CONTEMPORARY LEGAL STUDIES: COMMERCE, HUMAN RIGHTS, AND CIVIL JUSTICE

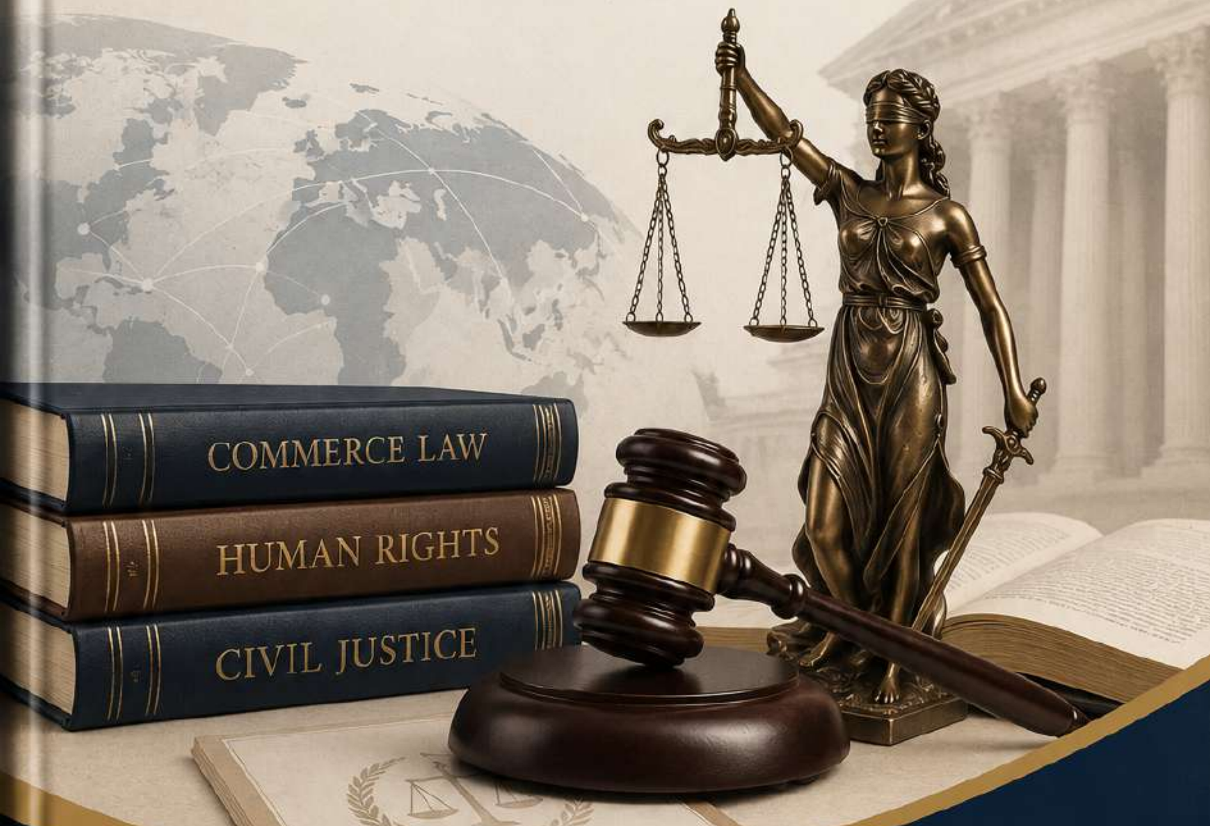

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TABLE OF CONTENTS

PREFACE

Law continues to play a central role in regulating social relations, protecting individual rights, and responding to the changing needs of economic and civil life. Contemporary legal research increasingly addresses the relationship between commercial practices, human rights, contractual justice, and legal responsibility. In this context, comparative and interdisciplinary perspectives provide valuable opportunities to examine how legal systems respond to emerging challenges in different societies.

The chapters in this volume explore selected issues in commercial law, human rights, and civil law. The first chapter discusses legal perspectives on optimizing halal supply chain management for micro, small, and medium-sized enterprises in Pekalongan. The second chapter examines forced marriage as a form of human-rights violation, emphasizing the importance of legal protection and individual autonomy. The third chapter revisits the hardship doctrine under Vietnamese civil law through comparative and case-based analysis.

By bringing together these studies, this volume highlights the diverse and evolving nature of contemporary legal scholarship. The chapters demonstrate how legal regulation, rights-based approaches, and civil-law principles can contribute to a more comprehensive understanding of justice and responsibility.

It is hoped that this book will serve as a useful academic resource for researchers, legal professionals, students, and scholars interested in commercial law, human rights, civil law, and comparative legal studies. We extend our sincere appreciation to all contributing authors for their valuable scholarly efforts.

Editorial Team
July 2026, Türkiye

CHAPTER 1
LEGAL PERSPECTIVES ON OPTIMIZING HALAL SUPPLY CHAIN MANAGEMENT FOR MSMES IN PEKALONGAN

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INTRODUCTION

The global halal industry currently experiences unprecedented growth, rapidly transforming from a niche religious requirement into a formidable, comprehensive global market force. Within this expansive economic landscape, Indonesia holds a highly strategic position as the nation with the world's largest Muslim population and a rapidly expanding domestic halal market. Micro, Small, and Medium Enterprises (MSMEs) are the backbone of the Indonesian economy, contributing significantly to the national Gross Domestic Product and employing the vast majority of the national workforce (Suharto & Sulaiman, 2023). In Pekalongan, a city historically renowned for its vibrant batik industry, thriving fisheries, and dynamic local food commerce, MSMEs play a pivotal role in driving regional economic development and community resilience. However, as global and domestic consumer awareness regarding strict halal integrity increases, these local enterprises face mounting pressure to guarantee the unequivocal halal status of their products from the point of origin directly to the final consumer. This necessity introduces the highly complex concept of Halal Supply Chain Management (HSCM), which extends far beyond mere final-product ingredient verification. HSCM comprehensively encompasses procurement, production, storage, transportation, and retail, ensuring that cross-contamination with non-halal elements does not occur at any node of the logistical network (Tieman, 2020).

While large multinational corporations often possess the vast financial and structural resources required to seamlessly integrate comprehensive HSCM systems, MSMEs in Pekalongan encounter substantial, often debilitating, barriers. The Indonesian government has enacted robust legal frameworks to regulate this sector, most notably Law Number 33 of 2014 concerning Halal Product Assurance, which, alongside its subsequent derivative regulations, mandates halal certification for a wide array of consumer goods. This profound transition from voluntary to mandatory halal certification fundamentally alters the operational and legal landscape for MSMEs nationwide. Current academic literature frequently highlights the technical and financial hurdles that small enterprises face, yet a significant, critical gap remains in understanding the intricate legal dimensions required to optimize these supply chains at the grassroots level.

MSMEs in Pekalongan continually struggle to navigate the labyrinth of regulatory compliance, bureaucratic certification procedures, and the severe legal implications of supply chain disruptions or contamination events. The core research problem centers on the glaring inadequacy of current legal implementations to actively support, protect, and optimize the halal supply chain specifically tailored for the limited scale and capacity of MSMEs. The lack of synchronized, accessible legal facilitation often renders halal compliance a burdensome administrative obligation rather than a strategic commercial advantage that optimizes their overall supply chain operations (Rahman & Ahmad, 2021).

This book meticulously addresses this critical void by exploring the nuanced legal perspective on optimizing Halal Supply Chain Management for MSMEs in Pekalongan. The topic is of profound importance because empowering local enterprises to effectively manage their halal supply chains through supportive legal mechanisms directly enhances their market competitiveness, bolsters the regional economy, and vigorously safeguards consumer rights under Islamic law and national statutes. This chapter significantly contributes to the existing body of knowledge by uniquely fusing supply chain management operational theories with rigorous socio-legal analysis, offering a localized yet globally relevant perspective on halal logistics and legal compliance. The chapter firmly establishes its scope within the geographical and administrative boundaries of Pekalongan, focusing specifically on local manufacturing, textile, and food processing MSMEs. It provides essential context by evaluating the intersection of positive Islamic law, the Halal Assurance System (HAS) 23000 standards, and the practical realities of local business operations.

The primary aim of this chapter is to critically analyze how existing legal frameworks influence, hinder, or optimize the daily halal supply chain operations of MSMEs. We hypothesize that rigid, overarching legal frameworks designed for massive industries currently stifle MSME supply chain optimization, and that introducing localized, legally recognized collaborative supply networks can resolve these inefficiencies. To test this, the research poses three fundamental questions.

First, how do current national halal assurance laws practically impact the localized supply chain operations of MSMEs in Pekalongan? Second, what specific legal constraints and liabilities prevent the optimization of Halal Supply Chain Management in this sector? Third, how can policymakers and local authorities reform or strategically implement legal frameworks to facilitate a more optimized, legally secure, and resilient halal supply chain ecosystem for local MSMEs?

To systematically address these research questions and test the underlying hypothesis, this chapter employs a comprehensive socio-legal methodological approach. The research design deliberately integrates normative legal analysis of relevant national statutes, government regulations, and Islamic jurisprudence with empirical, qualitative field research conducted directly within the MSME communities of Pekalongan. The investigators gather primary data through in-depth, semi-structured interviews with diverse MSME owners, local government trade officials, and regional halal certification authorities. We combine these interviews with direct observational studies of local procurement, production, and distribution practices to capture the reality of the logistics network (Creswell & Creswell, 2018). This robust dual approach ensures that the rigorous legal analysis remains deeply grounded in the practical, daily realities of the Pekalongan business environment. By deliberately examining the critical intersection of law 'in the books' and law 'in action', the chapter evaluates the living law governing local commerce.

The authors anticipate that this methodological approach will reveal significant, actionable disparities between high-level regulatory expectations and ground-level logistical execution. The potential outcomes of this comprehensive study include the precise identification of specific legal and bureaucratic bottlenecks that actively restrict MSME growth and supply chain efficiency. Furthermore, the chapter aims to produce targeted, evidence-based policy recommendations for local and national governments designed to streamline compliance. Ultimately, the research expects to develop a legally compliant, highly optimized supply chain model that Pekalongan MSMEs can practically adopt to reduce operational costs, eliminate legal liabilities, and guarantee absolute halal integrity.

To provide a clear, logical trajectory for the reader, the remainder of this book follows a systematically structured organization. The first chapter delves deeply into the theoretical foundations of Halal Supply Chain Management, tracing the historical evolution and current architecture of halal product assurance laws in Indonesia. The second chapter presents a detailed contextual and demographic analysis of the MSME landscape in Pekalongan, highlighting current logistical practices, cultural nuances, and localized economic dynamics. The third chapter critically examines the gathered empirical field data, systematically evaluating the direct impact of legal frameworks on specific stages of the supply chain, including raw material procurement, manufacturing processes, and final product distribution. The fourth chapter discusses the formulation of innovative strategies for legal and operational optimization, proposing the new frameworks derived from the research findings. Finally, the concluding chapter synthesizes all overarching findings, offering definitive answers to the core research questions, and presenting highly actionable, strategic recommendations for business owners, policymakers, and stakeholders committed to advancing the halal ecosystem in Pekalongan and the broader global market.

