

## STUDY OF THE LEGAL RESPONSIBILITY OF DEVELOPERS FOR THE PROVISION OF PUBLIC FACILITIES AND SOCIAL FACILITIES

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### ABSTRACT

The provision of public facilities and social facilities in housing is needed for the welfare and comfort of the community in housing. The provision of these facilities involves developers and the Government. In accordance with Cirebon Regency Regional Regulation No. 7 of 2015, the implementation of the provision of infrastructure and facilities in housing refers to the principles of openness, accountability, legal certainty, partiality, and sustainability. In connection with this, the purpose of this paper is to be able to find out the Developer's responsibility in carrying out the procurement of public facilities and social facilities as a condition of submission of housing to the Local Government. The method of approach used here is socio-legal which is associated with social problems. Related to the management of infrastructure and facilities in housing is still a problem, namely the developer has not submitted housing facilities to the Local Government. This happened due to the default of the developer to consumers and the lack of assertiveness of the Regional Government in implementing Government Regulation No. 6 of 2015.

**Keywords:** facility provision, developer, local government

### Introduction

The goal of housing and settlement development is to create an environment and human living space that is in accordance with the essential needs of life, namely the fulfillment of needs including security, protection, tranquility, self-development, health and beauty, and other needs in the preservation of humane life.

Discussing housing policies in general, is inseparable from discussing policies on social facilities and public facilities. It is necessary to have a greater role for the government and the private sector in providing housing support facilities. In order for the implementation of the policy to run well, the government issued regulations and standards governing the provision of social facilities and public facilities in a residential environment.

These regulations include Law No. 4 of 1992 concerning Housing and Settlements. Later replaced by Law No. 1 of 2011 concerning Housing and Settlement Areas. Regulation of the Minister of Home Affairs No. 1 of 1987 concerning the Submission of Environmental Infrastructure, Public Utilities, and Housing Social Facilities to Local Governments which was later replaced by Regulation of the Minister of Home Affairs No. 9 of 2009 concerning Guidelines for Submission of Housing and Settlement Infrastructure, Facilities and Utilities in the Region . (Purnomo et al., 2011)

According to the Regulation of the Minister of Home Affairs No. 9 of 2009, in the procurement of social and public facilities as required, various stages have been carried out, starting from the initial stage to management. This process becomes an integrated process with the overall development process. In accordance with Permendagri No. 9/2009 above in Article 11 Paragraph 1 and Article 2, it is stated that the local government requests the developer to hand over housing and settlement infrastructure, facilities, and utilities. The delivery period is no later than 1 (one) year after the maintenance period and according to the site plan that has been approved by the local government.

The Delivery of Infrastructure, Facilities, and Utilities Facilities in accordance with Article 1 Item (3) Can be Done Gradually (If the Plan is Done Gradually) and Done at Once If the Development Plan is Done Not Gradually. Submission of Social Facilities and Public Facilities After being carried out by the Developer to the Regional Government, the Developer is no longer responsible for its maintenance. The responsibility has fully shifted to the local government and housing residents. In accordance with Article 22 Paragraph 1, Paragraph 2, and Paragraph 3, it is stated that the Regional Government can cooperate with developers, private business entities, and or communities in the management of infrastructure, facilities, and utilities (Purnomo et al, 2011).

In the case of such cooperation, the one who is responsible is the manager/developer. Therefore, the developer is allowed to provide social and public facilities without incurring significant losses. The developer is only obliged to hand over the mature land to the local government, then the local government will appoint the relevant agencies to carry out the construction of the facilities. But sometimes problems arise when there is no compatibility between the developer's promises to prospective residents and also the housing marketing strategy. These problems cause the developer not to hand over social and public facilities to the local government, which results in opportunities for developers or third parties to misuse the facilities (Purnomo et al, 2011).

