

**NOTES TO
REPUBLIC OF INDONESIA ACT
NO 39 OF 1999
CONCERNING
HUMAN RIGHTS**

I. GENERAL

That humans are bestowed by God Almighty with intellect and reason that gives them the ability to differentiate between good and bad which will guide and direct their attitude and behavior in life. With this intellect and reason, humans are free to decide on their own behavior and act. Also, to balance this freedom, humans have the ability to be responsible for all their actions.

These basic freedoms and rights are known as human rights, which are bestowed on humans as creations of God Almighty. These rights are non-derogable. Derogation of these rights is tantamount to derogation of human dignity. Therefore, state, government, and all organizations shall execute their obligation to recognize and protect the human rights of all humans without exception. This means that human rights must be consistently be the starting point and aim in organizing the life of society, nation and state.

Likewise, Pancasila as the principles of the state encompasses the idea that humans are the creations of God Almighty having two aspects: individual and social. Therefore, the freedoms of every person are limited by the basic rights of others. This means that everyone is obliged to acknowledge and respect the basic rights of others. This obligation also holds for all organizations at all levels, in particular state and government. In this way, state and government are responsible for respecting, protecting, defending, and guaranteeing the human rights of all citizens and inhabitants without any discrimination.

This obligation to respect human rights is reflected in the Preamble to the 1945 Constitution, which itself reflects the spirit of all the articles contained in its body, in particular with regard to the equality of citizens before the law and government, the right to adequate work and livelihood, the freedom to unionize and associate, the right to express opinions orally and in writing, the freedom to choose a religion and worship according to one's religion and beliefs, and the right to obtain education and schooling.

The history of Indonesia records incidents of suffering, misery and social conflict caused by action that is unjust and discriminative based on ethnicity, race, skin color, culture, language, religion, group, sex, and other social statuses. This unjust and discriminative behavior, which constitutes a violation of human rights, was in some cases vertical (perpetrated by the state apparatus against the people, or

vice-versa) and in other cases horizontal (among citizens themselves), and in many cases constituted gross violations of human rights.

In fact, for more than fifty years of the Republic of Indonesia, respect for, and protection and upholding of human rights has been far from satisfactory. This is evident from the incidents of unlawful arrest, abduction, torture, enforced disappearance, and even killings, burning of homes and houses of worship, conflict between religious followers and their families. There has also been misuse of power by public officials and the state apparatus which should have been enforcing the law, keeping the peace and protecting the people, but in fact were implicated in intimidation, torture, enforced disappearance and/or loss of life.

To undertake these obligations set forth in the 1945 Constitution, though Decree of the People's Legislative Assembly of the Republic of Indonesia No. XVII/MPR/1998 concerning Human Rights, the People's Legislative Assembly of the Republic of Indonesia requires all High Level State Agencies and the whole of the Government Apparatus to respect, uphold and disseminate information concerning human rights to the general public, and to immediately ratify a number of United Nation's instruments concerning Human Rights, insofar as this does not contravene Pancasila and the 1945 Constitution.

Aside from these two sources of law, regulations concerning human rights are essentially mentioned in several pieces of legislation, including legislation which ratifies several international conventions concerning human rights. However, to consolidate all existing regulations, it is necessary to draw up an Act concerning Human Rights.

The basic principles for drawing up this Act are as follows:

- a. God Almighty is the creator of the universe and all its components;
- b. basically, humans are bestowed with souls, form, structure, abilities, needs and facilities by the Creator in order to guarantee the sustainability of their lives;
- c. to protect, maintain and raise human dignity, it is necessary to recognize and protect human rights, since without this humans will lose their character and dignity rendering them inhuman in the eyes of others (*homo homini lupus*);
- d. because humans are social creatures, the human rights of one person are limited by the human rights of another, which means that human freedoms or rights are not unrestricted;
- e. human rights shall not be abrogated by anyone whatsoever under any circumstances whatsoever;
- f. all human rights embrace the obligation to respect the human rights of others, which means that there are basic obligations intrinsic to human rights;
- g. human rights must be properly respected, protected and upheld; and the government, state apparatus and other public officials are obliged to and responsible for guaranteeing that human rights are respected, protected and upheld.

In this Act, provisions concerning human rights are determined using as guidelines the United Nations Declaration of Human Rights, the United Nations Convention concerning the Eradication of All Forms of Discrimination Against Women, the United Nations Convention of Children's Rights, and several other international instruments governing human rights. This Act is also adjusted to fit the legal requirements of society and the need to develop national law based on Pancasila and the 1945 Constitution.

