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The Gap in Human Rights Protection from an International Legal Perspective and the Implementation of the Principle of Equality

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Abstract:

Human rights are fundamental principles that guarantee the equality, dignity, and freedom of every individual, but their implementation still faces various gaps in global society. This study aims to analyze human rights gaps from an international perspective, particularly those related to economic inequality and racial and ethnic discrimination. This study uses a normative juridical method with a conceptual approach and legal regulations through an analysis of scientific literature and relevant legal instruments. The results show that economic inequality can limit people's access to education, health, decent work, housing, and social protection, thus impacting the fulfillment of economic and social rights. Meanwhile, racial and ethnic discrimination can limit individuals' and groups' access to employment, education, public services, political participation, and justice. In the Indonesian context, Law Number 39 of 1999 concerning Human Rights and Law Number 12 of 2005 concerning the Ratification of the ICCPR provide the legal basis for the protection of equality and non-discrimination. The study concludes that reducing human rights disparities requires harmonization of national laws with international standards, institutional strengthening, effective law enforcement, and policies that guarantee substantive equality for all individuals and groups.

Keywords:

Discrimination; Economic Inequality; Human Rights; International Perspective; Racial and Ethnic.

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1. Introduction

Human rights law (HAM) is one of the main foundations for building just relationships between states, individuals, and communities. Human rights recognize every human being as a subject with inherent rights from birth, regardless of social background, economic status, gender, race, or political status. This principle gained international legitimacy through the 1948 Universal Declaration of Human Rights (UDHR), which became one of the foundations for the development of the modern international human rights regime. However, the universality of human rights does not mean that their application and understanding are uniform across countries. The debate over the universality of human rights continues to evolve due to tensions between international human rights standards, national interests, and social and cultural diversity. García Escobar (2023) points out that the debate over the universality of human rights is closely related to the relationship between global norms and cultural diversity, necessitating an approach that maintains universal standards while also taking into account the contexts of different societies.

More complex issues arise when normatively recognized human rights principles are not fully realized in practice. The gap between de jure and de facto human rights is a crucial issue in human rights protection because the existence of constitutions, laws, and international instruments does not always guarantee the effective fulfillment of people's rights. Research on the implementation of human rights law shows that normative protection can experience gaps when domestic mechanisms, institutional capacity, political will, and implementation procedures are not functioning optimally. Fraser (2019) emphasized that despite decades of development in human rights law, human rights violations still occur in various countries, demonstrating a gap between law and practice. Meanwhile, Donald, Long, and Speck (2020) showed that the implementation of decisions by international human rights institutions is also significantly influenced by state responses, victim participation, civil society, and the capacity of follow-up mechanisms.

This gap can manifest itself in various forms, including economic inequality, discrimination against certain groups, limited access to justice, and restrictions on civil and political liberties. Economic inequality, for example, is not only a matter of income distribution but can also impact an individual's ability to enjoy basic rights equally. MacNaughton (2020) explains that economic inequality can hinder the realization of human rights and is related to government policy choices. Therefore, economic policies need to consider their impact on the fulfillment of human rights. This perspective is reinforced by Balakrishnan and Heintz (2020), who show that global inequality is also related to imbalances in power and state policy space in fulfilling people's social and economic rights.

In addition to economic inequality, discrimination against vulnerable groups also demonstrates that formal recognition of human rights does not always result in substantive equality. Kristiansson and Götzmann (2020) found that the implementation of human rights principles must take into account the gender dimension, as policies that are insensitive to women's issues can perpetuate systemic discrimination. Research on the protection of vulnerable groups in Indonesia also demonstrates the importance of legal and institutional systems capable of translating human rights guarantees into concrete protections for the community. Rudy et al. (2023) emphasize that the protection of the civil rights of vulnerable groups is related to the function of the rule of law, democracy, and legal institutions in providing protection for citizens.

In the Indonesian context, the national legal framework has provided a strong foundation for human rights protection. Law Number 39 of 1999 concerning Human Rights serves as the primary instrument governing various fundamental rights and the government's obligations to respect, protect, and uphold human rights.

Furthermore, Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR) strengthens Indonesia's commitment to international standards regarding civil and political rights. Both instruments are important because they link human rights obligations under national law with developments in international human rights law. However, the existence of legal norms has not automatically eliminated implementation gaps. Marzuki (2023), for example, points out that the application of the human rights paradigm in legislation and court decisions still faces tensions between universal and particular approaches to rights protection.

