



To cite this article: Anis Mashdurohatun, H. Farisal Adib, Sri Endah Wahyuningsih and Adi Sulistiyono (2023). RECONSTRUCTION OF HOUSING DEVELOPMENT BUSINESS REGULATIONS BASED ON JUSTICE VALUE, International Journal of Research in Commerce and Management Studies (IJRCMS) 5 (2): 118-139

RECONSTRUCTION OF HOUSING DEVELOPMENT BUSINESS REGULATIONS BASED ON JUSTICE VALUE

Anis Mashdurohatun¹, H. Farisal Adib², Sri Endah Wahyuningsih³ and Adi Sulistiyono⁴

^{1,2,3}Sultan Agung Islamic University, Semarang, Indonesia.

⁴Sebelas Maret University, Surakarta, Indonesia.

DOI: <https://doi.org/10.38193/IJRCMS.2023.5208>

ABSTRACT

The research background is that the deficit in the availability of houses or the backlog is still high. The backlog, which is still around 11.4 million units for residential needs, must be consistently realized by housing developers in the hope of consistent government subsidy assistance. The aim of the research is to analyze and find housing developer business regulations that are not based on justice values, to analyze and to find the reconstruction of housing developer business regulations that are based on justice values. The research method used in this study uses a constructivism paradigm (legal constructivism) which sees the truth of a legal reality as relative, applies according to a specific context that is considered relevant by social actors, with the Socio Legal Research approach method, because the research to be carried out is aimed at scientific research using systematic steps and controlled, careful and logical, objective and empirical and directed to the target to be solved. The research findings obtained are housing developer business regulations that are not based on values of justice, that the prevailing housing developer regulations show that the state is trying to build a framework for a fair system of relations at the system level, but in developing structures it has not fully provided equal opportunity. The service facilitation process and the resources needed have not been obtained by all parties. Reconstruction of housing developer business regulations based on the value of justice, namely the government does not ignore and pay attention to the aspirations of housing developers, especially in formulating government policies in various aspects of housing developer business regulation and taking into account the rights and compensation that housing developers must receive so that there is justice for housing developers, Norm reconstruction. Law of the Republic of Indonesia Number 1 of 2011 concerning Housing and Residential Areas, Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 55 of 2017 concerning the Implementation of Permits and Non-Permits for Housing Development for Low-Income Communities in the Regions.

KEYWORDS: regulatory reconstruction, housing developer, the value of justice.



INTRODUCTION

Currently, housing supply is still facing a big challenge to complete the backlog of 12.71 million households, and continues to add around 600,000-800,000 new households every year. The PUPR Ministry is gradually targeting increasing public access to livable housing by providing various strategic programs.

In completing the housing backlog, in 2023 it is necessary to develop housing finance that targets several community groups such as the informal Low-Income Communities (MBR), through a rent-to-own scheme combined with contractual saving housing so that they can access Tapera financing. Then, urban communities are directed towards vertical housing with a staircasing shared ownership (SSO) scheme, and the millennial generation, through a mortgage scheme with a longer term adapted to housing careers.

Based on Law Number 1 of 2011 concerning housing and settlements, Article 3 explains that housing developers are required to provide public facilities and infrastructure. The law states that efforts to support regional arrangement and development and proportional population distribution are through the growth of residential areas as well as residential areas. This is adjusted to the spatial layout in order to create a balance of interests. Among them is increasing the usability and efficiency of natural resources for housing development.¹

This development must pay attention to and pay attention to the preservation of environmental functions, both in urban and rural areas. In addition, public facilities must also support development in the economic, social and cultural fields and guarantee the realization of livable and affordable housing in a safe, healthy, orderly and well-planned, integrated and sustainable environment. In other words, public facilities are shared property for spatial planning to create a balance so that they can have a positive and efficient impact according to proportional utilization.²

Article 47 (1) and (4) stipulates that the construction of housing infrastructure, facilities and public utilities can be carried out by the regional government or any person. Infrastructure, facilities and public utilities that have been completed must be handed over to the district/city government based on statutory provisions considering that public facilities are one of the things that must exist in a good housing environment.³

In Law Number 1 of 2011 concerning Housing and Residential Areas, it is explained that each

¹ Law number 1 of 2011 concerning Housing and Residential Areas

² Law of the Republic of Indonesia number 1 of 2011 concerning Housing and Residential Areas

³ Law of the Republic of Indonesia number 1 of 2011 concerning Housing and Residential Areas



developer is required to allocate land to be built to be used as social facilities or public facilities. Among them are drainage, playgrounds, places of worship, connecting roads and green open spaces. The construction of public facilities in residential areas can be carried out by the developer and then handed over to the Regional Government or the community through the local RT or RW. However, if there are developers who do not provide social facilities and public facilities, they will be subject to sanctions, including cancellation of permits, imposition of administrative fines, written warnings, restrictions on construction activities, temporary or permanent suspension of construction work, temporary suspension or permanent suspension of housing management, freezing/revocation of proof of house ownership, temporary control by the government (sealed), obligation to dismantle the building yourself within a certain period, Restriction on business activities, suspension of business licenses, revocation of business licenses, suspension of building construction permits, revocation of building construction permits, orders for demolition of houses, supervision, obligation to restore land function within a certain period of time, revocation of incentives, closure of locations.⁴

On the other hand, developers in carrying out their work experience various obstacles such as licensing and taxation processes. Many housing developers have not fulfilled their obligations to build public facilities (fasum) and social facilities (fasos). One of the obstacles faced is related to compensation for grave land of two percent.⁵

Provision of public funerals is also regulated in Minister of Home Affairs Regulation No. 9 of 2009 concerning Guidelines for Submission of Housing and Settlement Infrastructure, Facilities and Utilities in the Regions that the construction of housing and settlements must be equipped with infrastructure, facilities and utilities.⁶

RESEARCH METHODS

This type of research is qualitative research⁷. Research Approach The approach in this study uses a sociological juridical approach from a sociological point of view as an interpretation or interpretation.⁸

⁴ Law of the Republic of Indonesia number 1 of 2011 concerning Housing and Residential Areas

⁵ Developer Obligations for Provision of Burial Places in Residential Areas. Office of Public Works, Housing and Residential Areas, Kulon Progon Regency Admindpu.

