

GOVERNMENT LIABILITY TOWARDS THE AMOUNT OF SAVINGS BY PUBLIC HOUSING SAVINGS PARTICIPANTS

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Abstract

Article 28H Paragraph (1) of the Indonesian constitution expresses that the government is responsible for the availability of housing. In line with that, the government launched solution by holding the People's Housing Savings (Tapera). This study aims to examine and analyze the appropriateness of the amount of Tapera participant savings reviewed from the perspective of good governance and the mechanism for suing the government. The method used is the legislative and conceptual approach. The results of this study indicate that the amount of Tapera participant savings in Article 15 of Government Regulation No. 21 of 2024 is not by the principles of good governance. This is because the high amount of participant savings is considered to burden the lower class, lose the opportunity to participate in the Tapera program, and favor the middle to upper class. Therefore, the community can sue the government through the civil law or Ombudsman.

Keywords: Government; Liability; Tapera.

Abstrak

Pasal 28H Ayat (1) konstitusi Indonesia menyampaikan bahwa pemerintah bertanggungjawab atas ketersediaan tempat tinggal masyarakat. Sehubungan dengan hal itu, solusi pemerintah adalah mengadakan Tabungan Perumahan Rakyat (Tapera). Penelitian ini bertujuan untuk mengkaji dan menganalisis mengenai kesesuaian besaran simpanan peserta Tapera ditinjau dari perspektif *good governance* dan mekanisme menggugat pemerintah. Metode yang digunakan adalah pendekatan perundang-undangan dan konseptual. Hasil penelitian ini menunjukkan bahwa besaran simpanan peserta Tapera dalam Pasal 15 Peraturan Pemerintah No. 21 Tahun 2024 tidak sesuai dengan *prinsip good governance*. Hal itu dikarenakan oleh tingginya besaran simpanan peserta dinilai membeani masyarakat kecil, kehilangan kesempatan untuk mengikuti program Tapera, dan berpihak pada masyarakat menengah ke atas. Oleh karena itu, masyarakat dapat melakukan tanggunggugat terhadap pemerintah secara hukum perdata dan Ombudsman.

Kata Kunci: Pemerintah; Tanggunggugat; Tapera.

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INTRODUCTION

Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) guarantees the right of every individual to obtain a decent place to live as part of the right to social protection and welfare. This guarantee reflects the state's commitment to ensuring that every citizen has access to adequate, safe, and healthy housing so that they can live with dignity.¹ In this context, the state is obliged to create policies and programs that support the provision of affordable housing that meets the needs of the community, as well as protect individual rights from eviction or arbitrary actions that can be detrimental.² With this guarantee, it is hoped that everyone can feel safe and comfortable in their residential environment, which is a fundamental aspect in achieving a prosperous life.³

The current problem is that Indonesia is facing a crisis in the need for home ownership or what is known as a housing backlog, where millions of people still do not have access to decent housing. According to data, the housing backlog in Indonesia has reached a significant number, with causal factors such as rapid population growth, urbanization, and limited financial ability of the community to buy a house.⁴ This crisis creates a major challenge for the government and other stakeholders in providing affordable and quality housing solutions.⁵ Efforts to overcome this backlog require innovative and collaborative policies, including the development of housing programs that focus on providing housing for low-income groups, as well as improving infrastructure and accessibility to residential locations.⁶ If not addressed seriously, the housing backlog problem can hurt the social and economic welfare of the community, as well as worsen inequality in access to housing.

Facing the above problems, the Government regulates the People's Housing Savings (hereinafter referred to as Tapera) in legislation as one of the strategic steps to overcome the decent housing crisis in Indonesia.⁷ Through this program, the government seeks to provide better access for the community, especially for low-income groups, to own decent and affordable homes.⁸ Tapera aims to encourage people to save and facilitate housing financing through a planned and sustainable scheme. With clear regulations, the government not only shows its commitment to fulfilling the right to housing but also creates a system

¹ Ridha Wahyuni, "Perlindungan Hak Atas Tempat Tinggal yang Layak Bagi Warga Terdampak Penggusuran Berdasarkan Perspektif Hak Asasi Manusia," *Jurnal Indonesia Sosial Teknologi* 3, no. 4 (2022), <https://doi.org/10.36418/jist.v3i4.404>.

