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FOREWORD

This issue of Legal Horizons—Issue 23, No. 4 (2024) — brings together a compelling collection of articles that examine contemporary legal issues through both national and international lenses. As legal systems worldwide grapple with emerging challenges—from environmental sustainability to the evolving scope of human rights—this edition offers valuable insights into the doctrinal, institutional, and normative dimensions of law in today's global context.

The volume opens with Dinan, A.M., Herlindah, and Jauharoh, A., who in the article **"JURIDICAL ANALYSIS OF THE SETTING OF PTSL FEES IN THE CONTEXT OF LEGAL CERTAINTY OF LAND RIGHTS"** explore the juridical aspects of setting fees for the Complete Systematic Land Registration (PTSL) program. Their analysis focuses on legal certainty and the rights of landholders, contributing to the broader discourse on equitable access to land administration.

O. Yatsun provides a comparative study of constitutional frameworks governing human rights restrictions during martial law. Drawing on international legal instruments and national practices, the article **"INTERNATIONAL APPROACHES TO CONSTITUTIONAL AND LEGAL REGULATION OF HUMAN RIGHTS RESTRICTIONS DURING MARTIAL LAW"** highlights the delicate balance between security imperatives and the preservation of fundamental freedoms.

Land law continues to be a focal point with the contribution from Ansori, M., Permadi, I., and Supriyadi, who examine legal constructions for the designation of land boundaries. Their work **"THE LEGAL CONSTRUCTION OF LAND BOUNDARY DESIGNATION: EFFORTS TO PREVENT DISPUTES IN LAND ADMINISTRATION"** addresses both practical and normative issues in preventing disputes, thereby reinforcing trust in land governance.

In a thought-provoking examination of the intersections between law, medicine, and ethics, M. Dei discusses the influence of palliative care on the fulfillment of the "Right to Life" and "Right to Dignity." The article "**"RIGHT TO LIFE" AND "RIGHT TO DIGNITY" WITHIN THE FRAMEWORK OF HUMAN RIGHTS PROTECTION: INFLUENCE OF PALLIATIVE CARE AND MEDICINE ON THE FULFILLMENT"** underscores the importance of human-centered legal interpretations in the field of health and end-of-life care.

M. Sidabutar, Yu. Cholil, and D. Widhiawati, tackle a controversial and timely issue: the position of notaries in corruption cases related to land acquisition. Their analysis **"THE POSITION OF NOTARIES IN LAND ACQUISITION CORRUPTION CASES: BETWEEN ABUSE OF AUTHORITY AND CRIMINALIZATION OF PROFESSION"** questions the fine line between legitimate professional conduct and potential abuse, shedding light on systemic vulnerabilities and the risk of criminalizing professional roles.

The issue also turns its focus to social rights, as E. Titko **"THE PRACTICE OF PROTECTING WOMEN'S SOCIAL RIGHTS: THE EXPERIENCE OF ITALY"** presents an insightful study on the protection of women's social rights through the Italian experience. This article broadens the conversation on gender justice and socio-economic inclusion within legal systems.

Finally, J.A.F. Silaen, Sudarsono, and N.D. Prasetyo, propose a forward-looking regulatory model for environmentally friendly election campaigns in Indonesia. Their work **"REGULATORY DESIGN OF ENVIRONMENTALLY FRIENDLY ELECTION CAMPAIGNS IN ENCOURAGING THE REALIZATION OF GREEN ELECTIONS IN INDONESIA"** promotes the integration of ecological principles into democratic processes, aligning legal regulation with sustainable development goals.

Together, the articles in this issue not only reflect the richness and diversity of contemporary legal scholarship but also provide critical tools for understanding and shaping the legal realities of our time. We invite our readers—academics, practitioners, and policymakers alike—to engage with these contributions and to continue fostering dialogue at the intersection of law, society, and global change.

Yurii Harust,
Editor-in-Chief
Legal Horizons

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Dinan, A.M., Herlindah, & Jauharoh, A. (2024). Juridical analysis of the setting of ptsl fees in the context of legal certainty of land rights. *Legal Horizons, 23*(4), 9-19. https://doi.org/10.54477/LH.25192353.2024.4.pp.9-20

# JURIDICAL ANALYSIS OF THE SETTING OF PTSL FEES IN THE CONTEXT OF LEGAL CERTAINTY OF LAND RIGHTS

**Aditya Michael Dinan**
Faculty of Law
Brawijaya University Malang
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: adityadinan183@gmail.com
https://orcid.org/0009-0001-2905-2707

**Herlindah**
Faculty of Law
Brawijaya University
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: herlindah@ub.ac.id
https://orcid.org/0000-0001-9342-9647

**Arini Jauharoh**
Faculty of Law
Brawijaya University
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: jauharoharini@gmail.com
https://orcid.org/0009-0000-7643-0769

## Abstract

The Complete Systematic Land Registration (PTSL) program is a national strategic effort to provide legal certainty over community land ownership through a transparent mechanism and affordable costs. This research aims to analyze the implementation of PTSL at the central and village levels, particularly in Medaeng and Parangargo Villages. A socio-legal approach is used to understand the relationship between central regulations and village regulations related to PTSL fees. The results showed that Medaeng Village successfully implemented the program in accordance with the provisions of the SKB Tiga Menteri without additional fees, creating community trust. In contrast, Parangargo village faced challenges such as a lack of transparency on additional fees and a lack of socialization. Digitalization through electronic land certificates has great potential to improve efficiency, transparency and document security in the implementation of the Complete Systematic Land Registration (PTSL) Program. This technology offers convenience in data verification, reduces the risk of document forgery, and speeds up the administrative process, thereby increasing public satisfaction with land services. However, the implementation of digitalization still faces challenges, especially at the

village level, such as the low digital literacy of the community, lack of technological infrastructure, and lack of socialization on the benefits and procedures of electronic certificates. Therefore, the successful implementation of PTSL requires not only technological strengthening, but also a participatory approach that actively involves the community, integrated supervision between the central and village governments, and harmonization of regulations to create an inclusive, fair, and sustainable system. Strategic steps such as developing digital infrastructure, increasing community literacy, and clear regulatory support can ensure PTSL has a significant impact in realizing social justice and legal certainty for all levels of society.

**Key words:** PTSL; SKB Tiga Menteri; electronic certificate; village regulation.

## 1. Introduction

Land ownership in Indonesia must be registered with the National Land Agency (BPN) to provide legal certainty and protection to the owner. Article 9 paragraph (1) and Article 19 paragraph (2) of the Basic Agrarian Law Number 5 of 1960 emphasize the importance of land registration to provide strong legal guarantees, as regulated in Government Regulation Number 24 of 1997 in conjunction with Government Regulation Number 18 of 2021. Land certificates serve as valid evidence as long as they are not contradicted by other evidence.

The modernization of land registration policy began with the issuance of Government Regulation No. 24 of 1997, which replaced Government Regulation No. 10 of 1961. This innovation was strengthened by the Complete Systematic Land Registration (PTSL) Program stipulated in Minister of ATR/BPN Regulation No. 6/2018, with the aim of simplifying land registration procedures and accelerating certificate issuance. This policy is supported by Presidential Instruction Number 2 of 2018 which sets a target of registering all land parcels in Indonesia by 2025.

The PTSL program continues to evolve, including the simplification of documents, elimination of inefficient steps, and integration of a digital platform for online registration. The latest policy sets a maximum time limit of 90 working days for completion of land registration. This is accompanied by subsidized measurement fees and the establishment of an adjudication team to resolve land disputes that arise during program implementation.

However, the land registration system in Indonesia, which adopts a negative publication system with a positive tendency, has not fully guaranteed legal certainty for land rights holders (Sutedi, 2011, p. 27). This is due to weaknesses in the land administration system that can lead to disputes in the future. Therefore, improvements are needed in the land registration system to ensure the achievement of legal certainty and protection of land rights for the community (Azisah, 2024, p. 73).

The Complete Systematic Land Registration (PTSL) program is the first land registration activity carried out simultaneously and systematically for all land registration objects in one village or kelurahan administrative area. This process involves the collection of physical and juridical data as the basis for land registration to ensure legal certainty and protection of community rights to the land owned (Ardani, 2019, p. 271).

PTSL aims to complete the data collection and certification of previously uncertified land, so that the community can utilize the certificate as collateral for economic needs. Unlike the sporadic PRONA program, PTSL uses a systematic approach involving initial verification to identify possible ownership conflicts. Land information including location, boundaries, and area is compiled in a registration map to provide comprehensive legal certainty to the owner (Kamurahan et al., 2018, p. 394).

As part of the National Strategic Project, PTSL is supported by Presidential Instruction (Inpres) No. 2/2018. This directs relevant ministries and agencies, including local governments, to accelerate the implementation of PTSL with the target of completing the registration of 129 million parcels of land across Indonesia by 2025. This policy support includes the establishment of regulations at the regional level, such as Malang District Regent Regulation No. 18/2018 which sets the registration fee at Rp150,000 for Java and Bali areas.

To achieve the success of this program, the government is mobilizing cross-sector coordination, including village officials and community organizations, to ensure the smooth implementation of PTSL in accordance with their respective functions and authorities (Indonesia, Pemerintahan Pusat, 2018).

In the implementation of the acceleration of the Complete Systematic Land Registration (PTSL) program, the government established a policy of uniformity of fees through the Joint Decree (SKB) of 3 Ministers Number: 25/SKB/V/2017, 590-3167A Year 2017, and 34 Year 2017. This policy regulates the types of activities, types of fees, and the amount of fees covering three main elements: document preparation, procurement of stamps and seals, and the operations of village officials. The standard fees set out in the SKB, such as the Rp150,000 fee for Java and Bali, are designed to make it easier for people to obtain land certificates (Keputusan Bersama Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional, Menteri Dalam Negeri, Menteri Desa, Pembangunan Daerah Tertinggal Dan Transmigrasi NOMOR: 25/SKB/V/2017, NOMOR: 590-3167A Tahun 2017, NOMOR: 34 Tahun 2017, 2017).

Innovations in the PTSL program also include the introduction of electronic land certificates (Sertifikat-el), which are stored in the BPN's electronic database to reduce the risk of document loss due to disaster, theft or physical damage. These e-Certificates are based on Law No. 11/2008 on Electronic Information and Transactions, which has been updated. This digitization minimizes government operational costs and provides easier access for the public.

However, the implementation of the PTSL program in the field shows a discrepancy with the central policy (Aminudin, 2020). Reported by Malang Corruption Watch (MCW), there was a practice of illegal levies in Sukun Subdistrict, Malang City, with an additional fee of Rp350,000 beyond the SKB 3 Minister standard. This created confusion in the community regarding the official PTSL fee (Wicaksana, 2023).

This practice indicates problems in regulatory harmonization between the central and regional levels. As a resolution step, stricter supervision of policy implementation and cost transparency in the PTSL program is needed so that the main objective of legal certainty can be achieved.

The implementation of the Complete Systematic Land Registration (PTSL) must follow the rules stipulated by the Ministerial Decree No. 25/SKB/V/2017, 590-3167A/2017, and 34/2017. The SKB regulates the cost components that include document production, procurement of boundary stakes and stamps, as well as financing operational activities such as transporting and installing stakes, duplicating documents, and transporting village officials to the land office. The fee set in the SKB is Rp150,000 for Java and Bali (Keputusan Bersama Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional, Menteri Dalam Negeri, Menteri Desa, Pembangunan Daerah Tertinggal Dan Transmigrasi NOMOR: 25/SKB/V/2017, NOMOR: 590-3167A Tahun 2017, NOMOR: 34 Tahun 2017, 2017).

However, in practice, there was repetition of cost components at the village level. For example, in Parangargo Village, Malang District, the community was charged an additional fee of Rp350,000, which is not regulated in the SKB 3 Ministerial Decree. This brought the total cost to Rp500,000. This additional cost covers socialization, consumption for filing, and honorarium for village officials, which should have been socialized to avoid misunderstanding among the community (Suara Data Network, 2020).

This condition shows that there is a misalignment between the central regulation (das sollen) and the practice in the field (das sein). Legal issues that arise include: (1)

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regulatory discrepancies between the SKB 3 Ministers and village regulations; and (2) repetition of cost components that creates inconsistencies in the PTSL fee policy. This creates public confusion regarding the legal certainty of PTSL fees and threatens the main objective of PTSL as a national strategic program aimed at providing legal certainty and protection of land rights.

As part of the government's efforts to realize legal certainty over land ownership, the Complete Systematic Land Registration (PTSL) Program is designed as a national strategic step that integrates the modernization of land registration with a systematic approach and digitalization. Although this policy has been accompanied by clear regulations through the SKB 3 Minister and the support of presidential instructions, its implementation in the field still encounters obstacles, especially related to the incompatibility of costs that burden the community. The misalignment between central regulations and practices at the regional level shows the need to strengthen supervision, transparency, and policy harmonization. With the right corrective measures, PTSL can more effectively achieve its goal of providing equal legal protection and justice for all Indonesians.

## 2. Materials and Methods

This research uses the socio-legal research method, which focuses on community responses to village regulations related to the additional cost of the Complete Systematic Land Registration (PTSL). This research examines the interaction between policymakers, both at the central and village levels, in determining the additional components of PTSL fees through village regulations. Law must be studied as a social phenomenon that lives in society, with a non-doctrinal and empirical approach. In this context, the primary and secondary data obtained will be analyzed qualitatively and presented descriptively to provide a detailed picture of the problems and solutions (Jayantiari et al., 2024, p. 64).

The approach used is a sociological approach or socio-legal research, which aims to examine people's behavior and perceptions of the law. This research also uses descriptive qualitative methods to produce data in the form of narratives from informants, written documents, and observed behavior. According to Moleong, a qualitative approach produces data in the form of written or spoken words without using variables or hypotheses. This approach aims to understand village regulations on PTSL surcharges and their impact on local communities (Lexy J. Moleong, 2017, p. 112).

Socio-legal approach with legal research methodology that combines normative and sociological analysis. Primary data analysis was conducted through direct observation in the field, while secondary data was collected from relevant literature (Anshari Siregar, 2007, p. 89), including archival documents of the Malang City Land Office. Conceptual and statutory approaches were used to ensure the research had a strong foundation in understanding the applicable concepts and regulations. The regulations that are the focus of the research include Permen ATR/KBPN No. 6/2018, Permen ATR/KBPN No. 1/2017, PP No. 24/1997, and SKB 3 Minister.

The sociology of law approach was used to analyze the interaction between legal norms and the community (Yulviani, 2024, p. 51), particularly the community's reaction to the village regulation setting additional PTSL fees. This research was conducted to answer questions related to the implementation of PTSL fees, examine the consistency of village regulations with central regulations, and understand the impact on the community. The research location was chosen because there is a village regulation in Parangargo that regulates additional PTSL fees, making it relevant to be analyzed in the context of legal certainty and justice.

This research uses a socio-legal approach to analyze the urgency of establishing village regulations related to the implementation costs of the Complete Systematic

Land Registration (PTSL). This approach emphasizes the importance of examining the relationship between regulations made by village heads and village officials and the Joint Decree (SKB) 3 Ministers as the legal basis governing PTSL fees. The focus of this research is to assess the legal certainty of the position of village regulations and the Joint Ministerial Decree, and its implications for the fairness and efficiency of PTSL implementation in the community.

The lack of clarity in regulations related to PTSL fees, particularly the discrepancy between the SKB 3 Ministerial Decree that sets a fee of Rp150,000 for Java and Bali and village regulations that impose higher fees, is a major issue. This has resulted in confusion in the community regarding the transparency and legal certainty of PTSL fees. Therefore, this research uses three main theories to analyze the problem: Justice Theory, Legal Certainty Theory, and Talcott Parsons' AGIL Structural Functional Theory (Top-Down Approach).

Justice theory is used to evaluate the extent to which the determination of PTSL fees is in accordance with the principles of distributive and procedural justice, so as not to burden the community disproportionately. According to John Rawls, justice in public policy must ensure fair distribution for all parties, including village communities (Sunaryo, 2022, p. 012) in the PTSL program. In the context of PTSL, the application of the principle of justice must reflect the balance between the financial burden borne by the community and the benefits obtained from land certificates. Discrepancies between central policy and implementation at the village level can lead to injustice, especially if the additional costs imposed by village regulations are not accompanied by transparency. According to Tamanaha, a just law should create certainty and not impose excessive burdens on society, especially in strategic public policies. Therefore, an evaluation of the implementation of PTSL fees should consider the dimensions of distributional justice and legal accessibility for all levels of society (Tamanaha, 2004, p. 8).

Legal certainty theory underscores the importance of legal consistency and clarity in regulating PTSL fees. Legal certainty is a fundamental element that gives people a sense of security and confidence that their rights are protected by unambiguous regulations (Friedman & Hayden, 2017, p. 11). In the context of PTSL, legal certainty plays a role in ensuring policy uniformity, both at the central and regional levels, so that communities understand their obligations without confusion. Misalignment between the SKB 3 Ministers and village regulations related to PTSL fees can raise doubts about the legitimacy of the policy. According to Fuller, good law should have elements of predictability and transparency to prevent conflicts of interpretation at the implementation level. Therefore, in the PTSL policy, it is important to enforce coherent regulations and eliminate legal loopholes that can be exploited for unfair practices (Fuller, 1969, p. 72).

Structural functional theory proposed by modern sociologist Talcott Parsons, namely functional structural theory, which is included in the social fact paradigm (Ritzer, 1975, p. 156). This theory is relevant for analyzing the relationship between central regulations (SKB 3 Menteri) and implementation at the village level. This approach examines how social systems, such as village governments, can function effectively in implementing central policies, by considering adaptation, goal achievement, integration, and pattern maintenance (Parsons, 1991, p. 21). In the context of PTSL, the adaptation function is seen in the village government's ability to adapt central regulations to local conditions. Goal achievement is realized through the effectiveness of PTSL policy implementation, while integration emphasizes the importance of cooperation between various parties in supporting this program. Pattern maintenance refers to the social stability that must be maintained during policy implementation. According to Alexander, this approach is important for understanding the interaction between formal policies and local practices,

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especially in analyzing the success of public policies in multi-level governance systems.

## 3. Result

### *3.1. Implementation of the fee setting arrangement for Complete Systematic Land Registration*

The National Land Agency (BPN) began its institutional journey as an Agrarian Office that functioned to manage agrarian affairs in Indonesia. However, along with the development of increasingly complex land-related issues, the role of this institution was expanded to become the National Land Agency in 1998 through Presidential Decree Number 26 of 1998. This change reflects a shift in focus from local agrarian issues to cross-sectoral issues involving land, spatial and security aspects (Indonesia, Pemerintahan Pusat, 2013).

As a non-ministerial institution reporting directly to the President, BPN holds a key mandate in land management, from national policy to implementation at regional and sectoral levels. Its institutional structure is designed to support the resolution of various land issues, including land certification and dispute management. In addition, these institutional changes create flexibility in policy-making that is more adaptive to community needs.

Currently, the Directorate General of Spatial Planning under the Ministry of Agrarian Affairs and Spatial Planning (ATR)/BPN consists of five main units. These units include the Directorate General Secretariat, Directorate of National Spatial Planning, Directorate of Regional Spatial Planning I and II, and Directorate of Spatial Utilization Synchronization. Each unit has specific functions, such as national spatial planning to regional spatial synchronization (Kementerian ATR/BPN, 2024). This structure allows BPN to address land challenges with a more holistic approach.

Based on Presidential Regulation No. 20/2015, BPN has the main task of carrying out government functions in the land sector. This task includes land registration, spatial planning, land acquisition for public interest, and land conflict resolution (Presiden Republik Indonesia, 2015). This function is implemented through the preparation of land survey, measurement, and mapping policies; regulation of land rights; and community empowerment in utilizing land optimally.

In addition, BPN is also responsible for the integrated management of land information data. By utilizing digital technology, BPN develops a land information system to improve transparency and service efficiency. This function includes supervising the implementation of tasks within the BPN, managing land data for sustainable agriculture, and developing human resources in the land sector.

The complexity of BPN's tasks also includes handling land disputes and cases. In resolving these issues, BPN adopts a regulation-based approach that includes coordination with other agencies such as the Ministry of Agrarian Affairs and Spatial Planning. According to Anshari, coordination between units within BPN plays an important role in ensuring efficiency and accountability of land policy implementation (Anshari Siregar, 2007, p. 91).

The Complete Systematic Land Registration (PTSL) program is an accelerated government initiative to facilitate the community in systematically registering land at a more affordable cost. The main objectives of this program are to improve the welfare of the community, prevent land conflicts, and provide legal certainty, as stipulated in Article 2 of the Regulation of the Minister of ATR/BPN Number 12 of 2017. PTSL objects include all land parcels, whether owned by individuals, government, business entities, or customary land (Menteri ATR/BPN, 2017b).

In its implementation, the cost of PTSL is uniformed through a Joint Decree (SKB) of

Three Ministers that covers the cost of preparing documents, procuring stakes and stamps, and the operations of village/kelurahan officers. The government also sets the amount of fees based on regional categories: Papua up to Rp450,000, Java and Bali Rp150,000. This provision aims to maintain equality and cost relief for the community (Menteri ATR/BPN, 2017a).

The central government also regulates PTSL funding sources, including from the Ministry of ATR/BPN's DIPA Fund, regional budgets, CSR, and community grants and self-help funds (Menteri ATR/BPN, 2017c). This approach ensures that communities are not overly burdened by the cost of the program, especially for areas with budget constraints.

Transparency and fairness in fee setting is also a priority. Article 33 of the Regulation of the Minister of Agrarian and Spatial Planning/BPN No. 12/2017 mandates fees that are transparent and within the means of the community. The central government also emphasizes the importance of socializing the fees to the community to increase trust and participation in the program (Haikal et al., 2024, p. 128).

However, despite clear regulations, implementation in the field often faces challenges, including a lack of public understanding and discrepancies in the fees charged by local governments. Therefore, coordination between the central and local governments is key to ensuring the success of the PTSL program.

### *3.2. Implementation of Complete Systematic Land Registration (PTSL) fee determination at the village level*

The implementation of the PTSL program at the village level is a strategic step in supporting the national agenda, especially in providing legal certainty over land to the community. The implementation of PTSL at the village level, such as in Parangargo Village, Malang District, is a concrete step to support the national program in providing legal certainty over land ownership. The program is designed to simplify the land registration process at an affordable cost, as stipulated in the Joint Decree (SKB) of Three Ministers which sets a fee of Rp150,000 for Java and Bali. The fee covers document preparation activities, procurement of land boundary stakes, and village officer operations, aiming to make it easier for people to access this service without the burden of high costs.

