



International Convention On The Elimination Of All Forms Of Racial Discrimination As An Effort To Fulfill Human Rights

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Abstract. The phenomenon of racial discrimination in Indonesia, an issue that highlights injustice in social and legal interactions is a phenomenon that needs to be considered, given the background of the Indonesian state is a country with rich diversity, so the state is faced with the challenge of overcoming racial attitudes that threaten unity and social justice. This research reviews racial discrimination in Indonesia using normative legal research methods. Racial discrimination is considered a crime against humanity that goes against the principles of equality and human rights. Indonesia has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) through Law Number 29 of 1999 and issued Law Number 40 of 2008 as a concrete effort to eliminate racial discrimination. However, the implementation of the law against racial discrimination still faces challenges, as shown by the persistence of discrimination cases. The role of Komnas HAM in supervision and recommendations related to racial discrimination has also not been fully effective. Therefore, the enforcement of human rights values in Indonesia still needs to be improved.

Keywords: Racial Discrimination, ICERD, Human Rights, Normativ law, Komnas HAM.

1 Introduction

Every human being has a different background. The differences in question are in the form of differences in ethnicity, religion, race, class, and so on. In the context of the Indonesian nation, the Indonesian people are very plural and plural where the background of the people is very diverse. With all its diversity, Indonesia is able to unite this diversity. One of the things that can break the unity is racism or racism. Racism is an understanding where a race is superior to other races so that other races must submit to it and be controlled by it [1]. Racism itself can be defined as a concept or view that rejects other different races. This racism developed from the theory of race put forward by Charles Darwin [2].

Racism or racism is actually a crime against humanity. Whatever its form and form, racist behavior should not be given a place. Once racism and racism are given space, the practice of superiority and discrimination in the name of race will flourish. Multiply as if it were a normal practice. Racial discrimination can take the form of actions that differentiate, select, or limit something based solely on racial differences. In the Indonesian context, racial discrimination is not new. Since the Dutch colonization, the

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division of the people into 3 groups, namely Europeans, foreigners, and natives, has become evidence of racial discrimination and "politics of ignorance"[2].

With the rapid development of information technology today, it is possible to carry out racial discrimination through social media. This condition encourages the birth of anti-discrimination movements and principles. This is because basically every human being has the same position and equality. The occurrence of discriminatory treatment indicates that humans are only seen from a physical perspective. This then leads to a lack of respect as a human being, seen and judged only by physical appearance. Racial differences cannot be used as the main standard in judging someone.

Every human being must have dignity or self-respect. Human dignity should not be violated or blamed just because of certain racial differences[3]. With such conditions, it then encouraged the United Nations as an international organization to respond. The existence of the Universal Declaration of Human Rights (UDHR) in 1948 and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1965 are evidence of the UN's role in eliminating racial discrimination [4].

Based on the background description above, this paper will try to answer several problem formulations, namely: How does the ICERD set out to eliminate racial discrimination? And what is the legal policy of the Government of Indonesia in preventing and stopping racial discrimination?

2 Research Methods

This research applies a type of normative legal research method, namely legal research to review legal norms, legal principles, legal theories, and so on [5]. This research uses a statutory approach, namely an approach by reviewing and analyzing all laws and regulations related to the research topic and a conceptual approach, namely an approach by reviewing and analyzing views and doctrines that grow and develop in legal studies related to the research topic being discussed. The legal materials used in this research consist of primary legal materials and secondary legal materials. Primary legal materials are in the form of laws and regulations, namely the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, and Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. Secondary legal materials include books, journal articles, and opinions of legal experts related to the research topic. The legal materials are collected through library research and then analyzed qualitatively.

3 Discussion

3.1 ICERD Arrangements as an Effort to Eliminate Racial Discrimination

A human being born into the world cannot choose which race to be born into. Differences in background cannot be used as legitimacy to discriminate against others. But the fact is that racial discrimination occurs in all parts of the world and is not impossible to cause conflict. Racial discrimination is an obstacle to relations between countries and between people [6]. Discriminatory treatment is generally carried out against vulnerable groups, marginalized groups, and minority groups [7]. Given the

potential for conflict due to racial discrimination, the UN General Assembly finally passed the ICERD on December 21, 1965. If ICERD is ratified by a country, then the country becomes bound and obliged to implement all provisions in the convention.

The ICECD contains a declaration of equality for everyone while also stating that acts of discrimination are a violation of human rights listed in the Universal Declaration of Human Rights. Indonesia's seriousness and commitment in fighting racial discrimination is in the form of ratifying ICERD and forming Law Number 29 of 1999 concerning the Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965. With the existence of this law, Indonesia has expressed its agreement and willingness to implement all obligations in ICERD, with the exception of Article 22.

