

Law No. 39 Year 1999 - Concerning Human Rights

REPUBLIC OF INDONESIA LEGISLATION NUMBER 39 OF 1999 CONCERNING HUMAN RIGHTS

THE HOUSE OF REPRESENTATIVES
OF THE REPUBLIC OF INDONESIA

REPUBLIC OF INDONESIA
**LEGISLATION
NUMBER 39 OF 1999
CONCERNING
HUMAN RIGHTS
WITH THE MERCY OF GOD ALMIGHTY**
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. whereas human beings, as creations of God Almighty charged with the task of managing and protecting the universe, with total devotion to and responsibility for the welfare of humanity, being His creation are bestowed with basic rights to guarantee their human dignity and worth, and harmony with their environment;
- b. whereas human rights are basic rights bestowed by God on human beings, are universal and eternal in nature, and for this reason must be protected, respected and upheld, and may not be disregarded, diminished, or appropriated by anyone whatsoever;
- c. whereas besides basic rights, humans also have basic obligations to one another and to society as a whole, with regard to society, nation and state;
- d. whereas as a member of the United Nations, the nation of Indonesia has a moral and legal responsibility to respect, execute, and uphold the Universal Declaration on Human Rights promulgated by the United Nations, and several other international instruments concerning human rights ratified by the Republic of Indonesia;
- e. now, therefore, upon consideration of paragraphs a, b, and c, and to implement Decree of the People's Legislative Assembly of the Republic of Indonesia Number XVII/MPR/1998 concerning Human Rights, it is considered necessary to enact provisions in an Act concerning Human Rights;

In view of: 1. Article 5 clause (1), Article 20 clause (1), Article 27 clause (1) and clause (2), Article 28, Article 29 clause (1) and clause (2), Article 30, and Article 31, Article 32, Article 33 clause (1) and clause (3), and Article 34 of the 1945 Constitution;
2. Decree of the People's Legislative Assembly of the Republic of Indonesia No. XVII/MPR/1998 concerning Human Rights;

with approval of
THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA
DECREES
To enact: ACT CONCERNING HUMAN RIGHTS

CHAPTER 1 GENERAL PROVISIONS Article 1

The terms used in this Act have the following meanings:

1. Human rights mean a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, Government, and all people in order to protect human dignity and worth.
2. Human obligations mean a set of obligations which, if not undertaken, would make it impossible for human rights to be executed and upheld.
3. Discrimination means all limitations, affronts or ostracism, both direct and indirect, on grounds of differences in religion, ethnicity, race, group, faction, social status, economic status, sex, language, or political belief, that results in the degradation, aberration, or eradication of recognition,

execution, or application of human rights and basic freedoms in political, economic, legal, social, cultural, or any other aspects of life.

4. Torture means all deliberate acts that cause deep pain and suffering, both physical or emotional, inflicted on an individual person to obtain information or knowledge from that person or from a third party, by punishing an individual for an act carried out or suspected to have been carried out by an individual or third party, or by threatening or coercing an individual or third party, or for reasons based on discriminative considerations, should this pain or suffering arise as a result of provocation by, with the approval of, or with the knowledge of any person or public official whosoever.

5. Children mean all unmarried persons under the age of 18, including, should this be in their interest, all unborn children.

6. Human rights violations mean all actions by individuals or groups of individuals, including the state apparatus, both intentional and unintentional, that unlawfully diminish, oppress, limit and/or revoke the human rights of an individual or group of individuals guaranteed by the provisions set forth in this Act, and who do not or may not obtain fair and total legal restitution under the prevailing legal mechanism.

CHAPTER II BASIC RIGHTS

Article 2

The Republic of Indonesia acknowledges and holds in high esteem the rights and freedoms of humans as rights which are bestowed by God and which are an integral part of humans, which must be protected, respected, and upheld in the interests of promoting human dignity, prosperity, contentment, intellectual capacity and justice.

Article 3

(1) Everyone is born equal in dignity and human rights, and is bestowed with the intellect and reason to live with others in a spirit of brotherhood.

(2) Everyone has the right to be recognized, guaranteed, protected, and treated fairly before the law and is entitled to equal legal certitude and treatment before the law.

(3) Everyone has the right without any discrimination, to protection of human rights and obligations.

