



Ratio Legis Provisioning Settings Public Flats in Law Number 20 Year 2011 About Flats

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Abstract

Law Number 20 concerning Flats was prepared because the state has the responsibility to protect the entire Indonesian nation, among others, through the implementation and fulfillment of housing that meets a decent quality of life including through the construction of flats that are healthy and comfortable, as this is the philosophical foundation of the Law. - Invite the apartment as stated in the Preamble. This type of research is legal research, which is a research that is carried out by examining the applicable laws and regulations to answer the legal problems under study. Legal research is a research by analyzing legal rules and laws based on dogmatic law, legal theory, and legal philosophy. The normative side that will be studied is Law Number 20 of 2011 concerning Flats, especially the Legislative Ratio of the arrangement of general flats in Law Number 20 of 2011 concerning flats. The legislative ratio regulating the provision of public flats is related to the responsibility of the state in meeting the needs of decent housing for low-income housing, especially in urban areas. Ensuring the availability of public flats is part of the implementation of the state's responsibility in fulfilling the need for adequate and affordable housing for low-income people as mandated by the Constitution.

Keywords: *Ratio Legis; Flats; Quality of Life*

1. Introduction

That Indonesia's national development aims to realize a prosperous, just and prosperous society, as mandated by the Constitution of the Republic of Indonesia year 1945, or later in this paper called the Constitution, where one form of community welfare is the fulfillment of the needs of decent housing for all people.

Therefore, the construction of housing and settlements also plays a role in fostering and shaping the character of the nation, which must be nurtured and developed for the continuity and improvement of people's lives and livelihoods. Housing and settlements are not only seen as a means of living needs but

more than that, namely creating the process of human settlement in creating the living order of the community and itself in placing its identity, as well as in terms of establishing the field of national resilience (Sutedi, 2009).

Sustainable and environmentally sound development is a development that meets the needs of today's generation without compromising opportunities for future generations to get a chance at life, with the aim of achieving ecological, economic, socio-cultural, political and security defense sustainability (Tjahja, 2001).

Vertical residential development or flats are considered appropriate in supporting a harmonious, healthy and balanced urban arrangement, with effective and efficient land use and refers to a quality urban spatial plan. In addition, the construction of flats is intended in order to realize improvements in the quality of life of the community, especially in densely populated cities, which is accompanied by improvements in the quality of housing, which is not only an improvement in the quantitative sense, but includes qualitative improvements by allowing the implementation of housing in accordance with its nature and function.

According to Law No. 20 of 2011 on Flats, flats consist of:

1. Public flats are flats that are organized to meet the needs of homes for low-income people.
2. Special flats are flats that are organized to meet special needs.
3. State flats are state-owned flats that serve as residences or residences, family building facilities, as well as support the implementation of the duties of officials and / or civil servants.
4. Commercial flats are flats held for profit.

2. Methodology

This type of research is a legal research, which is a research conducted through a way of reviewing the rules and laws that apply to answer the legal problems studied (Ibrahim, 2012). Legal research is a research by analyzing the rule of law and law based on dogmatic law, legal theory, and legal philosophy (Marzuki, 2011). The normative side that will be reviewed is Law No. 20 of 2011 on Flats, especially the *Legis Ratio* of the provision of public flats in law number 20 of 2011 on flats.

As a legal research related to the basic arrangement of partnerships related to the obligation to provide public flats in the Flats Law, this study uses several approaches in order to understand the legal issue more holistically. First, the approach of legislation (*statute approach*) (Soekanto, 1998), namely by reviewing and researching the legislation related to consistency between the basic constitution of the 1945 Constitution, and several laws and other legal rules related to flats. Second, conceptual approach, which is an approach by studying and studying the doctrines or principles of law that can be used as a basis in solving legal problems faced.

3. Result and Discussion

3.1. Home as a Basic Human Need

In living his life, every person / human has a need, which needs have a level of priority to be met, ranging from basic needs or basic needs, continued to secondary needs, tertiary needs, and so on. This means that basic needs must be met first, then try to meet the next needs, because basic needs are needs that must be met. Included in the basic needs of human beings are dressing (clothing), eating (food) and

houses / residences (boards). Home includes basic human needs in addition to clothing and food, because the house has an important function and role for human life, in addition to being a place to shelter and gather comfortably and a place for families to do daily activities, the house is also a means of coaching and family education in order to prepare future generations of quality.

A house as a place to live is not only a building in a physical sense, but also as a place of residence and the fulfillment of the conditions of a decent life from the point of view of various aspects of people's lives. Broadly speaking, the house serves to provide protection to humans from weather disturbances that are not in accordance with human living conditions, provide a sense of security and peace for the whole family, keep the occupants away from all health problems, and provide protection against security disturbances (Frick, 2006).

