanu Ridho Ing Pangestu, attempts to analyze the age restriction in job search from human right regulations including in Indonesia¹⁴. Siti Awaliyah *et al*, in their research

¹⁰ *Ibid*, 228.

¹¹ Gerald L. Neuman and Abadir M. Ibrahim, *Op.Cit.*, 228.

¹² Shelomita Putri Amelia, *et. al*, “Pengaruh Persyaratan Usia Terhadap Peluang Kerja Bagi Tenaga Kerja di Indonesia”, *Terang: Jurnal kajian Ilmu Sosial, Politik dan Hukum* 1, no. 3 (September 2024): 67, <https://doi.org/10.62383/terang.v1i3.363>.

¹³ Christopher Bratt, *et. al.*, “Supporting The Old But Neglecting The Young? The Two Faces of Ageism”, *Developmental Psychology* 56, no. 5 (May 2020): 1030, <https://doi.org/10.1037/dev0000903>.

¹⁴ Gema Ramadhanu Ridho Ing Pangestu, “Analisis Pembatasan Usia (Ageism) Pencari Kerja dalam Prespektif Hak Asasi Manusia (HAM)”, *Proceedings Series on Social Sciences & Humanities* 17, (July 30, 2024): 252, <https://doi.org/10.30595/pssh.v17i.1127>.

emphasize that the 1945 Constitution of the Republic of Indonesia mandates a prohibition against discrimination on any grounds, while Indonesian legislation has not yet to recognize age discrimination as a form of discrimination¹⁵.

The research conducted by the authors aims to complement previous studies. This research will explain deeper about the various forms of age discrimination including those occurs in the recruitment but also in retirement. The author will conduct a case study analysis related to age discrimination, including Constitutional Court Decision No. 35/PUU-XXII/2024. The research will also examine anti-age discrimination laws in Australia, South Korea, and the Philippines. Abel's research briefly mentions South Korea's anti-age discrimination regulations, but this research will use discussions regarding this regulation to identify aspects that could be regulated if Indonesia were to adopt an anti-age discrimination policy in the future. In summary, this research will try to answer on what types of employment practices can be considered age discrimination in Indonesia and how Indonesia can regulate proper anti age discrimination law.

B. Method

This normative legal research is using a comparative approach and case approach¹⁶. The comparative approach is carried out by comparing regulations across nations including Australia, South Korea, and the Philippines that against age discrimination. The case approach is carried out by reviewing some court decisions as references for resolving age discrimination issues.

C. Analysis and Discussion

1. Issues of Age Discrimination in Indonesia

Considering that Indonesia does not yet have a specific anti-age discrimination law, several cases discussed in this section would not be directly classified as age discrimination cases like in countries that have explicitly prohibited age discrimination and have court procedures to address it. This section will discuss the conditions and several rulings in Indonesia which, based on the author's research, could actually be classified as forms of age discrimination if Indonesia had such a law against age discrimination.

¹⁵ Siti Awaliyah, *et. al.*, "Law Review on Age Discrimination for Job Seekers in Indonesia", *Journal of Law, Policy and Globalization* 63, (2017): 115, <https://iiste.org/Journals/index.php/JLPG/article/view/38036/39120>.

¹⁶ Irwansyah, *Legal Research: Method Choices & Article Writing Practices* (Yogyakarta: PT. Mitra Buana Media, 2020), 144.

a. Age Discrimination in Recruitment

Age-based discrimination can occur at any age, but the experience of discrimination may vary between different age groups. Based on Hila Axelrad et al shows that the probability of a young person (age 18–24) getting a job is larger than that of an individual aged 30–44. Further, individuals who are older than 45 are less likely than those other age group to find work¹⁷.

In Indonesia, many job portals have emerged, such as Jobstreet and LinkedIn. Many of the job vacancies in this job portals seems to have age requirements. Abel's research provides many examples of companies' job vacancy that include age requirements. The online taxi driver position at BlueBird for instance requires a minimum age of 23 and a maximum age of 54 or the engineer staff position at PT Haier Electrical Appliances Indonesia that requires a minimum age of 25 and a maximum age of 32¹⁸. The criteria like "digital native" or "recent graduate" can also be considered as ageist language as it may hinder older worker to apply such job¹⁹.

The government also engages in age discrimination that can be shown at the Civil Service Candidate Selection (CPNS) requirements. They require candidates to be an Indonesian citizens (WNI) aged between 18 and 35 years, and for certain positions like dentistry, clinical education, lecturers, and engineers may up to 40 years. This is outlined in Article 23 paragraph (1) point a and paragraph (2) of Government Regulation No. 11 of 2017 concerning Civil Servant Management ("GR Civil Servant Management"). Another example is the selection for Candidates for Prosecutors in 2024. According to Announcement No. PENG-11/C/Cp.2/08/2024, the maximum age for applicants for the position of Junior Prosecutor is 27 years at the time of registration. This highlights that not only private but also government institutions set up maximum age limitations in their job vacancies.

According to BPS data, three age categories have the highest unemployment rates²⁰. First, the 20-24 age group with 2.5 million labor forces. Second, the 25-29 age group with

¹⁷ Hila Axelrad, *et. al*, "Unemployment Among Younger And Older Individuals: Does Conventional Data About Unemployment Tell Us The Whole Story?", *Journal for Labour Market Research* 52, no. 3, (March 8, 2018): 7, <https://doi.org/10.1186/s12651-018-0237-9>.

¹⁸ Abel Parvez, *Loc.Cit*.

¹⁹ Ifeoma Ajunwa, "Age Discrimination by Platforms", *Berkeley Journal Of Employment & Labor Law* 40, no. 1 (May 2019): 26, <https://doi.org/10.15779/Z38GH9B924>.

²⁰ Central Bureau of Statistics, "Labor Force Situation in Indonesia", June 7, 2024, <https://www.bps.go.id/en/publication/2024/06/07/112a10c79b8cfa70eec9f6f3/labor-force-situation-in-indonesia-february-2024.html>, accessed on 30 September 2024.

1.2 million labor forces, Third, the 15-19 age group with 1 million people labor forces. It can also be noted that among those unemployed across all age groups in the Labor Force, ranging from 15 years to over 60 years old, there are still a total of 3,996,530 of the Labor Force who have never worked before. Among those, there are people who are already feeling hopeless to find a job²¹.

The potential impact of the difficulty in finding a job if a maximum age limit is imposed may become more apparent following the surge in the number of Indonesian workers being laid off in 2024. According to data from the Ministry of Manpower, the number of employees laid off in 2024 has increased every month. For example, in June 2024, the number of employees laid off across 34 provinces reached 32,064 people, in July 2024 it rose to 42,863 people, and in August 2024, it increased again to 46,240 people²². Considering that laid-off workers are usually not at the entry level and have reached a certain age, their chances of finding another job become increasingly limited.

Employers are often reluctant to hire senior workers for various reasons, such as high labor cost²³ or proximity to retirement²⁴. Senior workers are perceived as more expensive than younger workers as they may have higher wages, more costly pension and health benefits²⁵, and there being less time to recoup the entity's investment in their recruitment and training²⁶ while productivity levels tend to stabilize or decrease²⁷. Even if the productivity of an older candidate remains well, such candidate likely still be less preferred than the young candidate²⁸. That can also be caused by the lack of knowledge of the employers about the value of older workers and how the organization will derive benefits from the age

²¹ *Ibid.*

²² Ministry of Manpower Republic of Indonesia, "Workers Laid Off, August 2024", September 20, 2024, <https://satudata.kemnaker.go.id/data/kumpulan-data/1921>, accessed on 30 September 2024.

