

HOUSING JUSTICE AND EVICTION POLICY: TENURE SECURITY, DUE PROCESS AND THE RIGHT TO ADEQUATE HOUSING

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Info Articles	Abstract
Article History Received : 08-13-2026 Revised : 09-18-2026 Published : 10-01-2026 Keywords: <i>Adequate housing; Eviction; Informal settlements; Tenure security; Hurmat al-maskan.</i> Kata Kunci: <i>Hurmat al-maskan; Penggusuran; Permukiman informal; Perumahan layak; Kepastian bermukim.</i>	Abstract Indonesian constitutional law guarantees a right to dwell and the housing statute obliges the state to provide, yet residents of informal settlements are removed through administrative action in which the absence of a land title functions as the absence of any procedural entitlement. This study aims to analyse eviction as a problem of due process rather than of land ownership, to assess the treatment of informal occupation against the right to adequate housing and the Islamic protection of the dwelling, and to formulate criteria for lawful eviction and resettlement. The research applies normative juridical research with statutory, conceptual, case and comparative approaches, supported by a reading of the inviolability of the dwelling, the prohibition of harm and the doctrine of necessity, drawing on Indonesian housing, land acquisition and spatial planning legislation, international standards on development-based evictions, and comparative constitutional jurisprudence. The findings show that tenure status governs procedural entitlement although the two are conceptually distinct, that public order enforcement operates as an eviction route bypassing land acquisition safeguards, and that compensation for structures without resettlement reproduces homelessness elsewhere. Islamic doctrine protects the dwelling independently of ownership. The study recommends procedural guarantees keyed to occupation rather than title, mandatory resettlement planning and judicial authorisation. Abstrak Hukum konstitusi Indonesia menjamin hak bertempat tinggal dan undang-undang perumahan mewajibkan negara menyediakan, namun penghuni permukiman informal dipindahkan melalui tindakan administratif yang memperlakukan ketiadaan alas hak sebagai ketiadaan hak prosedural. Penelitian ini bertujuan menganalisis penggusuran sebagai persoalan proses yang adil, bukan sekadar kepemilikan tanah, menilai perlakuan atas hunian informal terhadap hak atas perumahan layak dan perlindungan Islam atas tempat tinggal, serta merumuskan kriteria penggusuran dan pemukiman kembali yang sah. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, kasus dan

	perbandingan, ditopang pembacaan atas kehormatan tempat tinggal, larangan menimbulkan bahaya, dan doktrin <i>darūra</i> . Hasil penelitian menunjukkan bahwa status alas hak menentukan hak prosedural padahal keduanya berbeda secara konseptual, bahwa penertiban ketertiban umum berfungsi sebagai jalur penggusuran yang melewati pengamanan pengadaan tanah, dan bahwa ganti rugi bangunan tanpa pemukiman kembali hanya memindahkan ketunawismaan. Doktrin Islam melindungi tempat tinggal terlepas dari kepemilikan. Penelitian merekomendasikan jaminan prosedural yang bertumpu pada fakta meng huni, kewajiban rencana pemukiman kembali, dan izin pengadilan.
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I. INTRODUCTION

Shelter is the precondition of nearly every other entitlement. A person without a stable address encounters obstacles to registration, schooling, employment and health services, so the loss of a dwelling produces a cascade of exclusions that extends well beyond the physical structure. Indonesian constitutional law recognises the stake: every person has the right to live in physical and spiritual prosperity, to dwell, and to enjoy a good and healthy living environment.¹

The housing statute translates this into an obligation of the state to ensure the availability of decent and affordable housing and to organise settlement development, and it also criminalises certain forms of construction in prohibited areas.² The land acquisition statute governs the compulsory taking of land for public purposes, with valuation, consultation and judicial recourse built into the procedure.³

The ideal condition would apply these procedural guarantees to everyone displaced by a public project, with the quantum of compensation varying by legal interest while the process remains constant. The actual condition ties process to title. Where residents hold no registered right, removal is frequently effected not through land acquisition but through public order enforcement directed at unauthorised occupation or construction, a route that carries no valuation requirement, no consultation stage and no judicial authorisation.

