

# DOES THE VAGRANTS HAVE THE RIGHT TO HOUSING?

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## ABSTRACT

*This research aims to find out and understand to what extent the state responsibilities through integrated development programs for the people prosperity according to the principles of Human Rights and this research also aims to find out the parameters related to the discussion of state responsibilities for vagrant, as well as to find out the policies implication that have been implemented by the state in the construction of adequate residences and settlements for vagrant, also to find out the policies implications that have been implemented by state for the construction of residences and settlements for vagrant in the transportation area. This research used normative research method with qualitative approach. The results of this research showed that there are still many vagrants who roam in the urban cities in Indonesia, thus it is needed for the creation of regulations and policies from State to overcome this problem. Aside from the consequences of the ratification of international instrument regarding economic, social and cultural rights, wherein, one of the articles regulates the right to access for every people to the fulfillment of adequate residences, thus State obliges to provide adequate residences for vagrant as part of its human rights obligations, so there are no more people who do not have a place to live and no more people live on the side of the road, over the shop, under the bridge, etc. In addition, it is also state's obligation in terms of fulfilling the right to prosperity for its people, so that the rights to adequate residences must be realized by the State.*

**Keywords:** State Responsibilities, Residential and Adequate Residential Area, Vagrant Rights

## INTRODUCTION

The fourth paragraph of the Preamble of Indonesian Constitution 1945 contains several purposes of Republic Indonesia, one of the purposes is to advance the public welfare. However, in realizing the purposes, Indonesia encounters several obstacles in the form of social problems that slow down the process of realization of prosperity and advancement of people in Indonesia.

One of the obstacles to the development in reaching the degree of welfare according to authors is the rise of vagrant in urban cities. Almost in every major cities especially in the urban cities, vagrant can be found everywhere. As far as the author's observations, vagrant has a different pattern of interaction, rules and norms of life from other society in general. For instances, eating with modest food and even eating leftover food from other people, sleeping in any places (parking low, under bridges, roadside, garbage carts and etc) and wearing tattered clothes. Basically, the life of vagrant or homeless is far from decent life. The main factor causes the existence of vagrants is poverty and followed by the other factors. The other factors cause a new social problem with the term of vagrant or homeless. Poverty is the most realistic problem to be considered as the cause of all social problems According to Artidjo Alkotsar (Sulistiya, 2011) said that the factors causes the existence of vagrants and homeless, are:

1. **Economic Factor:** Lack of jobs opportunities, low per capita income and insufficient living needs.

2. **Social Factor:** The increasement of urbanization and lack of community participations in reaching social welfare.
3. **Educational Factor:** Relatively low education, thus the lack of skills for decent living and lack of informal education in the family.
4. **Psychological Factor:** There are conflicts within family and desire to forget the miserable past and lack of enthusiasm for work.
5. **Cultural Factor:** Resigned to fate and customs which are mental problems?
6. **Environmental Factor:** Vagrant who have family or who have children, indirectly will become the vagrant as well.
7. **Religious Factor:** Lack of basic religious teachings, thus cause the lack of faith, makes them unable to face the test from God and do not want to overcome it.

According to the General Director of Residences Financing at the Ministry of Public Works and Public Residences, Maurin Sitorus said that currently there are 13.5 million families in Indonesia who have not yet had a residence with the ownership rights (<https://money.kompas.com>). Meanwhile, the poverty rate in Indonesia is 9.66% or around 25.144.720 (Central Statistics Agency, 2019). Based on the description above, it seems that vagrant problems need to get serious attention and shall be overcome immediately with the extra handling. Since, the existence of vagrant can trigger social problems and other environmental problems. The big burden of government nowadays is to fulfill the rights of vagrants, due to some of them getting help from several Non-Governmental Organizations (NGOs) and the increasing demand from them to the government of Indonesia to immediately fulfill the rights of vagrants who are also citizen of Indonesia.