Thus, the issue of human rights lies not only in the existence or absence of legal recognition, but also in the ability of states and the international community to ensure that these rights are enjoyed effectively and equally. Oestreich (2023) points out the importance of linking international mechanisms such as the Universal Periodic Review with national development policies so that human rights recommendations are not limited to evaluation but translated into implementable action. Therefore, studying the human rights gap from an international perspective is crucial for understanding the relationship between the universality of norms, social inequality, discrimination, institutional capacity, and the effectiveness of legal implementation. Efforts to narrow this gap require harmonization between international standards and national law, strengthening human rights enforcement institutions, increasing access to justice, and a state commitment to implementing the principles of equality and non-discrimination effectively.Based on the above arguments, two questions arise:RQ1: How does economic inequality affect the fulfillment and protection of human rights from an international and national legal perspective?RQ2: How does racial and ethnic discrimination impact the fulfillment of individual and community human rights from a global perspective, and how does national law address this issue?

2. Methods

This research uses a relevant and effective library research approach to understand and analyze complex issues regarding human rights law, particularly the international perspective on gaps in the fulfillment and protection of human rights. This literature study does not have a specific research location; all data is obtained through a review of various written sources relevant to the research problem. Data sources in this study consist of books, scientific journal articles, official documents, research reports, and laws and regulations related to human rights.

In addition to using scientific literature, this research specifically analyzes Law Number 39 of 1999 concerning Human Rights as the national legal basis for examining the recognition, respect, protection, and fulfillment of human rights in Indonesia. This research also utilizes Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR) as a legal instrument linking international human rights principles with legal obligations within the national system. These two regulations are used to compare and understand the relationship between international human rights norms and their implementation in national law, particularly regarding equality, non-discrimination, civil and political rights, and the protection of individuals and groups.

The data collection technique used was documentation, namely by collecting, identifying, evaluating, and synthesizing various literature relevant to the research focus. The literature reviewed included scientific journal articles, books, international documents on human rights, and laws and regulations, particularly Law No. 39 of 1999 and Law No. 12 of 2005. This literature was used to gain an understanding of the development of human rights concepts, the principles of universality and non-discrimination, economic inequality, racial and ethnic discrimination, and the gap between normative recognition and implementation of

human rights from an international perspective. Through a literature review, this research also identified various arguments, developments in thought, similarities, differences, and research gaps found in previous literature.

The data analysis techniques in this study utilized data reduction, data presentation, and verification or drawing conclusions. In the data reduction stage, information obtained from various sources is selected and focused on aspects related to human rights gaps, economic inequality, racial and ethnic discrimination, and the implementation of Law No. 39 of 1999 and Law No. 12 of 2005. Next, the data is presented descriptively and systematically based on the research theme so that the relationship between international legal norms and national law can be analyzed more clearly. The final stage is carried out through verification and drawing conclusions by comparing findings from various literature and legal provisions used. The results of the analysis are then used to obtain an overview of the form of gaps in the fulfillment of human rights and legal efforts needed to strengthen human rights protection based on international standards and the national legal framework.

3. Results and Discussion

3.1. Economic Inequality as a Challenge to the Fulfillment of Human Rights

Economic inequality is an issue closely related to the fulfillment of human rights because differences in the distribution of income, wealth, employment opportunities, and access to resources can determine a person's ability to enjoy their basic rights. From an international human rights perspective, rights are not only understood as freedom from state intervention but also encompass economic, social, and cultural rights that require positive action by the state. When certain groups lack adequate access to education, health care, housing, decent work, and an adequate standard of living, the problem cannot be viewed solely as economic inequality, but also as a matter of equality in the enjoyment of rights. MacNaughton (2020) emphasizes that economic inequality can hinder the full realization of human rights, threaten democracy, and potentially disrupt peace. He also positions inequality as a consequence of economic policy choices, making it the government's responsibility to assess the impact of these policies on human rights.

The relationship between economic inequality and human rights is also evident in the issue of unequal access to public services. Communities with limited economic resources tend to face greater barriers to accessing quality education, healthcare, formal employment, and social protection. This situation can create a cycle of inequality, as limited access in one area can worsen a person's position in another. Balakrishnan and Heintz (2020) explain that the realization of economic and social rights occurs amidst significant income and wealth inequality. They also point out that global inequality is not solely about economic distribution, but also relates to imbalances in state power and policy space. International economic interdependence can lead to the policies of highly influential countries having consequences for the ability of other countries to fulfill the rights of their citizens.

