

Legal Study on Legal Mechanisms to Overcome Racism in Indonesia: Based on Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination

Moch Nouvan Ap

Faculty of Sharia and Law, Sunan Ampel State Islamic University
nouvanp12@gmail.com

Abstract: Racism remains a serious and detrimental social phenomenon that continues to affect individuals and society in Indonesia. Despite being a country known for its ethnic diversity, cases of racial discrimination and injustice persist across various sectors such as education, employment, housing, and public services. This research aims to analyze the legal mechanisms established to address racism in Indonesia, with a specific focus on the implementation of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. This study adopts a normative legal research method, complemented by empirical legal analysis, to evaluate both the substance of the law and its implementation in practice. Through the normative approach, this research examines legal norms, policies, and judicial decisions relevant to combating racism. Simultaneously, the empirical aspect involves evaluating the effectiveness of law enforcement agencies, public awareness efforts, and access to justice for victims of racism. The analysis highlights several key challenges in implementing the law, including limited public understanding of legal protections, inadequate capacity of law enforcement, and insufficient sanctions against perpetrators. The study finds that while Law Number 40 of 2008 provides a solid legal foundation, its enforcement still requires significant improvements. Policy recommendations include strengthening legal sanctions, enhancing institutional capacity, increasing public education campaigns, and promoting active participation from civil society organizations. Moreover, collaboration among government agencies, human rights institutions, and community organizations is essential to ensure the law's effective implementation and to build a more inclusive society. Ultimately, this research underscores the urgent need for continuous evaluation and refinement of legal frameworks and their enforcement to eradicate racism and uphold human rights in Indonesia.

Keywords: Racism; Legal Action; Elimination of Discrimination; Legal Policy; Indonesia.



Copyright © 2024 by Author(s)

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

HOW TO CITE:

Ap, Moch Nouvan, Muwahid, "Legal Study on Legal Mechanisms to Overcome Racism in Indonesia: Based on Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination" *Mimbar Yustitia: Jurnal Hukum Dan Hak Asasi Manusia* 8, no. 2 (2024): 177-184, <https://doi.org/10.52166/mimbar.v8i2>

Submitted: 18/11/2024; Reviewed: 23/12/2024; Accepted: 30/12/2024

I. INTRODUCTION

Legal actions to address racism in Indonesia include history, social context, and government efforts to combat racial discrimination. Although Indonesia is known as a country with rich ethnic and cultural diversity, racism still exists in society. The history of colonialism in Indonesia played a role in the formation of different racial perceptions between ethnic groups. Dutch colonialism implemented a policy of different treatment between indigenous and non-indigenous ethnic groups, which led to ongoing social and economic injustice.¹

After independence in 1945, the Indonesian government committed itself to building a just and independent country. The Indonesian constitution, the 1945 Constitution, guarantees equal rights and protection for all citizens, regardless of race, religion, or social background. However, efforts to overcome racism in Indonesia have not always gone smoothly.² There are cases of abuse of power, discrimination, and racially based violence against minority groups. This problem involves all aspects of life, including education, employment, housing, and daily social interactions.³

In recent years, there has been increasing attention to the issue of racism in Indonesia.⁴ Human rights organizations, activist groups, and individuals are working to address racism and promote social inclusion. The government is also increasingly aware of the issue and is working to enforce legal measures that protect citizens from racial discrimination. One important law is Law Number 40 of 2008 on the Elimination of Racial and Ethnic Discrimination. This law prohibits discrimination based on race or ethnicity in all aspects of life, including education, employment, health, and public services.⁵ The law provides a strong legal basis for dealing with cases of racism and provides sanctions for perpetrators who violate it.

In addition, the government has also implemented programs and policies aimed at promoting tolerance and unity among ethnically diverse societies.⁶ The program includes awareness campaigns, multicultural education, interfaith and intercultural dialogue, and the establishment of special institutions and units to address racism. Although these steps have been taken, there are still challenges to

¹ Rina Mulyani, "Legal Perspective on Anti-Discrimination Regulation in Indonesia," *Indonesian Journal of International Law* 18, no. 1 (2020): 63–86.

