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Legal Analysis of Residential Land Ownership Restrictions Under Ministerial Decree 6/1998

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ABSTRACT

Concurrent with economic expansion and demographic growth, land scarcity has intensified, necessitating state intervention to maintain equilibrium among competing stakeholders. The Basic Agrarian Law establishes land reform provisions encompassing ownership restructuring and tenure relationships, with Articles 7 and 17 mandating restrictions to prevent land concentration amongst particular groups. Despite legislative requirements that residential land ownership limitations be codified through Government Regulation, such implementing regulation remains absent. Consequently, the State Minister of Agrarian Affairs/Head of the National Land Agency promulgated Decree Number 6 of 1998, restricting residential land ownership to five parcels not exceeding 5,000 square metres cumulatively. This research employs normative juridical methodology with statute approach, examining regulatory hierarchies and enforcement mechanisms. Analysis reveals that whilst Decree 6/1998 constitutes a regulation pursuant to Law 12/2011 Article 100, fundamental deficiencies compromise its efficacy. The Decree lacks prescribed sanctions for violations, contains no supervisory mechanisms, and inadequately addresses ownership restrictions, applying solely to rights elevation rather than rights transfer mechanisms. Furthermore, hierarchical incongruence exists whereby ministerial decree implements primary legislative mandates absent intermediary Government Regulation as constitutionally required. Land office administrative systems lack comprehensive ownership data, rendering declaration verification practically impossible. These findings corroborate previous scholarship documenting weak enforcement mechanisms whilst revealing novel dimensions concerning hierarchical legitimacy and category-specific regulatory dysfunction. The absence of administrative, civil, or criminal sanctions substantially undermines legal enforcement, rendering residential land ownership restrictions ineffective in preventing ownership concentration and achieving equitable distribution objectives.

Keywords: *Agrarian Law, Enforcement Mechanisms, Land Ownership, Residential Restrictions*

INTRODUCTION

Within the agrarian sphere, land constitutes an integral component of the earth, specifically denoting its surface stratum.¹ The definition of land as a constituent element of the earth finds statutory articulation in Article 4(1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA), which provides that “*Atas dasar hak menguasai dari negara sebagaimana yang dimaksud dalam Pasal 2 ditentukan adanya macam-macam hak atas permukaan bumi yang disebut tanah, yang dapat dipunyai oleh orang-orang, baik sendiri maupun bersama-sama dengan orang-orang lain serta badan-badan hukum*” (on the basis of the State's right to control as stipulated in Article 2, various types of rights over the earth's surface, designated as land, may be held by persons, either individually or collectively, as well as by legal entities).²

Economic expansion coupled with the escalating economic valuation of land resources has precipitated an acute exacerbation of social stratification between those possessing access mechanisms facilitating land and building control exceeding reasonable thresholds and those in the most critical need of land resources yet relegated to marginalised positions.³ Concurrent with trajectories of economic growth, demographic expansion has intensified proportionally, rendering land resources increasingly scarce and finite.⁴ Consequently, the State assumes a pivotal regulatory function in governing and maintaining equilibrium among stakeholders with vested interests in land resources. The UUPA framework establishes provisions for land reform, constituting a comprehensive series of measures encompassing the restructuring of land ownership and control systems, together with attendant legal relationships governing land tenure.⁵

A principal component of the land reform programme concerns land ownership restrictions, specifically prohibiting proprietorship exceeding prescribed statutory limits.⁶ These prohibitions derive their legitimacy from fundamental

¹ Cláudia M. Viana et al., “Agricultural Land Systems Importance for Supporting Food Security and Sustainable Development Goals: A Systematic Review,” *Science of The Total Environment* 806 (February 2022): 150718, <https://linkinghub.elsevier.com/retrieve/pii/S004896972105796X>.

² Urip Santoso, *Hukum Agraria Dan Hak-Hak Atas Tanah* (Jakarta: Kencana Prenada Media, 2010).

³ Maria S W Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi Sosial Dan Budaya* (Jakarta: Penerbit Buku Kompas, 2009).

⁴ Mengistu M. Maja and Samuel F. Ayano, “The Impact of Population Growth on Natural Resources and Farmers’ Capacity to Adapt to Climate Change in Low-Income Countries,” *Earth Systems and Environment* 5, no. 2 (June 16, 2021): 271–283, <https://link.springer.com/10.1007/s41748-021-00209-6>.

