LEGAL HORIZONS

scientific and practical law journal

2025
3

ISSN: 2519-2353

ISSN: 2519-2353

Ministry of Education and Science of Ukraine
Scientific Institution «Legal Horizons»

LEGAL HORIZONS

Research-to-Practice Journal on Legal Science

Founded in 2008
Published four times per year

Vol. 26, No. 3

Kyiv – 2025

ISSN: 2519-2353

Certificate of state registrationof the print media
Series: KV No. 24828-14768 PR dated 21.04.2021

Collection of scientific works included in List of professional publications of Ukraine (Category "B")
in Law Sciences (Order of the Ministry of Education and Science of Ukraine No. 996 of July 11, 2017)

The collection is presentedin the following scientometric databases:
Index Copernicus, Google Scholar, Crossref, DOAJ, HeinOnline, VNLU, Sumy State University Repository

Legal Horizons: Research-to-Practice Journal on Legal Science / Ed. col.:
Yurii V. Harust (Ed.) et al.
Scientific Institution «Legal Horizons» LLC
Vol. 26 No. 3. 109 p.
2025.

Founder and publisher:
Scientific Institution «Legal Horizons»
Kyiv, Ukraine
E-mail: info@legalhorizons.com.ua
www: https://legalhorizons.com.ua/en

FOREWORD

It is with great pleasure that we present Volume 26, Issue 3 of Legal Horizons, a collection of articles that exemplifies the breadth, depth, and interdisciplinary nature of contemporary legal scholarship. This issue brings together contributions that span comparative law, legal theory, socio-legal studies, and emerging challenges in digital and environmental governance, highlighting the dynamic interaction between law and society in the twenty-first century.

Our issue opens with Anna Petrenko's "**THE DUTCH EXPERIENCE OF IMPLEMENTING RESTORATIVE JUSTICE IN CRIMINAL PROCEEDINGS: PROSPECTS FOR UKRAINIAN JUSTICE**", which examines restorative justice in the Netherlands and offers insights into its potential adaptation within the Ukrainian justice system. This comparative perspective underscores the importance of cross-jurisdictional learning in the pursuit of effective criminal justice reform. Complementing this, Serhii Prylypko's "**ORGANIZATIONAL AND LEGAL MECHANISMS OF THE FUNCTIONING OF THE SOCIAL STATE** "provides a thorough analysis of the institutional and legal frameworks underpinning the functioning of the social state, while Svitlana Bieliavska's **"THE CONCEPT OF PROPERTY IN ROMAN CIVIL LAW AND ITS EVOLUTION"** traces the evolution of the concept of property from Roman civil law to its contemporary implications.

Several contributions explore pressing policy and governance challenges. Juwita Manurung, Fadli Moh, Koeswahyono Imam, Permadi Iwan, and Wibisono Anditya Ariest's **"THE LEGAL POLITICS OF AGRARIAN REFORM IN JAKARTA AND THE MARGINALIZATION OF LAND CULTIVATORS**" scrutinizes agrarian reform in Jakarta, highlighting the marginalization of land cultivators. Similarly, Rahmah Sherina Azkia, Sihabudin, and Dewantara Reka's **"LEGAL POLITICS OF INVESTMENT SCREENING IN INDONESIA'S FOREIGN INVESTMENT REFORM"** examines the legal politics of investment screening in Indonesia's foreign investment reform.

Sasmitaningrum Dini, Widhiyanti Hanif Nur, and Anggraini Erna's **"LEGAL PROTECTION FOR CONSUMER BUYERS OF FLATS WITH A SALE AND PURCHASE AGREEMENT MADE UNDER HAND THROUGH THE PRE PROJECT SELLING SYSTEM"** addresses consumer protection in real estate transactions, a subject of increasing relevance in rapidly urbanizing contexts.

This issue also engages with the legal and ethical implications of contemporary technological and environmental challenges. Oleksii Shamov's **"AI AND COPYRIGHT: FROM A DOCTRINAL CRISIS TO A HYBRID MODEL OF COLLECTIVE LICENSING"** analyses the intersection of artificial intelligence and copyright law, proposing a hybrid model of collective licensing. Nataliia Stepanenko and Kostiantyn Perepadin's **"ENSURING HUMAN RIGHTS IN THE CONTEXT OF DIGITAL TECHNOLOGIES DURING AN ARMED CONFLICT"** explores human rights protections amid digital technologies during armed conflict.

Viktoriia Sydor and Yuri Ishchenko's **"LEGAL ASPECTS OF ENVIRONMENTAL TERRORISM IN THE CONTEXT OF THE WAR IN UKRAINE: NEW CHALLENGES TO GLOBAL SECURITY"** examines legal responses to environmental terrorism in Ukraine, emphasizing emerging threats to global security. Finally, Olena Kalmykova and Yuliia Vyshnevska's **"ADMINISTRATIVE AND LEGAL SUPPORT FOR PSYCHOLOGICAL SUPPORT AND REHABILITATION OF SERVICEMEN OF THE ARMED FORCES OF UKRAINE"** provides a detailed study of administrative and legal frameworks supporting the psychological rehabilitation of Ukrainian servicemen, highlighting the critical intersection of law, policy, and human welfare.

Taken together, these contributions reflect the journal's ongoing commitment to advancing rigorous, policy-relevant, and socially attuned legal scholarship. They illustrate how law operates both as a framework for societal organization and as a tool for addressing contemporary challenges—from restorative justice and agrarian reform to AI, digital rights, and environmental security. We are confident that this issue will provide readers with rich insights, stimulate scholarly debate, and inform practical reforms in legal systems worldwide.

We extend our sincere gratitude to the authors for their outstanding contributions and to our reviewers for their careful and constructive feedback. We hope that Volume 26, Issue 3 of Legal Horizons will inspire further research, dialogue, and innovation across the global legal community.

— Editorial Board, Legal Horizons

Yurii Harust,
Editor-in-Chief
Legal Horizons

CONTENTS

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.10-18

THE DUTCH EXPERIENCE OF IMPLEMENTING RESTORATIVE JUSTICE IN CRIMINAL PROCEEDINGS: PROSPECTS FOR UKRAINIAN JUSTICE

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Abstract

The article analyzes the Dutch experience in implementing restorative justice and the possibilities for its adaptation in Ukraine. The relevance of the topic is determined by Ukraine's European integration commitments and the need for post-conflict social cohesion. Comparative legal analysis and statistical cost assessment were used as methodological tools. The Netherlands was selected as a model case due to the widespread application of mediation and consistent state support. The study demonstrates that legislative comprehensiveness and procedural clarity significantly increase access to reconciliation. Centralized funding guarantees free services and strict selection of mediators. Moreover, large-scale information campaigns build public trust and professional support. Comparative data show that mediation is more cost-effective than traditional judicial proceedings, while simultaneously reducing the caseload of courts and accelerating conflict resolution. A distinctive contribution of the study is the formulation of comprehensive recommendations for Ukraine. The identified problems are analyzed through the lens of Dutch practice, with subsequent adaptation to domestic legal realities. Proposals include the allocation of stable state funding through redistribution of the court budget, as well as the development of educational programs and public awareness campaigns to overcome punitive justice stereotypes. The study argues that the adoption of the Dutch model could strengthen the humanistic vector of Ukraine's criminal policy.

Key words: comparative law; criminal mediation; mediation in the Netherlands; reconciliation agreement; reconciliation of parties

1. Introduction

In the context of globalization and expanding integration processes, the mutual exchange of successful practices in the field of law and law enforcement acquires particular importance. For Ukraine, which established its European course after signing the Association Agreement with the European Union in 2014, a pressing task has been the introduction of institutions that ensure the harmonization of national legislation with European legal standards (European Union & Ukraine, 2014). One such institution is restorative justice, regarded as a key instrument for the humanization of criminal policy and the enhancement of judicial efficiency. The significance of this article is not only in its description of the positive experience of the Netherlands but also in its adaptation of that experience to Ukrainian realities, with a focus on those elements that can be applied in the national context. Consequently, the material will be of interest both to scholars in the field of criminal law and criminal procedure, and to practitioners, i.e. judges, prosecutors, lawyers, mediators, as well as to representatives of state authorities responsible for shaping justice policy.

The ideas of restorative justice are not new to legal traditions. As early as the times of Kyivan Rus, the practice of reconciliation between conflicting parties and compensation to the victim played an important role in regulating social relations (Mykytyn, 2014). However, the Ukraine's long inclusion in the Russian Empire and later the Soviet Union led to the dominance of a punitive model that largely displaced humanistic approaches (Fris, 2005). Nowadays, in the context of European integration and the internal need to strengthen social cohesion, Ukraine is renewing its interest in restorative justice, though this process is accompanied by considerable challenges. Scholarly research on restorative justice and criminal mediation in Ukraine and abroad provides an important theoretical foundation for this study.

Among foreign scholars, Bazemore and Umbreit (1995) were among the first to develop the conceptual foundations of restorative justice, emphasizing its significance for the resocialization of offenders and restoration of victims' rights. Bush & Folger (2004), in their works, examined the legal and psychological aspects of mediation, highlighting the importance of voluntariness and equality of the parties in the reconciliation process. The studies of Elbers et al. (2023) are focused on the integration of restorative practices into European legal systems and outline their advantages in reducing the burden on the judiciary.

Ukrainian scholars have also made a significant contribution to the development of this approach. Mykytyn (2014) analyzed the historical roots of reconciliation and mediation in Ukraine, emphasizing both the continuity of the traditions and the loss of humanistic practices during Soviet period. Fris (2005), in his monograph "An outline of the history of criminal law policy of Ukraine", focused on the transformation of criminal policy and emphasized the need for the humanization of criminal justice. Sirko (2024) examined the legal challenges in the field of mediation and identified key problems of law enforcement, including fragmented legislation and insufficient state financial support. Fomina (2022) analyzed recent legislative innovations in the field of criminal mediation and proposed ways of improving the law, particularly in the context of defining the role of the mediator. Dotsenko (2017) and Yurkova (2008) addressed the issue of financing and proposed the creation of mediation support funds to ensure accessibility of the procedure for socially vulnerable groups. Dubovyk (2015) and Shyshka (2021) raised the problem of low legal culture in society, which hinders the development of restorative practices, while Rohatynska (2023) examined the institutional mechanisms for integrating mediation into the criminal justice system.

Despite the existence of substantial research, several gaps remain in contemporary Ukrainian scholarship. First and foremost, there is a lack of comprehensive legal studies that explore the experience of specific EU countries and propose mechanisms for its adaptation. Existing studies are frequently focused either on purely theoretical aspects or on the analysis of individual legislative innovations, without taking into account the interrelation between legal regulation, funding, and public perception. Moreover, the issue of the economic efficiency of mediation in comparison with traditional legal procedure remains underdeveloped which is of particular importance in the context of limited resources.

Despite the adoption of the Law of Ukraine "On mediation" (Verkhovna Rada of Ukraine, 2022), the Ukrainian model of restorative justice remains fragmented and limited in scope. Among the key challenges are the insufficient elaboration of the procedural obligations of prosecutors and courts regarding the initiation of mediation; the restricted nature of existing programs, which have primarily targeted juvenile offenders and minor crimes; financial barriers, since mediation is mainly funded by the parties or through grant programs; the low

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.10-18

level of legal culture and public trust in the institution of reconciliation; and the absence of a unified state policy and information campaigns aimed at promoting mediation and training professionals.

The choice of the Netherlands as a case study is determined by several factors. First, the country relatively recently, in the 2010s, introduced the institution of criminal mediation, which makes its experience chronologically comparable to that of Ukraine. Secondly, despite initial challenges, the Netherlands succeeded in creating a comprehensive system of restorative justice integrated into the Criminal Procedure Code, characterized by universal applicability and the capacity to cover all categories of crime. Third, the state provides centralized funding and mediator accreditation, ensuring both accessibility and quality of services. Finally, success was achieved through a combination of legislative clarity, financial support, and large-scale public information campaigns, which gradually transformed societal perception of mediation. An analysis of this success makes possible not only to identify the key factors of success but also to reveal institutional mechanisms that may prove effective under Ukrainian conditions.

The aim of this article is to conduct a comprehensive study of the Dutch experience in implementing of restorative justice and to develop proposals for its adaptation in Ukraine. To achieve this aim, the study pursues several objectives. These include: analyzing historical and theoretical foundations of restorative justice in Ukraine and the Netherlands; identifying the key stages of the institutionalization of mediation in the Dutch criminal process; assessing the effectiveness of the Dutch model on the basis of statistical and organizational indicators; carrying out a comparative legal analysis of the legislative frameworks of Ukraine and the Netherlands; identifying gaps and problems in the functioning of the Ukrainian model of restorative justice; and formulating recommendations for improving national legislation and practice, taking into account the Dutch experience.

The findings of the study hold both theoretical and practical significance. On the one hand, they contribute to a deeper scholarly understanding of the mechanisms through which European legal models can be adapted to the Ukrainian context. On the other hand, the recommendations proposed herein may serve as a foundation for specific legislative reforms, particularly in the areas of mediation funding and the regulation of prosecutorial and judicial responsibilities. In the light of the challenges facing Ukrainian society in the context of ongoing hostilities and post-war reconstruction, restorative justice has the potential to become an effective instrument not only of criminal policy but also of broader social integration.

2. Origins and legal integration of restorative justice in the Netherlands

The foundations of the restorative justice in the Netherlands began to take shape in the 1990s. Compared to other EU member states, it may be argued that the country embarked on this process relatively recently. However, concrete practical steps were taken even later. In 2013, the Dutch Ministry of Justice launched a pilot project entitled "Mediation on Criminal Cases" in several districts, including Amsterdam and Rotterdam (Wolthuis et al., 2019). The initiative allowed judges to temporarily suspend proceedings and refer parties to certified mediators for the purpose of reconciliation. Owing to its initial success, the project was gradually expanded to cover an increasing number of regions.

In 2017, criminal mediation was formally incorporated into national legislation. Specifically, Article 51h was added to the Dutch Code of Criminal Procedure (hereinafter –CCP of the Netherlands), providing a legal definition of restorative justice and outlining its practical application. This provision authorizes prosecutors and courts to refer parties to mediation, subject to their voluntary consent. Importantly, the outcomes of mediation must be taken into account in the subsequent criminal proceedings. In this way, the CCP of the Netherlands enshrines the principles of voluntariness and procedural significance of settlement agreements (Staten-Generaal, 1926). In addition, the judiciary received methodological guidelines for prosecutors regarding the proper use of mediation. From that point onward, mediation became available in courts across all regions of the country. As of 2018, the program had secured stable, institutionalized state funding (Geenen et al., 2019), marking its transition from a pilot initiative to an established component of criminal justice. By 2020, a comprehensive infrastructure had been developed. The coordination of programs was assigned to the Council for the Judiciary, while the training of mediators was provided by the Netherlands Mediation Institute. Courts and prosecution services also introduced clear procedures for the selection of cases suitable for mediation (De Vries, 2023).

3. Implementation, scope, and procedural features

Quantitatively, the results of the first five years (2017-2022) underscore the success of the initiative. Official statistics indicate that during this period, 7.622 criminal cases were referred to mediation. The number of annual referrals demonstrated steady growth. During the pilot project in 2017, only a few dozen cases were referred to mediation. However, by 2019, this number had exceeded 1.500 cases, and by 2022, it reached 2.000 (Hoekstra et al., 2024). These figures are particularly notable given the relatively small population of the Netherlands, approximately 17 million, and the recent introduction of mediation. The sustained upward trend reflects a positive trajectory in the implementation of the program.

A distinctive feature of the Dutch practice is the absence of categorical restrictions regarding the types of offenses eligible for mediation. The Dutch Code of Criminal Procedure does not provide a specific list of offenses that can or cannot be mediated. Instead, it affirms the general accessibility of mediation for all categories of crimes (Staten-Generaal, 1926). The model is applied to both adult and juvenile offenders. The right to mediation requires that the suspect acknowledges the basic facts of the offense and demonstrates a willingness to take responsibility. In addition, the victim's informed consent is mandatory. These principles ensure that mediation is not used as a means to evade accountability.

It should also be noted that the Netherlands has the Public Prosecution Service Directive on Restorative Justice of 2020 (The Minister for Legal Protection, 2020). This document specifies procedural details for prosecutors regarding mediation. In particular, it establishes the obligation to inform parties about the possibility of mediation. The prosecutor must verify the victim's consent to participate in the procedure. In cases of successful mediation, the prosecutor may request the court to take the outcome into account. Moreover, the prosecutor may independently close the case if they consider formal punishment unnecessary (Elbers et al., 2023).

In comparison with the Dutch regulatory framework, the Ukrainian legal system exhibits a certain degree of fragmentation. Ukraine lacks universally binding guidelines analogous to those in the Netherlands. Criminal mediation is regulated by the Law of Ukraine "On Mediation" (Verkhovna Rada of Ukraine, 2022) and the Criminal Procedure Code of Ukraine of 2001 (hereinafter – CPC of Ukraine) (Verkhovna Rada of Ukraine, 2001). However, these acts provide insufficient detail regarding the procedural responsibilities of prosecutors within the restorative justice system (Verkhovna Rada of Ukraine, 2001). Criminal mediation was also governed by the Order of the Prosecutor General of Ukraine and the Ministry of Justice of Ukraine No. 172/5/10 of 2019 (Verkhovna Rada of Ukraine, 2019), which introduced the pilot "Restorative Justice Program for Juveniles". This program applied only to minor

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.10-18

offenses committed by juveniles and was limited in scope. The order was repealed in 2020 (Verkhovna Rada of Ukraine, 2024).

By contrast, in the Netherlands, a universal directive exists for prosecutors, including mandatory verification of the victim's consent and the possibility of case closure following successful mediation. Compared with the Dutch model, the Ukrainian approach remains largely pilot-based and restricted in terms of case categories. Therefore, the introduction of a specialized directive, following the Dutch example, could help standardize prosecutorial practice in Ukraine. The importance of a unified act lies in: ensuring a consistent procedural framework for the parties; verifying the victim's consent; considering the results of mediation; and creating conditions for more effective compensation. Overall, this measure would contribute to aligning the domestic legal system with European standards.

Statistics from the Dutch Ministry of Justice indicate that in 2019, approximately 96% of cases referred to mediation were under the jurisdiction of the first-instance court. The remaining cases were either at the appeal stage or handled by the prosecutor (Wetenschappelijk Onderzoek- en Datacentrum, 2019). This demonstrates that judges actively utilize this instrument. At the same time, in 2020-2021, there was a significant increase in the proportion of cases in which the prosecutor initiated mediation prior to the commencement of court proceedings (Hoekstra et al., 2024). Thus, case review through mediation is increasingly employed at the early stages of proceedings, confirming its growing role within the Dutch criminal justice system.

However, it is important to note that the Dutch experience also faced several challenges during the implementation of restorative justice. One such challenge was the initially low level of understanding and awareness of mediation among participants in the process. In the early stages of implementation, not all criminal justice professionals fully understood the new procedure (Elbers et al., 2023). As a result, many suspects and victims did not receive adequate information. To address this issue, the government launched a large-scale public information campaign and implemented training programs for legal professionals. Thanks to this active state-led effort, mediation gained a high level of public trust and gradually became an integral part of the country's criminal justice system (Elbers et al., 2023). Dutch researcher Van Zwieten (2021) notes that today mediation is "well received by society and supported by legal professionals and courts". He attributes this success to years of promotion, government outreach, and professional training. Following its introduction, both the government and professional communities invested resources in educating citizens about the benefits of the procedure. Over time, this fostered a stable demand and trust within the legal community, establishing mediation as a recognized and viable alternative to formal court proceedings (Van Zwieten, 2021).

In Ukraine, a similar problem exists, as society currently does not have a high level of trust in the institution of restorative justice. Historically, the idea of justice has been shaped primarily through punishment. This perception is a legacy of the repressive Soviet legal model (Romanadze et al., 2022). Punishment is still often seen as the sole indicator of restored justice, while reconciliation or compensation are frequently considered insufficient. Consequently, victims are reluctant to voluntarily participate in mediation, as it may appear to them as a "concession" to the offender. The general public similarly tends to view mediation as a lenient option for wrongdoers. Researchers note that this punitive stereotype is deeply entrenched and obstructs the development of restorative approaches (Laundra, 2022). Another challenge is the overall level of legal culture: people are accustomed to relying on state institutions and courts. Compromise is perceived as unattractive, and parties are often unwilling to make concessions. As a result, demand for mediation remains low (Katsiora, 2021).

A partial solution can be seen in recent legislative changes. Fomina (2022) argues that a clear definition of the mediator's role could improve public perception of the procedure. It is also necessary to launch information campaigns, educational programs, and training sessions. These initiatives would clarify that mediation provides an opportunity for all parties involved in a conflict. Gradually, such measures help build trust and reshape perceptions of justice. As a result, a culture of dialogue is likely to strengthen over time, giving the restorative justice system a real opportunity to develop in Ukraine.

Although the Dutch restorative justice system is one of the youngest, it has already demonstrated remarkable effectiveness. Its main advantage lies in its comprehensiveness and accessibility. Mediation is possible for any category of offenses, for all groups of offenders, and at all stages of proceedings. In practice, every criminal conflict involving a specific victim has the opportunity to be resolved restoratively. This broad scope of application significantly increases the number of cases in which the parties reach mutually acceptable agreements, while minimizing situations in which reconciliation fails due to formal restrictions.

Moreover, a high level of state support and procedural quality in mediation has been observed. In the Netherlands, mediation is centrally funded by the government, ensuring that participants receive services free of charge and are assisted by highly qualified professionals. In contrast, Ukrainian practice currently lacks such stable financial support. Additionally, Dutch legislation imposes clear requirements on mediators. The law mandates accreditation and specialization in criminal cases. Each mediation session is thoroughly documented, and the results are monitored by the Ministry of Justice. Consequently, cases are resolved significantly faster than in court, and agreements reached by the parties reduce the number of court hearings, thereby contributing to the overall efficiency of the judicial system.

The Dutch experience demonstrates the effectiveness of sustained state funding for mediation. The country has a unified system for mediator accreditation. In Ukraine, by contrast, mediation largely relies on grants and volunteers, making it vulnerable. When the state covers service costs and a professional council oversees quality, the procedure becomes accessible nationwide. International practice shows that mediation is adaptable to different cultural contexts. It fosters dialogue and trust, i.e. values that are particularly crucial for post-conflict societies. Ukraine is currently facing aggression and requires mechanisms to strengthen social cohesion. Widespread implementation of restorative justice could provide a significant impetus for reconciliation.

4. Comparative analysis, challenges, and policy recommendations for Ukraine

Ukrainian scholar Sirko (2024) emphasizes the need to ensure financial accessibility of mediation. He highlights the importance of support programs that would make services available to all. The researcher proposes the establishment of special funds to cover the costs for parties unable to pay for a mediator. The solution lies in state funding of mediation. To achieve this, an appropriate legal framework should first be established. Amendments are proposed to the Law "On Free Legal Aid" of 2011. Specifically, it is suggested that Article 13, Part 2, after point 3, be supplemented with a new point 4 as follows: "4) Organization and payment, from the state budget, of mediator services and other necessary expenses directly related to the conduct of criminal mediation between the victim and the suspect (accused)" (Verkhovna Rada of Ukraine, 2022). These amendments would remove financial barriers for vulnerable groups. The purpose of the proposed changes is to provide a clear definition of the types of free secondary legal aid and to ensure coverage of the relevant costs. This would eliminate financial obstacles for participants and guarantee stable state funding of the procedure.

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For completeness, it is proposed to amend Part 1 of Article 14 by adding a new point 30 after point 29 as follows: 30) victims, suspects, and accused persons who have provided written consent to participate in criminal mediation – are entitled to the legal services specified in points 2 and 3 of Part 2 of Article 13 of this Law, as well as to the services and expenses specified in point 4 of Part 2 of Article 13 of this Law." These legislative changes are intended to ensure access to free mediator services and appropriate procedural support for all parties involved.

In Ukraine, there is no stable state funding for mediation. The Law of Ukraine "On Mediation" places the financial responsibility on the participants themselves (Verkhovna Rada of Ukraine, 2022). Although state allocations exist for restorative justice programs, these are applied only within a pilot program for juveniles. For adults, mediation is predominantly a private service, and access to such mechanisms largely depends on the financial capacity of the parties involved.

It should also be noted that stable funding for mediation gradually reduces the workload of investigators and judges. The associated costs can be covered from the same budgetary lines as those allocated for court expenses. Additional funds are required only during the initial phase of program implementation, but in the long term, significant savings can be realized. Examples from the Netherlands confirm this. There, restorative justice, including the work of mediators, is funded by the state. Hearings of medium complexity require approximately 6-10 hours, with an average market rate of around €150 per hour, amounting to approximately €900-1,500 for the entire process between two sessions (Rijksoverheid, n.d.).

Next, a comparison with the cost of a court case is warranted. The annual budget of the judiciary in the Netherlands amounts to €1.25 billion, with courts handling approximately 1.7 million cases each year (Council of Europe, 2024). Consequently, the average "internal" cost per case is calculated as follows: €1.250.000.000 ÷ 1.700.000 cases ≈ €735 per case. This figure covers salaries, administrative, and technical expenses but does not include investigation or party-related costs. When a case proceeds through the full process, from indictment to verdict, preparatory and main hearings, participation of the prosecutor, clerk, translators, and invited experts all contribute to additional costs. In such instances, the actual expense can easily reach several thousand euros.

Thus, even under a basic scenario, two court days render the costs of mediation at least comparable to court proceedings. In cases involving more hearings, mediation proves to be less expensive, as evidenced by the experience in the Netherlands. Over the long term, this approach generates substantial economic benefits compared to the traditional justice model.

4. Conclusions

This research shows that the role of the Court has shifted from negative legislator to poThe study demonstrated that the success of the Dutch restorative justice model resulted from a combination of interrelated factors. First, the universal nature of the legal framework created the broadest possible scope for reconciliation between parties. This flexibility is reinforced by clear normative provisions. Dutch legislation establishes explicit duties for prosecutors to inform the parties, verify their voluntary consent, and take the outcomes of mediation agreements into account when making procedural decisions. A high level of state funding ensures free and quality access to the procedure. In addition, ongoing monitoring by the Ministry of Justice provides adequate oversight of results. Finally, large-scale public information campaigns and professional training programs have fostered societal trust in mediation. The cumulative effect of these factors has led to a noticeable reduction in the workload of the court system and significant budgetary savings. Even under conservative estimates, mediation proves less costly than full court proceedings.

For Ukraine, which seeks both to harmonize its criminal justice system with European standards and to address the consequences of military aggression, the Dutch experience is particularly valuable. Implementation of appropriate legal reforms is necessary. Simultaneously, a dedicated budget line for mediator services should be established. Part of the funding could be obtained through the reallocation of resources from the court system. Effective functioning of the restorative justice institution is expected to reduce state expenditures on judicial proceedings. A nationwide information and education campaign would contribute to the gradual overcoming of societal resistance. Thus, an adapted Dutch approach could render mediation a fully functional and economically justified instrument for restoring social justice in Ukraine.

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ORGANIZATIONAL AND LEGAL MECHANISMS OF THE FUNCTIONING OF THE SOCIAL STATE

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Abstract
The article examines conceptual approaches to defining the social state and identifies legal mechanisms for its functioning. Ukraine's transition to market relations, aggravated by Russia's military aggression, has deeply affected the legal system, requiring reforms in social policy and law. Although the Constitution defines Ukraine as a social state, the realization of this principle remains inconsistent. The early stages of market transformation were marked by mass violations of social rights, declining health guarantees, rising unemployment, and reduced material security for vulnerable groups such as pensioners, people with disabilities, the unemployed, and low-income families. Addressing these challenges requires reducing social tensions through a new system of social guarantees. The experience of European welfare states, notably Germany, France, Spain, and Sweden, shows that constitutional recognition of the social state must be supported by effective institutions and legal mechanisms. In Ukraine, however, many normative acts remain declarative, lacking clear implementation procedures. The absence of a unified conceptual framework for social policy, combined with fragmented responsibility between state institutions, hinders its effectiveness. Social policy should be legally defined by Parliament, not left to ad hoc executive initiatives. A framework law on social policy is needed to establish its definition, goals, principles, mechanisms, and funding sources, while clarifying the competencies of state and local authorities. This would ensure that social rights enshrined in the Constitution—such as the right to social protection, health care, and a sufficient standard of living—move from declarations to enforceable guarantees. The article argues for developing a comprehensive Concept of Social Policy and adopting a law on the social budget. The latter would consolidate financial planning for social needs, ensure transparency, and serve as a key instrument of welfare state building. Strengthening the legal foundations of social policy and social budgeting would help Ukraine reduce inequality, guarantee human dignity, and align with European standards of social protection.

Keywords: welfare state, social policy, social budget.

1. Introduction

A significant feature of the contemporary stage of socio-legal development is its transitional character. As noted by legal scholars such as V. A. Bachynin, V. S. Zhuravskyi, and M. I. Panov, obsolete contradictions inherited from the past seek resolution through the dramatic clashes of various social forces. At the same time, new civilisational foundations are being laid for future transformations. Slowly, yet inevitably, the relics of the totalitarian system are being dismantled, and the former type of legal reality is gradually being replaced by another (Bachynin et al., 2003). This observation reflects the

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.19-28

complexity and contradictory nature of the legal and political situation, which exists in the context of the formation and conceptualisation of legal approaches to defining the content and essence of a democratic social state governed by the rule of law.

With the proclamation of the Declaration of State Sovereignty in Ukraine, the concept of prioritising social factors in state activity was established. Following the enshrinement of the term social state in the Constitution of Ukraine, the necessity for social orientation and social focus in legislation began to emerge. This process is logical, as social objectives derive directly from societal ideals and reflect the fundamental values of the community. In contemporary legal doctrine, the category of a socialist state has been replaced by that of a social state, signifying not only a terminological shift but also a transformation in the very essence of the state in the social sphere (Yermolenko, 2002). This entails the establishment of new directions for social policy, the creation of a transparent and stable system of social provision, which must operate independently of political changes.

Despite extensive treatment of the topic in legal and economic literature, several issues remain unresolved. In particular, domestic scholarship has largely emphasised the declarative aspects of social policy, while practical organisational and legal mechanisms for the realisation of human social rights have not received adequate theoretical substantiation. Insufficient attention has been paid to delineating the powers of the state, local self-government bodies, and civil society institutions in the field of social provision, as well as to the challenges of implementing international social protection standards into Ukrainian national legislation.

The aim of this study is to analyse the principal approaches to defining the category of social state and to propose specific organisational and legal mechanisms for achieving its objectives.