So strategic is the role of home / residence for human life, so that the constitution of the Republic of Indonesia imposes the responsibility of fulfilling the needs of a decent home for everyone becomes the responsibility of the state. This relates to the responsibility of the state to protect the entire nation of Indonesia and to realize the welfare of the people.

As a basic or basic need, the needs of the home will continue to exist and develop according to the stages and cycles of human life. In its current development, the house as a basic necessity not only serves as a shelter, but also to meet the other needs of the owner, for example located in a strategic location, affordable prices and meets decent housing standards.

In fact, the fulfillment of a decent house / residence, the harder it is to meet because of various problems and obstacles, among others because of the limited land available, especially in urban areas compared to the rapid population growth. This leads to a gap between the availability of decent and affordable homes (especially for low-income people) with the number of families who do not yet have a home getting bigger (housing backlog). Therefore, it is necessary for the state's impartiality towards low-income people (MBR) in obtaining a decent home/ residence, so that the whole community can meet its basic needs, in this case the house.

3.1.1. Housing Management

The fulfillment of public housing needs can be used as a benchmark for the realization of community welfare, because the house is one of the basic needs of the community, which has a strategic role to shape the personality of the nation. This is stated in the constitution of the Republic of Indonesia, which among others states that a prosperous life is born inwardly and resides in a good, healthy and safe environment is everyone's right.

That the state is responsible for fulfilling the need for a proper place to live / house as part of its responsibility in protecting the entire Indonesian nation, especially for low-income families who, due to their limited abilities, need government support to obtain adequate housing / housing. The state responsibility is carried out by the government which is given the authority as a supervisor in housing management activities (organizing housing and residential areas / apartment management) as stipulated in laws and regulations relating to the housing sector. The main objective of housing management activities is to ensure the availability of decent and affordable housing / housing, so that people in all regions of Indonesia are able to own and occupy a decent house or apartment.

The guidance carried out by the government in housing management activities includes authority in the areas of planning, development, regulation, control and supervision, in accordance with the scope of its authority, both central and regional governments by involving the role of the community. Housing development planning is meant as a plan which is an integral part of the overall national development

plan and regional development, which is determined and contained in the long-term, mid-term development plans as well as annual plans as stipulated in the prevailing laws and regulations. Housing development within the scope of housing management includes the construction of facilities, public facilities and utilities in a residential area.

What is meant by infrastructure, namely, such as roads, waterways (drainage), waste water disposal networks. Meanwhile, the facilities included are health, education, worship facilities, parks. As for public utilities, namely electricity networks, telephone networks, transportation networks, gas networks, fire engines, and public street lighting facilities. Through the housing development planning program, the government has also made it easy for MBR to obtain a house with a housing finance system that is comprehensive and integrated.

3.1.2. Live able Homes at Affordable Prices

The state is responsible for protecting the entire Indonesian nation through the implementation of housing and settlement areas so that people are able to live and occupy decent and affordable houses in a healthy, safe, harmonious and sustainable environment throughout Indonesia. Residence has a strategic role in shaping the character and personality of the nation as well as an effort to develop a complete Indonesian human being, with identity, independent and productive. Therefore, the state is responsible for ensuring the fulfillment of the right to housing in the form of adequate and affordable housing.

Sustainable housing is a term used in connection with the Brundtland Report at the United Nations in 1987. In the report referred to, it is stated that sustainable development is the improvement of the quality of life in a sustainable manner and for that it is necessary to improve the quality of the settlements themselves, both those that meet the needs of the current generation, but without reducing the ability of future generations to meet their needs. Since the publication of the Report, the use of the term sustainable development has spread and is used around the world.

All efforts that are continuously made to harmonize, integrate and increase economic-social and ecological values can be called the development of housing and settlements that are environmentally sound and the development of sustainable housing and settlements (Kuswantojo and Salim, 1997). The statutory regulations governing the housing sector both the Flat Law states clearly that the state is in favor of low-income people (MBR), as it is stated in the explanation of each of these laws. In this regard, the Government and / or Local Governments are required to meet the needs of low-income housing at affordable prices according to their purchasing power, as well as to facilitate the construction and acquisition of houses through a gradual and sustainable housing development planning program.

3.1.3. Low Income Communities (MBR)

The provision of housing for low-income families, both landed houses and flats, is regulated in the Law on Housing and Settlement Areas and the Law on Flats. The launch of the One Million Houses Program by the government where the main target is MBR, is a manifestation of the state's support for MBR in meeting housing needs. The legislation in the housing sector clearly states the government's support for MBR.