This Act sets forth in detail provisions concerning the right to life and the right not to be abducted and/or killed, the right to found a family and bear children, the right to self-development, the right to justice, the right to freedom of the individual, the right to security, the right to welfare, the right to participate in government, women's rights, children's rights, and the right to religious freedom. As well as governing human rights, this Act also governs basic obligations, and the duties and responsibilities of the government with regard to upholding human rights.

This Act also sets forth provisions concerning the Establishment of the National Commission on Human Rights as an independent body which has the function, task, authority to and responsibility for conducting study, research, investigation, monitoring, and mediation with regards to human rights.

This Act also governed public participation in the form of submitting complaints and/or reports of human rights violations; submitting proposals concerning the formulation of policy concerning human rights to the National Commission on Human Rights; and conducting study and education, and disseminating information concerning human rights.

This Act concerning Human Rights acts as an umbrella for all legislation concerning human rights. Therefore, violation both direct and indirect of human rights shall be subject to criminal, civil and/or administrative sanctions in accordance with the provisions set forth in legislation.

II. Article by Article

Article 1

Self-explanatory

Article 2

Human rights and basic human freedoms are inherent to the individual because without human rights and freedoms, the humans concerned would lose their human dignity and worth. Therefore, the Republic of Indonesia, the Government included, is responsible legally, politically, economically, socially and morally, for protecting, promoting and taking concrete measure towards upholding human rights and freedoms.

Article 3

Self-explanatory

Article 4

The meaning of 'any circumstances whatsoever' includes situations of war, armed conflict, and/or emergency situations.

The meaning of 'whosoever' is State, Government, and/or members of the public.

The right not to be prosecuted retroactively under the law may be excluded in the case of gross violations of human rights which are categorized as crimes against humanity.

Article 5

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory

Clause (3)

The meaning of 'disadvantaged groups' includes the old, children, the poor, pregnant women and the disabled.

Article 6

Clause (1)

Indigenous rights that are clearly still in force and highly regarded in an indigenous community must be respected and protected in the interests of protecting and upholding human rights in the community concerned, insofar as this does not contravene the principles of national law which is based on public justice and welfare.

Clause (2)

In the interests of upholding human rights, and the national cultural identity of indigenous law, indigenous rights which are still highly regarded by the local indigenous community, must be respected and protected insofar as this does not contravene the principles of national law which is based on public justice and welfare.

Article 7

The meaning of 'legal means' are routes that are open to all people or group to defend and restore their rights made available by Indonesian law, such as for instance by the National Commission on Human Rights or the courts, including appeals to the High Court over judgements made by district and appeal courts. In this Article it is intended that those who wish to uphold human rights and freedoms are basically obliged to exhaust all local remedies before using regional or international forums, unless the matter cannot be considered by a local forum.

Article 8

The meaning of 'protecting' includes defending human rights

Article 9

Clause (1)

Everyone has the right to life, to sustain life and to improve his standard of living. This right to life also applies to unborn babies and those sentenced to death.

In extraordinarily exceptional cases or circumstances, i.e. in the case of abortion, in the interests of the life of the mother; or in the case a sentence of death, based on the decision of the court, abortion or the death sentence may in these cases and/or under these circumstances be permitted. Only concerning these two matters may the right to life be limited.

Clause (2)

Self-explanatory

Article 10

Clause (1)

The meaning of 'legal marriage' is marriage conducted in accordance with the law.

Clause (2)

The meaning of 'free consent' is consent arising from genuine intent, without any force, deceit, or pressure whatsoever or from whosoever on the prospective husband and/or prospective wife.

Article 11

Self-explanatory

Article 12

Self-explanatory

Article 13

Self-explanatory

Article 14

Self-explanatory

Article 15

Self-explanatory

Article 16

Self-explanatory

Article 17

Self-explanatory

Article 18

Self-explanatory

Article 19

Clause (1)

The meaning of 'whole of assets he legally owns' are assets which do not arise from any violation or criminal action.

Clause (2)

Self-explanatory

Article 20

Self-explanatory

Article 21

The meaning of 'the object of research' is activity that involves a person as the party who is asked to comment, or give opinion or statement concerning his private life and private data, or whose picture and voice are recorded.

