

LAW OF THE REPUBLIC OF INDONESIA
NUMBER 40 OF 2008
ON
ELIMINATION OF RACIAL AND ETHNIC DISCRIMINATION
BY THE BLESSINGS OF ALMIGHTY GOD

PRESIDENT OF THE REPUBLIC OF INDONESIA,

- Considering :
- a. that the human beings are equal before the Almighty God and human beings are born with dignity and the equal rights without distinction of any racial or ethnic group;
 - b. that all actions of racial and ethnic discrimination conflict with the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, and the Universal Declaration of Human Rights;
 - c. that all citizens simultaneously to its position in the law and the right to protection against any form of racial and ethnic discrimination;
 - d. that the existence of racial and ethnic discrimination in the life of society is an obstacle to a relationship of family, fraternity, friendship, peace, harmony, security and livelihood among citizens who basically always live side by side;

- e. that based on considerations as referred to in point a, point b, point c, point d and it is necessary to make a law on the Elimination of racial and Ethnic Discrimination;

Observing : 1. Article 20, Article 21, Article 27 section (1), Article 28B section (2), section 28D section (1), and article 28I section (1) and section (2) of the 1945 Constitution of the Republic of Indonesia;

2. Law Number 29 of 1999 on Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (International Convention on the Elimination of all forms of racial discrimination, 1965) (State Gazette of the Republic of Indonesia of 1999 Number 83, Supplement to the State Gazette of Republic of Indonesia Number 3852);

3. Law Number 39 of 1999 on Human Rights (State Gazette of the Republic of Indonesia of 1999 Number 165, Supplement to the State Gazette of the Republic of Indonesia Number 3886);

With the Joint Approval of
THE HOUSE OF REPRESENTATIVES
and
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

HAS DECIDED:

To enact : LAW ON ELIMINATION OF RACIAL AND ETHNIC DISCRIMINATION.

CHAPTER I GENERAL PROVISIONS

Article 1

In this Law:

- 1. Racial and Ethnic Discrimination means any distinction, exclusion, restriction, or an election based on race and ethnicity, resulting in revocation or reduction of the

recognition, acquisition, or the implementation of human rights and freedoms the basics in an equality in the field of civil, political, economic, social, and cultural.

2. Race means the nation based on physical characteristics and bloodlines.
3. Ethnicity means a human grouping based on beliefs, values, habits, customs, norms, languages, history, geography and kinship.
4. Citizen is a resident of a country or nation of Indonesia based on descent, place of birth, or citizenship which has rights and obligations.
5. Racial and Ethnic Discrimination Action means the action with regard to all forms of distinction, exclusion, restriction, or an election based on race and ethnicity, resulting in revocation or reduction of the recognition, acquisition, or the implementation of human rights and fundamental freedoms in an equality in the field of civil, political, economic, social, and cultural.
6. Every person means the individual person or the Corporation.
7. Corporation means a group of people and/or wealth that is well organized which is a legal entity or is not a legal entity.
8. National Human Rights Commission (Komisi Nasional Hak Asasi Manusia, hereinafter as Komnas HAM, hereafter is an independent position level with other State institutions that function of carrying out studies, research, outreach, monitoring, and mediation of human rights.
9. State Administrator means the State officials who run the executive, legislative, or judicial functions and other officials whose functions and duties relating to the conduct of the State substantially in accordance with the provisions of the legislation.

CHAPTER II BASIS AND PURPOSE

Article 2

- (1) Elimination of racial and ethnic discrimination is carried out based on the principle of equity, freedom, justice, and humanitarian values that are universal.
- (2) The principle of equity, freedom, justice and humanitarian values that are universal as referred to in section (1) is established while still observing religious, social, cultural, and legal values applied in the territory of the Unitary State of the Republic of Indonesian.

Article 3

Elimination of racial and ethnic discrimination aims to embody family, fraternity, friendship, peace, harmony, security and livelihood among citizens who basically always live side by side.

