

## Government Power in Property Law: Control, Conflict, and Contestation in Indonesia and Nepal

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### Abstract

This study discusses the comparison of government authority regulations in property law between Indonesia and Nepal, including the challenges and their impact on individual rights, indigenous communities, and the implementation of public policies in the context of infrastructure development, urbanization, and environmental protection. The purpose of this research is to analyze the differences and similarities in the limitations of government authority in property law as well as governance mechanisms and public services related to property law in Indonesia and Nepal. This research employs a normative legal method with statutory, comparative, and conceptual approaches, along with descriptive, interpretative, and comparative analyses of primary, secondary, and tertiary legal materials to examine the limitations of government authority in property law in Indonesia and Nepal, focusing on public policy and public services. The study finds that Indonesia and Nepal share similarities in prioritizing public interests in limiting government authority over property law but differ in their legal approaches; Indonesia combines civil law, customary law, and Islamic law with an emphasis on collective management, while Nepal, influenced by common law, focuses more on land redistribution for social justice. Challenges such as agrarian conflicts in Indonesia and resistance to redistribution in Nepal highlight the need for transparent and fair governance. In property governance, Indonesia excels in digitalization through programs like PTSL, while Nepal emphasizes community participation through land redistribution, although both face obstacles such as regulatory overlap in Indonesia and geographical constraints in Nepal.

## 1. Introduction

The government's authority to regulate and limit property rights is one of the important issues in the field of law and public policy. The government has a responsibility to balance public interests with individual rights, especially in the context of infrastructure development, urbanization, and environmental protection.<sup>1</sup> However, limitations on this authority often lead to legal, political, and social conflicts. This study aims to compare how Indonesia and Nepal, as two developing countries with different legal, cultural, and public policy characteristics, limit government authority in property law to address public needs without neglecting individual rights.

In Indonesia, property law is based on a combination of three legal systems: customary law, Islamic law, and Dutch colonial law, which was later adapted into national regulations. The main basis for property law in Indonesia is Law Number 5 of 1960 concerning Basic Agrarian Regulations (Law No. 5/1960). Law No. 5/1960 gives the government broad

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<sup>1</sup> Muhammad Rahjay Pelengkahu and Najib Satria, "The Role of Environmental Legal Instruments and Government Policies in Realizing Sustainable Development in Indonesia," *Administrative and Environmental Law Review* 4, no. 2 (September 1, 2023): 127–38, <https://doi.org/10.25041/aclr.v4i2.2971>.

authority in regulating and managing land to meet public interests, for example for the development of public infrastructure such as highways, educational facilities, and health services.<sup>2</sup> In addition, Law Number 2 of 2012 concerning Land Acquisition for Public Interest is an important legal framework for land acquisition. However, this broad authority often triggers problems, especially related to the protection of indigenous peoples' rights, transparency in land acquisition, and fairness in compensation.<sup>3</sup>

Indigenous peoples in Indonesia have a very close relationship with land. For them, land is not just an economic asset, but also has social, cultural, and spiritual value. When the government takes over customary land for infrastructure projects, conflicts often occur because the community feels they have lost their identity and source of livelihood.<sup>4</sup> There are many cases where indigenous peoples are not adequately compensated, or the expropriation process is carried out without transparent participation and consultation. Cases such as the construction of large infrastructure projects, such as dams and highways, show that policy implementation often comes at the expense of the most vulnerable communities. Nepal, on the other hand, has a different approach to property law, although it also faces similar challenges. Nepal's legal system is influenced by the common law tradition combined with local values based on Hinduism and Buddhism. The 2015 Constitution of Nepal guarantees the right to property as one of the fundamental rights recognized by the state.<sup>5</sup> However, the constitution also gives the government the authority to expropriate or restrict the rights to individual property in the public interest, subject to fair compensation. In practice, the implementation of this principle often faces obstacles, such as unequal distribution of land, corruption in the expropriation process, and lack of transparency in public policies.<sup>6</sup>

Nepal faces unique challenges in land management, given that the majority of its population relies on agriculture as their primary source of livelihood. In many cases, the government has to take over agricultural land for development projects such as roads, reservoirs, or other public facilities. However, these land acquisitions often trigger tensions between the government and rural communities who feel they are losing their primary

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<sup>2</sup> Zaelani Zaelani, "Hukum Islam Di Indonesia Pada Masa Penjajahan Belanda: Kebijakan Pemerintahan Kolonial, Teori Receptie In Complexu, Teori Receptie Dan Teori Teceptio A Contrario Atau Teori Receptio Exit," *KOMUNIKE* 11, no. 1 (June 30, 2020): 128–63, <https://doi.org/10.20414/jurkom.v11i1.2279>.

<sup>3</sup> Putri Rahmadani, "Penyelesaian Sengketa Ganti Kerugian Pengadaan Tanah Untuk Pembangunan Jalan Tol Section Binjai-Pangkalan Brandan Berbasis Perlindungan Hukum," *Locus Journal of Academic Literature Review* 1, no. 4 (August 3, 2022), <https://doi.org/10.56128/ljoalr.v1i4.68>.

<sup>4</sup> Clarry Sada, Yabit Alas, and Muhammad Anshari, "Indigenous People of Borneo (Dayak): Development, Social Cultural Perspective and Its Challenges," ed. Lincoln Geraghty, *Cogent Arts & Humanities* 6, no. 1 (January 1, 2019): 1665936, <https://doi.org/10.1080/23311983.2019.1665936>.

<sup>5</sup> Tara Nath Ghimire and Shyam Prasad Phuyel, "Tradition, Political and Legal Systems of Nepal," *HISAN: Journal of History Association of Nepal* 8, no. 1 (December 31, 2022): 79–87, <https://doi.org/10.3126/hisan.v8i1.53077>.

