

An Analysis of Justice in Tapera Based on the Perspective of Jurgen Habermas' Critical Theory and John Rawls' Theory of Justice

Kusuma Firdaus^{1*}, Yos Johan Utama², Aju Putrijanti³

¹Doctoral Program in Law, Diponegoro University, Indonesia

^{2,3}Faculty of Law, Diponegoro University, Indonesia

Email*: kusumafirdaus703@gmail.com

Article Info

Received: 2024-10-10

Revised: 2024-12-18

Accepted: 2024-12-20

Keywords:

Justice; Tapera;

Perspective; Jurgen

Habermas's Critical

Theory; John Rawls'

Theory of Justice

Abstract

Government Regulation Number 21 of 2024 was designed and issued to help Indonesian people who need financial support to own their first home. However, a few days after the regulation was enacted, the People's Housing Savings (Tapera) policy drew criticism from the public. This program is considered to burden low-income workers and is not fair enough for people from the middle to upper income group. This research aims to apply both theories, namely Jurgen Habermas's Critical Theory and John Rawls' Theory of Justice in the context of the Tapera Program.

This research is a normative legal research using a statute approach. Data collection was carried out through literature studies of various legal sources and journals about Tapera.

The results of the study show that based on the perspective of Jurgen Habermas's Critical Theory and John Rawls' Theory of Justice, he emphasizes the importance of transparency, active participation, and protection of individual rights in the implementation of Tapera's policies. Based on Habermas' perspective, an inclusive public space is needed to ensure the participation of all parties in discussions and decision-making related to Tapera, with the aim of achieving social justice through rational communication. Meanwhile, Rawls' theory of justice emphasizes equal access to basic opportunities and a fair distribution of benefits for Tapera participants, regardless of social or economic status. The evaluation of Tapera's policies needs to consider these aspects to ensure justice in accordance with the social and democratic principles advocated by these two theories.

I. Introduction

Article 28H paragraph (1) of the 1945 Constitution affirms the right of every citizen to live a prosperous life in physically and mentally, including the right to have a decent place to live and get a good and healthy living environment. This right encompasses important aspects of each individual's life, which affect not only his physical well-being but also his mental and social well-being. The existence of a decent home and a healthy environment is a fundamental prerequisite for the full and sustainable fulfillment of individual potential. This is a challenge to ensure that every individual has access to the basic needs of decent housing (Liwakabessy et al., 2023).

The People's Housing Savings Program (Tapera) is one of the important initiatives of the Indonesian government launched to provide access to decent housing for all people, especially for those in the lower middle class (De, 2024). This program is expected to answer the major challenges faced by many families in Indonesia in owning decent housing, by utilizing savings schemes managed nationally. Tapera aims to reduce social disparities and improve welfare through the provision of affordable housing (Soeharto et al., 2020).

On May 20, 2020, President Jokowi began to ratify Law Number 4 of 2016 concerning the Implementation of People's Housing Savings. This ratification is accompanied by the preparation of technical regulations for its implementation, namely Government Regulation Number 25 of 2020 concerning the Implementation of People's Housing Savings (PP Tapera). This regulation regulates the procedures and management of Tapera contributions that will be managed by the People's Housing Savings Management Agency (BP Tapera). The PP requires civil servants (PNS), TNI and Polri soldiers, workers in state-owned and state-owned companies, and workers in private companies to manage funds in preparation for the implementation of the housing savings in question (Nasution, 2021).

At the end of May 2024, Indonesians were shocked by a government policy that aims to address the imbalance between the demand and supply of national housing, namely the Tapera Program. This policy is regulated through Government Regulation Number 21 of 2024, designed to help Indonesians who need financial support to own their first home. However, a few days after the regulation was enforced, Tapera's policy drew criticism from the public. This program is considered to burden low-income workers and is not fair enough for people from the middle to upper income group. Despite facing strong opposition from the public, the

government remains firm in its decision not to postpone the implementation of the Tapera program (Yusuf et al., 2024).

