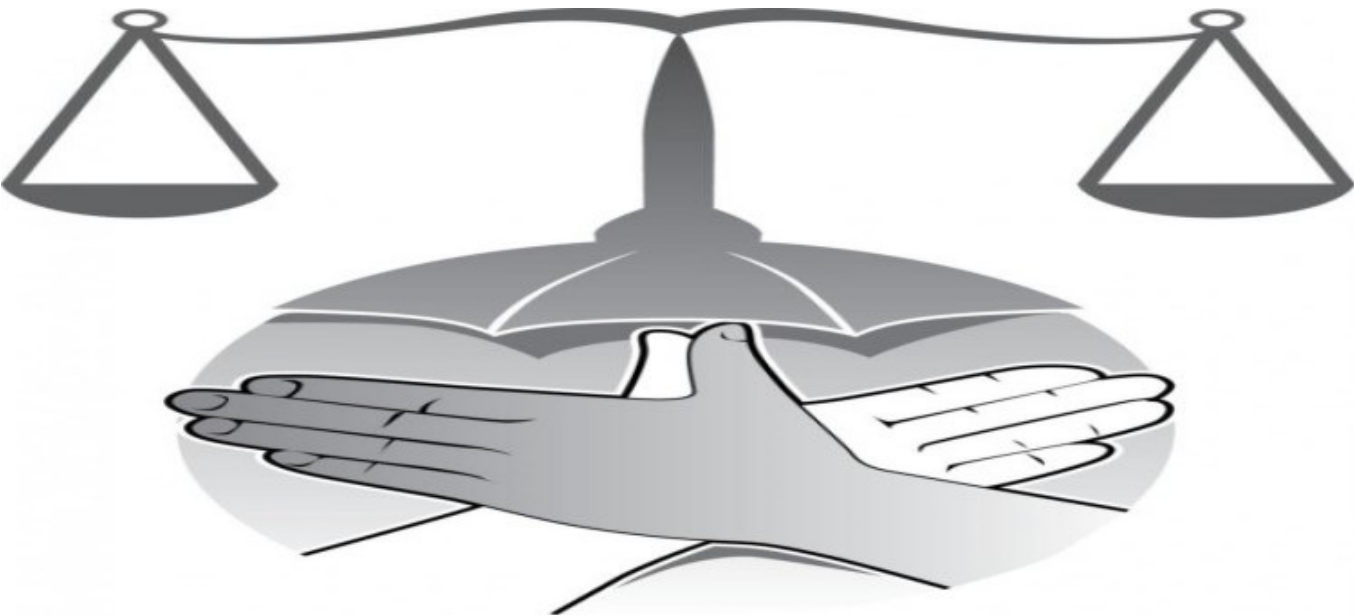


Racial Discrimination Offenses

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by Dr. Beniharmoni Harefa

" *Nemo prudens punit quia peccatum est, sed ne peccetur* ," said Seneca, a Roman philosopher. This expression means that no one can be punished for having committed a crime. However, someone is punished so that no more crimes occur. Criminal acts of racial discrimination that allegedly occurred in Surabaya and Malang have sparked demonstrations in Jayapura, Manokwari and Sorong, and even ended in chaos.

A number of parties regretted that this act of discrimination should not have happened. Because this happened in the midst of efforts by all parties to strengthen and strengthen national unity, after the presidential election which also shook national unity.

After the riots, a number of public facilities were burnt by the mob. They protest because they are victims of racial discrimination by irresponsible people. Economic activity was paralyzed. Teaching and learning activities and government offices are closed. In fact, chaos also spread to Fakfak and Timika.

An important question after the riots, what are the criminal sanctions for the perpetrators of spreading hate speech, racial discrimination, and the regulations?

In general, discrimination is the differential treatment of fellow citizens based on skin color, class, ethnicity, economy, religion, and so on. In criminal law, arrangements related to racial discrimination are contained in the Criminal Code (KUHP) regarding acts of expressing hostility, hatred and contempt for groups of people.