² Baharuddin Riqiey, Fransiscus Hapsekito, dan Anggini Milania Aranta, *Kasus HAM pada Kelompok Rentan di Indonesia* (Malang: Madza Media, 2024).

³ Karsten Jeske, Dirk Krueger, dan Kurt Mitman, "Housing, Mortgage Bailout Guarantees and the Macro Economy," *Journal of Monetary Economics* 60, no. 8 (2013), <https://doi.org/10.1016/j.jmoneco.2013.09.001>.

⁴ Panangian Simanungkalit, "'Mengatasi 12,7 Juta Backlog Perumahan'," *Kompas*, 2023, <https://www.kompas.id/baca/opini/2023/08/24/mengatasi-127-juta-backlog-perumahan>.

⁵ Faris Alshubiri dan Mawih Kareem Al Ani, "Housing Affordability Indicators and the Sustainability Paradigm in OECD Countries," *Cities* 148 (2024), <https://doi.org/10.1016/j.cities.2024.104904>.

⁶ Ashlesha Datar et al., "Assessing Impacts of Redeveloping Public Housing Communities on Obesity in Low-Income Minority Residents: Rationale, Study Design, and Baseline Data from the Watts Neighborhood Health Study," *Contemporary Clinical Trials Communications* 25 (2022), <https://doi.org/10.1016/j.conctc.2021.100879>.

⁷ Henriko Ganesha Putra, Erwin Fahmi, dan Kemal Taruc, "Tabungan Perumahan Rakyat (Tapera) dan Penerapannya di DKI Jakarta," *Jurnal Muara Sains, Teknologi, Kedokteran dan Ilmu Kesehatan* 3, no. 2 (2020), <https://doi.org/10.24912/jmstkik.v3i2.5630>.

⁸ Thomas Aneurin Smith dan Alison Brown, "Community-Led Housing and Urban Livelihoods: Measuring Employment in Low-Income Housing Delivery," *Habitat International* 94 (2019), <https://doi.org/10.1016/j.habitatint.2019.102061>.

that supports housing development effectively and efficiently.⁹ This is expected to reduce the housing backlog and improve the quality of life of the community, as well as create a better residential environment throughout Indonesia.¹⁰

One of the regulations governing Tapera is Law Number 4 of 2016 concerning Public Housing Savings which is then further regulated in Government Regulation Number 25 of 2020 concerning the Implementation of Public Housing Savings as last amended by Government Regulation of the Republic of Indonesia Number 21 of 2024 concerning Amendments to Government Regulation Number 25 of 2020 concerning the Implementation of Public Housing Savings (hereinafter referred to as PP No. 21 of 2024). In one of the contents of PP No. 21 of 2024, it is stated that the amount of Participant Savings is set at 3% (three percent) of Salary or Wages for Worker Participants and Income for Independent Worker Participants.

Regarding the provisions of Article 15 of PP 21 of 2024 above, the public thinks that the amount of the contribution deduction is very large, which can add to the burden on workers. This is because workers currently have to cover various contributions, such as Social Health Security Administering Body, Employment Social Security Administration Agency, and daily needs such as electricity and fuel (BBM). Seeing the problems above, the author wants to review and analyze the suitability of Article 15 of PP No. 21 of 2024 with the principle of good governance and the mechanism for suing the government if the government is deemed to have failed to provide guarantees for decent housing.¹¹ The principle of good governance emphasized in this study is focused on the principle of benefit.