The limited purchasing power of the MBR in obtaining / owning a livable house, (house or common apartment unit) is the reason for the government to provide its support through various policies including financial support. Apart from financial support, the government and regional governments according to their respective authority are also responsible for providing land for housing development and settlement areas.

The financial support referred to is to provide facilities for MBR in obtaining livable houses, which the government provides through various policies, such as tax incentive programs, interest difference subsidies and down payment subsidies, all of which are channeled through the state revenue and expenditure budget. The launch of various policies in order to support the program to build a million houses for the people, especially for low-income families, is expected to gradually resolve the housing backlog. Of the million houses built, the total allocated for MBR is around 603,000.

Based on the ability to access houses, MBR is divided into 3 (three) segments, namely:

1. An MBR who already owns land or a house but is unable to build or repair his house.
2. MBR who can afford to buy a house but their ability to repay housing loans is still low.
3. MBR who cannot afford a house at all.

Of course, government intervention is different for each segment. For MBR that already owns land or a house, the government can build Self-Help Houses and provide subsidies through the Housing Financing Liquidity Facility (FLPP) program. Meanwhile, for low-income families who cannot afford a house at all, the government provides Rental Simple Flats (Rusunawa). In order to determine which people are classified as MBR, the government has set criteria as indicators for communities that are included in MBR, which includes a limit on MBR household income and household income. This means that the income limit for low-income households is the value of the largest household income as a condition of being able to access the facilities provided by the government for MBR in obtaining a house. The houses obtained include landed houses, flat units (rusunami / rusunawa), and self-help houses. Currently, the government provides a maximum income limit of up to Rp. 8,000,000, - except for Papua and West Papua Provinces of Rp. 8,500,000.

The provision for the maximum income limit above is an update to the previous provision which stipulates that the maximum income limit is Rp. 4,000,000 to buy a landed house, and Rp. 7,000,000 to buy a flat. The purpose of this regulatory reform is to broaden the reach of the people who can afford to buy a house.

In the new regulation as mentioned above, in addition to determining the maximum income limit for MBR, it also regulates the limits on the selling price of public landed houses and public flats, limits on land area and floor area of public landed houses and floor area of common flat units, the value of which is determined based on location. For example, for the Jakarta area, the limit on the selling price of a general apartment unit is around Rp. 320,000,000 (for each administrative city and district in DKI Jakarta Province there is a difference in the selling price limit for the general syllabus), and the selling price limit for the general system for East Java is Rp. 284,400,000.

According to the author, the various policies made by the government to provide housing for low-income families must also be followed by running a partnership pattern with the community, in this case developers or development actors, particularly subsidized housing developers, among others by simplifying licensing regulations which are complex and require time. which is old. Likewise, the government does not often change regulations suddenly related to building specifications when construction is underway, which can harm the developer. developer-rated policies.

The government needs to pay attention to this, so that the partnership that is built with the community / developer can be well established based on balanced rights and obligations, so that more people / developers will be interested in participating in providing housing for low-income families. This

is because the government will not be able to solve the housing backlog problem alone due to budget constraints both from the APBN and APBD.

3.2. Main Problems of Public Housing

In fact, the fulfillment of people's homes is one of the constitutional rights that are the responsibility of the government in accordance with the mandate of the constitution. Various government policies as an effort to overcome the problem of public housing have been made, but in reality there are still many obstacles in overcoming the fulfillment of people's housing needs, especially decent and affordable housing for low-income people.

There are at least three main factors or obstacles in the fulfillment of housing for low-income families, namely the limited availability of land for housing construction for low-income families, the limited ability of MBP to absorb the housing market, and the low involvement of the community in providing adequate housing for low-income families. Apart from the three factors mentioned above, inconsistent legislation in the housing sector creates legal uncertainty, which is also an obstacle to the provision of proper housing for low-income families, including the inconsistency in the provision of public flats with the principle of partnership in the Law. Flat as the subject of study in this research. The imposition of obligations on development actors that are not based on the formation of a fair partnership, causes the community not to be interested in participating in meeting the needs of decent housing for MBR.

Broadly speaking, problems in the form of obstacles and obstacles related to the implementation of housing management in Indonesia can be described as follows:

1). There are still central government policies that are incompatible with local governments regarding the implementation of public housing which confuses developers. An example is the implementation of the flat in Jakarta, where the Provincial Government of DKI Jakarta issued a policy that only those who have the right to live in the apartment hold a DKI Identity Card. Another example is where in several regions, the local government charges retribution for flat-houses built with funds sourced from the APBN, even though they are not included in the object of retribution based on the provisions in the regional levy law. The inconsistency of this policy resulted in the rusunami project at a price in accordance with the Government's provisions which should have been earmarked for MBR, shifting to target the middle market, in order to avoid losses to developers.

