

Evidence from Indonesia on the legal policy confronting discrimination of minority groups based on race and ethnicity



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Abstract

The diversity of a multicultural society that supports Indonesia's national welfare has the opportunity to cause conflict and division, but there are still many acts of discrimination, especially against minority groups (race and ethnicity). Indonesia guarantees protection against discrimination as a constitutional right based on the Indonesian Constitution of the Republic of Indonesia and various laws and regulations on human rights in Indonesia. This research uses a normative method with a statute approach and is descriptive and qualitative. This discrimination violates human rights and is not in line with the principles of democracy and equality before the law. The Indonesian government has made various efforts to guarantee the rights of minority groups. Preventive efforts outside the law are still needed. Human rights, which were originally intended to secure the dimensions of human power as dignified beings, have been transformed into human rights that are considered to be full of dimensions of anthropocentrism, humanism, egoism, and false individualism. In terms of legislation, it is harmonious, but the practical implementation still needs to be improved. This can be seen from the lack of socialization of existing regulations related to racial and ethnic discrimination, which still often occurs in the form of insults for certain races and ethnicities.

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1. Introduction

Indonesia is the largest multicultural country in the world. This can be seen from the complex, diverse, and vast sociocultural and geographical conditions of Indonesia. According to data from the 2010 population census conducted by BPS, there are 1128 ethnic groups in Indonesia spread across more than 17 thousand islands. The composition of Indonesian ethnic groups consists of Javanese (40.2%), Sundanese (15.5%), Batak (3.6%), other tribes from Sulawesi (3.2%), Madurese (3.03%), Betawi (2.88%), Minangkabau (2.73%), Bugis (2.69%), Malay tribe (2.27%), other tribes from South Sumatra (2.16%), Dayak tribe (1.3%), and various other tribes up to 100%. The composition of religion in Indonesia consists of Islam (87.18%), Christianity (6.96%), Catholicism (2.91%), Hinduism (1.69%), Buddhism (0.72%), Confucianism (0.05%), and

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others by 0.51%.¹ However, the diversity of multicultural society that supports Indonesia's national welfare has the opportunity to cause conflict and division. In 2005, 2008, and 2011 alone, the total number of ethnic conflicts reached at least 166. The pluralism of Indonesian society is reflected in at least two unique characteristics. First, horizontally, it is characterized by the existence of social units based on ethnic, religious, customary, and regional differences.

The second, vertical, is characterized by the existence of quite striking vertical differences between the upper and lower layers.² The Founding Fathers of the Indonesian nation understood that the diversity of the nation is a reality that must be maintained in the unity of the nation. Diversity is a natural thing as long as its existence is recognized and appreciated as something that must be responded to with tolerance. However, diversity as a gift from God cannot be separated from the challenges that often arise in human life. Indonesia guarantees protection against discrimination as a constitutional right based on Article 281, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which reads, "Everyone has the right to be free from discriminatory treatment on any basis and has the right to protection against such discriminatory treatment". However, in practice, discrimination still occurs, especially against vulnerable groups, minorities, and marginalized groups of society.³

After the fall of the New Order regime, which for 32 years was almost rampant with human rights violations, the reformist regime aspired to realize democracy in all aspects of life, uphold the rule of law, and permit human rights without discrimination.⁴ However, instead of a peaceful democratic life, respect for the rule of law and human rights that had long awaited freedom gave birth to many acts of violence and indiscriminate discrimination compared to the dictatorial leaders of the old regime. The difference is that in this regime, violence and discrimination are no longer carried out by state authorities but by certain groups of people with certain identities. The presence of this group seems to bring oligarchic power into the midst of legitimate republican power. Violence and discriminatory treatment in Indonesia today seem to be increasingly rooted in the formation of institutionalized and pluralistic social institutions that can solve problems.⁵ One of the most painful events in the recent reform period is often related to issues related to religion or certain groups that attack minority groups and often cause many victims. Various acts of violence and discrimination can result from murder, torture, rape, kidnapping, and widespread unlawful acts—the destruction of educational facilities and places of worship and incapacity.⁶

¹ Zulianto Chairul and Veby Juniarti, 'Keadilan Bagi Kelompok Minoritas Dalam Perspektif Hak Asasi Manusia Menurut Filsafat Hukum (Contoh Kasus Meliana Di Medan Dituduh Melakukan Penodaan Agama)', *Law Review*, 18.2 (2019), 227 <<https://doi.org/10.19166/lr.v18i2.1258>>.

² Chairul and Juniarti.

³ Hesti Armiwulan, 'Diskriminasi Rasial Dan Etnis Sebagai Persoalan Hukum Dan Hak Asasi Manusia', *Masalah-Masalah Hukum*, 44.4 (2015), 493 <<https://doi.org/10.14710/mmh.44.4.2015.493-502>>.

⁴ Defira Martina Adrian, Fence M. Wantu, and Abdul Hamid Tome, 'Racial and Ethnic Discrimination in the Perspective of International Law', *Jurnal Legalitas*, 14.1 (2019), 1–17.

⁵ Yogi Zul Fadhlhi, 'Kedudukan Kelompok Minoritas Dalam Perspektif HaM Dan Perlindungan Hukumnya Di Indonesia', *Jurnal Konstitusi*, 11.2 (2016), 352 <<https://doi.org/10.31078/jk1128>>.