However, PTSL implementation in Parangargo Village has faced challenges, particularly in terms of transparency and consistency of surcharges. It has been reported that communities have had to pay additional fees of up to Rp700,000-Rp3,000,000, far exceeding the provisions stipulated in the SKB. This situation created unrest among the community and led to negative perceptions of the program (Burhanuddin et al., 2022, p. 55). Shortcomings in socialization and a lack of transparency from village governments are the main causes of this problem.

In addition to the cost, the timing of land certificate completion is also an issue. The central government claims that PTSL can be completed in 1-2 months if the documents are complete, but in Parangargo Village, some residents reported receiving their certificates after three years. This suggests administrative constraints, such as a lack of skilled personnel or the inability of village governments to efficiently manage physical and juridical data (Gea et al., 2024, p. 16034). These constraints not only hamper program objectives, but also reduce community trust in the village government.

To support the implementation of PTSL, the village government sets the surcharge through a community consultation that results in a Village Regulation (Perdes). This Perdes provides the legal basis for the management of additional fees beyond the SKB Tiga Menteri. However, the lack of community involvement in the deliberations and the lack of transparent explanation of the details of the fees are key challenges in implementing this policy (Rosdiani et al., 2024, p. 205). Perdes should be based on broad

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community participation and should be clearly informed to all parties involved.

Support from local and central government is essential to address this issue. Steps that can be taken include: (1) strengthening socialization to ensure the community understands the PTSL process and fees, (2) close supervision of Perdes implementation to ensure compliance with the SKB Tiga Menteri, (3) evaluating the transparency of additional fees, and (4) increasing the capacity of village officers in managing the PTSL program. This approach is necessary to prevent irregularities and to ensure that the program runs in accordance with its objectives, namely to provide legal certainty over land ownership to the community in a fair and transparent manner.

The implementation of the Complete Systematic Land Registration (PTSL) Program in Parangargo Village is part of a national agenda to provide legal certainty over community land ownership. The determination of fees through Village Regulations (Perdes) refers to the mechanism stipulated in Article 371 of Law No. 23/2014 on Regional Government, which allows village governments to make policies in accordance with local authority. In addition, Minister of Home Affairs Regulation No. 111/2014 on Guidelines for Drafting Village Regulations is also the legal basis for the Perdes drafting process. The fee of Rp 150,000 per parcel of land, in accordance with the SKB Tiga Menteri, covers the procurement of documents, stakes, and village operations (Sulastini, 2024, p. 944).

However, there have been complaints from the public regarding additional costs ranging from Rp 700,000 to Rp 3,000,000. This additional cost is claimed to cover other needs such as consumption, officer honorariums, and other operational costs that are not covered by the central government budget. Unfortunately, the village government's lack of socialization and transparency meant that the community did not fully understand the reasons behind these additional costs, leading to unrest and dissatisfaction (Ningsih & Arbayah, 2024, p. 869).

The process of determining PTSL fees ideally involves analyzing budget needs, preparing a budget plan, and consulting with the community. However, in Parangargo Village, the deliberations did not involve all elements of the community. This resulted in a lack of representation in decision-making and led to low community participation in the PTSL program. In addition, the lack of information conveyed to the community about the benefits of PTSL caused many residents to be reluctant to participate.

Analysis using Talcott Parsons' AGIL Structural Functional Theory shows that the implementation of PTSL fees in Parangargo Village has not fully met the elements of adaptation and integration in the social system. Adaptation was not achieved because the village government failed to provide a transparent mechanism in setting additional fees, making it difficult for the community to adjust to the existing policy. Integration was also not optimal because communication between the village government and the community did not go well, which led to low levels of trust and community participation.

From a Justice Theory perspective, the setting of additional fees beyond the provisions of the SKB Tiga Menteri violates the principle of distributive justice, because not all people are able to bear the burden of higher fees without a fair agreement. The lack of socialization also violates the principle of procedural justice, because the community is not given adequate information to understand the benefits and obligations in the PTSL program.

Based on Legal Certainty Theory, the policy taken through Perdes has not provided adequate legal clarity for the community. The discrepancy between the Perdes and the SKB Tiga Menteri creates confusion that leads to uncertainty, so that the community feels that they do not get proper legal protection.

To increase the success of PTSL implementation in Parangargo Village, the village government needs to improve adaptation and integration through better communication and involve all elements of the community in deliberations related to

PTSL policies. In addition, the application of the principles of distributive and procedural justice must be used as the main guideline in the formulation of village policies to ensure that the policies taken can create legal certainty and provide equitable benefits for the entire community.

In the long term, the success of PTSL in Parangargo Village requires a more participatory and inclusive approach. The village government needs to involve the community in every stage of decision-making, from planning to policy implementation. By ensuring cost transparency and providing clear information to the community, the PTSL program can run more effectively and achieve its main goal of providing legal certainty and preventing land conflicts.

### *3.3. Digital infrastructure improvement to support the implementation of electronic certificates at village level*

In determining the cost of systematic land registration throughout Indonesia, there are differences in the amount and also policies, which are regulated in the SKB 3 Ministers which differ in each province, and also further regulations that also regulate the determination of the cost of complete systematic land registration such as village regulations that further regulate additional costs in the implementation of complete systematic land registration.

However, in reality, there are also some villages that continue to refer to the SKB 3 Minister without making further regulations so that there is no additional cost in implementing complete systematic land registration, where for example this is done in Medaeng Village, Waru District, Sidoarjo Regency (Lika & Sholichah, 2020, p. 65).

The implementation of the Complete Systematic Land Registration (PTSL) Program in Medaeng Village, Waru Sub-district, Sidoarjo District, demonstrates compliance with the provisions set out in the Joint Ministerial Decree (SKB). The fee of Rp150,000 per parcel of land covers stamp duty, land boundary marking and transportation for village officials. This is in line with the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency No. 3 of 2023 on the Issuance of Electronic Documents in Land Registration Activities, which promotes efficiency and transparency in the land registration process (Indonesia, Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional, 2023).

Policy implementation shows that Medaeng Village successfully fulfills the indicators of policy standards, resources, and communication between the central government and the village government. Good synchronization between the central government, Sidoarjo District Land Office, and village officials ensured smooth policy implementation. However, there are still challenges in the form of a lack of socialization, so some people are reluctant to participate in the PTSL program because they consider the registration fee expensive and the procedures complicated (Lika & Sholichah, 2020, p. 68).

The government has also introduced digitalization through the Minister of ATR/BPN Regulation Number 3 of 2020 on Electronic Certificates. Electronic land certificates improve service efficiency, transparency, and document security through blockchain technology, layered encryption, and digital signature. However, in some areas, including Parangargo Village, the implementation of digitization faces obstacles of low public understanding and lack of effective socialization. Many residents prefer to use physical documents collected by the village office.

The success of PTSL depends on the willingness of the community to participate in the program as well as government support in conducting socialization and providing access to digital technology. To increase participation, the government needs to conduct periodic counseling by considering times that are convenient for the community.

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Based on an analysis of the implementation of the Complete Systematic Land Registration (PTSL) Program at various levels, including the central government and village levels such as Medaeng Village and Parangargo Village, it appears that the success of the program is highly dependent on regulatory compliance, communication effectiveness, and community involvement. Medaeng Village demonstrates how policy implementation in accordance with the SKB Tiga Menteri and supported by synchronization between central and village governments can create transparency and community trust. In contrast, challenges in Parangargo Village, such as the lack of socialization and the lack of clarity in determining additional costs, are important lessons that policy adaptation must involve all elements of society in an inclusive manner.

In addition, digitization efforts through electronic land certificates show great potential in improving efficiency, security, and transparency, although it still faces obstacles in the form of low public digital literacy and limited infrastructure at the village level. The success of the PTSL program requires not only clear regulatory support, but also a participatory approach, strengthened socialization, and increased capacity of village governments. By ensuring transparency, community involvement, and strengthening digital infrastructure, PTSL can provide real benefits in realizing legal certainty, preventing land conflicts, and supporting sustainable community welfare.

## 4. Conclusions

The Complete Systematic Land Registration (PTSL) program is a national initiative that aims to provide legal certainty over community land ownership through a transparent mechanism and affordable costs. The implementation of PTSL at the central to village level, such as in Medaeng and Parangargo Villages, shows that the success of the program is highly dependent on regulatory compliance, communication effectiveness, and community involvement. Medaeng Village successfully implemented the program in accordance with the provisions of the SKB Tiga Menteri without additional costs, creating community trust and efficiency in its implementation. In contrast, Parangargo village faced challenges such as lack of transparency on additional costs, lack of socialization, and inconsistent certificate completion times, which undermined the principles of justice and legal certainty. Digitization efforts through electronic land certificates show great potential in improving efficiency and document security, although it requires strengthening digital literacy and technological infrastructure at the village level. By overcoming challenges through improved socialization, community participation, and strengthened infrastructure, the PTSL program can be an effective instrument in realizing social justice, preventing land conflicts, and supporting sustainable development.

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# INTERNATIONAL APPROACHES TO CONSTITUTIONAL AND LEGAL REGULATION OF HUMAN RIGHTS RESTRICTIONS DURING MARTIAL LAW

**Olha Yatsun**
Department of Law
State University "Kyiv Aviation Institute"
03058, 1 Liubomyra Huzara Ave., Kyiv, Ukraine
e-mail: oliayatsun@gmail.com
https://orcid.org/0009-0008-2086-876X

**Abstract**

This article examines international practices in the constitutional and legal regulation of human rights restrictions during emergency and martial law across various European countries. An analysis of foreign constitutions reveals that most of them allow for the limitation of individual and citizen rights under these extraordinary conditions. The scope of these restrictions is generally similar for both martial law and states of emergency. Through a comparative analysis, the study identifies different constitutional approaches to defining the extent of human and civil rights restrictions under special legal regimes. Four main trends emerge: constitutions that explicitly list rights and freedoms that cannot be restricted (or suspended) during emergencies and martial law; constitutions that provide an exhaustive list of rights and freedoms that may be restricted during such periods to safeguard human rights, democratic order, public security, public welfare, and morality; constitutions that combine both approaches; and constitutions that grant state authorities the power to restrict personal rights and freedoms under special legal regimes for national security purposes without specifying the particular rights that may or may not be restricted. Typically, the specific rights subject to restriction are defined by subordinate regulatory legal acts issued by state authorities.

**Keywords:**martial law; emergency conditions; human rights; rights restrictions.

## 1. Introduction

The application of special legal regimes in most foreign countries reflects the understanding that these regimes are legal frameworks designed to regulate the extraordinary exercise of state power during situations where the normal functioning of society and the state is disrupted. The implementation of such regimes often involves the restriction of human and civil rights, sometimes enforced through coercive measures. However, in today's context of civilizational progress and the widespread adoption of humanistic principles, any restrictions on human and civil rights must be both reasonable and proportional. Limitations imposed under special legal regimes should not be excessive and must adhere strictly to procedural norms. This underscores the need for clear and appropriate criteria to guide the limitation of human and civil rights during such exceptional circumstances (Hyliaka et al., 2020).

Given this, understanding the grounds, nature, and scope of restrictions on human and civil rights under special legal regimes is significantly informed by studying international law norms and foreign practices regarding states of emergency and martial law.

The importance of studying the concept, types, and key characteristics of

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special legal regimes is undeniable, as these regimes provide the legal foundation for restricting human and civil rights. Throughout history, individual countries and the international community have frequently faced extraordinary situations, such as acts of aggression, threats to constitutional order, dangers to life and health, natural and man-made disasters, and other exceptional circumstances that disrupt the normal functioning of society and the state. In these challenging conditions, the need for clear and consistent legal frameworks governing behavior becomes even more critical, as they are essential for effectively addressing and mitigating the negative impacts of emergencies (Bukhanevych et al., 2021).

While the state has considerable freedom in addressing national security issues, any political or legal decision in a state governed by the rule of law is limited by the country's Constitution, which delineates the discretionary powers of each authority. The restriction of human rights and freedoms is an extremely relevant and necessary topic, driven not only by the extensive body of scholarly work and specialised academic disciplines but also by the practical aspects of coexisting within a state and the global space. This involves determining how to maintain order in society, which rights may be restricted, the procedures for such restrictions, and how to adhere to legal principles such as balancing individual, societal, and state interests, the rule of law, legality, proportionality, and humanism in the implementation of rights restrictions.

The importance of studying the constitutional and legal regulation of rights restrictions during emergency and martial law conditions is underscored by the critical role that the principle of legality plays in society. This principle ensures that universal human values—such as human dignity, humanism, freedom, justice, and equality—are upheld within real legal relationships. It requires that state institutions and their officials strictly follow the law (in its broadest sense) while exercising their powers, even in extraordinary circumstances.

The study of constitutional and legal mechanisms for restricting human rights under states of emergency and martial law in countries such as Macedonia, Armenia, Belarus, Moldova, Georgia, Latvia, Lithuania, Albania, and Azerbaijan is justified by several factors. First, these countries represent a broad spectrum of political, legal, and cultural contexts, allowing for a detailed examination of diverse approaches to regulating human rights in extreme conditions (Rohava, & Burkhardt, 2019). For instance, some of these nations have historical experience with authoritarian regimes, while others gained independence following the dissolution of the Soviet Union or have undergone significant political and social changes. This diversity provides a deeper understanding of how different systems address the challenges of national security and human rights. Secondly, studying these countries enables a comparative analysis to identify both common trends and unique approaches to restricting human rights. For example, the Baltic states may have different approaches to rights protection compared to countries in the South Caucasus or Central Asia. Thirdly, in the context of contemporary global challenges such as terrorism, military conflicts, and pandemics, the examination of these countries' experiences is crucial for understanding how national legal systems adapt to emergency situations. This knowledge can be instrumental in developing recommendations for improving mechanisms to safeguard human rights during states of emergency and martial law. Thus, the analysis of constitutional and legal mechanisms in these countries provides a comprehensive understanding of how legal systems balance the demands of national security with the protection of human rights in extreme situations.

It is widely recognized that the European Court of Human Rights applies a specific test to assess the legitimacy of restrictions on human rights. This test examines whether the restriction is prescribed by law, pursues a legitimate aim, is necessary in a democratic society, and is non-discriminatory. This approach highlights the principle that human rights are grounded in interests that must be fairly balanced with societal needs, thereby justifying state-imposed limitations on the exercise of those rights. This article will focus on the first aspect of this test—the foreseeability of restrictions under the law.

When restricting human rights, state authorities must themselves be bound by established legal norms. These rules of conduct for state authorities are embedded in constitutional texts, as constitutions function as a social contract between a country's citizens, society, and the state, aimed at harmonizing the private and public interests of all parties involved.

Given the above, constitutional and legal regulation of restrictions on human rights by state authorities is crucial to preventing arbitrariness by officials in applying legal norms under specific life circumstances, aiming to reconcile individual and societal interests.

## 2. Materials and Methods

The research employed a comprehensive system of scientific methods, including general scientific methods such as analysis and synthesis, along with specific methods drawn from various scientific fields, including comparative analysis, quantitative and qualitative analysis, and approximation. Additionally, specialized legal methods, like formal-legal and comparative-legal analysis, were utilized. The general philosophical (universal) method was applied throughout all stages of the research process. The approximation method, which involves substituting complex objects with simpler, analogous ones, facilitated the examination of numerical characteristics and qualitative properties by simplifying the study to more manageable or familiar objects—those with easily calculable characteristics or known properties. In this context, the method was used metaphorically to reflect the approximate and provisional nature of assessing the impact of peaceful assemblies on the development of a democratic regime in Belarus.

Through analysis, the research identified key features and specific aspects of constitutional and legal regulation of human rights restrictions under emergency and martial law conditions in countries such as Macedonia, Armenia, Belarus, Moldova, Georgia, Latvia, Lithuania, Albania, and Azerbaijan. Comparative analysis uncovered various approaches to defining the scope of restrictions on human and civil rights under special regimes as established in the constitutions of these states. The generalization method was employed to identify four predominant trends in these approaches.

Deductive reasoning was employed to draw general conclusions about the key features of constitutional and legal regulation of human rights restrictions under emergency and martial law conditions, based on established doctrinal perspectives. Conversely, the inductive method was used to analyze the constitutions of Macedonia, Armenia, Belarus, Moldova, Georgia, Latvia, Lithuania, Albania, and Azerbaijan, enabling the formulation of general conclusions about the grounds for restricting human rights under these special conditions. The historical method played a crucial role in uncovering the teleological foundations behind the development of constitutional norms related to human and civil rights restrictions in foreign countries. This approach provided a deeper understanding of these norms and supported the development of new recommendations for legal reforms.

Uzing legal methods, including formal-legal and systemic-structural approaches, were utilized to refine the terminological framework of the study. These methods helped clarify the definitions of «martial law» and «emergency law» and highlighted the distinct features of these legal concepts across different contemporary countries.

The research's normative foundation is rooted in the constitutions of foreign countries that establish the legal basis for the lawful restriction of human rights. Additionally, doctrinal sources that explore the content of constitutional and legal regulations on human rights restrictions were integral to the study.

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## 3. Result and Discussion

### *3.1. Legal regime is a substantive legal phenomenon*

The legal regime is a substantive legal phenomenon that encompasses a comprehensive array of legal norms and principles. When examining constitutions from various countries, it becomes evident that most of them provide mechanisms for restricting human and citizen rights and freedoms during states of emergency and martial law. These exceptional legal regimes are characterized by their capacity to modify or suspend the normal legal framework in response to crises, thereby allowing governments to implement extraordinary measures.

An in-depth comparative analysis of constitutional provisions across different jurisdictions reveals that, while the scope of rights limitations during emergency and martial law conditions is broadly similar, the specific approaches and extent of these restrictions can vary significantly. In general, constitutions grant the authority to impose such limitations based on the perceived severity of the threat and the necessity of the measures to restore or maintain public order and national security.

In many countries, the state of emergency is declared in response to severe situations such as natural disasters, civil unrest, or significant threats to public safety. The legal framework governing emergencies typically allows for temporary suspension or restriction of certain rights, such as freedom of movement, assembly, and expression. However, these limitations are often designed to be proportional and temporally confined to the duration of the emergency.

For example, the German Basic Law permits the suspension of certain fundamental rights during emergencies, but only under stringent conditions and with the requirement of maintaining the core of human dignity. Similarly, the French Constitution allows for the declaration of a state of emergency, during which the government can restrict rights like free movement and assembly, yet such measures are subject to judicial review and must be justified as necessary and proportional to the threat. Martial law, often invoked in situations of armed conflict or severe internal disorder, typically involves more extensive and prolonged restrictions on rights compared to emergency regimes. Under martial law, the scope of limitations may encompass broader areas, including judicial oversight, civil liberties, and administrative controls. This regime grants the military authority to enforce laws and maintain order, which can lead to significant curtailments of individual freedoms.

In the United States, for instance, martial law has historically been declared in exceptional circumstances, such as during the Civil War and World War II. Although the U.S. Constitution does not explicitly address martial law, historical precedents and legal interpretations have shaped its application. The restrictions imposed under martial law are generally justified by the need to address immediate and substantial threats to national security, but they also raise important questions about the balance between security and civil liberties.

The comparative analysis of constitutional approaches reveals that while most countries incorporate mechanisms for restricting rights during emergencies and martial law, the specifics of these mechanisms vary. Some constitutions provide detailed provisions and procedural safeguards to ensure that limitations are applied in a controlled and transparent manner. Others adopt a more flexible approach, allowing broader discretion to the authorities during exceptional conditions.

For example, the Indian Constitution provides a comprehensive framework for declaring a state of emergency, with clear provisions for the suspension of fundamental rights and the imposition of limitations. However, it also mandates parliamentary approval and periodic review to ensure that such measures are not misused.

In contrast, other countries may grant broader emergency powers with fewer explicit constraints, relying on the judicial system to oversee and adjudicate the proportionality and necessity of measures taken. This approach underscores the importance of an effective and independent judiciary in safeguarding rights and ensuring that emergency powers are not exercised beyond their legitimate scope.

In conclusion, while the fundamental principle of allowing for rights restrictions during exceptional states is widely accepted, the degree of specificity, procedural safeguards, and oversight mechanisms vary across different legal systems. Comparative analysis of these approaches provides valuable insights into how different countries balance the need for security with the protection of fundamental rights, highlighting the importance of both legal frameworks and judicial review in maintaining this balance.

***3.2. Non-derogable rights and constitutional safeguards during states of emergency: comparative analysis***

In examining foreign experiences with constitutional and legal regulation of human rights restrictions during emergency and martial law, North Macedonia and Armenia stand out for their distinctive approaches to protecting fundamental rights under exceptional circumstances. North Macedonia's Constitution explicitly enumerates inviolable rights that cannot be suspended, offering a clear framework for the protection of essential freedoms even during states of emergency. In contrast, Armenia's Constitution allows for the temporary restriction of certain rights while adhering to international obligations, highlighting a more flexible approach to balancing security and rights protection. By comparing these two countries, the analysis provides valuable insights into how different legal systems manage the tension between ensuring national security and preserving fundamental human rights, contributing to a broader understanding of effective constitutional safeguards in various national contexts.

For example, Article 54 of the Constitution of the Republic of North Macedonia, initially enacted on November 17, 1991, stipulates that the freedoms and rights of individuals and citizens may only be restricted in cases specified by the Constitution. Any such limitations during wartime or a state of emergency must comply with constitutional provisions. These restrictions must not result in discrimination based on sex, race, skin color, language, religion, national or social origin, property, or social status. Certain rights, such as the right to life, the prohibition of torture, inhuman or degrading treatment or punishment, the legal definition of criminal offenses and penalties, and freedom of personal beliefs, conscience, opinion, and religion, remain inviolable.

The drafting of the Macedonian Constitution began before the dissolution of socialist The drafting of the Macedonian Constitution began before the dissolution of socialist Yugoslavia in 1991 (Sabrina and Ramet, 1995). A significant debate during its formulation was whether Macedonia should be defined as a «state of citizens» (where all citizens have equal rights) or as a «national state» (favoring Macedonians over other ethnic groups within the country) (Vankovska, 2013). The drafters reached a compromise by defining the country as a national state in the preamble, while guaranteeing equal rights and obligations for all nationalities in the main body of the text.

Despite the country's name change from the Former Yugoslav Republic of Macedonia to North Macedonia, the normative act continues to be titled «Constitution of the Republic of Macedonia» due to a political-legal dispute with Greece over the use of the name «Macedonia» (Danforth, 1995). From 1993, the official designation in the UN was the Former Yugoslav Republic of Macedonia  (Ramet, 2017). In 2018, an agreement was reached between Greece and the Republic of Macedonia regarding the country's name, resulting in its renaming to the Republic of North Macedonia.

Likewise, Article 44 of the Constitution of the Republic of Armenia states that certain fundamental rights and freedoms—except for those outlined in Articles 15, 17-22, and 42 of the Constitution—may be temporarily restricted during martial law or a state of emergency, as prescribed by law, in accordance with international obligations related to derogations during emergencies.

