

Meeting the Right to Adequate Housing in Indonesia : National Legal Synchronization Perspective

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Abstract

The right to adequate housing as one of the most important of all basic human rights. It is recognised in a number of international human rights instruments, especially guaranteed by the International Covenant on Economic, Social and Cultural Rights (ICESCR). Indonesia has ratified ICESCR by Law No. 11 of 2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights. Likewise, The Constitution of the Republic of Indonesia 1945 article 28H protects everyone to settle and have a good and healthy environment. This article focused on the synchronization of government policies related to the right to adequate housing.

Keywords: human rights, adequate housing, policy.

1. Introduction

The issue of the fulfillment of the people's right to adequate housing is one of the strategic issues facing the whole world. The right to housing is also a list of issues the Human Rights formulated by the United Nations Human Rights (<http://www.ohchr.org/EN/Issues/Pages/ListOfIssues.aspx>). Housing rights is an important construct in affirming the fulfillment of economic, social and cultural. Housing rights signify a real effort for ensuring the fulfillment of rights and a adequate life. Housing rights is an essential element that strengthen the fulfillment of the fundamental rights of others, such as the right to food, health, etc (Majda El Muhtaj, 2009 : 142). Indonesia constitution Article 28H guarantees everyone to settle and have a good and healthy environment. Indonesia also has established Law No. 11 Year 2005 on the Ratification of the International Covenant on Economic, Social, and Cultural Rights.

According to Raquel Rolnik (2013: 4), as a party to the International Covenant on Economic, Social and Cultural Rights, Indonesia has an obligation to ensure fulfillment of the right to adequate housing, while ensuring non-discrimination on any grounds. The right to adequate housing should not be interpreted in the strictest sense as merely having a roof over one's head; it includes guarantees (a) legal guarantees of ownership; (b) the availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) the location; and (g) the adequacy of the culture.

2. Legal Synchronization Theory

The term between synchronization and harmonization are often used interchangeably, although in fact different. The term harmonization of the law is more widely used in the study of comparative law that explains the context of the encounter between two or more systems or traditions of law (legal tradition) are different, such as the civil law system and common law legal system or Islamic tradition. However, in this case can also be matched with the synchronization between the elements in the legal system, especially between legislations one another.

With the condition of harmony, does not appear a mismatch, paradox or contradiction between the norms of law or the rule of law component. Harmonization of the law have the function of prevention and mitigation functions of the legal disharmony. Thus the harmonization of law is legal discovery activities will, the will of the people and the moral will through legal interpretation and legal reasoning, as well as providing a rational argument against the results of interpretation and legal reasoning. In towards good governance, harmonization of laws must reflect coherence in the application of the legislation, which consists of regulatory mechanisms, administrative arrangements, the anticipation of change and the rule of law, and otherwise in alignment is also reflected in the harmonization of laws (Kusnu Goesniadhie, 2010: 11-12). Formulation ideal step in the harmonization of the national legal system is an attempt to align, synchronize, adjust, balance and consistency elements of the legal system in order to integrate the various legal systems, so arranged in the order harmony with one another within the framework of national legal systems. Thus, efforts to harmonize national legal systems is a "sine qua non" for ensuring the rule of law, rule of law, law enforcement, and legal protection that core justice and truth (Teguh Prasetyo, Abdul Halim Barkatullah, 2012: 332-333).

3. Synchronization of The National Legal Policy on The Fulfillment of The Right to Adequate Housing in Indonesia

Housing is a basic right for every citizen of Indonesia, as mandated in the Constitution of the Republic of Indonesia 1945 (Indonesia Constitution) Article 28 H paragraph (1) provides “every person has the right to live physical and spiritual prosperity, live, and get a good and healthy environment and receive medical care”. As a fundamental right, as well as a prerequisite for everyone to survive and enjoy a dignified life, peaceful, safe and comfortable, the provision of housing that meets the principles of adequate and affordable for everyone has become a global commitments as outlined in the Habitat Agenda (Istanbul Declaration on Human Settlements) and the Millennium Development Goals (MDGs). Therefore, the Government is responsible to help the community to live, protect, and improve the quality of housing and the environment.