Article 4

The right to life, the right to not to be tortured, the right to freedom of the individual, to freedom of thought and conscience, the right not to be enslaved, the right to be acknowledged as an individual before the law, and the right not to be prosecuted retroactively under the law are human rights that cannot be diminished under any circumstances whatsoever.

Article 5

(1) Everyone is recognized as an individual who has the right to demand and obtain equal treatment and protection before the law as befits his or her human dignity.

(2) Everyone has the right to truly just support and protection from an objective, impartial judiciary.

(3) All members of disadvantaged groups in society, such as children, the poor, and the disabled, are entitled to greater protection of human rights.

Article 6

(1) In the interests of upholding human rights, the differences and needs of indigenous peoples must be taken into consideration and protected by the law, the public and the Government.

(2) The cultural identity of indigenous peoples, including indigenous land rights, must be upheld, in accordance with the development of the times.

Article 7

(1) Everyone has the right to use all effective national legal means and international forums against all violations of human rights guaranteed under Indonesian law, and under international law concerning human rights which has been ratified by Indonesia.

(2) Provisions set forth in international law concerning human rights ratified by the Republic of

Indonesia, are recognized under this Act as legally binding in Indonesia.

Article 8

The principal responsibility for protecting, promoting, upholding, and fulfilling human rights lies with the Government.

CHAPTER 3

HUMAN RIGHTS AND FREEDOMS

Section One

Right to Life

Article 9

- (1) Everyone has the right to life, to sustain life, and to improve his or her standard of living.
- (2) Everyone has the right to peace, happiness, and well-being.
- (3) Everyone has the right to an adequate and healthy environment.

Section Two

Right to Marry and Bear Children

Article 10

- (1) Everyone has the right to marry legally, to found a family, and to bear children.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses, in accordance with prevailing legislation.

Section Three

Right to Self Development

Article 11

Everyone has the right to grow and develop in a way that he feels fit.

Article 12

Everyone has the right to protection of his self-development, to obtain an education, to educate himself, and to improve the quality of his life to become responsible, content, and prosperous people, in accordance with his human rights.

Article 13

Everyone has the right to develop and benefit from scientific knowledge and technology, arts and culture as befits human dignity, in the interests of his own welfare, and the welfare of the nation and humanity.

Article 14

- (1) Everyone has the right to communicate and obtain information they need to develop themselves as individuals and to develop their social environment.
- (2) Everyone has the right to seek, obtain, own, store, process, and impart information using all available facilities.

Article 15

Everyone has the right to develop himself by individually and collectively protecting his rights, in the interests of developing his society, nation, and state.

Article 16

Everyone has the right to undertake social and charitable works, to found organizations for this purpose, including organizing private schooling and education, and to raise funds for these purposes, in line with prevailing legislation.

Section Four

Right to Justice

Article 17

Everyone without discrimination, has the right to justice by submitting applications, grievances, and charges, of a criminal, civil, and administrative nature, and to a hearing by an independent and impartial tribunal, according to legal procedure that guarantees a hearing by a just and fair judge allowing an objective and impartial verdict to be reached.

Article 18

- (1) Everyone arrested, detained, or charged for a penal offence has the right to be presumed

innocent until proven guilty according to law in a trial at which he has had all the guarantees necessary for his defense, according to prevailing law.

(2) No one shall be charged or held guilty of a penal offence for any act or omission which did not constitute a penal offence under prevailing law, at the time when it was committed.

(3) Should any changes be made to law, the provisions most advantageous to the person held guilty shall apply.

(4) Everyone brought before a tribunal has the right to legal aid from the start of the hearing until a legally binding decision is made by the tribunal.

(5) No one shall be charged more than once for an action or omission concerning which a tribunal has previously made a legally binding decision.

Article 19

(1) No offender or criminal shall be threatened with punishment in the form of seizure of part or whole of assets he legally owns.

(2) No person found guilty by a tribunal shall be imprisoned or incarcerated for being unable to fulfill the obligations of a loan agreement.

Section Five

Right to Freedom of the Individual

Article 20

(1) No one shall be held in slavery or servitude.

(2) Slavery, the slave trade and servitude shall be prohibited in all their forms.

Article 21

Everyone has the right to integrity of the individual, both spiritual and physical, and as such shall not become the object of any research without his approval.

