

# THE CONSTITUTIONAL RESPONSIBILITY OF THE STATE IN FULFILLING CITIZENS' HUMAN RIGHTS TO ADEQUATE HOUSING AND A GOOD AND HEALTHY ENVIRONMENT

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## Abstract

Considering that the fulfillment of the right to healthy and decent housing and environment is the government's obligation in accordance with the provisions of The International Covenant on Economic, Social and Cultural Rights which was ratified through Law Number 11 of 2005. The fulfillment of healthy and decent housing and environment for the people until now based on facts and data has not been able to be fulfilled by the state. The essence of the State's constitutional responsibility in fulfilling the right to healthy and good housing and environment for citizens, Regulation and implementation of the state's constitutional responsibility in fulfilling the basic rights of citizens to healthy and good housing and environment, and the ideal concept of government responsibility for fulfilling the right to healthy and good housing and environment for its citizens. This research is a normative legal research or also called library legal research using the Statute Approach, Conceptual Approach, Comparative Approach, Historical Approach and Philosophical Approach. The results of this study indicate that the nature of the state's responsibility in fulfilling the right to housing and a good environment as a legal obligation that must be fulfilled because the state does not only function as a regulator, but also as a protector and fulfiller of the constitutional rights of its citizens. Although there has been an increase in housing development over the past few years, the achievement of housing targets has not always been fully achieved due to various factors. The new concept that researchers offer in fulfilling the state's constitutional responsibility is a new concept offered is Sustainable Settlements. The government needs to continue to innovate in overcoming these problems, such as through increasing budget allocations, utilizing technology, and programs that strengthen housing financing for low-income communities.

**Keywords:** Constitutional Responsibility, Adequate Housing, Healthy Environment.

## INTRODUCTION

Every human being has the right to live in physical and spiritual prosperity, where this right is inherent in each person since he was born. Article 28 J paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states "Everyone is obliged to respect the human rights of others in the orderly life of society, nation, and state". The important meaning contained in this article is to emphasize the obligation of every individual to respect the human rights of others in the life of society, nation, and state. The important meaning of this article is that human rights (HAM) are not only individual rights, but also collective rights that require respect for the rights of others, including in the context of living together in society.

Among these rights is the right to develop oneself from the fulfillment of basic needs, namely that everyone has the right to have a place to live in the form of housing and a healthy and

decent environment. The state's responsibility in organizing healthy and decent housing and environment is a mandate from the opening of the 1945 Constitution which states that one of the goals of the State is "social justice for all Indonesian people." This social justice includes equality in various aspects of life, including access to decent housing and a healthy environment. The state is responsible for creating conditions that ensure that all people, without exception, can enjoy their basic rights, including the right to decent housing and a healthy environment.

Article 28 H paragraph (1) of the 1945 Constitution states that "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to receive health services". Article 28 H paragraph (1) has several important meanings as the constitutional responsibility of the State in fulfilling the basic rights of citizens to healthy and decent housing and environment. First, the State has a responsibility for the physical and spiritual welfare of its citizens by ensuring access to employment, decent income, social protection, and other services that support the welfare of its people. Second, the State is responsible for the basic rights of its citizens to housing by providing public housing policies, subsidies, or housing development programs for low-income communities. Third, the State is responsible for guaranteeing a healthy and decent environment for its citizens by protecting the environment through regulation, controlling pollution, and ensuring sustainable development. (Sodikin, 2021)

The fulfillment of its obligations by the state to organize healthy and decent housing and environment for its people is to fulfill civil and political rights (sipol), economic, social, and cultural rights of citizens. Considering that the fulfillment of the right to healthy and decent housing and environment is the government's obligation in accordance with the provisions of The International Covenant on Economic, Social and Cultural Rights which was ratified through Law No. 11 of 2005. (Wahyuni, 2023) The fulfillment of healthy and decent housing and environment for the people until now based on facts and data has not been able to be fulfilled by the state.