The urgency of researching government responsibility for the amount of savings of public housing savings participants is very important considering that this program is one of the efforts to increase public access to decent housing. With the increasing need for housing, it is important to understand the extent to which the government plays a role in ensuring the security and growth of savings participants' savings, as well as its impact on their ability to own a home. This research can help identify effective policies, evaluate transparency in fund management, and provide recommendations to increase public trust in the program. In addition, the results of the research can be the basis for developing more responsive and sustainable policies in supporting public welfare through the provision of affordable housing.

METHOD

This research is normative research using a legislative and conceptual approach.¹² The legal materials used in this study are primary legal materials and secondary legal materials. The primary legal materials as referred to consist of the 1945 Constitution of the Republic of Indonesia, Law No. 37 of 2008, Law No. 25 of 2009, Law No. 4 of 2016, PP No. 21 of 2024, and *Burgerlijk Wetboek*. The secondary legal materials as referred to consist of books and legal journals. Primary legal materials are collected using the inventory and categorization method, while secondary and tertiary legal materials are collected using the literature search method. All legal materials that have been collected are then identified, classified, and systematized according to their sources and hierarchies. After that, the legal

⁹ Dian Rahmawati dan Deden Rukmana, "The Financialization of Housing in Indonesia: Actors and Their Roles in the Transformation of Housing Production," *Cities* 131 (2022), <https://doi.org/10.1016/j.cities.2022.103918>.

¹⁰ Yuheng Mao et al., "The Greener the Living Environment, the Better the Health? Examining the Effects of Multiple Green Exposure Metrics on Physical Activity and Health Among Young Students," *Environmental Research* 250 (2024), <https://doi.org/10.1016/j.envres.2024.118520>.

¹¹ Majid Khan dan Imran Khan, "Achieving Environmental Sustainability Through Technological Innovation, Good Governance and Financial Development: Perspectives from Low Income Countries," *Sustainable Futures* 8, no. 8 (2024).

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).

materials are reviewed and analyzed using legal reasoning with the deductive method.¹³ This research uses a basic theoretical basis, namely the theory of government liability.

RESULT AND DISCUSSION

1. Compliance of Article 15 of Government Regulation Number 21 of 2024 with the Principles of Good Governance

Good governance is a concept that refers to the way the government exercises its power with transparency, accountability, participation, and effectiveness.¹⁴ These principles aim to ensure that the government operates with integrity and is accountable to the public. In this context, good governance includes decision-making that involves all stakeholders, so that the resulting policies reflect the aspirations and needs of the community. With good governance, it is hoped that public trust in the government can increase, which in turn will strengthen legitimacy and social stability.

One of the key elements of good governance is transparency, where information on government policies, spending, and decisions must be accessible to the public. Transparency allows the public to understand the decision-making process and provide constructive input. In addition, accountability is an important aspect, where the government and public officials must be responsible for their actions and decisions.¹⁵ With the existence of accountability mechanisms, the public can demand accountability if there is abuse of power or corruption, thus creating a cleaner and more efficient environment.

Public participation is also the foundation of good governance. By involving the public in the policy-making process, the government can listen to the voice of the people and understand the issues they face.¹⁶ This not only improves the quality of policies but also empowers the community to contribute to development. In addition, good governance also emphasizes the importance of social justice and the protection of human rights, ensuring that all individuals have an equal opportunity to benefit from government policies and programs. By implementing the principles of good governance, it is hoped that development can take place sustainably and inclusively.

The principle of usefulness in good governance is very important because it ensures that every government policy and program has a real positive impact on society. This principle emphasizes that decisions taken must be oriented towards beneficial results, both in the short and long term, for the welfare of society. By implementing the principle of usefulness, the government can focus more on solving problems faced by the people and allocate resources efficiently to achieve inclusive development goals. In addition, this principle also encourages active community participation in the decision-making process so that the resulting policies are more relevant and per real needs, ultimately increasing public trust in the government and the legitimacy of the policies implemented.¹⁷

¹³ Irwansyah dan Ahmad Yunus, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

¹⁴ Zaitul Zaitul, Desi Ilona, dan Neva Novianti, "Good Governance in Rural Local Administration," *Administrative Sciences* 13, no. 1 (2023), <https://doi.org/10.3390/admsci13010019>.