Article 22

(1) Everyone has the right to freedom to choose his religion and to worship according to the teachings of his religion and beliefs.

(2) The state guarantees everyone the freedom to choose and practice his religion and to worship according to his religion and beliefs.

Article 23

(1) Everyone has the freedom to choose and hold his political beliefs.

(2) Everyone has the freedom to hold, impart and widely disseminate his beliefs, orally or in writing through printed or electronic media, taking into consideration religious values, morals, law and order, the public interest and national unity.

Article 24

(1) Everyone has the right to peaceful assembly and association.

(2) Every citizen or group has the right to found a political party, non-government organization, or other organization in order to take part in the government or administration of the state and nation for the purpose of protecting and promoting human rights, according to prevailing law.

Article 25

Every citizen has the right to express his opinion in public, and this includes the right to strike, according to prevailing law.

Article 26

(1) Everyone has the right to have, obtain, change and maintain his nationality.

(2) Everyone has the freedom to choose his nationality, and without discrimination has the right to enjoy his rights as a citizen and is required to undertake his obligations as a citizen in accordance with the law.

Article 27

(1) All Indonesian citizens have the right to freedom of movement and residence within the borders of Indonesia.

(2) All Indonesian citizens have the right to leave and return to the Republic of Indonesia, according to prevailing law.

Section Six The Right to Security

Article 28

(1) Everyone has the right to seek and receive political asylum from another country.

(2) The right as referred to in clause (1) does not apply perpetrators of non-political crimes or of acts that contravene the objectives and principles of the United Nations.

Article 29

(1) Everyone has the right to protection of the individual, his family, opinion, honor, dignity, and rights.

(2) Everyone has the right to recognition everywhere as a person before the law'

Article 30

Everyone has the right to security and protection against the threat of fear from any act or omission.

Article 31

(1) No one shall be subject to arbitrary interference with his home.

(2) No one shall set foot in or enter the enclosure of a house or enter a house without the permission of the person who lives there, except for reasons provided for under prevailing legislation.

Article 32

No one shall be subject to arbitrary interference with his correspondence, including electronic communications, except upon the order of a court or other legitimate authority according to prevailing legislation.

Article 33

(1) Everyone has the right to freedom from torture, or cruel, inhuman and degrading punishment or treatment.

(2) Everyone has the right to freedom from abduction and assassination.

Article 34

No one shall be subject to arbitrary arrest, detention, torture or exile.

Article 35

Everyone has the right to live in a peaceful, safe and secure society and nation which fully respects, protects and executes human rights and obligations as set forth in the provisions in this Act.

Section Seven Right to Welfare

Article 36

(1) Everyone has the right to own property, both alone and in association with others, for the development of himself, his family, nation, and society through lawful means.

(2) No one shall be subjected to arbitrary or unlawful seizure of his property.

(3) The right to ownership has a social function.

Article 37

(1) The right to ownership of a property in the public interest shall not be revoked, except with the restoration of fair, proper and adequate compensation, based on prevailing legislation.

(2) In the event that in the public interest a property must be destroyed or abandoned, either

permanently or temporarily, compensation shall be paid in accordance with prevailing legislation, unless otherwise decreed.

Article 38

(1) All citizens have the right to work as befits a human being, in line with his or her ability and capacity.

(2) Everyone has the right to free choice of employment and the right to just conditions of work.

(3) Everyone, both men and women, who works has the right to equal pay for equal work, and the right to equal work conditions.

(4) Everyone, both men and women, who works has the right to fair and adequate remuneration, ensuring for himself and his family an existence worthy of human dignity.

Article 39

Everyone has the right to form and join trade unions for the protection and promotion of his interests, in accordance with prevailing law.

Article 40

Everyone has the right to a place to live and the right to an adequate standard of living.

Article 41

(1) Everyone has the right to the social security necessary for an adequate existence and for the development of his well-being.

(2) The disabled, elderly, pregnant women and children have a right to special facilities and treatment.

Article 42

In the event of old age, physical and/or mental disability, every citizen has the right to special care, education, training and assistance at the expense of the state, ensuring an existence worthy of human dignity, and building his self confidence and capacity to participate in the life of nation, state, and society.

Section Eight

Right to Participate in Government

Article 43

(1) Every citizen has the right to vote and be voted for in general elections and has equal rights to a direct, free, secret, fair and just vote, in accordance with prevailing law.