⁶ Fitriana, Ika. "Protection of the Rights of Minority Groups in Indonesia in Realizing Equality Before the Law." *AL YASINI: Journal of Islamic, Social, Legal and Education* 6.2 (2021), 233

Discrimination against minority groups based on race and ethnicity is a serious problem that affects the lives of thousands of people in Indonesia. Such discrimination violates human rights principles and undermines social justice in our country. Therefore, legal policies that protect minority groups from discrimination are very important from a human rights perspective in Indonesia.⁷ Since its establishment, Indonesia has recognized the importance of human rights and made it an integral part of the country's constitution. The 1945 Constitution affirms that all Indonesian citizens have equal rights before the law and the state, with no discrimination based on ethnicity, religion, race, or intergroup (SARA).⁸ This provides a solid basis for legal protection for minority groups. In addition, Law No. 39/1999 on Human Rights and Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination are also important legal frameworks to protect minority groups from discrimination. These laws guarantee the right of every individual not to be discriminated against based on race or ethnic origin and provide criminal sanctions for those who commit discriminatory acts. However, despite the policy, its implementation still requires special attention. There are challenges in effective law enforcement, public awareness, and the elimination of lingering stereotypes and prejudices.

Discrimination against minority groups violates international human rights standards, including the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. The United Nations (UN) has also recognized human rights in the Universal Declaration of Human Rights, As in Article 19 of the Universal Declaration of Human Rights.⁹ These standards require states to promote and protect the rights of all individuals without discrimination based on race, ethnicity, or other factors. In Indonesia, national laws and policies have been adopted to promote non-discrimination, including the Anti-Discrimination Law and the National Human Rights Action Plan. However, the laws have been criticized for their limited coverage and enforcement. Incidents of violence and discrimination against minority groups in Indonesia have not ended. Cases such as the May riots in 1998, the Ahmadiyah conflict that took place in 2016-2017, the Poso conflict, and others not only recur, but these cases are rarely satisfactorily resolved. Most recently, a violent incident occurred in Solo, Central Java, on Saturday, August 8, 2020. A group of people carried out the violence and attack in Solo during the Midodareni ceremony held at the residence of the late Segaf Al-Jufri, Jl. Cempaka No. 81, Kp. Mertodranan, Pasar Kliwon, Surakarta City, on Saturday, August 8, 2020. A group of people attacked, damaged several cars, and beat several family members who were performing the Midodareni ritual while shouting that Shi'a are not Muslims and that their blood is halal.¹⁰

Indonesia itself, seen from the journey of Pancasila, has its history in the life of the nation and state, which until now has not shown harmony in the life of every part of the country,

⁷ Danang Risdianto, 'Perlindungan Terhadap Kelompok Minoritas Di Indonesia Dalam Mewujudkan Keadilan Dan Persamaan Di Hadapan Hukum', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 6.1 (2017), 125 <<https://doi.org/10.33331/rechtsvinding.v6i1.120>>.

⁸ Fikri Hadi, 'Negara Hukum Dan Hak Asasi Manusia Di Indonesia', *Wijaya Putra Law Review*, 1.2 (2022), 170-88 <<https://doi.org/10.38156/wplr.v1i2.79>>.

⁹ Nyoman Krisnanta Davendra, 'Eksistensi Hukum Internasional Dalam Penerapan Hak Asasi Manusia', *Ganesha Law Review*, 4.1 (2022), 1-10 <<https://doi.org/10.23887/glr.v4i1.1497>>.

¹⁰ Suwoko Suwoko, 'Multiculturalism & Democracy Education in Political and Cultural Based Conflict Resolution Process in East Kalimantan', *Iseedu: Journal of Islamic Educational Thoughts and Practices*, 6.1 (2022), 28-38 <<https://doi.org/10.23917/iseedu.v6i1.20535>>.

thus forcing the people to rethink the best way in the journey of the life of the nation and state in the corridor of Pancasila. Pancasila is a national effort that must be maintained and maintained for the sake of the territorial integrity of the country so that Pancasila is not just a slogan: "I am Indonesia, I am Pancasila".¹¹ Based on data from the National Commission on Human Rights related to a survey conducted to evaluate public assessments of efforts to eliminate racial and ethnic discrimination and as a reflection of the implementation of Law No. 40 of 2008, a survey conducted to 1,207 citizens (17-65 years) in 34 provinces in Indonesia recorded at least 101 cases of racial and ethnic discrimination reported to them. These violations include restrictions on public services, the rise of ethnicity or identity politics, the dissolution of traditional rituals, discrimination over land ownership rights for minority groups, and unequal access to employment. Interestingly, the highest number was recorded in 2016, with 38 cases. However, based on the survey, 70% answered that they had never seen racial and ethnic discrimination, while 90% answered that they had never experienced acts of racial and ethnic discrimination. This finding has two possibilities: acts of racial and ethnic discrimination are very rare, or what is worrying is that the public's understanding of the forms of racial and ethnic discrimination has been insufficient so far that they consider these acts of discrimination not a serious violation of the law. In the past two years, 2018-2019, we have recorded approximately 30 cases related to alleged human rights violations experienced by Papuan students in Indonesia. For example, in Surabaya, there are 9 cases; this is Surabaya and Malang, which just happened.¹²