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In 2005, the Constitution of the Republic of Armenia was amended (Application No. 36549/03..., 2007), leading to the establishment of a new judicial system in the country. Ensuring the effectiveness and efficiency of judicial protection is crucial for safeguarding human rights during exceptional regimes. The Judicial Code, which encapsulates all the principles and approaches of the judicial system, is a distinctive document without global equivalents (Rakipova et al., 2023). Armenia's reformed judicial system acknowledges precedent law, with the sources of precedent being decisions from the European Court of Human Rights and the Armenian Court of Cassation (Utkina & Reznik, 2022).

### *3.3. Presidential powers and parliamentary oversight in rights restrictions*

Some constitutions provide an exhaustive list of rights that can be restricted during a state of emergency or martial law to protect human rights, democratic institutions, public safety, and morality.

For example, Part 4 of Article 71 of the Constitution of Georgia allows the President to restrict certain rights listed in Articles 13, 14, 15, 17, 18, 19, 21, and 26 of the Constitution during a state of emergency or martial law. The President can also suspend the application of specific provisions during these states. Such decrees must be immediately submitted to Parliament for approval. Decrees limiting rights take effect immediately upon issuance, while decrees suspending provisions become effective once approved by Parliament (Brusis, et al., 2016).

V. Napetvaridze and T. Tsxovrebadze, analysing the drafting of the Georgian Constitution from a discourse ethics perspective, employed Jurgen Habermas's discourse quality index (Napetvaridze et al., 2020). This methodology, focusing on the behaviour of discourse participants, measures the quality of political debates. The researchers studied and analysed over 200 pages of parliamentary debate transcripts regarding the adoption of the 1995 Georgian Constitution. The 1995 Georgian Constitution succeeded the 1921 Constitution, which mandated a referendum for constitutional issues. Due to the activities of self-proclaimed governments in South Ossetia and Abkhazia, the Georgian government was unable to hold a referendum. The issue of the referendum became a major point of contention during parliamentary debates, with one group arguing that the Constitution could not be adopted in violation of the 1921 Constitution, while another group advocated for its adoption to guide the country's future development. On 24 August 1995, the Georgian Parliament adopted the new Constitution (Petryshyn, 2020).

R. Petrov and colleagues, analysing the constitutional and legal order of unrecognised entities in Georgia and Ukraine—such as «Abkhazia,» «South Ossetia,» «Donetsk People's Republic,» and «Luhansk People's Republic»—assert that the constitutional orders in these entities exhibit undeniable similarities, and their inhabitants face similar challenges regarding the protection of fundamental rights and the application of international conventions (Petrov et al., 2020).

### *3.4. Constitutional and legal frameworks for rights restrictions in Latvia: Balancing national security and fundamental freedoms*

In Latvia, national security issues are governed by the National Security Law, which defines the national security system and its objectives. This law outlines the competencies of Parliament (Saeima), the Cabinet of Ministers, the President, and various ministries and local authorities regarding measures to maintain order. Although the Latvian Constitution does not explicitly state that ensuring national or state security is a legitimate aim for restricting fundamental rights, the Constitutional Court has recognized the protection of state security as a legitimate aim alongside the protection of democratic institutions.

As noted by A. Lāviņš, Chair of the Constitutional Court of Latvia in 2016, if there is a legitimate aim for restricting fundamental rights, the Constitutional Court must balance the specific restricted right against national security concerns (Puraite-Andrikiene, 2019).

In case No. 2004-14-01 of 06.12.2004, the Constitutional Court of Latvia noted that for public safety to be a legitimate aim for legal regulation, the legislator must objectively justify the connection between the enactment of a particular act and the mitigation of security threats. The Court rejected the legislator's reliance on unsubstantiated references to state security. This case involved migration issues, which are of significant interest in European states due to the desire of citizens from less developed countries to live in developed, democratic, and socially advanced states (Shqarri & Rusi, 2021). The contested legal norm was part of the Immigration Law and provided that decisions by the Minister of Foreign Affairs and the Minister of the Interior to include a person on a list of those banned from entering Latvia could not be appealed. The legislator restricted the right to a fair trial, citing the protection of state and public security and the need for swift and effective measures in situations threatening security. Additionally, the norm aimed to prevent the disclosure of confidential information.

Referring to the European Court of Human Rights' practice, the Latvian Constitutional Court confirmed that it is within the state's competence to regulate the entry and residency of foreigners, including deportation of those convicted of criminal offenses. The Court noted that democratic societies have the right to national security, but internal security services must be authorized to protect state security without having unchecked powers to infringe on fundamental rights. It recognized that procedural limitations on human rights might be necessary to prevent harm to national security, emphasizing the broad discretionary powers of the executive in matters of national security.

## 5. Conclusions

National security issues are regulated at the constitutional level, with each state's fundamental law delineating the national security system, its objectives, and the competencies of Parliament, the President, the executive branch, individual ministries, and local government bodies. Analysis of political and legal relations in various countries around the world reveals that the structuring of rights and responsibilities of legal subjects gains particular significance following the outbreak of armed conflict within a state. Consequently, the process of implementing human and citizen rights necessitates more imperative regulatory methods and may justify the adoption of emergency measures, occasionally relying on coercive means.

Legal norms and actions of executive state authorities and local government bodies cannot escape judicial scrutiny if such norms or actions infringe upon the legitimate interests of individuals. Judicial power, as a whole and its constituent parts specifically, must ensure oversight over the other two branches of power. Constitutional courts, by assessing the compliance of laws with the Constitution, implement the principle of constitutional supremacy, thereby ensuring constitutional justice. Courts are empowered to review the legality and constitutionality of decisions made by other branches of power, especially when such decisions relate to national security.

National security and human rights often come into conflict when fundamental rights are restricted in the interest of national security. In such cases, it is the responsibility of state authorities and local governments to strike a balance between safeguarding fundamental rights and ensuring national (state) security. Restrictions on fundamental rights are only permissible if they serve a legitimate purpose. The European Convention on Human Rights recognizes national security as a legitimate aim for restricting certain rights in several of its articles. However, only the protection of constitutional values can justify limiting fundamental rights. Rights enshrined in the Constitution may be restricted under legally defined conditions, with objectives including: first, the protection of others' rights; second, the maintenance of the democratic order; and third, the preservation of public safety, welfare, and morality.

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# THE LEGAL CONSTRUCTION OF LAND BOUNDARY DESIGNATION: EFFORTS TO PREVENT DISPUTES IN LAND ADMINISTRATION

**Muhamad Ansori**
Faculty of Law
Brawijaya University Malang
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: ari_ansori@student.ub.ac.id
https://orcid.org/0000-0002-0082-1277

**Iwan Permadi**
Faculty of Law
Brawijaya University Malang
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: iwan_permadi@ub.ac.id
https://orcid.org/0000-0001-8283-9333

**Supriyadi**
Faculty of Law
Brawijaya University
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: doct.supriyadi@gmail.com
https://orcid.org/0000-0001-6696-7511

**Abstract**

Land boundary determination is a fundamental aspect of land administration in Indonesia, aimed at ensuring legal certainty and preventing disputes among landowners. Recent technological advancements, including the use of drones and photogrammetry as regulated in Permen ATR/BPN No. 3/Juknis-HK.02/III/2023, have significantly improved efficiency in land measurement processes. These technologies enable accurate data collection even in inaccessible locations and produce digital maps supporting the modernization of land administration. However, their application raises critical legal issues, particularly regarding violations of the rechtszekerheid principle (legal certainty) and contradictory delimitation, which require the direct presence of landowners and bordering parties. This study employs a normative juridical method, focusing on statutory and conceptual approaches. The findings indicate that while drones and photogrammetry enhance efficiency, the absence of direct stakeholder involvement undermines the legitimacy of measurement outcomes. Regulatory revisions are necessary to integrate field validation, ensuring compliance with legal and technical standards. The conclusion emphasizes harmonizing technological advances with legal principles to create an efficient, transparent, and equitable land administration system that aligns with Indonesia's systematic land registration goals by 2025.

**Keywords:** Land boundaries; drones; legal certainty; land administration; photogrammetry

## 1. Introduction

Land plays a fundamental role in human life, not only as a place of residence but also as an economic asset and a symbol of identity governed by law. In the context of land administration in Indonesia, land boundary regulation is a crucial element aimed at providing legal certainty for landowners while minimizing the potential for conflicts and disputes.

The Basic Agrarian Law (UUPA) Number 5 of 1960, as the legal foundation of agrarian law in Indonesia, emphasizes the importance of land registration to provide legal assurance of land ownership. This provision is reinforced through Government Regulation Number 24 of 1997 on Land Registration, which regulates the fundamental principles of land administration, including the determination and designation of land boundaries. In practice, the principle of contradictoire delimitatie, which requires the presence of landowners along with their neighbors during the boundary determination process, serves as an essential step to ensure the accuracy and validity of land boundary data.(Kaarhus & Dondeyne, 2015, p. 193)

However, in its implementation, various issues often arise, such as differences in the interpretation of regulations, the use of technology without the involvement of landowners, and discrepancies between field data and measurement results. For instance, recent regulations, such as the Technical Guidelines for Complete Systematic Land Registration (PTSL), allow the use of drones or photogrammetric methods.(Jahani Chehrehbargh et al., 2024, p. 22) In boundary measurements conducted without direct designation, there is a potential conflict with the principle of contradictoire delimitatie as stipulated in Government Regulation Number 24 of 1997. This situation may trigger legal disputes between landowners and the authorities, ultimately disadvantaging the community as rightful landowners.

This case involves a land dispute in Labokke Hamlet, Puty Village, Bua District, Luwu Regency, which originated from the Plaintiff's possession of the land since 1972. After purchasing the land, the Plaintiff utilized it for farming and rice fields. In 1991, the land was certified under a Certificate of Ownership in the name of Subaedah (Plaintiff I) Palopo District Court Decision Number: 25/Pdt.G/2014/PN Plp. However, in 2012, without the Plaintiff's consent, Defendant I took control of part of the land, which had previously been used in a new rice field development project by the Luwu Regency Government. Additionally, Defendant I trespassed by planting rice and harvesting timber belonging to the Plaintiff. Attempts to resolve the issue by the village and subdistrict governments were unsuccessful, leading to the case being brought before the Palopo District Court. The land measurement conducted by Defendant II (Land Office) sparked controversy due to discrepancies with field data, disregard for pre-existing land boundaries, and alleged violations of applicable regulations. Consequently, the Plaintiff sought justice for their encroached land rights and procedural violations by the parties involved.

Additionally, weaknesses in supervision and coordination among relevant agencies during the land boundary designation process have also contributed to the rising number of land dispute cases.(Wardani et al., 2023, p. 100042) As an illustration, several court rulings reveal that inaccuracies in determining land boundaries often trigger prolonged conflicts, which not only hinder the land administration process but also undermine public trust in the government. Legal facts indicate that, apart from disputes over measurements and land boundaries, the implementation of land registration, particularly within the Complete Systematic Land Registration Program (PTSL), faces several fundamental legal issues. One of these issues is the differing interpretations regarding the mechanisms for implementing PTSL, which can generally be carried out through two approaches: the establishment of separate PTSL service posts independent of the land office or integrated services directly within the land office. In the first mechanism, PTSL service posts are designed to focus on registration activities without disrupting routine services at the land office. However, this mechanism often leads to overlapping authorities if not accompanied by adequate coordination. Meanwhile, the second mechanism, integrated services with a «door-to-door» approach, offers convenience for the public but carries risks if there is no strict supervision of field officers. In practice, both mechanisms require sufficient and qualified human resources

(HR). However, the implementation of PTSL often faces challenges due to the limited availability of competent HR, considering the involvement of various parties, including civil servants from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), Licensed Cadastral Surveyors, Non-Permanent Employees, and even high school/vocational students undertaking internships. The disparity in competence among these parties can lead to inaccurate measurement data and procedural violations. This reflects a lack of harmony between the implementation mechanisms and the need for optimal HR, ultimately triggering disputes and legal issues in land administration in Indonesia

The issue of land boundary designation often leads to legal conflicts due to the disharmony between fundamental principles of land law, such as the principle of contradictoire delimitatie, and the application of modern technology in land measurements that exclude the direct participation of landowners. Additionally, differences in the implementation mechanisms of the Complete Systematic Land Registration Program (PTSL) and the limited availability of competent human resources also serve as contributing factors to disputes.(Cienciała et al., 2022, p. 4412) Therefore, it is essential to formulate an appropriate legal framework to regulate land boundary designation, aiming to prevent legal conflicts and provide fair legal certainty for all

## 2. Materials and Methods

This study employs a normative juridical method, a legal research approach that focuses on the analysis of legislation, concepts, theories, and relevant legal principles.(Irwansyah, 2021, p. 17) This study aims to understand and analyze legal issues related to land boundary designation by comparing Article 18 of Government Regulation Number 24 of 1997 with Ministerial Regulation of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) Number 3/Juknis-HK.02/III/2023.

The approaches used in this study include the statutory approach and the conceptual approach. The statutory approach involves examining the applicable laws and regulations to understand how the law governs land boundary designation. Meanwhile, the conceptual approach is used to explore doctrinal perspectives or evolving legal doctrines to construct a legal framework capable of preventing conflicts in the regulation of land boundary designation.(Amirudin & Asikin, 2016, p. 112)

The legal materials used in this study consist of primary and secondary legal materials. Primary legal materials include directly applicable regulations, such as Law Number 5 of 1960 on Basic Agrarian Principles, Government Regulation Number 24 of 1997 on Land Registration, Government Regulation Number 18 of 2021, and the Technical Guidelines for Complete Systematic Land Registration Number 3/Juknis-HK.02/III/2023. Secondary legal materials include literature, books, journals, and previous relevant studies, which provide additional context and assist in analyzing the primary legal materials.

The process of collecting legal materials involves steps such as identifying legal instruments, analyzing and eliminating irrelevant elements, and conducting an in-depth review of the legal issues central to the research. The legal material analysis techniques used include grammatical interpretation and systematic interpretation. Grammatical interpretation aims to understand legal provisions through the analysis of language and sentence structure in legal texts, while systematic interpretation is employed to link the analyzed regulation with other related regulations to achieve a more comprehensive understanding.

## 3. Results and Discussion

### *3.1. Land boundary designation in Indonesia: Legal principles, technological advancements, and challenges*

Land boundary designation is one of the fundamental elements of the agrarian legal system in Indonesia. As part of land administration, this process aims to determine and establish the physical boundaries of land owned by individuals or legal entities. Land boundary designation is not only related to the technical aspects of measurement but also holds significant legal dimensions, namely providing validity and certainty regarding the status of the registered land (Ansar et al., 2021). In the context of agrarian law, land boundary designation serves as a crucial initial step to ensure the clarity of land rights as stipulated in Article 19 of the Basic Agrarian Law (UUPA) Number 5 of 1960, which mandates land registration to guarantee legal certainty for landowners.

The process of land boundary designation in Indonesia involves several legal principles, one of which is the principle of contradictoire delimitatie as outlined in Article 18 of Government Regulation Number 24 of 1997 on Land Registration. This principle requires the active involvement of landowners and their neighbors in determining land boundaries on-site.(Arief, 2018) The presence of both parties aims to ensure that the designation of boundaries is accurate, transparent, and mutually agreed upon.

With the advancement of technology, the use of modern methods such as drones or photogrammetry in land boundary measurements has introduced new challenges. While these technologies enable efficiency in land registration processes, they often disregard the direct participation of landowners as mandated by existing legal principles. (Buana et al., 2024) In this context, the relevance of land boundary designation becomes increasingly significant, not only as an administrative tool but also as an instrument to prevent disputes and protect the legal interests of landowners.

The relevance of land boundary designation within the context of agrarian law in Indonesia is inseparable from its primary function as a tool to ensure clarity of land rights while preventing potential conflicts often arising from discrepancies in physical data on the ground. From the perspective of land administration, land boundary designation is not merely a technical process but also reflects the integrity of the legal system aimed at safeguarding ownership certainty. This becomes increasingly crucial in the context of rising population density and the growing complexity of land needs, where the risk of overlapping ownership claims is significantly heightened.

On the other hand, land boundary designation also plays a key role in strengthening the function of land registration. As regulated under Government Regulation Number 24 of 1997, land registration not only serves to provide legal certainty but also acts as a primary instrument for the efficient and equitable management of land resources. Accurate boundary designation is a prerequisite for land registration to ensure that recorded data align with actual conditions on the ground.(Menon, 1979) In this context, land boundary designation is not only declarative but also constitutive, as it serves as the foundation for legal recognition of landowners' rights

In Indonesia's agrarian legal system, land registration serves as the primary instrument to provide legal certainty and protection of land rights for every citizen. Government Regulation Number 24 of 1997 on Land Registration acts as the legal foundation governing the mechanisms and procedures for systematic land registration. (Çağdaş et al., 2023) One of the key elements regulated in this provision is the principle of contradictoire delimitatie, which aims to ensure clarity and validity of land boundaries through a process that directly involves the relevant parties.

Article 18 of the regulation specifically emphasizes the importance of land boundary determination with the presence of landowners and adjacent parties. This process not only serves as the foundation for establishing physical land data but also plays a crucial role in preventing potential disputes. The principle of contradictoire delimitatie reflects an effort to integrate technical and legal aspects into land administration, fostering transparency and accountability to support a fair agrarian system.(Adler, 2001)

Technological advancements have brought significant changes to various aspects of land administration, including land measurement methods. One of the latest innovations is the use of drones and photogrammetric methods, as regulated in the

Ministerial Regulation of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) Number 3/Juknis-HK.02/III/2023 on Technical Guidelines for Complete Systematic Land Registration (PTSL).(Sohl & Mahmood, 2024) This regulation offers efficiency in the land registration process, particularly in boundary measurement, by enabling the use of modern technology to expedite the accurate collection of physical land data.(Polkowska, 2023)

The implementation of this Ministerial Regulation of ATR/BPN raises critical questions regarding the legal principles underlying land boundary designation. Article 18 of Government Regulation Number 24 of 1997 on Land Registration stipulates that boundary designation must directly involve landowners and adjacent parties as part of the principle of contradictoire delimitatie. This principle aims to ensure the accuracy and validity of land boundary data while preventing future disputes. In practice, the use of technology without the direct participation of landowners has the potential to conflict with this principle.(Deliry & Avdan, 2021)

The discussion on the analysis of Ministerial Regulation of ATR/BPN Number 3/Juknis-HK.02/III/2023 and its conflict with Article 18 of Government Regulation No. 24 of 1997 will be outlined in two separate subchapters. The first subchapter will focus on an in-depth analysis of the content and objectives of the regulation in the Ministerial Regulation of ATR/BPN. The second subchapter will critically examine the conflict that arises between the principle of contradictoire delimitatie in Government Regulation No. 24 of 1997 and the use of modern technology regulated in the Ministerial Regulation of ATR/BPN, as well as its impact on legal certainty and dispute prevention. This structured discussion is expected to provide a comprehensive overview of the issues raised.

### *3.2. Analysis of Ministerial Regulation of ATR/BPN Number 3/Juknis-HK.02/III/2023*

Ministerial Regulation of ATR/BPN Number 3/Juknis-HK.02/III/2023 was issued as a strategic step to support the acceleration of the Complete Systematic Land Registration (PTSL) program, a national initiative aimed at ensuring legal certainty over land rights in Indonesia. In this context, the regulation offers an innovative approach by integrating modern technologies such as drones and photogrammetric methods into the processes of land measurement and mapping. These technologies provide a more efficient alternative compared to conventional methods, which have historically required significant time and resources.(Serafinelli, 2024) With the capability to produce high-quality mapping data in a relatively short time, this regulation is expected to accelerate the land registration process across Indonesia, particularly in remote and hard-to-reach areas.

Drones and photogrammetric methods outlined in this regulation are designed to address common technical challenges in land measurement processes, such as limited access to certain locations or difficulties in conducting manual surveys. This technology enables the capture of images and measurements with high precision, which are then processed into digital maps that serve as a foundation for land administration. These advantages significantly contribute to operational efficiency, particularly in helping the government achieve its ambitious target of registering all land parcels in Indonesia by 2025. Furthermore, the adoption of this technology presents an opportunity to modernize the land administration system, which has long been regarded as rigid and overly manual.

Under this regulation, the use of drones is permitted for photogrammetric land measurements without requiring direct boundary designation by landowners and their neighbors. This method is considered a modern solution to technical challenges in land measurement, particularly in areas difficult to reach with manual methods. Drones can map large areas at high speed and produce high-quality digital maps that accurately reflect the physical conditions of the land. These advantages make drones an efficient the future. This situation could also undermine public trust in the land administration system, which is expected to provide clear and equitable legal protection for all parties involved.

### *3.3. Conflict Between Article 18 of Government Regulation No. 24 of 1997 and Ministerial Regulation of ATR/BPN No. 3/Juknis-HK.02/III/2023*

The conflict between Article 18 of Government Regulation No. 24 of 1997 on Land Registration and Ministerial Regulation of ATR/BPN No. 3/Juknis-HK.02/III/2023 reflects a disharmony in the regulation of land administration, particularly in the process of land boundary determination. Article 18 of Government Regulation No. 24 of 1997 establishes the contradictoire delimitatie principle, which mandates the direct presence of landowners and adjacent parties during boundary designation. This principle aims to ensure the validity of land boundary data through direct agreement among the interested parties, thereby minimizing the potential for conflicts and disputes.

The contradictoire delimitatie principle, as stipulated in Article 18 of Government Regulation No. 24 of 1997, serves as a fundamental principle in land boundary determination for land registration in Indonesia. In its implementation, this principle requires the direct presence of landowners and adjacent parties during the boundary designation process. The primary objective of this approach is to ensure that the established land boundaries align with the factual conditions on the ground and have been mutually agreed upon by the involved parties.(Ficriyanta et al., 2024) This process provides legitimacy to the land boundary data produced, making it a valid basis for the issuance of land certificates.(Permadi et al., 2023)

Thus far, the implementation of this principle has been carried out through measurement mechanisms involving the Adjudication Committee for systematic land registration and the Head of the Land Office for sporadic land registration. The interested parties are officially invited to attend the boundary designation, which is typically conducted at the location of the land.(Hendriatiningsih et al., 2019) They are required to indicate their land boundaries, provide approval, and ensure there are no overlapping claims with neighboring land. The measurement results are then recorded in a land parcel map, which becomes an official document in land administration.

The implementation of this principle often encounters various challenges in the field. A primary issue is the absence of landowners or adjacent parties during boundary designation, which may arise due to a lack of awareness about the importance of the process, ongoing disputes, or logistical difficulties in bringing all relevant parties together. Such absences can render the resulting land boundary data invalid, necessitating repetition or adjustments to the process.