Article 2 of the ICECD states that "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races." This article obliges state parties to condemn as well as take action to eliminate racial discrimination. Then Article 3 of the ICECD obliges state parties to prevent, prohibit and eliminate acts of racial discrimination. Article 5 of the ICECD obliges state parties to eliminate racial discrimination and ensure the fulfillment of everyone's right to equality before the law.

From the articles described above, it can be said that the ICECD views racial discrimination and racial distinctions as wrong from a scientific perspective, condemned from a moral perspective, and far from the value of justice. Thus, there is no justification whatsoever for racial discrimination. That is how it is in the ICECD. In das sollen, racial discrimination still occurs both within Indonesia and internationally.

3.2 The Politics of Indonesian Law in Preventing and Stopping Racial Discrimination

At the international level, there is the ICECD as a legal basis to stop racial discrimination. Indonesia has ratified it through Law Number 29 of 1999. Racial discrimination is closely related to human rights. It is indisputable that acts of racial discrimination violate human rights and are not in accordance with the principle of equality. At the international level, there is the UDHR which relates to human rights. Indonesia has also made Law Number 39 of 1999 as a form of Indonesia's moral and legal responsibility as a member of the UN in respecting and implementing the UDHR. Acts of racial discrimination are certainly contrary to the UDHR and ICECD.

Article 28I Paragraph (2) of the 1945 Constitution has actually provided guarantees and protection for everyone to be free from discriminatory treatment. This means that the right not to be treated discriminatively is a constitutional right of every person as part of human rights [8]. Then in Law Number 39 of 1999 concerning Human Rights it is also stated that unfair and discriminatory actions are violations of human rights, both vertical (state tools against citizens or vice versa) or horizontal (between fellow citizens). Moreover, any act of racial discrimination is contrary to the values of Pancasila and the 1945 Constitution of the Republic of Indonesia[9].

As a form of implementation of efforts to eliminate racial discrimination, the seriousness of the Government of Indonesia is also evident from the existence of Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination. The Law clearly

defines the definition of racial discrimination (Article 1 letter a), details the actions classified as racial discrimination (Article 4), provides guarantees and protection (Articles 5 to 7), and the rights, obligations and participation of citizens (Articles 9 to 12). Protection of every citizen from racial discrimination is the responsibility of the central government, local governments, and the wider community[10].

Since 2008, the National Commission on Human Rights of the Republic of Indonesia (Komnas HAM RI) has been given additional authority in addition to its existing authority. The additional authority is to supervise the Elimination of Racial and Ethnic Discrimination as mandated by Law Number 40 of 2008. In 2010, Government Regulation No. 56/2010 on the Procedures for Monitoring the Elimination of Racial and Ethnic Discrimination was issued, which explains in more detail the steps for implementing the function of Monitoring the Elimination of Racial and Ethnic Discrimination given to Komnas HAM RI. Supervision is the action of Komnas HAM to evaluate government policies, both central and regional, periodically or at a certain time by monitoring, fact-finding, and assessing with the aim of searching and finding the presence or absence of racial and ethnic discrimination which is then followed up by issuing recommendations[11].

4 Conclusion and Advice

4.1 Conclusion

Based on the description above, it can be concluded that racial discrimination is the distinction and restriction of treatment or action based on a person's race. Racial discrimination can be categorized as a crime against humanity. To eliminate acts of racial discrimination, the UN has issued the UDHR and ICECD. In essence, the ICECD views that racial discrimination is wrong and condemned and there is no justification for it. Racial discrimination is still rampant in Indonesia and Indonesia has ratified the ICECD through Law Number 29 of 1999. Indonesia has also issued several laws and regulations as an effort and evidence of its seriousness in eliminating racial discrimination. Komnas HAM has also been given additional authority to supervise racial discrimination. Nevertheless, it turns out that racial discrimination is still rampant. This indicates that the implementation of the ICECD and several laws and regulations in Indonesia as well as supervision by Komnas HAM are still not effective and efficient in eliminating racial discrimination. Thus, the fulfillment of human rights values is still not optimal and maximum.

4.2 Advice

Based on the description above, recommendations/suggestions can be given in the form of the Indonesian Government to be more aggressive in conducting socialization so that it can provide education to the public about racial discrimination, forms of racial discrimination, as well as socializing Law Number 40 of 2008 so that more Indonesians know about it and stop committing acts of racial discrimination considering that this is not a trivial matter.

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