



# Urgency of applying the concept of warranty of habitability in house lease agreements in Indonesia

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## ABSTRACT

Adequate housing as a place to live is a human right protected under the Human Rights Act. Shelter is not limited to property rights but also rental housing. Decent housing arrangements are then mentioned in the Housing and Settlement Area Law, namely building safety requirements, minimum building area adequacy, and occupant health. If the freehold housing does not meet the livable criteria, the government's solution is to overcome it with financial assistance. Furthermore, to this day, there is no regulation forcing homeowners who rent out their dwellings to meet the standards of livability. In this case, in order to guarantee the quality of life of tenants, the lease agreement needs to follow the provisions of the warranty of habitability from the United States. This legal research uses normative legal research methods, with a statutory approach and conceptual approach. The criteria for warranty of habitability in the United States vary from the regulation of each state. If the warranty of habitability is not fulfilled and if afterwards the tenant's constructive notice is ignored by the landlord, the tenant can file a case with the respective state court, with the final result of abatement (reduction of rent) or even waiver of rent. If a landlord in Indonesia wants to rent out his/her dwelling, it is necessary to regulate this kind of coercive warranty of habitability and the lease agreement in Indonesia is no longer entirely private.

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## 1. INTRODUCTION

The right to live a decent life is regulated in Article 27 paragraph (2) of the Constitution of the Republic of Indonesia (UUD NRI 1945), namely "Every citizen has the right to work and a livelihood worthy of humanity." (Undang-Undang Dasar Negeri Republik 1945) A decent livelihood is further explained in Article 25 paragraph (1) of the Universal Declaration of Human Rights (UDHR), namely "(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including the right to food, clothing, housing... (The Excerpt is an original translation from the United Nations, with the original English version) "Everyone Has the Right to a Standard of Living Adequate for the Health and Well-Being of Himself and of His Family, Including Food, Clothing, Housing..."., 2023) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ECOSOB) which reads: "The States parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions ..." (International Covenant on Economic, Social and Cultural Rights (Diadopsi 16

Desember 1966, Mulai Berlaku 3 Januari 1976) 993 UNTS 3, Disahkan Melalui Undang-Undang (UU) Nomor 11 Tahun 2005 Tentang Pengesahan International Covenant on Economic, Social And , n.d.) With the repeated mention of the right to a decent life, one of which is the right to housing or the right to shelter needs more attention. The fulfillment of basic rights in the form of the right to shelter is rooted in survival and maintaining the dignity of human life..(Ardimas A.D. Wahyuwono dan Warah Atikah, 2022; Cecilia Waha dan Jemmy Sondakh, 2014) Legal and economic aspects are strongly embedded in a person's decision-making in choosing housing. Housing issues in the eyes of the law are not only ownership of housing and its transfer, but also include the law on residential leases.

The large number of houses for rent is a social phenomenon that cannot be underestimated. According to data from the Central Bureau of Statistics (BPS) on the Status of Owned and Rented Home Ownership in 2022, for male individuals there are 6.26% of the total population of the country (Jumlah Penduduk Pertengahan Tahun (Ribuan Jiwa)) living in rented housing, while for female individuals it is 5.28% and for households it is 6.13%..(Proporsi Rumah Tangga Dengan Status Kepemilikan Rumah Milik Dan Sewa/Kontrak Menurut Jenis Kelamin 2020-2022, n.d.) The trend of rented housing is particularly common in metropolitan areas. In 2020, DKI Jakarta Province was recorded as the first rank for the percentage of households whose occupancy was rented, at 37.71% of the total population of the province. The second and third rank is occupied by Riau Islands Province and Bali Province at 26.29% and 22.03% of the total provincial population, respectively (Monavia Ayu Rizaty)

People's decision to choose to rent housing as a residential consideration rather than buying housing is based on various reasons. The most common reason is that there is no financial readiness to buy housing (Brilian, 2023.) There are also other reasons, such as more economical expenses if renting a residence, the strategic location of rental housing to the reasons for a nomadic lifestyle due to the rules of work transfers that are still valid..(Brilian, 2023)

