

**LAWS OF THE REPUBLIC INDONESIA  
NUMBER 40 OF 2008  
ABOUT  
ELIMINATION OF RACIAL AND ETHNIC DISCRIMINATION  
BY THE GRACE OF ALMIGHTY GOD**

**PRESIDENT OF THE REPUBLIC OF INDONESIA,**

- Considering:**
- a. that human beings are equal before God Almighty and human beings are born with the same dignity and rights without any differences, whether racial or ethnic;**
  
  - b. that all acts of racial and ethnic discrimination are contrary to the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, and the Universal Declaration of Human Rights;**
  
  - c. that all citizens are equal under the law and have the right to protection against every form of racial and ethnic discrimination;**
  
  - d. that the existence of racial and ethnic discrimination in social life is an obstacle to fraternal relations,  
family,  
friendship, peace, harmony, security and livelihood among citizens who basically always live side by side;**
  
  - e. that based on the considerations as intended in letters a, b, c, and d, it is necessary to establish a Law on the Elimination of Racial and Ethnic Discrimination;**

**Remember . . .**

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- Remembering: 1. Article 20, Article 21, Article 27 paragraph (1), Article 28B paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (1) and paragraph (2) of the Constitution of the Republic of Indonesia 1945;
2. Law Number 29 of 1999 concerning 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 the Republic of Indonesia Number 3852);
3. Law Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia of 1999 Number 165, Supplement to State Gazette of the Republic of Indonesia Number 3886);

With Mutual Consent  
HOUSE OF REPRESENTATIVE OF INDONESIA REPUBLIC  
and

PRESIDENT OF THE REPUBLIC OF INDONESIA

DECIDE:

Establish: RACIAL AND ETHNIC ABOUT REMOVAL  
DISCRIMINATION LAW.

CHAPTER I

GENERAL REQUIREMENTS

article 1

In this Law what is meant by:

1. Racial and ethnic discrimination is any form of differentiation, exclusion, limitation or selection based on race and ethnicity, which results in the revocation or reduction of recognition, acquisition or implementation of human rights and basic freedoms in equality in the civil, political, economic, social and cultural fields.

2. Ras . . .

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2. Race is a national group based on physical characteristics and lineage.
3. Ethnicity is a classification of people based on beliefs, values, habits, customs, norms language, history, geography, and kinship relations.
4. Citizens are residents of the Indonesian state or nation based on descent, place of birth, or nationality who have rights and obligations.
5. Acts of Racial and Ethnic Discrimination are acts relating to all forms of differentiation, exclusion, limitation or selection based on race and ethnicity, which result in the revocation or reduction of recognition, acquisition or implementation of human rights and basic freedoms in terms of equality in the field of civil, political, economic, social and cultural.
6. Every person is an individual or corporation.
7. A corporation is an organized group of people and/or assets whether they are legal entities or non-legal entities.
8. The National Human Rights Commission, hereinafter referred to as Komnas HAM, is an independent institution whose position is at the same level as other state institutions whose function is to carry out rights studies, research, counseling, monitoring and mediation.  
human nature.
9. State Administrators are state officials who carry out executive, legislative or judicial functions and other officials whose main functions and duties are related to state administration in accordance with the provisions of statutory regulations.

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## **BAB II**

### **BASIS AND PURPOSE**

#### **Section 2**

- (1) The elimination of racial and ethnic discrimination is implemented based on the principles of equality, freedom, justice, and universal human values.**
- (2) The basis of equality, freedom, justice and values universal humanity as intended in paragraph (1) is carried out while still paying attention to religious, social, cultural and other values applicable laws in the territory of the Unitary State of the Republic of Indonesia.**

#### **Article 3**

**The aim of eliminating racial and ethnic discrimination is to realize kinship, brotherhood, friendship, peace, harmony, security and a livelihood among citizens who basically always live side by side.**

### **CHAPTER III**

### **DISCRIMINATIVE ACTIONS**

#### **Article 4**

**Racial and ethnic discriminatory actions include:**

- a. treat distinction, exclusion, limitation, or selection based on race and ethnicity, which results in the revocation or reduction of recognition, acquisition or implementation of human rights and basic freedoms in a country equality in the civil, political, economic, social and cultural fields; or**
- b. showing hatred or hatred towards people because of racial and ethnic differences in the form of actions:**

**1. make . . .**

- 5 -

1. create writing or images to be placed, pasted or distributed in public places or other places that can be seen or read by other people;
2. make a speech, express or utter certain words in a public place or other place that other people can hear;
3. wearing something on oneself in the form of objects, words or pictures in public places or other places that can be read by other people;  
or
4. taking someone's life, assault, rape, obscene acts, theft with violence, or deprivation of liberty  
  
based on racial and ethnic discrimination.

