

## Justice and Equality in Civil Service Recruitment *Siyasah Dusturiyah* Critique of Discriminatory Requirements

Haris Fadhil<sup>1\*</sup>, Nailur Rahmi<sup>2</sup>, Hebby Rahmatul Utamy<sup>3</sup>, Saadatul Maghfira<sup>4</sup>,  
Afrian Raus<sup>5</sup>

<sup>1,2,3,4,5</sup> Universitas Islam Negeri Mahmud Yunus Batusangkar

### Correspondence:

[harisfadhil@gmail.com](mailto:harisfadhil@gmail.com)

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**Abstract:** This study examines minimum height requirements for CPNS candidates at the Ministry of Law and Human Rights (men: 163 cm, women: 158 cm), questioning their justice, constitutional compliance, and alignment with Islamic *maslahah* principles guaranteeing equal employment access. It analyzes state obligations in rights fulfillment and consequences of Circular SEK-KP.02.01-323/2024. Employing normative juridical methodology with qualitative typology, research utilizes secondary data including 1945 Constitution Articles 27/28D, Human Rights Law, ministerial regulations, and literature via library studies for qualitative analysis. Findings reveal administrative criteria potentially discriminate, violating equality/non-discrimination principles in Articles 27/28D despite competency-based CAT systems. Height requirements burden women/non-conforming individuals despite qualifications, contradicting merit systems (Law No. 5/2014). *Fiqh Siyasah Dusturiyah* demands leaders prioritize *al-'adl* (justice) and *al-musawah* (equality), rendering irrelevant physical barriers unjust. Policy reform is recommended for inclusive, merit-based recruitment upholding constitutional/Islamic equity.

**Keywords:** Discrimination, Citizenship Rights In Indonesia, *Siyasah Dusturiyah*, Civil Servant

## Introduction

The 1945 Constitution of the Republic of Indonesia, in Article 1 paragraph (3), affirms Indonesia as a constitutional state grounded in Pancasila values as the nation's philosophy and foundation. This rule of law ideal posits that legal regulations, rather than politics or economics, must govern national dynamics (Aswadi, 2019). Consequently, protecting human rights (HAM) requires their integration into national law (Asshiddiqie, 2012). Articles 28A-28J of the 1945 Constitution address HAM, with Article 28D(1) guaranteeing "recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law," and Article 28D(2) ensuring "the right to work along with fair and proper remuneration and treatment in employment relations."

Article 38(1) of the Human Rights Law reinforces this by stating that "every citizen, according to talent, expertise, possibility, and ability, has the right to decent work," including free choice of preferred employment with fair labor conditions. These provisions affirm equal employment access without discrimination based on individual capabilities. However, Minister of State Apparatus Utilization and Bureaucratic Reform Regulation No. 6/2024 on Civil Service Candidate Recruitment and Decision No. 293/2024 on 2024 Staffing Needs establish Ministry of Law and Human Rights CPNS selection criteria,

including height requirements for high school-equivalent applicants: minimum 163 cm for men and 158 cm for women (SEK-KP.02.01-323 Announcement).

This height stipulation creates unequal rights between candidates meeting and falling below minimums, potentially excluding groups based on unchangeable biological factors despite organizational needs like physical demands for detention guards. Such institutionalized physical discrimination contradicts Articles 28D(1) and 28D(2), representing social norms that undermine equal access. Article 1(3) of the Human Rights Law defines discrimination as "any limitation, harassment, or exclusion directly or indirectly based on distinctions of religion, ethnicity, race, group, class, social status, economic status, gender, language, political belief, resulting in reduced, deviated, or nullified recognition, implementation, or enjoyment of human rights and fundamental freedoms individually or collectively in political, economic, legal, social, cultural spheres and other aspects of life" (Fulthoni et al., 2009).

Islamic law complements positive law through *fiqh siyasah*, requiring state policies to align with *shariah*. *Siyasah dusturiyah*, as Islamic constitutional politics, governs state legislation to achieve public welfare (*maslahah*) and fulfill essential human needs (Amri, 2023). It addresses governance forms, citizen rights, and power distribution, mandating equal treatment without discrimination in civil service candidacy to uphold justice and equity.

## Literature Review

Rights represent inherent authorities or freedoms possessed by individuals to obtain or perform certain actions without interference from any party. In citizenship contexts, rights encompass fundamental aspects such as legal protection, freedom of expression, education, and social-economic entitlements ensuring dignified living standards (Wandi Wandu et al., 2024). Notonegoro asserts rights are inalienable and non-transferable, while obligations constitute responsibilities individuals must fulfill within society. Rights and obligations form a complementary unity fostering social order and balance (Farahdiba et al., 2021). Human rights (HAM) comprise basic entitlements naturally inherent to every individual simply by virtue of being human – universal, inalienable, and requiring protection by states and societies. HAM thus forms the bedrock for justice, freedom, and equality in communal and national life, guaranteeing enjoyment without discrimination to uphold human honor and liberty (Alston & Suseno, 2008).