It is also emphasized in Law No. 39/1999 on Human Rights that minority groups must receive equal treatment and protection before the law. More specifically, the Covenant on Civil and Political Rights, which has been ratified through Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights, emphasizes that state parties must respect the rights of minority groups, including ethnicity, language or religion. Looking at the diversity in Indonesia, the National Human Rights Commission (Komnas HAM) includes several minority groups such as persons with disabilities, Lesbians, Gays, Bisexuals and Transgender (LGBT), minority political sects, and certain religions. The National Human Rights Commission (Komnas HAM) encourages the government to promote the fulfilment of the rights of minority groups. By doing so, it is hoped that there will be protection for minority groups who practice their beliefs and express their respective identities.¹³ From a human rights perspective, minority groups are equal to individuals with other rights. However, because minority groups belong to a subordinated class, special rights are needed to enhance their dignity. Special rights are not privileges but are given so that minority groups can maintain their identity, characteristics, and traditions. Such special rights are important to achieve equal treatment without discrimination. The issue of discrimination is not finished by just saying it, nor is it just written in the constitution, because

¹¹ Wulan Nurafifah and Dinie Anggraeni Dewi, 'Implementasi Nilai-Nilai Pancasila Dalam Kehidupan Bermasyarakat, Berbangsa, Dan Bernegara', *De Cive: Jurnal Penelitian Pendidikan Pancasila Dan Kewarganegaraan*, 1.4 (2021), 98-104 <<https://doi.org/10.56393/decive.v1i4.227>>.

¹² Abdul Hamid Tome, 'Membumikan Pancasila: Upaya Pelembagaan Nilai Pancasila Dalam Kehidupan Masyarakat Desa', *Al-'Adl*, 13.1 (2020), 118 <<https://doi.org/10.31332/aladl.v13i1.1717>>.

¹³ Muhammad Noer Qamaruddin Jaelani and others, 'Upaya Penegakan Hak Asasi Manusia Terhadap Masyarakat Minoritas Di Indonesia', *Lembaran Ilmu Kependidikan*, 51.1 (2022), 53-56 <<https://journal.unnes.ac.id/nju/index.php/LIK/article/view/37212>>.

to stop discriminatory practices and behaviours, more is needed if it is only contained in the law. If it is not effective in reality, and also discrimination cases are increasingly being discussed. In overcoming and dealing with cases and issues of human rights violations, especially racial and ethnic discrimination itself, law enforcement is one of the important instruments that is indispensable and must synergize with other instruments; therefore, national and international law enforcement is needed and must run synergistically to eliminate the issue of racial and ethnic discrimination. Based on the above foundation, the purpose of this research is to discuss the problems regarding legal policies against discrimination of minority groups (racial and ethnic) from the perspective of human rights in Indonesia.

2. Research Method

This research uses a normative method with a statute approach.¹⁴ This approach refers to legal analysis based on primary legal materials, namely Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination, Law No. 39/1999 on Human Rights, TAP MPR RI No. XVII/MPR/1998 on Human Rights, Decision Constitutional Court Decision Number 97/PUU-XIV/2016 on the review of the Population Administration Law and Article 28 I paragraph (2) of the 1945 Constitution. In addition, this research also uses secondary legal materials in the form of scientific books in the field of law, papers, scientific journals, and scientific articles. Secondary legal materials are all publications on law that are not official documents.¹⁵ This research is descriptive qualitative, which focuses on collecting and analyzing qualitative data to describe legal phenomena.¹⁶ From the analysis, this research concludes deductively, namely producing conclusions based on observations and systematizing the legal materials that have been collected.¹⁷

3. Results and Discussion

Human Rights Context for Defining and Understanding Discrimination Based on Race and Ethnicity: Evidence from Indonesia

There is also a variety of definitions. At the government level, several ministries whose duties and functions are related to the protection of minority groups have made various efforts that are contained in various policies, both in the form of legislation and work programs. Some of the relevant ministries include the Ministry of Social Affairs, the Ministry of Health, the Ministry of Home Affairs, and the Ministry of Law and Human Rights.¹⁸ In

¹⁴ Metya Mutiara and Ailly Latiefah, 'The Commercial Court ' s Power to Rule on Bankruptcy Cases Where an Arbitration Clause Is Present', *Wacana Hukum*, 29.1 (2023), 66–76.

¹⁵ Rian Saputra, 'Pergeseran Prinsip Hakim Pasif Ke Aktif Pada Praktek Peradilan Perdata Perspektif Hukum Progresif', *Wacana Hukum*, 25.1 (2019), 10–18.

¹⁶ Muhammad Asrul and Shilla Hasmara, 'Explaining Legal Implications : Ownership Analysis Of Intellectual Property Rights On Cryptokitties Platforms', *Wacana Hukum*, 29.1 (2023), 1–13.

¹⁷ Rian Saputra, Josef Purwadi Setiodjati, and Jaco Barkhuizen, 'Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)', *JOURNAL of INDONESIAN LEGAL STUDIES*, 8.1 (2023), 243–88 <<https://doi.org/10.15294/jils.v8i1.67632>>.

