

Criminal Acts of Refusing Housing Organizations and Settlement Companies in Indonesia

Tongat^{1*} Ratri Novita Erdianti² Nu'man Aunuh³ Said Noor Prasetyo⁴ Cholidah⁵

Kukuh Dwi Kurniawan⁶

^{1,2,3,4,5,6} Faculty of Law (University of Muhammadiyah Malang), Malang, Indonesia

*Corresponding author. Email: tongat@umm.ac.id

ABSTRACT

Housing and settlements are one of the basic needs of society so that all citizens can have a decent place to live. However, one of the problems that often occurs and is not realized by the community is that the refusal or act of obstructing the implementation of housing is one of the criminal acts regulated in the Law on Housing and Settlement Areas. However, of course, the crime must meet several elements to be said to be an act against the law. Therefore, the researcher will examine the details of unlawful acts in the criminal act of refusing the implementation of housing and settlement areas in positive Indonesian law. Using the normative research method, the researcher found that refusing or obstructing the resettlement of houses, housing, or settlements is an unlawful act on the condition that the payment has obtained permission from the government or local government.

Keywords: *Crime, Denial, Housing, Unlawful Acts.*

1. INTRODUCTION

Housing and settlements are one of the community's basic needs so that all citizens can have a decent place to live.[1] Of course, this is also related to the state's obligation, which is responsible for protecting all Indonesian citizens from having a decent and affordable place to live.[2] To provide such protection, the Government has issued laws and regulations in Housing and Settlement Areas, namely Law Number 1 of 2011 concerning Housing and Settlement Areas. This law is a replacement for Law Number 4 of 1992 concerning Housing and Settlements (Housing and Settlements Law).

There are several problems in the implementation of Housing and Settlements at this time. First, housing and settlements is a significant issue that always gets more attention from the Government. Second, the problem of housing and settlements is a problem that continues and will even continue to increase[3], in tune with population growth, population dynamics, and growing socio-economic demands. The main issues include population, spatial planning and regional development, suboptimal housing and settlement development, and land and infrastructure[1]. One of the problems that often occurs and is not realized by the community is that the act is a criminal act of refusal or

an act of obstructing the implementation of housing that has received permission from the Regional Government. Of course, this has social and economic impacts that hinder the performance of decent housing for the community.[4]

In principle, Article 142 of the Housing and Settlements Law prohibits a person from refusing and obstructing the activities of resettling houses, housing, or settlements that have obtained a determination from the Government or local Government, which is obtained after getting an agreement with the local community. If this is done, then it is considered a crime. As stated in Article 159 of the Housing and Settlements Law, which says that a person who deliberately refuses or hinders the construction of resettlement of houses, housing, or settlements that has received approval and determination by the Central Government or Regional Government after obtaining permission from the local community is a criminal act. Furthermore, the crime is subject to a maximum imprisonment of one year or a maximum fine of 100.000.000 IDR (one hundred million rupiahs).

Acts against the law stated in article 159 of Law no. 1 of 2011 concerning Housing and Settlement Areas have occurred in the people of Malang City in the implementation of Housing at Cengger Ayam Inside in 2017. In addition, there are also several problems related

to residents' rejection of housing development, such as Taman Tirta Housing[5], Housing Pondok Cabe Park[6], Griya Pangpong Regency Housing[7].

One of the problems that often occurs and is not realized by the public is that the refusal or act of obstructing the implementation of housing is one of the criminal acts regulated in the Law on Housing and Settlement Areas. However, of course, the crime must meet several elements to be said to be an act against the law. Therefore, the researcher will examine how the details of unlawful acts in the criminal act of refusing *housing and settlement areas in positive Indonesian law. Thus, the researcher will discuss the concept of illegal acts in the criminal act of refusing to organize housing and settlements.*

2. METHODS

This research is qualitative research that aims to find the right knowledge to provide answers to legal problems.[8] Therefore, this research requires a paradigm adopted by the scientific community, used as a perspective, method, basic principle to solve a problem.[9][10] This research is normative (*legal research*) with several approaches: the statute, *analytical, and philosophical approaches*. [11] This study will examine the legal norms contained in regulatory texts (regulation language). This study will use secondary data as the primary data obtained from a literature study which will be presented systematically and then analyzed descriptively and analytically using deductive logic.[12]