(2) Every citizen has the right to participate in government either directly or through his freely elected representative, in ways laid down by provisions set forth in legislation.

(3) Every citizen has the right to be appointed to any position in the government.

Article 44

Every citizen, both individually and collectively, has the right to submit orally or in writing requests, complaints and/or proposals to the government for the implementation of a clean, effective and efficient government, in line with prevailing legislation.

Section Nine

Women's Rights

Article 45

Under this Act, women's rights are human rights.

Article 46

The general election system, political party system, system of electing members of people's representative organizations, and the system of appointing executives, judges and civil servants must ensure that women are adequately represented.

Article 47

The nationality of a woman married to a foreign citizen shall not automatically change to that of her

husband; rather, she has the right to maintain, change, or re-gain her nationality.

Article 48

Women and men have equal rights to adequate access to and conditions of schooling and education.

Article 49

- (1) Women have the right to select, be selected and appointed to an adequate job, position or a profession, in line with prevailing law.
- (2) Women have the right to special protection in the undertaking of work or a profession that could put her safety and/or her reproductive health.
- (3) The special rights to which women are entitled arising from their reproductive function are guaranteed and protected by law.

Article 50

Women of full age and/or who are married have the authority to take both criminal and civil legal action as individuals, unless determined otherwise under religious law.

Article 51

- (1) During marriage, a wife and husband have equal rights and responsibilities with regard to all aspects of marriage, contact with their children, and rights to joint control of assets.
- (2) Following dissolution of marriage, a wife and her former husband have equal rights and responsibilities with regard to all matters concerning their children, taking into account the best interests of the child.
- (3) Following dissolution of marriage, a wife and her former husband have equal rights with regard to all matters concerning joint assets while not undermining children's rights, in accordance with prevailing law.

Section Ten

Children's Rights

Article 52

- (1) All children have the right to protection by parents, family, society, and state.
- (2) Children's rights are human rights which in the children's interest are recognized and protected before the law at the time of conception.

Article 53

- (1) From conception, every child has the right to life, to maintain life and to improve his standard of living.
- (2) From birth, every child has the right to a name and nationality.

Article 54

In the event of physical and/or mental disability, every child has the right to special care, education, training and assistance at the expense of the state, ensuring an existence worthy of human dignity, and building his self confidence and capacity to participate in the life of nation, state, and society.

Article 55

Every child has the right to practice his religion, and to think and express himself as befits his intellectual capacity and age under the guidance of a parent or guardian.

Article 56

- (1) Every child has the right to know who his parents are and to be brought up and cared for by his own parents.
- (2) Should the parents of a child not be able to bring up and care for their child adequately and in accordance with the provision set forth in this Act, the child concerned may be fostered and/or adopted by another person, based on and in accordance with procedures laid down in prevailing legislation.

Article 57

(1) Every child has the right to be raised, cared for, educated and guided through life by his parents or guardian until he is of full age, in accordance with prevailing legislation.

(2) Should both the parents of a child die before he is of full age, or should both parents be unable for a valid reason to fulfill their obligations as parents, the courts shall appoint the child a guardian or foster parent.

(3) Foster parent or guardians as referred to in clause (2) are responsible for properly fulfilling all the obligations of a parent.

Article 58

(1) Every child has the right to protection before the law against all forms of physical and mental violence, neglect, mistreatment and sexual assault while under the care of his parents, guardian, or any other party responsible for his care.

(2) Should a child's parent, guardian, or benefactor commit any form of physical or mental abuse; neglect; mistreatment; sexual assault, including rape; or murder of a child under his protection, he shall be subject to maximum legal sanctions.

Article 59

(1) Every child has the right not to be separated from his parents against his wishes, except for valid legal reasons and procedures indicating that this separation is in the best interests of the child.

(2) Under the circumstances referred to in clause (1), the child's right to regular direct meetings and individual contact with his parents is guaranteed and protected by the provisions set forth in this Act.

Article 60

(1) Every child has the right to access to education and schooling as befits his interests, talents, and intellectual capacity.

(2) Every child has the right to seek, receive, and impart information as befits his intellectual capacity and age in the interests of his own development, insofar as this meets moral requirements.

Article 61

Every child has the right to rest and mix with children of his own age, and to play and create as befits his intellectual capacity in the interests of his own development.