Scholars define human rights variably: Eleanor Roosevelt views them as birthright entitlements essential to human essence; Peter R. Baehr describes them as fundamental capacities enabling human development, absolutely inviolable (Yusri, 2020); Miriam Budiardjo sees them as innate to individuals from birth, universal regardless of race, nationality, religion, group, or gender, providing equal development opportunities based on potential and aspirations (Zein, 2015); and Thomas Jefferson posits them as God-given freedoms predating state authority, with governments existing to protect their exercise (Rudijanto, M. N., Rasji, R., & Aurelia, 2024).

Justice (*iustitia*), derived from "adil," signifies impartiality, truth allegiance, and proportionate treatment without arbitrariness. It demands individuals receive treatment commensurate with rights and obligations, irrespective of background or privilege. John Rawls conceptualizes justice as fairness in *A Theory of Justice* (1971), emphasizing equal liberty principles maximizing benefits for society's least advantaged. His two core principles include equal liberty ensuring uniform rights/obligations as human rights foundations, and the difference principle alongside fair equality of opportunity guaranteeing proportional rights-obligations exchange under good faith and fairness, providing equal access to positions absent equal conditions (Beta Utami, 2022; Mawardi, 2010).

Civil Service Apparatus (ASN) encompasses Civil Servants (PNS) and contract government employees serving central/regional institutions, appointed by authorized personnel officials per prevailing regulations. ASN receive position- and tenure-adjusted salaries/benefits, primarily advancing government policies, delivering quality public services, and maintaining national unity within Indonesia's unitary state framework. They must uphold integrity, professionalism, and service ethics for effective governance (Umaina et al., 2024).

Fiqh Siyasah originates from "fiqh" (deep understanding of shariah rulings via sources) and "siyasah" (governance derived from Qur'an/Hadith axiomatic doctrines). Siyasah Dusturiyah constitutes Islamic political-constitutional science examining universal evidences from Qur'an, Hadith, and shariah objectives. Government legislation/policy formulation ranks central, embedding societal regulations. Society functions dually as governance object/subject; political life unites communities for lawmaking/leadership selection via democratic commitments like elections at various levels, ultimately fulfilling Islamic legal aims (Aisha & Natasha, 2024). Siyasah Dusturiyah addresses rule of law concepts, government-citizen reciprocity, and citizen rights protection. Constitutional principles guarantee human rights equality before law, aiming for universal human welfare (maslahah) (Syukra et al., 2022; Jubair Situmorang citing A. Syaebany).

## Method

This research employs a normative juridical approach utilizing qualitative typology. Data sources consist of secondary materials, comprising primary legal materials including 1945 Constitution Articles 27 and 28(D), Human Rights Law, Minister of State Apparatus Regulation No. 6/2024 on CPNS Recruitment, Minister of State Apparatus Decision No. 293/2024 on 2024 Government Institution CPNS Staffing Needs, Ministry of Law and Human Rights Circular No. SEK-KP.02.01-323 on 2024 CPNS Recruitment, and secondary legal materials from library sources such as scientific books, journals, websites, and other research. Data collection techniques involve library studies of legal materials. Collected data are analyzed qualitatively to draw conclusions.

## Results and Discussion

### Fulfillment of Citizen Rights in CPNS Requirements at the Ministry of Law and Human Rights

Citizen rights fulfillment represents shared state-citizen responsibility, encompassing entitlements guaranteed by law (Yunita & Dewi, 2021). Governments must ensure decent employment per 1945 Constitution Articles 28D(1)/(2) (Alam & Arif, 2020). The Ministry provides CPNS opportunities via Circular SEK-KP.02.01-323/2024, yet height requirements (163 cm men, 158 cm women for high school equivalents in detention/immigration roles) create unequal access, per BKN Head Regulation No. 21/2011 defining physical demands (strength, agility) for job efficacy (Hamidah, 2021). Law No. 5/2014 Articles 56(1)/58 mandates need-based staffing via job/workload analysis, national merit alignment (Yunisa & Reviandani, 2025). PP No. 11/2017 jo. 17/2020 and Minister PANRB Decision No. 293/2024 guide formations addressing Ministry needs like prison/immigration workloads, retirements, bureaucratic reform for transparent services (Effendy et al., 2024).

Justice theory, particularly Rawls' fair equality of opportunity/difference principles, demands treatment per rights/obligations sans privilege, equal positions despite backgrounds. Positive law reinforces: Article 27(1) equal legal standing, 27(2) decent livelihood/work, 28D(1) fair protection/equality; ASN Law Article 51 merit systems sans discrimination (politics/race/gender/disability). CAT testing ensures objectivity, yet administrative physical criteria limit diversity. Friedman's legal system theory critiques height rules: structurally (circular subordinate to laws), substantively (merit-incompatible discrimination), culturally (evolving fairness demands). UDHR Article 23(1) guarantees work choice/fair conditions/unemployment protection sans discrimination, affirming legal equality honoring divine/social dignity.

