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Normative Examination of the Mandatory Public Housing Savings Scheme for Self-Employed Workers in Relation to Consumer Protection and the Constitution

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Abstract

The Public Housing Savings Law (*UU Tapera*) requires self-employed workers earning at least the minimum wage to participate as Tapera members, even though their income is not connected to any employer. This obligation stands in contrast to the Consumer Protection Law (UUPK), which ensures that consumers have the right to freely select goods and/or services based on their individual preferences. As Tapera consumers, self-employed workers should therefore retain the freedom to determine the financing model and capital-accumulation scheme they prefer for obtaining residential housing. Additionally, the 1945 Constitution of the Republic of Indonesia (UUD 1945) guarantees every individual's right to adequate housing. This article examines the compatibility of Article 7 paragraph (1) of the Public Housing Savings Law with Article 4 letter (b) of the Consumer Protection Law and Article 28H paragraph (1) of the 1945 Constitution. Using a normative juridical research method, the study analyzes primary, secondary, and tertiary legal materials on Tapera for self-employed workers from the perspectives of consumer protection and constitutional law. These materials are assessed to formulate scholarly insights presented in a constructive and argumentative manner. The study concludes that Article 7 paragraph (1) of the Public Housing Savings Law is inconsistent with the Consumer Protection Law and the constitutional guarantee of adequate housing. Accordingly, the article recommends clearly distinguishing the terms "workers" and "self-employed workers" in the law and regulating Tapera participation for self-employed workers on a voluntary basis.

KEYWORDS: Normative Review of Law, Public Housing Savings Scheme (Tapera), Self-Employed Workers, Consumer Protection Law, Constitutional Rights

Introduction

Article 7 paragraph (1) of the Public Housing Savings Law (UU Tapera), which obligates self-employed workers to participate in Tapera, constitutes an unconstitutional norm, since a legal norm can only be considered constitutional when it implements a constitutional principle or text[1]. In this case, the position of Article 7 paragraph (1) of the UU Tapera stands in contradiction to Article 4 letter (b) of the Consumer Protection Law (UUPK) and Article 28H paragraph (1) of the 1945 Constitution. The theory of consumer sovereignty affirms that consumers are entitled to choose goods and/or services according to their preferences[2]. Accordingly, self-employed workers (informal workers or those in self-employment), as Tapera consumers, possess sovereignty to determine the housing financing model most suited to their capacity[3]. Likewise, the Constitution guarantees the fundamental right of every individual to

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1 Ashraf Ahmed, "A Theory of Constitutional Norms," *Michigan Law Review* 120, no. 7 (2022): 1361-1418.

2 Kushagra Bhatnagar et al., "Consumer Sovereignty and the Ethics of Recognition," *Journal of Business Ethics* 192, no. 1 (June 2024): 1–19; Alexandre Chirat, "A Reappraisal of Galbraith's Challenge to Consumer Sovereignty: Preferences, Welfare and the Non-Neutrality Thesis," *The European Journal of the History of Economic Thought* 27, no. 2 (March 2020): 248–275.

3 Teguh Dartanto et al., "Enrolment of Informal Sector Workers in the National Health Insurance System in Indonesia: A Qualitative Study," *Heliyon* 6, no. 11 (November 2020): e05316.

adequate housing[4]. The Constitution stipulates that every individual has the right to adequate housing, which necessarily includes the right to access various models of housing finance according to one's needs and preferences[5]. Thus, the question arises as to whether the obligation for independent workers to participate in Tapera is in line with the principles of constitutional rights and consumer protection, or whether it actually creates a conflict of norms in the Indonesian legal system.

This article maps the normative relationship between the Constitution, the Tapera Law, and the UUPK through vertical and horizontal synchronization analysis. Vertical synchronization is conducted by examining whether Article 7 paragraph (1) of the Tapera Law is in line with the guarantee of constitutional rights to housing in Article 28H paragraph (1) of the 1945 Constitution. Meanwhile, horizontal synchronization is conducted by comparing the construction of obligations in the Tapera Law with the principle of consumer right to choose in the UUPK. From this analysis, normative tension is found between the welfare regulation approach used in the Tapera Law and the consumer sovereignty approach guaranteed in the UUPK. A normative conflict arises when the constitutional right to housing is transformed into a coercive financial obligation for self-employed workers.

In Indonesia, the number of self-employed workers reaches 84.13 million, or approximately 59.17% of the total workforce[6], while the number of formal workers employed in the civil service, state-owned enterprises, regional enterprises, and private companies amounts to 58.05 million, or 40.83%[7]. These statistics clearly demonstrate that self-employed workers constitute the dominant segment of the Indonesian labor force. Their professions vary widely—from farmers, traders, small and medium entrepreneurs, and service providers to investors. Given this diversity, it is difficult to identify the precise sources of income, levels of earnings, and patterns of expenditure, since their

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4 Stefanie Reissner and Elizabeth Armitage-Chan, "Manifestations of Professional Identity Work: An Integrative Review of Research in Professional Identity Formation," *Studies in Higher Education* 49, no. 12 (December 2024): 2707–2722.

5 Reissner and Armitage-Chan, "Manifestations of Professional Identity Work."

6 Yoram Barzel and Douglas W. Allen, *Economic Analysis of Property Rights*, 3rd ed. (Cambridge University Press, 2023).

7 Badan Pusat Statistik. "Keadaan Angkatan Kerja di Indonesia Februari 2024 [Labor Force Situation in Indonesia February 2024]. *Katalog Badan Pusat Statistik* 46, no. 1 (2024). https://www.bps.go.id/id/publication/2024/06/07/112a10c79b8cfa70eec9f6f3/keadaan-angkatan-kerja-di-indonesia-februari-2024.html

social and economic lives are conventionally integrated with their daily professional activities[8].

For self-employed workers, the relationship between residence and occupation is closely intertwined[9], as their homes often double as the center of their economic activity. Consequently, housing needs for self-employed workers cannot be separated from their professional needs, with proximity to the workplace becoming a central factor in housing choice[10]. However, if self-employed workers are compelled to participate in Tapera, their income-expenditure ratio may be significantly affected, thereby imposing a financial burden. Furthermore, their housing decisions are heavily influenced by the nature of their profession and income[11], which are highly varied and unstable.

The problem arises from Article 7 paragraph (1) of the Public Housing Savings Law (UU Tapera), which obliges self-employed workers earning above the minimum wage to become Tapera participants. From the perspective of consumer protection, however, these workers should be regarded as Tapera consumers, who as end-users of a financial product or service are entitled to choose both the locus of capital accumulation and the model of housing finance they consider most appropriate[12], as guaranteed under Article 4 letter (b) of the Consumer Protection Law (UUPK). From the constitutional perspective, the 1945 Constitution guarantees that every citizen has the right to adequate housing as part of the fulfillment of human rights[13]. The state therefore bears the responsibility to ensure that this right is realized, not converted into an obligation. This raises a fundamental question: why has the constitutional right to housing been transformed into a compulsory requirement for self-employed workers earning above the minimum wage?

