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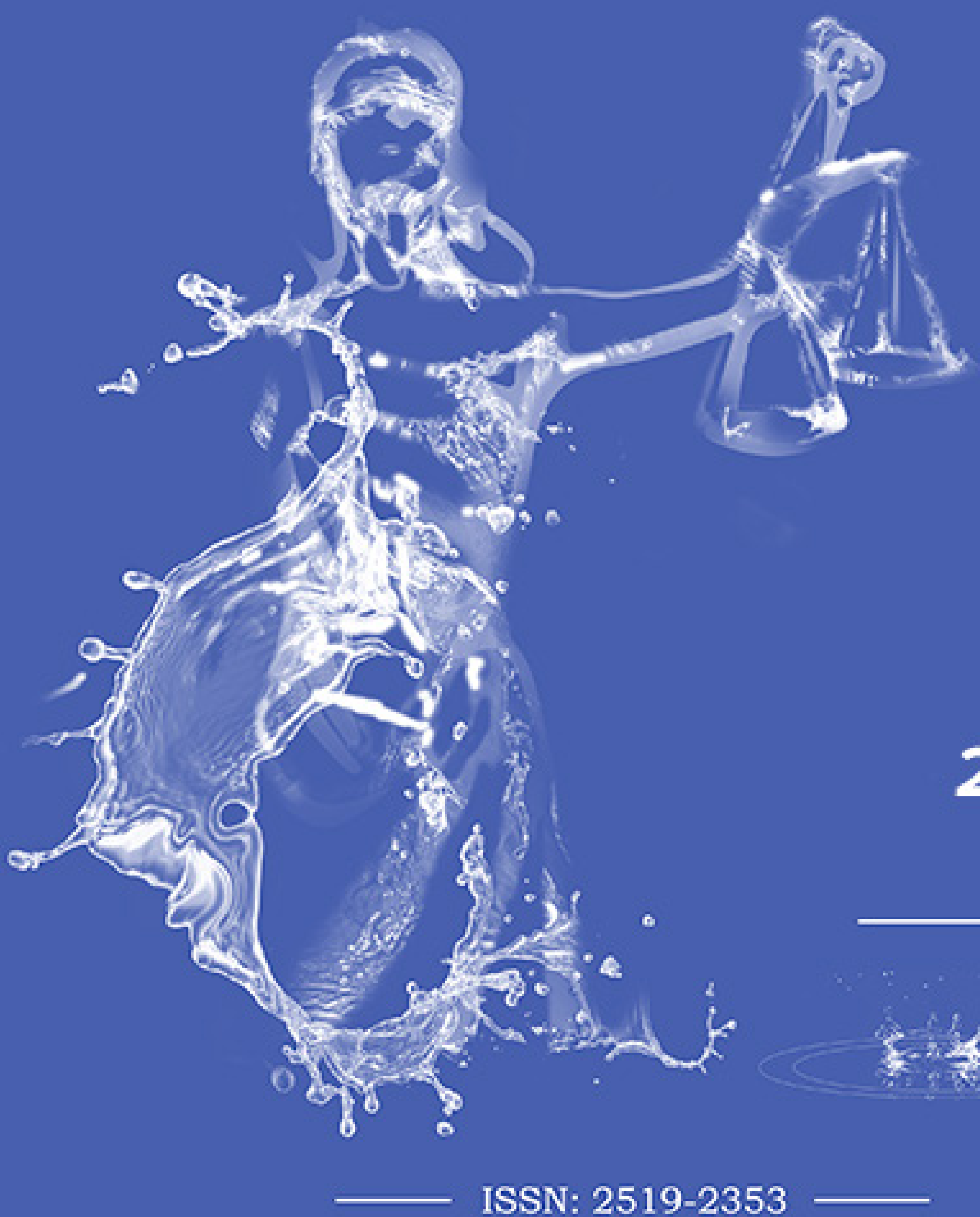

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## FOREWORD

This issue of *Legal Horizons* ***Volume 25, Issue 2 (2025)*** brings together a diverse and thought-provoking collection of articles that reflect the multifaceted challenges and transformations taking place across contemporary legal systems in both national and transnational contexts. The editorial board is proud to present nine scholarly contributions that not only explore pressing legal issues but also offer novel theoretical frameworks and practical recommendations for reform. Each article in this volume offers fresh insight into legal transformations occurring across different jurisdictions, reflecting the dynamic interaction between legal tradition and innovation.

Opening the issue **"JUDICIAL OVERREACH AND THE RISE OF THE POSITIVE LEGISLATOR: A CONSTITUTIONAL ANALYSIS OF INDONESIA'S CONSTITUTIONAL COURT"** by Faisyah, Ali Safa'at, and Susmayanti present a constitutional analysis of Indonesia's Constitutional Court, illuminating the growing tension between judicial authority and legislative prerogative. Their discussion on judicial overreach and the emergence of the court as a «positive legislator» is both timely and provocative, especially in light of recent constitutional developments in the region.

In a comparative turn, Manyilova and Norchuk **"LEGAL PRINCIPLES OF DIGITALIZATION OF PUBLIC ADMINISTRATION IN UKRAINE: CHALLENGES AND PERSPECTIVES"** delve into the legal principles underlying the digitalization of public administration in Ukraine, identifying both opportunities and risks. Their work bridges theory and institutional practice, offering valuable insights for policymakers navigating digital transformation.

In **«CIVIL-LAW REGULATION OF ELECTRONIC CONTRACTS: CURRENT CHALLENGES IN MARKETING AND THE DIGITAL ECONOMY»,** Zahorodnii, Nadiienko, and Artemenko address the evolving landscape of civil-law regulation in the realm of electronic contracts. They examine current marketing challenges and the digital economy, offering a nuanced understanding of contract law's adaptation to new commercial realities.

Myroslavskyi contributes with **«THE ROLE OF AI IN STANDARDIZATING CONTRACTS AND ITS IMPACT ON BUSINESS PROCESS OPTIMIZATION»**, offering a forward-looking analysis of how artificial intelligence tools can reshape the structure, negotiation, and performance of contracts in the business sphere. His analysis contributes to the growing discourse on how legal tools can integrate with emerging technologies to enhance economic efficiency and reduce transactional risks.

The regulatory challenges of emerging mobility technologies are discussed in **«THE URGENCY OF REGULATING ELECTRIC BICYCLES IN THE ROAD TRAFFIC AND TRANSPORTATION LAW IN THE ERA OF TECHNOLOGICAL ADVANCEMENT»** by Tabani Cahyaning Ekwandi, Noerdajasakti, and Yuliati. Their article proposes legal reforms to ensure the safe and equitable integration of electric bicycles into existing transport systems.

**"JUDGES' PARAMETERS IN DECIDING DIVORCE ON THE GROUNDS OF ONHEELBARE TWEESPALT"** by Chyntia, Sulistyarini, and Hadisuryo examines the Dutch-originated legal ground of irreparable breakdown in marital relations, as interpreted by Indonesian judges. Their work examines how cultural and doctrinal elements intersect in judicial decisions and adds a comparative dimension to family law jurisprudence.

Further addressing Indonesia's constitutional framework, **"REFORMING ETHICAL OVERSIGHT MECHANISMS FOR CONSTITUTIONAL COURT JUSTICES IN INDONESIA"** by Nasilah, Negara, and Dwi Prasetyo analyzes current deficiencies in ethical supervision and proposes systemic reforms to reinforce judicial accountability. Their call for reforming oversight mechanisms underscores the critical need for integrity and accountability at the highest levels of judicial power.

Environmental and criminal law intersect in **"CRIMINOLOGICAL AND CRIMINALISTIC BASES OF ILLEGAL ENGAGEMENT IN FISHING, HUNTING, OR OTHER WATER-BASED EXTRACTIVE INDUSTRIES"** by Denisova and Sobko. The article adopts an interdisciplinary approach to understanding and curbing ecological crime, highlighting both legislative and enforcement challenges.

The issue concludes with **"PROSECUTOR PARTICIPATION IN CRIMINAL MEDIATION: LEGAL REGULATION, CHALLENGES, AND WAYS TO OVERCOME THEM"** by Petrenko. Focusing on Ukraine, the author evaluates the normative basis and procedural realities of prosecutorial involvement in restorative justice, offering concrete proposals for legal and institutional improvement.

Together, these contributions showcase the dynamism of contemporary legal scholarship and the shared commitment of jurists, scholars, and practitioners to respond to complex societal transformations with rigor, critical insight, and an eye toward justice. We thank our contributors and peer reviewers for their dedication, and we invite our readers to engage deeply with the ideas presented in this issue.

Yurii Harust,
Editor-in-Chief
Legal Horizons

## CONTENTS

# JUDICIAL OVERREACH AND THE RISE OF THE POSITIVE LEGISLATOR: A CONSTITUTIONAL ANALYSIS OF INDONESIA'S CONSTITUTIONAL COURT

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**Abstract**

The shifting role of the Constitutional Court from a negative to a positive legislator is not merely an expansion of authority; it also exhibits symptoms of judicial overreach that may threaten the principle of separation of powers. The Indonesian Constitutional Court was originally designed to function as a negative legislator, with the authority to review the constitutionality of laws without creating new legal norms. However, in practice, several Constitutional Court decisions have shifted toward a positive legislator role, wherein the Court engages in norm formulation as a form of judicial activism. This article aims to analyze the limits of such authority by examining three landmark decisions: Decision Numbers 102/PUU-VII/2009, 90/PUU-XXI/2023, and 62/PUU-XXII/2024. The analysis shows that the role of a positive legislator can be justified in urgent situations, particularly when a legal vacuum threatens to violate constitutional rights. Nevertheless, the Constitutional Court's interventions must be limited, proportional, and free from conflicts of interest. This research proposes six substantive criteria as normative boundaries to ensure that the Court's judicial activism remains within the constitutional framework and reinforces the system of checks and balances. These findings aim to strengthen the institutional design of constitutional justice in Indonesia.

**Key words:** constitutional court; judicial activism; positive legislator.

## 1. Introduction

The Constitutional Court holds a vital role in the Indonesian constitutional system as the guardian of constitutional supremacy. As an institution entrusted with the authority

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to conduct judicial reviews, the Court ensures that laws enacted by the legislature do not conflict with the Constitution. This function positions the Constitutional Court as a negative legislator, meaning its authority is limited to annulling unconstitutional legal norms without replacing them with new ones. This model is aligned with Hans Kelsen's theory, which asserts that constitutional courts must restrict themselves to eliminating norms that contradict the Constitution rather than creating new ones (AL-Dulaimi, 2018, p.1-4). However, in practice, the Constitutional Court's role has undergone a significant shift. It has not only annulled legal norms but also introduced new ones with legislative implications. This development raises concerns about the extent to which judicial activism can occur without undermining the principle of separation of powers (Agustine et al., 2023, p. 183). Brewer-Carías (2011, p. 5) identified four key trends in the Court's evolution from a negative to a positive legislator: (1) intervention in constitutional amendments, (2) intervention in existing laws, (3) intervention to fill legal gaps, and (4) shaping norms through judicial review. These shifts have sparked debate over the Constitutional Court's proper limits within the framework of the separation of powers (Brewer-Carías, 2011, p. 5).

The legal basis for the Constitutional Court's authority to conduct judicial review in Indonesia is outlined in Article 24C of the 1945 Constitution and Article 10 of Law No. 24 of 2003 on the Constitutional Court. As part of the system of checks and balances, the Court functions to ensure that legislation passed by the legislature remains consistent with constitutional principles (Qamar, 2012, p. 1-15; Nugraha et al., 2020, p. 1-15). However, in several of its rulings, the Court has acted as a positive legislator by introducing new legal norms to address legal uncertainty (Adena Fitri Puspita Sari, 2022, p. 187). This phenomenon has sparked debate among scholars and legal practitioners. On one hand, the Constitutional Court's positive legislative role is viewed as necessary in certain circumstances to uphold substantive justice and prevent legal vacuums (Marlina, 2018, p. 171). On the other hand, actions that exceed the Court's role as a negative legislator can disrupt the balance of power between the executive, legislative, and judicial branches. Therefore, a deeper analysis is required to understand the legitimacy boundaries of the Court's positive legislative function and to identify effective mechanisms for preventing the abuse of judicial authority.

Several previous studies have explored the Constitutional Court's judicial review role and the implications of its judicial activism. For instance, (Efendi et al., 2023, p. 622-639) found that out of 198 decisions rendered by the Court, 107 exhibited characteristics of a positive legislator, highlighting the prevalence of this practice. Similarly, (Andiraharja, 2021, p. 70) emphasized how the Court's function in judicial review has evolved toward norm creation, sparking debate over its compatibility with the separation of powers principle. by ( Puspita Sari, 2022, p. 687) argued that although the Constitutional Court lacks explicit authority to establish new norms, in certain urgent contexts it may adopt legal breakthroughs to fill normative gaps and promote substantive justice. Interestingly, this trend is not unique to Indonesia. (Smekal et al., 2023, p. 92) observed that the Czech Constitutional Court also engages in selective judicial activism to protect democratic integrity and prevent excessive political influence. Similarly, the Turkish Constitutional Court, which was originally focused on preserving state ideology, has transformed into a defender of human rights while still adhering to the principle of separation of powers (Hazama, 2023, p. 570).

Although numerous studies have addressed the Constitutional Court's evolving role, there remains a significant academic gap concerning the legitimacy criteria and control mechanisms necessary to limit the Court's function as a positive legislator. Therefore, this study focuses on two aspects that have not been comprehensively explored: how judicial activism by the Constitutional Court influences the balance of power among state institutions, and why clear boundaries are essential to ensure that the Court's positive legislative actions do not undermine Indonesia's constitutional framework. By developing criteria and control mechanisms to ensure the legitimacy of the Court's actions within its constitutional mandate, this study contributes to the formulation of clearer juridical boundaries. These boundaries will allow the Constitutional Court to effectively perform its constitutional function without violating the separation of powers or diminishing the role of judicial review as a tool of constitutional oversight.

## 2. Materials and Methods

TThis research uses normative or doctrinal legal research methods, namely research that focuses on the study of legal norms, statutory regulations, and constitutional principles relevant to the scope of authority of the Constitutional Court (Irwansyah, 2021, p. 42). This research is prescriptive; that is, it aims to analyze and formulate the limits of the authority of the Constitutional Court based on legal objectives, values of justice, the validity of legal norms, and applicable constitutional principles. (Peter Mahmud Marzuki, 2010, p. 22). This research uses three approaches, namely the statutory approach, conceptual approach, and case approach. The statute approach is carried out through a literature study, which includes a review of statutory regulations and other legal documents relevant to the research problem. (Mamudji, 2006, p. 194). A conceptual approach provides a point of view in analyzing legal problem-solving from the legal concepts that underlie it or from the values contained in the formulation of norms for a regulation linked to a particular legal concept. This approach helps explore the philosophical and theoretical foundations of the practice of judicial activism, positive legislators, and the limits of the authority of judicial institutions according to principles of separation of powers and checks and balances. The case approach is an approach to studying cases related to legal issues raised in the research, based on a legal argumentation case approach built on the perspective of concrete cases that occur in the field, such as court decisions that have permanent legal force (Irwansyah, 2021, p. 24). In this research, three constitutional court decisions are landmarks in case studies. The legal materials used consist of primary legal materials, which are binding and consist of basic norms or basic rules, namely the Preamble and Body of the 1945 Constitution, basic regulations, statutory regulations, and uncodified legal materials, which are still in effect. (Mamudji, 2006, p.190), as well as court decisions relating to legal issues in research, namely the Constitution of the Republic of Indonesia Year 1945, Law Number 24 of 2003 concerning the Constitutional Court and its Amendments, as well as Constitutional Court Decisions Number 102/PUU-VII/2009, 90/PUU-XXI/2023, and 62/PUU-XXII/2024. Then, secondary legal materials are legal materials that explain primary legal materials, such as bills, research results, work from legal circles, and so on. (Peter Mahmud Marzuki, 2019, p. 187). Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials, including legal dictionaries and Indonesian dictionaries. (Mamudji, 2006, p. 192).

## 3. Result

### *3.1. The shift in the role of the Constitutional Court from being a negative legislator to being a positive legislator*

The Constitutional Court has a firm legal basis in the 1945 Constitution, especially in Article 24C paragraph (1) of the Constitutional Court Law, which states that the Constitutional Court has the authority to review laws against the Constitution. This shows the position of the Constitutional Court as a negative legislator. The idea of judicial review emerged during the discussion of the Judicial Power Bill, which later became Law Number 14 of 1970, concerning judicial power in the reform era when discussing amendments to UUD NRI 1945, which changed the Indonesian constitutional system from MPR supremacy to constitutional supremacy. This fundamental change requires institutional and

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constitutional mechanisms and new state institutions to overcome potential disputes between state institutions, which are now equal in the system of checks and balances (Darmadi, 2020, p. 1088).

Based on Article 24C paragraph (1) of the 1945 Constitution, the Constitutional Court's decision is final, so it has permanent legal force from when it is read at the Constitutional Court session and must be implemented (Muchamad Ali Safa'at, 2014). There are no longer any legal remedies, and all parties must obey them because of the principles that apply to the Constitutional Court's decision, which aims to protect human rights (Ningrum et al., 2022, p. 58). The Constitutional Court can regulate or control lawmakers' power, ensuring their actions and laws align with the Constitution. The Constitutional Court can address potential abuse of power by lawmakers because laws can become instruments of tyranny and a source of severe abuse (Asmal, 1991, p. 315-340).

The classic role of the Constitutional Court as a negative legislator directly impacts Constitutional Court decisions, which can cancel or issue several articles or legal provisions in law. Then, the legislative institution has the authority to reform these regulations or pass new regulations to follow the Constitutional Court's decision ( Brewer-Carías, 2017, p. 73). Based on this, it can be understood that the authority of the Constitutional Court to review laws against the Constitution is a form of constitutional supremacy that has been institutionalized in the state administration system through its authority to declare a norm unconstitutional (cancellation of a norm in law). The Constitutional Court is referred to as a negative legislator, and on the contrary, the legislative institution or parliament is referred to as a positive legislator because it has the authority to form laws.

The basis for the role of the Constitutional Court as a negative legislator was regulated initially in Article 57, paragraph (2a), letter c of Law Number 8 of 2011 Amendment to Law Number 24 of 2003 concerning the Constitutional Court, which states that the decision of the Constitutional Court may not contain the formulation of norms that replace the norms of laws that have been declared unconstitutional. However, based on Decision Number 48/PUU-IX/2011, the Constitutional Court stated that Article 57 paragraph (2a) of the Constitutional Court Law is contrary to the 1945 Constitution of the Republic of Indonesia. The shift from the traditional role of a negative legislator to a positive legislator has implications for the authority of the Constitutional Court, which not only has the authority to declare a law unconstitutional and annul it if it conflicts with the Constitution but also has the authority as a positive legislator. Formulate a norm (Constitutional Court Decision 48/PUU-IX/2011, 2011) .

The considerations of the Constitutional Court include that the provisions of Article 57 paragraph (2a) of the Constitutional Court Law are contrary to the aim of establishing the Constitutional Court, namely, to uphold law and justice to uphold the constitutionality of legal norms by the Constitution. The provisions of this article are considered to result in the obstruction of the Constitutional Court from reviewing the constitutionality of norms, filling the legal vacuum resulting from the Constitutional Court's decision declaring a norm unconstitutional. On the other hand, forming a law certainly takes a long time, so the legal vacuum cannot be implemented immediately. Another consideration is that Constitutional Court judges must explore, follow, and understand the values and sense of justice in society. (Mahanani, 2020, p. 421).

A shift from traditional roles as negative legislator to positive legislator has implications for the authority of the Constitutional Court, which not only has the authority to declare a law unconstitutional and annul it if it conflicts with the Constitution but also has the authority as a positive legislator by formulating a norm (AL-Dulaimi, 2018, p. 143). The rapid development of judicial activism is an idea that was initially born from the practice of countries with common law, which then increasingly spread to countries with civil law traditions. Regarding this development, pros and cons cannot be avoided in various groups, such as academics, practitioners, elites, and even judges. One factor is the legal positivism paradigm, which is widely adopted by academics (Martitah, 2012, p. 317-118).

As a result of new principles that have developed, for example, the Constitutional Court has the authority to interpret the law so that it is by the Constitution, and there is no legal vacuum without having to declare that the law is unconstitutional. This happens when the Constitutional Court interprets the Constitution in several cases to fill legal gaps permanently or temporarily, which could lead to the law's cancellation. Another role that has developed progressively, which is far from the role of the Constitutional Court to cancel a law, is the authority of the Constitutional Court in terms of judicial review, not concerning existing laws, but concerning the absence of laws or omissions or exceptions made by legislators when enacting laws (Allan R. Brewer-Carías, 2010, p. 13-14).

### *3.2. The change in the role of the Constitutional Court as a positive legislator has an impact on the legal system and the separation of powers*

Problems related to the shift of the Constitutional Court from negative to positive legislators also bring dynamics between state institutions, especially the legislature as the authority holder, and positive legislators, the real thing. At the same time, the relationship between the judiciary through the Constitutional Court and the executive and legislative branches is one of constitutional control (judicial review). Through judicial review, interactions between legislative and government institutions influence decision-making and intervene in policy development and implementation (Canello, 2014, p. 1-24). In line with the perspective of constitutionalism in the view of constitutional supremacy, laws must be based on the Constitution. They must not conflict with the Constitution through the mechanism of reviewing laws against the Constitution as one of the limitations of power. This limitation of power regulates that there is a mechanism for legislative control so that the tendency for abuse of power can be prevented and can contribute to preventing the possibility of making laws that conflict with the Constitution (Radian Salman, 2018, p. 146).

This shift raises fundamental problems regarding the right to the role of the judiciary in the context of the framework of institutional relations in the constitutional law system, by the principle of separation of powers, especially the authority of the Constitutional Court in administering proportional judicial review in a democracy. Strengthening judicial institutions has the consequence of developing the role of judicial power to act further for justice that goes beyond power and authority, which are political in the executive and legislative power domain. (Radian Salman, 2018, p. 146).

The main aim of the Constitutional Court is to limit the implementation of legislative or administrative decision-making, which shows a relationship between supervision and control. The relationship between judges and legislators is described as complex in the context of advancing the supremacy of law, indicating a multifaceted interaction involving aspects of dispute resolution, rights protection, and setting legal precedents. Apart from that, the role and function of the Constitutional Court in the separation of powers system include its involvement in the effective implementation of the system of checks and balances, protection of the Constitution, and the exercise of legal control over politics (Hutchinson, 2017, p. 137). So, the Constitutional Court is an institution that gives meaning to the rule of law towards legislative actions that exceed the limits, which are a response from the Constitutional Court; the relationship between the Constitutional Court and checks and balances legislative power.

Implementing the progressive role of the Constitutional Court should primarily focus on protecting the fundamental rights of citizens, such as equality and non-discrimination.

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In this context, the intervention of the Constitutional Court in legislative functions is considered valid and by constitutional values because it aims to protect the rights and guarantees of citizens. However, this progressive role sometimes goes beyond protecting fundamental rights and extends into the political realm. In Eastern European countries, for example, the constitutional court plays an important role in establishing new democratic regimes and the rule of law. Although intended to protect fundamental rights and strengthen democratic principles, these measures risk encroaching on legislative power and ignoring the principle of separation of powers. This risk is not just a theoretical concern but has become a tragic reality, especially in authoritarian countries. Some constitutional courts even act with absolute impunity by supporting and legitimizing the government's unconstitutional actions. The Constitutional Court usurped legislative power without adequate legal consideration, with decisions based on vague «state interests.» In extreme cases, the Constitutional Court has even become a tool to support authoritarian governments and limit citizens' constitutional freedoms (Brewer-Carías, 2011, p. 5-12).

### *3.3. Case study of constitutional court decision: When can positive legislators be justified?*

Research reveals that the judicial review of the Constitutional Court during the period (2012-2022) had a significant tendency towards the positive role of legislators. Of the 198 decisions granted by the majority (54%), 107 were classified as positive legislative decisions in that period (Efendi et al., 2023, p. 628). So, these figures indicate a gap between the judicial practice of the Constitutional Court and the juridical basis that regulates it. No formal legal basis explicitly gives the Constitutional Court the authority to act as a positive legislator.

On the one hand, the positive legislative role of the Constitutional Court is needed to maintain legal certainty and substantive justice. However, on the other hand, without a juridical basis, the role of the Constitutional Court has the potential to give rise to a tendency towards an authoritarian judiciary and ultimately can damage the principle of checks and balances, as well as a sense of justice that is ignored (Martitah, 2016, p. 216). Thus, it is important to analyze further when the Constitutional Court can be justified in acting as a positive legislator and when its limits must be enforced to maintain a balance of authority between state institutions. In this case, an analysis of three Constitutional Court decisions, which are landmark decisions that have different characteristics, will provide a clearer picture of the criteria that must be met so that the Constitutional Court can act in this capacity without exceeding its authority.

Decision Number 102/PUU-VII/2009 is a landmark decision that is a positive legislator and shows the flexibility of the Constitutional Court's interpretation in its decisions. In its decision, the Constitutional Court granted the request for review of Article 28 and Article 111 of Law Number 42 of 2008 concerning the General Election of the President and Vice President in part. In the Constitutional Court decision Number 102/PUU-VII/2009, the Constitutional Court provided a constitutional interpretation that allows citizens who are not registered on the Permanent Voter List (DPT) to exercise their right to vote by using a valid Resident Identity Card (KTP) or Passport. This decision stipulates that voters who use KTPs must fulfill several requirements, such as completing documents with a Family Card, can only vote at the TPS according to the KTP address, and must register first with the local Voting Organizing Group (KPPS). In addition, the right to vote can be used within one hour before the end of voting at the polling station. (Aritonang, 2013, p. 373). In its legal considerations, the Constitutional Court views the DPT as an administrative procedure that must not hinder citizens' constitutional right to vote. Procedural aspects should not eliminate a citizen's substantive rights in the general election process. The Constitutional Court emphasized the need to find a solution to guarantee citizens' constitutional rights so that administrative incompatibilities do not eliminate their opportunity to participate in general elections. The DPT must be viewed as a flexible technical instrument, not as a rigid barrier to the implementation of citizens' democratic rights (FH-Universitas Brawijaya, 2016, p. 146). This decision shows that the Constitutional Court can interpret its role more flexibly to protect citizens' constitutional rights while also showing the potential for evolution from the strictly negative role of the legislator to a more constructive one. This shift does not occur without limitations. The Constitutional Court is still careful in only taking a positive role as a legislator in certain urgent cases, where this decision was pronounced in the Plenary Courtroom of the Constitutional Court precisely two (2) days before the voting process for the 2009 Presidential and Vice-Presidential Election, namely on Monday, 6 July 2009. This is directly related to citizens' voting rights, where, in the run-up to the 2009 presidential election, many citizens who should have had the right to vote were not registered in the Permanent Voter List (DPT), while some who should not have been listed were listed. This chaos did not only occur in the presidential and legislative elections, hampering citizen participation in voting. (Rachman, 2016, p. 248-146).

The practice of judicial activism in this decision can be categorized as positive legislator because the Constitutional Court not only annulled unconstitutional norms but also added regulations regarding the use of voting rights with ID cards and passports as alternatives to facilitate voter access. In this context, the role of the Constitutional Court as a positive legislator is crucial to maintaining legal certainty and substantial justice. Therefore, the decision of the Constitutional Court, which formulates provisions regarding the use of KTPs and passports in elections, is considered the right step to overcome the legal vacuum and ensure the protection of fundamental constitutional rights, namely citizens' right to vote. This approach is in line with the view of (Maruste, 2007, p. 8), which emphasizes that the Constitutional Court has a central role in democracy but must remain within a clear constitutional framework. The role of the Constitutional Court as a positive legislator is to overcome legislative negligence, namely when laws have been passed but are not entirely by what should be regulated by the Constitution (AL-Dulaimi, 2018, p. 4). In this case, citizens' rights will be neglected if the Constitutional Court does not take urgent active steps to guarantee the right to vote in conditions that are not ideal.

The decision regarding using KTPs is considered an example of a technical decision that has exceeded the limits of the Constitutional Court's authority in the context of the separation of powers. Nevertheless, the judicial activism in this decision was well received by various parties, individuals, academics, legal activists, the government, Parliament, political parties, KPU, the National Human Rights Commission, and other institutions (Faiz, 2009, p. 5). The provisions of this article are considered to result in the Constitutional Court being prevented from reviewing the constitutionality of norms, filling the legal vacuum resulting from the Constitutional Court's decision, which declared a norm unconstitutional. On the other hand, forming a law certainly takes a long time, so the legal vacuum cannot be implemented immediately. Another consideration is that Constitutional Court judges should explore, follow, and understand the values and sense of justice in society.

In case 90/PUU-XXI/2023, the Constitutional Court partially granted the request regarding the age limit provisions for presidential and vice presidential candidates by stating Article 169 letter q of Law Number 7 of 2007 concerning General Elections by adding the phrase «at least 40 (forty) years of age or has/is currently holding a position elected through general elections, including regional head elections.» Determining the ages of presidential and vice-presidential candidates is the domain of lawmakers, in this case, the DPR and the President. Constitutional Court Decision Legal strategy, to a certain extent, empowers judges to make political decisions that should be decided in the legislative realm. However, the Constitutional Court showed inconsistency in

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its decision because it rejected several other requests for judicial review with similar arguments. These applications include case number 29/PUU-XXI/2023, case number 51/PUU-XXI/2023, and case number 55/PUU-XXI/2023; the Constitutional Court rejected all of these applications because limiting the age of presidential and vice presidential candidates is an open legal policy area (open legal policy), which is the authority of lawmakers (Subandri, 2024, p. 138). In its legal considerations, the Constitutional Court emphasized that the right to be elected is a political right protected by the Constitution and must not be limited by discriminatory or unfair conditions. The Constitutional Court considers that the minimum age limit of 40 years for candidates for president and vice president can reduce the participation of the younger generation in elections, which will result in limited leadership options. Therefore, the Constitutional Court considers this policy to be reviewed to maintain fairness and openness in the democratic process. The Constitutional Court considered that although the 1945 Constitution does not set an age limit, the age limit should be adjusted to the position's needs and not be discriminatory. Apart from that, according to the Constitutional Court, age policies can be changed if they conflict with the principles of justice and the Constitution, as reflected in several previous decisions, such as the Constitutional Court decision Number 112/PUU-XX/2022. The Constitutional Court also considered that experience as a regional head could be an alternative to the age limit because it shows the leadership abilities needed to run for office (Constitutional Court Decision Nomor 90/PUU-XXI/2023, 2023). This decision shows the tendency of the Constitutional Court to enter the area of legal politics, which is constitutionally the domain of the President and DPR as legislators, primarily because Article 6, Paragraph 2 of the 1945 Constitution states that the conditions for becoming President and Vice President are regulated in law so that they can be categorized as open legal policy. The difference in stance towards the petition occurred when the Constitutional Court accommodated the petition by adding new norms. At the same time, in other cases with similar arguments, the Constitutional Court rejected it for reasons of open legal policy, resulting in allegations of inconsistency and selectivity in judicial considerations. Furthermore, the argument for the protection of political rights to be elected by the Constitutional Court as the basis for the argument that the age of 40 is not determined solely based on the principles of substantive justice, equating age restrictions with juridical discrimination, is a dangerous simplification. Then, the analogy that «experience as a regional head» can be an alternative to the age requirement can shift the objective criterion (age) towards very situational and political criteria because not all regional head positions guarantee the quality of national leadership. Its replacement through the court's interpretation opens ambiguous space regarding the leadership quality parameters the political selection system should develop.

Several studies of the Constitutional Court decision Number 90/PUU-XXI/2023 show that this decision is closely related to politics. Firstly, the object of the submitted application is related to the requirements for nominating presidential and vice-presidential candidates. Second, the momentum of filing this petition coincided with the registration opening for presidential and vice-presidential candidates (Furqon et al., 2024, p. 416). According to John Rawls, this decision violates the principles of justice primarily related to equality of opportunity and justice. This decision also shows indications of a conflict of interest that could damage the independence and integrity of the Constitutional Court. As a result, this decision can potentially weaken the checks and balances system and reduce the institution's credibility in the public's eyes. Besides that, changing rules in the middle of the political process is considered unfair for all parties involved (Azhar, F, 2024, p. 245-246).

Application Number 90/PUU-XXI/2023 also has formal legal defects, especially concerning the applicant's legal standing. The applicant cannot show actual constitutional losses; they are only based on potential losses. The petitioner failed to explain the relationship between the losses experienced and the 40-year age limit stated in Law Number 7 of 2017 concerning elections. Supposedly, because of this formal defect, the application should be rejected. However, regarding the applicant's legal standing, the Constitutional Court still considers that the applicant has legal standing because the application object violates his constitutional rights, namely the right to elect a younger presidential candidate. The applicant also mentioned several inspiring young regional leaders, including Gibran Rakabuming Raka, who is considered a candidate who meets the criteria for young leadership (Rizky et al., 2024, p. 151).