²³ Joobong Kim, "Aging Workforce, Firm Productivity and Labor Costs in Korea: Are Older Workers Costly to Firms?" *Asian Economic Journal* 33, no. 2 (August 21, 2019): 116, <https://doi.org/10.1111/asej.12180>.

²⁴ Bérangère Legendre and Mareva Sabatier, "The Puzzle Of Older Workers' Employment: Distance To Retirement and Health Effects", *International Journal of Manpower* 28, no. 1 (March 27, 2017): 61, <https://doi.org/10.1108/IJM-02-2016-0042>.

²⁵ Pnina Alon-Shenker, "Nonhiring and Dismissal of Senior Workers", *Comparative Labor Law & Policy Journal* 35, no. 2 (February 28, 2014): 174, <https://ssrn.com/abstract=2386382>.

²⁶ Pnina Alon-Shenker, "Legal Barriers to Age Discrimination in Hiring Complaints", *Dalhousie Law Journal* 39, no. 1 (April 1, 2016): 302, <https://digitalcommons.schulichlaw.dal.ca/dlj/vol39/iss1/9/>.

²⁷ Zahri Hariman Umar, *et. al*, "'Sorry, We Rejected Your Application': A Study on the Age Limit of Job Seekers in Indonesia from a Human Rights Perspective", *International Journal of Multidisciplinary Research and Analysis* 7, no. 10 (October 10, 2024): 4757, <https://doi.org/10.47191/ijmra/v7-i10-21>.

²⁸ Jelle Lossbroek, "Age Discrimination in Hiring Decisions: A Factorial Survey among Managers in Nine European Countries", *European Sociological Review* 37, no. 1 (January 30, 2021): 59, <https://doi.org/10.1093/esr/jcaa030>.

diversity as younger workers and older workers can learn from each other²⁹.

Referring to Constitutional Court Decision No. 35/PUU-XXII/2024, it can be observed that the court perpetuates age discrimination in the workforce. Leonardo requests that Article 35 paragraph (1) should be interpreted to read as employers who need labor can recruit workers themselves or through the implementation of workforce placement and are prohibited from including clauses regarding age, religion, ethnicity, tribe, race, gender, or education. The judge rejected the petition with consideration that: 1) The court stated that discrimination is treating the same things differently. Conversely, it is not discrimination if different things are treated differently; 2) Article 1 point 3 of Law No. 39 of 1999 on Human Rights states that an action is considered discriminatory if the distinction is based on religion, ethnicity, race, ethnic group, community group, social status, economic status, gender, language, and political beliefs. In other words, the definition of discrimination acknowledged by Indonesia regulation does not include distinctions based on age, work experience, and educational background.

However, there is a dissenting opinion from one of the Judges, M. Guntur Hamzah. He stated that Article 35 paragraph (1) of the Employment Law creates legal uncertainty for job seekers, as all decisions depend on the subjective considerations of employers. This view conflicts with Article 27 paragraph (2) of the 1945 Constitution and Article 5 of the Employment Law. He emphasized that job vacancies should focus on competency requirements, maturity, experience, and skills, in line with the principle of minimum degree of maturity and experience. He suggested that the Court could have partially granted the petition by interpreting Article 35 paragraph (1) of the Employment Law, specifically the phrase “recruiting their own needed workforce” as conditionally unconstitutional under the 1945 Constitution, unless it is understood to mean that it is prohibited to announce job vacancies that require age, attractive appearance, race, skin color, gender, religion, political views, nationality, or descent, unless otherwise stipulated by legislation.

Therefore, the full wording of the contested article shall state that employers who require labor may recruit their needed workforce either directly or through labor placement executors and are prohibited from announcing job vacancies that require age, attractive appearance, race, skin color, gender, religion, political views, nationality, or descent, unless otherwise stipulated by legislation.

²⁹ Alex Bryson, *et. al*, “Does Employing Older Workers Affect Workplace Performance?”, *Industrial Relations* 59, no. 4 (October, 2020): 537-538, <https://doi.org/10.1111/irel.12265/>.

b. Age Discrimination and Retirement

Age discrimination also occurs in retirement. There is even an interesting view that retirement represents the primary form of age discrimination and is a key factor driving the wider emergence of ageism in modern societies³⁰. Another findings support this view stated that as people grow older, they are more likely to report perceived age discrimination at least up to the age of 75³¹. Age discrimination related to retirement can take various forms whether it is direct or indirect type, but one of those forms of discrimination that are often discussed are mandatory retirement and involuntarily or forced early retirement. Mandatory retirement is when the labor forces are forced to leave job at a fixed age either because of a legislation, company policies, employment and collective agreement, or pension plan terms³². While Long Zhai *et al* cited Shultz KS to define involuntarily retirement as a situation where an employee retires before the mandatory retirement age due to external factors including business closure, layoff, family problems, or health problems³³. It may not take the form of directly laying off older workers, but can instead involve indirect actions, such as offering severance packages to employees who agree to give up their jobs before the mandatory retirement age³⁴.

There are several reasons to encourage older individuals (referred to as “lansia”) to enter the labor market including financial motives³⁵, they are physically and mentally remains capable³⁶, or need for meaningful roles and valuable social contacts³⁷. On the other hand, when talking retirement timing, the need for this older workers step away to make a room for younger workers to work sometimes becomes a rationalization for ageist

³⁰ Malcolm Sergeant, *Op.Cit.*, 119.

³¹ Liat Ayalon and Octavio Bramajo, “Perceived Age Discrimination in the Second Half of Life: An Examination of Age, Period, and Cohort Effects”, *Innovation in Aging* 7, no. 8 (August 30, 2023): 8, <https://doi.org/10.1093/geroni/igad094>.

³² Pnina Alon-Shenker, “Ending Mandatory Retirement: Reassessment”, *Windsor Review of Legal and Social Issues* 35, no. 22, (March 6, 2014): 22, <https://ssrn.com/abstract=2405758>.

³³ Long Zhai, *et. al*, “Involuntary Retirement and Depression Among Adults: A Systematic Review and Meta-Analysis of Longitudinal Studies”, *Frontiers in Psychiatry*, no 13, (February 4, 2022): 747334, <https://doi.org/10.3389/fpsyt.2022.747334>.

³⁴ Manal Elsayed Shabat, “Early Retirement Incentive Programs As A Human Resources Restructuring Strategy in Public Sector”, *Review of Economics and Political Science* 5, no.1, (January 20, 2020): 82, <https://doi.org/10.1108/REPS-06-2019-0087>.

³⁵ Isabelle Hansson, “Motivational Drivers of Temporal Dynamics in Postretirement Work”, *Journals of Gerontology: Social Sciences* 78, no. 1 (September 8, 2022): 181, <https://doi.org/10.1093/geronb/gbac130>.

³⁶ Amalia Tiara and Rani Apriani, “Hak Anti Diskriminasi dan Upaya Hukum Bagi Tenaga Kerja Lanjut Usia Dalam Sektor Pekerjaan”, *Widya Yuridika: Law Journal* 5, no. 2 (Desember, 2022): 432-433, <https://doi.org/10.31328/wy.v5i2.3636>.

³⁷ Martine van Selm and Linda van den Heijkant, “In Search of the Older Worker: Framing Job Requirements in Recruitment Advertisements”, *Work, Aging and Retirement* 7, no. 4 (January 15, 2021): 299, <https://doi.org/10.1093/workar/waaa026>

behavior³⁸. Therefore, to reduce ageist perspectives, employers must be educated that they also benefit from retaining or hiring older workers. Knowledge transfer is one of the benefit while senior colleagues could be a mentor for younger employees and the employer³⁹ and it can help employers save on training costs.

