

The Implementation of Land Rights Relinquishment Policy for Green Open Spaces

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ABSTRACT

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The increased demand for decent housing at affordable prices has provided opportunities for housing development with government subsidies, or well known as LIC/MBR housing. Low-Income Communities (LIC/MBR) are people who have limited purchasing power, so they need government support to buy housing. This study discusses the importance of land rights relinquishment for green open space so that developers are not only concerned with economic value but also social functions for a green, conducive, and flood-free environment. This study applied a normative juridical research method with analytical descriptive specifications and used secondary data as the main data. Developers' obedience to providing green open space will have a positive impact including the maintenance of the housing environment and the fulfillment of green open space in Demak Regency. Thus, by relinquishing the land rights, the green open space cannot be converted as it has been relinquished to the state.

Introduction

The increasing number of residents leads to a high demand for clothing, food, as well as housing. A shift in millennials and generation Z has caused a higher demand for housing as they have started to think about housing needs even though they have not yet entered the family level¹. According to the Indonesian Central Bureau of Statistics (BPS), based on the results of the 2020 Population Census, Generation Z is a population born between 1997 and 2012 with an estimated current age of 9-24 years. Generation Z has grown up, is looking for and having a job, has seen the transition from the new order regime to the reform regime, and can contribute to any daily life aspects, such as economy, politics, social, culture, religion, etc.

The high demand for housing and special housing in the form of clusters provides an opportunity for developers to offer a variety of products that have different market shares. Currently, the most popular is subsidized housing with various housing development programs, such as KPR, non-KPR, and non-housing loans. The government itself provides broad opportunities for the community to be able to have affordable housing through banking financing that has a low interest. This program has a market share for income below IDR.5,000,000,-(Five Million Rupiah). Today, Demak Regency is developing housing areas either close to the city center or areas bordering the Capital City of Central Java Province, such as Mranggen, Karangawen, and Sayung Sub-Districts. It can be seen from several new housing in these areas.

¹Karina Gabrielova, Aaron A. Buchko. "Here comes Generation Z: Millennials as managers". *Business Horizons*, Vol. 64, Issue 4, (2021): 489-499

In terms of definition, housing is a group of several houses as part of a settlement. Meanwhile, settlement is part of the environment outside the protected area. In terms of function, housing refers to the land used to fulfill livable houses. In simple terms, the problem of housing and settlement is that the number of available housings does not match the needs and the number of people who will occupy it². Housing development cannot be separated from land relinquishment for social facilities, green open spaces, social areas, and other basic needs, such as roads, drainage, final waste disposal, and burial areas. Green open space is important to be prepared at the beginning of development so that residents as buyers will be able to enjoy these social facilities in the future. Yet, developers sometimes ignore this need. Some previous studies have discussed this issue. First, a study by Susilowati showed that each land procurement is prioritized for green open spaces, business areas, and other public utilities based on the General Spatial Plan (RUTR) as regulated in Governor Regulation of Central Kalimantan Number 5 of 2014 on Technical Guidelines for the Implementation of Land Procurement for Public Utilities Construction and the provision of compensation is not solely based on the Selling Value of Tax Objects (NJOP) used by the City Government of Palangka Raya but based on land area.³

Second, a study by Reayuda and Agung examined how land procurement for green development in Banggai Regency is implemented referring to Law Number 2 of 2012 on Land Procurement for Public Utilities Construction. The results showed that the implementation of land procurement for green development in Banggai Regency is not in accordance with Law Number 2 of 2012 on Land Procurement for Public Utilities Construction.⁴ Third, a study conducted by Wahyu Nugroho analyzed the settlement of land rights for problematic mineral and coal mining business activities and the licensing mechanism and environmental monitoring of mining areas following Law Number 3 of 2020. The results proved that the settlement of mining land rights by the central government would obscure the State's function as regulator and license holder, and the mining environmental license and supervision have not been based on environmental policies. Besides, an integrated environmental monitoring system has not been implemented in the regions.⁵ Fourth, a study by Hasbi *et al.* analyzed the fulfillment of green open space or the protection of the right to a good living environment for post-pandemic urban communities. The results indicated that one of the efforts to fulfill this right is applying harmonious and balanced spatial management. In line with the mandate of Law Number 26 of 2007 on Spatial Planning, every city is required to allocate a minimum of 30% of the land of its entire area to be used as Green Open Space.⁶