¹⁵ Ait Novatiani, R. Wedi Rusmawan Kusumah, dan Diandra Pepi Vabiani, "Pengaruh Transparansi dan Akuntabilitas Terhadap Kinerja Instansi Pemerintah," *JURNAL ILMU MANAJEMEN DAN BISNIS* 10, no. 1 (2019), <https://doi.org/10.17509/jimb.v10i1.15983>.

¹⁶ Syofyan Hadi et al., *Teknis Penyusunan Peraturan di Desa* (Yogyakarta: Jejak Pustaka, 2023).

¹⁷ Syofyan Hadi et al., "Implementation of Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Village Regulations (Study in Bedahlawak Village, Jombang Regency)," *DiH: Jurnal Ilmu Hukum* 20, no. 1 (2024), <https://doi.org/https://doi.org/10.30996/dih.v20i1.9589>.

The amount of Tapera participant savings must be carefully considered from the perspective of the principle of usefulness in good governance.¹⁸ This principle emphasizes the importance of every public policy providing maximum benefits to the community. Therefore, the amount of savings set needs to be adjusted to the financial capabilities of participants, especially for low-income groups. If the savings deduction is too high, this has the potential to increase the economic burden of participants, reduce their participation in the Tapera program, and become a field of corruption for officials, which will ultimately hinder the main goal of providing decent housing.¹⁹

On the other hand, setting a realistic and affordable savings amount can increase the benefits of the Tapera program.²⁰ With appropriate savings, participants will be more motivated to save, so that greater accumulation of funds can be achieved.²¹ This will not only accelerate their access to housing but also provide a sense of security and certainty for the community that they have reserves for other urgent needs. In this context, the government needs to conduct periodic evaluations and involve the community in determining the amount of savings to create policies that are responsive to the real needs of participants.

In addition, the benefits of the Tapera savings can also be seen in terms of its impact on overall housing development. If this program is successful in attracting public interest to participate, significant funds will be created for broader housing financing. This will contribute to reducing the housing backlog and improving the quality of life in the community. Thus, through the application of the principle of benefit, the government can ensure that the Tapera policy not only provides benefits to individual participants but also has a positive impact on society and national development as a whole.

The problem of the amount of savings for Tapera participants regulated in Article 15 of PP No. 21 of 2024 related to the principle of usefulness can be seen from several aspects. *First*, the amount of savings set must be able to reach various levels of society, especially for those with low incomes. If the amount of savings is too high, this has the potential to burden participants and reduce their interest in participating in the program. Therefore, it is important to ensure that the amount of savings is not only realistic but also provides optimal benefits for participants, so that they can easily save and achieve their goal of home ownership. If it is considered unrealistic, then Tapera participants will likely make demands to the government to encourage a review of the amount of Tapera.

Second, in the context of the principle of usefulness, there needs to be a periodic evaluation of the amount of savings to ensure that the policies implemented remain relevant to the economic conditions of the community. Economic uncertainty and inflation can affect people's purchasing power, so the amount of savings set needs to be adjusted to continue to provide benefits. If the government is not responsive to this dynamic, the Tapera program could fail to achieve its goal of providing access to decent housing for participants, resulting in public dissatisfaction with the policy.

¹⁸ Tazkiya Amalia Nasution, "Analisis Yuridis Undang-Undang Tabungan Perumahan Rakyat Ditinjau Dari Perspektif Good Governance," *Jurnal Lex Renaissance* 6, no. 4 (2021), <https://doi.org/10.20885/jlr.vol6.iss4.art13>.

¹⁹ Habibah Omar et al., "Corruption and Accountability of Public Officials: Comparative analysis from Malaysia and Indonesia," *Environment-Behaviour Proceedings Journal* 5, no. 15 (2020).

