

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