⁵ Mutia Zahra and Ery Agus Priyono, “Kepastian Hukum Atas Status Tanah Adat Setelah Berlakunya Undang-Undang Pokok Agraria,” *Legal Standing : Jurnal Ilmu Hukum* 9, no. 1 (January 25, 2025): 131–146, <https://journal.umpo.ac.id/index.php/LS/article/view/10973>.

⁶ Ida Ayu Mas Ratu and Ida Bagus Agung Putra Santika, “IMPLEMENTATION OF THE GRANTING OF LAND OWNERSHIP RIGHTS BY THE STATE FOR FOREIGN CITIZENS UNDER ARTICLE 21 PARAGRAPH 3 OF THE BASIC AGRARIAN LAW,” *Journal of Court and Justice* 3, no. 2 (June 14, 2024): 76–85, <https://journal.jfpublisher.com/index.php/jcj/article/view/546>.

provisions embedded within the land reform framework. Restrictions on excessive land ownership receive codification in Article 7 of the UUPA, which stipulates: “*Untuk tidak merugikan kepentingan umum maka pemilikan dan penguasaan tanah yang melampaui batas tidak diperkenankan*” (in order not to prejudice public interests, ownership and control of land exceeding prescribed limits shall not be permitted).⁷ The elucidation accompanying Article 7 of the UUPA incorporates a critical stipulation, namely that ownership and control of land exceeding prescribed limits shall not be permitted on the grounds that such arrangements prejudice public interests. It is well established that all land rights embody a social function, signifying that land held under any right must confer benefits not exclusively upon the rights holder but equally upon broader public interests.⁸ Subsequently, pursuant to Article 7 of the UUPA, regulations governing maximum and minimum permissible land area limits require establishment. Article 17 of the UUPA mandates the necessity for provisions concerning land ownership area restrictions with the objective of preventing or prohibiting *groot-grondbezit*, denoting the concentration of land holdings exclusively within particular groups or individuals.

Provisions governing land ownership limitations receive further articulation in Article 12 of Government Regulation in Lieu of Law Number 56 of 1960 concerning Determination of Agricultural Land Area, which stipulates that “*maksimum luas dan jumlah tanah untuk perumahan dan pembangunan lainnya serta pelaksanaan selanjutnya dari Peraturan Pemerintah Pengganti Undang-undang ini diatur dengan Peraturan Pemerintah*” (the maximum area and quantity of land for housing and other development purposes, as well as subsequent implementation of this Government Regulation in Lieu of Law, shall be regulated by Government Regulation). Notwithstanding the mandates articulated in both Article 17(2) of the UUPA and Article 12 of Government Regulation in Lieu of Law Number 56 of 1960, wherein further regulation concerning land ownership restrictions for residential purposes was to be codified through Government Regulation, such implementing regulation remains absent to date. In this regard, the absence of express regulatory provisions governing residential land ownership area restrictions has resulted in a regulatory vacuum concerning land ownership limitations, thereby enabling individuals to acquire land rights for residential purposes without definitive quantitative parameters. In response to constraints imposed by finite land availability, the State Minister of Agrarian Affairs/Head of the National Land Agency promulgated Decree Number 6 of 1998 concerning the Granting of Ownership Rights to Land for Residential Purposes. This governmental intervention was undertaken to forestall unrestricted residential land acquisition

⁷ Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang* (Jakarta: Universitas Trisakti, 2019).

⁸ Adelia Safitri and Dr. Sugiharto, “ANALYSIS OF THE SOCIAL FUNCTION OF LAND RIGHTS FOR PUBLIC INTEREST,” *Journal of Court and Justice* 3, no. 3 (August 23, 2024): 104–114, <https://journal.jfpublisher.com/index.php/jcj/article/view/634>.

absent prescribed maximum thresholds for ownership rights grants, which could potentially precipitate land ownership concentration exclusively among particular parties. Such concentration of land holdings by select entities results in increasing numbers of persons lacking residential accommodation due to diminished availability of land suitable for residential purposes.

In this context, a lacuna exists within the legal framework concerning ownership or control restrictions as codified in Articles 7 and 17 of the UUPA. Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998, which regulates restrictions on granting ownership rights to land for residential purposes, appears insufficient to satisfy qualifications concerning land ownership limitations. Indonesian statutory regulations mandate that further provisions concerning residential land ownership restrictions shall be regulated through Government Regulation, yet such implementing regulation remains absent to date. This circumstance necessitates legal analysis concerning restrictions on granting land ownership rights for residential purposes as regulated in Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998, with particular attention to the form of restrictions implemented by the government and its hierarchical position within Indonesia's statutory framework. Given that residential housing constitutes a primary human necessity subsequent to sustenance, ensuring Indonesian citizens' residential housing ownership requires guaranteeing the continuity of land rights upon which such residences are situated.