Article 62

Every child has the right to access to adequate health services and social security as befits his physical, emotional and spiritual needs.

Article 63

Every child has the right not to be involved in war, armed conflict, social unrest, and other incidents involving violence.

Article 64

Every child has the right to protection from financial exploitation, and from doing any work which is dangerous and/or which could interfere with his education or his physical, mental, or spiritual health.

Article 65

Every child has the right to protection from sexual exploitation and abuse, abduction and child trading, and from the misuse of narcotics, psychotropics, and other addictive substances.

Article 66

(1) Every child has the right not to be the object of oppression, torture, or inhuman legal punishment.

(2) Sentence of death or life imprisonment shall not be handed down child offenders.

(3) Every child has the right not to have his freedom unlawfully taken from him.

(4) Children may be arrested, detained, or jailed only in accordance with prevailing legislation and

only as a measure of last resort.

(5) Every child whose freedom is taken from him has the right to humane treatment, as befits the personal development needs of his age, and shall not be separated from his parents unless this is in his own interest.

(6) Every child whose freedom is taken from him has the right to access effective legal or other aid at every stage of ongoing legal proceedings.

(7) Every child whose freedom is taken from him has the right to defend himself and to access to a private hearing before an objective and impartial Child Tribunal.

CHAPTER IV HUMAN OBLIGATIONS

Article 67

Everyone within the territory of the Republic of Indonesia is required to comply with Indonesian legislation and Indonesian Law, including unwritten law and international law concerning human rights ratified by Indonesia.

Article 68

Every citizen is required to participate in measures to defend the state in accordance with prevailing legislation.

Article 69

(1) Everyone is required to respect the human rights of others, and social, national, and state morals, ethics and order.

(2) Every human right gives rise to the basic obligation and responsibility to uphold the human rights of others, and it is the duty of government to respect, protect uphold and promote these rights and obligations.

Article 70

In executing his rights and obligations, everyone shall observe the limitations set forth in the provisions in this Act, in order to ensure that the rights and freedoms of others are respected, and in the interests of justice, taking into account the moral, security, and public order considerations of a democratic society.

CHAPTER V GOVERNMENT DUTIES AND OBLIGATIONS

Article 71

The government shall respect, protect, uphold and promote human rights as laid down in this Act, other legislation, and international law concerning human rights ratified by the Republic of Indonesia.

Article 72

The duties and responsibilities of the government as referred to in Article 71, include measures towards effective implementation in law, politics, economics, social and cultural aspects, state security, and other areas.

CHAPTER VI LIMITATIONS AND PROHIBITIONS

Article 73

The rights and freedoms governed by the provisions set forth in this Act may be limited only by and based on law, solely for the purposes of guaranteeing recognition and respect for the basic rights and freedoms of another person, fulfilling moral requirements, or in the public interest.

Article 74

No provisions set forth in this Act shall be interpreted to mean that the government, or any political parties, factions, or any party whosoever is permitted to degrade, impair or eradicate the basic rights and freedoms governed by this Act.

CHAPTER VII THE NATIONAL COMMISSION ON HUMAN RIGHTS

Article 75

The National Commission on Human Rights aims to:

- a. develop conditions conducive to the execution of human rights in accordance with Pancasila, the 1945 Constitution, the United Nations Charter, and the Universal Declaration of Human Rights; and,
- b. improve the protection and upholding of human rights in the interests of the personal development of Indonesian people as a whole and their ability to participate in several aspects of life.

Article 76

(1) To achieve these aims, the National Commission on Human Rights functions to study, research, disseminate, monitor and mediate human rights issues.

(2) Members of the National Commission on Human Rights are drawn from public figures who are professional, dedicated, have a high level of integrity, who fully comprehend the aspirations of a democratic and welfare state based on justice, and who respect human rights and obligations.

(3) The National Commission on Human Rights is domiciled in the capital city of the Republic of Indonesia.

(4) Representative offices of the National Commission on Human Rights may be established in the regions.

Article 77

The National Commission on Human Rights is based on the principles of Pancasila.

Article 78

(1) The National Commission on Human Rights comprises:

- a. Plenary Council; and
- b. Sub-commissions.

(3) The National Commission on Human Rights has a Secretary General for the provision of services.