Implementation of the provisions of Article 28 H paragraph (1) of the 1945 Constitution as a form of protection and fulfillment of basic rights to a place to live, a good and healthy environment in the form of laws and regulations, including Law Number 11 of 2011 concerning Housing and Residential Areas Article 129 a states that "every citizen has the right to occupy and/or enjoy and/or own a decent house in a healthy, safe, harmonious and orderly environment". The state is responsible for protecting all Indonesian people through the provision of housing and residential areas so that people are able to live and occupy decent and affordable houses in healthy, safe, harmonious and sustainable housing throughout Indonesia. Then Law Number 39 of 1999 concerning Human Rights, although born before the amendment to the 1945 Constitution, has determined the right to a good and healthy environment, namely in Article 9 paragraph (3): "Everyone has the right to a good and healthy environment". The existence of the right to a good and healthy environment in Law Number 39 of 1999 is based on the fact that the environment has become increasingly damaged, which has disrupted the continuity of the right to life that every human being has.

After the fourth amendment to the 1945 Constitution in 2002 was completed, and human life needed a good and healthy environment, then as an implementation of Article 28H paragraph (1) of the 1945 Constitution, Law Number 32 of 2009 concerning Environmental Protection and Management was born.

Human rights are reinforced by the view that every individual has inherent dignity, where the right to healthy and decent housing and environment is considered an inseparable part of human dignity. In this position, the State is considered to have a moral and philosophical responsibility to protect and ensure the fulfillment of these rights as a form of respect for the dignity of every citizen. From the various descriptions of laws and regulations that regulate the government's responsibility in fulfilling citizens' human rights to healthy and good housing and environment, serious problems arise that must be solved.

Based on the description above, this research will focus on a housing policy model that can integrate the principle of sustainability with urgent housing needs, by examining the nature of the State's constitutional responsibility in fulfilling the right to healthy and good housing and environment for citizens, the regulation and implementation of the state's constitutional responsibility in fulfilling citizens' basic rights to healthy and good housing and environment, and the ideal concept of government responsibility for fulfilling the right to healthy and good housing and environment for its citizens.

## RESEARCH METHODS

In this study, the researcher uses a normative legal research type, namely law is conceptualized as written in laws and regulations (law in books) or the law is conceptualized as a rule or norm that is a reference for human behavior that is considered appropriate. (Amiruddin & Asikin, 2004) In order to answer the problems in this study, the approaches used include the Statute Approach, Conceptual Approach, Comparative Approach, Historical Approach and Philosophical Approach. (Muhaimin, 2020) The types and sources of legal materials used in this study are Primary Legal Materials, Secondary Legal Materials and Tertiary Legal Materials. The technique of collecting legal materials in this study was obtained through Library Research. Analysis of legal materials is carried out qualitatively; the method or method of concluding legal materials is carried out deductively.

## DISCUSSION

### 1. The Nature of the State's Constitutional Responsibility in Fulfilling the Right to Housing and a Healthy and Good Environment for Citizens

The right to housing and a good and healthy environment is an integral part of the constitutional rights guaranteed by the Constitution of the Republic of Indonesia. In this context, the right to housing does not only cover the physical aspects of the residence, but also involves broader social, economic, and cultural dimensions. According to Article 28H paragraph (1) of the 1945 Constitution, everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment. (Ramadhan & Sebayang, 2022)

This shows that adequate housing is a basic right that must be guaranteed by the state, and the government has a responsibility to meet these needs through effective public policies.

From a natural law perspective, the right to housing can be understood as a right inherent in every individual as part of human dignity. Natural law argues that everyone has the right to have a decent place to live as part of human rights. In this context, housing is not just a physical need, but also a place where individuals can develop themselves, interact socially, and build culture. (Mahfud, 2020) Therefore, the state must ensure that every citizen has access to decent housing, as a form of respect for human rights.

Meanwhile, from a utilitarian perspective, the right to housing and settlements can be seen as an effort to achieve the greatest welfare for society. Utilitarianism emphasizes the importance of actions that produce maximum benefits for the greatest number of people. In this context, the development of adequate and affordable housing can improve the overall quality of life of society, reduce poverty, and encourage economic growth. (Ginanjari, 2019) Research shows that effective housing programs can improve people's welfare, as seen in the Bedah Rumah policy implemented in various regions.