The “*lansia*” definition can be found in the Indonesian Law No. 13 of 1998 concerning Elderly Welfare (“UU *Lansia*”) in Article 1 point 2, which states, “*Lansia* is someone who has reached the age of 60 years or older”. Furthermore, as regulated in UU *Lansia*, the elderly are divided into two categories: potential elderly and non-potential elderly. Potential elderly are those who can still perform work and/or activities that generate goods and/or services. In contrast, non-potential elderly are those who are unable to earn a living and depend on assistance from others. This indicates that Indonesia acknowledges the concept that there are individuals that by age have been considered as elderly but are still capable of working. The potential elderly based on Article 5 of UU *Lansia* will have the rights of job opportunities service whether conducted by formal or informal institutions. However, there is no derivative regulation available to elaborate comprehensively related to the job opportunities service for elderly.

Indonesia, by concept, actually seems to distinguish between the retirement age and the pension age although by language both are referred to as a similar term which is “*usia pensiun*”. The concept however may not be viewed as ideal from the perspective of anti-ageist countries. The pension age in Indonesia as specified in Article 15 paragraph (1) Government Regulation No. 45 of 2015 concerning the Implementation of the Pension Guarantee Program (“GR Pension Guarantee”) are: 1) The initial retirement age is set at 56 years; 2) Starting January 1, 2019, the pension age mentioned in paragraph 1 increases to 57 years; 3) This pension age will further increase by 1 year for every subsequent 3 years until it reaches 65 years. Thus, for 2024, for instance, the applicable pension age is 59 years. If the labor forces have reached pension age but continue to be employed, based on Article 15 paragraph (3), they may choose to receive pension benefits either upon reaching retirement age or upon cessation of employment with the condition that this must occur no later than 3 years after reaching pension age. Pension age defined in the Article 1 paragraph

³⁸ Sarah Vickerstaff and Mariska Van der Horst, “The Impact of Age Stereotypes and Age Norms on Employees’ Retirement Choices: A Neglected Aspect of Research on Extended Working Lives”, *Frontiers in Sociology* 6, no. 686645 (June 4, 2021): 1, <https://doi.org/10.3389/fsoc.2021.686645>.

³⁹ Tanja Kosowski, “Older Workers from The Viewpoint of Their Younger Colleagues. Do Organisations Fail to Harness the Potential of An Ageing Workforce?”, *International Economic Review* 6, no. 2 (June 30, 2020): 89, <https://doi.org/10.15678/ier.2020.0602.06>.

(15) GR Pension Guarantee as the age at which participants (labor forces) can begin receiving pension benefits.

Meanwhile, the concept of retirement age is regulated in Job Creation Law for private sector employees and GR Civil Servant Management for civil servants. The retirement age for private sector employees is regulated in the Article 81 Number 41 of Job Creation Law stating that notification of employment termination is not required for workers who have reached retirement age according to the Employment Agreement, Company Regulations, or Collective Labor Agreement. This provision replace Article 151 paragraph 3 jo. Article 154 letter c Manpower Law stating that a ruling from the industrial relations dispute resolution body is not required when an employee reaches retirement age as stipulated in the employment agreement, company regulations, collective labor agreement, or applicable laws and regulations. This means that both Manpower Law and Job Creation Law grants employers the authority to establish the retirement age through Employment Agreements, Company Regulations, or Collective Labor Agreements even without any notification.

While the retirement age for civil servants according to GR Civil Servant Management is 58 years for Administrative Officials, First-Level Functional Experts, Intermediate Experts, and Skilled Functional Officials, including First-Level and Intermediate Researchers and Engineers, 60 years for High-Ranking Officials and Intermediate Functional Officials, and 65 years for Senior Functional Officials. Upon reaching the retirement age limit, the civil servant will be honorably discharged as a civil servant and receive their rights in accordance with the laws.

This retirement concept is not ideal from an anti-ageist perspective for 2 (two) reasons. First, Indonesia still enforces a state mandatory retirement age, which is the maximum age the employee could work are 61 years old, and 58, 60, and 65 years for civil servants, depending on their title. Many The Organization for Economic Co-operation and Development (OECD) countries are being directed towards flexible retirement systems⁴⁰. Second, Indonesia allows companies to set their own retirement age in their internal regulations, which may be lower than the pension age set by the government in the GR Pension Guarantee. This means Indonesia legalized the employer to force early retirement.

Another issue occurred if the employer does not regulate the retirement age in their Company Regulations, Employment Agreement, or Collective Labor Agreements and has

⁴⁰ Simone Scherger, "Flexibilizing the Retirement Transition: Why, How and for Whom? Conceptual Clarifications, Institutional Arrangements and Potential Consequences", *Frontiers in Sociology* 6, no. 734985 (October 1, 2021): 3, <https://doi.org/10.3389/fsoc.2021.734985>.

not been registered in *BPJS Ketenagakerjaan*. There is no article mention that the provision of Article 6 in conjunction with Article 15 of the GR Pension Guarantee will automatically be applied if such issue occurred, in which employees are entitled of Pension Benefits at the pension age stipulated in the GR Pension Guarantee. If older employees feel unable to work any longer due to the retirement age is not regulated in the company's internal policies, such older employee who submits a resignation may not be entitled to severance pay or pension benefits from the pension program. This is because resignation under Article 50 Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment ("GR 35/2021") only entitles the individual to compensation pay under Article 40 paragraph (4) and separation pay regulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement. Which in practice there are companies that do not comply with regulating separation pay, leading to its amount having to be determined through court proceedings⁴¹.

Further, Indonesia is actually open for the opportunities to re-employ older workers after retirement under *SEMA* Number 5 of 2021. It is stated that if older workers re-employed after retirement and have received their pension benefits, they will only be entitled to a long-service award starting from when they are re-employed. However, this provision still does not resolve the issue if the retirement age itself is not regulated by the company and also creates confusion regarding which employment agreement can be used to govern the working relationship between the company and older workers.

This indicates that anti age discrimination provisions allowing older workers to continue working beyond a reasonable retirement age must be supported by protection ensuring that older workers still can receive their pension benefits when they choose to retire voluntarily. However, there are several real cases that demonstrate that Manpower Law and Job Creation Law do not provide such protection. Decision Number 1370K/Pdt.Sus-PHI/2017 between PT Hexamitra Charcoalindo and its employee Paiman. The company believe that retirement is not relevant in its company due to the unavailability of pension age and retirement procedure provision in their company rule. The case between Subandi and Iwan Soeharto (owner of CV Sahabat Utama) in Decision Number 1/Pdt.Sus-PHI/2024/PN Sby. In this decision, it is evident that the business owner determines at will

⁴¹ Ari Hernawan, "Makna dan Penerapan Uang Pisah pada Pemutusan Hubungan Kerja dalam Hukum Ketenagakerjaan Indonesia", *Jurnal Hukum Ius Quia Iustum* 30, no. 3 (September, 2023): 487, <https://doi.org/10.20885/iustum.vol30.iss3.art1>.

that there is no need to provide pension benefit in accordance with the laws, even though Subandi was not registered to *BPJS Ketenagakerjaan* to receive pension guarantees, on the grounds that Subandi resigned. Supreme Court Decision No. 504K/Pdt.Sus-PHI/2017 involving PT Tainan Enterprises Indonesia as the Cassation Applicant and Amrizal as the Cassation Respondent. In brief, Amrizal was an employee who had worked for 17 years and was approaching retirement age. Amrizal was asked to work with an irrational target, making it impossible to achieve even though he had worked for 36 hours without rest. Because he was deemed to have failed to meet the work targets, Amrizal received a third warning letter and was prohibited from returning to work, being offered a sum of money that was less than his actual severance pay. According to Amrizal, the company often looked for faults in him and other workers approaching retirement age so that the company could avoid the obligation to pay pension or severance benefits. The company's cassation request in this case was rejected by the Supreme Court. It can be concluded that the Supreme Court recognized the existence of "pressure or coercion" in Amrizal's termination so that the company would not have to pay a significant severance amount under the pretext that the company had not laid off Amrizal.