Regarding the review process in Case Number 90/PUU-XXI/2023, it also shows inconsistencies with the procedural law of the Constitutional Court, which can be seen from the registration, which was then revoked and withdrawn, and the application for judicial review should have been submitted directly by the party who felt their constitutional rights had been violated. Then, regarding the conflict, irregularities arose when the Chief Judge of the Constitutional Court, Anwar Usman, was present at the Judges' Deliberation Meeting for Application 90/PUU-XXI/2023 but was not involved in the trial of other similar cases. This creates the impression of a conflict of interest in the Constitutional Court, worsening the credibility of the legal process (Rizky et al., 2024). This is reinforced by the decision of the Honorary Council of the Constitutional Court (MKMK) in Decision Number 02/MKMK/L/2023 (Apriansyah et.al, 2024). The existence of intervention outside the judiciary indicates that this country's checks and balances system is still weak. Therefore, it is necessary to review the authority of the Constitutional Court to avoid abuse of power (Raga Nata & Ramadhani Baskoro, 2023, p. 105). Decision Number 90/PUU-XXI/2023 shows how the Constitutional Court seems to have exceeded its normative role as a negative legislator because it is involved in excessive judicial activism. This can be seen in the Court taking part in making laws or creating new norms in the process of reviewing laws. The Constitutional Court should refocus on its primary role as the veto force, the guardian of the Constitution, the public reasoner, the institutional interlocutor, and the deliberator. By adhering to this role, the Constitutional Court can avoid abuse of authority, or «detournement de pouvoir,» and ensure that checks and balances operate effectively between the three branches of state power (Rohmah, 2024, p. 100). The Constitutional Court Decision Number 90/PUU-XXI/2023 has also shown symptoms of excessive judicial activism. This is marked by the involvement of the court in the formation of new norms, which should be the domain of lawmakers (DPR and president). Although the Constitutional Court does not rule out the possibility that open legal policy can test its constitutionality, the Constitutional Court, in its considerations, did not show that the principles of morality, rationality, and justice were violated regarding the implementation of the provisions regarding the minimum age limit of 40 years for presidential and vice-presidential candidates, and especially the Constitutional Court showed inconsistencies in making decisions on similar cases. Apart from that, there are strong indications of conflicts of interest and violations of procedural and substantive justice principles.

In Constitutional Court Decision Number 62/PUU-XXII/2024, the Court indicated the form of judicial activism through an in-depth approach to the norms of Article 222 of Election Law, which regulates presidential threshold. The Constitutional Court, in its decision, stated that Article 222 of the Election Law is contrary to the 1945 Constitution and does not have binding legal force. The Constitutional Court stated that even though these norms fall within the area of open legal policy, this does not rule out the possibility of being tested constitutionally. The Constitutional Court emphasized that a norm in open legal policy must still be subject to the principles of morality, rationality, and tolerable justice. When these provisions give rise to real injustice and cannot be tolerated, the Constitutional Court can cancel them (Constitutional Court Decision Number 62/PUU-XXII/2024, 2024). This is reflected in the Court's consideration that the threshold for presidential and vice-presidential nominations has created inequality in the democratic process, narrowing the space for new and minor political parties to

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nominate candidates and ultimately limiting voters' rights to obtain diverse choices. The Constitutional Court considered that this provision violated the moral substance of democracy and normative morality in the form of legal certainty. The Constitutional Court considers that the 20% presidential threshold is no longer rational in the context of simultaneous elections because it is not relevant to use as a basis for legitimizing candidacy. The Constitutional Court recorded many examples where potential candidates failed to run simply because they did not have formal support from major parties, even though they had been internally selected democratically. Furthermore, the Constitutional Court stated that applying Article 222 of the Election Law had created candidacy exclusivity, which alienated voters from the democratic process, closed the space for equal participation, and created structural injustice (Constitutional Court Decision Number 62/PUU-XXII/2024, 2024).

Previous studies have also shown that implementing the presidential threshold in the 2024 presidential and vice-presidential general elections has negatively impacted the rights of political parties in Indonesia. These impacts include the limited constitutional rights of political parties as election participants in nominating candidates for president and vice president, the obstruction of the right to nominate themselves as candidates for president and vice president, and the emergence of injustice between political parties. This injustice is visible because fifteen political parties still cannot nominate candidates for president and vice president in the 2024 general election (Dani Setidayanti, 2025, p. 8). The implementation of the presidential threshold is also seen as a constitutional instrument that weakens democratic consolidation and encourages the widespread practice of political oligarchy in a multiparty presidential system, which ultimately hinders democratic consolidation (Sukmawan & Pratama, 2023, p. 556). In addition, these provisions limit political representation by marginalizing small parties and independent candidates and reducing the diversity of voter choices. Even though it aims to strengthen political stability through coalitions, the PT risks undermining inclusive democracy. Changes in the number of presidential candidates in 2004-2019 saw fewer candidates, so PT significantly influenced political competition (Achmad Hariri, 2025, p. 1). Implementing the presidential threshold is also not in line with the heterogeneous characteristics of Indonesian society. In a pluralistic society like Indonesia, there should be many presidential candidates with diverse backgrounds so that each community group feels represented by the presence of the presidential and vice presidential candidates (Prabowo, 2022, p. 74).The presidential threshold is considered unconstitutional because it contradicts Article 6A paragraph (2) of the 1945 Constitution. It clearly states that presidential and vice-presidential candidate pairs are proposed by political parties or combinations of political parties without including threshold requirements (Rannie et al., 2024, p. 133). The high threshold makes it difficult for small parties or new parties, making it almost impossible to nominate candidates. Several constitutional law experts view the implementation of the presidential threshold as an aberration in the presidential system. However, the Constitutional Court rejected the request for judicial review of the presidential threshold 36 times, only then in Decision Number 62/PUU-XXII/2024. The Constitutional Court agreed and declared that the threshold provisions for presidential and vice-presidential nominations were unconstitutional.

Interestingly, even though this decision has the character of judicial activism because it interferes with the realm of lawmakers, this approach aligns with the principle of constitutionality because the Constitutional Court protects human rights and the principles of substantive justice. This decision remains within the limits of the court's authority as a negative legislator because it does not add new norms to the law but only cancels norms contrary to the Constitution. Decision Number 62/PUU-XXII/2024 has a strong argumentative basis and departs from criticism of the systemic inequality evident in democratic practice.

Decision Number 102/PUU-VII/2009, Decision of the Constitutional Court Number 62/PUU-XXII/2024, and Decision Number 90/PUU-XXI/2023 show variations in the approach of the Constitutional Court. In Decision 102/PUU-VII/2009, the Constitutional Court took the role of a positive legislator because it not only canceled norms but also established new norms regarding the use of KTPs and passports in elections as a solution to the legal vacuum leading up to the 2009 Presidential Election. The court's intervention was corrective to legislative negligence and relied on substantive justice principles and constitutional rights protection. Meanwhile, in Decision 90/PUU-XXI/2023, the Constitutional Court also acted as a positive legislator, but with controversial content, because it added a new norm to Article 169 letter q of the Election Law without legal considerations, indicating that the principles of morality, rationality, and justice were violated. This decision raises allegations of inconsistency and selectivity because there are three decisions with requests to review the same article. The Constitutional Court ignores the principle of open legal policy, which was previously used to reject similar requests. It can violate the principle of checks and balances and ethical aspects due to potential conflicts of interest within the Constitutional Court (Subandri, 2024, p. 139).

Unlike these two decisions, Constitutional Court Decision Number 62/PUU-XXII/2024 still shows judicial activism within a legal and constitutional framework. This decision does not create new norms but cancels norms considered substantially unfair, namely Article 222 of the Election Law concerning the presidential threshold. Decision Number 62/PUU-XXII/2024 is the result of a long process, namely 36 trials, with consistent, in-depth constitutional arguments, and accompanied by evidence of a real impact on democratic participation. Decision Number 62/PUU-XXII/2024 contains elements of judicial activism; its position remains within the negative limits of the legislator.

### *3.4. Limits and parameters of the constitutional court to act as a positive legislator in the future*

The Indonesian Constitutional Court has demonstrated various practices in carrying out its role. Constitutional Court Decision Number 102/PUU-VII/2009 is an ideal example of using the role of the Constitutional Court in a corrective and temporary manner in guaranteeing citizens' voting rights. On the other hand, Decision Number 90/PUU-XXI/2023 invited controversy because the Constitutional Court included new norms in legal provisions that were open legal policy, which, in legal consideration, was not strong enough to prove that there had been a violation of morality, rationality, or justice. There were also conflicts of interest and inconsistencies in the judge's stance, which changed in an instant. Meanwhile, Decision 62/PUU-XXII/2024 displays a constitutional form of judicial activism because it only cancels norms detrimental to the principles of justice and political representation without adding new norms.

Mahfud MD has formulated ten signs so that in a judicial review, the Constitutional Court does not exceed the limits or enter the authority of other institutions. Several signs that are closely related to when the Constitutional Court can act as a judicial activist include the following: the Constitutional Court may not make regulatory decisions (can only cancel, cannot rearrange); the Constitutional Court may not interfere with the authority/matters that the Constitution has delegated to legislative institutions; Constitutional Court judges may not decide cases related to their interests; and Constitutional Court judges must not proactively offer themselves as mediators in political disputes (Mahfud MD, 2009, p. 453-454).

Furthermore, in Martitah's research, he formulated three main requirements for the Court to act as a positive legislator (Martitah, 2016, p. 216). The principles of justice and tangible benefits for society must be fulfilled; the existence of urgent conditions to avoid violations of constitutional rights and a legal vacuum (rechtvacuum) has the potential to give rise to legal uncertainty and instability.

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Concerns regarding the Constitutional Court's judicial activism reflect institutional dominance, which has the potential to give rise to closeness to political interests. Especially after decision number 90/PUU-XXI/2023 indicated excessive judicial activism. However, according to Martitah, the practice of judicial activism in the positive practice of legislators in Constitutional Court decisions is a legitimate form of judge's discretion. It is not an intervention in legislative authority if it is based on constitutional considerations and justice. However, the absence of clear boundaries regarding the scope of this discretion can cause the Constitutional Court to play an overly dominant role and tend to overpower in reviewing laws related to legislative policies (Efendi et al., 2023, p. 629).

Within the constitutional system's framework, the Constitutional Court's role must be placed in the context of an appropriate separation of powers, namely being able to balance and evaluate other institutions without harming the principles of checks and balances (Maes, 2020). Rupert Scholz's view also emphasizes that the Constitutional Court must always comply with the political limits of the Constitution and strictly limit itself from substantive legislative interference (Faiz, 2009, p. 5).

Thus, the role of the Constitutional Court as a positive legislator does not have to be avoided; it needs to be limited by strict criteria and carried out carefully so that it does not turn into a form of judicial deviation or judicial pathology. Therefore, in the following section, several substantive criteria and constitutional limits will be formulated that must be met when the Constitutional Court wishes to act outside its role as a negative legislator:

1. The Court may only take an active role when it is proven to be the case of a legal vacuum closely related to the implementation of citizens' constitutional rights (Martitah, 2016, p. 216). For example, in Decision Number 102/PUU-VII/2009, the intervention of the Constitutional Court is justified when there is an absolute legal vacuum, and the Court can add temporary norms to ensure the continuity of constitutional rights.

2. Role-positive legislator The Constitutional Court must function as a «legal bridge», not as a substitute for the legislature. This means new norms or rules created through decisions are only transitional and not long-term binding. This also encourages constitutional dialogue between the judiciary and the legislature. (Simović & Simović, 2020, p. 64-77).

3. One of the characteristics of a violation of the principle of separation of powers is when the Constitutional Court formulates new norms as if it were a lawmaker (pure legislator). As in Decision 90/PUU-XXI/2023, the Constitutional Court inserted new norms regarding the age of presidential candidates without submitting the reformulation to the DPR. This is contrary to the principle of limitation of authority judicial review. The Constitutional Court's intervention should only be temporary, giving lawmakers room to follow up.

4. The Constitutional Court must show that the norms it annulled or drafted (in a limited way) conflict with the principles of substantive justice, are irrational, or violate democratic morality. This principle is strongly reflected in Decision 62/PUU-XXII/2024, which cancels the presidential threshold provisions because they close the space for fair political competition. Meanwhile, Decision 90/PUU-XXI/2023 cannot prove that the 40-year age requirement violates the principles of constitutional justice and instead gives birth to a problematic new standard.

5. The integrity of the Court is the foundation of the legitimacy of its decisions. Decisions made in conditions full of conflicts of interest or inconsistent with previous decisions without strong new arguments will reduce the credibility of the Constitutional Court and weaken public trust in the legal system. Decision 90/PUU-XXI/2023 shows that positive legislators can be dangerous if used in a context full of conflicts of interest due to the non-neutrality of the legal review process.

## 4. Conclusions

This research shows that the role of the Court has shifted from negative legislator to positive legislator, which is a real phenomenon in Indonesian constitutional practice; in a number of its decisions, the Constitutional Court has shown a tendency to form new norms in response to legal vacuums or the urgent need to protect citizens' constitutional rights. However, the role of a positive legislator cannot be carried out without limits. A comparison of three important decisions, Decision Numbers 102/PUU-VII/2009, 90/PUU-XXI/2023, and 62/PUU-XXII/2024, shows that the constructive and constitutional role of the Constitutional Court can only be justified if it is carried out in a framework that is transparent, rational, and free from conflicts of interest. Decisions 102/PUU-VII/2009 and 62/PUU-XXII/2024 show legitimate and urgent intervention in the context of protecting constitutional rights, while Decision 90/PUU-XXI/2023 shows signs of judicial overreach, which risks injuring the system of checks and balances and reducing public confidence in the independence of the judiciary.

Referring to the theory of judicial activism and positive legislators, according to Brewer-Carías and the criteria developed by Martitah, the role of the Constitutional Court in formulating norms can only be justified in certain situations. In this research, several substantive criteria have been formulated that can be used as future guidance so that the Constitutional Court does not exceed its constitutional limits but rather carries out its functions proportionally to maintain constitutional supremacy, guarantee substantive justice, and maintain the balance of power between state institutions.

Thus, the provisions regarding the role of the Constitutional Court as a positive legislator should be regulated explicitly in the Constitutional Court Law. This arrangement is important so that this authority has a firm legal basis and is accompanied by clear boundaries and parameters. Thus, the Court's constitutional actions remain within the framework of the Constitution and do not interfere with the principle of checks and balances between state institutions.

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# LEGAL PRINCIPLES OF DIGITALIZATION OF PUBLIC ADMINISTRATION IN UKRAINE: CHALLENGES AND PERSPECTIVES

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**Abstract**
The Ukrainian government's adoption of digital technologies marks a critical transition aimed at enhancing operational efficiency, strengthening accountability, and encouraging more active citizen engagement in governance. This study looks at the current legal framework in Ukraine that underpins this digital transformation and identifies key challenges that slow its progress. It is imperative that the following factors are given due consideration: the existence of gaps within the regulatory environment, the presence of cybersecurity vulnerabilities, and the limited institutional capacity to fully implement digital innovations. The study employed a variety of research methods, including the analysis of legislation, policy documents, and consultations with experts in the field. It is evident that Ukraine has already made a certain amount of progress in the development of legal instruments for e-government in the country. At the same time, it reveals persistent obstacles in the effective implementation and harmonization of these legal norms within the broader administrative context. In order to further implement digitalization, the Ukrainian government must adopt a multidimensional strategy. Significant legislative changes are required to ensure that national legislation is in line with the evolving requirements of digital governance. These reforms must address existing legislative gaps, reinforce data protection and privacy safeguards, and establish clear regulatory pathways for the integration of emerging technologies into the public domain. It is equally important to emphasize the enhancement of institutional capacity at all levels of public administration. International collaboration plays a pivotal role in advancing Ukraine's digital transformation in public governance. Such cooperation facilitates the exchange of knowledge and best practices. Further research should be directed towards the extensive comparative analysis of digital governance systems across various nations, with a particular emphasis on the legal intricacies inherent in the integration of artificial intelligence, block chain technologies and big data within public administration. It is imperative to give due consideration to the aforementioned challenges, as this will facilitate the establishment of robust legal strategies and the creation of adaptive regulatory mechanisms that can effectively respond to the evolving dynamics of technological development.

**Keywords:** digital transformation; public administration; legal framework; e-governance.

## 1. Introduction

Digital transformation has emerged drivers of contemporary societal evolution, delineating a novel paradigm of interaction among the pivotal actors within the public sphere: citizens, businesses, and the state. In the 21st century, the implementation of digital technologies has had a profound impact on the functional nature of public administration, leading to its transition to a new paradigm that is characterized by efficiency, openness, and technological adaptability. Information and communication technologies are emerging as catalysts for transformational processes. The digitalization of public administration is regarded as a pivotal mechanism for modernizing the state apparatus. The primary objectives of this process are to enhance transparency, accountability, institutional capacity, and the adaptability of government structures to the evolving socio-political environment. It opens up new opportunities for the realization of democratic principles in management practice, ensuring citizens' access to information, expanding feedback channels, and fostering the preconditions for inclusive participation in managerial decision-making processes (Hedikov, 2024).

Digital technologies are increasingly being integrated into public policy, changing the very logic of its implementation. Their actions contribute to the establishment of an intelligent governance framework. The model is founded upon the strategic utilization of data, supplemented by advanced analytical capabilities for predictive modeling. Moreover, it harnesses automation to streamline administrative tasks and adopts innovative technologies for the efficient delivery of public services. This process necessitates not only technical modernization but also profound institutional changes, including a revision of approaches to legal regulation, the development of digital infrastructure, and the advancement of digital competencies in the public sector. It is imperative to acknowledge that digitalization should not be regarded as an independent objective. The primary objective of digitalization should be aligned with the fundamental principles of democratic governance, including the protection of human rights, the safeguarding of personal data, the assurance of information security, and the facilitation of access to information. In order to achieve a successful digital transformation within the sphere of public administration, it is imperative to integrate technological progress with a robust legal framework, institutional capacity, and active citizen participation.

The European Union is implementing a coherent and focused digital development strategy. In the EU Member States, governments are implementing a comprehensive Digital Europe initiative, also known as the Digital Europe Programmer. This ambitious plan provides funding for digital innovation in several key areas, including artificial intelligence, cybersecurity, the development of digital skills, and the modernization of public institutions through digitalization (EUR-Lex, 2025). The EU is actively pursuing digital sovereignty while strengthening its competitive edge, set against a backdrop of global volatility and increasing cyber risks. This focus has gained further significance since the COVID-19 crisis and the Russian Federation's full-scale invasion of Ukraine. In alignment with the European Commission's Communication, «Shaping Europe's Digital Future,» the digital transformation is intended to be guided by democratic values, ensuring transparency and promoting inclusivity. (EU4Digital, 2025). In its quest to become a digitally integrated nation within Europe, Ukraine is actively pursuing the digital transformation of its government operations. However, this effort faces a number of challenges. These include inconsistencies within existing legal documents, the fragmented nature of its regulatory system, and the need to adopt European digital governance models and standards. The aim of this research is to examine the basic legal framework supporting the digitization of the Ukrainian public administration, identify the main legal barriers to this process, and forecast future progress.

This essay aims to explore the current framework supporting Ukraine's shift toward digital public administration. It will analyze the significant challenges within

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the existing legal and regulatory mechanisms. Additionally, it seeks to outline potential future directions, drawing on best practices observed across Europe. The focus will be on aligning Ukrainian laws with those of the European Union and examining how digital tools can contribute to the strengthening of democratic principles in governance. In the context of the digital transformation of public administration, it is of particular importance to study legislation that ensures the efficiency, security and transparency of digital processes. Contemporary scientific discourse highlights the critical importance of developing a flexible and well-integrated legal and regulatory framework. Such a framework is considered essential for supporting the sustainable, digitally-driven advancement of a nation. In particular, at the European level, research on the harmonization of digital contract law is relevant, having intensified after the adoption of the so-called «Twin Directives» of the EU in 2019 concerning digital content and services (De Franceschi & Schulze, 2023). This sets a benchmark for Ukraine in the context of implementing relevant norms into national legislation.

A number of studies have focused on digitization in the context of crisis, war and reconstruction. In this context, the work of M. Negrei, I. Kostenko, and Yu. Kravchenko (CSD EIS 2022) is of particular importance, presenting the dynamics of the transformation of digital processes in Ukraine in the pre-war and wartime periods. The focus here shifts to the emerging need for adjusting legal frameworks to address crises, specifically encompassing both the immediate aftermath and subsequent recovery. This necessitates not only a fundamental physical reconstruction, but also a thorough reassessment of the legal framework governing their activities (Nehrey et al., 2023). The study by K. Schedler (Schedler et al., 2019), A.A. Gündüz, and R. Frischknecht provides a significant theoretical contribution by explaining the institutional and organizational barriers that hinder the progress of digitalization. The researchers identified the absence of a robust legal framework as a significant impediment to digitalization (Schedler, et al., 2019). This conclusion is of particular pertinence in the context of Ukraine, where the fragmentation of regulatory frameworks constitutes a significant impediment to the advancement of digital transformation within the public sector.

The European approach to digital transformation in crisis conditions is also analyzed in the research by C.M. Profiroiu, C.I. Negoiță, and A. Costea (Profiroiu et al., 2023). Although it does not have a purely legal focus, the authors demonstrate that the effectiveness of digitalization directly depends on the availability of stable legal and financial mechanisms (Profiroiu et al., 2023). Summarizing the scientific approaches, it can be argued that the key challenges for the legal support of digitalization in Ukraine are:

- fragmentation and lack of systematically in the legal and regulatory framework;
- lack of institutional continuity in the implementation of digital policies;
- the necessity of harmonizing with European digital legislation

the need for legal regulation of crisis and emergency digital solutions.

At the same time, the prospects lie in the formation of a unified legal space for digital governance, based on the principles of openness, interoperability, and civic participation. Also, in the development of regulatory support for public digital platforms.

As Ukraine pursues its path toward integration with Europe, it must also pay close attention to these developments. The imperative of aligning its legal framework with the acquis communautaire is a crucial aspect of this endeavour. According to Ukrainian researchers Vavrynchuk (2023), Shulzhenko (Shulzhenko et al., 2021), Michalak and Śniadach (2023), the digitization of governmental processes requires a shift that goes beyond technological advancements. A comprehensive legal overhaul of existing laws is necessary to fully embrace this transformation. This involves formulating specific legal frameworks for artificial intelligence, refining existing regulations on the protection of personal information, and strengthening laws concerning cybersecurity and digital infrastructure. According to Ukrainian researchers Vavrynchuk (2023), Shulzhenko (Shulzhenko et al., 2021) and Michalak and Śniadach (2023), the digitization of governmental processes requires a shift that goes beyond technological advancements. A comprehensive legal overhaul of existing laws is necessary to fully embrace this transformation. This involves formulating specific legal frameworks for artificial intelligence, refining existing regulations on the protection of personal information, and strengthening laws concerning cybersecurity and digital infrastructure. (Vavrynchuk, 2023; Shulzhenko et al., 2021; Michalak and Śniadach, 2023).

The primary issue identified by scholars pertains to the incongruity between the rapid advancements in information technology (IT) and the gradual evolution of the legal framework. This discrepancy ultimately impedes the efficacy of digital transformation initiatives. Furthermore, a lack of adequate alignment between national laws and European Union regulations obstructs international cooperation and undermines confidence in digital services within the public sector.

Academic research emphasizes the need for a multifaceted strategy regarding the legal frameworks surrounding digitalization, which must include both technological and legal harmonization. The EU's experience in digital law can serve as a methodological and practical basis for updating the Ukrainian regulatory framework to ensure sustainable digital development and effective public administration. While these studies significantly enhance our understanding of the legal aspects of digital transformation, most of them are general in nature. There is a tendency to overlook the institutional challenges posed by the digitalization of public administration under martial law, underscoring the necessity for research to be conducted into the legal framework governing digital transformation. It is imperative to emphasize the necessity of aligning national legislation with international and European standards. The objective of this study is to analyze Ukrainian legislation on digital governance, with a focus on the effective and sustainable implementation of reforms in the public sector.

## 2. Materials and Methods

The present study employs qualitative methodologies, a particularly apt approach when analyzing the legal and institutional dimensions of the digitalization of public administration in Ukraine. The primary methodology employed is that of documentary analysis, a technique which facilitates a comprehensive examination of the prevailing legal framework that governs digital transformation within Ukraine's public sector. This encompasses the analysis of legislative acts, governmental resolutions and other regulatory documents that delineate the legal framework for digital governance. This specifically encompasses laws and directives related to e-governance initiatives, safeguards against cyber threats, the establishment of electronic trust services, administrative processes, and the protection of personal information. A thorough examination was conducted of key legislative instruments such as Ukraine's Law "On Electronic Governance" (as outlined in Order No. 649-r) and the Law "On Personal Data Protection" (Verkhovna Rada of Ukraine, 2025c), alongside relevant Presidential decrees and governmental strategies focused on digital development. This analysis considered not only the substantive content of these legal resources but also their internal coherence, alignment with the overarching national strategic objectives, and conformity with established international standards—with particular attention to those promoted by the European Union.

A comparative analysis constitutes the second key method, which facilitates the comparison of Ukrainian legislation with international standards and European practices in the field of digital governance. This enables the identification of the primary issues and lacunae in national legislation, in addition to the identification of areas for enhancement.

In addition to document analysis, this study employed semi-structured interviews.

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A diverse group of stakeholders—including legal professionals, lawmakers, governmental officials, and IT specialists—formed the interviewee pool. These individuals played active roles in shaping and implementing digital transformation initiatives in Ukraine. The primary objective of the interviews was to gain a practical understanding of how legal regulations are applied, how various institutions collaborate, and how digital initiatives are actually implemented in practice. Special attention was devoted to identifying implementation barriers. Owing to the flexible nature of semi-structured interviews, they enabled discussions to be guided by predefined themes while also allowing for the emergence of novel, context-specific insights. Furthermore, the study's methodological framework strongly incorporated comparative legal analysis. This provided a systematic means of contrasting Ukraine's legal landscape with globally recognized standards, particularly those set by the European Union. Key reference points in this comparative examination included the General Data Protection Regulation (GDPR), the Tallinn Declaration on e-Governance, and the OECD's guidelines on digital government. Furthermore, expert interviews with specialists in public administration, law, and information technology are also an important research tool. These interviews are instrumental in acquiring practical knowledge and experience from individuals directly involved in the implementation of digital innovations in the public sector.

The combination of these methodologies facilitates a comprehensive comprehension of the legal, institutional and procedural dimensions of digital public administration. Moreover, it offers a framework for the effective formulation of recommendations to enhance digital transformation in Ukraine.

## 3. Result and Discussion

Throughout recent history, Ukraine has progressively implemented a range of significant regulatory and legal instruments aimed at advancing digital governance. This process has involved the adoption of several pivotal legislative acts. These include provisions on electronic identification systems (Order No. 649-r), the functioning of state information systems (Order No. 1556-p), legislation on digital communication networks (Verkhovna Rada of Ukraine, 2025c), the delivery of administrative services through digital platforms (Verkhovna Rada of Ukraine, 2024), and regulations governing interactions via electronic platforms (Verkhovna Rada of Ukraine, 2023). Collectively, these legal measures have significantly reconfigured the national regulatory framework, laying a foundational path for the digital transformation of public sector administration.

These adopted regulations firmly establish foundational principles that prioritize clarity, accessibility, and the interoperability of governmental data systems. Furthermore, they underscore the importance of meeting the needs of both the public and the commercial sectors. The core provisions align closely with contemporary European models aimed at constructing efficient, accountable, and forward-looking governance structures. This legal framework is fully consistent with the concept of a "digital state" and embodies the fundamental ideals of sound public administration (Verkhovna Rada of Ukraine, 2022).

An analytical review of current Ukrainian regulations concerning the digital transformation of public administration reveals a set of recurring systemic challenges that significantly impede successful implementation (Verkhovna Rada of Ukraine, 2025a). A notable issue lies in the drafting of numerous legislative acts without adequate coordination among governmental bodies, which has led to fragmentation and insufficient integration. This lack of cohesion obstructs the creation of a unified regulatory environment, essential for facilitating effective interaction between digital infrastructures across various levels of public authority. Furthermore, the absence of clearly defined legal frameworks for interoperability contributes to overlapping mandates, inefficient information flows, and operational disjunction among institutions engaged in digital governance.

The main problems of interagency coordination and interoperability in the current laws of Ukraine regarding the digital transformation of public administration are summarized below, as shown in Table 1.

**Table 1.** key issues of interagency coordination in ukrainian digital governance laws

| Law of Ukraine | Problem | Example |
|---|---|---|
| "On Electronic Communications" (Law No. 1089-IX) | The absence of mechanisms for regulatory interoperability of ICT systems. | There are no legal provisions regarding the integration of digital platforms of government bodies. |
| "On Information" (Law of Ukraine No. 2807-IX) | Unclear regulatory framework for the integration of information resources between government agencies. | The information is presented fragmentarily, without proper coordination of exchange. |
| «On Administrative Services» ( Law No. 1907-IX) | Insufficient regulatory support for digital interaction between public administration entities. | The Diia platform functions in isolation from other state systems. |
| "On Personal Data Protection" (Law No. 2297-VI) | Lack of standardized approaches for the exchange of personal data between public authorities. | The lack of unified approaches to data processing complicates the integration of public administration information systems. |

*Compiled by the authors*

In this context, the viewpoint of V. Hedykov is particularly relevant, as he suggests that the consolidation of legislation through the development of a Digital Code of Ukraine represents both a feasible and pragmatic solution (V. Hedykov). According to the author, such a codified act would effectively systematize the key regulations governing the digitalization sphere and establish a unified legal foundation for the balanced development of a digital state. The adoption of this code would serve as a logical response to the challenges posed by regulatory fragmentation, enhance the coherence between sectoral policies, and create an integrated framework for digital governance, aligning it with European standards of good governance.

A significant obstacle hindering the modernization of Ukraine's public administration is the inadequacy of its legal and regulatory frameworks to accommodate cutting-edge digital technologies. Specifically, current legislation fails to provide clear guidelines for integrating innovative tools, such as automated decision-making processes, machine learning applications, and artificial intelligence systems, into administrative operations. This legal gap significantly undermines both the predictability and transparency of government agencies' operations as they transition to digital practices.

The current lack of explicit regulations concerning the deployment and use of AI technologies, automated decision-making systems, and machine learning algorithms presents various potential risks. Firstly, it generates legal uncertainty regarding responsibility for the consequences caused by decisions made in an automated mode. In particular, it remains unclear who will be held responsible in case of violation of citizens' rights or errors made by the system – the state body, the software developer, or the operator of the technical solution. Secondly, insufficient legal regulation complicates the proper control over algorithms that may be prone to bias, discrimination, or violation of the principles of transparency and integrity. Thirdly, without standards for the use of such

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technologies, the state lacks the necessary levers to ensure the protection of personal data, prevent abuse, and ensure procedural fairness in the use of innovative tools in public administration. Finally, this situation not only hinders the innovative development of the administrative sphere, but also significantly limits the potential for modernization of the state's electronic services. This makes it impossible to fully implement the principles of digital governance, such as client-orientation, efficiency, transparency, and public trust. As Ukraine seeks to integrate into the European digital space, one of the most significant obstacles to this process is the absence of clearly defined legal guidelines for the use of advanced technologies in government operations. This gap not only impedes alignment with the regulatory systems already established in the EU but also hampers the adoption of principles related to digital self-determination.

In addition, it is important to note that the absence of specific legal provisions has the potential to impact Ukraine's international competitiveness. Other countries have already taken steps to implement relevant regulations and utilize cutting-edge technologies to enhance the efficiency of government processes and foster trust in digital institutions. Ensuring the sustainable development of digital governance is a crucial aspect to consider. In this regard, the establishment of a contemporary regulatory framework for artificial intelligence technologies is a strategic priority to ensure the continued advancement and growth of our digital landscape. Furthermore, a serious problem remains the lack of clear regulations regarding the cross-border transfer of personal and administrative data. In a globalized world, where interaction between countries requires the rapid and secure transfer of data, the existing legal environment does not provide adequate legal protection for the exchange of information between state bodies of different countries. This leads to legal uncertainty, which can become a barrier to international cooperation in the field of digital technologies, particularly for the expansion of digital services and data exchange within international initiatives.

The absence of clearly defined regulations governing the cross-border exchange of personal and administrative data remains a critical concern. In an increasingly interconnected global environment—where the secure and rapid sharing of data between nations is essential—existing legal frameworks provide insufficient safeguards for intergovernmental data exchange. This legal ambiguity generates uncertainty and may impede international cooperation in the field of digital technologies, particularly in the context of expanding digital services and cross-border data initiatives. Ukraine's cybersecurity vulnerabilities have become increasingly critical amidst the ongoing, large-scale military conflict with Russia. While the country has foundational legal frameworks in place—most notably the Law of Ukraine "On the Basic Principles of Cybersecurity" (Verkhovna Rada of Ukraine, 2025b)—the existing legal structure remains insufficient. It is fragmented, lacks technical specificity, and fails to account for the complexities of modern cyber warfare.

