

The State's Obligation in Providing Replacement Housing Due to Lost Land

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ABSTRACT

This research aims to find out the state's obligation in organizing occupancy lost due to land destruction. The form of this research is normative juridical with a statute approach and case approach. The type of research used is descriptive research and the data used is secondary data which is then All data obtained is collected and analyzed normatively qualitative. The results showed that the impact of the loss of land was that the community lost their shelter. Shelter is a basic right of all citizens, especially those affected by the disaster. The state is responsible for the fulfillment of the basic rights of the community, namely organizing and providing housing / shelter that is feasible and safe from disasters. If the state is absent then the state is violating the mandate of the Constitution and Pancasila.

KEYWORDS Country, Home, Land Perished.



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INTRODUCTION

Shelter has a fundamental role for human existence that can create a sense of security as well as a place to shelter. Having a dwelling is part of everyone's right. Over time, the definition of shelter has elaborated, where a shelter is no longer considered just a form of housing, but its definition has expanded to include various elements of life. Shelter has a strategic role as a place for family education, cultural breeding, and improving the quality of the next generation (Sunarti, 2019). A dwelling can be lost or damaged for a variety of reasons depending on the specific situation and conditions. However, the biggest contributor to such damage is caused by natural disasters.

According to data from The World Risk Index in 2022, Indonesia is ranked 3rd out of 193 countries that are most vulnerable to disasters (Sandvik, 2022). The damage of natural disasters has an impact on changes in the land surface so that the affected

land can no longer be identified or cannot be utilized as before and this condition is called land destruction.

One of the land destruction disasters that has occurred in Indonesia is the liquefaction disaster in Palu and Donggala, Central Sulawesi Province in 2018 which caused hundreds of houses to collapse due to moving and sinking land fields which had an impact on the buildings above them being destroyed (BBC, 2018). Dozens of houses were also reportedly damaged in two villages in Purworejo Regency due to moving soil in 2021, based on data collection by the Purworejo Regional Disaster Management Agency (BPBD), which stated that 16 houses were damaged in Kaliwungu Village and 1 house was severely damaged in Tegalsari Village (CNN Indonesia, 2021).

Then recently, another earthquake occurred in Brebes, Central Java. It was reported that at least 76 houses and access to the village road in the hilly area, Dukuh Limbangan, Sridadi Village, Brebes Regency, Central Java were damaged. About 35 of the houses were nearly collapsed and slightly damaged. The damage includes collapsed walls, damaged roofs, and cracked floors with a depth of up to one meter. Currently, 237 residents have fled to safer places (Kompastv, 2024). Previously, abrasion disasters had also occurred in 2020 which caused a lot of land to be lost, including community-owned land. It was reported that in Brebes, approximately 2,115 hectares were affected by abrasion with details: 506.81 Ha in Brebes District, 626.15 Ha in Wanasari District, 1.98 Ha in Bulakamba District, 46.12 Ha in Tanjung District, and 934.33 Ha in Losari District (Adam et al., 2020).

The function of land is very central as a place to live and fulfill life activities, resulting in the problem of damage / loss of land due to disasters has serious implications, one of which is that people lose their homes. The state needs to consider that development, especially housing, is the most needed thing for the community, therefore this issue needs efforts from the government to meet these needs. Therefore, departing from this formulation, the author wants to further examine how the state's obligation in meeting the needs of housing caused by land destruction.

RESEARCH METHODS

This writing aims to examine the fulfillment of the state's obligations in meeting housing needs caused by land destruction with This form of research is normative juridical, namely by examining written legal norms directly with the subject matter discussed in this study. The approach used is a *statute* approach which aims to examine all laws and regulations related to the legal issues being discussed (studied) and a *case* approach (Muhaimin, 2020). The type of research used is *descriptive research*, namely by providing a description or description of the problems in this study and describing the data which is then analyzed based on relevant rules.