<sup>6</sup> Sudjito Sudjito, "Maladministration In Land Acquisition Of Public Interest (Case Study: Solo-Yogyakarta Highway Project)," *Jurnal Dinamika Hukum* 23, no. 1 (April 28, 2023): 89, <https://doi.org/10.20884/1.jdh.2023.23.1.3436>.

resource.<sup>7</sup> On the other hand, socio-economic inequality in Nepal also hampers the implementation of property law policies. Poorer or lower-caste groups are often the victims of land acquisition processes, as they have little access to legal recourse or adequate compensation.<sup>8</sup> In this context, public policy plays a critical role in determining how the government exercises its authority over property law. Good public policy should be able to integrate the public interest with the protection of individual rights. In Indonesia, public policy on property law is often hampered by slow bureaucracy, lack of transparency, and high levels of corruption. For example, in the process of land acquisition for infrastructure projects, many reports indicate that affected communities are not adequately informed about their rights or the compensation mechanisms available. In addition, weaknesses in public services, such as lack of coordination between government agencies, also exacerbate the situation.<sup>9</sup> Nepal faces similar challenges, albeit on a different scale. One of the main problems is the lack of institutional capacity to implement property law policies effectively. Many institutions in Nepal still face constraints in terms of human resources, finances, and technology.<sup>10</sup> Corruption is also a significant problem, with decisions on land acquisition often influenced by particular political or economic interests. In this situation, affected communities often feel they have no channels to voice their grievances or seek justice.<sup>11</sup> This study is relevant because it provides an in-depth analysis of how public policies and public services influence the limitations of government authority in property law. By comparing Indonesia and Nepal, this study aims to identify best practices that can be adopted by both countries to improve the effectiveness of public policies in this area. In addition, this study also offers theoretical contributions to understanding the principles of social justice and human rights in the context of property law. This is important because property law is not only related to economic aspects, but also to broader social, cultural, and environmental issues. In the analytical framework, this study will use a comparative approach that refers to three main dimensions: legal framework, public policy, and socio-economic context. These dimensions allow researchers to explore how the two countries regulate government authority in property law, as well as the factors that influence the success or failure of policies in this area.

By understanding the similarities and differences between Indonesia and Nepal, this study not only provides an overview of the current conditions but also offers practical

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<sup>7</sup> Raj K. GC and Ralph P. Hall, "The Commercialization of Smallholder Farming – A Case Study from the Rural Western Middle Hills of Nepal," *Agriculture* 10, no. 5 (April 30, 2020): 143, <https://doi.org/10.3390/agriculture10050143>.

<sup>8</sup> Etienne Lwamba et al., "Strengthening Women's Empowerment and Gender Equality in Fragile Contexts towards Peaceful and Inclusive Societies: A Systematic Review and Meta-analysis," *Campbell Systematic Reviews* 18, no. 1 (March 8, 2022), <https://doi.org/10.1002/cl2.1214>.

<sup>9</sup> Leli Tibaka and Rosdian Rosdian, "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 11, no. 3 (February 28, 2018): 266, <https://doi.org/10.25041/fiatjustisia.v11no3.1141>.

<sup>10</sup> Niloufar Fallah Shayan et al., "Sustainable Development Goals (SDGs) as a Framework for Corporate Social Responsibility (CSR)," *Sustainability* 14, no. 3 (January 21, 2022): 1222, <https://doi.org/10.3390/su14031222>.

<sup>11</sup> Yanan Song, Mark Yaolin Wang, and Xiaoting Lei, "Following the Money: Corruption, Conflict, and the Winners and Losers of Suburban Land Acquisition in Hina," *Geographical Research* 54, no. 1 (February 18, 2016): 86–102, <https://doi.org/10.1111/1745-5871.12158>.

recommendations for improving public policies in the future. In addition, this study also contributes to global efforts to achieve sustainable development. One of the goals of sustainable development (Sustainable Development Goals) is to ensure equitable access to land and other resources, as well as protect the rights of indigenous peoples and vulnerable groups. By exploring how Indonesia and Nepal address these issues, this study can provide valuable lessons for other countries facing similar challenges. For example, policies on land acquisition for infrastructure projects must take into account not only the development needs, but also the impacts on affected communities, especially those who are classified as vulnerable. Based on the background explanation above, the author is interested in conducting a study entitled "The Limitations on Governmental Powers of Property Law: Comparison of Indonesia and Nepal Public Policy and Public Service". The formulation of the problem in this study is:

1. What are the differences and similarities in the limitations of government authority in property law between Indonesia and Nepal?
2. What are the governance and public service mechanisms related to property law in Indonesia and Nepal?

The limitation of government authority in property law is a topic that has been widely studied, especially in the context of public policy and public services. Previous studies provide valuable insights into how various countries, including Indonesia and Nepal, manage land and property rights, and how these policies affect society. One relevant study is a study by Listyowati Sumanto (2016) which discusses how the Indonesian government limits land ownership by foreign parties to protect national sovereignty and interests. This study highlights that although holders of Ownership Rights, Building Use Rights, and Use Rights have the authority to transfer their land rights to other parties, there are restrictions set by the government. For example, in the use of such authority, it must not cause harm to other parties or interfere with other parties. This limitation shows the government's efforts to maintain a balance between individual interests and public interests.<sup>12</sup> Another relevant study is by Sri Suharti, Dudung Darusman, Bramasto Nugroho and Leti Sundawati (2016) published in the journal *Sodality*. This study describes the dynamics of development and the effectiveness of local institutions in managing natural resources, especially mangroves, which grow on emerging land in Tongke-tongke Village, East Sinjai, South Sulawesi. The results of the study show that even without government support, collective action to plant mangroves can be realized through various rules and agreements formulated by the local community. This shows that restrictions on government authority in managing natural resources can be balanced with active community participation through effective local institutions.<sup>13</sup> Although it does not specifically discuss restrictions on government authority in property law, "Legal Literacy - Nepal" published by the Grassroots Justice Network provides insight into legal empowerment efforts in Nepal. This organization promotes legal literacy to ensure fair,

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<sup>12</sup> Listyowati Sumanto, "Pembatasan Pemilikan Hak Atas Tanah Oleh Orang Asing Dan Badan Hukum Asing (Studi Perbandingan Indonesia - Turki)," *Jurnal Hukum PRIORIS* 3, no. 3 (May 17, 2016): 67-102, <https://doi.org/10.25105/prio.v3i3.369>.