In several cases, non-compliance with the contradictoire delimitatie principle has led to disputes in the future. For instance, when boundary designation is conducted without the presence of one party, the resulting measurements may be considered inaccurate or fail to reflect mutual agreement, resulting in overlapping claims on the land. A case study of a land boundary dispute in Labokke Hamlet, Puty Village, Bua District, Luwu Regency, illustrates the challenges in implementing the contradictoire delimitatie principle during boundary determination. In this case, Article 18 of Government Regulation No. 24 of 1997, which mandates the presence of landowners and adjacent parties during boundary designation, was not fully applied, leading to conflicts between the landowner, neighbors, and the authorities.

The dispute began when a land remeasurement requested by the certificate holder was not conducted in accordance with the existing physical data and disregarded the presence of relevant parties, including neighboring landowners. Moreover, the measurement extended beyond the boundaries recorded in the certificate, crossing a small river that should have served as the natural boundary. The absence of the involved parties during the measurement process became the root of the issue, as the results were deemed to not reflect the factual conditions and failed to comply with the contradictoire delimitatie principle.

The use of modern technology, such as drones, to expedite the land measurement process as regulated by Ministerial Regulation of ATR/BPN Number 3/Juknis-HK.02/III/2023, could exacerbate the situation if not accompanied by the direct involvement of relevant parties. In the Labokke case, if drones were used without on-site verification by the landowners and adjacent neighbors, the measurement results could further aggravate the legal uncertainty surrounding the land.

### *3.4. Legal construction of land boundary designation to prevent legal conflicts*

The legal construction of land boundary designation to prevent legal conflicts requires a harmonious approach that integrates agrarian legal principles with the efficiency of modern technology. Fundamentally, the contradictoire delimitatie principle, as stipulated in Article 18 of Government Regulation No. 24 of 1997, remains a core element to ensure the validity of the land boundary designation process. This principle guarantees that land boundaries are established through the direct involvement of relevant parties, making the results legally recognized as a valid basis for land registration. However, with the introduction of technologies such as drones and photogrammetric methods, as regulated by Ministerial Regulation of ATR/BPN Number 3/Juknis-HK.02/III/2023, there arises a need to design regulations that can bridge the efficiency of technology with the existing legal principles.

To achieve harmonization between the efficiency of modern technology and the principles of agrarian law, regulatory revisions and procedural updates are needed to systematically and measurably integrate both aspects. A revision to Article 18 of Government Regulation No. 24 of 1997 could include provisions requiring that measurements conducted using technologies such as drones and photogrammetry be validated through an on-site meeting involving landowners and adjacent parties. This validation must be a mandatory part of the process to ensure the legitimacy of land boundaries in accordance with the contradictoire delimitatie principle.

The proposed implementation begins with an initial measurement using drones to quickly and accurately collect land boundary data. The results of these measurements are then presented at the land location, involving landowners and adjacent parties to validate the data's accuracy. Agreements among the parties are documented in an official report (berita acara), which serves as the legal foundation for the data's validity. Finally, the validated data is used in the process of issuing land certificates, ensuring that legal certainty is maintained.

Second, Ministerial Regulation of ATR/BPN Number 3/Juknis-HK.02/III/2023 needs to be adjusted by incorporating protocols that require the direct involvement of relevant parties in the final stages of measurement. The regulation should stipulate that initial data collected using drones cannot be used as the sole basis for issuing land certificates without manual verification in the field. This is crucial to uphold the principle of rechtszekerheid (legal certainty) for landowners and adjacent parties.

The use of drones in land measurement, as regulated by Ministerial Regulation of ATR/BPN Number 3/Juknis-HK.02/III/2023, represents a modern approach to enhancing the efficiency and accuracy of land registration. However, this regulation requires refinement to ensure that technological efficiency aligns with agrarian legal principles, particularly rechtszekerheid (legal certainty) and contradictoire delimitatie.(Ávila, 2016) One of the main shortcomings of this regulation is the absence of mandatory provisions requiring on-site manual verification by landowners and adjacent parties. This raises the potential for violations of the principle of legal certainty, as the data produced by drones, while technically accurate, cannot fully represent the factual conditions that require agreement among the parties involved.

Regulatory refinement can be achieved by introducing protocols that mandate

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the direct involvement of relevant parties in the final stages of measurement. Initial data collected using drones should be treated as preliminary data that requires validation through field verification. In this process, landowners and adjacent neighbors must be present to confirm the validity of the measured land boundaries, under the observation of the Adjudication Committee for systematic land registration or officials from the Land Office for sporadic registration.(Aditya et al., 2020) Their agreement must be documented in an official report (berita acara), which serves as the legal basis for the issuance of the land certificate.

Third, the development of Standard Operating Procedures (SOPs) governing the use of modern technology is essential, including standards for measurement accuracy, drone usage permits, data protection, and field implementation oversight. These SOPs must be supported by clear accountability mechanisms, including administrative sanctions for violations.

Fourth, public outreach and training are needed for both the community and land officials to emphasize the importance of the contradictoire delimitatie principle and new procedures integrating technology. This education aims to increase public awareness of their rights and obligations in the land boundary designation process.

Fifth, implementation oversight must be strengthened by involving independent institutions to ensure that the new regulations are carried out in accordance with the principles of accountability and transparency. Through these measures, the proposed harmonization can deliver efficiency in land registration without compromising legal legitimacy and fairness for all parties involved.

## 4. Conclusion

Land boundary determination in Indonesia’s land administration is a fundamental element that not only provides legal certainty for landowners but also prevents potential disputes that could harm the community. Article 18 of Government Regulation No. 24 of 1997 underscores the importance of the contradictoire delimitatie principle, requiring the direct presence of landowners and adjacent parties during the boundary determination process. This principle aims to ensure the validity of land boundary data through mutual agreement among the parties involved. However, with the introduction of technologies such as drones and photogrammetry, as regulated in Ministerial Regulation of ATR/BPN Number 3/Juknis-HK.02/III/2023, new challenges arise in harmonizing technological efficiency with agrarian legal principles.

The case study in Labokke Hamlet, Puty Village, Bua District, Luwu Regency, illustrates the implications of disregarding the contradictoire delimitatie principle. In this case, land measurement was conducted without the presence of the relevant parties, resulting in measurement outcomes that did not reflect the actual field conditions and triggering disputes between the landowner and adjacent parties. This case demonstrates that without the direct involvement of the parties, measurement results—even with modern technology can be questioned for their validity, leading to legal uncertainty and social conflict.

A proposed solution to address this issue involves regulatory revisions that integrate modern technology with the contradictoire delimitatie principle. Data obtained through drones can be used as preliminary data but must be validated through field verification involving landowners and adjacent parties. This validation must be witnessed by land officials and documented in an official report (berita acara). Furthermore, regulations must establish operational standards for technology use to ensure transparency and accountability in land measurement.

Harmonizing modern technology with agrarian legal principles is key to creating an efficient land administration system while ensuring legal certainty. This approach not only leverages the advantages of technology but also safeguards the rights of the public as landowners, thereby supporting the overarching goals of the Complete tool for accelerating the land registration process, especially in the Complete Systematic Land Registration (PTSL) program, which has the ambitious target of completing the registration of all land parcels in Indonesia by 2025.

Despite its technological advantages, this approach raises significant legal issues. One of the primary concerns is the potential violation of the contradictoire delimitatie principle as stipulated in Article 18 of Government Regulation Number 24 of 1997 on Land Registration. This principle emphasizes the importance of the direct presence of landowners and adjacent parties during the boundary determination process. Such presence not only ensures the validity of land boundaries but also provides an opportunity for all parties to reach agreements that can prevent future disputes. By excluding landowners' direct involvement in drone-based measurements, the resulting data could be considered invalid or fail to reflect the consensus required by this legal principle.

The use of modern technologies such as drones and photogrammetric methods in land measurement, as regulated by Ministerial Regulation of ATR/BPN Number 3/ Juknis-HK.02/III/2023, represents an innovation aimed at enhancing efficiency in the implementation of the Complete Systematic Land Registration (PTSL) program. This regulation allows land measurements to be conducted without requiring direct boundary designation by landowners and their neighbors, as traditionally mandated by the contradictoire delimitatie principle. However, this approach raises legal issues that require thorough analysis, particularly regarding the harmonization between technological efficiency and adherence to agrarian legal principles.

Article 18 of Government Regulation Number 24 of 1997 on Land Registration emphasizes that land boundary designation must involve the presence of landowners along with their neighbors as part of the contradictoire delimitatie principle. This principle aims to ensure the validity of land boundaries through direct agreement among the parties, so that the resulting data can be accepted as legitimate evidence in land administration. The exclusion of the physical presence of the relevant parties during drone-based measurements raises questions about the validity of the results. This situation potentially violates the principle of pacta sunt servanda, which underscores the obligation to adhere to agreements or consensus in legal processes.

Another challenge that arises concerns the operational standards of drones, licensing, and the protection of public privacy. The use of this technology requires strict oversight to ensure that the data collected does not violate individual rights or lead to potential misuse.(Permadi et al., 2023) In addition, regulations governing the use of drones must align with the principles of public law and administrative law to ensure accountability in the implementation of the Complete Systematic Land Registration (PTSL) program.

The use of modern technologies such as drones and photogrammetric methods in land measurement, as regulated by Ministerial Regulation of ATR/BPN Number 3/ Juknis-HK.02/III/2023, represents an innovation aimed at enhancing efficiency in the implementation of the Complete Systematic Land Registration (PTSL) program. This regulation allows land measurement to be conducted without requiring direct boundary designation by landowners and their neighbors, which is traditionally mandated by the contradictoire delimitatie principle. This principle requires the direct involvement of relevant parties in determining land boundaries to ensure the validity and legitimacy of the process. In this context, the principle not only reflects the doctrine of pacta sunt servanda the obligation to honor and execute agreements among parties but also supports the principle of transparency in land administration.

However, this technology-based approach raises significant legal issues, particularly due to its potential violation of the principle of rechtszekerheid or legal certainty. Without the direct involvement of landowners, the validity of boundary measurements obtained through drones may be called into question, posing a risk of triggering legal disputes in

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Systematic Land Registration (PTSL) program to promote justice and welfare for all parties involved.

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# "RIGHT TO LIFE" AND "RIGHT TO DIGNITY" WITHIN THE FRAMEWORK OF HUMAN RIGHTS PROTECTION: INFLUENCE OF PALLIATIVE CARE AND MEDICINE ON THE FULFILLMENT

**Maryna Dei**
National Aviation University
03058, 1 Lubomyr Huzar Ave., Kyiv, Ukraine
e-mail: maryna.dei@npp.kai.edu.ua
https://orcid.org/0000-0002-0626-8089

## Abstract

The article explores the impact of palliative care and medicine on the realization of fundamental human rights, particularly the «right to life» and the «right to dignity,» within the framework of legal protection. It analyzes the legal regulation of palliative care at the international and national levels, emphasizing its role in ensuring humane and non-discriminatory healthcare. The study examines the interrelation between the availability of palliative care and the state's positive obligations to protect health, as well as the challenges in guaranteeing a dignified end of life in compliance with human rights standards. Special attention is given to the case law of the European Court of Human Rights, which provides an extended interpretation of the right to dignity in the context of healthcare.

**Keywords:** palliative care; right to life; right to dignity; human rights; legal protection; international law.

## 1. Introduction

Ensuring a dignified life, particularly at its final stages, is a fundamental responsibility of legal systems in democratic states. In this regard, palliative care and medicine play a crucial role in safeguarding essential human rights, particularly the «right to life,» the «right to health,» and the «right to dignity.» Ghoshal (2025) define palliative care as active support for patients whose diseases are not amenable to treatment. Ukrainian scientists, such Y.V. Voronenko, Y. I. Gubsky, & A. V. Tsarenko (2014), consider palliative care as a branch of medicine, the main task of which is to improve the quality of life of patients with chronic incurable diseases, especially in the terminal stage. Despite significant medical advancements, many individuals worldwide continue to suffer from terminal illnesses that bring immense physical and psychological distress. This highlights the urgent need to expand access to palliative care as a legal mechanism for ensuring both quality of life and a dignified passing (Pereira, 2011). With the rapid progress of modern biomedicine, the legal regulation of palliative care is becoming increasingly significant. Different countries adopt varied approaches to ensuring access to such care, necessitating a comparative analysis of national and international legislation in this field. In countries with advanced healthcare systems, palliative care is an integral part of medical services and is often legally supported. However, in nations where healthcare infrastructure is less developed, access to palliative care remains limited, raising concerns over potential human rights violations.

A particularly pressing issue is the legal recognition of palliative care as a fundamental human right (Gerasimova, 2013). The perception of palliative medicine varies widely across legal traditions, religious beliefs, and moral-ethical considerations.

One of the most controversial aspects in this regard is the distinction between palliative care and euthanasia. Many countries continue to prohibit euthanasia, considering it a criminal offense, while others have taken steps to legalize it under specific conditions.

However, when examining fourth-generation human rights, a critical question arises: where is the boundary between upholding these rights and infringing upon other fundamental human rights? The rapid development of medical and legal frameworks has led to an overlap of rights, where one right may unintentionally encroach upon another. One of the most contentious rights in this context is the «right to euthanasia» or, as it is often called, the «right to die.»

Currently, euthanasia is officially permitted in only a limited number of countries. The Netherlands was the first country to legalize euthanasia in 2001, establishing a legal framework to regulate its practice. Switzerland has one of the most liberal legal systems regarding euthanasia, allowing physicians to prescribe a lethal dose of medication to terminally ill patients who are mentally competent to make such a decision and administer the medication themselves (Hazif-Thomas et al., 2025). Interestingly, Switzerland does not have a specific law explicitly legalizing euthanasia, but under Article 114 of its Criminal Code, a person who commits an act of killing out of compassion for the victim is not subject to criminal liability.

Other countries, including Canada, Mexico, Belgium, Luxembourg, and certain U.S. states, have also established legal frameworks permitting euthanasia under specific conditions. In contrast, euthanasia remains illegal and is classified as homicide in most countries, including Spain, Italy, Ukraine, Russia, Brazil, Peru, Romania, Chile, and Cuba. In Ukraine, for example, Article 52 of the 1992 Law «On the Fundamentals of Healthcare Legislation» explicitly prohibits medical professionals from engaging in euthanasia. Furthermore, although Ukraine's Criminal Code does not contain a specific article criminalizing euthanasia, it equates the act to murder, without any mitigating or aggravating circumstances (Miroshnichenko, 2012).

A noteworthy case is Australia, where euthanasia was explicitly prohibited for many years. However, in 2019, the Australian Parliament legalized euthanasia in Victoria, introducing a legal framework that allows physicians to administer a lethal injection to terminally ill patients who are physically incapable of doing so themselves. This law includes strict criteria, such as requiring the patient to have a life expectancy of fewer than six months and to have resided in the state for at least one year. This provision prevents so-called «suicide tourism,» where individuals travel to jurisdictions where euthanasia is legal to end their lives.

Thus, the gradual legalization of euthanasia worldwide underscores the urgency of addressing the suffering of terminally ill patients. However, this study does not focus on the legal aspects of permitting or prohibiting euthanasia but rather examines its evolving role within the development of palliative care. Euthanasia, when viewed as part of the palliative care framework, raises critical questions about the balance between the right to life, the right to health, and the right to die. Therefore, the right to death requires a more in-depth analysis in the context of human rights protection for individuals facing severe, incurable illnesses.

The novelty of this research lies in its comprehensive examination of palliative care through the lens of human rights and its legal implications on national and international levels. Special attention is paid to the intersection of the right to life and the right to dignity, particularly in the context of terminal illness and end-of-life care. The findings of this study can be applied to improve legal regulations governing palliative care at the national level, contribute to the development of international standards, and shape legal policies aimed at ensuring the rights of terminally ill patients.

## 2. Materials and Methods

This study employs a multidisciplinary approach that integrates legal, comparative,

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empirical, and statistical research methods to analyze the role of palliative care in the realization of fundamental human rights, particularly the right to life and dignity. The research is based on Ukrainian and foreign scientific literature, international and national legal acts, as well as medical and statistical data. A doctrinal legal research method is applied to examine international treaties, national legislation, and judicial decisions, particularly those of the European Court of Human Rights, that define the legal status of palliative care and euthanasia. The comparative legal method is used to assess different legal systems' approaches, categorizing countries where euthanasia is fully legalized, partially permitted, or strictly prohibited. Additionally, empirical and statistical analysis is conducted using data on palliative care accessibility, including the «Quality of Death Index» and WHO reports on mortality causes, which indicate a significant increase in fatal diseases such as cancer, heart disease, and chronic respiratory conditions. Statistical trends show that by 2020, ischemic heart disease, stroke, chronic obstructive pulmonary disease, and lung cancer remain leading causes of death, emphasizing the growing need for palliative care. The research also takes into account the disparities in palliative care quality worldwide, with the highest-ranking countries including the United Kingdom, the Netherlands, and Australia, while the lowest-ranking include Guatemala, Egypt, and the Dominican Republic. An ethical and human rights-based perspective is applied to evaluate how different legal systems balance the right to life, dignity, and autonomy in end-of-life care. However, the study is limited by the absence of primary field research, such as interviews with medical professionals or patients, and focuses primarily on legal and policy analysis rather than medical or psychological aspects. Through this methodology, the research aims to provide a comprehensive understanding of the legal, ethical, and human rights implications of palliative care in different jurisdictions.

## 3. Results and Discussion

### *3.1. Palliative care as a tool to improve the quality of life due to incurable diseases*

Palliative care is a fundamental component of modern healthcare systems, aimed at alleviating suffering and improving the quality of life for patients with terminal illnesses. According to the World Health Organization (WHO), palliative care is an approach that enhances the quality of life of patients and their families facing life-threatening conditions through the prevention and alleviation of suffering. This is achieved through early identification, accurate assessment, and treatment of pain, as well as the management of other physical, psychosocial, and spiritual issues (Gubsky, n.d.).

The primary goal of palliative care is to maintain quality of life during the end-of-life phase, minimizing physical and emotional suffering for both the patient and their family, and preserving the dignity of the individual as they approach the inevitable end of biological life. Palliative care extends beyond medical aspects, also encompassing psychological support for patients and their families, helping them cope with emotional and social challenges associated with serious illness. The WHO emphasizes that effective pain management is a fundamental human right, and states are obligated to ensure access to essential medications, including opioids, for palliative care patients. Denying pain relief is a violation of dignity and may be considered inhumane or degrading treatment according to international human rights frameworks (Daniluk, 2018).

Studies show that approximately 60% of individuals who die each year require palliative care. However, access to such care remains limited, particularly in low-income countries where patients often do not receive adequate pain management and treatment for other symptoms. For example, in many developing nations, access to opioid analgesics, which are essential for pain relief in cancer patients, is restricted due to legislative barriers and insufficient training of healthcare providers. As a result, millions of patients endure severe pain that could be avoided with proper medical care.

Palliative care also plays a crucial role in supporting patients with HIV/AIDS. According to the United Nations, approximately 36.9 million people worldwide live with HIV, and between 670,000 and 1.3 million people die annually from AIDS. About 15.8% of patients with HIV/AIDS suffer from intractable pain in the later stages of the disease, yet only a small percentage have access to pain relief medications or palliative care. In low-income countries, the situation is even worse, as access to opioid analgesics is limited by legislative restrictions and inadequate infrastructure.

In addition to physical symptom control, palliative care also addresses psychological well-being. Patients with incurable diseases often experience anxiety, depression, and existential distress. Providing mental health support, including counseling, psychotherapy, and bereavement services for families, ensures that individuals do not suffer unnecessarily. Integrating psychological care into palliative services strengthens the principle of dignity, allowing patients to assess their condition and make informed decisions about their care (Zaborovsky, 2017).

Social and legal aspects of palliative care further contribute to improving quality of life. Patients often need assistance with legal matters, such as advance directives, wills, and guardianship decisions. Additionally, networks of social support, including caregiving families, community organizations, and hospice volunteers, play a significant role in mitigating the sense of isolation experienced by many terminally ill individuals. Ensuring appropriate social structures aligns with a broader interpretation of human rights protection, enhancing the dignity of every individual (Mironova, 2016).

From an ethical perspective, palliative care challenges the traditional dichotomy between life-sustaining treatment and end-of-life decisions. It advocates for a balanced approach in which medical interventions prioritize comfort over aggressive, futile treatments. Ethical principles in palliative care emphasize patient autonomy, encourage shared decision-making, and respect personal choices regarding end-of-life care. This ethical foundation underscores the importance of preserving dignity even when treatment options are no longer feasible (Ramos-Guerrero et al., 2025).

Moreover, palliative care serves as a tool to reduce healthcare inequality. In many regions, particularly in low- and middle-income countries, access to palliative services remains insufficient. Addressing these gaps through policy reforms, enhanced healthcare education, and increased funding can ensure that all individuals, regardless of socio-economic status, receive the care necessary to protect their rights to life and dignity.

Particular attention is given to pediatric palliative care. Palliative care for children is unique, as children often are born with severe conditions that require palliative treatment from birth. The WHO defines pediatric palliative care as active care focused on a child's physical, mental, and emotional state, which also includes family support. Pediatric palliative care begins at the time of diagnosis and continues regardless of whether the child is receiving curative treatment. The goal is to alleviate the physical and psychological suffering of the child as much as possible, provide appropriate social conditions, and support the child's development. According to the International Children's Palliative Care Network, approximately 20 million children worldwide require such care. However, due to a lack of awareness among healthcare providers, children's pain is often underestimated or ignored. Older adults frequently suffer from chronic conditions, making them one of the most vulnerable groups for palliative care. In many countries, such as the United States, the United Kingdom, and Germany, specialized institutions exist to provide care for the elderly. In Ukraine, the number of elderly individuals is increasing, making the issue of palliative care particularly relevant (Soroka, 2015).

Palliative care is closely connected to human rights, particularly the rights to life, health, and freedom from suffering. International documents such as the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social

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and Cultural Rights (1966) emphasize the importance of ensuring quality healthcare, including palliative care. Lack of access to palliative care may be seen as a violation of human rights, particularly the right to live free from pain and suffering. In the context of human rights, particularly the «Right to Life» and the «Right to Dignity,» palliative care plays a crucial role in ensuring that individuals can spend their final days with comfort, autonomy, and respect.

### *3.2. International Experience in Palliative Care*

Palliative care should not be viewed as an alternative to treatment but as a complementary approach aimed at enhancing the quality of life for patients. At the same time, the issue of euthanasia remains contentious, as it can be seen as a means to end the suffering of patients who have no chance of recovery. Euthanasia is the practice of ending the life of a patient suffering from an incurable illness in order to alleviate their suffering. It can be either active (when a doctor administers a lethal dose of medication) or passive (when life support or treatment is discontinued). International legal instruments, such as the European Convention on Human Rights, recognize the right to life but do not include the right to die. However, in some countries, such as the Netherlands, Belgium, Luxembourg, Canada, and Switzerland, euthanasia has been legalized, sparking debates about its ethical and legal implications. In these countries, euthanasia is permitted under certain conditions, such as when a patient suffers from unbearable pain and has no hope of recovery (Cano, n.d.).