The objectives of the research are as follows:

- To elucidate the essence and characteristics of a social state under contemporary conditions;
- To analyse organisational and legal forms of social policy implementation;
- To identify issues in current legislative regulation of social rights;
- To compare Ukrainian experience with international standards of social protection;
- To formulate proposals for improving the legal mechanisms of a social state, including the legislative enshrinement of a social budget.

The scientific novelty of this research lies in its attempt to systematically integrate doctrinal approaches, the provisions of the Constitution of Ukraine, and specialised legislation with international legal standards of social protection to determine practical mechanisms for the functioning of a social state. For the first time, the necessity of adopting a separate law on Social Policy and a law on the Social Budget is substantiated, aimed at consolidating the principles, institutional mechanisms, and financial foundations of the state's social function.

The research methodology is based on the analysis of scholarly sources by domestic and foreign authors, current Ukrainian legislation, and international instruments (including ILO documents, the European Social Charter, and the European Code of Social Security). Methods employed include systemic and comparative-legal analysis, as well as the formal-legal method to clarify the content of constitutional and legislative provisions concerning social rights.

2. The role of the state in the social sphere

TThe state exists and operates in nearly all spheres of society, influencing the realisation of human and civil rights. It maintains constant interactions both with society as a whole and with various collectives or individuals, whose social behaviour it regulates. The state plays a significant role in the life of an individual, particularly in the social sphere, manifesting from birth (e.g., provision of birth-related assistance), throughout life (e.g., support in cases of temporary incapacity or disability), and until death (e.g., provision of funeral assistance).

The state accompanies the individual throughout their life, ensuring access to free education and organising assistance in the event of occupational accidents or work-related illnesses leading to incapacity. It defines the mechanisms for granting pensions based on age, length of service, disability, or loss of a breadwinner. Moreover, the state establishes conditions and amounts of material support in cases of unemployment, temporary incapacity, and other life situations where an individual requires social protection and support from state institutions (Yakovyuk, 2000).

The state determines the content of fundamental human rights. It sustains a systematic dialogue between the executive authorities and the public, organising consultations concerning the rights, freedoms, and legitimate interests of citizens. The realisation of social rights is also facilitated by the state through social and legal policies it implements. As V. Selivanov argues, human rights and freedoms, both historically and normatively, shape the conditions and modes of human existence that are objectively necessary to ensure harmonious interaction among the individual, society, and the state (Kindratets, 2003). The existence of a particular conception of human rights represents a system of understanding of societal organisation, the individual's place within it, as well as the priorities for the functioning and development of the state, including the social benchmarks established by the authorities.

Addressing the primary tasks requires, first and foremost, clarifying the essence of the category of a social state. As P. M. Rabinovich rightly notes, a social state should be understood as a state that operates based on its social function, directing it towards the provision of societal welfare (Rabinovich, 1996). Similarly, Yu. M. Todika correctly asserts that a social state assumes responsibility for ensuring social justice, the well-being of its citizens, and their social protection, with its principal objective being the achievement of societal progress founded upon legally enshrined principles of social equality, general solidarity, and mutual responsibility (Todika, 1999). There is substantial ground to argue that the social state has become a reality, and the historical recognition of the state as social is closely linked to a societal shift in worldview regarding the organisation of life, the provision of dignified conditions for every citizen, and the protection by the state of the material and legal status of individuals.

The term social characterises the very essence of the state, indicating a deeper significance in the relations between the state and society, and between the state and the individual, confirming the actual and legal status of the person and citizen. In this context, M. Kopeichikov aptly observes that a social state should be distinguished by a fundamentally new approach to the system of human social rights in comparison with political rights, as social rights constitute a qualitatively new category of human and civil rights in terms of content and purpose (Kopeichikov, 2001). S. P. Nalyvaichenko (2001) rightly emphasises that state intervention in the economy is necessary where market mechanisms fail, particularly in transitional economies, where the state must assume the role of protector of citizens in the social sphere. V. V. Kapyltsova (2002), in exploring the provision of social guarantees during Ukraine's transformation into a market-type social state, argues that the social strategy aims, firstly, to eradicate poverty and ensure dynamic growth in living standards; secondly, to guarantee social stability and security; and thirdly, to socialise the structural components of the state's economic policy.

Thus, the idea of the social state brings to the fore the regulation of the social sphere through the law as an optimal combination of legal and other social factors, all of which are essential and beneficial for civilised human existence. In our view, D. O. Yermolenko takes a correct position in proposing to interpret the social state as a supra-class legal state based on the principles of social justice, equality, and freedom. It functions within a developed civil society and guarantees the comprehensive realisation of citizens' socio-economic rights, including the right to a decent minimum standard of

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.19-28

living, adequate social protection, and improvement of well-being, while ensuring the existence of an effective and accessible mechanism for their practical implementation and protection (Yermolenko, 2002). Therefore, the principal task of a social state is to ensure social security and the economic conditions for a free and dignified existence. This objective is realised through its main functions: social protection, provision of public goods, economic development, and so forth. From the classification of the primary directions of implementing these functions, it follows that the core purpose of the social state is to ensure a dignified existence for all citizens; the guiding principle is clear: the state exists for the individual, to protect their universally recognised rights and freedoms.

It is necessary to concur with I. V. Yakovyuk, who correctly stresses the unity of legal, democratic, and social categories when defining the essence of the state and human rights. As a social state, it recognises the individual as the highest societal value, provides assistance to persons with disabilities in difficult life circumstances, and guarantees each citizen a dignified standard of living. It redistributes economic benefits according to the principle of social justice and considers its primary purpose to be the maintenance of public peace and social cohesion. This scholar aptly defined the main principles of a social state, namely: (1) human dignity; (2) social justice; (3) social partnership or solidarity; (4) autonomy of social relations and processes; (5) subsidiarity; and (6) social obligations (Yakovyuk, 2000).

This position is also supported in the works of B. P. Hanba (2001), O. V. Skrypnyuk (2001), and other researchers. This approach should form the foundation for defining the essence of a social state as a condition for the realisation of the constitutional right to social protection.

3. Legal framework for social policy in Ukraine

In the context of globalisation and integration, as Ukraine enters increasingly close social and humanitarian relations with other states, there has arisen a need to approximate national standards to the level and quality of life enshrined in the conventions and recommendations of the ILO, the European Social Charter, the European Code of Social Security, the Universal Declaration of Human Rights, and other international instruments.

It is noteworthy that the issue of social support for the population was actively discussed as early as the late nineteenth century. V. P. Lytvynov-Falinsky, in his arguments regarding the German 1881 draft law on Compulsory Workers' Insurance, emphasised that the state's concern for the needs of the most vulnerable citizens was coming to the fore. This obligation is not only moral, grounded in humaneness and Christian principles guiding state institutions, but also a political responsibility of the state itself. The state should cultivate trust among the poorer strata of society through an active social policy. Concerning the concept of the modern state, alongside the protection of the existing social order, the state has a duty to support all citizens who are most in need of assistance (Lytvynov-Falinskyi, 1912).

The role of the social state is defined through its functions. V. V. Kopeichikov (1997) correctly observed that the functions of a social state should be understood as the main directions of its activity, through which the essence, tasks, and objectives of the state are concretely manifested. The argumentation of R. I. Kondratiev (2005) is particularly persuasive; he emphasised the growing role of the social function of the state, asserting that this function belongs to the state itself, rather than to commercial institutions or charitable foundations. Within this internal function, the state protects labour and health, establishes a guaranteed minimum wage, and provides support for families, motherhood, childhood, persons with disabilities, and the elderly. The state (when constitutionally defined as social) develops social service systems, sets pensions, benefits, and other guarantees of social protection.

It is important to underline the significance of fulfilling this function in the context of achieving the economic and political objectives of a lawful state. Social support for certain population groups is aimed at mitigating and overcoming the negative effects of the transitional period, such as material deprivation, widening social inequality, and high unemployment. State social payments stabilise living standards and contribute to a more equitable distribution of economic burdens among different population groups. The stability and effectiveness of social rights implementation directly influence the development and consolidation of the social state.

The contemporary concept of the social state is based on the premise that its principal aim is to achieve the welfare of society and its members, ensuring dignified living conditions and opportunities for comprehensive personal development. The social state guarantees social protection for the population and promotes broad citizen participation in social development, ensuring the realisation of their rights and fundamental freedoms. The functions of the social state are defined as the key directions of its activity, reflecting its essence. From this, it can be concluded that the primary aim of the social state is to maximise the satisfaction of citizens' material and spiritual needs, which are constantly increasing; to consistently improve living standards and reduce social inequality; to ensure universal access to essential social goods, medical and social services, and the realisation of the right to social protection. In pursuing these objectives, the social state must refrain from any measures that could infringe upon the rights of other citizens, associations, or states.

In contemporary conditions, the state is the principal actor in social policy. In determining the directions of this policy, it must ensure the realisation of citizens' rights to social protection, implement a coherent social policy, enact laws and normative acts regulating social provision, define the organisational and legal forms of social protection, and create conditions for the effective functioning of the social security system. Legislatively, the state must define the conditions, procedures, and amounts of pensions, benefits, entitlements, and social services; establish compulsory insurance contributions and social insurance fund budgets; form insurance reserves to ensure timely social payments; review the types and amounts of payments to improve citizens' material circumstances; provide subsidies to social insurance funds and social provision from the state budget; and provide social support to certain categories of incapacitated persons. The state sets fundamental social standards (e.g., minimum consumer budget, subsistence minimum, minimum pension, minimum social assistance) and monitors compliance with social security legislation.

The legal basis of the social state consists not only of national legislative acts but also of international instruments, including the Universal Declaration of Human Rights, the European Social Code, the revised European Social Charter, and the International Covenant on Economic, Social and Cultural Rights.

An analysis of scholarly positions regarding the aims and functions of the social state suggests that establishing a social state is both a prerequisite for and a guarantee of citizens' constitutional right to social protection and allows for the identification of the essential characteristics of a social state. The main features reflecting its essence include: (a) the presence of legal regulation of the social sphere, based on universal moral principles of social justice, equality, and solidarity, aimed at creating conditions necessary for a dignified life and the free development of every individual; (b) a legislative basis enabling working individuals to secure a dignified standard of living for themselves and their families; (c) state mechanisms to support incapacitated persons and those unable to support themselves at a subsistence level; (d) state guarantees of a minimum standard of living, social protection, improvement of general welfare, and other socio-economic rights; a transparent and functioning mechanism for implementing social protection; comprehensive provision of legal and economic guarantees for the realisation of human social rights; and (e) measures to minimise socio-economic disparities among members of society and to strengthen social cohesion.

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.19-28

Thus, the social state is founded upon a socially oriented market economy and creates conditions for the realisation of economic and social human rights, ensuring an adequate level of material welfare for citizens and their families. It guarantees every individual a minimum standard of living for dignified existence and contributes to the consolidation of social cohesion in society.

4. Comparative and international context of social policy

The social state functions as a democratic state, implementing social protection through an active social policy integrated into domestic policy and realised in effective social programmes. It regulates social relations in the interests of the most vulnerable groups of the population on the principles of justice, social partnership, and solidarity, thereby ensuring the constitutional right of citizens to social protection.

It should be noted that the strategy of social policy in Western European countries, particularly European Union member states, has achieved significant success. This strategy is directed towards increasing employment levels, enhancing social protection, alleviating poverty, and developing new organisational and legal forms and types of social security, as emphasised by V. Skurativskyi (2002). This underscores the role of social security as a key component of the structure of the social state. Accordingly, the process of social and societal transformation in Ukraine is closely linked to its integration into the European economic and social-democratic space. The intensification of this process is a necessary condition for the development of the country's social potential, ensuring citizens' social security, strengthening the social sphere, and guaranteeing human rights.

It is therefore unsurprising that scholars consider the characteristics of contemporary social policy in relation to globalisation and comparative research in social policy. B. Deacon, M. Halls, and P. Stubbs (1999) emphasise that at the present stage of global development, any social policy—traditionally analysed and implemented within a single state—assumes a supranational and transnational character. They examine social policy in the context of economic globalisation according to the principle of "globalisation of social policy and socialisation of global policy." Despite extensive discourse, the concept of "social policy" has yet to be legislatively defined, and its priorities and the role of social security within the broader social sphere remain unresolved. A range of pressing issues arises, including the legal definition of social policy, the delineation of its implementation mechanisms, and the specification of its content and principles.

Currently, there is a lack of comprehensive research on social policy; scholarly work predominantly addresses specific areas. For example, M. Koretskyi (2003) explores aspects of social policy in the agricultural sector, Y. Radysh examines social policy in healthcare (Radysh, 2002), T. V. Mashtaler and O. O. Voloshchuk analyse measures concerning citizens' incomes and support for real income levels, quality of life, and living standards (Mashtaler & Voloshchuk, 2003), while A. M. Shytko addresses aspects of social justice in the implementation of social policy (Shytko, 2003). Other studies focus on social policy in areas such as environmental protection, housing provision, socio-cultural initiatives, and the development of family and youth policy. From our perspective, theoretical research into social policy as a legal category, the principles guiding its implementation, and the development of its individual areas—particularly social security as a central element—is of paramount contemporary relevance. Components of social policy include living standards, quality of healthcare, education, science and culture, employment and unemployment reduction, wage levels, pension provision, social assistance, support for social services, and the mitigation of social tensions within society.

The legal definition of social policy is particularly important in the context of the state's aspiration to codify social legislation. Legal codification of social policy may serve as a foundation for completing this process. The scope of social policy encompasses labour markets, employment, labour migration, social insurance programmes, pension protection, healthcare, education, culture, and other social spheres.

Legal scholars emphasise that the role of law in implementing the state's social policy must be strengthened. Given changes in economic development and the need to formulate a new concept of social policy, increasing attention has been devoted to the legal regulation of its implementation. N. Hrynchuk (2003) notes that in a market economy, new social risk factors emerge and analyses specific legal provisions of social policy. However, this analysis is largely limited to a list of individual legislative acts and does not specify the methods of legal regulation in this field.

In the most general sense, the state's activities to meet citizens' needs in the social sphere are defined as social policy. In contemporary conditions, the development of a Concept of Social Policy of Ukraine is particularly relevant. The active participation of all members of society in shaping the strategy and tactics of social development is a key factor in societal democratization. It should be noted that many provisions of normative acts are declarative and do not specify concrete mechanisms for the implementation of social policy.

An unresolved issue remains which entity should determine the directions of social policy and which body bears responsibility in the event of non-implementation or inadequate implementation of its provisions. Currently, these directions are partially determined by the Verkhovna Rada, partially by the Office of the President, and to some extent by the Ministry of Social Policy. However, no specific body or official has been formally designated to coordinate the development and implementation of social policy. In practice, these functions are currently exercised by the President of Ukraine. Furthermore, scientifically grounded priorities, content, implementation mechanisms, and competencies of state bodies in this field have not been established.

A substantial analysis of the legal regulation of social policy in Ukraine was conducted by V. V. Zhernakov, who noted that contemporary legal regulation does not comply with Articles 85 and 92 of the Constitution of Ukraine regarding the policy-making subject and the normative level of acts. He rightly emphasises the need to overcome the tendency for social policy principles to be defined solely within executive offices, which does not always take citizens' needs into account. Zhernakov's advocacy for enshrining social policy at the legislative level in the Verkhovna Rada merits full support (Zhernakov, 2005).

Such a law should clearly define the concept of social policy, its principles, aims, tasks, guarantees, implementation mechanisms, competencies of subjects, and sources of funding. Social policy can be defined as the aggregate of legal, organisational, and economic measures, and the organisational and legal forms of activity of socio-political actors aimed at satisfying social needs that reflect vital human and societal interests and ensure the realisation of constitutional social rights.

The goal of social policy is to achieve social harmony, stability, and justice within society. Despite numerous studies and proposals for social sector development, gaps remain in the theoretical and methodological understanding of the mechanisms underpinning the functioning of the social state, the legal definition of social policy, and the principles guiding its implementation. In this context, the Ukrainian budget plays a particularly important role, as its allocations not only reflect the orientation of social policy but also serve as a primary indicator of the social system's effectiveness.

The organisation of social processes—their content, duration, mechanism of development, and implementation—presents a complex challenge. It is necessary to substantiate not only the organisational and economic mechanisms for ensuring the social orientation of budgets at different levels but also methods for preparing the economic system to undertake social measures. An urgent task is the development of a new strategy for social policy and social protection as its key element.

The growth of social expenditures by the state, provision of social assistance from

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.19-28

the state budget and extrabudgetary funds necessitates a scientifically grounded definition of the concept of a social budget and its formation mechanism. At present, social expenditures are often residual, with priority given to other state spending. The introduction of a social budget can prevent this.

V. V. Zhernakov was among the first to propose the concept of a social budget, emphasising that effective state social policy should be based on careful socio-economic calculations and a reliable legal framework, rather than solely on the volume of funding (Zhernakov, 2005). He identified three key characteristics of a social budget: financial—as the totality of social needs and sources for their coverage; social—as a tool for assessing the provision of citizens' socio-economic rights; and administrative—as a governmental mechanism for preparing an optimal draft of the State Budget with social expenditures. On this basis, it is proposed to legislatively enshrine the concept of a social budget, its objectives, tasks, functions, development principles, responsible entities, formation and approval mechanisms, its relation to the State Budget, social standards, and sources of funding.

The social budget precedes the adoption of the State Budget and constitutes an essential mechanism for building a democratic and social state, prioritising guaranteed social protection and the realisation of citizens' socio-economic rights. The consolidated social budget should be defined as the balance of expenditure on social needs of the population, compiled by the government and approved by the Verkhovna Rada, in accordance with legislatively established forms and revenue sources for the upcoming fiscal period. Key indicators of the social budget are annually approved in the Budget Resolution and are binding in the preparation of the State Budget of Ukraine.

5. Conclusions

The conducted analysis of the social state and its functions allows us to assert that the primary task of Ukraine as a social state is to ensure social security, a decent standard of living, and the realisation of citizens' economic and social rights. The Constitution of Ukraine contains a number of direct provisions guaranteeing these rights: Article 3 recognises the human being, their life, and dignity as the highest social value; Article 43 guarantees the right to work and protection against unlawful dismissal; Article 46 enshrines the right to social protection, including pensions, social benefits, and assistance; Article 48 guarantees the right to an adequate standard of living, while Article 49 guarantees the right to healthcare, medical assistance, and medical insurance.

At the same time, judicial and administrative practice demonstrates that a significant portion of these constitutional provisions remain declarative in nature. In particular, the provisions of Article 48 regarding the right of everyone to an adequate standard of living and Article 49 on guaranteed free medical care are not adequately ensured due to limited budgetary resources and the absence of clear mechanisms for their implementation. A similar situation is observed with the Law of Ukraine "On State Social Standards and State Social Guarantees", which defines a framework approach but, in practice, does not provide sufficient funding to uphold the established standards.

Conversely, more effective in terms of practical implementation are the provisions of the Law of Ukraine "On Compulsory State Pension Insurance", which establishes a functional mechanism for pension payments, and the Law of Ukraine "On Compulsory State Social Insurance", which regulates payments in cases of temporary incapacity for work, unemployment, and workplace accidents. Such provisions are not merely declarative but operational, as they contain financial and organisational mechanisms for realisation.

Thus, a gap exists between constitutional guarantees and the practical instruments for their implementation. To bridge this gap, it is necessary to adopt a comprehensive law "On Social Policy", which would define the concept, principles, aims, and objectives of social policy, its implementation mechanisms, and the responsibility of public authorities for non-compliance with its provisions. An important instrument would also be the legislative establishment of a social budget, ensuring transparency, planning, and accountability in the sphere of social expenditures.

The introduction of such mechanisms would facilitate the transition from declarative provisions to the effective realisation of social rights, enhance citizens' living standards, reduce social inequality, and strengthen the democratic and legal foundations of Ukrainian society.

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Bieliavska, S. (2025). The concept of property in Roman civil law and its evolution. *Legal Horizons, 26*(3), 29-39.
All authors declare that they have no conflicts of interest.

THE CONCEPT OF PROPERTY IN ROMAN CIVIL LAW AND ITS EVOLUTION

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Abstract

The article examines property rights as a central institution of any legal system, with a particular focus on their formation and development in Roman law. It is emphasized that it was in Rome that property rights took on their classical form, which laid the foundations for the further development of private law relations in Europe and remained relevant for modern legal systems. The author considers the key theoretical and practical aspects of property rights: their economic and social nature, the powers of the owner, the distinction between ownership (dominium) and possession (possessio), as well as the system of protection. Considerable attention is paid to the analysis of Roman legal constructs that made it possible to distinguish full ownership from its limited forms, in particular through the institution of usufruct and the category of nuda proprietas. The evolution of property rights from archaic forms of collective land ownership to complex constructions of the classical period is traced. Quirite property as a full right of Roman citizens is considered separately, as well as the praetorian and peregrine forms that arose in response to social and economic needs. It is shown that Roman law was distinguished by its pragmatism: it not only established legal doctrines, but also created mechanisms for regulating actual relations, ensuring the stability of property circulation. An important contribution was the development of a system of primary and derivative methods of acquiring property, including the unique institution of acquisitive prescription (usucapio), which combined legal logic with economic expediency. The article also highlights the post-classical unification of property rights carried out by Justinian, which eliminated the division between quiritary and praetorian property and brought Roman law closer to the modern understanding of proprietas. It is emphasized that even in its classical form, dominium was not absolute: in practice, it was limited by easements, state intervention, or family institutions such as peculium. In the 19th century, Roman law underwent a kind of “reinvention”: lawyers adapted ancient concepts to the needs of bourgeois society, forming the image of absolute property rights enshrined in the leading European codifications – the French Civil Code and the German Civil Code. The influence of this tradition can also be traced in modern Ukrainian legislation, where the institutions of ownership, use, disposal, acquisitive prescription, and property claims have retained a direct connection with Roman sources.

Keywords: property rights; Roman law; dominium; possessio; ownership.

1. Introduction

Property law is one of the oldest and simultaneously most complex institutions of private law, as it directly defines the nature of socio-economic relations within any society. Through property law, the foundations for the possession, use, and disposal of material goods are established, alongside the mechanisms for their legal protection and transfer. Historically, the institution of property has played a fundamental role in the formation of civilizations, as the ownership of land, assets, or other resources determined

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.29-39

the structure of social organisation, the distribution of power, the tax burden, and even political stability. It is therefore unsurprising that Aristotle referred to property as the "natural condition of man," while Roman jurists regarded it as the "basis of private law." Modern civil codes across virtually all European countries continue to build upon the concept of property developed in antiquity, underscoring the exceptional relevance of investigating its historical development (Bondarenko, 2020).

Roman law occupies a distinctive place in the history of law, as it was within its framework that the most refined concept of property rights emerged, serving as a prototype for subsequent European codifications. Unlike many ancient legal systems, in which property was collective or dependent upon the ruler's will, Roman law gradually consolidated the idea of private property as an individual and exclusive right of the citizen. Roman jurists not only articulated a doctrinal definition of dominium, but also elaborated a comprehensive system of rights – usus, fructus, abusus – and devised legal mechanisms for protection against any infringement. Simultaneously, Roman legal thought demonstrated flexibility and pragmatism: alongside quiritary property, praetorian and peregrine forms existed, allowing the legal system to accommodate the economic needs of a vast empire and integrate foreigners and newly acquired territories into the legal framework (Ciutacu, 2023).

The historical trajectory of property law indicates that it has always been the subject of active scholarly debate. From the glossators and commentators of medieval Europe, the Roman institution of property has been continually reinterpreted, experiencing a "second reception" during the codification movements of the nineteenth century. The French Code Napoléon and the German BGB not only reproduced fundamental Roman principles but also endowed them with a more individualistic character, responding to the challenges of the industrial age. In the Ukrainian legal system, which belongs to the Continental legal family, the influence of Roman law is directly observable: the Constitution of Ukraine (1996) and the 2003 Civil Code (2003) enshrine the classical triad of owner's rights and differentiate between primary and derivative modes of acquiring property. At the same time, contemporary challenges – globalisation, environmental limitations, and the emergence of digital assets – once again raise questions regarding the balance between the absoluteness of property rights and public interest.

Despite substantial research in the field of Roman law, several aspects remain insufficiently explored. In Ukrainian civil scholarship, studies tend to describe property law in general terms, without focusing on its internal evolution or its interrelation with the practical needs of society. Moreover, the lack of analytical works dedicated to intermediate and derivative forms of property (praetorian property, usufruct, nuda proprietas) complicates the understanding of how the division of owner's rights occurred and which doctrinal solutions were proposed by Roman jurists to maintain stability in property circulation (Domingo, 2017). The transformation of property concepts in the post-classical period, particularly during Justinian's reforms, when the unification of proprietas was finalised, has also not been fully analysed.

An additional issue is that in contemporary Ukrainian legal scholarship, the reception of Roman institutions is often considered fragmentarily, without systematic comparison with current legislation. This results in historical material being presented in isolation, without revealing its practical value for the improvement of the national legal system. In this context, there is a clear need for research that combines historical-legal and comparative methods, allowing the continuity of Roman ideas from antiquity to the present to be traced.

The theoretical foundation of this study relies on the classical works of M.A. Millner, A.R. Kiralfi (Millner & Kiralfi, n.d.), O.A. Pidopryhory, E.O. Kharitonova (2009), as well as contemporary research on the history of property law and its reception within Continental legal systems. A key methodological approach is the combination of historical-genetic analysis (tracing the development of property across different periods of Roman history) with the comparative-legal method (juxtaposing ancient concepts with provisions of the Civil Code of Ukraine and European codifications from the nineteenth to twenty-first centuries). This allows not only for the reconstruction of chronology but also for an assessment of profound doctrinal changes that have influenced the modern concept of private property.

The aim of this article is to conduct a comprehensive study of property law in Roman law and to identify its system-forming principles that remain relevant to contemporary civil law systems, including the Ukrainian legal framework. The objectives of the study are, first, to analyse the evolution of property forms from archaic communal ownership to Justinian's unified proprietas; second, to examine the relationship between dominium and possessio as two interconnected but distinct categories; third, to investigate mechanisms of limitation on property rights in Roman law (servitudes, state intervention, peculium) and their influence on contemporary models of owner rights; and fourth, to conduct a comparative analysis of the reception of Roman institutions in the Civil Code of Ukraine, including acquisitive prescription, vindicatory, and negatory actions. The scholarly novelty of the work lies in systematising the evolution of property forms, offering a new reading of the relationship between legal right and fact in the categories of dominium and possessio, and demonstrating the continuity between Roman and modern civil law constructions.

This article will be of interest not only to scholars of legal history but also to practising lawyers, lecturers, and law students, as it provides a deeper understanding of the nature of property law, which remains a central element of any legal system. The analysis of Roman legal constructs enhances comprehension of why contemporary legislation appears as it does and the doctrinal solutions that underlie it. For Ukrainian legal scholarship, the work is valuable in showing how ideas formulated over two millennia ago continue to influence modern law-making and judicial practice, while also highlighting directions for further modernisation of civil legislation.

2. Origins and social nature of property rights

Property law, in any legal system, is traditionally regarded as a central institution of private law, as it determines not only the economic foundations of society but also the orientation of contractual obligations, inheritance relations, family law, and the law of obligations. Property ensures the stability of civil circulation, creates conditions for individual autonomy and entrepreneurial initiative, and serves as an important indicator of the overall development of the legal system. It is therefore no coincidence that the category of property became the "starting point" from which Roman private law developed other legal institutions, establishing a coherent and highly logical system (Hordiienko, 2023).

Roman jurists devoted exceptional attention to the theoretical conceptualisation of property, and this attention was not merely academic but deeply pragmatic. The concept of dominium emerged at the intersection of the socio-economic conditions of the era, legal technique, and practical needs. In early Rome, land was the primary means of production, and control over it determined a citizen's social status, political rights, and military obligations. Consequently, the institution of property acquired not only economic but also socio-political significance, distinguishing it from many other legal categories. Property did not merely regulate relations between individuals—it became an essential instrument for structuring society, defining boundaries between Roman citizens, clients, slaves, and foreigners.

Contemporary scholars (Millner & Kiralfi, n.d.) emphasise that property is primarily a social phenomenon. It reflects actual relations of possession, use, and disposal of material goods that exist independently of legal formalisation. Property law merely confers formal certainty upon these relations, transforming factual control into a legally recognised entitlement that is protected against the encroachments of others. In other

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.29-39

words, property law serves as the "legal shell" of economic relations, rendering them generally binding and enforceable.

A distinctive feature of the Roman approach was that jurists considered property not as a relation between persons (as is common in modern sociological schools) but as a relation of a person to a thing. Dominium, in their understanding, is an absolute and exclusive right over a thing that does not require reference to other subjects to substantiate it. This approach was of fundamental importance, as it enabled a clear distinction between property rights and obligations, which are inherently relative and presuppose the existence of a specific creditor and debtor. It is precisely thanks to this conceptual framework that the Romans were able to construct an exceptionally precise dogmatics of private law, which continues to underpin European civil law methodology to this day (Long, 1875).

Understanding the social nature of property is impossible without considering its evolution in the earliest periods. Initially, property was collective: land belonged to the gens, and all members had an equal right to use it. Individual property, in the modern sense, emerged later, alongside economic development and the need to secure the fruits of labour for a specific household (familia). The transition from collective to familial property (heredium) marked a crucial stage in the formation of private property, as it generated the need for legal regulation of the division and inheritance of assets. In the Law of the Twelve Tables, the earliest codification of Roman law, one can already observe an attempt to establish legal mechanisms for the protection of private property and procedures for its transfer.

Property in Rome was always closely connected with power relations. The pater familias exercised nearly absolute authority over the members of his household and slaves, which extended to property rights. All family property legally belonged to him, even if others in the household made actual use of it. This model demonstrates the initial character of Roman property, when rights were not yet separated from social hierarchy. Over time, with the development of civil circulation, the institution of property gradually became detached from purely patriarchal and sacred elements, acquiring a more secular and formalised character suitable for regulating market and monetary relations (Johnston, 2015).

The social function of property, although not theoretically articulated by the Romans as in modern legal systems, was manifested in practice. The state had the authority to requisition property for public purposes (e.g., grain for the army), to impose public servitudes ensuring access to water or roads, and to control the allocation of public land (ager publicus). This indicates that even in the classical period, the absoluteness of dominium was relative: it always coexisted with public limitations and the need to account for communal interests.

Thus, the origins of the Roman institution of property reflect a complex interplay of economic, social, and political factors. Property served simultaneously as a means of individual autonomy and an instrument of social organisation. It is precisely this dual significance—private and public—that rendered it a central institution around which the entire system of Roman private law was constructed. Today, the analysis of the social nature of property allows for a deeper understanding of Roman jurists' logic and explains why their decisions continue to influence contemporary doctrines of civil law (McGinley, 1927).