CHAPTER IV

PROVISION OF PROTECTION AND GUARANTEE

Article 5

The elimination of racial and ethnic discrimination must be carried out by providing:

- a. protection, certainty and equal standing under the law for all citizens to live free from racial and ethnic discrimination;
- b. guarantee that there are no obstacles to the initiatives of individuals, groups of people or institutions that need protection and guarantee the equal use of their rights as citizens; And
- c. understanding to the public regarding the importance of pluralism and respect for human rights through the implementation of national education.

Article 6. . .

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#### **Article 6**

**Protection of citizens from all forms of racial and ethnic discrimination is carried out by the government, regional governments and the community, and involves the participation of all citizens which is carried out in accordance with the provisions of statutory regulations.**

#### **Article 7**

**To provide protection for citizens as intended in Article 6, the government and regional governments are obliged to:**

- a. provide effective protection to every citizen who experiences acts of racial and ethnic discrimination and ensure the effective implementation of law enforcement efforts against every act of discrimination that occurs, through a process justice carried out in accordance with the provisions of laws and regulations;**
- b. guarantee every citizen to obtain fair assistance, settlement and compensation for all losses and suffering resulting from racial and ethnic discrimination;**
- c. support and encourage efforts to eliminate racial and ethnic discrimination, and ensure that state apparatus and government institutions act in accordance with the provisions of laws and regulations; And**
- d. take effective action to update, change, revoke or cancel laws and regulations that contain racial and ethnic discrimination.**

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**BAB V  
SUPERVISION**

**Article 8**

- (1) Supervision of all forms of efforts to eliminate racial and ethnic discrimination is carried out by Komnas HAM.**
- (2) Supervision as intended in paragraph (1) includes:**
- a. monitoring and assessing government and regional government policies that are deemed to have the potential to give rise to racial and ethnic discrimination;**
  - b. fact-finding and assessment of individuals, community groups, or public or private institutions suspected of committing acts of racial and ethnic discrimination; c. providing recommendations to the government and regional governments regarding the results of monitoring and assessment of actions containing racial and ethnic discrimination;**
  - d. monitoring and assessing the government, regional government and community in implementing the elimination of racial and ethnic discrimination; And**
  - e. providing recommendations to the House of Representatives of the Republic of Indonesia to carry out supervision of the government which does not heed the findings of Komnas HAM.**
- (3) Further provisions regarding supervision procedures as intended in paragraph (1) and paragraph (2) are regulated by Government Regulation.**

**BAB VI ...**

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## **BAB VI**

### **RIGHTS, OBLIGATIONS AND PARTICIPATION OF CITIZENS**

#### **First part**

#### **Rights and Obligations of Citizens**

##### **Article 9**

**Every citizen has the right to receive equal treatment in obtaining civil, political, economic, social and cultural rights in accordance with the provisions of laws and regulations, without distinction of race and ethnicity.**

##### **Article 10**

**Every citizen is obliged to:**

- a. help prevent racial discrimination and ethnicity; And**
- b. provide correct information and be responsible to the authorities if they become aware of racial and ethnic discrimination;**

#### **The second part**

#### **Citizen Participation**

##### **Article 11**

**Every citizen plays a role in efforts to protect and prevent racial and ethnic discrimination.**

##### **Article 12**

**Citizen participation as referred to in Article 11 is implemented by:**

- a. increasing integrity and independence, and empowerment of community members;**
- b. growing and developing community capabilities and pioneering;**

**c. grow. . .**



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- c. foster a responsive attitude among community members to carry out social supervision; And
- d. provide suggestions, opinions, and convey correct and responsible information.