As A. Pravdiuk emphasizes, the rapid evolution of information technology and the intensifying threats to Ukraine's national security—particularly within the context of hybrid warfare and Russian cyberattacks—demand a continuous refinement of cybersecurity legislation (A. Pravdiuk). Although current laws establish some essential principles of cyber defence, they fall short in terms of coherence and practical applicability. In particular, the absence of detailed technical standards, clearly articulated response protocols, and coordinated mechanisms for interagency collaboration severely undermines the protection of critical information infrastructure. The timely mitigation of cyber incidents, and the broader resilience of the country's digital landscape. In such circumstances, legal uncertainty not only limits the internal capacity of the public administration system to counter threats but also reduces Ukraine's potential for full integration into the European and global cybersecurity ecosystem.

The issue of the lack of an effective mechanism for interagency coordination in the context of multi-level information attacks and destructive information and psychological operations by the aggressor state is becoming particularly relevant. Against the backdrop of systemic cyberattacks aimed at destroying information resources, disrupting governance, demoralizing the population and the military, legal instruments remain insufficiently flexible and do not cover the full spectrum of hybrid threats. The imperfection of legal regulation limits Ukraine's potential for interaction with international partners in the field of cyber defense and hinders the formation of a unified cybersecurity space with the EU and NATO. Therefore, revising the legal architecture governing cybersecurity to account for military threats, emerging technologies, and evolving global norms constitutes an urgent priority. Such reform is essential for strengthening the nation's digital resilience and ensuring the continuity and protection of governmental functions, particularly during times of armed conflict.

One of the main problems is the lack of proper mechanisms for the implementation of established norms. The legislation provides general guidelines and principles but does not define specific ways and procedures for ensuring cybersecurity in practice. This includes the absence of clear procedures for monitoring cyber threats, managing security incidents, as well as for continuously updating and adapting security policies in the face of new cyber threats and technological changes. Furthermore, existing rules and guidelines often diverge from internationally recognized standards, hindering the alignment of a nation's cybersecurity posture with global collaborative frameworks and weakening its capacity to contribute to collective defense mechanisms in cyberspace.

Of particular concern is the lack of established technical standards, which poses significant risks to information security across both governmental and commercial sectors. The absence of clear technical benchmarks for cyber protection obstructs accurate assessments of current infrastructure vulnerabilities and impedes the effective integration of advanced information security technologies. These include cryptographic systems, multifactor authentication, intrusion detection and prevention systems (IDS/IPS), and other state-of-the-art protective mechanisms. For the effective solution of these problems, it is necessary to develop clear technical standards and methodologies that meet the requirements of both national legislation and international standards. Furthermore, it is crucial to establish dynamic mechanisms that ensure the continuous review and adaptation of the regulatory framework. Such mechanisms are essential for keeping pace with the rapid evolution of emerging cyber threats and the advancement of cutting-edge technologies. This allows for an adequate level of cybersecurity to be ensured in the context of digital transformation and the globalization of cyber threats.

A major systemic obstacle impeding the digital transition of Ukraine's public administration lies in its institutional deficiencies within the realm of digital governance. These weaknesses manifest in limited coordination capacities, insufficiently defined responsibilities, and a lack of strategic coherence across governmental bodies responsible for implementing digital reforms. A significant part of state bodies demonstrates a limited capacity for proper legal support of digital processes, which is due, in particular, to an acute shortage of legal professionals with competencies in the field of digital, information, and cyber law. The absence of specialized lawyers complicates the development and implementation of legal and regulatory acts capable of effectively regulating digital management tools, personal data protection, the use of artificial intelligence, as well as electronic identification and authentication. Consequently, a fragmented approach to the legal support of digital initiatives emerges, accompanied by a sluggish response to the complex challenges posed by rapidly evolving technologies. This disjointed framework undermines the coherence and adaptability of public administration in the face of digital transformation.

The core issue is further exacerbated by persistent financial constraints, which significantly hinder the capacity of government institutions to adequately train personnel, implement digital reforms, and ensure the long-term sustainability of innovation. Low salaries, limited opportunities for career advancement, and insufficient investment in digital skills development collectively diminish motivation to adopt and integrate new technological solutions. In essence, the state's institutional deficiencies in digital governance impede the effective deployment of technology and threaten to stall the broader modernization of public administration. This modernization is vital for Ukraine's alignment with European and international digital policy standards. Addressing these systemic challenges requires a comprehensive reform of human resource management, the creation of resilient professional development frameworks, and the allocation of adequate financial resources to the institutions spearheading digital transformation.

The disparity between Ukrainian legislation and European Union standards on personal data protection constitutes a significant barrier to Ukraine's integration into the EU's unified digital space. While Ukraine has expressed strong support for transparency in the digital domain and for aligning with European regulatory norms, its current legal framework does not fully conform to the fundamental provisions enshrined in the General Data Protection Regulation (GDPR). In particular, the Ukrainian legal system reveals notable shortcomings in implementing the rights of data subjects. Key aspects such as the "right to erasure" and the right to data portability remain either insufficiently regulated or ambiguously defined. These rights are essential elements of the modern European legal architecture on digital rights, underpinning the principle of individual control over personal data. Their effective implementation is crucial not only for protecting user autonomy, but also for ensuring legal interoperability in the context of cross-border digital services and broader international cooperation.

Failure to comply with GDPR requirements complicates interaction with European partners, creates barriers to cross-border data exchange, and limits the opportunities for Ukrainian authorities and the private sector to integrate into joint digital platforms and information ecosystems of the EU. This situation also negatively affects trust in Ukrainian institutions in the context of ensuring information security and protecting digital rights. Considering the current circumstances, aligning Ukraine's domestic legislation with the General Data Protection Regulation (GDPR) is an objective necessity. In particular, this entails enacting a revised version of the Law of Ukraine "On Personal Data Protection" (Verkhovna Rada of Ukraine, 2025c) to ensure full compliance with European standards. Such a legislative revision is not only essential for harmonizing regulatory frameworks, but also for establishing a robust legal basis for the free and secure exchange of data between Ukraine and EU member states. This alignment would significantly strengthen Ukraine's position within the European digital ecosystem and facilitate its broader integration into the EU's digital single market.

Ukraine's transition toward digital governance in the public sector is constrained by a fragmented and complex legal environment. A key challenge lies in the absence of comprehensive legislative frameworks capable of accommodating innovative technologies such as artificial intelligence and automated decision-making systems. The digitalization process is further impeded by insufficient interagency cooperation, internal inconsistencies within the legal system, and a lack of full compliance with the European Union's directives on personal data protection. To overcome these systemic obstacles, a series of strategic legal reforms is required. These should include the formalization of laws tailored to digital technologies, the modernization of cybersecurity legislation, and the harmonization of national regulations with European legal standards. Such measures are essential not only for Ukraine's integration into the EU digital market, but also for strengthening its digital administrative infrastructure to effectively confront global technological and security challenges.

## 5. Conclusions

This study has conducted a comprehensive legal analysis of digital public administration in Ukraine, which has revealed both significant achievements and pressing problems in the existing regulatory environment. Ukraine's legal framework has made commendable progress with the adoption of pivotal legislative acts, notably the Law on Electronic Governance and the Law on Personal Data Protection. These serve as foundational pillars for establishing operational mechanisms for digital platforms, enabling electronic authentication systems, and ensuring the protection of personal data within the digital environment. However, significant legislative gaps remain, particularly in areas concerning emerging technologies such as artificial intelligence and the cross-border transfer of data. The absence of comprehensive regulation in these domains impedes technological innovation and poses serious risks to the transparency, accessibility, and resilience of public administration. Addressing these shortcomings is essential to reinforce Ukraine's digital transformation and align it with international standards. It has become evident that, despite the existence of cybersecurity laws, their implementation remains inconsistent and lacks the necessary technical detail. The operational capacity of governmental institutions is further constrained by limited financial resources and a shortage of qualified personnel, which significantly impedes the successful execution of digital initiatives. Additionally, persistent discrepancies between Ukrainian and EU legal frameworks create substantial barriers to regulatory alignment and hinder Ukraine's advancement toward full integration into the European digital ecosystem.

Drawing from the conclusions reached in this research, several key recommendations are proposed to strengthen the legal and institutional foundations of digital public administration in Ukraine:

1. Develop comprehensive legislation on emerging technologies. It is imperative to prioritize the adoption of legal frameworks regulating the use of advanced digital technologies, particularly artificial intelligence, within public sector operations. These frameworks should clearly articulate ethical principles, establish mechanisms for accountability, and safeguard individual rights in cases where algorithmic decision-making systems are employed.

2. Strengthen cybersecurity legislation and its enforcement mechanisms.

Existing regulatory acts in the field of cybersecurity should be updated by introducing precise technical standards and clearly defined control procedures. Emphasis should be placed on creating mechanisms for compliance, incident response, and regular security audits in state institutions.

3. Develop institutional capacity through legal and digital literacy.

Continuous investment in the professional development of civil servants is required. Specialized training programs should be implemented, covering the legal, ethical, and technical aspects of digital governance.

4. Harmonize national legislation with the standards of the European Union.

To advance Ukraine's ambitions for European integration, it is essential to align national legislation with European Union standards—particularly in the areas of digital governance, data protection, and cybersecurity. Such legal harmonization will facilitate more effective cross-border cooperation and support the adoption of advanced methodologies for modernizing the public sector.

These conclusions underscore both the practical and conceptual contributions of the study, emphasizing the urgent need for a progressive legal framework. This framework should be adaptable and resilient, capable of supporting a sustained transition to digital practices in the management and delivery of public administration.

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# CIVIL-LAW REGULATION OF ELECTRONIC CONTRACTS: CURRENT CHALLENGES IN MARKETING AND THE DIGITAL ECONOMY

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**Abstract**

In today's digital society, electronic contracts have become a key element of civil transactions, ranging from simple online purchases to complex financial agreements. This growing reliance on remote, digital interactions challenges traditional civil-law frameworks and calls for a reassessment of contract formation rules, especially in light of modern marketing practices. Aggressive or manipulative marketing may significantly influence a party's intent, raising concerns about the voluntariness and validity of consent in electronic agreements. This article explores the civil-law aspects of electronic contract formation and execution in the context of the digital economy. It focuses on how marketing tools—such as personalized advertising, automated platforms, and digital analytics—affect the expression of will and the integrity of contractual intent. The study applies general scientific and specialized legal methods, including formal legal, systemic, comparative, and analytical approaches, to examine regulatory frameworks, academic literature, and practical examples of e-commerce. Findings reveal that Ukrainian civil legislation only partially addresses the specificities of electronic contracts, resulting in legal uncertainty and enforcement difficulties. The article underscores the need for improved mechanisms regarding party identification, consent verification, electronic signatures, and the handling of digital evidence. Comparative legal analysis of EU and U.S. practices suggests directions for aligning Ukrainian law with international standards. Future research should focus on legal challenges posed by emerging technologies, such as blockchain and AI-driven contracting systems, and on enhancing consumer protection in online environments. Harmonizing national and international legal standards will be key to ensuring the legal validity and fairness of electronic contracts in the digital era.

**Keywords:** electronic contracts; civil law; marketing; economy; civil-law regulation.

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## 1. Introduction

In today's digital age, electronic contracts have become an essential component of civil transactions. The gradual transition to digital forms of agreements presents both new opportunities and challenges for legal regulation. Modern marketing strategies and the implementation of advanced technologies—such as automated platforms and blockchain—are fundamentally transforming traditional approaches to contract formation. Therefore, it is crucial to examine the civil-law aspects of electronic contracts in the context of current economic and marketing trends. The purpose of this article is to explore the civil-law aspects of the formation and execution of electronic contracts in the digital era, taking into account the marketing-related challenges and legal issues associated with the regulation of such agreements. To achieve this aim, the following objectives were set: to analyze the current legislation governing electronic contracts, to identify the key problems and challenges faced by the parties involved in such transactions, and to develop proposals for improving the legal regulation in this area (Herrington, 2018b).

An analysis of the legal regulation of electronic contracts in Ukraine, alongside a comparative study of international experience, reveals the shortcomings of existing legislation and highlights the need for adaptation to the realities of the digital economy. At the same time, marketing technologies—including automated contracting systems and personalized advertising—significantly influence the contract formation process, requiring particular attention from legal scholars. This research aims to identify the primary legal difficulties associated with the use of electronic contracts. These challenges pertain not only to the legal nature of such agreements but also include problems related to party identification, the recognition of electronic signatures, and the potential violation of the principle of freedom of contract due to the influence of marketing strategies. The study proposes recommendations for improving the legal regulation of electronic contracts. These include clarifying mechanisms for consent capture, expanding the application of emerging technologies such as blockchain, and harmonizing Ukrainian legislation with international standards (Jones, 2019).

In the contemporary digital world, electronic contracts have become an integral part of both economic and legal transactions. The rapid development of technology, particularly in the fields of information technology and automation, has significantly altered the ways in which contracts are concluded. Traditional legal instruments that govern contract formation are not always capable of effectively responding to these changes, thus necessitating the ongoing evolution of legislation. One of the key aspects requiring attention is the regulation of electronic agreements—unique legal acts that are concluded through digital technologies. With the growing popularity of online commerce and electronic transactions, an increasing number of legal questions have emerged. These include the legal validity of such contracts, party identification, confirmation of consent, and the protection of consumer rights. One of the main objectives is to establish a reliable legal mechanism that reflects the realities of today's economy, in which agreements are often concluded without the physical presence of the parties and through a variety of electronic platforms (Lee, 2020).

Special attention should be paid to the influence of marketing strategies on the conclusion of electronic contracts. Modern marketing tools, such as personalized advertising, targeting, and the use of automated platforms for contract conclusion, have significantly transformed traditional approaches to communication between sellers and consumers. Under these conditions, new legal challenges arise, particularly concerning the potential manipulation of a party's will, which threatens the fundamental principle of freedom of contract. It is also important to note that in the digital economy, electronic transactions are gaining increasing importance. They are used not only in the commercial sector but also in the provision of public services, financial operations, and the conclusion of contracts in education, healthcare, and other fields. These developments place a legislative obligation to ensure not only the legal validity of electronic agreements but also the effective protection of the rights of all parties involved. However, current Ukrainian legislation often does not meet the demands of the digital economy, as it fails to fully address the specifics of electronic legal transactions and does not always guarantee the necessary level of legal certainty (Parker, 2019a ).

The modern development of digital technologies is driving changes in all areas of economic activity, with electronic agreements being one of the most important aspects. These are legal acts concluded using technology and online platforms, which are becoming increasingly relevant due to the constant growth of online commerce, financial transactions, and other digital services. The unique nature of such agreements presents new legal challenges, including the legal recognition of electronic signatures, confirmation of consent, and the protection of consumer rights—factors that require the modernization of existing legislation (Smith, 2021).

Electronic transactions did not emerge overnight—they are the product of a gradual evolution in e-commerce and online platforms that began to take shape in the early 2000s (Pryson, 2021a). Initially limited to simple agreements between buyers and sellers, these transactions have grown significantly more complex with the widespread adoption of digital technologies. Today, they range from standard online contracts executed through e-commerce websites to sophisticated digital transactions in finance, insurance, and public services. This transformation has prompted lawmakers to develop universal legal frameworks capable of regulating this new form of contracting. As artificial intelligence and automation technologies rapidly advance, particularly in marketing applications, electronic transactions are taking on new characteristics. AI is increasingly used to automate contract formation, assess parties' intent, and predict consumer behavior—developments that are becoming the norm. In marketing, personalized recommendations and automated platforms now enable transactions to occur without direct interaction between parties. While this enhances efficiency and speed, it also raises questions about the freedom and voluntariness of consent in the contracting process. Another major concern is ensuring trust and security in the digital environment. As the volume of data exchanged during electronic transactions grows, so too does the risk of cyberattacks, breaches, and theft of personal information. Without adequate legal safeguards, both the parties to these transactions and the platforms that facilitate them may face serious legal consequences. It is therefore essential to create legal mechanisms that not only guarantee the validity of electronic agreements but also provide robust protection against cybersecurity threats.

Electronic transactions are often transnational in nature, as parties located in different countries enter into agreements over the internet. This requires the alignment of national legal standards with international norms and the harmonization of relevant legislation. The European Union, for example, has already established detailed regulations governing digital transactions, ensuring legal certainty for consumers and businesses engaged in cross-border activities (Spencer, 2020a). In this context, the experiences of jurisdictions such as the United States, the United Kingdom, and others with established regulatory practices offer valuable insights for developing effective e-commerce policies. In the digital economy, the role of the state is crucial in ensuring fairness and legal protection for all participants in electronic transactions. Governments must not only establish the legal foundations that confirm the enforceability of such agreements but also implement mechanisms to protect consumer rights—particularly in cases of business misconduct or online fraud. A strong rule-of-law framework should also guarantee transparency in the operation of online marketplaces and ensure that users have the ability to challenge unlawful or improper transactions through electronic means (Strauss, 2020).

Therefore, the rapid development of digital technologies, the use of modern

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marketing strategies, and the automation of business processes are creating new challenges for civil law. There is now a clear need to update the legal framework to meet the demands of the digital economy and align with international standards. This would help ensure legal certainty and adequate protection for all parties involved in electronic transactions.

## 2. Literature Review

One of the key areas of academic research today is the legal regulation of electronic transactions. Exploring the relationship between law and marketing in the digital environment helps uncover new legal challenges, particularly those related to the manipulation of party consent.

In recent decades, there has been growing interest in the use of advanced marketing technologies in the context of electronic agreements. For instance, the study by K. D. Herrington (2018a) examines how personalised advertising and automated platforms influence consumer behaviour during digital transactions. Similarly, the works of K. V. Strawson (2020) and T. V. Larson (2019a) focuses on issues related to the legal validity of electronic signatures, consent verification, and the recognition of electronic agreements under international law.

Legal uncertainty in electronic contracting is another topic actively addressed in the research of B. A. Freeman (2021a), who highlights the need to improve legal mechanisms that protect consumer rights in the digital economy. This includes the identification of parties, the use of electronic signatures, and the documentation of digital evidence. Of particular importance are matters related to transaction security and protection against cyber threats.

Given the frequently transnational nature of electronic agreements, many scholars emphasise the need for international standards and comparative legal analysis. Notable contributions include the work of M. E. Parker (2019) and K. L. Hampton (2020a), who compare the regulatory frameworks of the US, the EU, and China in governing digital transactions. These studies provide valuable insights into how Ukrainian legislation could be aligned with international norms and best practices.

In the context of a growing digital economy, increasing attention is also being paid to digital rights. The research of A. A. Spencer (2020a) and O. V. Pryson (2021a) focuses on the legal dimensions of digital rights, including internet user rights, data protection, and ensuring legal certainty when agreements are concluded through online platforms. These issues are critical for safeguarding consumer rights in the digital space and for adapting national legislation to meet the demands of emerging technologies.

## 3. Materials and Methods

To achieve the stated objectives and address the research questions, this article employs a combination of methods that allow for a comprehensive analysis of electronic transactions and their legal regulation. Prior to conducting the research, an in-depth review of academic publications on this topic was carried out. A wide range of sources was used, including scholarly articles, books, and reports from reputable scientific databases. This analysis provided a well-founded basis for the study and helped identify key aspects of the subject. Studies on electronic transactions demonstrate a clear need for harmonising national and international standards to ensure effective legal regulation.

The review revealed research findings by scholars addressing the legal regulation of electronic transactions, with particular attention given to the harmonisation of national legislation with international standards, due to the cross-border nature of many digital transactions. Most studies note that existing legislation in many countries does not fully account for the specific features of forming and executing electronic agreements, which leads to difficulties in legal enforcement.

The study included an analysis of the current legal framework governing electronic transactions, as well as the marketing and economic aspects of their impact on the parties involved. The analysis revealed several issues related to the legal validity of electronic agreements, such as the lack of unified standards for verifying electronic signatures and insufficient regulation of consumer protection procedures in digital environments. Additionally, the review of marketing technologies highlighted the significant influence of automated platforms, personalised advertising, and digital analytics tools on consumer behaviour when entering into agreements. These findings support the need to adapt legislation to the conditions of the digital economy in order to strike a balance between the interests of contracting parties and the protection of their rights in the modern digital space. The empirical part of the study focused on exploring the practical application of legal norms concerning electronic transactions and their interaction with contemporary marketing and economic conditions. Real-life cases of electronic contract formation were examined, along with data on the use of digital identification technologies, particularly electronic signatures, across various online platforms.

The research drew on several primary sources and platforms used for entering into electronic agreements, as well as data from real-life cases, court rulings, economic transactions, and marketing strategies related to electronic contracts. Thus, the use of targeted methods and approaches made it possible to obtain well-founded research results and draw conclusions regarding the civil law regulation of electronic transactions in the context of challenges posed by modern marketing and the digital economy.

The empirical research identified a range of issues in the field of electronic contract formation, such as the absence of unified standards for electronic signatures, difficulties in verifying the identity of contracting parties, and a lack of transparency in the process. Moreover, marketing technologies — particularly automated platforms and personalised advertising — can strongly affect consumer decision-making, sometimes undermining the principles of contractual freedom. The experimental base, which included an analysis of online platforms, case law, and marketing tools, made it possible to identify key areas that require improvement. In particular, there is a need to enhance consumer protection mechanisms and to develop new standards for the conclusion of electronic agreements that take into account the specific features of the digital economy.

The main problem arising in the context of legal regulation of electronic agreements is the insufficient adaptation of current legislation to the realities of the digital economy and the rapid development of marketing technologies. Although electronic transactions are becoming increasingly common, existing legal norms do not always provide adequate protection for the parties involved — particularly in areas such as electronic signatures, party identification, and transparency of the agreement process. To achieve the stated objective and address the identified problems, the study employed a comprehensive approach that combines general scientific and special legal methods. This methodology enables a thorough examination of the legal aspects of electronic agreements while also considering the influence of modern marketing technologies and the economic conditions of the digital economy on contract formation.

To ensure the scientific validity and accuracy of the research, it was essential to properly organise the collection and processing of data used for analysing both the legal regulation of electronic contracts and the role of marketing tools in the digital economy.

Validation and reliability are crucial for ensuring the accuracy and credibility of the results obtained. These aspects are essential for the scientific soundness of the conclusions drawn from the analysis. Careful validation and reliability procedures ensured a high level of research credibility. As a result, the findings can be considered reliable for use in future research as well as for practical implementation in legal regulation of electronic agreements and the integration of marketing technologies in the digital economy. The results of the study confirmed that electronic agreements play

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a significant role in the development of the digital economy. On one hand, they simplify the contracting process and reduce costs; on the other hand, they pose legal and ethical challenges. The majority of respondents noted issues with legal regulation — particularly regarding electronic signatures and the identification of parties.

Marketing technologies such as personalized recommendations and dynamic pricing have a positive impact on business performance, but they may also manipulate consumer will, raising concerns regarding the principle of freedom of contract. From a legal standpoint, current legislation does not fully align with the demands of digital technologies, highlighting the need to improve the regulatory framework to ensure legal certainty. In particular, there is a necessity to harmonize Ukrainian legislation with international standards. Thus, the research indicates the need to develop new legal mechanisms to ensure the security of electronic transactions, as well as to establish ethical standards for marketing practices in the digital environment.

One of the main limitations of this study is the limited number of respondents and the generalization of results in relation to specific types of electronic agreements. The research did not account for all possible aspects of international contracts, which may reduce the comprehensiveness of the analysis. In addition, rapid changes in the technological and legal environment may affect the future relevance of the results. However, the study opens up prospects for further research, particularly in the direction of a more detailed analysis of specific legal mechanisms related to electronic contracts in different sectors. It is also important to explore the impact of emerging technologies, such as blockchain, on the legal regulation of agreements, as well as to examine the ethical dimensions of digital marketing strategies in greater depth.

## 3. Results and Discussion

Civil-law regulation plays a key role in ensuring transparency, stability, and predictability of economic relations, particularly in the field of marketing. In the context of digital transformation, where traditional forms of communication between parties are being replaced by digital ones, there is a need to reassess legal approaches to the conclusion, performance, and termination of contracts. This is especially relevant for electronic contracts, which are increasingly being concluded via online platforms, mobile apps, and electronic signatures.

The current civil legislation of Ukraine partially accounts for these changes, yet remains insufficiently adapted to modern economic realities in many aspects. In particular, issues such as the legality of electronic consent, the legal status of digital content, the protection of personal data, and the regulation of liability in case of violations of electronic contract terms remain pertinent. In the marketing field, regulating contractual relations with consumers becomes especially important, where a balance must be struck between the freedom of business activities and the protection of consumer rights. This includes contract transparency, information accessibility, honest advertising, and preventing misleading practices. Thus, civil-law regulation in the marketing and economic sectors must be dynamic, flexible, and focused on digital security, enabling an effective response to the challenges of the modern market ecosystem.

The effectiveness of legal regulation in marketing and economics directly impacts the level of trust between business entities, the stability of contractual obligations, and the protection of both consumer and enterprise rights (Larson, 2019b). Contemporary practice shows that the current legislation of Ukraine includes several mechanisms that formally ensure legal certainty and provide a means of resolving disputes. However, in practice, these mechanisms do not always function as intended. Key issues include delays in law enforcement, insufficient digital adaptation of legal norms, and the limited use of innovative legal tools in the digital environment. This is particularly relevant to contractual relations in the online environment, where legal regulation often fails to keep up with the technological development of the market. On the other hand, the gradual integration of European standards, particularly in consumer rights protection, e-commerce, and personal data, creates the conditions for improving the effectiveness of legal regulation. The introduction of digital tools, such as electronic contracts, electronic signatures, and online dispute resolution systems, enhances the speed, transparency, and reliability of legal interactions between market participants. Thus, the evaluation of effectiveness highlights both positive shifts in the legal regulation of marketing activities and the need for further modernization of the regulatory framework in line with the dynamics of the digital economy.

Civil-law regulation of electronic agreements is a key factor in the stability and predictability of legal relations in the digital environment. With the development of e-commerce and business digitization, there has been an increased need for clear legal regulation of electronic contracts, confirming the consent of the parties, data protection, and adherence to principles of good faith in the virtual space. Ukrainian legislation recognizes electronic agreements as equivalent to paper contracts, provided that established requirements are met, such as the presence of an electronic signature, authentication of the parties, and the recording of agreement terms (Hampton, 2020b). This allows parties to engage in legal relations without physical presence, reducing time and financial costs, which is especially relevant for small and medium-sized businesses. However, challenges remain in identifying parties, establishing evidence in court disputes, and dealing with cross-border electronic agreements that require legal harmonization. Furthermore, there remains a limited legal culture regarding electronic document management in society, which affects the level of trust in such agreements. Despite these challenges, civil-law regulation of electronic agreements is gradually adapting to new economic realities, providing legal certainty and stimulating the digital transformation of contractual relations. Improving this area, particularly through the implementation of European standards, will enhance the legal security of e-commerce and contribute to the sustainable development of the digital economy.

Based on the results of the study, several recommendations can be made to improve the practical application of civil-law regulation of electronic agreements in marketing and economics. First, it is crucial to implement unified legal norms that align with both national and international legislation, particularly by adapting UNCITRAL provisions and EU directives to the Ukrainian legal framework. This would reduce legal barriers and facilitate more effective integration of the national economy into the global digital economy. There is also a pressing need to enhance mechanisms for digital identification and data protection. Expanding the use of electronic signatures and other authentication technologies will ensure the reliability and security of electronic agreements. This is especially important in the rapidly growing online commerce environment, where maintaining confidentiality and protecting consumer rights are critical. Additionally, it is essential to increase the digital legal literacy of all market participants. Specialized training programs should be organized for entrepreneurs, lawyers, and citizens, helping them better understand the opportunities and responsibilities when entering into electronic agreements. Such initiatives will reduce legal errors and contribute to the development of the digital economy in Ukraine. Another important step is to encourage the development of digital platforms for concluding electronic agreements. Creating convenient, transparent, and secure platforms will enhance the efficiency of legal interactions in the digital environment and provide favorable conditions for doing business. It would also be beneficial to establish legal consulting centers for small and medium-sized businesses, offering services related to electronic contract drafting and consumer rights protection. This would promote entrepreneurship and improve the legal environment for new digital business models. Finally, there should be an increased focus on monitoring electronic agreements. Mechanisms for auditing electronic transactions should be developed to detect fraud and consumer rights violations, while fostering

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closer cooperation between government agencies and businesses on these issues. Implementing these recommendations would significantly improve the effectiveness of legal regulation of electronic agreements and make the digital economy safer and more stable (Parker, 2019b).

The prospects for further research in the field of civil-law regulation of electronic agreements are broad and multifaceted, as this issue continues to evolve in the context of rapid technological and legal changes. One key area of focus is the in-depth study of the integration of international standards into the national legal system, particularly the adaptation of European Union norms on electronic contracts and data protection to Ukrainian legislation. This would not only enhance the legal protection of market participants but also ensure the harmonization of national law with international standards. Additionally, attention should be given to studying the social and economic aspects of legal regulation of electronic agreements, including an analysis of the impact of digital platforms on small and medium-sized businesses, as well as the protection of consumer rights in the context of online commerce. Understanding the behavior of consumers and businesses in electronic agreements will help identify additional measures needed to increase trust in such agreements and reduce the risk of fraud. Further research should also include the integration of automated legal systems into the process of concluding electronic contracts. This would significantly simplify and speed up the contract formation process while maintaining legal integrity and reliability (Pryson, 2021b).

The study also covered an analysis of trends in the use of technologies and platforms in internet marketing during crisis situations. The results indicate that companies frequently adjust their strategies and switch to using new digital tools to promote products and services. For example, during a crisis period, there is an increase in the use of social media for advertising and engaging with target audiences. The popularity of video marketing and the use of online platforms for e-commerce also significantly rise.

Regulation of electronic agreements is one of the most pressing issues in the modern civil-law environment, closely intertwined with the development of internet marketing and the digital economy. Recent trends in this field demonstrate a shift in regulatory approaches, driven by rapid technological changes and the globalization of digital markets. The challenges of contemporary marketing and the digital economy demand flexibility from the legal system, with the ability to quickly adapt to new realities and ensure legal certainty in digital interactions. One of the main trends is the development of technologies that ensure the reliability and security of electronic agreements. In particular, the implementation of electronic signatures, cryptographic technologies, and blockchain helps reduce fraud risks and confirm the authenticity of agreements. However, legal regulation often fails to keep pace with technological advancements, leading to gaps in legislation and issues in law enforcement (Spencer, 2020b).

Reorientation of business models in crisis conditions is a crucial aspect of businesses adapting to a rapidly changing market environment. Specifically, the COVID-19 pandemic and economic hardships have served as catalysts for the transformation of many businesses, which were forced to shift their processes to the online space. This has led to significant changes in the regulation of electronic agreements, which have become a key tool for supporting businesses in times of crisis. One of the main trends is the growing importance of digital platforms for entering into agreements, allowing businesses to maintain operations remotely while simultaneously reducing operational costs. Companies have actively adopted online trading tools, automated platforms for concluding agreements, and tools for digital signatures and user identification. This shift has become a necessity to ensure business continuity and maintain competitiveness in times of economic instability. At the same time, there has been a need to improve the regulation of electronic agreements to ensure their stability, security, and legality.

Technological innovations such as electronic platforms, cryptographic data protection methods, and artificial intelligence provide new opportunities for entering into agreements; however, legal clarity around these innovations remains a concern. In crisis conditions, where decision-making speed is critical, legislation must be flexible and adapted to new technological realities.

The analysis of the research results confirms that effective regulation of electronic transactions is a key factor in ensuring business stability and the growth of the digital economy. In times of crises, such as pandemics or economic downturns, businesses are forced to quickly adapt their business models to new realities, leading to significant changes in the mechanisms for concluding electronic contracts. The emergence of new technologies and platforms has allowed businesses to remain competitive, particularly through digital platforms for contracting and automated processes (Strawson, 2020). However, despite the numerous positive changes, the study highlights certain challenges arising from the lag of legislation behind technological progress. As the analysis shows, the current civil legislation does not always provide proper legal regulation for new forms of electronic contracts, especially in the case of automated agreements, the use of artificial intelligence, and blockchain. Specifically, legislative frameworks often fail to address issues related to data security, personal data protection, and the legal significance of agreements made through technologies that do not involve human participation. At the same time, the analysis revealed that innovative technologies, such as electronic signature systems and cryptographic solutions, significantly improve the security of transactions, reducing fraud risks and ensuring the accuracy and reliability of the contracting process. However, the need to establish a unified international approach to regulating electronic contracts remains pressing, as differences in national legal systems can complicate interactions between parties in a globalized economy.

Another important aspect is the impact of modern marketing technologies on the legal nature of electronic contracts. The use of personalized advertising and algorithms for automated contract execution can significantly influence consumer autonomy and their right to make informed decisions. Given that many contracts are made without direct human involvement, there is a need to enhance mechanisms for consumer protection to avoid manipulation of their choices or violations of their interests. In analyzing these results, it can be concluded that, in the context of the rapid development of the digital economy and technology, it is essential to continuously adapt the legal regulation of electronic transactions to new conditions. Legislation must become more flexible and capable of responding quickly to changes in the technological environment, while maintaining the principles of legal certainty and consumer rights protection. In this context, harmonizing national legal norms with international standards is crucial to ensuring a solid legal foundation for the development of online business and the effectiveness of marketing strategies in the digital age. Thus, the effectiveness of legal regulation of electronic transactions directly impacts business success and economic development, and requires constant attention from lawmakers and practitioners to ensure not only the stability of legal relations but also the promotion of innovative technologies and business processes.