3. Dominium and owner's rights: The quiritary model

Traditionally, it has been held that the Roman owner possessed several fundamental entitlements: the right of possession (corpus), the right to use the thing (usus), the right to dispose of it (abusus), the right to receive its fruits and profits (fructus), and the right to legal protection against any encroachments. The aggregation of these rights formed the classical conception of full ownership. Roman jurists referred to this as dominium, occasionally using the term proprietas. Although the latter was employed less frequently, it was generally synonymous. In certain contexts, however, proprietas was applied in a narrower sense to denote so-called "bare ownership" (nuda proprietas), referring to the residual right retained by the owner after the establishment of a usufruct (ususfructus). A usufruct conferred upon another person the right to use the property and enjoy its fruits, but did not entail the right to alienate it. This demonstrates the flexibility of Roman legal constructions: they allowed a clear distinction between full ownership and its limited forms, laying the foundations for modern models of the fragmentation of owner's rights (Pidopryhora & Kharitonov, 2009).

Of particular significance is the conceptual distinction in Roman law between ownership (dominium) and possession (possessio). For the Romans, ownership represented an abstract, legal right, existing independently of actual control over the object. Possession, by contrast, was a factual condition, consisting in the actual control of an object by a person. Consequently, Ulpian emphasised that "ownership has nothing to do with possession." Possession did not create ownership, nor did its loss automatically result in the loss of ownership. To acquire possession, two elements were required: corpus (physical control over the thing) and animus (the intention to treat the object as one's own). Possession could be lawful or unlawful, yet in either case it was protected by the praetor through specific interdicts. Nevertheless, this protection was relative and always subordinated to dominium, that is, full ownership (Long, 1875).

This duality between right and fact became one of the most profound ideas in Roman private law. It held not only theoretical significance but also practical utility: it ensured the stability of property circulation, permitted a distinction between lawful and unlawful possession, and laid the groundwork for modern understandings of ownership and possession in civil law systems.

The evolution of Roman property law was closely intertwined with the development of Roman society itself, which progressed from insular kin-based structures to a sprawling state with vast territories and complex economic relations. In the earliest period, property took primitive forms and reflected the collective character of life. Initially, kinship-based property (gens) predominated, grounded in the communal control of land by the family group. Individual members did not hold absolute rights to a parcel, as the land belonged to the entire community. With economic development, this model gave way to familial property (heredium), encompassing the house and garden plot. Yet even in this form, it did not correspond to private property in the modern sense; rather, it constituted a form of co-ownership, subject to termination by a judicial action, as codified in the Law of the Twelve Tables (Anghel, 2021).

Already in the archaic period, one can observe a differentiation between collective property, belonging to the state (notably ager publicus—public lands, the treasury, and even slaves), and private property—the quiritary ownership (dominium ex iure Quiritium), which remained a privilege of Roman citizens. This early distinction between communal and individualised property rights laid the doctrinal groundwork for the comprehensive system of Roman private law, allowing the state to reconcile collective interests with the legal recognition of individual entitlements.

4. Evolution and differentiation of property forms: From quiritary to praetorian ownership

The classical period (1st–3rd centuries CE) marked an era of considerable complexity and sophistication in Roman legal constructs. It was during this time that multiple forms of ownership emerged and coexisted, reflecting the pragmatism and adaptability of Roman law. Central to this system was quiritary ownership (dominium ex iure Quiritium), regarded as the full and absolute right of Roman citizens, particularly the pater familias possessing ius commercii. Initially, this form of ownership extended only to movable property and land within Italy, but it gradually encompassed broader

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.29-39

categories of property. Quiritary ownership was considered exclusive, inalienable without the owner's consent, and perpetual in duration.

However, the excessive formalism of civil law generated practical difficulties. For instance, the transfer of res mancipi (land, slaves, or draft animals) required adherence to complex archaic rites, such as mancipatio. Transfers conducted merely through traditio did not confer quiritary ownership. In such cases, the praetor provided factual protection to the transferee, giving rise to a new form of ownership—praetorian ownership (in bonis habere). This enabled the holder to use the property and seek legal remedies to protect it, even though quiritary ownership remained with the alienator. Over time, such ownership could evolve into full ownership through the institution of acquisitive prescription (usucapio), representing a significant step away from formalism and recognising the primacy of factual relations over archaic rituals (Pidopryhora & Kharitonov, 2009).

The expansion of the empire prompted the development of additional ownership forms. Foreigners (peregrini), who participated actively in trade, could not acquire quiritary ownership. A distinct legal regime—peregrine ownership—was therefore established to protect property transactions between non-citizens. Another form, possessio vel usufructus, allowed the use of provincial lands in exchange for taxation. Formally, land in the provinces belonged to the state or emperor, yet local inhabitants were permitted to possess and bequeath it, effectively exercising the rights of ownership. These legal adaptations demonstrate the exceptional pragmatism of Roman law, which created new categories not for theoretical perfection, but to facilitate economic transactions and governance across vast territories.

By the end of the classical period, quiritary ownership had diminished in significance, as its restrictions, availability only to citizens, and requirement to observe obsolete formalities no longer aligned with the dynamic development of society. In the post-classical era, particularly under Justinian's reforms, ownership law was definitively unified. The emperor abolished the distinction between res mancipi and res nec mancipi, removing the necessity for complex acts of mancipatio. All forms were consolidated under the single concept of proprietas, eliminating the division between quiritary and praetorian ownership. Ownership thus became a universal and singular institution, approaching the modern understanding of the category.

Nevertheless, as O.O. Hordiienko observes, even at the height of its sophistication, dominium was not an unqualified or unrestricted dominion over property. While theoretically encompassing the rights to use (ius utendi), to enjoy the fruits (ius fruendi), and to dispose (ius abutendi), these powers were often practically limited. Neighbours had rights of servitude, permitting access across property or use of water. The state could intervene in private property without providing compensation for expropriation. Within family life, the authority of the pater familias over property was so absolute that mechanisms such as the peculium—a property fund available for use by sons or slaves but legally retained by the head of the household—were instituted. This illustrates that, despite the formal concept of absolute ownership, Roman law consistently balanced theory and practice, providing mechanisms to temper rigid rules and accommodate societal needs (Hordiienko, 2023).

Over centuries, Roman law developed a sophisticated system for the acquisition and protection of property rights, laying the groundwork for the subsequent evolution of private law in Europe. The distinction between original and derivative modes of acquisition, as well as the differentiation of civil-law remedies from those arising under the law of nations (ius gentium), reflects a gradual transition from a strict, formalised tradition to a more flexible approach suitable for a dynamic commercial society. Roman law thus managed to reconcile the conservatism of ancient institutions with the innovation necessary for expanding economic and inter-state interactions.

The archaic distinction between res mancipi and res nec mancipi played a significant role within this system. It emphasised the special importance Romans attached to objects directly related to agriculture and military service, foundational spheres of Roman communal life. The requirement to observe solemn formalities for the transfer of res mancipi, such as mancipatio or in iure cessio, reflected a desire to ensure publicity and legal certainty in dealings with the most valuable assets. Conversely, the simplicity of transferring res nec mancipi via traditio demonstrated a gradual democratisation of civil transactions, ultimately supplanting excessive formalism and facilitating market relations (Pidopryhora & Kharitonov, 2009).

Original modes of acquisition were particularly significant, as they allowed property rights to be secured independently of the previous owner's consent or actions, reflecting a proto-natural law principle: whoever first acquired a res nullius became its lawful owner. Mechanisms such as occupation and accession underscored the close relationship between ownership, factual possession, and economic utility. Specification raised questions regarding the creation of new objects of law and the balance of interests between the material owner and the creator, demonstrating the depth of Roman legal thought. Discovery of treasure illustrated the desire for equitable distribution of unexpected gains, recognising both the finder's merit and the landowner's interest.

Derivative modes reflected a more developed concept of succession. Publicity and state oversight remained central to the transfer of ownership, but over time traditional formalities lost their dominance, giving way to simpler mechanisms suitable for daily transactions. Consequently, traditio, as an expression of ius gentium, became a universal instrument in international trade, where the rigid Roman formalities could not be applied.

Particular attention must be given to usucapio—acquisitive prescription—a unique institution in Roman law. It allowed factual possession to mature into full ownership, provided that good faith, lawful grounds, and absence of unlawfulness were present. This approach ensured stability in civil circulation, minimising the risks of endless disputes over title. Usucapio combined legal logic with practical expediency, securing for the factual possessor the rights they had already exercised in practice.

The concept of dominium in Roman law thus emerged not merely as an abstract legal right, but as a product of the intersection between societal needs and advanced legal thought. The system of actions protecting ownership reinforced the authority of the state as guarantor of legal order, while simultaneously emphasising the importance of private initiative and factual possession. This unique model reconciled formalism with flexibility, tradition with innovation, and laid the foundations for modern property law institutions in civil law systems (Long, 1985).

5. Balancing the absoluteness and limitations of dominium

The nineteenth century witnessed a distinctive "reinvention" of Roman law, which exerted a profound influence on the subsequent development of European legal systems. Whereas in ancient Rome dominium was conceived as a synthesis of formal, practical, and doctrinal elements, the medieval tradition significantly transformed it, most notably through the concept of divided dominium, wherein ownership was shared among multiple subjects—for example, between a lord and his vassal. This model reflected the feudal structure of society, in which property rights were intrinsically tied to mutual obligations and hierarchical dependencies. Ownership was understood not as an absolute and indivisible right, but as a complex system of rights and duties encompassing different layers of legal subjects.

The transformations of the nineteenth century, driven by the rise of capitalist relations, the increasing role of the bourgeoisie, and the dismantling of feudal hierarchies, necessitated a renewed conceptualisation of ownership. Jurists of the period, particularly Robert Joseph Pothier and his followers, sought not merely to revive the Roman legacy but to adapt it to the demands of a modern society. They artificially constructed an

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.29-39

image of absolute dominium, free from the divisions and limitations characteristic of the medieval era. In such a conception, ownership embodied the ideology of the bourgeois order: private property was proclaimed sacred, indivisible, and inviolable, and the right to it was absolute and exclusive (Bondarenko, 2020).

This doctrinal reconstruction was not merely theoretical but responded to tangible economic and social realities. Industrial development and the emergence of free markets required clear, unified, and systematic legal rules to ensure predictability and stability in transactions. Concurrently, the ideology of the age emphasised individualism and personal liberty, which could only be realised through the entrenchment of absolute property rights. The resulting model diverged sharply from both medieval and even classical practice, yet drew its authority from Roman legal tradition.

The reception of Roman law across European legal systems produced various models of property law, each developing the idea of dominium in different ways. German law, as codified in the Bürgerliches Gesetzbuch (BGB), retains the emphasis on systematic structure and abstraction characteristic of Roman constructions: §903 BGB defines the owner's right as full dominion over a thing while simultaneously recognising numerous limitations, primarily of a public-law nature (environmental protection, urban planning, and cultural heritage conservation). The German model conceives of property not merely as a subjective right but also as a social function (Sozialbindung des Eigentums), expressly enshrined in Article 14 of the Basic Law for the Federal Republic of Germany: "Property entails obligations. Its use shall also serve the public good." This concept effectively develops the trend initiated in Roman law through servitudes and public restrictions.

French civil law, as codified in the Code Napoléon (Article 544), proclaims ownership as "the right to use and dispose of things in the most absolute manner," yet contemporary doctrine and practice have substantially moderated this ostensibly "absolute" approach. The French Constitutional Council has repeatedly emphasised that the protection of private property must be reconciled with public order and the common good. Consequently, the French model converges with the German social conception, although formally the code retains the classical triad of ownership powers (Ciutacu, 2023).

In the Anglo-American legal tradition, property is not conceived as a singular, indivisible right (dominium), but rather as a "bundle of rights," which may be held by different persons and transferred independently (including the rights to possess, use, alienate, and derive income from property). This approach reflects greater flexibility and functionality in the legal construct, institutionalising what the Romans managed through derivative forms of ownership, usufruct, servitudes, or the division between dominium and possessio.

Thus, modern European and Anglo-American concepts attest to the enduring legacy of Roman law while simultaneously demonstrating its evolution. Whereas Roman dominium was formally absolute but practically constrained, contemporary legal systems openly recognise the social function of property and permit its "fragmentation" among multiple subjects. This enables a balance between private autonomy and public interests, a concern of particular relevance in the context of urbanisation, the development of environmental law, and the growing prominence of public welfare considerations.

Traces of this influence are evident in contemporary Ukrainian law. The Constitution of Ukraine enshrines the principles of property rights, emphasising their fundamental significance for society. Article 13 declares that land, subsoil, water, and other natural resources belong to the Ukrainian people, while Article 41 guarantees the right of every individual to own, use, and dispose of property (Constitution of Ukraine, 1996). The Constitution affirms the inviolability of private property and the equality of all owners. Particular attention is due to the Civil Code of Ukraine (2003), which systematically codifies property and related rights in its third book. Here, the inheritance of the Roman model is apparent: the classical triad of ownership powers (possession, use, disposal) is preserved, and original (e.g., acquisition of newly created objects, appropriation of publicly accessible natural gifts, acquisitive prescription) and derivative modes of acquisition (contracts, inheritance, administrative acts) are clearly distinguished. This mirrors the Roman distinction between original and derivative titles, as well as the principles of publicity in legal actions.

The institution of acquisitive prescription (Article 344 of the Civil Code) provides the most illustrative example of the reception of Roman usucapio. As in antiquity, it functions to stabilise civil circulation, legitimising long-term good-faith possession and eliminating uncertainty regarding ownership. Similarly, Ukrainian legislators have adopted the Roman vindicatory (Article 387) and negatory (Article 391) actions as principal means of protecting property rights, highlighting the continuity of doctrinal constructions.

Particular attention must also be paid to the limitations on property rights. Unlike classical dominium, which was proclaimed absolute, the contemporary Ukrainian model recognises the importance of public interest, environmental, urban-planning, and land-use restrictions. This evolution reflects a shift from the Roman notion of the "sacredness" of private property to a more balanced approach, where ownership rights are aligned with sustainable development and social responsibility. Examples include servitudes (Articles 401–417 of the Civil Code) and rights to use another's property (emphyteusis, superficies), which are, in essence, modernised Roman institutions.

Overall, analysis of current Ukrainian legislation demonstrates that modern law not only preserves the Roman legacy but also develops it in a manner that strengthens human rights guarantees and harmonises private and public interests. This underscores the practical significance of historical-legal research: understanding the evolution of property in Roman law facilitates a deeper comprehension of the logic underpinning Ukrainian civil-law constructs and may serve as a guide for further modernisation of the Civil Code.

6. Roman legacy and its influence on contemporary legal systems

Roman law has traditionally been regarded as the foundational source of the concept of "absolute" property rights. During the classical period, dominium ex iure Quiritium denoted the full and exclusive dominion over a thing, encompassing the right to use it (ius utendi), the right to derive its fruits or profits (ius fruendi), and the right to dispose of it (ius abutendi). In doctrinal discourse, this triad is often interpreted as synonymous with the unrestricted freedom of the owner. Yet, Roman jurists were acutely aware that such dominion could not exist without limitations. The practical application of property law demonstrates that dominium was consistently balanced against both public and private interests: neighbours enjoyed rights of servitude, such as passage and access to water; the state retained the authority to confiscate or requisition property; and the pater familias constrained the property autonomy of sons and slaves through the institution of peculium. In this way, Roman law already contained the embryonic concept of the "social function of property," which would gain fuller theoretical expression in the twentieth century (Domingo, 2017).

Contemporary property law in Ukraine and across Europe has moved away from the model of entirely unrestricted property rights, instead seeking to reconcile the rights of the owner with broader societal interests. This is particularly evident in environmental law, where a landowner may not exploit their property in a manner that causes harm to the environment (Article 66 of the Constitution of Ukraine establishes the duty not to damage nature). Similarly, urban planning legislation imposes constraints on land development, requiring compliance with zoning regulations and general development plans, thereby echoing the Roman idea of regulating res mancipi through public acts.

Servitudes in contemporary Ukrainian law (Articles 401–417 of the Civil Code) directly

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.29-39

descend from the Roman servitude regimes. They provide that even private property may be encumbered by the rights of third parties, such as rights of passage, access for vehicles, or installation of utilities, and that the owner is legally obliged to tolerate these encumbrances. This clearly demonstrates that the absolutism of property has always been relative and has never excluded consideration for the needs of neighbours or the wider community.

Thus, the modern discourse on the limits of property rights represents a continuation of Roman legal tradition. Whereas in antiquity dominium was formally absolute but practically circumscribed by servitudes, praetorian interdicts, and public interests, today legislation explicitly enshrines the social function of property. The Ukrainian model reflects the broader European approach, according to which property rights are not solely an expression of individual liberty but a legal instrument for harmonising private and public interests. Consequently, the "absoluteness" of property is understood less as an unfettered licence to do whatever one wishes with an object, and more as a guarantee against arbitrary interference by the state, balanced with societal obligations (Hordiienko, 2023).

Furthermore, the Roman legacy extends beyond conceptual frameworks into procedural and protective mechanisms that underpin modern civil law. The tradition of balancing ownership with public and private constraints informs contemporary doctrines of liability, compensation, and regulatory compliance, ensuring that property rights operate within a broader normative context that serves both individual and collective interests. This duality—respecting private autonomy while recognising communal needs—remains a defining feature of property law in Ukraine, Europe, and other civil law jurisdictions, demonstrating the enduring relevance of Roman legal thought in shaping the ethical and functional contours of modern ownership.

7. Conclusion

Roman property law is not merely a historical category but constitutes the foundational framework upon which contemporary legal systems have been constructed. Its significance lies in its exceptional systematic coherence and profound theoretical development, which enabled Roman jurists to formulate universal concepts that continue to retain relevance today. In particular, the distinction between abstract legal ownership (dominium) and factual possession (possessio) provided stability in property transactions and remains one of the most pivotal ideas in private law. The evolution of Roman property—from archaic formalism, as exemplified by dominium ex iure Quiritium, to pragmatic and flexible forms such as praetorian property—demonstrates the adaptability of the system to changing economic and social circumstances. It was precisely this capacity to harmonise conservative traditions with innovative approaches that allowed Roman law to withstand the test of time.

In the nineteenth century, European jurists "rediscovered" and adapted Roman concepts to the needs of emerging capitalist societies, leading to the development of modern codifications that enshrined property rights as indivisible and sacrosanct. This legacy is particularly evident in Ukrainian law, where the fundamental principles, classification of modes of acquisition, and mechanisms for protection—such as the vindicatory action and acquisitive prescription—represent a direct reception of Roman legal ideas. The Roman model of property, therefore, is not merely a historical artefact but a living foundation that continues to shape and regulate contemporary civil law relationships.

The findings of this study demonstrate that Roman property law was not a static construct but a dynamic institution, capable of adapting to socio-economic challenges. The study proposes a novel systematisation of the stages in the evolution of ownership, enabling a more precise tracing of the transition from formalised Quiritary ownership to the universal concept of proprietas. The research establishes that the key contribution of Roman law was the distinction between legal ownership (dominium) and factual possession (possessio), which continues to underpin the structure of civil transactions today.

The scholarly novelty of the article lies in the comprehensive comparison of Roman institutions with the provisions of the Civil Code of Ukraine, demonstrating both the direct legal inheritance and the practical relevance of Roman constructions for modern doctrine. The practical significance of the research is evident in its potential application to the improvement of Ukrainian civil legislation, particularly in the modernisation of provisions regarding limitations on property rights, servitudes, emphyteusis, and superficies. The Roman experience of balancing private autonomy with public interests can serve as a foundation for more clearly codifying the social function of property in Ukrainian law, responding to contemporary challenges such as the development of environmental legislation, urban planning regulations, and harmonisation with the European legal framework.

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DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.40-49.

THE LEGAL POLITICS OF AGRARIAN REFORM IN JAKARTA AND THE MARGINALIZATION OF LAND CULTIVATORS

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Abstract

Agrarian reform in Indonesia has long been dominated by a rural-centric approach, despite the fact that state land cultivation by communities also occurs extensively in urban areas such as Jakarta. Urban cultivators rely on state land as both a place to live and a source of livelihood, yet they receive little to no legal recognition. This study aims to examine the legal politics behind Jakarta's agrarian reform policies and their implications for the legal status of urban land cultivators. Using a normative legal method combined with a legal-political approach, this research critically analyzes existing regulations, including the Job Creation Law, Presidential Regulation No. 86 of 2018, and Jakarta Governor Regulation No. 153 of 2019. Data were collected through document studies and examined using the theoretical frameworks of agrarian justice and legal exclusion. The findings indicate that agrarian reform policies in Jakarta tend to favor capital interests and property developers, while sidelining the de facto claims of urban land cultivators. Existing legal frameworks do not grant them priority rights and instead open pathways for land privatization through selective legal instruments.

These results reveal a pattern of structural marginalization against urban cultivators. Rather than serving as a means of distributive justice, agrarian reform in this context functions as a tool to restructure urban space according to market logic. This highlights the urgent need for a more equitable, participatory legal framework that recognizes urban cultivators as legitimate subjects of agrarian reform.

Keywords: agrarian reform; cultivators; legal politics; legal exclusion; agrarian justice

1. Introduction

Agrarian reform projects are often imagined as efforts to redistribute land in rural areas, as if agrarian problems are solely about farmers and rice fields. Yet cities like Jakarta contain a far more subtle kind of agrarian complexity, one that involves the living spaces of the urban poor who exist in the shadow of legal uncertainty over the state land they occupy. Amid highways and skyscrapers lie hidden communities who, for years, have depended on state land for survival building semi-permanent shelters, planting crops, and running small-scale businesses. They are not formal owners, but they have built a deeply rooted social and existential relationship with the land. Tension arises when the state, through legal and spatial instruments, appears not as a protector but as a mechanism of exclusion. In this logic, the right to survive is subordinated to the imperative of urban order making the city more "investable," more "organized," without seriously considering who must be displaced in the process. This phenomenon resonates with critiques suggesting that urbanization under contemporary capitalism often proceeds through accumulation by dispossession, pushing subaltern classes out of the very spaces they have shaped and inhabited. (Uzonyi & Koren, 2024).

Contemporary literature in agrarian studies reveals a persistent rural bias in both the practice and discourse of agrarian reform across many developing countries. Policy frameworks that emphasize agricultural land redistribution often overlook the fact that land access conflicts also unfold intensely in urban areas, particularly in the context of city expansion and the commodification of space. Comparative research in the Philippines and Cambodia illustrates that the urban poor frequently experience not only the loss of land access, but also the erosion of their legal status, as formal legal systems struggle to recognize and accommodate informal modes of land occupation (Van Gelder, 2010).

On the other hand, the development of agrarian justice theory emphasizes the importance of recognizing rights based on long-term occupation and use, as a key dimension of distributive justice often overlooked by formal-legal regimes. Nevertheless, this body of literature largely remains focused on the broader context of the Global South, and has yet to specifically examine how rural bias becomes institutionalized within national legal frameworks, such as in the case of Jakarta. This gap opens a critical space for exploring how legal exclusion is not merely the result of absent access, but rather the product of regulatory choices that actively negate the existence of urban cultivators as rightful subjects within the national agrarian reform narrative (Peluso & Lund, 2011).

The absence of a legal framework that explicitly recognizes the position of state land cultivators in urban areas reflects not only a regulatory gap, but also a deeper conceptual void within the logic of national agrarian justice distribution. While numerous studies have exposed the rural bias inherent in land redistribution policies and brought attention to patterns of agrarian exclusion in rural settings, urban contexts remain critically underexplored. This lack of attention suggests a structural limitation in both legal and scholarly discourses, where urban land relations—often informal yet deeply embedded in survival economies—are excluded from the dominant narratives of agrarian reform (Eldridge, 2013), Urban cultivators in cities like Jakarta often fall outside the scope of policy imagination, even though they are actively engaged in concrete

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.40-49.

forms of spatial production.

Despite references to agrarian reform in regulatory instruments such as Presidential Regulation No. 86/2018 and Jakarta Governor Regulation No. 153/2019, their structural design and legal interpretations remain deeply rooted in legal-dogmatic frameworks that privilege formal ownership over actual land use. This article departs from such approaches by not merely reading agrarian reform as a matter of land redistribution policy, but as a site of legal-political struggle over who is recognized as a legitimate subject in the governance of state land.

This perspective enables a deeper inquiry into how law is produced within urban power configurations and how legal exclusion operates through seemingly neutral yet selectively applied norms. The novelty of this article lies in its attempt to reconceptualize urban state-land cultivators not as administrative anomalies awaiting eviction, but as rightful legal-political actors within the terrain of agrarian reform.

Understanding the dynamics of state land cultivation in Jakarta requires more than a legal-dogmatic inquiry; it demands an interpretive lens capable of unveiling the power relations embedded within legal categories such as "illegal occupants" or "unauthorized use." In an urban spatial configuration increasingly driven by investment interests and land value speculation, the law often operates as a mechanism of exclusion cloaked in procedural legitimacy. This condition exemplifies what has been described as urban legal violence—a situation in which legal mechanisms reproduce structural vulnerability for the urban poor. Simultaneously, a rigid, formalist approach to agrarian reform proves insufficient in capturing the lived and dynamic forms of land control, as critically noted in the literature on legal and agrarian pluralism in Southeast Asia. This article aims to examine the legal politics of agrarian reform in Jakarta and its consequences for the legal standing of urban cultivators on state land. It also offers a conceptual framework to reconstruct land policy in favor of distributive justice, social recognition, and citizen participation in an ever-evolving urban landscape.

Understanding the dynamics of state land cultivation in Jakarta requires more than a legal-dogmatic inquiry; it demands an interpretive lens capable of unveiling the power relations embedded within legal categories such as "illegal occupants" or "unauthorized use." In an urban spatial configuration increasingly driven by investment interests and land value speculation, the law often operates as a mechanism of exclusion cloaked in procedural legitimacy. This condition exemplifies what has been described as urban legal violence—a situation in which legal mechanisms reproduce structural vulnerability for the urban poor. Simultaneously, a rigid, formalist approach to agrarian reform proves insufficient in capturing the lived and dynamic forms of land control, as critically noted in the literature on legal and agrarian pluralism in Southeast Asia. This article aims to examine the legal politics of agrarian reform in Jakarta and its consequences for the legal standing of urban cultivators on state land. It also offers a conceptual framework to reconstruct land policy in favor of distributive justice, social recognition, and citizen participation in an ever-evolving urban landscape.

2. Materials and Methods

This study employed a normative legal method combined with a legal-political approach in order to capture both the formal dimensions of agrarian law and the political dynamics that shape its application in Jakarta. The normative method was used to interpret legal texts, identify doctrinal structures, and evaluate their consistency within the national legal framework. The legal-political approach, by contrast, enabled a critical reading of the ways in which political interests and economic imperatives inform the legal recognition, or exclusion, of urban land cultivators.

The primary materials consisted of statutory instruments and government regulations that explicitly address agrarian reform. Among the most significant were the Job Creation Law, Presidential Regulation No. 86 of 2018, and the Governor of

Jakarta Regulation No. 153 of 2019. These sources were examined in relation to their doctrinal content as well as their socio-political implications for urban cultivators who occupy state land. Secondary materials included scholarly literature on agrarian justice, legal exclusion, and urban land tenure, with particular reference to comparative studies from the Global South. These works provided theoretical grounding and facilitated the positioning of the Jakarta case within broader debates about urban agrarianism and distributive justice.

The analysis proceeded through three complementary methodological techniques. First, a doctrinal examination of the relevant legislation and regulations was undertaken to clarify their operative provisions and to highlight internal inconsistencies. Second, a comparative legal analysis was applied to juxtapose Indonesian regulatory frameworks with experiences in countries such as the Philippines and Cambodia, where similar tensions around urban land access have been documented. Third, documentary analysis was conducted on administrative materials, legal cases, and policy reports in order to reveal how formal regulations are implemented in practice.

The interpretive dimension of the research was guided by theoretical frameworks of agrarian justice and legal exclusion. These frameworks were used to interrogate the gap between formal legality and lived tenure relations, particularly in the context of urban land cultivation. The study further applied the concepts of urban legal violence and selective recognition to explain how ostensibly neutral regulations function to marginalise vulnerable groups. In doing so, the methodological design combined textual legal analysis with a critical socio-legal perspective, ensuring that the findings addressed not only the letter of the law but also its distributive consequences in urban space.

3. Results and Discussion

3.1. Legal politics of agrarian reform in urban contexts: Representation and bias

The legal construction of agrarian reform subjects within Indonesia's national policy framework is shaped by a predominantly rural-centric perspective, in which smallholder farmers, agricultural laborers, and Indigenous communities are presumed to be the principal beneficiaries of land redistribution. This orientation is evident in Presidential Regulation No. 86 of 2018, which outlines priority subjects of agrarian reform through a juridical framework that relies heavily on specific forms of administrative legality—such as decrees of land release or documented control over non-forest disputed areas. Such legal definitions implicitly exclude urban cultivators, whose modes of land use often fall outside the formalistic parameters required by these instruments.

This perspective overlooks the dynamics of spatial occupation in urban areas, which, despite lacking formal documentation, are often more complex and span decades of informal tenure. Within such a framework, cultivators of state land in cities like Jakarta are not only absent from policy design but also denied recognition as legitimate legal actors in spatial governance. This phenomenon aligns with the notion that access to land is not solely determined by formal ownership, but also by social recognition and institutional authority, which together shape who is entitled to claim space (Rasmussen & Lund, 2018). When the state restricts recognition exclusively to subjects that conform to an administrative-rural logic, it generates a legal hierarchy of recognition that systematically excludes urban actors from the narrative of agrarian reform—one that ought to be spatially and sociologically inclusive (Gilbert & Afrizal, 2019).

The absence of legal recognition for cultivators of state land in urban areas such as Jakarta creates a legal vacuum marked by ambiguity, where long-standing and tangible forms of land occupation remain excluded from the framework of formal legitimacy. Even though these communities have forged enduring relationships with the land they inhabit—through constructing dwellings, utilizing land for economic activities, and

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.40-49.

sustaining social reproduction across generations—the law continues to frame them as unlawful occupants of space.

The absence of legal instruments capable of bridging informal land tenure and formal recognition reflects the operation of a concealed logic of exclusion. In this context, the law is not merely absent—it actively constructs the invisibility of urban subjects within the national agrarian landscape. As illustrated by the theory of selective recognition, the state frequently determines who is deemed worthy of legal status based on a combination of political-economic interests and administrative configurations, ultimately producing systemic mechanisms of exclusion (Borras et al., 2011). This mechanism not only restricts access to land but also marginalizes claims to living spaces that do not conform to the state's formal legal narrative. When legality becomes the sole criterion for determining the validity of land tenure, all forms of lived social relations become invisible, unspeakable, and ultimately erased from the realm of legal protection (Borras et al., 2011).