The data used in this research, namely secondary data which is not obtained directly from the field but through the process of searching for literature materials such as law books, law journals, and other things put forward by a legal expert with data collection tools in the form of document studies and existing theories and regulations. All data obtained is collected and analyzed normatively qualitative because data

processing is not done by measuring related secondary data, but analyzing descriptively the data.

RESULTS AND DISCUSSION

Natural disasters can disrupt people's lives and the stability of the country. Loss of property, family, shelter, livestock, crops, livelihoods, fields, paddy fields and so on are the impacts of natural disasters. Those directly affected by disasters are known as disaster-affected communities where they are forced to leave their original place of residence, do not have access, live in refugee camps with housing conditions that are far below standard and have uncertain life prospects (Gazali & Andy, 2017).

Land loss according to Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Housing Units, and Land Registration (which will later be referred to as PP No. 18 of 2021) is land that has changed from its original form due to natural events and can no longer be identified so that it cannot be functioned, used, and utilized properly, resulting in land in a place being lost / vanished. The crucial impact of this land loss disaster is that the land cannot be rebuilt so that the affected community must find new land to be able to rebuild their homes.

It has been clearly mentioned in the mandate of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) through Article 28H paragraph (1) that having a decent and safe place to live from disaster risk is a right for everyone. Therefore, people affected by disasters also have the same right to get their rights back, namely to have a decent and safe place to live, because by providing protection and guarantee of a decent and safe place to live from the threat of disasters will affect the level of human welfare and the quality of life of its residents (Kalesaran et al., 2013). As a state of law, Indonesia has an obligation to protect all its people, including regulating the benefits of all aspects of life in order to provide justice and welfare. Sri Soemantri mentioned that there are four elements of a state of law, one of which is that the state guarantees the human rights of its people (Soemantri, 1992). The state must not ignore these rights but must respect and guarantee them.

The presence of the state for communities affected by disasters is also affirmed in the preamble of Law Number 4 of 2007 concerning Disaster Management (hereinafter referred to as Law No. 4 of 2007), that the State must be present to provide protection against disasters so that welfare based on Pancasila can be realized. This is in line with the mandate in the 1945 Constitution and Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (hereinafter referred to as UUPA) that the state is given the power to regulate and utilize these lands with the ultimate goal being for the prosperity and welfare of the people.

One of the state's efforts to protect the people of Indonesia is through the implementation of healthy, safe, harmonious and sustainable housing and residential areas throughout the territory of Indonesia so that people can live and inhabit decent and affordable homes so that environmental sustainability is guaranteed in harmony

with the order of life of society, nation and state as stated in the preamble of Law Number 1 of 2011 concerning Housing and Settlement Areas (hereinafter referred to as Law No. 1 of 2011). These basics then become the foundation for the state to provide and provide housing assistance, especially for people who lose their homes due to the impact of natural disasters.

Residential development due to disasters as stipulated in Law No. 1 of 2011 is known as a special house. Special houses are houses that are organized to meet special needs, one of which is for people who have to leave their original residence due to the direct impact of disasters in the form of national scale natural disasters, non-natural disasters and / or social disasters, as explained in Article 71 Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 7 of 2022 concerning Implementation of Housing Development Assistance and Provision of Special Houses (hereinafter referred to as PermenPUPR No. 7 of 2022). Special Houses are organized by the Ministry of Public Works and Public Housing (PUPR) and can be carried out program collaboration with work units, organizational units and ministries / institutions related to housing and settlement area development assistance. Housing must have access to supporting facilities and infrastructure and public facilities through coordinated housing development (Dwiputri et al., 2019).

The form of Special Housing Provision includes the construction of new habitable houses that include infrastructure, facilities, public utilities and furniture such as road access, drainage channels, sanitation, clean water supply, electricity networks, worship facilities, educational facilities, social and cultural facilities. The provisions for the construction of special houses include a floor area of at least 28 m² (twenty-eight square meters) and a maximum of 36 m² (thirty-six square meters), in the form of single houses, coupled houses or row houses with typology in the form of landed houses or houses on stilts and oriented towards the utilization of internal resources by developing environmentally friendly technology and design and paying attention to culture or local wisdom in the area.