Since a significant number of transactions are concluded without the physical presence of the parties, an important aspect is the creation of effective dispute resolution mechanisms, such as online arbitration or mediation platforms. These tools ensure quick and accessible conflict resolution, which is crucial for the stability of electronic agreements. Furthermore, the study indicated that, despite some positive changes in the legal regulation of electronic transactions, many businesses face difficulties in applying legislative norms related to personal data protection and consumer rights. This points to the need for further optimization and improvement of the legal framework to ensure the effectiveness and security of electronic transactions across all sectors of the economy. In general, the need for continuous improvement of legal regulation,

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integration of new technologies, and approaches to protecting the rights of consumers and businesses, as well as the effective regulation of global electronic platforms, lays the foundation for the development of a stable and secure digital environment amid the ever-changing market landscape (Freeman, 2021b).

In a globalized world, e-commerce transcends national boundaries, creating additional challenges for effective legal regulation. Interaction between different legal systems and jurisdictions can be complicated by discrepancies in approaches to consumer protection, intellectual property rights, and online security standards. Given these challenges, an important step is the harmonization of international standards for electronic transactions. This will eliminate legal barriers and create unified rules for all participants in the digital economy, ensuring more efficient and secure contracting and increasing consumer trust in e-commerce. Moreover, the development of tools and technologies such as smart contracts and blockchain has the potential to dramatically change the nature of electronic transactions. Smart contracts, in particular, can automate the execution of contracts, ensuring high security and transparency, significantly reducing the risks of one party's rights being violated. However, this also requires a detailed legal evaluation, as traditional legal principles, such as the freedom of contract and the legal consequences for automatic agreements, need to be reassessed in light of new technologies. It is also important not to overlook the ongoing need for legal education for all participants in electronic transactions, from consumers to businesses and legal professionals (Strauss, 2020). A high level of legal awareness helps avoid mistakes when concluding agreements and ensures the protection of all parties' rights. Therefore, despite significant achievements in the regulation of electronic contracts, many aspects still require further development and refinement. Technology and market globalization demand the creation of an adaptive legal framework that meets modern requirements and allows for the effective integration of the latest developments in e-commerce and marketing.

After analyzing the existing approaches and practices, it can be stated that, although certain legal mechanisms for regulating electronic transactions have been developed in Ukraine and worldwide, a number of problems and challenges remain to be addressed. Among the main issues are the incomplete adaptation of legislation to rapidly changing technological conditions, discrepancies between national legal systems, and the lack of universal standards for e-commerce at the international level. Modern marketing strategies, including process automation and the use of personalized data, create new ethical and legal challenges that require additional legal regulation. This includes issues of algorithm transparency in decision-making, personal data protection, and ensuring consumer rights in the digital environment. Overall, the successful implementation of effective legal regulation in the field of electronic transactions will contribute to the development of a secure, transparent, and resilient digital economy, which will serve as the foundation for further growth and innovation in marketing strategies and business processes.

## 4. Conclusion

Civil law regulation of electronic transactions is a crucial component of the modern digital economy and marketing. The legal framework supporting such transactions directly influences the effectiveness of e-commerce, transaction security, and the protection of the parties' rights. The research revealed that current legal norms do not always align with the rapidly changing conditions of the digital market, which necessitates continuous improvement of the legal framework. First, an important issue is the insufficient adaptation of existing legislation to modern technological challenges. Existing legal norms often fail to cover the latest tools, complicating law enforcement and leading to legal uncertainties in case of disputes. Second, there is a need for harmonizing international standards for the regulation of electronic transactions. In a globalized world, it is essential to create unified rules for electronic contracts that ensure equal conditions for all participants in the digital economy, despite differences in national legal systems. Third, one important aspect is the need to raise the level of legal awareness among participants in electronic transactions. To ensure proper protection of consumer and business rights, it is vital that all parties have a clear understanding of their rights and obligations in the digital environment, as well as how to protect their interests in case of disputes.

Considering all the above aspects, it can be stated that a comprehensive approach to civil law regulation of electronic transactions is essential for ensuring a safe, effective, and fair digital environment, one that takes into account technological, legal, and economic factors. In this regard, the study of civil law regulation of electronic transactions is not only a technical matter but also a multifaceted challenge, requiring the integration of various branches of law and technologies. Thus, future research should focus not only on improving existing norms but also on anticipating the development of new technologies and their impact on legal regulation, as well as finding ways to integrate these changes into the international legal framework.

To effectively regulate electronic transactions, it is important to continuously improve the legal framework to align with rapidly changing technological conditions. It is recommended to adapt national legislations to the latest innovations by creating legal mechanisms that allow for quick responses to technological changes. Developing flexible and integrated legal structures that can rapidly adapt to new technological realities is particularly crucial. Additionally, clear legal mechanisms should be established to resolve disputes arising from electronic transactions and to protect the rights of the participants, especially consumers. Attention should also be given to the development of international standards for regulating electronic transactions, as digital transactions often have an international nature. Harmonizing legal norms at the international level will reduce legal barriers and ensure equal conditions for participants in the digital economy, particularly for small and medium-sized enterprises operating on a global scale. To achieve this, cooperation between states, international organizations, and legal institutions should be strengthened, especially in the context of improving international conventions and standards related to electronic transactions and consumer rights protection. Moreover, a significant need exists to raise the level of legal awareness among participants in electronic transactions. Businesses should be more actively informed about changes in legislation regarding e-commerce and the ways to protect their rights and obligations in the digital environment. Consumers should also be provided with more knowledge on how to protect their interests when entering and executing electronic contracts, which will help create a safer and more transparent digital environment.

Considering constant technological changes, it is vital that legal systems continuously adapt to new challenges, ensuring effective protection of the rights of participants in electronic transactions and contributing to the development of the global digital economy.

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# THE ROLE OF AI IN STANDARDIZATING CONTRACTS AND ITS IMPACT ON BUSINESS PROCESS OPTIMIZATION

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## Abstract

The relevance of the research is due to the rapid development of artificial intelligence technologies and the need to increase the efficiency of contractual work in the conditions of the modern economy and digital transformation of business. The use of artificial intelligence technologies in the standardization of contracts opens new opportunities for increasing the efficiency of legal processes, minimizing risks and reducing the cost of time and resources. Standardized contracts created with the help of artificial intelligence contribute to ensuring high quality documentation and efficiency in concluding agreements. The purpose of the study is to determine the role of artificial in the process of standardization of contracts and analyze its impact on the optimization of internal business processes of enterprises, as well as assess the effectiveness of the implementation of relevant technological solutions in the practical activities of companies. The following methods of scientific knowledge were used in the study: formal-logical method and generalization method, classification and grouping methods, observation method, analytical method, comparison and analogy method, empirical analysis, modeling, methods of economic and statistical analysis, content analysis of publications, reports and documents, methods of abstraction and concretization. The study identified key benefits and risks of implementing AI, including the need for staff training and ensuring high data quality. It highlights the importance of standardizing contracts to optimize legal processes, which can reduce legal risks, facilitate document review, and ensure compliance with legal requirements. The study explored the use of AI to update contract templates in line with changes in legislation, which helps avoid errors and maintain the relevance of contracts at all stages of their lifecycle. Also, based on simulated practical examples, it is shown how AI-based automation and contract standardization contribute to reducing the time for preparing contracts, reducing the burden on the legal department, and improving the efficiency of business processes. In addition, comprehensive measures are proposed to improve the process of contract standardization. The importance of creating state contract standards alongside private sector solutions is identified.

**Keywords:** artificial intelligence; standardization; contract; optimization; business processes; automation.

## 1. Introduction

In today's globalized and digitalized society, the legal regulation of economic relations is largely carried out through a system of contracts, which act as a key tool for determining the rights and obligations of business entities. At the same time, the effectiveness of contractual work is often limited by both objective and subjective factors. In particular, the manual preparation of contracts, checking the terms, the process

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of coordination and ensuring their compliance with current legislative requirements are resource-intensive processes that require significant involvement of human and financial resources (Sri Adibhatla & Shrivastava, 2023).

An additional complication is the increasing dynamics of legal regulation, constant updating of legislation, increasing amounts of information that must be considered when concluding contracts, as well as a high risk of legal errors. In conditions of increased market competition, even minor inaccuracies or deviations from established standards in contractual documentation can lead to significant financial and reputational losses. An important challenge for enterprises is the overburdening of legal departments with routine work: searching for appropriate templates, adapting provisions to specific conditions, coordinating changes with counterparties, as well as monitoring the fulfillment of contractual obligations. In this context, the need to implement technological solutions aimed at standardizing contractual work and reducing the administrative burden on legal departments is becoming more urgent.

Businesses, regardless of size and form of ownership, are especially vulnerable to these risks, where significant volumes of contracts with partners, suppliers and customers are concluded every day. Therefore, there is an objective need to develop unified standards for contractual documentation that will help improve the legal quality of contracts, compliance with internal policies and legislative requirements. Small and medium-sized businesses, limited in financial and human resources, also demonstrate increased interest in implementing automated solutions.

In this context, artificial intelligence (AI) is seen as a promising tool for transforming contractual practice. It is not only about automating the drafting of contracts using templates, but also about deep integration of AI into legal processes, in particular:

- analysis of large volumes of text data and classification of contracts;
- identification of potential risks and atypical conditions;
- automation of routine operations with the provision of analytical recommendations;
- unification of legal formulations;
- ensuring compliance with the requirements of current legislation.

At the same time, the use of AI in contractual practice is accompanied by a number of challenges, in particular: the lack of clear legal certainty regarding the use of AI in the field of legal services, the risk of automatic reproduction of erroneous models, the reasoning of AI decisions. In addition, in many jurisdictions there are currently no specialized regulatory acts that would determine the procedure and limits of the application of AI in legal activities, which creates additional legal risks for business entities seeking to implement innovative solutions.

One of the key areas of application of AI in the legal sphere is the standardization of contractual documentation, which involves the unification of the structure of contracts, terminology, style and logic of text construction. Standardization helps to reduce the number of errors, ensures transparency of coordination procedures, reduces the time for document preparation and facilitates the administration of contractual obligations. However, in this aspect too, AI faces significant difficulties, in particular the need to adapt to industry specifics, the legal system of a particular country, local regulatory and legal features, as well as to the individual requirements of individual companies. The lack of universal solutions necessitates close cooperation between lawyers and developers of AI technologies.

So, the problem of implementing AI in the field of contractual relations covers a number of interdisciplinary challenges — legal, technical, managerial. It is a systematic approach to its study that will allow not only to assess the potential of AI in standardizing contractual practice, but also to identify practical mechanisms for optimizing business processes in modern conditions of digital transformation.

The purpose of the article is a comprehensive analysis of the potential and real impact of AI on the standardization of contractual documentation, as well as a study of its role in optimizing key business processes. The following tasks are envisaged:

- to investigate the concept of AI in the field of law and analyze the scale of its implementation;
- to analyze the features of the integration of AI systems with modern business platforms and systems;
- to provide examples of the use of AI in the processes of concluding and managing contracts;
- to determine the advantages of implementing AI in the process of standardizing contracts;
- to identify the main shortcomings and risks of using AI in legal processes;
- to investigate the impact of the use of AI and standardizing contracts on the optimization of business processes, taking into account simulated practical examples;
- to develop proposals for improving the process of standardizing contracts and implementing AI to increase the efficiency of contractual work and business processes.

## 2. Materials and Methods

The research used various methods of scientific knowledge aimed at comprehensively investigating the role of AI in the standardization of contracts and its impact on the optimization of business processes. The formal-logical method and the generalization method were used to define the general concept of AI, its characteristics, and the main directions of its use in legal practice. Classification and grouping methods were used to systematize the advantages and disadvantages of using AI in the standardization of contracts, as well as to identify the types of contracts that are most often subject to automation and standardization. The observation method made it possible to investigate the scope of AI application in the legal sphere, especially in the processes of concluding contracts and managing them in a business environment.

The analytical method allowed us to consider the features of using various AI-based solutions for standardizing contracts, in particular, tools for automated document preparation, risk analysis, and agreement on contract terms. The comparison and analogy method were used to identify similar systems for automating contract processes, such as Kira Systems, Luminance, Ironclad, and others, in order to establish general patterns and best practices for their application. The empirical analysis consisted of studying real cases of implementing AI in contract support for companies of various scales. The modeling method allowed to create a practical model for implementing AI in the contract process of an enterprise and assess the possible consequences of such changes.

Methods of economic and statistical analysis were used to assess the effectiveness of the implementation of AI technologies and included the calculation of key performance indicators (KPI): average time for contract preparation, risk reduction and the overall contract conclusion cycle, the level of cost savings on legal services. This allowed us to objectively compare the effectiveness before and after the implementation of AI systems.

Content analysis of publications, reports and documents related to the implementation of AI, the conclusion and execution of contracts in various areas of economic activity helped to systematize the data and identify the main positive trends and problems arising in the process of applying AI in contractual relations. Abstraction and specification methods were used to identify and further analyze areas for overcoming current problems in the field of contractual work and the preparation of contracts using AI.

A complex combination of theoretical and empirical methods allows not only to analyze the current state of regulation and technical solutions, but also to assess the real practical effect of the use of AI in the standardization of contracts. Thanks to the methods and materials used, the study allows us to identify the potential of using AI to automate and standardize contractual work and to determine the benefits and risks of this technology for business.

## 3. Results and Discussion

### *3.1. The scale of AI implementation in legal practice*

Modern legal practice is undergoing a period of active transformation, driven by the dynamic development of digital technologies. One of the key innovations that significantly affects the structure and content of legal work is AI. In the context of law, AI is considered as a set of technological solutions that allow to automate routine or complex legal tasks by applying machine learning algorithms, natural language processing (NLP) and generative artificial intelligence (GenAI).

NLP (Natural Language Processing) (Fareed, 2020) is used to analyze, understand, and generate natural language, which allows you to automate processes such as translation, proofreading of contract texts, creating document summaries, detecting errors, and providing interface interaction through chatbots or voice assistants.

GenAI (García-Peñalvo & Vázquez-Ingelmo, 2023) is defined as the ability of a model to create original synthetic content — texts, images, analytics, which can serve as an auxiliary tool in the legal process: from preparing draft contracts to automatically building legal opinions. Among the practical capabilities of GenAI, it is worth highlighting the improvement of systematic review of large volumes of data (Khalid et al., 2025), analysis of sources and creation, editing of content of any format (text, audio, photo, video).

The issue of introducing AI into the legal sphere is also actively considered in modern Ukrainian scientific discourse. Researchers pay significant attention to both the practical potential and legal challenges associated with the use of AI in jurisprudence. The effectiveness of using AI to predict the outcomes of court cases, optimize internal legal procedures, and promote the democratization of justice through automated access to legal information is emphasized (Hrab & Tomashivs'kyy, 2024). However, with existing opportunities come challenges (Hryshko, 2024), in particular those related to human rights and the possibility of uncontrolled application of automated decisions. The lack of clear regulatory definitions and principles of the use of AI in law creates difficulties in determining legal liability for actions taken using AI (Kobko-Odariy, 2025). The focus of research is also on the use of AI as an assistive technology for lawyers and prosecutors (Plakhotnik, 2024), emphasizing the possibility of optimizing time, reducing human errors, but also the danger of excessive automation of processes that require professional intuition and ethical judgment.

Among the most important aspects of implementing AI in legal practice, it is worth highlighting contract law, in particular contract standardization, which consists in creating unified templates for contracts in order to increase the accuracy, speed of processing and consistency of documents. AI can automatically highlight critically important elements of contracts, such as liability conditions, amounts, terms and other essential terms of the contract, which increases the accuracy and efficiency of legal expertise (Hiranmai & Shrivastava, 2023). In addition, AI is being integrated into various industries including e-commerce (Muzychenko et al., 2023), which allows to significantly increase the efficiency of interaction with clients, which can be useful in legal practices for automating contract processes and managing legal processes.

The above theoretical and applied aspects of AI implementation in law are confirmed in current international research. According to statistical data from the Statista platform (Statista, 2024), the impact of GenAI on the legal profession arouses both significant interest and caution among specialists:

1. 23% of lawyers fully agree that the effective use of GenAI will be a critical factor that will separate successful and unsuccessful law firms. This indicator shows the

formation of new standards of competitiveness in the market of legal services, where technological competence is increasingly becoming the key to growth.

2. 22.9% of the respondents indicated that they are ready to trust GenAI if the transparency of the algorithms is ensured: how the AI works, how it is trained, what data it uses. This emphasizes the importance of ethical and technical openness of AI systems in the field of law, where trust is fundamental.

3. The most anticipated direction of GenAI implementation was the creation of summaries and analytics: 34% of respondents see this as the most powerful potential of AI. This vector is directly related to the processing of contracts, since the automated creation of summaries and extracts from contracts significantly reduces the workload on lawyers and reduces the likelihood of errors.

4. In practical terms, 19% of law firms are already using GenAI specifically for document summaries — this is not yet a dominant, but growing trend, confirming the gradual but steady introduction of technology into workflows.

5. In addition, 58% of lawyers expect increased investment in technology, which is an important signal for the market: AI is gradually moving from the sphere of «experimental tools» to the category of strategic investments of law firms.

Overall, these data highlight that the legal services market is in a transformational phase, where trust in GenAI, algorithm transparency and focus on specific practical tasks (resumes, analytics, contract processing) are key development factors.

According to a Thomson Reuters study (Future of Professionals, 2024), 72% of lawyers consider AI to be the main prospect that contributes to the development of the profession, and half of firms have identified the implementation of AI as a strategic priority.

Despite this, there is an uneven implementation of technologies, according to a study by the International Bar Association (Rotenberg et al., 2024), 100% of firms with more than 500 lawyers are already using AI, while only 32% of small firms (up to 100 lawyers) do so. This creates a risk of increasing market inequality, as technologically advanced companies gain competitive advantages in the speed of client service and the quality of contract support.

The data presented in the report (Thomson Reuters, 2021) demonstrates in which areas law firms most often use AI technologies. Based on the data, several key areas can be identified that are most popular today (Fig. 1).

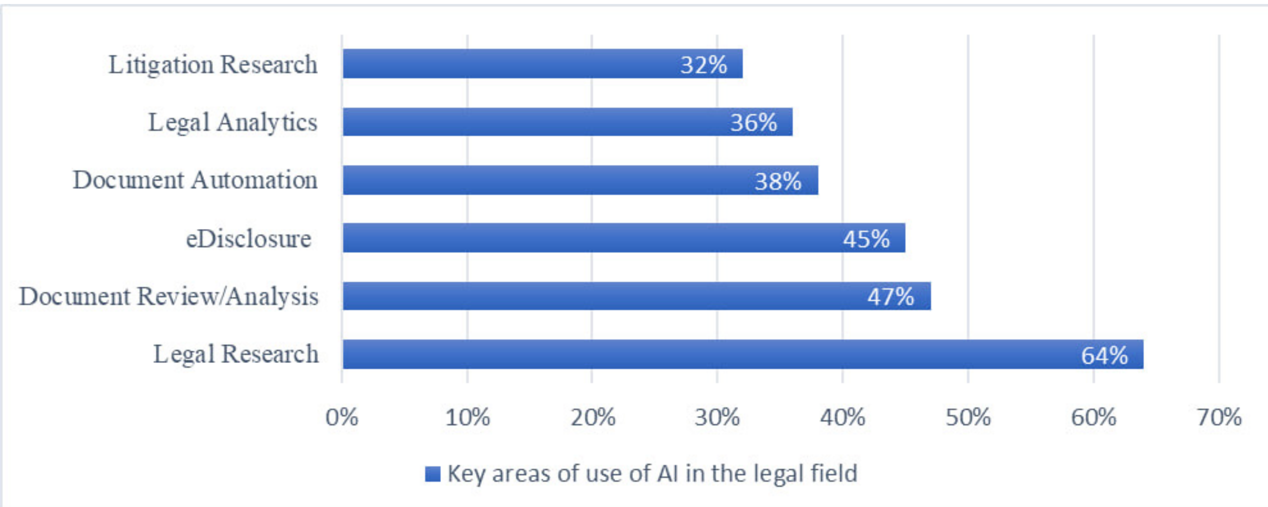


**Figure 1.** Key areas of use of AI in the legal field

AI is actively used in several key areas of legal practice. It is most commonly used for legal research, which allows lawyers to quickly find relevant information for case preparation. AI also plays an important role in document review and analysis, automating the process of reviewing agreements and contracts, which reduces the likelihood of

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errors. In addition, AI is used in electronic document disclosure, helping to efficiently process large amounts of information in court cases (Statista, 2024). Another important area is the automation of legal document creation, which significantly saves time and resources, as well as legal analytics, which allows you to assess trends and forecasts for making informed decisions. To a lesser extent, AI is used for case research, which helps to quickly find precedents for preparing case management strategies. In general, AI significantly optimizes legal processes, reducing the time and resources spent on routine tasks.

The results confirm the general trend — AI not only automates routine processes, but is also gradually turning into a legal «partner», especially in industries where standardization, accuracy, and speed are important, in particular in the preparation of contracts.

### *3.2. Integrating AI with modern business systems*

A developed and effective business environment is a prerequisite for the effective use of business potential, increased productivity, investment attractiveness and overall stability of the market economy (Bila & Nasikan, 2021). Business environment management is considered as one of the areas of improving its quality, which is a generalizing result of the functioning of the entire system. AI is actively used to automate request processing and increase customer satisfaction. Similar processes can be applied in law firms, where automation and AI data analysis significantly improve management decisions (Chernyshova et al., 2024).

In this context, AI acts as a new level tool that allows not only to automate processes, but also to continuously analyze the effectiveness of their implementation, adapt to changes and improve the quality of decision-making. The integration of AI with already existing business platforms, which creates the unity of digital management, is of particular importance.

For the effective work of AI in the field of standardization and contract management, its interaction with key business systems of the company is important, for example:

- ERP (Enterprise resource planning) - integration with ERP allows you to take into account financial and operational restrictions when forming the terms of the contract, automatically substitute the relevant details of the company and monitor compliance of contracts with internal policies.
- CRM (Customer relationship management) - combining AI with CRM systems (for example, Salesforce) allows you to initiate contract creation immediately after reaching a certain stage of the sales funnel. This minimizes delays and speeds up the contract conclusion cycle.
- ECM (Enterprise content management) - AI can automatically classify, tag and archive contracts, facilitating further search and analysis.
- CLM (Contract lifecycle management) - AI deepens the capabilities of CLM systems, providing:
- generation of drafts based on templates;
- coordination of changes according to the «draft-edit-version» principle;
- risk and key provisions analysis;
- automatic status update (at the stages of approval, signing, execution, prolongation).

In practice, there are various successful examples of integrating AI solutions with leading global business platforms. The choice of a specific integration architecture depends on the specifics of the enterprise, but the key trend is the implementation of adaptive AI models through open interfaces (Tran, 2025):

- The use of AI in SAP (System applications and products in data processing) allows you to identify risky provisions in contracts at the drafting stage, automatically compare the draft contract with corporate procurement standards, which can reduce the time of legal analysis.

-  CRM platform (customer relationship management) - thanks to the integration of AI in CRM, employees can generate personalized contracts directly from the client's profile, filling in important details without the need for manual editing, which can increase the speed of processing deals.
-  DocuSign - an electronic signature platform that complements the basic functionality with AI analytics, which in real time checks the compliance of the contract text with standard templates, offering editing or warning about potential risks.

The integration of AI into existing business systems ensures the creation of a single contract processing ecosystem, where processes become transparent, optimized and controlled. The result is not only the acceleration of contractual activities, but also an increase in the overall sustainability and competitiveness of the business.

The study of the benefits of AI in the context of standardization of contractual relations has long been a topic of scientific research (Linarelli, 2019). One of the main ideas is that AI can significantly contribute to the optimization of the processes of concluding and executing contracts, through automation and standardization. AI allows you to significantly improve management decisions, personalizing and predicting future trends. In the legal sphere, such technologies can be used to automatically form and manage contracts, which makes this process more efficient and accurate (Derba, 2024).

A standardized contract is a legal agreement, the terms of which are determined in advance, mostly without the possibility of making significant changes by the counterparty. Such documents are also called standard forms of contracts, or adhesion contracts, and are widely used, especially in industries with high operational activity.

Typical examples of standardized contracts include:

-  Internet service, banking or insurance subscription agreements.
-  Employment contracts in outsourcing companies.
-  Public offers in e-commerce.
-  NDA (Non-Disclosure Agreements), SLA (Service Level Agreements).
-  Software license agreements (EULA).
-  Logistics and distribution agreements.

Standardized contracts are particularly useful in the context of low-risk or typical transactions, where speed of conclusion and scalability are critical, rather than individual customization of terms, but with the advent of AI, the need for a compromise between standardization and personalization disappears.

In today's environment, standard contract terms are increasingly digitized. Online platforms provide a regulatory infrastructure that can be combined with algorithmic data analysis and other digital tools, enabling accelerated "regulatory learning" that is more efficient than traditional legal approaches, including "manual" review of contract terms (Möslein, 2023).

Special attention in modern researches is paid to the standardization of smart contracts, which can significantly transform contractual practice. Smart contracts are a flexible and secure tool that can ensure the automatic execution of agreements (Capocasale & Perboli, 2022). However, to realize the full potential of this technology, it is necessary to integrate them into a broader technical and legal framework, rather than existing as isolated solutions.

In this context, it is worth considering the key advantages of contract standardization, especially with the use of AI tools:

1. Economic efficiency - the standardization of contracts allows you to significantly reduce the costs of legal support, since repeated provisions do not require constant revision or editing. Using AI to process contract templates further reduces human costs by automating routine operations and reducing the need for legal intervention, especially in the initial stages. For example, Orangetheory Fitness successfully implemented an AI-powered contract management system, which reduced the time to review a single

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contract to 30 minutes, which is 80% faster than traditional methods (Williams, 2023). Using AI saved hundreds of hours of legal work and completed the project many times faster than planned.

2. Acceleration of the process - due to the use of standard wording, contracts are quickly created, the parties reach agreement faster, because they are familiar with the typical terms of the contract. AI can accelerate this process even more by analyzing the parties' requests in real time, offering compromise solutions and adapting standard terms to a specific context. Such tools are already used in LegalTech platforms for generating or verifying contracts. At the same time, the use of AI in business taxation (Shapovalova et al., 2024) can increase the accuracy and reliability of reporting, which can be extrapolated to legal processes where standardization of documentation is important.

3. Increased productivity - Using ready-made contract templates combined with intelligent systems reduces the time spent on each individual contract. Legal teams can focus on more complex or strategically important issues by transferring routine work to digital assistants. In an enterprise environment, this means scaling processes without a proportional increase in personnel costs.

A study conducted by LawGeex showed that an AI-based contract management tool achieves 94% accuracy in identifying risks in documents, while the average accuracy of lawyers is 85% (LawGeex, 2018). In addition, the AI document review time is only 26 seconds, compared to 92 minutes that lawyers need to analyze the same data.

The Forrester Total Economic Impact™ report on Lawgeex (The Total Economic Impact..., 2021) shows a return on investment of 209% and over 6,500 hours saved in contract review and negotiation. The results indicate the possibility of significant productivity improvements, which, in turn, contributes to cost reduction and improved quality of contract support.

4. Confidence in the content and execution of the contract - unified provisions reduce the likelihood of ambiguous interpretation of the terms of the contract, which contributes to an increase in the level of trust between the parties. AI can additionally analyze the wording of contracts for potential gaps, conflicts or ambiguities even before signing, thereby increasing the legal quality of the document.

5. Risk reduction - standardization helps reduce legal and operational risks, in particular in cases of involving third parties or executing contracts in different jurisdictions. AI can conduct preliminary compliance analysis, identify potential threats or inconsistencies with legal norms. In the event of an update of regulations, AI is able to quickly adapt standard templates to new requirements.

6. Scalability and reusability - in digital environments (e.g. e-commerce or SaaS), an important advantage is the ability to scale the process of concluding contracts with a large number of users. Standardized contracts are easily integrated into digital systems and allow for the automatic generation of contracts with a large number of customers or partners.

7. Flexibility within technical and legal innovations - although standardization is usually associated with limiting flexibility, in combination with AI it can allow for maintaining adaptability: conditions can change within defined parameters, and events that trigger the execution of the contract can be recorded automatically. Smart contracts can be part of larger legal frameworks, which allows combining the flexibility of technology with the clarity of legal regulation.

AI technologies are significantly changing the process of drafting legal contracts. AI tools help create accurate, customized, and compliant documents by automatically generating them based on input data and templates. Systems such as Legal Robot (Stavnichenko, 2024) analyze contract contexts, suggest appropriate terms, and ensure compliance with current legal standards. In addition, they support simultaneous collaborative work on draft contracts, change tracking, and access to extensive databases of legal precedents, which significantly improves the quality and speed of contract work, minimizes the risk of human error, and reduces company costs. Standardization combined with AI not only optimizes contract practice, but also creates the prerequisites for new models: smart contracts, self-executing agreements, and contracts that can «learn» from past experience (machine learning). This opens up prospects for creating more predictable, automated, and adaptive legal relationships.

### *3.3. Disadvantages and risks of implementing AI in legal processes*

The integration of AI opens up new opportunities for optimizing routine processes, increasing the efficiency of information processing, and reducing costs. At the same time, the rapid development of this technology creates a number of challenges that are essential for ensuring compliance with legislation and guarantees of counterparties' rights. Such risks require detailed analysis and development of appropriate mechanisms for their resolution.

One of the biggest threats is the gradual loss of full human control over decision-making processes in AI systems. Complex machine learning models can generate results whose logic is not always traceable even to the developers. In legal practice, this poses a particular danger, as decisions must be well-founded, predictable and open to scrutiny. The loss of transparency can lead to consequences such as reduced trust in automated decisions, violations of anti-discrimination laws, lawsuits and reputational damage.

For example, the COMPAS recidivism risk assessment algorithm (Scaria et al., 2024), which was used in US courts to make decisions on parole or bail, was found to be biased against people of African American origin. The assessment mechanism remained opaque, which made it impossible to effectively protect the rights of suspects.

In 2019, Apple faced a problem with the credit scoring algorithm in Apple Card (BBC, 2019). The AI provided lower credit limits to women than to men, even if their financial data was comparable or better. The company failed to provide a clear explanation of the logic behind the algorithm's decision-making, which raised serious questions about the transparency of the automated lending process and accountability for its results. To prevent such risks, it is necessary to introduce mandatory verification of all AI work results by specialists, establish clear boundaries of responsibility between machine and human, and develop protocols for regular algorithm audits. The key is the principle of «human-in-the-loop», which ensures that all legal conclusions remain under control.

Another serious threat is the tendency of modern models, in particular LLM, to create false or fabricated information. In legal practice, this can have serious consequences:

- submitting false information to the court may qualify as a disciplinary offense;
- undermining the trust of clients in the lawyer or law firm;
- receiving lawsuits for compensation of losses.

In Mata v. Avianca Inc. (Mata v. Avianca, Inc, 2023), a lawyer submitted documents to the court containing non-existent court precedents generated by AI. Even though the model provided fictional quotes and case details, the court's review revealed falsification, which led to the application of sanctions against the lawyer. To minimize this problem, it is necessary to implement multi-level verification of information, i.e., automatic results should be supplemented with independent expert assessment. It is also necessary to use highly specialized models that are «trained» exclusively on high-quality legal data, and regularly update them in accordance with changes in legislation and practice.

Legal activity is associated with the protection of a large amount of confidential information: personal data of clients, commercial secrets, strategic plans of companies. Transferring this data to third-party AI systems may violate attorney-client privilege or

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data protection legislation (e.g. GDPR in the EU).

A well-known case of privacy concerns is the situation with Samsung Electronics (Priya, 2023), where employees inadvertently transferred confidential data to the open neural network ChatGPT while preparing internal documents, which created a risk of trade secret leakage. As a result, Samsung introduced a complete ban on the use of public AI platforms in work processes and began developing its own secure AI model for internal use. To prevent this, modern data encryption protocols should be used both when storing and transmitting information, data access should be separated and multi-level user authorization should be implemented. In addition, it is important to choose AI solutions from trusted suppliers that meet international security standards, such as GDPR, ISO 27001, SOC 2. Special attention should be paid to the use of local servers or private cloud environments instead of open public platforms.

Uncertainty regarding the subjects of responsibility for errors made by AI systems is a serious threat to legal stability. Is a person liable if he entrusted AI with the preparation of a document? Definitely yes, since he is responsible for the preparation, verification and transmission of this document.

Contractual practices, especially in B2B contracts for the supply of AI solutions, should include provisions on:

- limitation of the developer's liability for unforeseen AI errors;
- the user's obligation to independently verify the results of the system's operation;
- the possibility of liability insurance for damage caused by decisions made on the basis of AI.

The case of Quoine Pte Ltd v B2C2 Ltd (Quoine Pte Ltd v B2C2 Ltd, 2020) is an important precedent that concerned algorithmic trading and the automated execution of transactions without direct human intervention. The court considered the issue of allocating liability for errors caused by automated systems.