Another case related to the age discrimination in retirement is Supreme Court Decision No. 698K/Pdt.Sus-PHI/2016 involving PT Garuda Indonesia (PERSERO) Tbk and 33 women who had sued the company. The case arose when Garuda Indonesia, through its Cabin Operations Unit, unexpectedly distributed a form requesting a change in the normal retirement age for female cabin crew from the initial age of 56 to 46 years. This form was provided with a neatly prepared format and already filled out so that it seems like they subtly suggest the crew to sign immediately where indicated. The form was distributed on-site while the female cabin crew were either about to begin or had just completed their flights. The female cabin crew felt that Garuda Indonesia had exerted coercion, as the timing and context were deemed inappropriate. Male cabin crew were not given the same form regarding retirement age and this led the female cabin crew to view the action as gender discrimination, given that the retirement form was distributed exclusively for women. The author however also views this as a form of age discrimination considering the oddity of the initiative to distribute early retirement forms without requests from female cabin crew, which were also not given to male cabin crew. In its cassation application, Garuda Indonesia claimed that the female cabin crew were not coerced and had agreed to retire at 46. The Supreme Court upheld Garuda Indonesia's cassation, stating that the company provided sufficient evidence that the 33 women had indeed consented to their

retirement at this age. This is aligned with the finding that women face age discrimination in the workforce to an even greater number than do men⁴².

c. Direct and Indirect Age Discrimination

Some age discrimination laws in other countries like Australia distinguish age discrimination prohibition into direct discrimination and indirect discrimination. Direct discrimination is intentional and necessarily involves a dignitarian harm⁴³ for instance happen in establishing hiring with the age limit⁴⁴, or dismissed because of age⁴⁵. Indirect discrimination is found in conditions when forcing older workers to retire early, for example, being the subject of impolite remarks or jokes about age⁴⁶. It may also reflect on longer-tenured employees behavior to ask their junior to assist them even if it was unrelated to their job just because the junior is younger than them⁴⁷.

Example of indirect age discrimination can be shown in *Games v University of Kent* happened in UK, where a worker who was near to retirement was required to obtain a PhD in order to continue working as a lecturer⁴⁸. Supreme Court Decision No. 504K/Pdt.Sus-PHI/2017 (Amrizal v PT Tainan Enterprises Indonesia) can also be categorized as indirect age discrimination as the employer forcing older workers to retire early, even though the employer does not specifically mention that the age is the reason why Amrizal is fired.

While it can also be found that both direct and indirect age discrimination may occurred at the same time at in the Supreme Court Decision No. 698K/Pdt.Sus-PHI/2016 (Garuda Indonesia vs its 33 Female Cabin Crews). The practices of Garuda offer options of voluntary retirement by distributing the form, followed by a subtle pressure by already neatly prepared and filled out the early retirement form can be considered as an indirect age discrimination as explained in. While direct age discrimination is considered to have

⁴² Jasmin Tahmaseb McConatha, *et. al*, "The Gendered Face of Ageism in the Workplace", *Advances in Social Sciences Research Journal* 10, no. 1, (January 25, 2023): 528, <https://doi.org/10.14738/assrj.101.13844>.

⁴³ Colin Campbell and Dale Smith, "Distinguishing Between Direct and Indirect Discrimination", *Modern Law Review* 86, no. 2 (March 2023): 309, <https://doi.org/10.1111/1468-2230.12760>.

⁴⁴ Z.V.Krinitcyna, *et. al*, "Discrimination Problems Of Retirement Age Employees," *SHS Web of Conferences* 28, no. 01061 (June 15, 2016); 2, <https://doi.org/10.1051/shsconf/20162801061>.

⁴⁵ Judith Davey, "Age Discrimination in the Workplace", *Policy Quarterly* 10, no. 3 (August 2014): 46, <https://doi.org/10.26686/pq.v10i3.4502>.

⁴⁶ Justyna Stypinska and Konrad Turek, "Hard and Soft Age Discrimination: The Dual Nature of Workplace Discrimination", *European Journal of Ageing* 14, no. 1, (January 24, 2017): 56, <https://doi.org/10.1007/s10433-016-0407-y>.

⁴⁷ Mardi Widyadmono and Yudi Yuniarto, "Autopia Dunia Kerja: Studi Eksploratory Praktik Diskriminasi di Tempat Kerja", *Jurnal Ekonomi Bisnis dan Kewirausahaan* 13, no. 1 (January, 2024): 1, <https://doi.org/10.47942/jebiskwu.v13i1.1718>.

⁴⁸ Jackie A. Lane and Rachel Ingleby, "Indirect Discrimination, Justification and Proportionality: Are UK Claimants at a Disadvantage?", *Industrial Law Journal* 47, no. 4 (December, 2018): 538, <https://doi.org/10.1093/indlaw/dwx009>.

occurred when Garuda implemented a policy in 2003 that set the retirement age for male cabin crew at 56 years and for female cabin crew at 46 years. It also constitutes direct age discrimination if the form distributed to the female crew was indeed labeled as the “Form for Submitting a Request to Change the Normal Retirement Age of Female Cabin Crew at PT Garuda Indonesia (Persero) Tbk” and stated that the revised retirement age was already written as 46 years old.

2. Potential Legal Reform to Combat Age Discrimination

Although awareness has grown in many countries to combat age discrimination, not all countries have their own regulations or policies that banned age discrimination. The US Age Discrimination in Employment Act (ADEA 1967) may be the oldest regulation governing age discrimination and has become a reference for similar kinds of regulation in global context.

There are at least three ways how countries implement age discrimination prohibition. First, countries that regulate age discrimination by creating specific or special regulations related to age discrimination, for example South Korea which has enforced Act On Prohibition Of Age Discrimination In Employment and Elderly Employment Promotion since 2008 and lastly amended at 2022 (“Korea Age Discrimination Law”), Australia which has enforced Age Discrimination Number 68 Year 2004 and lastly amended at 2023 (“Australia Age Discrimination Law”), and the Philippines which has enforced Republic Act Number 10911 An Act Prohibiting Discrimination Against Any Individual in Employment on Account of Age and Providing Penalties Therefor since 2016 (“Philippines Age Discrimination Law”). Second, countries that do not have specific age discrimination regulations but have other laws that include provisions against age discrimination, for example Vietnam which recognized the right to work and access to the labor market by older persons in their 2012 and 2019 Labor Code⁴⁹, Japan which regulated provision regarding equal opportunities regardless of age in recruitment and hiring and other kinds of protection from age discrimination in Employment Measurements Act (Act No. 132 of 1966), and Malaysia which stated that employees cannot be terminated on the grounds of age in Minimum Retirement Age Act 2012. Third, countries that generally regulate protection against all forms of discrimination in their constitution, which can be interpreted as including

⁴⁹ Thi Mai Huong Doan and Quynh An Ngo, “Flexibility And Security Policies For Elderly Workers: A Case Study in Vietnam”, E3S Web of Conferences 157, no. 04036 (October 1, 2020): 4, <https://doi.org/10.1051/e3sconf/202015704036>.

age discrimination, for example Cambodia that regulated more generally in The Constitution of the Kingdom of Cambodia stating that the state ensures that all citizens have equal opportunity to earn a living.