The Ministry of Law and Human Rights' CPNS recruitment announcement (SEK-KP.02.10-323/2024) fails to prioritize equal citizen rights by imposing height requirements—minimum 163 cm for men and 158 cm for women (high school equivalent)—effectively limiting access for those below thresholds. From justice theory perspectives, particularly John Rawls' principles, fairness demands treatment commensurate with rights/obligations without background privileges. Rawls' fair equality of opportunity ensures equal position access despite socioeconomic origins, while the difference principle permits inequalities only benefiting society's least advantaged. Positive law reinforces this: 1945

Constitution Articles 27(1)/(2) and 28D(1) guarantee equality/work rights; Law No. 5/2014 on ASN Article 51 mandates merit systems based on qualification/competency/performance without discrimination (race, religion, gender, disability); Minister PANRB Regulation No. 23/2019 employs objective CAT testing. Yet field issues persist in administrative requirements overlooking diversity, with physical criteria like height excluding competent groups despite merit focus.

The circular potentially violates Law No. 39/1999 on HAM, occupying lower hierarchy per Law No. 12/2011—administrative instruments cannot contradict superior laws guaranteeing equal work/government access without physical discrimination. Height requirements reduce/eliminate protected rights. Lawrence Friedman's legal system theory reveals structural (circular's limited binding power), substantive (merit-incompatible discrimination), and cultural (evolving fairness demands) misalignments. HAM principles, per UDHR Article 23(1), affirm work choice/fair conditions/protection from unemployment without discrimination, emphasizing legal equality/non-discrimination honoring human dignity as God's creations/social equals. Height criteria risk injustice exacerbating inequalities, sidelining competent candidates failing biological standards.

### **Consequences of Circular No. SEK-KP.02.01-323 on 2024 CPNS Recruitment**

Height requirements yield positives/negatives. Positives include physical task alignment (detention oversight), safety/professionalism standards (Secretary General: security demands fitness/posture for efficacy/impression), uniform selection easing assessments (Luqman, n.d.). Negatives center on discrimination: direct (competent rejections), indirect (disproportionately burdening women/shorter genetics), affecting recruitment quality (Saputri & Kamil, 2021). Types are individual (personal unfairness), structural (systematic barriers), cultural (stereotypes favoring tall authority) (Anita Hariyanti, n.d.). Justifications are physical demands (security/firefighting strength), safety (transport/defense minimizing accidents), field performance (patrol/control) (Bashri, n.d.; ASN, n.d.). BKN's Satya Pratama notes strict fitness for Ministry/Defense/Bakamla due to basic training (Zai, 2022).

Research identifies height requirements justified by physical demands/safety/performance but risking discrimination, particularly gender/physical minorities. Impacts span individual (competent rejections), structural (systematic institutional barriers), and cultural (reinforcing authority stereotypes favoring tall physiques). The circular undermines democracy's equal participation/access to public office, emphasizing equality/non-discrimination. Height burdens women (lower averages), evidenced by higher female administrative failures; Kompas.com (2025) reports Tri Cahya Ningsi (Boyolali factory worker) topping SKD scores (476) but failing health checks by 0.5 cm. This violates Law No. 39/1999 HAM and CEDAW (Law No. 7/1984), prohibiting irrelevant performance-based discrimination.

### **Siyasah Dusturiyah Analysis of the Circular's Consequences**

Islamic law (shariah) mandates HAM fulfillment as state/individual duties per divine revelation/Sunnah for mukallaf. CPNS requirements must ensure non-discriminatory government work access. Fiqh Siyasah Dusturiyah demands leaders prioritize justice/equality in rule-making. Qur'an An-Nisa:58 commands amanah (trustworthy authority). Islamic justice (al-'adl: rights placement) and equality (al-musawah: uniform treatment sans race/gender/status discrimination) reject height criteria as zulm (oppression) blocking potentials. Islamic democracy via musyawarah/justice/human dignity prohibits physical barriers; nobility derives from taqwa/ability/knowledge, not physique. Leaders must ensure objective/integrity-based public selection reflecting rahmatan lil 'alamin, rendering irrelevant physical criteria unjust deviations from Islamic governance.

### **Conclusion**

CPNS requirements at the Ministry of Law and Human Rights demonstrate adequate competency-based evaluation through CAT systems, yet administrative aspects—particularly SLTA physical criteria like height—remain potentially discriminatory, limiting rights for those below/above thresholds in 2024

recruitment. Policy evaluation is essential for greater inclusivity and equity across citizens. Height stipulations create discriminatory impacts, especially burdening women and physically non-conforming individuals despite competencies, necessitating review aligning with positive law and Islamic non-discrimination principles. Such irrelevant physical criteria contradict Islamic justice (al-'adl), obstructing qualified candidates and violating rahmatan lil 'alamin values. Public office selection must prioritize objectivity, ability, and integrity for effective governance reflecting universal mercy.

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## Conflict of Interest

This article has no conflicts of interest.

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