

Transformation of Regulatory Efforts Land Tenure and Land Ownership in Indonesia

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ARTICLE INFO	ABSTRACT
<p>Keywords: Ownership; Regulated; Tenure</p> <p>How to cite: Putri, Sri Dewi Marlina., Et., Al. (2025). Transformation of Regulatory Efforts Land Tenure and Land Ownership in Indonesia. <i>Veteran Law Review</i>. 8(2). 252-264.</p> <p>Received:2025-11-14 Revised:2025-12-05 Accepted:2025-12-11</p>	<p>Land is one of the potential agrarian resources. Land can reflect a social status of person which increasingly the land that someone have, so status social in society is higher. This causes high inequality of land ownership in Indonesia with proven that the Gini index ratio is almost to 0,48. Several regulations have been issued to address the inequality of land ownership. The research focuses on the study of land tenure dan land ownership that has been regulates in Indonesia, regulation in the agrarian statue and job creation statue. This study uses a normative juridical approach with an emphasis in analysis on positive legal norm in laws and regulation. The result show that existing regulations have not answered the main problem of inequality land ownership and there are no comprehensive norms which restrictions of national quantitative land tenure and land ownership, so that has the potential to create a monopoly on land tenure. Therefore, The Government needs to reformulate the regulation of the control and ownership of agricultural and non-agricultural land for both individuals and legal entities.</p>

1. Introduction

Land has a strategic position as a resource in the national agrarian legal system because it is directly related to basic human needs. In the constitution of Indonesia, it is affirmed that the Government has the authority to control and utilize Indonesia's earth, water, and natural resources for achievement of people's prosperity as set forth in article 33 paragraph (3) of the constitution of Indonesia. In accordance with these provisions, law number 5 of 1960 concerning basic regulation on agrarian principles (UUPA) mention that land has a social function and its use must pay attention to the public interest, social justice, and environmental sustainability (Sari, 2021).

The relationship between humans and land is a nature that covers ownership of the land itself. Naturally, Land can reflect a social status of person which the large number of land ownership is often a determinant of a person's high and low social position in society. In addition, land ownership also contains social functions that cannot be separated. (Sutedi, 2006).

In 2024, the context of land ownership in Indonesia in the Gini ratio index of 0,48 that means the land tenure and ownership in Indonesia reaches 0,48 which means that about 1% entities in Indonesia has 48% of agrarian resources, lan, and space. (Nirmawati et al., 2025).

This number shows that the level of inequality is still high in the distribution of land ownership, which is most of the land is controlled by a few entities while most people only have limited access to land. This affects human life, including increasing agrarian conflicts, social inequality, and injustice in access to natural resources.

Zimmerman argued that land tenure concentrated in a handful of entities gave rise to social irresponsibility, because the owner tends to benefit solely from the increase in land value that arises along with population growth. Therefore, the dominance of the existing market due to the existence of a monopoly on land ownership is considered to be contrary to legal principles (J.L.Zimmerman, 1955).

Limited access to land ownership is also evident in the oil palm plantation sector in Indonesia. In 2019, the total area of oil palm plantations reached 14,595,579 hectares. This inequality can be seen from the composition of the land owner. There are 3 groups of owners, namely farmers, state companies, and private companies. Farmers (99,92) only controls 41,35% of plantation land, state companies (0,01%) only controls 4,23% of plantation land, and private companies (0,07%) actually controls 54,2% of plantation land. (Carolina et al., 2023).

In context plantation business permission, the maximum limit of land area that can be grants permits for each commodity has been regulated. Refer to article 8, article 17 and annex V minister of agriculture number 98 of 2013, any company or group of companies' plantations must have a plantation business license. The maximum limit of land area allowed for palm oil, tea, sugarcane each of them is as wide as 100.000 hectares, 20.000 hectares, and 150.000 hectare (Peraturan Menteri Pertanian Nomor 98 Tahun 2013 Tentang Perizinan Usaha Perkebunan, 2013).

This data shows that a handful of private corporate entities control most of the national agrarian resources in the plantation sector, which is substantively contrary to the spirit of the national constitution. The provisions in Article 33 paragraph (3) emphasize that natural resource management must be directed at the creation of social justice and people's welfare, not solely for the benefit of a few large private companies.