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8 Jérôme Rossier and Abdoulaye Ouedraogo, "Work Volition, Decent Work, and Work Fulfilment, in the Formal and Informal Economy in Burkina Faso," *British Journal of Guidance & Counselling* 49, no. 2 (March 2021): 255–271.

9 Lan Wang et al., "Exploring the Physical and Mental Health of High-Speed Rail Commuters: Suzhou-Shanghai Inter-City Commuting," *Journal of Transport & Health* 18 (September 2020): 100902.

10 Sasithorn Thanapop and Chamnong Thanapop, "Work Ability of Thai Older Workers in Southern Thailand: A Comparison of Formal and Informal Sectors," *BMC Public Health* 21, no. 1 (December 2021): 1218.

11 Xi Zhang, Qiang Li, and Yijie Wang, "Impact of Commuting Time on Employees' Job Satisfaction—An Empirical Study Based on China's Family Panel Studies (CFPS)," *Sustainability* 15, no. 19 (September 2023): 14102.

12 Brett Smith et al., "Consumer 'App-Etite' for Workers' Rights in the Australian 'Gig' Economy," *Journal of Choice Modelling* 38 (March 2021): 100254.

13 I Dewa Gede Palguna, "Constitutional Complaint and the Protection of Citizens the Constitutional Rights," *Constitutional Review* 3, no. 1 (August 2017): 1.

Self-employed workers represent a vulnerable group in terms of income stability[14], as their earnings fluctuate—at times exceeding the minimum wage, while at other times falling below it. This raises a fundamental question: what about self-employed workers whose income is below the minimum wage? Why are they exempted from the obligation to participate in Tapera? Are they not, in fact, to be categorized among the poor[15]? The situation stands in contrast to the national health insurance system, in which the state subsidizes healthcare coverage for all citizens, including the poor.

Accordingly, the normative construction that obligates self-employed workers to participate in Tapera is questionable when examined from the perspectives of consumer protection law (UUPK) and constitutional law (UUD 1945). The critique may be framed on three grounds: (1) the obligation to participate in Tapera is not universally applicable to all individuals; (2) as Tapera consumers, self-employed workers are entitled to choose the locus of fund accumulation, financing model, and type of housing in accordance with their preferences; and (3) there is a fundamental shift and contradiction in meaning, whereby the constitutional *"right"* to housing has been transformed into a *"duty"* to participate in Tapera, despite housing being explicitly protected as a right under the Constitution.

Theoretically, this article utilizes three main analytical frameworks. First, the theory of consumer sovereignty is used to analyze the position of self-employed workers as consumers of housing finance services. This theory asserts that consumers have the freedom to choose the goods and services they use, including housing finance models and investment instruments. In the context of Tapera, this theory is used to assess whether the obligation to participate in Tapera limits the rights of self-employed workers to make their own economic choices. Second, the welfare state theory is used to assess the legitimacy of state intervention in the provision of housing finance. The state does have a constitutional obligation to ensure public welfare, including access to adequate housing. However, such intervention must remain proportional and not excessively diminish individual freedoms. Third, the theory of constitutional rights is used to examine whether changing the construction of the "right to housing" to the "obligation to participate in Tapera" contradicts the basic principles of human rights in the 1945 Constitution.

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14 Ioana Alexandra Horodnic and Colin C. Williams, "Evaluating the Working Conditions of the Dependent Self-Employed," *International Journal of Entrepreneurial Behavior & Research* 26, no. 2 (November 2019): 326–348.

15 Jin-Young Min et al., "Differences in Suicidal Behaviors between Self-employed and Standardly Employed Workers," *American Journal of Industrial Medicine* 62, no. 12 (December 2019): 1144–1151.

Various studies examine Tapera as a state instrument to fulfill the right to housing guaranteed by Article 28H paragraph (1) of the 1945 Constitution, but highlight that the 3% contribution scheme and policy design often burden low-income workers/families and have not fully realized the constitutional mandate 1234. A number of studies examine Tapera from the perspective of justice, utilitarianism, the principle of benefit, good governance, fiqh siyasah, and policy effectiveness, including unclear mechanisms, overlapping regulations, and transparency issues in fund management 5647+6 MORE. There are also studies that consider the obligation for self-employed workers to participate in Tapera as unfair because it does not consider the conditions of self-employed workers who already own homes, but their analysis is limited to utilitarianism theory and does not directly link it to the Consumer Protection Law or the structure of consumer constitutional rights. 6. On the other hand, literature on consumer protection emphasizes that the right to a decent standard of living, including housing, is part of economic human rights that should ideally be constitutionalized so that consumer protection becomes a fundamental right in the 1945 Constitution. 14.

The novelty of your research lies in: (1) the very specific object of the norm, namely Article 7 paragraph (1) of the Tapera Law regarding the obligations of self-employed workers; (2) the use of an explicit dual framework, namely Article 4 letter (b) of the Consumer Protection Law (consumer rights to comfort, security, and safety) and Article 28H paragraph (1) of the 1945 Constitution; and (3) the positioning of self-employed workers as both consumers and citizens, so that the normative validity of Tapera obligations is tested against consumer rights and constitutional rights in one integrated analysis—an intersection that has not been the main focus of previous Tapera studies.

On the basis of this background, this article aims to examine the normative validity of Article 7 paragraph (1) of the Public Housing Savings Law (UU Tapera) in relation to: (1) Article 4 letter (b) of the Consumer Protection Law (UUPK); and (2) Article 28H paragraph (1) of the 1945 Constitution.

This research method uses a normative juridical research type with a focus on testing the consistency of legal norms in Article 7 paragraph (1) of Law Number 4 of 2016 concerning Public Housing Savings (Tapera Law) against higher norms and norms that have substantial connections, namely Article 4 letter (b) of Law Number 8 of 1999 concerning Consumer Protection (UUPK) and Article 28H paragraph (1) of the 1945 Constitution of the Republic of

Indonesia.[16] This research departs from the alleged normative conflict between the obligation of independent workers to become Tapera participants with the principle of consumer rights to choose services and constitutional guarantees for the right to obtain decent housing. Therefore, the research was conducted using several legal approaches, namely the statute approach, the conceptual approach, and the comparative normative approach. The statutory approach is used to examine the hierarchy and synchronization between the Tapera Law, UUPK, and the 1945 Constitution as a basis for testing the validity of norms. A conceptual approach is used to analyze the concepts of constitutional rights, consumer protection, consumer sovereignty, the welfare state, and the principle of justice in the formation of public regulations. Meanwhile, a comparative normative approach is used to compare the normative construction of the concept of "rights" in Article 28H paragraph (1) of the 1945 Constitution with the concept of "obligations" in Article 7 paragraph (1) of the Tapera Law, and to compare the consumer's right to choose in the Consumer Protection Law with the obligation to participate in Tapera. The selection of these approaches is based on the need to examine whether the norms in the Tapera Law align vertically with the constitution and horizontally with the legal regime of consumer protection.

