



## Sale and Purchase of Rights to State Land Which is a Public Facility in a Residential Area

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**Abstract:** This study looks at how the law is applied to regulations pertaining to the supply of social and public services in Makassar City settlements, as well as the status of land ownership certificates for public facilities located above communities. The normative-empirical legal research used in this study was gathered from relevant literature and field research. Questionnaires and primary data are the types of data that are used. The legislation also comprises basic principles and requirements, rights to land, water and space as well as land registration, penal and transitional regulations. The findings indicate that Makassar City Regional Regulation Number 9 of 2011 concerning Provision and Delivery of Infrastructure, Facilities, Utilities in Industrial, Trade, Housing, and Settlement Areas, specifically funds in general, contains the regulations pertaining to the process for the delivery of public and social facilities in Makassar City settlements. outlined in Minister of Home Affairs Regulation Number 9 of 2009, which relates to Guidelines for the Provision of Facilities, Utilities, and Housing and Settlement Infrastructure in the Regions. In accordance with the law, the question of the certificate of property rights over public and social facilities must be fairly settled.

**Keywords:** *Public Facilities and Social Facilities; Certificate of Ownership; Settlements*

### 1. Introduction

A house, as defined by Article 1 of Law No. 4/1992, is a structure that serves as a place of residence and a means of raising a family, whereas settlements, as defined by Article 1 number 3 of Law No. 4/1992, are a part of the environment outside of protected areas and can be either urban or rural and serve as a place of activity that sustains life and livelihood (Syafrinaldi, 2017). According to Article 1 Number 1 of Law No. 1/2011, housing and settlement areas are a single system that includes land provision, funding and financing systems, community involvement, fostering, housing organization, settlement area organization, maintenance and repair, prevention, and improving the quality of slum housing and slum settlements (Abdurrasyid, 2002).

Housing is equipped with infrastructure, facilities, and public utilities (Widnyana, 2014). The fundamental physical completion of a residential setting that satisfies requirements for a respectable, safe, healthy, and comfortable place to live is known as infrastructure (Tambunan & Tambunan, 2019). Facilities for home environmental services are provided by public utilities. Public utilities are buildings required in the environmental service system organized by government agencies. These include clean water networks, electricity networks, and gas networks, as stated in Article 1 Letter C of the Regulation of the Minister of Home Affairs Number: 1 of 1987 concerning the Handover of Environmental Infrastructure, Public Utilities, and Social Facilities for Housing to Regional Governments, telephone networks, public transportation terminals/bus shelters, cleanliness/waste disposal, and fire extinguishers (Ana, 2020).

Facilities in residential settings that serve to facilitate the implementation and growth of social, cultural, and economic life are referred to as social facilities (Atoba et al., 2023). Land as a social facility, then the land is used for social interests as stipulated in Article 6 Law Number 5 of 1960 of the Republic of Indonesia pertaining to Fundamental

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Regulations on the Principles of Agrarian Law (hereinafter abbreviated as UUPA) (Azwina et al., 2023). According to Leoan Duguit in his teachings on "social function" starting from the denial of the existence of subjective rights, there is only a social function. People have objects, land, in order to fulfill social functions in their society (Chen & Chen, 2023). This means that property rights have a social function, which means that social facilities are facilities that are owned collectively and are not allowed to be owned privately (Margono, 2015).

In relation Surabaya City Regional Regulation Number 3 of 2007 regarding the Surabaya City Spatial Planning was issued in order to regulate public facilities in the City of Surabaya. The scope of this Regional Spatial Planning Plan includes strategies and structures for the utilization of regional space up to the boundaries of land, sea, and air based on applicable laws and regulations. Maps and Regional Spatial Planning Books make up the Regional Spatial Planning Plan as stated in the Attachment to this Regional Regulation.

Social facilities are a must for developers to provide and are handed over to the city/district government where the housing is built (Edwin et al., 2023). Starting from the transfer of public utilities, social facilities, and environmental infrastructure as mentioned in Article 6 1 of 2011 above, the relationship over the land/building with the Housing Development Company ends except for land and buildings above the management rights of Perum Perumnas which are handed over with regard to land that has use rights or building usage rights. In reality, print and electronic media have questioned social facilities that have not been handed over by the developer being used as objects of sale and purchase with third parties and finally a dispute occurs (Nopriansyah, 2019).