The outbreak of cases in the property or housing business basically begins with the discrepancy between what is listed in the brochure or advertisement in the form of product information, with what is contained in the binding agreement for sale and purchase signed by consumers. In this case, it is about the procurement of public facilities. Financing in the construction of public facilities and social facilities is included in the house price details. Because the community not only buys a house but also buys public facilities and social facilities contained therein. So that the Developer should not experience significant losses when building it. But the reality in the field is that there is still a lot of housing that has not been built in accordance with the criteria, specifications, requirements, facilities, infrastructure, and public utilities that have been promised. There are still housing developers

who postpone the construction of public facilities for various reasons, do not build at all and there are even developers who do not explain what public facilities are promised by housing developers or do not include public facilities promised in PPJB or in brochures to buyers. Which ultimately caused the buyer to experience losses.

Based on the above background, the formulation of the problem in this writing is how the responsibility of the developer is in carrying out the procurement of public facilities and social facilities as a condition for the delivery of housing to the local government? With the aim of being able to find out how the responsibility of the developer in carrying out the procurement of public facilities and social facilities as a condition of housing delivery to the local government.

### Research Method

In this research, the method used is the "Socio-Legal Research" method. The socio-Legal Research method can be defined through 2 (two) things, namely: First, Socio-Legal by conducting a textual study of Legislation and government policies to explain the philosophical sociological, and juridical problems of written law. Second, the study approach is carried out by combining an interdisciplinary to explain very broad legal phenomena such as power relations in the social, cultural, and economic context in which the law is located (Irianto, 2013). This research is a descriptive-qualitative study, focusing on the collection and analysis of qualitative data to describe and understand the phenomena related to the legal responsibility of developers. Primary data will be collected through in-depth interviews with involved stakeholders, such as property developers, relevant government officials (e.g., from the spatial planning and housing departments), and community members who utilize public and social facilities.

Secondary data will include legal documents, such as regulations related to the provision of public and social facilities by developers, as well as relevant literature reviews. The data analysis process will involve organizing and simplifying the collected data to facilitate further analysis. This includes identifying key themes or categories that emerge from interviews, documents, and field observations, and interpreting the categorized data to understand the social and legal implications of developers' responsibilities in providing public and social facilities

### Result and Discussion

#### Definition of Public Facilities and Social Facilities

The terms public facilities and social facilities (fasum and fasos) are more commonly heard to describe facilities commonly used by the public. In regulations on public facilities and social facilities, the terms public facilities and social facilities are not found. But public facilities and social facilities are terms for infrastructure, facilities, and public utilities. The terms public facilities and social facilities are used to make it easier to mention them.

Public facilities are "facilities held for the public interest, such as roads, public transportation, waterways, bridges, flyovers, underpasses, bus stops, public lighting,

electricity networks, places of worship, flood canals, sidewalks, busway lanes, landfills, and so on" (Nurnawati & Hibatullah, 2018).

Meanwhile, social facilities are "facilities needed by the community in a residential environment which include health facilities, education, shopping and commerce, worship, recreation/culture, sports and playgrounds, government & public services and public cemeteries" (Anonymous & Purwaningsih, 2014).

In Article 1 paragraphs (21, 22, and 23) of Law Number 1 of 2011 concerning Housing and Settlement Areas, what is meant by infrastructure is "Completeness of the physical basis of a residential environment that meets certain standards for decent, healthy, safe, and comfortable living needs", while facilities are "Facilities in a residential environment that function to support the implementation and development of social, cultural, and economic life", and public utilities are "Completeness of support for residential environment services".

In Article 1 points (1, 2, and 3) of the Regulation of the Minister of Home Affairs Number 9 of 2009 concerning Guidelines for the Delivery of Housing and Settlement Infrastructure, Facilities, and Utilities in the Regions, it is also stated that the definition of infrastructure is "The basic physical completeness of the environment that allows the housing and settlement environment to function properly", while facilities are "supporting facilities that function for the organization and development of economic, social, and cultural life", and public utilities are "supporting facilities for environmental services".

In the Big Indonesian Dictionary Online, what is meant by public facilities is "Facilities provided for the public interest, such as roads and public lighting devices" Social facilities are "Facilities provided by the government or private sector for the community, such as schools, clinics, and places of worship".