Along with the times, the pattern of individual thought is increasingly developing and progressing. One of the breakthroughs of thought in the civilization of human life is the belief that every human being has a set of fundamental human rights. Certainly, in supporting the fulfillment of those rights. The urgency of the creating of human rights is merely to protect, respect and fulfill the basic rights that are inherent to human beings, which the rights are universal and lasting. Indonesia has an absolute consequence of being part of the international community is obliged to respect and uphold the principles and objectives of the United Nations Charter and General Declaration of Human Rights or internationally known as the Universal Declaration of Human Rights. One of the guaranteed rights is the right to residences and right to live in adequate and affordable residences. In those rights lies the responsibilities of state to fulfill, as mandated by the Preamble of Constitution of Republic Indonesia 1945 in the fourth paragraph stated “ In order to create Government that protects all the Indonesian citizen and all of Indonesian’s blood spilled and to promote public welfare...”, in conjunction with Article 28H paragraph (1) of Constitution of Republic Indonesian 1945 that stated “Everyone has the right to live physically and mentally prosperous, to have residences and to have adequate and healthy environment and also to have health services”.<sup>1</sup> In addition, Indonesian Law Number 39 Year 1999 regarding Human Rights in Article 40 stated “Every person has the right to live and have a decent life.” Thus, it is formally clear, states guarantee the right to adequate residences and settlements for citizen. Since, fundamentally, residence is a form for the smallest units of community life, namely family.<sup>9</sup>

The fulfillment of the needs of state for the construction of residences and settlements for homeless is a form of fulfilling the economic, social and cultural rights of citizens. As mentioned in article 4 of International Covenant on Economic,<sup>10</sup> Social, and Cultural Rights (ICESCR) “The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a

democratic society” it emphasized that the determine of quality of human life that guarantee by the covenant which have ratified by the government of Indonesia trough Law Number 11 year 2005 (Sakharina, 2020).

Empirically, there are still people who cannot enjoy adequate residences and settlements, especially homeless in urban cities. This problem happens due to the differences in the growth and development in each region and especially due to the lack of attention from government to homeless, homeless has been seen as ragtag, criminal and triggers for other social problems. In fact, vagrants are the same position in the concept of the Indonesia State Of Republic who are citizen of Indonesia whose rights are guaranteed by law and state is obliged to fulfill it. Meaning that if state does not fulfill the positive rights, indicates that the states violate human rights, both acts of commission and omission.

The existence of the state is highly demanded to fulfill the right to adequate residences and settlements. So far, the issue of the fulfillment the basic rights of citizens revolve around the states only being demanded to fulfill right to clean water and clean environment, provide job field, improve the quality of education, increase labor wages, etc. Furthermore, it does not mean the rights to residences and adequate settlement is more important than the rights mentioned above. However, this only indicates that there are things that people miss to claim the accountability from state. The right to adequate residences and settlements is part of human rights which also include basic rights or in Dutch called *grond rechten*. Therefore, it generates state obligation to protect, respect and implement it. As clearly stated in Article 8 of Indonesian Law Number 39 Year 1999 regarding human rights, stated that “the protection, promotion, enforcement and fulfillment of human rights is primarily the responsibility of state.” In fact, the obligation stated in MPR Decree Number: XVII/MPR/1998 regarding human rights, stated that “the Preamble of Constitution Republic Indonesia 1945 has mandated recognition, respect and will for the implementation of human rights in performing social, national and patriotic life” (section b) and “Indonesian as part of international community should respect human rights as mentioned in the Universal Declaration of Human Rights of the United Nations and other international instruments of human rights” (section c).<sup>2</sup> It is also emphasized in the text of the international Covenant on Economic, Social and Cultural Rights, while the Government had ratified into the Law Number 11 year 2005, precisely in the Article 2 paragraph 1 which stated “Each State Party to the present Covenant may be interpreted as implying for any State, group of person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.”<sup>3</sup>

It must be emphasized that, the state is obliged to provide adequate residences and settlements. So, it needs to be stressed “adequate”, not just abort the obligations. Therefore, it needs to have standards or requirements that are used as benchmark regarding the boundaries of residences and settlements are categorised as adequate. The requirements that must be fulfilled, such as (Sitompul, 2013):

- a. The recognition of ownership rights includes legal guarantees that protect every people from threat of arbitrary forced evictions or other threats;
- b. Residences shall be accessible for everyone. Regulation and policies concerning residences shall prioritize disadvantaged groups for the fulfilment of this rights, for instance, elder people, people with disabilities, individual who suffers HIV, victims of natural disaster, women and children and economically disadvantaged groups.
- c. Residences have adequate space and can protect from all kinds of weather or other types of health issues.
- d. Location is not placed in remote area that cause difficulty for residents to work, access to health services, schools and other social facilities.
- e. Right for residents to freely express their cultural identity while recognising and respecting the reality of cultural diversity;
- f. Adequate services, materials and infrastructure, which must have access to clean and drinkable water, energy for coking, heating and lighting, sanitation and washing facilities, food storage garbage disposal,

water disposal and emergency services. If one of services mentioned above is not available then it cannot be categorized as proper residences.

