

Law Review on Age Discrimination for Job Seekers in Indonesia

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Abstract

Labor Law of 2003 prohibits discrimination for job seekers. However, the explanation of the legislation states that the discriminations are only limited to religion, gender, ethnicity, race, and political beliefs. In reality, almost all job vacancies in Indonesia specify maximum age limit for the applicants. This article discusses: (1) the meaning of discrimination in accordance with the value and legislation in Indonesia, (2) the existence of age discrimination in the legislation in Indonesia. The meaning of discrimination is reviewed in-depth from experts' opinions, dictionaries, and law. Age discrimination is not explicitly regulated in legislation. Prohibition of age discrimination implicitly can be found in the state constitution and labor laws.

Keywords: age discrimination, job seekers

1. Introduction

Regulations on prohibition of discrimination are clearly stated in the constitution and legislations. Article 28B and Article 28I paragraph (2) of Constitution of the Republic of Indonesia 1945 explicitly prohibit discrimination. Article 28B specifically prohibits discrimination on children. Article 28I paragraph (2) states "everyone reserves the right to be free from any discriminatory treatment on any basis and to get protection against discriminatory treatments". There are some legislations below the constitution regulating discrimination, namely : (a) Regulation of the Minister No. Per/03/MEN/1989 On Prohibition of Employment Termination for Women Workers for Marriage, Pregnancy, or Maternity, (b) Presidential Instruction No.9 of 2000 on mainstreaming Gender and Development, (c) Law No.40 of 2008 on the Elimination of Racial and Ethnic Discrimination, (d) Act No. 13 of 2003 on Manpower (e) Act No. 4 of 1997 on Persons with Disabilities (Disability), (f) Regulation of the Minister of Manpower and Transmigration No. 205 of 1999 About Job Training and Employment Opportunities of Persons with Disabilities.

The legislation has set up in such a way. However, in reality discrimination still exists in all aspects of human life, from employments, political participation, freedom of religion, and others. Discrimination in employments occurs in opportunities for employment, promotion, training, pensions, and wages. The result of job fairs⁵, shows that 64 (96%) out of 68 types of jobs offered by 13 companies specify maximum age limit for the applicants. Maximum age limit required in various types of jobs offered are ranging from 24-35 years old⁶.

In those job vacancies there are 4 types of job which do not limit the age of the applicants. The brochures do not list the limit of the age, but the stand keepers of the job fair informed the jobs are limited to a maximum age of 40 and 30 years. In reality, there are many labor force aged 27 to 50 years old. This age limitation of course makes the labor force difficult to find a job. It will be difficult for them even only for applying a job, because the age is not eligible.

Age restriction to prospective workers is in nearly all sectors of industry and services. Age restrictions for various types of job appear to be discriminatory when it is associated with the personal ability of the work to be performed. For example a shop keeper, the abilities needed are the abilities to maintain, fetch, or serve customers. In normal conditions, anyone aged 30 years and over will have no different abilities compared to the younger ones. In many cases the older is not nimble or even more experienced than anyone aged 20-25 years old. However, the owner of the shop commonly employs anyone aged less than 27 years.

Age restriction reflects some points, namely:⁷ "(1) the number of labor force is very huge, while job vacancies in Indonesia are very limited. Therefore, age restriction becomes the filter in the recruitment, (2) jobs in Indonesia do not require highly-experienced skills, (3) wages for young workforce is cheaper than the older ones, (4) young workers are more easily brainwashed to follow the culture of the company than older workers.

The determination of the maximum age limit mostly is at the age of 25 or 27 years old. It is based on views expressed by psychologists who claim that at the age of 18 to 25 people are at the peak of his physical abilities.

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⁵ Siti Awaliyah. 2016. *The Effectiveness of Anti Discrimination Laws for Job Seeker in Indonesia*. Journal of Law, Policy of Globalization. ISSN 2224-3240. Vol.51. New York. Pg.41

⁶ *Ibid.*

⁷ The Greyzed Theme. 2006. *Diskriminasi Usia pada Pasar Tenaga Kerja Indonesia*. buhadram.wordpress.com. Accessed January 12, 2014.