The legal sources in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution, Law Number 4 of 2016 concerning Public Housing Savings, Law Number 8 of 1999 concerning Consumer Protection, and implementing regulations related to Tapera. Secondary legal materials include books, scientific journals, previous research results, and expert opinions related to constitutional law, consumer protection, the welfare state, and housing finance policy. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting sources. The legal material collection technique is carried out through library research, while the analysis technique uses qualitative legal analysis with systematic, argumentative, and comparative interpretation methods.[17] The analysis is carried out by identifying the relationship between norms, assessing the suitability of norms based on the principle of lex superior derogat legi inferiori, and examining the rationality of establishing Tapera obligations for independent workers from the perspective of protecting constitutional rights

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[16] Florent Rivals, "Dental Microwear and Mesowear Raw Data for Equus Ferus and Rangifer Tarandus from Sesselfelsgrotte," *Zenodo*, May 13, 2021, https://doi.org/10.5281/ZENODO.4756099.

[17] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya, Selangor: Malayan Law Journal, 2007).

and consumer rights. With this method, this study seeks to produce comprehensive legal arguments regarding the normative validity of Article 7 paragraph (1) of the Tapera Law in the Indonesian legal system.

Analysis of the Regulation on the Obligation of Self-Employed Workers to Become Tapera Participants

Tapera is defined as savings deposited by participants periodically over a certain period, which may only be utilized for housing finance and/or returned together with the accumulated yield upon the termination of membership[18]. This definition aligns with the regulatory purpose of Tapera, namely to collect and provide sustainable long-term low-cost funds for housing finance in order to meet the need for decent and affordable housing for its participants[19] Accordingly, Tapera functions as a mechanism to save, collect, accumulate, provide, and return participants' funds to fulfill their housing needs. This regulatory framework differs from general housing or settlement regulations, which primarily focus on the availability of housing for citizens[20], as even other countries contribute to facilitating affordable housing for their people[21].

Several countries with large informal sectors have demonstrated a more flexible approach to housing financing for self-employed workers. In India, the government developed the Pradhan Mantri Awas Yojana (PMAY) scheme, which provides housing loan interest subsidies for low-income groups and informal workers without requiring specific national savings.[22] This model positions the state as a financing facilitator, rather than as the sole holder of control over public funds.

Meanwhile, Brazil, through its Minha Casa Minha Vida program, implements a tiered subsidy approach based on community income levels. The

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[18] Republic of Indonesia. U*ndang-Undang Republik Indonesia Nomor 4 Tahun 2016 Tentang Tabungan Perumahan Rakyat.* (UU Tapera).

[19] UU Tapera 2016.

[20] Christopher S. Elmendorf, "Beyond the Double Veto: Housing Plans as Preemptive Intergovernmental Compacts." *Hasting Law Journal* 71 (December 2019): 79-150.

[21] Mubarak F. Alhajri, "Housing Challenges and Programs to Enhance Access to Affordable Housing in the Kingdom of Saudi Arabia," *Ain Shams Engineering Journal* 13, no. 6 (November 2022): 101798.

[22] Rao, P. S. N, "A Review of the Pradhan Mantri Awas Yojana (PMAY) Urban: Housing for All," *Spatial Planning Initiatives under the National Urban Missions* 86 (2020); Gohil, Jayraj and Zarna H. Gandhi, "Pradhan Mantri Awas Yojana (PMAY) Scheme—an Emerging Prospect of Affordable Housing in India," *International Research Journal of Engineering and Technology* 6, no. 12 (2019): 2546–2550.

government provides financial support and homeownership assistance without guaranteeing universal savings contributions for all informal workers. Brazil's approach demonstrates that protecting the right to housing can be achieved through fiscal policy and social subsidies without transforming constitutional rights into financial obligations.[23]

This comparison demonstrates that countries with informal sectors tend to use a model of assistance and incentives rather than a mandatory housing savings approach. Therefore, Indonesia's Tapera policy appears more coercive than the models implemented in India and Brazil.

A "worker" is defined as any person who works by receiving wages or other remuneration in accordance with statutory provisions[24]. By contrast, a "self-employed worker" refers to any Indonesian citizen who works independently without relying on an employer for income. The "employer," in this context, refers to an individual, entrepreneur, legal entity, or other body employing workers with wages or other remuneration[25], or a state organizer employing civil servants, members of the Indonesian National Armed Forces, and members of the Indonesian National Police with salaries in accordance with the law. The distinction is therefore clear: workers earn income dependent on an employer, whereas self-employed workers generate income independently.

A crucial provision in the Public Housing Savings Law (UU Tapera) is found in Article 7 paragraph (1), which states that every worker and self-employed worker earning at least the minimum wage is required to become a participant. The subsequent provision, Article 7 paragraph (2), specifies that self-employed workers earning below the minimum wage may voluntarily become participants. Based on this construction, it is evident that Article 7 paragraph (1) merges the categories of workers and self-employed workers into a single obligation to participate in Tapera. However, the law itself differentiates their definitions under Article 1 points 4 and 6. Moreover, Article 7 paragraph (2) allows voluntary participation for self-employed workers based on income conditions.

Thus, the legal construction of Article 7 paragraphs (1) and (2) can be summarized as follows: (1) both workers and self-employed workers are obliged to become Tapera participants; and (2) self-employed workers are further distinguished by conditions: (a) mandatory participation if income exceeds the minimum wage; and (b) voluntary participation if income falls below the

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[23] Euclydes, Fillipe Maciel, "O Processo de Política Pública Do 'Minha Casa, Minha Vida': Criação, Desenvolvimento e Extinção," *Revista de Sociologia e Política* 30, no. e020 (2020).

[24] UU Tapera 2016.

[25] UU Tapera 2016.

minimum wage. This construction of merging workers and self-employed workers into a single obligation contradicts their definitional distinctions in Article 1 points 4 and 6. Similarly, dividing self-employed workers into mandatory or voluntary participants based on minimum wage conditions contradicts their legal standing, as self-employed workers, by definition, earn independently of employers.