The problems of the right to adequate residences and settlements that have sprung up not only originate from state apparatus but occur in parallel from non-state actors or private entities. In urban cities, gentrification happened a lot (Waha, 2013), which is a process where middle-class society occupied the lands that have been traditionally been controlled by lower-class society for a long time. This happened linearly with continued increasing the land values or inability of the lower class to rent a house. In fact, it is assumed that adequate residences and settlements are the human rights of every citizen who recognizes the Universal Declaration of Human Rights and under the International on Economic, Social and Cultural Rights is automatically imposed with responsibility to fulfil it.

## ANALYSIS AND DISCUSSION

### Human Rights

Some of experts stated that they encounter difficulty in defining the notion of Human Rights. As revealed by Manisuli Senyonjo: “Human Rights are difficult to define, but in general terms, they are regarded as fundamental and inalienable claims or entitlements which are essential for life as a human being”.

However, in general human rights can be implied as something that is closely related to the most basic and inherent things in life as human beings.

According to Black Law Dictionary (Aidid, 2006 : 150), human rights are referred to as natural rights, as follow :

*“Natural rights are those which grow out of the nature of man and depend on upon personality, as distinguished from such as are created by law and depend upon civilized society; or they are those which are plainly assured by natural law; or those which, by fair deduction from the present physical, moral, social, and religious characteristics of man, he must be invested with, and which he ought to have realized for him in a jural society, in order to fulfil the ends to which his nature calls him. Such are rights of life, liberty, privacy, and a good reputation.”*

According to Indonesian Law Number 39 Year 1999 regarding human rights article 1 paragraph 1 defines Human Rights as “ inseparable rights attached to human nature and ties associated with God and gift from God that must be fulfilled, upheld and protected by the state, law, government and everyone in accordance with expectations and human dignity.” Furthermore, proceed to Article 1 paragraph (2), which is “Basic human obligations are set of obligations which if not implemented, impossible for the implementation and enforcement of human rights.”

While, Fortman (Sakharina, 2016) stated that “Human Right reflect undetermined effort to protect the dignity of each and every human being against abuse of power through fundamental right. The spiritual source of this endeavour lies in the crucial belief that the protection of universal human dignity is a responsibility of society at all its different layers and levels. These principles should generally limit and govern any use of power over human beings. Its starting point is acknowledgement of every person’s right to exist. People count and in principle no individual counts more, or less, than any other. No one, in other words, is to be excluded from the typical human rights term everyone”.

Furthermore, Fortman explained that notably, in the global political idea of human rights that emerged after the Second World War, two genealogies converged:

- a. The fight for universal recognition and equal protection of the dignity of each and every human being; and
- b. Struggle for fundamental rights as way ro protect citizens against abuse of power, in particular by their own sovereign (Fortman, 2011).

In his book, Donnelly stated that Human Rights are literally the rights one has simply because one is a human being-droits de l' homme, Menschenrechtie, "the rights of man" (Donnelly, 1989)

Human rights according to Mark Gibney (Gibney, 2008) are Human Rights are core set of rights that human beings possess by simple virtue of their humanity. These rights are best spelled out in a number of international human rights instruments, most notably, the so called International Bill of Rights consisting of the Universal Declaration of Human Rights (UDHR), the international Covenant on Economic, Social and Cultural Rights, (Economic Covenant), and the international covenant on Civil and Political Rights (Political Covenant). Without attempting to provide an exhaustive list, human rights include the following:

- a) The rights to life, liberty, and security of the person (UDHR, Art. 3);
- b) The right to be free from torture or to cruel, inhuman, or degrading treatment or punishment (UDHR Art. 5);
- c) The right to an effective remedy by the competent national tribunal for violations of human rights (UDHR, Art. 8);
- d) The rights to work (UDHR, Art. 23);
- e) The right to education (UDHR, Art. 26);
- f) The right to social security (UDHR, Art. 22).