The legal umbrella regarding dwellings and their occupancy by way of lease is regulated, among others, in the Civil Code (KUHPerduta). (Kitab Undang-Undang Hukum Perdata, n.d.) Law Number 1 Year 2011 on Housing and Settlement Areas (PKP Law)),(Undang-Undang Nomor 1 Tahun 2011 Tentang Perumahan Dan Kawasan Permukiman, n.d.) and Government Regulation No. 14/2016 on the Implementation of Housing and Settlement Areas.(Peraturan Pemerintah Nomor 14 Tahun 2016 Tentang Penyelenggaraan Perumahan Dan Kawasan Permukiman, n.d.) However, specific regulations regarding decent housing standards for rent are still not regulated in Indonesia. There is also still no detailed regulation regarding government supervision of rental housing owners to meet livable standards and legal protection of tenants if these standards are not met by the owner.

In Indonesia, the legal relationship between owners and tenants of public housing is considered civil in nature only. It is different when looking at the regulations enforced in the United States. The United States, compared to Indonesia which adheres to a civil law legal system, enforces a common law legal system,(Peter de Cruz, 1999) yang menggolongkan hukum sewaan hunian (rent law) ke dalam ranah pengaturan state law. (*The United States has three levels of law according to its applicability and its formulators, namely at the federal, state and local levels. The regulation of the legal relationship between landlord and tenant and the process of legal remedies is included in the state law regulation because it also involves the realm of property law*) (Oslon, 1999) The United States as a country with a large percentage of residential tenants has enforced stricter and binding rules for residential owners before renting out their occupancy, When compared to DKI Jakarta Province as the province with the highest percentage of residential tenant households, the United States has New York as the state with the highest percentage of residential tenants, namely 45.9% of the total state population.

(Stebbins, 2022.) With this high number of residential tenants, the United States leaves the regulation of rent laws to each state to enforce the laws that apply according to the sovereignty of each state.(Nolo, 2022.) Every state, from New York to West Virginia (which has the lowest percentage of residential renters, at 26.3% of the state's total population), has its own tenants.)(Stebbins, n.d.) enforce their respective rent laws, including imposing a Warrant of

Habitability as an obligation of every owner of a rented dwelling so that the dwelling continues to meet livable standards (Warranty of Habitability).

Regulations such as the Warranty of Habitability have not been regulated in detail in Indonesia, even though the number of residential tenants in Indonesia has increased. It is important to regulate the standard of decent housing as legal protection for tenants. The fulfillment of the conditions in the contract of renting a house in Indonesia for the owner of the dwelling is not enough. Still, the owner of the rented dwelling must also ensure that the tenants' quality of life remains decent according to the mandate of the 1945 Constitution of the Republic of Indonesia. With the regulation of habitability guarantee adopted in Indonesia, the legal relationship between the tenant and the renting party is no longer entirely private but there is state intervention in the form of coercive provisions that the renting party should obey.

## 2. RESEARCH METHOD

The legal research method of this legal research is normative legal research or also called doctrinal research. Normative legal research describes the analysis of the relationship between legal norms, with the expected result being a systematic explanation of legal norms that answer the legal issues at hand. (Marzuki, 2016) The type of data that supports and becomes the basis of research using secondary data, which is obtained from official documents, books, to the results of research reports. (Soekanto, 2007),

The type of data that supports and becomes the basis of research using secondary data, which is obtained from official documents, books, to the results of research reports. (Marzuki, 2016) Conceptual approach (conceptual approach) is carried out by studying the views, doctrines and principles that develop in legal science, with the ultimate goal of being able to bring up answers to the legal issues raised, in this case the provisions of the warranty of habitability in the United States (Marzuki, 2016).

## 3. RESULTS AND DISCUSSIONS

### Regulations on Habitability in Indonesia

The PKP Law and PP No. 14/2016 define a house in Article 1 point 7 as "...a building that serves as a habitable residence, a means of family development, a reflection of the dignity of its occupants, and an asset for its owner." The PKP Law further differentiates the types of houses in Article 21 paragraph (1), namely, among others: commercial houses; public house; self-help houses; special houses; and state house. (Undang-Undang Nomor 1 Tahun 2011 Tentang Perumahan Dan Kawasan Permukiman, n.d.)