3. DISCUSSION

I. THE CONCEPT OF UNLAWFUL ACTS

Unlawful Acts, as stated in Article 159 of Law no. 1 of 2011 concerning Housing and Settlement Areas, will first explain the meaning of being against the law in general. In general, scholars agree that the essence of being against the law is against the law, both the law in the objective sense and the law in the subjective sense[13] and both written law and unwritten law.[14] Thus, breaking the law can be interpreted as an attitude that is contrary to the perpetrator's legal obligations or violates others' rights (Arrest HR January 6, 1905).[15] Against the law can also be interpreted as doing something or not doing something, which is contrary to the rights of others, or is contrary to the legal obligations of the perpetrator, or is contrary to decency or morals or is contrary to the appropriate attitude of caution in public relations for oneself or others. other people's goods (Arrest HR January 31, 1919).[16] Against the law can

also be interpreted as contradicting or against the law.[17]

Breaking the law is one of the elements of a crime. Every crime always contains elements against the law. By referring to the concept of against the law as described above, an act can be said to be an unlawful act if the act is against the law, both written law and unwritten law.

II. ELEMENTS OF THE CRIME OF REFUSAL TO ORGANIZE *HOUSING AND SETTLEMENTS*

Article 159 of the Housing and Settlements Law states that a person who intentionally refuses or hinders the construction of resettlement of houses, housing, or settlements obtained approval and determination by the Central Government or Regional Government after getting approval from the community local is a crime. Furthermore, the offense is subject to a maximum imprisonment of one year or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiahs). Meanwhile, the prohibition has been stated in the provisions of Article 142 of the Housing and Settlements Law, which states that it prohibits a person from rejecting and obstructing the activities of resettling houses, housing, or settlements that have obtained a determination from the Government or local Government which this is obtained after getting an agreement with the community local.

The crime as regulated in Article 159 of the Housing and Settlements Law is a formal crime. Formal crime is a type of crime considered completed/occurred (*vooltooid delict*) by having committed an act prohibited by law, without questioning the consequences.[18] It is also often doctrinally stated that formal criminal acts are criminal acts whose formulation is focused on prohibited acts, not on their products. Acts prohibited in Article 159 of the Housing and Settlements Law are acts of refusing or hindering the resettlement of houses, housing, or settlements that have been determined by the Government or local government after an agreement has been reached with the local community.

There are several things contained in Article 159 of the Housing and Settlements Law are. First, Everyone; "Everyone" means every legal subject, both human and legal entities, who are legally capable of acting and legally responsible. Second, by deliberately; "by deliberately" mean or want to know. This indicates that a person can have intentionally committed a crime if he wants to do the crime or knows what he is doing. In the context of Article 159 of the PKP, a person is said to have intentionally refused or hindered the resettlement of houses, housing, or settlements, if he wishes to reject or restrict the activities of resettling homes, housing, or

settlements that have been determined by the Government or local government after an agreement has been reached with the local community or if he knows or realizes that what he has done—whether in words or actions—is refusing or hindering the activities of resettling houses, housing, or settlements that have been determined by the Government or local government after agreement with the local community. However, because in legal practice, the view is that the intentional nature is colorless (*kleurloos apzet*), it is not necessary to prove that there was deliberate intent, that the perpetrator had malicious intentions, namely the intention to refuse or hinder the resettlement of houses. Housing, or settlements that the Government or local Government has determined. It is sufficient to prove that the perpetrator intends to carry out the act, which later turns out to be of the nature of refusing or hindering the activities of resettling houses, housing, or settlements that the Government or regional Government has determined.

Third, refusing/obstructing implies not accepting or obstructing (the actions of the other party). Resettlement activities of houses, housing, or settlements, are activities/businesses/work in implementing housing or settlements. Based on Article 1 point 6 of the Housing and Settlements Law, the implementation of housing and settlement areas are planning, development, utilization, and control activities, including institutional development, funding, and financing systems, and coordinated and integrated community roles. Meanwhile, based on Article 1 Number 2 of the Housing and Settlements Law, housing is a collection of houses as part of settlements, both urban and rural, which are equipped with infrastructure, facilities, and public utilities due to efforts to fulfill livable houses. Meanwhile, based on Article 1 Number 5 of the Housing and Settlements Law, Settlement is part of a residential environment consisting of more than one housing unit with infrastructure, facilities, public utilities. In addition, it has supporting activities for other functions in urban areas or rural areas. Meanwhile, according to the explanation of Article 28 paragraph 1 letter b of the Housing and Settlements Law, the definition of infrastructure includes roads, drainage, sanitation, and drinking water. Meanwhile, facilities at least include houses of worship and green open spaces (RTH), and public utilities at least include electricity networks, including KWH meters and telephone networks.