Human rights are universal that is every person has human rights. What does not matter is person's nationality, where a person resides, how much money a person has (or does not have), or even whether one's government has become a state party to any particular human rights treaty or not (Gibney, 2008).

Mark Gibney continued said that Human rights are not complicated, nor should they be made to be complicated. Human rights are sometimes derived for being utopian wish list of human desires; however, the exact opposite is true. Human rights are not about luxuries, and they are certainly not about mere desire either. Rather, human rights are better thought of as basic minimum that each individual has to have in order to live in a human (rather than an inhuman) existence. Even with these modest and achievable aims, and despite the repeated promise in every single international human right treaty that human rights are to be enjoyed by "everyone" and denied to "no one", vast number of people is left without human rights protection (Gibney, 2008).

Also, Human Rights according to United Nations by Baharuddin Lopa (Aidid, 2006) is "Human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as a human being". So, it can be interpreted that human rights are set of rights that inherent to every human being as a consequences of their existence as a creature of God, which naturally those rights are held since they are in the mother's womb. Human rights are universal, regardless of origin, nationality, physicality and wealth. Even if the state is not a member of international human rights conventions, a person still has full human rights and no one can revoke it except God who wants it, and all the mandatory components to respect and uphold the existence of these rights.

### **The Relevance between Adequate Residences and Settlements with Human Rights**

Residences are an inseparable part of the process of human life. Residences is no longer just an inanimate object that tends to be mean as shelter of life from the sun and heavy rain, but rather as a process of settling or occupancy, namely the active presence of humans. This presence later will present the living space for the surrounding by construction residences that are humane and liveable. Based on the statement above, it is assumed that residences cannot be separated from the reality of humankind. Starting from the inherent of humans who have human rights and basic rights, reproduction rights, right to adequate residences and settlements, the state is obliged to fulfil these rights.

Consequently, it can be interpreted that the function of residences in human life, indicates the place to live; people who live means living somewhere. Physically, person who is considered as resident refers to people who have found the environment that suits them and found all the equipment they needed to live. In other words, the residences and settlements are fundamental factor related to people 'rights and must be fulfilled by states, since it is related to the process of human life. Residence and settlement consist of human and the container, which is the physical place where humans live which includes natural and artificial elements. Therefore, there is a relevancy between residence and settlements with human rights, namely the provision of adequate residences and settlements is one of rights guaranteed by international human rights, thus all people, particularly states, and must fulfil these rights.

### **Phenomenon of Vagrants**

Citing the opinion of Artidjo Alkosar (Sulistiya, 2011), "vagrants are homeless people and for various reasons must live under the bridges, roadsides, city parks, train stations and other public facilities in running their daily life."

According to Indonesia Dictionary, vagrant is people who does not have house as permanent residence. Meanwhile, according to Wirosardjono (Sulistiya, 2011), vagrant is homeless who always wandering.

Thus, it can be concluded that the physical characteristics of vagrants: (a) Have no job; (b) In general, have health issues; (c) Often look for food in random places; and (d) Move everywhere or do not have permanent houses. Several factors that cause homelessness such as psychological issues, estrangement relationships with parents, or willingness to live freely. However, the most prominent and common factor is the failure to find a job in a city (Sulistiya, 2011). This phenomenon can be found in many countries, whether in developed countries or developing countries, particularly in Indonesia. The existence of vagrants has been an issue for a quite long time. Formally, the rights of vagrants are governed in the constitution as the highest law in the fourth most populous country around the world, that is in the Article 18H of the Constitution of the Republic of Indonesia 1945 states: "Everyone has the right to live in prosperity physically and mentally, to live..." and in the Article 34 of the Constitution 1945 states: "The poors and the neglected children are taken care of by the state." <sup>6</sup> To fulfill the rights of people on adequate residences and settlements, seven criterias must be considered as follows (United Nations of Human Rights, 1991):

- a) Legal security of tenure;
- b) Availability of services, materials, facilities and infrastructure;
- c) Affordability;
- d) Habitability;
- e) Accessibility;
- f) Location; dan
- g) Cultural adequacy.