Law No. 39/1999 on Human Rights (Human Rights Law) stipulates that decent living and housing is the right of every person. (Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, n.d.) In this case, the definition of a habitable residence, especially a house, is found in the Explanation of Article 24 letter a of the PKP Law, which is a house that meets the following criteria, including building safety requirements, minimum building area adequacy, and occupant health.

Further explanation of each of these criteria is not explicitly mentioned in the laws and regulations. In contrast, the Minister of Social Affairs Regulation No. 20/2017 on Social Rehabilitation of Uninhabitable Houses and Environmental Infrastructure (Permensos No. 20/2017) regulates a more detailed definition and criteria of uninhabitable houses. An uninhabitable house, which Permensos No. 20/2017 abbreviates as Rutilahu, is defined as a residence that does not meet health, safety, and social requirements. (Peraturan Menteri Sosial Nomor 20 Tahun 2017 Tentang Rehabilitasi Sosial Rumah Tidak Layak Huni Dan Sarana Prasarana Lingkungan, n.d.) It is stated in Article 3 of Permensos No. 20/2017 that the criteria for a house to be referred to as Rutilahu must fulfill at least the following criteria: the walls and/or roof are in a damaged condition that may endanger the safety of the occupants; the walls and/or roof are made of materials that are easily damaged/weathered; the floor is made of soil, boards, bamboo/cement, or ceramic tiles in a damaged condition; has no bathing, washing, and toilet facilities; and/or the floor area is less than 7.2 m<sup>2</sup>/person (seven point two square meters per person). (Peraturan Menteri Sosial Nomor 20

Tahun 2017 Tentang Rehabilitasi Sosial Rumah Tidak Layak Huni Dan Sarana Prasarana Lingkungan, n.d.)

From the above, it can also be interpreted that a contrario of the above criteria can also be a reference that a dwelling can be called livable. Following up on the phenomenon that occurred in the community about the existence of Rutilahu, the government has so far tried to fulfill the community's right to live in a livable house in various ways. The government provides support for homeowners with poor status or low-income communities such as in the distribution of social assistance for social rehabilitation of Rutilahu, (Peraturan Menteri Sosial Nomor 20 Tahun 2017 Tentang Rehabilitasi Sosial Rumah Tidak Layak Huni Dan Sarana Prasarana Lingkungan, n.d.) provision of Self-Help Housing Stimulant Assistance (BSPS) in the form of money or building materials, (Peraturan Menteri Pekerjaan Umum Dan Perumahan Rakyat Nomor 13/PRT/M/2016 Tentang Bantuan Stimulan Perumahan Swadaya, n.d.) or the provision of Savings-Based Housing Financing Assistance (BP2BT) in the form of fulfilling part of the down payment for home acquisition or part of the funds for the construction of self-help houses by the government. (Peraturan Menteri Pekerjaan Umum Dan Perumahan Rakyat Nomor 18/PRT/M/2017 Tentang Bantuan Pembiayaan Perumahan Berbasis Tabungan, n.d.) Other than this follow-up, there are no detailed regulations on the eligibility of residential dwellings, especially those for rent.

### **Eligibility Standards for Rented Housing in Indonesia**

The PKP Law stipulates that the right to occupy a house can be in the form of ownership, by way of rent or not by way of rent. (Undang-Undang Nomor 1 Tahun 2011 Tentang Perumahan Dan Kawasan Permukiman, n.d.) The legal basis for the lease of this house is not only regulated in the PKP Law, but also in PP Number 14 of 2016, and the terms of the agreement is regulated in more detail in the Civil Code. Regulated in Article 28 of PP No. 14/2016, regulations related to occupancy of houses by way of rent must fulfill the following conditions, among others: Must be with the consent or permission of the homeowner; (Undang-Undang Nomor 1 Tahun 2011 Tentang Perumahan Dan Kawasan Permukiman, n.d.) Performed based on a written agreement between the landlord and tenant, the clauses of which at least include rights and obligations, term, rental price and force majeure conditions; (Undang-Undang Nomor 1 Tahun 2011 Tentang Perumahan Dan Kawasan Permukiman, n.d.) dan Not a house that is in dispute. (Peraturan Pemerintah Nomor 14 Tahun 2016 Tentang Penyelenggaraan Perumahan Dan Kawasan Permukiman, n.d.)

