

Conference Paper

Implementation of Three Indicators of the Right to Housing in Indonesia

Jun Justinar*, Arlina Permanasari, Aji Wibowo, Andrey Sujatmoko, Amalia Zuhra

Faculty of Law, Trisakti University, Jakarta, Indonesia

ORCID

Jun Justinar: <https://orcid.org/0000-0002-6334-6143>

Arlina Permanasari: <https://orcid.org/0000-0002-6564-3870>

Aji Wibowo: <https://orcid.org/0000-0001-7849-0765>

Andrey Sujatmoko: <https://orcid.org/0000-0001-9444-2069>

Amalia Zuhra: <https://orcid.org/0000-0001-7481-9244>

Abstract.

The right to adequate housing is generally seen as the fulfillment of human needs based on tangible needs, such as the parameters for determining a healthy and livable house, the area and volume of the room that should exist, and other facilities. This study discusses the fulfillment of adequate housing from a normative perspective, especially human rights norms which are more intangible but can be felt. This research is based on content analysis with a qualitative approach to scientific journal databases. Based on the discussion, the fulfillment of the right to adequate housing should also pay attention to the explanation of international human rights instruments that provide an authoritative explanation for the fulfillment of right to adequate housing.

Keywords: adequate housing, the rights to housing, human rights perspective

Corresponding Author: Jun Justinar; email: jun.j@trisakti.ac.id

Published: 4 October 2022

Publishing services provided by Knowledge E

© Jun Justinar et al. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the INCLAR Conference Committee.

1. INTRODUCTION

Access to housing is a prerequisite for access to other social life demands such as employment, education, health, and other social services [1]. Today, housing is often seen as an opportunity for investment, not as a basic social and human right [1]. The right to adequate housing is more than just having a roof over the head. It means the right to live safely with dignity in an adequate home. Unfortunately, not everyone can enjoy the right to have adequate housing. Every year, several million people lose their homes and become displaced. The cause of this situation can be varied among others from development projects, conflicts, natural disasters, or climate crises. The effect may force the people to leave their homes; many of them were subjected to forced evictions. Adequate housing is a human right enshrined in international human rights instruments. It is also a legal obligation of the State Party of the international conventions of human

OPEN ACCESS

rights. The failure of the State Party to recognize this right or to protect and fulfill their right to adequate housing results in the violation of a large number of other basic human rights; such as the right to work, right to education, right to health, and right to security. The house as a safe place indicates that inadequate housing condition is not able to provide a safe place for individuals to live. On the other hand, inadequate housing may be unsafe, deteriorating neighborhoods [1].

In Indonesia, the number of inadequate housing and settlements is increasing along with the increase in poverty. In 2018, the percentage of slum houses in big cities reached 7.42%. This number rose significantly in 2019 by 13.86% [2]. The State is responsible for providing adequate, affordable, and sustainable housing and settlements throughout Indonesia. Housing development also includes the availability of infrastructure, facilities, and public utilities [3]. In addition, there are four criteria for livable houses, namely a strong construction structure, building area, good sanitation, and the availability of clean water networks [4]. Some of these provisions reinforce the view that individuals have the right to be provided with adequate housing by the State. An adequate house is a house that has building security, adequate minimum health coverage for the occupants is organized in harmony, and has proper facilities and infrastructures [5]. The right to adequate housing implies the existence of a level of security that ensures the protection of its residents from threats and provides adequate health sanitation facilities. The inhabitants have the right to affordable access and adequate social facilities [6].

The problem of poverty has had a close relationship with other aspects of life such as health, education, housing, food, and other aspects and become a major subject in international law and governed by constitutional instruments in recent decades [7]. Poverty is a very complex issue. This can be understood because poverty may be influenced by many various interrelated factors. These factors can be in form of income, health, access to goods and services, geographical location, gender, and environmental conditions [8], and many more. Poverty is a condition of a human person, who cannot get their rights to survive in developing their dignity and self-esteem as human rights. Poverty includes human life that lacks nutrition coupled with inadequate basic needs and living continuously in deprivation [9]. Pogge stated that poverty is a human life that includes minimal nutrition coupled with basic needs that are not sufficient or affordable and live continuously in deprivation [9].