The way countries like Cambodia address ageism may not be very effective because there could be discrepancies in the interpretation of the provisions, as seen in Indonesia. Almost similar with Cambodia, Indonesia set out general provisions to prevent discrimination in terms of right of work or job such as in Article 27 paragraph (2) of Indonesian Constitution 1945 states that every citizen has the right to a job and a living that is dignified for humanity and Article 28D paragraph (2) of Indonesian Constitution 1945 states that everyone has the right to work and to receive fair and decent compensation and treatment in employment relationships, but the judge in Constitutional Court Decision Number 35/PUU-XXII/2024 considered that the discrimination scope is not related to age limitations. Therefore, Indonesia shall consider to follow countries like Australia, South Korea, and Philippines to enact specific regulation regarding anti age discrimination. In this chapter, age discrimination regulations owned by Australia, South Korea, and the Philippines will be analyzed and compared in order to know the necessary aspects for anti age discrimination regulation.

a. Form of Age Discrimination

All three regulations prohibit both direct and indirect age discrimination in employment. The main difference between the laws in Australia and those in Korea and the Philippines is that South Korea and the Philippines specifically regulate age discrimination within the scope of employment. Meanwhile, Australia's law extends beyond employment into sectors like education, access to premises, goods, services and facilities, accommodation, and land. Below in table 1 are the similarities of age discrimination forms in the employment sector in Australia, South Korea, and the Philippines's law. It can be seen that some of the provisions in the table below may originate from a single article. The breakdown is done to show that what is regulated more generally in one country's legislation can be explained in more detail in another country. In this case, the regulations in the Philippines mostly govern a specific practice of age discrimination more explicitly.

Table 1.

Age Discriminations Prohibition in South Korea, Philippines, and Australia

Areas	Korea Age	Philippines Age	Australia Age
--------------	------------------	------------------------	----------------------

	Discrimination Law	Discrimination Law	Disrimination Law
Recruitment	Article 4-4 Paragraph (1) point 1 - Employers shall not discriminate against any of their workers or any person who wishes to work for an employer, on the grounds of age without reasonable grounds in recruitment and employment The representative, an agent or an employee of, or any other person employed by company (Article 23-4 paragraph (1) or individual (Article 23-4 paragraph (2) is also prohibited to conduct actions stated above	Paragraph (5) point a point 1 - It shall be unlawful for an employer to print or publish, or cause to be printed or published, in any form of media, including the internet, any notice of advertisement relating to employment suggesting preferences, limitations, specifications, and discrimination based on age Under paragraph (5) point b, it is also unlawful for a labor contractor and subcontractor to refuse to refer for employment or discriminate against any individual because of such person's age	Article 2 paragraph (18) point 1-(1) It is unlawful for an employer or a person acting or purposing to act on behalf of an employer to discriminate against a person on the ground of the other person's age: (c) in the terms or conditions on which employment is offered

			a point 2 - It shall be unlawful for an employer to require the declaration of age or birth date during the application process	
		Paragraph (5) point a point 3 - It shall be unlawful for an employer to decline any employment application because of the individual's age	Article 2 paragraph (18) point 1 - It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person on the ground of the other person's age: (a) in the arrangements made for the purpose of determining who should be offered employment; or (b) in determining who should be offered employment	
Compensation and Benefit	Article 4-4 paragraph (1) point 2 - Employers shall not discriminate against any of their	Paragraph (5) point a point 4 - It shall be unlawful for an employer to discriminate against	Article 2 paragraph (18) point 2 - It is unlawful for an employer or a person acting or	

		workers or any person who wishes to work for an employer, on the grounds of age without reasonable grounds in salary, provision of money and valuables other than salary, or other welfare benefits	an individual in terms of compensation, terms and conditions or privileges of employment on account of such individual's age	in purporting to act on behalf of an employer to discriminate against an employee on the ground of the employee's age: (a) in the terms or conditions of employment that the employer affords the employee
Promotion and Training	Article 4-4 paragraph (1) point 4 - Employers shall not discriminate against any of their workers or any person who wishes to work for an employer, on the grounds of age without reasonable grounds in Placement, transfer, or promotion	Paragraph (5) point a point 5 - It shall be unlawful for an employer to deny any employee's or worker's promotion or opportunity for training because of age	Article 2 paragraph (18) point 2 - It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against an employee on the ground of the employee's age: (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits	
	Article 4-4 paragraph (1) point 3 - Employers shall not discriminate against any of their workers or any person who wishes			

		to work for an employer, on the grounds of age without reasonable grounds in Education and training		associated with employment
Retirement and Dismissal		Article 4-4 paragraph (1) point 5 - Employers shall not discriminate against any of their workers or any person who wishes to work for an employer in Retirement or dismissal.	Paragraph (5) point a point 6 - It shall be unlawful for an employer to forcibly lay off an employee or worker because of old age; or Paragraph (5) point a point 7 - It shall be unlawful for an employer to impose early retirement on the basis of such employee's or worker's age.	Article 2 paragraph (18) point 2 - It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against an employee on the ground of the employee's age:(c) by dismissing the employee.
Indirect Age Discrimination		Article 4-4 paragraph (2) - In applying paragraph (1), any markedly disadvantageous result caused to a certain age group as a the result of applying standards other than age	The Act does not explicitly use the term "indirect age discrimination," but it prohibits employment practices that can be interpreted as such. For instance: Paragraph 5 point a	Article 2 paragraph (18) point 2 - It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person on the

without reasonable point 2 - the ground of the other grounds is deemed prohibition of person's age: (d) by age discrimination. requiring the subjecting the declaration of age employee to any and birthdate in the other detriment. application process. The policy or practice of age declaration even if it applies to everyone equally but may disadvantage a particular group, for example to choose only young age employees.

Source: Author Self Analysis

In addition to the points above, some forms of age discrimination only be addressed in the laws of one or two countries, but in the others. South Korea under provision of unfavorable treatment in Article 4-9 of Korea Age Discrimination Law and Australia under provision of Victimization Chapter 6 Article 47A Australia Discrimination Law regulated the retaliation prohibition in their age discrimination law but the Philippines has not yet regulated that retaliation measurement. The Philippines under paragraph (5) point d The Philippines Age Discrimination Act prohibits publishers from printing any employment advertisements that suggest age-based preferences, limitations, or discrimination. This rule is not found in the South Korea Age Discrimination Law and Australia Age Discrimination Law. The prohibition of age discrimination conducted by the labor organization under paragraph (5) point c The Philippines Age Discrimination Law is not regulated in the Korea Age Discrimination Law and Australia Age Discrimination Law. Australia Age Discrimination Law is the only among the 3 (three) laws regulated the prohibition of age discrimination against commission agents (Article 2 paragraph (19), prohibition of age discrimination against contract workers (Article 2 paragraph (20), prohibition of age

discrimination in partnerships (Article 2 paragraph (21), prohibition of age discrimination conducted by qualifying bodies (Article 2 paragraph (22), prohibition of age discrimination registered organizations under the Fair Work (Registered Organisations) Act 2009 (Article 2 paragraph (23), and prohibition of age discrimination of employment agencies (Article 2 paragraph (24).