The global experience demonstrates the effectiveness of integrating palliative care into healthcare systems. The United Kingdom possesses one of the most advanced palliative care systems, where palliative medicine is a distinct specialty and is primarily funded by the private sector. The country has an extensive network of hospices, mobile palliative care teams, and outpatient services that provide home-based care to patients (Zeilinger et al., 2025). The British Palliative Care Council recommends including physiotherapists, social workers, and psychologists in care teams. The British experience showcases the effectiveness of integrating palliative care into the broader healthcare system, ensuring high levels of accessibility and quality of service.

In the United States, palliative care is funded through government programs such as Medicare and Medicaid, as well as private insurance and charitable foundations. The U.S. palliative care system consists of four levels: home care, continuous home care, hospice inpatient care, and temporary hospitalization.

However, in many countries, access to palliative care remains limited, especially in low-income regions. According to WHO data, over 80% of the global population lacks adequate access to pain-relieving medications. In countries like India and some African nations, palliative care is often provided by non-governmental organizations and charitable projects. Despite limited resources, the introduction of even basic palliative care significantly improves the quality of life for patients. The primary challenges include inadequate funding, workforce shortages, restricted access to effective pain medications, and a lack of public awareness regarding palliative care (Riley et al., 2025).

The issue of euthanasia remains controversial in many countries. Palliative care does not aim to hasten death, but in some cases, it may be associated with discussions regarding the right to die. In countries where euthanasia is legalized (e.g., Switzerland and the Netherlands), palliative care and euthanasia are seen as distinct yet interconnected approaches to alleviating patient suffering. In many countries where euthanasia is prohibited, patients suffering from incurable diseases often do not have access to proper palliative care, leading to intolerable suffering. For example, in many developing countries, access to opioid analgesics is limited by legislative barriers, resulting in patients enduring severe pain. In such cases, euthanasia may be viewed as a humane way to end the suffering of patients (Lin et al., 2025).

European Union countries are also actively developing palliative care. Germany has a comprehensive model, which includes funding for palliative care through mandatory health insurance as well as the involvement of charitable organizations. France places significant emphasis on legal aspects, guaranteeing patients the right to pain relief and palliative care, enshrined in law. In Italy and Spain, hospice care is actively supported by the state and public initiatives.

### *3.3. Palliative care development in Ukraine: Challenges and opportunities*

In Ukraine, palliative medicine is still in the active process of formation and improvement. The foundations of palliative care in Ukraine are outlined in several legislative acts, including the Law of Ukraine «Fundamentals of Health Legislation of Ukraine,» orders from the Ministry of Health, and state programs for the development of palliative medicine. In 2013, amendments to the legislation were adopted, securing patients' right to adequate pain relief, which was a significant step in protecting the rights of incurably ill individuals.

Ukraine faces numerous challenges in the field of palliative care. According to experts, there are only seven hospices and two palliative care centers operating in the country, which is insufficient to meet the needs of the population. According to the Ministry of Health of Ukraine's order (2011), palliative care is defined as a set of measures aimed at improving the quality of life for patients and their families. However, for the full development of this area, it is necessary to adopt a separate law and a reform strategy for palliative care. One of the main issues is limited access to pain relief medications, particularly opioids, which are essential for effective pain management in palliative patients. Despite the simplification of procedures for obtaining these drugs, many patients and doctors still face bureaucratic obstacles. Additionally, the lack of sufficient mobile palliative care teams results in many patients having to remain in hospitals instead of receiving care at home.

The full-scale Russian invasion of Ukraine in 2022 presented new challenges for the healthcare system, particularly in the field of palliative care. A large number of injured civilians and military personnel, victims of violence and destruction, require specialized care, which includes not only medical but also psychological and social support. Key challenges include limited access to pain relief medications, as the war has complicated the supply of drugs, including opioids, which are critically important for palliative patients. The increasing number of patients, including those with cancer and other severe illnesses who have lost access to quality treatment due to the conflict, also poses a serious challenge.

As a result of the war, the number of individuals requiring palliative care has increased significantly. Military personnel who have sustained severe injuries often face chronic pain, amputations, and psychological disorders such as post-traumatic stress disorder (PTSD). Therefore, one of the key tasks is expanding access to palliative care for veterans and affected civilians. Furthermore, there is a need to create specialized rehabilitation centers that combine palliative care with physical and psychological rehabilitation. Psychological support for military personnel and their families has become particularly important, as many Ukrainian soldiers return from the front with serious injuries and require rehabilitation and palliative care. The destruction of medical infrastructure further complicates the provision of care, as many hospitals and hospices have been destroyed or damaged by the fighting. The high level of stress and PTSD among medical workers also presents a significant issue, as doctors working in combat zones themselves require support due to constant psychological pressure.

Despite these difficulties, Ukraine is actively developing palliative care. An important step has been the establishment of mobile palliative care teams, the creation of new hospices, and the implementation of programs supporting families who care for severely ill patients. Volunteer and international organizations are actively involved in supporting this field.

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To ensure the accessibility of palliative care, it is necessary to expand the legislative framework by creating a separate law on palliative care, which will ensure its funding and availability. Improving access to pain relief medications is critically important, and therefore, it is necessary to reform the opioid control system to ensure the uninterrupted delivery of these medications. The development of hospice networks and mobile teams is particularly important in war-affected regions, where the need for palliative care is growing.

The integration of psychological support is an essential aspect, as involving specialists to work with the families of palliative patients, veterans, and civilians who have experienced traumatic events can significantly improve their quality of life. Training medical personnel is a necessary step for preparing doctors and nurses according to modern palliative care standards.

International support will help integrate best practices in palliative care that have already been successfully implemented in Europe and around the world. Forming a culture of support for palliative patients is another crucial direction, which includes informing the public about the importance of this care and developing social adaptation programs for patients and their families.

The development of palliative medicine in Ukraine is critically important, especially in the context of war. Ensuring access to quality care will improve the lives of patients who need it and support their families during difficult times. It is essential that reforms in palliative medicine become part of the overall strategy for the recovery of Ukraine's healthcare system.

## 4. Discussion

The role of palliative care in ensuring the fundamental human rights to life and dignity remains a subject of significant debate and analysis within the international medical and legal communities.

One of the key points of discussion is the extent to which palliative care can be considered a legal and moral obligation of states. Many countries, particularly those with developed healthcare systems, have integrated palliative care into national health policies, recognizing its necessity in fulfilling human rights commitments. However, disparities in access to such care remain a pressing issue, especially in low- and middle-income countries, where resources are limited, and healthcare priorities often focus on curative rather than palliative interventions. The absence of adequate palliative services in these regions raises ethical concerns about the inequitable distribution of healthcare and the potential for unnecessary suffering among patients (Easther & Ward Jones, 2025).

Another critical aspect of the discussion is the intersection of palliative care with end-of-life decision-making, including euthanasia and physician-assisted suicide. While some countries, such as the Netherlands, Belgium, and Canada, allow for medically assisted dying under strict regulations, others categorically prohibit it, emphasizing the sanctity of life and the potential risks of abuse. Palliative care is often presented as an alternative to euthanasia, ensuring that patients receive comprehensive pain management and emotional support rather than seeking to hasten death. However, the debate persists over whether the availability of high-quality palliative care reduces the demand for euthanasia or whether the two concepts can coexist within a rights-based framework. In the context of palliative care, euthanasia may be considered as a final step when all other treatment and support options have been exhausted. However, palliative care should be the primary tool for improving the quality of life for patients, with euthanasia being only a last resort in cases where the patient's suffering cannot be alleviated (López-Altamirano et al., 2025).

Many religious organizations and ethical committees consider euthanasia unacceptable, as it contradicts the principle of the sanctity of life. They believe that life is a gift from God, and only God can decide when it should end. Additionally, there is a risk of abuse of euthanasia, such as when patients may be pressured into making decisions about ending their lives for financial or social reasons.

Moreover, the role of palliative care in conflict zones and humanitarian crises adds another layer of complexity to the discussion. In war-torn regions, access to pain relief and end-of-life care is often severely restricted due to infrastructure destruction, supply shortages, and overwhelmed healthcare systems. The ethical dilemma arises as to how limited medical resources should be allocated—whether priority should be given to life-saving interventions or whether palliative care should be equally prioritized to uphold the dignity of those who cannot be cured. The Ukrainian conflict, for instance, has highlighted the need for a more structured approach to integrating palliative care into emergency medical responses.

Thus, the issues of palliative care and euthanasia remain controversial and require further discussion at the international level. To ensure a dignified end of life for patients, it is essential to develop the palliative care infrastructure and provide access to the necessary support.

## 4. Conclusions

The study underscores the critical role of palliative care in safeguarding fundamental human rights, particularly the «right to life» and the «right to dignity,» within the framework of legal protection. Palliative care, as an essential component of modern healthcare systems, aims to alleviate suffering and improve the quality of life for patients with terminal illnesses. It extends beyond mere medical treatment, encompassing psychological, social, and spiritual support, thereby ensuring that patients can live their final days with comfort, autonomy, and respect. The World Health Organization (WHO) emphasizes that effective pain management is a fundamental human right, and states are obligated to ensure access to essential medications, including opioids, for palliative care patients. Denying pain relief not only violates human dignity but may also constitute inhumane or degrading treatment under international human rights frameworks.

Despite significant advancements in medical science, access to palliative care remains uneven globally. While developed countries have integrated palliative care into their healthcare systems, many low- and middle-income nations struggle with limited resources, inadequate infrastructure, and legislative barriers that restrict access to essential pain-relieving medications. This disparity raises ethical concerns about the equitable distribution of healthcare and the potential for unnecessary suffering among patients in these regions. The study highlights the urgent need for policy reforms, enhanced healthcare education, and increased funding to bridge these gaps and ensure that all individuals, regardless of socio-economic status, receive the care necessary to protect their rights to life and dignity.

The intersection of palliative care with end-of-life decision-making, including euthanasia, remains a contentious issue. While some countries have legalized euthanasia under strict regulations, others categorically prohibit it, emphasizing the sanctity of life and the potential risks of abuse. Palliative care is often presented as an alternative to euthanasia, ensuring that patients receive comprehensive pain management and emotional support rather than seeking to hasten death. However, the debate persists over whether the availability of high-quality palliative care reduces the demand for euthanasia or whether the two concepts can coexist within a rights-based framework. The study suggests that palliative care should be the primary tool for improving the quality of life for patients, with euthanasia being only a last resort in cases where the patient's suffering cannot be alleviated.

In Ukraine, the development of palliative care faces numerous challenges, including limited access to pain relief medications, insufficient infrastructure, and the impact of the ongoing conflict. The full-scale Russian invasion has exacerbated these issues, leading to an increased demand for palliative care among injured civilians and military personnel. Despite these difficulties, Ukraine is making strides in developing palliative care, with the establishment of mobile palliative care teams, new hospices, and programs supporting families who care for severely ill patients. International support and the integration of best practices from other countries will be crucial in further developing palliative care in Ukraine.

In conclusion, the study highlights the importance of palliative care in ensuring the fundamental human rights to life and dignity. It calls for a more structured approach to integrating palliative care into healthcare systems globally, particularly in conflict zones and low-income regions. By addressing the disparities in access to palliative care and ensuring that all individuals receive the care they need, we can uphold the dignity of every person, even in the face of terminal illness.

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# THE POSITION OF NOTARIES IN LAND ACQUISITION CORRUPTION CASES: BETWEEN ABUSE OF AUTHORITY AND CRIMINALIZATION OF PROFESSION

**Mawartina Sidabutar**
Faculty of Law
Brawijaya University Malang
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: mawarssps@gmail.com
https://orcid.org/0009-0002-4216-8859

**Yuliati Cholil**
Faculty of Law
Brawijaya University
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: yuliaticholil@gmail.com
https://orcid.org/0000-0002-1899-757X

**Dyah Widhiawati**
Faculty of Law
Brawijaya University
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: dyahwidh@ub.ac.id
https://orcid.org/0009-0008-7314-6082

**Abstract**

The Notary profession plays a crucial role in Indonesia's legal system, particularly in land procurement cases often linked to corruption crimes. This study highlights the legal dilemma faced by Notaries in cases of abuse of authority and the potential criminalization of their profession. With the enactment of the new Penal Code (Law No. 1 of 2023), the concept of corruption crimes has been reformulated, which could significantly impact Notaries' accountability mechanisms. This research aims to analyze the boundaries of Notary authority abuse within criminal and administrative law and assess to what extent administrative law mechanisms can be utilized as the primary instrument before proceeding to criminal prosecution. This study adopts a normative juridical approach by analyzing legislation and court decisions, particularly Decision No. 90/Pid.Sus-TPK/2022/PN Smg, which implicated a Notary in a corruption case related to land procurement. The findings indicate that the lack of a clear definition of authority abuse in the Anti-Corruption Law and the Notary Law creates the risk of over-criminalization of Notaries. Therefore, regulatory revisions are necessary to differentiate between administrative violations and actions that can be classified as corruption crimes. Clearer legal reforms will provide legal certainty for Notaries and ensure that legal proceedings are fair and do not hinder Notaries from performing their duties.

**Keywords:** notary; abuse of authority; profession criminalization; new Penal Code; administrative law.

## 1. Introduction

Along with the development of law and its enforcement, the number of Notaries involved in corruption cases has increased. Based on data from Indonesia Corruption Watch (ICW) from 2020 to 2022, the number of Notaries prosecuted for corruption increased from zero in 2020, to one case in 2021, and three cases in 2022 (Indonesia Corruption Watch, 2022). . The Notary profession, which should be based on integrity, is now facing serious challenges, both in terms of regulations, government policies, as well as economic pressures and professional competition (Nanjong, 2023, p. 6317).

In the context of criminal law, the role of Notary is often associated with corruption cases, especially in land acquisition for public interest. Notaries have the authority to make authentic deeds and legalize documents, which in some cases are used as a tool to facilitate corruption. One case of concern is the case of Notary PC in Decision Number 90/Pid.Sus-TPK/2022/PN Smg (Direktori Putusan Mahkamah Agung Republik Indonesia, 2022), where the Notary was charged with abusing his authority by legalizing documents that led to the transfer of funds that harmed the state (Umam, 2023, p. 42).

Although the role of Notary in land acquisition is very important to ensure the legality of the transaction, the lack of clarity of regulations related to abuse of authority creates the potential for criminalization of this profession. Article 3 of the Law on the Eradication of Corruption (UU PTPK) mentions abuse of power as one of the elements of corruption, but does not provide a clear definition of the limits and scope of the act. Article 3 of the Anti-Corruption Law mentions abuse of power as one of the elements of the crime of corruption, but without a clear definition (Indonesia, Pemerintah Pusat, 1999). The judge in this case interpreted the act of legalization by the Notary as a form of abuse of power that resulted in state losses, thus ensnaring him under the article. This raises the dilemma of whether the Notary actually abused his authority or was criminalized in carrying out his duties (Taufik Effendi, 2021, p. 71). Regulatory ambiguity is also seen in relation to administrative law. The Law on Government Administration (UU AP) should be the main instrument in determining abuse of authority before proceeding to the criminal realm, but there is no similar instrument governing Notaries (ANT, 2016). The Notary Honor Council (MKN) which is supposed to provide legal protection for Notaries in facing legal cases has also not been optimal in carrying out its role.

The enactment of the new Criminal Code (Law No. 1 of 2023) which will replace several provisions in the PTPK Law further complicates this issue. One of the main consequences of the enactment of the new Criminal Code is the elimination of the status of corruption as an extraordinary crime and treated as an ordinary criminal offense. This has the potential to change the Notary's accountability mechanism, especially in cases of abuse of authority that were previously handled specifically through corruption criminal law (Rodliyah & H. Salim, 2024, p. 5). Article 3 of the GCPL Law as a lex specialis will be replaced by new provisions in the Criminal Code, which has the potential to change the mechanism of Notary's liability in similar cases in the future. This further strengthens the urgency of an in-depth study of the position of Notaries in criminal law, especially in determining whether Notaries who are caught in corruption cases actually abuse their authority or are simply victims of professional criminalization.

The dilemma faced by Notaries in law enforcement is also caused by the absence of a clear examination mechanism to determine whether an action can be categorized as an abuse of authority or merely an administrative violation. In some cases, Notary actions that are actually administrative errors or carelessness in carrying out their duties are qualified as criminal offenses without a thorough evaluation of the elements of intent and legal consequences.

In this study, a normative juridical approach is used to examine aspects of criminal law and administrative law related to abuse of authority by Notaries in corruption cases. The main focus of this study is to analyze the extent to which administrative law mechanisms can be used as the main instrument before entering the realm of criminal law, as well as providing recommendations for regulatory improvements to avoid disproportionate criminalization of the Notary profession.

With this study, it is hoped that a more appropriate legal solution can be found in handling cases of abuse of authority by Notaries, so that legal certainty for the Notary

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profession can be better guaranteed. In addition, clearer regulatory reforms will help distinguish between administrative offenses and corruption crimes involving Notaries, so that the law can be enforced fairly without causing negative effects on the sustainability of the Notary profession.

## 2. Material and Methods

This research uses the normative juridical method, which is legal research that places the law as a system of norms. This method involves analyzing legislation, doctrine, and court decisions that are relevant to the problem under study(Soerjono Soekanto & Sri Mamudji, 2003, p. 13)

The approaches used in this research include statute approach and case approach. The statutory approach is carried out by inventorying and examining various laws and regulations relating to the position of notaries in land acquisition corruption cases, such as Law Number 31 of 1999 concerning Corruption Eradication and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position. Meanwhile, the case approach is carried out by analyzing court decisions involving notaries in corruption crimes, one of which is Decision Number 90/Pid.Sus-TPK/2022/PN Smg, which will be studied to understand how judges consider the involvement of notaries in corruption crimes and how legal aspects are applied in similar cases.

The types of legal materials used in this research consist of primary, secondary, and tertiary legal materials(Muhammad, 2004, p. 81) . Primary legal materials include laws and regulations that serve as the legal basis for this research, such as Law No. 31/1999 on the Eradication of Corruption and Law No. 2/2014 on the Amendment to Law No. 30/2004 on the Office of Notary. Furthermore, secondary legal materials include literature, legal journals, and expert opinions relevant to the issues under study, in order to provide an academic perspective and a more in-depth analysis of the implementation of the applicable law. Meanwhile, tertiary legal materials consist of legal dictionaries and encyclopedias used to support the understanding of the concepts used in this research, so as to clarify the definition and interpretation of legal terms that are part of this study.

The collection of legal materials is done through literature study by tracing relevant sources. Data analysis is carried out descriptively qualitatively, by interpreting the legal materials that have been collected to answer research problems. This method was chosen to deeply understand the position of notaries in land acquisition corruption cases, as well as to distinguish between abuse of power and criminalization of the profession.

In this research, the theory of authority is the basis for understanding the position of Notary in the crime of corruption in land acquisition, especially in examining the abuse of authority alleged against Notary. Abdul Latif explains that authority is a core concept in administrative law and constitutional law which is the basis for public officials in carrying out their duties(Latif, 2016, p. 6)

In the context of administrative law, Prayudi in Jum Anggriani distinguishes the concepts of authority (authority, gezag) and competence (bevoegdheid). Authority is a formal power granted by the legislature or administrative executive, which usually includes several powers within a particular sphere of government. An example is judicial authority or the power to adjudicate. Meanwhile, authority is the specific power to perform public legal acts, such as signing or issuing a license(Anggriani, 2012, p. 88)

Indroharto added that authority is the ability given by laws and regulations to cause legal consequences. This is in line with the view of Bagir Manan quoted by Aminuddin Ilmar, that in law, authority is not the same as power (macht). Power only describes the right to act or not act, while authority includes the rights and obligations of officials in carrying out government duties(Ilmar, 2016, p. 103)

In the Notary Position Law (UUJN), Notaries are given the authority to make authentic deeds and perform legalization, but it does not explicitly regulate the limits of abuse of authority in the realm of criminal law. This caused the judge in Decision Number 90/Pid.Sus-TPK/2022/PN Smg to interpret Notary PC's actions as an abuse of authority based on Article 3 of the PRC Law. In fact, the theory of authority in administrative law states that abuse of authority should be resolved through administrative mechanisms before entering the criminal realm.

In criminal law, the doctrine of causality is used to determine the causal relationship between an act and its consequences, which is the basis for determining the criminal liability of the perpetrator of an offense(Sofian, 2018, p. 17) . The concept of causality has long been recognized in legal science, but the Indonesian Criminal Code does not provide explicit limitations on the theory of causality or the method used in determining the causal relationship in a criminal offense(Hamzah, 2008, p. 169)

In the case of Notary PC in the corruption of land acquisition, the doctrine of causality is important in determining whether the Notary's actions in legalizing documents can be considered as the main cause of state losses, or whether there are other factors that are more dominant in causing corruption offenses. The judge in Decision Number 90/Pid.Sus-TPK/2022/PN Smg considered that Notary PC's legalization actions were the direct cause that allowed the overbooking of funds that harmed the state, thus making it part of the elements of abuse of authority under Article 3 of the PRC Law.

The doctrine of causality in criminal law becomes very important in analyzing the liability of Notary in the crime of corruption. In the civil law system, which separates criminal acts and criminal liability, causality cannot be directly linked to criminal liability without additional factors. In other words, not all actions that have a causal relationship with the consequences that occur can automatically lead to criminal liability.

In this research, the doctrine of causality will be used to analyze the relationship between the Notary's actions in land acquisition and the resulting legal consequences, as well as to determine whether the elements of abuse of power in Article 3 of the GCPL Law can be applied to Notary PC based on the causality approach. In addition, this study will also consider the impact of the enactment of the new Criminal Code (Law No. 1 of 2023) on the mechanism of legal liability in similar cases in the future.

Legal certainty is one of the main principles in a state of law that aims to provide order and clarity in the application of law. The rule of law was born from the demand for legal certainty, which is guaranteed through legislation and judicial institutions(Moh. Fadli & Syofyan Hadi, 2023, p. 35) . In the context of this research, legal certainty becomes an important issue in analyzing the liability of Notaries in corruption cases, especially related to the application of Article 3 of the PTPK Law to the abuse of authority of Notaries in land acquisition.

H. Margono quoting the opinion of Sudikmo Mertokusumo explained that, legal certainty is basically the implementation of the law in accordance with its wording so that the public can ensure that the law is implemented, legal certainty is essentially the law being obeyed and implemented(Hamzah, 2008, p. 171) . In the case of Decision Number 90/Pid.Sus-TPK/2022/PN Smg, the application of the law against Notary PC raises questions regarding legal certainty for Notaries as public officials, especially regarding the boundaries between abuse of administrative authority and actions that can be qualified as criminal acts of corruption.