Recent scholarly discourse on Indonesian agrarian law has illuminated critical deficiencies in land ownership regulation and enforcement mechanisms. Mahfud and Djohan (2024) examined the expansion of investor access to cultivation rights, demonstrating how overlapping regulations between the Job Creation Law and the Basic Agrarian Law create legal uncertainty and exacerbate land ownership inequality between entrepreneurs and communities.⁹ Their analysis reveals that such regulatory contradictions generate higher conflicts in the agrarian sector, contrary to the principle of protection for weak parties enshrined in Indonesian Agrarian Law. This socio-legal analysis emphasises that policy divergence between laws designed to facilitate entrepreneurial convenience and those prioritising strategic land management fundamentally undermines equitable access to land resources. Yendri and Israhadi (2025) investigated the dynamics of land ownership and asynchronous agrarian regulations as triggers of land conflicts and social injustice in Indonesia, employing a comprehensive examination of regulatory frameworks governing land ownership.¹⁰ Their research identified that weak

⁹ Muh.Afif Mahfud and Naufal Hasanuddin Djohan, "The Expansion of Investor Access to Cultivation Rights: A Socio-Legal Analysis on Agrarian Injustice in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 24, no. 2 (December 30, 2024): 55–67, <https://shariajournals-uinjambi.ac.id/index.php/al-risalah/article/view/1500>.

¹⁰ Agusra Yendri and Evita Isretno Israhadi, "The Dynamics of Land Ownership and the Asynchrony of Agrarian Regulations as Triggers of Land Conflicts and Social Injustice in Indonesia," *Jurnal*

enforcement mechanisms, overlapping jurisdictional authorities, and regulatory fragmentation constitute primary impediments to effective land governance. The study documented 8,959 cases of land disputes nationwide, with 56 per cent occurring between individuals and 15 per cent between persons and legal entities, underscoring the systemic nature of land tenure conflicts. Furthermore, their analysis demonstrated that the absence of harmonised cross-sectoral regulations and inadequate institutional capacity within the Agrarian Reform Task Force and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency substantially compromise the effectiveness of agrarian reform initiatives. Their findings advocate for multidimensional approaches integrating policy reform, community engagement, and technological advancement to achieve equilibrium between conservation objectives and economic development imperatives.

Whilst existing scholarship has extensively documented land ownership inequality, regulatory overlaps, and enforcement challenges within Indonesia's agrarian system, a critical analytical lacuna persists concerning the specific juridical efficacy of ministerial decrees in implementing land ownership restrictions for residential purposes. Previous studies have predominantly focused on cultivation rights, large-scale land conflicts, and agrarian reform implementation, yet the legal analysis of residential land ownership restrictions as governed by ministerial decree remains substantially underexplored. Specifically, the hierarchical legitimacy of Decree Number 6 of 1998 within Indonesia's statutory framework and its enforcement efficacy absent prescribed sanctions constitute unexamined dimensions requiring scholarly attention. This research addresses this gap by conducting a comprehensive legal analysis of the regulatory framework governing residential land ownership restrictions, with particular emphasis on examining the hierarchical positioning of the Ministerial Decree within Indonesia's legal system and assessing its practical enforcement mechanisms. The novelty of this study resides in its focused examination of the juridical relationship between land reform mandates codified in primary legislation, specifically the UUPA, and their implementation through subordinate regulatory instruments, specifically evaluating whether ministerial decrees constitute adequate legal mechanisms for effectuating land ownership restrictions absent parliamentary authorisation through Government Regulation. Accordingly, this research addresses two principal questions. First, how does Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998 regulate restrictions on granting ownership rights to land for residential purposes? Second, what constitutes the legal analysis of restrictions on granting land ownership rights for residential purposes pursuant to Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998?

Greenation Sosial dan Politik 3, no. 4 (November 24, 2025): 1046–1054, accessed December 18, 2025, <https://greenationpublisher.org/index.php/JGSP/article/view/529>.