¹⁸ Agus Suntoro, 'Implementasi Pencapaian Secara Progresif Dalam Omnibus Law Cipta Kerja', *Jurnal HAM*, 12.1 (2021), 1 <<https://doi.org/10.30641/ham.2021.12.1-18>>.

addition, the Indonesian National Police (Polri), in their role as law enforcement officials, also contain policies related to the protection of minority groups in their internal regulations. However, the efforts of these institutions in carrying out their obligations have yet to be maximized, considering that each ministry or institution has different targets. In addition, they also have difficulty formulating policies due to differences in the definition and/or scope of minorities themselves.¹⁹ This is why it is important to create a common definition of what constitutes a 'minority'. The National Human Rights Commission (Komnas HAM) defines minorities with keywords that need to be considered. However, minority groups must also be considered influential, i.e. not dominated, marginalized, or disadvantaged in the life of society and the state.²⁰ In addition, The National Human Rights Commission (Komnas HAM) also offers many ethnicities that fit the Indonesian context, such as 1. Racial Minority Groups; 2. Ethnic Minority Group; 3. Religion and Belief Minority Group; 4. Group of Persons with Disabilities; 5. Minority Groups based on Gender Identity and Sexual Orientation.²¹

The National Human Rights Commission (Komnas HAM) encourages the government to promote the fulfilment of the rights of minority groups.²² In this way, it is hoped that minority groups who practice their beliefs and express their identity will be protected. From a human rights perspective, minority groups have an equal position with individuals who have other rights. However, since minority groups belong to the dependent class, special rights are needed to enhance their dignity.²³ Special rights are not privileges but are given so that minority groups can maintain their identity, characteristics, and traditions. The contents of Law No. 39 of 1999 on Human Rights reads, "*Everyone has the right to be free from torture, punishment or cruel, inhuman, degrading treatment and human dignity*".²⁴

This discrimination violates human rights and is not in line with the principles of democracy and equality before the law. The Indonesian government has made various efforts to guarantee the rights of minority groups, such as by promulgating regulations and policies and issuing Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination. As mentioned earlier, the rights of racial and ethnic minorities are affirmed in the UDHR, the International Convention on the Elimination of All Forms of Racial Discrimination 1965, the Convention on the Rights of Child, and the International Covenant on Civil and Political Rights. The International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, 1992,

¹⁹ Muwaffiq Jufri, 'The Urgency of The Fifth Amendment of The 1945 Constitution of The Republic Of Indonesia Related To Religious Freedom and Rights', *Jurnal HAM*, 12.1 (2021), 123–40.

²⁰ William R I Sopaheluwakan and others, 'Two-Decade Decentralization and Recognition of Customary Forest Rights: Cases from Special Autonomy Policy in West Papua, Indonesia', *Forest Policy and Economics*, 151 (2023), 102951 <<https://doi.org/https://doi.org/10.1016/j.forpol.2023.102951>>.

²¹ Umi Muawanah and others, 'Going into Hak: Pathways for Revitalizing Marine Tenure Rights in Indonesia', *Ocean & Coastal Management*, 215 (2021), 105944 <<https://doi.org/https://doi.org/10.1016/j.ocecoaman.2021.105944>>.

²² Bagus Hermanto, 'Penguatan Pengaturan Kelembagaan Badan Pembinaan Ideologi Pancasila, Perluakah?', *Jurnal Legislasi Indonesia*, 18.2 (2021), 204 <<https://doi.org/10.54629/jli.v18i2.742>>.

²³ Krzysztof Szczucki, 'Ethical Legitimacy of Criminal Law', *International Journal of Law, Crime and Justice*, 53 (2018), 67–76 <<https://doi.org/https://doi.org/10.1016/j.ijlcrj.2018.03.002>>.

²⁴ Isabella Kaminski, 'Does Climate Change Threaten Human Right to Health?', *The Lancet Planetary Health*, 7.4 (2023), e268–69 <[https://doi.org/https://doi.org/10.1016/S2542-5196\(23\)00058-X](https://doi.org/https://doi.org/10.1016/S2542-5196(23)00058-X)>.

or other widely accepted international Conventions and Declarations.²⁵

The following rights of racial and ethnic minorities are indivisible and interdependent: a. The right to recognition and protection of national or ethnic identity, culture, religion and language; b. The right to express their own culture, profess and practice their religion, and use their language individually and in public; c. The right to enjoy and develop their culture and language; d. The right to establish and maintain their schools, training, and other educational institutions, and to teach and receive instruction in their languages; e. The right to establish and develop peaceful relations with members of their group and persons of other minority groups both within a country and between countries; g. The right to be free from distinction, exclusion, restriction, or preference (discrimination) based on race, colour, ethnicity, national origin, language, religion, birth, or other status, which has the purpose or effect of impairing the enjoyment of human rights and fundamental freedoms in all fields and at all levels of education, employment, access to health care, housing, and social services; h. The right to recognition as equal before the law, equality before the courts, and equal protection of the law; i. The right to participate effectively in cultural, religious, social, economic and community life; j. The right to participate in decision-making and policies concerning their group and society at local, national, regional and international levels; k. The right to assemble and form organizations or associations.²⁶

The individual rights of racial minorities are essentially universally applicable human rights in the form of civil and political rights and economic, social, and cultural rights. However, as a group, racial and ethnic minority groups have collective rights, especially minority groups that can also be identified as indigenous peoples. It seems that until now, Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination has not been implemented properly and still needs to be reviewed.

