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## SHIFT OF REGULATION NORMS RELATING TO HOUSING LAW

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### ABSTRACT

There is a shift in norms regarding the form of sanction regulation in the new and old public housing and settlement regulations, namely in Law Number 1 of 2011 concerning Housing and Settlement Areas to Law Number 6 of 2023 concerning Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation Becomes Law. It seems that such conditions do not provide enough legal protection for consumers. The aim of this research is to analyze the ideal of establishing legal norms in housing regulations; to discover the legal implications of shifting norms regarding Housing. This type of research is normative legal research. The approach used is a statutory, concept and case approach with qualitative analysis methods. The results of the research show that ideally the establishment of legal norms is to regulate criminal sanctions, fines and additional criminal sanctions in Law Number 1 of 2011 concerning Housing and Settlement Areas. Where the criminal sanction of a fine has been applied to the developer of the Padang District Court in Decision Number 46/Pid.Sus/2018/PN Pdg which made the defendant admit that he felt deterred and provided justice and legal protection for low-income people regarding the right to livable government subsidized housing . The implications are: First, justice in the principles of this theory is as if it sides with the interests of business actors. Second, the failure of the law to regulate sanctions in the new regulations. This condition shows that there is an inconsistency between law in abstract form and the implementation of law in society. Third, the new regulation is in conflict vertically with Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Fourth, the new regulation is also horizontally in conflict with Law Number 12 of 2011 concerning the Establishment of Legislative Regulations as guidelines. making laws and regulations in Indonesia where the concept of Omnibuslaw is unknown in the types and hierarchy of laws and regulations in Indonesia and amendments/revocations of laws and regulations across sectors that are not justified, apart from that it also violates the principle of clarity of formulation and the principle of conformity between types and hierarchies. , and cargo material. Fifth, the shift in norms for regulating sanctions in the new regulations has the implication of not realizing legal protection for low-income communities who suffer losses due to developers and violating the community's human rights to obtain adequate residential housing.

**Keywords:** Displacement, Sanctions, Housing.

### ABSTRAK

Adanya pergeseran norma dalam terkait bentuk pengaturan sanksi dalam regulasi perumahan dan permukiman rakyat yang baru dan yang lama yaitu dalam Undang-Undang Nomor 1 Tahun 2011 tentang Perumahan dan Kawasan Permukiman menjadi Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja Menjadi Undang-Undang. Kondisi yang demikian irasa kurang memberikan perlindungan hukum bagi konsumen. Tujuan penelitian ini adalah Untuk menganalisis idealnya penetapan norma hukum dalam peraturan

perumahan; untuk menemukan implikasi hukum dari pergeseran norma tentang Perumahan. Jenis penelitian ini adalah penelitian hukum normatif. Pendekatan yang digunakan adalah pendekatan perundang-undangan, konssep dan kasus dengan metode analisis kualitatif. Hasil penelitian diketahui bahwa Idealnya penetapan norma hukum adalah adanya pengaturan sanksi pidana denda dan pidana tambahan dalam Undang - Undang Nomor 1 Tahun 2011 tentang Perumahan dan Kawasan Permukiman. Dimana sanksi pidana denda tersebut sebagaimana telah diterapkan kepada pihak developer Pengadilan Negeri Padang dalam Putusan Nomor 46/Pid.Sus/2018/PN PdG yang membuat terdakwa mengaku merasa jera serta memberikan keadilan dan perlindungan hukum bagi masyarakat berpenghasilan rendah atas hak perumahan subsidi pemerintah layak huni. Implikasinya adalah *Pertama*, Keadilan dalam prinsip teori ini bersifat seolah-olah berpihak pada kepentingan pelaku usaha. *Kedua*, Kegagalan hukum Pengaturan sanksi dalam regulasi yang baru, kondisi demikian menunjukkan adanya inkonsistensi antara hukum dalam bentuk abstrak dengan pelaksanaan hukum dalam masyarakat. *Ketiga*, Regulasi baru tersebut bertentangan secara vertikal dengan Pasal 28H ayat (1) Undang - Undang Dasar Negara Republik Indonesia Tahun 1945. *Keempat*, Regulasi baru tersebut secara horizontal juga bertentangan dengan Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undang sebagai pedoman pembuatan peraturan perundang-undangan di Indonesia dimana tidak dikenalnya konsep *Omnibuslaw* dalam jenis dan hieraki peraturan perundang-undangan di Indonesia dan amandemen/ pencabutan peraturan perundang-undangan lintas sektor yang tidak dibenarkan, selain itu juga melanggar asas kejelasan rumusan serta asas kesesuaian antara jenis, hierarki, dan materi muatan. *Kelima*, pergeseran norma pengaturan sanksi dalam regulasi baru berimplikasi tidak terwujudnya perlindungan hukum bagi masyarakat berpenghasilan rendah yang dirugikan karena developer serta terlanggarnya hak asasi masyarakat tersebut untuk mendapatkan rumah hunian yang layak.

**Kata Kunci:** Pergeseran, Sanksi, Perumahan.

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## INTRODUCTION

The protection provided by the state has the scope of protecting the rights of the community, especially human rights. One of the characteristics of a state of law according to Jimly Asshiddiqie, is the existence of the principle of protection of Human Rights.<sup>1</sup> The Indonesian Constitution is the basic guideline for the implementation of legal protection of Human Rights in Indonesia. Human Rights are a dimension of the totality of human life. Examining the state of human rights is actually examining the totality of life, to what extent our lives give a fair place to humanity.<sup>2</sup> One of the human rights that is given legal protection in the Indonesian constitution as national law is the right to have a decent place to live, as regulated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that: Everyone has the right to live in physical and spiritual prosperity,

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<sup>1</sup> Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar - Pilar Demokrasi*, (Jakarta: Sinar Grafika, 2015), hlm. 131

<sup>2</sup> Majda El Muhtaj, *Hak Asasi Manusia dalam Konstitusi Indonesia*, (Jakarta: Prenada Media Group, 2015), hlm. 43.

to have a place to live, and to have a good and healthy living environment and has the right to receive health services.