According to Law 1 of 2011 concerning Housing and Settlement Areas, housing is "a collection of houses as part of settlements, both urban and rural, which are equipped with infra structure, facilities, and public utilities as a result of efforts to fulfill livable houses. While settlements are part of a residential environment consisting of more than

one housing unit that has infrastructure, facilities, public utilities, and has supporting activities for other functions in urban areas or rural areas". Settlement areas in Law 1 of 2011 concerning Housing and Settlement Areas are part of the environment outside the protected area, both in the form of urban and rural areas, which function as "a residential environment or residential environment and a place for activities that support livelihoods and livelihoods. So, housing and residential areas are a unified system consisting of fostering, administering housing, administering residential areas, maintaining and repairing, preventing and improving the quality of slum housing and slum settlements, providing land, funding and financing systems, and the role of the community".

2. METHODOLOGY/ MATERIALS

This research is normative legal research based on a content analysis of legal provisions concerning housing-related issues. The data collection method was conducted with a scientific journal database. Besides journal articles, the authors use existing data on housing-related problems stored on government websites, legal materials, and legal research. Analysis of this research used a qualitative approach focused on the human rights instruments perspective.

3. RESULTS AND DISCUSSIONS

3.1. Basic Legal Theory and Conceptual Framework concerning Housing Problems Theory of Justice

Housing as one of the human rights needs can be analyzed by the theory of justice [10]. One of the goals of the laws, which has had already understood, is to achieve justice. This eternal goal of the law, in legal science, is better known as the Ethical Theory. The weakness of the justice theory lies in the word "justice" itself, which is not literary and similar to every person. What is considered to be fair for some peoples, might be not necessarily the same as fair to other [10]. Besides, Aristotle has already distinguished justice into distributive and commutative justice. Distributive justice is justice for everyone based on their services. Meanwhile, commutative justice is justice given to everyone regardless of their services. Aristotle also distinguishes justice into how it is understood according to positive law and justice according to nature. Justice by nature is based on the same conditions everywhere at any time. Aristotle's opinion on abstract justice and equity is a discussion of justice. Therefore, the law makes rules that are generally

accepted and often acts cruelly on individual matters [10]. Regarding the right to housing as a human right, it can be inferred that the problem on such issues can be analyzed from the perspective of the theory of justice. The fulfillment of the right to housing is the responsibility of the State that must pay attention to the theory of justice as well.

3.2. Theory of Welfare State

The right to housing as a human right can be analyzed using the welfare state theory. According to the theory of the welfare state, the aim of the state is not only to maintain security and order but also to prosper its citizens [11]. The goal of the welfare state is to organize the welfare and happiness of its people or to organize a just and prosperous society [11]. Welfare theory as the goal of the state is currently the goal of the state which is generally found in the rule of law. The goals of the Indonesian state are stated in the fourth paragraph of the Preamble to the 1945 Constitution [12]. The fourth paragraph contains the goals of the Indonesian state, namely to realize the general welfare of a just and prosperous society based on Pancasila. If the prosperity of the people (the nation) is the goal of the state, it means that the Indonesian state is included in the material welfare state (Social Welfare State). This is in line with Article 1 paragraph 3 of the 1945 Constitution after the Amendment which states that the State of Indonesia is the State of Law. Based on the fourth paragraph of the Preamble to the 1945 Constitution, the goal of the Republic of Indonesia is to provide welfare for the entire Indonesian nation (general welfare). Related to the right to housing as a human right whose fulfillment is the responsibility of the state, the research uses the theory of the welfare state as an analytical tool.

3.3. Health and the Right to Health

The World Health Organization as a global institution has already issued a definition of health. According to the WHO, health is "a state of complete physical, mental and social well-being and not only freedom from disease and disability. Health is the most basic right of every human being, regardless of race, religion, politics, and socio-economic conditions" [13]. As a human right, the right to health is inherent in humans because of their existence as human beings, which every country must respect and protect. The right to health is the right to the enjoyment of the highest attainable standard of physical and mental health. Understanding health as a human right will cause a legal obligation for States to ensure access for their citizens. This access consists of

the access to timely, sufficient, and affordable health care, where the State provides appropriate standard quality for the fundamental determinants of health. To include in these criteria, the Government may provide facilities such as safe water that can be accessible, clean sanitation, information access on food, housing, education related to health, and gender equality.