Plural situations are inevitable. Indonesia, as an archipelago, has always been a multiracial, multiethnic, multi-religious, and multicultural nation-state. Various historical events encouraged the process of social integration that led to the diversity of Indonesian society. According to the 2000 census, there are 101 ethnic groups in Indonesia, with a population of 201,092,238.²⁷ The concept of Indonesian nationality is an attempt to find unity in diversity. Therefore, it is natural that Indonesia is referred to as a unitary state. Pancasila, the foundation of the Unitary State of the Republic of Indonesia, lays the foundation of nationality as the knot of Indonesian unity. The national concept that represents unity in diversity and diversity in unity is famously known as the slogan "Bhinneka Tunggal Ika".²⁸ Ironically, "Indonesia's multicultural society" has not yet been achieved. During the current Reformation period, there have been many violent incidents in several regions. Several regions in Indonesia show the tendency and risk of violence in multi-ethnic societies, and the nation never really regressed after the collapse of the New Order, but minority groups remain

²⁵ Sudharto P Hadi, Rizkiana S Hamdani, and Ali Roziqin, 'A Sustainability Review on the Indonesian Job Creation Law', *Heliyon*, 9.2 (2023), e13431 <<https://doi.org/https://doi.org/10.1016/j.heliyon.2023.e13431>>.

²⁶ Yoichi Hizen, Yoshio Kamijo, and Teruyuki Tamura, 'Votes for Excluded Minorities and the Voting Behavior of the Existing Majority: A Laboratory Experiment', *Journal of Economic Behavior & Organization*, 209 (2023), 348–61 <<https://doi.org/https://doi.org/10.1016/j.jebo.2023.03.014>>.

²⁷ Armiwulan.

²⁸ Yvonne Kunz and others, "'The Fridge in the Forest': Historical Trajectories of Land Tenure Regulations Fostering Landscape Transformation in Jambi Province, Sumatra, Indonesia', *Forest Policy and Economics*, 81 (2017), 1–9 <<https://doi.org/https://doi.org/10.1016/j.forpol.2017.04.005>>.

marginalized. Although political reforms have resulted in some positive changes, such as increased respect for indigenous peoples, the Indonesian government's policy on multiculturalism is similar to past perspectives.²⁹

The Indonesian judiciary is part of the judicial function prescribed by the constitution. The existence of the court is a forum for law enforcement in this country.³⁰ The judiciary is an institution whose role is to regulate and enforce the provisions of the law that apply in the territory of the national legal state. The function of the judiciary as an area is to realize a non-authoritarian judicial system for the environment in Indonesia. Related issues of Human Rights (HAM) issues are very active today, not only in seminars, discussions, and semi-seminars but even among legal practitioners are topics that are discussed and debated regularly.³¹ Legal protection of the human rights of minority groups in Indonesia is regulated in Article 28 I paragraph (2) of the 1945 Constitution and also regulated in Article 3 paragraph (3) of Law Number 39 of 1999 concerning Human Rights. However, the implementation of monitoring racial and ethnic discrimination carried out by the National Commission on Human Rights (Komnas HAM RI) has not been optimal. Discrimination also affects sexual minority groups, such as homosexuals, who still often experience oppression and discrimination.³² The perception of Chinese people as a minority group is also sometimes influenced by stereotypes or negative assumptions and different or discriminatory treatment of people of Chinese descent. Therefore, the protection of human rights of minority groups must continue to be protected and monitored to create justice and equality before the law.³³ Even the MPR-RI Decree No. XVII/MPR/1998 on Human Rights has not provided optimal results for minority groups in Indonesia.

Human rights are the culmination of man's awareness of himself. Human rights, which were originally intended to secure the dimension of human power as a dignified being, have been transformed into human rights that are considered full of anthropocentrism, humanism, egoism, and false individualism.³⁴ Therefore, the government's seriousness and commitment are needed to encourage the government to create an environment for the development of regulations that take into account elements of human rights enforcement efforts and the capacity to effectively implement human rights policies, as mandated by the constitution.³⁵ But of the pluralism that exists in Indonesia, many different things can be included in the content of human rights in Indonesia because each application of human rights is different

²⁹ Ken Miichi, 'The Role of Religion and Ethnicity in Jakarta's 2012 Gubernatorial Election', *Journal of Current Southeast Asian Affairs*, 33.1 (2014), 55-83 <<https://doi.org/10.1177/186810341403300104>>.

³⁰ Oly Viana Agustine, 'The Applicability of Jurisprudence on the Authority of Judging Laws in the Constitutional Court Decisions', *Jurnal Konstitusi*, 15.3 (2018), 642.

³¹ Adam Ilyas, 'The Problems of Constitutional Court Regulations and Its Implications', *Jurnal Konstitusi*, 19.4 (2022), 794-818 <<https://doi.org/10.31078/jk1943>>.

³² Kuswanto Kuswanto, 'Consistency of the Presidential System in Indonesia', *Sriwijaya Law Review*, 2.2 (2018), 170 <<https://doi.org/10.28946/slrev.vol2.iss2.67.pp170-182>>.

³³ Elisa Ortega Velázquez, 'Minority Rights for Immigrants: From Multiculturalism to Civic Participation', *Mexican Law Review*, 10.1 (2017), 103-26 <<https://doi.org/https://doi.org/10.22201/ij.24485306e.2017.19.11385>>.

³⁴ Rafi; et al Abdillah, 'Pidana Mati Dalam Hukum Nasional Menurut Perspektif Hukum Islam Dan Hak Asasi Manusia', *Al-Hakam Islamic Law & Contemporary Issues*, 3.2 (2022), 54-60.