Turning to the rights and obligations of Tapera participants, Article 65 provides that participants are entitled to: (a) utilize Tapera funds; (b) obtain a membership identification number and individual account number; (c) receive the return of their savings and accumulated yield at the end of membership; (d) access information from the Tapera Management Agency (BP Tapera) concerning the condition and performance of Tapera funds; (e) obtain information regarding Tapera fund placements from investment managers and/or custodian banks; and (f) access information from investment managers and/or custodian banks regarding the value of their savings and accumulated yield[26]. The obligation of participants, however, is to pay monthly savings as determined by BP Tapera[27]. Importantly, these rights and obligations are not distinguished between workers and self-employed workers, which makes it necessary to examine the amount of monthly savings required.

Article 17 regulates that Tapera contributions are paid jointly by employers and workers, with the contribution rates to be determined by government regulation[28]. Under this system, employers are required to deduct the contributions from their workers' wages and deposit them into participant accounts managed by custodian banks[29]. Accordingly, Tapera participants allow a 2.5% deduction from their wages to fulfill their Tapera obligation. By contrast, self-employed workers must independently deposit their contributions into their Tapera accounts[30]. Government regulation stipulates that the Tapera contribution rate is 3% of: (1) monthly wages for workers; and (2) the average monthly income from the previous year for self-employed workers. Thus, the Tapera contribution rate is uniformly set at 3% for both workers and self-employed workers[31].

[26] UU Tapera 2016.
[27] UU Tapera 2016.
[28] UU Tapera 2016.
[29] UU Tapera 2016.
[30] UU Tapera 2016.
[31] Republic of Indonesia. *Peraturan Pemerintah Republik Indonesia Nomor 14 Tahun 2016 Tentang Penyelenggaraan Perumahan dan Kawasan Permukiman* (PP Penyelenggaraan Perumahan dan Kawasan Permukiman 2016).

However, for workers, the contribution is shared with the employer: workers contribute 2.5% while employers contribute 0.5%[32]. Self-employed workers, by contrast, bear the full 3% obligation independently. This construction clearly conflicts with principles of justice and equality of rights and obligations. While both groups are recognized as having the same rights under Tapera, their obligations differ significantly, with self-employed workers disproportionately burdened[33]. This underscores the normative inconsistency within the Tapera regulatory framework, as it differentiates obligations despite recognizing identical rights. Consequently, attention must also be directed toward the accumulation and management of Tapera participants' funds.

The mandatory 3% Tapera contribution of average annual income has different economic impacts on self-employed workers, depending on the stability and characteristics of their income. In practice, self-employed workers in Indonesia are not a homogeneous group, but rather comprise various economic categories with varying levels of financial resilience. Therefore, the application of a single 3% rate has the potential to create substantial injustice.

As an illustration, informal traders with an average monthly income of IDR 3,500,000 are required to contribute approximately IDR 105,000 each month to Tapera. For low-income groups with consumptive and variable daily expenses, this reduction can directly reduce their ability to meet basic needs, business capital, and emergency funds. Conversely, a professional consultant with an income of IDR 25,000,000 per month would contribute approximately IDR 750,000 per month, but this group generally has financial flexibility and access to other investment instruments that are more profitable than Tapera. This situation suggests that the Tapera obligation does not take into account the disparity in economic capacity among self-employed workers.

The problem is further complicated by the fluctuating income of self-employed workers. During an economic crisis, pandemic, or decline in market demand, the obligation to pay Tapera remains in effect even if income declines drastically. Therefore, the mandatory savings scheme under Tapera has the potential to increase the economic vulnerability of informal groups, especially workers who lack the security of a steady income or other social protection.

The following diagram illustrates the distinction in legal standing between employees and self-employed workers in terms of access to employment and income. At the same time, it demonstrates that the regulatory construction of Tapera contradicts the principle of justice. Although both employees and self-employed workers are recognized as having equal rights under the Tapera Law,

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[32] PP Penyelenggaraan Perumahan dan Kawasan Permukiman 2016.

[33] PP Penyelenggaraan Perumahan dan Kawasan Permukiman 2016.

as previously explained, they are subject to different obligations regarding the amount of Tapera contributions. This provision further highlights the normative inconsistency within the Tapera regulation itself, specifically between the position of employees and that of self-employed workers. Ultimately, such differences necessitate careful consideration of the accumulation and management of Tapera participants' savings.

TABLE 1. Comparison of Obligations for Tapera Savings Contributions

Category	Employees	Self-Employed Workers
Contribution Basis	Monthly salary/wage	Average income from the previous year
Mandatory Rate	3%	3%
Distribution of Burden	2% borne by employee; 0.5% by employer	Entire 3% borne individually
Income Threshold	Applied regardless of minimum wage	Applied differently: below minimum wage (excluded); above minimum wage (mandatory)

Source: The Authors

The Tapera Fund is accumulated to increase its value, based on either conventional principles or sharia principles. The accumulation of Tapera Funds under conventional principles may take the form of: bank deposits; central government bonds; regional government bonds; securities in the housing and settlement sector; and/or other safe and profitable investment instruments in accordance with statutory regulations. Meanwhile, the accumulation of Tapera Funds under sharia principles may take the form of: Islamic bank deposits; central government sukuk; regional government sukuk; Islamic securities in the housing and settlement sector; and/or other safe and profitable investment instruments consistent with statutory regulations[34]. Tapera participants may choose either conventional or sharia-based accumulation of funds according to their preference.

In fact, both employees and self-employed workers are able to accumulate such funds independently through available services or facilities, as access to state-protected fund accumulation has become widely open to the public. For self-employed workers in particular, such accumulated funds can be channeled and utilized to develop their business activities more efficiently and effectively. Moreover, self-employed workers arguably have even broader options to invest and grow their funds across different sectors. From this perspective, it is evident

[34] UU Tapera 2016.

that the regulatory framework of Tapera fund accumulation does not constitute an emergency law, since both employees and especially self-employed workers are already capable of independently accumulating their own funds.

After the accumulation stage, the Tapera Fund is utilized for housing financing for Tapera participants, which is administered by banks or financing companies[35]. It should be understood that such housing financing is disbursed through banks or financing companies specifically designated by the Tapera Management Agency (BP Tapera) to handle housing finance[36]. The financing covers: home acquisition, home construction, or home improvement, subject to the following conditions: it must be the participant's first home; it is only granted once; and the financing amount is predetermined for each housing facility. The house in question may be in the form of a detached house, a row house, an apartment unit, or other equivalent forms[37].