⁶ Regulation of the Minister of Home Affairs No. 9 of 2009 concerning Guidelines for Submission of Housing and Settlement Infrastructure, Facilities, Utilities in the Regions

⁷ Bambang S and Eman Suparman Anis Mashdurohatun, Legal Protection for Creditors in Providing Business Credit with Object of Inventory Warranties Based on Justice Values, J.Eng. Applied Scinces, Volume 14 , Issue 12 , 2019. pp. 4176-4182. Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research, Vol.15 Issue.20. 2017

⁸ Esmi Warassih. Pranata Hukum: Sebuah Telaah Sosiologis, Suryandaru Utama, Semarang: 2005, page. 23-24. See too Anis Mashdurohatun, M Ali Mansyur, Product capabilities dynamic on industrial design carved wood in Small and Medium Enterprises (SMES) Jepara furniture in promoting the protection of intellectual property rights, International



In the sociological approach, it is deeper to study phenomena that occur in society, can be seen from the point of view of the implementation or implementation of the law, so this research uses direct research to obtain data as accurate as possible.⁹ Related to this research, the sources of data used in this study are: Primary Data, is data obtained from statements and information from respondents directly obtained through interviews and observations. Secondary Data, is legal research data obtained directly from the main source, but the data is obtained through intermediaries or other sources such as books, magazines, and journals, from the secondary data of course it has been grouped as follows: Primary Legal Materials, Legal Materials Secondary, and Tertiary Legal Materials. Data collection methods through observation, interviews, and literature studies. Data analysis techniques are qualitative data analysis.¹⁰

RESEARCH RESULTS AND DISCUSSION

1. Implementation of Housing Developer Regulations in Indonesia

Development Developers are companies or individuals engaged in the property sector, where their duties are as builders or developers and in general can be said to be property marketers themselves both in the form of large-scale housing and small-scale housing. As stated in "Article 5 paragraph 1 of Domestic Government Regulation Number 5 of 1974 concerning Provisions Regarding Provision and Granting of Land for Company Purposes: A Housing Development Company is a company engaged in the construction of housing of various types in large numbers. on top of a residential neighborhood unit that is equipped with various environmental infrastructure and social facilities needed by the residents."¹¹

Mentioned in the Law of the Republic of Indonesia No. 8 of 1999 concerning Consumer Protection in article 6 the rights of business actors, in this case a housing developer, include:

- a. The right to receive payments in accordance with the agreement regarding the conditions and exchange rates of goods and/or services traded;
- b. The right to obtain legal protection from consumer actions with bad intentions;
- c. The right to conduct proper self-defense in the settlement of consumer dispute law;
- d. The right to rehabilitation of good name if it is legally proven that the consumer's loss was not caused by the goods and/or services being traded;

Journal of Applied Engineering Research, Volume 12, Issue 19, 2017. pp.8217-8226.

⁹ Muhammad Zainuddin, Pemahaman Metode Penelitian Hukum (Pengertian, Paradigma, dan susunan Pembentukan), CV.Istana Agency, Yogyakarta:2019, page. 22.

¹⁰Agus Irawan Yustisianto, Sri endah Wahyuningsih, & Anis mashdurohatun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, Sch Int J Law Crime Justice, Dec, 2022; 5(12): 513-519

¹¹ Government Regulation Number 5 of 1974 Concerning Provisions Regarding Provision and Granting of Land for Company Purposes



- e. The rights regulated in the provisions of other laws and regulations.¹²

Based on Article 7 of the Law of the Republic of Indonesia No. 8 of 1999 concerning Consumer Protection, the obligations of business actors are:

- a. Have good faith in carrying out its business activities;
- b. Provide correct, clear and honest information regarding the condition and guarantee of goods and/or services and provide an explanation of use, repair and maintenance;
- c. Treating or serving consumers properly and honestly and not discriminatory;
- d. Guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable standards for the quality of goods and/or services;
- e. Providing opportunities for consumers to test and/or try certain goods and/or services and provide guarantees and/or guarantees for goods made and/or traded;
- f. Providing compensation, compensation and/or reimbursement for losses resulting from the use, use and utilization of traded goods and/or services;
- g. Providing compensation, compensation and/or reimbursement if the goods and/or services received or used are not in accordance with the agreement.¹³

That in order to guarantee the availability of infrastructure, facilities and utilities for housing and settlements, it is necessary to manage the infrastructure, facilities and utilities, in the context of sustaining the management of infrastructure, facilities and utilities for housing and settlements it is necessary to transfer the infrastructure, facilities and utilities from the developer to the regional government, the handover of housing and settlement infrastructure, facilities and utilities from the developer to the regional government is regulated in the Regulation of the Minister of Home Affairs Number 9 of 2009 concerning Guidelines for the Handover of Housing and Settlement Infrastructure, Facilities and Utilities in the Regions with the aim of ensuring the continuity of maintenance and management infrastructure, facilities, and utilities in housing and settlement environments. Submission of housing and settlement infrastructure, facilities and utilities based on the principles of:

1. Transparency, namely that the community knows the infrastructure, facilities and utilities that have been submitted and or it is easy for the public to access information related to the delivery of infrastructure, facilities and utilities;
2. Accountability, namely the process of handing over infrastructure, facilities and utilities that can be accounted for in accordance with statutory provisions;
3. Legal certainty, namely guaranteeing the availability of infrastructure, facilities and utilities in housing and settlement areas according to standards, site plans approved by the regional government, as well as the conditions and needs of the community;

¹² Law of the Republic of Indonesia No. 8 of 1999 concerning Consumer Protection

¹³ Law of the Republic of Indonesia No. 8 of 1999 Concerning Consumer Protection'



4. Alignment, namely the local government guarantees the availability of infrastructure, facilities, and utilities for the benefit of the community in housing and settlement areas; And
5. Sustainability, namely the local government guarantees the existence of infrastructure, facilities, and utilities according to their function and designation,¹⁴

In Article 11 of Regulation of the Minister of Home Affairs Number 9 of 2009 concerning Guidelines for Submission of Housing and Settlement Infrastructure, Facilities and Utilities in the Regions it is stated that the Regional Government asks the developer to hand over the housing and settlement infrastructure, facilities and utilities built by the developer no later than 1 (one) year after the maintenance period and in accordance with the site plan approved by the regional government in stages, if the development plan is carried out in stages or all at once if the development plan is carried out not in stages.¹⁵

Based on Article 1 and Article 3 of Law number 1 of 2011 concerning Housing and Residential Areas, what is meant by housing is as follows Housing is a collection of houses as part of settlements, both urban and rural, which are equipped with infrastructure, facilities and public utilities as the results of efforts to fulfill livable housing. Housing and residential areas are organized for:

- a. Providing legal certainty in the implementation of housing and residential areas;
- b. Supporting the structuring and development of areas as well as proportional population distribution through the growth of residential neighborhoods and residential areas in accordance with spatial planning to achieve a balance of interests, especially for MBR;
- c. Increasing the usability and efficiency of natural resources for housing development while still paying attention to the preservation of environmental functions, both in urban and rural areas;
- d. Empowering stakeholders in the field of housing and settlement development;
- e. Support development in the economic, social and cultural fields; And
- f. Ensuring the realization of livable and affordable housing in a safe environment

Healthy, safe, harmonious, organized, planned, integrated and sustainable.

So, infrastructure, facilities and public utilities are requirements that must be completed in a housing. In detail, it is stated that infrastructure is the basic physical equipment of a residential environment that meets certain standards for the need for a decent, healthy, safe and comfortable place to live. Facilities mean facilities in residential areas that function to support the implementation and development of social, cultural and economic life. Public utilities are supporting equipment for residential environmental services.

¹⁴ Regulation of the Minister of Home Affairs Number 9 of 2009 concerning Guidelines for Submission of Housing and Settlement Infrastructure, Facilities and Utilities in the Regions

¹⁵ Regulation of the Minister of Home Affairs Number 9 of 2009 concerning Guidelines for Submission of Housing and Settlement Infrastructure, Facilities and Utilities in the Regions



The construction of housing public infrastructure, facilities and utilities must meet the following requirements:

- a. Compatibility between service capacity and number of houses;¹⁶
- b. Integration between infrastructure, facilities, and public utilities and residential areas; And
- c. Technical provisions for the development of infrastructure, facilities and public utilities¹⁷

Article 134 in Law number 1 of 2011 Concerning Housing and Residential Areas is amended by Article 50 number 14 in Law number 11 of 2020 Concerning Job Creation whose content stipulates that everyone is prohibited from carrying out housing construction that does not comply with the criteria, specifications, requirements, infrastructure, facilities, agreed public utilities, and standards.¹⁸

Article 17 paragraph (6) of Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Residential Areas explains that housing facility standards at least include green open spaces and public facilities. Public facilities itself means the provision of facilities that at least include houses of worship, children's playgrounds, sports venues, and road signs. If the housing developer has made a promise but has not built it or the criteria, specifications, requirements, infrastructure, facilities and public utilities are not appropriate, then administrative sanctions may be imposed which can be in the form of:

- a. Written warning;
- b. Restrictions on development activities;
- c. Temporary or permanent suspension of construction implementation work;
- d. Temporary cessation or permanent cessation of housing management;
- e. Temporary control by the government (sealed);
- f. The obligation to dismantle the building itself within a certain period of time;
- g. Rebuilding housing according to agreed criteria, specifications, requirements, infrastructure, facilities, public utilities, and standards;
- h. Restrictions on business activities;
- i. Freezing of building approvals;
- j. Revocation of building approval;
- k. Freezing/revocation of proof of house ownership;
- l. House demolition orders;
- m. Freezing of business licenses;
- n. Revocation of business license;

¹⁶ Regulation of the Minister of Home Affairs Number 9 of 2009 concerning Guidelines for Submission of Housing and Settlement Infrastructure, Facilities and Utilities in the Regions

¹⁷ Law number 1 of 2011 concerning Housing and Residential Areas

¹⁸ Law number 1 of 2011 concerning Housing and Residential Areas



- o. Supervision;
- p. Cancellation of business licenses;
- q. Obligation to restore land function within a certain period of time;
- r. Revocation of incentives;
- s. Imposition of administrative fines; and/or
- t. Location closure.¹⁹