People have the greatest strength and very fast reflexes¹. At the age of 22-28 years people recognize themselves and the world they enter². They try to form a stable life structure and look for a place of work and social relations. Age 33-40 years is the phase of stability. Individuals with a steady conviction find a place in the community and try to advance a career very well. Their dreams on the previous phases begin to materialize³ Entering the age of 50 years or are approaching retirement or semi-skilled workers who are skilled susceptible to discrimination because of their stereotypes⁴. Older workers who have retired and rehired normally be placed in positions of lower and lower wages anyway⁵.

One of the aims of recruitment selection process is to find out differences in the ability of each individual. The selection process is intended to determine whether someone is experienced or not and well educated or not. Assessment of work or performance can be seen from the results of the work that is very influenced by the personality of workers including values, skills, motivation, attitudes, and other characteristics⁶. Recruiter job candidate should have the skills to interview well, analyzing skill posit

ions, and knowledge fair employment practices⁷. Other characteristics here are initiative, precision, intelligence and emotional stability⁸. On the other hand, in reality the individual differences are often associated with differences in gender, culture, education, age and ethnicity.

Person's intellectual ability to the age of 40 years or 50 years is still quite good, as stated by Thorndike that person's intellectual decline is not due to the age factor. A factor contributing to intellectual decline is basic capacity, which is the lack of intellectual and cultural activities. Basic capacity relates to the existence or background of a person. Someone's having no learning habit when he is young, will have no learning habit as well when he is old. Habitual intellectual activity which is abruptly terminated will also affect the intellectual ability. The idea of intellectual declining due to the age is influenced by rooted culture and prejudices in the society. In the end, when a 40 or 50 year old is applying a job, he will commonly be underestimated that he cannot work well.

Related to the age, there are some stereotypes given to the elderly. Schmidt and Bolland (1986) found eight stereotypes⁹, namely: "(1) eccentrics; (2) curmudgeons (grouchy, angry, uncooperative, nosey/peeping toms); (3) objects of ridicule or the brunt of the joke; (4) unattractive; (5) overly affectionate or sentimental; (6) out of touch with current/modern society; (7) overly conservative; and (8) afflicted (physically or mentally deficient)". Those attached stereotypes are less profitable when the elderly are applying a job. Discrimination based on age is often accompanied by gender and disability¹⁰.

The loss of the opportunity to work due to a variety of restrictions by the company can eliminate a person's right to get a job and have a decent living for themselves and their families. This condition can lead to poverty. Discriminatory treatment can trigger poverty, neglect, lack of recognition of the self, and the misery in some people who are excluded or differentiated. Workers in a company that is a 50 year old to have the experience, knowledge, work habits and commitment to loyalty, punctuality and respect for authority¹¹. Thus even though efforts to end more quickly toward retirement of older workers through retirement incentives persists¹².

However, these discriminatory behaviors have never met resistance from the public. It can be seen from the

¹ Desmita. 2013. *Psikologi Perkembangan*. PT. Remaja Rosdakarya. Bandung. Pg.234.

² F.J Monks, A M P Knoers, Siti Rahayu Hadinoto. 2014. *Psikologi Perkembangan*. Gadjah Mada University Press. Pg.330.

³ *Ibid*.

⁴ Vincent J. Roscigno, Sherry Mong, Reginald Byron, Griff Tester. 2007. *Age Discrimination, Social Closure and Employment*. Social Forces Journal Volume 86 edisi 1. Published in partnership with the Department of Sociology at the University of North Carolina at Chapel Hill. Pg.313

⁵ Yaw A Debrah. 2006. *Tackling age discrimination in employment in Singapore*. The International Journal of Human Resource Management Volume 7 Issue 4. Online <http://www.tandfonline.com/doi/abs/10.1080/09585199600000157>. Accessed on February 9, 2017.

⁶ Ashar Sunyoto Munandar. 2014. *Psikologi Industri dan Organisasi*. Universitas Indonesia. Jakarta. Pg.36.

⁷ Thomas H Butler and Beth A Berret. 2011. *A generation lost: the reality of age discrimination in today's hiring Practices*. Journal of Management and Marketing Research Volume 9 . Pg..2

⁸ Ashar. Sunyoto Munandar. *Op. Cit*. Pg.288.