When legal recognition is granted only to subjects who meet formal legal criteria, it produces a hierarchical structure that differentiates between valid and ignored claims. In Jakarta's context, this hierarchy results in the exclusion of urban land cultivators from processes of agrarian justice distribution, which in principle should encompass all citizens who rely on land as a space for living. Their existence is not merely overlooked in policy but also erased from the legal narrative that defines who is permitted to reside, build, and sustain life in the city. The connection between long-term land occupation and legal rights becomes severed, even though various approaches to agrarian justice emphasize the need to recognize sustained land use as a basis for legitimate access (Franco et al., 2015).

When the state fails to establish a recognition mechanism based on actual land use and social relationships with space, the result is not the absence of law, but rather the presence of law that actively sides with exclusion (Li, 2014). In this configuration, urban land cultivators not only lose the possibility of receiving legal protection, but also forfeit their political status as citizens entitled to space. This situation calls for a critical reinterpretation of the structure of land law politics, particularly in understanding how legal instruments reinforce land domination through narratives of neutrality, rather than through the distribution of justice. Consequently, further elaboration is needed to uncover how legal exclusion is institutionalized through mechanisms that appear objective but operate selectively.

4.2. Mechanisms of exclusion through legality: Formal narratives vs. realities of control

Land policy in urban areas such as Jakarta exhibits a strong tendency to regard formal legality as the sole basis for recognizing land tenure rights. Within this framework, a right is considered valid only if it can be proven with state-recognized documents—such as land ownership certificates, building use rights (Hak Guna Bangunan), or spatial utilization permits issued through administrative procedures. Regulations such as Presidential Regulation No. 86 of 2018 and Jakarta Governor Regulation No. 153 of 2019 reinforce this logic by establishing formal legal status as an absolute prerequisite for inclusion in agrarian reform schemes or land use legalization programs.

As a consequence, all forms of land tenure that occur outside the state documentation system—no matter how long-standing or functionally embedded in residents' daily lives—are not recognized as legitimate legal relations. This paradigm shapes what is referred to as the powers of exclusion—where law not only regulates ownership but also defines the boundaries of who may be recognized and who is rendered invisible. Furthermore, recognition of ownership is not merely administrative; it is inherently political: it determines who qualifies as a legal subject and who remains in the gray zone of tenure without protection. In this configuration, property is not only about control over land, but also about who is acknowledged as a rights-bearing citizen by a power structure that legitimizes.

The legal language employed in urban spatial planning policies often carries an illusion of neutrality, while in practice, it functions as a systemic instrument of exclusion. Terms such as “area arrangement,” “removal of illegal structures,” or “orderly land use” sound administrative and technocratic, but they frequently obscure the marginalization of residents who have long occupied land de facto. In the context of Jakarta, this mechanism operates through relocation actions that fail to acknowledge the historical use of the land, alongside the absence of participatory procedures that would accommodate the voices of affected communities. This produces a legal landscape that appears orderly on the surface, yet is socially unequal. Roy refers to this phenomenon as planned illegality, where the state deliberately allows certain groups to remain in an illegal condition in order to control or remove them at any time as dictated by planning needs (Roy, 2005).

On the other hand, Yiftachel introduces the concept of gray spacing to explain how certain urban spaces are deliberately maintained in a state of managed legal ambiguity, allowing recognition of their existence to be granted or withdrawn arbitrarily. Within this configuration, exclusion operates not only in physical terms but also through the erasure of the social meaning attached to the homes and livelihoods of the urban poor, who are framed not as rights-bearing subjects but as “issues of public order.”(Yiftachel, 2009)

Amid the state’s proclamations of commitment to land legalization and spatial regulation, there lies a profound paradox that is rarely addressed in formal legal discourse: access to legal status is not equally open to all. Land legalization mechanisms—whether under agrarian reform schemes or urban spatial restructuring programs—demand administrative prerequisites such as historical proof of ownership, registration fees, and familiarity with complex legal procedures. These requirements are structurally inaccessible to urban poor communities. This creates an invisible legal trap in which those unable to meet formal prerequisites remain in a liminal condition, as if occupying space without rights. Fernandes characterizes this condition as legal informality—a situation where the state manufactures informality through an exclusive legal framework that fails to respond to the lived realities of marginalized populations (Fernandes, 2011).

In this context, the inability to access legality is not a consequence of disobedience, but rather the result of a legal design that neglects the social realities of land occupation. Benjamin refers to this as occupancy urbanism—the survival practices of the urban poor who inhabit and manage city spaces without legal status, yet nonetheless build vital social and economic infrastructures that sustain urban life as a whole (Benjamin, 2008). This inequality in access to legalization perpetuates a cycle of exclusion and underscores that the distinction between “legal” and “illegal” is not merely a matter of law, but fundamentally about who is granted the possibility of recognition.

In many urban areas, including Jakarta, land occupation practices by the urban poor often form relational patterns that are not only socially stable but also possess strong community legitimacy. Residents build homes, establish social structures, and create informal systems that persist across generations—forms of organization that reflect continuity rather than mere necessity.

However, the state’s legal structure does not recognize these practices as a valid basis for spatial legitimacy. When formal law only accepts administrative documentation as the foundation for rights recognition, the entire social experience of residents regarding land becomes irrelevant in the legalization process. Merry introduces the term vernacularization of law to describe how communities often construct legal meanings that differ from the state’s official version, but are more consistent with their lived experiences (Merry, 1988). When the state's version and the community’s version conflict, the issue is not merely legal inconsistency—it is a clash of legitimacy between

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.40-49.

differing systems of authority.

In this context, the concept of interlegality as developed by Santos becomes crucial for understanding how state law operates amidst the plurality of normative systems (De Sousa Santos, 2020). The state's failure to accommodate the living legal forms embedded within society not only weakens its formal legitimacy but also deepens the gap between law as normative doctrine and law as lived experience. When legitimate social relations are not afforded space to be articulated within policy frameworks, exclusion manifests not merely as an administrative outcome but also as an epistemic one.

Urban legal frameworks often present themselves as neutral and procedural systems—regulating spatial use through technical rules, while failing to acknowledge that every legal decision carries political implications regarding who is permitted to exist within a space and who is excluded. Within this system, the principle of rule of law is treated as though it stands above all interests, while in practice it reproduces unequal ownership structures and forecloses space for social relations that are not documented administratively.

When legal procedures are implemented without addressing the disparities in access to legal mechanisms themselves, law becomes not only an instrument of order but also a tool for legitimizing exclusion. Lefebvre reminds us that urban space is not a neutral entity, but rather the product of social production—shaped by conflict and domination—where law functions as a spatial governance medium that serves dominant interests (Lefebvre, 2010).

In a similar context, Holston describes the form of citizenship that emerges from such legal systems as insurgent: citizens claim rights to space not through formal legal channels, but through collective occupation, repeated acts of dwelling, and resistance to the state's exclusive narrative of legality (Holston, 2021). This reality illustrates that the neutrality of law in urban spatial governance is not merely a myth, but a strategy—produced and reproduced through discourses and policies that appear objective.

ive but operate selectively.

4.3. Urban agrarian reform reorientation: Theoretical implications and conceptual recommendations

The definition of agrarian reform subjects, which has long been rooted in formal legality, creates structural barriers to reaching urban groups that have, in practice, maintained long-standing social relations with state land but lack administrative proof of tenure. Within a rigid policy configuration, the presence of urban poor communities occupying state land is positioned outside the legal framework, despite the fact that they often establish systems of production and social reproduction that are inseparable from the spaces they inhabit. When the state recognizes land rights solely through officially issued documents, the meaning of "rights" becomes reductive—implying that only those who hold legal certificates are deemed worthy of protection.(Enno Sellya Agustina, 2025).

Such an approach not only narrows the scope of agrarian reform but also neglects the historical, social, and economic dimensions of land tenure in urban areas. Bebbington underscores that recognizing agrarian claims must go beyond the logic of state registration and begin to acknowledge the complex relationships between communities and space, particularly amid the expansion of urban capital (Bebbington et al., 2018). Meanwhile, Franco and Monsalve argue that the subject of agrarian reform should not be understood merely as an administrative category, but rather as a political position rooted in the struggle for livelihood and living space (DeLong, 1997). This redefinition is crucial to prevent policy exclusion of those who are, in fact, the most vulnerable to urban land tenure inequalities.

Cities encompass a diversity of land tenure forms that cannot be reduced to a binary of legal and illegal. Between the spectrum of legal formality lies a variety of tenure practices grounded in survival needs, communal relationships, and collective usage legacies that remain undocumented. However, agrarian legal frameworks that rely on a singular recognition system—namely, state-issued certification—tend to exclude this diversity from gaining legitimacy.

The framework of multilayered tenure recognition emerges as a more adaptive conceptual alternative for urban contexts, acknowledging that tenure status is not always linearly aligned with legal status, but can be layered and contextual. Payne underscores the importance of a flexible recognition system to avoid the structural marginalization of residents whose land occupation is based on livelihood needs rather than formal transactions (Payne et al., 2009).

Meanwhile, Van Lindert argues that the success of agrarian policies in urban areas is largely determined by the extent to which the state is willing to recognize diverse forms of tenure that are socially embedded, even if they are not documented administratively (Van Lindert, 2016). The multilayered framework opens up space for a more human-centered approach, in which legality is no longer merely a status, but a process of recognition shaped through interactions between the state and society. Within this logic, urban agrarian reform no longer hinges on the vertical transfer of rights from the state to citizens, but rather on horizontal negotiations that acknowledge residents as integral actors in the production of urban space.

The strengthening of agrarian policy in urban areas can no longer rely on a top-down approach rooted in singular legality and the administrative logic of the state. The demand for more inclusive and contextual policies requires the development of recognition mechanisms that do not view land merely as an asset, but as a living space shaped by social interaction and historical use. Within this framework, participatory mapping emerges as a key instrument to bridge the gap between residents' claims and policy structures. Through such processes, residents are not merely positioned as objects of legalization, but as subjects who hold spatial and historical knowledge of the places they inhabit.

Mitchell argues that the recognition of spatial claims is inseparable from the political dimension of participation, as such claims essentially express assertions about who has the right to reside in and shape the city (Mitchell, 2011). Building on this perspective, Larsson and Nordqvist emphasize the importance of legal empowerment within the context of urban agrarian reform, where enhancing citizens' capacities to understand, use, and shape the law becomes a foundational element in realizing justice-based agrarian transformation (Sepúlveda Carmona & Donald, 2015). This participatory approach also opens pathways for acknowledging long-term use rights, communal tenure arrangements, and trust-based ownership structures—forms of tenure that have long been excluded from formal legalization frameworks.

The concept of agrarian reform in urban settings should not be confined merely to the redistribution of physical assets, but must evolve toward restitution of space—a form of redress for historical inequalities that have excluded certain groups from access to land. In urban contexts, space is not merely a market-valued location, but a terrain of everyday life that shapes the social and political identities of its inhabitants. When the state regulates landownership through an exclusive legal logic, what is ultimately at stake is the very definition of citizenship—who is recognized and who is rendered invisible. Blomley emphasizes that space is a product of legal power, and that every form of land regulation raises moral questions about who has the right to be present (Porter et al., 2020).

In this approach, justice is no longer measured through procedural equality, but through the recognition of histories of dispossession and restricted access experienced by marginalized communities. Nahar urges us to understand land rights as an inseparable part of human rights, deeply embedded within the context of social justice (Nahar Lata, 2021). Accordingly, the reorientation of urban agrarian reform is not merely about

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.40-49.

redesigning regulatory frameworks, but about shifting the ethical foundation from distribution to recognition—from asking who can afford to buy land, to acknowledging those who have long built their lives on and cared for land without ever being granted formal status.

4. Conclusions

The reconstruction of agrarian reform policy in Jakarta reveals that the exclusion of state land cultivators in urban areas is not the result of a legal vacuum, but rather a consequence of a narrowly framed legality rooted in administrative formalism. In this context, law not only regulates the relationship between people and land, but also produces the boundaries of citizenship through legal instruments that appear objective yet operate selectively. When agrarian reform subjects are defined solely as those who possess formal ownership documents, the entire spectrum of land tenure practices—shaped socially, historically, and culturally—becomes invisible within the prevailing legal structure.

These findings underscore the urgent need to deconstruct and rearticulate the category of “legitimate subjects” in urban agrarian policy to more accurately reflect the complexities of land tenure in the city. Agrarian reform must not be reduced to a mere asset redistribution scheme; it should be understood as a political project aimed at recognizing and restoring rights to space. In this regard, the concepts of multilayered tenure recognition, participatory approaches, and livelihood-based justice frameworks are critical elements for reaching urban cultivators who have long been excluded from the national agrarian reform agenda.

Going forward, the transformation of urban land policy design must go beyond the creation of legalization instruments. The state must open space for the recognition of diverse tenure relations that are not accommodated within the conventional legal system. It is not sufficient for the state to act solely as an enforcer of administrative law—it must also serve as a facilitator of social recognition for the living spaces of vulnerable urban populations. Urban agrarian reform will only become truly relevant when it moves beyond the rigid binary of legal versus illegal, toward a more democratic, inclusive, and substantively just spatial governance.

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DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.50-59

LEGAL POLITICS OF INVESTMENT SCREENING IN INDONESIA'S FOREIGN INVESTMENT REFORM

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Abstract

This study aims to examine the significance and regulatory models of investment screening mechanisms in the context of Indonesia's legal and political framework for foreign investment. Employing a normative juridical method combined with a political-legal approach, this research critically analyzes the growing global trend of screening foreign direct investment (FDI) to safeguard national interests. The study finds that Indonesia has yet to establish a coherent legal basis for investment screening, despite increasing strategic and security risks associated with uncontrolled FDI inflows. The absence of a legal framework creates vulnerability in upholding national economic sovereignty and managing foreign capital with precautionary oversight. The research concludes that reforming Indonesia's investment policy is imperative, not only to ensure regulatory consistency but also to build a national mechanism capable of assessing the potential impacts of foreign investment on strategic sectors. Establishing such a screening regime would align Indonesia with global best practices while preserving its autonomy in economic governance.

Keywords: foreign investment; investment screening; legal reform; national interest.

1. Introduction

TIndonesia, as a developing country, continues to open its doors to foreign direct investment (FDI) as part of a broader strategy to stimulate national economic growth. FDI is often framed as a catalyst for industrial advancement, technology transfer, and job creation. Yet, alongside these potential benefits, there are growing concerns about foreign dominance in key strategic sectors, particularly given that Indonesia's investment oversight remains predominantly administrative and has yet to engage with more substantive dimensions. Several countries have institutionalized investment screening mechanisms to filter foreign investments that may pose risks to economic security—a regulatory approach that, to date, has not been fully integrated into the Indonesian legal system (Dimitropoulos, 2020) The absence of such mechanisms leaves a legal gap that could potentially neglect the protection of strategic national interests.

Global trends indicate that the legal architecture of investment regulation is gradually shifting from a classical liberal paradigm toward a more selective and responsive model that accounts for national security considerations. This transformation is evident in the increasing adoption of investment screening mechanisms across various jurisdictions, which recognize that foreign investment—particularly in strategic sectors—is not politically neutral. In the context of Southeast Asia, there exists a structural imbalance between the flow of capital and the institutional capacity of states to proactively safeguard national interests (Salacuse, 1984). At the same time, the development of regulatory frameworks that are more attuned to geopolitical risks and the long-term implications of foreign ownership has become a central theme in the discourse of international economic law (Salacuse, 1984). Despite the growing prominence of this discourse, Indonesia has yet to fully integrate itself into these evolving normative trajectories.

There is an apparent absence of a legal design capable of functioning as a systematic and measurable screening instrument for strategic investments. This gap indicates that Indonesia's foreign investment regulation continues to rely heavily on an administrative facilitation paradigm, rather than advancing toward a stage where law operates as a sovereign policy filter within the broader framework of economic governance.

The current regulatory framework in Indonesia reveals a conspicuous absence of legal mechanisms that could serve as systematic and calibrated instruments to screen strategic foreign investments. This institutional void suggests that the governance of foreign capital remains confined to an administrative facilitation model, falling short of positioning law as a sovereign tool for discerning and safeguarding long-term national interests within the architecture of economic policymaking.

This regulatory gap becomes increasingly salient amid escalating global economic tensions, where foreign investment is often deployed as a vehicle for exerting political and technological influence (Anthony, 2018). Consequently, Indonesia's current legal framework lacks the adaptive capacity to function as a safeguard for economic sovereignty in the face of such evolving geopolitical dynamics.

This article aims to articulate the urgency and policy direction of reforming foreign investment law in Indonesia by proposing a regulatory model for investment screening that balances economic openness with the protection of national interests. In doing so, the study seeks to offer a theoretical contribution to the development of investment law and serve as a policy input for lawmakers and regulatory authorities.

The approach employed in this article is normative juridical with a qualitative analytical method. It adopts a legal politics perspective by elaborating constitutional principles and regulatory frameworks governing investment, while also examining comparative international contexts to formulate a model of investment screening tailored to Indonesia's needs. The study relies on secondary data, comprising both primary and secondary legal materials, which are systematically examined using prescriptive-analytical techniques.

2. Materials and Methods

This study adopted a normative juridical method, complemented by a political-legal approach, in order to explore the regulatory and constitutional foundations of foreign investment in Indonesia and the absence of a coherent framework for investment screening. The normative juridical method was employed to analyse legal sources systematically, clarifying their doctrinal coherence and identifying regulatory gaps. By focusing on the interpretation of primary legislation and derivative regulations,

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.50-59

this approach allowed the research to assess the extent to which Indonesia's investment law aligns with constitutional principles and broader international trends in investment governance.

The political-legal approach was used to situate these normative findings within the broader context of state policy and global regulatory developments. This perspective highlights the ways in which law interacts with political imperatives, particularly the tension between economic liberalisation and the protection of strategic national interests. By integrating this dimension, the study was able to examine not only the textual provisions of the law but also the political rationalities underpinning its formulation and application.

The materials analysed included primary legal sources, most notably Law No. 25 of 2007 on Investment, its derivative regulations, and constitutional provisions such as Article 33 of the 1945 Constitution. These were considered alongside regulatory practices such as the risk-based licensing mechanism and the investment priority list. Secondary legal materials comprised academic commentaries, journal articles, and international reports addressing investment screening and foreign direct investment governance. In addition, comparative references were drawn from the legal frameworks of the United States, the European Union, and Australia, each of which provides distinctive models for investment screening that balance openness to capital inflows with the safeguarding of national sovereignty.

The analytical process was qualitative in nature and followed a prescriptive-analytical technique. First, doctrinal analysis was undertaken to map the content and limitations of Indonesia's current investment regulation. Second, comparative analysis was conducted to identify best practices and adaptable principles from other jurisdictions. Finally, evaluative interpretation was applied to articulate a potential legal design for Indonesia, taking into account both normative principles and pragmatic policy considerations. This threefold process ensured that the research combined textual legal scrutiny with a critical appraisal of broader socio-political implications.

Through this methodology, the study was able to demonstrate that Indonesia's current approach remains predominantly administrative and facilitative, lacking the substantive evaluative capacity to filter foreign investments on grounds of strategic risk. By embedding the analysis within constitutional principles and international developments, the research offered both a theoretical contribution to legal scholarship and a practical framework for reforming investment law in Indonesia.

3. Result and Discussion

3.1 Investment screening as a legal-political instrument to uphold economic sovereignty and social justice

In Indonesia's constitutional conception, the state is not merely an administrative entity managing capital flows, but a custodian of public welfare and a protector of strategic resources that are intrinsically linked to the collective life of its people. This role is rooted in the principle of social justice as enshrined in Article 33 of the 1945 Constitution, which explicitly mandates that sectors vital to the state and essential to the livelihood of the people must be controlled by the state (Haris, 2024).

In this context, the investment screening mechanism must not be perceived merely as a technical procedure or an investment facilitation tool, but rather as a manifestation of the state's commitment to economic sovereignty and the protection of public interests. The state bears the responsibility to ensure that every incoming investment delivers not only financial gains but also respects the foundational values of the Constitution and does not disrupt the established social equilibrium (Anggara, 2024).

Investment screening is fundamentally not merely a technocratic matter of assessing capital feasibility; it touches on the deeper dimension of how economic power is distributed within society. In the absence of an adequate selection mechanism for foreign investment, the space for capital accumulation tends to be monopolized by powerful transnational economic entities, thereby narrowing the access of local economic actors to manage strategic resources.

This structural disparity gradually fosters a new form of oligarchy that not only disrupts domestic economic equilibrium but also undermines the state's authority in charting its development trajectory. Within the framework of distributive justice, investment screening functions as a state intervention to ensure that the economic benefits of investment are not concentrated in the hands of a few dominant actors, but are instead equitably distributed to communities directly affected by economic activities (Anthony, 2018). Absent such mechanisms, investment risks becoming a vehicle of social exclusion, marginalizing the rights of vulnerable groups over land, the environment, and their livelihoods (Cotula, 2012).

From the perspective of virtue ethics, the state is not merely a regulator enforcing the law in a mechanistic fashion, but a moral agent expected to embody the virtues of practical wisdom (phronesis), justice (dikaiosyne), and courage (andreia) in shaping public policies that affect the common good. Foreign investment entering the state's jurisdiction cannot be viewed as a value-neutral entity; rather, it constitutes a decision imbued with ethical dimensions, as it directly impacts the lives of citizens and the long-term direction of national development.

Within this framework, the state bears an active duty to discern and select forms of investment that align with the nation's collective values, while rejecting those that threaten to erode economic dignity or deepen structural dependency. The morality of such policy choices demands more than mere compliance with legal procedures; it requires accountability to future generations. A state that prioritizes nominal economic growth while neglecting normative dimensions ultimately risks forfeiting the ethical foundations upon which its legitimacy rests (Adger et al., 2017)

The concept of investment screening gains its moral relevance when approached from a communitarian perspective, wherein economic policy is inseparable from the state's obligation to safeguard the integrity of local communities and ensure the continuity of deeply rooted social values. Unfiltered foreign investment poses the risk of disrupting social structures, triggering forced displacement, and widening inequalities in the distribution of access to and benefits from development initiatives.

The state cannot solely rely on macroeconomic calculations, as development that neglects social dimensions tends to erode public trust and undermines national solidarity—the very foundation of democratic stability. Investment screening, therefore, represents a tangible expression of intergenerational responsibility: ensuring that today's economic decisions do not compromise the right to life and the sustainability of future communities.

Within this framework, the state's courage to reject forms of investment that threaten environmental sustainability, local wisdom, or the balance of social ecosystems constitutes a manifestation of the principle of collective protection grounded in relational justice (Trubek et al., 2013)

Indonesia's constitutional commitment, as articulated in Article 33 of the 1945 Constitution, positions the state not merely as a market regulator but as the mandated guardian of national prosperity, ensuring that strategic sectors are managed to the greatest benefit of the people. In this context, the investment screening mechanism becomes an inherent component of the state's responsibility to exercise oversight over incoming foreign capital that may influence the trajectory of national development.

In the absence of a structured and constitutionally grounded selection system, the state forfeits a vital mechanism to assess whether incoming investments align with the principles of economic sovereignty and social justice. The lack of substantive regulation for screening foreign investments not only creates a legal vacuum but also opens the

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.50-59

door to deviations from the public interest first principle, which ought to be the primary orientation of national economic policy (Guzman, 1995). Furthermore, the gap between national economic law and constitutional commitments reflects an imbalance between liberalization and the protection of public interest, potentially weakening the state's position within the global legal order (Schneiderman, 2016)

As the currents of economic globalization continue to expand cross-border capital flows, developing countries like Indonesia face a structural dilemma: whether to open themselves to foreign investment to stimulate growth, or to safeguard sovereignty over strategic sectors that shape the nation's developmental trajectory. This tension cannot be reduced to a binary opposition between protectionism and liberalism; rather, it constitutes a reflective policy space that demands the state's courage to define the boundaries of sovereignty in a proportional and context-sensitive manner.

In an interdependent global economy, openness is indeed inevitable; however, without a substantive investment screening mechanism, the state remains vulnerable to losing its capacity to filter investments that may have long-term implications for national stability. This tension is reflected in the efforts of various countries to construct legal frameworks that enable a balanced evaluation of foreign investments—respecting the principle of non-discrimination while safeguarding national security and economic integrity (Rana Saad Shakar et al., 2025). Indonesia, in this regard, continues to face significant challenges in formulating legal instruments capable of bridging market demands with the principle of sovereignty, as overly administrative approaches often overlook the strategic dynamics inherent in foreign investment (Diamond & Liddle, 2011)

The investment screening mechanism can no longer be framed merely as an administrative tool for managing foreign capital flows; rather, it must be understood as a constitutional and moral articulation of the state's identity—asserting the boundary between openness and sovereignty. Amid a global landscape increasingly shaped by economic integration, the state's capacity to establish substantive criteria for investment is not a form of resistance to modernity, but an expression of courage in shaping a national development future grounded in social justice and collective dignity.

Within the logic of public law, the state is not merely required to respond to global realities, but also to project its foundational constitutional values into a regulatory structure that is both dynamic and responsive to risk. Thus, investment screening is, at its core, an existential affirmation of the state as a legal subject with a vision—rather than merely a passive executor of market-driven policy. This moment presents an opportunity for Indonesia not only to reassess its legal architecture but also to formulate a screening system that is relevant, adaptive, and contextually grounded—an agenda that will be further explored in the following subsection on the formulation and legal design of foreign investment screening.

3.2 Constructing a legal formulation for foreign investment screening in Indonesia

The legal formulation of foreign investment screening in Indonesia should not be perceived merely as a reactive measure to the dynamics of global capital flows, but rather as an effort to construct a normative system capable of wisely governing the intersection between economic interests and public sovereignty. To date, the legal approach has remained predominantly procedural-administrative in nature and has not substantially assessed the strategic risks embedded in incoming investments.

The reliance on risk-based licensing mechanisms—framed within the logic of bureaucratic efficiency—has, in practice, failed to provide adequate space for evaluating the potential economic, social, and political impacts of foreign investment in vital sectors. When regulations do not distinguish between speculative and productive investments, the state forfeits its ability to align investment flows with the trajectory of sustainable national development ("Balancing Risks," 2023). In this context, the legal framework cannot remain confined to merely prescribing entry procedures; it must evolve into a selective instrument capable of applying long-term risk-based considerations, including the authority to reject or defer investments that contradict constitutional values or threaten national interests (Trebilcock & Howse, 1998).

Indonesia's investment legal politics is situated within a tension between the aspiration to attract foreign capital through economic liberalization and the imperative to retain control over strategic sectors with long-term implications for national sovereignty. This friction arises from the fact that legislative direction is often driven by the pragmatic logic of short-term development, whereas the protection of strategic interests has yet to be adequately embedded in the prevailing normative framework.

As a result, regulatory development in Indonesia tends to be reactive and sectoral, lacking an institutional design capable of integrating a unified vision of sustainable national development. In policy practice, the implementation of the OSS system and the formulation of the investment priority list have indeed accelerated licensing procedures. However, these mechanisms fall short of addressing the evaluative dimensions of political, environmental, or social risks inherent in certain types of foreign investments (Chan & Meunier, 2022).

This creates a gap in the integration between technocratic instruments and the foundational values of the state that should serve as the basis for policymaking. A legal politics framework that fails to articulate a balance between liberalization and substantive control risks producing cosmetic regulations—superficial in nature and lacking genuine protection for the nation's vital assets.

One of the most frequently cited models in the formulation of national investment screening policies is the mechanism implemented by the United States through the Committee on Foreign Investment in the United States (CFIUS). This mechanism illustrates that investment screening is not merely a matter of administrative procedure, but rather a form of strategic state prudence in responding to the influx of foreign capital that may affect national security and control over critical technologies.

What distinguishes the CFIUS approach from other systems is its integration of intelligence analysis into the evaluation process, as well as the legal flexibility it affords the government to reject or unwind transactions based on threat parameters to critical infrastructure or domestic supply chains (Da Silva, 2025). This approach reflects a nuanced understanding that in the age of geoeconomics, foreign investment is no longer a politically neutral activity—it can function as a means of strategic penetration by other states into sensitive areas of national jurisdiction.

CFIUS does not operate merely as a technocratic body, but rather as a deliberative interagency forum that brings together elements of national security, defense, and finance. The incorporation of a "threat-based justification" principle in CFIUS policy frames investment screening not as a violation of economic openness, but as an exercise of sovereignty oriented toward risk prevention (Tinti, 2025). From this practice, Indonesia can learn that strengthening an investment screening system need not conflict with liberalization commitments, as long as it is grounded in legitimate strategic reasoning and firmly anchored in legal norms.

The European experience in developing an investment screening system under Regulation (EU) 2019/452 demonstrates that cross-national coordination need not be executed solely through a central authority, but can instead be structured via a dialogue mechanism among member states based on minimum standards for safeguarding national security and public order.

This framework underscores that openness to foreign investment must be balanced with the capacity to collectively evaluate risks inherent in cross-border transactions, particularly in the technology, energy, and digital infrastructure sectors. Unlike the centralized model exemplified by the United States' CFIUS, the European Union's approach places greater emphasis on the principles of subsidiarity and proportionality, allowing member states to retain policy autonomy insofar as it aligns

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.50-59

with jointly agreed minimum standards (Wernicke, 2020).

This model demonstrates that investment screening can be established without sacrificing economic integration, as long as there is a legal architecture that ensures transparent participation among actors and an information-sharing framework that is institutionally accountable (Sattorova et al., 2020).For Indonesia, the key lesson from this practice is the importance of developing a screening system that is not only effective in selecting investments, but also capable of cultivating a culture of collective oversight involving multiple stakeholders, including sectoral regulatory bodies and civil society.

Australia's approach to foreign investment screening through the Foreign Investment Review Board (FIRB) offers a perspective that emphasizes conceptual flexibility in defining national interest. Unlike models that rely entirely on codified rules and rigid indicators, the FIRB system provides interpretive space for the government to evaluate investments contextually, taking into account dimensions such as economic security, impact on domestic employment, environmental sustainability, and the involvement of foreign governments in the proposed transactions.