1. EVALUATING THE EFFICACY OF NATIONAL HALAL ASSURANCE FRAMEWORKS ON LOCAL MSME SUPPLY CHAINS

The global halal industry has rapidly evolved from a niche religious requirement into a comprehensive economic paradigm, demanding rigorous integrity across the entire logistical network. Within Indonesia, the enactment of Law Number 33 of 2014 concerning Halal Product Assurance marks a pivotal transition from voluntary certification to a mandatory legal regime. This positive law, alongside its subsequent derivative regulations, fundamentally alters the operational and legal landscape for businesses nationwide. However, evaluating the true efficacy of this national framework requires a meticulous examination of its implementation at the grassroots level. This subchapter serves as the foundational analysis for understanding how overarching statutory mandates interact with the localized logistical realities of Micro, Small, and Medium Enterprises in Pekalongan.

Renowned historically for its vibrant traditional batik industry and dynamic local food commerce, Pekalongan presents a highly unique socio-economic and industrial ecosystem.

By dissecting the legal mechanics of the halal supply chain within this specific region, this analysis isolates the profound gap between the law in the books the written legal texts and formalized regulatory expectations—and the law in action, representing the practical, daily realities of MSME operations. Specifically, this section critically assesses how local enterprises navigate the stringent legal obligations of mandatory halal certification during the highly vulnerable initial stages of raw material procurement and early production processing. It explores the systemic friction that occurs when modern, industrialized legal standards confront traditional, resource-constrained supply networks, ultimately determining the actual effectiveness of national policy on local economic resilience.

To understand the compliance friction faced by local enterprises, one must first delineate the rigorous expectations embedded in the national legal framework. Law Number 33 of 2014, operationally enforced by the Halal Product Assurance Organizing Agency, mandates absolute traceability and strict physical segregation throughout the product lifecycle. The law explicitly requires that every node in the supply chain actively and verifiably prevent cross-contamination with non-halal or unclean materials. When integrated with the technical operational standards of the Halal Assurance System 23000, the legal framework requires enterprises to maintain comprehensive administrative documentation, scientifically verify the halal status of all incoming materials, and establish dedicated, isolated production facilities. The law in the books envisions a highly formalized, industrialized supply network where manufacturers wield significant contractual control over their upstream suppliers. This statutory design assumes that businesses possess the administrative capacity and financial leverage to impose strict compliance terms on their vendors, thereby ensuring a seamless, legally verifiable chain of custody from the point of agricultural or chemical origin to the manufacturing floor. However, observing the law in action within the Pekalongan food sector reveals a starkly divergent operational reality. Micro and small food enterprises typically operate within highly fragmented, deeply informal supply networks.

When procuring raw materials, these businesses frequently rely on traditional wet markets, where vendors lack formal halal documentation for essential, high-risk ingredients such as meat, poultry derivatives, and processed spices. The legal framework imposes strict liability on MSMEs to guarantee the halal status of these inputs, effectively shifting the massive regulatory burden to the most vulnerable link in the supply chain. In practice, local food producers attempt to respond to this mandate through informal trust networks rather than legally binding vendor agreements. They source materials from familiar suppliers whom they personally believe adhere to Islamic slaughtering and handling principles, substituting formal state certification with socio-cultural validation. While this approach reflects a genuine entrepreneurial intent to maintain halal integrity, it comprehensively fails to meet the rigid evidentiary standards required by positive law. Consequently, during the early production stages, these legally unverified materials enter shared processing spaces. The law strictly mandates architectural physical segregation, yet the severe spatial constraints of local enterprises force them to utilize the exact same equipment for varied production runs. They rely on intensive, behavioral sanitation protocols rather than the structural separation demanded by the regulators. This systemic vulnerability exposes food MSMEs to constant legal non-compliance risks, potential fines, and administrative sanctions.

The textile and traditional batik sectors in Pekalongan illustrate an even more complex manifestation of this legal-operational gap. The contemporary expansion of national halal regulations increasingly encompasses lifestyle products, requiring that apparel and fabrics remain entirely free of prohibited animal derivatives, often hidden in chemical dyes, industrial waxes, and fabric sizing agents. For the traditional batik artisan, raw material procurement involves purchasing synthetic dyes, natural colorants, and malam waxes from a highly localized, informal vendor network. The national halal assurance framework expects the artisan to secure certificates of analysis or official halal decrees for every single chemical compound utilized in the workshop. Yet, the upstream suppliers of these specialized chemicals rarely possess the necessary certification, frequently viewing it as an unnecessary, prohibitive expense for non-consumable industrial goods.

The law in the books fundamentally overlooks the chemical complexity and the informal procurement strategies inherent to traditional textile manufacturing.

Faced with these rigid legal obligations, batik MSMEs in Pekalongan adopt reactive rather than proactive compliance strategies during their early production phases. The law requires a dedicated, sterile workflow to ensure halal-certified dyes do not mix with potentially non-compliant traditional substances. In reality, traditional batik production utilizes communal dye vats, shared washing rivers, and open-air drying yards. Implementing the legally mandated spatial segregation requires capital investment that far exceeds the financial capacity of these micro-enterprises. Artisans respond by compartmentalizing only specific, high-value product lines for halal certification while maintaining traditional, legally unverified workflows for the vast majority of their output within the same physical compound. This dual-track production system highlights the central paradox of the current legal framework. The state attempts to force an idealized, industrialized supply chain model onto a deeply traditional, resource-constrained ecosystem. As a result, the national halal assurance framework acts less as a catalyst for local supply chain optimization and more as a formidable administrative barrier. The profound discrepancy between stringent legal requirements and Pekalongan MSMEs' actual logistical capabilities results in widespread precarious compliance, in which businesses technically violate the law simply by operating within their established socio-economic and infrastructural constraints.

The comprehensive evaluation of national halal assurance frameworks against the daily operational realities of Pekalongan MSMEs exposes a critical misalignment between legislative intent and grassroots logistical capacity. The analysis demonstrates a profound, systemic gap between the law in the books, which demands flawless documentary traceability and absolute spatial segregation, and the law in action, characterized by informal procurement networks and shared production facilities. Law Number 33 of 2014 imposes structural and administrative burdens that assume an industrialized scale, largely ignoring the specific vulnerabilities and operational mechanics of micro and small enterprises in both the local food and traditional textile sectors.

Consequently, local businesses respond to mandatory certification through precarious adaptations. They rely heavily on socio-cultural trust rather than legal documentation during procurement, and they implement temporary operational workarounds rather than the systemic infrastructural upgrades demanded by the state. Ultimately, the rigid, inflexible application of positive law fails to optimize the local halal supply chain; instead, it generates significant legal liabilities, stifles operational efficiency, and creates severe compliance bottlenecks. Bridging this critical gap requires policymakers to transition rapidly from a purely punitive enforcement model to an accommodative, developmental legal strategy. Optimizing the halal supply chain for grassroots industries necessitates the immediate formulation of legally recognized, collaborative supply networks and customized compliance tiers that actively support, rather than penalize, the unique logistical architecture of regional MSMEs.

2. LEGAL LIABILITIES AND COMPLIANCE BOTTLENECKS IN THE HALAL SUPPLY CHAIN NODES

The transition from evaluating overarching national frameworks to analyzing the microscopic operational realities of Micro, Small, and Medium Enterprises demands a rigorous examination of specific logistical nodes. This subchapter delves into the core operational challenges by dissecting the halal supply chain in Pekalongan into its fundamental stages, specifically focusing on procurement, production, storage, and distribution. At each operational juncture, businesses encounter highly sensitive Critical Control Points where the imminent risk of cross-contamination directly intersects with severe legal liabilities and stringent Sharia compliance mandates. Analyzing these nodes sequentially reveals that the current national regulatory apparatus, particularly Law Number 33 of 2014 concerning Halal Product Assurance, operates with a rigidity that fundamentally misaligns with the infrastructural realities of local commerce. Consequently, the state inadvertently transforms common logistical limitations into profound legal bottlenecks. This section focuses heavily on the intense bureaucratic hurdles, the overwhelming and often hidden compliance costs, and the looming threat of strict liability that MSMEs face as they navigate these operational nodes.

It ultimately demonstrates that the law currently fails to accommodate the localized logistical constraints of Pekalongan, thereby creating a hostile legal environment for small-scale entrepreneurs seeking to integrate into the formalized halal economy.

Navigating the initial procurement node immediately exposes local enterprises to significant and often unavoidable legal vulnerabilities. Positive law strictly mandates that every raw material, additive, chemical dye, and processing aid must possess verifiable, state-sanctioned halal certification. For Pekalongan enterprises, particularly those operating in the traditional food processing and culturally significant batik textile sectors, sourcing these certified materials involves navigating a highly fragmented, deeply informal local market. When an enterprise procures materials from uncertified local agricultural vendors or traditional chemical suppliers, the legal framework imposes strict liability directly on the MSME owner (Prabowo et al., 2015). This legal doctrine holds that if a final product is contaminated by an unverified upstream ingredient, the state holds the final manufacturer entirely and legally responsible, regardless of their original intent or lack of technical knowledge. The bureaucratic friction involved in forcing informal, traditional suppliers to adopt formal state certification creates a massive operational bottleneck. This friction effectively paralyses the procurement process and drives indirect compliance costs to astronomical levels, as MSMEs must either pay a substantial premium for certified industrial goods sourced outside the region or risk severe administrative and legal sanctions by relying on their traditional supply networks.

Moving deeper into the supply chain, the production phase magnifies these legal risks, as the spatial and operational constraints of Pekalongan MSMEs severely exacerbate the potential for cross-contamination at various Critical Control Points. Sharia compliance strictly dictates the absolute physical separation of halal and non-halal entities throughout the entire manufacturing process to maintain structural integrity (Zulfakar et al., 2014). However, the architectural and financial realities of local workshops often necessitate extensive sharing of equipment, processing tables, washing reservoirs, and sanitation facilities.

The Halal Assurance System 23000 requires meticulous administrative documentation and highly standardized operating procedures to scientifically mitigate these contamination risks. Yet, translating these highly technical, industrialized standards into the fluid, often improvised, and highly constrained production workflows of micro-enterprises proves nearly impossible (Susanti & Purnomo, 2021). The law aggressively treats accidental cross-contamination in these shared physical spaces not merely as a temporary quality-control failure, but as a direct, actionable violation of both consumer protection statutes and Islamic jurisprudence. This rigid legal stance forces MSMEs to shoulder exorbitant direct compliance costs. Business owners face the impossible choice of either investing massive capital in duplicate machinery and expanded facilities—resources they fundamentally lack—or undergoing disruptive, hyper-frequent sanitation protocols that devastate their daily production efficiency and threaten their overall economic viability.

The subsequent storage and distribution nodes introduce entirely new layers of legal complexity and uncontrollable external dependency. Once a product successfully navigates the perilous production phase, it must enter a broader logistical network that legally guarantees its continued purity until it reaches the final consumer (Tieman, 2011). In Pekalongan, micro-enterprises almost universally lack the capital required to maintain private, dedicated halal warehouses or to operate specialized, segregated transport fleets. Consequently, they rely heavily on third-party logistics providers, communal storage facilities, and informal regional transporters. The critical legal bottleneck emerges here because the national halal framework extends the manufacturer's strict liability deep into this external, uncontrollable distribution network. If a third-party transporter inadvertently mixes a verified halal product originating from a Pekalongan MSME with non-halal goods during regional transit, the resulting cross-contamination fundamentally invalidates the product's halal status, and the legal repercussions fall squarely back onto the original producer (Rahman et al., 2020).