This is regulated in Article 156, "Anyone who publicly expresses feelings of hostility, hatred or contempt for one or several groups of the Indonesian people, shall be punished by a maximum imprisonment of four years or a maximum fine of four thousand five hundred rupiahs. The words group in this article and the

following articles mean each part of the Indonesian people who are different from one or several other parts because of race, country of origin, religion, place, origin, ancestry, nationality or position according to constitutional law.

Article 157 Paragraph (1) of the Criminal Code stipulates, "Anyone who broadcasts, shows or attaches writings or paintings in public, the contents of which contain statements of feelings of hostility, hatred or contempt among or against groups of the Indonesian people, with the intention that the contents are known or more publicly known, shall be punished by a maximum imprisonment of two years and six months or a maximum fine of four hundred rupiahs."

In fact, global racial discrimination has been regulated in the 1965 International Convention on the Elimination of all Forms of Racial Discrimination which Indonesia has ratified through Law Number 29 of 1999 concerning Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination. Furthermore, to ensure that conflicts and discrimination do not occur, Indonesia established Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

Article 16 stipulates "Any person who deliberately shows hatred or hatred towards others based on racial and ethnic discrimination as referred to in Article 4 letter b number 1, number 2, or number 3, shall be punished with imprisonment for a maximum of 5 years and/or or a maximum fine of 500 million rupiah. Criminal sanctions based on Law Number 40 of 2008 are heavier than the Criminal Code.

Article 28 Paragraph 2 of the ITE Law explains the perpetrators of racial crimes, "Every person intentionally and without right disseminates information to create feelings of hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race, and inter-group." Article 45 Paragraph 2 emphasizes that the perpetrators of race crimes are sentenced to a maximum imprisonment of six years and/or a maximum fine of one million rupiah.

Currently, it is undeniable that the paradigm of criminal law has shifted from retributive which emphasizes retaliation to a corrective, rehabilitative and restorative approach. Corrective means correcting the perpetrator so that he realizes the mistake, apologizes and does not repeat the crime. Rehabilitative is more about fixing the offender as well as restorative restoring back to its original state.

Defended

In racial discrimination offenses, criminal sanctions are still regulated in the offense. Even in the Draft Criminal Law Act (RUUHP) the offense of racial discrimination is still regulated, related to insulting population groups. In general, the RUUHP still maintains the construction of the formulation of acts of insulting population groups as in the Criminal Code Articles 156 and 157. These articles are placed in Chapter V concerning Crimes Against Public Order. This is grouped together with the crime of insulting the symbols of the state and government.

The draft RUUHP contains two articles regarding criminal acts of insulting population groups (250 and 251). Article 250 confirms that racial criminals are sentenced to a maximum of three prisons. Article 251 stipulates that those who broadcast, show, or attach writing or pictures or listen to recordings so that they sound public... shall be punished with a maximum imprisonment of 4 years.

In fact, paragraph 4 of the bill specifically regulates criminal acts on the basis of discrimination (articles 252 and 253). Article 252 reads, "Anyone who makes distinctions, exclusions, restrictions or elections based on race and ethnicity which results in the revocation or reduction of the recognition, acquisition or implementation of human rights and basic freedoms in an equality in the civil, political, economic, social fields , and culture shall be punished with imprisonment for a maximum of 1 year."

Indonesia considers that racial and ethnic discrimination offenses are still important to regulate, even in the RUUHP a separate article is made to ensure that there is no conflict and discrimination. This is important because Indonesia consists of various tribes, religions, ethnicities, and races. Indeed, criminal sanctions for these offenses are more in the nature of correction, rehabilitation, and restoration of conditions that have been disrupted.

The prohibition of racial discrimination which has been regulated clearly and firmly in various laws aims to avoid national divisions that could threaten the Unitary State of the Republic of Indonesia.

Law enforcement officials must act decisively and thoroughly in handling various racial discrimination conflicts. Of course, enforcement must be based on the paradigm of modern criminal law. Now investigations no longer only emphasize retaliation or deterrence as Seneca said. However, it places more emphasis on corrective, rehabilitative and restorative approaches for the sake of the Republic of Indonesia based on Pancasila and the 1945 Constitution.

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<http://www.koran-jakarta.com/pidana-delik-discrimination-rasial/> (<http://www.koran-jakarta.com/pidana-delik-diskriminasi-rasial/>)

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