Law Number 1 of 2011 concerning Housing and Residential Areas. Legally, the definition of housing according to Article 1 number 2 of Law Number 1 of 2011 concerning Housing and Residential Areas, states that: Housing is a collection of houses as part of a settlement, both urban and rural, which is equipped with infrastructure, facilities, and public utilities as a result of efforts to fulfill habitable houses.

The need for decent housing in Indonesia is quite high today. This is known by the author based on literature/documentary studies which state that: although the amount of land availability continues to decrease. However, the demand for housing development is increasing along with the increase in population and limited land/land.<sup>3</sup>

The government in providing and facilitating the acquisition of housing for Low-Income Communities organizes cooperation with designated housing development organizers/developers. In order to obtain the availability of housing in question, the housing development organizers/developers of single houses and/or terraced houses are also allowed to market housing that is still under construction. This is based on the provisions of Article 22 paragraph (3) of Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas, which states that: Single houses and/or terraced houses that are still in the process of Housing construction can be marketed through the Preliminary Sale and Purchase Agreement system or Sale and Purchase Binding Agreement hereinafter referred to as PPJB in accordance with the provisions of laws and regulations.

The definition of PPJB is contained in Article 1 number 11 of Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas, which states that: Preliminary Sale and Purchase Agreement or Sale and Purchase Binding Agreement hereinafter referred to as PPJB is an agreement between the developer and any person to carry out the sale and purchase of a House or a unit of flats which can be carried out by the developer before construction for flats or in the construction process for single houses and terraced houses which are made before a notary.

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<sup>3</sup> Andika Wijaya dan Wida Peace Ananta, (Ed.), *Hukum Bisnis Properti di Indonesia*, (Jakarta: PT Grasindo, 2017), hlm. 7.

However, problems often arise in the implementation of the PPJB system in Indonesia, as the author knows based on secondary data sources which state that: However, the agreements that have been agreed upon in the PPJB which bind the parties often give rise to problems and obstacles in the future.<sup>4</sup> One of the problems in question is the time period for building a house that does not match what has been agreed in the PPJB, so that in this case the developer is in default of what was agreed in the PPJB. It even ends up not completing the construction of the house. As a result, consumers have been harmed.<sup>5</sup> Another problem is the failure to fulfill public infrastructure and utilities as stated in the PPJB signed by the consumer. In this case, the developer can be said to be in default.<sup>6</sup> Apart from that, problems often arise in terms of the shape, interior and quality of the house building which do not match what was agreed upon.<sup>7</sup> Where there are forms of default by the housing development organizer/developer, the housing development organizer/developer may be subject to legal sanctions.

Since the enactment of Law Number 11 of 2020 concerning Job Creation, which has now been amended to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, many laws and regulations have been amended, one of which is Law Number 1 of 2011 concerning Housing and Residential Areas.

The focus of normative legal research in this thesis is the regulation of legal sanctions against the obligations of housing development organizers/developers. Housing development organizers/developers are prohibited from carrying out acts regulated in Article 134 of Law Number 1 of 2011 concerning Housing and Residential Areas Jo. Article 134 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in

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<sup>4</sup> Antari Innaka, Sa'ida Rusdiana dan Sularto, "Penerapan Asas Itikad Baik Tahap Prakontraktual Pada Perjanjian Jual Beli Perumahan", *Jurnal Mimbar Hukum*, Vol. 24 No. 3 Tahun 2021, hlm. 505.

<sup>5</sup> Duwi Galih Prasetiawan, Abdurrahman Konoras dan Deasy Soeikromo, "Wanprestasi Developer Perumahan Terhadap Proses Penyelesaian Pembangunan Rumah Berdasarkan Perjanjian Pengikatan Jual Beli (PPJB) Tanah dan Bangunan", *Jurnal Lex Administratum*, Vol. IX No. 1 Tahun 2021, hlm. 52.

<sup>6</sup> Noviedz Zulvan Afriza, "Akibat Hukum Terhadap Developer Perumahan yang Tidak Sediakan Sarana, Prasana, Utilitas Berdasarkan Peraturan Pemerintah Nomor 12 Tahun 2021 tentang Penyelenggaraan Perumahan dan Kawasan Permukiman", *Jurnal Of Law*, Vol. 8 No. 2 Tahun 2022, hlm. 2.

<sup>7</sup> Jajang Arifin, "Perlindungan Konsumen Atas Wanprestasi Developer Terhadap Bangunan KPR Berdasarkan Undang - Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen", *Jurnal Yustisia*, Vol. 5 No. 2 Tahun 2019, hlm. 235.

Lieu of Law Number 2 of 2022 concerning Job Creation into a Law that amends Article of Law Number 1 of 2011 concerning Housing and Residential Areas.

Faced with the dynamics of the problem of Default in the implementation of housing development/developers, as mentioned above, the regulation of sanctions in Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law against violations of the law is considered not to provide legal protection for consumers. This is different from the regulation of sanctions in the old regulation which provides more legal protection for consumers, namely Law Number 1 of 2011 concerning Housing and Residential Areas, which is now related to the regulation of the sanctions in question has been changed. The sanctions in question are sanctions as regulated in Article 150 paragraph (1) and paragraph (2) letter g and Article 151 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. Where it is felt to provide less legal protection for consumers.

The regulation of sanctions in the old regulations which provide more legal protection for consumers is Law Number 1 of 2011 concerning Housing and Residential Areas, which has now been amended regarding the regulation of sanctions in question.