The prevailing legal architecture currently offers little to no legal safe harbour for MSMEs that fall victim to these downstream logistical failures, which occur far beyond their direct operational control.

The bureaucratic mandate requiring small business owners to audit and legally verify the halal compliance of massive external logistics providers imposes an absurd, impossible administrative burden on them. Local artisans and food producers simply lack the legal leverage, financial capacity, or administrative personnel to mandate strict halal compliance from regional transport conglomerates. Therefore, the existing regulatory environment acts primarily as a punitive mechanism rather than a facilitative or developmental framework. It rigidly enforces an industrialized standard of an unbroken, hermetically sealed chain-of-custody upon a fragmented, deeply informal regional economy. By completely ignoring the glaring lack of localized, state-supported halal logistics infrastructure in regions like Pekalongan, the law essentially traps MSMEs in a continuous state of potential legal jeopardy. In this environment, daily operational survival requires navigating an exhausting minefield of strict liabilities, complex bureaucratic procedures, and crushing compliance costs that stifle innovation and growth.

Dissecting the specific nodes of the halal supply chain in Pekalongan unequivocally demonstrates that the current regulatory framework transforms inherent operational constraints into devastating legal liabilities. From the initial, vulnerable procurement of raw materials through the highly complex stages of production, shared storage, and final distribution, local MSMEs encounter insurmountable compliance bottlenecks at every Critical Control Point. The strict liability doctrine imposed by national halal assurance laws disproportionately penalizes micro-enterprises for infrastructural and logistical deficiencies that exist far beyond their individual sphere of control. The overwhelming burden of direct and indirect compliance costs, coupled with intense, unyielding bureaucratic friction, actively stifles regional economic growth and strongly discourages formal legal participation among local entrepreneurs. Ultimately, the rigid, inflexible application of industrialized legal standards onto the localized, informal economy of Pekalongan fails to safeguard consumer rights effectively; instead, it fundamentally threatens the economic survival of the entire MSME sector. Resolving this escalating legal crisis demands a critical, systemic reevaluation of current legal doctrines.

It urges national policymakers and local authorities to design flexible, context-specific legal accommodations that actively protect small enterprises from disproportionate liability while systematically investing in and building the necessary, accessible halal logistical infrastructure required for genuine compliance.

3. STRATEGIC LEGAL FORMULATIONS AND LOCAL POLICY INTERVENTIONS FOR SUPPLY CHAIN OPTIMIZATION

The preceding analyses definitively establish that the rigid imposition of centralized, industrialized halal assurance frameworks creates severe operational and legal bottlenecks for grassroots industries. Identifying these systemic friction points within the procurement, production, and distribution nodes reveals a critical necessity to pivot from mere regulatory critique toward the formulation of innovative, constructive solutions. This final section represents the core novelty of the research, moving beyond the identification of legal liabilities to construct a highly optimized, localized legal ecosystem tailored specifically for the socio-economic fabric of Pekalongan. To resolve the profound, disconnect between overarching national mandates and local logistical realities, the state must fundamentally transition its regulatory posture from a punitive enforcer to a facilitative partner. Achieving true halal supply chain optimization requires designing an ideal model of legal protection and economic empowerment that actively accommodates the infrastructural constraints of Micro, Small, and Medium Enterprises. This section details strategic legal formulations and targeted local policy interventions designed to streamline compliance, reduce crippling administrative costs, and legally shield vulnerable entrepreneurs. By proposing specific regulatory relaxations, the enactment of customized local ordinances, and the formal legal recognition of collaborative supply networks, this analysis provides a definitive roadmap for transforming the halal certification mandate from a paralyzing administrative burden into a robust catalyst for regional economic resilience and sustainable market growth.

Addressing the complex logistical challenges in Pekalongan requires a fundamental restructuring of how local governments interpret and enforce national halal statutes. The most immediate and critical policy intervention involves the drafting and enactment of a specialized Local Regulation, or Peraturan Daerah, specifically designed to support the local halal logistics ecosystem. Currently, national laws, such as Law Number 33 of 2014, provide broad, sweeping mandates that fail to address regional industrial nuances, such as the unique spatial and chemical requirements of the traditional Pekalongan batik sector or the fragmented nature of the local food supply network. A targeted local regulation would bridge this critical gap by translating rigid national standards into actionable, locally supported frameworks (Fauziah & Santoso, 2020). This local ordinance should mandate the regional government to actively invest in shared halal infrastructural assets, such as centralized, state-certified halal slaughterhouses and communal, segregated storage facilities. By legally obligating the local government to provide this underlying physical infrastructure, the regulation effectively shifts the exorbitant capital expenditure required for halal logistics away from individual micro-entrepreneurs and absorbs it into the regional development budget. Furthermore, this local regulatory framework must establish an integrated, localized halal task force that provides free, continuous administrative assistance and technical auditing, thereby eliminating the reliance on expensive external consultants.

Complementing this localized infrastructural support, national and regional policymakers must urgently implement strategic regulatory relaxations tailored explicitly for the micro and small enterprise sectors. The current legal doctrine of strict liability disproportionately punishes small business owners for upstream logistical failures occurring far beyond their operational control. To mitigate this, the legal framework should introduce the concept of a regulatory sandbox and tiered compliance safe harbors (Kurniawan, 2022). Instead of enforcing an immediate, binary system where a business is either fully compliant or illegally operating, regulators should legally recognize transitional phases. During these transitional periods, local enterprises demonstrating a verifiable commitment to improving their supply chain transparency would receive temporary legal immunity from punitive administrative sanctions.

This progressive legal relaxation allows MSMEs the necessary time and operational breathing room to upgrade their internal sanitation protocols, renegotiate vendor contracts, and transition their procurement channels without the constant, paralyzing threat of operational closure or severe financial penalties. The law must systematically recognize intent and progressive improvement, establishing a developmental legal paradigm that nurtures compliance rather than merely punishing infrastructural poverty.

However, the most profound and novel legal formulation required for true supply chain optimization involves the formal statutory recognition of collaborative supply networks, fundamentally rooted in the Indonesian legal concept of "tanggung renteng" or joint liability and solidarity. Currently, the national halal certification regime operates on a highly individualized basis, requiring every single micro-enterprise to independently verify its entire supply chain, secure individual vendor certifications, and bear the full brunt of compliance costs. This atomized legal approach creates massive, redundant administrative inefficiencies across the local economy (Abdurrahman & Pratiwi, 2021). To revolutionise this system, the law must allow, and actively encourage, MSMEs operating in similar sectors and geographical clusters in Pekalongan to form legally recognized halal logistics consortia. By forming a legally binding cooperative entity, multiple small businesses can pool their limited financial resources to establish unified, highly controlled procurement channels.

Within this collaborative legal model, the consortium, rather than the individual micro-enterprise, assumes the administrative burden of auditing upstream suppliers, securing bulk halal-certified raw materials, and managing localized, segregated warehousing (Zulfakar et al., 2014). The legal framework would permit the issuance of overarching logistical certifications to the cooperative entity itself. Consequently, any individual MSME sourcing materials directly from this legally recognized consortium automatically satisfies the national traceability requirements without conducting redundant, costly individual audits. The concept of joint liability ensures that all members of the cooperative share a legally binding mutual interest in maintaining absolute halal integrity throughout their shared logistical network.

If a contamination event occurs within the shared procurement node, the collective entity addresses the liability, shielding the individual micro-artisan from catastrophic personal ruin. This legally sanctioned collaborative framework drastically reduces individual compliance costs, eliminates bureaucratic redundancies, and fosters a deeply interconnected, resilient local halal economy. It transforms the overwhelming legal burden of supply chain management into a shared, highly optimized communal asset, perfectly aligning modern industrial compliance requirements with the traditional, collaborative socio-economic fabric of Pekalongan (Rahman et al., 2020).

Optimizing the halal supply chain for micro, small, and medium enterprises in Pekalongan necessitates a bold departure from rigid, punitive regulatory enforcement toward a paradigm of strategic legal empowerment. The findings of this chapter unequivocally demonstrate that the prevailing national frameworks demand an infrastructural and administrative capacity that local traditional industries fundamentally lack. To resolve this systemic inequity, the legal architecture governing halal assurance must evolve to actively support the grassroots economy. Enacting highly specialized local regulations ensures that regional governments provide the critical, shared physical infrastructure necessary for strict logistical compliance. Implementing targeted regulatory relaxations and legal safe harbors protects vulnerable enterprises from disproportionate liabilities while they transition toward fully certified operations. Most importantly, establishing formal statutory recognition for collaborative supply networks and joint liability consortia offers a revolutionary mechanism to consolidate administrative burdens and drastically reduce compliance costs. By allowing local businesses to legally pool their resources and manage their logistical networks cooperatively, the state empowers them to achieve rigorous halal integrity without sacrificing their economic viability. Ultimately, these strategic legal formulations transform the mandate of halal certification from a debilitating barrier into a collaborative advantage, ensuring the sustainable growth, competitiveness, and resilience of the MSME sector in Pekalongan within the highly demanding global halal market.

CONCLUSION

The most critical and unexpected finding of this chapter demonstrates that the rigid application of industrialized national halal assurance frameworks, specifically Law Number 33 of 2014, inadvertently transforms inherent logistical constraints into devastating legal liabilities for local enterprises. Rather than catalyzing supply chain optimization, the prevailing strict liability doctrine forces resource-constrained micro, small, and medium enterprises into precarious compliance. Consequently, these businesses rely heavily on informal socio-cultural trust networks instead of formal legal documentation during critical procurement and early production stages.

This chapter significantly contributes to the current socio-legal discourse by introducing a novel, localized legal ecosystem model that actively shifts the state's regulatory posture from punitive enforcement to facilitative empowerment. It uniquely proposes the formal statutory recognition of collaborative supply networks rooted in joint liability, alongside the implementation of targeted local ordinances and tiered compliance safe harbors, effectively reducing administrative burdens to foster regional economic resilience. Despite these robust empirical findings, this chapter acknowledges specific methodological limitations. The chapter strictly restricts its geographical and administrative scope to the socio-economic fabric of Pekalongan, relying primarily on qualitative observational data gathered specifically from the local food and traditional batik sectors. Therefore, the outcomes generated may not universally reflect the logistical dynamics of vastly different geographical regions. Future research should systematically expand the sample to include multiple provinces to conduct a comprehensive comparative legal analysis. Furthermore, subsequent studies must continuously investigate the quantitative economic impact of integrating these proposed collaborative supply network frameworks on long-term enterprise sustainability.

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CHAPTER 2
FORCED MARRIAGE AS A FORM OF VIOLATION OF HUMAN RIGHTS

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INTRODUCTION

Marriage is among the most ancient and universally recognized social institutions in human civilization. Its legal and normative regulation has evolved considerably over time, moving progressively from a paradigm centred on family, property, and communal interests toward one that places the autonomy, dignity, and consent of the individual parties at its core. This evolution reflects a broader transformation in the understanding of human rights a shift that has become one of the defining characteristics of the post-World War II international legal order.

Yet despite this progressive normative development, forced marriage understood as any marriage contracted without the free and full consent of at least one of the parties remains a widespread and deeply entrenched phenomenon. It affects millions of individuals globally, cutting across national borders, religious traditions, ethnic communities, and socioeconomic strata. Victims are predominantly, though by no means exclusively, women and girls, and the consequences for their physical integrity, mental health, educational and economic opportunities, and overall well-being can be devastating and irreversible.