RESEARCH METHODOLOGY

This research employs a normative juridical methodology, wherein law is conceptualised as that which is codified within statutory regulations, commonly designated as law in books.¹¹¹² This methodological framework operates upon the premise that law constitutes a system of norms and rules serving as behavioural standards for human conduct deemed proper and appropriate within societal contexts. The normative juridical approach facilitates systematic examination of legal provisions through doctrinal analysis, enabling the researcher to evaluate the internal consistency, hierarchical coherence, and substantive adequacy of regulatory instruments governing land ownership restrictions for residential purposes.¹³

The research utilises a statute approach as its principal analytical framework, conducting comprehensive examination of relevant legislative and regulatory instruments including the Basic Agrarian Law (UUPA), Government Regulation in Lieu of Law Number 56 of 1960, Law Number 12 of 2011 concerning Formation of Legislative Regulations, and particularly Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998. This approach enables systematic legal analysis through interpretation of statutory provisions, evaluation of regulatory hierarchies, and assessment of normative relationships between primary and subordinate legislation. The analytical process encompasses examination of legislative intent, regulatory implementation mechanisms, and juridical efficacy of existing legal frameworks in achieving stated policy objectives concerning equitable land distribution and prevention of excessive land ownership concentration.

RESULT AND DISCUSSION

Regulatory Framework Governing the Granting of Land Ownership Rights for Residential Purposes Pursuant to Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998

A residence constitutes a building structure functioning as a habitable dwelling, a medium for family development, a reflection of the occupant's dignity and honour, and an asset for its proprietor. Pursuant to Article 43(1) of Law Number 1 of 2011 concerning Housing and Residential Areas, construction of detached houses, terrace houses, or apartment buildings may be undertaken upon land held under (a) ownership rights, (b) building use rights, whether over state land or land

¹¹ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta: Prenada Media Group, 2016).

¹² Dr. Suyanto Suyanto, *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan* (Gresik: Unigress Press, 2022).

¹³ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Depok: Raja Grafindo Persada, 2020).

held under management rights, or (c) use rights over state land. Ownership rights to land receive statutory recognition in Article 16(1)(a) of the UUPA, with specific provisions governing such rights codified in Articles 20 through 27 of the UUPA. Ownership rights constitute hereditary, strongest, and most complete rights that may be held by persons over land, subject to the provisions of Article 6.¹⁴

Article 22 of the UUPA establishes that ownership rights to land may arise through three mechanisms. First, ownership rights may arise pursuant to customary law through land clearing, specifically forest clearance, or through natural accretion processes resulting in new land formation. Second, ownership rights may arise through governmental determination, whereby such rights are granted following application for ownership rights over state land. Applications for land ownership rights are submitted by applicants to the Head of the National Land Agency through the Head of the District or Municipal Land Office within whose territorial jurisdiction the land in question is situated. Third, ownership rights may arise by statutory provision, wherein legislation determines the creation of ownership rights. The emergence of ownership rights through statutory provision receives regulation in Articles I, II, and VII(1) of the conversion provisions of the UUPA. Conversion of land rights denotes the transformation of land rights consequent upon the entry into force of the UUPA.¹⁵

Regulation concerning the granting of land ownership rights for residential purposes as articulated in Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998 stipulates in Article 1(1) that, first, building use rights or use rights to land for residential purposes belonging to individual Indonesian citizens with an area of 600 square metres or less shall, upon application by the concerned party, be extinguished and regranted to the former rights holder with ownership rights. Second, land held under building use rights or use rights for residential purposes belonging to individual Indonesian citizens with an area of 600 square metres or less whose tenure period has expired and which remains in possession of the former rights holder shall, upon application by the concerned party, be granted as ownership rights to the former rights holder.

Article 2 prescribes that applications for registration of ownership rights as specified in Article 1 must be submitted to the District or Municipal Land Office, accompanied by (a) the relevant land certificate, (b) evidence of land use for residential purposes comprising either a photocopy of the Building Construction Permit indicating that the structure is utilised for residential purposes or a certificate from the Village or Sub-district Head confirming residential use in instances where the Building Construction Permit has not been issued by the competent authority, (c) a photocopy of the most recent Land and Building Tax Payment Receipt (specifically for land areas of 200 square metres or greater), (d) proof of applicant

¹⁴ Urip Santoso, *Hukum Perumahan* (Prenada Media, 2017).

¹⁵ *Ibid.*

identity, and (e) a declaration from the applicant stating that upon acquisition of the ownership rights for which registration is sought, the concerned party shall possess ownership rights to land for residential purposes not exceeding five parcels with a cumulative area not exceeding 5,000 square metres, utilising the form provided in Appendix II of this Decree.