The legal relationship of renting a dwelling between the owner of the dwelling and the tenant is set forth in an agreement, so the provisions in the lease are subject to the Civil Code. In the Civil Code, leasing is defined as an agreement between the first party who gives the enjoyment of an item to the second party during a specified time, accompanied by the payment of a price agreed by the second party. (Kitab Undang-Undang Hukum Perdata, n.d.) The provisions governing the lease of a house are further regulated in Chapter VII Part 2-3 of the Third Book of the Civil Code, but as is known, the Third Book of the Civil Code is *aanvullend recht* or complementary in nature so that there are rules that are deviated by the parties if the parties agree to it (Tamboto, 2016). The rules in the lease are not coercive.

Occupancy of the house by way of rent must also pay attention to the provisions in the law of the agreement. Taking into account the terms of occupancy of the house by way of rent mentioned in Government Regulation Number 14 Year 2016, the lease must be based on a written agreement, which is defined in Article 1867 of the Civil Code: Proof by writing is carried out by an authentic deed or by a deed under hand. The authentic deed itself is a deed made in the form prescribed by law by or before a public official authorized to do so at the place where the deed is made, in this case the authorized is a notary.

Taking into account the above provisions, there is no compelling provision governing the eligibility standards of the leased dwelling that is binding especially for the owner of the residence. Indeed, there are provisions in the Civil Code such as in Article 1552 which states: "The renting party must bear the tenant against all damage to the leased item (house) that hinders the use of the item (placement of the house), even though the renting party himself did not know it at the time the lease agreement was made. If the damage has caused a loss to the tenant, then the renter is

obliged to compensate the tenant..”(Kitab Undang-Undang Hukum Perdata, n.d.) However, this provision can be overridden and does not compel the owner of the dwelling.

### **Comparison of the Regulation of Eligibility Standards for Rented Housing in Indonesia and the United States of America (*Warranty of Habitability*)**

In Indonesia, regulations related to the eligibility standards of rented housing are not explicitly mentioned and force the landlord. The regulation of occupancy eligibility standards follows the definition of a habitable house from housing-related laws and regulations. Regulations regarding the law of residential leases are subject to the law of agreements and leases in the Civil Code, so they seem to be private. Laws and government regulations also regulate residential eligibility standards along with ministerial regulations, so their applicability is different from state law. The regulation of residential eligibility standards applies throughout Indonesia, but *the warranty of habitability* with each diversity of regulations applies in their respective states. Looking at these legal facts, it is necessary to conduct a comparative study with the enactment of the warranty of habitability provision as a compelling provision for residential owners in the United States.

*Warranty of habitability*(*When a Landlord Won't Make Repairs*, n.d.) The literal translation of Warranty of Habitability in Indonesian is warranty of habitability. "Warranty" means promise. "Habitable" means that the rental unit is a safe and decent place to live. are the requirements that must be met by the owner of the dwelling (for *landlord/owner/lessor*) to keep the homes they rent out in compliance with basic standards (*Warranty of Habitability*, n.d.). Ketentuan *warranty of habitability* ini ada di ranah *rent law* dalam tingkatan hukum *state law*.(Legal Aid Society of Notheastern NY, n.d.) State law is the level of law that regulates what is not regulated by the realm of federal law. The existence of rent law regulation exists in all 50 states, even 21 states agreed to ratify Georgia's state law on Residential Owners and Tenants, under the umbrella of the uniform act of 2015 including the regulation of *warranty of habitability*. (Uniform Law Commission, n.d.). A Uniform Act is a statute that establishes the same law on a subject among the various states. The remaining 29 states did not provide for warranty of habitability, but did not adopt the Georgia state law and retained the rent law established in 1972. *warranty of habitability* is important to regulate because it is a form of responsibility control for landlords. Landlords are obliged to ensure that the housing they rent out is always habitable., To quote West Virginia state law, "...landlords are required to maintain rental housing in a habitable condition from move-in until move-out." Real Property, WV Code § 37-6-30. (2020) including the whole of its premises and the area used by other tenants jointly (in such premises). To quote a New York state law provision