This issue demonstrates that human rights protection requires an approach that goes beyond normative recognition. Economic policies need to be evaluated based on their impact on the most vulnerable groups in society. MacNaughton (2020) proposes the use of human rights impact assessments as a tool to help governments identify the impact of economic policies on human rights fulfillment and income and wealth inequality. Thus, economic development should not be measured solely by economic growth, but also by its ability to expand people's access to basic rights equitably.

In the context of Indonesian law, this issue can be analyzed through Law Number 39 of 1999 concerning Human Rights. This law provides the basis for the recognition and protection of various rights inherent in humans, including rights related to

welfare and the opportunity to receive equal treatment. Furthermore, Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR) strengthens Indonesia's commitment to the principles of equality and non-discrimination in the fulfillment of civil and political rights. Both instruments demonstrate that the state has a legal obligation to ensure that rights are not only formally recognized but also enjoyed in a non-discriminatory manner.

Economic inequality also has an international dimension because a country's policies can influence other countries through trade, investment, debt, taxation, and global economic relations. Balakrishnan and Heintz (2020) emphasize the importance of global cooperation because the international economic structure can limit a country's policy space in realizing economic and social rights. Therefore, reducing human rights disparities requires both national policies and international cooperation that considers the distribution of development benefits. The discussion shows that economic inequality can become a human rights issue when differences in economic conditions cause certain groups to systematically lose the opportunity to enjoy basic rights. A human rights-based approach is crucial to ensure that economic policies are directed towards substantive equality, the protection of vulnerable groups, and the sustainable fulfillment of rights.

3.2. The Impact of Racial and Ethnic Discrimination on the Human Rights of Individuals and Communities

Racial and ethnic discrimination is a form of inequality that directly contradicts the principles of equality and non-discrimination in international human rights law. Discrimination can occur in various areas of life, including education, employment, housing, public services, political participation, and access to justice. Its impact is felt not only by the individual victim but can also affect the community as a whole through marginalization, social segregation, and limited opportunities for economic and political participation. Research by Ahmed, Lundahl, and Wadensjö (2023) shows that ethnic discrimination has been found in the labor and housing markets and can result in minority groups receiving lower wages, experiencing higher unemployment rates, and facing residential segregation.

The structural dimension of discrimination is increasingly important because discriminatory acts do not always take the form of overt treatment based on race or ethnicity. Discrimination can arise through rules, institutional practices, stereotypes, and policies that have disparate impacts on certain groups. An analysis of legal protections in 193 countries shows that gaps remain in protection against racial and ethnic discrimination in the workplace. The study found that more than one in five countries do not explicitly prohibit racial discrimination in employment, while a significant number of countries do not require employers to take measures to prevent discrimination. This situation indicates that the existence of non-discrimination norms does not always result in effective protection in practice.

Racial and ethnic discrimination can also have a cumulative impact on the fulfillment of human rights. When someone experiences discrimination in education, for example, the consequences can continue to affect employment opportunities and income. Similarly, discrimination in housing can reinforce social segregation and limit access to public facilities. Therefore, discrimination cannot be viewed solely as a matter of interpersonal relationships, but also as a matter of social structure and institutions. Ahmed et al. (2023) show that ethnic discrimination in the labor and housing markets can have lasting economic and social consequences for minority groups.

In the Indonesian context, this issue also has strong relevance. Research by Musa et al. (2022) on discrimination against ethnic Chinese demonstrates the existence of various forms of discriminatory practices in Indonesian history and social life, including restrictions on political participation, expulsion, violence, and other discriminatory treatment. This research positions the issue of ethnic discrimination

in relation to the principles of Pancasila, human rights, and equality of citizens. Meanwhile, Firdausy (2020) explains that the implementation of international human rights norms into national law is a complex process because universal norms must interact with the legal system and social context of the country concerned.

The national legal framework provides a crucial basis for addressing this issue through Law No. 39 of 1999 concerning Human Rights and Law No. 12 of 2005 concerning the Ratification of the ICCPR. Law No. 39 of 1999 affirms the principle of respect for human dignity and equality, while the ratification of the ICCPR strengthens Indonesia's obligation to guarantee civil and political rights without discrimination. Both instruments can be used as a normative basis for assessing policies and practices that potentially result in disparate treatment based on race or ethnicity.