The differences in the concept of sanctions regulation in the two regulations can be explained as follows.:

1. The differences in the concept of sanctions regulation in the two regulations can be explained as follows.:
  - a. Article 151 (1) Any person who carries out housing development, who does not build housing in accordance with the criteria, specifications, requirements, infrastructure, facilities and public utilities agreed upon as referred to in Article 134, shall be punished with a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).
  - b. Article 151 (2) In addition to the criminal penalties referred to in paragraph (1), the perpetrator may be subject to additional penalties in the form of rebuilding the housing in accordance with the agreed criteria, specifications, requirements, infrastructure, facilities and public utilities.
2. Regulation of sanctions in Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law:

- a. Article 150 paragraph (1) and paragraph (2) letter g of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, that:
- 1). Article (1): "Any person who organizes housing and residential areas that do not fulfill the provisions as referred to in Article 26 paragraph (1), Article 29 paragraph (1), Article 30 paragraph (2), Article 34 paragraph (1) or paragraph (2), Article 36 paragraph (1), paragraph (2) or paragraph (4), Article 38 paragraph (4), Article 45, Article 47 paragraph (2), paragraph (3), or paragraph (4), Article 49 paragraph (2), Article 63, Article 71 paragraph (1), Article 126 paragraph (2), Article 134, Article 135, Article 136, Article 137, Article 138, Article 139, Article 140, Article 141, Article 142, Article 143, Article 144, Article 145, or Article 146 paragraph (1) shall be subject to administrative sanctions..
  - 2). Article (2): "Administrative sanctions as referred to in paragraph (1) may take the form of rebuilding housing in accordance with the agreed criteria, specifications, requirements, infrastructure, facilities and public utilities, and standards
- b. Article 151 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into a Law that amends Article 151 of Law Number 1 of 2011 concerning Housing and Residential Areas, which states that: "Any person who carries out housing development that builds housing that does not comply with the criteria, specifications, requirements, infrastructure, facilities, and public utilities agreed upon as referred to in Article 134 which results in victims/damage to health, safety, and/or the environment shall be punished with a maximum fine of IDR 5 billion."

Several literatures that conduct studies on legal violations by housing developers/developers have been conducted and written by several previous researchers which were then used as a literature review in this thesis research as the author describes as follows:

*First*, an article in a journal written by Jajang Arifin in a journal entitled "Consumer Protection for Developer Default on KPR Buildings Based on Law Number 8 of 1999 Concerning Consumer Protection". In the article, the author states that: Several housing consumers who have experienced losses due to house buildings that are not in accordance with what was agreed with the house construction organizer have filed complaints and asked for

responsibility in the form of compensation to the developer, but the developer still does not take responsibility for his actions.<sup>8</sup>

*Second*, an article in a journal written by Noviedz Zulvan Afriza in a journal entitled "Legal Consequences for Housing Developers Who Do Not Provide Facilities, Infrastructure, Utilities Based on Government Regulation Number 12 of 2021 concerning the Implementation of Housing and Residential Areas". In the article, the author states that: In its implementation, the problem of providing housing by housing development organizers/developers in Indonesia still occurs inconsistencies between the points listed in the sales and purchase agreement signed by consumers, especially if there is no availability of infrastructure, facilities, and public utilities, even though there are legal sanctions that can ensnare housing development organizers/developers.<sup>9</sup>

This research is important to do because it is related to the emergence of new provisions that criminal sanctions in the form of fines can be imposed but require that it must cause special losses for consumers, namely causing victims/damage to health, safety, and/or the environment, which is considered to provide less legal protection for consumers. Then the regulation of housing reconstruction in accordance with the criteria, specifications, requirements, infrastructure, facilities, and public utilities agreed upon, and standards that were initially regulated as additional criminal sanctions are now regulated as administrative sanctions, which are also considered to provide less legal protection for consumers considering that administrative sanctions do not specify a maximum limit regarding when the obligation must be carried out by the housing organizer/developer, in contrast to additional criminal sanctions which have executive power and can be submitted for execution to the judicial institution if the housing organizer/developer does not carry out its obligations.

This research attempts to create an ideal concept for regulating sanctions for housing organizers/developers who, in building housing for government subsidies for low-income communities in the People's Housing Credit program, do not comply with legal provisions and do not comply with the PPJB.

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<sup>8</sup> Jajang Arifin, *Perlindungan Konsumen...*, *Loc. Cit.*

<sup>9</sup> Noviedz Zulvan Afriza, *Akibat Hukum...*, *Loc. Cit.*

## RESEARCH METHODS

This research is descriptive in nature with a normative research type, namely: a process of finding legal rules, to answer the legal issues faced.<sup>10</sup> This is in accordance with the character of perspective in legal science. This normative legal research is conducted to produce new arguments, theories or concepts as prescriptions in the problems faced.<sup>11</sup> Data was collected secondary by conducting several research steps by reviewing based on primary, secondary and tertiary legal materials related to the research object. Primary legal materials in this study were obtained from the 1945 Constitution of the Republic of Indonesia; Law Number 1 of 2011 concerning Housing and Residential Areas; Law Number 12 of 2011 concerning the Formation of Legislation; Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law; Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas Regulation of the Minister of Home Affairs Number 5 of 1974 concerning Land Rights for Company Needs and Their Requirements. Regulation of the Minister of Public Works and Public Housing Number 12 of 2020 concerning the Role of the Community in the Implementation of Housing and Residential Areas.

The approaches used in this study are the legislative approach, the conceptual approach and the case approach. The data obtained in this study were analyzed qualitatively. While the conclusion was drawn inductively.

## RESULTS AND DISCUSSION

The regulation of Human Rights regarding adequate housing in International law that was also signed by the Indonesian government at that time was the Rio de Janeiro Declaration initiated by the United Nations Center for Human Settlements. "The legal substance of the implementation of Human Rights regarding adequate housing is contained in Agenda 21 and the Habitat II Declaration, which states that housing is a basic human need and is a right for everyone to occupy adequate and affordable housing (adequate and

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<sup>10</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Prenada Media Group, 2006), hlm. 35.

<sup>11</sup> *Ibid.*



affordable shelter for all). Agenda 21 also emphasizes the importance of housing as a human right.<sup>12</sup>

National law on the regulation of housing management is further regulated in Law Number 1 of 2011 concerning Housing and Residential Areas. Legally, the definition of housing according to Article 1 number 2 of Law Number 1 of 2011 concerning Housing and Residential Areas, states that: Housing is a collection of houses as part of a settlement, both urban and rural, which is equipped with infrastructure, facilities, and public utilities as a result of efforts to fulfill habitable houses.

Violation, overtrading; violation; contravention, an act that is prohibited and is threatened with a punishment that is determined by criminal law to be lighter than a crime. Violation of the law/wetschending, namely an act that is not in accordance with or contradicts the provisions of the law; for example, a person who violates a prohibition or does not carry out criminal law obligations. Violator, overtrader; law breaker, namely a person who violates criminal law.<sup>13</sup> However, legal protection for Indonesian people, especially low-income people, to obtain decent housing in housing has shifted due to shifts in norms that regulate legal sanctions for housing developers who do not build housing in accordance with legal provisions/provisions that have been agreed upon between the parties and low-income people who are then referred to as consumers.