⁹ Malcolm Sargeant. 2011. *Age Discrimination and Diversity (Multiple discrimination from an Age Perspective*. Cambridge University Press. New York. Pg.2.

¹⁰ Sarah von Schrader and Zafar E. Nazarov. 2017. *Trends and Patterns in Age Discrimination in Employment Act (ADEA) Charges*. Research on Aging Journal Volume 38 issue 5th. Pg.584. online http://journals.sagepub.com/doi/full/10.1177/0164027515593989#_i20. Accessed on February 10, 2017.

¹¹ Helen Dennis dan Kahryn Thomas. 2007. *Gageism in the Workplace*. Generation Sociology and Anthropology Journal Volume 31 No.1. American Society on Aging. Online <https://www.questia.com/read/1P3-1318281421/ageism-in-the-workplace>. Accessed on February 11, 2017.

¹² Joanna Lahey. 2008. State Age Protection Laws and the Age Discrimination in Employment Act. Journal of Law and Economics Volume 51 Issue 3th. Pg.433-460. Online <http://chicagounbound.uchicago.edu/jle/vol51/iss3/2/>. Accessed on February 11, 2017.

absence of any court case relating to the maximum age limit imposed by the company against job seekers. One lawsuit once filed by an employee of PT Garuda to Jakarta District Court is related to the retirement age. Yet suddenly the company issued a new regulation that the retirement age was 45 years. Thus the principal claim is actually not at retirement age 45 years, but the discrepancy between the current rules of recruitment and subsequent regulations. Suppose at the time of recruitment already stated that the retirement age is 45 years old then most likely there would be no lawsuit.

Based on the diverse backgrounds above this article will discuss the meaning of discrimination in Indonesian context, the presence of anti-age discrimination legislation in Indonesia, and the competence of the company to make such a requirement in the recruitment. This article is conducted with legislation and philosophy approaches.

2. Methods

This study uses legal research methodology. The approaches used in this article are legislation and conceptual approaches. Legislation approach is done by analyzing the use of the legislation in force, ranging from the constitution to the ministerial regulations. The conceptual approach is used to explore the concept of discrimination from psychologists, jurists, sociology, dictionaries, and legislation.

3. The Meaning of Discrimination by Legislations in Indonesia

Anti-discrimination becomes one of the principles that animate almost any laws or regulations, both at the international level and at the regional or local level. It appears simultaneously with the birth of the human rights struggling for equality against all of humanity that is naturally derived from God Almighty. Basically, all human beings have dignity that must be respected and upheld by anyone. The dignity must get protection from the state.

Anti-discrimination is so well entrenched due to the bitter historical experiences, when there were discriminatory treatment, misery, poverty, oppression, violence and harassment. Some of discrimination cruelties are shown by the history. For example, in the days before the Prophet Muhammad S.A.W, in Arab countries baby girls were buried alive. This was due to a view that girls would only bothersome and useless, could not go to war and could not work properly. The girls were so weak that they would be troublesome.

Another example is human slavery. Most of slaves were black people who were considered having lower level compared to people with other colors of skin. Once in Europe or America, particularly in the area of plantations, slaves were unskilled workers having no rights. They were equated with goods that could be traded. Blacks always became the target of repression. There was a stigma so attached that black people were dirty, thieves, ignorant, and other bad characteristics. As the result, they had a great difficulty in sustaining life.

The developments of science and eras have changed the mindset of people becoming more humane. The struggles to eradicate discriminated clans have appeared in various ways, including through regulation or law. In Western countries or the United States, the struggles first appeared and were recorded as a part of a milestone in the struggle of human rights or anti-discrimination in the world. Discrimination became the focus of experts observations, including social-psychologists, sociologists, environmentalists, and others. David O. Sears et al define discrimination as an act of categorizing arbitrarily that benefit the people "we" (the group) and ignore "them" (out-group)¹. The action begins with prejudices and stereotypes against others. Prejudice is not a good attitude and can be considered a predisposition to perceive, think, feel, and act in ways that oppose or away, and not supporting or approaching others². A prejudiced attitude leads to two things, namely: (a) take the distance and do not have a close relationship, and (b) harmful and unhelpful³.