These provisions demonstrate that Tapera Savings Funds are accumulated by BP Tapera and subsequently distributed to banks or financing companies, where they may then be accessed by Tapera participants for housing finance[38]. This article, however, refutes the assertion that Tapera is designed to foster mutual assistance among participants, since in reality each participant is only entitled to his or her own savings and the proceeds from the accumulation of those savings. In practice, Indonesian society already has access to housing finance mechanisms through the banking system. This argument reinforces the claim that such regulatory construction does not represent a legal emergency, as individuals are capable of securing housing finance independently, and indeed without any obligation to prepay savings contributions as required under Tapera.

Having analyzed the regulatory construction of Tapera—from its definition, the definition of participants, the rights and obligations of participants, the Tapera savings scheme, the accumulation of funds, through to the utilization of funds—it can be argued that these provisions are internally inconsistent. Furthermore, the regulation of self-employed workers as participants is demonstrably unjust, creating an imbalance between rights and obligations. For this reason, it is imperative to review the constitutionality of Article 7 paragraph (1) of the Tapera Law in light of Article 4(b) of the Consumer Protection Law, which enshrines the right of consumers to choose,

[35] UU Tapera 2016.

[36] PP Penyelenggaraan Perumahan Dan Kawasan Permukiman 2016.

[37] UU Tapera 2016.

[38] Jefri Hari Akbar, Yusriyadi Yusriyadi, and Soeganda Priyatna, "Legal Politics of Public Housing Savings for Citizens' Decent and Affordable Housing," *Corporate Law and Governance Review* 6, no. 1 (2024): 19–26.

and Article 28H paragraph (1) of the 1945 Constitution, which guarantees every citizen the right to adequate housing, as discussed below.

Judicial Review of the Obligation of Self-Employed Workers to Become Tapera Participants under the Consumer Protection Law (UUPK)

The right to choose constitutes a universal principle in consumer protection law[39]. In Islamic law, a similar principle is recognized through *al-khiyār* (option)[40], which affirms the right of consumers to exercise freedom of choice in transactions. Consumers are entitled to select from a variety of goods or services available in the market, a view reinforced by the doctrine of consumer sovereignty[41]. Accordingly, the consumer's right to choose must remain free from any form of coercion or restriction[42]. Guaranteeing such freedom is not merely a matter of market regulation, but also a reflection of the protection of human rights[43]. Hence, consumers should never be compelled in circumstances where their right to choose is restricted or negated[44].

Safeguarding the consumer's right to choose carries significant economic implications. It enables the creation of a competitive market[45], ensures the production of higher-quality goods and services[46], prevents monopolistic practices, and ultimately enhances consumer welfare. The cumulative effect of

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39 united Nations Conference on Trade and Development, *United Nations Guidelines for Consumer Protection* (New York: United Nations, 2016).

40 Daud Rasyid Harun, "Concept of Khiyār in Transaction in Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 2 (December 2020): 443.

41 Inge Graef, "Consumer Sovereignty and Competition Law: From Personalization to Diversity," *Common Market Law Review* 58, no. 2 (2021): 71–504.

42 Luke Herrine, "What Is Consumer Protection For?," *Loyola Consumer Law Review* 34, no. 2 (2023).

43 Ogugua VC Ikpeze and Egondu Grace Ikeatu, "Consumer Rights as Human Rights: An Appraisal," *UNIZIK Law Journal* 18 (2022): 71–77.

44 M. Bukowski, *Contribution to Growth: Consumer Protection. Delivering Economic Benefits for Citizens and Businesses* (Luxembourg: European Union, 2019).

45 Neil W. Averitt and Robert H. Lande, "Consumer Choice: The Practical Reason for Both Antitrust and Consumer Protection Law," *Loyola Consumer Law Review* 1 10, no. 1 (1998).

46 John Vickers, "Competition Policy and the Consumer Welfare Standard," *Journal of Antitrust Enforcement* 13, no. 1 (March 2025): 6–16.

these protections is the establishment of a fair and efficient market system (*fair market*)[47], which in turn contributes positively to Indonesia's economic growth.

From this perspective, the right to choose becomes one of the most fundamental, realistic, practical, and effective legal mechanisms for promoting consumer protection. It functions not only as a safeguard against market distortions but also as an instrument to empower consumers in their economic interactions. For this reason, the Consumer Protection Law (UUPK) must be understood not only as an umbrella act for consumer rights in Indonesia but also as a normative reference point for the formulation of subsequent legislation, including the Tapera Law, within the broader framework of consumer protection[48].

The Consumer Protection Law (UUPK) stipulates that a consumer is any individual who uses goods and/or services available in society, whether for personal, family, other people, or living creatures, and not for trading purposes[49]. This provision demonstrates that the Self-Employed Workers as Tapera Participants constitute ultimate consumers or end users[50], given their position as participants who are obliged to pay contributions, and who later receive benefits from BP Tapera after the fund accumulation process, through mechanisms as previously explained. Accordingly, the position of the Self-Employed Workers as Tapera consumers must be afforded protection, as the UUPK guarantees that consumer protection encompasses all efforts to ensure legal certainty in safeguarding consumers[51].

As evidence that BP Tapera qualifies as a business actor within the meaning of consumer protection law, the UUPK defines business actors as any individual or business entity, whether incorporated or not, established and domiciled or operating within the jurisdiction of the Republic of Indonesia, whether independently or jointly, through agreements to organize business activities in various economic sectors[52]. This construction proves that BP Tapera constitutes a business actor as referred to in the UUPK, since BP Tapera

[47] Sadhana S. Kunder, Bindu Ronald, and Shivani Rajesh, "Consumer Protection under Competition Law Highlighting Relevant Market Issues under Digital Market," *International Journal of Health Sciences*, July 25, (2022): 11752–11762.

[48] Zulham, *Hukum Perlindungan Konsumen* (Jakarta: Praneda Media, 2016).

[49] Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen, 8 (1999).

[50] Muhammad Irfan et al., "An Assessment of Consumers' Willingness to Utilize Solar Energy in China: End-Users' Perspective," J*ournal of Cleaner Production* 292 (April 2021): 126008.

[51] Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.

[52] Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.

is a legal entity established to manage Tapera[53], domiciled in the capital city of the Republic of Indonesia, and tasked, among other duties, with ensuring that Self-Employed Workers pay their mandatory contributions[54]. Therefore, it can be explained that the legal construction of a business actor as defined by the UUPK aligns with BP Tapera under the Tapera Law, namely as a business actor, or in other words, a service provider.