### **Determination of Ideal Legal Norms in Housing Regulations**

The law on housing and residential areas that applies in Indonesia, especially in Law Number 1 of 2011 concerning Housing and Residential Areas, if viewed from the perspective of criminal law, it can be said that the regulation is part of criminal law. This is as stated by Moeljatno who defines criminal law as part of the entire law that applies in a country, which provides the basis and rules related to the following matters: *First*, Contains provisions regarding acts that may not be carried out, which are prohibited, accompanied by threats or certain criminal sanctions for each violator. *Second*, Provides provisions regarding when and in what cases each person who has violated the prohibitions can or is sentenced to the criminal penalties as threatened therein; *Third*, Provides provisions on how and in what way the imposition of

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<sup>12</sup> Nia Kuirniati, "Kajian Hukum Pembangunan Rumah Susun Di Atas Tanah Wakaf Untuk Memenuhi Kebutuhan Rumah Tinggal Bagi Masyarakat Berpenghasilan Rendah", *Jurnal Kabuyutan*, Vol. 1 No. 2 Juli 2022, hlm. 63.

<sup>13</sup> *Ibid*, *lm.* 96.

criminal penalties can be carried out against people who are suspected of violating the provisions.<sup>14</sup>

However, there is another opinion if the law on housing and residential areas is more inclined towards administration. So that the implementation of sanctions is more recommended in the form of administrative sanctions. This is as stated that it is better to apply administrative sanctions than criminal sanctions because basically the criminal acts regulated in Law Number 1 of 2011 concerning Housing and Residential Areas are essentially not pure crimes, but only administrative laws that are strengthened by penal facilities, or in other words, only administrative laws that are given criminal sanctions. It should be remembered that this regulation, in addition to regulating criminal sanctions, also regulates administrative sanctions. It would be wiser if criminal law would only be used when administrative law is unable to resolve problems in the field of housing and residential areas. The existence of penalties in the regulation, from its negative aspect, risks a deterrent effect for perpetrators of criminal acts.<sup>15</sup>

Crime is part of a criminal act, related to the authority to impose a sentence on it, it is also stated that: Crime is a problem that is very disturbing to society at large. Crime always exists in society even though it is never wanted. Therefore, the government must overcome it, in the form of imposing a sentence or punishment for those who have been proven to have committed a crime.<sup>16</sup>

However, the prohibition in the provisions of Article 134 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into a Law that amends Article 34 of Law Number 1 of 2011 concerning Housing and Residential Areas is still violated in Indonesia from document/literature studies on online news sites, cases of housing development, especially housing for low-income communities, the construction of which by housing development organizers/developers is not in accordance with legal provisions and as agreed in the Preliminary Sale and Purchase Agreement or Sale and

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<sup>14</sup>Moeljatno, *Asas-Asas Hukum Pidana*, (Jakarta: Renika Cipta, 2008), hlm. 1.

<sup>15</sup> Panca Subagyo, "Penegakan Hukum Pidana Terhadap Tindak Pidana di Bidang Perumahan dan Kawasan Permukiman Berdasarkan Undang-Undang Nomor 1 Tahun 2011 tentang Perumahan dan Kawasan Permukiman", *Al' Adl: Jurnal Hukum*, Vol. 13 No. 2 Juli 2021, hlm. 219-220.

<sup>16</sup> Olivia Anggie Johar, Fahmi dan Selamat Parlindungan, "Pelaksanaan Surat Edaran Kapolri No. 8/VII/2018 tentang Penerapan *Restorative Justice* Dalam Perkara Pidana di Kepolisian Resor Kota Pekanbaru", *Riau Law Journal*, Vol. 5 No. 2 November 2021, hlm. 127.

Purchase Binding Agreement still occur in Indonesia. This is as a result of the document/literature study conducted by the author that: Yayasan Lembaga Konsumen Indonesia -YLKI (Indonesian Consumer Foundation) has collected data where in housing development, especially housing for low-income communities with a pre-project selling system/ Preliminary Sale and Purchase Agreement or Sale and Purchase Agreement by housing developers, it is still often a source of problems for consumers in the future. From 2014 to 2016, the Indonesian Consumers Foundation has received at least 440 (four hundred and forty) complaints related to housing.<sup>17</sup> Where the problems include: First, the realization of problematic public facilities/social facilities. Second, the housing unit changes during construction from the offered unit. And it has been agreed in the agreement between the consumer and the housing development organizer/developer.<sup>18</sup>

Related to its law enforcement by still referring to the old regulation which according to the author's analysis is an ideal regulation that can provide a deterrent effect for housing development organizers/developers who do not build housing, especially government subsidized houses for low-income communities in accordance with applicable legal provisions and in accordance with the Sale and Purchase Agreement or Preliminary Sale and Purchase Agreement, the form of law enforcement can be seen in several cases in Indonesia. Some of these cases are described by the author as follows:

*First*, in Padang City, where the housing development organizer/developer has not been able to complete the development of government subsidized housing for low-income people, due to violations of the law committed in obtaining land that was built as housing. a permanent legal decision from the Padang District Court against Elvi Maderani as a form of criminal law enforcement against the development of government subsidized housing for low-income people. Elvi Madreani at that time as the defendant was found guilty of committing a crime in the field of housing and residential areas and was sentenced to 1 (one) year in prison in the Padang District Court decision Number 46/Pid.Sus/2018/PN Pdg for violating Article 154 and Article 151 paragraph (1) of Law Number 1 of 2011 concerning Housing and Residential Areas. In this case, the defendant Elvy Madreani was

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<sup>17</sup> Tri Hamdani (Okezone.com), *Bentuk Badan-Badan Pengawas Pengembang Rumah, Otoritas Jasa Keuangan Hingga Pengadilan Bisa Dilibatkan (Online)*, dalam <https://economy.okezone.com/read/2017/05/19/470/1694880/bentuk-badan-pengawas-pengembang-rumah-ojk-hingga-pengadilan-bisa-dilibatkan>, diakses pada tanggal 2 Januari 2024, Pukul 16.11 WIB.

