

Law-Based Economic Governance and the Investment Climate in Viet Nam's Digital Market Economy: A Comparative Regulatory-Governance Approach

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Abstract

This article examines state management of the economy by law in Viet Nam under the combined pressures of market deepening, private-sector development and digital transformation. Its central claim is that economic management by law should not be reduced to the multiplication of administrative rules. Properly understood, it is a constitutional and regulatory method through which public power is authorised, limited, reasoned, proportionate and reviewable. The article uses doctrinal legal analysis, comparative regulatory theory and public-policy reasoning. It compares Viet Nam's legal-institutional framework with selected international standards on regulatory quality, impact assessment, agile regulation and digital governance. It argues that a modern socialist-oriented market economy requires a shift from permission-based administrative steering to an economic legality cycle: legal mandate, evidence-based rule-making, proportional intervention, transparent implementation, data accountability and effective remedies. The article proposes reforms in law-making, business regulation, digital public administration and regulatory impact assessment so that state economic management can better protect property rights, freedom of enterprise, fair competition, social justice and human dignity.

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1. Introduction: Economic Management as a Problem of Legality, Not Only Administration

The phrase *state management of the economy by law* carries a heavier meaning than administrative supervision. It refers to the way in which public power designs,

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guides and corrects market activity through legally recognisable forms. In a modern economy, the state no longer manages production as a central planner, yet it also cannot withdraw into the role of a night-watchman. It creates the legal architecture within which firms are established, capital is mobilised, contracts are enforced, digital transactions are authenticated, consumers are protected, competition is preserved and social risks are distributed. This article treats that architecture as a matter of constitutional legality: state economic power must be authorised by law, exercised through law and controlled by law.⁴

The problem is especially important for Viet Nam because the country's socialist-oriented market economy combines market coordination with a constitutional commitment to social justice, public interest and state direction. That combination is not inherently contradictory. It becomes problematic only where legal norms are unstable, administrative discretion is insufficiently reasoned, business conditions are fragmented across levels of government, or digital governance converts legal relationships into opaque database operations. A legal system may contain many rules and still fail to provide legality if citizens and enterprises cannot predict how those rules will be applied, cannot challenge unlawful decisions and cannot rely on equal treatment.

The article therefore asks a precise research question: what model of law-based economic governance is suitable for Viet Nam's digital market economy? The proposed answer is an *economic legality cycle*. Economic governance should begin with a clear legal mandate, continue through evidence-based and participatory rule-making, employ proportionate regulatory instruments, operate through transparent digital and non-digital implementation, and end with review, correction and learning. In this sense, law is not a brake on development. It is the institutional technology that makes development credible, fair and governable.⁵

The argument is interdisciplinary. From legal philosophy it takes the idea that law restrains arbitrary power through generality, publicity, prospectivity, coherence and adjudicability. From institutional economics it takes the proposition that credible rules reduce uncertainty and transaction costs. From public administration it takes the concern that state capacity depends on competent organisations, not merely formal competences. From regulatory studies it takes the view that contemporary economic governance is plural, networked and risk-based. The article uses these lenses to examine the Vietnamese context and to formulate legal-policy recommendations rather than abstract administrative slogans.⁶

⁴ National Assembly of Viet Nam, *Constitution of the Socialist Republic of Viet Nam*, adopted November 28, 2013, arts. 32–35, 51, <https://vanban.chinhphu.vn/?classid=1&docid=171264&pageid=27160&typegroupid=1>; *International Covenant on Economic, Social and Cultural Rights*, adopted December 16, 1966, entered into force January 3, 1976, arts. 2, 6, 9, 11, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; *International Covenant on Civil and Political Rights*, adopted December 16, 1966, entered into force March 23, 1976, arts. 2, 14, 17, 19, 25, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁵ Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven, CT: Yale University Press, 1969), <https://search.worldcat.org/title/The-morality-of-law/oclc/59778637>; Joseph Raz, “The Rule of Law and Its Virtue,” *Law Quarterly Review* 93 (1977): 195–211, <https://doi.org/10.3316/agispt.19771103>; Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), <https://doi.org/10.1017/CBO9780511812378>.

