
| RESEARCH ARTICLE

Legal Protection of Housing Consumers Against Misuse of Social Facilities and Public Facilities in Makassar City

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| ABSTRACT

This study aims to analyze the Consumer Protection of Housing and Public Facilities and Public Facilities from developers and analyze the implementation of the various functions of the United States social facilities and public facilities umby Housing Developers in Makassar City. The method used in the study is normative juridical research; the author tries to examine several laws and regulations related to public facilities, social facilities and consumer protection. The results showed that changes in housing/settlement are very detrimental to housing consumers to get their rights. So, the Makassar City government needs to require developers to include and explain this site plan so that housing consumers are protected.

| KEYWORDS

Consumer protection, public and social facilities, housing.

| ARTICLE INFORMATION

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1. Introduction

In line with the rapidly increasing population, the demand for the availability of various facilities that support people's lives has also increased (Hussein and Al-Mamary 2019). This encourages the government and private sector to carry out development, especially in the housing sector. Housing is one of the basic human needs that already exist, along with human existence (Ulfah and Tista 2019). Housing media is a means for humans to carry out various kinds of life activities and a means to provide the main protection against external disturbances, both against climatic conditions and against other disturbances. Therefore, the need for houses is part of human rights that should be protected and is the responsibility of the state housing areas that can be affordable, decent, healthy, safe, and harmonious (Alamudy, Roestamy, and Suhartini 2022). The existence of adequate and affordable housing is a recognition and protection of human rights as the goal of the welfare state (KOMNAS HAM Republic of Indonesia 2022)

The Constitution of the Republic of Indonesia Year 1945 (UUD NRI 1945) stipulates that "Everyone has the right to live a prosperous life physically and mentally, to reside, and to get a good and healthy living environment and the right to health services" (Article 28H paragraph 1 of the 1945 Constitution). In addition, welfare is the fulfillment of a decent life, both materially and spiritually, so that it can develop itself in socializing with others (Prasetyaningtyas 2014). The need for housing as the right of citizens to obtain it is the obligation of the State to meet this need (Waha and Jemmy 2014). However, the population is increasing rapidly, and the demand for land availability for housing has increased, especially in urban communities; the desire to get houses that meet health standards, construction standards and availability of public facilities, social facilities and environmental infrastructure is limited (Putri, Ridlo, and Widyasamratri 2023).

Article 3 of Law Number 1 of 2011 concerning Housing and Settlement Areas (hereinafter referred to as the Housing and Settlement Law/Perkim Law), that housing and settlement development is intended to provide legal certainty in the

implementation of housing and settlement areas as well as increase the utilization and use of natural resources for housing development and empower stakeholders in the field of housing development and Residential areas.

Currently, the concept of housing has undergone a shift, not only as a basic need or as a medium that provides protection, but housing has become a lifestyle, providing comfort and showing characteristics or identity, which is one of the patterns of self-development as needed in today's global society (Wahyuni 2018). The number of housing developments in South Sulawesi, especially in Makassar City by developers/developers, often causes several problems that can harm housing industry consumers because there are still many *developers* who only seek maximum profit regardless of consumer needs, especially small-scale developers and are not members of housing developer organizations or known as Real Estate English (REI).

To build housing, you must have a plan in advance, which includes plans for infrastructure, facilities and public utilities and plans for the provision of land plots for housing as part of housing. Planning is needed in order to avoid land allocation errors between house caveling and facilities, infrastructure, public utilities and social facilities, as happened in Anging Mammiri Makassar Housing, which should be There are several locations of the land plots concerned intended for public facilities (according to the site plan of Anging Mammiri Housing Makassar City), but used as private buildings (residential houses) by Residents who bought a piece of land in question, so it switched functions. However, the Developer promised to replace and relocate these public facilities.

2. Research Methods

In this study, the authors used normative juridical research methods. The nature of this research is looking for laws that are conceptualized as norms, rules, principles, or dogmas, known as doctrinal approaches. Thus, the author tries to find the enactment of normative legal provisions, namely legislation related to housing and settlements and consumer protection, bypassing primary data as supporting data with interviews with relevant government agencies to be analyzed in a qualitative way, then elaborated in descriptive analysis as a form of new norms.

3. Discussion

3.1 Consumer Protection of Housing and Social Facilities and Public Facilities from Developers

Housing consumers are everyone who buys and uses houses provided by developers as housing and settlement areas (Alamudy, Roestamy, and Suhartini, 2022). Consumer protection in question is related to legal protection, and consumer protection contains legal aspects. The material that gets protection is not just physical, but consumer rights (Lamentira and Subekti 2022). This is as stated in the Consumer Protection Law that what is meant by consumer protection is "All efforts that ensure legal certainty to provide protection to consumers". So, housing consumer protection is protection provided by law against the rights of housing consumers, namely the right to compensation, compensation or replacement, if the agreed house building or facility received is not in accordance with the agreement with the developer/developer (Hendri 2017). Housing is a group of houses that form a unit and function as a residence or residential environment (Sari and Ridlo 2022), equipped with infrastructure and facilities, and in accordance with the existing location, to support active community activities.