The United Nations Committee on Economic, Social, and Cultural Rights has stated that health is a fundamental human right that is indispensable for the implementation of other human rights. Every human being has the right to enjoy the highest attainable standard of health conducive to living a life of dignity.

A State's legal obligation concerning the right to health may include the allocation of "maximum available resources". This goal is reviewed through various international human rights mechanisms available on the human rights instruments such as The Universal Periodic Review under the Committee on Economic, Social, and Cultural Rights. In almost all countries, the right to health enshrined in the Covenant has been transformed into national law [14]. The right to health must be enjoyed without discrimination based on race, age, ethnicity, or another status.[15] Non-discrimination and equality require states to take steps to improve discriminatory laws, practices, or policies. Also important is the participation of many agencies, whether in national or international stakes. Included in this participation is the participation of non-governmental organizations. Generally, this agent is actively involved in all phases of such participation, for example in formulating the program, assessment, analysis, implementation, monitoring, and evaluation.

The international human rights instruments which govern health rights are:

1. Article 12 para. (1) International Covenant on Economic, Social and Cultural Rights (ICESCR);
2. Article 5 para. (iv) Convention on the Elimination of All Forms of Racial Discrimination (CERD);
3. Article 10 para. (h), 11(1)(f), 12, 14(2)(b) and 16(1)(e) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
4. Article 24 and 25 Convention on the Right of the Child (CRC);
5. Article 23 para. (1) and 25 Convention on the Rights of Persons with Disabilities (CRPD).

3.4. The Parameter of Health

According to WHO (1948) health is defined as "a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity". In 1986, WHO further explained that resources are for everyday life, not a purpose of life. Health is a positive concept that emphasizes social and personal resources, as well as physical capacities. The determinants of good health are genetics and the environment. Physical and mental health is the two things that become the most benchmarks in addition to spiritual, emotional, and financial health that supports physical and mental health. Someone who has good physical health will have body functions and processes that work optimally.

Mental health refers to a person's emotional, social and psychological well-being. Mental health is as important as physical health as part of a fully active lifestyle. Defining mental health is more difficult than physical health because many psychological diagnoses depend on individuals' perceptions of their experiences. With advances in medical technology, it is now possible to identify some physical signs of several types of mental illness through CT scans and genetic tests. Good mental health is not only characterized by the absence of depression, anxiety, or other disorders. It also depends on a person's ability to: enjoy life, bounce back after difficult experiences and adapt to adversity, balance various elements of life, such as family and finances, feel safe and secure, and reach their highest potential [16].

3.5. The Indicator of Health

In general, to measure the degree of public health, WHO uses the indicator "life expectancy" [17]. Global health indicators become indicators of health phenomena that are direct (eg, disease, death, use of services) or indirectly in nature (eg, indicators of social development, education, and poverty). The developing countries usually use the Global health indicators related to morbidity and mortality. For developed countries, the indicator depends on the situation and condition of the welfare of their people. Most of the main indicators are health and reflect individual lifestyles and behaviors, such as physical exercise, smoking, diet, or substance, and alcohol abuse [18].

Based on the basic theories explained above, the reality and implementation in Indonesia show that the implementation of the right to health based on the provisions of international and national law in Indonesia cannot be said to be optimal and good. Many areas in Indonesia are still lacking in terms of providing adequate facilities, according to

international standards. Therefore, it can be said that the factors of availability, access, equity, and quality of health facilities and personnel have not been met.

3.6. The Indonesian Government's Efforts to Fulfill the Right to Housing

The government's efforts to fulfill the right to housing for its citizens refer to several indicators that have been determined by CESCR General Comment No. 4: The Right to Adequate Housing. Some of them are discussed in this presentation. The Right to Adequate Housing as discussed below.