AI is certainly becoming an integral part of the legal profession. However, the successful use of such technologies depends not only on the technical characteristics of the models, but also on the development of effective mechanisms to prevent the risks they carry. Only a systematic approach to legal and technical aspects will ensure that AI works for the benefit of the law, and not threaten its fundamental principles.

### *3.5. The impact of using AI and standardization of contracts on business process optimization*

Automating contract work using AI tools and standardized templates is now one of the key strategies for improving the efficiency of business processes. It not only accelerates contract execution, but also reduces risks, optimizes costs, and improves collaboration in both external and internal company processes. The use of AI and standardization of contracts to optimize business processes is based on the main directions:

- Standardization of contract templates.
- Automated contract analytics and verification.
- Risk analysis and reduction of dependence on the human factor.
- Integration of contract processes into the business environment.

Below are the most popular solutions that help standardize and automate contract work and, as a result, improve core business processes (Table 1.).

**Table 1.** Overview of systems for standardization and automation of contracts

| System | Basic capabilities | Features |
|---|---|---|

| | | |
|---|---|---|
| ChatGPT (OpenAI) | Contract text generation, template creation, assistance in formulating terms. | Additional legal validation of creat-ed documents is required. High level of errors, loss of confidentiality. |
| Kira Systems | Pre-contractual risk analysis, crea-tion of standard contracts. | Recognized leader in due diligence processes, used by leading law firms. |
| ThoughtRiver | Pre-contractual risk analysis, crea-tion of standard contracts. | It has pre-configured modules for different branches of law. |
| World Commerce & Con-tracting (WorldCC) | Development of contract stand-ards, contract optimization meth-odologies. | Actively used to implement best practices in contract management. |
| LexisNexis CounselLink | Contract management, analytics, contract templateization. | Suitable for large corporate legal departments. |
| Westlaw Edge (Thomson Reu-ters) | Search for precedents, contract analysis, generation of standard wording. | Especially useful for comprehensive analysis of contracts with reference to current practice. |
| Practical Law (Thomson Reu-ters) | Ready-made contract templates, step-by-step instructions for con-cluding agreements. | Ideal for a quick start in complex contractual issues. |
| Luminance | For verification, audit and contract management | Suitable for identifying risks and inconsistencies |
| Ironclad | Contract management "from crea-tion to signing", automation of approvals. | One of the most popular "no-code" solutions for in-house lawyers. |
| ContractPodAi | AI-based contract creation, analy-sis, approval and storage. | Fully automated solution for the contractual lifecycle (CLM). |
| DocuSign CLM | Automation of workflows for sign-ing and approving contracts. | Integration with popular CRM and ERP systems (Salesforce, SAP). |

Intelligent systems optimize resource management. Due to such innovations, companies can reduce costs and shorten the time for concluding agreements, which makes their business processes much more efficient (Butenko et al., 2025). As can be seen from the table, there are already solutions on the market for different stages of working with contracts: from generation and verification of individual provisions to the full life cycle of the contract. The right choice of platform depends on the needs, size of the business, specifics of the activity and the volume of the workload. The optimal approach is to combine basic tools with professional systems such as Kira Systems or Ironclad to formalize and standardize work (Future of Professionals Report, 2025).

The effectiveness of contract automation should be assessed not only by qualitative impressions such as increased convenience, but also by quantitative indicators. For this, KPIs are used, which allow objectively measuring the impact of implemented solutions on business processes. Below are the key metrics used to assess the effectiveness of contract automation (Table 2).

**Table 2.** Example of efficiency measurement: key KPIs of business process optimization

| Indicator | Meaning | Possible expected re-sults |
|---|---|---|
| TAT (Turna-round Time) | Time from draft creation to final signing. | Reduction by 40-50% |
| Cost Saving | Reduction of the cost of legal support of contracts. | Save up to 30% of the budget |
| Contract Risk Level | Reduction of risks in contracts | Risk reduction by 20-35% |
| Cycle Time Re-duction | | Reducing the overall contract cycle. |

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The above indicates that reducing workload, increasing process transparency, and minimizing human errors in contract preparation contribute to the overall increase in the company's efficiency and increasing its competitiveness in the market. At the same time, when implementing any new solutions, it is necessary to systematically analyze the indicated indicators in order to have an objective idea of their actual impact on business processes and timely identify areas for further improvement.

### *3.5. Practical example of optimizing contractual processes through standardization*

To demonstrate the effectiveness of implementing automation and standardization of contractual work and their impact on optimizing business processes, let's consider a conditional example of an IT company.

Initial data:

- Company: IT company with up to 150 employees.
- Legal department: 20 lawyers.
- Workload: 50 NDAs and 50 contracts per month.

In order to assess the effectiveness of work before and after the implementation of AI-based systems, it is worth considering specific indicators. Table 3 shows the key parameters that characterize the changes in the processes of preparing NDAs and service contracts after the implementation of AI technologies.

**Table 3.** Modeling the effectiveness of AI implementation in standardization of contract work

| Parameters | Before AI imple-mentation | After AI implementa-tion |
|---|---|---|
| Number of NDAs/ per month | 50 | 50 |
| Time to prepare 1 NDA | 120 min (fully manu-al by lawyer) | 25 min (lawyer + AI generation) |
| Total time/month per NDA | 100 hours | ~20.8 hours |
| Part of NDAs requiring legal review | 100% | 10–15% |
| Average NDA cycle time | 3 days | 1 day |
| Number of service agreements/ per month | 50 | 50 |
| Time to prepare 1 agreement | 180–240 min (fully manual by lawyer) | 45–60 min (lawyer + AI generation) |
| Total time/month for agreements | 175–200 hours | ~41.6–50 hours |
| Part of agreements requiring legal review | 100% | 20–25% |
| Average contract cycle time | 5–7 days | 2–3 days |
| Legal workload | High | Average-low |

Analysis of the obtained data demonstrates that the implementation of AI tools for automating the preparation of NDAs and service agreements allows to significantly optimize key business processes. There is a significant reduction in the time for preparing documents (by 70–80%), reducing the burden on the legal department. Reducing the time for preparing contracts provides additional benefits for the company:

- increases the level of satisfaction of counterparties due to faster response to requests;
- reduces the risk of losing potential deals due to a long wait for agreement on contracts;

- helps to strengthen the company's reputation as a flexible and technologically advanced partner;
- is economically beneficial - allows to reduce costs for legal support and redirect resources to other priority business tasks;
- allows the legal team to focus on more complex and risky agreements, strategic consulting.

These results confirm the feasibility of further developing document standardization processes and using modern technologies to support contractual work. Along with the automation of basic contracts, it is important to pay attention to improving the procedures for auditing counterparty changes, risk analysis, and the gradual integration of AI tools into more complex types of contracts

### *3.6. Prospects for improving the standardization process and implementing AI to optimize business processes*

The implementation of AI in the process of standardizing contracts and automating legal processes is an important step for optimizing business processes. However, to achieve maximum effect and efficiency, it is important to consider not only technological innovations, but also changes in organizational and management processes, as well as in employee skills:

1. Expanding the application of AI to different types of contracts. It is important to apply AI technologies not only to standard contracts such as NDAs, but also to more complex documents such as service contracts, software development or license agreements. Intelligent systems such as Kira Systems, ThoughtRiver or Luminance can significantly reduce the number of errors in the contract and speed up the process of concluding them, which is especially important for companies with many counterparties.
2. The development of an internal database of standard contracts is necessary in the standardization process, which allows you to create and store a single database of verified and adapted templates and will provide faster access to current documents, reducing the time for their preparation.
3. Automatic or updating of templates and verification using AI. It is important to ensure regular updating of contract templates, considering changes in legislation and internal company policies. For this, you can use both automatic AI-based tools and combined solutions: automatic notification of changes + manual confirmation or updating of templates by responsible persons.
4. The development of an internal database of standard contracts is necessary in the standardization process, which allows you to create and store a single database of verified and adapted templates and will provide faster access to current documents, reducing the time for their preparation.
5. Automatic or updating of templates and verification using AI. It is important to ensure regular updating of contract templates, considering changes in legislation and internal company policies. For this, you can use both automatic AI-based tools and combined solutions: automatic notification of changes + manual confirmation or updating of templates by responsible persons.
6. Creating a «guide» or «checklist» for contracts will help to unify approaches to concluding complex B2B agreements, improve the legal quality of documents and speed up the approval processes. They should contain mandatory elements of contracts, examples of wording and recommendations for working with atypical conditions.
7. Training employees in new systems. Technologies in themselves do not guarantee efficiency without proper mastery of them by the staff. Regular education and training will increase the efficiency of lawyers' work with AI systems, minimize technical errors and improve the overall quality of contractual activities.

In addition to internal business process optimization, an important area of improvement is the development of unified contract standards at the state level.

Introducing standardization of individual documents (e.g. NDA, service agreements, agency agreements, contracts) would provide the following benefits:

- unity of law enforcement - uniform interpretation of typical provisions in the practice of state bodies, business and the judicial system;
- reduction of the number of disputes by minimizing ambiguous wording and legal risks;
- increasing the efficiency of inspections and controls - unified contracts facilitate audit, legal expertise and ensure compliance with legislative requirements;
- optimization of public procurement - simplification of procedures for concluding contracts in the public sector, reduction of administrative costs;
- increasing the level of legal culture - facilitating the understanding of basic contractual provisions for entrepreneurs and citizens;

Thus, the combination of internal digitalization of contracts in business and the development of standardization of contracts at the national level will contribute to greater predictability of contractual relations, reduction of transaction costs and sustainable development of the private and public sectors.

## 4. Conclusions

As a result of the research, the essence of the AI concept in the field of law and the scope of its implementation were analyzed. AI is actively integrated into legal practice, significantly changing approaches to working with documents, forensic analytics, and managing contractual processes. Special attention is paid to the integration of AI with modern business platforms, which allows automating the processing of large volumes of data, reducing time spent and increasing the accuracy of legal work.

Examples of the use of AI in the conclusion and management of contracts are considered - in particular, through the Kira Systems, ThoughtRiver and Luminance systems, which allow to accelerate the approval of contracts, automatically identify risks and propose options for changes. The key advantages of implementing AI in the process of standardizing contracts are established: increasing work efficiency, minimizing the risks of errors, faster updating of templates in accordance with changes in legislation. At the same time, the main disadvantages and risks are identified, including: the need for high-quality data for training AI, the risks of misinterpretation of complex legal norms, confidentiality and liability.

It has been proven that the use of AI in combination with contract standardization contributes to the optimization of business processes, reduction of transaction costs and increase of predictability of contractual relations. The study simulated practical scenarios of application of AI to optimize the processes of concluding contracts. Several practical proposals for improvement were developed: expanding the use of AI for complex contracts, creation of internal databases of templates, automation of document updates, development of guides and training of personnel. It was also proposed to introduce national standards of contracts to unify practices and reduce legal risks.

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# THE URGENCY OF REGULATING ELECTRIC BICYCLES IN THE ROAD TRAFFIC AND TRANSPORTATION LAW IN THE ERA OF TECHNOLOGICAL ADVANCEMENT

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**Abstract**

This study explores the legal framework and challenges in regulating electric bicycles (e-bikes) in Indonesia, particularly in the context of technological advancements in transportation. Employing a normative juridical approach combined with conceptual and comparative analysis, this research identifies the legal gap between the national traffic law and implementing regulations concerning hybrid vehicles. The findings highlight the absence of specific provisions governing e-bikes in Law Number 22 of 2009 on Road Traffic and Transportation, causing legal uncertainty and potential safety issues. The study concludes that a comprehensive revision of the law is necessary to adapt to evolving transportation technologies and to ensure legal protection and safety for all road users.

**Keywords:** E-bike regulation; legal framework; road safety; hybrid vehicle; transportation law.

## 1. Introduction

The development of global transportation technology has experienced significant acceleration, particularly with the emergence of environmentally friendly vehicles such as electric bicycles. This transformation not only enhances the efficiency of mobility but also contributes to efforts to mitigate climate change by reducing greenhouse gas emissions (Tsemekidi Tzeiranaki et al., 2023). However, the increase in the number of vehicles, including electric bicycles, has also created new challenges in terms of regulation and traffic safety. Philosophically, the law functions as an instrument that responds to social and technological dynamics, adapting itself to the ever-evolving needs of society (Ogugua, 2015). In this context, Law Number 22 of 2009 concerning Road Traffic and Transportation in Indonesia serves as the main legal foundation governing the national

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transportation system. Nevertheless, the emergence of electric bicycles as a new mode of transportation raises questions about the appropriateness of their classification within the existing legal framework. From a sociological perspective, the adoption of electric bicycles by the public reflects a shift in preferences toward more sustainable transportation modes, although regulations governing their use remain inadequate.

The development of regulations concerning electric motor vehicles has become a focal point in the study of transportation law, particularly in line with the adoption of environmentally friendly electric-based vehicles. Previous studies have primarily focused on the regulation of larger electric vehicles such as cars and motorcycles, which are specifically regulated within the context of energy and environmental policies. (Khan et al., 2015) However, the regulation of electric bicycles as hybrid vehicles that combine electric power and human pedaling has not received sufficient attention in legal literature. Previous studies have tended to overlook the legal classification of electric bicycles, which occupy an intermediate category between motor vehicles and non-motorized vehicles. This indicates a regulatory gap relevant to accommodating the unique characteristics of electric bicycles, in terms of speed, propulsion system, and user safety standards (Lee et al., 2022). The absence of clear regulations creates legal uncertainty, both for users and law enforcement officials. This article seeks to fill this gap by offering a new perspective on the classification and regulation of electric bicycles within the framework of national law. Thus, this study presents a novelty that emphasizes the urgency of revising the Indonesian Road Traffic and Transportation Law to adapt to the advancements of modern transportation technology.

The rising use of electric bicycles in Indonesian society has become a phenomenon indicating a shift in transportation preferences toward environmentally friendly vehicles. However, the popularity of electric bicycles has not been accompanied by sufficient regulatory clarity, creating legal gaps that have the potential to cause serious problems. Incidents involving electric bicycle accidents, whether due to a lack of supervision or use by underage children, serve as concrete evidence of legal risks requiring immediate attention. The lack of clear legal classification for electric bicycles, whether as motor vehicles or non-motorized vehicles, has resulted in a weak legal basis for enforcing regulations, ensuring consumer protection, and maintaining traffic safety (Gkoumas et al., 2021). This situation is further exacerbated by the lack of education on safe usage and the wide variation in technical specifications of electric bicycles available in the market.

Electric bicycles face significant legal challenges due to the ambiguity of their classification within the framework of Indonesian legislation. Law Number 22 of 2009 on Road Traffic and Transportation only includes two main categories of vehicles, namely motorized and non-motorized, without specifically accommodating the presence of electric bicycles, which possess dual characteristics as hybrid vehicles (Nur, 2022). This misalignment has resulted in a legal gap, particularly in aspects such as ownership requirements, the necessity of holding a driver's license, speed limits, and safety standards that should be applied to vehicles with electric mechanical components (Agustina, 2024). In addition, Minister of Transportation Regulation Number 45 of 2020, which regulates electric bicycles as certain types of vehicles, is merely an implementing regulation and does not provide legal force equivalent to that of a law. This gap creates serious implications, such as a weak legal basis for enforcing traffic safety rules for electric bicycle users and uncertainty in legal enforcement on the ground. As a result, comprehensive and explicit regulation at the statutory level has become increasingly essential to ensure adequate legal protection for all stakeholders.

This study employs a normative juridical method with a statutory, conceptual, and comparative approach to understand the regulatory gap concerning electric bicycles within the national legal system. The data used include scientific literature, legislation, legal documents, and light empirical findings that support the analysis. The study adopts a descriptive-analytical method to explore in depth the differences in regulations between motor vehicles, non-motorized vehicles, and hybrid vehicles such as electric bicycles (Irwansyah, 2020). The legal argumentation is built upon the progressive legal theory, which emphasizes the necessity for law to evolve in accordance with the times and the needs of society. Additionally, comparative analysis is conducted by examining electric bicycle regulatory policies in other countries as a point of reference to formulate adaptive and responsive regulatory solutions (Hadiati, 2024). This approach allows for a comprehensive exploration of philosophical, juridical, and sociological aspects, resulting in conclusions that are not only descriptive but also solution-oriented and progressive. By combining these methods, the findings of this study are expected to make a substantial contribution to the improvement of electric bicycle regulations in Indonesia, in line with the spirit of just and sustainable legal development.

This research aims to identify and formulate a more comprehensive legal regulatory solution regarding the existence of electric bicycles in Indonesia within the framework of the Road Traffic and Transportation Law. The existence of electric bicycles as hybrid vehicles combining human and electric mechanical power has not yet been clearly classified, necessitating a legal basis that can accommodate the realities of modern transportation technology. This study also seeks to establish a juridically acceptable legal classification for electric bicycles, considering their operational speed, power source, and technical specifications that distinguish them from both motorized and non-motorized vehicles. Furthermore, the research aims to propose a revision to the Road Traffic and Transportation Law that is not only adaptive to the advancements in transportation technology but also addresses aspects of safety, environmental sustainability, and consumer protection. By achieving these objectives, this study is expected to make a concrete contribution to the formulation of inclusive and sustainable national transportation policies.

## 2. Dinamika Perkembangan Teknologi Transportasi di Era Modern

TThe development of global transportation technology over the past two decades has undergone significant transformation, marked by the increasing adoption of Electric Vehicles (EVs) as part of the energy transition agenda and carbon emission reduction efforts. The growth of the EV market has been driven by both national and international policies that support the shift from fossil fuel-powered vehicles toward low-emission transportation systems.(IEA & AIE, 2023) Transportation technology has evolved into one of the key pillars in achieving the targets of the Sustainable Development Goals (SDGs), particularly in relation to climate change mitigation objectives. Developed countries have integrated electric vehicle transition policies into their national regulations, driving innovation in battery technology, electric motor efficiency, and the development of charging infrastructure to support environmentally friendly mobility (Şengül & Mostofi, 2021).

In addition to larger vehicles such as electric cars, global trends also show a significant increase in micro or personal mobility vehicles, including electric bicycles, electric scooters, and battery-based hybrid vehicles. Such vehicles offer efficient solutions for short-distance transportation, reduce dependence on large-engine private vehicles, and promote healthy lifestyles (Abduljabbar et al., 2021). The application of environmentally friendly technology is also in line with the philosophy of sustainable development, which integrates economic, environmental, and social aspects, with an emphasis on reducing carbon footprints and improving urban air quality. In the global context, electric bicycles are not merely a technological innovation but also represent a paradigm shift in transportation that is more inclusive and responsive to climate change. This concept of green mobility has become a focal point for policymakers and industry stakeholders to ensure a balance between energy efficiency, user safety, and the sustainability of urban ecosystems.

International policies supporting electric vehicles, including the commitment to reducing greenhouse gas emissions under the 2015 Paris Agreement, provide a strong impetus for the development of sustainable transportation technology. These initiatives emphasize the necessity for adaptive and innovative regulatory frameworks to accommodate the dynamics of modern transportation technology development. Therefore, the advancement of electric vehicles, including electric bicycles, requires regulatory support that is responsive to technological changes and the evolving needs of global society.

In Indonesia, the development of electric vehicles has experienced significant growth alongside the government's policy push to reduce dependence on fossil fuels and lower urban air pollution levels. Through Presidential Instruction Number 7 of 2022 on the Use of Battery-Based Electric Motor Vehicles as Government Service Vehicles, the country demonstrates its political commitment to accelerating the transition toward sustainable transportation. This policy is reinforced by Presidential Regulation Number 55 of 2019, which governs the acceleration of the battery-based electric motor vehicle program as part of the national effort to address climate change challenges and enhance national energy resilience. The market response to these policies is evident in the increasing penetration of electric vehicle products, including electric bicycles, offered by various domestic and international manufacturers at increasingly affordable prices.

The increasing use of electric bicycles in urban communities is driven by considerations of efficiency, ease of daily mobility, and low operational costs. Electric bicycles have become a popular alternative for students, daily workers, and younger age groups, especially in densely populated areas with limited accessibility for conventional motor vehicles. This trend is also influenced by the growing public awareness of environmental issues and green lifestyles, encouraged by public campaigns and support from electric vehicle user communities. However, regulatory policies for electric bicycles in Indonesia remain fragmented and have not yet been comprehensively integrated into the national transportation legal system.

Minister of Transportation Regulation Number 45 of 2020, which regulates the use of certain electric motor-based vehicles, serves as the only technical guideline for vehicles such as electric bicycles. However, this regulation is administrative in nature and does not carry the same legal weight as a statutory law, leading to legal uncertainty in aspects of safety, vehicle classification, and rider responsibility in cases of violations or accidents. The imbalance between market development and the regulatory framework has the potential to create normative confusion in practice, particularly in the context of law enforcement and protection for road users.

Electric bicycles have become a symbol of technological innovation in transportation widely embraced by society, especially in densely populated urban areas. The use of electric bicycles as an alternative daily transportation mode has gained popularity due to their ease of operation, cost efficiency, and contribution to reducing carbon emissions.(Rose, 2012) In a social context, the presence of electric bicycles facilitates transportation accessibility for groups in society who previously faced mobility limitations, including students, the elderly, and informal workers. This phenomenon indicates a shift in public transportation preferences from fossil-fuel-powered motor vehicles to more environmentally friendly and energy-efficient alternatives. Urban communities in Indonesia, particularly in Jakarta, Bandung, and Surabaya, are showing a continuous increase in electric bicycle adoption, influenced by public campaigns and growing environmental awareness. A significant rise in electric bicycle use has been documented in various urban transportation surveys, highlighting a behavioral shift among commuters from conventional motor vehicles to battery-based electric vehicles (Pendakur, 1984).

The existence of electric bicycle user communities also plays a crucial role in promoting the adoption of this technology, both through education on safe riding practices and the promotion of its environmental benefits. Social media serves as the primary channel for disseminating information and user experiences, thereby accelerating the spread of the electric bicycle trend among younger generations. However, amid the positive public reception of electric bicycles, challenges remain in terms of supporting infrastructure, such as dedicated lanes, charging stations, and uniform technical standards.(Hossein Sabbaghian et al., 2023) The lack of adequate infrastructure readiness creates potential risks of accidents and conflicts on the roads, particularly when electric bicycles are used in public lanes that are not designed for medium-speed vehicles.

The lack of clear regulations governing the technical aspects, safety, and classification of electric bicycles also affects users' perceptions regarding the legality of using electric bicycles on public roads. Many users are unaware of speed limits, helmet requirements, and other administrative provisions that should apply. This phenomenon creates an urgent need for clearer and more stringent regulations to ensure that the adoption of electric bicycles can continue safely and orderly.

The rapid growth of electric bicycles as an alternative mode of transportation in Indonesia marks a paradigm shift in public mobility preferences, increasingly favoring sustainability and energy efficiency. However, the successful adaptation of this technology has not yet been fully supported by adequate regulatory and infrastructure preparedness. The ambiguity surrounding the classification of electric bicycles, whether as motor vehicles or non-motorized vehicles, creates a legal vacuum that directly impacts user safety and legal certainty on the roads (Müggenburg et al., 2015). Moreover, limitations in supporting infrastructure such as dedicated lanes, charging facilities, and public education on safe riding rules add to the complexity of the challenges faced (Rasyid & Kusumawaty, 2022). The continuous advancement of technology demands a legal framework that is adaptive and capable of accommodating the dynamic needs of society and the modern transportation industry. Countries with advanced transportation systems have demonstrated that responsive policies, based on empirical studies and the latest technologies, can serve as a crucial foundation for supporting widespread adoption of electric vehicles.

In this context, Indonesia requires a legal framework that is not only reactive to technological developments but also proactive in formulating policies that combine legal protection, user safety, and environmental sustainability. Clear regulations will minimize ambiguity in law enforcement, provide certainty for stakeholders, and build an inclusive and safe transportation ecosystem. Furthermore, adaptive regulations will also encourage technological innovation in the domestic transportation industry, strengthening Indonesia’s position in the global landscape of environmentally friendly vehicle adoption.

The regulatory ambiguity surrounding electric bicycles becomes even more apparent when compared to Minister of Transportation Regulation Number 45 of 2020, which serves as an implementing regulation. This regulation defines electric bicycles as specific vehicles powered by electric motors, complete with technical provisions on specifications, maximum speed, and safety requirements. However, the existence of this implementing regulation has not been accompanied by a revision of the parent law, namely Law Number 22 of 2009, which only recognizes two categories of vehicles: motorized and non-motorized. The hierarchical difference between the law and the implementing regulation results in a legal gap concerning the legality of electric bicycles, particularly in terms of driver’s license ownership, vehicle registration numbers, and applicable speed limits. Without consistent and integrative regulations, overlapping norms occur, complicating law enforcement and potentially creating uncertainty for riders and law enforcers. This reality highlights the urgent need for regulatory harmonization between the parent law and technical regulations to establish a clear legal foundation for electric bicycles and ensure user safety.

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### 3. The urgency of revising the road traffic and transportation law to accommodate electric bicycles

The rapid development of transportation technology, particularly electric-based vehicles such as electric bicycles, necessitates an adaptive regulatory update in Indonesia's Road Traffic and Transportation Law (UU LLAJ). Currently, Law Number 22 of 2009 only classifies vehicles into two categories: motorized and non-motorized, without considering the presence of electric bicycles as hybrid vehicles that combine electric motors and human pedalingThis gap creates a legal vacuum that has the potential to cause ambiguity in enforcing safety rules, controlling speed, as well as managing ownership and use of electric bicycles. Along with the increasing adoption of electric bicycles in various major cities in Indonesia, there is a growing demand to update the legal framework to accommodate the unique characteristics of electric bicycles and ensure the safety of road users (Oeschger et al., 2020). The existence of Minister of Transportation Regulation Number 45 of 2020, which is merely administrative and technical in nature, is insufficient to meet the legal needs at the national level, particularly because its legal force is lower than that of a statutory law. This has resulted in overlapping implementation of regulations, creating uncertainty for law enforcers, users, and electric bicycle manufacturers.

Furthermore, transportation technology is developing much more rapidly than legislative processes, necessitating proactive efforts in updating regulations to prevent legal vacuums. Countries with advanced transportation systems have demonstrated that adaptive, technology-based regulations can create a legal framework that supports the adoption of electric vehicles while also ensuring traffic safety and order. Without a comprehensive revision of the Road Traffic and Transportation Law, the status of electric bicycles will continue to exist in a regulatory grey area, which not only hinders industry development but also has the potential to trigger legal and social risks in society. Therefore, revising the Road Traffic and Transportation Law is an urgent step to provide adequate legal certainty, ensure protection for all involved parties, and guarantee that technological advancements in transportation align with principles of justice and sustainability.

The gap between Law Number 22 of 2009 on Road Traffic and Transportation and Minister of Transportation Regulation Number 45 of 2020 highlights a fundamental weakness in the regulation of electric bicycles in Indonesia. The Road Traffic and Transportation Law only distinguishes between motorized and non-motorized vehicles, without taking into account the existence of electric bicycles as hybrid vehicles with unique characteristics (Greene & Rau, 2018). Meanwhile, Minister of Transportation Regulation No. 45/2020 has established definitions, technical specifications, and safety provisions for electric bicycles, but this regulation is administrative in nature and holds a lower hierarchical level compared to a statutory law. This discrepancy creates a legal gap that complicates the consistent enforcement of regulations, particularly regarding the legality of using electric bicycles on public roads, maximum speed limits, and licensing requirements. Furthermore, the absence of provisions concerning safety standards and rider responsibilities in the main law adds complexity to the issue. Without harmonization between the law and technical regulations, implementation on the ground becomes ambiguous and has the potential to create legal conflicts that disadvantage all parties.

Revising the Road Traffic and Transportation Law to accommodate electric bicycles will yield significant benefits across various aspects of life. From a safety perspective, clear regulations regarding technical standards for electric bicycles, maximum speed limits, and safety requirements—such as helmet use and dedicated lanes—will help reduce the risk of road accidents. Additionally, legal clarity regarding classification and technical regulations will strengthen legal certainty for riders, law enforcement, and the transportation industry. The existence of comprehensive regulations will also support environmental sustainability goals, as electric bicycles have the potential to reduce greenhouse gas emissions and air pollution in urban areas. With responsive regulations, the use of electric bicycles can be promoted as part of an inclusive, efficient, and environmentally friendly multimodal transportation system. Clear rules will also boost public confidence in the safety and legality of using electric bicycles, ultimately stimulating the growth of the domestic electric vehicle industry and creating a sustainable transportation ecosystem that supports national development.

Adequate regulation of electric bicycles will not only enhance technical and safety aspects but also have significant juridical and sociological impacts. Legal clarity in the law will facilitate consistent enforcement, reduce conflicts on the ground, and ensure fair legal protection for riders and other road users. From a sociological perspective, comprehensive regulation will increase public awareness and compliance with traffic rules while fostering a culture of more responsible riding. This aligns with the objectives of sustainable transportation development, integrating economic, social, and environmental interests into an inclusive legal framework. Therefore, revising the Road Traffic and Transportation Law to accommodate electric bicycles will lay the foundation for a transportation ecosystem that is not only modern and environmentally friendly but also fair and respectful of the rights of all stakeholders. These juridical and sociological aspects must be seriously considered in the next stages of the discussion to ensure regulations that are responsive to the demands of the times.

Comprehensive regulation of electric bicycles within Indonesia's legal system will have a significant impact on juridical aspects. Clear rules regarding the definition, classification, and technical standards of electric bicycles will enhance legal certainty for users, businesses, and law enforcement alike.(Weber, 2022) This legal certainty serves as a crucial foundation for establishing a fair, transparent, and accountable transportation system. Without clear rules, legal interpretations in practice may vary, leading to confusion, injustice, and potential conflicts. Moreover, clear regulation will strengthen consumer protection, for instance, by setting safety standards and transparent procedures for handling violations. Electric bicycle users will feel safer and legally protected, while manufacturers will also have clarity in producing and distributing products in compliance with applicable regulations. On the other hand, a robust regulatory framework will also facilitate law enforcement.

With a firm legal foundation, law enforcement officials will be able to carry out their duties more effectively and consistently, whether in handling violations, monitoring traffic, or resolving disputes. Good law enforcement will support the creation of a more orderly and safe transportation ecosystem. Furthermore, responsive regulation can also mitigate the potential misuse of electric bicycles by modifying their technical capabilities beyond the established limits, thereby preventing potential safety risks for both users and the general public.(Li et al., 2022) A strong and adaptive regulatory framework that keeps pace with technological developments will facilitate the transformation of transportation towards a more sustainable and environmentally friendly era. Thus, the existence of adequate regulation will firmly establish electric bicycles within the national legal framework, thereby creating a balance between technological innovation and legal certainty that favors consumer protection and public safety.

The implementation of clear regulations for electric bicycles will have a significant impact in the sociological context. Electric bicycles are not merely a technological innovation but also a symbol of changing behavioral patterns and driving culture in society. In major cities, the use of electric bicycles has become a preferred transportation alternative, particularly among younger generations and communities that prioritize efficiency and sustainability. Clear rules regarding the use of electric bicycles, such as safety requirements, dedicated lanes, and maximum speed limits, will influence the public's adaptation patterns to this new mode of transportation. Firm regulations will foster legal awareness and better traffic discipline among users, while simultaneously

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encouraging a shift towards more orderly and responsible driving culture.

In the long term, the implementation of comprehensive regulations will strengthen collective values related to safety, compliance, and social responsibility, which are essential foundations for building a modern and sustainable society. Furthermore, clear regulations will reduce conflicts among road users, increase mutual respect, and support the creation of safer and more inclusive public spaces. In the context of a society increasingly open to innovation, adaptive regulations will enhance public confidence in technology-based transportation systems while opening opportunities for improving quality of life through greener and more efficient mobility.

The relationship between juridical and sociological implications in the regulation of electric bicycles is closely intertwined, reflecting the dynamic interaction between established legal norms and the behavior of the regulated society. Clear legal regulations—such as the classification of electric bicycles, speed limits, safety requirements, and administrative obligations—will provide strong certainty for users and law enforcement officials. On the other hand, this legal certainty also acts as a catalyst for the formation of a more disciplined and responsible traffic culture. A society that understands the rules will tend to comply with the applicable provisions, creating order and reducing conflicts on the roads. The social impact of implementing consistent regulations will strengthen collective awareness of the importance of safety, rights, and obligations of road users. Additionally, regulations that are responsive to technological developments will enhance the legitimacy of the law in the eyes of the public, thereby increasing trust in law enforcement institutions and the government. This harmonious interaction between juridical and sociological aspects forms a critical foundation for creating a transportation ecosystem that is not only modern and efficient but also sustainable and equitable. Consistent regulation will facilitate behavioral changes in society toward safer, more orderly driving patterns that contribute to creating inclusive and environmentally friendly public spaces.