CHAPTER III DISCRIMINATORY ACTIONS

Article 4

Actions of racial and ethnic discrimination are in the forms of:

- a. treating the distinction, exclusion, restriction, or an election based on race and ethnicity, resulting in revocation or reduction of the recognition, acquisition, or the implementation of human rights and fundamental freedoms in an equality in the field of civil, political, economic, social, and culture; or
- b. showing hatred or sense of hate to the people because of the racial and ethnic differences in the form of:
 1. making your writings or pictures to be placed, affixed, or shared in a public place or other place that can be seen or read by others;

2. addressing, revealing, or catapulting certain words in a public place or other place that can be heard by others;
3. wearing something in the form of objects, words, or images in a public place or other place that can be read by other people; or
4. conducting the deprivation of the life of the person, assault, rape, fornication, theft with violence or deprivation of freedom based on racial and ethnic discrimination.

CHAPTER IV GRANTING OF PROTECTION AND GUARANTEES

Article 5

The elimination of racial and ethnic discrimination is required by providing:

- a. protection, certainty, and in common position within the law to all citizens to live free from racial and ethnic discrimination;
- b. guarantee the absence of barriers to initiatives of individuals, groups, or institutions that need protection and guarantee in common usage rights as citizens; and
- c. understanding to the public about the importance of pluralism and respect for human rights through the institutions of national education.

Article 6

The protection of citizens from any form of racial and ethnic discrimination is provided by the government, local governments, and public, as well as the participation of all citizens in accordance with the provisions of legislation.

Article 7

For the protection of citizens as referred to in Article 6, the government and the local government are obligated to:

- a. provide effective protection to all citizens who experience

racial and ethnic discrimination and ensure the effective implementation of law enforcement efforts against any action of discrimination that occurs, through a process of a trial conducted in accordance with the provisions of the legislation;

- b. guarantee every citizen to obtain fair assistance, settlement, and replacement for all the losses and suffering resulting from racial and ethnic discrimination;
- c. support and encourage the efforts of elimination of racial and ethnic discrimination, and guarantee the State apparatus and the Government institutions to act in accordance with the provisions of legislation; and
- d. act effectively in order to update, modify, repeal, or annul legislation containing racial and ethnic discrimination.

CHAPTER V

SURVEILLANCE

Article 8

- (1) Surveillance against any attempts of elimination of racial discrimination and ethnic carried out by Komnas HAM.
- (2) The surveillance as referred to in section (1) includes the following:
 - a. monitoring and assessment of the policies of governments and local governments that are judged potentially to encounter racial and ethnic discrimination;
 - b. fact-finding and assessments to those individuals, community groups, or public or private institutions who are suspected of committing actions of racial and ethnic discrimination;
 - c. the granting of recommendations to governments and local governments over the results of the monitoring and assessment of actions that contain racial and ethnic discrimination;
 - d. monitoring and assessment against the government, local governments and communities in implementing the elimination of racial and ethnic discrimination; and

- e. the granting of recommendations to the House of representatives of the Republic of Indonesia to conduct surveillance to governments that do not heed the results of the findings of Komnas HAM.
- (3) Further Provisions regarding the procedures for the surveillance as referred to in section (1) and section (2) is set by government regulations.

CHAPTER VI

CITIZEN RIGHTS, OBLIGATIONS AND PARTICIPATIONS

Part One

Citizen Rights and Obligations

Article 9

Every citizen has the right to obtain the equal treatment to get civil, political, economic, social, and cultural rights in accordance with the provisions of the legislation, without racial and ethnic distinctions.

Article 10

Every citizen is obligated to:

- a. help prevent the occurrence of racial and ethnic discrimination; and
- b. provide information that is true and is responsible to the authorities if knowing the occurrence of racial and ethnic discrimination;

Part Two

Citizen Participations

Article 11

Every citizen participate in the efforts of providing protection and prevention of racial and ethnic discrimination.

Article 12

The citizen participations as referred to in Article 11 are carried out by:

- a. improving the integrity, independence, and empowerment of community members;
- b. building and developing ability as well as pioneering community;
- c. cultivating an responsive attitude of community members to conduct social surveillance; and
- d. giving advice, opinions, and delivering the right information and responsible.