In addition, the housing developer in question can also be criminally charged if this results in victims/damage to health, safety and/or the environment based on Article 50 point 16 of the Job Creation Law which amends Article 151 of Law number 1 of 2011 Concerning Housing and Residential Areas which reads as follows that everyone who organizes housing construction who builds housing does not comply with the agreed criteria, specifications, requirements, infrastructure, facilities and public utilities as referred to in Article 134 resulting in casualties/damage to health, safety, and/or the environment shall be punished with a maximum fine of Rp. 5,000,000,000.²⁰

Regulation of the Minister of State for Public Housing Number: 11/Permen/M/2008 Concerning Guidelines for Harmonization of Housing and Settlement Areas states Harmony of Housing and Settlement Areas is the arrangement of housing and settlement areas that are harmonious, commensurate, and aligned with the objectives of improving ecological quality, economic growth and development social culture to achieve humane and sustainable housing and settlement development. The Building Base Coefficient, hereinafter abbreviated as KDB, is the percentage ratio between the area of the entire ground floor of the building and the area of plot/planning area controlled. Building Floor Coefficient, hereinafter abbreviated as KLB, is the percentage ratio between the area of all building floors and the area of plot/planning area controlled. Basic Green Coefficient, hereinafter abbreviated as KDH, is the percentage ratio between the total area of open space outside buildings designated for landscaping/greening/agriculture and the area of plotted land/planning areas controlled.²¹

Requirements for Area Conformity aimed at maintaining development consistency and harmony between the development of urban and rural areas with the Regency/City Spatial Plan. The construction of housing and settlement areas may only be carried out in locations that are in accordance with the local Spatial Plan or other planning documents stipulated by the regional government. includes:

¹⁹ Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Residential Areas

²⁰ Law number 1 of 2011 concerning Housing and Residential Areas

²¹ Regulation of the State Minister for Public Housing Number: 11/Permen/M/2008 Concerning Guidelines for the Harmony of Housing and Settlement Areas



- a. Location of residential areas and settlements;
- b. Green open space;
- c. Land use intensity;
- d. Composition of effective and non-effective land;
- e. Cross subsidies;
- f. Social harmony;
- g. cultural harmony;
- h. Adjustment of the home environment with the road corridor;
- i. Harmony of regional infrastructure, facilities and utilities.

To create regional harmony, the proportion of green open space is determined through the KDB and KDH figures for housing and settlement areas, which are calculated transitionally according to the characteristics of the location and density of residential areas. KDB and KDH are areas with the following area composition:

- a. Protected zone with a maximum KDB of 0% and a minimum KDH of 100%;
- b. Rural zone with a maximum KDB of 20% and a minimum KDH of 80%;
- c. suburban zone with a maximum KDB of 30% and a minimum KDH of 70%;
- d. Urban zone with a maximum KDB of 50% and a minimum KDH of 50%;
- e. City center zone with a maximum KDB of 60% and a minimum KDH of 40%;
- f. Metro center zone with a maximum KDB of 70% and a minimum KDH of 30%;
- g. The KDB and KDH preservation zones are in accordance with the provisions in force in their respective regions.

Article 20 describes the effective land which is the total area of plotted land used for residential plots and settlements as well as environmental facilities that are commercial in nature and can be sold to private parties or individuals. Non-effective land is the total area of plotted land used for residential environmental infrastructure, facilities and utilities, including public facilities and social facilities that are non-commercial in nature, of which part of the non-effective land, in accordance with applicable regulations, is handed over to the local government. . The requirements for the composition of effective and non-effective land are percentage figures based on a comparison between effective land and non-effective land, and the total percentage of both is one hundred percent. In the context of harmony between housing and settlement areas, the composition of effective land and non-effective land is regulated by the following parameters:

- a. Effective land area;
- b. Area of infrastructure and utilities;

c. Area of facilities.²²

The composition of effective land and non-effective land is tabulated as follows

Table 3.1. Composition of effective land and non-effective land

Area	≤ 25 Ha	25 – 100 Ha	> 100 Ha
Maximum effective land area	79 %	60 %	55 %
The widest area of infrastructure & utilities (roads and canals).	25 %	30 %	30 %
Smallest facility area (including green open space)	5 %	10 %	15 %

In an effort to accelerate the availability of decent housing for low-income people, it is necessary to facilitate the implementation of permits and non-permits for the construction of housing for low-income people in the regions, the Minister of Home Affairs of the Republic of Indonesia Number 55 of 2017 concerning Implementation of Permits and Non-Permits for Housing Construction for Low-Income Communities in Area. Article 3 states that the Regional Government provides convenience to legal entities that will carry out the construction of housing for MBR in the regions to meet the needs of housing for MBR, in the form of permits and non-permits at the stage of housing development for Low-Income Communities, namely the stages of preparation, pre-construction, construction, post-construction.²³

Article 4 states that legal entities that carry out housing development for MBR are equipped with the construction of infrastructure, facilities and public utilities and those that have been completed by legal entities are handed over to the Regional Government in stages in accordance with statutory provisions.