The objectives of providing public facilities and social facilities are as follows:

- a. Achieving the welfare and prosperity of the people  
Since public facilities and social facilities are one of the forms of public interest, the purpose of their provision is the same as the purpose of the public interest, namely for the welfare and prosperity of the housing community (Dwithia, 2014).
- b. As a forum for social interaction between housing residents  
With the provision of social facilities in housing, it is hoped that it can become a forum or place for housing residents to carry out social interactions and fulfill the needs and satisfaction of housing residents in the social, mental, and spiritual fields (Sukmawati & Yuliasuti, 2014)
- c. As a way of enticing consumers to buy housing  
"One of the purposes of building public facilities and social facilities is because it is one of the factors that make consumers buy housing" that the availability of complete and adequate public facilities and social facilities is one of the factors that make consumers buy houses in a housing complex. If the developer provides complete facilities, consumers will be more interested because these facilities will definitely further improve the standard of living and welfare of the residents of the housing (Sukmawati & Yuliasuti, 2014).
- d. Meeting the needs of the community in activities  
"One of the purposes of providing housing facilities is also to make it easier for housing residents to meet their needs and access the desired facilities without having to leave the

housing area". By fulfilling the needs of residents without leaving the housing area, it can save time, energy, and costs as well as ease of accessibility to housing facilities so that it will be more efficient.

e. As an improvement in the quality of the housing area/region

If in a housing estate, there are complete various kinds of facilities such as shopping centers, recreation or sports venues. Then it will affect the quality of the housing area/region. If social facilities are complete, the value of land and buildings will tend to be high in housing and will attract investors to use the area as a business activity (Fahirah , 2010)

**Regulation of Provision of Public Facilities and Social Facilities by Developers**

Based on Law Number 1 Year 2011 on Housing and Settlement Areas and Government Regulation Number 14 Year 2016 on the Implementation of Housing and Settlement Areas Housing and settlement areas that are comfortable and attractive to live in can be created through the provision of complete and adequate social facilities and public facilities. Public facilities and social facilities are needed by the community in a housing and settlement area. To provide these public facilities and social facilities, it is necessary to have a greater role for the Government and the private sector in the provision of housing support facilities. So that the implementation of the policy runs well. So the government issued regulations and standards governing the provision of social facilities and public facilities in a residential environment.

These regulations include Law Number 4 of 1992 concerning Housing and Settlements. Later replaced by law Number 1 of 2011 concerning Housing and Settlement Areas. Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas. Regulation of the Minister of Home Affairs Number 1 of 1987 concerning the Submission of Environmental Infrastructure, Public Utilities, and Housing Social Facilities to Local Governments which was later replaced by 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 Region.

**Developer's Responsibility in Providing Public Facilities and Social Facilities as a Condition of Housing Transfer to Local Government**

Law No. 1 Year 2011 on Housing and Settlement Areas is the legal basis for the implementation of housing and settlement area development, starting from the planning stage, development stage, utilization stage, to the control stage of housing and settlement areas. However, not a few implementers, in this case housing developers (developers), violate the rights of consumers as users which is detrimental to consumers.

The following are forms of consumer rights violations committed by housing developers, as follows:

a. Low quality of building construction

Violations of consumer rights committed by housing developers can be in the form of low-quality building construction, for example in the form of sloping/uneven foundation construction, the use of iron that does not meet standards, the combination of cement and sand that does not meet standards, the use of low-quality wood and so on which is detrimental to consumers as users. This is a form of violation of consumer rights that have

been regulated in Law No. 1 of 2011 concerning Housing and Settlement Areas Article 129 letter a, which states that "Everyone has the right to occupy, enjoy, and/or own/obtain a decent house in a safe, healthy, harmonious and orderly environment".

The provisions of Article 8 of Law No. 8/1999 on Consumer Protection prohibit business actors (developers, contractors, or sub-contractors) from building or producing houses that are not in accordance with the technical specifications or building quality offered during the initial offering (direct selling or indirect selling).

Business actors providing construction services (planners, implementers, or construction supervisors) are prohibited from building houses that are not in accordance with the technical specifications specified in the approved Budget Plan (RAB), reducing the number of materials so as to affect the low quality of the building. Meanwhile, developers are prohibited from trading house buildings that are not in accordance with the quality, level, composition, processing, style, fashion, or specific use as stated in the brochure.