<sup>13</sup> Sri Suharti et al., "Kelembagaan dan Perubahan Hak Akses Masyarakat dalam Pengelolaan Hutan Mangrove di Sinjai Timur, Sulawesi Selatan -- Institution and Change on Community Access Right in Mangrove Forest Management in East Sinjai, South Sulawesi," *Sodality: Jurnal Sosiologi Pedesaan* 4, no. 2 (December 17, 2016), <https://doi.org/10.22500/sodality.v4i2.13392>.



transparent and equal access to community rights. This effort is important in the context of limiting government authority, because a legally literate society is better able to understand and negotiate their rights regarding property and land. Thus, legal literacy plays a role in ensuring that restrictions imposed by the government do not harm individual rights.

The above studies provide an overview of how Indonesia and Nepal manage restrictions on government authority in property law. In Indonesia, there are efforts to limit land ownership by foreign parties to protect national interests, while in Nepal, legal literacy is an important tool for the community to understand and defend their rights. However, there is still a gap in the literature that discusses direct comparisons between the two countries. Most studies focus on one country or a particular aspect, without conducting an in-depth comparative analysis. In addition, studies that link restrictions on government authority with public policy and public services in the context of property law are also still limited. Based on the literature review above, the study entitled "Government Power in Property Law: Control, Conflict, and Contestation in Indonesia and Nepal" offers novelty by conducting a comparative analysis between Indonesia and Nepal. This study not only compares the legal framework governing the limitation of government authority in property law, but also relates it to public policy and public services in both countries. Thus, this study is expected to fill the gap in the existing literature and make a significant contribution to understanding how the limitation of government authority in property law is implemented in various countries with different social, political, and legal contexts.

## 2. Methods

This study uses a normative legal research method, which focuses on the study of legal rules, doctrines, and legal principles relevant to the limitation of government authority in property law.<sup>14</sup> This method was chosen because this study aims to understand the positive legal framework applicable in Indonesia and Nepal and analyze how these regulations are applied in the context of public policy and public services. By using a normative method, this study integrates analysis of legal texts and underlying theories, thus providing a holistic picture of the issues discussed. Within the framework of this normative legal research, several complementary approaches are used. The first approach is the statute approach, which is used to analyze the main laws and regulations, such as Law No. 5/1960 in Indonesia and the 2015 Constitution of Nepal. This approach helps identify the legal basis and public policy framework that underlies the limitation of government authority in property law in each country. The second approach is the comparative approach, which aims to compare the legal systems in Indonesia and Nepal. This approach allows for the analysis of similarities and differences in public policies, governance, and public service mechanisms related to property law. By comparing the two countries, this study can identify best practices that can be adopted to improve policy effectiveness. The last approach is the conceptual approach, which is used to examine legal theories and key concepts related to the limitation of government authority, such as social justice, property rights, and good governance. This approach provides a theoretical framework that strengthens the analysis in the study. This study uses various sources of legal materials to support its analysis. Primary legal sources include laws and

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<sup>14</sup> Irwansyah, *Penelitian Hukum: Pilihan Metode Dan Praktik Penulisan Artikel* (Yogyakarta: Mira Buana Media, 2020).

regulations and official legal documents that apply in Indonesia and Nepal. Examples are the Law No. 5/1960 and Law Number 2 of 2012 concerning Land Acquisition for Public Interest in Indonesia, as well as the Nepalese Constitution 2015 and laws related to property law in Nepal. These primary legal materials are the main basis for understanding how the two countries regulate the limitation of government authority. In addition, this study also utilizes secondary legal sources, such as legal literature, scientific journals, previous research results, and expert opinions that are relevant to the research topic. These sources are used to provide additional context and strengthen the analysis. Tertiary legal sources, such as legal encyclopedias, legal dictionaries, and other reference documents, were also used to help understand key concepts and terms that emerged in the study.<sup>15</sup> The data collection technique in this study was carried out through document study, which involved the collection and in-depth analysis of various primary, secondary, and tertiary legal materials.

The documents analyzed included laws and regulations, government reports, journal articles, books, and other official publications that were relevant to the limitations of government authority in property law in Indonesia and Nepal. This document study allowed researchers to identify patterns, trends, and issues that emerged in the implementation of policies in both countries.<sup>16</sup> The data analysis in this study was carried out descriptively, interpretively, and comparatively. Descriptive analysis was used to describe the contents of laws and regulations and policies that apply in Indonesia and Nepal. By using this approach, researchers were able to identify the main elements in the legal framework in both countries. Furthermore, interpretive analysis was carried out to understand the meaning and purpose of the legal rules, and to explore how legal principles are applied in the context of public policy and public services. The comparative analysis technique is at the heart of this research. The researcher compares the legal systems, public policies, and public service mechanisms between Indonesia and Nepal, focusing on similarities, differences, and factors that influence policy implementation in each country. This analysis includes an evaluation of governance, level of community participation, transparency, and fairness in property management. With this technique, the research is expected to provide relevant recommendations to improve policies in the field of property law in both countries.

### 3. Results and Discussion

#### 3.1. The Differences and Similarities in the Limits of Government Authority in Property Law between Indonesia and Nepal

The limitations of government authority in property law have unique characteristics in each country. This is influenced by the underlying legal framework, political system, and socio-cultural history.<sup>17</sup> Indonesia and Nepal, despite their differences in many aspects, both face challenges in regulating government authority over property management to achieve a balance between public interest and protection of individual rights. In this discussion, the discussion of the differences and similarities between the two countries will be based on the

<sup>15</sup> Sugiyono, "Metode Penelitian Kuantitatif, Kualitatif, Dan R&D," Bandung: CV. Alfabeta, 2019.

<sup>16</sup> Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT Remaja Rosdakarya, 2017).