<sup>18</sup> *Ibid.*

sentenced to a fine and a sentence of 1 (one) year in prison by the Padang District Court. The verdict made the defendant admit that he felt deterred.<sup>19</sup>

*Second*, in Makassar City where the problem of government subsidized housing development for low-income people is a fairly complex problem that is violated by the organizers of housing development/developers. This is as stated that: The problems that occur in the housing and settlement sector that occur in Indonesia and in Makassar City in particular include problems related to non-conformities in the form of delayed delivery schedules, architectural drawings, floor plans and technical specifications for construction, non-conformities in agreements, and other facilities such as clean water network facilities, electrical installations and environmental infrastructure (public facilities), as well as legal issues such as Building Permits (IMB) and house certificates. The IMB and certificates promised to home buyers or consumers during the house sales promotion were not fulfilled. In addition, developer companies as housing developers in Makassar City only provide guarantees for the quality of housing buildings that have been purchased for only 100 days since the handover of the house. This occurs in several housing estates, one of which is government subsidized housing for low-income people. In this case, criminal sanctions have not been applied.<sup>20</sup>

*Third*, in Balikpapan City where the problem of government subsidized housing development for low-income communities is violated by housing development organizers/developers, especially housing development that is not in accordance with the initial agreement. This is as stated in a journal that: Law enforcement should be carried out by the government preventively and repressively, namely by strictly supervising and implementing administrative sanctions and criminal sanctions against developers who do not build in accordance with the planned footprint as stipulated in the Balikpapan City Regional Regulation and its parent regulation, namely Law Number 1 of 2011 concerning Housing and Residential Areas. In fact, the legal accountability imposed by the government on Balikpapan's *Pesona Khatulistiwa* housing developers who do not build *bendali/bozem* is in the form of administrative legal accountability and criminal legal accountability. Administrative legal accountability is in the form of warnings to revocation of permits, in accordance with Article 17 of

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<sup>19</sup> Panca Subagyo, *Penegakan Hukum...*, *Op. Cit*, hlm. 238.

<sup>20</sup> Muhammad Arsy, "Tanggung Jawab Pengembang Terhadap Kualitas Bangunan Yang Telah Terjual di Kota Makassar", *Jurnal Pleno Jure*, Vol. 10 No. 1 Tahun 2021, hlm. 3.

Balikpapan City Regional Regulation Number 5 of 2013 concerning the Provision and Delivery of Infrastructure, Facilities, and Utilities in Housing Areas is applied. While Law Number 1 of 2011 concerning Housing and Residential Areas. In fact, the application of administrative sanctions alone is not enough, so that the number of violations still occurs every year.<sup>21</sup>

To find out the ideal concept of establishing legal norms in housing regulations related to the legal functions above, in this case Law Number 1 of 2011 concerning Housing and Residential Areas in conjunction with Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into a Law that amends Article of Law Number 1 of 2011 concerning Housing and Residential Areas, then regarding the existing problems obtained by the author from primary legal materials (statutory regulations), secondary legal materials (Journals) and tertiary (websites) above, the author will analyze them using the Theory of Justice, Theory of Legislation and Theory of Legal Protection with the following analysis results:

*First*, Collective justice according to Aristotle, states that: If an action occurs that is considered unfair (unfair prejudice) in social relations, then the law plays a very important role in reversing the situation, so that the justice that has been lost (the lost justice) can be found again by the party that has been treated unfairly (wronged, exploited).<sup>22</sup> In this thesis research, the injustice referred to is the failure to build government subsidized housing for low-income communities in several administrative areas of the Unitary State of the Republic of Indonesia.

Where the author analyzes that the provisions of sanctions in Article 151 paragraph (1) and paragraph (2) of Law Number 1 of 2011 concerning Housing and Residential Areas in the form of criminal sanctions in the form of imprisonment and criminal sanctions in the form of fines accompanied by additional criminal sanctions in the form of rebuilding housing in accordance with legal provisions/in accordance with that agreed in the Sale and Purchase Agreement can conceptually restore justice that has been lost regarding the rights of poor people to decent housing.

John Rawls views justice as something that must be upheld, where the justice enforcement program with a people's dimension must pay attention to

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<sup>21</sup> Isa Jannet Firdzusy, Suhadi dan Sri Endang Rayung Wulan, "Pertanggungjawaban Hukum Pengembang yang Tidak Membangun Bendali/Bozem di Perumahan Pesona Khatulistiwa Balikpapan", *Jurnal De Facto*, Vol. 6 No. 2 Januari 2020, hlm. 101.

<sup>22</sup> B. Arief Sidharta dan Meuwissen, *Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum*, (Bandung: Refika Aditama, 2007), hlm. 93.

two principles of justice, namely, granting equal rights and opportunities for the broadest basic freedoms as broad as the same freedom for everyone; and being able to reorganize the socio-economic disparities that occur so that they can provide reciprocal benefits.<sup>23</sup> However, in terms of the concept of justice that John Rawls meant, poor people do not get it.

The author's analysis is based on the provisions as a justice enforcement program where the enforcement of justice in the realm of legal science can be carried out through the concept of regulating law enforcement against prohibitions that have been violated, in fact only favors the organizers of housing development/housing developers/developers. So in this case there is discrimination of justice for certain groups as weak groups, namely the poor.

According to the author, this can be seen in the shift in norms related to the regulation of sanctions for housing development organizers/housing developers/developers who do not build housing, especially government subsidized housing for low-income communities in accordance with the focus of this thesis research. The shift in new norms makes the old norm, namely the Regulation of sanctions in Article 151 paragraph (1) and paragraph (2) of Law Number 1 of 2011 concerning Housing and Residential Areas in the form of criminal sanctions in prison and criminal sanctions in the form of fines accompanied by additional criminal sanctions in the form of rebuilding housing in accordance with legal provisions/in accordance with what is agreed in the Sale and Purchase Agreement conceptually able to restore justice that has been lost regarding the rights of poor people to decent housing to no longer apply.