Regulations concerning restrictions on land ownership rights for residential purposes pursuant to Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998 were previously governed by Ministerial Decree Number 59/DDA/1970 concerning Simplification of Regulations on Permits for Transfer of Land Rights. The provisions therein were characterised as restrictive insofar as Article 2(2) stipulated that individuals were limited to owning five land parcels, with acquisition of additional land contingent upon obtaining permission from the local land office.¹⁶ However, this regulation contained a lacuna inconsistent with land ownership restriction principles, specifically concerning the permit requirement for acquisition of land parcels exceeding the prescribed limit. In other words, whilst Ministerial Decree Number 59/DDA/1970 imposed restrictions on one hand, it simultaneously created an avenue enabling individuals to acquire unlimited land holdings provided that applications for such permits received approval from the land office.¹⁷

Consequently, in light of these circumstances, Ministerial Decree Number 59/DDA/1970 was revoked and declared no longer valid. Following its revocation, the regulation presently governing restrictions on land ownership rights for residential purposes is Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998 concerning Restrictions on Granting Land Ownership Rights for Residential Purposes, which entered into force in 1998. The promulgation of the policy restricting grants of ownership rights for residential purposes pursuant to Decree Number 6 of 1998 was predicated upon two considerations. First, residential housing constitutes a primary necessity subsequent to sustenance, and consequently, to guarantee Indonesian citizens' ownership of residential housing, continuity of land rights upon which such residences stand must be assured. Second, in connection therewith, it is necessary to enhance the granting of ownership rights to land for residential purposes still held by individual Indonesian citizens under building use rights and use rights.

These restrictions apply not solely to rights elevation but equally to limits concerning the land area subject to application and the area owned, as stipulated in Article 4(2) and (3), specifically limiting land area to a maximum of 2,000 square metres and requiring applicant declarations that ownership of land with ownership

¹⁶ Firly Irhamdani, "Analiss Yuridis Terhadap Batas Maksimum Kepemilikan Tanah Hak Milik Non Pprtanian Menurut Hukum Pertanahan Nasional = Legal Analysis against Ownership Limit for Non-Agricultural Land Ownership According to the National Land Law" (Universitas Indonesia, 2012), accessed December 19, 2025, <https://lib.ui.ac.id>.

¹⁷ Ibid.

rights for residential purposes does not exceed five parcels with a cumulative land area not exceeding 5,000 square metres. Furthermore, Decree Number 6 of 1998 establishes criteria for granting ownership rights to land for residential purposes as follows: first, ownership rights for residential purposes are granted for building use rights held by individual Indonesian citizens; second, such grants apply to building use rights holders with land areas of 600 square metres or less still in effect and held by individual Indonesian citizens; and third, ownership rights are granted to holders of building use rights with areas of 600 square metres or less held by individual Indonesian citizens whose tenure period has expired but which remain in possession of the former building use rights holder.

Legal Analysis of Restrictions on Granting Land Ownership Rights for Residential Purposes Pursuant to Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998

Restrictions on granting land ownership rights are articulated in a ministerial decree, specifically Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998. Pursuant to Article 7(1) of Law Number 12 of 2011 concerning Formation of Legislative Regulations, the types and hierarchy of legislative regulations comprise (a) the 1945 Constitution of the Republic of Indonesia, (b) Decrees of the People's Consultative Assembly, (c) Laws or Government Regulations in Lieu of Laws, (d) Government Regulations, (e) Presidential Regulations, (f) Provincial Regulations, and (g) District or Municipal Regulations. Article 7(2) of Law Number 12 of 2011 stipulates that “*Kekuatan hukum Peraturan Perundang-undangan sesuai dengan hierarki sebagaimana dimaksud pada ayat (1)*” (the legal force of legislative regulations corresponds to the hierarchy as specified in paragraph (1)).

Subsequently, the elucidation of Article 8(1) governs types of legislative regulations beyond those specified in Article 7(1), namely regulations established by the People's Consultative Assembly, House of Representatives, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, Bodies, Institutions, or equivalent Commissions formed pursuant to legislation, Provincial Regional House of Representatives, Governors, District or Municipal Regional House of Representatives, Regents or Mayors, Village Heads, or equivalent officials. Such legislative regulations are recognised and possess binding legal force provided they are mandated by higher legislative regulations or formed pursuant to authority. Concerning ministerial authority in legislative regulation formation, two types may be established by Ministers, namely Ministerial Regulations and Ministerial Decrees.