<sup>17</sup> Cheryl Doss and Ruth Meinzen-Dick, "Land Tenure Security for Women: A Conceptual Framework," *Land Use Policy* 99 (December 2020): 105080, <https://doi.org/10.1016/j.landusepol.2020.105080>.

legal framework, governance, public policy, and public services. The following are the differences and similarities presented in the table:

**Table 1.** Legal and Policy Comparison of Land Governance in Indonesia and Nepal

Aspect	Indonesia	Nepal	Similarity	Differences
Legal Framework	Civil law, customary law, Islamic law. LAW NO. 5/1960 as the main basis.	Common law, local traditional values. Constitution of Nepal 2015, Land Reform Act 1964.	The government may limit of property rights for the public interest.	Indonesia places more emphasis on collective management; Nepal focuses on redistribution for social equity.
Purpose of Restrictions	For collective resource management, infrastructure development, agrarian reform.	Land redistribution for social poverty alleviation.	Both prioritize public interest.	Indonesia prioritizes development; Nepal emphasizes redistribution to the poor.
Land Acquisition	Involves planning, public consultation, and compensation under Law No. 2 of 2012.	Land redistribution through the Land Reform Act 1964.	Both countries have mechanisms that consider public interest and individual rights.	Indonesia's process is more organized through public consultation; Nepal focuses on redistribution of unproductive land.
Foreign Investment Policy	Foreigners can only have Right of Use (Article 42 of the LAW NO. 5/1960).	Foreign land ownership is almost completely prohibited.	Both limit foreign land ownership to protect national interests.	Indonesia allows foreign investment through Right to Use; Nepal more strictly prohibits direct ownership.
Human Rights	Individual rights are protected through fair compensation mechanisms.	Individual rights are respected by providing land access to the poor and marginalized.	Both uphold human rights in land management policies.	Indonesia emphasizes compensation; Nepal focuses more on land access for the poor.
Governance Challenges	Agrarian conflicts, complex bureaucracy, corruption.	Limited administrative capacity, resistance to land redistribution.	Governance requires transparency, accountability, and community participation.	Indonesia faces greater agrarian conflict; Nepal faces administrative capacity constraints.

Aspect	Indonesia	Nepal	Similarity	Differences
Public Services	Provision of land certificates through digitization of the land system.	Land redistribution through PTSL, the poor, involving the community participation.	Both face challenges to increasing community access to land services.	Indonesia is more advanced in digitalization; Nepal prioritizes community participation.
Public Interest Principle	Restrictions on property rights for infrastructure development and the wider community.	Land redistribution and national development.	The public interest is the basis for limiting government authority.	Indonesia uses it for infrastructure development; Nepal for social land redistribution.

Indonesia and Nepal have fundamental differences in the legal systems they adopt. Indonesia adopts a mixed legal system that integrates customary law, Islamic law, and positive law based on civil law. The main legal framework governing land management in Indonesia is the Law. 5/1960. Article 2 of Law No. 5/1960 states that "the land, water, and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people." Indonesia follows a mixed legal system, incorporating civil law, customary law, and Islamic law. The primary legislation governing land rights is Law No. 5/1960, which grants the state control over land, water, and natural resources. In addition, Law No. 2 of 2012 on Land Procurement for Public Interest provides the legal foundation for government land acquisition. However, this law has faced criticism for its implementation, particularly concerning unfair compensation and prolonged legal disputes, which highlight inconsistencies in protecting landowners' rights.<sup>18</sup> Nepal, on the other hand, follows a common law-influenced legal system with traditional Hindu and Buddhist values embedded in governance. The 2015 Constitution guarantees the right to property but allows the government to impose restrictions for public interest purposes. The Land Reform Act of 1964 was introduced to address social inequalities by redistributing land to marginalized groups. However, its implementation has faced challenges due to resistance from landowners and issues of corruption, making the redistribution process less effective.<sup>19</sup> Nepal also has a long history of land reform, starting with the Land Reform Act of 1964. This reform aimed to address the inequality of land ownership, mainly due to the feudal system that previously dominated.<sup>20</sup> This difference shows that Indonesia's legal framework places more emphasis on collective management of natural resources, while Nepal's focuses more on land redistribution

<sup>18</sup> Alexander Syauta, "Perbandingan Sistem Hukum Benua Eropa Dan Sistem Hukum Nasional Indonesia," *Jurnal Penegakan Hukum Indonesia* 3, no. 1 (February 11, 2022): 1-13, <https://doi.org/10.51749/jphi.v3i1.53>.

<sup>19</sup> Khim Lal Devkota and Gopi Krishna Khanal, "Nepal," in *The Forum of Federations Handbook on Local Government in Federal Systems* (Cham: Springer International Publishing, 2024), 347-76, [https://doi.org/10.1007/978-3-031-41283-7\\_12](https://doi.org/10.1007/978-3-031-41283-7_12).

<sup>20</sup> Damaru Ballabha Paudel and Katsuhiko Saito, "Impact of Implementation of Current Land Reform Policy in Nepal," *The Japanese Journal of Rural Economics* 17 (2015): 35-39, <https://doi.org/10.18480/jjre.17.35>.



to achieve social equity. This is closely related to the historical context and social structure of both countries. Indonesia has a clear legal mechanism for land acquisition for public interest, as regulated in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. In this law, the government is given the authority to take over community land, but must go through strict procedures, including planning, public consultation, social impact assessment, and fair compensation. This process aims to ensure transparency and reduce the potential for conflict.<sup>21</sup> While both countries permit land expropriation in the public interest, Indonesia's legal framework emphasizes structured procedures, such as compensation and legal recourse, whereas Nepal's approach focuses more on redistribution, often facing administrative inefficiencies.

However, in practice, there are still many challenges faced, such as protracted land disputes and community dissatisfaction with the compensation value. In Nepal, land acquisition is often associated with redistribution to reduce social inequality. The Nepalese government through the Land Reform Act 1964 authorizes the distribution of unused or excessively owned land by individuals. This redistribution aims to provide access to poor communities and small farmers.<sup>22</sup> However, this redistribution process often faces resistance from large landowners and challenges in policy implementation due to the lack of government administrative capacity. Foreign investment policy is also an aspect that shows significant differences between the two countries. In Indonesia, Article 42 of Law No. 5/1960 limits foreign land ownership to Right to Use, meaning foreigners can only lease land under specific conditions. In Nepal, land ownership by foreign nationals is almost entirely prohibited, with exceptions made for specific investment projects. This demonstrates a shared policy goal of limiting foreign land control, but Nepal's approach is significantly stricter than Indonesia's.<sup>23</sup> On the other hand, Nepal has a stricter policy regarding land ownership by foreign investors. The Nepalese government generally prohibits land ownership by foreign nationals and restricts its use to specific projects that have a direct impact on national development.<sup>24</sup>

In Indonesia, affected landowners have clearer legal mechanisms to challenge government land acquisitions, although implementation challenges remain. The government is required to consult with communities and provide compensation, as outlined in Law No. 2 of 2012. However, in practice, compensation disputes are frequent, and indigenous communities often find their customary land rights inadequately protected.<sup>25</sup> In contrast, Nepal's approach relies heavily on redistribution policies aimed at addressing historical land inequalities. However, the lack of strong legal protections for landowners means that

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<sup>21</sup> Rahmat Masturi, "Hakekat Keadilan Pada Pengadaan Tanah Untuk Kepentingan Umum Dalam Rangka Pembangunan Nasional," *Al-Ishlah: Jurnal Ilmiah Hukum* 21, no. 2 (2018).