This model enables the state to remain adaptive to global dynamics without losing control over its strategic resources (Dupont & Reckmeyer, 2012).One of the core strengths of this system lies in its capacity to articulate economic sovereignty through administrative practices that still uphold the principles of transparency and public accountability. Investment evaluations are not carried out by a single technical agency but instead occur through a consultative structure involving relevant ministries, intelligence agencies, and fiscal policy actors. The final decision rests with the Treasurer as the executive representative, but it is reached through a multi-layered deliberative process. In the context of Indonesia, the FIRB model is worth examining because it offers a synthesis between openness and protection, and it allows the state to define national interest through parameters that are not static but evolve in accordance with societal needs and geopolitical challenges (McCalman et al., 2024)

The absence of a risk-based investment screening mechanism and substantial parameters within Indonesia's legal framework creates a normative gap that severely undermines the state's capacity to proactively safeguard its economic sovereignty. Existing regulations, such as Law Number 25 of 2007 on Investment and its derivative provisions, remain largely entrenched in an administrative approach focused on ease of doing business. This orientation neglects the strategic dimension necessary for the state to conduct substantive evaluations of the motives and long-term consequences of foreign investment.

The absence of clear definitions for key concepts such as "strategic sectors," "national interest," or even "threats to economic security" renders Indonesia's investment selection process overly formalistic, failing to account for the multidimensional nature of contemporary global investment (Crystal, 2009). Regulatory fragmentation across sectors such as energy, technology, and natural resources further exacerbates the issue, as each domain operates under its own supervisory logic, lacking an integrated regulatory coordination mechanism.

As a result, the state lacks sufficiently robust legal instruments to reject investments that, in practice, harm local communities or create structural dependencies on external actors. Moreover, the absence of a comprehensive risk assessment mechanism hampers policymakers' ability to anticipate the potential for international arbitration when the state seeks to revoke permits or intervene on the grounds of protecting strategic interests (Adarkwah & Benito, 2023).

Building an effective investment screening system requires clarity on the substantive principles underpinning decision-making. Within the context of international economic law, the principle of nondiscrimination is often upheld to prevent differential treatment of foreign investors; however, within national legal frameworks, this principle must be balanced with the need to protect strategic sectors that have direct implications for national security and public welfare.

The principle of nondiscrimination should not be interpreted as an obligation to always accept investments, but rather as a commitment to approve or reject them based on objective, transparent, and legally accountable reasons (Mariotti, 2025). Furthermore, the principle of transparency must be upheld through the mandatory publication of evaluation criteria, public participation in policy assessments, and the accountability of screening institutions to prevent the mechanism from becoming a closed political tool.

Equally important, the national security review approach must be incorporated as part of a substantive legal framework, granting the state the authority to assess potential threats not only from military dimensions but also from digital economy, food security, and strategic technological infrastructure (Heidari, 2022). Finally, the public interest clause should be explicitly articulated to ensure that every screening decision consistently references constitutional values prioritizing the welfare of the broader population. By coherently integrating these four principles, the state can design an investment screening system that is not merely reactive to global pressures but proactively shapes a sovereign, just, and adaptive legal ecosystem.

The legal formulation of investment screening should not be positioned as an impediment to capital flows, but rather as an affirmative mechanism that ensures economic openness does not come at the expense of national sovereignty and social justice.

Amid the tension between liberalization and protection, risk-based screening offers a middle ground that enables the state to perform a reflective function regarding the direction of national development without disregarding commitments to international legal principles. A screening system designed with substantive indicators, cross-sectoral institutional involvement, and multidimensional security parameters provides the state with the legitimacy and capacity to exercise selective discretion grounded in solid legal foundations.

In a broader horizon, this also reflects a shift from a passive approach to investment toward a more active, responsive, and visionary regulatory model. Thus, investment screening is not merely an administrative control tool but a reflection of the state's courage to renegotiate its strategic position amid the uncertainties of the global landscape. This perspective lays the foundation for the subsequent discussion, which will highlight the challenges of implementation and institutional design of investment screening within Indonesia's national legal framework.

4. Conclusions

Strengthening the legal framework for foreign investment screening in Indonesia requires a shift from mere procedural facilitation to a normative formulation that integrates the principles of risk, sovereignty, and sustainability. In this context, the screening system cannot be designed as a passive administrative instrument but must become part of the state's legal strategy to safeguard the direction of national development, protect strategic sectors, and respond to evolving geopolitical dynamics. Lessons drawn from jurisdictions such as the United States (CFIUS), the European Union, and Australia demonstrate that successful screening lies not in a uniform model but in the clarity of principles, the accountable distribution of authority, and the flexibility to interpret national interests. Indonesia continues to face normative fragmentation and lacks legal parameters that enable substantive evaluation of the long-term impacts of foreign investment. Therefore, the urgent need is not merely to establish new norms but to transform the legal perspective itself—as a space for negotiating values between economic openness and the courage to determine the nation's future sovereignly.

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DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.60-67

LEGAL PROTECTION FOR CONSUMER BUYERS OF FLATS WITH A SALE AND PURCHASE AGREEMENT MADE UNDER HAND THROUGH THE PRE PROJECT SELLING SYSTEM

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Abstract

This research examines the legal protection for consumers who buy apartment units through pre-project selling schemes using underhand Sales and Purchase Agreement (PPJB). Although considered efficient by the developer, this practice puts consumers in a vulnerable position due to the absence of formal legal protection and without the involvement of a notary. This research uses a normative juridical approach to examine the lack of explicit sanctions in Article 43 of Law No. 20/2011 on Flats, which is often used by developers to avoid obligations. The findings show an imbalance in the legal power structure between consumers and developers, exacerbated by weak supervision and legal loopholes. PPJB, which should be made before a notary, is often used as an informal contract that does not provide effective protection for consumers. This research concludes that urgent regulatory reform is needed to require notarization of PPJBs and clarify administrative and civil sanctions for violations. The novelty of this research lies in the focus on the imbalance of legal power in PPS transactions and the proposal of prescriptive norms that ensure contractual justice for consumers.

Keywords: legal protection; PPJB; pre project selling; consumer rights; housing law.

1. Introduction

iThe property marketing system with the pre project selling (PPS) model creates both opportunities and legal vulnerabilities in transactions between developers and consumers (Hasibuan et al., 2025, p. 742). On the one hand, this mechanism is an economic solution for business actors to raise initial funds for the construction of flats; on the other hand, consumers are often trapped in uncertainty because they are buying units that are not yet physically tangible. When developers offer units through a sale and purchase binding agreement (PPJB) made under the hand, not through a notary, consumers lose formal protection instruments (Agustining et al., 2022, p. 23) . In fact, the binding of sale and purchase on apartment units should be subject to the provisions in Article 43 of Law Number 20 Year 2011 concerning Flat Houses, including minimum buildability requirements and land legality (Pongantung, 2018, p. 183) . The practice of making PPJB without a notary opens a gap for latent losses, especially due to the imbalance of bargaining position between developers and consumers, as well as the weakness of legal evidence from underhand deeds.

Previous research has raised the dimensions of legal protection in property sale and purchase transactions through PPJB. Research by Rahmat et al. (2022) highlights the losses arising from the practice of buying and selling apartments based on PPS which is not stated in a notarial deed, but the focus is still limited to the aspect of default without dissecting in depth the normative implications of the weak regulation of legal sanctions (Rahmat et al., 2022, p. 405) . Nola's research (2017) has also noted the problem of PPS in the context of apartment construction, but has not answered the void of sanction norms against developers who bind the sale and purchase under the hand (Nola, 2017, p. 2) . Therefore, this research is present to close the gap in the absence of a comprehensive analysis of the incompleteness of sanction norms and how this condition creates a legal vacuum that weakens legal protection for consumers. This is the novelty position of this research, namely the analysis of legal power relations (asymmetry of legal bargaining power) and the need for the formation of new norms that are responsive to the reality of PPS practices.

The urgency of this research is strengthened by the massive practice of property marketing with PPS in the last decade which is not always accompanied by compliance with the prudential principle. The lack of clarity of sanctions for property business actors who carry out the binding of sale and purchase under the hand creates a legal precedent that can jeopardize the legal certainty of consumers. In many cases, consumers suffer losses both financially and legally due to the promised flats not being built, or not meeting the agreed specifications. This condition is contrary to the constitutional right to guarantee fair, equal, and proportional legal protection, as stipulated in Article 28D of the 1945 Constitution, as well as the principle of consumer protection in Law Number 8 Year 1999 on Consumer Protection (UUPK). This shows the importance of rearranging norms to overcome the normative vacuum in the context of flat construction.

This research will focus on two interrelated legal issues. First, what is the form of developer liability in the pre-project selling marketing scheme for consumers who buy flats using PPJB under the hand? Second, what form of legal protection should be given to consumers in these conditions, given the unequal bargaining position and potential losses due to the absence of notarial legalization? These issues become the operational definition of the practice of buying and selling flats through PPS with inauthentic PPJB and form the framework for analyzing the substance of consumer protection in civil law and consumer protection law. The purpose of this research is to identify and analyze the legal liability of developers in the context of pre-project selling conducted with an unauthentic PPJB, as well as to evaluate and formulate an adequate form of legal protection for consumers in such transactions.

This research uses a normative juridical approach, which is a legal research method that focuses on positive legal norms, legal principles, and legal doctrines that are relevant to answering legal issues that are the object of study (Rizkia & Fardiansyah, 2023, p. 120) . Normative juridical research is used to analyze the imbalance of legal protection against consumers in the pre-project selling system as outlined in the PPJB under the hand, especially in the context of the vacuum of regulatory sanctions against developers who ignore the provisions of Article 43 paragraph (2) of Law Number 20 of 2011 concerning Flat Houses. This approach is appropriate because the main issues in this research lie in the validity of the agreement, legal certainty, and protection of consumer rights that have not been explicitly covered in the applicable positive norms.

In its implementation, this research uses two types of approaches: statute approach

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.60-67

and analytical approach (Djulaeka & Devi Rahayu, 2020, p. 33) . The statutory approach is used to examine the provisions in laws and regulations such as the Civil Code, the Flat Law, and the Consumer Protection Law, in order to examine the consistency and completeness of norms in regulating PPJB made outside the notary. Meanwhile, an analytical approach is needed to deeply interpret how these provisions are applied in practice and their impact on the position of consumers in concept-based property transactions. Through this analysis, the researcher not only describes the norms, but also offers a normative construction of the need for legal reform.

The type of data in this research consists of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant legislation and court decisions. Secondary legal materials include legal literature, scientific journals, and expert opinions that provide explanations of norms. Tertiary legal materials in the form of legal dictionaries and encyclopedias are used to clarify basic concepts and technical terms (Marzuki, 2017, p. 181) .

Sources of legal materials were obtained through library research and documentation studies. Library studies were conducted to collect primary and secondary legal materials through libraries, academic digital repositories, and international law journal databases. The documentation study includes the collection of agreements, notarial minutes, and contractual documents that support the comparative analysis between authentic and non-authentic PPJB.

The analysis of legal materials in this research was conducted in a descriptive-qualitative manner, with an emphasis on the interrelationship between legal norms and principles. Researchers describe and interpret existing norms, then evaluate the extent to which these norms are able to answer the needs of legal protection for consumers. This technique is suitable for formulating legal prescriptions that are not only descriptive, but also normative in answering the inequality of consumers' bargaining position in the practice of pre-project selling.

2. Result and Discussion

Consumers in the pre project selling (PPS) system are in a very vulnerable position legally because they have to make payments for residential units that are not physically established (Maria et al., 2022, p. 202) . In practice, many developers offer apartment projects with the lure of promotional prices through the PPS scheme, but the sale and purchase binding agreement (PPJB) presented is not made authentically before a notary, but only in the form of an underhand document. When the PPJB is made without adequate procedural protection, consumers lose the legal guarantees that should be attached to property transactions, especially regarding the certainty of development, land legality, and clarity of unit handover time (Wilson Pompana, 2025) . This situation creates unequal power relations between business actors and consumers, where developers are in a dominant position, while consumers are positioned as passive recipients of risk.

In fact, one of the basic principles in contract law is the equality between the parties (Rutgers & Sauter, 2021, p. 334) . However, this principle is difficult to realize if there is no strict regulatory intervention to protect the weak party. In the context of an underhand PPJB, the developer has the discretion to design unilateral clauses that are often favorable to him, such as the absence of penalties for construction delays or risk delegation clauses to consumers (Soemarwi & Darmawan, 2023, p. 1912) . This shows that one-sided contract structures in property transactions are a form of legal inequality that leads to consumer exploitation.

Information asymmetry and consumer ignorance of technical regulations are among the factors reinforcing this inequality. Many consumers do not understand that a valid PPJB should only be made after the fulfillment of minimum development requirements, land legality, and development permits as stipulated in Article 43 of Law

No. 20 of 2011 concerning Flat Houses (Marbun et al., 2023, p. 67) . In practice, this ignorance is utilized by developers to shift responsibilities through non-authentic agreements.

The absence of a preventive monitoring mechanism for the form and content of underhand PPJBs makes matters worse. This kind of agreement does not go through a formal legal verification process by a notary, who should function as an independent third party to bridge the gap in legal understanding between the parties. Therefore, strengthening the position of consumers in PPS is not only a matter of contractual protection, but also part of revamping the legal structure to be more in favor of substantive justice. By prioritizing the precautionary principle and equal participation in the agreement, the legal system can prevent consumers from abusing their dominant position by developers.

In the practice of marketing property with a pre-project selling system, many developers choose to use a Sale and Purchase Agreement (PPJB) made under the hand as an initial transaction instrument (Suryanto et al., 2022, p. 39) . The arguments often put forward are cost efficiency and administrative flexibility. Notarial deed making is considered an irrelevant additional burden when physical development has not yet begun (Apituley, 2024, p. 2) . In fact, the existence of an authentic deed should be positioned as a preventive protection that is able to guarantee consumer rights in the future, especially if disputes or defaults arise from the developer. When the PPJB is made informally, the aspects of legal certainty and protection become very weak (Anggara, 2024).

The main weakness of an underhand PPJB lies in its evidentiary power in the Indonesian civil law system. According to Article 1874 of the Civil Code, a deed under the hand only has full evidentiary power if it is not denied by the party who signed it. This means that if one of the parties denies the contents or validity of the document, then the consumer must prove the validity of the agreement through an additional evidentiary process in court. This condition is certainly detrimental to consumers who are in a weak legal position from the start. PPJBs made under the hand tend not to be able to provide legal protection guarantees equivalent to authentic deeds in property transactions (Sartono, 2010, p. 30) .

In fact, Article 43 paragraphs (1) and (2) of Law Number 20 of 2011 concerning Flat Houses explicitly requires that the PPJB can be carried out before the construction is completed, but only if it has met several basic requirements such as a minimum of 20% buildability, certainty of land rights, and complete licensing (Therik & Gultom, 2023, p. 409) . This provision is intended as a safety net so that consumers are not deceived by fictitious projects. However, the phrase "can be done" is often loosely interpreted by developers to avoid the formal obligation to make a notarial deed (Rahmat et al., 2022, p. 381) . This creates a legal loophole that obscures the obligations of business actors, while structurally reducing the bargaining position of consumers.

Ironically, the efficiency claimed by developers is actually a source of legal uncertainty for consumers. In this context, contractual efficiency cannot be placed higher than the principles of prudence and consumer protection. Legal protection in property transactions must prioritize the substance of justice and legal certainty rather than just flexible procedural forms (Rumadanu & Djajaputra, 2025, p. 727). Therefore, regulatory intervention is needed to limit the use of underhand PPJB in pre-project selling schemes, as well as to require the involvement of notaries to ensure the legal security of consumers in transactions that are promises of the future.

Lack of Sanction Norms and the Need for Regulatory Reform: One of the fundamental problems in the practice of pre project selling (PPS) that uses an underhand PPJB is the absence of strict legal sanctions against violations of Article 43 of Law Number 20 Year 2011 on Flat Houses. The article uses the phrase "can be done before a notary", which in practice is often loosely interpreted as an option, not an obligation (Central Government of Indonesia, 2011) . This indecisiveness is exploited by some developers to

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.60-67

avoid the notarial process, so that transactions are carried out without the involvement of a third party that guarantees legal protection. As a result, violations of the provisions of the conditions for the construction of flats before making PPJB do not have clear legal consequences (Dewi, 2024).

When a legal norm does not explicitly stipulate sanctions, the effectiveness of the norm becomes weak. This gives rise to a condition referred to as normative vacuum, namely when regulations exist but are not accompanied by an enforcement mechanism. The absence of sanction norms in the legal system will cause business actors to have no incentive to comply, and consumers have no tools to effectively claim compensation in the administrative or civil realms. Without strict legal supervision and enforcement mechanisms, contractual justice is difficult to realize in developer-consumer relations.

This vacuum also impacts on the increasingly marginalized role of notaries. Notaries are supposed to be the guardians of legal validity in PPJB transactions by ensuring the fulfillment of all administrative requirements and project legality before the deed is made (Azka & Hermono, 2022, p. 158) . However, in a legal system that allows loopholes for violations without sanctions, developers tend to ignore this formal procedure. In most cases of flat disputes, the disputed PPJB is an underhand PPJB that does not meet the substantive requirements of development according to Article 43 paragraph (2) of the Flat Law (Central Government of Indonesia, 2011) .

Therefore, regulatory reform is an urgent need. There needs to be changes to the wording of Article 43 by clarifying that the making of the PPJB must be done before a notary after the fulfillment of all formal requirements. In addition, the addition of administrative sanctions such as revocation of development permits, administrative fines, or cancellation of projects through civil mechanisms needs to be part of the legal protection system for consumers. Supervisory authority can be extended not only to local governments or the Ministry of PUPR, but also involve the Financial Services Authority (OJK) and the National Consumer Protection Agency (BPKN), so that there is synergy between supervision of physical development and financial aspects of transactions .

Legal protection for consumers in the pre-project selling (PPS) system does not rely solely on the principle of freedom of contract. In reality, the relationship between developers and consumers does not run in an equal position, both in terms of legal knowledge, access to information, and bargaining power. When the PPJB is made under the hand without the intervention of a notary or formal verification mechanism, consumers tend to passively accept the contents of the contract without understanding its legal implications. Therefore, a laissez-faire approach to property transactions increases the potential for injustice. The state cannot allow business-only contracts to develop without a fair normative framework.

In the logic of modern rule of law, the regulation of contracts must be juxtaposed with the principles of substantive justice, not just formal validity. Contract law in apartment transactions requires a consumer protection dimension in anticipation of exploitative practices by business actors (Illona & Anggraini, 2018, p. 1229) . Therefore, the legal prescription of PPJB in the PPS system should not only be administrative, but also reflect the social responsibility of property business actors, as well as state intervention in ensuring true contractual justice.

This research emphasizes the importance of the PPJB's position as a legal instrument that is not only formally valid, but also substantively fair. Such fairness can only be achieved if the PPJB is made before a notary whose role is not only as a recorder, but also as a party who provides legal education to the parties. The presence of a notary can minimize disputes because the contracts made have clarity of objects, subjects, and fair obligations. In this context, contractual justice is not only determined by the agreement, but also by the legitimacy of the process that oversees it.

Thus, a reformulation of the norms in the Flat Law is needed that requires the making of PPJB to be done authentically, and removes the gap of multiple interpretations of the phrase "may" in Article 43. In addition, the preparation of consumer protection policies must integrate cross-institutional supervision, including OJK, BPKN, and the Ministry of PUPR. This effort is not only to strengthen the legal position of consumers, but also to ensure that people's need for housing is no longer overshadowed by legal uncertainty. Social justice in the housing sector can only be achieved if legal protection is proactive, not merely reactive.

Conclusions

This research shows that the pre-project selling (PPS) system implemented through an underhand Sales and Purchase Agreement (PPJB) creates an imbalance in the legal position between developers and consumers. When the PPJB is not made before a notary and does not fulfill the requirements as stipulated in Article 43 of Law Number 20 Year 2011 on Flats, then consumers lose the legal protection that should be inherent in property transactions. This imbalance is further exacerbated by the weak bargaining position of consumers who do not have the same legal capacity and information as business actors. The main finding of this research reveals a normative gap in the form of the absence of strict sanctions against violations of non-authentic PPJB provisions. The phrase "can be done before a notary" opens up room for multiple interpretations that are utilized by developers to avoid formal legal mechanisms. As a result, not only is there legal uncertainty for consumers, but it also has the potential to weaken the role of notaries as guardians of the validity of civil contracts in apartment transactions. This shows the urgent need to reformulate non-compelling legal norms into imperative norms. The novelty of this research lies in the analysis of the asymmetry of legal bargaining power in PPS transactions and the importance of legal prescriptions that are not only formalistic, but also substantive justice. This research expands the scope of the discussion by highlighting how the absence of sanctions in Article 43 of the Flat Law creates a legal vacuum that has a systemic impact on consumer protection. This novelty fills a void in the previous legal literature that tends to be limited to the issue of default or unilateral clauses in the PPJB. Normatively and practically, the urgency of legal reform is very real. The state must be present not only as a regulator, but also as a protector of citizens' interests in accessing decent, safe, and legally protected housing. Reforming the provisions of the PPJB, especially in affirming the obligation to notarize and providing administrative and civil sanctions for violations, is the first step towards substantive contractual justice. This research recommends the development of new norms that are prescriptive and multi-sectoral, involving supervisory institutions such as OJK, BPKN, and the Ministry of PUPR within the framework of a comprehensive legal protection system for property consumers in Indonesia.

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DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.68-76

AI AND COPYRIGHT: FROM A DOCTRINAL CRISIS TO A HYBRID MODEL OF COLLECTIVE LICENSING

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Abstract

The explosive development of generative artificial intelligence (hereinafter – AI) has triggered a fundamental crisis within intellectual property law. A central conflict has emerged between artificial intelligence developers, who require access to vast datasets for model training, and rights holders, who seek to protect their works and receive fair compensation for their use. The purpose of this article is to demonstrate the inadequacy of existing legal doctrines in addressing the use of copyrighted data for training generative AI and to substantiate the need for a transition to a hybrid model of compulsory collective licensing as the most rational alternative. The research is based on a comprehensive application of general scientific and special legal methods. The formal-legal method was used to analyze the norms of United States law and European Union (hereinafter – EU) law. The comparative-legal method allowed for the identification of common features and key differences between the American and European approaches and an assessment of their relative effectiveness. Systemic analysis was applied to view copyright as an integral system and to identify the fundamental challenges posed by artificial intelligence to its core elements (authorship, originality, economic incentives). The synthesis method enabled the generalization of the findings and the formulation of the author's hypothesis. The article proves that neither the flexible but unpredictable fair use doctrine nor the formalized but ineffective Text and Data Mining (hereinafter – TDM) exception can resolve the issue. As a solution, the architecture of a hybrid model of compulsory collective licensing is proposed. This research affirms that a continued reliance on legacy legal doctrines creates a landscape of perpetual instability. The case-by-case litigation engendered by the fair use doctrine proves to be an inefficient and unpredictable means of governance, while the EU's TDM opt-out mechanism has been shown to be functionally incapable of providing meaningful compensation to creators.

Keywords: artificial intelligence; collective licensing; copyright; fair use; text and data mining.

1. Introduction

We are witnessing a “Cambrian explosion” in the field of AI. Generative models such as OpenAI's GPT-4, Midjourney, and Stable Diffusion demonstrate a remarkable ability to create complex texts, photorealistic images, music, and software code, previously considered the exclusive domain of human intellect. This technological leap, which promises unprecedented opportunities for science, business, and art, has simultaneously precipitated a profound crisis in one of the most conservative areas of law-copyright (Eichner, 2023). The system, built over centuries to protect and incentivize human creativity, has proven unprepared for the emergence of a non-human “creator” capable of learning from the entirety of human knowledge and generating derivative content on an industrial scale.

At the heart of the conflict lies a fundamental dilemma. Training modern generative models requires enormous amounts of data (datasets) that inevitably contain billions of copyrighted texts and images scraped from the Internet. From the perspective of AI developers, this process is a necessary condition for innovation and falls under the concept of "non-expressive use", as the model learns statistical patterns rather than copying specific works (Sag, 2024). On the other hand, writers, artists, photographers, and publishers see this as unauthorized mass copying that devalues their work and creates a direct competitor trained on their own intellectual property. This tension has already erupted into a series of high-profile lawsuits that have become markers of the era. Lawsuits from Getty Images, a group of artists led by Sarah Andersen, the Authors Guild, and especially the lawsuit by The New York Times against OpenAI and Microsoft, have moved theoretical discussions into the realm of multi-billion dollar legal battles (United States District Court for the Southern District of New York, 2024a, 2024b).

The issue of the interaction between AI and copyright is being actively researched by leading scholars worldwide. Recent publications analyze various aspects of this complex relationship. For instance, Abbott (2020) puts forward the radical idea of the need to grant AI certain rights, including copyright, to stimulate innovation. Samuelson (2023), one of the most authoritative researchers in the field of IP law, analyzes the applicability of the fair use doctrine, noting its flexibility but also its unpredictability. Researchers in the EU, as seen in a report for the European Parliament, are focused on analyzing the effectiveness of the Directive on Copyright in the Digital Single Market (hereinafter – CDSM), and are increasingly concluding that it is limited and that licensing solutions are needed (Lucchi, 2025). Gervais (2020) examines the problem through the prism of the fundamental blurring of the line between idea and expression, which is a cornerstone of copyright law.

Despite the significant number of publications, most of them focus either on analyzing specific aspects of the problem (authorship, fair use) or on criticizing existing approaches. A key part of the problem remains unresolved: the development of a comprehensive, practically feasible, and fair model that would not just state the crisis but would offer a systemic way out of it. This article is dedicated to this unresolved part, proposing a specific architecture for a hybrid model of collective licensing that synthesizes the best elements of global experience and adapts them to the unique challenges posed by generative AI. Thus, the objective of the research is not only to critique existing doctrines but also to substantiate and provide a detailed description of a viable alternative capable of creating legal certainty and ensuring the sustainable development of both the technological and creative spheres.

After outlining the rise of generative AI and the legal uncertainties it introduces, the scholarly conversation has fractured into several key debates. The scientific discourse in recent years surrounding AI and copyright has been characterized by high intensity and polarization of opinions. An analysis of publications in leading law journals indexed in the Scopus and Web of Science databases allows us to identify several key areas of research. The first area, represented by authors such as Sag (2024), focuses on attempting to adapt the fair use doctrine to the process of AI training. The argument is based on the idea that using data for training is "transformative" and "non-expressive", as the model does not store or reproduce works but only learns statistical patterns.

However, as opponents note, this logic collapses when the generated content begins to compete directly with the original works on the market, which is a central issue in the NYT v. OpenAI case. The second area, more characteristic of European legal thought, analyzes the effectiveness of the TDM exception (De Pauw & Heremans, 2024; Lucchi, 2025). Researchers conclude that the right to opt-out, granted to rights holders by Article 4 of the CDSM Directive, is weak and technically difficult to implement, making the exception practically ineffective for protecting rights. The third, more philosophical direction, represented by the works of Abbott (2020) and others, questions the very

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.68-76

anthropocentrism of copyright law. The previously unresolved part of the general problem, to which this article is dedicated, is the absence in the scientific discourse of a detailed and substantiated model that would go beyond the dichotomy of “allow everything” (through broad interpretation of exceptions) or “prohibit everything” (through strict protection). Most studies either criticize the current state of affairs or propose piecemeal changes. This work, in contrast, proposes to consider the problem not as a matter of exceptions, but as a matter of mass commercial use that requires a systemic licensing solution, and describes the architecture of such a model in detail.

The relevance of this research lies in the fact that legal uncertainty is hampering the development of both sides. AI developers operate under the Damoclean sword of potential court injunctions and massive fines, which stifles investment. Creators, in turn, lack effective mechanisms to control the use of their works and receive fair compensation, undermining the economic foundations of the creative industries.

The purpose of this article is to prove that attempts to adapt existing doctrines, particularly the American fair use doctrine and the European exception for TDM, are futile. These tools, designed for entirely different realities, are incapable of providing an adequate balance of interests. Instead, the article argues for the necessity of a paradigm shift a transition to a hybrid model of compulsory collective licensing as the only rational way out of the impasse.

2. Materials and Methods

This study is a theoretical legal investigation based on the analysis of doctrines, legislation, and judicial practice. Given the nature of the objectives, a system of general scientific and special legal methods was used, which ensured the comprehensiveness and objectivity of the conclusions. The foundation of the methodology is the formal-legal method. With its help, a detailed analysis of the legal norms governing copyright was conducted, particularly the provisions of the U.S. Copyright Act, especially Section 107 on fair use, and the Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market, specifically its Articles 3 and 4 concerning the exception for TDM. The analysis was aimed at identifying the content, structure, and limits of the application of these norms in the context of generative AI.

A key role in the research was played by the comparative-legal method. By comparing the American approach, based on a flexible judicial doctrine, and the European approach, based on codified legislative exceptions, their strengths and weaknesses were identified. This method allowed not only to state the differences but also to assess the potential effectiveness of each approach in achieving a balance of interests between AI developers and rights holders, which became the basis for the conclusion about the inadequacy of both systems.

Systemic analysis was applied to view copyright not as a set of disparate norms, but as an integral system that performs certain functions, primarily stimulating creativity by granting temporary monopoly rights. It was analyzed how the emergence of AI affects the key elements of this system: the concept of “author”, the criterion of “originality”, the “idea/expression” dichotomy, and the economic balance. This allowed us to go beyond a purely technical analysis of norms and understand the deep, fundamental nature of the crisis.

The final stage was the synthesis method, which consisted in generalizing the results obtained using the previous methods. Based on the identified shortcomings of existing legal models and taking into account the successful experience of collective rights management mechanisms in other areas (e.g., the music industry), the author's hypothesis – a hybrid model of compulsory collective licensing – was formulated and substantiated.

The materials (research base) for the work were: texts of legal acts of the USA and the EU; materials of current court cases, in particular, statements of claim and decisions of first-instance courts in the cases New York Times Company v. Microsoft Corporation, et al., Andersen v. Stability AI Ltd., Authors Guild v. OpenAI, Inc.; as well as scientific publications (articles, monographs, reports) by leading world researchers in the field of intellectual property law, published mainly in peer-reviewed journals indexed in international scientometric databases Scopus and Web of Science. An empirical part in the form of sociological surveys or experiments was not envisaged in this study.

3. Results and Discussion

3.1. The failure of fair use and the TDM exception

The main result of the research is the substantiation of the thesis that existing legal paradigms are incapable of adequately responding to the challenges of generative AI, and the only way out is to create a new system of regulation. This conclusion is based on a consistent analysis of fundamental problems and existing doctrines.

The copyright crisis caused by AI has two main dimensions: the problem of authorship for generated content and the problem of the legality of using protected data for training models. The first dimension, although important, is less acute. The position of the U.S. Copyright Office (2023) is that protection is granted only to works created by a human, and content fully generated by AI is not subject to protection. This provides some clarity, although it leaves open the question of works created in collaboration between a human and AI. However, the second problem – the legality of AI training – is much more complex and central. It is here that existing doctrines demonstrate their complete failure (Lemley & Casey, 2021).