On the other hand, legal positivism emphasizes the importance of written and systematically applied laws. In the context of the right to housing, legal positivism focuses on regulations and policies governing the provision of housing and residential areas. Law No. 1 of 2011 concerning Housing and Residential Areas creates a clear legal framework to ensure that the government is responsible for providing adequate housing for the community. (Mardiansyah & Adisti, 2020) In this case, legal positivism plays an important role in creating legal certainty for the community in obtaining housing rights.

The development of decent and healthy housing and environment also has significant social implications. Research shows that good housing can support the social and economic development of the community, as well as improve the quality of life of individuals. (Ragazza et al., 2024) In this context, housing is not just a place to live, but also a space where individuals can interact, build communities, and develop culture. Therefore, housing planning must consider social and cultural aspects, and involve community participation in the planning process.

The right to housing and settlement as part of constitutional rights can be analyzed through the perspective of natural law, which emphasizes that these rights are inherent and attached to every individual as part of human dignity. Natural law argues that everyone has the right to live in decent conditions, including the right to a safe and comfortable place to live. In this context, the right to housing is not only seen as a physical need, but also as a fundamental human right that must be respected and protected by the State. (Mukhtar, 2021)

In the natural law perspective, the right to housing can be considered as part of the inalienable rights, which include the right to life, the right to a healthy environment, and the right to participate in society. This concept is rooted in the idea that humans, as social beings, need a decent place to live to develop and interact with others. Thus, the state has a moral and legal obligation to provide decent housing for all its citizens, especially for the less fortunate.

(Qalsum & Wibowo, 2023) The right to housing and settlement can be analyzed through the perspective of utilitarianism, which focuses on achieving the greatest happiness and well-being for the greatest number of people. Utilitarianism, popularized by philosophers such as Jeremy Bentham and John Stuart Mill, emphasizes that good actions or policies are those that produce the maximum benefits for society. In the context of the right to housing, this approach requires that governments and other stakeholders consider the social and economic impacts of housing policies taken, so as to improve the quality of life for society as a whole. (Tobroni, 2020)

In its implementation, the utilitarian approach encourages the government to develop housing programs that not only focus on physical development, but also consider social and economic aspects. For example, the Bedah Rumah program implemented in various regions in Indonesia aims to improve the quality of housing for low-income communities. Research shows that this program not only improves the physical condition of the house, but also has a positive impact on the health and welfare of the family. (Suryana, 2017) Thus, these types of programs reflect the principle of utilitarianism, where the benefits generated can be felt by many people.

The right to housing and settlement can be analyzed through the perspective of legal positivism, which emphasizes the importance of written and systematically applied laws. Legal positivism, pioneered by figures such as Jeremy Bentham and John Austin, focuses on the fact that law is a set of rules established by a legitimate and recognized authority, without considering moral or ethical values outside the law itself. (Endratno, 2022) In the context of the right to housing, this approach demands clear and firm regulations governing the provision of housing for the community.

In Indonesia, the right to housing is regulated in various laws, including Law No. 1 of 2011 concerning Housing and Residential Areas. This law provides a clear legal framework regarding the government's responsibility to provide adequate housing for the community. (Haryono, 2019) From a positivist perspective, the existence of this law is the basis for enforcing the right to housing, where the government is required to meet the community's housing needs in accordance with applicable provisions.

From the description above, the essence of state responsibility includes: 1). creation of a binding legal framework, 2). Fair allocation of resources, 3). Protection from third party exploitation, 4). Provision of basic services and infrastructure, and 5). Restoration of rights for affected groups. Without strong political commitment and a human rights-based approach, the promise of healthy housing and environment will remain a utopia for millions of citizens.

## **2. Regulation and Implementation of Responsibility for Good and Healthy Housing and Settlements**

The regulations governing the right to housing and settlements in Indonesia have a broad scope, starting from the constitutional level to sectoral policies and regional regulations, so that the discussion must touch on normative aspects, policy implementation, and interconnectivity between levels of government.