Fifth, a study conducted by Dandy Himawan Sutanto identified the policy and implementation of the submission of public housing infrastructure, facilities, and utilities in Pamekasan Regency. The results indicated that Regional Regulation Number 7 of 2014 on

²Haris Budiman. "Kebijakan Tata Ruang Dalam Penerapan Pusat Kegiatan Lokal Di Kabupaten Kuningan Untuk Peningkatan Pendapatan Asli Daerah". *Unifikasi: Jurnal Ilmu Hukum*, Vol. 2 No. 2 (2015): 1-30

³Eny Susilowati. "Pelepasan Hak Atas Tanah Bagi Pembangunan Untuk Kepentingan Umum di Kota Palangka Raya". *Jurnal Sociopolitico*, 2,2 (2020): 111-125

⁴Mat Dadi, Zaenal Arifin, Kukuh Sudarmanto, Amri Panahatan Sihotang. "Pelaksanaan Pengadaan Tanah Terhadap Kepentingan Umum Dalam Perlindungan Lahan Pertanian". *Jurnal Juridisch* Vol. 1, No. 1 (2023): 33-45

⁵Wahyu Nugroho. "Persoalan Hukum Penyelesaian Hak Atas Tanah Dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba". *Jurnal Hukum Ius Quia Iustum*. 27. 3 (2020): 568-591

⁶Hasbi Assidiq, Muhammad Anwar, Siti Nurhaliza Bachril. "Pemenuhan Ruang Terbuka Hijau: Perlindungan Hak Atas Lingkungan Hidup Yang Baik Bagi Masyarakat Perkotaan Pasca Covid-19". *Jurnal Tantangan Untuk Keilmuan*. 1.1.(2020): 143-171

Transfer of Housing and Settlement Infrastructure, Facilities, and Utilities has been formulated to realize the provision of housing infrastructure, facilities, and public utilities in Pamekasan Regency.⁷ Considering the five previous studies, this study is different in terms of objects and subjects being studied, the analytical tools used, and the time the study was carried out. To avoid the occurrence of fraud by developers, a relinquishment of land rights, in this case investors to the state, is needed to guarantee the green open space portion is protected for fulfilling the social needs of housing. It is important as the existence of green open space can provide a better environment. Accordingly, this study discusses the policy on land relinquishment that will be used for green open space in housing development.

Research Methods

This study applied a normative juridical research method with analytical descriptive specifications and used secondary data as the main data. The data were in the form of primary legal materials, namely laws and regulations, and secondary legal materials, namely legal statements. The collected data were then presented qualitatively. Here, statements were arranged coherently following the issues discussed, namely the policy on land relinquishment that will be used for green open spaces in housing development. This qualitative study used a socio-legal approach to look at the working process of law, both at the level of formulation and implementation in relation to social, cultural, economic, and political dynamics. In short, it can be said that socio-legal studies try to portray law in the dynamics of social life in a broader context. Here, research does not start from a theory but from social realities that surround the working process of law to be processed, analyzed, and interpreted to formulate a more ideal theoretical framework of spatial law.⁸

Results and Discussion

1. Land Relinquishment Policy

The housing development process begins with assessing the suitability of the land with spatial planning; whether the location planned for housing has spatial zoning intended for housing development. In Demak Regency, there are several zoning areas that can be used for housing development, including urban settlement designated areas, rural settlement designated areas, and industrial designated areas. Industrial designated areas are specifically regulated in Article 108 Paragraph 5 (e) in which it is stated that it is conditional permissibility to develop housing and its supporting facilities.⁹

The next step is changing land use from agriculture to non-agriculture through PKKPR. After the issuance of a Change Decree from the Investment Agency and One-Stop Integrated Service or DINPMTSP of Demak Regency, it is then recorded at the Demak Regency Land Office.¹⁰ Basically, the spatial plan should be conceptualized as a comprehensively integrated plan by analyzing all aspects and factors of urban

⁷Dandy Himawan Sutanto. "Kebijakan Dan Implementasi Penyerahan Prasarana, Sarana, dan Utilitas Umum Perumahan di Kabupaten Pamekasan". *Syntax Literate: Jurnal Ilmiah Indonesia*, Vol. 6, No. 2 (2021): 1489-1503

⁸Edy Lisdiyono, Desertasi, Legislasi Penataan Ruang Studi Tentang Pergeseran Kebijakan Hukum Tata Ruang Dalam Regulasi Daerah di Kota Semarang, Program Doktor Ilmu Hukum Universitas Diponegoro Semarang, 2008.