Prejudice is originally just an attitude of negative feelings, which gradually leads to a discriminatory act against people who are prejudiced with no objective reasons. The conditions spawned discriminatory action, that is an action which inhibits and adverse developments, even threatening the private lives of others just because they are the group being prejudiced⁴. The emergence of prejudice occurs naturally in the community. At first, intercourse is doing well. However, some events or conditions spawn numerous judgments that ultimately manifested in a variety of prejudices that are often not objective.

The crashing of World Trade Center (WTC) in the United States in 2001 is also a result of the prejudice of certain people against the American government. The impact of prejudice results in various damages for community life. According A.M Rose in his writings *The Roots of Prejudice* (1951), it is very hard to debunk because there are some people who vigorously defend their personal interests or prejudice for the group or their

¹ David O. Sears, Jonathan L. Freedman, L. Anne Peplau. 1985. *Psikologi Sosial* terjemahan buku Social Psychology. Diterjemahkan oleh Michael Andryanto dan Savitri Soekrisno. Erlangga. Jakarta. Pg.84.

² Theodore M Newcomb, Ralph H Turner, Philip E Converse. 1985. Psikologi Sosial terjemahan dari Social Psychology the Human Interaction. Diterjemahkan oleh Joesoef Noesjirwan, M. Soewondo, Fatimah Z Abdullah. CV. Diponegoro. Jakarta. Pg.564.

³ *Ibid.*

⁴ W.A Gerungan. 2004. *Psikologi Sosial*. PT. Refika Aditama. Bandung. Pg.180

own sakes, to get sustenance when maintaining these prejudices¹. Social prejudices fostered to exploit certain groups for self-advancement or group itself. Presupposition eventually gives rise to stereotypes against certain groups of people.

Based on various definitions above, there are some conclusions related to the term discrimination. Discrimination is a concept that is growing and developing in a society that occurs from various views of a certain object. Prejudice which is an attitude toward an observed object with the absence of objective assessment, mainly against specific groups of people outside the group, leads to a stereotype. Negative connotation labeling based only on a small group is used to assess the group as a whole, and it becomes a broad view of the society. In the end it causes discrimination against a particular group of people resulting in losses on the discriminated group.

The word discrimination is always there in national and international law. Defining discrimination is indispensable. Therefore, the regulation can be applicable in various areas of life. Various international conventions have included the word discrimination in various established covenants. The amendment of state constitution of Republic of Indonesia also explicitly includes the word discrimination. As a follow-up to the constitution, various laws and regulations regulate the prohibition of discrimination.

The inclusion of the word of discrimination does not automatically make the applicability of a regulation easy. It can be seen in many cases in various countries around the world. Countries in Europe and America that have made progress in various fields are also not easy to determine an action whether or not it is a form of discrimination. This is due to the fact that discrimination is closely related to equality. Meanwhile, when talking about the two terms it will also face a term that is very glorified especially in the west, namely freedom.

The world has been changing very rapidly over time. Various sciences have become a stimulant or trigger the emergence of the changes in various sectors. The changes occur not only on the pattern of life in the economics, health, culture, technology and information, but also on aspects of attitudes and behavior.

Discrimination is a term that has been very popular in life. Discussions of various issues related to discrimination are quite deep. The meaning and limits of an act considered to be discrimination receive serious attention and still need further studies.

Based on dictionaries, legislation, and expert opinions, there are various terms related to discrimination. Grammatically and lexically, it is easy to say that an act is considered discrimination or not. Meanwhile, contextually it is not that easy. Not all acts of differentiating and restricting can be categorized as discrimination. It will be a complicated proof to declare an act as discrimination.

Black Law Dictionary defines discrimination as an act that denies the existence of the rights of others due to race, age, gender, nationality, religion, or disability and incompetence of a person². Indonesian Dictionary states that discrimination is treat differently to his fellow citizens motivated by gender, colors of skin, race, ethnicity, religion, economics, and so forth³. From two definitions above, it can be said that principally discrimination is a difference in treatment to others. The difference lies in the object. Black Law Dictionary generally refers the rights of others as the rights of all people in this world. On the other hand, Indonesian Dictionary refers the term citizen to Indonesian citizens. The similarity of both dictionaries is on the type of discrimination that is prohibited. Indonesian Dictionary has wider scope because of the use of the word "etc." at the end of the definition, which indicates opening of other discrimination than those mentioned in the dictionary.