The main recommendation for regulating electric bicycles in Indonesia is the need for a comprehensive revision of Law Number 22 of 2009 concerning Road Traffic and Transportation (UU LLAJ). This revision is essential to align the regulations with the development of transportation technology, particularly the existence of electric bicycles as hybrid vehicles that combine electric motor power and human pedaling. The revision should include a clear definition of electric bicycles, technical classification, safety requirements, and usage procedures, thereby eliminating legal gaps that could potentially cause uncertainty and conflicts in practice. In addition to revising the main law, implementing regulations such as the Minister of Transportation Regulation (Permenhub) need to be strengthened to detail technical specifications, vehicle registration procedures, ownership requirements, and supervision mechanisms for electric bicycle use. Regional regulations (Perda) also play an essential role in accommodating local conditions, such as establishing dedicated lanes, restricted areas, and determining maximum speed limits for electric bicycles in urban areas. Strengthening regulations from the national to local levels will create harmonized rules, ensuring effective and consistent implementation in practice. Moreover, the revision of the law and the enhancement of implementing regulations must involve relevant stakeholders, such as the Ministry of Transportation, the Police, industry players, user communities, and civil society organizations. This participatory approach will ensure that the resulting policies are not only adaptive to technological advancements but also responsive to societal needs and aspirations. In practice, the implementation of this revision must be supported by effective communication strategies, public education on new regulations, and firm yet fair supervision. Thus, revising the UU LLAJ, along with strengthening technical and regional regulations, will create a comprehensive and adaptive legal framework that not only supports technological innovation in transportation but also ensures adequate legal protection for all road users.

The implementation of realistic regulations for electric bicycles requires a well-planned and integrated strategy, encompassing public education, the development of supporting infrastructure, and multi-stakeholder collaboration. Education is the key to building public awareness about the rules for using electric bicycles, including understanding speed limits, the use of dedicated lanes, and the importance of safety equipment such as helmets and reflective gear. This educational program should be carried out massively through mass media, digital platforms, and integration into educational curricula, to reach various segments of society, including the younger generation, who are the primary users of electric bicycles.

In addition to education, the development of adequate infrastructure is also crucial. The government needs to build safe, dedicated lanes for electric bicycles, separate from motor vehicles, provide accessible electric charging stations, and establish clear road markings for these light vehicles. Improving infrastructure will not only smooth traffic flow but also minimize the risk of accidents due to interactions with motor vehicles. An effective implementation strategy also requires multi-stakeholder collaboration, involving relevant ministries, local governments, user communities, industries, and civil society organizations. This collaborative approach will strengthen the sustainability of electric bicycle regulation programs by considering local needs and community aspirations. A public-private partnership model can be adopted to support infrastructure investment, while regulation and oversight remain under government control.

The use of digital technology, such as online registration systems, speed monitoring sensors, and integration of transportation data, will strengthen the implementation of efficient and adaptive regulations. This comprehensive strategy will ensure that the regulation of electric bicycles is not only normative but also practical and has a positive impact on safety, sustainability, and the modernization of the national transportation system.

## 4. Conclusions

The rapid development of electric-based transportation technology, particularly electric bicycles, has created new dynamics in Indonesia's legal and social systems. Although electric bicycles offer an environmentally friendly and efficient transportation solution, their regulation within the national legal framework remains inadequate. Law Number 22 of 2009 on Road Traffic and Transportation only differentiates between motorized and non-motorized vehicles, without providing legal recognition of the unique characteristics of electric bicycles as hybrid vehicles. This legal gap creates uncertainty in classification, speed control, safety requirements, and rider responsibility. Moreover, Minister of Transportation Regulation Number 45 of 2020, which is administrative in nature, has not provided a comprehensive solution to address the challenges posed by modern transportation technology. As a result, this situation not only hampers industrial development but also increases legal and safety risks for users.

From a sociological perspective, regulatory ambiguity leads to low legal awareness and compliance among users and has the potential to cause conflicts on the roads. Therefore, a comprehensive revision of the Road Traffic and Transportation Law and the strengthening of technical regulations through implementing provisions are urgent steps to create a safe, orderly, and just transportation system. A participatory approach involving stakeholders, the development of supporting infrastructure, and the use of digital technology will be key pillars in effective implementation. With adaptive and responsive regulations, electric bicycles can contribute to the creation of an inclusive, sustainable, and technologically advanced national transportation ecosystem.

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# JUDGES' PARAMETERS IN DECIDING DIVORCE ON THE GROUNDS OF ONHEELBARE TWEESPALT

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**Abstract**

Permanent conflict that cannot be reconciled (onheelbare tweespalt) as grounds for divorce in Indonesia still faces a lack of clear legal parameters. Inconsistent judicial decisions and multiple interpretations of Supreme Court Circular (SEMA) No. 3 of 1981 demonstrate a weak regulatory framework that fails to ensure justice and legal certainty. This research aims to analytically elaborate the legal concept of onheelbare tweespalt as grounds for divorce and to formulate objective parameters for judges to uphold substantive justice, legal certainty, and legal utility. The research method employs a normative juridical approach, analyzing primary, secondary, and tertiary legal materials, as well as case studies of two Supreme Court decisions (No. 1425/K/Pdt/2016 and No. 1900/K/Pdt/2017). The findings reveal the need to strengthen legal parameters that integrate the principles of corrective justice, epikeia, and legal certainty to prevent decision disparities and ensure fair legal protection for parties. The novelty of this research lies in the proposal of ideal parameters for judges in assessing onheelbare tweespalt, which can be applied consistently in Indonesian judicial practice. The urgency of this research is reinforced by the importance of drafting binding judicial guidelines, such as a Supreme Court Regulation (PERMA), to replace SEMA No. 3 of 1981 and promote a fair legal system aligned with humanitarian values.

**Keywords:** onheelbare tweespalt; divorce; corrective justice; legal certainty; judicial parameters.

## 1. Introduction

Marriage is universally recognized as a religious engagement that is not only contractual, but also sacred, especially in the context of major religions in the world

(Suryatni, 2021, p. 83). In Indonesia, marriage is not merely a private matter, but an institution that has legal, social, and spiritual dimensions (Yudistira, 2024, p. 16). In positive law, for example, Article 1 of Marriage Law Number 1 of 1974 stipulates that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (Hanifah, 2019, p. 298). However, social reality shows that this ideal is often faced with the reality of cracking household relationships for various reasons. In the midst of the high divorce rate, a legal problem arises regarding the limits of the judge's parameters in deciding divorce cases. One of the reasons for divorce that often becomes a point of debate is irreconcilable conflict (onheelbare tweespalt), which in practice opens up broad interpretation space for judges in determining the validity of the lawsuit (Safitri & Syatar, 2022, p. 443). The absence of explicit juridical parameters creates the potential for disharmony in court decisions.

Several previous studies have examined the grounds for divorce, but not many have explicitly examined the problem of judge inconsistency in assessing the grounds for divorce based onheelbare tweespalt. Literature studies reveal that in the Dutch legal system, this concept is known as a subjective form of household destruction (Jeremy D. Morley, 2025), but in the Indonesian context, its application has not been rigidly regulated in written norms (Mys, 2012). In fact, Supreme Court Decisions Number 1425/K/Pdt/2016 (Indonesia, Mahkamah Agung, 2016) and 1900/K/Pdt/2017 (Indonesia, Mahkamah Agung, 2018) show that there are differences in the application of consideration of the guilty party in a divorce suit, giving rise to a diversity of interpretations of Supreme Court Circular Letter (SEMA) No. 3 of 1981 (Indonesia, Mahkamah Agung, 1981). The gap between written law and court practice shows that there is no consistency in the parameters of judicial consideration. Based on a comparison of the literature, it is stated that a certainty-oriented legal system will require the development of objective indicators for each multi-interpretive legal norm.

This research is important because it touches on fundamental aspects of the protection of procedural and substantive justice for parties in divorce cases. The existence of clear parameters in assessing onheelbare tweespalt will prevent judges from acting arbitrarily and ensure equality in legal treatment for all parties. The irregularity of jurisprudence in this case has an impact on the emergence of a sense of injustice, and creates legal uncertainty for justice seekers, especially for parties who feel wronged but their rights are not recognized because they are hampered by the formal interpretation of SEMA. This condition, if left unchecked, could undermine the authority of the judiciary and reduce public confidence in the legal system, especially in cases that are very personal and have major implications for the future of the family. In the perspective of ius constituendum, it is important to have legal reforms or technical guidelines that are able to provide signs to judges in assessing divorce cases objectively and accountably (Taufik, 2022, p. 15).

Based on the description above, there are several legal questions that are the focus of this research. First, how is the concept of onheelbare tweespalt understood as a reason for divorce in the Indonesian legal system? Second, what are the parameters used by judges in deciding divorce cases filed on the basis of irreconcilable conflict? Third, to what extent can Supreme Court Circular Letter Number 3 of 1981 be used as a binding guideline in judicial practice, and how does it affect the independence of the judiciary?

This research aims to analytically describe the legal concept of onheelbare tweespalt as one of the grounds for divorce, and formulate parameters that can be used objectively by judges in assessing similar cases in order to ensure the fulfillment of the principles of justice, certainty, and legal expediency. This creates a fundamental problem in the legal protection of litigants, as well as a serious challenge to the independence and accountability of judges. Therefore, this research is not only intended to fill the conceptual void regarding restrictions and flexibility in the use of onheelbare tweespalt

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reasons, but also to formulate normative foundations and practical recommendations that can strengthen the juridical framework in divorce cases, so as to prevent disparity in decisions and support the realization of a judicial system that is fair, consistent, and in favor of human values.

## 2. Materials and Methods

In understanding the issue of divorce filed on the basis of onheelbare tweespalt (irreconcilable permanent conflict), it is important to place this issue within a theoretical framework that explains how the legal system should fairly and consistently assess the grounds for divorce. The two main frameworks that form the conceptual basis of this research are Justice Theory and Legal Certainty Theory, both of which provide an argumentative framework in assessing the extent to which judges' decisions on divorce cases can be accounted for philosophically and juridically.

Justice theory is the main foundation in determining whether a divorce decision has fulfilled a sense of substantive justice for the parties. Aristotle distinguished between distributive and corrective justice (Nurjanah et al., 2022, p. 2). In the context of divorce, corrective justice is relevant to correct domestic relations that have become unequal and untenable, without taking sides on who is at fault or caused the problem in the first place. In this case, Huijbers (1988) states that the judge's decision must consider the balance of relations, not just who sues or who is guilty first (Anshori, 2018, p. 5). In such a situation, the epikeia of judicial discretion must be put forward by judges in reading the complexity of domestic relations that can no longer be united for the sake of justice for both parties. John Rawls adds a new dimension of "justice as fairness," which emphasizes that in social conditions that are not ideal, legal decisions must favor the most vulnerable parties so that they do not become victims of a rigid and discriminatory system (Tarigan, 2018, p. 110). This is particularly relevant when judges are faced with the option of rejecting a divorce suit simply because the plaintiff is considered to be the cause of the conflict, even though the household relationship is untenable. In this context, justice does not only mean compliance with norms, but sensitivity to the social and psychological conditions of the litigants.

In positive law, legal certainty is the main principle that must be maintained so that the law can provide clear and measurable protection to the community. According to Utrecht, legal certainty is not only about the orderliness of norms, but also about protection against arbitrary actions, including inconsistent judicial actions (Situmorang, 2023, p. 4). This becomes relevant when there are different court decisions in divorce cases on the grounds of onheelbare tweespalt, even though the substance of the case is similar. When Supreme Court Circular Letter (SEMA) No. 3 of 1981 is used as a reference by some judges to reject the claim of the guilty party, but ignored by other judges, the question arises: where is the legal certainty in judicial practice? Lon Fuller emphasized that a valid law is one that meets eight moral principles, such as not contradictory, understandable, not retroactive, and consistently applied (Atmadja & Budiartha, 2018, p. 19). If a norm such as SEMA is used inconsistently, then according to Fuller, the norm loses its moral legitimacy as a valid law. Therefore, legal certainty in this context does not mean rigid in the application of norms, but consistent and rational in assessing whether the norm should be applied in each case by considering aspects of justice.

By basing this research on these two theories, a strong argumentative foundation can be built that the court must have clear parameters in assessing onheelbare tweespalt as a reason for divorce. Judges should not be fixated on the formality of documents or SEMA that have multiple interpretations, but must wisely consider the social and psychological facts of a fractured relationship. When justice and legal certainty are collaborated proportionally, it will create a legal decision that is not only normatively valid, but also substantively fair.

This research uses a normative juridical approach, which is a legal research method carried out by examining written legal materials as a basis for answering the legal issues raised in the research, namely regarding the parameters of judges in deciding divorce cases on the grounds of onheelbare tweespalt (Rizkia & Fardiansyah, 2023, p. 120). The normative approach was chosen because the problem in this research lies in the vagueness of norms and the inconsistency of jurisprudence in applying the grounds for divorce, not in empirical facts in the field. According to Marzuki, the normative approach is relevant to use when the focus of research is on the study of legal principles, rules, and doctrines, as well as the systematics of relevant laws and court decisions (Marzuki, 2017, p. 110).

In answering these legal issues, researchers used two main approaches: statute approach and case approach (Efendi & Rijadi, 2022, p. 188). The statutory approach is used to examine legal rules relating to the grounds for divorce, such as Law Number 1 of 1974 concerning Marriage (Indonesia, Pemerintah Pusat, 1974), Government Regulation Number 9 of 1975(Indonesia, Pemerintahan Pusat, 1975), and Supreme Court Circular Letter Number 3 of 1981 (Indonesia, Mahkamah Agung, 1981) . This approach aims to understand the scope and juridical limitations of the grounds for irreconcilable divorce. Meanwhile, the case approach is used to analyze two relevant Supreme Court decisions, namely Decision Number 1425/K/Pdt/2016 (Indonesia, Mahkamah Agung, 2016) and Number 1900/K/Pdt/2017 (Indonesia, Mahkamah Agung, 2018), which show differences in assessing the validity of claims from parties considered to be the cause of domestic conflict. An analysis of the two decisions was conducted to identify the extent to which judges have clear parameters or instead rely on subjective assessments.

The sources of legal materials in this research consist of three types: primary, secondary, and tertiary, which were collected through literature review and online searches on credible sources (Efendi et al., 2016, p. 304). Primary legal materials include normative provisions such as the Civil Code, Law Number 1 of 1974 and its amendments, Government Regulation Number 9 of 1975, and Supreme Court Circular Letter Number 3 of 1981, as well as two Supreme Court decisions, namely Number 1425/K/Pdt/2016 and Number 1900/K/Pdt/2017. Secondary legal materials are in the form of scientific literature that supports the understanding of the principles of justice (Aristotle, Rawls, Pound) and legal certainty (Fuller, Utrecht), which serve as a conceptual framework in assessing the consistency of judges' decisions. Meanwhile, tertiary legal materials such as legal dictionaries and encyclopedias were used as complementary references in interpreting the normative concepts used. All of these materials were analyzed using a systematic prescriptive and interpretative approach, which aims to explore what should be done by judges in divorce cases based on onheelbare tweespalt by considering the principles of substantive justice and legal certainty. The deductive analysis method is used to derive general principles into concrete cases through five stages: identification of legal facts, collection of relevant materials, classification and synthesis of norms, assessment of consistency between norms and decisions, and formulation of normative recommendations (Zakaria et al., 2021, p. 1635). This approach is taken to answer the need for clearer and fairer juridical guidelines for judges in handling divorce cases characterized by permanent conflict, as outlined in the background and reinforced through the theoretical framework that has been built.

## 3. Results

### *3.1. Permanent conflict as a ground for divorce in the perspective of indonesian law*

Divorce as the end of the marriage relationship in the Indonesian legal system is regulated limitatively in Law Number 1 of 1974 concerning Marriage (Rizal, 2019, p. 77). However, the reason for divorce, known as onheelbare tweespalt, which is a permanent irreconcilable conflict, is not explicitly explained in the legislation (Mys, 2012). This creates juridical ambiguity that opens room for broad interpretation among judges in handling

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divorce cases based on prolonged household conflicts. The provisions of Article 39 paragraph (2) of the Marriage Law only state that divorce can occur if the husband and wife can no longer live together, without setting objective indicators (Imaduddin, 2020, p. 7). In practice, this phrase is often used as an entry point to assess whether or not there is onheelbare tweespalt, but with very subjective parameters from each judge.

The absence of rigid regulations regarding permanent conflict as a basis for divorce indicates the existence of vagueness of norms, which is contrary to the principle of legal certainty as emphasized by Utrecht that the law must provide definite guidelines regarding what can and cannot be done in society (Laritmas & Rosidi, 2024, p. 24). In this context, vague normative provisions result in disparity in decisions, depending on judges' personal preferences and views on the intensity of domestic conflicts. This research uses a normative approach method with a combination of a statutory approach and a case approach, to show how such loopholes contribute to the inconsistency of decisions, as reflected in the two Supreme Court decisions that are the object of analysis Decision No. 1425/K/Pdt/2016 and Decision No. 1900/K/Pdt/2017. The different outcomes in the two decisions reflect the lack of clear juridical indicators in defining onheelbare tweespalt as a valid reason for divorce.

Theoretically, this issue can be analyzed through the perspective of the theory of corrective justice proposed by Aristotle and developed by Huijbers (Anshori, 2018, p. 5). In divorce cases, justice is not only determined by adherence to formal legal procedures, but also by the ability of the law to correct social relations that have been unequal and unhealthy. If the relationship between husband and wife has been filled with continuous quarrels, then the judge's role is not only as an interpreter of the law, but also as a balancer of relations that have lost their harmony. John Rawls even emphasizes that justice must favor the most vulnerable parties in a system that is not ideal, so it is not right if the plaintiff is rejected just because he is considered the cause of conflict when the household is socially and psychologically untenable (Saleh et al., 2024, p. 40).

In many other jurisdictions, including the Netherlands and Germany, courts have recognized that permanent conflict with no hope of reconciliation is a legitimate ground for divorce, and courts focus on the social and emotional impact on the parties, rather than on who is at fault (European Union, 2025). This approach is more in line with the principles of substantive justice than formalistic justice. Contemporary studies show that legal systems that do not provide objective guidelines on grounds for divorce create legal uncertainty and increase the risk of substantive injustice to justice seekers (Kohn, 2025, p. 196). Therefore, in the Indonesian context, it is imperative to normatively reformulate the onheelbare tweespalt indicator as a valid reason for divorce so that it can be implemented consistently in judicial practice.

In Indonesian judicial practice, Supreme Court Circular Letter (SEMA) No. 3 of 1981 has long been used as a normative reference by judges in handling divorce cases, especially those involving plaintiffs who are considered the cause of domestic conflict. The SEMA directs judges not to grant divorce claims filed by parties who are the cause of household breakdown. However, normatively, the SEMA has a position that is not equivalent to legislation. SEMA does not have general binding legal force, but rather has an internal administrative nature intended as technical judicial guidelines. This ambiguity is the main source of multiple interpretations that actually interfere with legal certainty in the process of making divorce decisions by judges (Hutagalung, 2022, p. 298).

In the theory of legal certainty according to Utrecht and developed by Gustav Radbruch, the law must fulfill the elements of clarity, consistency, and predictability (Fazri, 2025, p. 9). When SEMA is used as the only reference to reject the claim of the guilty party, without considering the substantive facts and the balance of relations in the household, then procedural justice will sacrifice substantive justice. The inconsistency of judges in applying SEMA No. 3 of 1981 shows a violation of the principle of legal consistency. In one case, such as Supreme Court Decision No. 1425/K/Pdt/2016, the claim of the guilty party was rejected; however, in Supreme Court Decision No. 1900/K/Pdt/2017, the claim of a similar party was granted. This irregularity creates a gap of injustice that can harm the party who should be entitled to the termination of an unhealthy marriage.

Through the normative and case approach used in this research, it can be explained that SEMA as soft law should not be used as the sole basis in making legal decisions that have a major impact on individual lives. Methodologically, the analysis of the two Supreme Court decisions proves that without standardized normative indicators in assessing onheelbare tweespalt, judges tend to rely on subjective interpretations of non-legislative documents such as SEMA. In fact, according to the principles of Lon Fuller's theory of law, a legal norm must fulfill the requirements of transparency and consistency in order to function as a valid guideline in law enforcement (Al'anam, 2025, p. 146).

Furthermore, in modern judicial practice, the use of instruments such as SEMA often creates a dilemma between the principle of justice and the principle of legal certainty (Solikhudin et al., 2024, p. 262). Judicial guidelines without a strong normative basis tend to result in disparity of decisions and erode public trust in the judiciary (Zamani, 2024, p. 15). Therefore, it is necessary to reformulate legal norms in the form of more hierarchical regulations such as Supreme Court regulations (PERMA), which can replace the role of SEMA in a more binding and consistent manner. This will help encourage judicial practices that are not only compliant with procedures, but also oriented towards the principles of justice and protection of citizens' personal rights in the realm of family law.

Supreme Court Decisions Number 1425/K/Pdt/2016 and Number 1900/K/Pdt/2017 are clear illustrations of the inconsistency in the application of the law in divorce cases filed on the grounds of onheelbare tweespalt. In the first case, the Supreme Court rejected the divorce petition filed by the plaintiff who was proven to be the main cause of domestic conflict, in line with the provisions of Supreme Court Circular Letter (SEMA) No. 3 of 1981. However, in the second case, although the plaintiff was in a similar position as the guilty party, the divorce petition was granted. This disparity shows that judges do not yet have uniform parameters in assessing grounds for divorce based on irreconcilable permanent conflict.

The difference in legal considerations in the two decisions shows how the ambiguity of legal norms that do not explicitly regulate onheelbare tweespalt opens space for subjective interpretation by judges. In the context of Aristotle's theory of corrective justice, judges should consider the balance of relationships that have been unequal as the basis for decisions, not just the formality of who is guilty or triggers domestic conflict (Kartawijaya et al., 2024, p. 9). On the other hand, if seen through the perspective of Lon Fuller, a law that is inconsistent and does not fulfill the principles of transparency and clarity will lose its moral legitimacy as a valid law( Herdhianto et al., 2022, p. 3476)

In an analysis based on normative research methods with a legislative and case study approach, it can be concluded that the two decisions reflect the lack of objective legal parameters to assess permanent conflict. A study of the two decisions shows that SEMA No. 3 of 1981 is used as the main reference by judges in assessing who is entitled to file for divorce. However, in practice, there are decisions that still grant divorce on the basis that domestic life is impossible to maintain, even though the plaintiff is the guilty party. This emphasizes the importance of establishing standardized parameters so that judges do not solely rely on internal documents such as SEMA which are multi-interpretive and non-binding.

In addition, when reviewed from comparative studies of civil law in several European countries, such as the Netherlands and Germany, the courts tend to assess the grounds for divorce more on the substance of the domestic relationship that has been destroyed, not just legal formalities. Legal systems that only focus on formal procedures in divorce tend to ignore substantive justice and negatively impact the protection of

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individual rights in family law (Taqwa, 2025, p. 12). Therefore, the consistent application of parameters that are oriented towards the balance of relations is crucial to avoid similar disparities in judicial practice in Indonesia.

In the framework of improving the Indonesian legal system, it is important for the Supreme Court to consider reformulating the onheelbare tweespalt parameter through a more binding regulation, such as a Supreme Court Regulation (PERMA). This will help create legal certainty, avoid disparity in decisions, and guarantee the rights of justice seekers in divorce cases. In the absence of clear guidelines, judges will continue to face a dilemma between complying with non-legislative documents such as SEMA or prioritizing substantive judgment based on the social and psychological facts of disharmonious domestic relationships.

In deciding divorce cases on the grounds of onheelbare tweespalt, judges need legal parameters that are not only based on formal documents such as SEMA No. 3 of 1981, but also consider the principles of substantive justice and legal certainty. This approach is in line with Aristotle's theory of corrective justice, which emphasizes balance in the relationship between parties as the basis for decisions (Pratama et al., 2024, p. 18). When a domestic relationship has been damaged and conflicts become unbridgeable, the role of the judge is not only as an interpreter of the law, but also as a balancer of relations that have been unequal. Therefore, judges need to use the epikeia principle of judicial discretion to adjust general legal norms to the unique facts of each divorce case (Andang L. Binawan, 2022, p. 320). In addition to the principle of justice, the theory of legal certainty proposed by Utrecht and expanded by Lon Fuller also provides an important foundation for the development of ideal parameters. The applicable law must contain clarity, consistency, and predictability so that each party can understand the legal consequences fairly (Re, 2019, p. 1497). In the context of divorce, clear parameters regarding onheelbare tweespalt will minimize the potential for disparity in decisions and increase public confidence in the judicial system. In many countries with progressive legal systems, courts utilize objective criteria such as frequency of conflict, intensity of communication breakdown, and psychological impact on children as legitimate indicators of irreconcilable permanent conflict (Yadav et al., 2023, p. 23).

In practical terms, the ideal parameters that judges can apply in assessing onheelbare tweespalt include: (1) identification of recurring and escalating conflict facts; (2) evaluation of the failure of mediation or reconciliation efforts; (3) consideration of social and psychological impacts, especially on children; (4) consistency with the principles of corrective justice and epikeia in assessing legal facts; and (5) alignment with substantive justice without ignoring formal procedures, a complete description of the ideal parameters that judges can apply in assessing onheelbare tweespalt:

**Table 1.** Ideal parameters for judges in assessing onheelbare tweespalt

| No. | Parameters | Full Explanation |
|---|---|---|
| 1 | Identification of Recurring and Escalative Conflict Facts | Judges should identify patterns of domestic conflict that are not one-offs, but recurring with increasing levels of intensi-ty. Evidence may include witnesses, mediation reports, and police records. This indicates an irreversible relationship and is a strong ground for divorce. |
| 2 | Evaluating the Failure of Mediation or Reconcilia-tion Efforts | An evaluation is made of the record of mediation or amica-ble efforts facilitated by the court or a third party. If all efforts have failed and both parties remain adamant about divorce, then this is an indicator that the relationship has reached an irreparable impasse. |

| | | |
|---|---|---|
| 3 | Consideration of Social and Psychological Impacts, Especially on Children | Judges need to assess the impact of prolonged conflict on children, including their mental health and emotional devel-opment. Child protection is a priority, so a divorce that re-moves children from ongoing conflict may be considered a just protective measure. |
| 4 | Consistency with the Prin-ciples of Corrective Justice and Epikeia in Assessing Legal Facts | Judges must interpret the law wisely (epikeia), bearing in mind that each case has its own unique complexities and social dynamics. Corrective justice demands a judgment that considers the balance of rights and obligations of both parties without being rigidly bound to formal procedures. |
| 5 | Favors Substantive Justice without Ignoring Formal Procedures | Although formal procedures are important to maintain legal order, judges should not only focus on who is formally at fault, but assess the substance of the relationship that has been damaged. Substantive justice should be the primary goal to ensure the protection of the rights of both parties. |

Thus, it is hoped that the court can produce a decision that is not only normatively valid, but also reflects justice and legal certainty in handling divorce cases on the grounds of irreconcilable conflict.

In the enforcement of divorce law in Indonesia, the role of theories of justice and legal certainty is key in creating a fair, consistent and trustworthy justice system. Aristotle's theory of justice emphasizes justice as a balance of relations, while John Rawls focuses on justice as fairness that prioritizes siding with vulnerable groups. In the context of divorce, this means that judges should not only rely on legal formalism, but also pay attention to the factual conditions of households that cannot be maintained, in order to protect the rights of the parties, especially women and children (Sudono, 2024). Meanwhile, the theory of legal certainty from Utrecht and Lon Fuller provides a normative framework that the law must be clear, consistent, and predictable so that it can be relied upon as a guide for society. In divorce cases based on onheelbare tweespalt, legal certainty is essential so that there is no disparity in decisions that are detrimental to justice seekers. The inconsistency in the application of SEMA No. 3 of 1981 found in the Supreme Court's decision shows that there is a gap in the application of this principle. Vague and inconsistent laws will weaken the legitimacy of the legal system and create public distrust. Combining these two theories, courts need to develop parameters for evaluating onheelbare tweespalt that integrate the principles of substantive justice and legal certainty. This can be done by establishing a clear evaluation framework, including identification of conflict patterns, evaluation of reconciliation failures, and assessment of the social impact on the parties concerned. Aristotle's principle of epikeia can guide judges to adapt norms to the complexity of facts, while Fuller's principle of consistency demands that similar decisions result in consistent rulings in similar cases (Susanto, 2024, p. 207).

In modern judicial practice, this theoretical approach has been adopted by many jurisdictions that prioritize substantive justice over legal formalities. The integration of the theories of justice and legal certainty in the family court system in Europe was able to improve the consistency of decisions and the satisfaction of litigants (Husin & Husin, 2022, p. 136). Therefore, the contribution of these two theories is important to be adopted in the preparation of normative guidelines in Indonesia, so that the divorce legal system can reflect the principles of fair substantive justice and firm legal certainty.

The phenomenon of inconsistency in decisions in divorce cases based on

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onheelbare tweespalt in Indonesia reflects the absence of objective legal parameters. This is due to the lack of normative regulations that can guide judges in assessing divorce cases, especially in the face of complex household facts that are prone to multiple interpretations. Reliance on SEMA No. 3 of 1981 as a technical reference without binding power has widened the gap in disparity in decisions. Therefore, juridical reflection is needed that places substantive justice as the main foundation in reformulating divorce law policy.

In this context, the role of the Supreme Court as the highest judicial institution is crucial to initiate the preparation of more binding guidelines, such as the Supreme Court Regulation (PERMA). These guidelines should contain clear and implementable parameters, including identification of conflict patterns, mediation failure, and consideration of social impacts, especially on children. Aristotle's principle of epikeia, which emphasizes the wisdom of legal interpretation according to specific contexts, must be combined with Fuller and Utrecht's principle of legal certainty, which demands consistency and predictability in every legal decision (Andang L. Binawan, 2022, p. 320).

Strong and consistent jurisprudence can be an effective reference in preventing disparity in decisions, as well as increasing public confidence in the judicial system (Solehah, 2024, p. 50). Therefore, legal reform is not only an academic necessity, but also a strategic step to strengthen the legitimacy of the judiciary, especially in handling divorce cases that touch on personal and social dimensions. Thus, the legal system will be able to provide justice that is not only procedural, but also substantive for all parties.

In closing, this reflection underlines that the parameters of judges in deciding divorce based onheelbare tweespalt must be directed to balance formal and substantive aspects. The formulation of more stringent and participatory guidelines needs to involve various stakeholders, including academics, practitioners, and family rights protection organizations. With an integrative and adaptive approach to social developments, it is hoped that the Indonesian judicial system can answer the need for justice and legal certainty in divorce cases, and build public trust in the law as a dignified instrument of justice

## Conclusions

This study found that irreconcilable permanent conflict (onheelbare tweespalt) as a reason for divorce in Indonesia is still faced with a blurring of juridical parameters that has the potential to cause disparity in decisions and injustice to the parties. The existence of Supreme Court Circular Letter No. 3 of 1981, which is often used as a reference in assessing divorce claims, does not have clear binding force, resulting in multiple interpretations and inconsistencies in judicial practice. Comparative studies with other jurisdictions and analysis of two Supreme Court decisions (No. 1425/K/Pdt/2016 and No. 1900/K/Pdt/2017) reveal a gap between theory and practice, and emphasize the need for clear and uniform legal parameters. The contribution of this research lies in the proposal to develop ideal parameters for judges in assessing onheelbare tweespalt, which integrates the principles of corrective justice, epikeia, and legal certainty, in order to realize a justice system that is fair, consistent, and protects the rights of justice seekers. The urgency of this research is reinforced by the need for legal reform through more binding regulations such as PERMA, which can replace the role of SEMA No. 3 of 1981 and minimize the disparity of decisions in divorce cases.

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# REFORMING ETHICAL OVERSIGHT MECHANISMS FOR CONSTITUTIONAL COURT JUSTICES IN INDONESIA

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**Abstract**

The integrity of the Constitutional Court of Indonesia, as one of the judicial authorities in the post-reform constitutional system, demands not only independence but also ethical accountability of its justices. While Article 24 of the 1945 Constitution and Law No. 48 of 2009 safeguard judicial independence, oversight mechanisms particularly ethical ones remain limited and internally controlled. The abolition of the Constitutional Court Honorary Council of Appeals (Majelis Kehormatan Banding) and the lack of external checks have raised critical questions about due process, institutional legitimacy, and legal certainty in judicial ethical enforcement. This research adopts a normative legal method, utilizing statute, case, and conceptual approaches. Primary legal sources include the 1945 Constitution, Law No. 48 of 2009 on Judicial Powers, Law No. 24 of 2003 and its amendments on the Constitutional Court, and Constitutional Court Regulations (PMK). These are analyzed alongside decisions of the Honorary Council (MKMK), academic literature, and comparative doctrines on judicial accountability and ethics. The findings reveal significant institutional and procedural weaknesses in the current ethical oversight system. The absence of an appeal mechanism against MKMK decisions and the concentration of oversight within the Court itself reduce transparency, weaken checks and balances, and potentially undermine public trust. Although the MKMK is tasked with maintaining judicial ethics, its structural dependency, lack of external participation, and limited procedural safeguards raise concerns about fairness and impartiality in high-stakes disciplinary decisions. This study argues for a comprehensive reconstruction of the ethical oversight framework for Constitutional Court justices. Reform is needed to enhance the independence of the MKMK, reestablish a credible appellate body, and institutionalize procedural guarantees in line with the principles of due process of law.