As stated in the Regulation of the Minister of Home Affairs No. 9 of 2009 concerning the Handover of Environmental Infrastructure, Public Utilities, and Social Housing Facilities to the Regional Government, the government has established guidelines and standards governing the acquisition of public and social facilities. In the Makassar City Regional Regulation Number 9 of 2011 concerning the Provision and Handover of Infrastructure, Facilities, and Utilities in Industrial, Trade, Housing, and Settlement Areas, the Makassar City Government also established rules pertaining to the transfer of public and social facilities. Furthermore, there is Makassar Mayoral Regulation No. 97 of 2015, which outlines the processes for paying compensation, verifying, handing over, and overseeing and managing infrastructure, facilities, and utilities in areas related to trade, industry, housing, and settlement (Putra, 2017).

In Indonesia, especially Makassar and Surabaya, before the implementation of UUPA, there was still dualism regarding Agrarian Law, this was based on the fact that two types of laws were still in force which became the basis for our land law, namely Customary Law and Western Law which resulted in there being 2 (two) types of land, namely customary land and western land. This system was influenced by the colonial/feudal legal system as a result of the Dutch colonial rule in Indonesia, thus differentiating the transfer of land ownership rights both under Customary Law and Western Law in buying and selling as well as the method of legal protection and legal certainty for the landowners concerned.

However, the reality is that there are still some parties who make public facilities above the settlement as their property and have been certified by other parties, even though the land has long been a public facility that functions as a residential area park. Legally, the City Government still has the opportunity to reclaim the public facility land (fasum) if the National Land Agency cancels the current certificate without going through a lawsuit to the State Administrative Court (PTUN). This study aims to examine or research the Sale and Purchase of Rights to State Land Which is a Public Facility in Residential Areas.

## 2. Materials and Methods

The research used in this study is normative legal research or known as legal research. In this normative legal research, a statutory regulatory approach is used (Statute Approach). The legal materials used in writing this thesis were obtained from: Primary legal materials in the form of 1) the Civil Code (KUHP), 2) the Civil Procedure Code (KUHAP), 3) Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Secondary legal materials were obtained from literature studies relevant to the main problem, consisting of literature, as well as opinions or opinions of legal experts and practitioners on the internet and also collections of legal theories from legal experts. Tertiary legal materials consisting of dictionaries and scientific works or encyclopedias.

## 3. Results and Discussion

### 3.1 *Criminal Act Regulations in the Housing and Residential Areas Law*

Law Number 1 of 2011 about Housing and Residential Areas in Indonesia contains the legislation pertaining to housing and residential areas. According to Moeljatno, criminal law is a component of the total body of legislation that is in effect in a nation and serves as the foundation and guidelines for: a) Identifying prohibited acts that are not to be performed and providing threats or specific criminal penalties for those who violate them. b) Establishing the circumstances under which those who have violated the prohibitions may be subject to or sentenced to the criminal penalties that have been threatened. c) Determining how criminal penalties may be applied in the event that an individual is suspected of breaking the rules (Suketi, 2018).

According to Wirjono Prodjodikoro, there are two types of criminal law: formal criminal law and substantive criminal law. He asserts that the definition and description of crimes covered by criminal law, as well as the general conditions that must be fulfilled for an act to qualify as one for which the perpetrator may face criminal penalties, constitute the substance of substantive criminal law; designation of persons or legal entities that can generally be punished by criminal law; and designation of the type of criminal punishment that can be imposed (Li et al., 2024). Formal criminal law (criminal procedural law) is closely related to the implementation of criminal law so that it is a series of regulations that contain how government agencies in power, specifically, the enforcement of criminal legislation by the police, prosecutors, and courts is necessary to accomplish state objectives (Tambunan & Tambunan, 2019).