⁶ Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), <https://doi.org/10.1017/CBO9780511808678>; Daron Acemoglu, Simon Johnson, and James A. Robinson, “Institutions as a Fundamental Cause of Long-Run Growth,” in *Handbook of*

2. Conceptual Framework: From Command Administration to Regulatory Legality

Economic management by law may be misunderstood in two opposite ways. The first reduces it to command administration: the state issues permissions, prohibitions and sanctions, while enterprises and citizens comply. The second equates it with deregulation: the state removes barriers and trusts markets to self-correct. Neither approach is sufficient for a digital, integrated and socially complex economy. Command administration may suppress initiative and invite informal negotiation. Deregulation may leave information asymmetries, monopolistic practices, consumer harm and social exclusion unchecked. The appropriate question is not whether the state should regulate, but how it should regulate lawfully.

A rule-of-law approach demands more than the presence of legislation. It requires legal norms capable of guiding conduct before coercion occurs. A business registration rule, a licensing requirement or a digital compliance obligation should be knowable, stable, intelligible and non-retroactive unless exceptional constitutional reasons justify otherwise. More importantly, legality requires that executive action be reasoned. When an enterprise is denied a licence, sanctioned for market conduct or excluded from procurement, the decision must disclose its factual and legal basis. Without reasons, legal management degenerates into administrative opacity.⁷

Institutional economics helps explain why this is not merely a moral claim. Investment decisions depend on expectations about the future behaviour of public authorities and private parties. A law that is formally valid but unpredictably applied increases transaction costs. A permission system that depends on unofficial interpretation encourages avoidance and informality. A subsidy programme without transparent criteria invites capture. In this sense, legality is part of economic infrastructure. Roads and ports move goods; legal certainty moves expectations.⁸

Regulatory theory further clarifies that the modern state governs through multiple instruments: rules, standards, disclosure duties, inspections, public procurement, competition control, tax incentives, data-sharing systems, guidance documents, soft law, co-regulation and self-regulation under public oversight. The regulatory state does not vanish when markets expand. On the contrary, more complex markets often require more sophisticated public ordering. The task is to avoid the crude multiplication of commands and to design regulatory instruments that are targeted,

Economic Growth, vol. 1A, ed. Philippe Aghion and Steven N. Durlauf (Amsterdam: Elsevier, 2005), 385–472, [https://doi.org/10.1016/S1574-0684\(05\)01006-3](https://doi.org/10.1016/S1574-0684(05)01006-3); Dani Rodrik, Arvind Subramanian, and Francesco Trebbi, “Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development,” *Journal of Economic Growth* 9, no. 2 (2004): 131–65, <https://doi.org/10.1023/B:JOEG.0000031425.72248.85>.

⁷ Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1978), <https://search.worldcat.org/title/Economy-and-society-%3A-an-outline-of-interpretive-sociology/oclc/4545292>; Peter B. Evans, “Predatory, Developmental, and Other Apparatuses: A Comparative Political Economy Perspective on the Third World State,” *Sociological Forum* 4, no. 4 (1989): 561–87, <https://doi.org/10.1007/BF01115064>; K. Sabeel Rahman, “Conceptualizing the Economic Role of the State: Laissez-Faire, Technocracy, and the Democratic Alternative,” *Polity* 43, no. 2 (2011): 264–86, <https://doi.org/10.1057/pol.2010.29>.

⁸ Ronald H. Coase, “The Problem of Social Cost,” *Journal of Law and Economics* 3 (1960): 1–44, <https://doi.org/10.1086/466560>; Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990), <https://doi.org/10.1017/CBO9780511807763>.

evidence-based and reviewable.⁹

The proposed concept of *regulatory legality* therefore has four elements. First, state intervention must rest on a legal mandate. Secondly, the choice of instrument must be proportionate to the public problem. Thirdly, implementation must be transparent, consistent and procedurally fair. Fourthly, regulatory experience must feed back into law-making through ex post evaluation. This is a cycle rather than a hierarchy, because economic governance fails when rule-making, implementation and review are treated as separate bureaucratic silos.