The Tapera Government Regulation issued as an implementation of the Tapera Law, in fact still faces several substantive problems. Many parties argue that the amount of Tapera contributions will increase the financial burden on the community considering the existing BPJS contributions and income tax deductions. In addition, this policy has the potential to overlap with BPJS Employment in terms of housing financing. The participation of Foreign Citizens as Tapera participants also raises concerns, as well as the position, authority, function, and responsibility of the Tapera Management Agency in managing the funds collected from participants. All of these issues raise questions about the effectiveness and fairness of the implementation of the Tapera Government Regulation in supporting the housing needs of the Indonesian people (Tania et al., 2021).

Social justice is a concept that is at the core of public policy that aims to improve the condition of disadvantaged communities (Kurniawan et al., 2023). Two very influential theories in the study of social justice are Critical Theory by Jurgen Habermas and Justice Theory by John Rawls. This study aims to analyze justice in the implementation of Tapera by using the perspectives of the two theories.

This study aims to apply these two theories in the context of the Tapera Program, which faces challenges in the implementation and public perception of distributive justice. Tapera's policy analysis based on the perspective of Habermas can be evaluated to the extent to which public participation and an inclusive decision-making process are implemented. Meanwhile, Rawls' perspective helps in assessing the distribution of benefits and opportunities generated by the program, as well as whether the program provides equal justice for all levels of society involved. Through the merger of these two perspectives, it is hoped that this research can provide a comprehensive analysis of justice in the implementation of Tapera.

2. Research Method

This research is a normative legal research using a statute approach (Efendi & Rijadi, 2022) which focuses on analyzing laws, government regulations, and policies related to the People's Housing Savings Program (Tapera). Through this approach, researchers can systematically examine and review the policies or legal rules contained in these documents, including their interpretation and practical application in the implementation of Tapera. Data collection was carried out through an in-depth literature study of various legal sources such as

the Tapera Law, Government Regulations, related court decisions, journals on Tapera and other relevant legal literature. Data analysis was carried out by comparing existing legal provisions with the goals and principles of social justice that are the focus of the research.

3. Results and Discussion

Regulation of the People's Housing Savings Program (Tapera)

The People's Housing Savings Program (Tapera) in Indonesia is based on Law Number 4 of 2016 concerning People's Housing Savings, which is the main legal basis for the implementation of this program. The definition of Tapera is based on Article 1 number 1 of Law Number 4 of 2016 that "Public Housing Savings, hereinafter abbreviated as Tapera, is a deposit carried out by participants periodically for a certain period of time which can only be used for housing financing and/or returned along with the results of fertilization after the membership ends".

Law Number 4 of 2016 sets out the basic objectives, principles, and mechanisms of Tapera, namely to provide affordable housing financing facilities for the people of Indonesia, especially for low- and middle-income groups. This law underlines the principles of justice, equity, sustainability, and affordability, and regulates the establishment of the People's Housing Savings Management Agency (BP Tapera) which is responsible for the management of funds collected from participants including civil servants (PNS), TNI and Polri soldiers, as well as workers in state-owned enterprises and BUMDs, with the possibility of expansion to the private sector.

As an implementation of Tapera, the government promulgated Government Regulation Number 25 of 2020 concerning the Implementation of Public Housing Savings was issued. This Government Regulation regulates the technical procedures, management mechanisms, and responsibilities of BP Tapera in managing Tapera funds. The main points of regulation in this Government Regulation include procedures for collecting funds from participants, management of funds by BP Tapera, including investment and use of funds for housing financing, Tapera benefits such as financing for the purchase, renovation, or construction of new homes, as well as monitoring and reporting mechanisms to ensure transparency and accountability.

In the regulation of Government Regulation Number 25 of 2020, there is an antinomy between several articles that regulate the participation and obligations of Independent Workers. Article 5 paragraph (2) states that Tapera participants consist of Workers and Independent Workers. Furthermore, Article 5 paragraph (3) states

that every worker and independent worker who earns at least the minimum wage must become a participant. However, in Article 5 paragraph (4) it is stipulated that Independent Workers who earn below the minimum wage can become participants. The word "can" in this article shows that becoming a Tapera participant for Independent Workers earning below the minimum wage is not an obligation, but an option.