CHAPTER VII COMPENSATION

Article 13

Everyone has the right to file a lawsuit against compensation through the State Court over racial and ethnic discrimination that harms themselves.

Article 14

Everyone individually or jointly has the right to file a lawsuit against compensation through State Court over racial and ethnic discrimination that harms themselves.

CHAPTER VIII CRIMINAL PROVISIONS

Article 15

Every person who deliberately do a distinction, exclusion, restriction, or an election based on race and ethnicity resulting annulment or reduction of the recognition, the acquisition or exercise of human rights and fundamental freedoms in the an equality in civil, political, economic, social, and cultural fields as referred to in Article 4 point a, shall be sentenced with imprisonment for a maximum of 1 (one) year and/or a maximum fine of Rp100,000,000.00 (one hundred million rupiah).

Article 16

Every person who intentionally shows hatred or sense of hate to others based on racial and ethnic discrimination as referred to in Article 4 section b point 1, point 2, point 3, or shall be sentenced with imprisonment for a maximum of 5 (five) years and/ or a maximum fine of Rp500,000,000.00 (five hundred million rupiah).

Article 17

Every person who deliberately commits a deprivation of person life, assault, rape, fornication, theft with violence or deprivation based on racial and ethnic discrimination as referred to in Article 4 point 4, point b shall be sentenced in accordance with the provisions of legislation plus 1/3 (one-third) of the respective maximum criminal threats.

Article 18

In addition to the sentence as referred to in Article 16 and Article 17, perpetrators may be sentenced with the additional sentence in the form of restitution or restoration of rights of victims.

Article 19

- (1) The criminal offence as referred to in Article 16 and Article 17 is considered performed by the corporation when the crime was committed by persons acting for and/or on behalf of the Corporation or to the interests of corporations, whether based on the working relationship or other relationship, action in the corporation environment individually as well as jointly.
- (2) In the event that a criminal offence as referred to in section (1) is committed by a corporation, then the investigation, prosecution, and sentence is undertaken against the Corporation and/or its administrator.

Article 20

In the event that summons against corporations, the summons to appear and surrender, the summons is delivered to the executive board at the office the executive board works, at the place the Corporation operates, or where the executive board lives .

Article 21

- (1) In the event that a criminal offence is committed by a corporation, in addition to imprisonment and fines against its executive board, a sentence may be imposed against the corporation in the form of fines with aggravation of 3 (three) times from fines as referred to in Article 16 and article 17.
- (2) In addition to criminal fines as referred to in section (1), the Corporation may be subject to additional criminal form of revocation status and business legal entities.

CHAPTER IX

CLOSING PROVISIONS

Article 22

At the time this law comes into force, all legislation governing or relating to race and ethnicity, is declared to remain effective to the extent not contrary to this Law.

Article 23

This Law comes into force on the date of its promulgation.

In order that every person may know hereof, it is ordered to promulgate this Law by its placement in the State Gazette of the Republic of Indonesia.

Enacted in Jakarta
on 10 November 2008

PRESIDENT OF THE REPUBLIC OF INDONESIA,

signed

DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta
on 10 November 2008

MINISTER OF LAW AND HUMAN RIGHTS
OF THE REPUBLIC OF INDONESIA,

signed

ANDI MATTALATTA

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2008 NUMBER 170

Jakarta, 5 September 2019

Has been translated as an Official Translation
on behalf of Minister of Law and Human Rights
of the Republic of Indonesia

DIRECTOR GENERAL OF LEGISLATION,



WIDODO ELA MAHJANA

ELUCIDATION OF
LAW OF THE REPUBLIC OF INDONESIA
NUMBER 40 OF 2008
ON
ELIMINATION OF RACIAL AND ETHNIC DISCRIMINATION

I. GENERAL

Every human being in the equal position before the Almighty God due to being born with dignity, degrees, the equal rights and obligations. Basically, human beings are created in groups of different ethnicities or races that are the absolute and supreme right of the Almighty God. Thus, humans cannot choose to be born as part of a certain ethnicity or race. Racial and ethnic distinctions do not result in differences to rights and obligations between racial and ethnic groups in public and the State.