Meanwhile, services under the UUPK are defined as any work or performance provided to the public to be utilized by consumers[55]. In line with this, the Tapera Law obliges Self-Employed Workers to deposit funds through the Tapera Savings service amounting to 3%, which is then managed by BP Tapera through fund accumulation mechanisms, and the benefits are distributed through Banks or Financing Companies, ultimately provided for the Self-Employed Workers themselves as the ultimate consumers or end users. This provision clearly shows that the services provided by the Tapera Law to Self-Employed Workers begin with: the obligation to contribute 3% to the Tapera Savings Fund, the accumulation of the Tapera Savings Fund, and the utilization of the Tapera Savings Fund, which are unmistakably services as defined under the UUPK. At this point, it becomes evident that the position of Self-Employed Workers under the Tapera Law is that of ultimate consumers or end users of the Tapera Savings Fund services, provided by BP Tapera as the service provider. Therefore, by causal reasoning, Self-Employed Workers are entitled to guaranteed protection of their rights as consumers, specifically the right to choose.

It is now time to analyze Article 4 letter b of the Consumer Protection Law (UUPK), which stipulates that consumers are entitled to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange value and conditions as well as guarantees that have been promised[56]. This regulatory construction contains two norms simultaneously, namely: (1) the normative right of consumers to choose goods and/or services[57]; and (2) the normative right of consumers to obtain goods and/or services in accordance with the exchange value[58], conditions, and guarantees promised. This article focuses on analyzing the first norm, namely the consumer's right to choose

[53] UU Tapera 2016.

[54] UU Tapera 2016.

[55] Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.

[56] Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.

[57] Otoritas Jasa Keuangan Republik Indonesia, Kredit Pemilikan Rumah, n.d., https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Category/47.

[58] Otoritas Jasa Keuangan Republik Indonesia, Jenis Investasi, n.d., https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Category/63.

goods and/or services. As previously explained, Self-Employed Workers whose income exceeds the minimum wage are required to become Tapera Participants. Based on the legal argumentation already elaborated, their position is legally constructed as Tapera consumers. Consequently, pursuant to Article 4 letter b of the UUPK, Tapera consumers are entitled to the right of choice.

Meanwhile, the Tapera Savings Fund, which Self-Employed Workers as Tapera Participants are obliged to pay, is accumulated in various instruments as stipulated by the Tapera Law, namely: banking deposits (sharia-compliant); debt securities (sukuk); other securities (sharia); and other investment alternatives. Just as many banks have offered various mortgage financing products, so too have several banks and capital markets offered a variety of investment vehicles for fund accumulation[59]. In principle, Self-Employed Workers as Tapera consumers could independently undertake mortgage financing as well as invest their accumulated funds in such instruments[60], based on the right of choice attributed to them under consumer law. This argument demonstrates that the state regulation of Tapera Savings Fund accumulation is unnecessary, since Tapera consumers are capable of managing it themselves. Indeed, Self-Employed Workers could even accumulate their funds independently to develop their own businesses, which would be far more advantageous for them.

The right of Self-Employed Workers to choose in matters of financing and fund accumulation for housing ownership should not be restricted, given that they are technically capable of managing their own financing and accumulation independently[61]. The imposition of the obligation for Self-Employed Workers to become Tapera Participants, accompanied by the threat of administrative sanctions, constitutes clear evidence that the Government monopolizes the concept of housing finance for Self-Employed Workers. This stands in contradiction to the UUPK, which guarantees consumers the freedom of choice. The situation differs from that of the State Electricity Company (PLN), in which consumers do not possess the technical expertise to generate or procure electricity independently, although its monopolistic position remains subject to scrutiny[62]. The argument is grounded in the reasoning that if Tapera were the sole option for financing home ownership, then such regulation would

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59 Otoritas Jasa Keuangan Republik Indonesia, Kredit Pemilikan Rumah.

60 Otoritas Jasa Keuangan Republik Indonesia, Jenis Investasi.

61 Hendry Campbell Black, Black's Law Dictionary, Seventh (West Group, 1999).

62 Indri Dwi Apriliyanti et al., "To Reform or Not Reform? Competing Energy Transition Perspectives on Indonesia's Monopoly Electricity Supplier Perusahaan Listrik Negara (PLN)," *Energy Research & Social Science* 118 (December 2024): 103797.

effectively create a monopolistic situation[63], as consumers would have no alternative whatsoever.

It can therefore be concluded that the norm contained in Article 7 paragraph (1) of the Tapera Law, which regulates the obligation of Self-Employed Workers to become Tapera Participants, contradicts the norm in Article 4 letter b of the UUPK, which guarantees the consumer's right of choice[64]. The legal constructions of these two norms stand in opposition: on one side, Self-Employed Workers are compelled to pay mandatory contributions to the Tapera Savings Fund, which is then accumulated under state management; on the other side, Self-Employed Workers as Tapera consumers are granted the right to choose the accumulation instruments in accordance with their rights and preferences. This contradiction arises from divergent perspectives: the Tapera Law frames it as an obligation, whereas the UUPK frames it as a right. To substantiate this normative conflict between right and obligation, both Article 7 paragraph (1) of the Tapera Law and Article 4 letter b of the UUPK must ultimately be assessed in light of Article 28H paragraph (1) of the 1945 Constitution, which stands as the higher legal authority.

In addition to normative issues, the Tapera policy also faces challenges in the form of low levels of public trust in the management of funds by state institutions. In the Indonesian context, the collection of large amounts of public funds often raises concerns about transparency, accountability, and the potential for mismanagement. These concerns are even more relevant because the Tapera Supervisory Agency (BP Tapera) manages long-term funds derived from mandatory public contributions.

This situation demonstrates that the legality of Tapera's obligations cannot be separated from social legitimacy and institutional trust. Financial obligations imposed without adequate public trust have the potential to generate social resistance. Therefore, the Tapera issue is not only a matter of normative law, but also concerns good governance, investment transparency, and the protection of public funds.

From the perspective of a modern welfare state, the success of a social security scheme depends heavily on the level of public trust in the managing institution. The lower the public trust, the more difficult it is to maintain the legitimacy of mandatory contributions.

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63 A. I. Ogus, *Regulation: Legal Form and Economic Theory* (London: Hart Publishing, 1994).

64 G. M. Novikova, E. J. Azofeifa, and V. R. Milov, "Towards the Formalization of Contradictions in a Legal Multiagent System," *Procedia Computer Science* 150 (2019): 488–494.

Normative Review of the Obligation of Self-Employed Workers to Become Tapera Participants in Light of the Constitution

The constitution constitutes the fundamental law that guides the functioning of the state. In modern states, it usually takes the form of a written basic law referred to as the Constitution[65]. Although in a broader sense the constitution encompasses both written and unwritten norms, many scholars equate the term *constitution* with the *Constitution*. Accordingly, the constitution may be described as a *unified whole*, meaning a fundamental legal regulation and the higher and ultimate norm[66]. Substantively, a constitution may be defined as: (1) a body of law that attributes power to public authorities; (2) regulates the fundamental relations between public authorities; and (3) regulates the fundamental relations between public authorities and individuals[67]. As a constitutional state (*Rechtsstaat*), at least three essential elements must be present: (1) supremacy of law, (2) equality before the law, and (3) a constitution grounded in individual rights[68]. The position of the constitution as the ultimate consensus of national aspirations generally rests on three pillars: (1) the general goals of society or a shared philosophy of government, (2) the rule of law as the foundation of governance, and (3) the institutional form and procedures[69].