"In every ... agreement for a dwelling, the owner ... shall be deemed to bind and warrant that the premises ... rented and all areas used in connection therewith jointly with other tenants or occupants are fit for human habitation" Real Property, Consol. Laws of N.Y. § 235-B (2014).

The following are examples of criteria, adapted from some states' provisions to fulfill the habitability warranty. Each state's regulations vary regarding the warranty of habitability but generally include things like:

- *Drinkable water* (air minum);(*Ground Water and Drinking Water: Basic Information about Your Drinking Water*, n.d.)  
This is based on the Safe Drinking Water Act (SDWA) in 1971 in order to protect public health, with one of its efforts making regulations on drinking water systems in general. Drinking water or commonly referred to as tap water in the United States is supposed to be accessible.
- *Running water and working hot water* (Penyediaan air mengalir dan sistem pemanas air);  
Provision of clean and running water is an essential instrument for sanitation and cooking purposes.
- *Weather protection* (perlindungan dari cuaca);  
The United States is a four-season country with the extreme summer heat reaching 47.2 Celsius degrees.<sup>1</sup> (Skilling, n.d.) and in winter, all states except Hawai'i can reach temperatures below 17 degrees Celsius..(Lam, n.d.) Extreme weather conditions can put people's lives at risk of heatstroke, dehydration,(Ashley A. Akerman, 2016) up to hypothermia.(Paige Zhang;

<sup>1</sup> Suhu ini tercatat di Las Vegas, Nevada pada musim panas Juli 2021.

et.al, 2019) Forms of protection from the weather in a dwelling that is suitable for rent are to ensure that windows and doors are in good condition, install insulation, install a thermostat that can be adjusted by yourself.,(Georgios D. Kontes; et.al, 2017) and ensure that the house has healthy airflow (Seraphina Di Mizzurati, n.d.).

- (A good *working electricity*);
- Electricity provision is necessary to protect basic rights to adequate shelter (Löfquist, 2020) such as to power heating, lighting and is a means to increase productivity. (Mike Hughes, n.d.)
- Basic sanitation facilities;  
Not only should the bathrooms and toilets be in good working order, but the landlord should create a clean environment by providing household garbage disposal, to include cleaning if the dwelling faces serious rodent or insect problems.
- Up-to-date conformity to building codes.

If we consider electrical and plumbing regulations, the United States follows the International Building Code/International Residential Code (IBC/IRC). These regulations, as well as other aspects of habitability, are likely to change over time. So, homeowners need to keep up to date with the latest building regulations so that their buildings fulfill the warranty of habitability.

The criteria mentioned above are just a few examples. Each state is authorized to impose different regulations. For example, as stipulated in the state of West Virginia, landlords are required to install *dead bolt locks* at each dwelling unit entrance according to the manufacturer's specifications regarding fire safety and accessibility to residents with disabilities. (2022 *West Virginia Code Chapter 37. Real Property*, n.d.).

*Warranty of habitability* is a form of legal protection to tenants. For example, in the state of New York, negligence in fulfilling the warranty of habitability criteria results in material losses suffered by residential tenants, so that residential tenants are affected by negative consequences that reduce their quality of life. If something like this has happened, then the tenant of the dwelling has the right to file a claim (claim) to the court accompanied by evidence. The evidence can be in the form of photos of the condition of the house, recordings, witnesses such as residential neighbors, various kinds of related letters, with the most important evidence being a "*constructive notice*" or notification to the landlord of the condition of the dwelling that is not suitable to live in. (*Landlord/Tenant Answer In Person: Fact Sheet*, n.d.). The constructive notice is also a mechanism to prevent delinquent tenants who do not want to pay rent on the grounds that there is a breach of *warranty of habitability*.(Paula A. Franzese; et.all, 2016)