This constitutional principle is implemented juridically through the UUPA, especially Article 2 paragraph (2), which explains the role of the state as an entity that can regulate the legal relationship between human beings as the subject of rights and land as the object of rights, in addition, it is also to regulate the allocation of land use and legal acts on the land.

The right to control by the State includes the authority to set policies (*beleid*); performing administrative actions (*bestuutsdaad*); make rules (*regelendaad*); carrying out management (*beheersdaad*); and carry out the supervisory function (*toezichthoudensdaad*) (Widjayanto, 2025).

Within the framework of the national land law system, the urgency of regulating the ownership of land rights has been explicitly affirmed in the UUPA. One form of implementing regulation that reflects the implementation of the UUPA regarding maximum and minimum limits of control and ownership of agricultural land is regulated in Article 1 paragraph (1) of a substitute statue Number 56 of 1960 and the regulation of non-agricultural land ownership have been regulated in the Decree of the Minister of Agrarian/Head of National Land Company Number 6 of 1998.

The non-optimal arrangement of land tenure and ownership, especially for the agricultural sector and the absence of a non-agricultural land tenure and ownership arrangement, has provided ample space for speculators of land. In practice, land is no longer positioned as an agrarian resource that has a social function, but rather becomes an investment commodity that is hoarded to obtain economic benefits solely through a progressive increase in land value without direct utilization.

Speculation on land ownership encourages massive land ownership by a small number of entities, often without productive management. The land was left idle land with the aim of waiting for a surge in market value. As a result, there is a distortion of the social function of the land, hampered public access to land, and a structural deterioration of agrarian inequality and causes many disputes, conflict, and land cases. On the other side, culture of the community that considers land as an economic and investment object, the gap in ownership inequality has widened. The current laws and regulations have not been effective in suppressing land ownership inequality. As a result, the

concentration of land ownership still takes place both by individuals and corporations, land is controlled by a handful of elites, both individuals and legal entities.

Therefore, this research focuses on the discussion of the transformation of land tenure and ownership as regulated in the UUPA and its copy deed, as well as land tenure and ownership regulated in the UUCK and its copy deed.

2. Method

The normative juridical approach focuses its study on the positive legal norms contained in various legislative products, legal principles, and legal theoretical frameworks that have been established in academic practice and discourse. This study is carried out by examining normative legal material, namely legal sources that contain principles and regulations that formally have binding power and are relevant in social dynamics.

This paper focuses on the legislative approach, which is an approach that refers to legislation and involves an analysis of the form of laws and regulations related to legal issues related to land tenure and ownership and the substance of the regulation in order to understand the normative basis that governs it (Marzuki, 2005).

3. Analysis or Results

3.1. Land Tenure and Ownership in the UUPA and Copy Deed

Theory of land ownership stems from two fundamental assumptions that are the basis of Indonesian Culture Law, known as "*beschikkingsrecht*". 1st assumption provides the understanding that "only individuals who are part of a legal community have the capacity to become the absolute owner of land within the jurisdiction of that community". This premise is in line with the essential principles that define the concept of "*beschikkingsrecht*" in culture agrarian theory. In line with that, the second assumption is related to the doctrines and principles that govern the evolution of land rights and the dynamics of agrarian relations within the framework of indigenous culture.

Property rights derived from customary law norms have been confirmed by the UUPA. This statement indicates that there is a solid philosophical foundation, both in terms of principles, doctrines, and theories, derived from national values and the official legal provisions in the 1945 constitution. This basis opens opportunities to formulate a theory of land ownership with a "de facto-de jure" nature under the National Agrarian

Law. Thus, the establishment of a "de facto-de jure" theory of land ownership as a substitute for the theory of "*eigendom*" and "*domeinverklaring*" of Dutch colonial heritage is a valid step. This change is due to the presence of the firm legal legitimacy, both in terms of constitution and philosophy, in line with the fundamental principles of the nation and the State of the Republic of Indonesia (Urip Santoso, 2005).

The right to land tenure is always accompanied by certain obligations and limitations that must be complied with by the subject of the land ownership rights. The type of land rights regulated in the land law system serves as an indicator of the difference in the rights of tenure. The perspective on land tenure can be reviewed from the private and public aspects (Urip Santoso, 2005). From a juridical point of view, land tenure refers to the ownership of rights that are recognized and legally protected, which usually authorize the owner to use the land directly.