Indonesia has established some regulations to meet the right to adequate housing as a derivation of Indonesia Constitution, as follows:

- 1) Article 40 of Law No. 39 of 1999 on Human Rights provides: “Everyone has the right to settle and live adequately”.
- 2) Article 11 paragraph (1) of Law No. 11 of 2005 on Economic Social and Cultural (Ratification of the International Covenant on Economic, Social and Cultural): "The State recognizes the right of everyone to an adequate standard of living for his family, including adequate food, clothing and housing, and to the continuous improvement”.
- 3) Law No. 1 of 2011 on Housing and Settlement Area. It regulates the duties and authority of the Government, Provincial Government, and district/ city. In the operation of housing and residential areas, everyone is entitled:
 - a. occupy, enjoy, and / or have / acquire a adequate house in a healthy environment, safe, harmonious, and orderly;
 - b. undertake the construction of housing and residential areas;
 - c. obtain information relating to the implementation of housing and residential areas;
 - d. benefit from the implementation of housing and residential areas;
 - e. obtain adequate reimbursement for losses suffered directly as a result of the implementation of housing and residential areas; and
 - f. filed a class action suit to the court against the implementation of housing and residential areas are detrimental to society.
- 4) Law No. 20 of 2011 on the Flats. This law aims to ensure the realization of flats livable and affordable, improve the efficiency and effectiveness of space utilization, reduce the extent and prevent the housing and slums, directing the development of urban areas, meet social and economic needs, empower stakeholders, and provide legal certainty in the provision, tenancy, management, and ownership of flats. The settings in this legislation also shows alignments countries in meeting affordable housing needs of low-income and public participation in the implementation of flats. This Act gives broad powers to the Government in the field of operation of flats and giving authority to local governments to carry out the implementation of flats in the area in accordance with their authority. The authority granted is supported by funding from the state budget revenues and expenditures and budget revenue and expenditure.
- 5) Law No. 23 of 2014 on Regional Government. Housing problems associated with central and local government affairs within the framework of regional autonomy, including in the government affairs mandatory. Article 12 paragraph (1) provides Government Affairs Mandatory related to Basic Service includes:
 - a. education;
 - b. health;
 - c. public works and spatial planning;
 - d. housing and residential areas;
 - e. peace, public order, and the protection of society; and
 - f. social.
- 6) Government Regulation No. 88 of 2014 on the implementation of the Housing and Area Development Settlement. This government regulation set up to implement the provisions of Article 11 of Law No. 1 of 2011 on Housing and Settlement Region and Article 12 of Law No. 20 of 2011 on the Flats. It is necessary to stipulate Government Regulation on the Implementation of the Housing and Area Development Settlement.
- 7) Regulation of the Minister of Public Works and Housing No. 22/ PRT/ M/ 2015 on Support Facility for Civil Servants Housing Savings. This regulation is a refinement of previous policy that is not optimal. It can be seen in considerations that the product services Advisory Board for Civil Servants Housing Savings can support civil servants to own homes through the provision of an advance, not optimal utilization, so it should be given assistance facility.

- (8) Regulation of the Minister of Public Works and Housing No. 38/ PRT/ M/ 2015 on Infrastructure, Facilities, and Public Utilities For Public Housing. The aim of this regulation to improve low-income people's access to adequate housing. Government gives infrastructure support, facilities, housing and public utilities.
- 9) Regulation of the Minister of Public Works and Housing No. 39/ PRT/ M/ 2015 on the Amendment of the Regulation of the Minister of Housing Number 06 of 2013 on Guidelines for the Implementation of Stimulants Help Housing Organization. This regulation aims to increase community self-reliance in building adequate housing in a healthy environment, safe, harmonious, and sustainable community development needs to be done and the increased role of local government.
- 10) Regulation of the Minister of Public Works and Housing No. 42/ Prt/ M/ 2015 on Advances For Low-Income Communities To Improve Accessibility Credit/ Financing Subsidized Housing. Government provides and facilitates the acquisition of a home for the community through the organization of housing and residential areas and community self-reliance. Besides, this regulation also established in order to increase the accessibility of low-income people in the acquisition of the house, should be given aid credit advances / financing of housing.