Fourth, has been determined by the Government or local government after an agreement with the local community. This element has the following meanings:

1) Matters that the Government or regional governments have determined are called Stipulations. Based on Article 1 Number 3 of Law

Number 5 of 1986, the stipulation is a written determination issued by the Agency/PTUN containing legal actions for State Administration based on the applicable laws and regulations, which are concrete, individual, and final which will have legal consequences for the person and judicial body. This determination is important in providing legality to people who want to organize housing and settlement areas. Furthermore, based on Article 17 paragraph (2) of Government regulations Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas, several administrative requirements must be met in the Planning of Public Infrastructure, Facilities, and Utilities (Housing), namely: status of land plot control and completeness of permits.

- 2) Permit is a form of stipulation, a legal act of state administration applied in regulations based on requirements and procedures as determined by statutory provisions. This stipulation is followed by details of the requirements, criteria, and others that the Applicant must meet to obtain a dispensation accompanied by procedures and operational guidelines to the relevant state administration official. The implementation of housing requires several stages of licensing that must be met, namely: 1) Land use permit/location permit; 2) Land Acquisition; 3) Environmental Agency Permit; 4) Preparation of the Site Plan; 5) Certificate Solving; and 6) Permit to construct a building.
- 3) To fulfill the permit to construct a building, one of the requirements that must meet is a Neighbor's Statement which the right-left-front-back neighbors and sub-districts legalize. Related to this, as an example in the area of Malang City, a Mayor regulation has been made which has been regulated in Article 8 of Malang Mayor Regulation Number 8 of 2009 About Procedure for Licensing Services at the Malang City Integrated Licensing Service Agency, which determines that if one or several or all owners of land and / or buildings that are in direct contact with the structure and/or business of the Applicant cannot and / or are not willing to sign the Statement of No Objection.

Furthermore, the stages of the building construction permit issuance process are sequential as follows:

- a. Applicants are required to comply with licensing procedures and fulfill other requirements, including the stipulated technical studies;
- b. The applicant signs a Statement Letter with sufficient stamps, which the local RT knows, RW, and Lurah, which states that the Applicant has visited the owner of the land and / or building that is directly adjacent to the building and / or business being requested to ask for the willingness to sign the Statement of No

Objection but is concerned. not willing for some reason;

- c. The Applicant includes a Certificate signed by the local Lurah, which certifies that a village-facilitated deliberation has been carried out between the Applicant and the owner of the land and/or building which is directly adjacent to the Applicant's building and/or business;
- d. The statement letter as referred to in number 3 is attached with the results of the meeting/minutes of deliberation and a list of attendance at the meeting, all of which are signed by the RT, RW, Lurah, and both parties to the conflict
- e. If after deliberation the owners of land and/or buildings that are directly adjacent to the building and/or business of the Applicant are willing to sign a No Objection Letter, then the permit issuance process can be carried out based on the established mechanism as stipulated in the legislation;
- f. If after the deliberation, the owner of the land and/or building that is directly adjacent to the building and/or business of the Applicant is still not willing to sign the Statement of No Objection, then the Head of BP2T immediately facilitates a coordination meeting by involving the relevant Regional Apparatus to discuss the results of the meeting/minutes as intended at number 4;
- g. The results of the coordination meeting as referred to in number 6 are stated in the Minutes signed by the Head of BP2T accompanied by the Attendance List of the participants;
- h. If based on the contents of the Minutes it is stated that the reason for the refusal of the owner of the land and/or building which is directly adjacent to the building and business requested to sign the Statement of No Objection cannot be a proven technology, the permit issuance process can be carried out based on the established mechanism as stipulated in the provisions. laws and regulations;
- i. If based on the contents of the Minutes it is stated that the reasons for the refusal of the owner of the land and/or buildings that are directly adjacent to the buildings and businesses that are requested to sign the Statement of No Objections can be a proven technology, the permit issuance process cannot be carried out. Thus, the Building Permit (IMB) becomes the final benchmark of the legality of housing.

Based on the analysis of Article 159 above, the unlawful act referred to in Article 159 of the Housing and Settlements Law is an act of refusing or preventing the resettlement of houses, housing, or settlements that have obtained permission from the Government or local Government.

