

Restrictions on Individual Land Ownership for Residential Purposed in Indonesia: A Proposed Solution

Febri Jaya^{1*}, Lu Sudirman², Nurlaily³, David Tan⁴

Universitas Internasional Batam, Indonesia

*Corresponding Author: febri.jaya@uib.ac.id

ABSTRACT

Keywords:

Residential; Owner; Solution.

Article Info:

Received:

09/02/2026

Revised:

27/02/2026

Accepted:

23/03/2026

Published:

31/03/2026

The government has a responsibility to provide decent housing for all Indonesian people. The absence of legal regulations regarding the limitation of ownership of land rights for residential houses for individuals causes a person to freely and without limits buy a residential house. The purpose of housing purchases has shifted from the needs to be an investment does not protect the rights of all citizens to obtain a decent place to live in order to achieve prosperity and justice. To answer the problems in this research, the researcher uses a normative type of research with a legal approach to fill the lacuna of existing legal regulations in Indonesia since the object of the research is not yet legally regulated. The focus of attention on normative law as a practical science is to change the situation and offer solutions to concrete and potential social problems. The problems faced by each individual (especially people of the middle to lower income) to get a decent house are of course the responsibility of the government. This situation is constitutionally mandated under the 1945 Constitution of the Republic of Indonesia. The answers to the problems, the researcher will approach the study by utilizing the approaches, in particular the Welfare State Theory of John Rawls, and the Law Development Theory of Mochtar Kusumaatmadja. As a conclusion, the solution proposed by the researcher is the application of the triple check system in the preparation of Government Regulations regarding the limitation of control over the land rights for residential houses for individuals in Indonesia.

This work is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International \(CC BY-SA 4.0\)](https://creativecommons.org/licenses/by-sa/4.0/)



How to cite: Jaya, F., Sudirman, L., Nurlaily, N., & Tan, D. (2026). Restrictions on Individual Land Ownership for Residential Purposed in Indonesia: A Proposed Solution. *International Journal of Educational Review, Law And Social Sciences (IJERLAS)*, 338–344. <https://doi.org/10.5281/zenodo.20367507>

Introduction

The paradigm of the modern state has significantly evolved from the classical concept of a *nachtwakerstaat* (night-watchman state) toward the concept of a welfare state. Within the welfare state paradigm, the government is no longer merely positioned as a passive guardian of public order, but rather as an active institution responsible for ensuring social justice, economic equality, and the welfare of all citizens. The state therefore bears constitutional and moral obligations to provide protection and prosperity in all aspects of human life, including the fulfillment of the right to adequate housing. In this context, housing is not merely viewed as a physical structure, but as a fundamental human necessity closely related to dignity, security, and social stability.

Indonesia constitutionally embraces the welfare state principle as reflected in the Preamble of the 1945 Constitution of the Republic of Indonesia, particularly in the mandate to promote public welfare and achieve social justice for all Indonesian people. Furthermore, Article 27 paragraph (2) of the Constitution guarantees the right of every citizen to obtain a decent living, while Article 33 paragraph (3) emphasizes that land, water, and natural resources shall be controlled by the state and utilized for the greatest prosperity of the people. These constitutional provisions establish a strong legal and philosophical foundation for state intervention in land governance and housing policies.

Housing constitutes one of the most essential social needs in contemporary society. Along with rapid urbanization, population growth, and economic development, the demand for residential land in Indonesia

has increased significantly. However, the growing commercialization of land and housing sectors has shifted the function of residential property from a social necessity into an investment commodity. This transformation has encouraged speculative ownership practices and excessive accumulation of residential land by individuals with substantial economic capacity. Consequently, low- and middle-income communities increasingly experience difficulties in accessing affordable housing and land ownership.

The imbalance in land ownership has become a serious socio-legal issue in Indonesia. Data and public discourse frequently indicate that land tenure remains concentrated among a relatively small portion of the population, while many citizens still struggle to secure proper housing. Such conditions contradict the constitutional mandate of social justice and equitable distribution of resources. In practice, the absence of specific legal limitations regarding the ownership and control of residential land by individuals creates opportunities for unlimited land acquisition for investment purposes. This legal vacuum weakens state efforts to ensure equal access to housing and undermines the social function of land as mandated by Indonesian agrarian law.