Based on the National Long-Term Plan for 2005-2025, the construction of housing and infrastructure and supporting facilities will be improved, so the need for shelter is equipped with the infrastructure and support facilities are met for the whole community that is supported by long-term housing finance system that is market friendly, efficient, and accountable as well as the cities without slums materialized (Cities without slum) in accordance with the Millennium Development Goals (MDGs). In line with the fulfillment of adequate housing, infrastructure development aimed at improving piped drinking water coverage nationwide up to 100 percent; an increase in the proportion of households with access to basic sanitation worth up to 100 percent; and the development of a centralized sanitation systems. The fulfillment of housing and infrastructure and supporting facilities directed to:

- 1) the implementation of sustainable residential development, adequate, decent and affordable by the community and supported by the infrastructure and facilities are adequate settlement and qualified professionally managed, credible, independent and efficient.
- 2) the construction of housing and infrastructure and means of supporting independent, able to raise the potential of funding from the public and the capital markets, create jobs, and improve the distribution and dissemination of development.
- 3) the construction of housing and infrastructure development and support facilities are concerned about the function and environmental balance.

According to Housing and Settlement Policy in the Medium Term Development Plan 2014-2019, development of housing and residential areas include the provision of housing, as well as drinking water and proper sanitation and affordable and prioritized in order to improve the living standard of the bottom 40 percent.

- 1) The facilitation of the provision of adequate and affordable shelter for 2.2 million households from the government budget in reducing the accumulated shortage of places to stay, especially low-income communities to five million households in 2019 through: (i) the provision of public houses for 900,000 households supported with the distribution of aid housing finance in the form of mortgage (KPR) prosperous footprint, mortgage apartment units, and mortgage hire purchase for flats, (ii) the supply of rental flats for 550,000 households, (iii) the provision of mortgages self to 450,000 household, (iv) the construction of new homes stimulant aid self-help to 250,000 households, and (v) the development of special homes in the border areas, post-disaster and post-conflict to 50,000 households.
- 2) Encourage community self-reliance and the business world in the provision of adequate housing for 2.2 million households to support the drop in housing shortages.
- 3) Improving the quality of the house is not habitable for 1.5 million households, including in the framework of the handling of the slum areas.
- 4) The achievement of alleviating the urban slums to 0 percent over the handling of a slum area covering 38 431 hectares and increase community self-reliance in 7683 villages.
- 5) The achievement of 100 per cent of drinking water for the entire population of Indonesia, which is performed through three approaches, namely the optimization and development of new (supply side), increased efficiency of water services (demand side), and the creation of an enabling environment (enabling environment).
- 6) Optimization of water service delivery is done through (i) the facilitation of SPAM taps namely aid program taps towards 100% taps Healthy and network development SPAM MBR in 5700 the region and (ii) the facilitation of SPAM non-taps, namely aid program non-PDAM towards 100% healthy non-PDAM managers and network development SPAM MBR in the region of 1,400. While new development is done through (i) development of special zones namely SPAM SPAM urban slums to 661 600 household connections (SR), SPAM fishing area for SR 66,200, and SPAM water prone to 1.70592