The persistence of forced marriage as a global human rights challenge reflects a complex interplay of factors: deep-seated cultural norms and patriarchal structures that subordinate individual autonomy to communal or familial authority; socioeconomic conditions that render marriage a survival strategy for families and communities living in poverty; weak or inadequate legal frameworks that fail to criminalize the practice or to provide meaningful protection and redress for victims; and institutional responses that prioritize social cohesion or family integrity over the rights and safety of individual victims. At the same time, the international human rights framework has developed a sophisticated and increasingly robust normative response to forced marriage.

The Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, and numerous regional human rights instruments collectively affirm the right to freely and fully consent to marriage as a fundamental human right and impose on states legally binding obligations to prohibit and prevent forced marriage.

Within the specific context of the Republic of Moldova, forced marriage occupies an ambiguous and underaddressed space in the legal and institutional landscape. Moldova's criminal law has been progressively amended to incorporate provisions addressing gender-based violence, trafficking in persons, and domestic violence, but the criminalization of forced marriage as a distinct offense remains incomplete, and the practical capacity of law enforcement and judicial institutions to effectively prosecute such cases is constrained by evidentiary, attitudinal, and resource-related challenges.

This article seeks to contribute to the scholarly and policy discourse on forced marriage by providing a comprehensive, doctrinal, and comparative analysis of the phenomenon. It examines the definitional parameters of forced marriage, its relationship to the broader human rights framework, the nature and extent of state obligations, the comparative legal landscape, and the particular challenges and opportunities presented by the Moldovan legal system. The analysis draws upon a wide range of primary and secondary legal sources, including international treaties, regional instruments, comparative legislation, judicial decisions, and the contributions of leading scholars in the field of human rights law and family law.

1. LITERATURE REVIEW

The scholarly literature addressing forced marriage has expanded significantly over the past two decades, reflecting growing recognition of the phenomenon as a serious human rights concern and a form of gender-based violence. Several distinct but intersecting streams of scholarship inform the analysis undertaken in this article.

Fundamental contributions to the conceptualization of forced marriage as a human rights violation have been made by Welchman and Hossain (2005), whose edited volume 'Honour': Crimes, Paradigms, and Violence Against Women situates forced marriage within the broader constellation of honour-based violence, examining the cultural logics that sustain these practices and the limitations of purely legalistic responses. Their analysis highlights the risk of essentializing complex social phenomena when legal categories are applied without sensitivity to context and agency.

Gill and Anitha (2011), in their comprehensive study Forced Marriage: Introducing a Social Justice and Human Rights Perspective, provide one of the most thorough interdisciplinary analyses of forced marriage available in the literature, with broader implications for comparative scholarship. They challenge the tendency to treat forced marriage as a problem specific to particular ethnic or religious communities, arguing instead for an understanding that locates the practice within structures of gender inequality that transcend cultural boundaries.

The relationship between forced marriage and international human rights law has been systematically examined by Benninger-Budel (2008) in her study of violence against women and state obligations, which details the normative evolution of international standards and the mechanisms through which states are held accountable for failures to prevent and remedy forced marriage. Her work underscores the crucial importance of CEDAW and its Optional Protocol as enforcement tools.

From a European perspective, Gangoli and Chantler (2009) have analyzed the policy and legislative responses to forced marriage in the United Kingdom and across Europe, critically evaluating the effectiveness of civil protection orders, criminalization measures, and support services. Their comparative research reveals significant variation in the depth and effectiveness of national responses and identifies best practices that could inform legislative development in transitional legal systems such as Moldova.

The emerging scholarship on forced marriage in Eastern Europe, including the post-Soviet legal space, remains relatively underdeveloped compared to the extensive literature on Western European and Anglo-American contexts.

Contributions by Moldovan legal scholars, including Berliba (2019), have begun to address gaps in the analysis of gender-based violence and victim protection in the Moldovan criminal law framework. Berliba's research on domestic violence legislation provides a useful framework for contextualizing the legal treatment of forced marriage within Moldova's evolving human rights architecture.

International organizations, including the Council of Europe, the United Nations Population Fund, and UN Women, have produced a series of policy documents and reports that bridge scholarly analysis and institutional practice. The Council of Europe's Istanbul Convention (2011), which Moldova ratified in 2023, provides a critical normative reference point, and scholarship analyzing its implications notably the work of Hagemann-White (2010) is directly relevant to the present analysis. Finally, the intersection of forced marriage with trafficking in persons has been examined by Stöckl et al. (2013), whose systematic review of intimate partner violence and femicide provides empirical grounding for understanding the lethal potential of coercive intimate relationships, including forced marriage. This literature reinforces the argument that an effective response to forced marriage cannot be limited to formal legal prohibition but must encompass a continuum of protective, support, and preventive measures.

2. METHODOLOGY

This study employs a doctrinal-analytical methodology that combines systematic review of primary legal sources with comparative analysis and critical engagement with relevant scholarly literature. The research is structured around three interconnected analytical dimensions. The first dimension involves the examination of international and regional human rights instruments addressing marriage consent and gender-based violence.

Primary sources analyzed include the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979) and its Optional Protocol, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention, 2011), and the jurisprudence of international human rights treaty bodies interpreting these instruments.

The second dimension entails a comparative legal analysis of national legislative frameworks addressing forced marriage in selected jurisdictions, including the United Kingdom, Germany, Belgium, France, Sweden, and Turkey. This comparative analysis focuses on definitional approaches, criminalization strategies, procedural safeguards, victim support mechanisms, and the effectiveness of enforcement, providing a normative reference point for evaluating the Moldovan legal framework.

The third dimension involves a critical assessment of the Republic of Moldova's legal framework, including relevant provisions of the Criminal Code, the Family Code, the Law on Prevention and Combating Domestic Violence, and implementing regulations. Judicial practice, reports of monitoring bodies, and data from non-governmental organizations operating in the field are also considered. The analysis identifies legislative gaps, institutional challenges, and specific areas where legal and policy reform is required.

3. RESULTS AND DISCUSSION

3.1 Conceptual Delimitation: Defining Forced Marriage in the Human Rights Framework

Any rigorous analysis of forced marriage as a human rights violation must begin with a careful consideration of what the concept encompasses and where its definitional boundaries lie. This is not a merely academic exercise: the scope of the definition has direct implications for the coverage of legal protections, the conditions for criminal prosecution, the design of support services, and the scope of state obligations under international law.

The most widely accepted definition, reflected in the Istanbul Convention and the CEDAW Committee's General Recommendations, characterizes forced marriage as any marriage contracted without the free and full consent of at least one of the parties. This formulation encompasses two conceptually distinct though practically overlapping situations: marriages in which a party is subjected to physical or psychological coercion to enter the marriage, and marriages in which a party lacks the legal or factual capacity to give valid consent most commonly because they are below the minimum age for marriage.

The distinction between forced marriage and arranged marriage occupies significant attention in the scholarly and policy literature. Arranged marriage, in which families and communities play an active role in facilitating the introduction and union of prospective spouses, is not per se a violation of human rights provided that both parties retain genuine freedom to accept or refuse the proposed partner. The critical variable is not the degree of family involvement but the presence or absence of free and full consent, which requires both the absence of coercion and the possession of sufficient information, maturity, and genuine freedom to decide (Gangoli & Chantler, 2009).

A further definitional challenge concerns the spectrum of coercive conduct that can vitiate consent. While overt physical violence or threats of violence clearly negate consent, more subtle forms of pressure including emotional manipulation, psychological intimidation, financial dependency, social ostracism, or threats against family members may equally deprive individuals of genuinely free choice. International human rights standards, as interpreted by treaty bodies, make clear that consent cannot be considered free when it is obtained through any form of duress or manipulation, even when that duress falls short of overt physical compulsion (CEDAW Committee, General Recommendation No. 21, 1994).

Child marriage presents a specific and particularly acute dimension of the forced marriage problem. The capacity of children to give free and full consent to marriage is inherently constrained by their developmental stage, their dependence on parental authority, and the social and economic pressures that typically drive child marriages.

Accordingly, the international human rights framework treats child marriage as categorically incompatible with human dignity and the rights of the child, regardless of whether ostensible consent has been expressed.

3.2 The International Human Rights Framework and State Obligations

The prohibition of forced marriage is firmly embedded in the international human rights architecture, deriving from a constellation of interconnected rights and generating a complex set of obligations for states. The foundational normative basis is Article 16 of the Universal Declaration of Human Rights, which proclaims that marriage shall be entered into only with the free and full consent of the intending spouses. This provision established the principle of free and full consent as a fundamental human right, subsequently codified in binding form in Article 23 of the International Covenant on Civil and Political Rights and Article 16 of CEDAW.

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) is the most specific multilateral treaty directly addressing forced and child marriage. Its three substantive articles require states parties to ensure that no marriage shall be legally entered into without the full and free consent of both parties, to stipulate a minimum age for marriage, and to require compulsory registration of marriages. While ratification has not been universal, the norms reflected in this convention are widely regarded as reflecting customary international law obligations applicable to all states.

CEDAW provides the most comprehensive treaty framework for addressing forced marriage as a form of gender-based discrimination. The CEDAW Committee has consistently interpreted the Convention as requiring states to take all appropriate measures to address practices that deny women equal rights in marriage and family life, including forced marriage and child marriage. General Recommendation No. 21 (1994) and General Recommendation No. 29 (2013) detail the specific legislative, administrative, and institutional measures expected of states, including criminalization, provision of support services, training of law enforcement and judicial personnel, and data collection.

The Council of Europe's Istanbul Convention (2011) represents the most advanced regional instrument in this field and is directly relevant to the analysis of Moldovan law. Article 37 of the Istanbul Convention requires states parties to criminalize the conduct of intentionally forcing an adult or a child to enter into a marriage. The Convention also requires states to ensure effective investigation and prosecution of forced marriage offenses, to provide support services to victims, and to address the phenomenon through preventive education and awareness-raising measures (Hagemann-White, 2010).

The human rights due diligence standard as articulated in the Inter-American Court of Human Rights' landmark judgment in Velásquez Rodríguez v. Honduras (1988) and subsequently adopted by other bodies requires states to exercise due diligence to prevent, investigate, punish, and provide redress for acts of gender-based violence including forced marriage, even when those acts are committed by private individuals rather than state agents. This standard has been progressively incorporated into the interpretive practice of the CEDAW Committee, the Human Rights Committee, and the European Court of Human Rights.

3.3 Forced Marriage as a Multi-Dimensional Human Rights Violation

Forced marriage constitutes a violation not of a single human right but of a cluster of interrelated fundamental rights that together define the conditions for a life of dignity, autonomy, and freedom. Understanding forced marriage in this multi-dimensional frame is essential for designing comprehensive legal responses that address all of its harmful dimensions.

Most fundamentally, forced marriage violates the right to free and full consent to marriage, as articulated in the instruments discussed above. This right is understood as an expression of personal autonomy and the inviolability of the individual's will in matters that are among the most intimate and consequential in a human life. Its violation constitutes a direct assault on human dignity understood not merely as a rhetorical commitment but as a legally operative norm that conditions the validity of all consensual acts under international human rights law.