## **BAB VII**

### **INDEMNIFICATION**

#### **Article 13**

Every person has the right to file a claim for compensation through the district court for acts of racial and ethnic discrimination that harm him or her.

#### **Article 14**

Each person, individually or collectively, has the right to file a claim for compensation through the district court for acts of racial and ethnic discrimination that harm him or herself.

## **BAB VIII**

### **CRIMINAL PROVISIONS**

#### **Article 15**

Any person who deliberately makes distinctions, exceptions, restrictions or selection based on race and ethnicity which results in the revocation or reduction of recognition, acquisition or implementation of human rights and basic freedoms in a country.

equality in the civil, political, economic, social and cultural fields as intended in Article 4 letter a, shall be punished with imprisonment for a maximum of 1 (one) year and/or a fine of a maximum of IDR 100,000,000.00 (one hundred million rupiah).

**Article 16 . . .**

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#### Article 16

Every person who deliberately shows hatred or hatred towards another person based on racial and ethnic discrimination as intended in Article 4 letter b number 1, number 2, or number 3, shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine a maximum of IDR 500,000,000.00 (five hundred million rupiah).

#### Article 17

Any person who intentionally takes someone's life, torture, rape, obscene acts, theft with violence, or deprivation of liberty based on racial and ethnic discrimination

as intended in Article 4 letter b number 4, punished in accordance with the provisions of statutory regulations plus 1/3 (one third) of each maximum criminal threat.

#### Article 18

In addition to the punishment as intended in Article 16 and Article 17, the perpetrator can be sentenced to additional punishment in the form of restitution or restoration of the victim's rights.

#### Article 19

- (1) Criminal acts as referred to in Article 16 and Article 17 are deemed to be committed by a corporation if the criminal act is committed by a person acting for and/or on behalf of the corporation or in the interests of the corporation, whether based on an employment relationship or other relationship, acting within the environment. the corporation either individually or jointly.
- (2) In the event that the criminal act as intended in paragraph (1) is committed by a corporation, the investigation, prosecution and punishment will be carried out against the corporation and/or its management.

Article 20 . . .

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**Article 20**

**In the case of a summons against a corporation, summons to appear and submit the summons to the management at the place where the management has an office, where the corporation operates, or where the management lives.**

**Article 21**

**(1) In the event that a criminal act is committed by a corporation, in addition to imprisonment and fines management, the punishment that can be imposed on the corporation is in the form of a fine with a weight of 3 (three) times the fine as intended in Article 16 and Article 17.**

**(2) Apart from the fine as intended in paragraph (1), corporations may be subject to additional penalties in the form of revocation of business permits and revocation of legal entity status.**

**Chapter IX**

**CLOSING**

**Article 22**

**When this Law comes into force, all laws and regulations that regulate or relate to race and ethnicity are declared to remain in effect as long as they do not conflict with this Law.**

**Article 23**

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

**So that . . .**

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**So that everyone is aware, this Law is ordered to be promulgated  
by placing it in the State Gazette of the Republic of Indonesia.**

**Ratified in Jakarta**

**on November 10, 2008**

**PRESIDENT OF THE REPUBLIC OF INDONESIA,**

**ttd**

**DR. H. SUSILO BAMBANG YUDHOYONO**

**Promulgated in Jakarta on**

**November 10 2008**

**MINISTER OF LAW AND HUMAN RIGHTS**

**REPUBLIC OF INDONESIA,**

**ttd**

**ANDI MATTALATTA**

**STATE GAZETTE OF THE REPUBLIC OF INDONESIA 2008 NUMBER 170**

**The copy corresponds to the original**

**STATE SECRETARIAT OF THE Republic of Indonesia**

**Head of the Legislative Regulation Bureau**

**Politics and People's Well-Being,**

**Vishnu Setiawan**

**EXPLANATION  
ABOVE  
LAWS OF THE REPUBLIC INDONESIA  
NUMBER 40 OF 2008  
ABOUT  
ELIMINATION OF RACIAL AND ETHNIC DISCRIMINATION**

**I. UMUM**

Every human being has the same position before God Almighty because he was born with the same dignity, rank, rights and obligations. Basically, humans are created in different racial or ethnic groups which are the absolute and highest right of God Almighty. Thus, humans cannot choose to be born as part of a certain race or ethnicity. The existence of racial and ethnic differences does not result in differences in rights and obligations between racial and ethnic groups in society and the state.