Legal reform should also clarify the consequences of ethical violations and establish clearer norms for proportional sanctions. These efforts are essential to restore public confidence and ensure the Court's legitimacy as the guardian of the Constitution.

**Keywords:** Constitutional Court; ethical oversight; judicial accountability; judicial independence; legal reform.

## 1. Introduction

The rule of law (rechstaat) adhered to by Indonesia, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), necessitates the existence of an independent and impartial judicial system (Rishan, 2022). Within this framework, judicial power must stand free from any form of intervention in order to uphold law and substantive justice. This independence is guaranteed by Article 24 of the UUD NRI 1945 and reinforced by Law Number 48 of 2009 concerning Judicial Power (Malleson, 2002). In the context of Indonesia's post-reform constitutional system, the Constitutional Court serves as a strategic organ of judicial authority, particularly in safeguarding the supremacy of the constitution and the constitutional rights of citizens. Nevertheless, the existence of the Constitutional Court is not immune to demands for ethical and moral accountability of its justices (Sunnqvist, 2022).

Previous studies have highlighted the problems related to ethical oversight of Constitutional Court justices. For instance, a study by Ujang Bahar focused on the limitations of the Judicial Commission's authority in supervising constitutional justices. (Ujang Bahar, 2018) Other research, such as studies published by the Constitutional Court and the Center for Legal Studies at the Islamic University of Indonesia (UII), examined the effectiveness of Constitutional Court Regulations (PMK) in establishing the Honorary Council of the Constitutional Court (MKMK). However, these studies have generally remained within the boundaries of formal juridical analysis and have not critically examined the inconsistency between ethical norms and the imposition of sanctions particularly in the recent case involving Anwar Usman. Therefore, a research gap exists concerning the disharmony between positive norms and their implementation in the ethical oversight system for constitutional justices. This study offers a novelty in the form of a reconstructive approach to the resolution mechanism of ethical code violations within the Constitutional Court, emphasizing the alignment between legal substance and its application in maintaining the integrity of constitutional justice. The inconsistency in the application of ethical norms, as reflected in the decision of the Honorary Council of the Constitutional Court (MKMK) No. 2/MKMK/L/11/2023, has raised serious public concerns regarding the accountability of the Constitutional Court. In that decision, Justice Anwar Usman was found guilty of a serious ethical violation, yet was merely dismissed from his position as Chief Justice, without being honorably discharged as a constitutional justice, as should have been mandated under Constitutional Court Regulation (PMK) No. 4 of 2012 and Law No. 7 of 2020. This misalignment directly impacts the credibility of the constitutional judiciary and has the potential to undermine public trust in the principles of impartiality and institutional integrity. Therefore, reconstructing the ethical oversight system for Constitutional Court justices has become an urgent necessity to ensure the consistent and integrity-driven enforcement of justice. This research focuses on a key legal issue, namely the discrepancy between the ethical norms stipulated in existing regulations and their implementation in the current system for resolving ethical code violations by Constitutional Court justices. It also seeks to explore how an ideal model of ethical oversight can be reconstructed to ensure the integrity of the constitutional institution. The objective of this study is to analyze the disharmony between positive legal norms and the practical handling of ethical violations by Constitutional Court justices, and to formulate a reconstructed model of ethical oversight that is more consistent, transparent, and accountable in upholding the integrity of constitutional justice

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## 2. Materials and Methods

This research is a normative legal study, which is grounded in the examination of written legal norms as the primary object of analysis (Irwansyah, 2020). Within this approach, law is understood as a set of prescriptive norms; therefore, the analysis focuses on how legal norms are formulated, interpreted, and implemented consistently within the framework of the national legal system (Peter Mahmud Marzuki, 2011). This research is not merely descriptive of positive legal provisions, but also evaluative and constructive in identifying the inconsistencies between legal norms and their practical implementation, particularly in the context of resolving ethical code violations committed by Constitutional Court justices.

Methodologically, this research employs three main approaches in an integrated manner. First, the statute approach is used to examine relevant legal instruments, ranging from the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court (and its subsequent amendments), to various Constitutional Court Regulations governing the establishment and operational mechanisms of the Honorary Council of the Constitutional Court (MKMK). Second, the case approach is applied to conduct an in-depth analysis of decisions related to ethical violations by constitutional justices, particularly Decision No. 2/MKMK/L/11/2023, which serves as a critical turning point in the dynamics of ethical code enforcement within the Constitutional Court. Third, the conceptual approach is employed to elaborate on foundational principles such as the independence of judicial power, judicial impartiality, and ethical accountability within the constitutional justice system.

The data sources in this research consist of primary and secondary legal materials. Primary legal materials include legislation, decisions of the Constitutional Court and the Honorary Council of the Constitutional Court (MKMK), as well as other official documents that carry binding normative authority (Zuhdi et al., 2025). Meanwhile, secondary legal materials consist of scholarly literature, legal journal articles, and relevant expert opinions, which are utilized to strengthen the argumentation and provide a comprehensive theoretical perspective (Zuhdi & Kamula, 2024). All data are analyzed qualitatively using a deductive legal reasoning method, so that the findings of this research are not only descriptive-analytical in nature but also oriented toward the formulation of a reconstructive model for resolving ethical code violations within the Constitutional Court.

## 3. Results and Discussion

### *3.1. Strengthening the institutional independence of the honorary council of the Constitutional Court*

In a state governed by the rule of law, the existence of an independent judiciary is a fundamental prerequisite for upholding law and substantive justice. Judges, as central figures within the judicial system, are entrusted with the responsibility to resolve disputes and to ensure the protection of citizens' rights and freedoms.(McKeown, 2021) This role positions judges as the guardians of justice within society. Within the framework of judicial power in Indonesia, the Constitutional Court holds a strategic position as the final interpreter of the Constitution. Consequently, the integrity of its justices must be safeguarded through a robust ethical oversight mechanism. However, like other state institutions, the Constitutional Court is not immune from ethical issues involving its internal actors. This underscores the critical need for continued oversight of constitutional justices while at the same time preserving the core principle of judicial independence. Following the Constitutional Court’s Decision No. 005/PUU-IV/2006, which ruled that oversight by the Judicial Commission cannot be applied to constitutional justices, an internal oversight mechanism was established through the formation of the Honorary Council of the Constitutional Court (MKMK)(MKMK) (Wiryanto et al., 2017).

The establishment of the Honorary Council of the Constitutional Court (MKMK) marked the beginning of an internal ethical oversight system within the Constitutional Court. In its subsequent development, the Court established an Ethics Council as a permanent body responsible for daily oversight. The presence of the Ethics Council was essentially a response to the Constitutional Court's internal need following several ethical scandals that damaged the institution's credibility most notably, the case involving former Chief Justice Akil Mochtar (Yudanto et al., 2024). However, from the outset, the role and function of the Ethics Council lacked a legal foundation in statutory law and were instead based solely on internal regulations of the Court. This absence of legislative grounding has weakened its authority, particularly when dealing with cases of a sensitive nature or those involving structural interests within the Constitutional Court itself. There are several obstacles that weaken the function of internal oversight. For instance, the quality and transparency standards in the examination process of ethical violations remain low, and there is no effective channel for the public to openly report alleged misconduct (Frost, 2013). In addition, close interpersonal relationships among justices particularly within a small institutional environment like the Constitutional Court can give rise to conflicts of interest and internal solidarity that ultimately hinder accountability.

In practice, the oversight carried out by the Ethics Council tends to be limited to the submission of preliminary reports and recommendations, while the authority to impose sanctions remains with the Honorary Council of the Constitutional Court (MKMK), which is formed on an ad hoc basis. This structure leaves a grey area, particularly regarding who holds the authority to form the MKMK and how the selection process can truly be free from internal interference. For example, when the Chief Justice plays an administrative role in forming the MKMK, a power imbalance is highly likely to occur especially when the person under investigation is the highest-ranking official within the institution (Suparto et al., 2024).

Given this situation, there is a need to reconsider how ethical oversight within the Constitutional Court is constructed. One approach that could be developed involves strengthening the institutional independence of both the Ethics Council and the Honorary Council (MKMK) themselves. Repositioning the Ethics Council as a body that operates more autonomously from the Constitutional Court's administrative structure could enhance the neutrality of its oversight functions. Composing its membership with external figures who possess a proven track record of integrity and an in-depth understanding of judicial ethics would also enhance the institution's legitimacy in the eyes of the public (Geyh, 2023). Furthermore, the provision of an independent budget and technical support would significantly reinforce the capacity of the Ethics Council to carry out its duties professionally. Moreover, the mechanism for establishing the Honorary Council of the Constitutional Court (MKMK) should ideally be carried out through a transparent and inclusive procedure. Under current practice, the formation of the MKMK is conducted internally by the Constitutional Court, which under certain circumstances may raise doubts about its independence (Hanych et al., 2023). A selection process that involves external stakeholders such as academics, public figures, or representatives of independent ethics bodies could serve as an alternative to ensure a higher level of accountability in the oversight process.

Although the Constitution does not explicitly provide provisions regarding ethical oversight of Constitutional Court justices, a closer examination reveals that Article 24B of the 1945 Constitution (UUD NRI 1945) offers a normative basis for the existence of the Judicial Commission, a body tasked with upholding the honor and conduct of judges. While the Constitutional Court has ruled that the Judicial Commission has no authority over constitutional justices, the spirit of oversight remains embedded in the constitutional framework. The phrase "judicial conduct" (perilaku hakim) is not explicitly limited to Supreme Court justices, and thus, in theory, could encompass all

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judges under judicial authority, including those serving on the Constitutional Court. The Constitutional Court's decision in Case No. 005/PUU-IV/2006 legally severed the supervisory relationship between the Judicial Commission and the Constitutional Court. However, from the perspective of a sound oversight system in a democratic rule-of-law state, such disconnection poses a significant risk of ethical control weaknesses over an institution as powerful as the Constitutional Court. Therefore, reconstruction should not merely entail the creation of new institutions, but rather focus on strengthening existing structures through reforms that enhance their independence, accountability, and transparency.

**Table 1.** Green election implementation model

| Aspect | Constitutional Court Judge | Supreme Court Judge |
|---|---|---|
| Supervisory Body | Honorary Council of the Constitutional Court | Court |
| Legal basis | Law No. 7 of 2020 | Law No. 3 of 2009 and Law No. 18 of 2011 |
| Nature of Supervision | Internal and ad hoc, formed when there is a report | The combination of internal (MA) and external (KY), is structural and sustainable |
| Scope | Limited to ethics and behavior | Covering ethics, behavior and judicial techniques |
| Mechanism | Passive, waiting for report for MKMK formation | Active (KY can carry out direct monitoring) and responsive to public reports |
| Supervisory Composition | A mix of MK judges and external figures, formed by the Chief Justice of the MK | KY Commissioners are selected by the DPR, and MA structural officials |
| Sanctions | Reprimand up to dismissal from the position of Chairman/Deputy Chairman of the Constitutional Court | Warnings up to recommendations for dismissal by the Supreme Court at the request of the KY |
| Transparency and Public Participation | Limited, the public can only complain | Relatively open, with public reporting and monitoring channels |
| Appeal Mechanism | Not available; MKMK's decision is final | There is a mechanism for objections to KY recommendations |

In comparative terms, the oversight system for Supreme Court justices is far more structured, as it involves both internal (the Supreme Court) and external (the Judicial Commission) mechanisms. In contrast, oversight of Constitutional Court justices tends to be passive and internally confined. Public involvement is also limited, unlike the Judicial Commission's mechanisms, which are more open to public participation.

This fundamental difference between the two oversight systems highlights the urgent need for governance reform in ethical oversight within the Constitutional Court. The objective is not to interfere with the institution's independence, but rather to ensure that the principles of accountability are consistently upheld. Reconstructing the oversight system is essential for restoring public trust in the Constitutional Court, particularly in light of the ethical controversies involving constitutional justices in recent years.

### *3.2. Regulation of the appeals mechanism and the principle of finality in ethical decisions*

In Indonesia's constitutional judicial ethics system, the tension between the principle of finality and the need for a corrective mechanism has become increasingly relevant—particularly following the abolition of the Constitutional Court's Honorary Appeals Council (MKBMK). When ethical rulings are declared final with no avenue for review, it raises normative concerns affecting procedural justice, institutional accountability, and institutional legitimacy (Ojiako, 2023). On one hand, swift and binding ethical decisions are seen as essential to uphold the stability and dignity of the institution. On the other hand, the absence of any corrective pathway for potentially flawed decisions creates a legal uncertainty gap, which may undermine the very justice such decisions are meant to protect. This issue becomes even more complex when ethical rulings have far-reaching implications for the constitutional order. Ethical code violations that occur in sensitive contexts, such as general elections, create a pressing need for procedural safeguards that are not only swift but also fair and subject to review. When there is only a single-tier ethical ruling with no possibility of appeal, concerns arise that such decisions are made behind closed doors, without adequate checks and balances (Fisher, 2017). Therefore, it is essential to reassess the position of the principle of finality in the context of ethical oversight within the Constitutional Court and to consider the urgent need for redesigning an appeals mechanism that ensures greater fairness, transparency, and legitimacy.

Within the framework of the rule of law, judicial independence is recognized as a non-negotiable foundation. However, such independence must not be interpreted as absolute freedom without oversight. As affirmed in the Law on Judicial Power, the role of judges is not only to uphold the law and justice but also to align their reasoning with the living social values of the community. Therefore, when ethical oversight mechanisms fail to provide avenues for evaluation, procedural justice is at risk of being undermined by the system's lack of transparency. Most modern legal doctrines including the perspectives of Jan Michiel Otto and Lon Fuller emphasize the importance of legal certainty that is not only substantive but also procedural (Gusarov & Terekhov, 2019). This implies that legal rules must not only be predictable but also subject to review through lawful procedures. In this context, the establishment of an Honorary Appeals Council becomes highly relevant as an embodiment of the principle of due process of law. Such a council could serve as a forum to objectively reassess first-instance ethical decisions, particularly in cases of high complexity or those with potentially broad institutional consequences.

The absence of an appeals mechanism also poses challenges in ensuring accountability and the principle of checks and balances. Without an appeals forum, ethical oversight becomes a closed and unilateral process. This, in turn, can diminish the quality of decision-making and create greater space for bias and subjectivity (Rothfeld, 2014). Conversely, the presence of an appellate body can strengthen internal oversight through a balanced mechanism of review. In this regard, Hans Kelsen's theory on the importance of the hierarchy of norms provides a foundational argument that every ethical ruling must be subject to structural correction to ensure its alignment with higher legal principles. Ethical oversight is not limited to formal rules but also touches upon personal integrity and institutional reputation. In this context, an Honorary Appeals Council could serve as a corrective body to address potential errors in prior decisions without compromising judicial independence. On the contrary, its existence would enhance perceptions of objectivity and public legitimacy regarding the decisions rendered.

Criticism of the absence of an appeals mechanism also intensifies when viewed through the lens of sanction proportionality. According to Robert Alexy, sanctions in the enforcement of law must satisfy the principles of suitability, necessity, and proportionality. Therefore, without a forum to assess whether a given sanction corresponds appropriately to the severity of the violation, there can be no guarantee that punishment is administered proportionally (Alexy, 2010). This concern becomes even more pressing in the context of ethical violations, where issues of personal reputation and a judge's professional career are at stake. In such cases, substantive justice must be carefully balanced with stringent procedural safeguards.

Beyond legal and theoretical considerations, social dimensions also play a critical role. In democratic societies, the legitimacy of a decision is not determined solely

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by its legal substance, but also by the process through which it is reached. Jürgen Habermas's discourse theory posits that legal legitimacy emerges from rational and open deliberative processes. Accordingly, the establishment of an appeals body with an inclusive composition featuring external elements such as academics, public figures, or former constitutional justices could serve as a platform for deliberative review of ethical decisions, while also reinforcing public trust in the integrity of the institution (Vanberg, 2015).

Various perspectives from prominent national legal scholars such as Bagir Manan, Saldi Isra, Jimly Asshiddiqie, and Artidjo Alkostar fundamentally emphasize that ethical oversight of constitutional justices must be governed by the principle of prudence. They do not oppose the notion of oversight; rather, they underscore the importance of mechanisms that are fair, objective, and free from any appearance of political interference. It is within this context that an appeals body becomes a vital element of the ethical system serving not only to impose sanctions, but also to guarantee justice for all parties involved. To realize such a system, it is necessary to design an institutional model for the Honorary Appeals Council that meets several key criteria. First, in terms of composition, its membership must be independent from the Constitutional Court's organizational structure and consist of individuals with a strong reputation for ethical integrity. Second, its mandate must be clearly defined and limited to specific issues such as due process and the proportionality of sanctions, in order to avoid overlap with the first-instance Honorary Council. Third, its procedures must be transparent and accountable, with clear standards of review and strict timeframes. Fourth, there must be mechanisms to prevent conflicts of interest, including mandatory recusal of appellate members in cases where personal or institutional relationships with the reported justice exist.

With a well-designed institutional framework, the re-establishment of the Honorary Appeals Council will not delay the ethical review process; rather, it will serve as an integral component of a fair, objective, and rule-of-law-based oversight system (Fakhriyah Garnita et al., 2024). In this regard, the primary objective is not merely to provide an appeals channel for the reported justice, but to create an ethical process that is more transparent, accountable, and publicly legitimate, thereby contributing to the strengthening of the Constitutional Court's legitimacy.

The Application of the Principle of Judicial Independence is as follows:

1. Constitutional justices must perform their judicial functions independently, based on an assessment of facts, and must resist external influences in the form of inducements, promises, pressure, threats, or interference whether direct or indirect from any party and for any reason, in accordance with their thorough understanding of the law.
2. Constitutional justices must remain independent from public pressure, mass media influence, and the parties involved in any case under their adjudication.
3. Constitutional justices must safeguard their independence from the influence of the executive, legislative, and other state institutions.
4. In carrying out their judicial duties, constitutional justices must be independent from peer pressure or influence from fellow justices in the decision-making process.
5. Constitutional justices must promote, uphold, and strengthen the guarantees of judicial independence, both individually and institutionally, in the execution of their duties.
6. Constitutional justices must preserve and exhibit an image of independence, and advance high standards of conduct in order to strengthen public confidence in the Constitutional Court.

The process of resolving ethical code violations by constitutional justices is not a static system, but one that continues to evolve in response to experiences and lessons learned from past cases. The Constitutional Court periodically conducts evaluations and reforms of its ethical oversight system for constitutional justices (Haris, 2024). These evaluations and improvements are carried out to address emerging developments and challenges, as well as to enhance the effectiveness of preventing and responding to ethical violations.(Anwar Usman, 2020) Several reforms have included the strengthening of the Ethics Council's capacity, the refinement of regulations concerning the code of ethics and enforcement procedures, and the enhancement of transparency in the oversight process.

The abolition of the Honorary Appeals Council within the ethical oversight system of Constitutional Court justices has sparked academic discourse regarding its implications for the enforcement of judicial ethics. Although this removal was intended to accelerate the resolution of ethical violations and to reinforce the finality of decisions made by the Honorary Council, an analysis grounded in the theory of legal certainty reveals substantive weaknesses that may undermine the integrity and accountability of the ethical oversight framework. This paper analyzes the urgency of re-establishing the Honorary Appeals Council of the Constitutional Court based on the theory of legal certainty (Hadiati, 2024). In this context, legal certainty encompasses not only the presence of clear and consistent rules, but also includes a procedural dimension that ensures the operation of a fair legal process (due process of law).

According to Jan Michiel Otto, legal certainty is a multidimensional concept that encompasses five essential elements. First, it requires the existence of clear and consistent legal rules that provide predictability for both the state and its citizens. Second, these rules must be consistently applied by state institutions, ensuring uniform enforcement across similar cases. Third, public compliance with the law is a vital indicator that legal norms are recognized and respected within society. Fourth, legal certainty demands independent and impartial judicial decisions, free from political or external interference. Finally, there must be certainty in the implementation of judicial decisions, so that court rulings are not only declarative but also effectively enforced. Together, these dimensions form the foundation of a legal system that aspires to uphold the rule of law and deliver justice in both substance and procedure (Otto, 2000). Lon Fuller reinforces this concept by articulating eight principles of legality, which serve as the moral foundation of a functioning legal system. Among these principles is the requirement that there must be mechanisms available to correct errors in the application of rules. This principle reflects the understanding that no legal system is infallible, and therefore, procedural safeguards such as appeal mechanisms are essential to uphold justice, accountability, and public trust. Fuller's framework underscores that legal systems must not only prescribe norms but also ensure that those norms are applied fairly and are subject to review when misapplied, thereby aligning legality with legitimacy (Woozley & Fuller, 1966).

Based on the above analysis, the re-establishment of the Constitutional Court's Honorary Appeals Council must take into account several key aspects of institutional design. First, the composition of its membership should be independent and free from the internal dynamics of the Constitutional Court. This composition may include former constitutional justices, constitutional law scholars, and public figures with proven integrity. Second, the Council must have clear and limited authority to prevent overlapping with the jurisdiction of the first-instance Honorary Council. Its powers should focus on evaluating adherence to the principle of due process of law and the proportionality of sanctions (Maruarar Siahaan, 2006). Third, its procedures must be transparent and accountable, with clearly defined operational rules, including the timeframe for examination, the rights of the reported justice, standards of proof, and the decision-making process (Al Amin Syayidin Ali Mustopa, 2022). Fourth, there must be an effective conflict-of-interest prevention mechanism. This includes regulations on the recusal of Honorary Appeals Council members who may have personal or institutional connections to the case under review (Tirado, 2024).

The reestablishment of the Constitutional Court's Honorary Appeals Council finds strong justification within the framework of legal certainty theory. An appeals mechanism is a concrete manifestation of the principle of due process of lawreinforcing accountability and the system of checks and balances, addressing the risks of subjectivity and bias, ensuring the proportionality of sanctions, and enhancing the legitimacy of ethical rulings. With an appropriate institutional design, the Honorary Appeals Council can strengthen the ethical oversight system of constitutional justices without undermining the efficiency and effectiveness of the ethical adjudication process. Ethical supervision of constitutional justices must be conducted through mechanisms that uphold judicial independence while simultaneously ensuring adequate accountability (Angela Dewi, 2024). In this regard, the Honorary Appeals Council may serve as a procedural safeguard for reported justices and, at the same time, enhance the accountability and legitimacy of the Constitutional Court as the guardian of the Constitution.

## 4. Conclusions

The reconstruction of the ethical oversight system for Constitutional Court justices constitutes an urgent necessity in order to strengthen the institutional integrity of constitutional justice in Indonesia. The current internal oversight system, operated through the Ethics Council and the Honorary Council of the Constitutional Court (MKMK), continues to face various structural and substantive challenges. Low standards of integrity, lack of transparency, ineffective complaint mechanisms, and weak internal commitment to follow up on oversight outcomes reflect the pressing need for a comprehensive reformulation of the existing oversight model.

This reconstruction should begin with the strengthening of institutional independence by repositioning the MKMK structurally so that it is free from internal administrative interference. Fundamental steps toward building a credible and accountable oversight system include: reforming the composition of the MKMK by increasing the number of independent external members, ensuring an autonomous budget and secretariat, and transforming the appointment process of MKMK members into a more transparent and participatory mechanism. In doing so, ethical oversight of constitutional justices will not merely serve as a procedural formality, but rather as a substantive instrument to uphold the dignity of the Constitution.

On the other hand, the abolition of the appeals mechanism for ethical decisions has created legal ambiguity and has undermined guarantees of a fair legal process. In this context, the re-establishment of the Honorary Appeals Council is highly important—not only as a corrective instrument, but as a manifestation of the principle of due process of law. This body would serve as an internal counterbalance that enhances accountability, reduces the potential for bias, ensures the proportionality of sanctions, and increases the public legitimacy of ethical decisions. The ideal institutional design of the Honorary Appeals Council must include an independent membership structure, clearly defined and limited powers, transparent and accountable procedures, and effective mechanisms for preventing conflicts of interest. By strengthening the design of the ethical oversight system in a way that reflects the values of justice, objectivity, and accountability, the Constitutional Court will be better positioned to maintain its integrity as the guardian of the Constitution and protector of the constitutional rights of Indonesian citizens.

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# CRIMINOLOGICAL AND CRIMINALISTIC BASES OF ILLEGAL ENGAGEMENT IN FISHING, HUNTING, OR OTHER WATER-BASED EXTRACTIVE INDUSTRIES

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**Abstract**

The article examines the peculiarities of the criminological characteristics of illegal fishing, hunting, or other water extraction industries. The authors determine the state of criminal offenses in Ukraine, as well as the state and specific weight of illegal extraction (fishing) of aquatic biological resources in Ukraine, and investigate the causes of illegal activities. Statistical observations are made on the dynamics of criminal offenses related to illegal fishing that have been registered and referred to court. Trends that influence the growth of illegal fishing are considered. Attention is also focused on latent crime in this area. It has been established that procedural aspects are the most important in uncovering the issue of illegal fishing. In addition, the article examines the main procedural forms of participation of knowledgeable persons in the investigation of criminal cases involving illegal fishing. The issues on which experts should focus their attention when investigating these issues are highlighted. The role of the expert biologist in forming an expert opinion and the peculiarities of conducting these categories of cases are highlighted. The tactical and organizational aspects of conducting special studies and expert examinations in cases of this group of criminal offenses are analyzed. It is proposed to grant specialists of territorial administrations the function of investigative bodies during the investigation of illegal fishing. General conclusions and proposals are made that should contribute to improving the situation with illegal fishing.

**Keywords:** illegal fishing; special knowledge and research; specialist; expert; investigator, detective.

## 1. Introduction

Illegal engagement in fishing, hunting, and other water-based extractive industries represents a significant and persistent threat to environmental security, biodiversity, and legal order in Ukraine and globally. This form of criminal behavior, while often underestimated, has wide-ranging consequences for aquatic ecosystems, fisheries sustainability, economic development, and the integrity of natural resources management. In the context of Ukraine, the criminological and criminalistic study of illegal fishing activities has gained heightened importance due to both the environmental degradation caused by such offenses and the evolving patterns of organized criminal behavior connected to the exploitation of aquatic biological resources. The transformation

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of environmental crimes into a distinct category under the Criminal Code of Ukraine, particularly in the newly introduced section titled "Criminal Offenses Against the Environment," reflects the increased societal and legislative recognition of their gravity. Among these crimes, illegal fishing and water-based extraction industries stand out not only because of their frequency but also due to their latent nature and the difficulty of detection and prosecution. Official statistics reveal a decreasing trend in registered environmental crimes over recent years, but this trend may not accurately reflect the true scale of the problem. Rather, it likely indicates underreporting and limitations in law enforcement capacity. Article 249 of the Criminal Code of Ukraine specifically targets illegal fishing, hunting, and related water-based activities. The prominence of this offense within environmental crime statistics underlines its criminological relevance (Petrenko et al., 2020). Despite some statistical decline since 2020, the share of these offenses remains high, and the real extent is believed to be far greater due to latent crime. The inconsistency in reported numbers and actual activity reflects a gap between formal legal responses and on-the-ground realities, necessitating a deeper understanding of both the causes and operational modalities of such offenses.

The criminological significance of illegal fishing lies not only in its environmental impact but also in the structural and economic factors that drive its persistence. The convergence of socio-economic hardship, geographic conditions, and weak enforcement creates a fertile ground for both opportunistic and organized poaching. In certain regions, illegal fishing constitutes a major means of subsistence or supplemental income, which complicates prevention and punishment strategies. Moreover, the involvement of organized criminal groups, equipped with sophisticated gear and supported by corrupt networks, demonstrates the professionalization of this type of crime (Mackay et al. 2020). These organizations often operate with high efficiency and low risk of prosecution, thereby undermining regulatory frameworks. Criminal professionalism in illegal fishing is manifested through several key features: specialized knowledge and skills, reliance on illegal income, stable criminal roles, and established distribution channels. Simultaneously, the field remains accessible to "accidental" offenders—individuals engaging in illegal fishing sporadically or out of ignorance, highlighting the need for nuanced prevention strategies that distinguish between different offender profiles.

Historical and cultural factors also contribute to the resilience of fish poaching in Ukraine. Fishing is one of the oldest human occupations, and in many communities, it holds traditional significance. The weakening of environmental awareness and the widespread perception of aquatic resources as freely accessible exacerbate the criminogenic potential of such activities. Greed and the pursuit of quick profits continue to be central motives, particularly when enforcement is weak and the perceived risk of punishment is low. A major obstacle to combating illegal fishing is its high latency. The hidden nature of the crime, combined with limited patrol capabilities and public indifference, results in a low detection rate. Latent crime reinforces the belief in impunity among offenders, contributing to recidivism and even recruitment into poaching networks (Woodill et al., 2020). Public engagement in monitoring and reporting is minimal, though it represents a critical component in improving crime detection and environmental stewardship. The criminalistic aspect of illegal fishing demands a robust response that includes both procedural precision and the involvement of experts. Investigating these offenses requires not only conventional police work but also the participation of specialists in biology, ecology, ichthyology, and criminalistics. The proper documentation, analysis, and interpretation of physical evidence—such as fish remains, fishing tools, and environmental data—are essential for securing convictions and understanding the full extent of ecological damage. Forensic examinations, including biological, ecological, and ichthyological assessments, play a vital role in qualifying the offense, estimating damages, and identifying environmental impacts. These examinations must be supported by methodologically sound collection and preservation of evidence, often under challenging field conditions. The integration of expert input at early stages of investigation enhances the quality and reliability of legal outcomes (Weekers et al., 2021). The decentralization of investigative powers—such as granting territorial environmental authorities certain procedural rights—could significantly improve response times and crime detection. Empowering these bodies to conduct site inspections and gather primary evidence would leverage their field-specific expertise and operational proximity to suspected crimes.

Given the diversity of factors influencing illegal fishing, from economic incentives to cultural attitudes and institutional weaknesses, a comprehensive criminological and criminalistic framework is required. This framework must account for offender typologies, regional patterns, environmental harm, and legal process efficiency. Only through such an integrated approach can effective prevention, prosecution, and policy design be achieved.

In this context, the present article aims to systematically analyze the criminological profile of illegal fishing, the dynamics of such offenses in Ukraine, and the procedural mechanisms necessary for effective investigation. By combining empirical data, legislative analysis, and forensic practice, the study provides actionable insights for law enforcement, environmental protection bodies, and policymakers. Ultimately, improving the legal and institutional response to illegal engagement in water-based extractive industries is not only a matter of justice but also a crucial step toward preserving Ukraine's aquatic biodiversity and ecological resilience.

## 2. Criminological Dimensions and Scale of Illegal Fishing in Ukraine

The increased danger of illegal encroachment on the environment is confirmed by the fact that, for the first time in the history of our legislation, provisions providing for liability for environmental crimes have been separated into a separate section of the Criminal Code of Ukraine – "Criminal Offenses Against the Environment." Statistics on criminal offenses registered in Ukraine over the past five years show a steady decline in criminal offenses in the environmental sphere. In 2021, 5,304 criminal offenses against the environment were registered in the country, in 2022 – 4,018, in 2023 – 4,741, and in 2024 – 4,153 (On registered criminal offenses and the results of their pre-trial investigation, 2025). An analysis of the share of criminal offenses against the environment in the structure of all registered criminal offenses shows a decrease in the proportion of such illegal acts. In 2020, the share of criminal offenses against the environment in the structure of all registered criminal offenses in Ukraine was 1.55%, in 2021 – 1.48%, in 2022 – 1.21%, in 2023 - 1.19%, in 2024 - 1.12%. However, the above facts do not allow us to objectively judge the state of criminal offenses, since they are not information about the state of this type of crime, but, most likely, indicators of the fight against it by law enforcement agencies. The most complete picture can only be imagined taking into account the high latency of this type of criminal offense. Illegal fishing occupies a significant place in the structure of criminal offenses against the environment.

According to the "Rules of Amateur Fishing" in Ukraine, it is prohibited to fish:

- during spawning season - from April 1 to May 30/June 19 inclusive (on rivers and their tributaries/on reservoirs, lakes, and bays, respectively);
- during wintering - from November 1 to the beginning of spawning season (this period is set annually by the fisheries protection agency) (Order No. 229 (z0819-01) 2004).

The exact dates when the fishing ban ends may be adjusted. For example, during wintering, it is not allowed to fish in wintering pits. These dates may also depend on when a particular species of fish spawns, the region, and the water bodies.

Thus, back in 2014, in his monograph "Criminal Liability for Illegal Fishing, Hunting, or Other Water Extraction Industries," K.M. Orobets noted that illegal fishing accounts for 60% of criminal offenses in the field of natural resource protection [3, p. 20]. This is

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confirmed by official data on the state of crime in Ukraine. In 2020, under Article 249 of the Criminal Code of Ukraine, "Article 249. Illegal fishing, hunting, or other water extraction industries," 17,407 criminal offenses were registered in 2021 – 608, 2022 – 576, 2023 – 615, 2024 – 685. This means that in 2020, the share of illegal fishing, hunting, or other water extraction industries in the structure of all registered criminal offenses against the environment in Ukraine was 37.34%, in 2021 – 34.84%, in 2022 – 30.76%, in 2023 – 29.62%. When providing a criminological description of illegal fishing, it is important to mention the geography of this type of criminal offense. According to the indicators, the number of registered criminal offenses is increasing despite the state of war.