Article 134 of Law No. 1 of 2011 concerning Housing and Settlement Areas also explains that "Every person is prohibited from organizing housing development that is not in accordance with the agreed criteria, specifications, requirements, infrastructure, facilities, and public utilities". When referring to Article 134 of the PKP Law above, the developer should be obliged to build houses based on the provisions of the applicable laws and regulations, so as not to harm and violate consumer rights.

b. Construction of public facilities and social facilities that do not meet the requirements

Another form of violation committed by developers is related to violations of the collective rights of housing consumers. The violation is about the construction of public facilities and social facilities that are not in accordance with the requirements. For example, inadequate road networks, unavailability of clean water networks (either drilled wells or pam water), poor drainage, unavailability of landfills, unavailability of commercial / shopping facilities, not built educational facilities, recreational and sports facilities that are not built, the absence of electricity networks and street lighting and so on.

If the infrastructure, facilities, and public utilities built by housing developers are not in accordance with the requirements, then this is a form of violation of Law No. 1 of 2011 concerning Housing and Settlement Areas Article 29 paragraph (1) and paragraph (2) and Article 47 paragraph (1) to paragraph (4) regarding the requirements for the construction of public facilities and social facilities. The construction of public facilities and social facilities must fulfill administrative, technical, and ecological requirements as mentioned in Article 29 paragraph (1) and paragraph (2) of Law No. 1/2011 on Housing and Settlement Areas.

- 1) Article 47 paragraphs (1) to (4) of Law Number 1 of 2011 concerning housing and residential areas also explains the requirements for the development of infrastructure, facilities, and public utilities which include:
- 2) the development of housing infrastructure, facilities, and public utilities is carried out by the government, local government, and/or every person.
- 3) the development of infrastructure, facilities, and public utilities must be carried out in accordance with plans, designs, and licenses.

- 4) the construction of housing infrastructure, facilities, and public utilities must meet the requirements, namely the suitability between service capacity and the number of houses, integration between infrastructure, facilities, and public utilities and the residential environment, and technical provisions for the construction of infrastructure, facilities, and public utilities.
- 5) infrastructure, facilities, and public utilities that have been completed by each person must be handed over to the regency/city government in accordance with the provisions of laws and regulations.
  - a. Because the availability of public facilities and social housing facilities is an obligation of housing and settlement development organizers. This can be seen in Law Number 1 of 2011 concerning Housing and Settlement Areas. Article 19 of Law Number 1 of 2011 states that "the implementation of housing and housing is carried out to meet housing needs as one of the basic human needs for improving and equitable distribution of people's welfare".
  - b. The implementation of houses and housing is carried out by the Government, Regional Governments, and/or every person who guarantees the right of every citizen to occupy, enjoy, and/or own a decent house in a healthy, safe, harmonious, and orderly environment.
- c. Building housing in potentially hazardous locations

Building housing, apart from being aesthetically pleasing, must also be comfortable, healthy, and functional. Having good building quality or specifications is not enough, if without paying attention to the safety and comfort of its residents. So it is forbidden to build housing in potentially dangerous locations. For example, building in locations that have the potential for natural disasters, such as floods and landslides. As stipulated in Article 140 of Law No. 1 Year 2011 on Housing and Settlement areas states that "Every person is prohibited from building, housing, and/or settlements in places that have the potential to cause danger to goods or people."

Housing must not be built in locations with the following potential hazards:

  - 1) Accident hazards The main accident hazards are collisions with other motor vehicles, fire and explosion hazards, falls, and drowning.
  - 2) Noise and vibration Excessive noise, sometimes accompanied by vibration is usually generated by railroads, airports, traffic, heavy industry, ship whistles, and so on. Housing should not be located on sites that are constantly subjected to uncontrolled noise, especially at night.
  - 3) Odors, smoke, and dust Sources of unpleasant odors are usually :
    - a. Factories, industries, especially abattoirs, tanneries, and factories producing animal products; rubber, chemical, and fertilizer industries, textile dyeing or washing; paper, soap, and paint factories; and gas plants.
    - b. Landfills, especially where the destruction process involves burning.

- c. Rivers fouled with sewage water, or fecal treatment plants that are not running properly.
- d. Livestock farming, especially pigs and goats, especially when kept in crowded and dirty conditions.
- e. Traffic fumes from motor vehicles and coal-fired trains.