The condition of Indonesian society, which has plural dimensions in various aspects of life, such as culture, religion, race and ethnicity, has the potential to give rise to conflict. The cultural characteristics of mutual cooperation that Indonesian society has and the existence of deliberative/consensus behavior is not a guarantee that conflict will not occur, especially in the presence of acts of racial and ethnic discrimination.

The racial riots that have occurred show that in Indonesia some citizens still experience discrimination on the basis of race and ethnicity, for example, discrimination in the world of work or in socio-economic life. Recently in Indonesia there have been frequent conflicts between races and ethnic groups, followed by harassment, destruction, arson, fights, rape and murder. This conflict arises because of the imbalance of relationships that exist in society, both in social, economic and power relations.

Conflict . . .

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The above conflicts not only harm the community groups involved in the conflict but also harm society as a whole. This condition can hamper ongoing national development. It also disrupts family relations, brotherhood, friendship, peace and security within a country and hampers friendly relations between nations.

In the history of human life, racial and ethnic discrimination has resulted in unrest, division and physical, mental and social violence, all of which are violations of human rights. To overcome this, the International Convention on the Elimination of All Forms of Racial Discrimination was born, which was approved by the United Nations through UN General Assembly Resolution 2106 A (XX) dated 21 December 1965. The Indonesian nation as a member of the United Nations has ratified this convention by law. Law Number 29 of 1999 concerning 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). Apart from ratification, Indonesia also has Law Number 39 of 1999 concerning Human Rights.

Pancasila as the philosophy and way of life of the Indonesian nation and the 1945 Constitution of the Republic of Indonesia as the basic law that upholds human dignity and dignity which is reflected in the second principle, just and civilized humanity.

This principle is a constitutional mandate that the Indonesian nation is determined to eliminate all forms of racial and ethnic discrimination.

In the context of implementing Pancasila and implementing the 1945 Constitution of the Republic of Indonesia, Indonesia has basically established laws and regulations which contain provisions regarding the elimination of all forms of racial and ethnic discrimination, but they are still inadequate to prevent, overcome and eliminate discriminatory practices. race and ethnicity in a law.

Based on . . .

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Based on the views and considerations above, in Law

This law regulates:

1. principles and objectives of eliminating racial and ethnic discrimination;
2. actions that fulfill discriminatory elements;
3. providing protection to nationals who suffer  
acts of racial and ethnic discrimination;
4. implementation of protection for citizens from all forms of racial and ethnic discrimination  
carried out by the government, regional governments and the community, as well as all  
citizen;
5. supervision of all forms of deletion efforts  
racial and ethnic discrimination by Komnas HAM;
6. the right of citizens to receive equal treatment in obtaining civil, political, economic,  
social and cultural rights;
7. obligations and participation of citizens in eradication efforts  
racial and ethnic discrimination;
8. claims for compensation for acts of racial and ethnic discrimination;  
and
9. Punishment of anyone who commits an action  
in the form of:
  - a. treat distinctions, exceptions, restrictions or selection based on race and ethnicity,  
which result in the revocation or reduction of recognition, acquisition or  
implementation of human rights and basic freedoms in equality in the civil,  
political, economic, social and cultural fields; And
  - b. showing hatred or hatred towards people because of racial and ethnic differences  
by carrying out actions  
certain.

The preparation of this Law is a manifestation of commitment  
Indonesia to implement the Universal Declaration of Human Rights  
Man.

II. ARTICLE. . .

## II. ARTICLE BY ARTICLE

### article 1

Quite clear.

### Section 2

#### Sentence (1)

Quite clear.

#### Sentence (2)

In this provision, what is meant by "religious values" are the values adhered to by each religion which regulate human relations with humans and their environment.

### Article 3

Quite clear.

### Article 4

#### Letter A

**Restrictions in this provision, for example limitations a person of a certain race or ethnicity to enter an educational institution or to occupy a position public office only someone of a certain race or ethnicity.**

#### Letter b

##### Number

**1 What is meant by "public place" is a place that, among other things, is visited or visited or is a gathering place for people, such as shops, places of work, parks, parking lots, public transportation, mass media.**

##### Number 2

Quite clear.