³⁵ Ija Suntana and others, 'Ideological Distrust: Re-Understanding the Debate on State Ideology, Normalization of State-Religion Relationship, and Legal System in Indonesia', *Heliyon*, 9.3 (2023), e14676 <<https://doi.org/https://doi.org/10.1016/j.heliyon.2023.e14676>>.

according to the ideology, law, and culture that exists in Indonesia. However, we must also pay attention to the growing dynamics of globalization to celebrate and glorify people and communities to develop innovation and express life in the context of a country. In addition, respect for the law and human rights is important and does not require pressure from any party to implement it.

The Legal Safeguarding of Minority Groups from Racial and Ethnic Discrimination in Indonesia: Legislative Provisions and Implementation

In Indonesia, implementing legal policies to protect minority groups from racial and ethnic discrimination is important. The 1945 Constitution of the Republic of Indonesia guarantees the right to special treatment and facilities for minority groups. However, the development of these regulations still needs to be clarified, vague, and uncertain and needs to be rebuilt.³⁶ The philosophy of the right to special treatment and its foundation in the Constitution is to restore rights lost due to past discrimination. The government grants this right to minority groups only based on identity and the will of the state.³⁷ The aim is to respect the principles of justice and equality, which must be interpreted cumulatively. Harmonization of regulations related to the right to special treatment and facilities shows that the various bases of discrimination do not use an equal approach, have overlapping concepts, and need to be studied more deeply.³⁸ It is important to note that Indonesia is a diverse country with many different racial and ethnic groups.³⁹ Discrimination against minority groups is a long-standing problem in Indonesia. The government has taken steps to address this issue, including establishing the National Human Rights Commission and enacting various laws and regulations to protect minority rights. However, the implementation and enforcement of these laws and regulations still face many challenges. Some examples of legal policy implementation that have been carried out include;

1. Law No. 39/1999 on Human Rights:

This law generally guarantees human rights to all individuals, including minority groups, without discrimination based on race or ethnic origin. This law provides a strong legal basis for protecting the rights of minority groups.

2. Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination:

This law specifically regulates the elimination of racial and ethnic discrimination in Indonesia. It prohibits all forms of discrimination based on race and ethnic origin and provides criminal sanctions for those who discriminate.

3. Article 281 paragraph (2) of the 1945 Constitution of the Republic of Indonesia:

This article guarantees that every person has the right to be free from discriminatory

³⁶ Helen F Sanchez and others, 'Racial and Gender Inequities in the Implementation of a Cannabis Criminal Justice Diversion Program in a Large and Diverse Metropolitan County of the USA', *Drug and Alcohol Dependence*, 216 (2020), 108316 <<https://doi.org/https://doi.org/10.1016/j.drugalcdep.2020.108316>>.

³⁷ Ridwan Ridwan, 'Pertanggungjawaban Hukum Pidana Terhadap Pelanggaran Rahasia Medis', *Jurnal Hukum & Pembangunan*, 49.2 (2019), 338 <<https://doi.org/10.21143/jhp.vol49.no2.2007>>.

³⁸ Randi Solhjell, 'How Acts Become Hate Crime: The Police's Documenting of Criminal Cases', *International Journal of Law, Crime and Justice*, 72 (2023), 100574 <<https://doi.org/https://doi.org/10.1016/j.ijlcj.2022.100574>>.

³⁹ Bambang Sugeng Rukumono and others, 'Arrangement Registration Of Geographical Indications Of Traditional Alcoholic Beverages In Indonesia Based Multiculturalism', *Revista de Gestão Social e Ambiental*, 17.6 (2023), 1-14 <<https://doi.org/10.24857/rgsa.v17n6-001>>.

treatment on any grounds and has the right to protection against such discriminatory treatment.

4. TAP MPR-RI Decree No. XVII/MPR/1998 on Human Rights:

Assign state institutions and all government apparatus to respect, uphold, and disseminate an understanding of human rights to the entire community. Immediately ratify various United Nations instruments on Human Rights as long as they do not conflict with Pancasila and the 1945 Constitution.

Although implementation measures have been taken, challenges remain in ensuring effective protection of minority groups. Some of these challenges include raising public awareness, consistently enforcing the law, and eliminating lingering stereotypes and prejudices. Indonesia is a country that adheres to the continental European legal tradition commonly known as civil law.⁴⁰ The civil law tradition is characterized by the existence of a written legal system, which is the main requirement for state administration.⁴¹ In its constitution, Indonesia is a state of law as outlined in laws and regulations made to limit the power of the state (government) and provide guidance to the people in carrying out their activities as citizens. Therefore, a true constitutional democracy, state, and constitution must contain basic aspects, including regulations related to the guarantee of citizens' human rights.⁴² To prevent ethnic conflict, public spaces should not be dominated by certain ethnic groups and provide easy access for all sectors of society without discrimination based on ethnic origin, tribe, race, or religion. This is one of the indicators to assess the quality of public space. Frans Magnis Suseno also emphasized that the government must create certain preconditions by restoring the rule of law, where all violations of the law, whether individual or collective, have always been suppressed and never firmly tolerated, including the return of a clean and competent judicial system (judiciary, courts). If the state does not create the preconditions, including the rule of law, Indonesia will always be at risk of communal conflict.⁴³

Law No. 40/2008 aims to end all forms of racial and ethnic discrimination and end human rights violations in Indonesia, where more and more incidents related to racial and ethnic discrimination are occurring. Article 2 of Law No. 40/2008 explains that the elimination of racial and ethnic discrimination is based on the principles of equality, freedom, justice, and universal human values. These principles are implemented by taking into account the religious, social, cultural, and legal values that apply in the territory of the unitary state of the Republic of Indonesia.