Article 5 states that legal entities carrying out housing development for MBR in the regions are subject to the following conditions:

²² Regulation of the State Minister for Public Housing Number: 11/Permen/M/2008 Concerning Guidelines for the Harmony of Housing and Settlement Areas

²³ Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 55 of 2017 Concerning the Implementation of Permits and Non-Licensing for Housing Development for Low-Income Communities in the Regions



-
- a. Conducted for a land area of not more than 5 (five) hectares and at least 0.5 (zero point five) hectares
 - b. Located in 1 (one) location designated for the construction of landed houses.
 - c. The implementation of the development is free of charge.
 - d. Land must be in a location that is in accordance with its designation with the regional spatial layout plan. If the regional spatial layout plan is not yet available, the local government will prepare technical considerations for land use management/advise planning for the proposed MBR housing area in accordance with the provisions of the legislation.²⁴

Ease of implementation of Licensing and Non-licensing is carried out through Simplification of Services provided as stated in article 8 through:

- a. Licensing abolition;
- b. Licensing consolidation; And
- c. Completion time acceleration.

Licensing is carried out on:

- a. Location permission;
- b. Flood peil recommendation;
- c. cut and fill permit; And
- d. Traffic environmental impact analysis.

Merger of Licensing is carried out on:

- a. Housing development proposals for MBR submitted by legal entities are combined with a non-dispute statement if the land has not been certified;
- b. The land use permit/spatial use permit is combined with the conformity checking stage of the general spatial layout plan/detailed regional spatial layout plan and land use technical considerations/advise planning; And
- c. The approval of the site plan is processed together with a statement on environmental management, recommendations for firefighters and the provision of a burial site.

Acceleration of completion time is carried out on:

- a. Letter of release of land rights from the land owner to a Legal Entity with a maximum completion time of 3 (three) days;
- b. Application letter, approval and validation of site plan drawings with a maximum completion time of 7 (seven) days;

²⁴ Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 55 of 2017 Concerning the Implementation of Permits and Non-Licensing for Housing Development for Low-Income Communities in the Regions



- c. Measuring and making maps of land parcels with a maximum completion time of 14 (fourteen) days;
- d. Issuance of the Main Building Permit and splitting of the Building Construction Permit with a maximum completion time of 3 (three) days; And
- e. Evaluation and issuance of Decree on the Determination of Land Rights with a maximum completion time of 3 (three) days.²⁵

Article 10 states further provisions regarding the ease of implementing Licensing and Non-Permitting for Housing Development for MBR are regulated by Regional Head Regulations. Includes:

- a. The longest timeframe for each stage in the Licensing and Non-Licensing process;
- b. Submission of environmental management effort documents and environmental monitoring efforts in the form of a statement of commitment to environmental management and monitoring.²⁶

Weaknesses in the regulation of the current housing developer business, there are weaknesses in legal substance, legal structure and legal culture. The obligations of housing developers include: Housing developers release their land in housing in the amount of 30% to the state for social and public facilities. Even though the housing developer pays the land and building rights acquisition tax (BPHTB) as a buyer's tax on the land they buy for housing, the land will still be released to the state at least 30%. The developer must pay a fee to the state for the processing of certificates and splitting of certificates on residential land built by the developer. The land purchased by the housing developer was originally priced at land and building tax (PBB) in accordance with the area of the purchase, but after the land was produced for housing by the housing developer, the government raised the price of land and building tax so that it increased and increased state tax revenue by same location. Residential developers, before purchasing land for housing development, usually have difficulties in applying for location permits and City Planning Statements (KRK), which are one of the regulations required in the construction of housing, although this is very difficult due to bureaucracy and lack of transparency. After the land purchased by the housing developer has been formed and has obtained permits in accordance with existing regulations, the housing developer carries out the construction in accordance with the regulations with a permit in the form of a Building Approval (PBG formerly IMB). if the developer sells the house to the public, then the developer is subject to income tax and value added tax. Supervision and control of the implementation of the mandate of Law number 1 of 2011 concerning Housing and Settlement Areas Article 34 paragraph (4) which states that in terms of housing construction as referred to in paragraph (1), the Government and/or regional governments can provide incentives to agencies law to encourage housing development with balanced occupancy. has

²⁵ Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 55 of 2017 Concerning the Implementation of Permits and Non-Licensing for Housing Development for Low-Income Communities in the Regions

²⁶ Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 55 of 2017 Concerning the Implementation of Permits and Non-Licensing for Housing Development for Low-Income Communities in the Regions



not yet been implemented as mandated in the law, so a more detailed technical regulation is needed to regulate it.

2. Reconstruction of Housing Developer Business Regulations Based on the Value of Equity

Comparison of Laws Regarding Compensation for Housing Developers in the United States, the Netherlands, and South Korea

1. Non-financial compensation initiatives in the United States, among others

- a. Transferable Development Rights (TDRs) are one of several creative land use planning tools that help resolve inequities resulting from land use regulations and which also serve to protect the environment.

Transfer of Development Rights (TDRs) are a type of zoning technique used to permanently protect land that has conservation value (such as agricultural land, community open spaces, or other natural or cultural resources) by redirecting development that should occur in the land (sending area). to an area planned to accommodate growth and development (recipient area).

- b. This theory argues that land ownership entitles the owner to a certain 'bundle of rights'. Among these rights are the right to own land, the right to exclude others, and the right to develop property. The right to develop, separated from the property concerned, is referred to as the sender's or grantor's property, and transferred to another property, is referred to as the assignor's or assignee's property. More broadly, the sender's property is said to be located in the sender's area and the recipient's property is said to be located in the recipient's area. The result is that the sending property is prohibited from developing to the same extent as the surrounding property, and property owners in the sending area receive monetary compensation for this restriction while property owners in the receiving area pay permission for additions. all development beyond what he should have allowed.
- c. The Claims Clause prohibits the government from taking "private property" for the "public interest" without "fair compensation." This provision was part of the first Ten Amendments to the Constitution, known as the Bill of Rights, which was ratified in 1791, and was included to protect Americans from abuse when the government simply expropriated property, leaving citizens with no recourse under the law (Mandelker, 2004). Legal bodies have evolved over time defining the terms 'property', 'common use' and 'fair compensation.' In this chapter, we focus on the impact of TDR on 'fair compensation' requirements. In general, when the government appropriates a landlord's property, under the eminent domain doctrine (Kanter, 2006), the landowner must receive a fair market value for the expropriation. However, even government regulation was eventually deemed capable of being classified as 'taking', and a body of laws known as 'taking regulation' was developed.