Legal certainty when viewed from the judge's decision in the judicial process, legal certainty is nothing but what a person can or may do and the extent to which a person can act without being punished or the consequences of the desired action. The judge's decision must provide legal certainty without leaving behind aspects of a sense of justice and expediency.

The theory of legal certainty is used to analyze whether the application of Article 3 of the PTPK Law against Notaries is in accordance with the principle of legal certainty, or it creates uncertainty in legal practice for Notaries in Indonesia. Margono emphasized that the judge's decision must provide legal certainty without overriding aspects of justice

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and expediency. Therefore, this research will examine whether the PC Notary actually abused his authority or was criminalized in legal practice, as well as the implications of the enactment of the new Criminal Code (Law No. 1 of 2023) on the mechanism of Notary's liability in similar cases in the future.

## 3. Results and Discussion

In the Indonesian legal system, Notary is a public official who has the authority to make authentic deeds and provide legal certainty for certain legal acts as stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN). However, in practice, Notary's authority often intersects with legal issues, especially when Notary's involvement in legalizing documents or making deeds becomes a tool for other parties to commit criminal acts of corruption in land acquisition(Dahnir et al., 2022, p. 257)

Cases of corruption in land acquisition that implicate Notaries as defendants have created a legal dilemma regarding the boundary between the performance of Notary duties and abuse of authority. In some cases, Notaries are considered to have abused their authority by facilitating transactions that lead to state losses. However, on the other hand, the absence of explicit legal provisions regarding the mechanism for assessing abuse of authority by Notary raises the potential for criminalization of this profession(Ma'ani, 2024, p. 31)

The concept of abuse of authority in administrative law has been regulated in Law Number 30 of 2014 concerning Government Administration (UU AP), which In the Indonesian legal system, Notary is a public official who has the authority to make authentic deeds and provide legal certainty for certain legal acts as stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN). However, in practice, Notary's authority often intersects with legal issues, especially when Notary's involvement in legalizing documents or making deeds becomes a tool for other parties to commit criminal acts of corruption in land acquisition(Dahnir et al., 2022, p. 257)

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The concept of abuse of authority in administrative law has been regulated in Law Number 30 of 2014 concerning Government Administration (UU AP), which includes three forms of abuse of authority, namely exceeding authority, mixing authority, and acting arbitrarily(Indonesia, Pemerintah Pusat, 2004) . However, the AP Law does not specifically regulate Notary as a legal subject subject to these provisions. As a result, allegations of abuse of authority by Notaries in corruption cases still rely on the interpretation of judges in the criminal justice system, in the absence of a more objective administrative law mechanism in assessing Notary actions.

The absence of a specific legal instrument in assessing abuse of authority by Notary becomes a gap for legal uncertainty and has the potential to criminalize the Notary profession. Therefore, a more comprehensive legal construction is needed to distinguish between abuse of authority that is truly an unlawful act and the performance of Notary duties carried out in accordance with their authority under the UUJN.

This research aims to analyze the legal construction of abuse of authority by Notary in cases of corruption in land acquisition by examining aspects of criminal law and administrative law. In addition, this research will also identify the weaknesses of existing regulations and provide recommendations for regulatory improvements to avoid criminalization of the Notary profession in corruption cases involving land acquisition.

Abuse of authority is one of the main elements in the crime of corruption, as regulated in Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 on the Eradication of Corruption (UU PTPK)(Indonesia, Pemerintah Pusat, 1999) . However, this provision does not provide a clear definition of what is meant by «abuse of authority» or how it can be qualified as a criminal offense. This lack of clarity creates difficulties in law enforcement, especially in cases involving public officials, including Notaries

In the context of notaries, the Law on Notary Position (UUJN) also does not explicitly regulate abuse of authority. Notaries, as public officials who are given broad authority to make authentic deeds and provide legality to various legal transactions, have great potential to abuse their authority. However, to date, UUJN does not provide clear boundaries regarding what can be categorized as abuse of authority by a Notary, nor the examination mechanism that must be carried out(M. Fadly, 2023, p. 47)

This lack of clarity is exacerbated by the fact that the Notary Code of Ethics and the Notary Honor Council (MKN) only regulate administrative sanctions, without touching the criminal realm. Administrative sanctions, while important, are insufficient to address cases of abuse of authority that have a broad impact on the public interest. The absence of a criminal investigation mechanism in UUJN creates legal uncertainty, which in turn can harm the public and undermine the integrity of the Notary profession(Ridodi, 2017, p. 101)

One of the conditions for the realization of legal certainty is the existence of legal norms that are formulated in a complete, coherent and consistent manner. Without this clarity, gray areas in the implementation and enforcement of the law will continue to emerge, triggering excessive use of discretion by law enforcement officials. This can lead to injustice and legal uncertainty in the community.

To overcome this problem, it is necessary to improve regulations related to the office of Notary, especially in terms of defining abuse of authority and its examination mechanism. Researchers suggest that the UUJN be updated to include clearer provisions regarding the limits of Notary authority and criminal sanctions for violations committed. In addition, it is necessary to establish an independent supervisory mechanism that can ensure the accountability of Notaries in carrying out their duties.

Thus, it can be concluded that the unclear provisions regarding abuse of authority in the GCPL Law and the JN Law create serious challenges in law enforcement. Regulatory improvements and the establishment of more effective oversight mechanisms are needed to create legal certainty and protect the public interest.

Abuse of authority by notaries poses a dilemma in law enforcement, especially in relation to the boundaries between the realms of administrative law and criminal law. The case of Notary PC in Decision Number 90/Pid.Sus-TPK/2022/PN Smg is a concrete example where the notary was charged for legalizing documents that allegedly facilitated the transfer of funds, causing state losses. The absence of a special mechanism to assess the abuse of authority by a notary causes the examination to be conducted based on general criminal law, which has the potential to lead to the criminalization of the notary profession.

Criminalizing notaries shows the lack of understanding of the notary world by external parties. This indicates the need for clear legal instruments to assess allegations of abuse of authority by notaries, in order to avoid undue criminalization(Adjie, 2014, p. 13)

In the context of administrative law, Law Number 30 of 2014 concerning Government Administration (AP Law) regulates abuse of authority in three forms(Indonesia, Pemerintah Pusat, 2014b)

1) Exceeding authority: Action beyond the limits granted by law.

2) Mixing up authority: Using authority in one field for purposes that are not in accordance with regulatory provisions.

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3) Acting arbitrarily: Taking decisions or actions without a clear legal basis.

Although the AP Law does not directly apply to notaries, the concept of abuse of authority in it can be a reference to form specific regulations related to notaries. Legalization actions by notaries can be evaluated based on the concept to determine whether there is an abuse of authority. If no such elements are found, then the notary's actions should not be categorized as abuse of authority in the criminal realm.

The concept of Abuse of Authority in the Perspective of Administrative Law in Indonesia, emphasizes that abuse of authority must be seen from an administrative law perspective before entering the criminal realm. This is important to ensure that there is no overcriminalization of administrative actions that should be resolved through administrative mechanisms(Jiwantara et al., 2022, p. 355) . In addition, regarding «Criminal Liability of Notaries in the Making of Deeds Based on False Information» states that notaries can be held criminally liable if it is proven that they intentionally make deeds based on false information that they know. However, if the notary only performs his/her function without knowing the existence of false information, then criminal liability should not be imposed(Ramadhan & Suhardini, 2019, p. 30) . Therefore, more specific regulations are needed to assess and handle allegations of abuse of authority by notaries, so as to distinguish between administrative violations and criminal acts, and prevent inappropriate criminalization of the notary profession.

Abuse of authority by Notaries is a complex legal issue because it falls between two legal domains, namely administrative law and criminal law. The lack of clarity of regulation regarding the limits of abuse of authority in the Notary Position Law (UUJN) can lead to overcriminalization of Notaries, where administrative actions that should be resolved through administrative mechanisms are instead prosecuted as criminal acts. This not only threatens the sustainability of the Notary profession, but also creates legal uncertainty in the enforcement of justice.

In the administrative law system, Law Number 30 of 2014 concerning Government Administration (UU AP) has regulated the concept of abuse of authority more clearly. Abuse of authority in administrative law is categorized into three forms: exceeding authority, mixing authority, and acting arbitrarily(Indonesia, Pemerintah Pusat, 2014a) . However, Notaries are not included in the scope of officials regulated in the AP Law, so the protection mechanism for Notaries in the event of alleged abuse of authority is not available in the law(Soeprapto, 2020, p. 27)

When there are allegations of abuse of authority by a Notary, the more appropriate mechanism should first be through an examination process by the Notary Honor Council (MKN) as part of the internal supervisory system of the Notary profession. If after going through the administrative mechanism, there is an element of intent that can be categorized as a criminal offense, then law enforcement officials can conduct further investigations in the criminal realm. However, currently MKN does not have strong enough authority to determine whether a Notary's actions fall into the category of abuse of authority or not. Therefore, there needs to be clearer legal reform in the UUJN.

In «Amendments to a law are made if there are provisions in the law that are no longer in accordance with the situation or conditions prevailing in society»(Ariyanti, 2012, p. 429) . Based on this principle, revisions to the UUJN are needed to add provisions regarding abuse of authority by Notaries, clearer limitations on the concept of abuse of authority, prohibition of abuse of authority, and more specific examination mechanisms for alleged abuse of authority by Notaries. Clearer regulations should also include protection for Notaries in carrying out their duties, so that not every alleged violation in their profession is immediately categorized as a criminal offense.

In addition, professional organizations such as the Indonesian Notary Association (INI) and the Association of Land Deed Officials (IPPAT) have an important role in proposing more specific regulations regarding abuse of power in the office of Notary. They can play an active role in advocating for the establishment of more comprehensive regulations to ensure legal certainty for Notaries, while ensuring that Notaries remain responsible in carrying out their profession in accordance with the code of ethics and applicable law(Jiwantara et al., 2022, p. 360)

In some international jurisdictions, such as in the Netherlands and France, regulations regarding Notary liability are clearer, where any alleged abuse of authority is first examined through administrative law mechanisms and professional ethics before entering the criminal realm. This system can be used as a reference in the reform of UUJN in Indonesia so that law enforcement against Notaries is more objective and does not directly lead to the criminalization of the profession.

Without clearer regulations, Notaries will remain in a vulnerable position to criminalization, while legal certainty for the Notary profession and users of Notary services will also be weak. Therefore, the revision of UUJN or the establishment of special regulations governing the mechanism for examining allegations of abuse of authority by Notaries is an urgent need.

The unclear concept of abuse of authority by Notaries in the Corruption Eradication Law (UU PTPK) and the Notary Position Law (UUJN) has created legal uncertainty in the examination mechanism of alleged abuse of authority. This opens the gap for overcriminalization of Notaries who should be subject to administrative law mechanisms first before entering the criminal realm. In some cases, Notary actions that are actually administrative errors or carelessness in carrying out their duties are qualified as criminal offenses, without a thorough assessment of the elements of intent and legal consequences.

This issue is even more complex because the Government Administration Law (UU AP), which regulates the concept of abuse of authority, does not include Notaries as part of its legal subjects. In fact, administrative law offers a more objective and tiered mechanism in assessing allegations of abuse of authority, by providing an opportunity for Notaries to defend themselves before being named as a suspect in a criminal case. Without a strong administrative law mechanism, Notaries will remain in a vulnerable position to professional criminalization, which has the potential to hamper the sustainability of notarial practice in Indonesia.

The enactment of Law Number 1 Year 2023 on the Criminal Code (New Criminal Code) brings fundamental changes to the law enforcement of corruption crimes, including for notaries. The reformulation of the provisions in Article 2 and Article 3 of the Corruption Eradication Law (UU PTPK) in the New Criminal Code has broad implications. The transitional provisions in the New Criminal Code revoke Article 2 and Article 3 of the PTPK Law, so that starting January 2, 2026, the applicable corruption provisions will refer to the New Criminal Code(Indonesia, Pemerintah Pusat, 2023)

The New Criminal Code brings several legal consequences, one of which is the change in the status of corruption crimes, which were previously categorized as extraordinary crimes, to ordinary crimes. This means that corruption crimes now have an equal position with other common crimes such as theft and embezzlement. In addition, all provisions in the New Criminal Code and KUHAP apply equally in every process of investigation, investigation and prosecution, whether carried out by the Police, Prosecutor's Office or court. Another consequence is the reduced authority of the Corruption Eradication Commission (KPK), which is no longer able to conduct wiretapping without court permission hidayat(Hidayat, 2023)

Notaries as public officials have an important role in various legal transactions, including in the land acquisition process. In some cases, Notaries may be implicated in allegations of corruption due to their role in legalizing transactions involving the transfer of state assets or third parties. The provisions in Article 154 of the New Criminal Code classify Notaries as officials who can be subject to criminal liability, especially if there are indications of abuse of authority in their capacity as authentic deed makers(Indonesia, Pemerintah Pusat, 2023)

One example of a case that reflects the potential involvement of Notary in corruption is the case of Notary PC in Decision Number 90/Pid.Sus-TPK/2022/PN Smg. In this case, the Notary was charged with abuse of authority for legalizing documents that allowed the overbooking of funds that resulted in state losses. The panel of judges decided that the legalization action fulfilled the elements of abuse of power based on Article 3 of the PRC Law, although in administrative law practice, such actions should first be assessed through administrative law mechanisms before entering the criminal realm (Decision Number 90/Pid.Sus-TPK/2022/PN Smg).

The application of the ultimum remedium principle in the New Criminal Code emphasizes that criminal law should be the last resort in dealing with allegations of abuse of authority. Thus, before naming a Notary as a suspect in a corruption case, an examination through administrative law instruments is required first. The principle of lex specialis derogat lex generalis must also be considered, where the provisions in the Government Administration Law (UU AP) should be a reference in assessing the presence or absence of abuse of authority before entering the criminal investigation stage.

The granting of authority to the criminal court to assess and prosecute abuse of authority without a clear concept of such abuse creates uncertainty in the application and enforcement of the law. This uncertainty has the potential to cause criminalization of the Notary profession, which in practice is often involved in various legal events, both as a witness and as a suspect.

Laurentius, citing Mulyoto's opinion, states that a Notary is often faced with legal cases due to errors in the deeds he makes, either due to his own negligence or due to the fault of the parties who do not provide correct information or documents. Furthermore, the involvement of a Notary in a case can be caused by the absence of good faith from one of the parties or because of an agreement with certain parties that ultimately harms other parties(Laurensius Arliman S, 2015, p. 5)

Referring to this opinion, the involvement of a Notary in a legal case can occur because of his/her obligation to provide testimony or because of allegations that he/she has violated the law. This is increasingly evident in the case of Notary PC, who became part of a corruption case in land acquisition. This case is not the only one, but reflects a broader trend where Notaries are becoming vulnerable to criminalization.

In land acquisition for the public interest, the role of Notary as a public official is crucial, as he is responsible for making authentic deeds that serve as the basis for the legality of the parties' transactions. However, in practice, land acquisition is often associated with acts of corruption involving various parties, including government officials and the private sector. Thus, the Notary's position becomes very vulnerable to blame or even criminalization.

In addition, there is also a risk that the authority of Notaries can be misused by certain individuals to facilitate corrupt practices, which in turn can lead to state losses. Therefore, it is important to ensure legal certainty for Notaries so that they can carry out their duties safely and professionally without the threat of unfounded criminalization. This legal certainty must be realized by improving the existing regulations to more clearly define the abuse of Notary's authority and its supervision mechanism.

Moh. Fadli and Sofyan Hadi argued that quality legislation must meet several main criteria, one of which is the completeness of legal norms. According to them, a good law is a complete law, so that it does not cause problems in its implementation. In addition, good regulations must ensure certainty in law enforcement procedures. As they explain:

«The potential for legal violations is very large. Therefore, the law must also regulate clearly, definitively and completely the dispute resolution procedures. In other words, material law requires adequate formal law. The purpose of the establishment of formal law is to maintain material law and so that law enforcement remains within the framework of the rule of law (due process of law)(Moh. Fadli & Syofyan Hadi, 2023, p. 86)

As a public official with authority, a Notary can certainly commit administrative errors or even abuse of authority that contains criminal elements. However, in the context of abuse of authority, an objective evaluation must be carried out using administrative law instruments first before entering the criminal realm. If there are indications that abuse of authority leads to corruption, then the criminal law process must begin with an objective assessment, not just based on the subjective perceptions of law enforcement. Thus, the law enforcement system against Notaries can be fairer and does not lead to disproportionate criminalization.

To ensure legal certainty and avoid criminalization of the Notary profession, additional provisions are needed in the existing regulations. First, it needs to be emphasized that a Notary cannot be convicted simply for exercising his/her authority, unless it is proven legally and convincingly that he/she has abused the authority. Allegations of abuse of authority must first be examined by an authorized institution before entering the criminal law process. This is in line with Adjie's opinion which emphasizes the importance of legal protection for Notaries in carrying out their duties(Habib Adjie, 2015, p. 15)

In addition, Notaries must be prohibited from abusing their authority for personal or other parties' interests. Abuse of authority must be distinguished from administrative errors to avoid excessive criminalization. Synchronization between the Government Administration Law and the Corruption Law is important to avoid overlap in handling cases of abuse of authority(Dewi & Yudanto, 2017, p. 33)

The definition of abuse of power in the office of Notary needs to be clarified, including ultra vires, interfering with authority, and acting arbitrarily. This should be distinguished from ordinary administrative errors to ensure fairness in law enforcement. Jiwantara, highlights the importance of a proper understanding of the concept of abuse of authority in the perspective of administrative law in Indonesia(Jiwantara et al., 2022, p. 352) . The mechanism for examining allegations of abuse of authority should include the determination of a Notary as a suspect based on sufficient evidence and a review by an authorized institution. The evaluation of abuse of authority should first be conducted by an administrative body or administrative court before criminal proceedings are initiated. The results of the administrative examination should be the basis for determining whether or not there are elements of a criminal offense. If it is proven that there is only an administrative error, the Notary is subject to administrative sanctions without criminal proceedings. However, if the abuse of authority leads to a criminal offense, then the legal process can proceed to criminal justice. The administrative decision must be part of the consideration in the criminal court decision. This is in accordance with the views of Adonara (2016) who emphasizes the implementation of the principle of the rule of law in providing legal protection to Notaries.

Lastly, there should be a provision stipulating which institution is authorized to assess and supervise allegations of abuse of authority by Notaries. This is important to ensure there is a clear authority in law enforcement related to the Notary profession. Purwadi (2014) emphasized the need for legal protection of Notaries in the criminal justice process in accordance with Law Number 2 Year 2014(Utami et al., 2015, p. 82)

The guarantee of legal protection for Notaries is very important in ensuring the professionalism and integrity of this profession. With clearer and non-overlapping mechanisms between administrative law and criminal law, Notaries can exercise their authority more safely. Regulatory reforms that clarify the limits of abuse of authority as well as the supervision mechanism will prevent Notaries from excessive potential criminalization.

## 4. Conclusions

Notaries as public officials have a unique legal position in the Indonesian legal system, especially in land acquisition which is often associated with corruption. The unclear definition of abuse of authority in the Corruption Eradication Law (UU PTPK) and the Notary Position Law (UUJN) has the potential to overcriminalize Notaries, as in some cases, Notaries are criminalized on the basis of alleged abuse of authority without a clear administrative law mechanism to assess whether the action is an administrative violation or a criminal offense. The enactment of the New Criminal Code (Law No. 1 of 2023) brings significant changes in the law enforcement of corruption, especially with the elimination of the status of corruption as an extraordinary crime and the inclusion of Notaries in the category of officials who can be subject to criminal liability under Article 154 of the New Criminal Code, thus increasing the risk of criminalization of the Notary profession in transactions that have the potential to harm the state. To avoid disproportionate criminalization, regulatory revisions are needed to clarify the limits of abuse of authority by Notaries and prioritize administrative law examination mechanisms before entering the realm of criminal law, according to the ultimum remedium principle. Examination by administrative institutions such as the Notary Honor Council (MKN) must be strengthened in order to provide an objective assessment before the Notary is further processed criminally. With more specific regulations related to the limits of abuse of authority and the examination mechanism, legal certainty for Notaries can be more assured, so that clearer legal reforms are expected to provide protection for Notaries so that they can carry out their duties professionally without worrying about being entangled in unnecessary criminal cases. Therefore, it is important for the government and related institutions to formulate a more comprehensive legal policy to ensure that law enforcement against Notaries is fair, proportional, and does not hamper the sustainability of the Notary profession in Indonesia.

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# THE PRACTICE OF PROTECTING WOMEN'S SOCIAL RIGHTS: THE EXPERIENCE OF ITALY

**Elvira Titko**
Department of International Law, European and Euro-Atlantic Integration
Borys Grinchenko Kyiv Metropolitan University
04053, 18\2 Bulvarno-Kudryavska Str., Kyiv, Ukraine
e-mail: law-kiev@i.ua
https://orcid.org/0000-0002-7485-2623

**Abstract**

The article examines the history and evolution of Italian legislation aimed at ensuring equal rights for women and men, starting from 1902, when the first law was passed limiting the working hours of women and children and establishing mandatory maternity leave after childbirth. The article aims to review key cases brought before the European Court of Human Rights (ECtHR) regarding Italy's violations of women's social rights. These cases demonstrate that even with a developed legal framework, the Italian legal system often fails to provide effective protection for women's rights, leading to the intervention of the ECtHR to restore justice. The article analyzes Italy's progress in ensuring the protection of women's rights at the legislative level and guaranteeing equal social rights for women and men. It highlights that in recent decades, efforts have been made in the country to reduce the gender gap in the labor market and strengthen legislation against violence, including domestic violence against women. The article aims to assess the effectiveness of legislative and practical measures taken by the Italian authorities, analyze the impact of ECtHR case law on national legislation, and identify key challenges in the realization of women's social rights in Italy.

**Keywords:** women's social rights; European Court of Human Rights; gender inequality; domestic violence; Italian legislation.

## Introduction

Currently, Italy ranks seventh in the number of cases brought against it before the European Court of Human Rights, as the national judicial system is often unable to fully protect the violated rights of women who file complaints. Women frequently face situations where the state directly ignores their complaints about existing violations or, during the appeal process, sides with the defendant, usually a man who committed the violation (the most striking example of this was the case of J.L. v. Italy (No. 5671/16)).