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**Number 3**

**Quite clear.**

**Number 4**

**Quite clear**

**Article 5**

**Quite clear.**

**Article 6**

**What is meant by "society" is a collection or group of people who bind themselves to one another**

**Article 7**

**Quite clear.**

**Article 8**

**Sentence (1)**

**With this provision, Komnas HAM needs to adjust its organizational structure.**

**Sentence (2)**

**In this provision, supervision is intended to evaluate government policies, both central and regional, which are carried out periodically or incidentally as needed.**

**Letter A**

**Quite clear.**

**Letter b**

**Quite clear.**

**The letter c**

**Quite clear.**

**The letter d. . .**

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The letter d

**Quite clear.**

The letter e

**Komnas HAM proposes to the DPR RI and DPRD to take action in accordance with their supervisory function if within the time limit specified in the Komnas HAM decision the government does not follow up on the recommendations given by Komnas HAM.**

Sentence (3)

**Quite clear.**

#### **Article 9**

**What is meant by "civil rights" includes, among other things, the right to: a. free to travel and move and reside within the territory of the unitary state of the Republic of Indonesia; b. leave and return to the territory of the unitary state Republic of Indonesia;**

**c. retain citizenship; d. forming a family, choosing a life partner and continuing offspring; e. own property in their own name or jointly with another person; f. thinking, feeling, expressing and expressing**

**opinions freely; g. use any language freely; h. assemble and associate freely and peacefully; and i. get information.**

**What is meant by "political rights" includes, among other things, the right to: a. receive equal treatment before the law, judicial institutions and other public administration bodies; b. receive a sense of security and protection from the state against racial and ethnic violence, whether physical, social or psychological, whether caused by government officials or by certain individuals, groups, institutions or organizations; c. participate in government as in public activities at any level; and D. participate in national defense.**

**Which . . .**

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What is meant by "economic rights" includes, among other things, the right to: a. trying to find a decent living in all regions of Indonesia; b. work, choose a job, have fair working conditions and desired; c. get a quick salary according to the job and the payroll system; d. forming and becoming a member of a labor union; e. obtain protection against unemployment; and f. have housing.

What is meant by "social and cultural rights" includes, among other things, the right to: a. obtain health services, treatment, social security and other social services; b. have equal opportunities and treatment for all forms of public services; c. obtain opportunities and participate in cultural, social and economic events; d. get an equal opportunity to express the culture; e. enjoy, obtain and obtain guarantees for the provision of education and training which aims to educate and/or increase their skills, without distinction of race and ethnicity; and f. providing education without paying attention to characteristics specific race and ethnicity.

#### Article 10

##### Letter A

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

##### Letter b

Information submitted to the authorities, in this case the National Human Rights Commission, the Police and the Prosecutor's Office, can be in the form of information and evidence relating to businesses or activities that are racially and ethnically discriminatory carried out by any person or corporation.

Article 11 . . .

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**Article 11**

**This provision is intended so that every person, political organization, community organization and non-governmental organization has the same opportunity to participate in carrying out all directed and responsible efforts aimed at eliminating obstacles in inter-racial and inter-ethnic interaction and communication.**

**Article 12**

**Quite clear.**

**Article 13**

**Quite clear.**

**Article 14**

**What is meant by "filing a lawsuit jointly" is a *class action* lawsuit in this article is the right of a small group of people to act on behalf of a large number of people who are disadvantaged on the basis of similar problems, legal facts and claims arising from discriminatory activities based on race. and ethnicity.**

**Article 15**

**Quite clear.**

**Article 16**

**Quite clear.**

**Article 17**

**Quite clear.**

**Article 18**

**Quite clear.**

**Article 19 . . .**

- 9 -

**Article 19**

Quite clear.

**Article 20**

Quite clear.

**Article 21**

Quite clear.

**Article 22**

This provision is intended to ensure that relevant laws and regulations, for example Law Number 11 of 2008 concerning Electronic Information and Transactions, Law Number 13 of 2006 concerning Protection of Witnesses and Victims, the Criminal Code, and the Legal Code Criminal Procedure is legislation that complements or complements each other in order to facilitate the application of the law.

**Article 23**

Quite clear.