<sup>22</sup> Ghimire and Phuyel, "Tradition, Political and Legal Systems of Nepal."

<sup>23</sup> Dian Dewi Khasanah, "Kepemilikan Properti Bagi Warga Negara Asing Yang Berkedudukan Di Indonesia," *PROGRESIF: Jurnal Hukum* 16, no. 1 (June 22, 2022): 13-37, <https://doi.org/10.33019/progresif.v16i1.2999>.

<sup>24</sup> Swoyambhu M. Amatya and Prakash Lamsal, "Private Forests in Nepal: Status and Policy Analysis," *Journal of Forest and Livelihood* 15, no. 1 (September 4, 2017): 120-30, <https://doi.org/10.3126/jfl.v15i1.23094>.

<sup>25</sup> Henny Saida Flora et al., "The Criticism of Land Procurement Law to Improve Landowners Welfare in Indonesia," *Jurnal Smart Hukum (JSH)* 3, no. 1 (September 30, 2024): 99-106, <https://doi.org/10.55299/jsh.v3i1.1089>.

expropriation decisions are often made with less transparency, leading to resistance and delayed implementation. This suggests that Indonesia offers stronger legal safeguards for landowners, while Nepal prioritizes redistribution to achieve social justice, sometimes at the expense of individual property rights.

Both Indonesia and Nepal impose land rights restrictions based on the public interest principle. However, their legal criteria for defining and applying these restrictions vary. In Indonesia, the Constitutional Court has ruled that land acquisition must comply with the principles of justice, legal certainty, and utility. This means that restrictions on property rights must be justified with clear legal grounds, proper compensation, and adherence to due process. Despite these principles, disputes frequently arise, particularly in cases where indigenous communities claim that their customary land rights are inadequately recognized.<sup>26</sup> In Nepal, land redistribution is a key policy for achieving social justice, but there is no explicit judicial doctrine equivalent to Indonesia's Constitutional Court rulings on land restrictions. Instead, the government relies on broad legislative provisions to justify expropriation, which can lead to uncertainty and inconsistent application. This indicates that while Indonesia places greater emphasis on legal certainty in property law, Nepal prioritizes socio-economic equity, often at the expense of clear legal protections for landowners.<sup>27</sup>

However, the implementation of this policy varies according to the needs and context of each country. Both Indonesia and Nepal have in common that they place the public interest as the basis for limiting government authority in property law. In Indonesia, this is reflected in Article 33 paragraph (3) of the 1945 Constitution, which states that "the land and water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people." This provision gives the government a mandate to manage land for the welfare of the community, including for infrastructure development, provision of public facilities, and environmental protection.<sup>28</sup> Nepal also places public interest as the basis for limiting government authority. Article 25 of the 2015 Constitution of Nepal stipulates that the government may limit an individual's right to land for national development purposes, such as land redistribution and infrastructure development. This principle reflects the Nepalese government's commitment to ensuring that land is used for the benefit of the wider community, not just for the benefit of a few individuals.<sup>29</sup>

Both countries also share similarities in upholding human rights in limiting government authority. In Indonesia, respect for individual rights to land is guaranteed through a fair compensation mechanism in the land acquisition process. Law Number 2 of 2012 requires the government to provide appropriate compensation to landowners whose land is taken for

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<sup>26</sup> Try Widiyono and Md Zubair Kasem Khan, "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law," *LAW REFORM* 19, no. 1 (August 9, 2023): 128-47, <https://doi.org/10.14710/lr.v19i1.48393>.

<sup>27</sup> Aboul Taif and Eduardo Wassim, "International Political Science Abstracts," *International Political Science Abstracts* 70, no. 3 (June 21, 2020): 311-478, <https://doi.org/10.1177/0146645320931410>.

<sup>28</sup> Elli Ruslina, "Makna Pasal 33 Undang-Undang Dasar 1945 dalam Pembangunan Hukum Ekonomi Indonesia," *Jurnal Konstitusi* 9, no. 1 (May 20, 2016): 49, <https://doi.org/10.31078/jk913>.

<sup>29</sup> Andi Bustamin Daeng Kunu, "Kedudukan Hak Menguasai Negara Atas Tanah," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 6, no. 1 (October 22, 2015), <https://doi.org/10.25041/fiatjustisia.v6no1.343>.

public interest.<sup>30</sup> Nepal, through its land reforms, is attempting to address decades of social inequality. Land redistribution in Nepal is designed to provide rights to previously marginalized groups, such as small farmers and the poor. This policy reflects the Nepalese government's efforts to ensure social justice and respect the fundamental rights of every citizen.<sup>31</sup>

Good governance is an important element in limiting government authority in property law. Governance principles, such as transparency, accountability, community participation, and law enforcement, must be applied to ensure that policies taken by the government do not violate individual rights and remain in the public interest.<sup>32</sup> In Indonesia, governance in property management faces various challenges, such as agrarian conflicts, inequality in land ownership, and corrupt practices in land administration. To address these issues, the government has launched various initiatives, such as the digitalization of land services through the One Map Policy and the agrarian reform program. These initiatives aim to increase transparency and efficiency in land management.<sup>33</sup> Nepal also faces challenges in property governance, particularly due to its long history of feudalism and social conflicts over land. Nevertheless, Nepal has taken significant steps to improve governance, including involving civil society organizations in the land reform process and building government administrative capacity.<sup>34</sup>

Both Indonesia and Nepal face governance challenges in enforcing property laws. In Indonesia, overlapping regulations, bureaucratic inefficiencies, and agrarian conflicts hinder effective land management. The government has attempted to address these issues through digital land registration initiatives, such as the Complete Systematic Land Registration (PTSL) program. Despite these efforts, corruption and delays in land acquisition remain concerns.<sup>35</sup> Nepal, meanwhile, struggles with limited administrative capacity and resistance to land redistribution efforts. The government has introduced the Land Information System (LIS) to

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<sup>30</sup> Masturi, "Hakekat Keadilan Pada Pengadaan Tanah Untuk Kepentingan Umum dalam Rangka Pembangunan Nasional."