According to the statistical data of the European Court of Human Rights for 2023, a total of 52 applications were filed against Italy in the past year. The majority of these applications concerned violations of Article 1 of Protocol No. 1 to the European Convention on Human Rights, which protects the right to property, and Article 5 of the Convention, which guarantees the right to liberty and security of person (Statistical reports, 2024). Additionally, according to data from Statista (a global data and business analytics platform), there have been approximately 16,000 reports of stalking in Italy in recent years. About 74% of these crime reports were filed by women, with former partners being one of the most common perpetrators. In 2019, around 60% of femicides (the killing of women based on their gender) were committed by either a partner or a former partner, while in 22.5% of cases, the perpetrator was a relative of the victim (Topic:

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Gender Violence in Italy, 2024). Furthermore, according to data from the European Institute for Gender Equality, published in 2022, Italy ranks 14th in the European Union in terms of the Gender Equality Index (Gender Equality Index | 2022 | IT | European Institute for Gender Equality, 2024).

The issue of protecting women's rights in Italy has often been the subject of discussion in academic circles. Among the researchers who have studied this topic, Francesca Capone, Giuseppina Sacco, Adriana Ostuni, Consuelo Corradi, and Camille Luci stand out. These authors have explored the topic of women's rights violations from a sociocultural perspective and the issue of violence against women in Italy. Italy was chosen for analysis due to its rich history and evolution of legislation aimed at protecting women's rights, as well as the contemporary challenges women face in the country. Italy is one of the countries where traditional patriarchal values still have a strong influence on society, making it an interesting subject for studying gender inequality and the protection of women's rights. Moreover, as a member of the European Union, Italy's legislation and practices are important to analyze in the context of European human rights standards. However, the aspect of protecting women's social rights in the European Court of Human Rights has not been previously studied, which forms the scientific novelty of this research.

The main problem faced by women in Italy is gender inequality, particularly discrimination in hiring and career advancement (which violates their right to work), as well as becoming victims of domestic and sexual violence, facing discrimination in various spheres of life, and having less influence on the political and economic life of the country.

This study aims to examine the current state of ensuring women's social rights in Italy, focusing on aspects of gender inequality and protection from violence. The study will identify key problems and challenges faced by women in Italy in realizing their social rights, assess the effectiveness of legislative and practical measures taken by the Italian authorities to ensure gender equality and prevent and combat domestic violence, evaluate the impact of ECtHR case law on the development of Italian legislation and practice in this area, and analyze ECtHR case law regarding cases of women's rights violations in Italy. This research will be of interest to scholars studying gender inequality and the protection of women's rights, as well as to human rights activists working in the field of women's rights protection. Additionally, the study may be useful for policymakers and legislators involved in developing and implementing laws aimed at ensuring equal rights for women and men.

## Materials and Methods

This scientific article employs a comprehensive methodological approach, combining several analytical methods to ensure the completeness and reliability of the results regarding the practice of protecting women's social rights in Italy. The research is based on general scientific and specialized methods that allow for an assessment of the features and effectiveness of mechanisms for protecting women's social rights in Italy. The foundation of the research is the principles of gender equality, social justice, and human rights. A comparative legal method is used to analyze Italian legislation in the field of protecting women's social rights in comparison with international standards and practices of other European countries. Document analysis includes the study of international treaties, Italian legislative acts, court decisions, and reports from governmental and non-governmental organizations. The sociological method involves the analysis of statistical data on the social status of women in Italy, their access to social guarantees, and the effectiveness of state support programs. The case study method is used to examine specific cases of the application of legislation on the protection of women's social rights, including judicial practice and initiatives by civil society organizations. The historical method allows for tracing the evolution of legislative norms and policies in the field of protecting women's social rights in Italy. The empirical part of the research is based on the analysis of official reports from the European Union, the Council of Europe, the National Institute of Statistics in Italy (ISTAT), as well as studies by international organizations such as the UN and the International Labour Organization (ILO). The article uses a combination of various general scientific and logical methods and techniques. For a comprehensive analysis of the research topic, statistical analysis was used to examine the general statistics on the number of applications to the European Court of Human Rights regarding violations of women's rights in Italy, analyze data on gender inequality in the labor market, the level of violence against women, and the level of women's participation in political and economic life, among other aspects. General logical methods of theoretical analysis, such as generalization and comparison, were used. Analytical methods, including interpretation, were applied to clarify the provisions of Italian legislation. Additionally, a systemic-structural, comprehensive, and holistic approach was applied to the work. The research allows for identifying the main trends and problems in the field of protecting women's social rights in Italy, assessing the effectiveness of legislative mechanisms, and developing recommendations for their improvement. Thus, the application of a comprehensive methodological approach ensures a thorough analysis of the problem and contributes to obtaining well-founded conclusions regarding the protection of women's social rights in Italy.

**Results**

Over the past decades, Italy has made significant progress in ensuring adequate protection of women's rights at the legislative level and guaranteeing equal social rights for women and men. In particular, at the state level, actions are being taken to reduce the gender gap in the labor market and strengthen legislation against violence, including domestic violence against women. However, the COVID-19 pandemic has exacerbated existing inequalities, leading to a sharp increase in domestic violence cases and economic hardships for women. According to recent data from the National Institute of Statistics in Italy (ISTAT), reports of domestic violence increased by 30% during the pandemic, highlighting the urgent need for more effective protective measures.

In light of this, it should be noted that Italian women suffer most from violations of the following social rights: the right to fair working conditions, the right to decent pay, the right to protection from gender-based discrimination in the workplace, the right to equal access to education, the right to social security, the right to respect for family life, and so on. In 2023, Italy adopted Law No. 168, which introduced significant amendments to the Criminal Code and the Code of Criminal Procedure, aimed at combating violence against women and domestic violence. This law established specialized magistrates to handle cases of violence against women and expanded preventive measures, such as restraining orders and the creation of safe spaces for victims. However, the implementation of these measures remains uneven across different regions, with rural areas often lacking the necessary infrastructure and resources.

The problem of violations of these rights is primarily related to the fact that Italy is a secular state, and the Catholic Church has long exerted a significant influence on the formation of Italian society and its values. Despite legislative progress, societal stereotypes about women's roles in the family and workplace persist, leading to discrimination and violence. For example, women in Italy still earn 12% less than men for the same work, and only 36.6% of leadership positions are held by women, according to a 2023 report by Deloitte Ukraine. The Church promoted the idea of a patriarchal society, supporting and emphasizing the correctness of the idea of women's subordination to men. Another factor that played a role in the formation of gender inequality in

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Italian society is the historical influence of the Roman Empire and Roman law, which emphasized the idea of women's dependence on men. Roman law effectively limited girls' right to education, as they could only receive primary education.

The influence of these factors on modern society has led to the entrenchment of characteristic discrimination against women in various spheres of their lives solely based on gender in Italy and the existence of the problem of physical or sexual violence against women, which women have suffered and continue to suffer from throughout their lives.

Indeed, analyzing Italian legislation that promotes equal rights for women and men, it should be noted that the process of establishing this equality began in 1902 with the adoption of Law No. 242, which prohibited work for children under 12, established a maximum working day of 12 hours for women and children, and mandated a mandatory maternity leave of 4 weeks after childbirth. At the same time, despite the legislative requirement for mandatory maternity leave as a social right for women, this leave was unpaid and in practice often led to women being dismissed from their jobs (Le leggi per le donne che hanno cambiato l'Italia).

The decline in the status of women's rights in Italy became particularly noticeable during the period when the fascists came to power in the 1920s. This period was characterized by the adoption of laws that prohibited women from teaching in middle and high schools (1923) (Stato, 1923b), banned women from teaching philosophy, history, and economics in high schools (1926) (§ 57.7.1 - R.D. 9 Dicembre 1926, N. 2480. Regolamento per I Concorsi a Cattedre Nei Regi Istituti Medi D'istruzione E per Le Abilitazioni All'esercizio Professionale Dell'insegnamento Medio), reduced women's salaries by half (1927), and allowed state administration to discriminate against women's social rights in hiring and set a maximum quota (no more than 10%) for the total number of women in a company (1938) (Stato, 1938).

Subsequently, a key factor in the development of women's rights in Italy was the country's accession to a number of international legal treaties regulating the protection of women's rights, including the Universal Declaration of Human Rights (1948), the Charter of Fundamental Rights of the European Union (2000), the United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979), and others. These international treaties served as a catalyst for the adoption of new Italian laws on women's rights, which fundamentally changed the position of women in Italian society by ensuring the proper recognition of internationally guaranteed rights and freedoms.

Analyzing Italian legislation, it should be noted that in the period following the proclamation of the Universal Declaration of Human Rights, the Italian government adopted more than 80 legislative acts related to ensuring women's social rights in Italy. Among the most important of these are Law No. 860 (1950) on the physical and economic protection of working mothers (Gazzetta Ufficiale, 1950), which guaranteed women financial assistance during maternity leave, provided necessary medical care after childbirth, and prohibited the exploitation of pregnant women in dangerous or strenuous work; Law No. 66 (1963) (Gazzetta Ufficiale, 1963), which recognized women's right to access all professions, positions, and career opportunities, promoting their professional development; Law No. 151 (1975) on the reform of family law (Gazzetta Ufficiale, 1975), which equalized the rights of men and women in matters of marriage and family; and Law No. 194 (1978) (Gazzetta Ufficiale, 1978), which established methods for women to access abortion on demand, among others.

Italian society remains heavily influenced by traditional patriarchal values, which complicates the implementation of legislation aimed at protecting women's rights. For example, societal stereotypes about women's roles in the family and workplace often lead to women facing discrimination and violence, despite the existence of relevant laws.

The analysis of ECtHR cases related to violations of women's rights in Italy demonstrates that even with a developed legal framework, the Italian legal system often fails to provide effective protection for women's rights. In particular, one of the cases brought against Italy was LANDI v. Italy (No. 10929/19), which concerned the state's negligence in protecting the applicant and her son from domestic violence, leading to the murder of her one-year-old son and an attempt on the applicant's life.

The facts presented in the case indicate that the applicant and her children suffered from domestic violence at the hands of her partner between 2015 and 2018, which was reported to Italian authorities. In September 2018, the partner, irritated by noise and a phone call from the applicant, grabbed a knife and attacked. As a result, he stabbed the one-year-old son multiple times, killing him, and attempted to kill the applicant and her daughter.

The court's decision in this case was a finding of a violation of Article 2 (right to life) of the European Convention on Human Rights. The court ruled that by blatantly ignoring a wide range of protective measures directly available to the authorities, which could have taken protective actions, such as warning social-psychological services and placing the applicant and her children in a women's shelter, the authorities showed little diligence in preventing violence against the applicant and her children, which led to the attempted murder of the applicant and the actual murder of her son. As also recognized by GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence) during its review of the compliance of the national legal framework with the provisions of Article 55(1) of the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011), the aforementioned measures could and should have been taken by the authorities in accordance with Italian law, regardless of whether complaints were filed or the perception of risk by the victim changed. Under these circumstances, it cannot be considered that the authorities showed the necessary diligence. Thus, they failed to fulfill their positive obligation under Article 2 to protect the lives of the applicant and her son (ECtHR. no 10929/19. 7 April 2022).

Another case worth noting is J.L. v. Italy (No. 5671/16), which concerned a situation where seven men committed sexual violence against the applicant. In the context of the actions of national authorities, it should be noted that the applicant won the first trial, and in January 2013, six of the seven men were found guilty of inducing a person in a state of physical and psychological weakness to engage in sexual acts (a crime punishable under Article 609-1 in conjunction with Article 609-octies of the Criminal Code) (ECtHR. no 5671/16, 27 May 2021).

However, after the defendants filed an appeal, all charges against them were dropped. It should be noted that when the applicant attempted to file a cassation appeal, the Italian prosecutor's office refused to process her request, and as a result, the appellate court's decision became final.

In reviewing this case, the European Court of Human Rights conducted a detailed analysis of all the facts presented (including the fact that the applicant was in a state of alcohol intoxication and was unable to make conscious decisions) and ruled that there had been a violation of Article 8 of the European Convention on Human Rights, namely the right to respect for private and family life. The court recognized that the national authorities in this case had attempted to ensure that the investigation and trial were conducted in a manner consistent with their positive obligations under Article 8 of the Convention. In this case, the court concluded that the applicant's rights and interests under this article of the Convention had not been adequately protected, taking into account the wording of the appellate court's decision. It followed that the national authorities had failed to protect the applicant from secondary victimization throughout the proceedings, in which the wording of the court's decision played an extremely important role, especially given its public nature (ECtHR. no 5671/16, 27 May

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2021).

In the case of M.S. v. Italy, decided on July 7, 2022 (No. 32715/19), the European Court of Human Rights ruled that there had been a violation of Article 3 of the Convention (prohibition of inhuman or degrading treatment) due to the Italian authorities' inability to protect the woman from repeated threats and violence inflicted by her husband (Raimondi A., 2023).

In this case, the applicant had repeatedly filed complaints against her husband, who had subjected her to violence and stalking. He was first convicted in 2008, and a preventive measure was imposed, but in 2014, when the statute of limitations expired, he was acquitted. The key point in this case is that it began in 2004, when the applicant started filing regular complaints against her husband, but it was not until 2020 that the court sentenced her husband to three years in prison for stalking. In this case, the European Court of Human Rights found a violation of Article 3 of the Convention in its substantive aspect and stated that «the applicant had been a victim of violence on several occasions, and the authorities were aware of these facts and conducted several investigations. Therefore, the Court concludes that the shortcomings complained of in this case, which were the result of the passivity of the authorities, while certainly deserving of condemnation and contrary to Article 3 of the Convention, cannot in themselves be considered as evidence of discriminatory treatment by the authorities» (Raimondi A., 2023).

**Discussion**

Italian women most often file applications with the ECtHR concerning the state's failure to adequately protect their right to be free from violence at the hands of their husbands. In particular, among these cases are M.S. v. Italy (No. 32715/19), De Giorgi v. Italy (No. 23735/19), Talpis v. Italy (No. 41237/14), Landi v. Italy (No. 10929/19), and many others. Despite the significant number of precedents related to domestic violence cases, it was only in 2023 that the Italian parliament passed Law No. 168, which contains «Provisions on combating violence against women and domestic violence.»

This law aimed to introduce amendments to the Criminal Code, the Code of Criminal Procedure, and legislation on preventive measures and victim support. Article 5 of the law provided for changes in the organization of the prosecutor's office to ensure that crimes committed against women and within the household are handled by specialized magistrates.

Additionally, the law strengthened preventive measures to protect women and expanded the list of circumstances indicating potential danger, explicitly regulating the prohibition of dangerous individuals from approaching within 500 meters of places frequented by those in need of protection, among other provisions.

However, despite the adoption of this law by the Italian parliament, it should be noted that the situation regarding the protection of women's social rights remains unsatisfactory. Women in Italy still face unequal pay compared to men for the same work, become victims of domestic and physical violence without receiving adequate protection from the state and its judicial bodies, and face gender-based discrimination. According to a report by Deloitte Ukraine, only 36.6% of women in Italy hold leadership positions, further confirming the existing problem of gender imbalance in the country («Women in Leadership»: Much work remains to be done to support women at the top of companies).

The issue of domestic violence is particularly pressing, as in many cases, Italian law enforcement agencies fail to provide adequate protection to women even after they have filed complaints with the courts. For example, in the case of Talpis v. Italy, the ECtHR found that the Italian authorities had failed to adequately respond to the applicant's repeated complaints about violence by her husband, ultimately leading to a fatal outcome. This highlights serious gaps in the implementation of legislative norms in practice.

Moreover, the issue of the gender pay gap remains a significant challenge. Although Italy has Law No. 162/2021 aimed at eliminating discrimination and increasing pay transparency, in practice, women continue to earn lower wages for the same work. According to data from the National Institute of Statistics in Italy (ISTAT), the gender pay gap in Italy is around 12%, which is higher than the European average of 10%.

Another significant issue is the lack of sufficient state programs to support working mothers. In many regions of Italy, there is a shortage of childcare facilities, forcing many women to temporarily or permanently leave the workforce. This further exacerbates social inequality and contributes to women's economic dependence on men, which can make it more difficult for them to escape situations of domestic violence.

In light of these issues, it is important to consider the recommendations of international organizations for improving the situation. For example, the UN Committee on the Elimination of Discrimination against Women (CEDAW) has repeatedly called on Italy to implement stricter mechanisms for protecting women's rights and to increase funding for crisis centers for victims of violence. One positive example in this regard is Spain, which, after implementing a comprehensive program to combat gender-based violence in 2004, significantly reduced the number of domestic violence cases through rapid judicial response and the establishment of specialized courts for cases of violence against women.

In this regard, Italy should more actively adapt the successful experiences of other European countries and implement additional measures to ensure the effective protection of women's social rights. This could include strengthening accountability for non-compliance with court orders to protect victims of violence, expanding state programs to support women in business, and promoting equal access for women to leadership positions.

In conclusion, despite significant progress in the legislative framework, the issue of effectively implementing women's social rights in Italy remains unresolved. Addressing this problem requires a comprehensive approach that includes both improving legislation and enhancing its practical application through effective legal protection mechanisms.

## Conclusions

Ensuring women's social rights in Italy, focusing on aspects of gender inequality and protection from violence, remains a relevant topic, the study of which has both theoretical and practical value. Women face gender inequality in the labor market, primarily in the context of receiving lower pay for the same work as men. Domestic and sexual violence, as well as stalking, remain serious problems in Italy. The authorities do not always take sufficient measures to protect women's rights, leading to impunity for perpetrators and repeated violence. The practice of the European Court of Human Rights plays an important role in the development of legislation and practice in Italy regarding the protection of women's rights. ECtHR decisions encourage the Italian authorities to take measures to address violations of women's rights and improve their situation in society. In summary, it is worth noting that ensuring women's social rights in Italy requires comprehensive measures aimed at eliminating gender inequality, protecting women from violence and discrimination, and improving their position in society. An important role in this process is played not only by legislation but also by its practical application, as well as the active stance of women themselves.

While Italy has made significant strides in protecting women's rights, much work remains to be done. The adoption of new laws, such as Law No. 168/2023, is a positive step, but their practical implementation requires greater commitment and resources. Addressing the root causes of gender inequality, such as societal stereotypes and

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economic disparities, will be essential for achieving true equality. The active involvement of civil society organizations and the continued oversight of international bodies like the ECtHR will be crucial in this process.

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# REGULATORY DESIGN OF ENVIRONMENTALLY FRIENDLY ELECTION CAMPAIGNS IN ENCOURAGING THE REALIZATION OF GREEN ELECTIONS IN INDONESIA

**Josua A.F. Silaen**
Faculty of Law
Brawijaya University Malang
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: josuasilaen22@gmail.com
https://orcid.org/0009-0009-4104-9226

**Sudarsono**
Faculty of Law
Brawijaya University Malang
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: Sudarsono@ub.ac.id
https://orcid.org/0000-0003-3709-9035

**Ngesti Dwi Prasetyo**
Faculty of Law
Brawijaya University Malang
65145, 10-11 Jl. Veteran Str., Malang, Indonesia
e-mail: ngesti@ub.ac.id
https://orcid.org/0009-0008-3037-9177

**Abstract**

Elections are the main pillar of democracy that allows people to determine the leaders and policy direction of the country. However, election campaigns in Indonesia still produce negative impacts on the environment, especially through print-based campaign props (APK) waste. Current election regulations, including Law No. 7/2017 on Elections, have not explicitly accommodated the principle of sustainability. Therefore, this study aims to analyze the urgency of legal reform in regulating green election campaigns and develop a regulatory model that can integrate sustainability principles into every stage of election campaigns in Indonesia. This research uses normative legal methods with statutory and conceptual approaches. The results show that regulatory reform of green election campaigns can be carried out through regulatory adjustments, the application of the polluter pays principle, and strengthening supervisory mechanisms. This study emphasizes that Green Elections are not only a solution to reduce the environmental impact of political campaigns, but also a strategic step in strengthening a more sustainable democracy in Indonesia. Therefore, a strong political commitment is needed from election organizers, election participants, and the community to support the effective implementation of green election regulations.

**Keywords:** Green election; election regulation; sustainable campaign; law reform; environment**.**

## 1. Introduction

Elections are one of the main pillars of democracy that serves to realize the sovereignty of the people in determining the leaders and direction of state policies.

However, in practice, the election campaign stage in Indonesia has not fully reflected the principles of sustainability, especially in terms of environmental protection. This phenomenon can be seen from the large volume of waste generated during the campaign process, such as campaign props (APK), printed materials, and other campaign attributes that often end up as waste without adequate management. The 2024 general election, for example, is estimated to generate a minimum waste generation of 784 thousand $m^3$ or 392 thousand tons. This figure shows the significant environmental impact of campaign activities that do not take sustainability into account (Amrurobbi, 2021, p. 66).

At the normative level, the prevailing electoral regulations in Indonesia, especially those related to campaigns, still do not fully accommodate the principle of sustainability. Law Number 7/2017 on Elections, as well as its derivative regulations such as General Election Commission Regulations (PKPU) and Bawaslu Regulations, do not yet have provisions that explicitly regulate environmentally friendly principles in election campaigns. In fact, in the 2025-2045 RPJPN, the government has set a target of improving the environmental quality index and emphasizing the importance of controlling environmental pollution to achieve sustainable development. Therefore, a more comprehensive regulation on environmentally friendly election campaigns is an urgency to encourage the realization of green elections in Indonesia (Wahyuni, 2024, p. 146).

Various studies have addressed the relationship between elections and environmental sustainability, both in the context of using digital technologies in campaigns and in designing more resource-efficient campaign policies. The studies conducted show that the application of the green campaign model is able to significantly reduce the use of printed materials in the campaign by reducing the various kinds of meterial campaign tools such as banners, flags, etc., in favor of a model system using media such as electronic, thus reducing the negative impact on the environment. Instead, the model system prioritizes the use of media such as electronics, thus reducing the negative impact on the environment (Hisan & Azhar, 2020, p. 80). In addition, other studies have proposed information technology-based campaign models as a more environmentally friendly alternative to conventional methods that rely on large amounts of printed materials (Firdaus, 2019, p. 164).

However, in Indonesia, studies on environmentally friendly election campaigns are still limited and have not been integrated into regulations in a holistic manner. The majority of previous studies have only focused on the technical aspects of campaigns without considering their ecological impacts. Therefore, this research seeks to fill the gap by offering a normative approach to the regulation of environmentally friendly election campaigns, through legal reforms that integrate sustainability principles in election regulations. The novelty offered in this research is an upstream-downstream election campaign law reform model that accommodates the principle of sustainability in every stage of the campaign, so that it can become a reference for the formulation of election policies that are more oriented towards environmental protection (Susi Dwi Harijanti, 2023).