Moreover, in modern conditions, poaching is widespread not only in inland waters, but also within Ukraine's maritime economic zone. Studying the territorial spread of crime has both theoretical and practical significance. Theoretically, it allows for a better understanding of the influence of various factors, including geographical ones, on the state and dynamics of crime. The practical significance lies in the organization of preventive work.

For many years, statistical data showed a steady trend of rapid growth in criminal offenses related to illegal fishing, with a peak in 2010, and since then there has been a downward trend in the registration of this type of criminal offense. We agree with K.M. Orobets that the reasons are unlikely to lie in a decrease in illegal fishing, but rather are related to the elimination of the body that was directly involved in prosecuting these criminal offenses and the transformation of environmental protection structures which monitor compliance with fishing rules and requirements for the conservation of aquatic biological resources, and a decrease in their activity (Orobets, 2014). Organized fishing occupies a special place in illegal fishing. Poaching has turned into a huge business with its own factories, exports abroad, and corrupt connections. Organized criminal groups with good equipment, weapons, and division of roles began to form here. The scale of organized criminal activity in the field of illegal fishing can be explained by the huge profits and relatively lenient penalties. In my opinion, illegal fishing is characterized by criminal professionalism, i.e., a type of criminal activity that:

1) is a source of livelihood for the perpetrator (the person receives a certain income from illegal fishing);

2) requires certain knowledge and skills to achieve the ultimate goal (for example, the person can operate a self-propelled floating vehicle, knows how to navigate at sea, can use certain means and methods for illegal fishing, etc.);

3) involves certain contacts with anti-social circles (for example, it is necessary to establish channels for selling fish caught illegally, etc.);

4) defines a stable type of criminal activity (committing predominantly similar criminal offenses) in the cases provided for in Article 249 of the Criminal Code of Ukraine (2001). Of course, it cannot be unequivocally stated that this type of criminal offense is characterized only by criminal professionalism; illegal fishing is also characteristic of “accidental” criminals, i.e., those who have committed criminal offenses for the first time.

## 3. Criminogenic factors and expert support in investigating illegal fishing

Speaking about the causes and conditions of crime, we would like to highlight some of the direct factors of illegal fishing. These are, first of all, gaps in environmental awareness, which in various ways exacerbate the criminogenic impact of the factors involved. Recently, the population has developed an indifferent attitude towards the fate of nature and a consumerist attitude towards aquatic biological resources. The causes of fish poaching, like any other criminal offense, should be considered in a historical context. Fishing is one of the earliest human activities. For a certain part of the population, it is the main occupation and means of subsistence in western regions [5]. As we have already noted, illegal fishing is characterized by criminal professionalism, so fish poaching is mainly motivated by greed, which is the basis of criminal activity aimed at enrichment. In the course of our research and study of scientific literature, we have come to the conclusion that the proliferation of fish poaching and the depletion of Ukraine's fish stocks are facilitated by widespread corruption in this sector. Currently, the technical equipment of criminals engaged in fish poaching exceeds that of nature conservation authorities, which increases the mobility of poachers and makes it difficult to apprehend them. It should be recognized that one of the reasons for the existence and rapid growth of poaching is the high level of latency of the criminal offenses in question. Latent crime encourages criminals to believe that they can commit new criminal offenses with impunity. Its impact on the self-determination of illegal fishing is evident in the fact that poachers who are not detected in time continue their illegal activities, attracting new people to join them. In our opinion, an important reason for widespread poaching is the silent indifference of the population. The public in our country must take an active part in the fight against illegal fishing. Invaluable assistance in the detection and investigation of these criminal offenses is provided by knowledgeable individuals—specialists and experts in the fields of ecology, biology, biochemistry, and criminalists As practice shows, business interaction between investigators and competent specialists and experts significantly improves the quality, completeness, and effectiveness of investigations into cases of illegal fishing. The visit of one specialist to the site of illegal fishing should not prevent another specialist from visiting the site, since during the inspection they are called upon, in accordance with their specialization, to assist the investigator in solving various tasks. When the results of the inspection are evaluated taking into account various specialized knowledge, the completeness, comprehensiveness, and objectivity of this investigative action are achieved, and the most optimal decision is made regarding the actions necessary to establish the circumstances of the crime.

The participation of a specialist in the inspection of the scene of illegal fishing should not determine the content of the procedural and tactical decisions of the investigator. In turn, the investigator should not restrict the procedural rights of the specialist or hinder his initiative in studying the circumstances of the incident, identifying and recording evidence. The correct combination and scientifically organized performance of the specialist's functions leads to the effective use of special knowledge and skills in order to establish the truth in the case under investigation. Let us consider the practice of involving knowledgeable persons in the investigation of illegal river fishing. Most often, an inspection of the site of illegal fishing is carried out immediately after signs of it are detected during scheduled and unscheduled inspections, as well as during patrols of certain sections of rivers and reservoirs. It is they who, as the first to inspect the fishing site, establish the probability of the authenticity of the fact of fish poaching, as well as the circumstances of the alleged criminal event (place, time, method, fishing gear, etc.). In this regard, it is advisable to grant the territorial authorities procedural powers to independently conduct certain investigative actions, in particular, to inspect the scene of the incident. This, in turn, will increase the detection rate of these criminal offenses, as well as the efficiency and effectiveness of the investigation as a whole. An ichthyologist should be involved in the inspection of the site of illegal fishing. Using special technical means and devices, the ichthyologist, during the inspection of the scene, collects scales from illegally caught river fish for further expert examination, determines the species composition of the fish, its sexual maturity, reproductive capacity, and any damage. Subsequently, taking into account the value of the fish, the amount of damage caused by illegal fishing is determined. As practice shows, various unfounded errors are sometimes made in this process. Therefore, from a biological point of view, it is advisable to make a final conclusion on the amount of damage after a biological examination conducted by an expert biologist.

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### 4. Forensic support and methodological approaches in investigating illegal fishing

It should be emphasized that the problem of proving the nature and extent of damage caused to aquatic biological resources is complex, since its assessment must take into account the number of river fish caught, damaged, or destroyed, as well as the damage caused to the environment. This is especially true in cases where explosives, chemicals, electric current, or other methods of mass destruction are used for illegal fishing of river fish, as only a small portion of the stunned or dead fish is removed from the water. It is important to note that the effectiveness of the use of expert knowledge will be higher if, in the case under investigation, the same expert is then entrusted with conducting an expert examination of the same name. The expediency of such a combination is due to the fact that in order to resolve the issues posed to a specific expert, the latter needs to be directly familiar with the specifics of the situation at the scene, and the expert's participation in the detection, recording, and examination of material evidence facilitates further expert research and increases the reliability of the expert's conclusions. During the investigation of cases of illegal extraction (fishing) of river fish, forensic ecological, forensic biological, and forensic ichthyological examinations are usually appointed at the initial stage. Forensic ecological examinations of the crimes under investigation are conducted to establish the factual circumstances of the negative anthropogenic impact (through illegal fishing) on the environment. Forensic ecological examinations into illegal river fishing are most often ordered during the spawning and migration (run) seasons. Spawning grounds are specific areas of the aquatic environment where fish lay their eggs. When investigating illegal river fishing, the forensic environmental expert may ask the following key questions.

1. Is there a negative anthropogenic impact on the biological resources inhabiting the river estuary or its tributary, according to the documentation provided?

2. Is the seized equipment (fishing nets or explosive and toxic agents) an instrument of negative anthropogenic impact, namely a tool for the mass extermination of river fish?

3. Is it possible to establish the cause of mass fish mortality in the river or its tributary?

4. Is the fishing net a means (weapon) of mass destruction of fish or a complete barrier to fish migration routes to spawning grounds?

In our opinion, when appointing a forensic environmental examination into the facts of illegal river fishing, the following materials must be provided:

a) a ruling on the appointment of a forensic environmental examination;

b) a report on the inspection of the scene;

c) a diagram (drawing, plan) of the scene;

d) a certificate from the territorial branch of fisheries and conservation of aquatic biological resources stating that the section of the river or its bay where illegal fishing was recorded is a spawning ground for the fish caught;

e) a certificate from an ichthyologist on the species composition of the illegally caught fish;

f) maps of specially protected natural areas (state reserves and sanctuaries, national parks, etc.);

g) tables, photos, and video materials from the scene (photos of the coastal strip of the river or its tributary where illegal fishing was detected; photos of the criminal means and tools used, specimens of fish carcasses, etc.);

h) explanations from persons involved in the illegal fishing and its witnesses (if any).

The appointment and conduct of a forensic biological examination in the investigation of illegal river fishing has its own organizational and tactical features, which are explained by its objects, methods, and research tasks. The main objects of research conducted during this examination are fish carcasses and their remains.

In cases where, when recording the fact of illegal fishing of river fish, it is necessary to establish or clarify the systematic taxon (species) of the fish, the method of its capture, as well as when the fish has been destroyed but there are traces of it on the suspect's clothing, nets, sides of floating vehicles (boats, rafts) fish roe, it is necessary to appoint a biological examination of objects of animal origin.

The following specific questions are asked of the expert biologist regarding these objects: 1. What is the taxonomic affiliation of the river fish samples submitted for examination?

2. To which species of river fish do the scales from the samples seized during illegal fishing belong?

3. Is the biological substance seized from the floating vessel fish mucus or roe?

4. Do the fish samples seized from the scene belong to rare and endangered species listed in the Red Book of Ukraine?

5. How were the fish samples submitted for examination caught?

6. Is it possible to establish the fact of mass fish poisoning based on the documents and fish samples submitted?

The effectiveness of a biological expert's work is determined by the correct and timely removal, packaging, and transportation of material evidence and samples for comparative study. Thus, fish carcass samples must be provided to the expert in frozen form.

If traces of biological origin visible to the naked eye are found at the scene of the incident, they must be removed mechanically (by cutting out the carrier object, scraping, etc.).

In cases where such traces are expected to be present but are invisible to the naked eye or the objects carrying them cannot be transported, traces can also be collected using fingerprint films or adhesive transparent tape (such as Scotch tape).

In order to preserve the evidence necessary for biological examination, these objects must not be packed in plastic bags (to prevent them from rotting). If possible, carrier objects with traces of biological origin left on them should be submitted for examination. These may include clothing, car seat covers, individual parts from a floating vehicle, poaching gear (nets, traps, snares, spears, etc.). When investigating the illegal extraction (catching) of river fish, a forensic ichthyological examination is appointed to determine the nature and extent of damage caused to the fishery as a result of pollution of the reservoir, to establish the causes and circumstances of the death of fish and plankton, and to determine the prospects for the restoration of food organisms in the reservoir. The main objects of forensic ichthyological examination are fish scales and bones. An expert ichthyologist determines the species (genus, family) of fish, the age of the individual, and also identifies how many fish of a particular species have changed their natural properties. Sometimes, a comprehensive study is conducted with the involvement of experts from other specialties—biochemists, physiologists, geneticists, and zoologists.

To sum up the above, it should be noted that there are currently many reasons contributing to the development of fish poaching in Ukraine. They, of course, stem from the general causes of all crime in the country, as well as the causes of environmental crime, but, in our opinion, it is not enough to study the causes and conditions that contribute to the predatory destruction of our country's fish stocks. Criminological studies should be conducted regularly to characterize the overall picture of criminal offenses related to illegal fishing. The data obtained is important for developing optimal recommendations for the protection of fish stocks. Thus, having a general picture of illegal and predatory fishing in different regions of our country, it is possible to make the right decisions regarding the material and technical support necessary for the prevention agencies of a particular territory to combat poaching. Active measures must

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be taken to eliminate it, as poaching is a direct threat to Ukraine's national security.

Thus, all of the above allows us to conclude that the effectiveness and quality of criminal investigations into illegal fishing is largely ensured by the timely and active participation of knowledgeable individuals through their conduct of special studies and forensic examinations.

## Conclusion

Illegal fishing and related water-based poaching activities pose a multifaceted threat to Ukraine's ecological balance, resource sustainability, and environmental security. This study has demonstrated that such crimes are both widespread and deeply latent, often driven by economic necessity, cultural acceptance, and institutional shortcomings. Their continued prevalence reflects the convergence of various factors, including underdeveloped enforcement mechanisms, limited public engagement, and the growing sophistication of organized criminal groups.

The criminological landscape of illegal fishing in Ukraine reveals a mix of opportunistic and professional offenders, necessitating differentiated prevention strategies. Criminological patterns also show significant geographic variation, demanding tailored regional interventions. Addressing this issue effectively requires a shift from reactive enforcement to proactive prevention and inter-institutional coordination.

From a criminalistic perspective, the investigation of these offenses must increasingly rely on interdisciplinary expertise. The integration of environmental, biological, and ichthyological knowledge into investigative practice enhances the accuracy of crime scene assessments, supports the legitimacy of forensic conclusions, and strengthens the evidentiary base in court proceedings. Timely expert involvement, precise collection and preservation of material evidence, and the use of specialized forensic methodologies are essential to ensuring the objectivity and efficiency of criminal investigations.

Equally important is the institutional empowerment of territorial environmental agencies. Granting them specific procedural rights in criminal investigations can significantly improve crime detection rates and facilitate faster responses to environmental violations. This decentralization can serve as a model for enhancing ecological governance across other environmental domains. Overall, combatting illegal fishing requires an integrated criminological and criminalistic strategy that balances strict legal enforcement with ecological sensitivity and public participation. Legislative reforms should continue to align with international standards while enabling adaptive law enforcement practices. Moreover, fostering environmental education and community involvement is critical to reversing the societal indifference that fuels poaching.

Only through a coordinated, expert-informed, and legally robust approach can Ukraine curb illegal fishing, preserve its aquatic biodiversity, and build a resilient framework for environmental justice and sustainability.

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# PROSECUTOR PARTICIPATION IN CRIMINAL MEDIATION: LEGAL REGULATION, CHALLENGES, AND WAYS TO OVERCOME THEM

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**Abstract**

The article reveals general theoretical and practical issues of the prosecutor's role in criminal mediation. The author describes scientific and legal approaches to defining the concept of "mediation." Based on an analysis of current legislation, the author reveals aspects of the prosecutor's participation in restorative justice practices and his role in concluding agreements between the parties. Despite the existing legislation, the author notes a number of legal conflicts and practical problems regarding the role of the prosecutor in criminal mediation. In particular, the author emphasizes the conflict between confidentiality and public interest, as well as the problem of determining the voluntariness of the parties. In addition, the author notes practical obstacles to the implementation of criminal mediation, which stem from cultural characteristics and inadequate information. The novelty of the article lies in the comprehensive recommendations provided by the author for solving the identified problems, in particular, specific legislative changes to the Criminal Procedure Code of Ukraine. The author also emphasizes the need to implement educational programs and practices to inform the public about the benefits of mediation. The general comprehensive recommendations form a coherent concept for improving the effectiveness of the prosecutor's role in domestic restorative justice practices.

**Keywords:** criminal mediation; prosecutor; legal regulation; mediation; public interest; voluntariness; restorative justice; law enforcement.

## Introduction

In recent decades, the global discourse on criminal justice has gradually shifted toward more restorative approaches that focus not only on punishment but also on repairing the harm caused by crime, reintegrating the offender into society, and healing the victim. Restorative justice (RJ) seeks to humanize legal proceedings by encouraging voluntary participation, dialogue, and mutual understanding between the parties. Among its key mechanisms is criminal mediation, which aims to resolve conflict by enabling constructive communication between the victim and the offender in a safe and regulated environment. The overarching goal is to restore social balance rather than merely impose retribution. While restorative justice has received increasing attention in various legal systems, the practical implementation of criminal mediation, especially the role of the prosecutor in such procedures, remains a matter of significant legal and scholarly concern (Lapkin, 2011).

Ukraine, in its ongoing process of harmonizing national legislation with European standards, has begun incorporating the principles of restorative justice into its legal system. These developments are in line with international recommendations such as the Council of Europe Recommendation (2018) concerning restorative justice in criminal matters, which encourages states to integrate restorative mechanisms into formal criminal proceedings. Nevertheless, the adaptation of such models within Ukrainian criminal justice faces conceptual, institutional, and practical challenges. One of the central issues is the lack of clarity and consistency in defining the role of the prosecutor in criminal mediation. Prosecutors, traditionally seen as representatives of the state and guardians of public interest, are now required to act not only as litigators but also as facilitators—or at least endorsers—of non-punitive forms of justice. This transformation raises a set of pressing questions: How should prosecutors engage in mediation? What legal frameworks guide their involvement? How can their role be reconciled with the principles of voluntariness, neutrality, and confidentiality inherent in mediation?

This article is driven by the growing necessity to address these questions and to explore the legal and practical implications of prosecutorial participation in criminal mediation within Ukraine's legal system. Despite legislative attempts to introduce mediation as a formal component of criminal proceedings—such as amendments to the Criminal Procedure Code of Ukraine and the Law of Ukraine on Free Legal Aid—a clear and comprehensive regulation of the prosecutor's role remains lacking. Often, mediation is conducted under vague procedural guidelines, resulting in inconsistent practices and the risk of undermining the very principles on which restorative justice is built.

The existing scholarly literature provides valuable insights but has not yet comprehensively examined the multidimensional position of the prosecutor in restorative justice processes. For instance, I.V. Hlovyuk and S.V. Andrusenko note the risks associated with excessive prosecutorial influence over mediation outcomes and the absence of clear benchmarks for evaluating public interest in such contexts. T.H. Fomina highlights the fragmented nature of current legal regulation, while K.O. Chumak underscores the ambiguity surrounding voluntariness and the informed consent of the parties. Furthermore, N.O. Turman (2018) emphasize the lack of professional training and legal awareness among mediation participants, including prosecutors. Although scholars such as V.O. Hryniuk, P.D. Denysiuk (2021), O.V. Katsiora, A.V. Lapkin (2011), and others have contributed to the discussion, a systematic and analytical study focusing specifically on the prosecutor's functions, legal status, and ethical obligations in mediation is still absent. This gap forms the conceptual foundation of the present research.

The theoretical basis of this article draws on a combination of legal positivism and principles of restorative justice theory. Legal positivism allows us to explore the existing regulatory framework and its internal consistency, while restorative justice theory—rooted in the works of Howard Zehr and John Braithwaite—emphasizes the importance of dialogue, victim-offender reconciliation, and the transformation of legal roles. According to Zehr, restorative justice challenges the traditional punitive paradigm by shifting the focus from "what law was broken and what punishment is deserved" to "who was harmed and how can that harm be repaired." In this light, the role of the prosecutor must be reconceptualized not as a passive observer or gatekeeper but as an active participant capable of facilitating, or at least not obstructing, restorative dialogue. This theoretical lens provides a framework for analyzing the institutional tensions between state interests and the individualized justice promoted by mediation.

Given this context, the purpose of the article is to conduct a comprehensive analysis of the legal regulation of the prosecutor's participation in criminal mediation in Ukraine. The article also aims to identify key theoretical and practical challenges, assess the degree of alignment between existing regulations and restorative justice principles, and propose concrete solutions—both legislative and institutional—to improve the efficacy of prosecutorial involvement in mediation. Particular attention is paid to the tension between confidentiality and public interest, the problem of determining the voluntariness of the parties, and cultural or procedural barriers that hinder broader application of mediation practices.

Accordingly, the objectives of the study are as follows:

- To examine the normative framework regulating the prosecutor's

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participation in criminal mediation.

- To assess the compatibility of prosecutorial functions with the principles of restorative justice.
- To identify legal conflicts and institutional challenges arising from prosecutorial involvement in mediation.
- To propose specific amendments to the Criminal Procedure Code of Ukraine that would enhance the effectiveness of mediation.
- To formulate practical recommendations for training prosecutors and informing the public about the benefits of restorative justice.

The central hypothesis of this article is that the absence of clear legal guidelines and theoretical clarity regarding the prosecutor's role in criminal mediation contributes to procedural inconsistencies, undermines voluntariness, and limits the transformative potential of restorative justice in Ukraine. Furthermore, it is hypothesized that with adequate legal reform and institutional support—including improved education and awareness—prosecutors can become effective agents of restorative justice rather than passive or obstructive actors.

From a methodological standpoint, this study employs an interdisciplinary approach, combining formal legal analysis with comparative legal research, systemic analysis, and interpretive methods. The study analyzes Ukrainian legislation and judicial practice, juxtaposing them with best practices and legal standards from other jurisdictions that have successfully integrated restorative justice into their criminal justice systems. This approach allows for the identification of both structural gaps and promising directions for reform.

This article will be of interest to a wide audience, including legal scholars, practitioners, lawmakers, and restorative justice advocates, as it addresses a timely and underexplored aspect of criminal procedure. By shedding light on the prosecutor's role in mediation and offering actionable solutions, the article contributes to the broader discourse on the modernization and humanization of criminal justice in Ukraine and beyond.

## Results and Discussion

Modern Ukrainian criminal justice is gradually moving away from the traditional punitive model. In this context, criminal mediation is increasingly regarded as an effective tool for transforming approaches to conflict resolution. As P.D. Denysiuk aptly notes, the punitive-repressive model of justice is losing its effectiveness. These changes emphasize the need to introduce alternative procedures, including mediation. Mediation has an interdisciplinary nature and is aimed at encouraging the involvement of both parties. It provides the victim with an opportunity to receive appropriate compensation and to express their views, while offering the offender a chance for proper resocialization, provided that the terms of the mediation are fulfilled. However, the full-scale implementation of restorative justice practices requires thorough theoretical reflection and appropriate legal regulation (Denysiuk, 2021).

In the works of Ukrainian scholars, criminal mediation is conceptualized as an institution developing within the framework of restorative justice. Its essence lies in giving humanistic content to traditional criminal justice. According to this concept, every offense gives rise to the offender’s obligation to remedy the harm caused. Therefore, it is the task of the state and society to create the proper conditions for this to occur.

This model receives further elaboration in the work of T.H. Fomina, who emphasizes that mediation adds a "healing dimension" to traditional criminal proceedings. That is, the victim receives actual moral and material compensation, while the offender gains a real opportunity for resocialization. In the author’s view, mediation helps reduce social tension between the parties and improves the protection of victims’ rights (Fomina, 2022).

The practical implementation of this approach is explored by A.A. Dmytrenko and M.R. Mazur, who define criminal mediation as a structured process with clearly delineated stages and rules. Within this procedure, the parties to the conflict—assisted by a neutral third party—reach a mutually acceptable agreement that considers their individual interests (Dmytrenko, 2022; Mazur, 2023).

Ukrainian scholar V.S. Sirko defines mediation as a method of alternative dispute resolution that involves the participation of a neutral third party. Unlike litigation, mediation is based on the principles of voluntariness, confidentiality, mutual understanding, and cooperation. Unlike a judge, a mediator does not make decisions for the parties but facilitates dialogue between them. According to the author, this approach helps reduce time and resource expenditures and allows the individual needs of each participant to be taken into account (Sirko, 2024).

According to paragraph 4 of Article 1 of the Law of Ukraine "On Mediation" (2019), mediation is defined as "a voluntary, confidential, and structured process whereby the parties, with the assistance of a mediator, seek to prevent or resolve a conflict (dispute) through negotiations." The law explicitly states that it applies to criminal relations, particularly during the conclusion of reconciliation agreements (Law of Ukraine No. 1875-IX..., 2022).

Thus, despite the diversity of approaches and terminological emphases, scholars broadly agree on the essence of criminal mediation: it is a voluntary, confidential, and structured extrajudicial procedure aimed at remedying harm and achieving agreement between the victim and the offender.

It is important to emphasize that the main participants in mediation are the conflicting parties and the mediator. However, it is equally important to consider the role of other actors in criminal proceedings, particularly the prosecutor. The prosecutor's participation in criminal mediation derives from their function of upholding public prosecution. At the same time, it reflects the restorative character of contemporary criminal justice. At the legislative level, the prosecutor's involvement is based on the provisions of Chapter 35 of the Criminal Procedure Code of Ukraine (CPC) of 2001. Articles 469–472 of the CPC govern the procedure for concluding and approving a reconciliation agreement (Criminal Procedure Code of Ukraine, 2001). These articles are also connected to the broader principles of public interest laid out in Article 121 of the Constitution of Ukraine (1996) and Article 2 of the Law of Ukraine "On the Prosecutor's Office" (2014) (Constitution of Ukraine, 1996; Law of Ukraine No. 1697-VII..., 2014). According to part 7 of Article 474 of the CPC, the prosecutor is obligated to verify that the agreement is voluntary, justified, and in line with public interest. Only after performing these checks may the prosecutor petition the court for its approval (Criminal Procedure Code of Ukraine, 2001). This legal framework suggests that the prosecutor plays a pivotal role in balancing the restorative and public dimensions of justice.

At the doctrinal level, scholars consider the prosecutor's role in mediation through the lens of two groups of powers. On one hand, the prosecutor has an informational function, which includes informing the parties about the possibility of using restorative justice mechanisms and explaining the consequences of reconciliation (Turman, 2018). On the other hand, the prosecutor performs an evaluative function. The law entrusts them with assessing the legality, voluntariness, and proportionality of the proposed terms. In this context, K.O. Chumak rightly points out that the content of an agreement between the parties may remain superficial without proper prosecutorial scrutiny (Chumak, 2016). Therefore, we can define the prosecutor's role as twofold: informing the parties and evaluating the reconciliation agreement they have reached.

It is also worth noting that the prosecutor's role may change significantly depending on the stage of the criminal process. At the pre-trial stage, for example, the prosecutor may inform the parties about restorative justice mechanisms and propose reconciliation

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(Turman, 2018). Once the parties agree on a draft agreement, the prosecutor submits it to the court and provides their opinion on whether the agreement serves the public interest. At the trial stage, the prosecutor is empowered to either support or oppose the approval of the agreement.

However, this is where the first serious issue arises. The prosecutor may not be present during the mediation sessions, as this would violate the principle of confidentiality. Therefore, the prosecutor has no direct access to the content or dynamics of the negotiations. This problem is symptomatic of a broader tension in restorative justice. Confidentiality is a cornerstone of mediation, but it raises concerns about fairness and undue influence once the agreement is finalized. In this article, we focus specifically on the issue of the prosecutor's non-participation in the negotiation process. As a result of mediation, the prosecutor receives a signed agreement that they must evaluate for voluntariness and for the adequate protection of the victim's interests. Yet, not being present during the negotiations substantially limits the prosecutor's ability to make an informed judgment.

Ukrainian scholar V.O. Hryniuk highlights this asymmetry, emphasizing that the prosecutor has "limited capacity" to control the content of the agreement due to their absence from the discussions. Often, the prosecutor must rely solely on their subjective perception of the agreement's adequacy (Hryniuk, 2016).

Recognizing the fundamental importance of confidentiality, this issue nevertheless presents a serious obstacle to the effective integration of restorative justice practices into the domestic legal system. As a potential solution, we propose the establishment of a transparent mechanism for communication between the mediator and the prosecutor that does not compromise the confidentiality of the process. First, it is advisable to amend the procedural aspect of mediation. Since only the mediator has full access to the negotiation process, it is logical to assign them the responsibility of confirming the voluntariness of the agreement. To that end, we propose the introduction of a "Mediator's Explanatory Memorandum"—a standardized form signed by both the mediator and the parties, affirming the voluntary nature of participation, the balance of the agreement, and respect for the victim's rights, without disclosing any confidential details. This memorandum should be submitted to the prosecutor within three days after the mediation concludes. This timeline ensures the necessary level of procedural oversight while preserving the non-interventionist nature of mediation. Because this procedural innovation is a substantive change, it must be codified in law. We propose the addition of a new Article $470^1$ to the Criminal Procedure Code of Ukraine, titled "Mediator's Explanatory Memorandum," outlining its legal status, content, and use in verifying the voluntariness and legality of the agreement. Among its key provisions: the memorandum must exclude any factual information about the offense or the negotiations, and must include general procedural information, statements confirming voluntariness and absence of pressure, and confirmation of confidentiality compliance. The memorandum would be appended to the reconciliation agreement and used solely for verifying its legal validity. If the memorandum contains any confidential details, courts would be obliged to exclude them as inadmissible evidence.

This innovation may partially resolve the conflict between the confidentiality of negotiations and the prosecutor's duty to ensure adequate protection of the victim's rights. Additionally, to strengthen verification of voluntariness, the prosecutor should be granted a procedural right to ask clarifying questions during a closed court session. This would allow them to confirm the absence of coercion or manipulation and strengthen procedural fairness. In this model, the prosecutor's absence from the mediation session is compensated by formalized documentary evidence of voluntariness and the opportunity for targeted procedural review. Thus, the prosecutor retains meaningful oversight powers without undermining the informality and confidentiality that are essential to restorative justice. In this same context, it is necessary to highlight another problem:

the conflict between the public interest, which the prosecutor is mandated to defend, and the will of the parties seeking reconciliation. As mentioned above, Chapter 35 of the Criminal Procedure Code entrusts the prosecutor with the duty to verify the legality and voluntariness of the agreement. However, the prosecutor is also empowered to reject an agreement that "does not meet the interests of society" (Criminal Procedure Code of Ukraine, 2001). While this provision is intended to protect the public interest, the concept itself is formulated too abstractly. Ukrainian scholars I.V. Hlovyuk and S.V. Andrusenko have stressed that the prosecutor's position is often decisive in whether a reconciliation agreement receives judicial approval. Yet the absence of clear criteria creates the risk of excessive interference and, in effect, the blocking of voluntary settlements (Andrusenko & Hlovyuk, 2015). It is worth noting that the Supreme Court addressed this issue in Case No. 756/11661/17 (2018), clarifying that public interest is considered respected when the rights and legitimate interests of the conflict participants—primarily the victim—are protected (Resolution of the Supreme Court, 2018). This guidance underscores the importance of ensuring the victim's interests are respected, which again brings attention to the confidentiality dilemma. The ruling supports the rejection of agreements where these interests are not upheld but does not eliminate the legislative vagueness entirely.

Resolving this dilemma requires legislative clarification. We propose amending Article 474 of the CPC of Ukraine to define specific circumstances under which reconciliation is objectively contrary to public interest. These may include: the presence of serious recidivism; direct threats to life or health; or a gross imbalance between the harm caused and the compensation offered. This list should not be exhaustive, but its very existence would significantly reduce subjectivity and improve the protection of public interest.

Importantly, the prosecutor's role is not limited to procedural oversight. According to Recommendation R(99)19 of the Committee of Ministers of the Council of Europe (1999), prosecutors are expected to play a broader strategic role by promoting the implementation of restorative justice practices (Recommendation No. R(99)19, 1999). In the context of Ukrainian law, this means balancing punitive and restorative paradigms. Prosecutors must actively contribute to the expansion of mediation and reconciliation agreements.

However, this broader strategic role reveals yet another pressing problem: the psychological unpreparedness of prosecutors and participants for restorative processes. Moreover, public awareness of restorative justice remains limited. Institutionally, many prosecutors still operate within a strictly punitive framework. Mediation is not viewed as a public good but rather as a form of leniency. In the early years of reconciliation agreement implementation, prosecutors frequently objected to their approval. Professional biases remain a significant obstacle, with many perceiving restorative practices as undermining the authority of criminal justice (Laundra, 2022).

Overcoming this challenge requires more than legal reform—it demands a shift in public and institutional mentality. Foremost, this involves awareness-raising among both the general population and legal professionals. Law school curricula should include mandatory modules on restorative justice. National public education campaigns should be implemented to highlight the benefits of mediation. Furthermore, A.V. Lapkin proposes the introduction of preparatory sessions prior to mediation, during which the mediator—with the involvement of the prosecutor—explains the essence of the process, its rules, and potential outcomes (Lapkin, 2011). Only a holistic combination of education and structured participant preparation can increase acceptance and successful implementation of restorative justice practices in Ukraine.

## Conclusion

Criminal mediation is a voluntary, confidential, and structured extrajudicial procedure aimed at addressing harm and achieving consensus between the victim and

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the offender. Within the context of mediation, the prosecutor assumes informational, evaluative, and strategic roles. The informational role involves informing the parties about the possibility of applying restorative justice practices. The evaluative role concerns the assessment and approval of the agreement reached between the parties. The strategic role, as outlined in the Council of Europe's Recommendation, relates to the broader promotion and institutionalization of criminal mediation.

Despite existing legal regulation, the practical involvement of the prosecutor in mediation remains fraught with a number of challenges. First and foremost, the prosecutor is not a direct participant in the negotiation process between the parties. Consequently, they are unable to independently verify the voluntariness of the agreement or ensure the adequate protection of the victim's rights. To resolve this contradiction—while upholding the principle of confidentiality—it is proposed to amend the Criminal Procedure Code of Ukraine to introduce a Mediator's Explanatory Memorandum.

Another legal inconsistency pertains to the need to respect the principle of public interest. To eliminate subjectivity in the prosecutor's decision-making, it is recommended to establish a clear list of grounds within the Criminal Procedure Code that would preclude mediation in certain cases.

Finally, in order to fulfill the prosecutor's strategic role and support the wider application of restorative justice, it is proposed to conduct large-scale public awareness campaigns aimed at explaining the benefits of mediation.

In conclusion, the implementation of these comprehensive reforms is intended to minimize legal ambiguities and foster the broader use of restorative justice practices in Ukraine.

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