The new provisions in the concept of shifting norms referred to are: Article 150 paragraph (1) and paragraph (2) letter g of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, that:

- a. Article 150 paragraph (1): Any person who organizes Housing and Residential Areas that do not fulfill the provisions as referred to in Article 26 paragraph (1), Article 29 paragraph (1), Article 30 paragraph (2), Article 34 paragraph (1) or paragraph (2), Article 36 paragraph (1), paragraph (2) or paragraph (4), Article 38 paragraph (4), Article 45, Article 47 paragraph (2), paragraph (3), or paragraph (4), Article 49 paragraph (2), Article 63, Article 71 paragraph (1), Article 126 paragraph

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<sup>23</sup>Raisul Muttaqien, *General Theory of Law and State Hans Kelsen*, (Bandung: Nusa Media, 2006), hlm. 7.

(2), Article 134, Article 135, Article 136, Article 137, Article 138, Article 139, Article 140, Article 141, Article 142, Article 143, Article 144, Article 145, or Article 146 paragraph (1) shall be subject to administrative sanctions..

- b. Article 150 paragraph (2): Administrative sanctions as referred to in paragraph (1) may take the form of rebuilding housing in accordance with the agreed criteria, specifications, requirements, infrastructure, facilities and public utilities, and standards.
- c. Article 151 states that: Any person who carries out housing development and builds housing that does not comply with the criteria, specifications, requirements, infrastructure, facilities and public utilities agreed upon as referred to in Article 134 which results in victims/damage to health, safety and/or the environment shall be punished with a maximum fine of IDR 5 billion..

Where the shift in norms according to the author can be analyzed as follows:

- a. The emergence of a new sanction concept, namely administrative/administrative sanctions. Where initially the concept of sanctions was only in the form of criminal sanctions, specifically criminal fines and additional criminal sanctions in the form of rebuilding housing in accordance with applicable legal provisions.
- b. The emergence of new provisions that criminal sanctions in the form of fines can be imposed but require that it must cause special losses to consumers, namely causing victims/damage to health, safety, and/or the environment. This means that if there is no such loss, then criminal sanctions in the form of fines cannot be imposed.
- c. The emergence of new provisions in the regulation regarding the reconstruction of housing in accordance with the agreed criteria, specifications, requirements, infrastructure, facilities and public utilities, and standards which were initially regulated as a form of additional criminal sanctions are now regulated as administrative sanctions.

So the final result of the author's analysis based on the Theory of Justice is the ideal concept of determining legal norms in housing regulations is the old regulation before experiencing a shift in norms. The old regulation in question is Law Number 1 of 2011 concerning Housing and Residential Areas. This regulation does not favor certain groups, but provides balanced and equal justice for all groups in society.

*Second*, According to Jimly Asshiddiqie, statutory regulations are defined as follows: Statutory regulations are the entire hierarchical structure of statutory regulations in the form of laws and below, namely all legal products that involve the role of the people's representative institutions together with the government or involve the role of the government because of its political position in the context of implementing legislative products determined by the people's representative institutions together with the government according to their respective levels.<sup>24</sup>

The hierarchical structure of the statutory regulations referred to by Jimly Asshiddiqie, if linked to Law Number 12 of 2011 concerning the Formation of Statutory Regulations, hierarchically consists of:

- a. UUD NRI 1945
- b. Decree of the People's Consultative Assembly (TAP MPR)
- c. Law/Government Regulation in Lieu of Law (Perppu)
- d. Government Regulation
- e. Presidential Regulation
- f. Provincial Regulation
- g. Regency/City Regulation.

Related to the problems in this study, the new regulation on housing and residential areas, namely Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into a Law that amends Article of Law Number 1 of 2011 concerning Housing and Residential Areas with the concept of omnibus law is not known in Law Number 12 of 2011 concerning the Formation of Legislation as a guideline for making legislation in Indonesia. The author analyzes that the unfamiliarity of Omnibuslaw in the types and hierarchy of laws and regulations in Indonesia based on Law Number 12 of 2011 concerning the Formation of Laws and Regulations and the amendment/revocation of cross-sectoral laws and regulations that are not permitted in Law Number 12 of 2011 concerning the Formation of Laws and Regulations causes it not to fulfill the legal basis for the formation of laws, in addition to also violating the principle of clarity of formulation and the principle of conformity between types, hierarchies, and material contents, causing this regulation to be formally flawed.

Then in the reform era, the transparency frame was articulated as participation which was given the meaning of community involvement in the

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<sup>24</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme di Indonesia*, (Jakarta: Sinar Grafika, 2011), hlm 264.



political process as widely as possible, especially in the formation of legislation so that it gave birth to participatory and responsive legal products. One of the participatory and responsive legal products according to the author's analysis that was born was Law Number 12 of 2011 concerning the Formation of Legislation. With the enactment of Law Number 12 of 2012 concerning the Formation of Legislation, the hope for transparency in the formation of legislation began to strengthen. The community can participate in every stage of the formation of legislation starting from the planning, drafting, discussion, ratification/stipulation and promulgation stages.<sup>25</sup>

Where the provisions regarding public participation in the making of laws in the substance of Law Number 12 of 2012 concerning the Formation of Legislation are legally regulated in Article 96 paragraph (1) of the regulation which states that: "The public has the right to provide input verbally and/or in writing in the Formation of Legislation. Where in fact the formation of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into a Law that does not listen to the participation of the public who reject it.

Then the sociological aspect in the formation of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law is also not fulfilled because according to the author's analysis, this regulation, especially regarding the shift in norms regarding sanctions for developers in housing development, only favors developers by ignoring the bias towards small communities such as low-income communities. It should be noted that Law Number 12 of 2012 concerning the Formation of Legislation requires the formation of laws in Indonesia to consider philosophical, legal and sociological aspects. The sociological aspect is only textual as stated in the Consideration of the Job Creation Regulation. However, concretely, this does not exist.