Active roles of states are required to fulfil the rights on adequate residence and settlements according to those criteria. The government can claim that he has conducted his tasks well in providing adequate residences and settlements for the needs, for instance, the vagrants. Nonetheless, in fact, it is still easy to find homeless in the urban areas. This indicates that the planned programs, which ran by the government, are quite ineffective in controlling the growing up number of the vagrants.

### **State's Duties in Providing Adequate Residences and Settlements**

State obliges to protect all the nations of Indonesia, through an enforcement of adequate residences and settlements for Indonesia's citizens, therefore, every individual can inhabit adequate and affordable houses in healthy, safe, and sustainable environment. The roles of the

government are required to supply and provide easy access and residence and settlement assistances that proper for people such as vagrants. Therefore, this becomes one function in the form of physical, economic, social and cultural space that is in line with the spirit of democracy, regional autonomy, and openness in the fabric of social life.

Pursuant to Indonesian Law Number 1 of 2011 on Residences and Settlements, in the article 13, contains the government's duties in carrying out development, as follows:

- a) Formulating and establishing policies and national strategies in residential and settlement areas;
- b) Formulating and establishing national policies concerning the utilization of technology engineering results in residential and settlement areas;
- c) Formulating and establishing national policies concerning Kasiba dan Lisiba provision;
- d) Supervising the implementation of policies and national strategies in residential and settlement areas;
- e) Performing operationalization function and coordinate the implementation of national policies on housing provision and the development of residential and settlement areas;
- f) Alocating budget and/or project costs to support housing for MBR;
- g) Fasilitating housing provision and strategies at the national level;
- h) Conducting and supporting research and the development of housing and settlement areas;
- i) Conducting certification, qualification, and skill registration to people or body that organizes housing construction and residential areas; and
- j) Conducting education and training in the field of housing and residential areas.

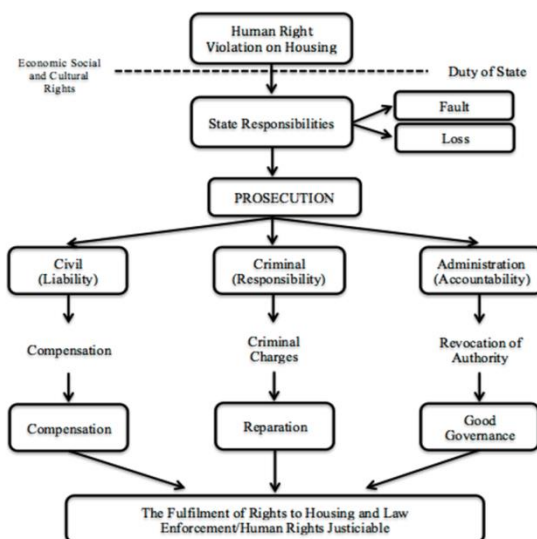
In relation to the rights of economic, social, and culture, United Nation Development Program (UNDP)<sup>8</sup> has specified twelve rights that are part of the economic, social, and culture rights, as follows (Bahar, 2002):

- a) Rights of participation are rights possessed by every mankind to participate in voting that will influence their lives;
- b) Rights to food, health, habitat, and economic security are right to obtain food, health, housing, and social security;
- c) Rights to education are rights to obtain adequate education to live;
- d) Rights to work are rights to obtain proper jobs;
- e) Rights of children are rights possessed by children;
- f) Rights of workers are rights possessed by every worker, as well as legal security that is related to those rights, such as employment contract, working hours, employability, provisions regarding termination of employment relations;
- g) Rights of minorities and indigenou people are rights and securities that are provided for minority groups and indigenou groups;
- h) Rights to land are rights to possess lands, in particular for the farmers;
- i) Rights to equality are rights for equality before the law and government;
- j) Rights to environmental protection are rights to obtain adequate environmental protection;
- k) Rights to administrative due process are rights to be treated equally in the state's public institutions; and
- l) Rights to the rule of law are rights to equal legal treatment.

### **Vagrants' Claim against State's Responsibilities**

The use of the term responsibility in the legal world is very diverse. It depends on what legal perspective is discussed or used. In the perspective of civil law, responsibility is referred to as liability. While in the perspective of criminal law, responsibility is known as responsibility. Meanwhile, in the perspective of state administration law, it is called accountability (Hussain, 2021). Thus, if there are citizens who feel that the state has or is in violation of their human rights, they can be prosecuted in terms of civil law (*i.e.*, relating to compensation), criminal law (*i.e.*, relating to acts against the law), and state administrative law (*i.e.*, Related to procedural errors).