At the constitutional level, the right to housing is recognized as part of human rights, which is then stated through various national laws. A number of national regulations have been established to provide a framework for justice and the fulfillment of basic needs of citizens, including adequate housing. For example, Arafat and Taniady's research shows that although there is already a regulatory substance containing the right to housing, the implementation of these regulations in the field still faces obstacles due to inconsistencies between national policies and implementation mechanisms at the regional level. (Arafat & Taniady, 2021) This indicates that a strong constitutional basis is not always accompanied by operational alignment at all levels of government.

At the sectoral policy level, various ministries and government agencies have developed specific programs to address housing, especially for low-income groups. Firdaus' research on the DKI Jakarta provincial government program shows a direct intervention approach in providing housing as a response to existing disparities. This policy emphasizes the need for integrated sectoral solutions that are responsive to the needs of communities that are often marginalized in the housing process. (Firdaus, 2019) In addition, housing sector policies must also accommodate the dynamics of urbanization and the growth of slums, where the implementation of regulations as studied in Medan Belawan District shows the need for strategic maps and local context analysis to formulate effective interventions. (Marpaung & Franky, 2019)

The interrelationship between regulations at various levels of government lies in the need for harmonization between national, sectoral, and regional policies. Although the national legal basis is strong, differences in interpretation and application at the regional level often hinder consistent implementation. Thus, convergence between national regulations and regional policies must be improved so that the vision of the right to adequate housing can be realized. This integration requires cross-sectoral and inter-agency coordination, as well as effective monitoring and evaluation mechanisms to close the gap between the policies that are planned and their implementation in the field.

In addition, the development of regulatory implementation is also influenced by social dynamics and local governance. Government intervention at the regional level is not only technical, but must also be responsive to the socio-economic characteristics of the local community and structural challenges in the area. This can be seen in the case study in Medan Belawan which identified slums and supporting factors for the growth of slums. Therefore, a contextual and participatory approach is needed as a bridge between normative intentions at the central level and the reality of implementation at the regional level. (Marpaung & Franky, 2019)

In conclusion, the regulation of housing and settlement rights in Indonesia is built on a strong constitutional basis and has been strengthened through various sectoral policies and regional regulations. However, the main challenge remains the harmonization of implementation between various levels of government. A comprehensive solution requires synergy between national legislation, sectoral policies, and regional regulations, as well as improvements in coordination and evaluation mechanisms at each level of government to ensure that the right

to adequate housing can be enjoyed by all levels of society. There are several causal factors that result in a mismatch between the planned needs for housing and a healthy environment and its realization in Indonesia from 2011 to the present. Although the government has launched various programs to meet housing needs, the challenges faced are very complex and multidimensional. Here are some of the main factors that influence this unfulfillment.

#### 1) Budget and Resource Constraints

One of the main factors that hinders the realization of housing needs is budget constraints. The government often faces obstacles in allocating sufficient funds for housing projects, especially for low-income communities. Although the One Million Houses Program aims to provide housing for the community, the available budget is often insufficient to meet the set targets. This causes the housing backlog to remain high and many people still live in slums. One of the main obstacles in realizing housing development targets is the availability of funds. The main sources of financing come from the state budget and community funds, such as the housing subsidy program for low-income communities (MBR).

#### 2) Complex Bureaucracy

Complicated licensing and bureaucratic processes are also obstacles to housing development. Many developers face difficulties in obtaining the necessary permits to build, which can slow down housing projects. Inefficient bureaucracy often causes delays in project implementation, so that housing needs plans cannot be met on time.

#### 3) Land and Legality

The land acquisition process for housing is often hampered by land acquisition problems and legal processes that take a long time.

#### 4) Rapid Urbanization

Rapid urbanization in Indonesia, especially in large cities, has caused a significant increase in demand for housing. According to BPS data, more than 50% of Indonesia's population lives in urban areas, and this figure continues to increase. This high demand is not balanced by an adequate supply of housing, resulting in price increases and an increase in the number of slums. Many people cannot afford to buy or rent decent housing, so they are forced to live in unhealthy areas. Community Purchasing Power: Although there are subsidy programs, community purchasing power is still a challenge. Affordable housing programs and housing subsidies for low-income families have indeed been implemented, but the number of houses built does not always match market demand.