Philipus M. Hadjon is of the view that law is always related to power. Related to legal protection, it is stated that: Power consists of two, namely government power and economic power. In relation to government power, the problem of legal protection for the people (who are governed), against the government (who governs). Then in relation to economic power, the problem of legal protection is protection for the weak (economic) against the strong (economic), for example protection for workers against employers. So, it can

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<sup>25</sup> *Ibid*, hlm. 135.

be said that legal protection can be assessed from the aspect of government and the aspect of economic power.<sup>26</sup>

Related to the problems in this thesis research, the author analyzes that the conceptual aspect of legal protection provided by the government both in terms of government power and economic power has been accommodated in Law Number 1 of 2011 concerning Housing and Residential Areas. Where with the coercive power held by the government, through legal products the government makes coercive efforts to protect consumers from the legal aspect in this case the weak, namely low-income communities, to obtain compensation for the construction of housing intended for them that is not in accordance with the agreement and not in accordance with legal provisions. Where developers can be given criminal sanctions in the form of fines and additional criminal sanctions in the form of rebuilding the housing in question so that it is in accordance with the agreement and in accordance with legal provisions.

Regarding the regulation of sanctions in the shifting of norms, namely the new norm (Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into a Law that amends Article of Law Number 1 of 2011 concerning Housing and Residential Areas), it does not provide legal protection for the community. This can be seen from the emergence of new provisions that criminal sanctions in the form of fines can be imposed but require that they must cause special losses for consumers, namely causing victims/damage to health, safety, and/or the environment, which is considered to provide less legal protection for consumers. Then the regulation of housing reconstruction in accordance with the criteria, specifications, requirements, infrastructure, facilities, and public utilities agreed upon, and standards that were initially regulated as a form of additional criminal sanctions are now regulated as administrative sanctions, which are also considered to provide less legal protection for consumers considering that administrative sanctions do not specify a maximum limit regarding when the obligation must be carried out by the housing organizer/developer, in contrast to criminal sanctions in the form of fines and additional criminal sanctions which have executive power and can be submitted for execution to the judicial institution if the housing organizer/developer does not carry out its obligations.

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<sup>26</sup> Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, (Jakarta: Sinar Grafika, 2009), hlm. 10.

So the final result of the author's analysis based on the Theory of Legislation is the ideal concept of determining legal norms in housing regulations is the old regulation before experiencing a shift in norms. The old regulation in question is Law Number 1 of 2011 concerning Housing and Residential Areas. With the following legal reasons:

- a. Through legal products, the government makes coercive efforts to protect consumers from legal aspects, in this case the weak, namely low-income communities, to obtain compensation and a deterrent effect for developers. Where developers can be given criminal sanctions in the form of fines and additional criminal sanctions in the form of rebuilding the housing in question so that it is in accordance with the agreement and in accordance with legal provisions.
- b. Criminal sanctions in the form of fines and additional criminal sanctions that have executorial power and can be submitted for execution to the judicial institution if the housing organizer/developer does not carry out his/her obligations so as to provide more legal protection for housing consumers.

Overall, by referring to the results of normative legal research and the theoretical analysis above, the broad outline of the author's analysis is that in concrete terms, by not applying criminal sanctions in the form of fines and additional criminal penalties in the provisions of Article 151 paragraph (1) and 151 paragraph (2) of Law Number 1 of 2011 concerning Housing and Residential Areas, such as the cases that occurred in the cities of Padang, Makassar, Cibitung and West Sumatra Province, it is clear that this will not deter developers and make them afraid of breaking the law, so that they do not provide legal protection to housing consumers, especially government subsidized housing for low-income communities.

Then, regarding the ideal concept of regulating legal norms in housing regulations in concrete form in Balikpapan City, the application of administrative sanctions alone is in fact not enough so that the number of violations still occurs every year so that it does not provide significant legal protection for housing consumers. In concrete terms, in Padang City, criminal sanctions were applied in the Padang District Court Decision Number 46/Pid.Sus/2018/PN PdG because based on the provisions of Article 154 and Article 151 paragraph (1) of Law Number 1 of 2011 concerning Housing and Residential Areas. Where in accordance with the focus of this research, Article 151 paragraph (1) of Law Number 1 of 2011 concerning Housing and

Residential Areas was implemented in the form of imposing a fine which made the defendant admit to feeling deterred, the positive effect is that consumers get legal protection. So it can be said that ideally the determination of legal norms in housing regulations is as regulated in Law Number 1 of 2011 concerning Housing and Residential Areas regarding the existence of criminal sanctions in the form of fines and additional criminal sanctions for housing development organizers/developers.

Based on the results of the overall analysis related to the problem of the ideal concept of determining legal norms in housing regulations, there is a regulation of criminal sanctions in the form of fines and additional criminal penalties for housing development organizers/housing developers/developers who carry out housing development but do not comply with legal provisions related to criteria, specifications, requirements, infrastructure, facilities, and public utilities and do not comply with what is agreed in the Preliminary Sale and Purchase Agreement/Sale and Purchase Binding Agreement in Law Number 1 of 2011 concerning Housing and Residential Areas. This is because in the administrative sanctions in the new regulations, there is no maximum limit regarding when the obligation must be carried out by the housing organizer/developer, in contrast to the criminal sanctions in the form of fines and additional criminal penalties in Law Number 1 of 2011 concerning Housing and Residential Areas. Which has executive power and can be submitted for execution to the judicial institution.

### **Barriers to Legal Implications of Shifting Housing Norms**

The sanctions in Law Number 1 of 2011 concerning Housing and Residential Areas are quite ideal for the author because they regulate sanctions in the form of criminal fines. If so, it is certain that the sanctions in Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law which has an impact on the shift in norms are certainly even less ideal. Where the shift in norms in question is as generally brings the following legal implications: First, the emergence of new provisions that criminal fines can be imposed but requires that they must cause special losses for consumers, namely resulting in victims/damage to health, safety, and/or the environment, is considered to provide less legal protection for consumers. Second, it provides less legal protection for consumers considering that administrative sanctions do not specify a maximum limit regarding when the obligation must be carried out by the housing organizer/developer, in

contrast to additional criminal sanctions which have executive power and can be submitted for execution to the judicial institution if the housing organizer/developer does not carry out its obligations.

To find out the legal implications of the shift in housing norms, the author will analyze it specifically using the Theory of Justice, the Theory of Legislation and the Theory of Legal Protection. With the following analysis:

*First*, "Collective justice according to Aristotle, states that: If an action occurs that is considered unfair (unfair prejudice) in social relations, then the law plays a very important role in reversing the situation, so that the justice that has been lost (the lost justice) can be found again by the party that has been treated unfairly (wronged, exploited).<sup>27</sup> Related to the problems in this thesis research, the author analyzes that the shift in housing norms is actually a legal regression. The impact is that the sense of justice for the wider community, especially low-income communities in Indonesia, is not fulfilled.