<sup>31</sup> Michael Levien, "The Politics of Dispossession," *Politics & Society* 41, no. 3 (September 1, 2013): 351-94, <https://doi.org/10.1177/0032329213493751>.

<sup>32</sup> Guntur Lionandiva and Triandi Triandi, "Penerapan Prinsip-Prinsip Good Governance Dalam Meningkatkan Kualitas Pelayanan Publik Pada Kantor Badan Pendapatan Daerah Kota Bogor," *Jurnal Ilmiah Akuntansi Kesatuan* 10, no. 3 (December 30, 2022): 607-16, <https://doi.org/10.37641/jiakes.v10i3.1604>.

<sup>33</sup> Cecep Miptahuddin, "The Problem of Ownership of Land Rights Is Reviewed Based on the Law and Government Regulations," *Advances In Social Humanities Research* 2, no. 5 (May 31, 2024): 784-803, <https://doi.org/10.46799/adv.v2i5.250>.

<sup>34</sup> Uma Shankar Panday et al., "Securing Land Rights for All through Fit-for-Purpose Land Administration Approach: The Case of Nepal," *Land* 10, no. 7 (July 16, 2021): 744, <https://doi.org/10.3390/land10070744>.

<sup>35</sup> Nurul Huda et al., "The Strategic Development of Quality Improvement Land Data Incrementally Using Integrated PESTEL and SWOT Analysis in Indonesia," *Land* 13, no. 10 (October 10, 2024): 1655, <https://doi.org/10.3390/land13101655>.

improve transparency, but geographical constraints and a lack of technological infrastructure have slowed progress.<sup>36</sup>

Public policy in the field of property law reflects the government's efforts to create a balance between protecting individual rights and collective interests. In Indonesia, agrarian reform policy is one of the strategic steps to reduce inequality in land ownership and increase access to resources for small communities. This policy also includes providing free land certificates to the poor through the Complete Systematic Land Registration (PTSL) program.<sup>37</sup> In Nepal, public policy in the property sector focuses more on land redistribution to address extreme social inequality. The Nepalese government is working with international organizations to implement land redistribution programs involving poor communities, women, and small farmers.<sup>38</sup> In terms of public services, both countries face challenges in ensuring public access to land-related information and administrative services. Digitization and modernization of land administration systems are important steps to increase efficiency and reduce the potential for abuse of authority.<sup>39</sup>

The differences between Indonesia and Nepal in the limits of government authority in property law reflect the differences in history, legal systems, and social needs in each country. Indonesia places more emphasis on collective management of natural resources, while Nepal focuses more on land redistribution to address social inequality. However, both countries have in common that they place the public interest as the main foundation of their policies and uphold human rights in limiting government authority. In the context of governance, the challenges faced by both countries demonstrate the importance of transparency, public participation, and law enforcement in property management. By strengthening governance and improving public policies, both Indonesia and Nepal can achieve more inclusive and sustainable development goals.

### 3.2. The Governance and Public Service Related to Property Law in Indonesia and Nepal

Governance in property law is an important aspect that reflects how the government and related institutions manage, distribute, and protect ownership rights to land and property.<sup>40</sup> In addition, public services related to property law describe the mechanisms and policies implemented by the government to provide equal accessibility, transparency, and ease

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<sup>36</sup> Ganga Bahadur Thapa and Jan Sharma, "Nepal's Democratic Deficit and Federalism Is It a Cure or Part of the Problem?," *Lex Localis - Journal of Local Self-Government* 9, no. 1 (January 24, 2011): 39–66, [https://doi.org/10.4335/9.1.39-66\(2011\)](https://doi.org/10.4335/9.1.39-66(2011)).

<sup>37</sup> Ricco Andreas, Luthfi Kalbu Adi, and Sri Sulastuti, "The Effect of Colonialism on Implementation of Agrarian Reform in Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 13, no. 2 (July 1, 2019): 101, <https://doi.org/10.25041/fiatjustisia.v13no2.1565>.

<sup>38</sup> Bhubaneswor Dhakal et al., "International Environmental Policy Processes That Dispossessed Developing Societies of Public Land Resources: A Case Study of Nepal," *GeoJournal* 88, no. 6 (October 4, 2023): 5677–5719, <https://doi.org/10.1007/s10708-023-10926-2>.

<sup>39</sup> Rana Tatsbita Noer et al., "Transformasi Digital Pendaftaran Tanah: Tantangan Dan Efektivitas Implementasi Aplikasi Sentuh Tanahku Dalam Era Society 5.0," *JINU: Jurnal Ilmiah Nusantara* 1, no. 6 (2024), <https://doi.org/https://doi.org/10.61722/jinu.v1i6.2806>.

<sup>40</sup> Alessandra Jerolleman et al., "Property Law and Its Contradictions," in *People or Property* (Cham: Springer International Publishing, 2024), 23–40, [https://doi.org/10.1007/978-3-031-36872-1\\_2](https://doi.org/10.1007/978-3-031-36872-1_2).



in managing land rights for the community.<sup>41</sup> Indonesia and Nepal have different characteristics of governance and public services based on their respective social, political, cultural and legal backgrounds. To understand these mechanisms, it is important to review how the systems in both countries work, the challenges faced, and the governance approaches applied in the property sector.