In Australia Age Discrimination Law, it is clearly defined the concept of direct and indirect age discrimination. Direct discrimination on the ground of age under Chapter 3 Article 14 is considered to be done if the discriminator treats or proposes to treat the aggrieved person less favorably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of a different age. The discriminator does so because of: 1) the age of the aggrieved person; or 2) a characteristic that appertains generally to persons of the age of the aggrieved person; or 3) a characteristic that is generally imputed to persons of the age of the aggrieved person. Indirect discrimination considered as occurred if: 1) the discriminator imposes, or proposes to impose, a condition, requirement or practice; and 2) the condition, requirement or practice is not reasonable in the circumstances; and 3) the condition, requirement or practice has, or is likely to have, the effect of disadvantaging persons of the same age as the aggrieved person.

b. Scope of Age Groups

All three regulations cover all age groups. However, the Korea Age Discrimination Law regulates more specific protection for workers categorized as “aged” which is workers aged 55 years old or above and “middle-aged” which is workers aged 50 years old or older, but younger than 55 years old. The age category determination can be seen in the Korean Enforcement Decree Of The Act On Prohibition Of Age Discrimination In Employment And Elderly Employment Promotion that has been enacted since 2008.

c. Mandatory Retirement Age

South Korea, unlike 38 other OECD countries, still enforces a mandatory retirement age, as stated in Article 19 of the Korea Age Discrimination Law. In contrast, the Philippines Age Discrimination Law and Australia Age Discrimination Law do not specify a mandatory retirement age. A distinctive feature of some labor regulations in South Korea is the prohibition of any provisions within its legislation being overridden by companies, either through company regulations or employment agreements with employees. This can be seen in the provisions of Article 19 paragraph (2) regarding the mandatory retirement age, which states that in cases where any employer sets the retirement age of workers at

below 60 years of age, notwithstanding paragraph (1), the retirement age shall be deemed set at 60. Unlike labor regulations in Indonesia, which allow employers to deviate from certain labor provisions through company regulations, employment agreements, and/or collective labor agreements.

Although the Philippines Age Discrimination Law does not specify the mandatory retirement age, the Philippines regulates its mandatory retirement age in Article 287 the Philippines Republic Act No. 7641. Australia on the other hand adopts a flexible retirement concept and has abolished the mandatory retirement age except for certain positions such as judges with retirement age 70 years old⁵⁰ and police officers distinguished between state police and federal police⁵¹.

d. Exceptions of Age Discrimination Prohibitions

Exceptions to age discrimination exist in all three laws. The Philippines follows the United States Age Discrimination in Employment Act (ADEA) 1967 that regulates: First, to set out when age is bona fide occupational qualification (BFOQ) or deemed reasonably necessary in the normal operation of a particular business. Second, the intent of the act is to follow the rules of a legitimate seniority system that doesn't aim to bypass this law. Third, the intent is to observe the terms of a bona fide employee retirement or a voluntary early retirement plan consistent with the purpose of this Act: provided that such retirement or voluntary retirement plan is in accordance with the Labor Code, as amended, and other related laws; or fourth, the action is duly certified by the Secretary of Labor and Employment in accordance with the purpose of this Act.

In Korea Age Discrimination Law, it shall not be age discrimination if cases where: First, a certain age limit is inevitably required in view of the nature of the relevant duties. This concept is quite similar to the bona fide occupational qualification concept. Second, cases where salary or money and valuables, other than salary, and welfare benefits are offered commensurate with length of service. Third, cases where a retirement age is set under labor contracts, rules of employment, collective agreements, etc. pursuant to this Act or other Acts. Fourth, cases where supportive measures are taken for maintaining and promoting the employment of a certain age group pursuant to this Act or other Acts.

In the Australia Age Discrimination Law, exemptions are specified in each article

⁵⁰ Alysia Blackham, "Judges and Retirement Ages", Melbourne University Law Review 39, no. 3 (January, 1 2016): 742, https://law.unimelb.edu.au/__data/assets/pdf_file/0019/2061019/02-Blackham.pdf.

⁵¹ Mary Anthony and Werner Soontiens, "Managing Women's Post Retirement Career In Law Enforcement Organizations: Lessons From Developed Nations For Emerging Economies", International Journal of Work Organisation and Emotion 9, no. 1 (January, 2018): 20, <https://doi.org/10.1504/IJWOE.2018.091337%20>.

that outlines each violation, unlike in South Korea and the Philippines, which regulate exceptions generally for all types of violations.

e. Resolutions and Sanctions for Age Discrimination.

The sanctions in Korea involve imprisonment, fines and corrective orders. Unfavorable treatment, such as dismissal, transference, or disciplinary action, against a worker under Article 23-3 paragraph (1) of the Korea Age Discrimination Law will result in imprisonment and fines. Discrimination on the grounds of age in recruitment or employment without good cause under paragraph (2) in similar article will result in fines. It is stated that the corporation of the violator shall also be punished by the fine prescribed in the relevant article if the violator committed such violation in connection with duties of the said corporation. Besides the imprisonment and fines, remedial measures followed by corrective order in case of non-compliance to execute the remedial measures without justification could be imposed by the National Human Rights Commission. Further, the administrative fines based on Article 24 of such Law may also be imposed if a person fails to comply with the corrective order without justifiable grounds. In the Philippines, employers violating any of provisions in the Philippines Age Discrimination Law may face imprisonment and fines under Article 7 of such Law. While in Australia, age discrimination cases can result in compensation but not necessarily fines.

f. Anti Age Discrimination Commissions

Australia, South Korea, and Philippines have a dedicated government agency or commission for enforcing the laws and resolving disputes related to age discrimination. South Korea has a National Human Rights Commission. Australia has the Australian Human Rights Commission and shall appoint a person to be Age Discrimination Commissioner. While Philippines is overseen by the Philippines Department of Labor and Employment.

g. Recommendations for Establishing Age Discrimination Laws in Indonesia

After comparing the regulations of other countries, the Indonesian government is advised to create specific rules regarding age discrimination. Regulations like those in Australia, which not only specifically address age discrimination in the employment sector are the most ideal to emulate. This is to avoid age discrimination violations in other sectors, such as related to land issues. This age discrimination law shall also cover all age groups.

In relation to the form of age discrimination, in the employment sector it is advised to clearly state that both direct and indirect age discrimination are prohibited. Minimum forms of age discrimination that should be banned are to set out age limits in recruitment,

discrimination on the grounds of age only when determining compensation, benefit, terms and conditions, promotions, and training, forced early retirement, and pension.

Indonesia could choose to set a retirement age like South Korea, but with justifiable grounds other than age. It would be beneficial to harmonize the age limits set by the state with those established in company regulations and employment agreements to prevent the possibility of forced early retirement. However, the ideal setting to fully tackle age discrimination would be to regulate state pension age or in Australia is known as Age Pension. So, instead of the old default retirement age which a forced retirement age of 65 for example, state pension age is the earliest age labor forces can start receive the state pension. As there is no compulsory retirement age in Australia, elderly Australians are able to continue working⁵² while at Age Pension could anyway get their pension benefits right.

All kind of employment termination in Australia under Article 117 of Australia Fair Work Act 2009 shall be done with prior written notice depends on the employee's length of service and redundancy pay. Such termination cannot occur due to age discrimination reason as regulated in Article 351 of Australia Fair Work Act 2009 and Article 18 paragraph 2(c) of Australia Age Discrimination Act, but it is acceptable for employer under Article 18 paragraph 4 of Australia Age Discrimination Act to terminate on the ground of age, if the employee is unable to carry out the inherent requirements of the particular employment because of his or her age. If Indonesia could implement an ideal age pension scheme similar to that in Australia, the Article 81 Number 41 of Job Creation Law that stating the termination notification for employees reaching retirement age is unnecessary shall be abolished. Therefore, the written notification under Article 81 Number 40 of Job Creation Law shall be provided by the employer and include the termination reason to prevent the termination is carried out solely based on age, without other justification such as health condition or the inability to meet reasonable requirement inherent to particular employment because of employee's age.