According to Jimly Asshiddiqie in his work concerning legislation, Indonesia presently recognises Ministerial Regulations that function as legislative regulations possessing general binding effect, designated as Decrees (Ministerial Decrees).¹⁸ Regarding Ministerial Decrees of a regulatory nature, reference must be made to Article 100 of Law Number 12 of 2011 concerning Formation of Legislative Regulations, which provides that “*Semua Keputusan Presiden, Keputusan Menteri, Keputusan Gubernur, Keputusan Bupati/Walikota, atau Keputusan pejabat lainnya sebagai dimaksud dalam Pasal 97 yang sifatnya mengatur, yang sudah ada sebelum Undang-undang ini berlaku, harus dimaknai sebagai peraturan, sepanjang tidak bertentangan dengan Undang-undang ini*” (all Presidential Decrees, Ministerial Decrees, Gubernatorial Decrees, Regent or Mayoral Decrees, or Decrees of other officials as specified in Article 97 that are regulatory in nature and existed prior to the entry into force of this Law must be construed as regulations, provided they do not conflict with this Law).

Decisions of a regulatory and determinative character may be distinguished by examining the substance or content of each. Decisions of a general nature typically regulate, whilst decisions of an individual, concrete nature typically contain determinations. Following the provision of Article 100 of Law Number 12 of 2011 stating that “*Semua Keputusan Presiden, Keputusan Menteri, atau pejabat lainnya yang dimaksud pada Pasal 97 yang sifatnya mengatur, yang sudah ada sebelum Undang-Undang Nomor 21 Tahun 2011 ini berlaku, maka harus dimaknai sebagai peraturan, sepanjang tidak bertentangan dengan Undang-Undang ini*” (all Presidential Decrees, Ministerial Decrees, or other official decrees as specified in Article 97 that are regulatory in nature and existed prior to the entry into force of Law Number 12 of 2011 must be construed as regulations, provided they do not conflict with this Law), all decisions promulgated by the President, Ministers, Governors, Regents or Mayors, or other officials prior to Law Number 12 of 2011 that are regulatory in nature are no longer designated as decrees but rather as regulations.

Decree of the Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998 may consequently be construed as a regulation based upon several considerations. First, Decree Number 6 of 1998, which entered into force on 26 June 1998, predates Law Number 12 of 2011. Second, it constitutes a Decree promulgated by a Minister, specifically the State Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. Third, it regulates restrictions on granting land ownership rights for residential purposes, possessing general and regulatory characteristics. Fourth, pursuant to the closing provision of Article 100

¹⁸ Amrie Hakim, “Perbedaan Antara Peraturan Menteri Dengan Keputusan Menteri,” *Klinik Hukumonline*, last modified January 25, 2012, accessed December 19, 2025, <https://www.hukumonline.com/klinik/a/perbedaan-antara-peraturan-menteri-dengan-keputusan-menteri-lt4f1a24ebf2c43/>.

of Law Number 12 of 2011, Decree Number 6 of 1998 must be construed as a regulation.¹⁹

Examining the elucidation of Article 8(1) of Law Number 12 of 2011, Ministerial Regulations constitute regulations established by Ministers in conducting governmental affairs based upon subject matter. This signifies that Ministerial Regulations are equally formed pursuant to authority in conducting governmental affairs in accordance with legislative regulations. A critical consideration in legislative regulation formation is the scope of regulation mandated to ensure that regulations promulgated do not exceed conferred authority.²⁰ Regulation concerning the granting of land ownership rights for residential purposes encompasses restrictions on ownership of such rights by citizens as mandated in Articles 7 and 17 of the UUPA, wherein subject matter concerning community rights constitutes legislative subject matter. Pursuant to Article 5(2) of the 1945 Constitution, “*Peraturan Pemerintah merupakan peraturan yang dibuat dan ditetapkan oleh Presiden untuk menjalankan ketentuan dalam Undang-Undang*” (Government Regulations constitute regulations promulgated and established by the President to implement provisions of Laws). Subject matter contained in Government Regulations corresponds to Article 12 of Law Number 12 of 2011, stating that “*materi muatan Peraturan Perundang-undangan berisi materi untuk menjalankan Undang-Undang sebagaimana mestinya*” (the content of Legislative Regulations comprises subject matter for implementing Laws as appropriate).

According to A. Hamid S. Attamimi, characteristics of Legislative Regulations include the following: (a) they are formed subsequent to provisions in Laws, (b) they do not contain criminal sanction provisions if the relevant Law equally does not regulate criminal sanctions, (c) their provisions may not add to or diminish provisions in the relevant Law, (d) they may be formed notwithstanding the absence of express mention in Law provisions, and (e) they contain provisions consisting of regulations or combinations of regulations and determinations. In other words, Legislative Regulations constitute further regulation of Laws; consequently, Government Regulations constitute further regulation of Law provisions, whether expressly stated or otherwise. In this regard, compared with Ministerial Regulations or Ministerial Decrees, Ministerial Regulations or Ministerial Decrees (of a regulatory nature) serve to provide (a) general regulation in governmental administration within their respective fields, (b) further regulation

¹⁹ Dina Fitriana, Herlindah Herlindah, and Setiawan Wicaksono, “Analisis Yuridis Pembatasan Pemberian Hak Milik Atas Tanah Untuk Rumah Tinggal,” *Warkat* 3, no. 2 (December 5, 2023): 87–103, <https://warkat.ub.ac.id/index.php/warkat/article/view/46>.