⁹Sri Kusriyah. "Spatial Synchronization and Territorial Planning Policies Between Regions and National Spatial Planning". *Jurnal Daulat Hukum*, Vol. 4, 2 (2021): 109-123

¹⁰Zaenal Abidin, Azis Nur Bambang, Dian Wijayanto. "Manajemen Kolaboratif Untuk Introduksi Pengelolaan Rajungan Yang Berkelanjutan di Desa Betahwalang, Demak". *Journal of Fisheries Resources Utilization Management and Technology*, 3,4 (2014): 29-36

development in an integrated series in the form of policy descriptions and basic steps supplemented by data and space utilization map.¹¹ After the recording process is completed, the next step is submitting an application for a housing site plan. A site plan is a two-dimensional image describing a conceptual description or map of a building or plot division plan. A site plan is useful for developers as a formula for development planning as well as for prospective buyers to identify the preferred location more accurately.

The important things in the site plan drawings are adequate road width so that occupant access and interaction are easier. Availability of public and social facilities, such as places of worship, education, playgrounds, and green open spaces. The drainage system is well-designed to prevent clogged ditches and flooding. For those whose application requirements are only advice planning (location direction plan) without a location permit, the Head of the Demak Regency Settlement and Spatial Planning Service can approve the site plan through the Settlements Sector when the terms and conditions are met. Further, the site plan technical team will verify the survey results in the field.



Figure 1. Example of a Housing Site Plan

Green open space is regulated in Demak Regent Regulation Number 55 of 2019 on Management of Housing Development for Low-Income Communities in which it is stated that developers need to comply with a provision requiring them to allocate a minimum of 30% (thirty percent) of the total land area for green open space and to develop based on the approved site plan to protect social facilities and channels as well as green open space. The site plan made by developers should describe public and social facilities as well as effective lots to be marketed. The percentage of land distribution in a housing area should be:

- a. maximum 65% for housing;

¹¹Eka Saputra Imran, Ali Rahman, and Rizki Ramadani. "Efektivitas Peraturan Daerah Kabupaten Gowa Nomor 5 Tahun 2009 Tentang Penataan Dan Pembinaan Pedagang Kaki Lima Di Kabupaten Gowa". *UNES Law Review* 5, no. 3 (2023): 1189-1205

- b. 20% for the road;
- c. 10% for open spaces and public facilities; and
- d. 5% for commercial purposes.

Through the site plan, the regional government of Demak Regency will identify the following information:

1. The types of buildings to be developed by developers.
2. The suitability of the building boundary line and the building basic coefficient with the applicable laws.

In formulating a site plan, site composition is crucial considering that the demand for comfort housing has become a necessity for urban communities. This is a challenge for developers to compete with other developers. In addition to a strategic location, the housing concept and site plan are also considered by prospective buyers.¹² Further, the formulated site plan is then attached when submitting land splitting to the Demak Regency Land Office. The final product is in the form of an HGB (the right of building) Certificate equipped with an IMB (Building Permit) that will be given to buyers, which can then be increased from HGB (the right of building) to the right of ownership.¹³

Relinquishment of rights is the termination of a legal relationship between a plot of land and its owner, which is carried out through deliberation and accompanied by the provision of appropriate compensation. The relinquishment of rights is then recorded in a deed/statement of relinquishment of right. This land relinquishment can only be carried out based on an agreement between the entitled parties regarding the technique as well as the amount and form of compensation to be given.¹⁴ According to Arie S. Hutagalung, the reliance of land rights is carried out if the subject who needs land does not meet the requirements to become the holder of the required land rights so that it cannot be obtained by buying and selling and the land rights holder is willing to relinquish his land rights.¹⁵



¹²Choiriyah, Prasetiyo. "Studi Kelayakan Perumahan Citrapuri Keniten 1 Ponorogo Dilihat Dari Site Plan". *Rekayasa: Jurnal Teknik Sipil*, Vol. 3 No.2 (2018): 21-24

¹³Muammar, Chand. "Perencanaan Site Plan Komplek Perumahan Meriam Patah Residen Tahap Ii Kecamatan Baitussalam Kabupaten Aceh Besar". *Journal of Engineering Science* Vol. 7 No. 2 (2021): 1-10

¹⁴Ni Putu Cintya Meriasti, Made Gde Subha Karma Resen. "Perlindungan Hukum Perbuatan Pelepasan Hak Atas Tanah Bagi Pembangunan Untuk Kepentingan Umum". *Jurnal Kertha Wicara* Vol.10 No.9 (2021): 676-691