Article 79

(1) The Plenary Council is holder of the highest authority in the National Commission on Human Rights.

(2) The Plenary Council consists of all members of the National Commission on Human Rights.

(3) The Plenary Council determines the Rules and Regulations, Work Program and Work Mechanism of the National Commission on Human Rights.

Article 80

(1) The activities of the National Commission on Human Rights are implemented by Sub-commissions.

(2) Provisions governing these Sub-commissions are set forth in the Rules and Regulations of the National Commission on Human Rights.

Article 81

(1) The Secretariat General provides administrative services for the implementation of the operations of the National Commission on Human Rights.

(2) The Secretariat General is headed by a Secretary General who is assisted by work units in the form of bureaus;

(3) The position of Secretary General is held by a Civil Servant who is not a Member of the National Commission on Human Rights.

(4) The Secretary General is appointed by the Plenary Council and this appointment shall be ratified in a Presidential Decree.

(5) The position, duties, responsibilities and organizational structure of the Secretariat General

shall be set forth in a Presidential Decree.

Article 82

Provisions concerning the Plenary Council and Sub-commissions are set forth in greater detail in the Rules and Regulations of the National Commission on Human Rights.

Article 83

(1) The National Commission on Human Rights comprises 35 (thirty five) members selected by the House of Representatives of the Republic of Indonesia based on the recommendation of the National Commission on Human Rights, and validated by the President as Head of State.

(2) The National Commission on Human Rights is headed by a Chair and two Vice-Chairs.

(3) The Chair and the Vice-Chairs are elected by and from among the Members.

(4) The Chair, Vice-Chairs, and Members serve for a period of five years, and may be re-appointed for a further five-year period.

Article 84

Those eligible for appointment as members of the National Commission on Human Rights are Indonesian citizens who:

- a. have experience in the promotion and protection of individuals or groups whose human rights have been violated;
- b. are experienced as lawyers, judges, police, attorneys, or other members of the legal profession;
- c. are experienced in legislative and executive affairs and in the affairs of high level state institutions; or
- d. are religious figures, public figures, members of NGOs, or from higher education establishments.

Article 85

(1) Discharge of a Member of the National Commission on Human Rights is based on the resolution of the Plenary Council and shall be made known to the House of Representatives and ratified by a Presidential Decree.

(2) A Member may be discharged:

- a. in the event of his/her death;
- b. upon the request of the Member him/herself;
- c. in the event that prolonged psychological or spiritual ill-health prevents the member from carrying out his duties consecutively for a period of one year;
- d. in the event that he perpetrates a gross criminal act; or
- e. in the event that he/she perpetrates a reprehensible act or other act which the Plenary Council deems to besmirch the dignity and reputation, and/or diminish the independence and credibility of the National Commission on Human Rights.

Article 86

Provisions concerning the election, appointment, and discharge of Members and leadership of the National Commission on Human Rights are set forth in the Rules and Regulations of the National Commission on Human Rights.

Article 87

(1) All Members of the National Commission on Human Rights are required to:

- a. study prevailing legislation and decrees of the National Commission on Human Rights;
- b. participate actively and sincerely towards attaining the objectives of the National Commission on Human Rights;
- c. maintain confidentiality of information that by nature is a secret of the National Commission on Human Rights obtained based on his position as a member.

(2) All Members of the National Commission on Human Rights have the right to:

- a. submit proposals and ideas to the Plenary Council and Sub-commissions;
- b. provide input into the decision making of the Plenary Council and Sub-commissions;

- c. propose nominees for and elect the Chair and Vice-Chairs on the Plenary Council;
- d. nominate prospective Members of the National Commission on Human Rights for interim and regular replacement.

Article 88

Provisions concerning the rights and obligations of members of the National Commission on Human Rights are set forth in greater detail in the Rules and Regulations of the National Commission on Human Rights.

Article 89

(1) To carry out the functions of the National Commission on Human Rights with realize aims as referred to in Article 76, the National Commission on Human Rights has the authority to:

- a. study and examine international human rights instruments with the aim of providing recommendations concerning their possible accession and ratification;
- b. study and examine legislation in order to provide recommendations concerning drawing up, amending and revoking of legislation concerning human rights;
- c. publish study and examination reports;
- d. carry out literature studies, field studies, and comparative studies with other countries;
- e. discuss issues related to protecting, upholding and promoting human rights; and,
- f. conduct cooperative research and examination into human rights with organizations, institutions or other parties, at regional, national and international levels.