²⁰ Rasendryo Wahyu Ramadhianto dan Lutfian Ubaidillah, "Analisis Yuridis Besaran Simpanan Peserta Tapera Berdasarkan Peraturan Pemerintah Tentang Penyelenggaraan Tabungan Perumahan Rakyat," *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora* 3, no. 1 (2025).

²¹ Inna Junaenah, Abd Shukor Mohd Yunus, dan Normawati Hashim, "Adequacy of Public Information for Meaningful E-Participation in Policy-Making: Human Rights-Based," *Journal of Southeast Asian Human Rights* 6, no. 2 (2022), <https://doi.org/10.19184/jseahr.V6i2.32420>.

Third, the aspect of transparency and community participation in determining the amount of savings is also very important from the perspective of the principle of usefulness. Involving participants and other stakeholders in the decision-making process regarding the amount of savings can increase the accountability and legitimacy of policies.²² With open dialogue, the government can better understand the needs and expectations of the community, so that the resulting policies are truly beneficial and oriented towards community welfare. If the amount of savings is not felt to provide clear benefits, then the Tapera program is at risk of losing community trust and participation.

The conformity of Article 15 of PP No. 21 of 2024 with the principle of usefulness in the principle of good governance can be seen from the efforts to ensure that every policy that is set has a positive impact on Tapera participants. This article regulates the amount of savings that must be made by participants, which should be designed in such a way as not to burden the community, especially low-income groups. By setting a realistic and affordable amount of savings, the government can increase community participation in this program, while fulfilling the main objective of providing access to decent housing. This reflects the government's commitment to prioritizing the interests of the people and ensuring that the policies taken are truly beneficial to them.²³

However, to achieve optimal compliance, it is important for the government to conduct periodic evaluations of the provisions in Article 15 and involve the public in the decision-making process. Public participation in determining the amount of savings can increase transparency and accountability, two important principles of good governance. By involving the voice of the public, the government can not only identify the needs and expectations of participants, but also adapt policies according to dynamic economic conditions. The compliance of this article with the principle of benefit in good governance will be achieved if the government is committed to listening to and responding to input from the public, so that every policy produced truly reflects the needs and provides maximum benefits.

The government's accountability model for the amount of savings of public housing savings participants can be understood as a form of state commitment to guarantee the security and growth of funds saved by the community. In this context, the government has a responsibility to provide clear and transparent regulations related to the management of public housing savings. This includes establishing policies that support savings stability, ensuring that the funds saved are not only safe but also able to provide reasonable returns for participants.

The government also needs to play an active role in supervising and evaluating financial institutions that manage public housing savings. This accountability includes the obligation to ensure that the institution complies with good operational standards and does not engage in practices that are detrimental to participants. With strict supervision, it is hoped that it can reduce the risk of misuse of funds and increase public trust in the housing savings program. Research on this model is important to identify potential weaknesses and formulate better policies.

²² Syofyan Hadi et al., "Partisipasi Masyarakat dalam Penyusunan Produk Hukum di Desa Bedahlawak Kabupaten Jombang," *Prosiding Seminar Nasional & Call for Paper "Penguatan Kapasitas Sumber Daya Manusia Menuju Indonesia Emas 2045"* 10, no. 1 (2023).

²³ Shandi Patria Airlangga, "Hakikat Penguasa dalam Negara Hukum Demokratis," *Cepalo* 3, no. 1 (2019), <https://doi.org/10.25041/cepalo.v3no1.1783>.

2. Government Liability If It Fails to Guarantee the Right to Housing

This concept of liability explains the principle of accountability in the implementation of state functions. This implementation is based on legitimate authority under laws and regulations and supervision of such authority.²⁴ Within the framework of this liability, supervision of government actions acts as a legal protection tool for people who feel disadvantaged. This is a consequence of the principle of the rule of law that is upheld so that legal protection for the community must be implemented.