The fair use doctrine, enshrined in Section 107 of the U.S. Copyright Act, is a flexible standard that allows courts in each specific case to determine whether the use of a work without the author's permission was fair. Courts analyze four factors: (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

AI developers build their defense primarily on the first factor, arguing that training models is a “transformative use”. They refer to the decision in Authors Guild v. Google, Inc., where the court recognized the creation of the Google Books digital library as fair use because the purpose (creating a search tool) was new and did not compete with the sale of books (Lemley & Casey, 2021). By analogy, they argue that AI does not store copies but only learns patterns, creating a new, transformative technology.

However, this argument begins to crumble when analyzing the fourth factor the effect on the market. As the New York Times lawsuit convincing y demonstrates, generative models are capable of reproducing significant portions of original articles almost verbatim, providing users with answers to queries and thereby eliminating the need to visit the publication's website. This is no longer “non-expressive use”, but direct market substitution. When an AI assistant, trained on millions of recipes from culinary websites, generates its own recipe, it directly competes with these sites for attention and advertising revenue. The Andersen v. Stability AI case also highlights that AI trained on the works of specific artists can generate images “in the style” of that artist, which directly devalues their unique market proposition (United States District Court for the Northern District of California, 2024).

Moreover, the third factor (the amount of use) also works against AI developers. Unlike Google Books, where snippets were used, effective training of generative models requires full texts and images, meaning 100% of the work is copied, and billions of times over. Thus, reliance on fair use creates a situation of legal roulette. The outcome depends on the composition of the court, the specific facts, and the economic arguments that the parties can present. This leads to long, expensive court proceedings that cannot give a clear signal to the market. This doctrine is too unpredictable to serve as a reliable

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.68-76

basis for a multi-billion dollar industry.

The EU tried to approach the problem more systematically by introducing a special exception for TDM in the 2019 CDSM Directive. Article 3 provides a broad exception for TDM for the purpose of scientific research (Margoni & Kretschmer, 2022). However, for commercial purposes, which is relevant for most AI developers, Article 4 applies. It allows free TDM, but with one significant reservation: rights holders can expressly reserve their rights against such use (make an "opt-out"), for example, in a machine-readable format (e.g., in the robots.txt file).

At first glance, this looks like a balanced solution. However, in practice, it has proven ineffective for several reasons. First, for an AI developer who wants to train a model on data from the entire Internet, it becomes technically impossible to track the "opt-out" status for billions of individual web pages, images, and texts. Second, the mechanism is not unified, which creates fragmentation (Kop, 2021). Third, and most importantly, the model does not provide for any compensation for rights holders whose data were still used (if they did not opt-out). It puts them before a choice: either completely prohibit the use and lose any potential benefit, or allow it for free. As noted in the report for the European Parliament, this approach does not create a fair market for data, but only provokes a zero-sum game (Lucchi, 2025).

This analysis reveals that both approaches, despite their different philosophies, converge on a similar outcome of insufficiency. The American path leads to a costly and unpredictable landscape of litigation, while the European path results in a fragmented and economically unsatisfactory regulatory framework. Neither provides a viable foundation for the future. It is worth noting that the search for a balance of interests is not limited to the US and the EU. Other leading jurisdictions are also actively shaping their own approaches, which further underscores the global nature of the problem. For example, Japan holds one of the most liberal positions. Article 30-4 of its copyright law permits the use of copyrighted works for "information analysis" (which includes AI training) without the rights holder's permission, provided it does not "unreasonably prejudice" their interests. This flexible wording, however, creates its own legal uncertainty as to what exactly constitutes "unreasonable prejudice".

The United Kingdom, which has its own TDM exception for non-commercial research, considered introducing a broader exception for commercial purposes but abandoned the idea after significant opposition from the creative industries. This demonstrates a deep conflict of interest that cannot be resolved by simply expanding exceptions. Meanwhile, Canada is still in the public consultation phase, analyzing various policy options. This mosaic of divergent approaches – from Japan's liberal stance to the UK's cautious one – demonstrates the absence of a single, universally accepted solution and strengthens the argument for developing a new, harmonized international model that could offer universal principles rather than a set of fragmented national rules.

3.2. The way forward: A hybrid model of compulsory collective licensing

The failure of existing legal doctrines creates not only a legal vacuum but also a huge economic risk, stifling the development of a market valued in the billions of dollars. According to a report from Bloomberg Intelligence, the generative AI market, valued at $40 billion in 2022, is projected to grow to $1.3 trillion by 2032. This exponential growth is based on the use of data, a significant portion of which is protected by copyright. However, unlike other industries where the mass use of content generates substantial licensing streams, the AI field currently remains a "wild west".

For comparison, the global music industry's revenues from licensing (including public performance, synchronization, and other rights) amount to billions of dollars annually. Just two leading American collective management organizations, ASCAP and BMI, together collected over $3 billion in licensing royalties for their authors and publishers in 2023 (Catsaros, 2023). This experience proves that mature and transparent collective licensing systems can effectively monetize the mass use of content, providing a stable income for creators. Ignoring such an approach for the generative AI industry means losing potential billions in revenue for the creative economy and perpetuating a state of legal uncertainty, which is disadvantageous for all market participants in the long run.

It follows that licensing the mass commercial use of protected works for AI training is an adequate way to regulate these relations. Individual licensing (when the AI developer enters into agreements with millions of individual authors) is absolutely impossible due to the huge transaction costs (Pope, 2024). Therefore, the only realistic solution is a model of mandatory collective licensing. Since existing copyright exceptions are inadequate, the logical conclusion is that the mass commercial use of protected works for AI training should not be an exception. It should be regulated through licensing. However, individual licensing (where an AI developer enters into agreements with millions of individual authors) is absolutely impossible due to huge transaction costs. The only realistic solution is a model of compulsory collective licensing.

The idea of collective rights management is not new. It has been successfully operating for decades in other areas where individual licensing is impractical. A classic example is the music industry, where organizations such as ASCAP and BMI in the USA collect royalties from radio stations, television channels, and public establishments for the use of music and distribute them among authors and publishers. Another example is the Copyright Clearance Center, which provides licenses to universities and companies for photocopying scientific articles and books.

The proposed model for AI is based on the same logic: if a certain use is socially useful and economically important, but impossible on the basis of individual agreements, the state can establish a system of compulsory licensing that guarantees both access for users and compensation for creators (Hilty et al., 2020). The model should be hybrid, combining elements of the European tradition of collective management and American pragmatism. Its architecture could look as follows:

1. Subjects:

- Payers: Developers of commercial generative AI models (e.g., OpenAI, Google, Stability AI).
- Recipients: Rights holders (writers, artists, publishers, musicians, photographers).
- Intermediary: One or more state-authorized collective management organizations (CMOs) operating on a non-profit basis.

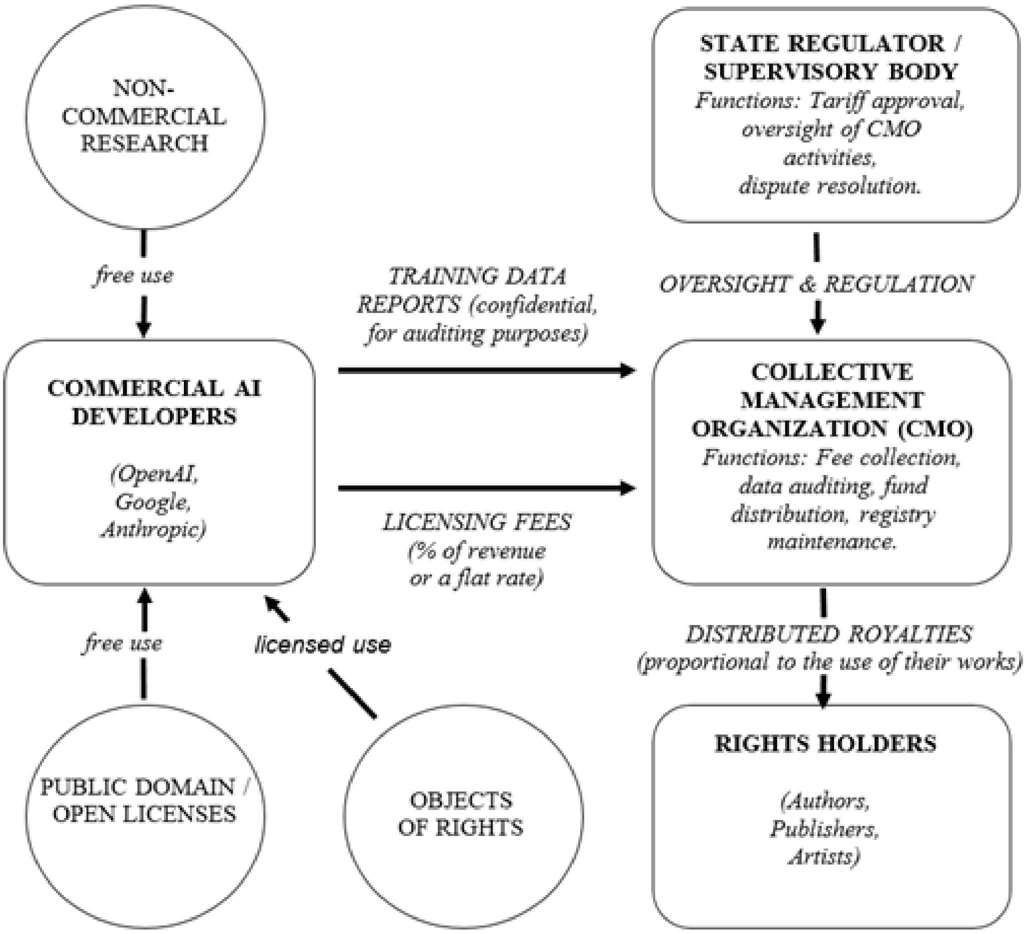
2.Object of Licensing: The use of copyrighted works as part of a training dataset for a commercial generative AI model.

3.Mechanism of Operation:

- Compulsory Payments: Legislation establishes an obligation for developers of commercial AI to pay license fees to the CMO. The payment can be structured as a percentage of the revenue received from the model, or as a fee that depends on the size and composition of the training dataset. Transparency Requirement: AI developers are obliged to provide the CMO with detailed but confidential reports on the composition of their training data. This is a key requirement, without which fair distribution is impossible. Technically, this can be implemented, and initiatives such as the Coalition for Content Provenance and Authenticity (C2PA) are already developing standards for tracking content provenance.
- Distribution of Funds: The CMO, based on the reports received and with the help of its own analytical tools, distributes the collected funds among the rights holders in proportion to the share of their works in the training datasets.
- Exceptions: The model does not apply to the use of data for non-commercial scientific research (analogous to Article 3 of the CDSM Directive) and to the use of works in the public domain or distributed under free licenses (e.g., Creative Commons).

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.68-76

Figure 1 illustrates the architecture of the Proposed Hybrid Model:



The proposed model has a number of key advantages:

- Legal Certainty: AI developers get a clear and legal way to access data, which eliminates the risk of lawsuits and promotes the stable development of technology.
- Fair Compensation: Creators receive remuneration for the use of their work, which supports the viability of the creative industries.
- Efficiency: The model eliminates the huge transaction costs associated with both individual licensing and litigation.

The implementation of such a model is associated with challenges. The main one is the need for international cooperation, as AI development and the Internet are global. However, this can be resolved through bilateral and multilateral agreements between national CMOs, as is already happening in the music sphere. The technical complexity of data auditing is significant but a solvable problem in the era of big data. Determining fair tariffs will require negotiations between all interested parties under the supervision of state regulators. Ultimately, the transition to such a model is not just one of the options, but a necessity. It is the only way to move beyond the “allow all” or “prohibit all” paradigm and create a balanced ecosystem in which AI innovation and human creativity can not conflict, but mutually complement and enrich each other.

4. Conclusions

The conducted research allows us to conclude that there is a deep systemic crisis in copyright law caused by the rapid development of generative artificial intelligence. Attempts to apply existing legal doctrines, developed for the analog era, to new technological realities have proven to be a failure.

It has been demonstrated that the American fair use doctrine, despite its flexibility, is unable to provide the necessary legal certainty. Its application in the context of AI training leads to lengthy, expensive, and unpredictable court proceedings, where the outcome depends on the subjective assessment by the court of the balance of the four factors. This creates an unstable environment for both technology developers and rights holders.

Similarly, the European approach in the form of the exception for TDM, although an attempt at a codified solution, has proven ineffective in practice. The opt-out mechanism is technically difficult for rights holders to implement and impractical for developers to track, and most importantly, it does not provide for any fair compensation for the mass commercial use of works, which undermines the economic foundations of creative activity.

The results of the research confirm the proposed hypothesis: an adequate solution to the problem lies beyond the modification of existing exceptions. A paradigm shift from the logic of "exceptions" to the logic of "licensing" is necessary. In response to this need, the architecture of a hybrid model of compulsory collective licensing was proposed and substantiated. This model offers a balanced and pragmatic way forward, providing legal certainty and lawful access to data for AI developers, while at the same time guaranteeing fair remuneration for creators for the use of their intellectual property. The implementation of such a system will allow for the transformation of confrontation into cooperation, creating a sustainable ecosystem where technological innovation and human creativity can develop harmoniously. The practical implementation of this model will require political will and coordinated actions from legislators, technology companies, and creative communities at the national and international levels.

Outlining the prospects for further research requires moving from the conceptual level to practical implementation. Future work for national and international legislators should focus on three key areas. First, the development and unification of technical transparency standards. It is necessary to legally mandate that AI developers use and implement machine-readable protocols, such as C2PA, which will allow for the tracking of data provenance and automate the auditing process for CMOs. Second, the creation of infrastructure and rules for proper oversight. This includes developing accreditation criteria for CMOs, establishing clear requirements for their transparency and accountability, and forming expert commissions with all stakeholders to determine fair tariff structures. Third, international harmonization. Given the global nature of the AI market, a key task for organizations like WIPO will be to develop a framework convention that promotes mutual recognition and cooperation between national collective management systems to avoid legal arbitrage and ensure global coverage for rights holders.

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ENSURING HUMAN RIGHTS IN THE CONTEXT OF DIGITAL TECHNOLOGIES DURING AN ARMED CONFLICT

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Abstract

In the context of the full-scale armed conflict caused by the russian federation's aggression against Ukraine, digital technologies have become an integral part of both hostilities and the daily lives of the civilian population. This poses unprecedented challenges for ensuring and protecting human rights. The article analyzes the key issues arising at the intersection of digital technologies, human rights, and armed conflict in the Ukrainian context. It examines the use of digital platforms for spreading disinformation and propaganda, which violates the right to receive reliable information, as well as countermeasures against these phenomena and the associated risks of restricting freedom of speech. Threats to the right to privacy and personal data protection, stemming from increased state surveillance and data collection under martial law, are analyzed, emphasizing the importance of adhering to the principles of legality and data minimization. The impact of cyberattacks on critical infrastructure as a factor violating the socio-economic rights of the civilian population and the complexity of legally qualifying such actions are highlighted. Simultaneously, the positive potential of digital technologies as a tool for documenting war crimes and human rights violations using open-source intelligence (OSINT), photo, and video evidence is demonstrated, underscoring the importance of adhering to standards for handling digital evidence (e.g., the Berkeley Protocol). The article is based on the analysis of current research by Ukrainian academic institutions, human rights, and expert organizations. It concludes that a comprehensive approach is necessary, including improving national legislation and international legal norms, strengthening cybersecurity, developing standards for working with digital evidence, and ensuring a balance between national security needs and the protection of fundamental human rights and freedoms in wartime.

Keywords: human rights, digital technologies, martial law, armed conflict, disinformation.

1. Introduction

Contemporary armed conflicts increasingly demonstrate the profound integration of digital technologies into all spheres of social life. Whereas in the twentieth century the information domain largely played an auxiliary role in supporting defence and communications, it has today evolved into an autonomous arena of confrontation. Cyber operations, disinformation campaigns, the blocking of online resources, and the use of digital platforms to shape public opinion have become as decisive for the course of hostilities as traditional military operations. The full-scale aggression of the Russian

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.77-87

Federation against Ukraine, which began in 2022, has vividly confirmed this trend, rendering digitalisation an inalienable element of wartime reality (Mazepa, 2024).

The deployment of digital technologies in wartime generates complex and often contradictory consequences for the protection of human rights. On the one hand, digital tools provide unprecedented opportunities to record war crimes, document violations of international humanitarian law, and rapidly disseminate truthful information. Smartphones, social networks, satellite imagery and open-source intelligence (OSINT) technologies enable the collection of evidence of crimes on a scale previously unimaginable. This enhances transparency and strengthens the work of international judicial institutions such as the International Criminal Court (Shevchuk et al., 2022). On the other hand, the digital environment itself has become an instrument of large-scale human rights violations. Disinformation campaigns and propaganda undermine the right to access reliable information, provoke panic, create a fertile ground for manipulation, and even incite violence. Cyberattacks on critical infrastructure directly affect the enjoyment of the socio-economic rights of civilians by depriving them of access to electricity, water supply, and essential medical and public services. In parallel, state surveillance has expanded significantly, which under martial law may assume excessive dimensions and jeopardise the right to privacy (Zarembo et al., 2024). Thus, digitalisation simultaneously emerges as both a means of protection and an instrument of restriction of human rights. The relevance of this problem is heightened by the fact that existing international legal norms only partially address these novel challenges. While the Universal Declaration of Human Rights and the European Convention on Human Rights guarantee freedom of expression, the right to privacy, and access to information, the specific issues of the qualification of cyberattacks, the admissibility of digital evidence, and the permissible scope of digital monitoring during armed conflict remain unresolved. Additional complications arise from the transboundary nature of cybercrime: disinformation and hacking campaigns are often launched from the territory of the aggressor state, which significantly hinders accountability. Ukraine has found itself in a unique situation where the war coincides with rapid processes of digital transformation. The introduction of e-government services such as Diia, the development of state cyber-defence infrastructure, and partnerships with international technology companies illustrate the high level of digital resilience demonstrated by the state. At the same time, the accelerated proliferation of digital practices in crisis conditions produces legal and ethical dilemmas. For instance, the storage and processing of personal data concerning internally displaced persons and other war-affected groups require special protection, as data breaches may lead to discrimination, fraud, or even direct physical threats (Kravchuk et al., 2024). The academic study of these issues demands the combination of several research perspectives. On the one hand, a formal legal analysis of national legislation and international instruments that define standards in the field of digital rights is indispensable. On the other hand, it is essential to take into account the experience of human rights organisations, analytical reports, the work of international expert communities, and practical case studies from Ukraine. Such an approach makes it possible to view digital rights not merely as abstract legal categories, but as concrete mechanisms of protecting the individual under the exceptional circumstances of war. The topic of safeguarding human rights in conditions of armed conflict and digitalisation has been actively addressed in the recent academic literature. Several thematic strands allow for a comprehensive understanding of the multifaceted nature of the challenges involved. Firstly, a number of authors, including Bochkova and Baadzhi (2024), Belov, Peresh, and Pokorba (2024), focus on the conceptualisation of “digital human rights”. Their works consider digital rights both as an extension of traditional rights in the online sphere (freedom of expression, right to privacy) and as novel legal categories such as the right to Internet access, digital identity, and protection against content manipulation. These contributions provide a valuable theoretical foundation, while simultaneously highlighting the insufficient elaboration of mechanisms for implementing digital rights within national legal systems. Secondly, studies on information security and disinformation campaigns (Mazurenko, 2022) show that the digital environment has become a crucial channel of hybrid warfare. Scholars emphasise that the large-scale spread of disinformation undermines the right to reliable information and threatens democratic processes. At the same time, these works point to the difficulty of striking a balance between countering disinformation and safeguarding freedom of expression, which necessitates clear criteria and procedural safeguards for state intervention. Thirdly, a significant strand of literature focuses on cyber security and the classification of cyberattacks. Authors such as Petryshyn and Hilyaka (2021) draw attention to the vulnerability of critical infrastructure and social systems to cyber threats. Although the technical dimension of the problem is extensively described, the legal qualification of such actions as war crimes remains controversial. The absence of unified international legal criteria of attribution and harm assessment leaves a gap in mechanisms of accountability. Fourthly, scholars such as Shevchuk and Haiduk (2022) examine the protection of personal data under martial law. They identify risks related to data leaks concerning internally displaced persons and other vulnerable groups, underscoring the necessity of data minimisation principles and independent supervisory mechanisms, as well as the adaptation of GDPR standards to the Ukrainian context. Fifthly, a distinct body of research addresses the use of digital evidence in judicial proceedings. Tikhomirov (2022), together with Denysenko, Borko and Kosov (2023), highlight the potential of digital materials in documenting war crimes, while also identifying problems of verification, preservation, and compliance with procedural safeguards. The lack of harmonised international norms on the admissibility of digital evidence reduces their effectiveness in judicial practice.

Overall, the literature review demonstrates considerable scholarly interest in the issue of digital rights during wartime, yet reveals several important gaps: the lack of clear international criteria for the classification of cyberattacks as war crimes, the absence of unified standards for the admissibility of digital evidence, insufficient systemic proposals for harmonising Ukrainian law with EU standards, and a shortage of interdisciplinary approaches that combine legal, technical, and sociological perspectives.

Despite the substantial body of existing scholarship, a number of fundamental questions remain unresolved. Firstly, there is no consistent international practice recognising cyberattacks against civilian infrastructure as war crimes, despite their often greater destructive consequences compared to conventional attacks. Secondly, there are no harmonised standards for the admissibility of digital evidence in international and national courts. Thirdly, the balance between national security requirements and the protection of fundamental rights—particularly the right to privacy and freedom of expression—remains unsettled.

Accordingly, this study aims to conduct a comprehensive analysis of the main challenges and problems in the field of human rights protection associated with the use of digital technologies under wartime conditions in Ukraine. The objective is not only to identify existing threats but also to propose potential solutions, drawing upon contemporary academic approaches, international standards, and human rights practices. Particular emphasis is placed on finding a balance between legitimate security measures and the guarantees of individual rights, as well as on exploring the possibilities for harmonising Ukrainian legislation with European Union law in the domain of digital rights.

The purpose of this article is to identify and classify the principal threats to digital human rights during armed conflict, to analyse the legal regulation of this field, and to develop recommendations for its improvement. The specific objectives include: clarifying the legal nature of digital human rights; assessing the impact of disinformation, cyberattacks and digital surveillance on individual rights; analysing international and

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.77-87

national standards in the sphere of digital rights; and formulating proposals for aligning Ukrainian regulations with the European legal framework.

The novelty of this study lies in combining legal, information-security, and human rights approaches to the issue of digital rights in wartime. For the first time in Ukrainian scholarship, a systematic analysis is offered of the justification and excessiveness of restrictions on digital rights during armed conflict; the specific features of documenting war crimes through digital technologies are explored; and pathways for adapting Ukrainian legislation to EU standards are proposed.

2. Materials and Methods

The methodology of this study is grounded in a combination of general scientific and specialised legal methods, which enabled a comprehensive analysis of the impact of digital technologies on the protection of human rights during the armed conflict in Ukraine. Addressing the research problem required both theoretical reflection and the consideration of practical data derived from an examination of current legislation, international legal instruments, the practice of human rights organisations, and scholarly research.

A dialectical method of inquiry was employed, which made it possible to view the interaction between digital technologies and human rights as a dynamic process that evolves under the influence of wartime conditions. This method facilitated an examination of how traditional human rights acquire new forms in the digital environment and how their realisation changes during armed conflict. In addition, a systemic approach was applied, allowing human rights, digital technologies, and legal regulation to be regarded as an interconnected whole. Within this framework, individual phenomena such as disinformation, cyberattacks, and digital surveillance were analysed alongside their cumulative impact on the overall state of rights protection in Ukraine.

A comparative legal method played a particularly significant role, providing the basis for analysing the compliance of Ukrainian legislation with international and European standards in the field of digital rights. This entailed a comparison of the provisions of the Constitution of Ukraine, the Law “On Information”, and the Law “On Personal Data Protection” with the norms of the European Convention on Human Rights, the Universal Declaration of Human Rights, as well as European Union standards, in particular the General Data Protection Regulation (GDPR). This comparison made it possible to identify shortcomings and to outline avenues for harmonisation. The formal legal method was also applied to analyse the substance of legal norms regulating the digital sphere in Ukraine and at the international level. This method made it possible to define the permissible limits of restrictions on human rights in wartime and to assess their compliance with the criteria of legitimacy, proportionality, and necessity.

A historical-legal method was used to trace the evolution of approaches to information security and digital human rights since 2014, when Russia’s hybrid aggression against Ukraine commenced. This facilitated an understanding of both the continuity and transformation of threats and countermeasures. Equally important was the method of content analysis, which enabled the examination of publications by Ukrainian and foreign scholars, reports by human rights organisations (such as the Human Rights Platform, Access Now, and the Expert Centre for Human Rights), as well as materials produced by international organisations including the United Nations, the OSCE, and the Council of Europe. The use of this method allowed for the identification of key themes, challenges, and approaches in the field of digital rights in wartime. Finally, a prognostic method was employed, which provided the means to formulate recommendations for the further development of national legislation and international standards in the sphere of digital rights, taking into account prospective challenges associated with the use of artificial intelligence, deepfakes, and other innovative technologies in armed conflicts.

The empirical foundation of the study consisted of: national legal acts of Ukraine, including the Constitution of Ukraine, the Law "On Information", the Law "On Personal Data Protection", and other acts regulating martial law and digital activity; international instruments such as the Universal Declaration of Human Rights, the European Convention on Human Rights, international standards for the collection and use of digital evidence (the Berkeley Protocol), and the Tallinn Manual on the International Law Applicable to Cyber Operations; reports and analytical materials by human rights organisations (Human Rights Platform, Access Now, Expert Centre for Human Rights) documenting practical cases of violations of digital rights during the war; scholarly publications by Ukrainian and foreign researchers (Bochkova, Baadzhi, Petryshyn, Hilyaka, Mazurenko, Rusakevych, among others) exploring doctrinal and practical aspects of digital rights; and the practice of international and national judicial institutions illustrating approaches to the assessment of digital evidence and the limitation of rights during armed conflict.

The research was conducted in several stages. At the initial stage, the relevance of the topic was established, and the main directions of inquiry were defined, including disinformation, digital surveillance, cyberattacks, and digital evidence. Scholarly publications, reports, and international documents concerning digital rights in armed conflicts were systematised. A formal legal analysis of the Constitution of Ukraine, relevant laws, and international instruments was conducted to assess their compliance with international standards. Ukrainian norms were compared with European and international standards, particularly the GDPR and the jurisprudence of the European Court of Human Rights. Empirical cases of digital rights restrictions, cyberattacks, disinformation campaigns, and the documentation of war crimes through digital technologies were studied. On the basis of these findings, conclusions were drawn regarding the dual impact of digitalisation on human rights in wartime, and directions for improving both national and international law were identified.

The choice of methods was determined by the interdisciplinary nature of the subject, which lies at the intersection of law, information security, technology, and human rights practice. Reliance solely on a formal legal approach would have been insufficient, as the realities of war create new challenges that transcend the boundaries of classical legal scholarship. Accordingly, the combination of systemic, comparative, content-analytical, and prognostic methods ensured a multidimensional understanding of the problem.

In sum, the methodology of the study rests upon a combination of theoretical and applied approaches, which enabled a comprehensive result. The application of a broad range of methods and sources ensured both the objectivity and depth of the analysis and allowed for the formulation of well-founded conclusions and recommendations.

3. Results and Discussion

The armed conflict in Ukraine is unfolding in an era of profound societal digitalisation, which generates specific and multifaceted challenges for the protection of human rights, while simultaneously opening new avenues for their assertion and the documentation of violations. The concept of "digital human rights" has emerged to address the unique challenges and opportunities arising in the digital age. These rights encompass traditional human rights as they apply to online environments, as well as novel rights specific to the digital sphere, such as the right to internet access, data protection, and digital identity. According to V.A. Bochkovaya and N.A. Baadji (2024), digital human rights constitute a set of rights and freedoms safeguarding individuals in digital environments, including the right to communication, freedom of content, digital identity, and the acquisition of digital skills.

We concur with scholars who emphasise that digital human rights are becoming an integral component of contemporary society, where technology is rapidly transforming lifestyles and modes of interaction (Belov et al., 2024). O.V. Petryshyn and O.S. Hilyaka note that the digital technology era offers entirely new and qualitatively

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.77-87

distinct opportunities for the realisation of human rights, while simultaneously creating novel challenges and threats to their protection (Petryshyn & Hilyaka, 2021).

International human rights law, in particular the Universal Declaration of Human Rights and the European Convention on Human Rights (ECHR), provides a foundation for the protection of digital rights. Article 10 of the ECHR guarantees the right to freedom of expression, which extends to all individuals without exception, including users in online environments (Freedom of Speech on the Internet. Human Rights Platform NGO. International and National Standards of Freedom of Speech on the Internet, 2025).

Ukrainian national legislation, including the Constitution (Article 34), the Law on Information, and the Law on Personal Data Protection, also regulates aspects of digital rights (Data Protection Legislation in Ukraine, 2025). Article 34 of the Constitution guarantees every person the right to freedom of thought and expression, the free articulation of views and convictions, and the right to freely collect, store, utilise, and disseminate information orally, in writing, or by other means. The right to privacy is enshrined in international instruments and the constitutions of most countries, including Ukraine.

In the context of martial law in Ukraine, the issue of temporarily restricting fundamental human rights, including digital rights, arises in the interest of national security. However, according to international human rights standards, such restrictions must be legitimate, justified by pressing social needs, and proportionate to the pursued objectives. Limitations on informational rights during armed conflict may be necessitated by the objective requirement to preserve national viability, aligning with the state's right to undertake measures that restrict certain individual rights to ensure security and operational effectiveness.

Analysis of Ukrainian practice indicates a partial deviation from obligations under Article 10 of the ECHR regarding freedom of expression and access to information due to the imposition of martial law. The concept of digital rights remains in a dynamic phase of development, and its implementation during armed conflict is particularly complex. In this context, the challenge of balancing national security interests with individual rights becomes especially salient. Although the fundamental principles of human rights are universal and applicable in online environments, the precise boundaries and permissible limitations of digital rights remain subjects of scholarly debate and legal determination.

Martial law constitutes an exceptional circumstance that may justify deviations from peacetime standards. Nonetheless, such deviations require stringent oversight to prevent abuse and ensure their genuine necessity and proportionality. The interplay between international human rights law and national legislation in regulating digital rights during armed conflict is decisive. National legislation must demonstrate alignment with international standards to ensure adequate protection, while simultaneously accounting for specific domestic needs and challenges faced by the state.