(2) To carry out its function as disseminator as referred to in Article 76 , the National Commission on Human Rights is charged with and authorized to:

- a. disseminate information concerning human rights to the Indonesian public;
- b. take steps to raise public awareness about human rights through formal and non-formal education institutes and other bodies;
- c. cooperate with organizations, institutions or other parties at national, regional and international level with regard human rights;

(3) To carry out its supervisory function as referred to in Article 76, the National Commission on Human Rights is charged with and authorized to:

- a. monitor the execution of human rights and compile reports of the output of this monitoring;
- b. investigate and examine incidents occurring in society which either by their nature or scope likely constitute violations of human rights;
- c. call on complainants, victims and accused to request and hear their statements;
- d. call on witnesses to request and hear their witness statements, and in the case of prosecution witness to request submission of necessary evidence;
- e. survey incident locations and other locations as deemed necessary;
- f. call on related parties to give written statements or to submit necessary authenticated documents as required upon approval of the Head of Court;
- g. examine houses, yards, buildings, and other places that certain parties reside in or own, upon approval of the Head of Court;
- h. on approval of the Head of Court, provide input into particular cases currently undergoing judicial process if the case involves violation of human rights of public issue and court investigation, and the input of the National Commission on Human Rights shall be made known to the parties by the judge;

(4) To carry out its function as mediator as referred to in Article 76, the National Commission on Human Rights is charged with and authorized to:

- a. arbitrate between the two parties;
- b. resolve cases through consultation, negotiation, mediation, conciliation and expert evaluation;
- c. give recommendations to the parties for resolving conflict through the courts;
- d. submit recommendations concerning cases of human rights violations to the Government in order that their resolution may be followed up on;
- e. submit recommendations concerning cases of human rights violations to the House of Representatives of the Republic of Indonesia for their follow up.

Article 90

(1) All people and groups of people who have strong grounds that their human rights have been violated may submit an oral or written complaint to the National Commission on Human Rights.

(2) Complaints will be dealt with only if the true identity of the complainant is made known, and if adequate and clear evidence/statement of the subject matter of the complaint is provided.

(3) In the case in which a complaint is made by a third party, the complaint must have the approval of the party whose rights have been violated as victim, with the exception of certain human rights violations as based on the consideration of the National Commission on Human Rights.

(4) Violation of human rights as referred to in clause (3) also covers complaints made by proxy concerning violation of human rights experienced by the public

Article 91

(1) Investigation shall not be undertaken, or shall be suspended if already underway, in the event that:

- a. there is insufficient evidence;
- b. the subject matter of the complaint is not a violation of human rights;
- c. the complaint is not presented in good faith, or if the complainant is not in earnest;
- d. more effective legal measures are available to resolve the complaint;
- e. resolution through available legal means, in accordance with the law.

(2) The mechanism for executing the authority not to undertake or to suspend investigation as referred to in clause (1) is set forth in the Rules and Regulations of the National Commission on Human Rights.

Article 92

(1) In certain cases and if deemed necessary to protect the interests and rights of those involved, or to realize the resolution of an issue, the National Commission on Human Rights may decide to keep confidential the identity of the complainant, those providing statements or other evidence, and parties related to the subject matter of the complaint or monitoring.

(2) The National Commission on Human Rights may decide to keep confidential or restrict dissemination of a statement or other evidence obtained by the National Commission on Human Rights which is related to the subject matter of the complaint or monitoring.

(3) Decision as referred to in clause (2) is based on the consideration that dissemination of the statement or other evidence could:

- a. endanger state security and safety;
- b. endanger public safety and order;
- c. endanger the safety of an individual;
- d. besmirch the good name of an individual;
- e. divulge state secrets or other matters which must be kept confidential in the government decision-making process;
- f. divulge matters which must be kept confidential in the process of investigating, litigating, and trying a criminal case;
- g. hamper the resolution of an existing issue;
- h. divulge matters of trade secret.

Article 93

Investigation of human rights violations is to be closed, unless deemed otherwise by the National Commission on Human Rights.

Article 94

(1) Complainants, victims, witnesses and other related parties as referred to in Article 89 clause (3) letters c and d, are required to meet the request of the National Commission on Human Rights.