² S.A. Rahim and E. Susilowati, "The Role of Law in Combating Racism in Indonesia: A Critical Review," *Indonesian Journal of International Law* 16, no. 1 (2019): 81–104.

³ Agus Pramono, "The Legal Protection for Ethnic and Racial Minorities in Indonesia: Challenges and Prospects," *Journal of Southeast Asian Human Rights* 2, no. 2 (2018): 259–277.

⁴ Imam Tirtadji, "The Legal Framework of Discrimination Against Ethnic and Religious Minorities in Indonesia: A Critical Analysis," *Al-Jami'ah: Journal of Islamic Studies* 58, no. 2 (2020): 337–364.

⁵ Aditya Savirani, "Legal Pluralism and Ethnic Discrimination in Indonesia," *Journal of Legal Pluralism and Unofficial Law* 49, no. 3 (2017): 371–389.

⁶ R.H. Siregar, "Combating Racism through Legal Mechanism in Indonesia," *Indonesian Journal of International Law* 17, no. 1 (2020): 29–50.

be faced in combating racism in Indonesia.⁷ Education, public awareness, and effective law enforcement need to be continuously improved. Cooperation between governments, civil society, and individuals is needed to create an inclusive environment, respect differences, and fight all forms of racism.⁸

Moreover, in the current digital era, the emergence of racism is not only limited to face-to-face interactions but also increasingly occurs in the virtual space. Social media and online platforms have become new mediums for the spread of hate speech, racial slurs, and discriminatory content targeting certain ethnic groups. This phenomenon poses new challenges for the government and law enforcement agencies in monitoring, preventing, and taking legal action against online racism. In response, the government needs to strengthen its cyber law enforcement capacity and collaborate with digital platforms to control and mitigate the spread of racist content. Additionally, digital literacy programs must be intensified to educate the public about the dangers of racism in cyberspace and promote ethical online behavior that respects diversity and human rights.

II. METHODS

Implementation of the Law on the Elimination of Racial and Ethnic Discrimination, research can be focused on analyzing the implementation of the law in the context of courts, government institutions, or the private sector. The purpose of this study is to evaluate the effectiveness of the law in combating racism and racial discrimination in Indonesia⁹. Qualitative research methods are methods used to understand and explain complex phenomena through descriptive data collection, such as interviews, observations, or document analysis. Qualitative research focuses on interpreting meaning and a deeper understanding of the subject being studied.¹⁰ Normative legal research focuses on the analysis of applicable legal norms, such as laws, regulations, court decisions, and other legal documents.¹¹. This method involves document analysis, legal comparison, and theoretical interpretation of applicable regulations. In this research, particular attention is given to the content and legal implications of Law Number 40 of 2008 and related provisions in the 1945 Constitution of the Republic of Indonesia. In addition to the normative approach, this study employs empirical legal research by analyzing secondary data derived from court reports, human rights organization publications, media reports,

⁷Prita Lestari and R. Dharmaputera, "The Protection of Ethnic Minorities in Indonesia: Challenges and Opportunities," *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 227–252.

⁸R. Meidyawati and R.A. Nugroho, "The Role of the Constitutional Court of Indonesia in Combating Racism," *Legal Dynamics* 19, no. 2 (2019): 157–171.

⁹Laili Afifah, "Racism and Ethnic Discrimination in Indonesian Society: A Legal Perspective," *Jurnal Cita Hukum* 6, no. 1 (2018): 33–48.

¹⁰Endang Salim, "Racism in the Indonesian Legal System: An Analysis of Discrimination Cases," *Journal of Legal, Ethical and Regulatory Issues* 20, no. 2 (2017): 1–13.