Ukraine's legal framework for digital rights is shaped by both international conventions and domestic constitutional and statutory provisions. Analysing the coherence and consistency across different levels of legal regulation is key to understanding the overall degree of protection afforded to individuals in the digital space during wartime.

The use of digital technologies during the war in Ukraine has posed numerous human rights challenges, including cyberattacks targeting critical infrastructure and civilians (What They Did in the Shadows: Internet Shutdowns and Atrocities in Ukraine, 2025). Disinformation campaigns aimed at manipulating public opinion and undermining trust have become prevalent. Concerns have been raised regarding privacy violations due to data breaches and surveillance. False information has been disseminated since 2014 to destabilise Ukraine. Disinformation distorts public opinion both within and outside Ukraine, indicating that false narratives can induce panic and damage the government’s reputation, including interference by Russian hackers with

Ukrainian broadcasting and media websites.

Ukrainian scholars have actively investigated the impact of these digital threats on human rights during the war. L.I. Mazurenko (2022) examines challenges and threats to information security amid the Russia–Ukraine conflict, including the dissemination of disinformation via social networks and the importance of countering false information. A.I. Rusakevych (2024) analyses information security under martial law in the context of citizens' informational rights, highlighting legal, political, and technical dimensions. Legal aspects of safeguarding information security during full-scale invasion are also explored, emphasising the protection of political rights and freedoms in the information space. Violations of the right to publish content in digital media constitute breaches of digital rights and fundamental principles of freedom of expression enshrined in Article 19 of the Universal Declaration of Human Rights (Denysenko et al., 2023).

In the context of armed conflict, information assumes strategic significance, transforming into a tool of influence, with digital spaces becoming a primary arena of confrontation. This necessitates a comprehensive approach encompassing cybersecurity measures to protect information systems and informational-psychological security aimed at countering destructive informational influences and manipulation. Research indicates that contemporary armed conflicts possess not only kinetic but also pronounced informational dimensions. Digital platforms significantly extend the reach and intensity of both verified and misleading information, highlighting the critical need to understand the impact of information flows on human rights, individuals' psychological states, and national security.

Persistent emphasis on the threats of disinformation and cyberattacks in the literature suggests deliberate, coordinated efforts to destabilise Ukraine using digital tools. This directly affects a broad spectrum of human rights, including the right to receive objective and reliable information, freedom of expression (potentially limited through censorship or manipulation), and the right to privacy (compromised by unauthorised access to personal data). The consistency of identified threats across different information sources and over time points to the strategic nature of the aggressor's actions. Analysing tactical methods, strategic objectives, and operational impacts of these digital operations is critical for devising effective countermeasures and ensuring human rights protection in digital environments.

Ukrainian scholars emphasise the need for a multi-faceted approach, incorporating legal and technical mechanisms alongside initiatives to enhance media literacy and critical thinking skills among the population. Combating disinformation and mitigating cyberattack consequences require fostering societal resilience to manipulative influences and raising awareness of potential digital risks. Educational and informational campaigns play a pivotal role in empowering citizens to protect their rights and strengthen national informational security.

Limited internet access in conflict zones and occupied territories constitutes a significant human rights challenge, restricting access to information, communication, and essential services (Tikhomirov, 2022). Reports highlight censorship and blocking of online resources, particularly those perceived as pro-Russian. Concerns exist regarding unlawful surveillance and potential misuse of personal data collected via digital platforms (Internet in Wartime: Are Restrictions Necessary in Ukraine, 2025). The dissemination of hostile propaganda and disinformation remains a serious issue, influencing public opinion and potentially inciting violence (Lytvyn & Yarosh, 2024). Russia's deliberate internet shutdowns in occupied territories coincided with human rights violations. Ukrainian scholars have documented specific challenges and their human rights consequences, including internet restrictions, censorship of pro-Russian resources, IT sector regulation, and violations of digital and informational rights due to cyberattacks and disinformation. The right to access information may be limited under martial law in Ukraine for national security reasons.

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.77-87

Targeting internet infrastructure and enforcing shutdowns in occupied territories indicates a strategy to control information flows and isolate populations, potentially facilitating human rights violations and obstructing accountability. By restricting external access and limiting internal communication, occupying forces promote population isolation, creating an environment of impunity. This complicates victims' ability to report abuses and hinders international observers' collection of objective data and monitoring of human rights violations. Striking the right balance is crucial to avoid undermining democratic values in the name of security. Overly broad or opaque restrictions on internet access and content may produce unintended consequences, including suppression of lawful dissent, obstruction of journalists' and human rights defenders' work, and opportunities for spreading unverified rumours and disinformation.

The vulnerability of personal data during wartime is a significant concern, as data breaches can expose individuals to increased risk of harm, particularly displaced persons or conflict-affected populations. Electronic registries containing confidential information about internally displaced persons, victims of war, and social assistance recipients are potential cyberattack targets. Compromise of such data may result in identity theft, fraud, discrimination, or even physical harm.

Although Ukraine possesses a robust legal framework, legislation requires improvement in line with international standards. There is a need to harmonise digital practices with international human rights norms and ensure cybersecurity. The Ukrainian government has actively leveraged digital technologies to support governance, service provision, and citizen engagement during the war, demonstrating a high degree of digital resilience. Rapid deployment and expansion of platforms such as "Diia" for essential services, coupled with efforts to maintain internet connectivity despite infrastructure damage, underscore the strategic importance of digital transformation in crisis conditions. Engagement with international partners, including technology companies and foreign governments, has been crucial in sustaining digital infrastructure and cybersecurity efforts, highlighting the transnational nature of digital security and the significance of international cooperation in addressing wartime digital challenges.

Provision of services such as Starlink, transfer of confidential data abroad for protection, and sharing of expertise and resources demonstrate collective efforts to strengthen Ukraine's digital defence and maintain critical online functions. Ukrainian experts recognise the need for continual refinement of the legal framework and practical measures to protect digital rights during wartime. This includes adapting legislation to specific armed conflict challenges, enhancing cybersecurity capabilities, and promoting digital literacy among the population. The dynamic nature of both digital technologies and the conflict itself necessitates ongoing assessment and improvement of strategies for human rights protection in the digital sphere, requiring commitment to learning from experience and adapting to emerging threats and challenges.

The right to freedom of expression faces challenges due to censorship, content restrictions, and criminalisation of statements deemed to undermine national security. Access to information is hindered by infrastructure damage, government restrictions on certain data for security reasons, and digital inequality. Privacy is threatened by surveillance, data breaches, and potential misuse of personal information collected online. Data security is paramount given the risk of cyberattacks targeting confidential information and critical infrastructure.

Ukrainian scholars stress the importance of aligning national laws with international human rights principles in the digital sphere, advocate strengthening the international legal framework for regulating digital rights during armed conflicts, and acknowledge that national legislation alone may be insufficient to address transnational threats and ensure accountability. Calls for a new international convention on digital and informational human rights reflect recognition that existing international law may inadequately address digital technology-specific challenges in conflict contexts, highlighting the need for a more comprehensive, globally adaptive approach. The emphasis on harmonising Ukrainian legislation with EU standards reflects broader aspirations toward European integration and recognition of the EU's advanced legal frameworks in areas such as data protection and cybersecurity. Adoption of EU norms could enhance Ukraine's protection of digital rights and facilitate greater compatibility and cooperation with European partners in countering digital threats. The study underscores the dynamic nature of digital environments and the necessity for continual adaptation of legal norms and enforcement mechanisms to keep pace with technological progress and evolving threats. Rapid development of digital technologies, including artificial intelligence and deepfakes, presents new challenges for human rights protection. Legal frameworks must be flexible and adaptive to effectively address these emerging issues.

At the same time, despite these challenges, digital technologies have become a powerful instrument for protecting human rights and documenting the aggressor's atrocities. The capacity to record events via smartphones and other mobile devices, analyse high-resolution satellite imagery, and collect and verify open-source intelligence (OSINT) allows for the documentation of war crimes, crimes against humanity, and other serious human rights violations on an unprecedented scale (NGO Human Rights Platform, 2023). Such digital evidence has the potential to play a pivotal role in national and international investigations and judicial proceedings (International Criminal Court, International Court of Justice). However, to ensure legal validity and admissibility, the collection, storage, analysis, and presentation of such evidence in court must adhere to rigorous internationally recognised procedures and standards, such as the Berkeley Protocol on the Use of Digital Open Source Information in Investigations (Expert Center for Human Rights, 2023).

Thus, digitalisation exerts a profound and dual impact on the human rights situation in Ukraine during armed conflict, generating both significant threats and unique opportunities.

Conclusion

The study demonstrates that digitalisation in the context of the armed conflict in Ukraine exerts a dual impact: on the one hand, it presents significant challenges to the protection of human rights, while on the other, it provides tools for safeguarding them and documenting violations.

Firstly, the analysis of practice confirms that restrictions on rights during wartime are heterogeneous in terms of their justification. Temporary restrictions on access to specific resources directly used for coordinating the aggressor or disseminating harmful propaganda, as well as the reinforcement of cybersecurity measures to prevent attacks on critical infrastructure, may be considered justified. Such measures meet the criteria of legitimacy, urgent societal need, and proportionality. By contrast, excessively broad or opaque blocking of websites and social media platforms encompassing lawful content, as well as the unwarranted expansion of state digital monitoring without adequate oversight safeguards, are disproportionate. These practices risk transforming wartime exceptions into instruments for long-term curtailment of freedom of expression and the right to privacy.

Secondly, particular attention should be given to the harmonisation of Ukrainian norms with EU law. In light of Ukraine's European trajectory, the most appropriate steps include:

the implementation of GDPR provisions concerning transparency in personal data processing and the strengthening of the independence of supervisory authorities;

- the adaptation of practices for the collection and use of digital evidence in accordance with the standards set out in the Berkeley Protocol and the recommendations of the Council of Europe;
- the development of a dedicated law on digital rights during a state of martial

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.77-87

law, clearly defining the limits of permissible restrictions and mechanisms for ensuring their proportionality;

- the enhancement of media literacy among the population and the integration of European approaches to countering disinformation, including mechanisms under the EU Code of Practice on Disinformation.

Thirdly, the findings underscore the need for a balanced strategy: the state must ensure security and counter hostile digital attacks while guaranteeing that restrictions on rights remain temporary, transparent, and accountable. Otherwise, the risks of authoritarian tendencies under the guise of wartime circumstances may undermine public trust in institutions.

The scientific novelty of this study lies in the fact that, for the first time in domestic scholarship, a comprehensive analysis has been conducted of the justification and excessiveness of restrictions on digital rights during martial law in Ukraine, accompanied by proposals for harmonising Ukrainian legislation with European standards. A promising avenue for further research is the development of international legal mechanisms for classifying cyberattacks on civilian infrastructure as war crimes and the establishment of a global convention on digital human rights.

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DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.88-97

LEGAL ASPECTS OF ENVIRONMENTAL TERRORISM IN THE CONTEXT OF THE WAR IN UKRAINE: NEW CHALLENGES TO GLOBAL SECURITY

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Abstract

The article provides a comprehensive theoretical and legal analysis of the phenomenon of ecological terrorism in the context of the full-scale armed aggression of the Russian Federation against Ukraine. Special attention is paid to the legal nature of this phenomenon, its specific manifestations during the war, and the challenges of classifying such acts under national and international law. The study outlines examples of deliberate destruction of critical environmental infrastructure-such as the explosion of the Kakhovka HPP, mass environmental pollution, and forest arson-as instruments of terrorist influence. The article identifies legal gaps in Ukrainian legislation regarding the criminalization of ecocide as a form of terrorism and emphasizes the need for harmonization with international law. The author proposes a legal classification of ecological terrorism, highlights its key forms, and outlines effective countermeasures. It is argued that ecological terrorism, within the context of modern warfare, evolves into a global threat to international security, ecosystems, and the humanitarian legal order, and therefore requires a clear legal response at all levels.

Keywords: ecological terrorism; ecocide; hybrid war; environmental security; international humanitarian law.

Introduction

In the twenty-first century, the issue of environmental security has assumed a global dimension, extending far beyond purely national or regional contexts. Climate change, the degradation of natural resources, the escalation of technological risks and anthropogenic disasters have become integral factors shaping contemporary international relations and the global security system. However, the onset of the full-scale aggression launched by the Russian Federation against Ukraine in 2022 has demonstrated that environmental security may be not only a casualty of armed conflict but also a deliberately chosen instrument of warfare (Krampe et al., 2025). The targeted destruction of ecosystems, the devastation of natural resources and the use of technological disaster risks as tools of political or military pressure have revealed the emergence of a new phenomenon – environmental terrorism – which requires systematic legal conceptualisation.

The notion of "environmental terrorism" has long remained on the periphery of academic and legal discourse. In classical studies of international humanitarian law, environmental law and criminology, it has been treated only fragmentarily, as a derivative of broader categories such as war crimes, ecocide, or acts of sabotage. Yet contemporary reality demands a more precise differentiation of this phenomenon, since the intentional infliction of harm upon the environment may constitute not merely an incidental effect of hostilities but rather a principal objective of an aggressor (Popovych et al., 2023). The destruction of the Kakhovka Hydroelectric Power Plant, attacks on the Zaporizhzhia Nuclear Power Plant, large-scale forest arson, contamination of river systems, and the deliberate targeting of industrial facilities with missile strikes demonstrate that the environmental dimension has become an integral element of modern hybrid warfare. This elevates the issue of environmental terrorism from a matter of ecological concern to one of national and international security.

It should be emphasised that legal scholarship has not yet produced a single, universally accepted definition of environmental terrorism. The academic literature reveals divergent approaches: some consider it as a specific type of terrorism directed at environmental objects, while others interpret it as a variety of ecocide or a form of war crime (Flamm & Kroll, 2024; Veresha et al., 2023). At the same time, the absence of universal legal criteria for its classification creates serious challenges for legal practice: difficulties in qualifying such acts, identifying responsible actors, applying appropriate sanctions, and ensuring adequate reparation. Accordingly, the legal nature of environmental terrorism, its relationship with other international crimes, and the prospects for its criminalisation require dedicated scholarly examination.

The urgency of the issue is amplified by the transboundary character of environmental terrorism. The consequences of the destruction of hydrotechnical structures or accidents at nuclear facilities are not confined to the territory of the state in which they occur. They extend into neighbouring countries, affect ecosystems on a regional scale and generate long-term risks to human health, economic stability and biodiversity. In this sense, Russia's war against Ukraine is not merely a local conflict but a source of global threats that undermine the foundations of international security and necessitate a reconsideration of existing legal approaches to the protection of the environment during armed conflict.

Within the contemporary academic debate there is a growing interest in the problem of environmental terrorism. Scholars are addressing its relationship with the concept of sustainable development, with state obligations under international environmental law, and with the provisions of international criminal law (Bielikova & Levanda, 2025). Some argue for the recognition of environmental terrorism as an autonomous international crime falling within the jurisdiction of the International Criminal Court. Others consider it sufficient to improve national legislation and reinforce the implementation of existing international conventions. Yet no consensus has been reached, which underscores the need for further research.

For Ukraine, this issue carries particular significance. The Constitution of Ukraine guarantees to every individual the right to a safe environment and imposes upon the state the duty to ensure ecological balance. Nevertheless, under the conditions of war, the effectiveness of these guarantees and the adequacy of existing legislation in addressing new challenges are called into question. The Criminal Code of Ukraine contains a provision on ecocide, yet it does not provide for a distinct category of "environmental terrorism". This gap in the legal framework must be addressed through legislative reform, harmonisation with international law and the initiation of international mechanisms of justice concerning environmental crimes. Ultimately, the protection of the environment in wartime must be integrated into the system of national security alongside military, economic and informational components.

At the same time, the study of environmental terrorism cannot be conducted without an interdisciplinary perspective. Alongside legal analysis, insights from ecology, economics, sociology, psychology and security studies are essential. Sociological surveys, for instance, reveal a growing public awareness of the connection between environmental

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.88-97

and national security, thereby generating societal demand for stronger legal regulation in this domain. Ecological research provides empirical evidence regarding the scale of environmental damage, while economic assessments substantiate the necessity of international compensation mechanisms. Thus, the study of environmental terrorism is a complex undertaking that requires the consolidation of efforts across multiple disciplines.

The purpose of this article is to conduct a comprehensive theoretical and legal analysis of the phenomenon of environmental terrorism in the context of Russia's war against Ukraine, to define its legal nature, forms of manifestation and legal consequences, and to identify pathways for the improvement of national and international legislation to enable an effective response to this challenge. The article pays attention not only to the conceptual definition of environmental terrorism but also to the practical issues of its legal qualification, the gaps in international law and the prospects for the establishment of new mechanisms of accountability. The authors proceed from the position that environmental terrorism is not an isolated or incidental occurrence but a systemic element of contemporary hybrid wars, one that undermines the foundations of humanitarian law, generates long-term risks for humanity and demands a legal response at the global level.

Literature Review

The issue of environmental security and the legal protection of the environment during armed conflicts has been the subject of sustained examination in both international and national scholarship. The expanding scale of contemporary wars, their hybrid nature and the deliberate use of natural resources as instruments of pressure have underscored the necessity of rethinking existing legal categories.

A number of contemporary researchers emphasise that armed conflicts have long-lasting and large-scale consequences for the natural environment. In their article Armed Conflict Causes Long-Lasting Environmental Harms (2025), Florian Krampe, Joakim Kreutz and Tobias Ide demonstrate that war leads to environmental degradation persisting for decades, diminishing the resilience of ecosystems and undermining the economic potential of the state (Krampe et al., 2025). Ukrainian scholars have also actively addressed this problem. For example, T. Popovych, L. Andrushchenko and V. Olefir analyse methods of assessing environmental and human harm during wartime, highlighting the need to integrate environmental expertise into international legal accountability mechanisms (Popovych et al., 2023). In their study, N. Bielikova and O. Levanda assess environmental risks and the impact of warfare on territorial development, particularly with respect to water resources and infrastructure (Bielikova & Levanda, 2021). A. Shevchenko stresses the necessity of incorporating environmental standards into Ukraine's national security system, emphasising that the right to a safe environment must be treated as an integral component of human rights. I. Ivanov examines the relationship between environmental and humanitarian law, noting the difficulties of qualifying war crimes against the environment. O. Yurchenko, in turn, analyses the problem of ecocide and the need to enshrine within Ukrainian criminal law a distinct category of crimes against the environment committed in wartime.

The issue of environmental terrorism as a distinct phenomenon has long remained underexplored. In his classical work Environmental Terrorism: Analysing the Concept (1998), Daniel M. Schwartz proposed a systematisation of the phenomenon according to criteria such as intent, symbolism, target selection and violations of international law (Schwartz, 1998). At present, however, an increasing number of scholars highlight the link between environmental terrorism and the concept of hybrid warfare. In particular, Patrick Flamm and Stefan Kroll, in their article Environmental (In)security, Peacebuilding and Green Economic Recovery in the Context of Russia's War Against Ukraine (2024), examine how ecological attacks operate not only as tools of intimidation but also as factors complicating recovery and peacebuilding processes (Flamm & Kroll, 2024).

International law provides only partial regulation of environmental protection during armed conflict. The Rome Statute of the International Criminal Court (1998), in Article 8, defines widespread, long-term and severe damage to the natural environment as a war crime. Yet no unified concept of "environmental terrorism" currently exists. Scholars stress the gaps in the existing legal framework. For instance, V. Veresha and colleagues analyse the prospects for the criminalisation of ecocide at both national and international levels, advocating its recognition as a separate category of international crime (Veresha et al., 2023).

This issue is also actively developed in the international dimension. Considerable attention has been devoted by United Nations experts to the protection of the environment during armed conflicts. For example, the United Nations Environment Programme (UNEP), in a series of reports, stresses that the deliberate destruction of ecosystems or their use as "weapons of war" should be regarded as a threat to international peace and security (UNEP, Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law, 2009).

Within the International Criminal Court, discussions are ongoing regarding the inclusion of ecocide as a distinct category of international crime. Although the Rome Statute (1998) already contains provisions on responsibility for acts resulting in "widespread, long-term and severe damage to the environment" (Art. 8), scholars and experts emphasise the need for greater precision in these provisions and for stronger mechanisms of enforcement (Higgins, Short & South, Protecting the Planet: A Proposal for a Law of Ecocide, 2013).

An important contribution to the development of this discourse is the work of the United Nations Special Rapporteur on Human Rights and the Environment, who in annual reports highlights the interconnection between the right to a safe environment and international humanitarian law during armed conflict (UN General Assembly, Report of the Special Rapporteur on Human Rights and the Environment, 2022).

Ukrainian scholarship has increasingly focused on the specificity of warfare in Ukraine. The monograph Ecological Security of Territories discusses systems of environmental security primarily under conditions of peacetime (Adamenko et al., 2014). By contrast, more recent publications addressing the post-2022 context emphasise the deliberate nature of environmental destruction, thereby providing grounds for identifying a new category of crimes—environmental terrorism.

In sum, both Ukrainian researchers and international institutions stress the necessity of integrating environmental security into the legal framework of human rights protection and humanitarian law. Nevertheless, despite the substantial volume of research, the specific theme of environmental terrorism—understood as the deliberate use of environmental destruction for military purposes—remains underdeveloped, which determines the relevance of the present study.

Results and Discussion

In the contemporary realities of the full-scale war unleashed by the Russian Federation against Ukraine, environmental security has acquired a new dimension: from a local concern, it has evolved into a challenge to global human security (Khylko, 2024). Whereas previously it was considered largely through the lens of environmental policy, sustainable development, and climate adaptation, today the ecological factor has become an integral instrument of hybrid warfare. Destructive actions targeting the environment, infrastructure, and natural resources not only produce immediate devastating consequences but also generate long-term risks for the lives and health of millions of people, the economic stability of regions, and the preservation of biodiversity.

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.88-97

In this context, it is essential to delineate, systematise, and analyse a phenomenon that has hitherto remained only fragmentarily addressed in scholarly and legal discourse—namely, environmental terrorism.

Within the scope of this research, the authors propose an original definition of the concept. As noted by O. A. Mashkov, under current conditions, the category of "environmental terrorism" encompasses a wide range of actions: the use of explosive substances in protected areas, the deliberate destruction of nature reserves, the shelling of chemical enterprises, and the contamination of rivers and soils (Mashkov et al., 2019). The unfolding of such actions during wartime casts doubt on the possibility of rapid restoration of ecological balance in Ukraine. Environmental terrorism should be understood as a set of deliberate actions by a state, an organised group, or other actors aimed at the destruction or pollution of the natural environment, ecological infrastructure, or vital resources for the purposes of terror, intimidation, or coercion of the population and authorities. Such actions transcend the bounds of conventional warfare and produce long-term ecological and humanitarian consequences. This definition enables a clearer distinction of the phenomenon from related categories and underscores its uniqueness in contemporary armed conflicts. Unlike ecocide, which presupposes the systematic destruction of the environment on a global or national scale, environmental terrorism may be more selective and localised, yet its primary purpose lies in exploiting ecological threats as a tool of coercion. It differs from war crimes in that environmental damage is inflicted not as an incidental effect of hostilities but as a deliberately chosen means of demoralisation, coercion, or intimidation. Sabotage, although it may overlap with environmental terrorism, is generally of a narrowly military or economic character and does not entail systemic, long-term destructive consequences for ecosystems and civilian life. Thus, environmental terrorism represents an interdisciplinary category encompassing environmental, legal, humanitarian, and security dimensions.

For a fuller understanding of its essence, it is appropriate to offer a classification. In terms of forms, environmental terrorism may be divided into several types. First, nuclear terrorism, which includes attacks or threats of attacks on nuclear power plants and other facilities storing or utilising radioactive materials. Second, hydrotechnical terrorism, which encompasses the destruction of dams, reservoirs, and other installations that regulate water balance and ensure energy stability. Third, chemical terrorism, involving the destruction, damage, or shelling of enterprises and depots containing hazardous substances capable of contaminating vast areas. Fourth, biological terrorism, which includes the creation of conditions conducive to the spread of disease, the abandonment of unburied bodies, or the deployment of biological agents. Finally, forest and soil terrorism, manifesting in deliberate forest fires, destruction of soil cover, eradication of vegetation, and degradation of ecosystems. By methods of execution, environmental terrorism may involve the use of explosives and heavy weaponry against natural and industrial objects, the creation of man-made disasters through disruption of infrastructure operations, deliberate arson and pollution, denial of access to natural resources, and manipulation of ecological factors to achieve military objectives. By object, three major groups may be distinguished: critical ecological infrastructure (nuclear and hydroelectric power plants, treatment facilities, oil depots), protected natural areas (reserves, national parks, forests), and vital natural resources (rivers, soils, drinking water, atmospheric air). Such an approach enables the reconciliation of theoretical propositions with the practice of warfare and allows for a clearer determination of the scale and consequences of specific crimes.

An important stage of the study is the analysis of international legal instruments that partially cover the phenomenon of environmental terrorism. The 1976 United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) prohibits the manipulation of natural processes such as earthquakes, floods, or climate change as means of warfare. This instrument reflected global concerns about the potential military use of environmental modification technologies. Additional Protocol I to the Geneva Conventions (1977), in Articles 35(3) and 55, prohibits methods and means of warfare that may cause widespread, long-term, and severe damage to the natural environment, and emphasises the obligation of conflict parties to protect the environment as part of the civilian sphere. The Rome Statute of the International Criminal Court (1998), in Article 8, classifies as war crimes intentional acts that cause such environmental damage in the absence of military necessity. Yet none of these instruments provides a direct qualification of "environmental terrorism," thereby creating a legal vacuum that requires further academic and legislative clarification. Moreover, the difficulty of proving intent, scale, and duration of environmental harm before international tribunals makes the practical application of these norms limited.

Empirical evidence confirms that environmental terrorism in the present war against Ukraine is not an abstract threat but manifests in concrete forms. In the very first days of the invasion, Russian forces seized the Chornobyl Nuclear Power Plant and the exclusion zone, flagrantly violating all principles of nuclear safety. Personnel were forced to work without rotation, supply chains were disrupted, and the risk of failure in cooling systems could have resulted in a disaster on the scale of 1986. Additional dangers were posed by extensive fires in the exclusion zone, which affected territories with elevated radioactive contamination—an example combining nuclear and forest-related environmental terrorism.

Equally striking was the shelling of the Zaporizhzhia Nuclear Power Plant on 4 March 2022, when tank and artillery attacks triggered a fire on the plant's premises. Subsequent detonation of munitions in close proximity to reactors created a constant risk of nuclear catastrophe and posed a danger to millions of people in multiple countries. This incident vividly illustrates the deliberate use of nuclear infrastructure as an object of coercion and blackmail. The destruction of the Kakhovka Hydroelectric Power Plant on 6 June 2023 represented the most large-scale act of hydrotechnical environmental terrorism in twenty-first-century Europe. The collapse of the dam caused catastrophic consequences: flooding of dozens of settlements, annihilation of ecosystems, loss of flora and fauna, devastation of infrastructure, and the deprivation of drinking water for millions of people. Hundreds of tonnes of engine oil were discharged into the Dnipro River, causing additional chemical pollution. The tragedy's consequences were multidimensional—ecological, humanitarian, economic, and demographic. Over 4,300 houses were flooded, at least 34 people were killed, and thousands were displaced. Evacuation efforts were hampered by shelling from Russian forces, who even targeted gathering points and boats with civilians. Despite this, Ukrainian emergency and security services rescued over 700 people, evacuated nearly 3,800 civilians and more than 280 animals, and delivered over 119 tonnes of food and more than 116,000 tonnes of drinking water. The response to the disaster became an unprecedented example of large-scale coordination of security, rescue, and humanitarian structures, though the damage inflicted upon nature and the population will have long-term, and in some cases irreversible, consequences.

The sociological component of the research, covering 129 respondents from Ukraine, Poland, Bulgaria, and the United States, demonstrates profound concern among both Ukrainians and the international community. A majority (over 79%) regard environmental threats as highly relevant, while more than 93% acknowledge the close link between environmental and national security. This points to a high level of ecological awareness and growing global anxiety about the consequences of the war in Ukraine for the environment.

Analysis of national legislation reveals that environmental security is enshrined as a constitutional value in Ukraine. Article 16 of the Constitution defines ensuring environmental security and maintaining ecological balance as a duty of the state, while

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.88-97

Article 50 guarantees the right of every individual to a safe environment. The Law of Ukraine On Environmental Protection sets out the basic principles of rational resource use and prohibits activities leading to degradation. However, the current legal framework does not provide a precise definition of environmental terrorism, complicating its criminalisation and creating a legal vacuum that is particularly perilous in wartime. The presence of unburied bodies on battlefields, for example, creates additional biological risks. Such manifestations contradict the fundamental principles established by Ukrainian law, which oblige the state, institutions, and citizens alike to preserve and restore natural resources. Hence, environmental security in Ukraine is not merely a sphere of state policy but a constitutional value; violations of it, particularly through acts of environmental terrorism, must be regarded as infringements upon the foundations of the constitutional order and human rights.

Environmental security must be recognised as an inseparable component of national security. In the context of modern hybrid warfare, where military, informational, economic, and ecological methods of pressure converge, neglect of the ecological factor is fatal. Ukraine must immediately implement effective mechanisms for monitoring and responding to ecological threats, integrating environmental security into defence planning and post-war recovery. From a legal perspective, significant challenges remain regarding the qualification of Russian actions as environmental terrorism. Ukraine's legal framework lacks a clear definition of the phenomenon, while international law only partially addresses its manifestations. Nonetheless, the deliberate destruction of critical ecological infrastructure—such as hydroelectric and nuclear power plants and chemical enterprises—bears the hallmarks of international crimes, including war crimes and crimes against the environment.

Analysis of both international and national law highlights the need for the clear criminalisation of ecocide as a form of terrorism. Following the argument of R. V. Veresha, such changes must be implemented in Ukraine's Criminal Code and supported by the establishment of an international tribunal for environmental crimes. At the same time, the experience of other states demonstrates that institutional mechanisms for addressing crimes against the environment already operate in countries such as France, Sweden, and Canada, offering models for Ukraine. Current international initiatives aimed at recognising ecocide as a distinct crime under international law create further grounds for ensuring that environmental terrorism receives appropriate legal qualification in the future.

Scientific institutions and educational establishments play a pivotal role in shaping effective policies for countering environmental terrorism. They conduct research in the field of ecological security, develop strategies for sustainable resource management, and participate in international programmes such as Erasmus+ and Jean Monnet. These initiatives facilitate the integration of Ukrainian science into global discourse and contribute to the formation of modern policies of environmental resilience.