The same holds true for the aspirations of the Republic of Indonesia as enshrined in the Preamble of the 1945 Constitution, namely: (1) to protect the entire people of Indonesia—ensuring the protection of citizens' rights; (2) to safeguard the entire territory of Indonesia—requiring the state to defend its sovereignty; (3) to promote the general welfare—mandating the state to enhance the standard of living of its people; (4) to educate the nation—requiring the state to improve the quality of education and human resources; and (5) to contribute to world order—requiring the state to play a role in promoting international peace. These national ideals reflect the orientation of

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[65] Mahfud MD, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi* (Jakarta: LP3ES, 2007).

[66] Schmitt Carl, *Constitutional Theory* (Durham: Duke University Press, 2008).

[67] AW Heringa and PH Kiiver, *Constitutions Compared: An Introduction to Comparative Constitutional Law* (Portland: Intersentia, 2009).

[68] AV Dicey, *Introduction to the Study of the Law of the Constitution* (Indianapolis: Liberty Fund, 1982).

[69] Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Mahkamah Konstitusi Republik Indonesia, 2006).

Indonesia toward the creation of a *welfare state* through the protection of citizens' rights, freedoms, and obligations.

As part of the effort to realize a welfare state, the role of the state in housing provision must be implemented in accordance with the principles of citizenship rights, social justice, national efficiency, equality of social status, and social integration[70]. The idea of the welfare state itself must be rooted in national identity and culture, not merely a replication of models from other states[71], although it may also reflect global condition[72]s. While the welfare state is intended to support national identity and reinforce the unity of citizens, it may not unduly restrict individual freedoms. The state's role is to guarantee formal freedoms while ensuring distributive justice and fairness in the allocation of resources[73].

One dimension of such freedom and distributive justice is expressly guaranteed under Article 28H paragraph (1) of the 1945 Constitution, which provides: *Every person shall have the right to live in physical and spiritual prosperity, to have a home, and to enjoy a good and healthy environment, and shall have the right to obtain health services.* This provision clearly affirms that housing is a right of every person, whereas a house is merely one form of dwelling. As a right, the right to housing constitutes a human right that must be protected[74]: every person is entitled to reside in adequate housing and to live a dignified life. Similarly, the *Universal Declaration of Human Rights* stipulates: *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, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control*[75].

The government can argue that mandatory Tapera participation constitutes a legitimate restriction of rights under Article 28J of the 1945 Constitution. This article states that in exercising their rights and freedoms, everyone is obliged to comply with restrictions established by law for the sake of respecting the rights of others, morality, security, and public order in a democratic society.

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70 Brian Lund, *Understanding State Welfare: Social Justice or Social Exclusion* (London: SAGE Publications, 2002).

71 Robert Pinker, *The Idea of Welfare* (London: Heinemann Educational Books Ltd, 1979).

72 Friedrich von Hayek, *The Meaning of the Welfare State* (Cambridge: Polity Press, 2003).

73 James Midgley, *Social Welfare in Global Context* (London: SAGE Publications, 1995).

74 Republic of Indonesia. *Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.*

75 Universal Declaration of Human Rights 1948.

However, restrictions on rights under Article 28J cannot be imposed arbitrarily. In modern constitutional law doctrine, restrictions on rights must meet the principles of proportionality, necessity, and legitimate aim. Therefore, the state must prove that the Tapera obligation is truly necessary, proportionate, and that no other policy alternatives are available that lessen the citizen's rights.

In the context of self-employed workers, the obligation to pay a 3% Tapera contribution does not necessarily meet the principle of proportionality because: (1) this group has fluctuating income; (2) there are alternative housing financing options available through the banking system and state subsidies; and (3) this obligation limits individual freedom to choose financing and investment instruments. Therefore, the use of Article 28J as a constitutional justification for mandatory Tapera participation remains legally questionable.

The constitution regulates housing as a citizen's right, not as a citizen's obligation. Recognition of the right to housing must therefore be accompanied by measures to ensure affordable housing availability, such as rent subsidies or construction grants. At this point, it is clear that ownership of housing is a constitutional right and a human right that the state is obliged to protect as part of its welfare state commitment[76]. Consequently, the state must ensure access for all citizens to obtain affordable housing[77] through measures such as housing policies, financing systems, financial relief, assistance programs, insurance, development permits, land provision, and supporting infrastructure and utilities.

By contrast, constitutional obligations are formulated explicitly with the phrase *wajib* ("shall" or "must"). For example: every person shall respect the human rights of others in the order of community, nation, and state life; in exercising their rights and freedoms, everyone must be subject to the limitations established by law; every citizen must attend compulsory basic education, which the government is obliged to finance. These constitutional formulations clearly contain mandatory norms (not rights), expressed through the use of the phrase *wajib*. Accordingly, the 1945 Constitution distinguishes between rights and obligations based on the language used.

In contrast, Article 7 paragraph (1) of the Tapera Law obligates Self-Employed Workers earning above the minimum wage to pay Tapera Savings contributions of 3% of their average income in the preceding year. Yet Article 28H paragraph (1) of the 1945 Constitution recognizes housing as a right, not

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76 Wanxia Zhao and Yonghua Zou, "Smart Governance for Affordable Housing in China: Preparation, Practice, and Paradoxes," *Cities* 156 (January 2025): 105500,

77 Nick Gallent et al., "Enabling the Delivery of Rural Affordable Housing in England," *Journal of Rural Studies* 111 (October 2024): 103433.

an obligation. Thus, all regulations designed to facilitate access to housing must likewise be framed as rights, not obligations. Accordingly, any scheme of financing, saving, or fund accumulation for housing must be regulated as a right[78]. If framed as an obligation, such provisions conflict with Article 28H paragraph (1) of the Constitution. Given the supremacy of the Constitution at the apex of the legal hierarchy, all subsequent regulations must conform to the higher norm. Since the Constitution regulates housing through rights, provisions concerning financing and savings must also be rights-based.