2. Non-financial compensation initiatives in the Netherlands, among others



- a. the Space for Space program which in principle needs planning must have a causal relationship with development. A cost recovery system in a broad and regional sense has been introduced in the new Land Development Law (*Grondexploitatie wet*). Voluntarily, developers in an area can contribute to the spatial quality of the area.
 - b. The pay-as-you-grow planning principle can be included as an interesting additional tool in Dutch planning. A paradigm shift towards more development-oriented planning. With development planning policies, the government's command and control role changes to a more active role in creating sustainable development
3. Non-financial compensation initiatives in Korea, among others
- a. Urban development in Korea relies heavily on the traditional command-and-control regime. Recently non-coercive pro-market tools have been introduced into the Korean planning system. The density bonus technique, which is a variant of incentive zoning, represents a new Korean innovative planning tool. Density reward schemes are implemented through a Type I DUP process. The complex and often necessary negotiations required to operate a DUP process can result in high transaction costs. To encourage relevant actors to save on transaction costs, intensive planning interventions are accompanied by the DUP process.
 - b. Type I DUPs appear to be well-suited for realizing defined design features at a limited scale from single-line wells. It also makes a major contribution to reducing financial pressure on the government to provide public infrastructure. However, the DUP process failed to provide adequate instruments to preserve the community's heritage which has historical significance and environmental resources. Under a Type I DUP, the transfer of unused development rights between separate sites is not permitted. Given the sizeable area of resource land that appears to extend beyond the boundaries of a single plot, small-scale density development, with only intra-zonal transfers allowed, may not serve conservation and/or conversion purposes.

Legal foundations that allow the use of more innovative tools that approach traditional non-financial compensation have recently been introduced into the Korean planning system. To facilitate the process of non-financial compensation, the guidelines and standards outlined need to be established a priori. Since Korean non-financial compensation is still emerging, it is too early to be able to find and specifically evaluate cases of non-financial compensation processes.

The fifth precept of Pancasila "Social Justice for All People" is translated comprehensively that the state is responsible for creating equality of justice in the process of national and state life, both in the fields of politics, law-government-human rights, economy as well as culture and education. As part of realizing social justice, the state is responsible for providing equal protection of the rights of its citizens and social justice can be achieved by each citizen, including in the framework of people's welfare.



For example, the state provides facilities or compensation only to housing that is built for subsidized housing which is a government program. In accordance with regulations already issued by the government, including establishing Government Regulation No. 64 of 2016 concerning Housing Development for low-income communities, Minister of Public Works and Public Housing Regulation No. 5 of 2016 concerning Permits to Construct Buildings, Presidential Instruction No. 3 of 2016 concerning Simplification Housing Development Licensing, Presidential Regulation No. 91 of 2017 concerning Business Acceleration, and Minister of Home Affairs Regulation No. 55 of 2017. The above regulations apply only to subsidized housing developers.

Meanwhile, government non-subsidized housing does not receive regulations that provide facilities and compensation for housing that developers build. Meanwhile, the state is in regulation, namely the 1945 Constitution article 28 H, Law number 39 of 1999 concerning Human Rights in article 40, and law number 1 of 2011 concerning Housing and Settlements article 19 explains that the state is obliged to fulfill, protect and respect the rights of its citizens to housing. So this is where the state has not been fair between housing that is built for government program subsidized housing and government program non-subsidized housing while both aim to provide the housing needs of the Indonesian people.

All housing developers who build regular housing or government non-subsidized housing are obliged to comply with regulations on housing and settlements. While the rights as a housing developer have not been obtained, while the housing intended for government program subsidies has received its rights.

However, all developers, both those who build non-subsidized and subsidized housing, are still not awarded financial and non-financial compensation rights as was done in the Netherlands to housing developers that housing has their rights in managing PBG, both ease of management and cost facilities.

Currently housing supply is still facing a big challenge to complete the backlog of 12.71 million households, and continues to add around 600,000 to 800,000 new households every year. Meanwhile, the existing regulations mandate that the State is responsible for providing and facilitating the acquisition of housing for the community through housing and settlement areas as well as community self-help. The provision and ease of obtaining such houses is a functional unit in the form of spatial planning, economic life, and socio-culture that is able to guarantee environmental sustainability in line with the spirit of democracy, regional autonomy, and openness in the order of life in society, nation and state.

Meanwhile, housing developers are working together with the state to work together to resolve the



backlog problem.

Implementation of Housing and Residential Areas is planning, development, utilization and control activities, including institutional development, funding and financing systems, as well as the role of the community in a coordinated and integrated manner. The results of planning and designing a house must comply with housing standards which include general provisions and technical standards. Through Law Number 11 of 2020 Concerning Job Creation (UU Ciptaker), several provisions in Law Number 1 of 2011 concerning Housing and Residential Areas have been amended.