The concepts of physical or juridical ownership have different meanings. If it is said to be physical ownership, it means the direct control of the land by the subject of rights, while juridically it means possession based on written evidence recognized by law (Zefanya & Lukman, 2022).

The classification of land tenure rights in the land law system consists of 2 (two) main categories (Urip Santoso, 2005)

a. Land tenure rights as a legal institution.

Land tenure rights in this category are abstract and are not specifically related to land objects or legal subjects (individual or legal entity) who owns it. The principles of regulating land tenure rights include:

- 1) The term of land tenure of right is relevant;
- 2) Definition of coverage title, including regulations regarding permits, obligations, prohibitions for rights holders, and duration of control;
- 3) Provisions regarding the legal subject to which the law is entitled, including who is eligible to become a rights holder and the requirements that must be met;
- 4) Controlled land object settings.

b. The authority to control land as a substantial legal relationship.

This authority to control land has been attributed to a specific unit of land as its object, and individual or corporate entities as subjects or rights holders. The rules governing the authority to control the land include:

- 1) The determination of its formation becomes a concrete legal interaction, with the nomenclature or specification of certain land control authority;
- 2) Arrangements regarding its encumbrance with other authorities;

- 3) Arrangements regarding its transfer to a third party;
- 4) Arrangements regarding its termination;
- 5) Arrangements regarding its validation.

Linear land ownership with effective land ownership. Effective control means that the land is used and controlled de facto by the landowner or subject who has a legal correlation with the land with legality in the form of a land rights certificate (Wiradi, 1989).

Regulations regarding land ownership and tenure are explained in Article 7 of UUPA, which reads that "to avoid state losses, excessive ownership and tenure of land is not allowed. Further, Article 17 describes that there will be a limit on the maximum and/or minimum area of land that can be controlled by each family or corporation. The arrangement will be realized through legislation soon. The Government has a responsibility to supervise and prevent the practice of land ownership monopolies, both by individuals and legal entities.

The implementation of the mandate of the UUPA was issued in Lieu of Law Regulation Number 56 of 1960. This regulation sets the maximum and minimum limits of agricultural land per person or family and the acquisition of land belonging to a person who exceeds the limit with a compensation mechanism to be distributed to landless farmers. The time of implementation of the regulation currently is because many farmers in Indonesia are landless farmers, meanwhile, on the other hand, there are also farmers who control agricultural land with very extensive ownership as the background for the issuance of the regulation. The main purpose of the regulation at that time was to distribute land to farmers who did not have land, which the land to be distributed comes from land owned by someone in excess. Restrictions on tenure and ownership are designed for farmer households. The main provisions are:

1. Agricultural land that can be owned is not more than 20 hectares for rice fields, dry land, or both;
2. Efforts to fulfill so that farmers can own land is the responsibility of the Government, Therefore, the minimum land ownership limit is set at 2 hectares and is not allowed to transfer land rights that may result in land ownership with an area less than the specified area;
3. If it is known that a land owner beyond the limit, so the owner is allowed to propose the part of land to be defended or the part released with compensation is then determined by the Government;
4. If the former landowner does not agree to the amount of compensation, he can appeal to the Land Reform Committee;

5. The amount of compensation outlined is ten percent of the value of deposits in Farmers and Fishermen Cooperatives, plus debt securities related to agrarian reform;
6. The land that has been compensated by the Government is then distributed to farmers who meet the requirements in the land division of land reform objects;
7. The Land reform Fund Foundation was established to facilitate land reform financing and credit facilitation for farmers;
8. There are criminal law implications for landowners who refuse or knowingly impede the takeover process and land distribution by the Government. The landowner concerned may be subject to detention for a maximum of 3 months and/or fine of Rp. 10.000,-, provided that the land will be taken over by the Government without compensation.

The existence of the implementation of the regulation can be seen from one of the lawsuits at the Constitutional Court. Based on the case register Number 11/PUU-V/2007, mentioning lawsuits related to several articles in substitute statue Number 56 of 1960 because it is contrary to Article 28D section (1), Pasal 28H section (4), dan Article 28I section (2) UUD 1945 (Mahkamah Konstitusi, 2007). The petitioner's reason is that the provision causes agricultural land that exceeds the maximum limit to fall to the State without compensation, which is considered contrary to the principle of justice and protection of private property rights.