Frequent sources of smoke and dust are industries, railroads, garbage dumps, and fires. Housing near potentially hazardous locations is:

- 1) Near hospitals, vulnerable to infectious diseases from patients
  - 2) Near a river, there is a possibility of abrasion and flooding
  - 3) Near gas stations, worried about fire hazards
  - 4) Near downhill and uphill, prone to traffic accidents, because on the downhill the speed of the vehicle is faster and the location of the incline requires driver concentration
  - 5) Near or under a sutet, worried about radiation and the danger of collapsing sutet towers
  - 6) Near factories, worried about pollution and factory noise from employees and the sound of factory machinery
  - 7) Near military complexes, frequent military exercises, and gunfire If the housing developer builds housing in a location that has the potential to cause danger, for example, building in the Extra High Voltage Air Line (SUTET) area or in disaster-prone areas such as floods and landslides, then the developer not only violates the laws and regulations but also the developer does not guarantee the safety and comfort factors of its residents.
- d. Land certificates that the developer did not provide to consumers

The implementation of house purchase payments can be made by credit and can be done with cash or cash gradually. With the provision that if the house payment has been paid off by the buyer, the developer will submit a house certificate that has been renamed in the name of the buyer. But in reality, there are some consumers who experience, that the house payment has been paid in full but the certificate is not submitted by the developer for various reasons and asked to be patient to wait.

Housing and settlement development is expected to be carried out by developers in good faith in carrying out their business activities. Developers must provide clear, correct, honest, and reliable information. Developers who do not hand over land certificates to consumers, not only violate laws and regulations but also harm the interests of consumers.

Article 130 letter b of Law Number 1 Year 2011 on Housing and Settlement Areas regulates one of the developer's obligations, where the developer as a business actor is obliged to protect the interests of consumers as users. Article 130 letter b of Law Number 1 Year 2011 concerning Housing and Settlement Areas states that "In the implementation of housing and settlement areas, everyone is obliged to participate in preventing the implementation and settlement areas that are detrimental to the interests of others and/or the public interest."

- e. The time of handing over the house is not in accordance with the agreement



Agreements made by developers and consumers as outlined in the sale and purchase binding agreement are expected to be carried out by both parties in accordance with the laws and regulations. PPJB will prevent a detrimental action from the developer against consumers.

Broadly speaking, the PPJB contains matters relating to agreements between developers and consumers, including the time of handover of buildings. The developer promises to hand over the house building in accordance with the time agreed upon according to the PPJB. Must perform its obligations properly in accordance with the agreement.

In accordance with Article 16 paragraphs (1) and (2) of Law No. 8 of 1999 concerning Consumer Protection, which states that business actors offering goods and/or services through orders are prohibited from:

- 1) Not fulfilling the order and/or completion time agreement as promised;
- 2) Not keeping the promise of a service and/or performance.

### Conclusion

The implementation of the obligation for developers to provide public facilities and social facilities must be in accordance with the provisions of Law Number 1 of 2011 concerning Housing and Settlement Areas and Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas. The implementation of the developer's obligation to provide public facilities and social facilities is carried out with various processes starting from the initial stage of applying for a location permit to build housing, to the process of building public facilities and social facilities in accordance with the site plane, then the public facilities and social facilities that have been built are submitted to the Regional Government, the submission can be done in stages, with the submission time no later than 1 (one) year after the maintenance period and according to the site plan approved by the Regional Government. Once handed over the developer is no longer responsible for the maintenance and management of these public facilities and social facilities. The responsibility has fully shifted to the Local Government and Housing residents. The Local Government may cooperate with developers, private business entities, and/or the community in the management of infrastructure, facilities, and utilities. In the case of such cooperation, the one who is responsible is the manager/developer.

### Acknowledgments

It is expected that the provision of public facilities and social facilities will be implemented by developers in accordance with the provisions of Law Number 1 of 2011 concerning Housing and Settlement Areas and Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Facilities. So developers always build public facilities and social facilities in accordance with the plan. To effectively carry out the handover of public facilities and social facilities by developers, the Government is expected to tighten supervision of housing developers so that developers submit public facilities and social facilities to the Regional Government and public facilities and social facilities can be managed properly.

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