The Fulfillment of the right to housing from a human rights perspective counts on national legislations. Sufficient area is the main sign of healthy housing. According to WHO, housing should be considered the living space, and it means the house of the residences should be large enough so it can produce comfort for people to accommodate. In addition, adequate housing can be enjoyed for people of different ages and ensure sufficient space to give the resident the aspect, and privacy needs. In other words, adequate housing not only fulfills the basic human need such as the function of shelter but also contributes to the physical and non-physical well-being and social integration of its inhabitants. Substandard housing is associated with mental illness and infection. This is in line with the Healthy Home Principles.

3.7. Facilities and Infrastructures

An "Adequate" housing implies a certain standard of housing that includes facilities and is adequate. On the other hand, having the right to access adequate housing is not the same as a claim to the housing itself, and the right to housing is subject to facilities and infrastructure requirements determined by the State [6]. In Indonesia, provisions regarding housing are regulated in Law Number 1 of 2011. In addition, there are provisions regarding buildings that are regulated in Law Number 28 of 2002 concerning Buildings that were later abolished by the Job Creation Act.

Facilities are facilities in a residential environment that function to support organizing and developing social, cultural, and economic life [19]. The structure of the building determines how well the building transmits sound. Air passages above or in walls and uncovered pores in masonry transmit sound through the air. Bonding in cavity walls can conduct sound, especially if mortar debris is not removed during construction. The lightweight plastic ceiling upstairs can cause echoes in the roof space. The pliable layer

adhering to the wall or floor can vibrate and reduce the insulation of the walls. One of the most annoying sounds is the human voice, and surprisingly, the intensity of a sound is not very important in determining the disturbance it causes [20].

In addition to the national level, local governments are obligated to exercise the right to housing in areas of responsibility that are delineated and must be stipulated in the law. Housing policies and programs at all levels should be coordinated and overseen by intergovernmental bodies to ensure the fulfillment of the right to housing. The Rio De Janeiro Declaration results in Agenda 21 and Habitat II Declaration which have a passion for fulfilling the basic needs of the right to adequate and affordable housing for all. The agenda underscores the importance of housing as a human right under the spirit of the 1945 Constitution of the Republic of Indonesia. The spirit is realized in Article 129 of Law Number 1 of 2011 concerning Housing and Settlement Areas, it is stated that every citizen has the right to have healthy, safe, harmonious, and orderly housing. To meet the criteria for a healthy house, the government issues a Decree of the Minister of Settlement and Regional Infrastructure number: 403/kpts/m/2002 on Technical Guidelines for Construction of Healthy Simple House. The Decree technically regulates these aspects as the basis or rules for house planning healthy and comfortable. This regulation has implemented the habitability requirement to fulfill the right to housing as confirmed by CESCR General Comment No. 4: The Right to Adequate Housing, especially Art. 11 (1) of the Covenant on Economic, Social and Cultural Rights.

3.8. Accessibility

Traditionally, the home has been conceptualized as a safe place to go and return, and to be the primary focus of one's attention [21]. To be able to go and return to the place of residence is very dependent on the available facilities and infrastructure and is related to the physical condition of everyone who is part of the population. The predominantly elderly population faces an increased risk of morbidity, multimorbidity, functional limitations, and physical disabilities or disabilities. Although aging is not a mere disease the elderly are more fragile and vulnerable to the harmful effects of the place where they live. Of course, it is not only the elderly who have limited mobility who need to adapt their place of residence. This adaptation is also needed to deal with chronic and acute conditions, such as injuries that occur on the road, at home, or work accidents, or diseases that are genetically or other infectious diseases. Healthy living opportunities for the elderly and people with disabilities related to the appropriate use of indoor and outdoor spaces, especially at home to lead an independent and

active life should also be considered. To ensure this possibility, living spaces should be designed for people with functional limitations and ensure at least the activities of their daily living. Accessibility for persons with disabilities and security for those who are vulnerable should be incorporated in the design of new, adaptable housing [22].

The fulfillment of accessibility rights for persons with disabilities in Indonesia is carried out based on Law Number 8 of 2016 [23]. Accessibility rights for persons with disabilities include the right to use public facilities, and get adequate accommodation as a form of accessibility for individuals. In addition, persons with disabilities have the right to live independently and be involved in the community, including personal mobility with the provision of assistive devices and ease of access.