Forced marriage also constitutes a form of gender-based discrimination within the meaning of CEDAW. While men and boys may be victims of forced marriage, the practice disproportionately affects women and girls and is overwhelmingly driven by patriarchal norms that subordinate female autonomy to family, communal, or male authority. The discriminatory dimension of forced marriage means that states' obligations under CEDAW apply in full to forced marriage, and that legislative and institutional responses must be designed with a gender-sensitive lens that addresses the structural inequalities that enable the practice to persist.

The right to personal liberty and security, guaranteed in Article 9 of the ICCPR and equivalent regional instruments, is violated where individuals are physically confined, abducted, or otherwise deprived of their freedom in connection with a forced marriage. Physical abduction to a third country for the purpose of contracting a forced marriage a practice documented in a significant number of European states may constitute both a violation of this right and, in some circumstances, an act of trafficking in persons within the meaning of the Palermo Protocol.

The right to health including sexual and reproductive health is systematically compromised by forced marriage. Victims, particularly those subject to child marriage, face significantly elevated risks of early pregnancy, complications in childbirth, sexually transmitted infections, and mental health disorders including depression, anxiety, and post-traumatic stress disorder. The WHO's documentation of the health consequences of child marriage and intimate partner violence provides extensive empirical support for understanding forced marriage as a public health emergency as well as a human rights violation (Stöckl et al., 2013).

Finally, forced marriage intersects with the right to education and work. Girls subject to child marriage typically experience curtailed access to education, foreclosing economic independence and reinforcing cycles of poverty and dependence. This dimension of the harm is particularly relevant to understanding the socioeconomic dynamics that sustain forced marriage in certain communities, and it underscores the importance of preventive strategies that address educational and economic disempowerment alongside legal and criminal justice responses.

3.4 Comparative Legal Responses: Criminalization and Protection Strategies

Comparative analysis reveals significant variation in the legal strategies adopted by European states to address forced marriage, reflecting different assessments of the appropriate balance between criminal law responses, civil protection measures, and social support interventions.

The United Kingdom was among the first European states to introduce specific criminal legislation addressing forced marriage. The Anti-social Behaviour, Crime and Policing Act 2014 created the offenses of forced marriage and breach of a Forced Marriage Protection Order, punishable by up to seven years' imprisonment. Prior to criminalization, civil Forced Marriage Protection Orders, introduced by the Forced Marriage (Civil Protection) Act 2007, provided an important interim remedy enabling courts to prohibit specific individuals from taking steps to force another person into marriage. The UK's Forced Marriage Unit, a joint initiative of the Foreign, Commonwealth and Development Office and the Home Office, provides a dedicated national resource for victims and practitioners. Critically, the UK experience has demonstrated the importance of multi-agency coordination between police, social services, health professionals, and NGOs in responding effectively to forced marriage cases (Gill & Anitha, 2011).

Germany criminalized forced marriage as a distinct offense in 2011, through an amendment to the Criminal Code (§ 237 StGB), with a maximum sentence of five years' imprisonment rising to ten years in cases involving aggravating circumstances. German law also addresses the specific problem of cross-border forced marriage cases in which victims are taken abroad for the purpose of marriage by criminalizing the deception or compulsion used to bring a person to another country to prevent them from returning. This provision reflects growing awareness of the transnational dimension of forced marriage.

Belgium's Penal Code has addressed forced marriage since 2013, with penalties ranging from one month to two years' imprisonment, rising to up to four years in cases involving aggravating circumstances such as the victim being a minor.

Belgian law takes an expansive approach to the definition of coercion, encompassing threats, deception, and abuse of a position of authority, thereby providing protection against a wider range of coercive conducts. The Belgian approach also involves significant investment in preventive and educational measures targeting communities where the practice is most prevalent.

Across these comparative contexts, a consistent finding emerges: criminalization alone is insufficient to effectively address forced marriage. Robust criminal provisions must be accompanied by specialized victim support services, training of law enforcement and judiciary, awareness-raising and preventive education, and mechanisms to address the socioeconomic conditions that drive the practice. The comparative evidence also highlights the particular challenges posed by cross-border forced marriage, calling for enhanced international cooperation and mutual legal assistance frameworks.

3.5 The Legal Framework in the Republic of Moldova: Assessment and Gaps

The Republic of Moldova has made significant legislative progress in addressing gender-based violence over the past decade, driven in part by its commitments under international and regional human rights instruments and by advocacy from civil society organizations. However, the legal treatment of forced marriage remains fragmented, inadequate, and poorly integrated with the broader framework of victim protection.

The Family Code of the Republic of Moldova (Law No. 1316-XIV of 2000) establishes the principle of free and voluntary consent as a condition for the validity of marriage. Article 11 provides that marriage shall be concluded on the basis of the free mutual consent of a man and a woman who have attained the marriageable age. A marriage contracted without consent or under coercion is voidable under Article 41. However, the civil law consequences of a void or voidable marriage represent only one dimension of the necessary response, and the Family Code's provisions do not themselves generate criminal liability for those who orchestrate or execute forced marriages. The Criminal Code of the Republic of Moldova (Law No. 985-XV of 2002, as amended) does not contain a dedicated provision criminalizing forced marriage as a distinct offense.

Conduct associated with forcing a person into marriage may in principle be prosecuted under several existing provisions, including Article 151 (intentional serious bodily harm), Article 166 (illegal deprivation of liberty), Article 155 (threat), Article 168 (trafficking in persons), and Article 2011 (domestic violence). However, the absence of a specific forced marriage offense creates significant obstacles to effective prosecution, as existing provisions may not capture the full range of coercive conducts associated with forced marriage, particularly the psychological and emotional coercion that is most prevalent in practice.

Moldova ratified the Istanbul Convention in 2023, generating an obligation to criminalize forced marriage in conformity with Article 37 of the Convention. As of the date of this analysis, the legislative process to amend the Criminal Code accordingly has not been completed, representing a significant gap in Moldova's compliance with its international commitments. GREVIO, the Council of Europe's monitoring body for the Istanbul Convention, has identified this gap in its monitoring reports and called for expeditious legislative action.

The Law on Prevention and Combating Domestic Violence (Law No. 45 of 2007, as amended) provides relevant protective mechanisms, including protection orders, psychosocial assistance, and shelters for victims. However, the practical capacity of Moldovan authorities to identify, investigate, and respond to cases of forced marriage remains limited, reflecting persistent challenges in training, resourcing, and institutional culture within the law enforcement and social service sectors.

Data on the prevalence and nature of forced marriage in Moldova is extremely limited. National statistical systems do not systematically record forced marriage as a distinct category of offense or complaint, making it difficult to assess the true extent of the phenomenon. Civil society organizations, including La Strada and Amicul, have documented cases involving coerced marriages among Roma communities, in rural areas, and in connection with international trafficking networks, but the available data likely represents only a fraction of the actual incidence.

3.6 Evidentiary and Procedural Challenges in Prosecuting Forced Marriage

The prosecution of forced marriage cases presents distinctive and formidable evidentiary challenges that significantly limit the effectiveness of criminal law responses even where adequate legal provisions exist. The central evidentiary challenge is establishing that the marriage was contracted without the free and full consent of the victim. This requires demonstrating the absence of a subjective mental state consent which by definition is not directly observable and must be inferred from the circumstances surrounding the marriage. The evidentiary burden is complicated by the fact that many forced marriages occur within the privacy of the family home, with few external witnesses; that victims may have been conditioned to present an outward appearance of consent; and that physical evidence of coercion is often absent in cases where psychological or emotional pressure has been the primary instrument of compulsion.

Victims of forced marriage face significant barriers to reporting and cooperating with criminal investigations. These barriers include fear of retaliation from family members or community; shame and social stigma associated with publicly disclosing family conflicts; lack of awareness of their legal rights and available remedies; distrust of law enforcement based on prior negative experiences or cultural norms; and economic dependence on their family or spouse. These barriers are compounded in contexts, including many rural Moldovan communities, where law enforcement officers and judicial personnel lack the sensitivity, training, and specialized knowledge required to respond appropriately to victims of gender-based violence.

The international dimension of forced marriage cases in which victims are transported across borders creates additional procedural complexities involving questions of jurisdiction, mutual legal assistance, and the gathering of evidence from foreign jurisdictions. These challenges call for enhanced cooperation between Moldovan authorities and their counterparts in destination states, particularly in Western Europe, where significant numbers of Moldovan nationals may be subjected to forced marriage in connection with labour migration.

Effective prosecution of forced marriage cases requires specialized investigative techniques, including early and sensitive engagement with victims, use of specialized victim advocates and interpreters, careful assessment of risk, and coordination among law enforcement, social services, health professionals, and NGOs. International good practice, as documented in guidance from GREVIO and the Council of Europe, emphasizes the importance of proactive investigation that does not depend solely on victim cooperation, given the vulnerability of victims and the barriers to disclosure described above.

CONCLUSION

Forced marriage constitutes a profound and multi-dimensional violation of human rights that demands a comprehensive and integrated legal and social response. The analysis undertaken in this article leads to several conclusions with direct relevance for the development of Moldovan law and policy, as well as for comparative scholarship on the subject.

First, the doctrinal analysis confirms that forced marriage is not a monolithic phenomenon but encompasses a spectrum of coercive conducts ranging from overt physical violence to subtle psychological manipulation each of which may negate the free and full consent required for a valid marriage under international human rights law. Legal definitions and criminal provisions must be sufficiently broad to capture this full spectrum, while remaining precise enough to provide meaningful guidance for prosecutorial practice.

Second, the comparative analysis demonstrates that criminalization, while necessary, is not sufficient. Effective responses require investment in victim support services, specialized training for law enforcement and judiciary, awareness-raising among at-risk communities, and sustained engagement with the socioeconomic conditions that make individuals and families vulnerable to forced marriage. The United Kingdom's multi-agency model, combining criminal sanctions, civil protection orders, and dedicated support services, represents a particularly instructive reference point for reform in the Moldovan context. Third, the assessment of Moldovan law reveals significant gaps that must be addressed to bring the national legal framework into conformity with Moldova's obligations under the Istanbul Convention and other international instruments.

Most urgently, the Criminal Code should be amended to introduce a specific offense of forced marriage, defined consistently with Article 37 of the Istanbul Convention and providing for penalties proportionate to the gravity of the offense. Complementary amendments should address cross-border forced marriage, ensure the availability of civil protection mechanisms, and guarantee access to specialized support services for victims.

Fourth, systemic data collection on the prevalence and characteristics of forced marriage in Moldova is urgently needed to inform evidence-based policy responses. This requires both reform of national statistical systems and investment in research capacity, including cooperation with civil society organizations that are best positioned to reach marginalized communities where the practice may be most prevalent.

Finally, this article underscores the importance of approaching forced marriage responses with sensitivity to the complex social and cultural contexts in which the practice occurs, without allowing that sensitivity to compromise the fundamental principle that every individual has an inalienable right to enter into or refuse marriage freely, fully, and knowingly. The international human rights framework leaves no room for cultural relativism on this point, and the legal and institutional responses of states must reflect this non-negotiable commitment.

To enhance the effectiveness of legal responses to forced marriage in the Republic of Moldova, the following measures are recommended:

- Amendment of the Criminal Code to introduce a dedicated offense of forced marriage, with penalties graduated according to the severity of the conduct and the vulnerability of the victim, in conformity with Article 37 of the Istanbul Convention.
- Development of specialized training programs for law enforcement, prosecutors, and judges on the investigation and prosecution of forced marriage cases, including trauma-informed interviewing techniques and cultural competency.
- Establishment of a dedicated national forced marriage protection mechanism, building on the experience of the Forced Marriage Unit in the United Kingdom, with a mandate to assist victims, coordinate multi-agency responses, and conduct awareness-raising activities.