Sudarto defines criminal law as a law that contains legal rules that bind certain actions that meet certain requirements to a criminal consequence. In line with this, the Criminal Code (KUHP) contains two main things, namely: 1) The Criminal Code contains descriptions of the actions that are threatened, which allow the court to impose a criminal penalty. So, here it is as if the state is stating to the public and also to law enforcers, what actions are prohibited and who can be punished. 2) The Criminal Code determines and announces what reactions will be received by people who commit the prohibited actions. In modern criminal law, this reaction is not only in the form of criminal sanctions, but also what is called action, which aims to defend society against acts that are harmful to it.

The following explanation is provided for Articles 151 to 163 of Law Number 1 of 2011 respecting Housing and Residential Areas, which regulate certain illegal offenses:

a. Article 151

The substance Law Number 11 of 2020 amends Article 151 of Law Number 1 of 2011. In Law Number 1 of 2011, the substance of Article 151, which initially contained two paragraphs, was changed by Law Number 11 of 2020 to only one paragraph. The formulation of Article 151 after being amended by Law Number 11 of 2020 reads as follows:

" The maximum penalty for anyone who plans a housing development and constructs housing that does not meet the standards, specifications, requirements, infrastructure, facilities, and public utilities mentioned in Article 134 and causes harm to the environment, public health, safety, or security is IDR 5,000,000,000.00 (five billion rupiah)" (Tambunan & Tambunan, 2019).

The criminal sanctions in Article 151 paragraph (1) and paragraph (2) are sanctions against perpetrators of crimes who violate the prohibition norms regulated in Article 134. The penalties are cumulative, not alternative. This implies that those who commit crimes covered by Article 134 face two criminal penalties at once: a maximum fine of IDR 5,000,000,000.00 (five billion rupiah) and further penalties in the form of rebuilding housing in compliance with the established standards, specifications, requirements, infrastructure, facilities, and public utilities (Widnyana, 2014).

b. Article 152

Article 152 has only one verse. The formulation of Article 152 is as follows:

"The maximum penalty for anyone who rents or transfers ownership of a public establishment to a third party as specified in Article 135 is IDR 50,000,000.00."

The prohibition norm stated in Article 135—that is, the ban on renting or transferring ownership of a public establishment to another individual—is violated by the criminal threat in Article 152. "Everyone" is the subjective element in Article 152, whereas "one who rents or transfers ownership of a public house to another party" is the objective element (Prasetya, 2018).

c. Article 153

The criminal provisions contained in Article 153 of Law Number 1 of 2011 has been transformed into administrative sanctions by Law Number 11 of 2020. Prior to Law Number 11 of 2020's revision, Article 153's criminal threat consisted of a maximum fine of IDR 5,000,000,000.00 (five billion rupiah) and further, such as permission revocation (Ibnu Sani & Suartini, 2024).

d. Article 154

The formulation of the provisions of Article 154 states as follows:

If someone sells a housing or Lisiba unit without having finalized the status of their land rights as specified in Article 137, they could face up to five years in prison or a fine of up to IDR 5,000,000,000.00 (five billion rupiah).

The objective element or act that is prohibited in the formulation of the article above is "selling lisiba environmental units or residential areas that have not yet obtained

their full land rights status." Meanwhile, the subjective element of Article 154 is "every person".

e. Article 155

The provisions of Article 155 regulate the criminal threat intended for legal entities that intentionally carry out transfer and/or obtain payment from the buyer in excess of 80% (eighty percent). The following is how Article 155 is formulated:

An organization that knowingly performs a transfer and/or obtains payment of more than 80% (eighty percent) from the buyer as referred to in Article 138, shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

The subjective elements of the article above are "legal entity" and "intentionally", while the objective elements are "handing over and/or receiving payment from the buyer of over 80% (eighty percent)" (Nopriansyah, 2019).

f. Article 156

Similar to the provisions of Article 155, the subjective element of Article 156, in addition to "every person" also includes "intentionally". In more detail, Article 156 states the following:

Anyone who will fully construct homes and/or settlements outside of the areas specifically authorized for housing and settlements as mentioned in Article 139 faces a maximum sentence of two years in prison or a fine of up to IDR 2,000,000,000.00 (two billion rupiah).