The essence of this liability is the state's obligation to provide compensation if its citizens suffer losses. In its definition, government liability is understood as the obligation to provide compensation for losses experienced, whether directly or indirectly impacting, both materially and mentally, on its citizens.²⁵ This is also explained by Tatiek Sri Djatmiati, who highlights the difference between responsibility and state liability. Responsibility refers to the government's accountability through parliament, while state liability relates to losses that must be resolved through the courts.²⁶

The occurrence of such losses needs to be considered, whether caused by defects in the use of authority or by the personal actions of government officials. These two factors serve as a reference for determining the measure of error related to liability for the losses that occur. There are two types of errors that are known, namely personal error (*faute personnelle*) and official error (*faute de service*).²⁷ In general, personal error is a form of individual liability that arises due to errors by government employees in carrying out their functions as state administrators, which causes losses to the community. On the other hand, official error refers to liability related to losses experienced by the community due to the actions of government employees in using authority related to public services.

The government's liability to guarantee the right to housing is regulated in the 1945 Constitution of the Republic of Indonesia, which emphasizes the importance of protecting the basic rights of citizens. Article 28H paragraph (1) explicitly states that everyone has the right to a decent place to live, which shows the state's commitment to ensuring that all citizens can access safe and comfortable housing. In this context, the government must formulate policies that support the provision of affordable housing for all levels of society, especially for those with low incomes.

As part of this liability, the government needs to develop programs that facilitate people's access to housing. This includes providing housing subsidies, ease of applying for housing credit, Tapera, and building infrastructure that supports housing locations. With these steps, the government can help ease the financial burden on people in having a decent place to live, while improving their quality of life.

In addition, the government must also protect people's housing rights from unfair eviction practices. This includes fair and transparent law enforcement in land tenure, as well as protection for vulnerable communities. By ensuring that land tenure and housing development processes are carried

²⁴ Sultoni Fikri, "Tanggungjawab Pemerintah Dalam Pelayanan Kesehatan," *LEX LIBRUM: JURNAL ILMU HUKUM* 6, no. 2 (2020).

²⁵ Yong Zhang, *Comparative Studies On Governmental Liability In East and Southeast Asia* (London: Kluwer Law International, 1999).

²⁶ Tatiek Sri Djatmiati, in her speech entitled "Licensing as a Legal Instrument in Public Services," conveyed her thoughts at the inauguration ceremony of Professor in the field of Administrative Law at the Faculty of Law, Airlangga University, which took place in Surabaya on Saturday, November 24, 2007.

²⁷ Tatiek Sri Djatmiati, in her paper entitled "Personal Errors and Official Errors in State Responsibility or Liability," presented it at the Administrative Law and Corruption Workshop at the Faculty of Law, Airlangga University, Surabaya, on 28-30 October 2008, page 9.

out in an accountable manner, the government can prevent housing rights violations and create a safe environment for the community.

Finally, the government's liability in guaranteeing the right to housing also includes efforts to involve the community in decision-making regarding housing. Through active participation, the community can convey their needs and expectations, so that the resulting policies are more relevant and in accordance with local conditions. Thus, the government not only functions as a regulator, but also as a facilitator that supports the creation of fair and decent housing access for all citizens, in line with the mandate of the 1945 Constitution of the Republic of Indonesia.

The public believes that the amount of Tapera participant savings regulated in Article 15 of PP No. 21 of 2024 has a concrete negative impact, especially for people with low incomes and accompanied by many family needs that must and must be spent. It cannot be denied that when a family is faced with the problem of prioritizing Tapera compared to the needs of their family, domestic violence will occur. When this happens, such arrangements are ineffective and will cause various other losses. These losses include, *First*, an increase in the amount of Tapera participant savings can result in financial difficulties, where participants may have to reduce spending on basic needs such as food, education, and health. This condition can trigger ongoing economic stress and worsen people's quality of life.

Second, the inability to meet savings obligations can result in participants losing access to the Tapera program. If participants are unable to set aside the necessary funds, they may be forced to withdraw from the program or be unable to take advantage of the benefits offered, such as better housing financing. As a result, Tapera's main objective of increasing access to decent housing for the community is not achieved, and the housing backlog remains an unresolved problem.