This produces a doctrinal confusion with severe practical consequences. Whether a person owns land and whether that person is entitled to fair procedure before losing a home are separate questions. A trespasser may be removed, but the law of every developed system requires that the removal follow a process; conflating

¹ Constitution of the Republic of Indonesia 1945, Article 28H(1).

² Law Number 1 of 2011 concerning Housing and Settlement Areas, Articles 5, 19 and 129.

³ Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Articles 19, 37 and 38.

the substantive question of right with the procedural question of process means that the least secure residents receive the least protection at the moment of greatest loss.

International standards address this directly. Evictions are permissible only in exceptional circumstances, must be authorised by law, must follow genuine consultation, adequate notice, the presence of officials, and must not result in homelessness, with adequate alternative accommodation provided where those affected cannot provide for themselves.⁴ Comparative constitutional jurisprudence has given these requirements domestic force, most influentially in the South African holding that the state's housing programme must include provision for those in desperate need.⁵

Indonesian scholarship has documented eviction practice extensively but has focused on compensation adequacy rather than on the procedural gap, and Islamic legal materials on the dwelling are rarely brought to bear. This article asks: what determines procedural entitlement in Indonesian eviction practice; how does that allocation fare against constitutional and Islamic standards; and what criteria should govern lawful eviction and resettlement?

II. RESEARCH METHODS

The research is normative juridical, applying statutory, conceptual, case and comparative approaches.⁶ The statutory approach examines the housing statute, the land acquisition statute, the spatial planning legislation, the regional government provisions on public order enforcement and the administrative procedure statute. The conceptual approach reconstructs the right to adequate housing, tenure security as a spectrum rather than a binary, and the Islamic doctrines of the inviolability of the dwelling, the prohibition of harm and necessity. The case approach analyses administrative and constitutional decisions concerning eviction. The comparative approach considers South Africa, Brazil and India, each of which has developed constitutional doctrine on eviction.

Primary materials comprise legislation, regulations, judicial decisions and international standards, together with Qur'ānic verses and classical juristic discussion of the dwelling and of necessity. Secondary materials consist of peer-reviewed scholarship and institutional reports from the last fifteen years. Analysis proceeds by qualitative content analysis, comparative tabulation and normative evaluation. The study relies on published documentation of eviction cases rather than on original fieldwork.

⁴ Committee on Economic, Social and Cultural Rights, *General Comment No. 7: The Right to Adequate Housing — Forced Evictions* (1997), paragraphs 13–16.

⁵ Constitutional Court of South Africa, *Government of the Republic of South Africa v Grootboom*, 2001 (1) SA 46 (CC).

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017), 55–60.

III. RESULTS AND DISCUSSION

A. Title as the Gateway to Process

The first finding concerns the allocation of procedural protection. Where land is acquired for a public project from a registered holder, the statutory procedure applies: planning documents, consultation, independent valuation, the option to contest valuation in court and payment before relinquishment. Where the occupant holds no registered right, the same physical displacement may be effected as an enforcement action against unauthorised occupation, and none of those steps is engaged.

The distinction is defended on the ground that compensation attaches to legal interests and that unauthorised occupants have none. That argument, whatever its merits regarding compensation, does not extend to procedure. Notice, consultation, reasons and an opportunity to be heard are not payments for a proprietary interest; they are the minimum conditions of lawful administrative action affecting a person's interests, and the administrative procedure statute already establishes reason-giving and hearing obligations for decisions affecting citizens.⁷

Tenure, moreover, is not a binary. Between registered freehold and bare trespass lies a spectrum of positions: long possession, customary claim, municipal permission, payment of local levies, receipt of utility connections and inclusion in population registers. Many informal residents occupy the middle of that spectrum, having been treated as residents by the state for decades in every respect except tenure. A doctrine that collapses the spectrum into a binary at the moment of eviction disregards the state's own prior conduct.