Older workers should be allowed to claim pension benefits upon reaching the age pension. If the older workers are not enrolled in a pension program, employers should be obligated to pay pension benefits even if such employee voluntarily resign.

It is also advised to strengthen UU *Lansia* with comprehensive procedures on how to ensure potential elderly could get suitable jobs if they want to by following the protective

⁵² Kadir Atalay Garry F. Barrett, "The Impact of Age Pension Eligibility Age on Retirement and Program Dependence: Evidence from an Australian Experiment", *The Review of Economics and Statistics* 97, no. 1 (March, 2015): 71-87, https://doi.org/10.1162/REST_a_00443.

measures for middle-aged and aged individuals as comprehensively outlined in Korea Age Discrimination Law. The re-employment of older workers shall also be comprehensively regulated, including the type of employment agreement that can properly be used between the Company and older workers and what kind of benefits they could receive.

Strict sanctions or repressive measures as regulated by the Philippines Age Discrimination or Korea Age Discrimination Law shall also be provided in the anti age discrimination law to ensure the provisions are enforceable and will be taken seriously. However, soft penalty, other corrective actions, incentives and facilities that can support the implementation shall also be provided in the law. To monitor the implementation of protection against age discrimination, a special unit, government institution, or commission focusing on protection of age discrimination is suggested to be established.

D. Conclusion

Age discrimination might involve refusing to hire or promote someone due to their age, involuntarily retirement, or any other direct and indirect age discriminations. In Indonesia, there are several cases that are actually can be considered as age discriminations including age limit requirement in job vacancy and forced early retirement. In Indonesia, specific law to combat age discrimination still unavailable. In fact, Indonesia, through a Constitutional Court Decision Number 35/PUU-XXII/2024, does not consider or recognize age-based discrimination as a form of discrimination. Further, Article 81 Number 41 of Job Creation Law also makes forced early retirement possible, as this provision grants employers the authority to terminate employee solely on the ground of retirement age stated in the Employment Agreements, Company Regulations, or Collective Labor Agreements without written notification stating the purpose and reason as obligated in Article 81 Number 41 of Job Creation Law.

Indonesia shall follow Australia, South Korea, and Philippines to regulate specific regulation to combat age discrimination. The potential aspects to be included in the regulations consist of the form of age discrimination, coverage of the regulations which shall cover all age groups, clear pension age determination, provision of resolutions, penalty, and sanction when the discrimination occurs, the institutions to supervise the implementation of the act, the type of re-employment agreement, the obligation for the employer to provide prior written notification to terminate older workers to ensure that the termination is not on the ground of age discrimination, and the provisions that ensure older workers receive proper pension benefits even if they voluntarily resign after or by the time they reach the Age Pension.

References

Books

Irwansyah, *Legal Research: Method Choices & Article Writing Practices*, Yogyakarta: PT. Mitra Buana Media, 2020.

International Monetary Fund, *World Economic Outlook—Steady but Slow: Resilience amid Divergence*, Washington DC: International Monetary Fund, 2024.

Journal Articles

Ajunwa, Ifeoma, “Age Discrimination by Platforms”, *Berkeley Journal Of Employment & Labor Law* 40, no. 1 (2019): 1-27, <https://doi.org/10.15779/Z38GH9B924>.

Alon-Shenker, Pnina, “Ending Mandatory Retirement: Reassessment”, *Windsor Review of Legal and Social Issues* 3512, no. 22 (2014): 22-53, <https://ssrn.com/abstract=2405758>.

_____, “Legal Barriers to Age Discrimination in Hiring Complaints”, *Dalhousie Law Journal* 39, no. 1 (2016): 289-325, <https://digitalcommons.schulichlaw.dal.ca/dlj/vol39/iss1/9/>.

Amelia, Shelomita Putri, *et. al.*, “Pengaruh Persyaratan Usia Terhadap Peluang Kerja Bagi Tenaga Kerja di Indonesia”, *Terang: Jurnal kajian Ilmu Sosial, Politik dan Hukum* 1, no. 3 (September 2024): 67, <https://doi.org/10.62383/terang.v1i3.363>.

Apriyani, Ni Wayan Ella, “Age Restriction for Job Application from a Human Rights Perspective”, *Journal of Law, Politic, and Humanities* 4, no. 5 (2024): 1850-1857, <https://doi.org/10.38035/jlph>.

Awaliyah, Siti, *et. al.*, “Law Review on Age Discrimination for Job Seekers in Indonesia”, *Journal of Law, Policy and Globalization* 63, (2017): 109-116, <https://www.iiste.org/Journals/index.php/JLPG/article/view/38036/39120>.

Axelrad, Hila, *et. al.*, “Unemployment Among Younger and Older Individuals: Does Conventional Data About Unemployment Tell Us the Whole Story?”, *Journal for Labour Market Research* 52, no. 3, (2018): 1-12, <https://doi.org/10.1186/s12651-018-0237-9>.

Ayalon, Liat and Octavio Bramajo, “Perceived Age Discrimination in the Second Half of Life: An Examination of Age, Period, and Cohort Effects”, *Innovation in Aging* 7, no. 8 (2023): 1-10, <https://doi.org/10.1093/geroni/igad094>.

Bratt, Christopher, *et. al.*, “Supporting The Old But Neglecting The Young? The Two Faces Of Ageism”, *Developmental Psychology* 56, no. 5 (2020): 1029-1039, <https://doi.org/10.1037/dev0000903>.

Bryson, Alex, *et. al.*, “Does Employing Older Workers Affect Workplace Performance?”, *Industrial Relations* 59, no. 4 (October, 2020): 532-562, <https://doi.org/10.1111/irel.12265/>.

- Campbell, Colin and Dale Smith, "Distinguishing Between Direct and Indirect Discrimination", *Modern Law Review* 86, no. 2 (2023): 308-330, <https://doi.org/10.1111/1468-2230.12760>.
- Cebola, Maria Manuela Jacob, *et. al*, "Worker-Related Ageism: A Systematic Review Of Empirical Research", *Ageing & Society* 43, no. 8 (2021): 1882-1914, <https://doi.org/10.1017/s0144686x21001380>.
- Davey, Judith, "Age Discrimination in the Workplace", *Policy Quarterly* 10, no. 3 (August 2014): 42-48, <https://doi.org/10.26686/pq.v10i3.4502>.
- Doan, Thi Mai Huong and Quynh An Ngo, "Flexibility And Security Policies For Elderly Workers: A Case Study in Vietnam", *E3S Web of Conferences* 157, no. 04036, (October 1, 2020): 4, <https://doi.org/10.1051/e3sconf/202015704036>.
- Farianto, Willy, "Retirement and Continuation of Employment Relations: Annotation of Supreme Court Circular Letter Number 5 of 2021", *Lex Publica: Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia* 9, no. 1, (2020): 112-122, <https://doi.org/10.58829/lp.9.1.2022.111-122>.
- Goosey, Stuart, "Is Age Discrimination a Less Serious Form of Discrimination?", *Legal Studies* 39, no. 3 (2019): 533-549, <https://doi.org/10.1017/lst.2019.7>.
- Hansson, Isabelle, "Motivational Drivers of Temporal Dynamics in Postretirement Work", *Journals of Gerontology: Social Sciences* 78, no. 1, (2022): 179-189, <https://doi.org/10.1093/geronb/gbac130>.
- Hariman Umar, Zahri, *et. al*, "'Sorry, We Rejected Your Application': A Study on the Age Limit of Job Seekers in Indonesia from a Human Rights Perspective", *International Journal Of Multidisciplinary Research and Analysis* 7, no. 10 (2024): 4753-4760, <https://doi.org/10.47191/ijmra/v7-i10-21>.
- Hernawan, Ari, "Makna dan Penerapan Uang Pisah pada Pemutusan Hubungan Kerja dalam Hukum Ketenagakerjaan Indonesia", *Jurnal Hukum Ius Quia Iustum* 30, no. 3 (2023): 475-496, <https://doi.org/10.20885/iustum.vol30.iss3.art1>.
- Kim, Joobong, "Aging Workforce, Firm Productivity and Labor Costs in Korea: Are Older Workers Costly to Firms?", *Asian Economic Journal* 33, no. 2, (2019): 115-142, <https://doi.org/10.1111/asej.12180>.
- Kosowski, Tanja, "Older Workers from The Viewpoint of Their Younger Colleagues. Do Organisations Fail To Harness The Potential Of An Ageing Workforce?", *International Economic Review* 6, no. 2 (2020): 83-94, <https://doi.org/10.15678/ier.2020.0602.06>.
- Krinitcyna, Z.V., *et. al.*, "Discrimination Problems Of Retirement Age Employees", *SHS Web of Conferences* 28 no. 01061 (June 15, 2016): 2, <https://doi.org/10.1051/shsconf/20162801061>.
- Lane, Jackie A and Rachel Ingleby, "Indirect Discrimination, Justification and Proportionality: Are UK Claimants at a Disadvantage?", *Industrial Law Journal* 47, no. 4 (2018): 531-552, <https://doi.org/10.1093/indlaw/dwx009>.