In the conclusion of the verdict, The Constitutional Court has determined that Article 10 section (3) and (4) Substitute statue Number 56 of 1960 in line with the principles set out in UUPA. Thus, the provisions regarding the maximum limit of land and compensation do not conflict with Constitution of the Republic of Indonesia in 1945. By considering the considerations, The Constitutional Court issued a Decision to reject the application.

In the legal considerations section, The National Land Agency presents evidence showing that substitute statue Number 56 of 1960, from January 1, 1961 to 2007, still have effective applicability both juridically and sociologically. Based on data compiled by the National Land Agency of the Republic of Indonesia, there were 31,593 landowners who were considered to have maximum excess and absentee land Reporting excess land ownership with a total area of reaching 121.605,9412 hectare. Against these lands, compensation has been given in the form of compensation with a total accumulated budget of Rp.58.520.949.063.

Based on this data, it can be concluded that the implementation of substitute statue Number 56 of 1960 was still applied until 2007. The existence of the Land reform Fund Foundation institution is one of the factors in providing compensation and facilitating land reform financing. The existing norms of rules are about individuals, while restrictions on the control and ownership of legal entities only about location permissions and the rule has been revoked. Limitation of land tenure granted Location permit as Article 5 Regulation of Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number 14 of 2018 jo. Regulation of Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number 17 of 2019 given with 4 criteria, namely:

1. Housing and settlement development efforts;
2. Industrial zone or special economic zone;
3. Plantation business in the form of large plantations with cultivation rights title, which consists of sugarcane and other food commodities;
4. Pond business;
5. Each business is limited in area per province and throughout the Republic of Indonesia.

These restrictions apply for entity which is a group. Moreover, there are exceptions of the provisions mentioned above for BUMN and BUMD, business entities whose capital is wholly or partly owned by the government, both the Central and Regional Governments, and Business Entities that have "gone public".

Meanwhile, Non-agricultural land tenure and ownership do not yet have clear restrictive norms. In response to this, The Minister of State for Agrarian Affairs/Head of the National Land Agency issued a regulation regulating land ownership, namely the Decree of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 6 of 1998. The main points regulated in the regulation are Building Rights Title or Right to Use which is intended for residential houses belonging to individual Indonesian citizens with a large area 600 M² or less can be upgraded to Freehold Title even though the term has expired. However, the Decree of the Minister of State for Agrarian Affairs/Head of the National Land Agency has been declared invalid.

Regulation of non-agricultural land restriction have been prepared by stakeholders. This is shown by the existence of a national seminar in cooperation between the National Land Agency and Gadjah Mada University. One of the results of the formulation in the seminar is Alternative approaches that can be used in solving the problem of non-agricultural land ownership and possession are (1) the imposition of direct

sanctions against violations of the predetermined prohibition, (2) the imposition of sanctions indirectly in the form of the imposition of land and building taxes with progressive effective rates or the elimination of land rights by determining abandoned land (B. H. dan M. S. Sumardjono, 1993).

UUPA and Substitute Statue 56 of 1960 have contained the principle of restricting land ownership and control which is an effort to prevent the concentration of land ownership in a few people, However, in the regulation there are no national quantitative restrictions for legal entities so that it has the potential to cause a monopoly on land ownership/ownership by large companies.

Based on the study conducted, opinion of Prof. Maria SW. Sumardjono is very relevant, namely the alternative settlement of land tenure and ownership through juridical and fiscal approaches. The juridical approach means that direct sanctions will be imposed on violations of the predetermined prohibition, meanwhile, the fiscal approach is by imposing sanctions indirectly through taxation efforts or severing the legal relationship between the subject and the object of land rights through the abandoned land mechanism (Nasional, 1993).

The spirit in this effort to regulate restrictions was aroused by the initiation to propose a draft law on land in 2013. The drafting was stopped in 2019. It is formulated that "The maximum limit is set with an area that can guarantee the equal distribution of control and ownership of land fundamentally in Population, Area, Availability of Cultivation Area in each district in accordance with laws and regulations". In the 2018 draft regulations there is a little change:

- There are exceptions, about (a) Scale finances, (b) people participation, and (c) National Strategic Interests;
- Still open the possibility to "Exceed" the maximum limit with willingness to pay progressive taxes (M. S. Sumardjono, 2025).