Further inequality is evident in the Tapera Law, which mandates participation only for Workers and Self-Employed Workers earning above the minimum wage, while participation for Self-Employed Workers earning below the minimum wage remains voluntary. Yet the Constitution does not distinguish citizens' rights to housing based on income level. Moreover, compelling Self-Employed Workers to join Tapera is problematic due to the fluctuating nature of their incomes, which depend on profession and market demand[79]. Unlike Employees whose earnings are determined by Employers, Self-Employed Workers' incomes are self-dependent[80]. For example, the average monthly income of a Self-Employed Worker in the previous year may have exceeded the minimum wage, yet this may drastically decline in the following year due to unforeseen circumstances, such as the COVID-19 pandemic[81].

The mandatory obligation to save for housing through Tapera restricts citizens from managing their own resources. In reality, Indonesian society has long had mechanisms to independently finance housing, such as the *Kredit Perumahan Rakyat* (KPR)[82]. For Self-Employed Workers, mandatory Tapera contributions limit their financial freedom and restrict their ability to achieve

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78 Claire B. Wofford, "The Structure of Legal Doctrine in a Judicial Hierarchy," *Journal of Law and Courts* 7, no. 2 (2019): 263–280.

79 David Cross and Juani Swart, "Professional Fluidity: Reconceptualising the Professional Status of Self-Employed Neo-Professionals," *Organization Studies* 42, no. 11 (November 2021): 1699–720.

80 Ondřej Dvouletý, "Classifying Self-Employed Persons Using Segmentation Criteria Available in the Labour Force Survey (LFS) Data," *Journal of Business Venturing Insights* 14 (November 2020): e00199.

81 Katrin Gasior, H. Xavier Jara, and Mattia Makovec, "Assessing the Effectiveness of Social Protection Measures in Mitigating COVID-19-Related Income Shocks in the European Union," *Economic Analysis and Policy* 83 (September 2024): 583–605.

82 Barbara Putri and Ruslan Prijadi, "Public Fund Optimization for Housing Finance (Case Study: Tabungan Perumahan Rakyat, Indonesia)," *Proceedings of the 5th International Conference on Economics, Business and Economic Education Science, ICE-BEES 2022*, 9-10 August 2022, Semarang, Indonesia, 2023, https://doi.org/10.4108/eai.9-8-2022.2338624.

the constitutional right to housing through alternative means. Thus, Self-Employed Workers, as a constitutionally vulnerable group, should be treated under a voluntary, not mandatory, framework.

The recommendation to make self-employed workers' participation voluntary does not eliminate the state's role in housing finance. Instead, the state can continue to build a sustainable system through an incentive-based participation approach. In this model, the state can provide incentives in the form of housing loan interest subsidies, tax deductions, matching funds, or priority access to financing for self-employed workers who voluntarily participate in Tapera.

A voluntary, incentive-based approach better aligns with the characteristics of self-employed workers, who have economic flexibility and diverse investment preferences. Furthermore, this model maintains the principle of social mutual cooperation without resorting to coercion. The state can focus subsidies on vulnerable and low-income groups, while giving high-income groups the freedom to choose other financing instruments. Thus, the sustainability of the system does not have to be built through universal obligations but can be achieved through a combination of economic incentives, transparent fund management, and public trust in the managing institution.

A further inequity arises regarding the 3% Tapera contribution: Employees contribute 2.5% while Employers cover 0.5%, whereas Self-Employed Workers must shoulder the full 3%. This regulation clearly favors Employees over Self-Employed Workers, who bear a heavier burden. Such provisions contravene the philosophy of justice enshrined in Pancasila as *grundnorm*[83], namely Social Justice for All Indonesian People. Moreover, this arrangement already conflicts with Article 28H paragraph (1) of the Constitution, which formulates housing as a right, while transforming that right into an obligation constitutes a violation of human rights.

Accordingly, based on the foregoing legal argumentation, it can be concluded that the normative construction of Article 7 paragraph (1) of the Tapera Law conflicts with the normative construction of Article 28H paragraph (1) of the 1945 Constitution. This conflict arises from the use of the phrase *wajib* ("shall") in Article 7 paragraph (1) of the Tapera Law, which obliges Self-Employed Workers to become Tapera Participants, whereas Article 28H paragraph (1) of the Constitution uses the phrase *hak* ("right") in guaranteeing citizens the right to housing. Based on constitutional theory, lower legal norms may not conflict with higher ones; thus Article 7 paragraph (1) of the Tapera

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[83] Khudzaifah Dimyati et al., "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (August 2021): e07865.

Law lacks binding legal force against Article 28H paragraph (1) of the 1945 Constitution. Furthermore, the Tapera Law presents internal injustices, namely: (1) inequality between Self-Employed Workers earning above the minimum wage and those earning below it, and (2) inequality in contribution obligations, as Employees pay 2.5% while Employers cover 0.5%, whereas Self-Employed Workers must bear the full 3% contribution.

Conclusion

This article concludes that the provision under Article 7 paragraph (1) of the Public Housing Savings Law (UU-Tapera) is in conflict with Article 4(b) of the Consumer Protection Law (UUPK), as well as with the constitutional norm enshrined in Article 28H paragraph (1) of the 1945 Constitution. The inconsistency with Article 4(b) of the UUPK is grounded on the following arguments: (1) self-employed workers earning above the minimum wage, who are mandated to become Tapera participants, are positioned as consumers of Tapera; (2) such self-employed workers, as Tapera consumers, are not granted the right to choose their financing model or investment scheme for home ownership; (3) in principle, Tapera consumers are capable of making independent choices regarding financing models and investment schemes; (4) the income of self-employed workers is highly fluctuating, depending on profession and market demand; and (5) the imposition of a mandatory norm ("wajib") requiring self-employed workers to join Tapera establishes a monopolistic situation that contradicts the philosophy of the UUPK, particularly the consumer's right to choose.

Furthermore, Article 7 paragraph (1) of the UU-Tapera is declared contradictory and non-binding in relation to Article 28H paragraph (1) of the 1945 Constitution, based on the following grounds: (1) the Constitution safeguards the rights of every citizen as a reflection of a welfare state; (2) the Constitution guarantees home ownership through the recognition of a "right" for every citizen; (3) the UU-Tapera imposes a "mandatory" obligation on self-employed workers to join Tapera; (4) there exists a philosophical injustice between employees and self-employed workers regarding the amount of compulsory savings; and (5) a normative disparity arises between self-employed workers earning above the minimum wage and those earning below the minimum wage.

Based on these conclusions, this article ultimately recommends: (1) that the terms "employees" and "self-employed workers" be separated in the regulation of Article 7 paragraph (1) of the UU-Tapera; (2) that the terms "employees" and "self-employed workers" be regulated under distinct provisions; and (3) that the mandatory obligation ("wajib") for self-employed workers to participate in Tapera be amended into a voluntary option ("dapat"), thereby ensuring freedom of choice for this vulnerable group.

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