(2) Should the requirement referred to in clause (1) not be met, the party in question shall be subject to the provisions set forth in Article 95.

Article 95

Should a person called on fail to appear or refuse to give a statement, the National Commission on Human Rights may seek the assistance of the Head of Court to enforce its request, in accordance with prevailing law.

Article 96

- (1) Resolution as referred to in Article 89 clause (4) letters a and b, shall be carried out by a Member of the National Commission on Human Rights appointed as mediator;
- (2) Resolution reached as referred to in clause (1) shall be in the form of a written agreement signed by both parties and validated by the mediator;
- (3) Written agreement as referred to in clause (2) constitutes a mediation settlement which is legally binding and officially valid;
- (4) In the event that a mediation settlement is not executed by one of the parties within the period of time set forth in the settlement, the other party may entreat the local District Court to declare that this settlement be executed, by appending the words, "For the Justice of God Almighty".
- (5) A Court may not refuse the request referred to in clause (4).

Article 97

The National Commission on Human Rights is required to submit annual reports on concerning the execution of its functions, tasks and authority, and on the condition of human rights and on cases handled to the House of Representatives and the President, and submit carbon copies to the Supreme Court.

Article 98

The budget for the National Commission on Human Rights shall come from the National Budget.

Article 99

Provisions and regulations concerning the functions, tasks and authority of the National Commission on Human Rights are set forth in the Rules and Regulations of the National Commission on Human Rights.

CHAPTER VIII

PUBLIC PARTICIPATION

Article 100

All people, groups, political organizations, community organizations, and self-reliant organizations and other non-government organizations, have the right to participate in protecting, upholding and promoting human rights.

Article 101

All people, groups, political organizations, community organizations, and self-reliant organizations and other non-government organizations, have the right to submit reports of human rights violations to the National Commission on Human Rights or other competent agency, in the interests of protecting, upholding and promoting human rights.

Article 102

All people, groups, political organizations, community organizations, and self-reliant organizations and other non-government organizations, have the right to submit proposals to concerning matters and policy related to human rights to the National Commission on Human Rights or other agency.

Article 103

All people, groups, political organizations, community organizations, and self-reliant organizations, higher educational institutes, study agencies or other non-government organization, both individually and in cooperation with the National Commission on Human Rights, have the right to study, educate and disseminate information about human rights.

CHAPTER IX

HUMAN RIGHTS TRIBUNAL

Article 104

(1) To hear gross violations of human rights, a Human Rights Tribunal shall be set up in the domain of the District Court;

(2) Tribunal as referred to in clause (1) shall be established under law within a period of 4 (four) years.

(3) Prior to the establishment of the Human Rights Tribunal referred to in clause (2), cases of

human rights violations as referred to in clause (1) shall be heard by an authorized tribunal.

**CHAPTER X
TRANSITIONAL PROVISIONS**

Article 105

(1) All provisions concerning human rights set forth in other legislation shall remain valid insofar as these are governed by this Act.

(2) At the time this Act comes into force:

- a. the National Commission of Human Rights established based on Presidential Decree No. 50 of 1993 concerning the National Commission on Human Rights shall be deemed the National Commission on Human Rights according to this Act;
- b. the Chair, Vice-Chairs, and Members of the National Commission on Human Rights shall continue to carry out their functions, tasks and authority according to this Act until such time new members of the National Commission on Human Rights are appointed;
- c. all issues currently being handled by the National Commission on Human Rights shall continue to be resolved according to the provisions set forth in this Act.

(3) Within 2 (two) years of this Act coming into force, the organizational structure, membership, tasks and authority, and regulations of the National Commission on Human Rights must be brought into accordance with this Act.

**CHAPTER XI
CONCLUDING PROVISIONS**

Article 106

This Act comes into force on the date of its enactment.

For the public to be informed, it is ordered that this Act be promulgated in the State Gazette of the Republic of Indonesia.

Ratified in Jakarta,

23 September 1999

PRESIDENT OF THE REPUBLIC OF INDONESIA

BAHARUDDIN JUSUF HAIBIBIE

Enacted in Jakarta

23 September 1999

SECRETARY FOR STATE

MULADI

STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 165 OF 1999

Posted on 2005-09-22

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