Article 22

Clause (1)

The meaning of 'right to freedom choose his religion and beliefs' is that everyone has the right to choose his own religion according to his own beliefs, without any coercion on the part of anyone.

Clause (2)

Self-explanatory

Article 23

Self-explanatory

Article 24

Self-explanatory

Article 25

Self-explanatory

Article 26

Self-explanatory

Article 27

Self-explanatory

Article 28

Clause (1)

Self-explanatory

Clause (2)

The country where asylum is being sought shall determine whether an action constitutes a political or non-political crime.

Article 29

Self-explanatory

Article 30

Self-explanatory

Article 31

Clause (1)

The meaning of 'arbitrary interference' is the right concerned with privacy in one's home.

Clause (2)

Self-explanatory

Article 32

Self-explanatory

Article 33

Clause (1)

Self-explanatory

Clause (2)

The meaning of 'enforced disappearance' in this clause is action taken by any person whosoever which renders the existence or whereabouts of a person unknown.

The meaning of 'assassination' is unlawful killing not based on a court decision.

Article 34

Self-explanatory

Article 35

Self-explanatory

Article 36

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory

Clause (3)

The meaning of 'right to ownership has a social function' is that any execution of the right to ownership must consider the public interest. Should the public interest genuinely require or demand, the right to ownership may be revoked in accordance with the law.

Article 37

Self-explanatory

Article 38

Self-explanatory

Article 39

The meaning of 'has the right' is that no person or worker shall be forced to become a member or not to become a member of a trade union.

Article 40

Self-explanatory

Article 41

Clause (1)

The meaning of 'right to social security' is that all citizens have social security in accordance with the law and the capacity of the state.

Clause (2)

The meaning of 'special facilities and treatment' is the provision of services and/or facilities and infrastructure in the interests of efficiency, security, health and safety.

Article 42

Self-explanatory

Article 43

Self-explanatory

Article 44

Self-explanatory

Article 45

Self-explanatory

Article 46

The meaning of 'adequately represented' is that women have the equal opportunity and access to playing a role in executive, judicial, legislative, political party matters and in general elections towards gender equity and equality.

Article 47
Self-explanatory

Article 48
Self-explanatory

Article 49
Clause (1)
Self-explanatory

Clause (2)
The meaning of 'special protection of the reproductive function' is health services related to menstruation, pregnancy, birth, and providing the opportunity to breastfeed.

Clause (3)
Self-explanatory

Article 50
The meaning of 'take legal action as individuals' is the capacity according to the law to take legal action; and in the case of adult Islamic women wishing to marry, a male relative legally responsible for the bride (*wali*) is required.

Article 51
Clause (1)
Self-explanatory

Clause (2)
The meaning of 'equal responsibilities' is parental obligation with regard to education, living costs, affection, and creation of an adequate future for the child.
The meaning of 'the best interest of the child' is in accordance with the rights of children as set forth in the Convention on The Rights of The Child ratified by Presidential Decree No. 36 of 1990 concerning Ratification of the Convention on The Rights of The Child.

Clause (3)
Self-explanatory

Article 52
Self-explanatory

Article 53
Clause (1)
Self-explanatory

Clause (2)

The meaning of 'a name' is own name and biological parent's name, and/or family name, and/or clan name.

Article 54

Execution at state expense of the rights of children who are physically or mentally disabled, shall primarily be for the disadvantaged.

Article 55

Self-explanatory

Article 56

Self-explanatory

Article 57

Self-explanatory

Article 58

Self-explanatory

Article 59

This article applies in the case of divorce of a child's parents, or in the case of death of one of the parents, or in the case that the authority of foster parents is revoked, or in the case in which a child is maltreated or not protected, or his parents are unfit.

Article 60

Clause (1)

Education in this article includes etiquette and morals.

Clause (2)

Self-explanatory

Article 61

Self-explanatory

Article 62

Self-explanatory

Article 63

Self-explanatory

Article 64

Self-explanatory

Article 65

Misuse of narcotics, psychotropics, and other addictive substances includes illegal production, distribution, trade and use.

Article 66
Self-explanatory

Article 67
Self-explanatory

Article 68
Self-explanatory

Article 69
Self-explanatory

Article 70
Self-explanatory

Article 71
Self-explanatory

Article 72
Self-explanatory

Article 73
Limitations as referred to in this Article do not apply to non-derogable rights as referred to in the Notes for Article 4 and Article 9.
The meaning of 'the national interest' is in the interests of national unity and not the interests of the authority.