¹⁵Suryani Syuryani, Yozi ardian. "Pemblokiran Sertifikat Hak Atas Tanah Yang Mengalami Sengketa Untuk Tertib Administrasi Pertanahan Pada Kantor Pertanahan Kabupaten Padang Pariaman". *Pagaruyung Law Journal*.Vol. 6 No. 2 (2023): 268-280

The legal basis for the relinquishment of land rights is regulated in Article 27 of Law Number 5 of 1960 on Basic Regulations on Agrarian Principles, stating that the right of ownership is annulled if:

- a. the land falls back to the State;
- b. Because of the revocation of the right based on Article 18;
- c. Because of voluntary transfer by its owner;
- d. Because of the land is lying fallow;
- e. Because of the provisions in Article 21 paragraph 3 and Article 26 paragraph 2;
- f. The land is destroyed.¹⁶

Article 27 letter c shows that the relinquishment of land rights can be in the form of voluntary transfer by the owner which will be developed into a green open space. Consistency in maintaining the land relinquishment policy is crucial to maintain the provision of land for green open spaces. Green open spaces, public facilities, and social facilities are immediately transferred by the developers to the Regional Government of Demak Regency no later than 6 (six) months or 1 (one) year after the completion of housing construction. It shows that the developers comply with the requirements and regulations contained in Article 12 of Permendagri Number 9 of 2009.

Within 1 (one) year, the developers still have the authority to use public facilities that have not been transferred to the Regional Government of Demak Regency. Before the transfer, the status of the land rights was the Right of Building (HGB). Meanwhile, after the transfer was carried out by the developers to the Regional Government of Demak Regency and registered at the Demak Regency Land Office, the land rights changes to become State land. The developers transfer public infrastructure, facilities, and utilities to the Regional Government of Demak Regency as stated in the Minutes of Transfer and the Deed of Relinquishment of Rights. After transferring to the Regional Government of Demak Regency, public infrastructure, facilities, and utilities are transferred to the Demak Regency Regional Government Work Unit (SKPD) which has the authority to manage and maintain public infrastructure, facilities, and utilities. Transfer of public infrastructure, facilities, and utilities should be done no later than 3 (three) months after the Demak Regency Land Office issues land rights to the Demak Regency Regional Government Work Unit (SKPD). The Regional Government of Demak Regency provides strict supervision regarding the obligations of developers to provide public infrastructure, facilities, and utilities. It is because many developers have not immediately transferred these public facilities to the Regional Government of Demak Regency even though the construction has been completed. The Regional Government of Demak Regency is trying to approach and socialize and collect data before imposing administrative sanctions on developers who have not transferred public facilities.

2. Green Open Space

Green Open Space is an elongated area/lane and/or grouped that is used as a place for plants to grow, both naturally grown and intentionally planted, and functions as the lungs of a housing area. Plants in the green open space can absorb carbon dioxide (CO₂),

¹⁶Miftahul Khair Patahuddin. "Pengaturan Terhadap Peralihan Hak Milik Atas Tanah Melalui Jual Beli Tanah Menurut Uu No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok - Pokok Agraria". *Lex Administratum*, Vol. 11 No. 1 (2023): 1-12

produce oxygen, reduce temperature, provide a cool atmosphere, and become a water catchment area.¹⁷ Green open space is regulated in the Decree of the Minister of Home Affairs Number 650-658 on the Arrangement of Green Open Spaces in Urban Areas. In Demak Regency, the handling of green open space facilities is regulated in Demak Regent Regulation Number 55 of 2019 which is included in an environmental program involving the green lanes and parks development program and river/canal conservation program.

The existing green open spaces are expected to be able to carry out four (4) functions as follows:

1. Ecological functions include city lung, micro-climate regulator, oxygen producer, rainwater absorber, animal habitat provider, pollutant absorber in air, water, and soil, and windbreaker.
2. Socio-cultural functions include the portrayal of local cultural expressions, communication media, and recreational areas for residents.
3. Economic functions include a source of products to be sold, such as flowers, fruits, leaves, and vegetables. Some also function as part of agricultural, plantation, forestry, and other businesses.
4. Aesthetic functions include increased comfort, added aesthetic value to the urban environment, both on a micro-scale (residential environment) and on a macro-scale (overall urban landscape), and the creation of a harmonious and balanced atmosphere between built and unbuilt areas.