If we refer to the provisions of Article 139, the objective element in the article above is "building housing and/or settlements outside areas specifically designated for housing and settlements" (Colavitti & Serra, 2023).

g. Article 157

The essence of the crime in the provisions of Article 157 is a commission crime, not an omission crime because the prohibited act is establishing settlements and/or housing in areas that could endanger people or property. The formulation of Article 157 is as follows: Any individual who will fully construct homes and/or settlements in areas that could endanger people or property as defined by Article 140 faces a maximum sentence of one (1) year in prison or a fine of Rp. 50,000,000.00 (fifty million rupiah) (Muhammad, 2014).

The objective element of the article above is "building housing and/or settlements in places that have the potential to cause danger to goods or people", while the subjective element of Article 157 is "any person" and intentionally (Jia et al., 2023).

h. Article 158

Article 158 may only be carried out by certain categories of criminal law subjects, namely officials who issue building permits. The meaning of officials here must be limited to ministers, governors, and regents/mayors. Why is that? Article 5 paragraph (1), which reads, "The state is responsible for the organization of housing and residential areas whose development is carried out by the government," serves as the foundation for this. The development mentioned in paragraph (1) is carried out by the minister at the

national level, the governor at the provincial level, and the regents/mayors at the district/city level, according to Article 5 paragraph (2). Article 5 paragraph (2) refers to the following developments: Regulation, Control, Supervision, and Planning (Margono, 2015).

Theoretically, officials who issue permits for There are criminal penalties for constructing homes, housing, and/or settlements that do not fit the function and use of the available space. This is based on the idea that it weakens the legitimacy of government authority and encourages citizens not to obey the law. If officials who should set an example of compliance with the law break the law, citizens will use it as a basis for also breaking the law (Kertadi & Putra, 2014).

i. Article 159

The offense in Article 159 is a commission offense because the prohibited act requires a body movement in the form of "rejecting or obstructing the resettlement activities of houses, housing, or settlements". Article 159 explicitly reads as follows: After an agreement has been reached with the local community as mentioned in Article 142, anyone who will fully rejects or obstructs the resettlement activities of houses, housing, or settlements that have been determined by the Government or regional government faces a maximum sentence of one (1) year in prison or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

The article's subjective components are "any person" and "intentionally," while its objective components are "rejecting or obstructing resettlement activities of houses, housing, or settlements that have been determined by the Government or regional government after an agreement has been reached with the local community".

j. Article 160

The formulation of Article 160 states as follows: Any individual who will fully invest money from housing savings funds other than for funding housing and residential area development projects as specified in Article 143 faces a maximum fine of IDR 50,000,000,000.00 (fifty billion rupiah) or up to five (five) years in prison.

According to how the article is written, "investing funds from the accumulation of housing savings funds other than for financing housing" is the aim aspect of Article 160 and residential area management activities". Meanwhile, the subjective elements are "everyone" and "intentionally". Because the meaning of everyone can be an individual or a corporation, the perpetrator of the crime of Article 160 can be anyone and does not have to be required to have certain qualifications.

k. Article 161

In contrast to the substance of the crime in Article 160, the subjective element of which is "every person", in Article 161 paragraph (1) the subjective element other than "intentionally" is "individual person". The meaning of every person and the meaning of an individual are clearly different. If the meaning of every person can be an individual or a corporation, while the meaning of an individual does not include a corporation. The formulation of Article 161 paragraph (1) reads as follows:

The criminal sanctions in Article 161 paragraph (1) and paragraph (2) are sanctions against perpetrators of crimes who violate the prohibition norms regulated in Article 145 paragraph (2). The criminal sanctions are cumulative, not alternative. This means that perpetrators of crimes who commit acts as referred to in Article 145 paragraph (2) shall be subject to 2 criminal sanctions at once. The formulation of Article 145 paragraph (2) is: "Individuals are prohibited from building Lisiba" (Astiti & Tarantang, 2019).