Article 74
Provisions in this Article emphasize that no one has the right to benefit from another party and/or injure another party with regards to the provisions set forth in this Act, with the result that the human rights guaranteed by this Act are degraded or eradicated.

Article 75
Self-explanatory

Article 76
Self-explanatory

Article 77
Self-explanatory

Article 78
Self-explanatory

Article 79

Self-explanatory

Article 80

Self-explanatory

Article 81

Self-explanatory

Article 82

Self-explanatory

Article 83

Clause (1)

The meaning of 'validated by the President' is in the form of a Presidential Decree. Validation by the President is related to the independence of the National Commission on Human Rights. Recommendations of the National Commission on Human Rights as referred to, must encompass the aspirations of all sections of society in line with stipulated conditions, and shall be a maximum of 70 (seventy) people.

Clause (2)

Self-explanatory

Clause (3)

Self-explanatory

Clause (4)

Self-explanatory

Article 84

Self-explanatory

Article 85

Clause (1)

Self-explanatory

Clause (2)

point a

Self-explanatory

point b

Self-explanatory

point c

Self-explanatory

point d
Self-explanatory

point e
A decision concerning discharge shall be conveyed beforehand to the party concerned, who shall be given the right to defend himself in a special Plenary Session.

Article 86
Self-explanatory

Article 87
Self-explanatory

Article 88
Self-explanatory

Article 89
Clause (1)
Self-explanatory

Clause (2)
Self-explanatory

Clause (3)
point a
Self-explanatory

point b
The meaning of 'study and examine' with regard to monitoring is gathering data, information and facts in order to establish whether or not a violation of human rights has occurred.

point c
Self-explanatory

point d
Self-explanatory

point e
Self-explanatory

point f
Self-explanatory

point g
Self-explanatory

point h

The meaning of 'violation of human rights of public issue' includes matters concerning land, employment and the environment.

Clause (4)

point a

Self-explanatory

point b

The meaning of 'mediation' is resolution of civil cases outside the courts on the agreement of the parties.

point c

Self-explanatory

point d

Self-explanatory

point e

Self-explanatory

Article 90

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory

Clause (3)

Self-explanatory

Clause 4

The meaning of 'complaints by proxy' is complaints made by a person or group acting on behalf of a particular community whose human rights have been violated and/or based on equality before the law.

Article 91

Clause (1)

point a

Self-explanatory

point b

Self-explanatory

point c

The meaning of 'not in good faith' is an action, the purpose or aim of which is corrupt, for instance complaints accompanied by false data or untrue statements, and/or the sole aim of which is to defame a person, or cause group and/or social unrest.

The meaning of 'not in earnest' is that the purpose of the complainant is genuinely not to resolve the conflict, for instance, complainants called 3 (three) times and failing to appear with no valid excuse.

point d

Self-explanatory

point e

Self-explanatory

Clause (2)

Self-explanatory

Article 92

Self-explanatory

Article 93

Self-explanatory

Article 94

Self-explanatory

Article 95

The meaning of 'the law' in this article is provisions set forth in Article 140 clause (1) and (2) and Article 141 clause (1) of the Regulations for Indonesia as amended, and in Article 167 clause (1) of the Regulations for Outside Java and Madura.

Article 96

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory

Clause (3)

The original or authenticated copy of a mediation settlement shall be forwarded to and registered with the Clerk of Court.

Clause (4)

Entreaties concerning execution of settlements may be submitted to the District Court via the National Commission on Human Rights. Should the party concerned continue to fail to execute the settlement

as instructed by the court, the court shall be required to execute the settlement.

Should a third party feel injured by this settlement, the third party may file an appeal through the courts.

Clause (5)
Self-explanatory

Article 97
Self-explanatory

Article 98
Self-explanatory

Article 99
Self-explanatory

Article 100
Self-explanatory

Article 101
Self-explanatory

Article 102
Self-explanatory

Article 103
Self-explanatory

Article 104
Clause (1)
The meaning of 'gross violations of human rights' is genocide, arbitrary /extra judicial killings, torture, enforced disappearance, slavery, and systematic discrimination

Clause (2)
Self-explanatory

Clause (3)
The meaning of 'authorized tribunal' includes the four judicial frameworks according to Act No. 4 of 1970 concerning Basic Provisions concerning Judicial Authority.

Article 105
Self-explanatory

Article 106

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA
NO. 3886