B. Public Order Enforcement as an Eviction Route

The second finding concerns institutional routing. Public order enforcement units, established under regional government legislation to uphold local regulations, have become the operative instrument of displacement in many cities. Their mandate concerns compliance with regional rules rather than land acquisition, which means the displacement occurs under a legal characterisation that carries no valuation or resettlement obligation.

The routing is not necessarily deliberate; it is the path of least procedural resistance. But its effect is to permit the state to achieve through enforcement what it could not achieve through acquisition without cost and process. Where the same physical outcome can be produced through two legal routes with radically different safeguards, the safeguards of the more demanding route are effectively optional.

The design response is a characterisation rule. Where the displacement of residents from their dwellings is a foreseeable consequence of an administrative action, the protections applicable to displacement should attach regardless of the

⁷ Law Number 30 of 2014 concerning Government Administration, Articles 52–53 and 75.

legal instrument invoked. This converts the question from which statute the official cites to what the action does, which is the orientation that administrative law generally takes towards the substance of decisions.

C. The Dwelling in Islamic Legal Doctrine

The third finding concerns doctrinal resources. Qur'ānic protection of the dwelling is framed in terms of entry rather than ownership: one may not enter the houses of others without seeking permission and greeting the occupants, and the prohibition attaches to the dwelling as a space of private life.⁸ Classical commentary treats the protection as running to the occupant, which is significant here because it decouples the inviolability of the dwelling from proprietary title.

Two further doctrines bear directly on eviction. The prohibition of causing harm constrains the exercise of rights over property where the exercise inflicts serious detriment on others, and classical juristic discussion of competing uses applies it to neighbours and to the wider community.⁹ And necessity, which permits an otherwise impermissible act to avert grave harm while preserving the owner's entitlement to compensation, applies with obvious force to a household occupying land without title because no lawful alternative shelter was available. The classical position that the act is excused while liability persists maps precisely onto a policy that may lawfully reclaim land while owing resettlement.

Taken together, these materials support a position that Indonesian debate rarely articulates: the state may recover land it holds, and simultaneously owes the occupant process and shelter, because the protection of the dwelling and the question of title are distinct in the tradition as they are in the international standards. Framing eviction as a contest between property and charity misdescribes both bodies of law.

D. Compensation, Resettlement and the Displacement of Homelessness

The fourth finding concerns remedy design. Where compensation is provided to informal residents, it typically covers structures and movable assets rather than the loss of location. Because livelihoods in informal settlements are overwhelmingly location-dependent, involving proximity to markets, clients and informal work, structure-based compensation funds relocation to a place where the income that sustained the household cannot be reproduced.

Public housing allocation, where offered, encounters two further problems. Vertical housing units are frequently located at distances that impose transport costs exceeding the household's margin, and eligibility conditions requiring documentation exclude precisely those whose informality was the occasion of the

⁸ Qur'ān 24:27.

⁹ Aḥmad b. Muḥammad al-Zarqā, *Sharḥ al-Qawā'id al-Fiqhiyya*, 2nd ed. (Damascus: Dār al-Qalam, 1989), 165–170.

eviction. The result is a resettlement policy whose take-up is low and whose non-take-up is then cited as evidence that residents preferred cash.

Comparative practice indicates that effective resettlement requires three elements: location within commuting distance of the original livelihood, tenure security in the new site sufficient to prevent repetition, and transitional support during the period of re-establishment. Each is costly, and the cost is the real subject of the policy debate. Stating it openly is preferable to a design that assigns the cost silently to the displaced.