*Second*, In the study of legal theory it is stated that: Failure of legal regulations may occur when the abstract legal regulations are in the concrete world.<sup>28</sup> Related to the problems in this thesis research, the author analyzes that the shift in norms regarding housing has implications for legal failure. The norm in question is the Regulation of sanctions in Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law which is considered to have failed, considering the emergence of losses for housing consumers and the increasing number of cases in housing development that are not in accordance with legal provisions/not in accordance with what was agreed in the Preliminary Sale and Purchase Agreement between consumers and housing developers.

To be clearer, the failure in question can be indicated by the emphasis on the absence of substance/content of the legislation which should have fulfilled several moral requirements according to Lon F. Fuller's standards as follows:

- a. *Free of contradiction*, the rules must not conflict with each other either vertically or horizontally..

In relation to this thesis research, the regulation of sanctions in Article 150 paragraph (1) and paragraph (2) letter g and Article 151 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation

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<sup>27</sup> B. Arief Sidharta dan Meuwissen, *Tentang Pengembangan...*, *Loc. Cit.*

<sup>28</sup> Ahmad Redi, *Hukum Pembentukan Peraturan Perundang - Undangan*, (Jakarta: Sinar Grafika, 2017), hlm. 44-45.

into Law are vertically contradictory to the provisions of the Indonesian constitution. Specifically in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which 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 has the right to obtain health services.

The regulation horizontally also contradicts Law Number 12 of 2011 concerning the Formation of Legislation which is a guideline for the creation of legislation in Indonesia. The concept of omnibus law proposed in Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law is not recognized in Law Number 12 of 2011 concerning the Formation of Legislation. The author analyzes that the unfamiliarity of Omnibus law in the types and hierarchies of legislation in Indonesia based on Law Number 12 of 2011 concerning the Formation of Legislation and the amendment/revocation of cross-sectoral legislation that is not permitted in Law Number 12 of 2011 concerning the Formation of Legislation causes it not to meet the legal basis for the formation of legislation, in addition to also violating the principle of clarity of formulation and the principle of conformity between types, hierarchies, and material contents, causing this regulation to be formally flawed.

- b. *They should be a congruence between the laws as announced and their actual administration, where the law must have consistency between the rules as announced and their actual implementation.*

In relation to this thesis research, the provisions on sanctions in Article 150 paragraph (1) and paragraph (2) letter g and Article 151 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law are not effective in society. The provisions on sanctions therein do not make housing organizers/developers avoid the prohibition that regulates not to carry out housing development that does not comply with the criteria, specifications, requirements, infrastructure, facilities, agreed public utilities, and standards as the prohibition is regulated in Article 134 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law which amends Article 134 of Law Number 1 of 2011 concerning Housing and Residential Areas, which states that: everyone is

prohibited from carrying out housing development that does not comply with the criteria, specifications, requirements, infrastructure, facilities, agreed public utilities, and standards.

Such conditions indicate an inconsistency between the law in abstract form and the implementation of law in society (concrete law). Such legal implications in the concept of legal theory can be solved through judicial review. Thus, judicial review of the constitutionality aspect of the Law is actually a legal control over the political process, namely the making of laws carried out by the Government and the DPR.<sup>29</sup>

*Third*, Satjipto Raharjo provides an understanding of the concept of legal protection, namely: legal protection is an action to provide protection to parties who are harmed and whose basic rights are violated and this protection is given to the community so that the community can enjoy their rights which have been legally granted by law.<sup>30</sup>

Related to the problems in this thesis research, the shift in the norm of sanctions regulation in Article 150 paragraph (1) and paragraph (2) letter g and Article 151 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law has implications for the failure to realize legal protection in the form of protection for low-income people who are disadvantaged because developers build subsidized houses for them not in accordance with the agreement in the Sale and Purchase Agreement/Preliminary Sale and Purchase Agreement and in several cases the construction of the house does not comply with the requirements stipulated by law. Such conditions also have further implications for the violation of the basic rights of low-income people to obtain decent housing/housing.

## CONCLUSION

1. Ideally, the determination of legal norms in housing regulations is the regulation of criminal sanctions in the form of fines and additional criminal penalties for developers who carry out housing development but do not comply with legal provisions and do not comply with what is agreed in the Preliminary Sale and Purchase Agreement in Law Number 1 of 2011 concerning Housing and Residential Areas. Where the criminal

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<sup>29</sup> Mahfud. MD, *Hukum dan Pilar-Pilar Demokrasi*, (Yogyakarta: Gama Media, 1999), hlm. 327-328

<sup>30</sup> Satjipto Rahardjo, *Permasalahan Hukum di Indonesia*, (Bandung: Alummni, 1983), hlm. 121.

sanctions of fines as has been applied to the developer of the Padang District Court in Decision Number 46 / Pid.Sus / 2018 / PN Pdg which made the defendant admit to feeling deterred and providing justice and legal protection for low-income people for the right to decent government subsidized housing.

2 The legal implications of the shift in norms regarding Housing are *First*, Justice in the principles of this theory is discriminatory in that it appears to favor the interests of business actors. *Second*, Legal failure of the sanctions provisions in the new regulations, considering the increasing number of housing development cases that do not comply with legal provisions/do not comply with what was agreed in the Preliminary Sale and Purchase Agreement. Such conditions indicate an inconsistency between the law in abstract form and the implementation of the law in society (the law in concrete form). *Third*, The new regulation is in vertical conflict with Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states: "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 has the right to receive health services". *Fourth*, The new regulation horizontally also contradicts Law Number 12 of 2011 concerning the Formation of Legislation as a guideline for the creation of legislation in Indonesia, where the concept of Omnibuslaw is not recognized in the types and hierarchy of legislation in Indonesia and the amendment/revocation of cross-sector legislation is not permitted, in addition to also violating the principle of clarity of formulation and the principle of conformity between types, hierarchies, and material content. *Fifth*, The shift in the normative provisions for sanctions in the new regulations has implications for the failure to realize legal protection for low-income communities who are harmed by developers and the violation of the basic rights of these communities to obtain decent housing.



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