Meanwhile, the important points that have become changes to the Housing and Settlements Law after the enactment of the Job Creation Law are as follows:

1. The Job Creation Law changes provisions regarding technical, administrative, spatial and ecological requirements to become provisions based on standards set by the Government.
2. The Job Creation Law provides an opportunity for development actors to be able to convert the obligation to build simple houses into flats or forms of funds for the construction of public houses
3. The Job Creation Law changes the terminology for location permits to suit spatial use activities. The term location determination which is still included in the law does not refer to a location permit but to the stage of land acquisition for public interest which is regulated in different laws.
4. The Job Creation Law mandates the establishment of the Agency for the Acceleration of Housing Implementation (BP3), which aims to realize the provision of public housing for low-income people in Indonesia. This BP3 was formed by the central government, President Joko Widodo has issued a Presidential Regulation ensuring the establishment of the Agency for the Acceleration of Housing Implementation (BP3), which aims to accelerate the provision of decent and affordable public housing for low-income people (MBR). This has been stated in Presidential Regulation Number 9 of 2021 concerning the Agency for the Acceleration of Housing Implementation which was stipulated on February 2, 2021, this is a follow-up to the provisions of Article 50 and Article 185 letter b of Law No. 11/2020 concerning Job Creation.
5. The Job Creation Law regulates that development actors who carry out residential neighborhoods or ready-to-build areas that do not separate the residential neighborhoods or kasiba into residential neighborhood units or ready-to-build neighborhoods are subject to administrative sanctions. Previously, this stipulation was a criminal stipulation with a maximum penalty of Rp 5 billion.

At present, the Government has issued several derivative regulations which have become the Job Creation Law for the housing and residential area sector, including:



1. Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Residential Areas
2. Government Regulation Number 21 of 2021 concerning Implementation of Spatial Planning.
3. Presidential Regulation Number 9 of 2021 concerning the Agency for the Acceleration of Housing Implementation.

The government is expected not to differentiate regulations for subsidized housing developers that are intended for low-income people, with commercial housing developers that are not intended for low-income people or the general public. The compensation scheme for all housing developers can be in the form of:

1. Financial compensation

Financial compensation, namely the government waives costs arising from regulations that require the construction of housing by housing developers.

As an alternative to financial compensation, among others:

- a. for the management of PBG, do not pay retribution fees for the PBG because housing developers fulfill their obligations in supporting the government, one of which is by handing over public facilities and social housing facilities that are built according to housing business regulations in Indonesia
- b. The 1% VAT income tax is applied to subsidized and commercial housing developers because the obligations of subsidized and commercial housing developers are the same.

2. Non-financial compensation

Non-financial compensation, namely the government removing the permits required in the regulations required in the construction of housing-by-housing developers.

As an alternative to non-financial compensation, among others:

- a. In the event that the Regional Spatial Plan is not yet available, the Regional Government shall prepare a Land Use Technical Consideration/Advise Planning for the MBR Residential Area which is applied for by both subsidized and commercial housing developers.
- b. Service Simplification is provided through:
 - Licensing is carried out on:
 - a. location permission
 - b. flood peil recommendation
 - c. cut and fill permission
 - d. traffic environmental impact analysis
 - Merger of Licensing is carried out on:



- a. Housing development proposals for MBR submitted by legal entities are combined with a non-dispute statement if the land has not been certified
 - b. land use permit/spatial use permit combined with the conformity checking stage of the general spatial layout plan/detailed regional spatial layout plan and land use technical considerations/advise planning
 - c. site plan approval is processed together with a statement on environmental management, recommendations for firefighters, and provision of burial grounds.
- Acceleration of completion time is carried out on:
- a. Letter of release of land rights from the land owner to a Legal Entity with a maximum completion time of 3 (three) days.
 - b. application letter, approval and validation of site plan drawings with a maximum completion time of 7 (seven) days;
 - c. measuring and making maps of land parcels with a maximum completion time of 14 (fourteen) days;
 - d. issuance of the Main Building Construction Permit and splitting of the Building Construction Permit with a maximum completion time of 3 (three) days; And
 - e. evaluation and issuance of Decree on the Determination of Land Rights with a maximum completion time of 3 (three) days.

Reconstruction of housing developer business regulations based on the value of justice, so as not to create differences in treatment between subsidized housing developers and commercial housing developers, while the obligations and support/participation of all housing developers are the same, so all housing developers should have the same rights.

By reconstructing Law of the Republic of Indonesia number 1 of 2011 concerning Housing and Residential Areas in:

- a. Article 33 paragraph (1) becomes

The regional government is obliged to provide licensing facilities for legal entities submitting housing development plans

- b. Part Seven, Ease of Development and Acquisition of Houses for MBR, Article 54 becomes

(1) The government is obligated to meet the housing needs of the community

(2) In order to meet the housing needs of the community as referred to in paragraph (1), the Government and/or regional governments are required to facilitate the construction and acquisition of houses through a gradual and sustainable housing development planning program.

(3) Facility and/or assistance in the construction and acquisition of housing for the community as referred to in paragraph (2) can be in the form of:



- a. housing acquisition subsidies;
- b. self-help home stimulants;
- c. tax incentives in accordance with the provisions of laws and regulations in the field of taxation;
- d. licensing;
- e. insurance and guarantee;
- f. provision of land;
- g. land certification; and/or
- h. infrastructure, facilities, and public utilities.

(4) The provision of facilities as referred to in paragraph (3) letter a is stated in the deed of agreement on credit or financing for the acquisition of houses for the community.