However, on the contrary, Article 8 paragraph (1) stipulates that the Employee as referred to in Article 5 paragraph (2) letter a must be registered as a participant by the employer to BP Tapera. Furthermore, Article 8 paragraph (2) states that Independent Workers as referred to in Article 5 paragraph (2) b must register themselves as participants to BP Tapera. The word "shall" in Article 8 paragraph (2) indicates a binding obligation.

Antinomy arises because there is a contradiction between Article 5 paragraph (4) and Article 8 paragraph (2). Article 5 paragraph (4) implies that Independent Workers with income below the minimum wage are not required to be participants, while Article 8 paragraph (2) requires Independent Workers to register as participants. The difference in the use of the words "may" and "must" in these two articles creates confusion and legal ambiguity and has the potential to lead to different interpretations in its implementation.

Furthermore, Government Regulation Number 21 of 2024 was issued to update and improve Government Regulation Number 25 of 2020, this regulation aims to adjust policies to the development and needs of the community and increase the effectiveness and efficiency of Tapera implementation. The main changes in this Government Regulation include adjustments to the amount of contributions that must be paid by participants so as not to burden them financially, improvements in fund management policies to ensure safer and more profitable investments, adjustments in the scope of membership including a mechanism for foreign nationals working in Indonesia to participate in Tapera, and strengthening the functions of BP Tapera with the affirmation of responsibility, functions, and authorities in managing funds and a stricter supervision mechanism.

Government Regulation Number 21 of 2024 regulates employee salary deductions for the Tapera program, which was previously only required for civil servants through Housing Savings or Taperum contributions. This new regulation expands the scope of Tapera membership so that it currently covers all employees in both the public and private sectors. Workers in the private sector will now have to receive an integrated pay cut, while independent workers will be subject to a 3% cut of their

income. Of the total deductions, workers bear 2.5% and employers bear 0.5%. The regulation sparked widespread public turmoil over the government's policy to cut the salaries of all workers in the formal sector to finance the Tapera program (Yusniar, 2024).

Jurgen Habermas's Critical Theory and John Rawls' Theory of Justice

Jurgen Habermas's Critical Theory is an approach in social philosophy and social theory that seeks to understand and critique the social and cultural structures that underlie human life (Sudrajat, n.d.). Habermas, who is one of the main figures in the Frankfurt School (Siregar, 2021), developing this theory to explain how communication and rationality can be used to achieve better social justice and democracy. Here are some of the key concepts in Habermas's Critical Theory:

a) Theory of Communicative Action

This theory is at the heart of Habermas's thought. Habermas argues that human communication is not only about the exchange of information but also involves validation and the search for agreements. Habermas distinguishes between two types of action, namely instrumental action and communicative action (Schaefer et al., 2013). Instrumental actions are actions directed at achieving a specific goal, often strategic. Communicative actions are actions directed at understanding and agreement through communication.

b) Communicative Rationality

Habermas emphasized the importance of rationality in communication. Habermas argues that ideal communication should be free from domination and manipulation, allowing all participants to participate equally in discussions and reach consensus based on rational argumentation (Muttaqien & Ramdan, 2023).

c) Public Sphere

Habermas developed the concept of public space as an arena where individuals can discuss and debate social, political, and cultural issues (Kellner, n.d.). Public spaces should ideally be open and inclusive, allowing for equal participation from all members of society.

d) Lifeworld

Habermas criticized how economic and administrative systems (referred to as "systems") can colonize the world of life, which is the area of everyday social interaction between norms and cultural values developed (Noor, 2016). This colonization occurs when system logic, such as efficiency and control, begins to dominate and interfere with rational communication in the world of life.

e) Emancipation

One of the main goals of Critical Theory is emancipation, that is, the liberation of individuals and societies from conditions that impede autonomy and freedom. Habermas believes that through free and rational communication, society can overcome dominance and achieve more just and democratic conditions (Rizqian, 2023).

f) Criticism of Modernity

Habermas also criticized certain aspects of modernity, especially moderation in the West (Kirom, 2020), such as excessive rationalization and bureaucratization, which can reduce the space for communicative action and individual autonomy. However, Habermas did not reject modernity entirely, but rather sought ways to realize the emancipatory potential contained in it.