#### 5) Poor Environmental Quality

Poor environmental quality in many areas is also a contributing factor to the unfulfilled need for healthy housing. Air pollution, lack of access to clean water, and inadequate sanitation contribute to inadequate housing conditions. Many slums lack basic infrastructure, creating unhealthy environments for their residents. This impacts public health and overall quality of life.

#### 6) Lack of Community Participation

Community participation in housing planning and development processes is often lacking. The lack of community involvement in decision-making can result in policies that are not aligned with local needs. Research shows that when communities are involved in the planning process, outcomes are more effective and sustainable. Therefore, a lack of community participation can hinder the achievement of housing needs that are in line with their expectations and needs.

The above factors indicate that the unfulfilled needs of housing and a healthy environment in Indonesia are the result of various interrelated challenges. To overcome this problem, a holistic and collaborative approach is needed, involving all stakeholders, including the government, community, and private sector. Thus, it is hoped that the needs of decent housing and a healthy environment can be met sustainably.

### **3. The Concept of Government Responsibility Arrangement for Fulfilling the Right to Housing and a Good and Healthy Environment for Its Citizens**

Fulfillment of the right to good and healthy housing and environment is the government's responsibility which must be realized through effective policies, provision of adequate infrastructure, and strict supervision.

Although there are still various challenges in the implementation of Law No. 1 of 2011, the steps that have been taken show the government's commitment to improving public welfare. In the future, better policy integration, increased public participation, and strengthening of regulations are needed so that the right to healthy housing and environment can truly be enjoyed by all citizens.

Departing from the weaknesses or shortcomings of the existing concept in Law No. 1 of 2011, including the approach used is the Top-Down approach, where policies are still dominated by the government and minimal community participation in planning.

Furthermore, there is an imbalance in financing, namely that low-income communities' access to cheap credit is hampered by bureaucracy and many and complicated administrative requirements.

Then another concept is the concept of Unsustainable Environment, namely Focus on physical development, lack of integration with ecosystems such as sustainable drainage, renewable energy. And in Law No. 1 of 2011 has a weakness in Weak Law Enforcement, namely in land conversion activities and spatial planning violations are still rampant, and the response is limited to Climate change, namely there is no adaptation strategy for residential areas to floods, sea level rise, or extreme weather.

Due to the weaknesses or shortcomings of the existing concept of Law No. 1 of 2011, the author offers a new concept that can be offered to fulfill the right to sustainable housing and a healthy environment, answering current and future challenges, by improving the weaknesses of Law No. 1 of 2011 and integrating the principles of innovation, participation, and sustainability. The new concept offered is: "Sustainable Settlements"



This concept integrates technology, community participation, circular economy and climate resilience to create an inclusive, healthy and sustainable residential environment.

### 1) Main Principles

- a) Inclusivity: Equal access for all groups, including low-income people, people with disabilities, and the elderly.
- b) Green and Resilient: Eco-friendly, low-carbon and disaster-adaptive design.
- c) Community Engagement: Communities as active partners, not just beneficiaries.
- d) Integrated Technology: Utilizing smart systems for energy, water and waste efficiency.

### 2) New Concept Pillars

The pillars of the new concept offered are:

#### a) Community Based Affordable Housing

The construction is carried out using green technology in home construction, such as the use of solar panels and rainwater management systems. Then implementing energy-efficient and climate change-resistant building designs.

The advantage of using this concept is that it can reduce the environmental impact of housing development and can save household operating costs in the long term. While the disadvantage is that it requires a larger initial investment and requires public education about the benefits and how to use green technology.

Private-Community Partnership Model where the community is involved in planning through co-housing or cooperative housing. Example: Community Land Trust (CLT) system, where land is managed by the community to prevent price speculation.

#### b) Green and Climate Resilient Settlements

The development is carried out using green technology in home construction, such as the use of solar panels and rainwater management systems. Then apply building designs that are energy efficient and resistant to climate change.

The advantages are reducing the environmental impact of housing development and saving household operating costs in the long term. While the disadvantages are that it requires a larger initial investment and requires public education about the benefits and how to use green technology.