²⁰ Suhariyono, “Peraturan Menteri Dan Keputusan Menteri,” *Jurnal Legislasi Indonesia* 1, no. 2 (2004).

of Presidential Regulations, (c) further regulation of Laws expressly stating such, and (d) further regulation of Government Regulations expressly stating such.²¹

Consequently, Ministerial Regulations or Ministerial Decrees (of a regulatory nature) constitute further regulation of Presidential Regulations. Where Ministerial Regulations or Ministerial Decrees (of a regulatory nature) provide further regulation of Law or Government Regulation provisions, such provisions must expressly state that further regulation shall be governed by Ministerial Regulations or Ministerial Decrees (of a regulatory nature). Regulation concerning restrictions on granting ownership rights for residential purposes as governed by Decree Number 6 of 1998 should properly be regulated through Government Regulation. Government Regulations constitute further elaboration of Laws, whereas the content of Ministerial Decrees construed as Regulations addresses subject matter designated by Government Regulations for implementing Laws or Presidential Regulations. Given that subject matter concerning land rights ownership restrictions as mandated in Articles 7 and 17 of the UUPA constitutes legislative content lacking further regulation that should properly be governed by Government Regulation pursuant to provisions concerning Government Regulation content as further regulation of Law provisions, and recognising that further regulation of Laws should not be undertaken through Ministerial Regulations or Ministerial Decrees, a regulatory incongruence exists.

The aspect of restrictions on granting land ownership rights regulated in Decree Number 6 of 1998 does not comprehensively address land ownership rights restrictions. Several lacunae exist in this regard. Restrictions on granting ownership rights, whether through rights elevation from building use rights or use rights to ownership rights or through applications for ownership rights over state land, are implemented subject to requirements including declarations prescribed by the Decree. The declaration states that upon acquisition of the ownership rights sought, the applicant shall possess land ownership rights for residential purposes not exceeding five parcels with a cumulative land area not exceeding 5,000 square metres. However, the rationale underlying this restriction to five parcels with a cumulative area not exceeding 5,000 square metres receives no further explanation in the Decree.

Subsequently, land offices must verify the accuracy of such declarations. However, given that the land office administrative system contains no data concerning the number and location of land parcels owned by each individual, the absence of such data substantially impedes land office capacity to verify applicant declarations. Decree Number 6 of 1998 solely regulates restrictions applicable to rights elevation, specifically from building use rights or use rights to ownership rights, and applications for grants of ownership rights over state land. This signifies

²¹ Maria Farida Indrati, *Ilmu Perundang-Undangan: Proses Dan Teknik Pembentukannya* (Yogyakarta: Kanisius, 2017).

that where individuals acquire ownership rights through rights transfer mechanisms, such as through sale and purchase transactions, the prescribed restrictions cannot be applied. Consequently, for individuals acquiring ownership rights through rights transfer, no clear restrictions exist within legislative provisions.

Furthermore, Decree Number 6 of 1998 contains no provisions concerning sanctions where individuals possess land ownership rights for residential purposes exceeding the limits prescribed in Article 4 of the Decree, nor does it establish supervisory mechanisms whereby land offices monitor ownership rights for residential purposes exceeding prescribed limits. Ideally, legislative regulations governing restrictions should incorporate sanction provisions; accordingly, Decree Number 6 of 1998, which regulates restrictions on land ownership rights for residential purposes, should equally incorporate provisions concerning sanctions and supervision. Consequently, Decree Number 6 of 1998 fails to address mandates articulated in Articles 7 and 17 of the UUPA concerning land ownership restrictions, specifically regarding non-agricultural land ownership. Based upon Article 12 of Government Regulation in Lieu of Law Number 56 of 1960, implementing Government Regulation remains absent to date. Alternatively stated, Decree Number 6 of 1998 lacks efficacy due to the absence of explicit and robust sanctions for violations of maximum limits. Absent definitive sanctions, whether administrative, civil, or criminal in nature, provisions within the Decree remain weak in terms of legal enforcement. The National Land Agency, for instance, may merely postpone certification processes or recommend rights transfer without legal consequences that are compelling or binding. This circumstance substantially impedes the regulation's capacity to achieve its objectives optimally.