Indonesia, as a country with a large population and a wide geographical area, faces major challenges in property governance. The main legal basis for property governance in Indonesia is Law No. 5/1960. Law No. 5/1960 is the basis for regulations related to property rights, land use rights (HGU), building use rights (HGB), and use rights. The philosophy of Law No. 5/1960 is based on Article 33 paragraph (3) of the 1945 Constitution which states that the earth, water, and natural resources are controlled by the state and used for the greatest prosperity of the people.<sup>42</sup>

As part of governance, the government established the National Land Agency (BPN) which is responsible for land administration. The functions of BPN include land registration, certificate issuance, and land dispute resolution. To strengthen governance, the Indonesian government also issued Government Regulation Number 24 of 1997 concerning Land Registration, which regulates the process of land administration and recording.<sup>43</sup> However, land governance in Indonesia faces a number of obstacles. One of them is overlapping regulations, agrarian conflicts, and low recognition of indigenous peoples' rights. Overlapping regulations often occur because of the many conflicting sectoral regulations. For example, land that has been used by indigenous peoples for farming is often allocated for commercial purposes without prior consultation.<sup>44</sup> This has resulted in quite high agrarian conflicts, as reported by the Agrarian Reform Consortium (KPA), which records hundreds of conflicts every year. To address this problem, the government initiated Agrarian Reform, as regulated in Presidential Regulation Number 86 of 2018. Agrarian Reform aims to redistribute land to the poor, legalize land through certification programs, and recognize customary rights of indigenous peoples. This program is also expected to reduce the gap in land ownership which is often unequal between small communities and large companies.<sup>45</sup>

In terms of public services, Indonesia has made a number of strides forward through digitalization. Programs such as Complete Systematic Land Registration (PTSL) and Electronic

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<sup>41</sup> Sisilia Sisilia et al., "Juridical Analysis of Government Policies on Ownership of Rights to Flats," *International Journal of Social Science and Humanity* 1, no. 3 (August 21, 2024): 107–22, <https://doi.org/10.62951/ijss.v1i3.62>.

<sup>42</sup> Wayan Dedy Juniawan et al., "Tantangan Kebijakan Penataan Spasial Pada Tanah Ulayat Adat: Studi Kasus Di Provinsi Bali," *Development Policy and Management Review (DPMR)*, May 23, 2023, 157–73, <https://doi.org/10.61731/dpmr.vi.26485>.

<sup>43</sup> Rr. Luh Sekar N.S et al., "Analisis Yuridis Peranan Kantor ATR/BPN Terhadap Penyelesaian Permasalahan Sengketa Batas Tanah," *Indonesian Journal of Law and Justice* 1, no. 4 (March 22, 2024): 11, <https://doi.org/10.47134/ijlj.v1i4.2333>.

<sup>44</sup> Muh Afif Mahfud, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik, "Land Bank in Indonesia: Disoriented Authority, Overlapping Regulations and Injustice," *Jambura Law Review* 6, no. 2 (July 22, 2024): 240–63, <https://doi.org/10.33756/jlr.v6i2.24166>.

<sup>45</sup> Lina Jamilah and Arif Firmansyah, "Preliminary Concept of Alternative Agrarian Reform for Justice: The Social Tenure Domain Model (STDM) Approach to Constructing a Just Society in Indonesia," *Jurnal Hukum* 39, no. 2 (December 7, 2023): 174, <https://doi.org/10.26532/jh.v39i2.32516>.

Mortgage Rights Service (HT-el) are designed to speed up the process of obtaining land certificates. PTSL, for example, aims to ensure that all land in Indonesia is registered and has an official certificate. This program not only increases transparency, but also makes it easier for people, especially in rural areas, to obtain legal certainty over the land they own.<sup>46</sup> However, the implementation of public services still faces challenges in the form of long bureaucracy and corrupt practices. In some cases, the public still has to face additional unofficial costs to speed up the administrative process. In addition, the digitalization of services is not yet fully evenly distributed, especially in remote areas with minimal access to technology.<sup>47</sup>

To overcome these obstacles, the government launched the Online Single Submission (OSS) system through Government Regulation Number 24 of 2018. OSS allows people to take care of land permits online without having to come directly to the service office. Although this initiative deserves appreciation, its success still requires improving digital infrastructure and strengthening bureaucratic integrity.<sup>48</sup> In Nepal, property governance also plays a vital role in ensuring social justice and economic development. The legal basis for property governance in Nepal is the National Land Policy 2019, which aims to address inequality in land tenure and ensure sustainable land use. In addition, the 2015 Constitution of Nepal provides for the guarantee of land rights as part of human rights.<sup>49</sup> The agency responsible for property governance in Nepal is the Department of Land Management and Archive (DoLMA). This agency manages land administration, property registration, and dispute resolution. One of the main approaches to property governance in Nepal is the use of cadastral surveys, which is a detailed mapping of land to ensure legal and accurate ownership.<sup>50</sup>

However, like Indonesia, Nepal also faces a number of challenges in property governance. One of them is gender inequality in land ownership, where women often do not have equal access to land ownership rights. This problem is related to patriarchal social norms and a lack of legal awareness among the community.<sup>51</sup> Nepal also faces challenges in terms of transparency and efficiency of public services. Many rural communities have difficulty accessing land services due to their geographical distance from administrative centers. In addition, corruption cases at the local level often hamper administrative processes that should

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<sup>46</sup> Dwi Budi Martono et al., "The Legal Element of Fixing the Boundary for Indonesian Complete Cadastre," *Land* 10, no. 1 (January 7, 2021): 49, <https://doi.org/10.3390/land10010049>.

<sup>47</sup> Ira Patriani et al., "Digitalization in Public Administration Services in Indonesia: Pseudo or Real Digitalization," *The International Journal of Artificial Intelligence Research* 6, no. 1 (2022), <https://doi.org/https://doi.org/10.29099/ijair.v6i1.1.602>.

<sup>48</sup> Rinto Mujiono Lumban Tobing, Bengkel Bengkel, and Tengku Irmayani, "The Impact from the Implementation of Online Single Submission (OSS) towards the Ease of Business Licensing for Business Actors in North Sumatera Province," *Dinasti International Journal of Economics, Finance & Accounting* 3, no. 6 (2023), <https://doi.org/https://doi.org/10.38035/dijefa.v3i6.1546>.