#### c) Participatory and Digital Governance

Digital Participation Platform is an application based on ("RumahKu") to report housing problems, propose spatial ideas, and monitor budgets. Decentralization of Authority is Empowerment of sub-districts or RW as micro-planning centers, with a special budget from the Village Fund.

#### d) Progressive Regulation of Flexible and Adaptive Housing

The development is carried out by developing a modular housing concept that can be changed according to the needs of the occupants and creating a multifunctional zone that can be used for various economic and social activities. The advantages of this concept are that it is easier to adapt to changes in social and economic conditions and optimizes land use efficiently. While the disadvantages are that it requires special regulations to ensure the feasibility and safety of construction. And it requires adaptation in the mindset of the community towards a more flexible housing model.

Adaptive Zoning Policy, namely flexible zoning that allows changes in land use based on population dynamics and climate needs, Green Incentives, namely PBB reductions for green-certified buildings, Progressive taxes for vacant properties to prevent land hoarding and Data-Based Law Enforcement, namely Satellites and drones to monitor land conversion in real-time.

#### e) Circular Economy in Settlements

Integrated Waste Management, namely a zero-waste system with a blockchain-based waste bank (reward tokens for residents who recycle).

Domestic wastewater treatment into irrigation water or biogas energy. Urban Agriculture, namely vertical and hydroponic gardens in residential areas for food security and CO<sub>2</sub> absorption, with the Implementation Strategy being to conduct a Pilot Project in Urban Slum Areas. Example: Transformation of the Manggarai area, Jakarta, into an "Eco-Village" with solar panels, biopores, and co-housing.

Education and Training, namely a capacity building program for communities on green technology, financial management, and digital participation. Global Partnership, namely collaboration with international institutions (UN-Habitat, World Bank) for funding and technology transfer.

## CONCLUSIONS AND SUGGESTIONS

### 1. Conclusions

- a. The nature of the state's responsibility in fulfilling the right to good housing and environment as a legal obligation that must be fulfilled based on applicable norms. The state must act proactively to create and implement policies that support the fulfillment of citizens' basic rights to good and healthy housing and environment, and ensure that all individuals, without exception, can enjoy the right to good and healthy housing and environment. Thus, the state does not only function as a regulator, but also as a protector and fulfiller of the constitutional rights of its citizens.
- b. Based on historical studies and regulations, the law on the regulation of the fulfillment of citizens' basic rights to good and healthy housing and environment by the State has not been fulfilled according to needs.

In the period 2011-present the government has also made many policies and programs aimed at fulfilling the basic rights of citizens to good and healthy housing and environment, in its implementation the fulfillment of citizens' basic rights is faced with Budget and Resource Limitations, Complex Bureaucracy, Land and its Legality, Rapid Urbanization, Poor Environmental Quality and Lack of Community Participation.

Despite the increase in housing construction in recent years, the achievement of housing targets is not always fully achieved due to the above factors, Budget and Resource Constraints, Complex Bureaucracy, Land and Legality, Rapid Urbanization, Poor Environmental Quality and Lack of Community Participation. In addition, the global economic crisis and disasters such as the COVID-19 pandemic have had a significant impact on the housing sector.

- c. The new concept that researchers offer in fulfilling the constitutional responsibility of the State is the new concept offered is: "Sustainable Settlements". This concept integrates technology, community participation, circular economy, and climate resilience to create an inclusive, healthy, and sustainable residential environment.

## 2. Suggestions

Special regulations are needed, namely Regional Regulations that prioritize the poor in every housing development and require entrepreneurs or developers to set aside or prioritize 10% of housing development for the poor. Policies and programs such as KOTAKU, BSPS, Sejuta Rumah are needed that directly touch and answer the needs of residents for good and healthy housing and environments, then more integrated and synergistic steps between the government, private sector, and the community to overcome this problem comprehensively and ensure that every Indonesian citizen has access to decent housing and a healthy environment. The government needs to continue to innovate in overcoming these problems, such as through increasing budget allocations, utilizing technology, and programs that strengthen housing financing for low-income communities.

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