The Basic Agrarian Law of 1960 (*Undang-Undang Pokok Agraria*) was enacted as a national legal instrument intended to establish equitable land governance and protect the interests of Indonesian citizens. The law reflects the spirit of nationalism and social justice by recognizing state control over land for public welfare purposes. Nevertheless, the implementing regulations concerning land ownership limitations primarily focus on agricultural land. Article 12 of Law Number 56 Prp of 1960 mandates further regulation regarding limitations on land ownership, yet concrete implementing regulations specifically addressing residential land ownership by individuals have not been comprehensively established.

Several ministerial regulations and administrative instructions have attempted to regulate land tenure, particularly concerning large-scale land acquisition by legal entities. However, these legal instruments do not specifically regulate the maximum ownership limit of residential land for individuals or families. Consequently, the legal framework governing residential land ownership remains incomplete and fragmented. The absence of comprehensive government regulations regarding residential land ownership restrictions has created uncertainty in legal enforcement and weakened efforts to prevent excessive land concentration.

From the perspective of legal theory, this issue is closely connected with the concept of the welfare state, theories of justice, and legal development theory. The welfare state doctrine requires the government to ensure equitable access to basic necessities, including housing. Meanwhile, John Rawls' Theory of Justice emphasizes fairness in the distribution of social and economic advantages within society. Excessive concentration of residential land ownership among certain groups clearly contradicts distributive justice principles because it limits opportunities for disadvantaged communities to obtain adequate housing. In addition, Mochtar Kusumaatmadja's Law Development Theory positions law as an instrument of social engineering that must adapt to social realities and societal needs. Therefore, legal reform concerning residential land ownership restrictions becomes necessary to achieve social balance and public welfare.

Previous studies on agrarian reform and land law in Indonesia have generally focused on agricultural land redistribution, land disputes, or investment regulations. Research specifically discussing restrictions on residential land ownership for individuals remains limited. Moreover, most existing studies tend to emphasize administrative or procedural aspects of land registration rather than examining the urgency of establishing ownership limitations as a constitutional mechanism for social justice. Therefore, this study aims to fill the existing research gap by examining the urgency of regulating residential land ownership limitations within the framework of Indonesian welfare state principles and proposing a concrete legal solution to address the current regulatory vacuum.

This research employs a normative legal approach by analyzing statutory regulations, legal doctrines, and theoretical perspectives related to land rights and social welfare. The study seeks to examine the legal implications of unrestricted residential land ownership and formulate a proposed regulatory solution that aligns with constitutional values and principles of justice. In particular, this study proposes the implementation of a "triple check system" as a mechanism to control and supervise residential land ownership by individuals in Indonesia.

The significance of this research lies not only in its academic contribution to the development of agrarian law studies, but also in its practical implications for policymakers and government institutions. The establishment of clear regulations regarding residential land ownership limitations is expected to strengthen legal certainty, reduce social inequality, and ensure fairer access to housing for all Indonesian citizens.

Ultimately, legal reform in this area represents an important step toward realizing the constitutional ideals of welfare, justice, and social prosperity in Indonesia.

Method

This research employed a normative juridical approach by examining laws and regulations, legal doctrines, and other secondary legal materials related to residential land ownership restrictions in Indonesia. Normative legal research focuses on analyzing legal norms and statutory regulations to address particular legal issues systematically (Soerjono Soekanto & Sri Mamudji, 2003).

The study used statutory and conceptual approaches. The statutory approach examined relevant legal instruments concerning agrarian law and housing regulation, while the conceptual approach analyzed the issue through the Welfare State Theory and the Law Development Theory. Primary legal materials consisted of the 1945 Constitution of the Republic of Indonesia, the Basic Agrarian Law, and housing-related regulations. Secondary legal materials included books, journal articles, and previous legal studies relevant to the research topic.

The collected legal materials were analyzed qualitatively through legal interpretation and systematic analysis to identify regulatory gaps regarding restrictions on residential land ownership for individuals and to formulate an appropriate legal solution.

Results and Discussion

Study of Welfare State Theory in Restricting the Control and/or Ownership of Land Rights for Residential Houses for Individuals in Indonesia

The welfare state itself is not a single-faced entity. The extent and variety of social policies implemented by the state varies from one welfare state to another. Titmuss has identified two typologies of the welfare state, namely the residual welfare state and the institutional welfare state (Darmawan Triwibowo dan Sugeng Bahagijo, 2006).