In New York, in addition to filing a claim, breach of warranty of habitability can be the basis of an argument by the tenant of a dwelling if the landlord sues him for non-payment of rent. (Edward W. De Barbieri dan Jordan Fruchter, 2023). In addition to being an argument for defense, breach of *warranty of habitability* can be the basis for a counterclaim. If the judge grants the tenant's claim/defense/counterclaim, then the tenant may be exempted from paying rent for the duration of the damage, or may also be granted an "abatement" or reduction in rent according to what the judge decides. This abatement takes the form of a percentage reduction in the value of the dwelling, and if it is not repaired, the abatement can last for more than six years.(Laws of N.Y, 2014).

There are times when this warranty of habitability is not explicitly stated in the lease agreement, so this situation is called implied warranty of habitability There are times when this warranty of habitability is not explicitly stated in the lease agreement, so this situation is called implied warranty of habitability.(Chen, n.d.) Even if not stated in the agreement, the provisions regarding warranty of habitability are equally applicable. The right to live properly is highly protected, so even if the warranty of habitability provision is not expressly stated, the landlord must still be subject to it, If it is deliberately stated in the agreement that the warranty of habitability is waived, then this agreement will be null and void because it is contrary to the applicable rent law). However, there are consequences, especially if the tenant has full knowledge before renting that there is a breach of the warranty of habitability but still rents the dwelling (due to reasons such as low rents far below market prices), then the tenant cannot sue the landlord for the problems that have arisen in the dwelling from the beginning.

The operation of the warranty of habitability gives landlords some leeway, in that once a constructive notice is given they have a time limit for repairs. The landlord is also exempted if the damage caused is the result of the tenant's actions. The existence of warranty of habitability should also not be an excuse for delinquent tenants if they do not want to pay rent. If the landlord wishes to start renting out the property, the landlord is required to obtain a license to manage the rental property. Before the license is approved, a safety and health inspection will be conducted. The resulting report will include any changes or repairs that need to be made to fulfill the warranty of habitability. (Tim Parker, n.d.)

### **The Urgency of Regulating Habitability for Rented Housing in Indonesia**

As mentioned earlier, the detailed regulation of residential leases, in addition to being subject to the PKP Law and PP No. 14/2016, is also subject to the Civil Code, especially the provisions on the lease itself and the provisions on agreements. Regarding provisions similar to the warranty of habitability policy, in the Civil Code, Article 1552 has stipulated that one of the obligations of the owner of the dwelling / party who leases is to bear all deficiencies in the form of defects in the leased dwelling. (Kitab Undang-Undang Hukum Perdata, n.d.). Any defect in the dwelling that may cause impairment of use, in this case habitability, obliges the owner of the dwelling to compensate for the loss. (Mahalia N. Pohan dan Sri Hidayani, 2020). The tenant of the dwelling is entitled to the delivery of the dwelling in a maintained state so that the dwelling can be occupied according to his needs. After entering into a lease agreement, the landlord must also ensure that the dwelling he owns can be enjoyed, peaceful and serene and that there are no defects that hinder its occupancy. (Suryodiningrat, 2002).

Non-fulfillment of these provisions indicates a default. However, it must be noted that given the nature of the Third Book of the Civil Code, which is a supplementary regulation only, the matters as above must be clearly agreed in the agreed agreement so that both parties know the existence of the clause. If the above has been clearly stated in the agreement, then the condition of non-fulfillment of these conditions is only a default.

The consequences of default are stated in Article 1243 of the Civil Code, namely reimbursement of costs, losses and interest. The article stipulates that an obligation begins to be obligated, if the owner of the dwelling, even though it has been declared negligent (did not resolve the defect of the house), still fails to fulfill the obligation. (Kitab Undang-Undang Hukum Perdata, n.d.). In the next article, the owner of the dwelling is only relieved of this obligation if he can prove that the non-completion of the damage to the house was caused by something unforeseen, which cannot be attributed to him, even though there was no bad faith on his part. (Undang-Undang Hukum Perdata). Article 1245 of the Civil Code regulates force majeure circumstances, namely "... force majeure or due to things that happen by chance." Things that fulfill this force majeure situation need to be explained further by the parties because it is a clause that must be included in the lease agreement in accordance with Article 28 of Government Regulation Number 14 of 2016.