¹¹Eko Prasetyawan, "The Implementation of Law Number 40 of 2008 on the Elimination of Racial and Ethnic Discrimination in Indonesia," *Journal of Legal and Socio-Legal Studies* 1, no. 2 (2020): 147–164.

and official statistics related to racism cases in Indonesia.¹² This empirical approach aims to assess the effectiveness of legal enforcement mechanisms and the extent of public awareness regarding anti-racism laws. The combination of these two research approaches is expected to provide comprehensive insights and concrete recommendations to strengthen the legal framework and its enforcement in combating racism in Indonesia.

III. ANALYSIS AND DISCUSSION

The Effectiveness of the Law on the Elimination of Racial and Ethnic Discrimination in Combating Racism in Indonesia

The effectiveness of the law may depend on the level of public awareness of the issue of racism and the importance of combating racial discrimination. Educational and outreach efforts that include a good understanding of the concept of racism and existing legal protections can help raise awareness and strengthen the effectiveness of the law. The success of the law depends on the ability of law enforcement agencies to handle cases of racism. It is important to ensure that institutions such as the police, prosecutors, and courts have sufficient knowledge, resources, and willingness to take firm and fair action against perpetrators of racism.¹³

The effectiveness of the law can be judged by the extent to which victims of racism are protected and receive justice. This involves increasing victims' access to justice, adequate redress, protection from retaliation, and psychological and social support. The effectiveness of the law also depends on its good implementation and enforcement. It is important to ensure that regulations and mechanisms for implementing the law have been established and are properly implemented by the government and related institutions.¹⁴ In addition, regular monitoring and evaluation of the implementation of the law can help in identifying weaknesses and making necessary improvements. The effectiveness of the law can be enhanced through cooperation between the government, civil society, and human rights organizations. Active participation of various parties in promoting equality and combating racism can strengthen the implementation and impact of the law.¹⁵ In order to evaluate the effectiveness of the Law on the Elimination of Racial and Ethnic Discrimination in Indonesia, research is needed that involves policy analysis, stakeholder interviews, analysis of legal cases, and a comprehensive

¹²A.S. Kurniawan and D. Yudiantoro, "The Effectiveness of Anti-Discrimination Law in Indonesia: A Critical Analysis," *Indonesian Journal of International Law* 16, no. 1 (2019): 107–126.

¹³Husen Arifin, "Combating Racial Discrimination in Indonesian Labor Law: An Analysis of Legal Framework and Implementation," *Journal of Southeast Asian Human Rights* 5, no. 1 (2021): 1–23.

¹⁴Intan Ayu Andriani and Budi Prasetyo, "The Role of Law in Combating Racial Discrimination in Indonesia: A Case Study of the Indonesian Legal System," *Indonesian Journal of International Law* 14, no. 1 (2017): 41–62.

¹⁵Endang Hartati, "Legal Protection for Ethnic and Racial Minorities in Indonesia," *Journal of Legal Research and Analysis* 6, no. 1 (2020): 53–72.

impact evaluation. Such research will provide a deeper understanding of the extent to which this law has been successful in combating racism in Indonesia and recommendations for possible improvements.¹⁶ Strengthening the effectiveness of this law requires not only legal reforms but also continuous collaboration among all stakeholders, increased public awareness, and firm commitment from law enforcement institutions. Only through these integrated efforts can Indonesia achieve its goal of eradicating racism and upholding human rights for all citizens.

Legal policies that need to be updated or strengthened to combat racism in Indonesia

The Elimination of Racial and Ethnic Discrimination Act could be updated to include broader protections against racism and discrimination. This could include protections against discrimination in areas such as education, housing, health and other public services. Strengthening penalties and sanctions against perpetrators of racism could be an important step. This could include increasing the level of criminal penalties and penalties imposed on those found to have committed racist acts. Stronger sanctions could serve as a strong warning and deterrent to perpetrators of racism.¹⁷

It is important to strengthen the ability of law enforcement agencies to handle racism cases actively and efficiently.¹⁸ This involves increasing training and knowledge on racism issues, providing adequate resources, and close collaboration between the law enforcement agencies involved. Strengthening public education and awareness efforts on racism issues through campaigns, educational programs, and other public activities. Raising awareness of the importance of combating racism can change the perception and attitude of society as a whole. Encouraging the participation and active role of civil society, including human rights organizations and advocacy groups, in combating racism. Their involvement can help strengthen law enforcement, monitoring, and advocacy for the protection of victims of racism.