The residual welfare state assumes that the responsibility of the state as a welfare provider applies if and only if the family and the market fail to carry out their functions and are focused on certain groups in society, such as marginal groups and those who "deserve" welfare allocations from the state. Meanwhile, the institutional welfare state is universal, covers the entire population, and is institutionalized in a broad and vital social policy base for the welfare of society (Darmawan Triwibowo dan Sugeng Bahagijo, 2006).

Based on the concept of the welfare state above, the Indonesian state can be classified as a welfare state. This is impliedly stated in the Preamble to the 1945 Constitution, which among other things reads: "..., to form an Indonesian State Government which protects the entire Indonesian nation and to promote the general welfare ...".

The provisions of Chapter XIV of the Preamble to the 1945 Constitution which regulates the National Economy and Social Welfare also refers to the concept of a welfare state which requires the state to have the duty and responsibility to create welfare for its people.

As a consequence of the State of Indonesia as a welfare state, all regulations formulated by the government must always focus on the interests of all people from all walks of life in order to realize social welfare for all Indonesian people.

In connection with this research with the theme of limiting the control of land rights in the context of agrarian reform, the role of the State of Indonesia in implementing the welfare state is mandated in Article 33 paragraph 3 of the 1945 Constitution which uses the earth, water, and natural resources as much as possible for the benefit and the prosperity of the people.

The mandate of Article 33 paragraph 3 of the 1945 Constitution has the same spirit as the philosophical foundation of the Indonesian State, namely Pancasila, especially the 5th principle which reads: "Social justice for all Indonesian people".

The concept of the welfare state above is used as a Grand Theory as an analytical tool by the researcher. Therefore, the solution in this research is to encourage the establishment of laws and regulations regarding the limitation of control over land rights for residential homes for individuals in order to create a welfare state.

Study of Theory of Justice in Restricting the Control and/or Ownership of Land Rights for Residential Houses for Individuals in Indonesia

The basis of the Theory of Justice used by the researcher in this study is the concept of the Theory of Justice proposed by John Rawls. The points of view stating that justice is the main virtue in social institutions. The Theory stipulates that untrue theories must be rejected, as well as unjust laws must be reformed (John Rawls, 1995).

The principles of justice employ two points, namely:

- a. The principle of justice must provide a concrete assessment of the fairness of institutions and institutional practices.
- b. The principle of justice should guide us in developing policies and laws to correct injustices in the basic structures of certain societies.

The importance of justice in social life as the first point means that in the life of the nation and state, Indonesia must prioritize the principle of justice in every basis of government policy. In this case, the justice in question is what is stated in the 5th principle of Pancasila, which reads: "Social justice for all Indonesian people". Furthermore, the meaning of social justice is in accordance with the Preamble to the 1945 Constitution, the fourth paragraph which reads as follows:

"..... protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace and social justice based on: Belief in the One and Only God, just and civilized humanity, Indonesian unity, democracy led by wisdom in deliberation and representation and social justice for all Indonesian people".

Regarding social justice for all Indonesian people, it must be acknowledged that justice is a substantial human life force for human life, so that in the Pancasila State Foundation and Ideology, which is set forth in the second principle, namely just and civilized humanity and the fifth principle which reflects the characteristics of justice which are morally integralistic, and social justice for all Indonesian people which represents the characteristics of social justice. The fifth principle constitutes "one of the goals or ideals" that needs to be realized (Anil Dawan).

Based on the explanation above, the researcher argues that the essential meaning of justice proposed by John Rawls still contains the characteristics of justice in Indonesia which refers to the fifth principle of Pancasila. Through the study of the theory of justice proposed by John Rawls as Middle Theory, the researcher conducts a study to encourage a solution to the legal vacuum of limiting the control of land rights for individual residences.

Study of Law Development Theory in Restricting the Control and/or Ownership of Land Rights for Residential Houses for Individuals in Indonesia

The Law Development Theory seeks to balance between positive law (law in the books) and the living law. In this case, the law refers to the means as a social order (as the most conservative function of the law) as well as a means of social engineering. Therefore, the law leads to the achievement of order since it is a condition leading to certainty and justice (Shidarta, 2012).

Mochtar Kusumaatmadja states that the main purpose of law, if reduced to one aspect, is order, which is the main requirement for an orderly society. Another purpose of law is the achievement of justice, which varies in its content and size, according to its society and era (Lilik Mulyadi, 2020).