4. CONCLUSION

Breaking the law is one element of a crime. Every crime always contains elements against the law. An act can be against the law if the show is against the law, both written and unwritten. As referred to in Article 159 of the Housing and Settlements Law, the unlawful act is the act of refusing or hindering the resettlement of houses, housing, or settlements that have obtained permits from the government or local governments.

REFERENCES

- [1] Admin BAPPEDA, "Isu dan Permasalahan Pembangunan Perumahan dan Pemukiman - Bappeda Kabupaten Grobogan," 2012. [Online]. Available: <https://bappeda.grobogan.go.id/data-info/bidang-prastaru/26-isu-dan-permasalahan-pembangunan-perumahan-dan-pemukiman/>.
- [2] A. . Isnaini and L. Adnan, "Hak Warga Negara Dalam Pemenuhan Lingkungan Tempat Tinggal yang Layak Ditinjau dari Perspektif Hukum Hak Asasi Manusia," *Jatiswara*, vol. 33, no. 1, 2018.
- [3] Perumahan dan Kawasan Permukiman, "Isu dan Tantangan Penyediaan Perumahan," 2021. [Online]. Available: <https://perkim.id/tantangan-penyediaan-perumahan/isu-dan-tantangan-penyediaan-perumahan/>.
- [4] D. Herdiana, "Dampak Pembangunan Perumahan Terhadap Perubahan Sosial Masyarakat Desa (Studi Kasus Di Desa Jayamekar, Kabupaten Bandung Barat)," *Pembang. Wil. dan Kota*, vol. 14, no. 4, pp. 265–280, 2019.
- [5] N. Bakrie, "Pembangunan Perumahan Taman Tirta di Malang Ditolak Warga," *jatimnow*, 2020.
- [6] A. Irfan, "Warga Taman Pondok Cabe Tolak Jalan Perumahan Jadi Akses Pembangunan," *Antara News*, 2020.
- [7] A. Basri, "Warga Tolak Pembangunan Perumahan," *Radar Madura*, 2021.
- [8] S. Wignjosebroto, *Hukum: Paradigma, Metode, dan Masalahnya*. Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2002.
- [9] J. S. Suriasumantri, *Filsafat Ilmu sebuah Pengantar Populer*. Jakarta: Pustaka Sinar Harapan, 2009.
- [10] D. Satori and A. Komariah, *Metodologi Penelitian Kualitatif*. Bandung: Alfabeta, 2009.
- [11] J. Efendi and J. Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris*, 2nd ed. Depok: Prenadamedia Group., 2018.
- [12] I. Mustofa, "Jendela Logika dalam Berfikir; Deduksi dan Induksi sebagai Dasar Penalaran Ilmiah," *Pemikir. dan Pendidik. Islam*, vol. 6, no. 2, 2016.
- [13] R. B. B. Prastowo, "Delik Formil/Materiil, Sifat Melawan Hukum Formil/Materiil Dan Pertanggungjawaban Pidana Dalam Tindak Pidana Korupsi," *Huk. Pro Justitia*, vol. 24, no. 3, 2006.
- [14] I. Sari, "Perbuatan Melawan Hukum (Pmh) Dalam Hukum Pidana Dan Hukum Perdata," *Ilmu Huk. Dirgant.*, vol. 11, no. 1, 2021.
- [15] A. Rahmatdi and P. . Faiz, "Gugatan Perdata Perbuatan Melawan Hukum Dalam Perselisihan Partai Golongan Karya," *Yudisial*, vol. 14, no. 1, 2021.
- [16] T. Apriani, "Konsep Perbuatan Melawan Hukum Dalam Tindak Pidana," *GANEC SWARA*, vol. 13, no. 1, 2019.
- [17] I. Anggraeny and Tongat, "Notary Liability over their Involvement in Document Falsification Crime," *Varia Justitia*, vol. 16, no. 1, 2020.
- [18] Y. A. Fajrin, A. F. Triwijaya, F. S. Prastyo, and M. Naufal, "Reformulasi Delik Makar Dalam Rancangan Kitab Undang-Undang Hukum Pidana Nasional Tahun 2019 (Sebuah Telaah Leksikal Terhadap Terminologi Aanslag)," *J. Huk. dan Pembang.*, vol. 51, no. 1, pp. 74–94, 2021.