John Rawls, a famous political philosopher of the 20th century, is known for his contributions to the theory of justice. His theory, known as the "Theory of Justice as Fairness", proposes a concept of justice based on two main principles. First, the principle of equal basic liberties (Disantara, Putri, et al., 2023). The principle of basic equality which states that everyone has the same rights to the broadest system of fundamental freedoms that is compatible with similar freedoms for all. Second, the principle of fair social difference (The Difference Principle) (Disantara, Permatasari A. B, et al., 2023). This principle revolves around social and economic justice, which stipulates that social and economic inequality should only be justified if it benefits the most disadvantaged in society (the difference principle). Rawls' theory emphasizes the importance of protecting individual rights and creating fair conditions for all citizens of society, regardless of social or economic status (STIH ADHYAKSA, 2023).

An Analysis of Justice in Tapera Based on the Perspective of Jurgen Habermas' Critical Theory and John Rawls' Theory of Justice

An analysis of justice in the People's Housing Savings Program (Tapera) using the perspective of Jurgen Habermas' Critical Theory and John Rawls' Theory of Justice can provide a theoretical perspective on the implementation and impact of Tapera regulations in Indonesia. Jurgen Habermas' Critical Theory provides an understanding of how communication and rationality can form the basis for achieving better social justice.

In the context of Tapera, the implementation of Tapera must consider how participants communicate and reach agreements regarding the management of funds and the

benefits received. The communication process between the People's Housing Savings Management Agency (BP Tapera), the government, and the community must be transparent and inclusive, allowing for active participation from all parties involved. The importance of rationality in communication demands that decisions related to Tapera regulations must be based on rational arguments and consider common interests. This avoids domination or manipulation in the decision-making process that can be detrimental to Tapera participants (Puspatara & Kurniawan, 2023).

The concept of public space in Habermas' theory emphasizes the importance of an open and inclusive public arena so that the public, especially Tapera participants, can discuss and discuss issues such as Tapera policies. Transparency in the management of Tapera funds and the opportunity to participate in the decision-making process are crucial to maintaining fairness and accountability (Simbolon & Kurniawan, 2023). In making Tapera laws and regulations involving workers and independent workers, they should also be involved in the process of making the legislation so that they can voice the interests of prospective Tapera participants directly and ensure that their perspectives can be accommodated in the regulations implemented.

This direct participation not only strengthens the legitimacy of the policy but also reflects the democratic principles and justice embraced in theories such as those put forward by Habermas and Rawls. Thus, transparency and active participation in the Tapera policy-making process can result in more inclusive rules and strengthen responsible management of funds collected from Tapera participants (Dewi et al., 2022). The main goal of Critical Theory is emancipation, that is, the liberation of individuals and societies from conditions that impede autonomy and freedom. Tapera implementation should be designed to empower Tapera participants, especially low- and middle-income groups, to access decent housing without restricting their freedom and autonomy.

John Rawls' Theory of Justice, known as the concept of "Justice as Fairness", provides a view of how social justice can be achieved through the principles of equality and distributive justice. In the context of Tapera, this implies that every participant must have equal access to basic opportunities to utilize their funds without discrimination based on social or economic status. Tapera regulations should be designed to provide fair benefits to participants in more vulnerable economic situations, and protect individual rights from the dominance of economic or political forces, thereby creating fair conditions for all members of society, regardless of background or personal interests.