Furthermore, to achieve an order, it is endeavored to have legal certainty in human interactions in society, because it is impossible for humans to develop the talents and abilities that God has given to them optimally without the certainty of law and order (Lilik Mulyadi, 2020). Legal certainty is indeed an important aspect in the development of Indonesian law. The school of legal thought in Indonesia is based on the legal positivism. Therefore, all forms of regulations must be in written form (Lili Rasjidi dan Liza Sonia Rajidi, 2012).

The dimension of the Development Law Theory proposed by Mochtar Kusumaatmadja is one of the legal theories that was established based on the condition of a pluralistic Indonesian society based on Pancasila. This theory was established, developed and was created by Indonesians so that it is relatively suitable when applied to Indonesian society. Furthermore, the Development Law Theory makes law as a means of community renewal, not as a tool for community renewal or as law as a tool of social engineering (Lilik Mulyadi, 2020).

The Law Development Theory proposed by Mochtar Kusumaatmadja is used by the researcher as an Apply Theory to examine the limitation of land tenure rights for individual residences. Furthermore, the researcher will formulate the concept of limiting the control of land rights for residential homes for individuals as a solution in this study.

Proposed Solutions for the Lacuna of Legal Regulations Regarding the Restrictions on Ownership and/or Control of Land Rights for Residential Houses for Individuals

In the absence of legal regulations regarding the limitation of controlling the land rights for residential homes for individuals, customary law should not be anticipated as a source of agrarian law in the event of a legal vacuum. However, in this case, customary law is not able to provide confirmation regarding the regulation regarding the limitation of control over the land rights for individual residences.

As a concrete solution to the issuance of the said government regulation, the researcher recommends that a Government Regulation must be formed in accordance with the mandate of Article 12 of Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Areas.

The solution proposed by the researcher is the application of the triple check system in the preparation of Government Regulations regarding the limitation of control over the land rights for residential houses for individuals in Indonesia. The explanation of the triple check system is as follows:

a. Checking on the application process for land rights for residential houses by the applicant

This process encourages public awareness not to control the land rights for houses in excess of a predetermined limit. Therefore, in the application process, applicants are required to make a written statement which at least contains the following phrases:

"That the applicant is aware that the number of land rights for residential houses controlled to date does not exceed the limit specified in the legislation".

Making a statement containing the phrase above, is not an administrative completeness in the process of applying for the right to a residence. The statement is intended to encourage and/or direct the applicants to check the area or number of land rights for residential houses that have been controlled by the applicant.

Of course, in making the statement, the parties involved in the process of applying for the land rights for residential houses can explain the legal consequences of giving wrong statements in the process of applying for the land rights for the dwelling house. In this case, the addition of a phrase that knows and is aware of all the consequences and risks of making a statement is important so that the applicant for the land rights does not ignore such matters (consequences and risks).

b. Checking the process of registering the land rights for residential houses by the Regency/Municipal National Land Agency Office

In this checking process, the presence of an information system to encourage orderly administration is very much needed. The integrated information system is intended to make it easier for officials of the Regency/Municipal National Land Agency Office to be able to check the parties who control the land above the amount exceeding the limit.

After the said checking process, the applicant for the land rights for the residence who does not exceed the maximum limit has been determined, then the registration process can proceed to the next process, namely the field measurement process and the issuance of a certificate of the land rights.

This process is an anticipatory step from Regency/Municipal Land Office officials so that the parties who apply for the land rights for residential houses to which a certificate of the land rights will be issued do not exceed the maximum limit specified in the legislation.

c. Checking the updating data process periodically

In this process, officials at the Regency/Municipality National Land Agency Offices are required to update the data periodically, either once every year or within the period specified in the laws and regulations (Government Regulations).

Updating the said data can also give advantages for any information obtained from the community, for example in the form of community reports to the Regency/Municipal National Land Agency. In this case, the information obtained from the community through the report can be initial evidence that someone has control the land rights for housing that exceed the maximum limit.

If it is found that people who control the land rights for residential houses exceed the limit, then the competent official of the Regency/Municipal National Land Agency is obliged to reprimand that

person through a written warning. Of course, the mechanism for giving the written warnings must be regulated in detail in the said Government Regulation.

This is to clarify the duties and functions of the Regency/Municipal National Land Agency officials who carry out the warning. Furthermore, the reprimanded persons must provide clarification or further legal remedies, such as immediately transferring and/or relinquishing the land rights for the dwelling house to another party.