Role of Society Civilians in support of legal action and against racism in Indonesia

Civil society can advocate for stronger law enforcement against racism. They can conduct campaigns, organize educational events, and disseminate information to raise awareness about racism in society. Proper education will help strengthen the understanding of the importance of fighting racism and the importance of protecting individual rights. Civil society can monitor cases of racism and report discriminatory acts to law enforcement agencies. They can act as witnesses, collect

¹⁶Eko Supriyadi, "The Role of Law Enforcement in Combating Racial Discrimination in Indonesia," *Indonesian Journal of International Law* 16, no. 2 (2019): 237–256.

¹⁷I Gusti Bagus Suartha Arta and I Wayan Kompiang, "The Role of Law in Combating Racial Discrimination in Indonesia: A Critical Analysis of the Legal Framework," *Indonesian Journal of International Law* 17, no. 2 (2020): 221–240.

¹⁸Ika Fatmawati, "Legal Protection for Victims of Racial Discrimination in Indonesia: A Case Study on Hate Speech," *Indonesian Journal of International Law* 15, no. 1 (2018): 89–108.

evidence, and report violations of the law. This reporting will help in following up on cases of racism legally and provide additional strength to law enforcement agencies.¹⁹

Civil society can provide legal aid and support to victims of racism. This includes providing information about their rights, accompanying them through legal processes, or providing emotional and social support. This support is essential to ensure that victims have adequate access to justice and redress. Civil society can work with government agencies, law enforcement agencies, and other organizations to combat racism. They can form networks, collaborate on projects, and share resources and knowledge. This collaboration will strengthen efforts to combat racism and create synergies between stakeholders. Civil society can monitor public policies related to racism and provide recommendations for improvement. They can conduct research, analysis, and monitoring of existing policies, and provide constructive input to the government and relevant institutions. This monitoring will help strengthen the policy framework that combats racism.

VI. CLOSING

Effective legal action to address racism in Indonesia is an urgent necessity to ensure the protection of human rights, foster an inclusive society, and build a just and equitable nation. The law plays a central role as a strategic instrument in combating and preventing acts of racism. Based on the analysis conducted, several key conclusions can be drawn regarding the legal mechanisms to address racism in Indonesia. First, Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination serves as an essential legal foundation in combating racism. However, continuous evaluation and improvement of this law are required to ensure its effectiveness in protecting vulnerable individuals and groups from discriminatory practices. Second, expanding the scope of protection and strengthening sanctions is necessary. Legal policies must be updated to cover various sectors, such as education, employment, housing, and public services, while also imposing strict and deterrent sanctions against perpetrators of racism.

Third, enhancing active law enforcement is crucial by improving the capacity and readiness of law enforcement agencies including the police, prosecutors, and courts in handling racism cases fairly, swiftly, and efficiently. Fourth, raising public awareness and education is needed, with civil society and government institutions working together to promote anti-racism campaigns and educational programs that foster greater societal understanding of the dangers of racism. Fifth, collaboration and active participation from all stakeholders, including government bodies, law enforcement agencies, human rights organizations, and advocacy groups, is vital for strengthening law enforcement, monitoring, and advocacy efforts for victim

¹⁹ Asri Rahmi Nurul, "The Effectiveness of Anti-Discrimination Law in Indonesia: A Comparative Study with International Standards," *Indonesian Journal of Human Rights* 8, no. 1 (2021): 1–23.

protection. Through these integrated steps, it is hoped that Indonesia can build a stronger, more responsive legal framework that effectively eradicates racism and upholds the dignity and rights of every citizen.