The success of fulfilling human rights is very dependent on the implementation of justiciable legal responsibilities. The concrete manifestation of the law is the prosecution of the state, civil, criminal and administrative by homeless people who feel disadvantaged. Regarding the scheme, see Figure 1 below (Waha, 2013):

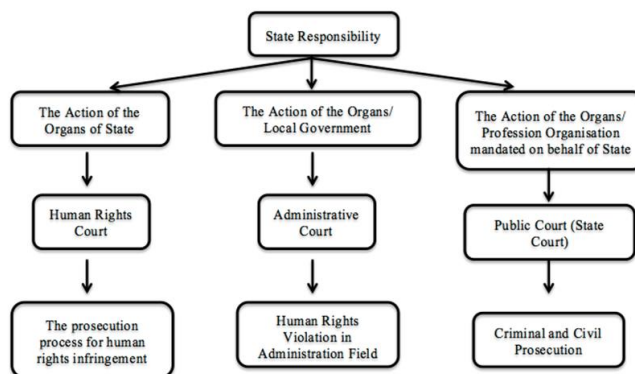


**FIGURE 1**  
**LEGAL IMPLICATIONS ON THE ENFORCEMENT AND FULFILMENT OF HUMAN RIGHTS FOR HOUSING**

The state accountability mechanism must be distinguished between state accountability in this case as a whole or the accountability of state officials. Actions that can be delegated to the state are (Waha, 2013):

1. The actions of state organs in their official capacity;
2. Acts of unity of regional entities that exist within the state, or actions of unity outside the formal structure of the central government or regional government, but legally authorized to carry out elements of government power;
3. Acts of individuals or groups acting on behalf of the state or in reality carrying out elements of government power in the absence of an official ruler and in a situation, which justifies the activity.

Therefore, based on the description above, a figure can be drawn regarding the mechanism for prosecuting state accountability, as follows:



**FIGURE 2**  
**MECHANISM OF STATE LIABILITY PROSECUTION**

In the context of Human Rights, three State obligations that have to be fulfilled by the State *i.e.*, are known in terms of protecting the rights of citizens, namely respecting, protecting and fulfilling. All three are a process and are interrelated with one another. Where in its application, carried out sequentially and continuously. In the theory of human rights law, these



obligations are classified into categories Primary Rules (the duty to abstain from infringing upon human rights).

United Nation Human Rights Office of The High Commissioner stated (<https://www.ohchr.org/en>) "... By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights".

The three State obligations above have close links with the right to adequate housing for the homeless, as follows:

a. The obligations to respect the rights of adequate housing

- i. States should refrain from intervening in the enjoyment of housing rights;
- ii. States open access and opportunities for homeless people to obtain proper housing;
- iii. States provide excellent service in supporting the fulfilment of the right to housing for vagrants.

b. The obligations to protect the right to adequate housing

- i. The state must prevent violations of rights by third parties that can eliminate, damage or tarnish the right to housing for homeless people;
- ii. The country protects the homeless from threats of any kind that could hinder its right to adequate housing;
- iii. The state reduces private intervention in the ownership of adequate housing for homeless people.

c. The obligations to fulfil the rights to adequate housing

- i. The states provides an affordable housing development budget for the elderly;
- ii. The state provides adequate housing for homeless people free of charge or at least subject to a fee but at an affordable nominal;
- iii. The state embodies equitable distribution of adequate housing for homeless people in all major cities in Indonesia;
- iv. The state prepares regulations that do not discriminate against homeless people;
- v. The state provides administrative facilities in proper housing arrangement for homeless people.