According to the law, the meaning of discrimination can be defined by international and national laws. The definition of discrimination can be found in international conventions, including the ILO Convention of 111 which states that discrimination is any distinction, exclusion or a preference based on several things, namely race, color, sex, religion, political belief, nationality or origin causing diminished or loss of opportunity in employment or occupation⁴. On the next point is that discrimination is other acts not stated in the convention (race, color, sex, religion, political beliefs, nationality, and origin). The elements of discrimination under the definition above are: (a) any distinction, (b) exceptions, (c) sorting, (d) race, colors of skin, sex, religion, political belief, nationality or origin, and so forth (e) reduction or loss of opportunity, (f) job or position.

Law No. 39 of 1999 on Human Rights explicitly include the definition of discrimination in Article 1 paragraph (3) that are the restrictions, harassment, or exceptions either directly or indirectly based on religion, race, ethnic group, class, social status, economic status, gender, language, political beliefs resulting in the reduction, distortion, or removal of recognition, or the use of human rights in different spheres of life. The elements of discrimination based on this definition include: (a) restrictions, (b) harassment, (c) exception, (d) directly or indirectly, (e) religion, ethnic, racial, race, group, class, social status, sex, language, political belief, (f)

¹ *Ibid.* Pg.187-188.

² Bryan A Garner (Ed). 2009. *Black's Law Dictionary*. 9th ed. St. Paul USA:West Publishing Co. Pg.534.

³ Pusat Bahasa Kementerian Pendidikan dan Kebudayaan. Kamus Besar Bahasa Indonesia (KBBI). online. 2014. <http://kbbi.web.id/>. Accessed January 6, 2014.

⁴ The wording of Article 1 paragraph 1 of ILO Convention of 11

reduction, (g) deviations, (h) elimination of recognition, (i) the use of human rights and (j) the various fields of life.

Law No.8 of 2016 on Persons with Disabilities in the General Provisions Article 1 point 3 states that discrimination is exclusion, distinction, restriction, exclusion, or harassment on the basis of disability which has the purpose or impact on the limitation or elimination of the recognition, enjoyment, or execution disability rights. The definition of discrimination is specifically therein used or intended for the disabled. This provision does not provide the kind of discrimination that is prohibited other than disability or disability.

Based on the ILO convention of 111, Law No. 39 of 1999, and Law No. 8 of 2016 there are some somewhat different words in indicating an act of discrimination. Here is the difference outlined in table 1.

Table 1. Comparison of terms being used to define discrimination in the ILO convention No. 111, Law No. 39 of 1999 and Law No. 8 of 2016

ILO convention of 111	Law No. 39 of 1999	Law No. 8 of 2016
Distinction	Restriction	Exception
Exception	Harassment	Distinction
Sorting	Exception	Restriction Exclusion Harassment
Causing reduced or lost opportunities	Causes reduction, irregularities, elimination of rights use recognition	Impact on restrictions, elimination, rights enjoyment recognition

The table shows a comparison of the terms used as restrictions or definitions of discrimination. Law No. 8 of 2016 as the most recent regulations compared to ILO Convention of 111 and the Law No.39 of 1999 imposes more widespread limits of discrimination. According to those three regulations discrimination is exclusion, distinction, restriction, exclusion and harassment. The exception is a method, process, or excluding act containing a negative connotation, which is an act that excludes or segregates¹.

For example, everyone can apply for work except for those aged 27 years and over. It means that those are less than or equal to 27 years are eligible to apply. Distinction is a way, the process or act of differentiating². The restriction is a way, the process or act that limits. The synonyms are separation, insulation, obstacles, barriers, limitations, and qualifications³. Exclusion is an act of breaking off a social relation by a group of people or community against another person or group. Harassment is a process, method or act that harasses, degrades, dishonors, humiliates or neglects.