- Legendre, Bérangère and Mareva Sabatier, "The Puzzle Of Older Workers' Employment: Distance To Retirement and Health Effects", *International Journal of Manpower* 28, no. 1 (2017): 45-61, <https://doi.org/10.1108/IJM-02-2016-0042>.
- Lossbroek, Jelle, "Age Discrimination in Hiring Decisions: A Factorial Survey among Managers in Nine European Countries", *European Sociological Review* 37, no. 1, (January 30, 2021): 49-66, <https://doi.org/10.1093/esr/jcaa030>.
- McConatha, Jasmin Tahmaseb, *et. al*, "The Gendered Face of Ageism in the Workplace", *Advances in Social Sciences Research Journal* 10, no. 1 (2023): 528-536, <https://doi.org/10.14738/assrj.101.13844>.
- Neuman, Gerald L and Abadir M. Ibrahim, "When is Age Discrimination a Human Rights Violation?", *Harvard Human Rights Journal* 36, (2023): 223-246, <https://ssrn.com/abstract=4669868>.
- Pangestu, Gema Ramadhanu Ridho Ing, "Analisis Pembatasan Usia (Ageism) Pencari Kerja dalam Prespektif Hak Asasi Manusia (HAM)", *Proceedings Series on Social Sciences & Humanities* 17, (2024): 250-253, <https://doi.org/10.30595/pssh.v17i.1127>.
- Ridwan, Asrifia and MH Ismail, "Identifikasi Kebijakan Ketenagakerjaan Pada Generasi Y dan Generasi Z tentang Syarat Maksimal Usia Kerja di Indonesia", *Jurnal Tata Sejuta* 10, no. 2 (September 2024): 289-302, <https://doi.org/10.32666/tatasejuta.v10i2.654>.
- Selm, Martine van and Linda van den Heijkant, "In Search of the Older Worker: Framing Job Requirements in Recruitment Advertisements", *Work, Aging and Retirement* 7, no. 4 (January 15, 2021): 288-302, <https://doi.org/10.1093/workar/waaa026>.
- Scherger, Simone, "Flexibilizing the Retirement Transition: Why, How and for Whom? Conceptual Clarifications, Institutional Arrangements and Potential Consequences", *Frontiers in Sociology* 6, no. 734985 (October 1, 2021): 3, <https://doi.org/10.3389/fsoc.2021.734985>.
- Shabat, Manal Elsayed, "Early Retirement Incentive Programs As A Human Resources Restructuring Strategy in Public Sector", *Review of Economics and Political Science* 5, no. 1 (2020): 69-90, <https://doi.org/10.1108/REPS-06-2019-0087>.
- Stypinska, Justyna and Konrad Turek, "Hard and Soft Age Discrimination: The Dual Nature Of Workplace Discrimination", *European Journal of Ageing* 14, no. 1, (January 24, 2017): 49-61, <https://doi.org/10.1007/s10433-016-0407-y>.
- Tiara, Amalia and Rani Apriani, "Hak Anti Diskriminasi Dan Upaya Hukum Bagi Tenaga Kerja Lanjut Usia Dalam Sektor Pekerjaan", *Widya Yuridika Law Journal* 5, no. 2 (2022): 432-433, <https://doi.org/10.31328/wy.v5i2.3636>.
- Top, Dan "Considerations Regarding The Continuation of The Employment Relationship of The Employee Who Has Reached The Standard Pension Age", *Valahia University Law Study* 38, no. 2, (2022): 41-47, <https://doi.org/10.53373/vuls.2021.38.2.003>.
- Vickerstaff, Sarah and Mariska Van der Horst, "The Impact of Age Stereotypes and Age Norms on Employees' Retirement Choices: A Neglected Aspect of Research on Extended Working Lives", *Frontiers in Sociology* 6 no. 686645 (2021): 1-8, <https://doi.org/10.3389/fsoc.2021.686645>.

Widyadmono, Mardi and Yudi Yuniarto, "Autopia Dunia Kerja: Studi Eksploratory Praktik Diskriminasi di Tempat Kerja", *Jurnal Ekonomi Bisnis dan Kewirausahaan* 13, no. 1 (2024): 1-12, <https://doi.org/10.47942/jebiskwu.v13i1.1718>.

Zhai, Long, *et. al*, "Involuntary Retirement and Depression Among Adults: A Systematic Review and Meta-Analysis of Longitudinal Studies", *Frontiers in Psychiatry* 13, no. 7473342 (2022): 1-9, <https://doi.org/10.3389/fpsyt.2022.747334>.

Research Results/Thesis

Parvez, Abel, "Formulation of Age Discrimination Legislation in National Labor Law as Protection for Workers" (Undergraduate Thesis, Undergraduate Program Faculty of Sharia and Law Syarif Hidayatullah State Islamic University Jakarta, 2024).

Internet

Central Bureau of Statistics, "Labor Force Situation in Indonesia," February 2024, , <https://www.bps.go.id/en/publication/2024/06/07/112a10c79b8cfa70eec9f6f3/labor-force-situation-in-indonesia-february-2024.html>.

_____, "Official Statistical News No. 36/05/Th. XXVII, May 6, 2024: Indonesia's Employment Situation February 2024," May 6, 2024, bps.go.id.

Ministry of Manpower Republic of Indonesia, "Workers Laid Off, August 2024," September 20, 2024, <https://satudata.kemnaker.go.id/data/kumpulan-data/1921>.

Law and Regulations

Australia, Commonwealth of Australia. Age Discrimination Number 68 Year 2004.

Indonesia, Central Government. Government Regulation 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment.

_____. Government Regulation 45 of 2015 concerning the Implementation of the Pension Guarantee Program.

_____. Law 13 of 2003 regarding Manpower Law.

_____. Law 6 of 2023 regarding on the Establishment of Government Regulation in Lieu of Law 2 of 2022 on Job Creation as Law.

_____. The 1945 Constitution of the Republic of Indonesia.

Philippines, Central Government. Republic Act Number 10911 An Act Prohibiting Discrimination Against Any Individual in Employment on Account of Age and Providing Penalties Therefor.

South Korea, Central Government. Act On Prohibition Of Age Discrimination In Employment and Elderly Employment Promotion since 2008 and lastly amended at 2022.