Thus, racial and ethnic discrimination is a human rights issue with both individual and collective consequences. These issues not only undermine individual dignity and opportunities but can also create structural inequalities in society. Addressing them requires more than a formal prohibition on discrimination. States need to ensure effective complaint and redress mechanisms, strengthen legal protections, raise awareness of non-discrimination, and ensure that minority groups have equal opportunities in education, employment, public services, and political participation. With this approach, universal human rights principles can be translated into concrete protections for individuls and communities.

4. Conclusion

The research results show that economic inequality and racial and ethnic discrimination remain significant challenges to the fulfillment of human rights from an international perspective. Economic inequality is not only a matter of differences in income and wealth but can also impact people's ability to obtain basic rights, such as education, health, adequate housing, employment, and social protection. When this inequality results in certain groups regularly having less access to basic rights, this condition indicates a gap in the fulfillment of the principles of equality and human rights protection. Therefore, development policies need to be directed at reducing inequality and increasing equal access for all people, especially vulnerable groups.

Furthermore, racial and ethnic discrimination has a broad impact on the rights of individuals and communities. Discrimination can limit access to education, employment, public services, political participation, and justice, and reinforce marginalization and structural inequality. The existence of formal legal rules is insufficient without effective implementation, institutional protection, and accessible redress mechanisms for victims. In the Indonesian context, Law No. 39 of 1999 concerning Human Rights and Law No. 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR) provides an important normative basis for guaranteeing respect, protection, equality, and non-discrimination. Therefore, reducing human rights disparities requires harmonization between international human rights standards and national law, institutional strengthening, effective law enforcement, and policies that ensure that every individual and group can enjoy human rights equally without discrimination.

References

Ahmed, A., Lundahl, M., & Wadensjö, E. (2023). Ethnic discrimination during the Covid-19 pandemic. In Migration and Integration in a Post-Pandemic World, 291–314. Springer.

Balakrishnan, R., & Heintz, J. (2020). Human rights in an unequal world: Structural inequalities and the imperative for global cooperation. Humanity.

Donald, A., Long, D., & Speck, A.-K. (2020). Identifying and assessing the implementation of human rights decisions. Journal of Human Rights Practice, 12(1), 125–148.

Firdausy, A. G. (2020). Measuring human rights legal resilience in the context of ethnic anti-discrimination: Study of universalism or cultural relativism? Proceedings of the International Conference on Law, Administrative and Social Science.

Fraser, J. (2019). Challenging state-centricity and legalism: Promoting the role of social institutions in the domestic implementation of international human rights law. The International Journal of Human Rights, 23(6), 974–992.

García Escobar, G. (2023). Human rights pluralistic universality: A bridge between global norms and cultural diversity. Nordic Journal of Human Rights, 41(2), 171–188.

Kristiansson, L., & Götzmann, N. (2020). National implementation processes for the United Nations Guiding Principles on Business and Human Rights: Towards gender-responsive approaches. Australian Journal of Human Rights, 26(1), 93–109.

MacNaughton, G. (2020). Economic inequality and human rights impact assessments of economic reforms. The International Journal of Human Rights, 24(9), 1311–1332.

Marzuki, S. (2023). Assessing the conformity of human rights paradigm in Indonesian legislation and the rulings of the Constitutional Court. Academic Journal of Interdisciplinary Studies, 12(4), 239.

Musa, M. R. P., Lesmana, A. B., Arthamevia, R. N., Pratama, P. A., & Savitri, N. (2022). Human rights and Pancasila: A case of Tionghoa ethnic discrimination in Indonesia. Indonesian Journal of Pancasila and Global Constitutionalism, 1(1), 119–170.

Oestreich, J. E. (2023). Closing the circle of implementation: The sustainable development goals, universal periodic review, and the rights-based approach to development. The International Journal of Human Rights, 28(1), 69–8.

Race, ethnicity, and discrimination at work: A new analysis of legal protections and gaps in all 193 UN countries. (2023). Equality, Diversity and Inclusion: An International Journal, 42(9), 16–34.

Rudy, R., Natamiharja, R., Magaldi Serna, J. A., & Syofyan, A. (2023). Implementation of civil rights against vulnerable groups in the legal and constitutional system in Indonesia. Hasanuddin Law Review, 8(3), 299–309.

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The data that support the findings of this study are available from the corresponding author upon reasonable request.