ILO Convention of 111 uses words that are simple enough but has a very broad meaning of "diminished or lost opportunity" which can include a variety of things. On the other hand, Act 39 of 1999 and Law No. 8 of 2016 uses more specific words, the "reduction, distortion, and elimination of recognition, restrictions, abolishing of the recognition, enjoyment and use of rights".

Table 2. Comparison of types of discrimination listed in the ILO Convention of 111, Law No. 39 of 1999 on Human Rights, and in Law No. 13 of 2003 on Employment

Convention ILO of 111	Law No. 39 of 1999	Law No. 13 of 2003
Race	Race	Race
Color of skin	Ethnic	Color of skin
Sex	Sex	Religion
Religion	Religion	Political belief
Political belief	Political belief	Ethnic
Nation or origin	Language	
Other types	Group Tribe Class Social status Economic status	

ILO Convention No. 111 outlines fewer types of prohibited discrimination, comprising six types and one statement (the words "other options"). Meanwhile, in Law No.39 of 1999 are listed 11 types of prohibited discrimination. Although ILO Convention No. 111 lists fewer types, in practice it will be wider than Law No.39 of 1999 because of the word "other options". Thus any distinguishing act can be categorized as discrimination if it fulfills the criteria as specified in Article 1 paragraph 1 point (b). Distinction, exclusion, or other options (besides 6 kind referred to in point a) can be categorized as discrimination if: (a) the associated member has

¹ Online Indonesian Dictionary. On line. <http://kamusbahasaindonesia.org/pegecualian>. Accessed on October 20, 2016.

² *Ibid.*

³ *Ibid.*

consulted with organizations representing employers and employees, if any, (b) the associated member has consulted with other relevant bodies.

Various types of discrimination in society eventually became the center of attention of social and law scientists. The existence of laws as protectors of the people plays a role in addressing various issues of discrimination to create balance in life in order to realize a safe, prosperous, and fair society. Various regulations, both international and national, are arranged in such a way that any types of discrimination on this earth may be removed.

4. The presence of Age Discrimination in Legislation in Indonesia

Differentiation in treatments for potential workers based on age is generally very unreasonable and looks very discriminatory. For example, the requirement of maximum age for a factory worker of instant noodles packing section is 27 years. There come some questions then. Can anyone aged over 28 years pack instant noodles in a box? Does the profession require a certain ability or skill that can only be done by people aged 27 years and under? The skills required of an instant noodle packer are: ability to stand, having hands that can be moved well, and speed in retrieving and putting the noodles in a box. Speed as the main point can be carried out if the person is healthy and accustomed/trained to do the job. Anyone who has never packed will initially slow, but can be fast over time because he is used to doing it.

The searching for the meaning of discrimination is traced from the various existing regulations, either expressed or implied, ranging from the rules at international level to the national, and even at the local level. The expressed meaning can be traced from the wording of the rules in the chapters or explanations. On the other hand, the implicit meaning can be traced from the spirit of the constituents and the philosophical study of the origin of the regulation as well, which is very important.

In general, the provisions of Constitution of 1945 which regulate the protection for job seekers and workers expressed or implied can be seen in Article 27 paragraph (2), and Article 28D. Article 27 paragraph (2) concerns with the rights of citizens to get a decent job. Citizens are all people who have a legal relationship with the state and have been ratified by the legislation. Citizens here mean Indonesian citizens. The word "get" means that every citizen has the right to access any type of work.

Article 28D (2) and Article 27 paragraph (2) are almost the same. The differences are on the subject and the nature of sound rules. Article 27 directly regulates employment and livelihood. On the other hand, Article 28D (2) contains provisions on the right to work. It especially clarifies compensation/remuneration of work, decent and fair treatment, as well as labor relations. The right to work can be interpreted that every person has the right to access a job. Furthermore, decent and fair treatments in an employment relationship are especially for those who are already employed.

Fairness and feasibility are related to things such as the placement, working hours, treatments among workers, including wages. The word "working relationship" indicates that these provisions addressed to a particular group and not to all kinds of field work. Working relationship according to Labor Law Article 1 number 15 is a relationship between employers and workers which contains employment agreements including elements of employment, orders and wages. Employment agreement according to Labor Law Article 1 number 14 is an agreement between workers and employers containing the terms of employment, the rights and obligations of the parties.