(5) Removed

By reconstructing the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 55 of 2017 Concerning the Implementation of Licensing and Non-Licensing for Housing Development for Low-Income Communities in the Regions to be enforced on all housing developers, namely subsidized housing developers and commercial housing developers, by replacing:

- a. Title changed to
Regulation Number Year ... Concerning the Implementation of Licensing and Non-Licensing for Housing Development
- b. Article Article 5 paragraph (4), replaced with
In the event that the Regional Spatial Plan is not yet available, the Regional Government shall prepare a Land Use Technical Consideration/Advise Planning for the housing area being applied for.
- c. Article 6 paragraph (1) becomes:
The Regional Government through the Investment Service and PTSP provides facilities for the implementation of permits and non-permits for housing development
- d. Article 8 paragraph (1) becomes
Service Simplification as referred to in article 6 paragraph (1) is provided through:
 - a. deletion of Licensing;
 - b. amalgamation of Licensing; And
 - c. acceleration of completion time.
- e. Article 8 paragraph (2) becomes
Service Simplification as referred to in paragraph (1) is provided through:
 - a. deletion of Licensing;
 - b. amalgamation of Licensing; And
 - c. acceleration of completion time.



- f. Article 9 paragraph (1) becomes
Licensing as referred to in Article 8 paragraph (2) letter a is carried out for:
 - a. location permission;
 - b. flood peil recommendations;
 - c. cut and fill permit; And
 - d. traffic environmental impact analysis
- g. Article 9 paragraph (2) becomes

The Merger of Licensing as referred to in Article 8 paragraph (2) letter b is carried out on:

- a. Housing development proposals submitted by legal entities are combined with a non-dispute statement if the land has not been certified;
- b. land use permit/spatial use permit combined with the conformity checking stage of the general spatial layout plan/detailed regional spatial layout plan and land use technical considerations/advise planning; And
- c. site plan approval is processed together with a statement on environmental management, recommendations for firefighters, and provision of burial grounds
- h. Article 9 paragraph (3) becomes

Acceleration of completion time as referred to in Article 8 paragraph (2) letter c is carried out for:

- a. letter of release of land rights from the land owner to the Legal Entity with a maximum completion time of 3 (three) days;
- b. application letter, approval and validation of site plan drawings with a maximum completion time of 7 (seven) days;
- c. measuring and making maps of land parcels with a maximum completion time of 14 (fourteen) days;
- d. issuance of the Main Building Construction Permit and splitting of the Building Construction Permit with a maximum completion time of 3 (three) days; And
- e. evaluation and issuance of Decree on the Determination of Land Rights with a maximum completion time of 3 (three) days.

So that new regulations emerged that apply equally to all housing developers, both subsidized housing developers and commercial housing developers.

CONCLUSION

Housing developer business regulations are not based on the value of justice, the state seeks to accelerate the availability of decent housing for low-income people, the state facilitates the implementation of licensing and non-permitting for housing development for low-income



communities in the regions as explained in the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 55 of 2017 concerning Implementation of Licensing and Non-Licensing for Housing Development for Low-Income Communities in the Regions. This shows one of the state's efforts to provide compensation for Low-Income Communities for Low-Income Communities but there is a gap in how compensation for housing developers other than housing for Low-Income Communities, the housing developer also provides support or participation to the state by carrying out its obligations such as handing over Infrastructure , Housing and Settlement Facilities and Utilities, tax payments, fulfillment of licensing requirements, environmental management. Reconstruction of housing developer business regulations based on the value of justice, so as not to create differences in treatment between subsidized housing developers and commercial housing developers, while the obligations and support/participation of all housing developers are the same, so all housing developers should have the same rights.

BIBLIOGRAPHY

- Agus Irawan Yustisianto, Sri endah Wahyuningsih, & Anis mashdurohatun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, Sch Int J Law Crime Justice, Dec, 2022; 5(12): 513-519
- Anis Mashdurohatun, M Ali Mansyur, [Product capabilities dynamic on industrial design carved wood in Small and Medium Enterprises \(SMES\) Jepara furniture in promoting the protection of intellectual property rights](#), International Journal of Applied Engineering Research, Volume 12, Issue 19, 2017.
- Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research, Vol.15 Issue.20. 2017
- Bambang S and Eman Suparman Anis Mashdurohatun, [Legal Protection for Creditors in Providing Business Credit with Object of Inventory Warranties Based on Justice Values](#), J.Eng. Applied Scinces, Volume 14 , Issue 12 , 2019.
- Developer Obligations for Provision of Burial Places in Residential Areas. Office of Public Works, Housing and Residential Areas, Kulon Progon Regency Admindpu.
- Esmi Warassih. Pranata Hukum: Sebuah Telaah Sosiologis, Suryandaru Utama, Semarang:2005.
- Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Residential Areas
- Government Regulation Number 5 of 1974 Concerning Provisions Regarding Provision and Granting of Land for Company Purposes
- Law number 1 of 2011 concerning Housing and Residential Areas
- Law of the Republic of Indonesia No. 8 of 1999 concerning Consumer Protection



Muhammad Zainuddin, Pemahaman Metode Penelitian Hukum (Pengertian, Paraadigma, dan susunan Pembentukan), CV.Istana Agency, Yogyakarta: 2019.

Regulation of the Minister of Home Affairs No. 9 of 2009 concerning Guidelines for Submission of Housing and Settlement Infrastructure, Facilities, Utilities in the Regions

Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 55 of 2017 Concerning the Implementation of Permits and Non-Licensing for Housing Development for Low-Income Communities in the Regions

Regulation of the State Minister for Public Housing Number: 11/Permen/M/2008 Concerning Guidelines for the Harmony of Housing and Settlement Areas