The elimination of racial and ethnic discrimination to realize kinship, brotherhood, friendship, peace, harmony, security, and livelihood between citizens who, in principle,

⁴⁰ Rian Saputra and Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 1-13 <<https://doi.org/10.53955/jhcls.v2i1.21>>.

⁴¹ John Griffiths, 'Legal Pluralism', in *International Encyclopedia of the Social & Behavioral Sciences (Second Edition)*, ed. by James D Wright, Second Edition (Oxford: Elsevier, 2015), pp. 757-61 <<https://doi.org/https://doi.org/10.1016/B978-0-08-097086-8.86073-0>>.

⁴² Petter Grahl Johnstad, 'The International Regime of Drug Control May Violate the Human Right to Life and Security', *International Journal of Drug Policy*, 113 (2023), 103960 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2023.103960>>.

⁴³ M. Syafi'ie, 'Instrumentasi Hukum Ham, Pembentukan Lembaga Perlindungan Ham Di Indonesia Dan Peran Mahkamah Konstitusi', *Jurnal Konstitusi*, 9.4 (2016), 681 <<https://doi.org/10.31078/jk945>>.

always live side by side.⁴⁴ The types of racial and ethnic discrimination according to Article 4 are: 1. treating any distinction, exclusion, restriction, or preference based on race and ethnicity, which results in the denial or reduction of the recognition, enjoyment, or exercise of human rights and fundamental freedoms on an equal basis in the civil, political, economic, social, and cultural fields; or 2. showing hatred or resentment towards people because of racial and ethnic differences in the form of actions: a. to make writings or drawings to be placed, affixed, or disseminated in a public place or any other place that can be seen or read by other persons; b. making a speech, expressing, or uttering certain words in a public place or other place that others can hear; c. wearing on his/her objects, words, or pictures in public places or other places that others can read; or d. commit deprivation of life, persecution, rape, obscene acts, theft with violence, or deprivation of liberty based on racial and ethnic discrimination.⁴⁵

The elimination of racial and ethnic discrimination shall be carried out by providing: a. protection, certainty, and equality in law to all citizens to live free from racial and ethnic discrimination; b. guarantees that there are no obstacles to the initiatives of individuals, groups of people, or institutions that need protection and guarantees of equal use of rights as citizens; and c. an understanding of the importance of pluralism and respect for human rights through the implementation of national education. As explained in Law No. 40 of 2008, humans have the same position before God Almighty and are born with the same dignity and rights. There is no difference whatsoever, neither race nor ethnicity, and This is contrary to the values of the Pancasila, Indonesia Constitution and the Universal Declaration of Human Rights (HAM).

The Indonesian state guarantees human rights for all its citizens. The guarantee of human rights protection is contained in various documents, including the 1945 Constitution and Law No. 39/1999 on Human Rights.⁴⁶ Law No. 40/2008 is a human rights instrument aimed specifically at protecting citizens from racial and ethnic discrimination. This law seeks to eliminate racial and ethnic discrimination that must be carried out by the state, such as: 1. Protection, certainty, and equality in law to all citizens to live free from racial and ethnic discrimination; 2. The absence of obstacles to the actions of individuals, groups of people, or institutions that require protection and guarantee the use of equal rights as citizens; and 3. Public understanding of human rights through the implementation of national education.

In addition, MPR-RI Decree No. XVII/MPR/1998 on Human Rights assigns state institutions and all government officials to respect, uphold, and disseminate an understanding of human rights to the entire community and immediately ratify various United Nations instruments on Human Rights as long as they do not conflict with Pancasila and the 1945 Constitution. Protecting human rights can be done through the establishment of the National Human Rights Commission and Human Rights Court, as well as the Truth and Reconciliation Commission. Article 28I paragraph (2) also explains that everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection

⁴⁴ Tommy Leonard, 'Pembaharuan Sanksi Pidana Berdasarkan Falsafah Pancasila Dalam Sistem Hukum Pidana Di Indonesia', *Yustisia Jurnal Hukum*, 5.2 (2016), 468-83.

⁴⁵ Risdianto.

⁴⁶ Haikal Arsalan and Dinda Silviana Putri, 'Reformasi Hukum Dan Hak Asasi Manusia Dalam Penyelesaian Perselisihan Hubungan Industrial', *Jurnal HAM*, 11.1 (2020), 39 <<https://doi.org/10.30641/ham.2020.11.39-50>>.