Regulatory functions by state (*regelendaad*) carried out through the authority of the House of Representatives as a legislator with the Government, and regulations by the Government (Triningsih & Aditya, 2019). The state has a responsibility in terms of regulating land ownership and ownership to achieve the nation's ideals, namely the welfare of the Indonesian people. Land rights granted to the subject of rights then there is also inherent restriction that are born and inherent in the granting of a certain right by the state.

3.2. Land Tenure and Ownership in the UUCK and Copy Deed

The Presence of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as UUCK) is the Government's effort to restructure laws and regulations which is expected to resolve the overlap of several laws into one law comprehensively. Some aspects of land that are the focus of discussion in the UUCK are on the ease of licensing and extension of cultivation rights title and the conception of land abandonment.

UUCK Implement risk-based licensing and simplification in terms of licensing aimed at supporting investment in Indonesia. Location permits and business licenses are simplified to requirements-based risk base approach and integration of land licensing with spatial planning. Granting of Extension of Cultivation Rights Title and/or Building Rights Title It is possible to do it all at once. However, this also has the potential to increase large-scale land ownership by legal entities and encourage the concentration of legal entity land ownership.

Copy deed of UUCK namely Government Regulation Number 18 of 2021, Government Regulation Number 20 of 2021 and Government Regulation Number 26 of 2021. The main points regulated in Government Regulation Number 18 of 2021 are:

1. Arrangement of subjects and objects that can acquire land rights;
2. Provisions for the term that can be granted for each land right;
3. Provisions for the mechanism for granting, extending, renewing land rights;
4. Provision for responsibility, prohibition, and right of land right owner;

In Government Regulation Number 18 of 2021, which is regulated only related to the administration or requirements for registration of right. Policy norms on the regulation of tenure and land ownership have not been regulated.

The main points regulated in Government Regulation Number 20 of 2021 are:

1. Setting up area objects and abandoned land;
2. Inventory of areas and land indicated to be abandoned;
3. Control of abandoned areas and abandoned lands;
4. Utilization of abandoned areas and national land called "*Tanah Cadangan Untuk Negara*";

How to put abandoned land in order involves evaluating documents, plan, and the implementation of land use. The landowner received a warning to use the land until it was determined as abandoned land. Determination of abandoned land also includes the revocation of land rights, legal termination, and affirmation as state land.

Restriction of land tenure and land ownership in the plantation sector contained in Government Regulation Number 26 of 2021. The maximum area limit is formulated based on the type of commodity as follows: oil palm 100.000 Ha, coconut 35.000 Ha, rubber 23.000 Ha, cocoa 13.000 Ha, coffee 13.000 Ha, cane 125.000 Ha, tea 14.000 Ha, and tobacco 5.000 Ha. However, there has been no synchronization of these settings with the area restrictions for cultivation rights title of plantation.

The restrictions on land control and ownership in the Plantation sector contained in Government Regulation Number 26 of 2021. The maximum area restriction is formulated based on the type of commodity as follows: oil palm 100.000 Ha, coconut 35.000 Ha, rubber 23.000 Ha, cocoa 13.000 Ha, coffee 13.000 Ha, cane 125.000 Ha, tea 14.000 Ha, dan tobacco 5.000 Ha. However, there has been no synchronization of these arrangements with the area restriction for Plantation with cultivation rights title. The newest regulation about implementation of suitability of space utilization activities and synchronization of space utilization programs as Regulation of Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number 13 of 2021. However, in the regulation there are no restrictions on the control and ownership of land.

UUCK and copy deed about land restructuring land administration to facilitate investment and the mechanism for controlling abandoned land to improve the efficiency of land use and utilization However, it has not answered the problem of inequality in land ownership and there are no norms restricting land tenure and ownership.

4. Conclusion

UUPA has contained the principle of restricting land tenure and ownership to prevent the concentration of land in a few people. As an implementing regulation on restrictions on the control and ownership of agricultural land, substitute statue 56 of 1960 was issued which still applies the principle of compensation for land that exceeds the limit until 2007. This is due to the institutional existence of the Land Reform Fund Foundation is one of the factors in providing compensation and facilitating land reform financing.

Existing regulations have not answered the problem of inequality in land ownership and there are no norms of comprehensive national quantitative land tenure and ownership restrictions so that it has the potential to create a monopoly on land tenure. To equalize and prevent monopoly on land ownership, The government needs to reformulate the regulation of the boundaries of the control and ownership of agricultural and non-agricultural land for both individuals and legal entities.

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