This research is important because election regulations in Indonesia still have weaknesses in accommodating the principles of environmental sustainability. The lack of rules governing environmentally friendly campaigns has the potential to worsen the quality of the environment, which in turn can hinder the goals of sustainable development as stated in the 2025-2045 RPJPN. From the ius constituendum perspective, legal reforms in regulating election campaigns need to be carried out to ensure that every element in organizing elections not only upholds the principles of democracy, but is also responsible for environmental sustainability (Mukhlis et al., 2024, p. 567).

In addition, election campaigns that are not environmentally friendly can have far-reaching impacts, such as environmental pollution due to unmanaged APK waste,

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and increased costs of organizing elections due to the production and distribution of large quantities of campaign materials. Without strict regulations, the democratic process has the potential to continue to impose a high ecological burden. Therefore, this research becomes relevant in an effort to encourage election campaign regulations that are more in favor of environmental sustainability (Assyayuti et al., 2024, p. 185).

In the context of organizing elections in Indonesia, there is an urgency to reform election campaign regulations that are more oriented towards environmental protection. This is motivated by the lack of regulations that accommodate the principle of sustainability in the implementation of the campaign, resulting in significant environmental impacts. Therefore, this research seeks to answer several legal issues that are of primary concern, namely how the urgency of legal reform in the regulation of election campaigns to pay more attention to aspects of environmental protection, as well as how the legal reform model can be applied to integrate the principle of sustainability in every stage of the election campaign in Indonesia. In addition, this research will also evaluate the effectiveness of the implementation of green election principles in the national election system through comparative studies with other countries that have implemented environmentally friendly campaign models. By examining these various dimensions, this research is expected to provide direction for the development of more ideal regulations in supporting the concept of green elections in Indonesia

In line with the formulation of the problem, this research aims to analyze the urgency of legal reform in regulating election campaigns that are more environmentally friendly in order to encourage the implementation of the green election concept in Indonesia. In addition, this research also seeks to develop a regulatory model that can be applied to integrate sustainability principles in the implementation of election campaigns, both in terms of policy and practice in the field. Furthermore, this research will evaluate the effectiveness of the green election concept by conducting a comparative study of other countries that have implemented environmentally friendly campaign models. Thus, this research is expected to provide strategic recommendations for policymakers in designing election campaign regulations that are not only democratic, but also sustainable and environmentally sound.

## 2. Materials and Methods

This research uses a normative legal research method, which relies on analyzing regulations related to the regulation of environmentally friendly election campaigns to encourage the realization of Green Elections in Indonesia. Normative legal research is a method that focuses on conceptual and theoretical legal studies by analyzing various legal norms contained in laws and regulations and related legal doctrines (Kusumaatmadja, 2002, p. 83).

In this research, the approaches used are statute approach and conceptual approach (Kusumaatmadja, 2003, p. 38). The statutory approach is carried out by examining various regulations related to election campaigns, including Law Number 7 of 2017 concerning Elections, General Election Commission Regulation (PKPU) Number 15 of 2023 concerning Election Campaigns, as well as various regulations related to environmental protection such as Law Number 32 of 2009 concerning Environmental Protection and Management. Meanwhile, a conceptual approach is used to analyze relevant legal theories in building a more environmentally friendly election campaign regulatory model.

The data used in this research consists of secondary data, which includes primary, secondary, and tertiary legal materials (Hidayat, 2008, p. 9). Primary legal materials include laws and regulations related to elections and the environment, while secondary legal materials include various legal literature, academic journals, and previous research on Green Elections. In addition, tertiary legal materials such as legal dictionaries and encyclopedias are also used to support conceptual analysis.

The method of analysis used is qualitative analysis, by systematically interpreting relevant legal norms and legal doctrines (Bryant & Bailey, 1997, p. 43). This analysis aims to identify weaknesses in current election campaign regulations and formulate a legal reform model that can support the implementation of Green Elections in Indonesia. By using a normative approach, this research not only examines the regulatory aspects of election campaigns, but also evaluates the effectiveness of the implementation of these regulations in practice. Through this analysis, it is hoped that a more effective legal solution can be found in encouraging election campaigns that are oriented towards sustainability and environmental protection.

The theoretical foundation in this research serves as a framework for thinking that is the basis for analyzing the regulation of environmentally friendly election campaigns to encourage the realization of Green Elections in Indonesia. This theoretical foundation not only explains the basic concepts used, but also connects relevant theories to the phenomenon under study. In this research, the two main theories that support the analysis are Development Law Theory and Political Ecology Theory.

Development Law Theory proposed by Mochtar Kusumaatmadja argues that law is not only a tool to maintain order, but also as a means to encourage social change and community development (Soekanto & Mamudji, 2003, p. 13). In the context of this research, law must be a tool of social engineering that can direct election regulations towards a more environmentally friendly concept.

According to Kusumaatmadja, law has a role not only as a norm that regulates people's lives, but also as a means to direct and shape social behavior in order to achieve broader development goals. In other words, the law should not be static, but should be progressive and able to adapt to the needs of the times. In this perspective, more environmentally friendly election regulations should be developed as part of the development law agenda, which aims not only to ensure the smooth running of elections, but also to protect the environment from the negative impacts of uncontrolled political campaigns (Soekanto & Mamudji, 2003, p. 14).

The application of Development Law Theory in the context of Green Elections refers to the urgency of legal reform in regulating election campaigns that pay more attention to environmental aspects. This reform includes the integration of sustainability principles into election regulations, by prioritizing the polluter pays principle, which ensures that each election participant is responsible for the environmental impacts caused by their campaign activities. From the perspective of Development Law Theory, electoral regulations that accommodate sustainability principles must be systematically structured through a progressive legal approach that is responsive to the needs of society and environmental challenges. Therefore, strengthening Green Legislation in the Election Law and other technical regulations is an important step in implementing Green Elections more effectively.

Political Ecology Theory focuses on the relationship between politics, law and the environment, and how power and policy influence natural resource management. In the context of this research, Political Ecology Theory is used to understand how electoral regulations can reflect the balance between human sovereignty (democracy) and environmental sovereignty (ecocracy) (Muhammad, 2004, p. 81).

According to Bryant and Bailey (1997), political ecology highlights how the environment is not just a passive object in resource management, but is also closely tied to political and economic dynamics (Tiyas Vika Widyastuti et al., 2024, p. 60). In the context of elections, political campaigns conducted using conventional methods have become one of the factors that put significant ecological pressure, both in the form of environmental pollution due to campaign waste and uncontrolled resource exploitation. Therefore, election campaign regulations must consider sustainability aspects as part of more holistic political planning.

Election campaigns in Indonesia have so far emphasized practical politics and

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the effectiveness of communication with voters, without taking into account their ecological impacts. This reflects the weak position of the environment in electoral politics. In the perspective of Political Ecology Theory, the environment should not only be part of the public policy discourse, but also integrated in the technical regulations of elections, especially in campaigns. Therefore, this approach underlines the importance of regulations governing the use of campaign materials, community involvement in campaign waste management, and the implementation of a monitoring system for election participants' compliance with Green Election principles.

By understanding politics as a factor that determines environmental regulations, this research asserts that Green Election policies in Indonesia require an active role from state institutions such as the KPU and Bawaslu to monitor and enforce rules that favor environmental protection. Through the application of the concept of Political Ecology, green elections are not only an environmental agenda, but also part of a broader national political policy to realize sustainable elections.

These two theories become the main foundation in this research to formulate a model of legal reform in election campaigns that is oriented towards the principle of sustainability. Development Law Theory is the basis for efforts to formulate regulations that are more adaptive and progressive towards environmental protection in the context of elections. Meanwhile, Political Ecology Theory is used to analyze how political and legal factors affect the implementation of the Green Election concept, as well as how regulations that favor the environment can be integrated into the electoral system in Indonesia.

By combining these two theories, this research seeks to offer legal reforms that are not only normative but also implementative, so as to be able to answer the environmental challenges faced in organizing elections in Indonesia.

## 3. Results and Discussion

In a modern democratic system, elections not only serve as a mechanism for the legitimate transfer of power, but also a reflection of the extent to which a country is able to manage the democratic process in a sustainable manner. In Indonesia, election campaigns are still dominated by the use of physical props that not only have an impact on increasing political costs, but also cause environmental problems due to the production of large amounts of waste. Waste from campaign props (APKs) such as billboards, posters and paper leaflets is often poorly managed, contributing to environmental pollution and ecosystem degradation. The lack of regulations governing the use of environmentally friendly campaign materials is one of the main factors that cause election campaigns in Indonesia to still be far from the principles of sustainability.

The Green Election concept comes as a solution to this problem by emphasizing the importance of reforming election regulations to integrate sustainability principles in every stage of the campaign. This reform aims to reduce the environmental impact caused by elections through the implementation of stricter regulations regarding the use of environmentally friendly campaign props and the optimization of digital-based campaigns. Thus, this research not only seeks to identify weaknesses in existing electoral regulations, but also offers strategic recommendations for policymakers in designing election campaign regulations that are more oriented towards environmental protection.

The concept of Green Elections is a future idea for the electoral system in Indonesia that integrates human sovereignty (democracy) with environmental sovereignty (ecocracy). The implementation of this concept requires changes in the election campaign mechanism, which has tended to produce significant environmental impacts due to the use of print-based campaign materials that are not environmentally friendly. Political campaigns in Indonesia have produced large amounts of election waste, such as banners, billboards and other campaign props, which contribute to environmental pollution (Ibrahim Mohammed, 2023, p. 1).

The 2024 General Election is a clear example of this problem, where the waste generated from the campaign stage is estimated to reach 784 thousand $m^3$ or equivalent to 392 thousand tons of waste. This figure confirms that the absence of regulations that explicitly regulate sustainability principles in election campaigns has had an impact on the high carbon footprint of the democratic process in Indonesia.

Normatively, election regulations in Indonesia, especially in Law Number 7/2017 on Elections, have not explicitly accommodated the principle of environmental protection (Indonesia, Pemerintah Pusat, 2017). The lack of sustainability-related arrangements in the election campaign also has consequences for the lack of a monitoring mechanism that can reduce the ecological impact of organizing elections. In fact, in the 2025-2045 RPJPN, the government has set a target of improving the environmental quality index and encouraging pollution control to achieve sustainable development (Indonesia, Pemerintah Pusat, 2024).

Therefore, in the context of the ius constituendum, a more comprehensive regulation of environmentally friendly election campaigns is an urgency that cannot be ignored. Legal reforms in electoral regulations must be carried out to ensure that every element of elections not only upholds democracy, but is also responsible for environmental sustainability.

In addition, the lack of regulations governing campaign waste management adds to the complexity of this problem. As stated by Firdaus and Kalingga (2021), «One of the environmental problems that Indonesians are not aware of is the handling and management of waste during election campaigns organized by legislative candidates and executive candidates in campaigning for seats in the upcoming government.» (Firdaus & Kalingga, 2021, p. 1) This shows that without a clear legal framework, efforts to reduce the environmental impact of campaign activities will be difficult to realize.

The implementation of Green Elections is also in line with global efforts to address climate change and environmental degradation. By adopting more sustainable campaign practices, Indonesia can demonstrate its commitment to the international environmental agenda. As stated by Thalib (2024), «This research underscores the urgency of implementing green election practices for the 2024 Simultaneous Regional Head Elections (Pilkada).» Thus, Green Elections are not only relevant nationally but also in the context of Indonesia's commitment to global environmental issues (Abbadi Said Thalib, 2024, p. 138).

To realize Green Elections, cooperation between the government, election organizers, political parties, and the community is needed. The preparation of comprehensive regulations, public education on the importance of environmentally friendly campaigns, and the application of sanctions for violators can be the first step towards a more sustainable electoral transformation. As stated by Assyayuti et al. (2023), «Handling violations of the installation of campaign props; second, the environmental impact due to the emergence of visual campaign waste.» With these steps, it is hoped that Green Elections can become a new standard in the implementation of democracy in Indonesia (Assyayuti et al., 2024, p. 184).

The implementation of the PTSL program at the village level is a strategic step in supporting the national agenda, especially in providing legal certainty over land to the community. The implementation of PTSL at the village level, such as in Parangargo Village, Malang District, is a concrete step to support the national program in providing legal certainty over land ownership. The program is designed to simplify the land registration process at an affordable cost, as stipulated in the Joint Decree (SKB) of Three Ministers which sets a fee of Rp150,000 for Java and Bali. The fee covers document preparation activities, procurement of land boundary stakes, and village officer operations, aiming to make it easier for people to access this service without the burden of high costs.

In comparative studies with other countries, the implementation of Green Election has been implemented with a more sustainability-oriented approach. Germany

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and Canada, for example, have implemented digital-based campaign regulations as a strategy to reduce the use of printed material-based props. Meanwhile in Indonesia, regulations governing environmental aspects in elections are still very limited, so more systematic legal reforms are needed.

The various law reform efforts offered in this study include:

Adjustments to electoral regulations, including in Law No. 7/2017 on Elections, by including the principle of environmental protection as part of the basic principles of election campaigns.

The application of the polluter pays principle, which ensures that election participants are responsible for the environmental impacts resulting from their campaign activities.

Strengthening green election supervision, by adding an administrative sanction mechanism for election participants who do not manage campaign props (APK) waste responsibly.

Within the framework of the Green Election implementation model, there are several important stages that are prerequisites for the success of environmentally friendly campaign regulations, as illustrated in the Table 1.[1]

**Table 1.** Green election implementation model

| Regulatory Aspects | Implementation Strategy | Expected Impact |
|---|---|---|
| **Regulation Adjustment** | • Amend Law No. 7/2017 to include the principle of sustainability in election campaigns.<br>• Require election participants to adopt green campaigns. | **Regulations that are more adaptive to environmental issues in the conduct of elections.** |
| **Implementation of the Polluter Pays Principle** | Requires election participants to be responsible for campaign waste.<br><br>Impose an environmental tax on political parties that use non-environmentally friendly APKs. | Reduce the use of print-based campaign props.<br>Encourage the use of digital campaigns. |
| **Strengthening Supervision** | • Increase administrative sanctions for violators of green campaign regulations.<br>• Improve KPU and Bawaslu supervision of the implementation of environmentally friendly elections. | **Increased compliance of election participants with the principle of sustainable campaigns.** |
| **Digital Campaign Optimization** | • Encourage the use of social media, webinars, and digital apps as the primary means of political campaigning.<br>• Reduced distribution of printed brochures and banners. | Reducing the cost of political campaigns.<br>Reduce waste of campaign props. |
| **Community Participation in Green Elections** | • Increase voter education on Green Election.<br>• Engage the environmental community in green campaign monitoring. | Higher political awareness of environmental issues.<br>Voter behavior change towards sustainable elections. |

The implementation of green campaigns in Indonesian elections has several significant positive impacts. First, by reducing the use of conventional campaign props, which are often plastic-based and difficult to decompose, waste generation that has the

1 This table illustrates concrete steps that can be taken in an effort to implement Green Elections as part of the transformation of elections in Indonesia towards a more environmentally friendly democracy

potential to pollute the environment can be minimized. This is in line with the polluter pays principle, where the party that produces pollution is responsible for its impact (LSE, 2022).

Second, the implementation of green campaigns can encourage changes in people's political behavior. Voters begin to consider environmental aspects in determining their political choices, thus increasing the number of green voters, namely those who have concerns about environmental issues and sustainable development. As stated by Faure and Grimeaud (2003), the application of the polluter pays principle can encourage pro-environmental behavior among the public (Khan, 2015, p. 640).

Third, green campaigns are a means of testing the commitment of election participants to environmental issues. Sustainability is one of the main indicators in evaluating political campaigns, so election participants are encouraged to show real commitment to protecting the environment. In addition, moving from a print-based campaign model to a more sustainable digital and social media-based campaign model can streamline campaign costs, reduce spending on physical props, and utilize digital platforms that are more efficient and environmentally friendly.

Thus, the transformation of election campaign regulations based on Green Election not only contributes to environmental conservation, but also improves the quality of democracy through more environmentally conscious political participation.

In the context of Development Law Theory, as stated by Mochtar Kusumaatmadja (1976), law must function as a tool of social engineering to change people's behavior towards a more sustainability-oriented pattern. Kusumaatmadja emphasizes that law not only functions as a means of social control, but also as an instrument to achieve the development goals desired by society. In this case, green election regulations must be constructed as part of a national legal development strategy aimed at shaping a more environmentally friendly political culture. As stated by Kusumaatmadja, «the law is expected to function more than that, namely as a 'means of community renewal' or a 'social engineering tool» (Supriyanto & Barthos, 2022, p. 3).

On the other hand, from the perspective of Political Ecology Theory, as explained by Bryant and Bailey (1997), green electoral regulations must also consider political power and interests in their implementation. They emphasize that environmental changes do not affect society homogeneously; political, social, and economic differences lead to unequal distribution of costs and benefits. Therefore, Green Election requires not only regulatory support, but also political commitment from various stakeholders, including political parties, election organizers, and civil society. Bryant and Bailey state that «any change in environmental conditions must affect the political and economic status quo» (Bryant & Bailey, 1997, p. 156)

Thus, the role of law in supporting Green Elections is crucial. The law must be able to be an effective instrument in encouraging changes in political behavior towards sustainability, while taking into account the dynamics of power and interests that exist. This requires a comprehensive and collaborative approach between policymakers, election implementers and the wider community to ensure that sustainability principles are integrated in every aspect of the electoral process.

The key strategies required to ensure the effectiveness of the Role of Law in Green Election regulation, by linking each step with its objectives and expected impact are outlined in the Table 2.

**Table 2.** Effective strategies for green election regulation

| Strategy | Implementation Description | Objectives and Expected Impact |
|---|---|---|

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| | | |
|---|---|---|
| Election Law Reform | Add explicit provisions on environmentally friendly principles in election campaigns in Law No. 7/2017 on Elections. | Ensure sustainability principles become part of the electoral law that binds all parties. |
| Preparation of Technical Guidelines (PKPU & Perbawaslu) | Regulate the use of recyclable campaign materials.<br><br>Prohibit the installation of props in green spaces and conservation areas. | Reduce environmental impact due to APK usage.<br><br>Restricting indiscriminate installation of campaign tools |
| Imposition of Administrative Sanctions | Set fines for election participants who violate environmental regulations.<br><br>Impose a ban on campaigning in the next election for serious violators. | Encourage compliance by election participants with the principle of sustainability.<br><br>Prevent environmental pollution due to political campaigns. |
| Improved Monitoring & Evaluation | Involve civil society, environmental communities and academics in green election monitoring.<br><br>Provide an open complaint mechanism for environmental campaign violations | Ensure transparency and accountability in the implementation of green elections. Increase the active role of the community in sustainable democracy. |

To ensure the effectiveness of Green Election regulations, various strategies are needed that can guarantee the implementation of more environmentally friendly campaigns and reduce the ecological impact of the democratic process. One of the main steps that must be taken is the reform of the Election Law, by adding explicit provisions governing sustainability principles in election campaigns. Currently, the regulations governing elections are still general in nature and have not specifically accommodated environmental protection as an integral part of the campaign stage. Therefore, it is necessary to revise Law Number 7/2017 on Elections, so that the principle of sustainable elections can be included as a binding legal norm for election participants, political parties, and election organizers.

In addition, to ensure more effective implementation, it is necessary to develop technical guidelines in the General Election Commission Regulation (PKPU) and the Election Supervisory Agency Regulation (Perbawaslu). These guidelines should include specific rules regarding the use of recyclable campaign materials, such as a ban on the use of single-use plastic campaign props, as well as restrictions on installing banners in green areas and conservation areas. With these technical guidelines in place, election participants will have clearer guidance on how they can run campaigns that remain effective without neglecting environmental aspects.

Furthermore, the implementation of green election regulations must also be supported by strict sanction mechanisms. Election participants who are proven to violate the rules regarding environmentally friendly campaigns must be subject to administrative sanctions, either in the form of fines, revocation of campaign rights, or a ban on participating in the next election. The application of the polluter pays principle in the context of elections can be a solution to ensure that parties who cause environmental pollution due to their political campaigns are responsible for the impacts caused. With a clear and measurable sanction system, election participants will be more encouraged to comply with the regulations that have been set.

Finally, the effectiveness of Green Election regulations relies heavily on rigorous monitoring and evaluation. The active role of the community in monitoring election participants' compliance with sustainability principles must be strengthened with a transparent complaint mechanism. The involvement of the environmental community, academics, and civil society organizations can be an important factor in ensuring that the principles of sustainable elections are truly applied in every stage of the election. With this strategy, Green Elections will not only be a mere discourse, but also a new standard in a more sustainable and environmentally responsible Indonesian democracy.

The implementation of these strategies requires a strong and comprehensive legal framework. As stated by Koesnadi Hardjasoemantri in his book Environmental Law, «Environmental protection and management must be an integral part of every development policy, including the holding of elections.» This emphasizes that the integration of sustainability principles in electoral regulations is not just an option, but a necessity to ensure that the democratic process does not damage the environment (Hardjasoemanti, 1994, p. 102).

In addition, Kusumaatmadja in Law and Development: The Indonesian Perspective emphasizes that law must function as a social engineering tool to change people's behavior towards more sustainability-oriented patterns (Katz & Katz, 1976, p. 335). In this context, green election regulations should be designed in such a way that they encourage election participants and the wider community to adopt environmentally friendly practices in every aspect of political campaigns.

Thus, comprehensive legal reforms, supported by clear technical guidelines, strict sanction mechanisms, and active public monitoring and participation, will be key in realizing effective and sustainable Green Elections in Indonesia.

## 4. Conclusions

Election regulations in Indonesia still face challenges in accommodating sustainability principles, especially in political campaigns that generate large amounts of waste. The lack of regulation regarding environmentally friendly campaigns has a significant ecological impact, which has the potential to hamper sustainable development as mandated in the 2025-2045 RPJPN. Therefore, legal reform in regulating election campaigns is a must so that the principle of sustainability can be integrated in every stage of the election. This research offers a Green Election-based legal reform model, which accommodates the principle of sustainability in election regulations through regulatory adjustments, the application of the polluter pays principle, and strengthening supervision of election participants' compliance in preserving the environment. Thus, green electoral regulatory reform is expected to increase political awareness of environmental issues and encourage a more sustainable democratic transformation.

To realize more effective green elections, concrete steps are needed in a more comprehensive electoral regulatory reform. The government and policymakers need to immediately revise Law No. 7/2017 on Elections, by adding explicit provisions regarding environmentally friendly principles in election campaigns. In addition, PKPU and Perbawaslu need to develop technical guidelines that regulate the use of recyclable campaign materials and prohibit the installation of props in green spaces. The application of stricter administrative sanctions, including fines and campaign bans for violators, also needs to be enforced to improve compliance with sustainability principles. In addition, public participation in green election monitoring should be strengthened with community-based monitoring systems and transparent complaint mechanisms. With these measures in place, it is hoped that the Green Election concept can be optimally applied in Indonesia's democratic system, thus not only ensuring electoral justice, but also contributing to environmental conservation.

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