- Reform of national statistical and data collection systems to enable systematic recording and analysis of forced marriage cases, and investment in research capacity to generate reliable evidence on prevalence and dynamics.
- Engagement with civil society organizations and community leaders in the design and implementation of preventive and awareness-raising interventions targeting communities where forced marriage is most prevalent, including Roma communities and rural populations.

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CHAPTER 3
REVISITING THE HARDSHIP DOCTRINE UNDER VIETNAMESE CIVIL LAW: A COMPARATIVE AND CASE-BASED ANALYSIS

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INTRODUCTION

In modern contract law, the principle of pacta sunt servanda—requiring that agreements must be kept has long been regarded as a cornerstone of legal certainty and commercial stability. However, in an increasingly volatile economic environment, strict adherence to this principle may lead to unjust outcomes when unforeseen events fundamentally alter the equilibrium of contractual obligations. To address such situations, many legal systems have developed the doctrine of hardship, allowing for contract adaptation or termination when performance becomes excessively onerous due to a fundamental change of circumstances.

In Vietnam, the doctrine of hardship was formally recognized with the introduction of Article 420 of the 2015 Civil Code. This provision marks a significant legislative effort to modernize Vietnamese contract law and bring it closer to international standards, particularly those reflected in instruments such as the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law. By establishing conditions under which parties may request renegotiation or judicial intervention, Article 420 aims to balance contractual stability with fairness in situations of unexpected hardship.

Despite its progressive intent, the application of Article 420 in judicial practice has revealed a number of conceptual ambiguities and practical inconsistencies. Vietnamese courts have adopted differing approaches in determining what constitutes a "fundamental change of circumstances," how risks should be allocated between contracting parties, and whether contract termination or adaptation should be prioritized as a remedy. In some cases, courts have expansively interpreted hardship to justify contract termination and financial rebalancing, while in others, they have rejected hardship claims due to a strict or formalistic reading of statutory conditions. These divergences raise concerns about legal predictability and the coherence of contract adjudication in Vietnam.

Existing scholarship has primarily focused on doctrinal analysis of Article 420 or its legislative background, with limited attention to how the provision operates in practice through judicial decisions. Moreover, comparative insights with international soft law instruments and foreign legal systems remain underexplored in the Vietnamese context.

This gap is particularly significant given the increasing integration of Vietnam into global trade and investment regimes, where harmonization with international contract principles becomes essential.

Against this backdrop, this article aims to provide a comprehensive reassessment of the hardship doctrine under Vietnamese law. It does so by combining doctrinal analysis with a case study examination of selected Vietnamese court decisions, thereby identifying key regulatory gaps and inconsistencies in its application. The study further conducts a comparative analysis with the PICC and the PECL to evaluate the extent to which Vietnamese law aligns with international standards and to draw lessons for reform.

Methodologically, the article employs a qualitative approach, including statutory interpretation, case law analysis, and comparative legal research. Through this multi-layered method, it seeks not only to clarify the legal nature of hardship under Article 420 but also to assess its functional effectiveness in resolving contractual disputes.

The remainder of the article is structured as follows. Section 2 examines the legal framework and theoretical foundations of hardship under Vietnamese law. Section 3 analyzes judicial practice through selected case studies, highlighting inconsistencies and interpretative challenges. Section 4 provides a comparative perspective with international principles. Section 5 discusses key regulatory gaps and proposes reform-oriented recommendations. Finally, Section 6 concludes the study.

1. LEGAL FRAMEWORK OF ARTICLE 420: CONDITIONS, LEGAL CONSEQUENCES, AND DOCTRINAL AMBIGUITIES

1.1 Conditions for Establishing a Fundamental Change of Circumstances

Article 420 of the Civil Code 2015 establishes a cumulative set of conditions for recognizing a fundamental change of circumstances. These conditions reflect a restrictive approach, requiring the concurrence of multiple elements before judicial intervention is justified.

First, the change must arise from objective circumstances occurring after the conclusion of the contract. This requirement excludes subjective factors attributable to the parties, thereby reinforcing the principle of contractual responsibility. However, the concept of “objective cause” remains undefined, creating ambiguity in distinguishing between external events and risks inherent in commercial activities.

Second, the change must be unforeseeable at the time of contract formation. This criterion aligns with international standards, particularly those reflected in the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law, which similarly require that the relevant events could not reasonably have been taken into account by the disadvantaged party at the time of contracting (UNIDROIT, 2016; Commission on European Contract Law, 2002). Nonetheless, Vietnamese law does not provide clear guidance on the threshold of foreseeability, leaving courts with broad discretion and potentially inconsistent interpretations.

Third, the circumstances must change to such an extent that, had the parties foreseen it, the contract would not have been concluded or would have been concluded with fundamentally different terms. This condition introduces a hypothetical test, requiring courts to reconstruct the parties’ presumed intentions. In practice, such an assessment is inherently speculative and difficult to substantiate, particularly in the absence of clear evidentiary standards (McKendrick, 2020).

Fourth, continued performance without contractual modification must result in serious damage to one party. While this requirement emphasizes the need for substantial imbalance, the law does not define what constitutes “serious damage,” nor does it establish objective criteria for its evaluation. As a result, judicial practice may vary significantly in assessing the degree of hardship required.

Fifth, the disadvantaged party must demonstrate that it has taken all necessary and reasonable measures to prevent or mitigate the adverse effects. This condition reflects the broader duty of mitigation recognized in contract law, which requires parties to take reasonable steps to limit their losses (McKendrick, 2020). However, its application raises evidentiary challenges, particularly in determining the adequacy of the measures taken.

Taken together, these five conditions reveal a high threshold for invoking Article 420, which may limit its practical applicability. The cumulative nature of these requirements, combined with the lack of interpretative guidance, contributes to legal uncertainty and restricts the flexibility intended by the hardship doctrine.

1.2. Legal Consequences of a Fundamental Change of Circumstances

Article 420 provides a structured mechanism for addressing hardship, combining elements of contractual autonomy with judicial intervention.

At the first stage, the affected party has the right to request renegotiation of the contract within a reasonable time. This reflects a preference for preserving the contractual relationship and aligns with international principles that prioritize renegotiation as the primary response to hardship (UNIDROIT, 2016, Art. 6.2.3). However, the law does not define what constitutes a "reasonable time," nor does it impose clear obligations regarding the conduct of negotiations in good faith.

If renegotiation fails, either party may request the court to intervene. The court is empowered to either terminate the contract or modify its terms in order to restore the balance of interests. This dual mechanism reflects a hybrid approach, combining the binding force of contract with elements of equitable adjustment.

Nevertheless, Article 420 establishes a significant limitation: the court may only modify the contract if termination would cause greater damage than the cost of performance under the modified contract. This condition effectively prioritizes contract termination over modification, which appears inconsistent with the underlying rationale of the hardship doctrine in modern contract law, where adaptation is generally favored as a means of preserving contractual relationships (Perillo, 1997; UNIDROIT, 2016).

Furthermore, during the renegotiation and dispute resolution process, the parties are required to continue performing their contractual obligations, unless otherwise agreed. While this rule aims to ensure contractual stability, it may impose additional burdens on the disadvantaged party, particularly in situations where performance has already become excessively onerous.

Overall, the legal consequences framework under Article 420 reveals an inherent tension between contractual stability and fairness. Although the provision formally recognizes the possibility of contract modification, its restrictive conditions and lack of detailed guidance may discourage courts from applying this remedy in practice, thereby increasing the likelihood that contract termination will be favored.

1.3. Doctrinal Ambiguities of Article 420

Although Article 420 represents a progressive legislative step in recognizing hardship within Vietnamese contract law, its doctrinal structure reveals several conceptual ambiguities that undermine coherence and predictability.

Ambiguity in the Concept of "Fundamental Change of Circumstances"

The Civil Code does not define what constitutes a "fundamental" change. Instead, Article 420 sets out a series of cumulative conditions without clarifying the conceptual threshold that transforms an ordinary contractual imbalance into legally relevant hardship.

The absence of a precise definition creates uncertainty at multiple levels. First, it remains unclear whether "fundamental" refers to the magnitude of economic impact, the disruption of contractual equilibrium, or the exceptional nature of the external event. Second, the relationship between "serious damage" and "fundamental change" remains unclear, as the provision does not specify whether these are distinct elements or whether serious damage merely evidences the existence of a fundamental alteration.

This lack of conceptual clarity contrasts with international instruments, which articulate hardship in terms of a significant imbalance rendering performance excessively onerous due to events beyond the control of the disadvantaged party and not reasonably foreseeable at the time of contracting (UNIDROIT, 2016; Commission on European Contract Law, 2002). As noted in comparative scholarship, the notion of hardship is closely linked to the idea of a disruption of contractual equilibrium rather than merely the occurrence of external change (Perillo, 1997).

Without similar conceptual guidance, Vietnamese courts are left with broad interpretative discretion, increasing the risk of inconsistent application.

The Unclear Role of Risk Allocation

A central premise of the hardship doctrine in comparative law is that relief is unavailable where the disadvantaged party has assumed the relevant risk. While Article 420 implicitly reflects this principle, it does not expressly articulate it.

The provision fails to clarify whether risk allocation should be determined strictly on the basis of contractual clauses, inferred from trade usages, or assessed according to an objective standard of reasonable risk assumption. This silence generates doctrinal uncertainty and leaves courts without a structured analytical framework.

In comparative contract law, hardship is generally excluded where the risk of changed circumstances was or should have been borne by the disadvantaged party, whether expressly or implicitly (Schwenzer et al., 2019). Moreover, modern scholarship emphasizes that hardship doctrines function not to eliminate risk, but to reallocate only those risks that fall outside the parties' reasonable contemplation at the time of contracting (Berman, 2007). The absence of explicit guidance in Vietnamese law contributes to inconsistent judicial reasoning, particularly in commercial contexts where market fluctuations are both foreseeable and inherent.

Tension Between Termination and Adaptation

Article 420 formally provides for both contract termination and modification. However, the statutory requirement that courts may modify a contract only when termination would cause greater damage introduces a significant doctrinal inconsistency.

In modern hardship regimes, contract adaptation is typically regarded as the primary remedy, reflecting the objective of preserving contractual relationships and maintaining economic efficiency. International instruments explicitly empower courts or arbitral tribunals to adapt contracts with a view to restoring equilibrium (UNIDROIT, 2016, Art. 6.2.3).

By contrast, the Vietnamese provision appears to subordinate adaptation to termination, thereby reversing the conventional remedial hierarchy.

This structural tension raises a fundamental theoretical question: whether Article 420 is designed as a mechanism for equitable rebalancing or merely as a limited exception allowing release from contractual obligations. As observed in comparative literature, the preference for adaptation reflects a shift from strict contractual formalism toward a more flexible and fairness-oriented approach (Perillo, 1997). The ambiguity in Article 420 may therefore discourage courts from engaging in substantive contract adjustment.

The Relationship Between Hardship and Force Majeure

Another doctrinal ambiguity concerns the boundary between hardship under Article 420 and force majeure under Article 351 of the Civil Code.

While force majeure generally excuses non-performance due to impossibility, hardship addresses situations where performance remains possible but becomes excessively onerous. This distinction is well established in comparative contract law (McKendrick, 2020). However, Vietnamese law does not clearly articulate this conceptual separation, nor does it provide criteria for distinguishing between the two doctrines in practice.