3.9. The Criteria of Housing-Livable

The concept of the feasibility of housing rights is very important because it is related to factors that must be considered to determine a suitable place to live under the provisions of the Covenant on Economic, Social, and Cultural Rights. Habitable housing is housing that is located in an environment that protects it from cold, heat, rain, and other threats that are harmful to health. Physically, being livable means being protected from bad weather and disease, and health disturbances. The criteria for livable houses have been stated in the explanation of Article 24 letter of Law Number 1 of 2011 concerning Housing and Settlement Areas which states that habitable houses must meet building safety requirements, adequacy, minimum building area, and occupant health. Several issues demonstrate the impact of housing on human health. Relevant classic issues such as lighting comfort, noise, protection, water supply, and waste disposal have a strong impact on the psychological and physical health of occupants [22]. Normatively, the legal provisions regarding the right to health in Indonesia are regulated in the 1945 Constitution (article 28H paragraph 1) and Law no. 36/2014 on Health. The consensus on the right to health is categorized as a human right in Indonesia, which has been increasingly emphasized after the reform period. This is confirmed in Chapter XA of the 1945 Constitution concerning human rights, namely in Article 28 H paragraphs (1) and (2), as well as in Article 34 paragraph (2) of the 1945 Constitution. This provision is further affirmed in Law Number 36 of 2009 concerning Health which emphasizes that "every individual, family and all citizens have the right to obtain protection for their health, and the state is responsible for making policies that are oriented towards the fulfillment of the right to optimal health" [24]. According to Law Number 36 of 2009

concerning Health, healthy is "a healthy state either physically, mentally, spiritually, and socially that allows everyone to live socially and economically productive" [25].

In addition, to fulfill the principle of livability, the physical safety of building occupants in general also remains a concern of the government. The definition of building safety regarding the building must include the ability of the building to support the load [26]. Furthermore, according to research conducted by the Center for Research and Development of Housing and Settlements in 2011, the minimum area of a simple housing building is 47.65 m² with the assumption that 1 family consists of four people [27]. In addition, there is also the Regulation of the Minister of Public Housing of the Republic of Indonesia Number 10 of 2012 concerning the Implementation of Housing and Settlement Areas with Balanced Occupancy. The regulation stipulates that the objective of balanced housing is to realize cross-subsidies for the provision of infrastructure, facilities, and public utilities, as well as financing housing development; and to create a harmonious place to live both socially and economically [3]

4. CONCLUSION AND RECOMMENDATION

The fulfillment of the right to housing from a human rights perspective normatively must refer to the ICESCR as an international human rights law instrument that has been ratified by Indonesia through Law Number 11 of 2005. The fulfillment of the right to housing is guided by some indicators, namely: legal certainty of ownership; availability of services, facilities, and infrastructure; affordability; habitability; accessibility; location. The fulfillment of the right to housing from a human rights perspective normatively must refer to the ICESCR as an international human rights law instrument that has been ratified by Indonesia through Law Number 11 of 2005. The fulfillment of the right to housing is guided by some indicators, namely: legal certainty of ownership; availability of services, facilities, and infrastructure; affordability; habitability; accessibility; location.

The Indonesian government's efforts in fulfilling the right to housing must make some policies related to housing that refer to some indicators that have been determined by the ICESCR. This policy is manifested in a housing program that covers the entire level of people's purchasing power so that the principle of the right to housing for all groups can be fulfilled. The Indonesian government's efforts in fulfilling the right to housing must make some policies related to housing that refer to some indicators that have been determined by the ICESCR. This policy is manifested in a housing program that covers the entire level of people's purchasing power so that the principle of the right to housing for all groups can be fulfilled.