Another consequence that can arise in the event of default by the landlord is the termination of the lease, due to the condition that the dwelling cannot be used by the tenant. (Kitab Undang-Undang Hukum Perdata, n.d.) The tenant can cancel the agreement and the agreement will be abolished according to Article 1381 of the Civil Code. (Kitab Undang-Undang Hukum Perdata, n.d.; Milano Dolo, 2018) Such a break in legal relations is not a good development in the matter of residential leasing, because the owner of the dwelling should be obliged to always maintain the feasibility of his dwelling if he wants to rent it to others. Therefore, there is a need for a legal umbrella to guarantee the habitability of the dwelling, and it should start from the very beginning when the landlord wants to rent out the dwelling. The government can carry out inspections so that before the dwelling is rented out, the landlord has complied with the law and completed the health and safety requirements of the dwelling.

### **4. CONCLUSION**

Regulations regarding housing eligibility are regulated in various laws and regulations, including the PKP Law, PP No. 14/2016 and ministerial regulations. Article 24 letter a of the PKP Law states that a house is considered habitable if it meets building safety requirements, minimum building area

adequacy, and occupant health. Houses can be occupied by renting, the conditions are listed in Article 28 of PP No. 14/2016, namely: based on the consent of the owner of the house; have a written agreement between the owner and the tenant, which at least contains rights and obligations, term, rental price and force majeure conditions; also not in the form of a house that is in dispute. Regulations on the lease of a house as well as the legal relationship between the tenant and the landlord are contained in the Civil Code. Article 1552 of the Civil Code explains that the landlord is obliged to bear the damage to the leased house that hinders the placement of the house even though the landlord was not aware of the damage when the lease was approved. Even if the damage has caused loss to the tenant, then the landlord is obliged to provide compensation. However, the nature of the third book of the Civil Code which contains this article is complementary only, so it must be clearly agreed if this article will bind both parties. If it has been clearly agreed and the landlord violates it, then there has been a default. So far, there are no compelling provisions for homeowners to meet the eligibility standards for rented housing. The standard of habitability of rented dwellings in Indonesia needs to be compared with the warranty of habitability provisions in the United States, a country with a high number of home renters.

Unlike the regulations in Indonesia, where the validity of housing regulations applies throughout Indonesia, warranty of habitability in the United States has a variety of regulations that vary from state to state. Warranty of habitability is an inherent obligation for homeowners, as well as an inherent right for tenants, remains in effect even though it is not explicitly explained in the rental agreement. If the warranty of habitability is waived or deliberately deleted in the rental agreement, then the agreement becomes null and void. Examples of warranty of habitability criteria in three states in the United States (New York, California and West Virginia) include drinkable water, running water and working hot water, weather protection, working electricity, basic sanitation facilities including massive rodent and insect removal, and up-to-date conformity to building codes. If the landlord fails to repair the damage after the tenant sends a constructive notice within 30 days, the tenant can file a claim in court. The tenant may also not pay the rent due to repair costs, so if the landlord goes to court the tenant can cite breach of warranty of habitability as a defense or even a counterclaim. The judge will decide on the reduction or waiver of rent according to the period of damage as his ruling.

Regulations regarding the feasibility of rented housing need to be enforced in Indonesia. It is not enough from the clauses of the agreement alone, but there needs to be more detailed arrangements with what is meant by building safety requirements, minimum adequacy of building area, and occupant health which have been mentioned in the explanation of Article 24 letter a of the PKP Law. Not only referring to the a contrario criteria of Rutilahu in Article 3 of Permensos Number 20 of 2017, but there must also be regulations governing the consequences if this uninhabitable house is rented out by the owner, as well as property inspection by the government before the owner of the residence wishes to rent it out. This is to provide legal protection to tenants so that the ideals of a decent livelihood for everyone from the 1945 Constitution can be achieved.

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