The types of infrastructure, facilities and settlements, as referred to in the Permendagri above, are housing and settlement infrastructure, including road networks, wastewater sewers, rainwater sewerage (drainage) and garbage dumps (Study et al., n.d.). Housing and settlement facilities include commercial / shopping facilities, public and government facilities, education, health, worship, recreation and sports, cemeteries, landscaping and green open spaces and parking, housing utilities and settlements including clean water networks, electricity networks, telephones, gas, transportation, fire fighting and public lighting services (Rosanti, Idris, and Kalalinggi 2015).

The existence of planning, which includes the provision of public facilities and social facilities in housing development, is intended so that every family occupies a decent house in a healthy, safe, harmonious, and orderly environment (Frans Mitrano 2020). Therefore, it is necessary for an environment that meets the requirements for land use, control of land rights, and the feasibility of environmental infrastructure and facilities to support the needs of the residents of the housing (Study et al., 2018).

However, based on an in-depth interview with Ma'russy, Manager of Mechanical Electric from PT. Nusasembada Bangunindo - IMB Group that the implementation and provision of public facilities and social facilities for Anging Mammiri Housing is in accordance with the provisions of the Settlement and Housing Law, namely with a ratio of 40%: 60%. The composition of the comparison has been coordinated with relevant agencies such as the Spatial Planning Office, the Environment Agency, and the Makassar City Government itself. Meanwhile, regarding the slight changes in Green Open Space, abbreviated as RTH, in the provision of public facilities in housing, changes have been proposed at the site plan and coordinated with related agencies.

Even Syamsul Kamar, the head of the legal team of PT. Nusasembada Bangunindo – IMB Group menjeexplain that, in principle, the Developer will always follow and apply the provisions of the applicable Law related to the provision and management of

public facilities and social facilities within the scope of housing PT. Nusasembada Bangunindo – IMB Group because most of these facilities have been enjoyed by residents in housing until now.

The legal rules that form the basis for the procurement of public facilities and social facilities in residential areas include SNI-03-6981- 2004, Regulation of the Minister of Public Works Number: 05/PRT/M/2008 concerning Guidelines for the Provision and Utilization of Green Open Space in Urban Areas, Regulation of the Minister of Home Affairs No. 9 of 2009 concerning Guidelines for Handover Infrastructure, Facilities, and Utilities in Residential and Residential Areas in the Regions, Makassar City Regional Regulation No. 15 of 2004 concerning Building Planning. The above rules prove that public facilities and social facilities are still an important issue in all related agencies.

Government Responsibility for the Procurement and Management of Public Facilities and Social Facilities by *Developers* in Makassar City, as previously explained, is that the procurement of public facilities and social facilities is an activity at the post-transaction stage, which includes after-sales service. Although the post-transaction activities are not agreed upon in the PPJB, several legal provisions are spread outside the KUHPdt, such as Article 7 of the Housing and Settlement Law and Permendagri No. 1 in the year 1987, which has been revised with Permendagri No. 9 of 2009 which requires *developers* to provide or hold post-transaction activities. This is intended solely for the benefit and protection of consumers, where the activities in this post-transaction are a series of legal protections for consumers.

3.2 Efforts to Resolve the Transfer of Its Functions, social facilities and public facilities by Housing Developers in Makassar City.

In Law Number 1 of 2011 concerning Housing and Settlement Areas, there are rights and obligations for the implementation of housing and settlement areas. This law regulates each of the rights and obligations applied to the developer/developer and to the consumer of housing.

This is a consequence of the need for recognition and certainty of equality in different functions between housing consumers and developers based on a clear formulation of the rights and obligations of each party. Thus, there is a relationship between housing consumers and developers that is manifested in terms of balance (fair) (Noormansyah and Taupiqurrahman, 2023).

According to the author, efforts are needed to resolve if there is misappropriation in the implementation of housing and settlement area development carried out by the developer, namely by obtaining adequate compensation for losses experienced directly as a result of the implementation of housing and settlement areas and filing a representative lawsuit (*Class Action*) to the court against the operation of housing and residential areas that harm the community. The right of housing consumers to obtain reimbursement and file a lawsuit in court is a form of effort to resolve consumer disputes on the responsibility of developers (Suharto, Hukum, and Maret 2011). In the legal community, there are two tendencies in dispute resolution, namely, through the courts and outside the court.