The condition of Indonesian people, in a variety of life, such as culture, religion, race and ethnicity, can potentially cause a conflict. The mutual cultural characteristics have been owned by Indonesia and the existence of discussion/consensus, it is not a guarantee for no occurrence of conflicts, especially with the existence of racial and ethnic discrimination.

Racial riots that have occurred in Indonesia shows that most citizens still contained the existence of discrimination on the basis of race and ethnicity, such as, discrimination in the workforce or in socio-economic life. Lately in Indonesia conflicts often occur between race and ethnicity, followed by harassment, destruction, burning, fights, rape and murder. The conflict arise due to an imbalance in the relationship that exists in public, both in social, economic, and power relations.

The above conflict do not only harm to the community groups involved in

conflict but also harm public as a whole. This conditions that can hinder national development progress. It also disrupts the relationship of kinship, fraternity, friendship, peace and security in the country as well as inhibit the friendly relations among the Nations.

In the history of human life, racial and ethnic discrimination has led to disquiet, the split as well as the physical, mental, social and all it is a violation of human rights. To overcome it, the establishment of the International Convention on the Elimination of all forms of Racial Discrimination, which is adopted by the United Nations through the United Nations General Assembly Resolution 2106 A (XX) of 21 December 1965. The nation of Indonesia as a member of the United Nations has ratified the Convention by Law Number 29 of 1999 on Ratification of the International Convention on Elimination of All Forms of Racial Discrimination (1965 Convention International on the Elimination of all forms of racial discrimination, 1965). In addition, Indonesia has also ratified Law Number 39 of 1999 on Human Rights.

Pancasila as the nation's view of life and philosophy of Indonesia and the 1945 Constitution of the Republic of Indonesia as a basic law which upholds the dignity and the dignity of the human being that is reflected in the second principle, just and humanitarian civilized. This is the basis of the constitutional mandate that the nation of Indonesia is determined to eliminate all forms of racial and ethnic discrimination.

In implementing Pancasila and the implementation of the 1945 Constitution of the Republic of Indonesia, Indonesia basically have set legislation containing the provisions on the Elimination of all forms of racial and ethnic discrimination, but it is still not sufficient to prevent, resolve, and eliminate the practice of racial and ethnic discrimination in the legislation.

Based on the above considerations and views, this Law is regulated regarding:

1. the basis and purpose of the Elimination of racial and ethnic discrimination;
2. actions that meet the discriminatory element;
3. granting of protection to citizens who have experienced actions of racial and ethnic discrimination;
4. Organization of the protection of citizens from any form of racial and ethnic discrimination organized by the government, local governments, and communities, as well as entire citizens;

5. surveillance against any attempts of elimination of racial and ethnic discrimination by Komnas HAM;
6. the right of citizens to obtain equal treatment in getting the civil rights, political, economic, social, and culture;
7. obligations and citizen participation in the effort of elimination of racial and ethnic discrimination;
8. the lawsuit damages over racial and ethnic discrimination; and
9. the sentence against any person who commits the actions is in the forms of:
 - a. treating the distinction, exclusion, restriction, or an election based on race and ethnicity, resulting in revocation or reduction of the recognition, acquisition, or the implementation of human rights and fundamental freedoms in an equality in the civil, political, economic, social, and cultural fields; and
 - b. showing hatred or sense of hate to the people because of the racial and ethnic discrimination by performing specific actions.

The preparation of this Law embodies the commitment of Indonesia to implement the Universal Declaration of Human Rights.

II. ARTICLE BY ARTICLE

Article 1

Sufficiently clear.

Article 2

Section (1)

Sufficiently clear.

Section (2)

In this provision the term "religious values" means the values embraced by every religion which regulates the human relationship with humans and the environment.

Article 3

Sufficiently clear.

Article 4

Point a

The restrictions in these terms, for example, limitation of a

person of a particular race or ethnicity to enter an institution or to occupy a public office only someone of a particular race or ethnicity.

Point b

Point 1

The term "public place" means, among other things, a stopover or a visit or a gathering place of people, such as shops, places of work, Garden, parking, public transportation, and mass media.