In summary, environmental terrorism in Ukraine manifests as a multidimensional phenomenon combining legal, ecological, humanitarian, and security aspects. It is systemic in character and poses a threat not only to Ukraine but also to Europe and the wider world. Environmental terrorism today is not an abstract concept but a daily reality for Ukraine. Its manifestations form part of military aggression, necessitating legal recognition and international response. War crimes against the environment should be regarded as an element of genocide and be subject to international judicial review. The absence of clear legal qualification hampers accountability; thus, Ukraine must initiate the creation of an international mechanism for addressing environmental crimes during armed conflict, including sanctions, compensation, and restorative components.

In the post-war period, Ukraine will face the task not only of rebuilding destroyed infrastructure but also of rethinking its development model on the basis of resilience, clean technologies, circular economy, and biodiversity conservation. Legislative regulation in the sphere of environmental security requires updating, taking into account international experience, the conditions of hybrid warfare, and contemporary threats. Environmental education must also be strengthened to raise a new generation of citizens conscious of their responsibility towards nature, even in the most difficult circumstances.

The problem of environmental terrorism during war constitutes a call to the international community: nature knows no borders, and the destruction of ecosystems in one country poses a threat to all humanity. The protection of Ukraine's environment is therefore simultaneously the protection of global security.

Conclusion

This study has demonstrated that ecological terrorism in the context of Russia's full-scale war against Ukraine cannot be regarded as an incidental or collateral effect of hostilities but rather as a deliberate instrument of aggression. The deliberate targeting of environmental infrastructure and resources manifests itself in multiple forms: attacks on nuclear and hydro-technical facilities, deliberate forest fires, contamination of rivers and soils, and the creation of conditions for long-term ecological degradation. These actions not only devastate natural ecosystems but also generate enduring threats to public health, economic stability, and regional as well as global security.

The definition of ecological terrorism proposed in this research provides a conceptual basis for distinguishing it from related categories such as ecocide, war crimes, and sabotage. Unlike ecocide, which implies systemic or large-scale destruction of the natural environment, ecological terrorism may be selective or localised but is characterised by its instrumental use of environmental harm as a means of intimidation, coercion, or psychological pressure. Unlike ordinary war crimes, environmental damage in this context is not an unintended by-product of military operations but a consciously chosen method of warfare. The classification developed in this paper – by forms, methods, and targets – offers a more structured framework for identifying, assessing, and preventing such acts, which is essential both for legal qualification and for the design of preventive mechanisms.

The examination of international legal instruments has revealed that although certain provisions of humanitarian law, such as the ENMOD Convention, Additional Protocol I to the Geneva Conventions, and the Rome Statute of the International Criminal Court, partially address the protection of the environment during armed conflict, they do not provide a comprehensive framework for addressing ecological terrorism. The absence of a universally recognised legal definition complicates prosecution, attribution of responsibility, and compensation for harm caused. This legal vacuum underscores the need for renewed international dialogue and the development of more precise instruments that explicitly recognise and criminalise ecological terrorism.

From a practical perspective, the findings of this study can inform state security strategies, guide reforms of criminal legislation, and strengthen Ukraine's position in pursuing international claims against the aggressor state. They are also relevant for the design of post-war recovery policies that embed environmental sustainability, resilience, and circular economy principles into reconstruction efforts. Moreover, the results can serve as a foundation for capacity-building initiatives, enabling policymakers, academics, and civil society actors to work together on integrating environmental security into broader security agendas.

Future research in this area should focus on several key directions. First, there is an urgent need to develop a universal definition of ecological terrorism at the international level, capable of being adopted across jurisdictions and supported by effective monitoring and enforcement mechanisms. Second, further interdisciplinary studies are required to explore the long-term social, psychological, economic, and ecological consequences

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.88-97

of environmental terrorism, with particular emphasis on vulnerable communities and ecosystems. Third, empirical research into methods of documenting and verifying environmental crimes in conflict zones should be advanced, using modern technologies such as satellite imagery, geospatial mapping, and digital evidence platforms. Finally, greater attention should be devoted to integrating ecological security into defence planning, humanitarian responses, and international mechanisms of collective accountability.

In conclusion, ecological terrorism should be understood not only as an environmental issue but also as a profound challenge to national and global security. Its consequences transcend borders, threatening the ecological balance, human rights, and sustainable development on a planetary scale. Addressing this phenomenon requires coordinated action by states, international organisations, and the scientific community. Only through collective recognition and legal codification of ecological terrorism as a distinct international crime can the international community effectively deter future violations, ensure accountability, and safeguard both humanity and nature for future generations.

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DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.98-108

ADMINISTRATIVE AND LEGAL SUPPORT FOR PSYCHOLOGICAL SUPPORT AND REHABILITATION OF SERVICEMEN OF THE ARMED FORCES OF UKRAINE

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The article explores the administrative and legal framework for providing psychological support and rehabilitation to servicemen of the Armed Forces of Ukraine amid prolonged armed aggression. It analyzes the current state of normative-legal regulation in this area, including key legislative acts, subordinate normative documents, and their compliance with the urgent needs of servicemen who have suffered psycho-emotional trauma due to combat operations. The main gaps have been identified, including insufficient systematization, lack of clear procedures for providing psychological assistance, and the need to improve coordination between government bodies, military units, and healthcare institutions. Special attention is given to the analysis of the Cabinet of Ministers of Ukraine Resolution № 1338, which defines the main principles, forms, and levels of providing free psychological support to war veterans and their families. The influence of the Law of Ukraine "On Rehabilitation of Persons with Disabilities in Ukraine," which expands legal guarantees for servicemen affected by martial law conditions, is also discussed. The authors emphasize the necessity of adopting a specialized legislative act regulating psychological assistance at a systemic level, as well as amending relevant normative acts to enhance administrative and legal mechanisms. Approaches to the formation of an integrated and comprehensive system of psychological support are proposed, taking into account both international experience and the specifics of current military challenges, ensuring effective protection of servicemen's mental health and increasing their combat readiness.

Keywords: servicemen; normative-legal regulation; administrative and legal support; military psychology; social protection.

Introduction

The full-scale armed aggression of the Russian Federation against Ukraine, ongoing since 2022, has resulted not only in colossal human and material losses but also in profound socio-psychological consequences for Ukrainian society. These effects are particularly acute among members of the Armed Forces of Ukraine (AFU), who are exposed daily to highly stressful combat conditions, suffer the loss of comrades, and endure prolonged physical and emotional exhaustion. Psychological research indicates that between 20% and 30% of combatants are at risk of experiencing post-traumatic stress disorder (PTSD), depression, and anxiety disorders (Yehuda & Lehrner, 2018). Consequently, the issue of psychological support and rehabilitation for military personnel emerges not only as a humanitarian concern but also as a matter of national security, given that the mental health of service members directly impacts the combat readiness of the army and the defence capacity of the state (Brenner et al., 2021).

In Ukraine, the development of a system for providing psychological assistance to military personnel has long remained outside the priorities of state policy. Only after 2014, in response to Russian aggression in the east, was a series of legal acts adopted, initiating progress in this area. Nevertheless, even following the outbreak of the full-scale war in 2022, the existing legal and regulatory framework remains fragmented, inconsistent, and insufficiently adapted to actual needs. Research conducted by the National Institute for Strategic Studies (2023) highlights the lack of adequate interagency coordination, unified standards for psychological support, and a clearly designated authority responsible for this domain. Similar conclusions have been drawn by Ukrainian legal scholars and psychologists (Kochuhur & Lytvyn, 2023; Kurkova & Lutsenko-Myskiv, 2024).

In the scholarly literature, the issue of psychological support for military personnel is examined through both medical and legal lenses. Psychological studies emphasise the need for early diagnosis of trauma-related conditions, the use of crisis interventions, multidisciplinary approaches, and rehabilitation programmes (Hoge et al., 2016). Legal scholarship, in turn, analyses the normative foundations for providing psychological assistance, issues of governmental coordination, and the alignment of national legislation with international standards (Dimich, 2019; Angelska, 2025).

International experience demonstrates that in NATO countries, psychological support for military personnel is integrated into the broader system of military medicine and social protection. For instance, in the United States, the Military OneSource programme provides free counselling to service members and their families, while in the United Kingdom, the Defence Medical Services operates a network of rehabilitation centres. In Israel, where the military continuously operates under threat conditions, the administrative and legal provision of psychological support is enshrined in specific legal acts, ensuring rapid access to specialists for military personnel (Shalev, 2020). For Ukraine, studying this experience is critically important, as it allows the avoidance of common mistakes and the integration of best practices.

Despite certain positive steps, including the adoption of Cabinet of Ministers of Ukraine Resolution No. 1338 of 29 November 2022, significant challenges remain in the provision of psychological support for military personnel. Chief among these is the absence of a dedicated law on psychological assistance that would establish legal foundations, procedures, and standards for service delivery. Equally problematic is the unclear coordination between governmental bodies—the Ministry of Defence, Ministry of Health, Ministry for Veterans Affairs, and other agencies—resulting in duplicated responsibilities and bureaucratic barriers. Existing subordinate legislation remains insufficiently systematised, complicating its practical application. Additional challenges include the absence of a unified training system for personnel providing psychological support to the military and the limited implementation of international standards within Ukrainian institutions. These gaps are corroborated both by scholarly publications (Kolesnichenko, 2018; Angelska, 2025) and analytical reports from leading expert centres. Accordingly, the issue is complex and requires an interdisciplinary approach.

The aim of this study is to identify and substantiate effective approaches to the administrative and legal provision of psychological support and rehabilitation for members of the Armed Forces of Ukraine. To achieve this aim, the study sets out several objectives: to analyse current legislation and subordinate acts in the field of psychological support for military personnel; to identify the main gaps and inconsistencies in

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.98-108

regulatory frameworks; to examine international experience (NATO, Israel, USA, UK) and the possibilities of its adaptation in Ukraine; to formulate proposals for improving administrative and legal mechanisms, including the adoption of a dedicated law and the designation of an authorised body; and to propose a model for an integrated system of psychological support for military personnel (Shalev et al., 2017). The study hypothesises that the enhancement of administrative and legal provision for psychological assistance to the military is feasible only through a systemic approach, encompassing the enactment of a dedicated "Law on Psychological Assistance," the establishment of a single coordinating authority, the unification of service standards, and the integration of best international practices. This approach would enable the creation of an effective model capable of responding to contemporary wartime challenges and the needs of post-war reconstruction.

Previous studies (Kochuhur & Lytvyn, 2023; Dimich, 2019) have largely focused on describing existing legislation and providing a general analysis of implementation challenges. This article proposes a novel approach by formulating a model of an administrative and legal mechanism that integrates normative, institutional, and procedural components. The study argues for the establishment of a central executive authority responsible for policy in the field of psychological support for the military. Specific legislative amendments are proposed, including the concept of a dedicated "Law on Psychological Assistance." Comparative legal analysis of international practices is employed to generate recommendations for adapting the best experiences from NATO and countries with prolonged conflict exposure. The study advances the hypothesis that effective psychological support is not merely a medical or social service but a component of national security, requiring specific legal regulation.

Literature Review

The issue of psychological support and rehabilitation for military personnel in the context of full-scale war has increasingly attracted the attention of both domestic and international scholars, practitioners, and analytical centres. Ukrainian research emphasises that the mental health of service members is not solely a humanitarian concern but also a direct determinant of combat readiness and national security (Kochuhur & Lytvyn, 2023; Kurkova & Lutsenko-Myskiv, 2024). This issue has gained particular urgency following 24 February 2022, when the escalation of hostilities led to a sharp increase in cases of post-traumatic stress disorder (PTSD), depression, and other psycho-emotional disorders.

Analytical centres and non-governmental organisations have made a significant contribution to shaping the scholarly discourse. Reports by the Ukrainian Institute for the Future, the Centre for Civil Liberties, and the NGO "Mental Health Platform" highlight systemic deficiencies in coordination between state bodies regarding the mental health of military personnel, as well as the absence of unified standards of care. Similar findings are presented in the report of the National Institute for Strategic Studies, Psychological Support for Military Personnel in Wartime: Challenges, Resources, Prospects (2023), which emphasises the need to establish a single administrative centre to coordinate activities between the Ministry of Defence, Ministry of Health, Ministry for Veterans Affairs, and other agencies. The report advocates the development of a network of psychological centres attached to military units, which would ensure rapid access to services and reduce bureaucratic obstacles.

Scholars also underline the misalignment of the existing legal and regulatory framework with the actual needs of military personnel. Kochuhur and Lytvyn (2023) conducted a comprehensive analysis of legislation governing medical and psychological rehabilitation, including the Law of Ukraine On Social and Legal Protection of Military Personnel and Their Families, noting both positive developments after 2022 (such as rehabilitation abroad and assistance for released prisoners of war) and persistent gaps related to interagency coordination. Dimich (2019), prior to the full-scale invasion, examined psychological and medical rehabilitation of participants in the Joint Forces Operation as an element of national security logistics, emphasising the insufficient effectiveness of legal regulation. Angelska (2025) highlighted challenges associated with severe injuries among service members and the need for multidisciplinary rehabilitation encompassing medical, psychological, and social components. Kurkova and Lutsenko-Myskiv (2024) concluded that legislation requires adaptation to wartime conditions, particularly regarding support for military personnel with PTSD, and proposed measures to strengthen interagency coordination.

Internationally, the psychological support of military personnel has long been a subject of study. In the United States, it has been established that 20–30% of combat veterans experience PTSD and other mental disorders (Hoge et al., 2016; Brenner et al., 2021). Comprehensive support programmes have been developed, notably Military OneSource, which provides free counselling to service members and their families. In the United Kingdom, the Defence Medical Services system offers multi-level medical and psychological support to service members, including rehabilitation centres for veterans. The Israeli experience is also instructive: administrative and legal mechanisms ensure rapid access to psychologists for military personnel, and PTSD is treated as a priority public health issue (Shalev, 2020).

Contemporary scholarly literature increasingly emphasises that psychological support for the military constitutes not merely a medical or social service but is an integral component of national security (Yehuda & Lehrner, 2018). This implies the necessity of a distinct legal status and formal normative recognition. Research demonstrates that effective support models require the integration of administrative, legal, and medico-social mechanisms, alongside close collaboration between state authorities, military structures, and civil society (Journal of Veterans Studies, 2025).

Accordingly, the literature indicates that, despite some positive developments, Ukraine has yet to establish a comprehensive system of psychological support for military personnel. Both domestic and international studies stress the importance of systematisation, unified standards, and adequate funding. Scholars concur that, without the adoption of dedicated legislation and the designation of an authorised body, it is impossible to create an effective administrative and legal mechanism. At the same time, international experience demonstrates that the implementation of a comprehensive psychological support system is not only achievable but critically necessary in the context of prolonged conflict and post-war reconstruction.

Materials and Methods

The methodological framework of this study is grounded in an interdisciplinary approach, encompassing jurisprudence, psychology, sociology, and public administration. This approach is necessitated by the complexity of the phenomenon under investigation—the legal and regulatory provision of psychological support and rehabilitation for members of the Armed Forces of Ukraine. Psychological assistance for military personnel possesses not only a medico-social dimension but also an administrative and legal one, requiring a comprehensive analysis of various levels of legal regulation, implementation procedures, and human and material resources.

To achieve the objectives of the study, several groups of methods were employed: general scientific, specialised legal, and comparative-analytical. In the initial stage, a systems-structural method was applied, which allowed the identification of components of the legal and regulatory framework—constitutional, legislative, subordinate, and departmental levels. This method enabled the examination of the interrelationships between general legal acts (the Constitution of Ukraine, the Laws On Health Care, On Social

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.98-108

Services) and specialised documents, notably Cabinet of Ministers of Ukraine Resolution No. 1338 of 29 November 2022. The systemic approach facilitated the identification of the fragmented nature of the regulatory framework and the consequences arising from the absence of a unified strategy.

The second key method employed was formal-legal analysis, which facilitated a detailed examination of the content of existing legislative and subordinate acts. Particular attention was paid to the definitions of concepts such as "psychological assistance," "rehabilitation," and "social services," their codification in legislation, and their alignment with international standards. The application of this method revealed that, although the laws establish basic frameworks for psychological support, these provisions are general rather than specialised, complicating their practical implementation.

In the third stage, a comparative-legal method was used to analyse international experience in NATO countries, the EU, the United States, and Israel. The materials analysed included legislative acts, strategic documents, and scholarly publications by foreign researchers (Hoge et al., 2016; Shalev et al., 2017; Yehuda & Lehrner, 2018; Brenner et al., 2021). Comparative analysis indicated that, in most of these countries, psychological support for military personnel is regarded as a component of national security and is enshrined in specific legal instruments. For Ukraine, this experience is particularly relevant in the context of developing a dedicated Law on Psychological Assistance.

Content analysis also played a significant role and was applied to scholarly publications by Ukrainian and international authors, analytical reports from the National Institute for Strategic Studies, the Ukrainian Institute for the Future, non-governmental organisations (such as the "Mental Health Platform"), and publications in leading international journals (Journal of Psychiatric Research, American Journal of Psychiatry, Journal of Veterans Studies). This facilitated the assessment of the current state of scholarly discourse and the identification of research gaps.

Additionally, a historical-legal method was employed to trace the evolution of legal regulation of psychological support in Ukraine from the early 1990s to the present. This allowed the conclusion that, prior to 2014, psychological support for military personnel was scarcely considered a state policy priority, whereas following the conflict in eastern Ukraine, and particularly after 2022, it has become a central component of national security.

The study drew on a wide range of material sources, including Ukrainian legal and regulatory acts: the Constitution of Ukraine; the Laws On Health Care, On Social Services, On the Rehabilitation of Persons with Disabilities in Ukraine, On Psychiatric Assistance, On Social and Legal Protection of Military Personnel and Their Families; and subordinate legislation, primarily Cabinet of Ministers Resolution No. 1338 (2022). Drafts and concepts developed by the Ministry of Health, Ministry of Defence, and Ministry for Veterans Affairs were also examined. Additional sources included scholarly monographs and articles by Ukrainian researchers (Kolesnichenko, 2018; Kochuhur & Lytvyn, 2023; Angelska, 2025; Kurkova & Lutsenko-Myskiv, 2024), as well as international publications addressing PTSD, trauma prevention, and interdisciplinary rehabilitation programmes (Shalev et al., 2017; Brenner et al., 2021).

The research was conducted in sequential stages. Initially, existing legal and regulatory acts governing psychological support for military personnel were reviewed and systematised. Subsequently, scholarly and analytical sources were analysed to identify the main practical challenges in the implementation of legislation. The next stage involved a comparative-legal analysis of the experiences of other countries. Finally, proposals were developed to improve Ukrainian legislation and administrative mechanisms.

The selection of these methods is justified by the complexity of the research problem. Only through the combination of formal-legal analysis, an interdisciplinary approach, and comparative-legal research was it possible to evaluate the effectiveness of the existing legal framework, benchmark it against international standards, and formulate practical recommendations. The use of a comprehensive methodology ensured the scientific validity of the findings and allowed for conclusions relevant to both legal theory and state policy in the field of psychological support for military personnel.

Results and Discussion

The legal and regulatory framework for the psychological support of military personnel in Ukraine has developed gradually in response to the increasing significance of safeguarding the mental health of service members during armed conflict. In the early stages of Ukrainian statehood, psychological assistance to military personnel was largely a secondary concern and addressed primarily within the general provisions for medical care. However, following the onset of Russian aggression in 2014, and particularly after the full-scale invasion in 2022, the issue assumed exceptional importance. The war has imposed unprecedented psychological burdens on both active service members and veterans, highlighting the urgent need to establish a comprehensive, systematically regulated legal framework to ensure effective psychological support and rehabilitation. Consequently, the development of legal mechanisms in this area has become the subject of active scholarly debate and practical investigation.

Analysing the current state of legal provision for psychological assistance, most researchers emphasise its fragmentation and dispersion. Scholars, including Lytvyn, note that although the overall level of legal regulation can be considered satisfactory, it is characterised by incremental development, slow legislative processes, and significant deficiencies in practical application. Kolesnichenko rightly observes that the existing legislative framework reflects a reactive rather than proactive approach: regulatory acts are adopted in response to specific challenges or incidents rather than establishing a coherent systemic strategy. This results in uneven delivery of psychological support, dependent on the initiative of individual agencies, international partners, or civil society organisations (Kochugur & Lytvyn, 2023). Furthermore, as Kolesnichenko (2018) emphasises, the current legal framework for psychological support, particularly for service members affected by combat, remains fragmented and underdeveloped both in general and specialised contexts. A key gap is the absence of a dedicated law regulating psychological assistance and the provision of corresponding services at a systemic level. This contrasts with psychiatric care, which is governed by the separate Law of Ukraine on Psychiatric Assistance, establishing the legal and organisational foundations for its provision (Law of Ukraine No. 1489-III, 2000). Such a situation necessitates urgent legislative refinement to create an effective, comprehensive mechanism for psychological support for those affected by armed conflict. At present, there is no unified framework outlining the fundamental principles of state policy on psychological support for military personnel. These principles should include mandatory psychological support throughout the service lifecycle, integration of psychological assistance into national security structures, interagency coordination with clearly defined responsibilities, guaranteed state funding, and active participation of civil society organisations and international partners as fully recognised stakeholders.

A key positive development in this regard was Cabinet of Ministers Resolution No. 1338 (29 November 2022), which initiated the creation of a single interagency registry of psychological service providers. This measure aims to reduce fragmentation and enhance service quality; however, its implementation has faced numerous challenges, including insufficient resources for proper coordination, a shortage of certified specialists, and a disconnect between military and civilian approaches to psychotherapy. Consequently, even legally established mechanisms remain largely declaratory, hindered by the absence of a coherent institutional architecture (Resolution of the Cabinet of Ministers

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.98-108

of Ukraine No. 1338 of 2022).

Particular attention must be given to the concept of psychological security for service members, which should be considered an integral component of Ukraine's national security. In the current conditions of war, the psychological resilience of the armed forces is as critical a resource as material and technical support. Psychological security encompasses not only the treatment of existing mental disorders, including post-traumatic stress disorder (PTSD), but also systematic preventive measures aimed at developing stress resistance, crisis management skills, and a positive moral-psychological climate within units. This necessitates the development and codification of strategies, methodologies, and programmes covering all stages of service—from training to demobilisation and reintegration into civilian life (Gorbunova et al., 2016).

International experience demonstrates the importance of a comprehensive approach. In the United States, the Mental Health Services for Veterans Act provides for specialised units within the Department of Veterans Affairs, integrated with military medical services. NATO and EU countries emphasise close cooperation between state structures and the civil sector: for example, the United Kingdom operates the Veterans' Mental Health Transition, Intervention and Liaison Service, covering both service members and their families, while Germany has a dedicated network of accredited psychotherapists for Bundeswehr veterans. WHO recommendations underline the need to ensure access to mental health services at all levels, from primary care to highly specialised centres, and to incorporate psychological support into national crisis response systems. The 2023 European Mental Health Strategy emphasises the importance of prevention and the integration of psychosocial interventions across health, education, and security sectors (Law of Ukraine No. 1338). For Ukraine, it is not only important to implement selected elements of this international experience but also to develop a model tailored to the specific conditions of protracted hybrid warfare, a substantial mobilisable population, and the social challenges associated with veteran reintegration. Unlike most European countries, where veterans constitute a relatively small proportion of the population, in Ukraine this figure is expected to increase significantly in the coming years, requiring adaptation of the entire mental health system. Therefore, the enactment of a dedicated law on psychological support for military personnel and veterans is not merely desirable but essential (Bortnyak, 2022).

Within the scope of administrative law, amendments are also warranted to relevant legislation, including the Laws On Social Services, On the Fundamentals of National Resistance, and On the Status of War Veterans and Guarantees of Their Social Protection, as well as subordinate normative acts. Such amendments should harmonise interagency procedures, delineate the powers of executive authorities, regulate access to services, and ensure quality control. It is also necessary to designate a central executive authority responsible for the formulation and implementation of state policy in psychological rehabilitation, granting it coordination, supervisory, and regulatory functions. These measures would establish a comprehensive administrative and legal mechanism to address mental health challenges in wartime (Law of Ukraine No. 2671-VIII, 2019).

The prevention of psychological disorders and engagement with service members' families merit particular attention. International experience confirms that family environments significantly influence the effectiveness of psychological rehabilitation. Programmes in the United States and Canada include specialised courses for family members, equipping them to understand the behavioural manifestations of PTSD and to provide a supportive environment (Hoge et al., 2016). In Ukraine, such approaches are only nascent and require legislative consolidation. Without this, even successful treatment risks being undermined by an unsupportive environment, complicating reintegration.

Statistical data further underscore the scale of the problem. According to the

Ministry of Health, in 2023 the number of service members and veterans seeking help for PTSD symptoms increased by over 70% compared to 2021. International experts estimate that at least one-third of combatants require professional psychological support (National Institute for Strategic Studies, 2023). Meanwhile, the number of certified military psychologists in Ukraine remains critically insufficient, with estimates suggesting over a thousand potential clients per specialist. This highlights a systemic gap between need and capacity that cannot be bridged without a comprehensive regulatory approach encompassing funding, personnel training, and international collaboration.

Another significant challenge concerns staffing. While the Resolution establishes qualification requirements, there is a shortage of trained psychologists specialised in combat trauma and military rehabilitation. University curricula and in-service training are not always updated in line with current clinical and legal standards, resulting in reliance on generalist psychologists, which reduces the quality of care for PTSD and complex trauma cases (Brenner et al., 2021). Geographic disparities further exacerbate inequities: access is better in major cities and regions with military hospitals and veterans' centres, whereas in district centres and frontline areas services are often limited or absent.

Coordination between military services and the healthcare system also presents ethical and legal challenges. Tensions exist between command imperatives, which may require information on personnel status for operational purposes, and principles of medical and psychological confidentiality (Yehuda & Lehrner, 2018). In practice, there are no clear standards governing information sharing between medical-psychological services and command structures, creating risks of rights violations or, conversely, impeding adequate care. The absence of legally established rules on commanders' access to medical data undermines trust and may reduce service members' willingness to seek help.

Practical inconsistencies also arise regarding standardised methods and validated assessment tools. Although the use of validated instruments is codified, some agencies employ adapted or untested methodologies, leading to inconsistent diagnostic conclusions and, consequently, unstable clinical decisions concerning rehabilitation (Goodson et al., 2025). There is also no centralised mechanism for accrediting methodologies or monitoring the quality of their application.

Procedural barriers and bureaucracy further impede effective support. Accessing certain services requires multiple steps, including commissions and specialist panels, before prolonged rehabilitation or overseas treatment can be granted. In crisis situations, such procedures delay interventions, reducing their effectiveness, as early support is critical in preventing chronic disorders. Simplified referral pathways and "fast-track" protocols for critical cases have proven more effective, yet they are not codified at a national level.

Thus, although recent legislation contains key provisions and principles (right to assistance, standards, confidentiality), practical implementation is hindered by insufficient systemic funding, staffing deficits, procedural inconsistency, fragmented record-keeping, and weak interagency coordination. This underscores the need not only for codifying rights and mechanisms in law but also for establishing an implementation "architecture": clear procedural algorithms, guaranteed funding, a unified registry, personnel training systems, and information-sharing protocols to ensure that legal norms function effectively in practice.

Practical measures to enhance normative effectiveness may include: (1) codifying financial mechanisms for the psychological support network in budgetary legislation; (2) establishing a unified registry of service providers and recipients; (3) standardising rules on command access to medical data and restoring trust in confidentiality; (4) centralising accreditation of methodologies and training programmes; and (5) implementing fast-track pathways for crisis interventions. The implementation of these measures would

DOI: https://doi.org/10.54477/LH.25192353.2025.3.pp.98-108

strengthen the link between legal norms and practice, creating a genuinely effective system of psychological support for military personnel.

Conclusion

The present study has generated new insights into the status and prospects of the legal and regulatory framework for psychological support and rehabilitation of service members of the Armed Forces of Ukraine. For the first time, the principal directions of legal regulation in this sphere have been systematically consolidated, and the key gaps that significantly undermine the effectiveness of the guarantees provided have been identified. It has been established that, despite the adoption of progressive acts in recent years—most notably Cabinet of Ministers Resolution No. 1338 (29 November 2022)—the regulatory framework remains fragmented and does not ensure sufficient coherence between different institutions.

The findings indicate that the current legal framework does not provide a unified mechanism for interagency coordination, adversely affecting the consistency of psychological support programme implementation. There is no single dedicated law establishing fundamental principles, procedures, and standards for providing psychological assistance to service members and their families. This creates legal uncertainty and increases the risk of systemic "gaps" in support, leaving certain categories of individuals without adequate attention from the state. A novel contribution of this research is the systematic analysis of resource and personnel challenges: staffing deficits, the absence of specialised training programmes for psychologists experienced in combat trauma, and the instability of funding for psychorehabilitation programmes constitute critical barriers to the practical implementation of regulatory provisions. It has been established that, without the creation of sustainable financial mechanisms and a centralised accreditation system for specialists, improvements in the quality of psychological support are unattainable.

Another original contribution is the conclusion regarding the necessity of integrating Ukrainian legislation with best international practices. Comparative analysis demonstrates that in NATO and EU countries, psychological support for military personnel is enshrined in dedicated laws and strategic programmes encompassing both rehabilitative and preventive dimensions. For Ukraine, it is important not only to adapt these approaches but also to develop a model tailored to the conditions of protracted warfare and the needs of veterans' reintegration into society.

Accordingly, the study demonstrates that psychological support and rehabilitation of service members should be regarded not merely as a social service or healthcare provision, but as an integral component of state policy in the field of national security and defence. The conclusions formulated provide a basis for the development of comprehensive measures: the adoption of a dedicated Law of Ukraine on Psychological Assistance, the establishment of a unified registry of recipients and services, the implementation of interagency coordination mechanisms, the enhancement of personnel training, and the provision of sustainable funding.

The results have significance not only for the theoretical development of administrative law and social security law, but also for practical policy-making in the field of mental health. Future research should focus on detailing the mechanisms for implementing the proposed reforms and evaluating their long-term effectiveness.

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Journal

«LEGAL HORIZONS»

Volume 26, No. 3
2025

Editing English-language texts: O. Lapka

Literary editor: A. Shcherbak

Editing bibliographic lists: O. Yatsun

Desktop publishing: K. Tiazhkorob

Signed to the print with the original layout 29.08.2025

Conventional Printed Sheet 9
Circulation 275 copies

Publisher: Scientific Institution "Legal Horizons" LLC

E-mail: info@legalhorizons.com.ua