The prohibition of discrimination is particularly clearly stated in Article 28G paragraph (2), Article 28H paragraph (1), Article 28H paragraph (2), and Article 28 paragraph (2). Article 28H paragraph (1) regulates the right to live in prosperity. Benchmarks of well-being are the fulfillment of the basic needs including food, shelter and clothing. Moreover, nowadays the basic needs are not only limited to the three components above, but also including education and recreation. In order to fulfill the rights, one of the main means is working. Therefore, access to get a job is crucial for the community.

Article 28H Paragraph (2) contains provisions on the right to get ease in getting a chance to achieve equality and justice. Some keywords in this Article are getting ease, the opportunity and benefit, equality and justice. This is related to many aspects of life, including employment. Every person has the right to get convenience and opportunity to gain employment. The equality and justice then can be realized by convenience and opportunity.

Article 28I paragraph (2) contains several meaningful key words, namely the right to be free from discriminatory treatments on any basis, and the right to be protected from discrimination. The term discrimination occurs twice, meaning that it is something important to avoid. Discriminatory is the adjective of discrimination. The right to be free from discriminatory treatment and to obtain protection from discriminatory treatment does not refer to a specific field. It means that there must be no discriminatory treatment allowed in all aspects of life. State provides all citizens protection from a wide range of discriminatory as regulated in Article 28 paragraph (4). The government as the organizer of the country of course is responsible for this duty.

An important and very basic phrase related to the prohibition of discrimination in Article 28 paragraph (1)

is the phrase "on any basis". It indicates that any form of discrimination on any basis for such actions in the category of discrimination will get penalized. Various forms of discrimination can be based on religion, sex, political views, economic, social and others.

Employment is one of the main means to achieve the national goal of promoting the general welfare. In order to ensure the citizens to get a proper job, the state must give job seekers protection, as stated in Article 27 paragraph (2). Therefore, they can access an appropriate job based on their skills and abilities, which are further regulated in Article 28I. In this article it is clearly stated that it must be no discrimination on any basis, including religion, gender, race, nationality, political views, social status, age, or other. Besides, all citizens must be guaranteed to get a job and a decent living as stated in Article 28H paragraph (2) that is the right of each person to get opportunities and benefits in order to achieve equality and justice. This article is designed more for individual or groups who have weaknesses due to their natural conditions or something else that should get special treatment or get affirmative action (affirmative action), e.g., pregnancy, disability, old age or other.

In addition, through the constitution or legislation, governments need to create policies to promote age as a protected through education and information to the public and employers so that old age can participate well in the workplace¹. One of the main things to do is sharing the work, which divides one job for two workers². The aim is to overcome unemployment or to address older workers who experienced a decrease in productivity.

5. Conclusion

There are two conclusions from the discussion:

1. The characteristics of an act considered discrimination can be viewed from many aspects: experts' views, dictionaries and legislation. From dictionaries it can be identified some points dealing with discrimination, namely: (a) an act/deed, (b) differentiate, (c) denial of rights, (d) is addressed to another person, (e) based on race, ethnicity/nationality, sex, religion, economics, incompetence/inability, and so on. The characteristics of discrimination based on regulations, international and national ones, include (a) any distinction, exclusion, favoritism, harassment, restrictions, (b) directly or indirectly, (c) the reduction, distortion, omission/elimination of recognition of rights, (d) race, colors of skin, sex, religion, political belief, nationality, and so forth. Experts on Social Psychology identify that discrimination has many aspects, namely (a) actions/deeds, (b) arbitrary, (c) harmful, threatening, (d) not objective assessments, (e) giving benefit of individuals or certain group.
2. There is no legislation in Indonesia which explicitly and implicitly mentions that age is the basis of discrimination for job seekers. Implicit discrimination can be seen in various legislations. Article 28I of the Constitution of the Republic of Indonesia regulates the protection of the country against any act of discrimination on any basis. Law No. 13 of 2003 governs that the recruitment should be based on talent, enthusiasm, and expertise, no discrimination.

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