l. Article 162

Article 162 paragraph (2) is an extra punishment on top of the fine specified in paragraph (1) of Article 162. Article 162 paragraph (2) states: "Administrators of legal entities may be sentenced to a maximum of 5 (five) years in prison in addition to the penalty for legal entities as mentioned in paragraph (1)." If "legal entity" is the subjective element in Article 162 paragraph (1), then "managers of legal entities" is the subjective element in Article 162 paragraph (2). This is the distinction between the two paragraphs. Why are the administrators of legal entities subject to the subjective element of Article 162 paragraph (2)? Because incarceration as a form of corporal punishment is the criminal sanction that is being threatened.

m. Article 163

Article 163 regulates the aggravation of criminal penalties for legal entities. The formulation of the article is as follows: In the case of acts carried out by a legal entity as specified in Article 151 paragraph (1), Article 152, Article 153, Article 154, Article 156, Article 157, Article 160, or Article 161, then the legal entity may be subject to a penalty in the form of a fine with an aggravation of three (three) times the fine for individuals, in addition to imprisonment and fines for its administrators.

The criminal threat in Article 163, Apart from incarceration and fines for the administration of a legal body, the legal entity may also be subject to a fine that is three times the fine imposed on persons.

### ***3.2 Criminal Law Enforcement Against Criminal Offenses in the Housing and Residential Areas Sector***

Criminal law enforcement against crimes is still quite small in the housing and residential areas industry. This is due to the fact that Law Number 1 of 2011 concerning Housing and Residential Areas governs administrative sanctions in addition to criminal sanctions. Due to the unpleasant nature of criminal law, administrative law is more frequently used to handle infractions that occur in the housing and residential areas sector (Amran, 2017).

The handover of the public facilities is intended to be transferred from the developer to the Surabaya City Government according to Article 12 of Surabaya Regional Regulation No. 7 of 2010, which states that the Regional Government has the authority to oversee the utilities, infrastructure, and facilities that the developer has turned over to it. The site plan that has been approved by the regional government must be followed by the regional government when performing management (Abrianto, 2021).

The Surabaya City Government actually has the authority to supervise the fulfillment of developer obligations in providing and handing over infrastructure, facilities,

and utilities in areas of industry, commerce, housing, and settlement in compliance with Article 21 of Regional Regulation No. 7 of 2010, which specifies that the Regional Head has the power to oversee and manage the delivery of infrastructure, facilities, and utilities in the areas of industry, commerce, housing, and settlement.

The above is emphasized by the provisions of Article 22 of Regional Regulation No. 7 of 2007, that the Regional Head has the authority to apply administrative sanctions to any person or business entity/legal entity that violates it. Types of administrative sanctions can be in the form of written warnings; delay in granting approval of documents and/or permits; administrative fines of Rp. 50,000,000.00 (fifty million rupiah); announcement to the mass media; being included in the blacklist (Amriani, 2012).

The developer's actions that break promises or default by the community, then the community can file a lawsuit to the District Court (Hadimulyo, 2017). There are differences in lawsuits filed by the community to the District Court, namely by buyers of public facilities and by buyers of other houses. For buyers of public facilities, the lawsuit is for the cancellation of the agreement and compensation, while for buyers of other houses the lawsuit is for the fulfillment of the agreement and compensation (Pongkapadang, 2016). Causative factor:

a. Viewed from the perspective of the law/law

Legal considerations are elements that impact the success or failure of law enforcement in the process. However, there are a number of issues or disruptions that contribute to the imperfect implementation of law enforcement. These include ignoring the fundamental standards of laws and regulations and, second, the absence of regulations to carry out the law (Soekanto, 2007). The Basic Law on Land and Land Registration of 1997 Number 24 PP governs the transfer of rights in this instance; before to its passage, land sales were conducted accurately and transparently in conformity with customary law. As long as it does not conflict with the interests of the state and nation based on national unity and integration with Indonesian socialism, Article 5 of the UUPA, which applies to the earth, water, and space, is considered customary law (Santoso, 2012).

b. Viewed from the Civil Apparatus

Professional law enforcement officers are those who can be highly dedicated to their profession as law enforcement officers, thus a law enforcement officer can carry out his duties and authorities well (Soekanto, 2007). From the lowest level of apparatus are:

a) Village Head, according to customary law, the participation of the Village Head is an absolute requirement, because the Village Head's involvement makes the sale and purchase of land rights legitimate, either directly involved in the sale and purchase or only as a witness, in the Supreme Court decision dated June 12, 1975 No.952/K/SIP/1975 in its legal considerations it is stated that a sale and purchase is considered valid according to customary law if it is carried out openly and in cash and goes by the Village Head's name.