- million SR; (ii) the development of community-based SPAM to 9.66592 million SR; (iii) development of urban ie SPAM SPAM IKK to 9.9912 million SR and SPAM Capital Expansion and Urban Expansion to 4.2688 million SR; (iv) development SPAM Regional to SR 1,320,000 in the 31 region.
- 7) Improving the efficiency of water service is done through the application of the principle in case of water, water-saving and water savings nationally. The application of these principles is done through (i) the implementation of the Drinking Water Safety Plans on the source component, operators and consumers in all districts/ cities; (ii) optimizing the mix of domestic water in all districts/ cities; (iii) the application of the efficiency of water consumption at the household level about 10 liters/ person/ day each year and at the level of commercial and public facilities around 10 percent annually.
 - 8) Creation of an enabling environment is done through (i) the preparation of planning documents drinking water as a reference to the construction of drinking water in all districts/ cities which include the Master Plan for Water Supply System, a strategic plan for water supply area and annual plan drinking water supply; (ii) improving data collection on water as a reference for planning and budgeting of drinking water in all districts/ cities; (iii) facilitating the development of local regulations that guarantee the provision of water services in all districts/ cities.
 - 9) Increasing people's access to adequate sanitation (domestic wastewater, garbage and drainage environment) to 100 per cent at the level of basic needs, namely (i) for infrastructure management of domestic waste water with the construction and improvement of wastewater infrastructure system of centralized scale city, region, and communal services in 438 cities/ districts (serving 34 million), as well as improving the quality of the local waste water management system through improved quality management of urban sludge and construction of sewerage treatment plant (IPLT) in 409 cities/ districts; (ii) for waste management infrastructure with the construction of the landfill sanitary landfill in 341 cities/ districts, the provision of communal facilities 3R in 334 cities / districts, 3R centralized facilities in 112 cities/ districts; (iii) for settlement drainage infrastructure in the reduction of inundation area of 22,500 hectares in the settlement area, including 4,500 hectares in the slums; and (iv) development activities, facilitation, supervision and campaigns and advocacy in 507 cities / regencies throughout Indonesia.
 - 10) Increased security and safety of buildings including keserasiannya to the environment through (i) supervision especially government-owned buildings in all districts/ cities; (ii) the preparation of norms, standards, guidelines and criteria (NSPK) for entire buildings and organizing the implementation of green building in all districts/ cities; and (iii) creating building codes that can be a reference for the organization and arrangement of buildings in all districts/ cities.

Based on Housing and Settlement Policy in the Strategic Plan of the Ministry of Public Works and Housing for 2015-2019, housing and settlement development zone, for the 2010-2014 housing development achievements in supporting the provision and financing of housing has made efforts, among others:

- 1) Development of regulations and policies to create a favorable climate in the construction of housing and residential areas (designated Law No. 1 of 2011 on Housing and Settlement area, Law No. 20 of 2011 on the Flats, Government Regulation No. 88 of 2014 on the Implementation of the Housing Development and Settlement Region).
- 2) Provision of appropriate housing that is supported by the infrastructure, facilities and public utilities (including: construction of high-rise apartments as much as 843 Twin Block/ Tower Block or 18.216 units with a total capacity of 143.072 inhabitants, facilitation of the development of PSU housing and residential areas that serve as many as 261.768 units home, facilitation and stimulation of environmental arrangement slum area of 912,5 hectares, facilitation of the development of a special house as many as 6.384 units, which includes a special home for workers, fishermen, border areas, new residents in the border NTT- East Timor, population relocation and accelerated development Jatigede Papua and West Papua).
- 3) Expansion Program Pro-People Cluster 4 through Stimulants Help Housing Organization (includes: New Housing Development Organization with as many as 64.757 units, the Housing Quality Improvement Organization with the achievements of as many as 596.162 units, PSU Organization with the achievements of as many as 62.909 units, and Facilitation Pre-Certification and Post-Certification with the achievements of as many as 44.242 field); and development of long-term housing finance system through: Lending for housing finance with the achievements of 370.250 units through a pattern of Housing Finance Liquidity Facility (FLPP) and amounted to 89.081 units through a pattern of subsidizing interest margin / cash advance. Until 2014, it still remain backlog of 7.6 million housing units.

5. Conclusion

Indonesia government laws to meet the right to adequate housing are synchronized. The implementing

regulations created some indicators and targets to measure the achievement of the fulfillment of adequate housing. The central government policies on the right to adequate housing also has actually stimulated the local governments to take policy as a response, both on the particulars availability of housing, financial and technical support.

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