When associated with community turmoil, the evaluation of the Tapera policy is very

important to ensure that this policy is not only appropriate but also provides justice for prospective Tapera participants. The evaluation should include aspects such as equal access to basic opportunities to utilize Tapera funds without discrimination, fair distribution of benefits to the most economically vulnerable, and protection of individual rights from the influence of economic or political forces that may be detrimental. This is important to ensure that Tapera's policies are in accordance with the principles of social justice and can make a positive contribution to tackling injustice in society.

4. Conclusion

The analysis of justice in the People's Housing Savings (Tapera) program based on the perspective of Jurgen Habermas's Critical Theory and John Rawls' Theory of Justice emphasizes the importance of transparency, active participation, and protection of individual rights in the implementation of Tapera's policies. Based on Habermas' perspective, an inclusive public space is needed to ensure the participation of all parties in discussions and decision-making related to Tapera, with the aim of achieving social justice through rational communication. Meanwhile, Rawls' theory of justice emphasizes equal access to basic opportunities and a fair distribution of benefits for Tapera participants, regardless of social or economic status. The evaluation of Tapera's policies needs to consider these aspects to ensure justice in accordance with the social and democratic principles advocated by these two theories.

References

- De, Y. M. (2024). Analisis Kritis Program TAPERA “Tabungan Perumahan Rakyat” Bagi Kehidupan Umat di Paroki Riam Batang Kalimantan Tengah. *Jurnal Pendidikan Agama Dan Teologi*, 2(3), 57–73.
- Dewi, A. A. I. A. A., Dharmawan, N. K. S., Krisnayanti, A. A. I. E., Samsithawrati, P. A., & Kurniawan, I. G. A. (2022). The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia. *Sriwijaya Law Review*, 6(2), 268–285.
<https://doi.org/10.28946/slrev.Vol6.Iss2.1885.pp268-285>
- Disantara, F. P., Permatasari A. B, R. M., Ilmiah, F., & Chansrakaeo, R. (2023). The Integralistic State Idea: Reconstruction of Administrative Efforts Perspective. *Jurnal Daulat Hukum*, 6(2), 130.
<https://doi.org/10.30659/jdh.v6i2.30982>
- Disantara, F. P., Putri, F. F., Mufarrochah, S., & Assari, E. (2023). EKSTENTIFIKASI KEWENANGAN MAJELIS KEHORMATAN MAHKAMAH KONSTITUSI DALAM MEMPERKUAT GAGASAN CONSTITUTIONAL ETHICS. *LITIGASI*, 1(24), 40–63.
<https://doi.org/10.23969/litigasi.v24i1.7232>