References

- [1] UNHR. "Special Rapporteur on the Right to Adequate Housing," <https://www.ohchr.org/en/issues/housing/pages/housingindex.aspx>, 2020.
- [2] Badan Pusat Statistik. "Badan Pusat Statistik, Persentase Rumah Tangga Kumuh Perkotaan (40% Ke Bawah), Menurut Provinsi (Persen)," [BPS.go.id](https://www.bps.go.id), 2018.
- [3] Peraturan Menteri Perumahan Rakyat Nomor 10 Tahun 2012 Tentang Penyelenggaraan Perumahan Dan Kawasan Permukiman Dengan Hunian Berimbang. "Peraturan Menteri Perumahan Rakyat Republik Indonesia Nomor 07 Tahun 2013 Tentang Perubahan Atas Peraturan Menteri Perumahan Rakyat Nomor 10 Tahun 2012 Tentang Penyelenggaraan Perumahan Dan Kawasan Permukiman Dengan Hunian Berimbang.
- [4] Undang-Undang Republik Indonesia Nomor 1 Tahun 2011 tentang Perumahan dan Kawasan Permukiman.
- [5] Madalina M, Purwadi H, Firdausy AG, Achmad. THE PATTERN OF ADEQUATE HOUSING RIGHTS FULFILLMENT IN INDONESIA. *Yust. J. Huk.* 2018 Sep;7(2):376.
- [6] Leijten I, de Bel K. Facing financialization in the housing sector: A human right to adequate housing for all. *Neth Q Hum Rights.* 2020 Jun;38(2):94–114.
- [7] Ferraz OL. Poverty and Human Rights. *Oxf J Leg Stud.* 2008 Sep;28(3):585–603.
- [8] Djatnika Utama D. "Peranan Pendidikan dalam Pengentasan Kemiskinan (Dicky Djatnika Utama) PERANAN PENDIDIKAN DALAM PENGENTASAN KEMISKINAN."
- [9] Mowbray A. Freedom from Poverty as a Human Right. *Hum Rights Law Rev.* 2007 Jan;8(3):577–8.
- [10] Soetiksno. *Filsafat Hukum*. Jakarta: Balai Pustaka; 2013.
- [11] Soehino, *Ilmu Negara*. Yogyakarta: Liberty; 2005.
- [12] Sibuea HP. *Ilmu Negara*. Jakarta: PT Erlangga; 2014.
- [13] Faradiba N. "Definisi Sehat Menurut WHO Dan Kemenkes, Tidak Hanya Soal Penyakit," [Kompas.com](https://www.kompas.com), Jan-2022. .
- [14] WHO, "Human Rights and Health," [who.int](https://www.who.int). .
- [15] Budiono A, Absori A, Ngestiningrum AH, Dewi EK, Nurhayati N, Arum Prastyanti R, et al. Black swan theory: legal policy of the Indonesian national healthcare. *Leg. J. Ilm. Huk.* 2022 Mar;30(1):29–46.
- [16] M. N. Today, "What is good health," [Medical News Today](https://www.medicalnewstoday.com). .
- [17] Perwira I. "Memahami Kesehatan Sebagai Hak Asasi Manusia," 2019.
- [18] Ardinata M. Tanggung Jawab Negara terhadap Jaminan Kesehatan dalam Perspektif Hak Asasi Manusia (HAM). *J. HAM.* 2020 Aug;11(2):319.

- [19] Peraturan Pemerintah Republik Indonesia Nomor 26 Tahun 1985 Tentang Jalan.
- [20] Lowry S. Health and housing: Noise, space, and light. *BMJ*. 1989 Dec;299(6713):1439–42.
- [21] Fozdar F, Hartley L. Housing and the creation of home for refugees in Western Australia. *Housing, Theory Soc*. 2014 Apr;31(2):148–73.
- [22] Capasso L, D'Alessandro D. Housing and health: Here we go again. *Int J Environ Res Public Health*. 2021 Nov;18(22):12060.
- [23] Undang-Undang Republik Indonesia Nomor 13 Tahun 1998 tentang Kesejahteraan Lanjut Usia. .
- [24] Kurniawan MB. Politik Hukum Pemerintah dalam Penanganan Pandemi Covid-19 Ditinjau dari Perspektif Hak Asasi atas Kesehatan. *J. HAM*. 2021 Apr;12(1):37.
- [25] Undang-Undang RI. 36 Tahun. Tentang Kesehatan; 2009.
- [26] Undang-Undang Republik Indonesia Nomor 28 Tahun 2002 tentang Bangunan Gedung. .
- [27] Arafat BA, Taniady V. Pemenuhan Hak Masyarakat Miskin Terhadap Perumahan dan Permukiman yang Layak di Perkotaan Indonesia: Studi Perbandingan Singapura dan Australia. *Jurist-Diction*. 2021 Mar;4(2):559.