The findings of this research illuminate critical dimensions of regulatory enforcement deficiencies that both corroborate and extend previous scholarly analyses whilst revealing novel aspects requiring further examination. The identification of weak enforcement mechanisms and absence of prescribed sanctions in Decree Number 6 of 1998 directly supports the conclusions advanced by Yendri and Israhadi (2025), who documented that inadequate enforcement frameworks and regulatory fragmentation constitute primary impediments to effective land governance in Indonesia.²² Their finding that weak institutional capacity within the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency compromises agrarian reform effectiveness receives specific validation through this study's demonstration that land offices lack comprehensive data systems to verify ownership declarations, thereby rendering restriction provisions practically unenforceable. Furthermore, this research extends the analysis of Mahfud and Djohan (2024) concerning regulatory overlaps and legal

²² Yendri and Israhadi, "The Dynamics of Land Ownership and the Asynchrony of Agrarian Regulations as Triggers of Land Conflicts and Social Injustice in Indonesia."

uncertainty by identifying a previously unexamined dimension, specifically the hierarchical incongruence whereby ministerial decrees attempt to implement primary legislative mandates absent the intermediary Government Regulation explicitly required by the UUPA framework.²³ Whilst Mahfud and Djohan examined contradictions between the Job Creation Law and Basic Agrarian Law affecting cultivation rights, this study reveals analogous regulatory dysfunction operating at a different hierarchical stratum, demonstrating that the absence of implementing Government Regulations creates enforcement vacuums even where ministerial decrees exist. However, this research diverges from prior studies through its focused examination of residential land ownership restrictions as distinct from agricultural or cultivation contexts, revealing that enforcement challenges persist across multiple land tenure categories yet manifest through distinct regulatory mechanisms requiring category-specific interventions rather than generalised reform approaches.

CONCLUSION

The regulatory framework governing restrictions on granting land ownership rights pursuant to Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998 establishes limitations applicable to rights elevation, specifically conversion from building use rights or use rights to ownership rights, where such land is utilised for residential purposes. Additionally, restrictions are implemented through requirements mandating submission of prescribed declarations stating that applicants possess land ownership rights for residential purposes not exceeding five parcels with a cumulative land area not exceeding 5,000 square metres inclusive of the ownership rights for which application is sought.

However, legal analysis reveals fundamental deficiencies in this regulatory framework. Whilst Decree Number 6 of 1998 possesses regulatory characteristics and may consequently be construed as a regulation pursuant to Article 100 of Law Number 12 of 2011, its provisions governing restrictions on granting land ownership rights for residential purposes, which encompass land ownership limitations, contain no sanction provisions applicable where individuals possess land ownership rights for residential purposes exceeding prescribed limits. The absence of administrative, civil, or criminal sanctions substantially undermines enforcement efficacy, rendering the Decree weak in terms of legal implementation. This regulatory deficiency persists notwithstanding the mandates articulated in Articles 7 and 17 of the UUPA and Article 12 of Government Regulation in Lieu of Law Number 56 of 1960, which require that land ownership restrictions be

²³ Mahfud and Djohan, “The Expansion of Investor Access to Cultivation Rights: A Socio-Legal Analysis on Agrarian Injustice in Indonesia.”

governed through Government Regulation, implementing regulation that remains absent to date.

RECOMMENDATIONS

To effectuate the mandates codified in Articles 7 and 17 of the UUPA, the government should promulgate comprehensive further regulation concerning land ownership rights restrictions, preferably through Government Regulation as statutorily mandated, to prevent concentration of land ownership rights exclusively among particular individuals or entities. Such regulation must incorporate definitive sanction provisions, robust verification mechanisms, and comprehensive data management systems enabling effective monitoring of ownership patterns across multiple jurisdictions. Furthermore, to facilitate law enforcement and ensure compliance with restrictions on granting land ownership rights for residential purposes as governed by Decree Number 6 of 1998, supplementary regulation establishing sanction provisions for individuals possessing land ownership rights for residential purposes exceeding prescribed limits should be promulgated. These sanctions should encompass administrative measures including certification suspension or revocation, civil penalties proportionate to the extent of violations, and where appropriate, criminal sanctions for egregious or repeated violations. Additionally, institutional capacity enhancement within the National Land Agency through development of integrated land ownership databases and strengthened inter-agency coordination mechanisms would substantially improve enforcement efficacy, thereby advancing the fundamental objectives of equitable land distribution and prevention of excessive ownership concentration as articulated in Indonesia's agrarian reform framework.

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