## **Violations of the Right to Adequate Housing for Homelessness**

A State Party to the Covenant can be considered to have failed if it cannot conduct the agreed obligations. According to international law, the failure is an infringement against the Covenant. In qualifying a failure, it is important to highlight that the Covenant grants a discretion to the State Party to choose the means to carry out its objectives, and reasonable factors outside the power of the State Party, of which can provide bad influence for its capacities to conduct special rights (Violence on Economic Social Rights, 1986) (Hussain & Hassan, 2020). According to the Limburg Principals, other parties can be qualified to violate the covenant, if:

- a. Fail to take steps required by the Covenant;
- b. Fail to diminish the obstacles quickly, even though it is the State's obligation to remove them so that rights can be fulfilled immediately;
- c. Fail to apply the rights without delay, of which the Covenant obliges to give immediately;
- d. Purposely do not reach minimum achievement that accepted by public, of which in fact, can be reached;
- e. Impose restrictions on the rights that are recognized by the Covenant in a way that is not in accordance with the Covenant;
- f. Deliberately hinder the progress of the exercise of a right, unless it is performed within the limits permitted by the Covenant or which occurs due to lack of resources; and
- g. Fail to submit the report that is requested pursuant to the Covenant.

In Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights (Maastricht Guidelines) regulates that:<sup>7</sup>

- a. Violation on Economic and Social Rights committed by a State Party in terms of State policy, is if a violation of Economic Social and Cultural rights occurs when the State takes action by doing or not doing the act (Maastricht Guidelines: 11) ;
- b. Violation of a State Party in the case of inability to fulfil is to determine an act or not to commit an act which includes a violation of the Economic Social and Cultural rights, it is important to distinguish between the inability and unwillingness of the State Party to carry out the obligations in the agreement (Maastricht Guidelines: 13) ;
- c. Violation through acts of obligation to conduct, is if violations of the Economic, Social and Cultural Rights occur through direct actions of the State or other parties which are not adequately regulated by the State (Maastricht Guidelines: 14) ;
- d. Violation by a State Party because it does not act, is a violation of the Economic Social and Cultural Rights which can occur because the State has not committed an act or the failure of the State to take further action that is necessary for legal obligations (Maastricht Guidelines: 15).<sup>5</sup>

The Indonesian government can be qualified to commit violations, in the context of the State it can be judged to fail to act or not act at all or be late in acting due to lack of responsiveness in minimizing obstacles according to the Covenant. Empirically, there are still many cases of citizens who do not have adequate housing and settlements, it is proven by it is easy to find vagrants or homeless people under bridges, shopping centres, garbage carts, and other places in almost every corner of major cities in Indonesia Indonesia. If the above cases are still occurring, the State is deemed to have failed to take action according to the rules established by the Covenant by allowing its citizens to live in poverty in inappropriate places (Hussain, 2021).

## CONCLUSION

That every person has the same human rights and this right must be respected, protected and fulfilled by the State as part of the State's obligation to fulfil the human rights of its citizens is also the responsibility of the State to fulfil the rights of every citizen, including vagrants. If the State has ratified the International Covenant on International Covenant on Economic, Social, and Culture Rights, then the homeless problem in Indonesia should no longer exist, because the State through the Government in this case, is obliged to provide housing or a place that is habitable for its citizens so that there will be no more people sleeping in the storefront or vagrancy on the highway, because in essence all people are entitled to adequate residences and settlements. Therefore, if the State cannot fulfil the rights of its citizens to the right to adequate residences and settlements, the State can be deemed to have failed to fulfil its human rights obligations as a State (Mahrinasari, 2021).

## RECOMMENDATIONS

The government must commit to integrating regulations, enacting regulations that have not yet been established, replacing those that are not compatible, removing over-lapping regulations. Besides that, it encourages the performance of the National Commission on Human Rights and the Ministry of Social Affairs to immediately address the addition of homeless people in Indonesia. A synergy among the Government, the Provincial Government, the Regency/City Government, and the Village Government is required, as an effort to fulfil human rights in the field of housing and settlements that are appropriate for the community, especially the homeless in urban areas.

## ENDNOTES

1. Constitution of Republic Indonesia 1945

2. The Universal Declaration of Human Rights, 1948
3. The International Covenant on Economic, Social, and Cultural Rights 1966
4. Limburg Principle, 1986
5. Maastricht Guidelines, 1997
6. United Nations of Human Rights doc. The International Covenant on Economic, Social, and Cultural Rights. General Comment No. 4: The Right to Adequate Housing (1991), paragraph 8.
7. United Nation Development Program
8. Indonesian Law Number 39 Year 1999 regarding Human Rights
9. Indonesian Law Number 11 Year 2005 regarding the ratification of International Covenant on Economic, Social, and Cultural Rights
10. Indonesian Law Number 1 Year 2011 regarding residences and settlements

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