against discriminatory treatment.⁴⁷

To address and resolve human rights issues, especially racial and ethnic discrimination, law enforcement is one of the most necessary tools and must coordinate with other tools. According to Ingrid Galuh Mustikawati, various conflicts that occur in Indonesia and ASEAN countries, including racial and ethnic conflicts, are horizontal conflicts, which tend to often or always arise as a result of a combination of various issues of public policy, identity, effective law enforcement, poor governance and competition for natural/economic resources. Law enforcement alone cannot prevent the recurrence of racial and ethnic conflicts in the post-conflict peacebuilding phase.⁴⁸ For example, legal instruments must be supported by security reforms that prioritize the professionalism of the police and the military. This is done by encouraging both institutions to play a role in maintaining order, security, and law enforcement in society and by restoring the rule of law as a necessary condition for strengthening democracy in society.⁴⁹ Article 17 of Law Number 40 of 2008 states that "Every person who intentionally takes the life of a person, persecutes, rapes, commits obscene acts, commits robbery with violence or deprives based on racial and ethnic discrimination, as stipulated in Article 4 letter b number 4 shall be punished by the regulations plus 1/3 (one third) of the maximum penalty. It can be concluded that although Law Number 40/2008 on the Elimination of Racial and Ethnic Discrimination has been implemented, there are still people who commit discriminatory acts in places where there are members of the security and order apparatus. Law enforcement officers must be able to guarantee the achievement of justice and legal certainty, which is the main task of law enforcement agencies. Also, the main objective of the mandate of law enforcement, in particular, is creating a society that protects the public interest, which protects human rights and society. Together, they create a fair and non-discriminatory life. Law enforcement must be able to satisfy people's sense of justice. The problem is that there is still no measure that can say that people's sense of justice has been achieved.⁵⁰

However, with the existence of the Racial and Ethnic Discrimination Law, discrimination does not necessarily disappear when the law guarantees it and makes it a criminal offence. The legislation developed is still limited to the standard level that needs to be pursued. Prevention efforts beyond the law are still needed. Law No. 40 of 2008 on the Elimination of Discrimination, Law No. 39 of 1999 on Human Rights, Article 28 I paragraph (2) of the 1945 Constitution of the Republic of Indonesia, TAP MPR RI Number XVII/MPR/1998 on Human Rights to date have not guaranteed freedom for minority groups (racial and ethnic) in Indonesia does not deter perpetrators of discrimination violence against minority groups (racial and ethnic). The elimination of discrimination requires strong support and

⁴⁷ Retno Kusniati, 'Sejarah Perlindungan Hak Hak Asasi Manusia Dalam Kaitannya Dengan Konsepsi Negara Hukum', *Inovatif: Jurnal Ilmu Hukum*, 4.5 (2011), 79-91 <<https://online-journal.unja.ac.id/index.php/jimih/article/view/536>>.

⁴⁸ Saldi Isra, 'Peran Mahkamah Konstitusi Dalam Penguatan Hak Asasi Manusia Di Indonesia', *Jurnal Konstitusi*, 11.3 (2016), 409 <<https://doi.org/10.31078/jk1131>>.

⁴⁹ Belengar Francis Maïnkade, 'Corporate Human Rights Obligations of Investors in Recent Investment Agreements: The Progressive Hardening Process of CSR Clauses', *Heliyon*, 9.4 (2023), e15120 <<https://doi.org/https://doi.org/10.1016/j.heliyon.2023.e15120>>.

⁵⁰ Mao Jun Xiang and Belengar Francis Maïnkade, 'The Human Rights-Based Approach to Sustainable Development: Lessons from Recent African Investment Treaty Practice', *Heliyon*, 9.8 (2023), e18578 <<https://doi.org/https://doi.org/10.1016/j.heliyon.2023.e18578>>.

commitment from various parties to eliminate discrimination gradually. For the principle of non-discrimination to be effectively abolished, sanctions must be taken against implementing agencies that are deemed non-compliant with applicable laws. This is very important because a good law can be implemented and enforced with the willingness and commitment of various parties by their respective functions and duties. In other words, no matter how good the laws and regulations are, if they are not enforced, they are still useless and meaningless.

4. Conclusion

Human rights are inherent human rights, and the existence of human rights is considered an integral part of human life. Human rights are the culmination of human consciousness towards themselves. Human rights, which were originally intended to secure the dimensions of human power as dignified beings, have been transformed into human rights that are considered to be full of dimensions of anthropocentrism, humanism, egoism, and false individualism. Therefore, the government's sincerity and commitment are needed to encourage local governments to create an environment in the development of regulations that consider elements of human rights enforcement efforts and the capacity to implement human rights policies effectively, as needed. In terms of legislation, it is harmonious, but the practical implementation still needs to be improved. This can be seen from the lack of socialization of existing regulations related to racial and ethnic discrimination, which still often occurs in the form of insults for certain races and ethnicities. Based on international legal studies, the Indonesian government has also made efforts to prevent racial and ethnic problems by ratifying various international treaties that essentially aim to eliminate all forms of behavioural discrimination. Extra measures are still needed, Law No.40 of 2008 on the Elimination of Discrimination, Law No.39 of 1999 on Human Rights, Article 28 I paragraph (2) of the 1945 Constitution of the Republic of Indonesia, TAP MPR RI No XVII/MPR/ 1998 on human rights currently, does not guarantee freedom for minority groups (racial and ethnic) in Indonesia, nor does it prevent the perpetrators from committing acts of violent discrimination against minority groups (racial and ethnic). Law enforcement against criminal acts of racial and ethnic discrimination always requires the professionalism of law enforcement officials in the community to avoid discriminatory conflicts because the protection of laws and regulations against racial and ethnic discrimination in Indonesia is still not limited to procedural justice as stipulated in laws and regulations and has not been enforced. Consider material justice in line with justice as one of the objectives of law.

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