Lawsuits to court through *class action* are consumer dispute resolution with *the adversary system* and *coercion* approach (Ayu et al. 2002). Meanwhile, the provision of compensation due to the implementation of housing development and residential areas is an approach that is not with a coercive system but is resolved voluntarily (*win-win solution*).

In an effort to provide protection to housing consumers, the government has formulated actions that are prohibited from being carried out by developers/developers, both in the context of housing development, marketing, and promotion, so as not to harm consumers. The prohibited acts in the context of housing consumer protection are regulated in Article 7 of the Consumer Protection Law, which stipulates prohibiting business actors from committing fraudulent acts, ignoring applicable standards or laws and regulations and deceiving consumers in any way (Hanafi Amrani 2015).

In addition, the Consumer Protection Law regulates the responsibility of business actors (developers) by expressly seeking good faith in carrying out housing and residential area activities. The manifestation of this good faith is reflected in the willingness of developers to provide compensation for errors that occur in the framework of housing implementation activities (Fitriani 2013). If the developer refuses the claims against him that will cause losses to housing consumers, it results in the developer being sued by the court or the Consumer Dispute Settlement Agency (BPSK), as stipulated in the provisions of Article 45 paragraph (2) of the Consumer Protection Law.

However, it is possible for developers to be prosecuted under criminal law if, as proven in housing implementation activities carried out by developers, there is evidence of criminal elements (Alamudy, Roestamy, and Suhartini, 2022). In criminal sanctions, in the context of misappropriation of changes in social facilities and public facilities by developers (Subagyo 2021), according to the

author, the responsibility of developers should be more administrative sanctions. This sanction is in accordance with the functions of social facilities and public facilities, which support the facilities of a settlement.

In the misappropriation of the site plan for social facilities and public facilities, according to the Regional Finance Agency (BKD) of Makassar City, there has been a developer changing the *site plan* for facilities for other purposes, which then the Makassar City government asked developers to provide replacement land from land that has been transferred to other uses (Syukur et al. 2019). The land for existing facilities, social facilities and public facilities, according to the author, should be managed by the community of housing residents as early consumers, which will be allocated later for public interest and provide benefits for residents themselves. The reason the author reveals management by housing residents is because housing development itself is a development for public interest that is in line with the regional development plan in accordance with the city's spatial planning. So that social facilities, public facilities, and public green open spaces are in line with the arrangement of urban settlements.

Makassar City itself, if the misuse of land social facilities and public facilities that occurs is handled by the Makassar City BKD, even though it is limited to the use of public facility functions by residents who are not residents of housing for business activities without permission from the government. Then, the Makassar City Bappeda asked for a revision of the *site plan* that was not in accordance with its designation, and the developer who built the housing submitted a revision request to correct it immediately. Based on Makassar City Regional Regulation Number 15 of 2004 concerning Building Planning, it is determined that the management of Public Utility Facilities (PSU) that has been handed over to the regions is fully the responsibility of the local government and can cooperate with developers / private / community to manage it. As for the lands that are abandoned and not used by interested parties, the Makassar City Government supervises and controls the abandoned / unmaintained Housing and Settlement PSU land. If social facilities and public facilities have not been handed over to the region, then the Makassar City Government submits a letter to the developer/developer to repair/maintain it, if unable to have to with a statement letter. Then, it is processed through the Verification Team until it is handed over to the Makassar City government agency/agency authorized to manage the asset.

Based on the Makassar City regional regulation on the changes in social facilities and public facilities into business land by the developer/developer, the author has provided protection to housing consumers by providing administrative sanctions, namely by providing replacement land or by submitting revisions to the *site plan* that has been submitted and approved by the Makassar City government. However, the use of land social facilities and public facilities as housing PSU facilities has not involved housing residents as priority parties to do business in their residential areas.

In accordance with the statement of Hirman, Head of the PSU Handover Section at the Makassar City Housing and Settlement Office, public facilities and social facilities are mandatory in every residential area. Based on the results of research and field surveys on housing locations, namely Anging Mammiri and Beringin Permain 2, the procurement of public facilities and social facilities has been fulfilled by the Developer.

4. Conclusion

Based on the things that have been described in the discussion of the chapters and subchapters above, the author can conclude as follows:

1. This research has not been able to completely resolve the changes in social and public facilities that become business land in accordance with the initial site plan and the Makassar city government, as the regulator has not strictly obliged organizers of housing and settlement development in Makassar City because there are no provisions governing the prevention of changes. These facilities and there has not been much supervision over the use of their functions.
2. It is hoped that future researchers will focus more on the provisions for the transfer of social and public facilities that become business land in a residential area so that it does not harm housing consumers in getting the facilities provided in accordance with the initial agreement by the developer. So, more effective efforts are needed to complete these changes, which require the developer to revise the site plan for the Makassar City government. Apart from that, there needs to be requirements for developers to form groups of housing residents as a form of community that can submit legal applications.

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