Green open space aims at maintaining the availability of land for water absorption and balancing the natural environment and the built environment for people's welfare. Besides, green open space also aims at preventing erosion and storms.¹⁸ From a visual perspective, green open space creates a visual quality of the beauty of the plants. The more open space is planted with lots of plants, the visual level will increase. Thus, the trees and flowers planted must be chosen following urban settings, especially residential areas as they affect the aesthetic value.¹⁹ In addition to having aesthetic value, green open spaces have many benefits for physical and mental health. The followings are some of the benefits of green open spaces.

1. Greater Biodiversity, The existence of green open spaces can contribute to the creation of biodiversity. Green open spaces can create a habitat for wildlife which is also important in improving the quality of life in urban areas.
2. Reducing Pollution, Pollution can cause various health problems, both in the respiratory, skin, and eyes. Various plants in public green open spaces can help filter air pollutants, even the most harmful ones.
3. Increasing Water Reserves, Green open space can help reduce runoff and increase rainwater absorption.
4. Reducing Runoff and Increasing Rainwater Absorption, Runoff is rainfall flowing over the soil surface and carrying away soil particles and substances. This condition is

¹⁷Syamsu Rijal. "Kebutuhan Ruang Terbuka Hijau di Kota Makassar Tahun 2017". *Jurnal Hutan dan Masyarakat*. Vol.3. 1(2008): 65-77

¹⁸Jamilah Hayati, Santun R. P. Sitorus, and Siti Nurisjah. "Pengembangan Ruang Terbuka Hijau Dengan Pendekatan Kota Hijau di Kota Kandangan." *Tataloka* 15, no. 4 (2013): 306-316

¹⁹Siti Badriyah Rushayati, Hadi S. Alikodra, Endes N. Dahlan, and Herry Purnomo. "Pengembangan Ruang Terbuka Hijau Berdasarkan Distribusi Suhu Permukaan Di Kabupaten Bandung". *Forum Geografi*, Vol. 25, No. 1 (2011): 17 - 26

caused by a lack of soil absorption. With green open spaces, rainwater can be retained so that humidity can be increased.

5. Reducing the Effects of Global Warming, Some of the effects of global warming include the increased earth's temperature, the emergence of heavy rains and heat waves, and the spread of disease. Green open spaces can help reduce these effects which can then provide a good impact on the community's health and welfare.
6. Maintaining Normal Air Temperature, Green open space can help maintain a normal air temperature and climate. Green open spaces on the roofs of buildings and private houses are even able to insulate the temperature so that the surrounding temperature is colder in summer and warmer in winter.
7. Muffling Noise, Reported by National Geographic, exposure to city noise can cause health problems, such as high blood pressure, heart disease, sleep disturbances, and stress. These health problems can affect anyone, especially children.
8. Improving Quality of Life

The presence of green open spaces in cities and housing areas can improve the overall quality of life. The followings are some of the benefits of green open spaces based on several studies.

1. Providing psychological relaxation and reducing stress;
2. Reducing respiratory diseases;
3. Reducing the risk of cardiovascular disease (heart and blood vessels);
4. Improving concentration;
5. Stimulating social cohesion;
6. Supporting healthy physical activity, and
7. Reducing death at a young age.²⁰

The following figure shows the role of urban planning in the stages of housing and settlement development²¹ ;