According to the researcher, the competent authorities are officials at the local District Attorney's Office who can continue the confiscation process to the District Court office where the land rights for the residence are registered.

The presence of officials at the Regency/Municipal land office is a follow-up action to the use of an integrated system for registration of the land rights in Indonesia. This phase is the best solution to prevent an over limitation of the land rights.

In order for the proposed solution can be fully implemented, the provisions of the said Government Regulation must regulate the follow-up actions of limiting the control of the land rights for individuals. The follow-up action referred to by the researcher is the distribution of land rights that exceed the limit to people who do not yet have a house.

The solution in the form of the issuance of a Government Regulation is expected to be able to fill the lacuna in the legal regulations regarding the limitation of the land rights for residential houses for individuals in Indonesia. The issuance of these regulations becomes an urgency because the existence of customary law which should fill the lacuna of law is unable to overcome the problem of the vacuum of legal regulations which is the object of research by researchers.

Conclusion

The regulation concerning restrictions on the ownership and/or control of land rights in Indonesia has generally been governed under the Basic Agrarian Law and its implementing regulations. However, specific provisions limiting individual ownership and control of residential land remain absent, creating a legal vacuum that potentially enables excessive land accumulation and weakens equitable access to housing for society, particularly for low- and middle-income groups.

As a welfare state, Indonesia has a constitutional responsibility to ensure social justice and provide adequate housing opportunities for all citizens. Therefore, the establishment of Government Regulations concerning limitations on residential land ownership for individuals is urgently needed as a concrete manifestation of the constitutional mandate contained in Article 33 paragraph (3) of the 1945 Constitution.

This study proposes the implementation of a "triple check system" as a preventive and supervisory mechanism in controlling residential land ownership. The proposed system is expected to strengthen legal certainty, improve land administration, prevent excessive land concentration, and support a fairer distribution of residential land ownership in Indonesia. Ultimately, the formation of comprehensive regulations in this area is essential to realizing social welfare, legal justice, and sustainable agrarian governance.

References

- Agustianto dan Celine Tio. "Kajian Hukum Terhadap Sengketa Tanah Ex Eigendom Verporing: Studi Kasus Putusan MA Nomor : 211/PDT.G/2019/PN.AMB", *Justitia: Jurnal Ilmu Hukum dan Humaniora*, Vol. 9 No. 2 Tahun 2022.
- Anil Dawan, "Keadilan Sosial: Teori Keadilan Menurut John Rawls dan Implementasinya Bagi Perwujudan Keadilan Sosial di Indonesia.
- Darmawan Triwibowo dan Sugeng Bahagijo. *Mimpi Negara Kesejahteraan*. Jakarta: Pustaka LP3ES Indonesia, 2006.
- David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78, <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/5601/3191>.
- Eman Ramelan, *Problematika Hukum Hak Milik Atas Satuan Rumah Susun dalam Pembebanan dan Peralihan Hak Atas Tanah*, Cetakan Kedua, Yogyakarta: Aswaja Pressindo, 2015.

- Gouwgioksiong, *Komentar Atas Undang-Undang Perumahan dan Peraturan Sewa Menyewa*, Jakarta: Kinta, 1965.
- Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (30 November 2022): 289, <https://doi.org/10.37253/jjr.v24i2.7280>.
- Johnny Ibrahim. *Teori dan Metode Penelitian Hukum Normatif*, Cetakan Kesatu. Malang: Bayumedia Publishing, 2003.
- John Rawls. "A Theory of Justice", Havard University Press, Cambridge, Massachusetts, 1995, yang diterjemahkan oleh Uzair Fauzan dan Heru Prasetyo, *Teori Keadilan: Dasar-Dasar Filsafat Politik Untuk Mewujudkan Kesejahteraan Sosial dalam Negara*. Yogyakarta: Pustaka Pelajar, 2006.
- Lili Rasjidi dan Liza Sonia Rajidi. *Dasar-Dasar Filsafat dan Teori Hukum*. Bandung: PT. Citra Aditya Bakti, 2012.
- Mochtar Kusumaatmadja dalam Lilik Mulyadi, "Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M: Sebuah Kajian Deskriptis Analitis".
- Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: RajaGrafindo Persada, 2003.
- Sudikono Mertokusumo. *Mengenal Hukum (Suatu Pengantar)*, Edisi Ketiga, Yogyakarta: Liberty, 1991.