Local wisdom refers to local characteristics, traditions, and values that can explain the character and identity of a region with the aim of creating a sense of belonging or *self-belonging* from the community to inhabit and manage housing assistance from the Government, because the houses they live in are able to represent their identity (Panggabean, 2023).

According to PermenPUPR No.7 of 2022, the provision of special houses includes several stages, namely:

1. Make a request that can be submitted by the Regional Government or other Ministries / Institutions (KL) as well as individuals or community groups in accordance with the policy direction of the Minister of PUPR. Submission of proposals is currently done by the system in the Housing Assistance Information System application or what is called SIBARU. In short, the SIBARU application is a system designed by the Directorate General of Housing to present integrated housing assistance governance information and support the business process of managing housing assistance starting from the stage of proposing assistance,

monitoring the implementation of development and the distribution of its location, until finally the housing assistance is occupied and / or handed over to prospective beneficiaries. Technically, the availability of land must also be prepared by the applicant.

2. Verification of the proposed application which is an examination of the readiness of the location of the Special Housing Provision so that the conditions can meet the *Readiness Criteria* which include conformity with the RTRW, land outside disaster-prone areas, legality of land ownership, availability of clean water sources, electricity networks and road access, and land is mature and ready to build. The applicant must also have a commitment to provide or support the infrastructure.
3. The technical planning process is carried out based on the determination of the recipient of the Special Housing Provision and the results of verification by preparing a *Detail Engineering Design (DED)*, which consists of technical drawings, technical specifications and general specifications, volume, and cost of work.
4. The implementation of special housing construction is carried out by the applicant, which includes the procurement and construction stages after the technical planning documents are prepared.
5. After the construction process is complete, a handover is carried out and temporary occupancy can be carried out by the beneficiaries. Furthermore, the management of special houses is the responsibility of the beneficiaries, both the Regional Government and the applicant Ministries/Institutions.
6. Monitoring and evaluation is carried out by the directorate general in charge of housing, which is responsible for monitoring the implementation of Special Housing Provision and comparing the realization of Special Housing Provision against the predetermined standards to ensure that Special Housing Provision goes according to plan. However, local governments can also establish regional units to oversee housing management, although assistance and supervision are provided by the central government (Puspitarini & Hanif, 2019).

At the construction stage, housing management is supervised through inventories to ensure that housing development is in accordance with the provisions of spatial planning, housing plans, and permits for building construction stipulated by laws and regulations. In addition, to confirm that the housing constructed is safe, complies with requirements and prevents deterioration of building quality, the construction stage is carried out in an orderly manner after the results of the physical tender are announced. The project manager ensures that the special houses for disaster-affected communities are livable and of high quality during the construction process (Hanaseta et al., 2023).

In residential development, the availability of adequate land is also an important element that must be considered by the state. Land provision for housing and settlement development can be organized through: a) granting land rights over land directly controlled by the state. b) land consolidation by landowners. c) transfer or

relinquishment of land rights by the landowner. d) utilization and alienation of State-owned or regional-owned land in accordance with the provisions of laws and regulations. e) utilization of State land formerly abandoned land and/or. f) Land acquisition for development for the public interest in accordance with the provisions of laws and regulations.

Housing and settlement development is a development that is in the public interest, meaning that the need for housing / housing is a need for all levels of society. The definition of public interest according to Law No. 2/2012 on Land Acquisition for Development in the Public Interest (hereinafter referred to as Law No. 2/2012) is the interest of the nation, state, and society that must be realized by the government and used to the greatest extent for the prosperity of the people. The confirmation of development objects that can be categorized as public interest is stipulated in Article 10 of Law No. 2 of 2012 as amended by Article 123 point 2 of Law No. 11 of 2020 on Job Creation which was later revoked by the Regulation in Lieu of Law No. 2 of 2022 on Job Creation stipulated by Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (hereinafter referred to as UUCK) which for the development of housing / residential areas lost due to disasters is categorized as public interest as mentioned in letter o, so that its development is a priority because it is a need for the entire community.