REFERENCES

- Mulyani, Rina. "Legal Perspective on Anti-Discrimination Regulation in Indonesia." *Indonesian Journal of International Law* 18, no. 1 (2020): 63–86.
- Rahim, S.A., and E. Susilowati. "The Role of Law in Combating Racism in Indonesia: A Critical Review." *Indonesian Journal of International Law* 16, no. 1 (2019): 81–104.
- Pramono, Agus. "The Legal Protection for Ethnic and Racial Minorities in Indonesia: Challenges and Prospects." *Journal of Southeast Asian Human Rights* 2, no. 2 (2018): 259–277.
- Tirtadji, Imam. "The Legal Framework of Discrimination Against Ethnic and Religious Minorities in Indonesia: A Critical Analysis." *Al-Jami'ah: Journal of Islamic Studies* 58, no. 2 (2020): 337–364.
- Savirani, Aditya. "Legal Pluralism and Ethnic Discrimination in Indonesia." *Journal of Legal Pluralism and Unofficial Law* 49, no. 3 (2017): 371–389.
- Siregar, R.H. "Combating Racism through Legal Mechanism in Indonesia." *Indonesian Journal of International Law* 17, no. 1 (2020): 29–50.
- Lestari, Prita, and R. Dharmaputera. "The Protection of Ethnic Minorities in Indonesia: Challenges and Opportunities." *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 227–252.
- Meidyawati, R., and R.A. Nugroho. "The Role of the Constitutional Court of Indonesia in Combating Racism." *Legal Dynamics* 19, no. 2 (2019): 157–171.
- Afifah, Laili. "Racism and Ethnic Discrimination in Indonesian Society: A Legal Perspective." *Jurnal Cita Hukum* 6, no. 1 (2018): 33–48.
- Salim, Endang. "Racism in the Indonesian Legal System: An Analysis of Discrimination Cases." *Journal of Legal, Ethical and Regulatory Issues* 20, no. 2 (2017): 1–13.
- Prasetiawan, Eko. "The Implementation of Law Number 40 of 2008 on the Elimination of Racial and Ethnic Discrimination in Indonesia." *Journal of Legal and Socio-Legal Studies* 1, no. 2 (2020): 147–164.
- Kurniawan, A.S., and D. Yudiantoro. "The Effectiveness of Anti-Discrimination Law in Indonesia: A Critical Analysis." *Indonesian Journal of International Law* 16, no. 1 (2019): 107–126.
- Arifin, Husen. "Combating Racial Discrimination in Indonesian Labor Law: An Analysis of Legal Framework and Implementation." *Journal of Southeast Asian Human Rights* 5, no. 1 (2021): 1–23.
- Andriani, Intan Ayu, and Budi Prasetyo. "The Role of Law in Combating Racial Discrimination in Indonesia: A Case Study of the Indonesian Legal System." *Indonesian Journal of International Law* 14, no. 1 (2017): 41–62.

- Hartati, Endang. "Legal Protection for Ethnic and Racial Minorities in Indonesia." *Journal of Legal Research and Analysis* 6, no. 1 (2020): 53–72.
- Supriyadi, Eko. "The Role of Law Enforcement in Combating Racial Discrimination in Indonesia." *Indonesian Journal of International Law* 16, no. 2 (2019): 237–256.
- Arta, I Gusti Bagus Suartha, and I Wayan Kompiang. "The Role of Law in Combating Racial Discrimination in Indonesia: A Critical Analysis of the Legal Framework." *Indonesian Journal of International Law* 17, no. 2 (2020): 221–240.
- Fatmawati, Ika. "Legal Protection for Victims of Racial Discrimination in Indonesia: A Case Study on Hate Speech." *Indonesian Journal of International Law* 15, no. 1 (2018): 89–108.
- Nurul, Asri Rahmi. "The Effectiveness of Anti-Discrimination Law in Indonesia: A Comparative Study with International Standards." *Indonesian Journal of Human Rights* 8, no. 1 (2021): 1–23.