Comparative analyses suggest that conflating these doctrines may lead to inappropriate legal consequences, particularly where courts apply exemption-based reasoning to situations that instead call for contractual adjustment (Berman, 2007). The absence of a clear doctrinal boundary in Vietnamese law thus creates a risk of inconsistent classification and remedial outcomes.

The Ambiguous Standard of Judicial Intervention

Finally, Article 420 does not specify the normative basis guiding judicial intervention. It remains unclear whether courts should prioritize contractual stability, equitable redistribution of losses, economic efficiency, or protection of the disadvantaged party.

This lack of normative orientation contrasts with modern contract theory, which provides distinct justifications for hardship doctrines.

Economic analysis emphasizes efficiency and optimal risk allocation, while corrective justice theories focus on restoring fairness between the parties (Posner, 2007; McKendrick, 2020). At the same time, comparative scholarship highlights that hardship operates as a mechanism for balancing certainty and flexibility in contract law (Berman, 2007).

In the absence of a clearly articulated guiding principle, judicial decisions may reflect implicit value judgments rather than a coherent doctrinal framework. This contributes to variability in interpretation and weakens the predictability of contract adjudication.

Interim Assessment

Taken together, these doctrinal ambiguities demonstrate that although Article 420 adopts the language and structure of modern hardship doctrines, it lacks the conceptual precision necessary for consistent application. The provision reflects an effort to align Vietnamese contract law with international standards, yet it does not fully internalize the theoretical foundations and methodological clarity found in comparative legal systems.

These structural limitations help explain the divergences observed in judicial practice, which will be examined in the following section.

2. JUDICIAL APPLICATION OF ARTICLE 420: A CASE-BASED ANALYSIS

2.1. Formalistic Application and the Absence of a Structured Legal Test (Case 1)

People's Court of Ca Mau Province. (2021). Appellate Judgment No. 133/2021/DS-PT (08 July 2021) concerning a dispute over a house lease agreement.

In Case 1, the court expressly referred to Article 420 of the Civil Code 2015, thereby acknowledging the potential applicability of the doctrine of fundamental change of circumstances. However, the judgment reflects a predominantly formalistic approach, lacking substantive engagement with the statutory framework.

Article 420(1) establishes a cumulative set of conditions for recognizing a fundamental change of circumstances, including: (i) the occurrence of objective changes arising after contract formation; (ii) unforeseeability at the time of conclusion; (iii) a fundamental alteration of the contractual equilibrium such that the contract would not have been concluded, or would have been concluded on entirely different terms; (iv) the risk of serious damage if performance continues without modification; and (v) reasonable mitigation efforts undertaken by the disadvantaged party.

Despite citing Article 420, the court failed to conduct a structured assessment of these conditions. In particular, the judgment does not clearly examine whether the alleged change arose from objective circumstances occurring after the contract was formed, nor does it evaluate the threshold of serious damage resulting from continued performance. Similarly, the requirement that the disadvantaged party must have undertaken all reasonable measures to mitigate the adverse impact was not meaningfully addressed.

Instead, the court appeared to rely on general considerations of fairness and factual context without explicitly linking these considerations to the statutory criteria. This approach creates a disconnect between the formal invocation of Article 420 and its actual application. As a result, the reasoning lacks both transparency and predictability, making it difficult to discern how the doctrine is operationalized in practice.

From a doctrinal perspective, Case 1 illustrates a pattern of judicial formalism in which statutory provisions are cited but not systematically applied. The absence of a clearly articulated legal test undermines the normative coherence of Article 420 and limits its effectiveness as a mechanism for addressing hardship in contractual relations.

2.2. Judicial Intervention and the Unstructured Exercise of Contractual Modification (Case 2)

People's Court of Binh Duong Province. (2020). Appellate Judgment No. 46/2020/DS-PT (12 March 2020) concerning a dispute over the transfer of land use rights and a request for cancellation of the land use right certificate.

In Case 2, the court adopted a more interventionist approach by recognizing the existence of a fundamental change of circumstances and granting relief through contractual modification. This reflects a more active use of Article 420 compared to Case 1. Nevertheless, the reasoning raises significant doctrinal concerns regarding the limits and conditions of judicial intervention.

Under Article 420 (3), courts are empowered to modify a contract in order to rebalance the legitimate rights and interests of the parties, but only where two cumulative conditions are satisfied: (i) the parties have failed to renegotiate the contract within a reasonable time; and (ii) termination of the contract would cause greater damage than its continued performance as modified. These requirements constitute mandatory statutory thresholds rather than discretionary considerations.

In this case, however, the judgment does not clearly demonstrate that either condition was fully satisfied. The court did not provide a structured analysis of whether genuine renegotiation had taken place or whether such negotiations had failed within a reasonable period. More importantly, the judgment lacks a reasoned assessment of the comparative harm between termination and modification, which is a central requirement under Article 420 (3).

Furthermore, the court directly imposed a revised performance standard based on the prevailing market price without articulating a clear normative basis for this method of adjustment. While market price may serve as a relevant reference point, the judgment does not explain why this benchmark ensures a fair and proportionate rebalancing of contractual interests. Consequently, the concept of “balancing legitimate rights and interests” remains insufficiently substantiated.

From a doctrinal standpoint, this case does not represent an unlawful expansion of judicial authority, but rather an unstructured exercise of that authority. The issue lies not in the recognition of judicial power to modify contracts, but in the absence of clear criteria guiding its application. This creates a risk of inconsistent and potentially excessive intervention, thereby undermining contractual certainty.

2.3. Restrictive Interpretation and the Denial of Hardship Claims (Case 3)

People's Court of Dak Nong Province. (2022). Appellate Judgment No. 37/2022/DS-PT (12 July 2022) concerning a dispute over a land use rights lease contract and a claim for damages due to unilateral termination of the contract.

In Case 3, the court adopted a restrictive approach by rejecting the application of Article 420 and refusing to recognize the existence of a fundamental change of circumstances. Instead, the dispute was resolved under traditional principles of contractual breach.

The defendant sought to justify the unilateral termination of a land lease agreement on the basis of hardship, arguing that the agreed rental price had become excessively burdensome and that certain financial expectations related to the project had not been realized. The court, however, found that these arguments did not satisfy the statutory conditions set out in Article 420(1).

In particular, the court emphasized that the alleged difficulties stemmed from subjective assessments and commercial dissatisfaction rather than from objective, unforeseeable events arising after the conclusion of the contract. Moreover, the defendant failed to demonstrate that the circumstances were of such magnitude that the contract would not have been concluded, or would have been concluded on fundamentally different terms, had those circumstances been foreseen.

The judgment also reflects a strict evidentiary approach, relying on documentary evidence to establish that the claimant's assumptions regarding financial obligations were unfounded. This further weakened the argument that the contractual equilibrium had been disrupted by external circumstances.

Although the court did not conduct a comprehensive and structured analysis of all five statutory conditions, its reasoning implicitly affirms a narrow interpretation of Article 420. Where the threshold requirements are not clearly met, the court is inclined to revert to conventional contract law principles, particularly liability for breach under Article 422.

From a doctrinal perspective, Case 3 illustrates a cautious and restrictive judicial attitude toward hardship claims. While the rejection of an unfounded claim is legally justified, the limited scope of reasoning does little to clarify the conceptual boundaries of Article 420.

In particular, the judgment does not articulate clear criteria for distinguishing between normal contractual risks, subjective dissatisfaction, and legally relevant changes in circumstances.

2.4. Synthesis: Fragmentation and the Absence of a Coherent Methodology

Taken together, the three cases reveal a fragmented and inconsistent judicial approach to Article 420 of the Civil Code 2015. Rather than applying a coherent and structured legal methodology, courts oscillate between formalistic citation (Case 1), interventionist modification (Case 2), and restrictive denial (Case 3).

This divergence reflects the absence of a clearly articulated analytical framework for applying the doctrine of fundamental change of circumstances. In particular, courts do not consistently apply the cumulative conditions under Article 420(1), nor do they rigorously assess the procedural and substantive requirements governing renegotiation and judicial intervention under Article 420(2) and (3).

As a result, the practical application of Article 420 remains unpredictable and doctrinally underdeveloped. This not only undermines legal certainty but also limits the effectiveness of the provision as a mechanism for addressing hardship in contractual relations.

From a comparative perspective, this lack of methodological consistency contrasts sharply with international instruments such as the UNIDROIT Principles of International Commercial Contracts, where hardship doctrines are applied through clearly defined and systematically articulated criteria. The Vietnamese experience thus highlights the need for more precise interpretative guidance, either through judicial clarification or legislative refinement, in order to ensure the coherent and effective operation of Article 420.4. Comparative Analysis with International Principles and Foreign Laws.

3. COMPARATIVE ANALYSIS: VIETNAM AND INTERNATIONAL APPROACHES TO HARDSHIP

3.1. Conceptualization of Hardship

In international contract law, hardship is generally conceptualized as a situation in which the equilibrium of the contract is fundamentally disrupted due to events that render performance excessively onerous for one party. This understanding is explicitly reflected in the UNIDROIT Principles of International Commercial Contracts (PICC) and the Principles of European Contract Law (PECL), both of which define hardship in terms of a significant alteration of the contractual balance rather than merely the occurrence of external changes.

Under Article 6.2.2 of the PICC, hardship arises where events fundamentally alter the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance received has diminished, provided that such events occur after the conclusion of the contract, could not reasonably have been taken into account, and are beyond the control of the disadvantaged party. Similarly, the PECL adopts a functional definition centered on excessive onerousness and disruption of the contractual equilibrium.

By contrast, Vietnamese law, as embodied in Article 420 of the Civil Code 2015, does not provide an explicit definition of hardship. Instead, it relies on a set of cumulative conditions without clarifying the conceptual core of what constitutes a "fundamental change of circumstances." As discussed in Section 2, this absence of a clear conceptual framework creates uncertainty regarding the threshold at which contractual imbalance becomes legally relevant.

The comparative analysis thus reveals a fundamental divergence: while international instruments adopt a substantive and effect-based approach, focusing on the disruption of contractual equilibrium, Vietnamese law adopts a formal and condition-based approach without articulating the underlying concept. This lack of conceptual clarity contributes directly to the inconsistent judicial reasoning observed in Section 3.

3.2. Conditions for Invoking Hardship

Both the PICC and the PECL establish a relatively coherent and structured set of conditions for invoking hardship. These conditions typically include: (i) the occurrence of events after the conclusion of the contract; (ii) unforeseeability of such events at the time of contracting; (iii) the absence of risk assumption by the disadvantaged party; and (iv) a fundamental alteration of the contractual equilibrium.

Importantly, these instruments treat the conditions as part of an integrated and flexible assessment rather than as a rigid checklist. The emphasis is placed on whether the disadvantaged party could reasonably have foreseen or assumed the relevant risks, thereby ensuring that hardship operates as a mechanism for reallocating extraordinary risks rather than ordinary commercial ones.

In comparison, Article 420 of the Vietnamese Civil Code adopts a more rigid and cumulative structure. All statutory conditions must be satisfied simultaneously, including objective change, unforeseeability, fundamental impact on contractual intent, serious damage, and the duty to mitigate. While these elements broadly correspond to international standards, their formulation lacks precision and interpretative guidance.