Adrian Sutedi also explained that there are three principles in activities that are truly in the public interest, namely that these activities are truly owned by the government and development activities can only be carried out by the government and are not profit-oriented (Roesli & Hidayat, 2022). This means that the state does not arbitrarily determine the category of development for the public interest. As explicitly stated in the preamble of the Disaster Management Law (DM Law), the Unitary State of the Republic of Indonesia is responsible for protecting the entire Indonesian nation and the entire homeland of Indonesia with the aim of providing protection for life and livelihood including protection against disasters, in order to realize general welfare based on Pancasila, as mandated in the 1945 Constitution of the Republic of Indonesia.

The liquefaction disaster in Palu and Donggala, Central Sulawesi resulted in houses being destroyed and severely damaged, requiring new areas that are more prepared and safe from disasters. Presidential Instruction No. 10/2018 on the Acceleration of Rehabilitation and Reconstruction after the Earthquake and Tsunami Disaster in Central Sulawesi Province and Other Affected Areas instructs relevant *stakeholders* to accelerate rehabilitation and reconstruction after the earthquake and tsunami disaster in Central Sulawesi Province and other affected areas to restore the social and economic life of the community in disaster-affected areas.

On the basis of these instructions, the State through the Ministry of PUPR has built special housing in the form of permanent housing (huntap) which is intended for disaster victims who no longer have a place to live and is intended for those whose homes are included in Disaster Prone Areas that cannot be lived in anymore. The construction of Post-Disaster Permanent Residential Special Houses in Central Sulawesi will be carried out as many as 6,312 units by the Directorate of Special

Houses through 2 stages. Phase 1 has built 1,679 units consisting of 230 units in Duyu, Palu City and 400 units in Pombewe, 97 units in Palu City, 330 units in Sigi Regency, and 622 units in Donggala Regency. A total of 655 shelter units in Palu City, Central Sulawesi have been handed over to the Palu City Government to be immediately inhabited by disaster survivors. The shelters were built with funding sourced from the central budget and equipped with various facilities and infrastructure such as water tendons, electricity and environmental roads, waterways, green open spaces and clean water networks.

Until now, the construction of phase 2 of the shelters is still in progress. The Ministry of PUPR and local governments argue that the process of providing shelters is hampered by obstacles in land acquisition and availability. Therefore, it is a homework for the state to provide adequate land and disaster resilient areas so that the fulfillment of housing for disaster victims can be achieved. The fulfillment of decent and safe housing needs from disasters is a measure of the quality of people's welfare. According to Sri Widati, rehabilitation can restore self-esteem, confidence, awareness and responsibility for the future of self, family and community or social environment so that they can carry out their social functions reasonably (Tursilarini & Udiati, 2020).

CONCLUSIONS

A dwelling that is lost or damaged due to land destruction is the responsibility of the state as explained in the laws and regulations. It is the right of the affected community to get a decent and safe place to live / shelter from disasters. One of the fulfillments of the state's responsibility in organizing housing due to disasters is the construction of special housing with various facilities and infrastructure in it. Communities affected by disasters not only rebuild damaged homes but require new residential areas that are more resilient to disasters.

The construction of the shelter is a form of implementation of the State carrying out the mandate of the law, because in fact each of these laws and regulations does require the State to provide, direct, foster and supervise activities related to the implementation of residential development so that they can be realized properly so that adequate housing can be fulfilled. If the state ignores this responsibility, it will be a form of state defiance of the 1945 Constitution and Pancasila.

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