E. Criteria for Lawful Eviction

Table 1. Comparative Constitutional Treatment of Eviction

Jurisdiction	Procedural requirement	Role of tenure status	Resettlement duty
Indonesia	Full procedure under land acquisition; none where enforcement route is used	Determines which route applies	Discretionary; varies by region
South Africa	Court order required, with consideration of all relevant circumstances	Unlawful occupation does not remove procedural protection	State must address those rendered homeless
Brazil	Judicial process with mediation in collective possession disputes	Long possession may generate rights	Negotiated relocation in collective cases
India	Notice and hearing requirements developed judicially	Livelihood protection recognised independently of title	Rehabilitation policies applied variably

Source: Processed from primary legal materials and comparative literature, 2026.

Five criteria follow. First, procedural entitlement keyed to occupation rather than title: notice, consultation, written reasons and an opportunity to be heard should attach to any administrative action foreseeably displacing residents, whatever statute is invoked. Second, judicial authorisation for evictions affecting occupied dwellings, with the court required to consider the circumstances of those affected. Third, a mandatory resettlement plan filed before authorisation, specifying location, tenure, transport implications and transitional support. Fourth, compensation reflecting livelihood loss and not only structures, consistent with the treatment recommended for development-induced displacement generally. Fifth, a prohibition on eviction producing homelessness, which converts the international standard into a domestic rule and gives the court a determinate criterion.

IV. CONCLUSION

Indonesian eviction practice allocates procedural protection by tenure status although process and property are distinct questions. Public order enforcement functions as a displacement route that bypasses the safeguards of land acquisition, and compensation calculated on structures relocates households to places where

their livelihoods cannot be reproduced, which reproduces rather than resolves informality.

Islamic legal doctrine supports separating the two questions. The inviolability of the dwelling runs to the occupant rather than to the owner, the prohibition of harm constrains the exercise of rights over property, and necessity excuses the act while preserving liability, which is precisely the structure of a policy that may recover land while owing process and shelter.

The study recommends procedural entitlement keyed to occupation, judicial authorisation for evictions from occupied dwellings, a mandatory resettlement plan filed in advance, compensation reflecting livelihood loss, and a prohibition on evictions resulting in homelessness. Further research should track the residential and income trajectories of evicted households over several years, since the claim that current practice displaces rather than resolves informality is testable and, if confirmed, decisive.

REFERENCES

- Chenwi, Lilian. "Evictions in South Africa: Relevant International and National Standards." *Community Law Centre Research Paper* (2008): 1–48.
- Davy, Benjamin. *Land Policy: Planning and the Spatial Consequences of Property*. Farnham: Ashgate, 2012.
- Fernandes, Edésio. "Constructing the Right to the City in Brazil." *Social and Legal Studies* 16, no. 2 (2007): 201–219.
- Leckie, Scott, ed. *National Perspectives on Housing Rights*. The Hague: Martinus Nijhoff, 2003.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Revised edition. Jakarta: Kencana, 2017.
- Payne, Geoffrey, Alain Durand-Lasserve, and Carole Rakodi. "The Limits of Land Titling and Home Ownership." *Environment and Urbanization* 21, no. 2 (2009): 443–462.
- al-Zarqā, Aḥmad b. Muḥammad. *Sharḥ al-Qawā'id al-Fiqhiyya*. 2nd ed. Damascus: Dār al-Qalam, 1989.
- Committee on Economic, Social and Cultural Rights. *General Comment No. 4: The Right to Adequate Housing* (1991).
- Committee on Economic, Social and Cultural Rights. *General Comment No. 7: The Right to Adequate Housing — Forced Evictions* (1997).
- United Nations. *Basic Principles and Guidelines on Development-Based Evictions and Displacement* (2007).
- Constitutional Court of South Africa. *Government of the Republic of South Africa v Grootboom*, 2001 (1) SA 46 (CC).
- Constitution of the Republic of Indonesia 1945, Articles 28G(1) and 28H(1).

Law Number 1 of 2011 concerning Housing and Settlement Areas (Republic of Indonesia).

Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest (Republic of Indonesia).

Law Number 30 of 2014 concerning Government Administration (Republic of Indonesia).

Law Number 23 of 2014 concerning Regional Government (Republic of Indonesia).

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (Republic of South Africa).