Moreover, Vietnamese law does not explicitly articulate the principle of risk allocation, which plays a central role in international hardship doctrines. As a result, courts are left to infer whether a particular risk falls within the scope of contractual assumption, leading to divergent interpretations, as illustrated in Section 3.

Therefore, while there is a formal resemblance between Vietnamese law and international principles, the comparative analysis demonstrates that Vietnamese law is characterized by overly rigid conditions combined with insufficient conceptual guidance, which undermines its practical effectiveness.

3.3. Remedies: Adaptation vs. Termination

One of the most significant differences between Vietnamese law and international instruments lies in the hierarchy of remedies.

Under both the PICC and the PECL, renegotiation is the primary response to hardship. If renegotiation fails, courts or arbitral tribunals are empowered to adapt the contract with a view to restoring its equilibrium.

Contract termination is generally regarded as a last resort, to be used only when adaptation is not feasible or would be unreasonable. This approach reflects a clear policy preference for preserving contractual relationships and promoting economic efficiency.

In contrast, Article 420 of the Vietnamese Civil Code establishes a more restrictive framework. Although it formally allows both contract modification and termination, it imposes a significant limitation: courts may modify the contract only if termination would cause greater damage than the cost of performance under the modified contract. This condition effectively elevates termination as the default remedy, while making adaptation contingent and exceptional.

This reversed remedial hierarchy diverges from the underlying rationale of modern hardship doctrines. Instead of prioritizing the preservation of contracts, the Vietnamese approach implicitly favors release from obligations. This tension is also reflected in judicial practice, where courts either hesitate to modify contracts or do so without a clear methodological basis, as seen in Section 3.

From a comparative perspective, this indicates that Vietnamese law has not fully embraced the functional objective of hardship as a tool for contractual rebalancing, but rather treats it as a limited exception to contractual binding force.

3.4. Role of Courts and Normative Foundations

International instruments provide not only substantive rules but also a clear normative framework guiding judicial intervention. Under the PICC and PECL, courts are expected to play an active role in restoring contractual equilibrium, guided by principles of fairness, reasonableness, and good faith. The hardship doctrine is thus grounded in a balance between contractual certainty and equitable adjustment.

In addition, comparative legal systems often articulate the theoretical foundations of hardship more explicitly. Economic analysis emphasizes efficient risk allocation and the minimization of transactional losses, while corrective justice theories focus on restoring fairness between the parties when unforeseen events disrupt the contractual balance.

By contrast, Article 420 of the Vietnamese Civil Code does not clearly define the normative basis for judicial intervention. It remains unclear whether courts should prioritize contractual stability, fairness, or economic efficiency. This lack of guidance contributes to the divergent judicial approaches identified in Section 3, where courts alternately adopt formalistic, interventionist, or restrictive reasoning without a consistent underlying rationale.

Furthermore, Vietnamese law does not provide detailed criteria for how courts should exercise their power to modify contracts. Unlike international instruments, which emphasize proportionality and reasoned rebalancing, Article 420 offers little direction on the methodology of contract adaptation. This results in either judicial hesitation or unstructured intervention.

Overall, the comparative analysis highlights that the limitations of Vietnamese law are not merely technical but normative and structural. The absence of a clear guiding philosophy weakens both doctrinal coherence and practical application.

The comparison between Vietnamese law and international approaches demonstrates that, although Article 420 reflects an effort to incorporate the hardship doctrine into domestic law, it remains conceptually underdeveloped and structurally constrained.

While international instruments such as the PICC and PECL adopt a flexible, principle-based, and equilibrium-oriented approach, Vietnamese law is characterized by rigid conditions, unclear concepts, and a lack of normative guidance. These differences help explain the inconsistencies observed in judicial practice and highlight the need for a more coherent and structured legal framework.

This comparative insight provides the foundation for the reform-oriented recommendations discussed in the following section.

4. RECOMMENDATIONS FOR REFORM

Although Article 420 of the 2015 Civil Code represents a significant step toward recognizing the doctrine of hardship in Vietnamese contract law, its current formulation remains incomplete and ambiguous. To enhance legal certainty and align domestic law with international standards, several reforms should be considered.

4.1. Clarifying the Conditions for Determining a Fundamental Change of Circumstances

The existing conditions under Article 420 provide a basic framework for identifying a fundamental change of circumstances. However, these conditions remain overly general and lack interpretative guidance, which leads to inconsistent application in judicial practice.

First, the requirement that the change must be "objective" should be clarified. In its current form, the term may be interpreted narrowly as referring only to external events such as natural disasters or state actions. However, international instruments such as the UNIDROIT Principles of International Commercial Contracts (PICC) adopt a broader approach, focusing not merely on the source of the change but on its impact on contractual equilibrium (UNIDROIT, 2016, Art. 6.2.2). Therefore, Vietnamese law should explicitly recognize that an objective change includes any event beyond the reasonable control of the disadvantaged party, regardless of its origin.

Second, the criterion of "fundamental alteration of the contractual balance" should be further elaborated. Article 420 does not provide a threshold for determining when a change becomes sufficiently serious to justify intervention. By contrast, the PICC emphasizes a "fundamental alteration" measured either by a significant increase in the cost of performance or a substantial decrease in the value of the counter-performance (UNIDROIT, 2016, Art. 6.2.2). Incorporating similar quantitative or qualitative benchmarks would improve predictability and reduce judicial discretion.

Third, the requirement of unforeseeability should be refined. The current provision does not clarify whether foreseeability should be assessed subjectively (based on the actual knowledge of the parties) or objectively (based on a reasonable person standard). To ensure consistency, Vietnamese law should adopt an objective standard, aligned with international practice, while allowing courts to consider the professional capacity and expertise of the parties in specific cases (McKendrick, 2020).

4.2. Strengthening the Legal Consequences: Prioritizing Renegotiation and Limiting Judicial Intervention

Article 420 recognizes both renegotiation and judicial intervention (adaptation or termination) as possible responses to hardship. However, the relationship between these remedies remains insufficiently structured, creating a risk of premature or excessive judicial involvement.

First, renegotiation should be explicitly established as a mandatory preliminary step. Although Article 420 encourages parties to renegotiate, it does not impose a clear obligation or define procedural requirements. In contrast, both the UNIDROIT Principles of International Commercial Contracts (Art. 6.2.3) and the Principles of European Contract Law require parties to engage in good faith negotiations within a reasonable time before resorting to judicial remedies. Incorporating a similar obligation into Vietnamese law would help reinforce party autonomy and reduce unnecessary litigation.

Second, the scope of judicial intervention—particularly contract adaptation should be more narrowly defined. At present, courts appear to enjoy broad discretion to modify contractual terms, which risks undermining contractual certainty. Comparative scholarship has emphasized that judicial adaptation should remain exceptional, functioning as a last resort when renegotiation fails (McKendrick, 2020). Clarifying this limitation would contribute to greater predictability in adjudication.

Third, clearer criteria should be introduced to guide courts in choosing between adaptation and termination. Adaptation should be prioritized where the contract remains viable and the imbalance can be reasonably corrected, whereas termination should be reserved for situations in which performance has become excessively onerous or has lost its commercial purpose. This distinction is also reflected in international soft law instruments (UNIDROIT, 2016, Art. 6.2.3).

Finally, Vietnamese law should articulate more clearly the normative foundations underlying hardship, particularly the balance between pacta sunt servanda, fairness, and economic efficiency. A more explicit theoretical framework would support coherent judicial reasoning and help reduce the current inconsistencies in case law.

4.3. Integrating International Standards: Lessons from PICC and PECL

The experience of international instruments such as the UNIDROIT Principles of International Commercial Contracts (PICC) and the Principles of European Contract Law (PECL) provides valuable guidance for improving Article 420.

Both instruments adopt a coherent and structured approach to hardship. They clearly define the conditions for hardship, emphasize the obligation to renegotiate in good faith, and establish a sequential mechanism: renegotiation first, followed by judicial intervention only if negotiations fail (UNIDROIT, 2016; Lando & Beale, 2000). Moreover, they provide detailed guidance on the powers of courts, including the ability to adapt contracts in order to restore equilibrium.

In contrast, Article 420 lacks such structural clarity and detailed guidance. As a result, its application depends heavily on judicial interpretation, which may vary across cases. To address this gap, Vietnamese law should incorporate key elements from the PICC and PECL, particularly: a more precise definition of hardship; a structured sequence of remedies; and clearer limits on judicial discretion.

Such integration would not only improve domestic coherence but also facilitate Vietnam's participation in international commercial practice, where these principles are widely recognized (Bonell, 2018).

4.4 Enhancing Judicial Guidance and Practical Application

Beyond legislative amendments, improving the application of Article 420 also requires stronger judicial guidance and interpretative consistency.

First, the Supreme People's Court should issue guiding resolutions or case law to clarify the interpretation of Article 420. These guidelines should address key issues such as the threshold for hardship, the meaning of objective change, and the criteria for selecting remedies.

Second, developing a body of consistent case law is essential. Currently, the lack of published decisions on hardship limits the ability of courts and practitioners to predict outcomes. Encouraging the publication of relevant judgments would contribute to greater transparency and doctrinal development.

Third, training for judges and legal practitioners should be strengthened. Given the relatively recent introduction of hardship into Vietnamese law, many practitioners may lack familiarity with its conceptual foundations and comparative context. Training programs that incorporate international perspectives would enhance the quality and consistency of judicial reasoning (Bonell, 2018).

In sum, while Article 420 marks an important evolution in Vietnamese contract law, its effectiveness is constrained by conceptual ambiguities and structural limitations. By clarifying its conditions, strengthening its remedial framework, and aligning it with international standards such as the PICC and PECL, Vietnam can develop a more coherent and predictable doctrine of hardship. Such reforms would not only enhance legal certainty but also promote fairness and flexibility in contractual relationships, particularly in an increasingly volatile economic environment.

CONCLUSION

This article has examined the doctrine of fundamental change of circumstances under Article 420 of the 2015 Civil Code of Vietnam. While the provision marks an important step in recognizing hardship within Vietnamese contract law, the analysis demonstrates that its conceptual structure and remedial framework remain insufficiently articulated.

The study identifies three principal concerns. First, the statutory conditions—particularly those relating to objective change, unforeseeability, and serious damage—lack doctrinal precision, leading to interpretative uncertainty. Second, the relationship between renegotiation and judicial intervention is not clearly structured, thereby increasing the risk of inconsistent application. Third, the absence of detailed guidance on judicial adaptation may result in excessive discretion and reduced predictability.

Comparative analysis with the UNIDROIT Principles of International Commercial Contracts (PICC) and the Principles of European Contract Law (PECL) reveals a more coherent model built upon clearly defined hardship criteria, structured renegotiation mechanisms, and carefully limited judicial powers. These instruments provide persuasive guidance for refining the Vietnamese approach.

Accordingly, this article proposes clarifying the statutory elements of hardship, strengthening the procedural role of good faith renegotiation, and introducing clearer limits on judicial adaptation. Such reforms would enhance legal certainty while preserving flexibility in the face of economic disruption.

By situating Article 420 within a comparative and doctrinal framework, this study contributes to the ongoing modernization of Vietnamese contract law and offers a foundation for further scholarly and legislative development.

This study not only contributes to the doctrinal understanding of hardship under Vietnamese law but also provides a foundation for future judicial and legislative reforms in an increasingly globalized contractual landscape.

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