<sup>49</sup> Juan Pablo Sarmiento Barletti et al., "Designing for Engagement: A Realist Synthesis Review of How Context Affects the Outcomes of Multi-Stakeholder Forums on Land Use and/or Land-Use Change," *World Development* 127 (March 2020): 104753, <https://doi.org/10.1016/j.worlddev.2019.104753>.

<sup>50</sup> Panday et al., "Securing Land Rights for All through Fit-for-Purpose Land Administration Approach: The Case of Nepal."

<sup>51</sup> Puspa Raj Ghimire et al., "Does Joint Land Ownership Empower Rural Women Socio-Economically? Evidence from Eastern Nepal," *Land Use Policy* 138 (March 2024): 107052, <https://doi.org/10.1016/j.landusepol.2024.107052>.

run smoothly.<sup>52</sup> In an effort to improve public services, the Nepalese government launched the Land Information System (LIS), which allows citizens to access land data online. The system aims to increase transparency, reduce corruption, and speed up administrative processes. However, the adoption of LIS still faces obstacles, especially in remote areas with minimal technological infrastructure.<sup>53</sup> In addition, Nepal also implemented a land redistribution program for poor farmers and vulnerable groups. This program is designed to reduce social inequality and increase land productivity. Land redistribution also involves active community participation, which is in line with the principles of good governance.<sup>54</sup>

Although Indonesia and Nepal have similarities in terms of property policy reform efforts, they also have fundamental differences that reflect the level of development and priorities of each country. In Indonesia, property governance is more focused on the legalization aspect and reducing agrarian conflicts through digitalization and agrarian reform. In Nepal, the main focus is on land redistribution to vulnerable groups and increasing gender equality in land ownership. In terms of public services, Indonesia is superior in adopting digital technology, as seen from programs such as PTSL and OSS. However, the effectiveness of these programs still needs to be improved through strengthening infrastructure and bureaucratic oversight. Nepal, on the other hand, is still in the early stages of service digitalization, although these efforts have shown positive impacts, especially in increasing transparency. Governance in property law in both countries can be analyzed through the theory of good governance, which emphasizes the principles of transparency, accountability, efficiency, and participation. Indonesia has shown significant progress in the aspects of transparency and efficiency through digitalization. However, accountability remains a major challenge, especially in terms of monitoring corrupt practices in the land sector. In Nepal, community participation is an important element in property governance, especially in land redistribution programs. This principle of participation shows the Nepalese government's awareness of the importance of involving the community in decision-making. However, the efficiency aspect still needs to be improved, especially in terms of technology adoption and strengthening the capacity of government institutions.

Governance and public services in the field of property law in Indonesia and Nepal reflect different approaches, but both have the same goal, namely to create justice and efficiency in land management. Indonesia needs to continue to strengthen the implementation of agrarian reform and digitization of services with a focus on bureaucratic oversight. Nepal, on the other hand, needs to increase technology adoption and expand land redistribution programs to reduce social inequality. Collaboration between the two countries can also be a strategic step to learn from each other's experiences. Indonesia can adopt Nepal's land redistribution approach that focuses on vulnerable groups, while Nepal can learn from

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<sup>52</sup> Lwamba et al., "Strengthening Women's Empowerment and Gender Equality in Fragile Contexts towards Peaceful and Inclusive Societies: A Systematic Review and Meta-analysis."

<sup>53</sup> Dinoroy Marganda Aritonang, "The Impact of E-Government System on Public Service Quality in Indonesia," *European Scientific Journal, ESJ* 13, no. 35 (December 31, 2017): 99, <https://doi.org/10.19044/esj.2017.v13n35p99>.

<sup>54</sup> Mohan Poudel et al., "Social Equity and Livelihood Implications of REDD+ in Rural Communities – a Case Study from Nepal," *International Journal of the Commons* 9, no. 1 (March 16, 2015): 177, <https://doi.org/10.18352/ijc.444>.

Indonesia's land service digitization system. With consistent application of good governance principles, governance and public services in the property sector can become more inclusive, transparent, and effective.

The comparison between Indonesia and Nepal regarding governance and public service related to property law remains somewhat superficial, primarily focusing on policy rather than legal principles (see table 1). For instance, the discussion on land redistribution in Nepal does not explore whether its underlying legal framework shares similarities with Indonesia's agrarian reform. A more in-depth comparative legal analysis should examine whether both countries adhere to common legal principles, such as land ownership rights and land use rights, and how these principles are implemented within their respective legal systems. Additionally, it would be beneficial to analyze how governance structures influence property law enforcement and public service efficiency in both nations. By incorporating these elements, the comparison can move beyond policy differences and offer a more substantive legal perspective, enhancing the understanding of property law governance in Indonesia and Nepal.

#### 4. Conclusions

Indonesia and Nepal have similarities in prioritizing public interest in limiting government authority over property law, as reflected in Article 33 paragraph (3) of the 1945 Constitution of Indonesia and Article 25 of the 2015 Constitution of Nepal, which allow for restrictions on individual rights for the sake of development and public welfare. Both also uphold human rights through mechanisms such as compensation (in Indonesia) or land redistribution for marginalized groups (in Nepal). However, there are fundamental differences in the legal systems: Indonesia combines civil law, customary law, and Islam with a focus on collective management of resources, while Nepal, influenced by common law, places more emphasis on land redistribution through social reform. The challenges in both countries are also similar, such as land conflicts in Indonesia and resistance to redistribution in Nepal, demonstrating the need for transparent and fair governance. The governance mechanisms and public services related to property law in Indonesia and Nepal have unique characteristics that are influenced by the social, cultural, and regulatory contexts of each country. In Indonesia, property governance is centered on legal foundations such as Law No. 5/1960 and Agrarian Reform aimed at reducing inequality in land access through digital land redistribution and certification, such as the Complete Systematic Land Registration (PTSL) program. However, overlapping regulations, agrarian conflicts, and corrupt practices remain major obstacles. In Nepal, governance is based on the 2019 National Land Policy with a focus on land redistribution to vulnerable groups, including women, to address social inequality. Nepal's public service systems such as the Land Information System (LIS) attempt to improve transparency and accessibility, but geographical constraints and lack of technological infrastructure slow down implementation. Both countries have demonstrated significant reform efforts, with Indonesia excelling in digitalization, while Nepal excels in community participation, particularly in land redistribution for social justice

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