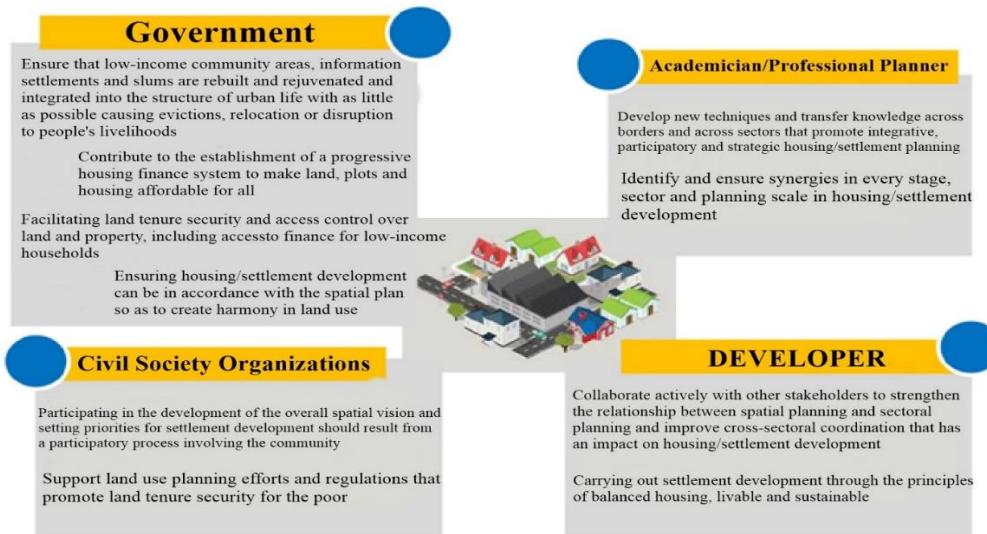


Figure 3. The Role of Each Stakeholder in Housing and Settlement Development Plan

²⁰Maks Bernard Krisifu, Zetyl E. Tamod, Meldi T.M. Sinolungan. "Identifikasi Ruang Terbuka Hijau (Rth) Di Kawasan Perumahan Taman Mapanget Raya Kecamatan Mapanget Kota Manado". *Cocos* 10,8 (2018): 1-10.

²¹Lino Pereira, Bambang Supriyono, Mochamad Makmur. "Perencanaan Pembangunan Permukiman Sebagai Upaya Peningkatan Kelayakan Hidup Masyarakat". *JISIP: Jurnal Ilmu Sosial dan Ilmu Politik* Vol. 4, No. 2 (2015): 221-230

Fasum/fasos is the developers' obligation to provide housing facilities and infrastructure as stated in Law Number 1 of 2011 on Housing and Settlements. Article 3 of Law Number 1 of 2011 on Housing and Settlements describes the efforts to support regional development as well as proportional population distribution through the growth of residential neighborhoods and residential areas following spatial planning to realize balanced interests. Besides, there are also efforts to increase the usability of natural resources for housing development without neglecting the preservation of environmental functions, both in urban and rural areas, to support the development in economic, social, and cultural sectors, and to ensure the realization of livable and affordable housing in a healthy, safe, harmonious, planned, integrated, and sustainable environment. Article 47 (1) and (4) describes that the construction of housing infrastructure, facilities, and public utilities can be carried out either by the government or any person. Infrastructure, facilities, and public utilities developed by any person must be transferred to the regency/city government following the provisions of laws and regulations. Thus, it is prohibited to be traded as regulated in Article 144: "Legal entities carrying out housing and residential construction are prohibited from converting infrastructure, facilities, and public utilities outside their functions" and can be punished with a fine of up to IDR. 5,000,000,000.00 (five billion rupiah) as regulated in Article 162 (1).²²

Conclusion

Relinquishment of land rights for public utilization, in this case green open space, is crucial to be fulfilled by developers. In addition to creating comfort situation, maintaining the housing environment is a top priority. The provision of housing for low-income communities is the government's effort to realize the mandate of the Law of the Republic of Indonesia. This effort should be carried out by all stakeholders, including the government, community, and private sectors. In its implementation, housing development should avoid the occurrence of new problems which can be more dangerous. Government participation in development, supervision, and financing should be more dominant than other parties. Besides, the community's participation in monitoring and controlling the housing development, starting from the preparation until getting permits, is also important. The higher the community's awareness to participate in each monitoring activity, the less green open space in a housing area will be minimized. With the fulfillment of 30% of green open space in Demak Regency, it is expected that a safe, comfortable, productive, and sustainable space can be realized. The community's and the Regional Government's support to collaboratively implement and provide green open space is needed. It is also a form of control over the regency to make it better.

Suggestion

A shared commitment of all parties is needed to maintain public and social facilities. Accordingly, several suggestions are proposed, including: supporting regional development and population distribution following the applicable regulations; optimizing supervision and monitoring for housing or residential areas to maintain public and social facilities; increasing the usability and efficiency of natural resources and preserving natural resources and

²²Winahyu, Erwiningsih, and Mahrus Ali. "Constitutional Right to Housing for Poor People in Indonesia". *International Journal of Educational Review, Law and Social Sciences (IJERLAS)* 3, no. 1 (2023): 304-311

environmental health in developing housings; supporting development in economic, social, and cultural sectors and ensuring the realization of livable and affordable housing in a healthy, safe, harmonious, planned, integrated, and sustainable environment; and ensuring the developers to not lower the housing quality if subsidized housing is removed from regulations in the following years. Next, further research is expected to broaden the scope of research by adding objects, subjects, and differentiating variables and analytical tools so that the research is useful for both readers and future researchers.

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