Point 2

Sufficiently clear.

Point 3

Sufficiently clear.

Point 4

Sufficiently clear.

Article 5

Sufficiently clear.

Article 6

The term "public" means a group or groups of people are tying themselves between one and the other

Article 7

Sufficiently clear.

Article 8

Section (1)

The existence of this provision, Komnas HAM needs to adjust the structure of its organization.

Section (2)

In this provision the surveillance is intended to evaluate the Government's policies of both the Central and regional performed periodically or incidental as needed.

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Komnas HAM proposes to the House of Representatives (DPR RI) and the Regional House of Representatives (DPRD) to undertake appropriate action with the surveillance function within the grace period if specified in the decision of the Komnas HAM, the Government does not follow through on the recommendations given by Komnas HAM.

Section (3)

Sufficiently clear.

Article 9

The term "civil rights", among others, means the rights to:

- a. be free from travelling and moving and domiciling in the territory of the unitary state of Republic of Indonesia;
- b. leave and return to the territory of the unitary state of the Republic Of Indonesia;
- c. maintain citizenship;
- d. form a family, choose a life partner and continue the descent;
- e. have the property on behalf of itself or together with other persons;
- f. think, feel, express and issue opinions freely;
- g. use any language freely;
- h. be free Assembly and Association and peaceful; and i get the information.

The term "political rights", among others, means the rights to:

- a. get equal treatment before the law, the judiciary and public administration bodies;
- b. get a sense of security and the protection of the State against racial and ethnic violence in both psychic, physical or social violence and violence is caused by government apparatus or by an individual, group, institution or organization;

- c. participate in Government as in public activities on the level of anything; and
- d. participate in the defense of the country.

The term "economic rights", among others, means the rights to:

- a. try to find a decent livelihood in the entire territory of the country of Indonesia;
- b. work, choose a job, have a fair working conditions and desirable;
- c. get a decent salary in accordance with the employment and payroll system;
- d. establish and become members of trade unions;
- e. get the protection against unemployment; and
- f. have housing.

The term "social rights and culture", among others, means the rights to:

- a. obtain health care, treatment, social security and other social services;
- b. have the opportunity and equal treatment for all forms of public services;
- c. obtain the opportunity and participate in cultural events, social, and economic occurrences;
- d. obtain equal opportunities to express its culture;
- e. enjoy, get, and obtain guarantee on the education and training that aims to educate and/or increase his skill, without differentiating race and ethnicity; and
- f. hold education without regard to racial and ethnic characteristics.

Article 10

Point a

This provision is intended if racial and ethnic discrimination will occurs, citizens responsibly and in accordance with the provisions of the legislation report it to the appropriate authorities.

Point b

Information that is submitted to the authorities, in this case Komnas HAM, Police, and Prosecutors, may be a description and evidence relating to the business or activities which are racial and ethnic discrimination committed by any person or the corporation.

Article 11

This provision is intended to any person, political organizations, community organizations and non-governmental organizations have an equal opportunity to participate in undertaking aimed and responsible efforts and the efforts removing barriers in the communication and interaction between race and ethnicity.

Article 12

Sufficiently clear.

Article 13

Sufficiently clear.

Article 14

The term "to file a lawsuit together" means a class-action lawsuit (class action) in this article which is the right of a small group of people to act to represent public in large numbers harmed on the basis of equality issues, facts and legal claims brought against them due to the activity discrimination based on race and ethnicity.

Article 15

Sufficiently clear.

Article 16

Sufficiently clear.

Article 17

Sufficiently clear.

Article 18

Sufficiently clear.

Article 19

Sufficiently clear.

Article 20

Sufficiently clear.

Article 21

Sufficiently clear.

Article 22

This provision is intended that the related legislation, such as, Law Number 11 of 2008 on the Information and Electronic Transaction, Law number 13 of 2006 on Protection of Witnesses and victims, the Criminal Code, and the Criminal-Law Procedural Code is legislation that is complement or complement each other in order to facilitate the implementation of law.

Article 23

Sufficiently clear.

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA
NUMBER 4919