b) Sub-district Head: Following the parties' receipt of the sale and purchase agreement, which is executed covertly in front of the village head, the agreement will typically be forwarded to the sub-district head, who is a higher-ranking official than the village head, for ratification.

c) PPAT, which states that "Land Deed Making Officials, hereinafter referred to as PPAT are public officials who are authorized to make certain

land deeds" in Article 1 number 24 of Government Regulation Number 24 of 1997 concerning Land Registration. d) The land office is a division of the National Land Agency in the district or city area that handles the registration of land rights and upkeep of general land registration registers. According to Article 1 Paragraph 22 of PP No. 24 of 1997, the land office is a Non-Departmental Government Institution whose responsibilities include the land sector (Widianingsih et al., 2024).

c. Viewed from Facilities and Infrastructure

The process of law enforcement can be completed well if there is support, both in the form of adequate facilities and infrastructure. What is meant by facilities and infrastructure, including human resources, good organization, adequate equipment, and sufficient funding sources, the purpose of law enforcement itself is to achieve peace in society that comes from the community itself (Rajabi et al., 2024).

According to the results of interviews with the Village Head regarding facilities and infrastructure, there is still a lack of understanding from the Pagaruyung Village community regarding the transfer of rights, but socialization to villagers regarding this matter is still very lacking, such as at the BPN, where the appeals given are mostly through social media only, where as we all know this is not an effective way because of the limitations of the village community regarding technology.

d. Viewed From The Community Itself

Law enforcement comes from the community and returns to the community. Therefore, the community's role in the process is crucial of enforcing the law. A community that knows the law already knows what its rights and obligations are, so it will develop its needs in accordance with applicable regulations (Soekanto, 2007).

Low legal culture, one of the factors is legal culture, whether originating from state apparatus or society, if the legal culture is high then regulations will be increasingly obeyed and implemented, and vice versa (Zhu et al., 2022).

Very effective administrative sanctions can be in the form of written warnings; restrictions on construction activities; temporary or permanent suspension of construction work; temporary or permanent suspension of housing management; temporary control by the government (sealed); the obligation to demolish the building itself within a certain period of time; restrictions on business activities; freezing of building permits; revocation of building permits; freezing/revocation of proof of house ownership; orders to demolish houses; freezing of business permits; revocation of business permits; supervision; cancellation of permits; the obligation to restore land functions within a certain period of time; revocation of incentives; imposition of administrative fines; and/or closure of the location.

#### 4. Conclusions

According to Surabaya City Regional Regulation Number 3 of 2007 regarding the Surabaya City Spatial Planning Plan, developers that alter public infrastructures may be held legally responsible. The Developer is subject to both criminal and administrative penalties as a result of their legal obligations. Terminating development and/or space-related operations in compliance with relevant rules and regulations is one way that administrative punishments are applied. Criminal penalties include a maximum fine of IDR 50,000,000 (fifty million rupiah) or a potential prison sentence of 6 (six) months.

The Surabaya City Spatial Planning Plan is governed by Surabaya City Regional Regulation No. 3 of 2007. The community that is harmed due to the transfer of public facilities should report the developer to the police on the basis of having committed a criminal act of fraud. The community that is harmed can sue for compensation on the basis that the developer has broken a promise or breach of contract. The community that buys public facility houses, the lawsuit is for the cancellation of the agreement and compensation, while the community that buys other houses, the lawsuit is for the fulfillment of the agreement and compensation.

To strengthen coordination between institutions (BPN, local governments, and village officials), residents who are harmed by the transfer of public facilities should report the developer to the police for fraud. These affected residents can sue for damages based on the developer's breach of promise or breach of contract. For a long-term strategy to build a legal culture with the public facility homebuyers, the lawsuit should be for cancellation of the agreement and compensation, while other homebuyers should sue for fulfillment of the agreement and compensation.

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