Third, dissatisfaction with the amount of savings that is considered inappropriate for the economic conditions of participants can lead to decreased participation in the Tapera program. If people feel that the savings imposed are too heavy, they may be reluctant to participate in the program. This can reduce the amount of funds collected for housing development, thus hampering government efforts to provide decent and affordable housing for the community.²⁸

Finally, the amount of Tapera participant savings does not consider the aspect of usefulness so that it can damage public trust in the government and the programs being carried out. If participants feel that the policies implemented do not pay attention to their needs, this can lead to skepticism and dissatisfaction with public policy in general. Thus, it is important for the government to evaluate and consider input from the public in determining the amount of savings so that the Tapera program can provide optimal benefits and increase public trust.

Based on the problems as described above, the result is that the community is harmed by the implementation of the amount of Tapera participant savings from the government. In relation to this, it can be said that the government has failed to guarantee the right to housing for the community. Therefore, the question arises regarding how the community who feels disadvantaged by the government's actions can file a lawsuit against the government. As a country of law that guarantees

²⁸ Atin Meriati Isnaini dan Lalu Adnan, "Hak Warga Negara Dalam Pemenuhan Lingkungan Tempat Tinggal yang Layak Ditinjau dari Perspektif Hukum Hak Asasi Manusia," *Jurnal Jatiswara* 33, no. 1 (2018), <https://doi.org/10.29303/jatiswara.v33i1.158>.

human rights for its people, of course Indonesia has provided steps that can be taken if the community is disadvantaged by the government.²⁹

The first mechanism is through government liability in a civil context. In this case, government liability is usually based on unlawful acts committed by the ruler (*onrechtmatige overheidsdaad* or unlawful acts of the government), as regulated in Article 1365 of the Civil Code. Therefore, to file a lawsuit through civil procedures based on Article 1365 of the Civil Code, it is necessary to meet certain requirements so that the government can be held civilly liable in the form of compensation. These elements include:

1. The government's action is unlawful.
2. Truly guilty.
3. The plaintiff suffered a loss.

The *a quo* loss is the result of the government's actions or deeds. P. Hadjon said that two things can allow the government to be sued legally. First, is the liability for the consequences arising from the implementation of unlawful administrative decisions. Second, is the liability for government actions that cause losses. In the implementation of government affairs, especially in the context of guaranteeing the right to housing, if there is a government action that causes losses to the community, the government can be considered to have committed an unlawful act (*Onrechtmatige Overheidsdaad*). To determine whether the government has committed an unlawful act, further explanation is needed regarding this matter.

First, the element of government action must be unlawful. This element is understood by the understanding after the verdict, which includes: actions that violate applicable laws and regulations, actions that violate the rights of others protected by law, actions that are contrary to obligations, actions that are not under moral norms, and actions that are contrary to the public interest. The government's failure to provide health services violates Article 28H of the 1945 Constitution of the Republic of Indonesia, which regulates the state's obligation to fulfill the right to housing for the community. With the right to housing protected by the constitution, the government must provide decent housing. However, this failure results in the community's rights not being fulfilled and the government not carrying out its responsibilities.

Second, the community and/or individuals experience losses. Regarding the second loss insurance, this is very important because it is a requirement for a lawsuit based on the provisions of Article 1365 of the *Burgerlijk Wetboek* to be filed. The losses in question include material and immaterial losses that can be valued in money. In this context, the losses experienced by the community are in the form of the inability to meet savings obligations which can result in participants losing access to the benefits of the Tapera program, such as housing financing. Then, the amount of savings is considered unaffordable, causing participants to be reluctant to participate in the Tapera program. Finally, it can burden participants, especially those with low incomes. An increase in savings burdens can reduce participants' purchasing power to meet basic needs, such as food and education.