- Efendi, J., & Rijadi, P. (2022). *Metode Penelitian Hukum Normatif dan Empiris* (2nd ed.). Kencana.
- Kellner, D. (n.d.). *Habermas, the Public Sphere, and Democracy: A Critical Intervention*. Retrieved July 2, 2024, from <https://pages.gseis.ucla.edu/faculty/kellner/papers/habermas.htm>
- Kirom, S. (2020). INDIVIDU KOMUNIKATIF MENURUT JURGEN HABERMAS DALAM PERSPEKTIF FILSAFAT MANUSIA. *Jurnal Yaqzhan*, 6(2), 202–216.
- Kurniawan, I. G. A., Samsithawrati, P. A., & Lulo, L. D. D. M. (2023). Eksistensi Sanksi Administratif Bisnis Digital dalam Perspektif Economic Analysis of Law. *Jurnal Ius Constituendum*, 8(1), 115. <https://doi.org/10.26623/jic.v8i1.6281>
- Leiwakabessy, J., Cahyani, P. I., & Lewerissa, S. (2023). Sosialisasi Pengenalan Persyaratan Rumah Yang Aman dan Layak Huni Menurut SDGs (Sustainable Development Goals). *Jurnal Pengabdian Pada Masyarakat Indonesia (JPPMI)*, 2(4), 26–32.
- Muttaqien, M. E., & Ramdan, D. (2023). KONSEP KOMUNIKASI JURGEN HABERMAS DALAM IDE DEMOKRASI DELIBERATIF DAN TINDAKAN KOMUNIKATIF. *LINIMASA : JURNAL ILMU KOMUNIKASI*, 6(1), 51–64.
- Nasution, T. A. (2021). Analisis Yuridis Undang-Undang Tabungan Perumahan Rakyat Ditinjau Dari Perspektif Good Governance. *Jurnal Lex Renaissance*, 6(4). <https://doi.org/10.20885/JLR.vol6.iss4.art13>
- Noor, I. (2016). IDENTITAS AGAMA, RUANG PUBLIK DAN POST-SEKULARISME: PERSPEKTIF DISKURSUS JURGEN HABERMAS. *Jurnal Ilmiah Ilmu Ushuluddin*, 11(1), 61. <https://doi.org/10.18592/jiu.v11i1.733>
- Puspata, R. G., & Kurniawan, I. G. A. (2023). Rethinking Unjust Enrichment: Advancing Distributive Justice in Indonesian Law. *Rechtsidee*, 11(1). <https://doi.org/10.21070/jihr.v12i1.961>
- Rizqian, D. R. (2023). PEMBERDAYAAN MASYARAKAT DALAM PERSPEKTIF TEORI TINDAKAN KOMUNIKATIF JURGEN HABERMAS. *Jurnal El-Hamra : Kependidikan Dan Kemasyarakatan*, 8(2), 1–21.
- Schaefer, M., Heinze, H.-J., Rotte, M., & Denke, C. (2013). Communicative versus Strategic Rationality: Habermas Theory of Communicative Action and the Social Brain. *PLoS ONE*, 8(5), e65111. <https://doi.org/10.1371/journal.pone.0065111>
- Simbolon, H. P. W., & Kurniawan, I. G. A. (2023). THE EXONERATION CLAUSES IN PARKING PRACTICES: A REVIEW FROM THE PRINCIPLE OF PROPORTIONALITY AND INCLUSIVE LAW. *JCH (Jurnal Cendekia Hukum)*, 8(2), 180. <https://doi.org/10.33760/jch.v8i2.655>
- Siregar, G. M. (2021). Teori Kritis Habermas dan Kebijakan Merdeka Belajar. *Jurnal Filsafat Indonesia*, 4(2), 142–151. <https://doi.org/10.23887/jfi.v4i2.34771>
- Soeharto, Q. W., Paramitha, I. N., & Rosidah. (2020, June 30). *TAPERA (TABUNGAN PERUMAHAN)*. <https://sipinter.dpr.go.id/akun/detail/id/50>
- STIH ADHYAKSA. (2023, September 4). “Justice as Fairness” Konsep Teori Keadilan Oleh John Rawls. <https://stih-adhyaksa.ac.id/justice-as-fairness-konsep-teori-keadilan-oleh-john-rawls/>
- Sudrajat, A. (n.d.). *JURGEN HABERMAS: TEORI KRITIS DENGAN PARADIGMA KOMUNIKASI*. Retrieved July 2, 2024, from <https://staffnew.uny.ac.id/upload/131862252/penelitian/Jurgen+Habermas++Teori+Kritis+dengan+Paradigma+Komunikasi.pdf>
- Tania, N., Novienko, J., & Sanjaya, D. (2021). KAJIAN TEORI HUKUM PROGRESIF TERHADAP IMPLEMENTASI PRODUK TABUNGAN PERUMAHAN RAKYAT. *Perspektif*, 26(2), 73–87. <https://doi.org/10.30742/perspektif.v26i2.800>
- Yusniar, S. P. (2024, June 4). *Perubahan PP Tapera, Apa Relevan?*

<https://radarjember.jawapos.com/opini/794725147/perubahan-pp-tapera-apa-relevan>

Yusuf, S. S., Yusuf, R. K., Desdiani, N. A., & Wahyuputri, F. W. (2024, June). *Ribut Soal Tapera: Kebijakan "Harga Mati" untuk Turunkan Angka Kekurangan Perumahan Nasional?*
https://lpem.org/wp-content/uploads/2024/06/Special_Report_Tapera.pdf