2). In building flats, there is no regulation that requires developers to provide subsidies without losing money. The provision of vertical housing experiences obstacles due to the limited ability of APBN funds, therefore it requires developer participation in its development. However, in order for the allocation of the built flats (general flats) to be right on target for MBR, it is hoped that subsidies from the developer will be in the form of certain obligations that are not detrimental.

3). Many of the Rusunawa and special houses that have been built by the government are not yet occupied.

4). The requirements in the Home Ownership Credit program with the Housing Financing Liquidity Facility (KPR-FLPP) scheme, which is only given to houses built with type 36, make it more difficult for MBR to get it because of their limited economic capacity.

Those are some of the obstacles and obstacles in the implementation of housing that must be resolved immediately, given the increasing number of housing needs, especially for low-income families who live in big cities. When these various obstacles and obstacles are not resolved immediately, the

housing problem is difficult to overcome, as a result the housing deficit is getting higher from year to year. Because housing is a basic human need, it is as important as human needs for clothing and food. Government attention to the availability and ability of people to obtain foodstuffs must be the same as attention to the availability of housing for the entire community.

3.3. Legis Ratio of Provision of Public Flats

As it is known, along with the high population growth rate, especially in urban areas, the need for housing has also increased. However, because on the one hand the economic capacity of the community is very limited, it has also led to an increase in the number of families who still do not have houses (backlog). The rapid population growth is a reflection of the increasing number of housing needs followed by the need for other social facilities along with related infrastructure needs.

In fact, there are two main problems in the provision of housing and flats, namely population growth and the provision of cheap funds that can be accessed by all levels of society. It is urbanization that is the biggest contributor to the rapid population growth due to the factor of migration from rural to urban areas, in addition to the natural growth factor of the population of urban areas. The high level of urbanization makes life in big cities in Indonesia uncomfortable due to increased population density, reduced green open spaces or environmental problems in residential areas, such as the emergence of slum areas. These conditions and the increasingly limited availability of land require that the type of housing that is built vertically cannot only rely on horizontal housing.

Building vertical housing or flats is a suitable solution in supporting urban growth, which needs to be improved and expanded so that the development is evenly distributed and can reach low-income people, while paying attention to spatial planning and the integration of the surrounding social environment. Public flats which according to the Law on Flats are types of flats designated for MBR, their provision needs to be accompanied by a special financing mechanism that makes it easy for MBRs in obtaining livable flats at affordable prices. However, on the one hand, due to the limited government budget that can be allocated for the provision of public flats, the availability of public flats is still far from the target of meeting the needs of decent and affordable housing for low-income families. Therefore, it requires the participation of the entrepreneur community in the construction and provision of public flats as government partners.

Seeing the complexity of the problems surrounding the provision of public flats involving several aspects, such as land, socio-economic, community culture in addition to the main aspects in the form of physical aspects of the construction of public flats, the arrangements related to the provision of public flats should contain rules that cover all these aspects, whether regulated in laws or government / regional regulations as well as related Ministerial regulations.

Based on the description above, the ratio legis regulating the provision of public flats is related to the responsibility of the state in meeting the needs of decent and affordable housing for low-income families, especially in urban areas. Ensuring the availability of public flats is part of the implementation of the state's responsibility in fulfilling the need for adequate housing for MBR as mandated by the Constitution.

Conclusion

The high level of urbanization makes life in big cities in Indonesia uncomfortable due to increased population density, reduced green open spaces or environmental problems in residential areas, such as the emergence of slum areas. These conditions and the increasingly limited availability of land

require that the type of housing that is built vertically cannot only rely on horizontal housing. However, seeing the complexity of the problems surrounding the provision of public flats involving several aspects, such as land, socio-economic, community culture in addition to the main aspects in the form of physical aspects of the construction of public flats, the arrangements related to the provision of public flats should contain rules that cover all aspects those stipulated in laws and government / regional regulations as well as related Ministerial regulations. On the other hand, with the limited government budget that can be allocated for the provision of public flats, the availability of public flats is still far from the target of meeting the needs of decent and affordable housing for low-income families. Therefore, it requires the participation of the entrepreneur community in the construction and provision of public flats as government partners. The legislative ratio regulating the provision of public flats is related to the responsibility of the state in meeting the needs of decent housing for low-income housing, especially in urban areas. Ensuring the availability of public flats is part of the implementation of the state's responsibility in fulfilling the need for adequate and affordable housing for MBR as mandated by the Constitution.

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