Fulfillment of PMH elements by the government about providing services allows the public to file a lawsuit. The means that can be used to sue are the provisions of Article 52 paragraph (1) of Law Number 25 of 2009 concerning Public Services, which states that "If the organizer commits an unlawful

²⁹ M. Misbahul Mujib dan Mustari Kurniawati Muchlas, "Achievements and Challenges of Human Rights Protection Policy in Realizing Good Governance in Indonesia and China," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023), <https://doi.org/10.53955/jhcls.v3i2.98>.

act in the provision of public services as regulated in this law, the public can file a lawsuit against the organizer in court." The use of these provisions is important because the understanding and scope of public services includes aspects related to residence.

In addition to filing a civil lawsuit, another alternative that can be taken is reporting to the Ombudsman of the Republic of Indonesia (hereinafter referred to as ORI). Supervision carried out on public services organized by government organs in various aspects of life is an important element in creating good governance. Therefore, the ORI institution was formed, which has the authority to supervise all implementation of various government affairs, both by officials and agencies that carry out public services. The position of ORI is regulated in Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (hereinafter referred to as Law No. 37 of 2008).

In essence, the concept of ORI is based on the idea that the public has the right to file claims or complaints against government actions that cause losses, and these claims or complaints must be investigated independently. The basic principle of the Ombudsman is as an independent institution that is easily accessible and functions as a supervisor of public organizers, under the principles of democracy and the rule of law. ORI is an independent institution regulated in Article 2 of the Ombudsman Law. The purpose of establishing the Ombudsman is regulated in Article 4 of Law No. 37 of 2008. ORI is a government organ that does not have jurisdiction over the legislative or judicial branches of power, so ORI has the authority to investigate public complaints related to executive institutions. In general, ORI is related to public complaints regarding maladministration carried out by government institutions.

Related to the problems that occur in providing guarantees of housing rights, on various occasions it is often colored by maladministration practices.³⁰ Maladministration in guaranteeing housing rights often occurs, especially against poor people, some even die due to prolonged service.³¹ When this happens, people's rights are taken away, so they suffer losses. Forms of maladministration can be seen in Article 1 number 3 of Law No. 37 of 2008. Because the basis for reporting to ORI must contain elements of maladministration, this legal basis is important for reporting government actions.

According to Law No. 37 of 2008, people who experience losses related to the right to health, in addition to being able to sue the government through general courts, also have the right to report maladministration in health services to the Ombudsman. From complaints submitted by people who feel disadvantaged, the Ombudsman will issue binding recommendations if the report is accepted (see Article 35 of the Ombudsman Law). This means that every agency that is reported is obliged to implement the recommendations of the Ombudsman (see Article 38, paragraph (1) of the Ombudsman Law). If these recommendations are not implemented, the agency will be subject to administrative sanctions (see Article 39 of the Ombudsman Law). The provisions regarding the Ombudsman in the law not only have an impact on the political position of the institution but can also result in legal consequences from the decisions taken.

CONCLUSION

The guarantee of housing is one of the rights guaranteed by the 1945 Constitution of the Republic of Indonesia. In implementing this guarantee, the government faces various challenges. Currently, the Indonesian government is facing a crisis in the need for home ownership. Therefore, the Indonesian government has provided various solutions to this problem, one of which is by organizing the People's Housing Savings. Provisions regarding the People's Housing Savings are regulated in the Law which

³⁰ Muslimah Hayati, "Maladministrasi Dalam Tindakan Pemerintah," *Wasaka Hukum* 9, no. 1 (2021).

³¹ Ridwan HR, *Hukum Administrasi Negara* (Jakarta: Rajawali Pers, 2016).

are then further regulated in Government Regulations. One of the contents of the Government Regulation specifically regulates the amount of savings for participants in the People's Housing Savings. Regarding these provisions, when viewed from the perspective of the principle of benefit which is part of the principle of good governance, the contents of the Government Regulation are not by the principle of benefit. This is because (1) the large amount of savings for participants is considered burdensome for the lower class, (2) they lose the opportunity to participate in the People's Housing Savings program, and (3) prioritize the middle to upper class. Regarding this, the community can sue the government in civil court and can also report this to the Ombudsman.

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