3. Viet Nam's Legal-Institutional Context: A Market Economy Under Public Direction

The Vietnamese constitutional order recognises private ownership, freedom of enterprise in sectors not prohibited by law, social security and the right to work. It also identifies the economy as a socialist-oriented market economy with multiple forms of ownership and economic sectors. These principles establish a dual legal grammar. On one side, enterprises require autonomy, property protection and predictable market rules. On the other, the state is constitutionally authorised to pursue social justice, macroeconomic stability and public welfare. The central issue is how to translate that dual grammar into enforceable legal institutions.¹⁰

Viet Nam has built a dense body of economic legislation. The Law on Enterprises and the Law on Investment provide the basic architecture for market entry and investment activity. The Competition Law addresses anti-competitive agreements, abuse of dominance, economic concentration and unfair competitive practices. The Law on Support for Small and Medium-sized Enterprises reflects the developmental dimension of economic management by law, because the state may use legal instruments to correct structural disadvantages faced by smaller firms.¹¹

The digital economy adds a new layer. The Law on Electronic Transactions gives legal recognition to electronic transactions and trust services. The 2023 Law on Protection of Consumers' Rights extends consumer protection in a market where platforms, data and cross-border supply chains reshape vulnerability. Decree No. 13/2023/ND-CP on personal data protection is particularly significant because state economic management increasingly relies on population databases, business data, digital identities and administrative data-sharing. Digitalisation can reduce costs, but it can also

⁹ Julia Black, "Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a Post-Regulatory World," *Current Legal Problems* 54, no. 1 (2001): 103–46, <https://doi.org/10.1093/clp/54.1.103>; Robert Baldwin, Martin Cave, and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice*, 2nd ed. (Oxford: Oxford University Press, 2011), <https://doi.org/10.1093/acprof:osobl/9780199576081.001.0001>.

¹⁰ National Assembly of Viet Nam, *Constitution*, arts. 32–35, 51; *International Covenant on Economic, Social and Cultural Rights*, arts. 2, 6, 9, 11; *International Covenant on Civil and Political Rights*, arts. 2, 14, 17, 19, 25.

¹¹ National Assembly of Viet Nam, *Law on Enterprises No. 59/2020/QH14*, adopted June 17, 2020, effective January 1, 2021, <https://vanban.chinhphu.vn/default.aspx?docid=200447&pageid=27160>; *Law on Investment No. 61/2020/QH14*, adopted June 17, 2020, effective January 1, 2021, <https://vanban.chinhphu.vn/default.aspx?docid=200449&pageid=27160>; *Law on Competition No. 23/2018/QH14*, adopted June 12, 2018, effective July 1, 2019, <https://vanban.chinhphu.vn/?docid=206113&pageid=27160>; *Law on Support for Small and Medium-Sized Enterprises No. 04/2017/QH14*, adopted June 12, 2017, effective January 1, 2018, <https://vanban.chinhphu.vn/default.aspx?docid=190283&pageid=27160>.

enlarge surveillance, profiling and automated exclusion if legality is weak.¹²

Two 2025 developments sharpen the reform agenda. The Law on Promulgation of Legal Documents No. 64/2025/QH15, as amended by Law No. 87/2025/QH15, seeks to modernise the system of legal normative documents and the organisation of implementation. At the policy level, Resolution No. 68-NQ/TW frames private economic development as a central strategic task, while Resolution No. 57-NQ/TW places science, technology, innovation and digital transformation at the centre of national development. These instruments converge on one lesson: the quality of economic governance will depend less on the number of policies than on the legal capacity to implement them coherently.¹³

Vietnamese and comparative scholarship on Viet Nam's legal reform suggests caution against purely formal accounts of rule-of-law development. Commercial regulation in practice often includes state law, administrative discretion, professional networks, local interpretation and informal coordination. That reality does not mean formal law is unimportant. Rather, it shows that formal law must be designed with implementation environments in mind. A statute that ignores local administrative incentives, data capacity and business compliance costs may appear modern on paper while reproducing informality in practice.¹⁴

4. Comparative and International Reference Points

Comparative law is useful here not because Viet Nam should copy another jurisdiction, but because regulatory problems have family resemblances. Every state must decide how to make rules, consult affected groups, evaluate costs and benefits, prevent capture, supervise digital markets and correct administrative error. The OECD Recommendation on Regulatory Policy and Governance treats regulatory policy as a

¹² National Assembly of Viet Nam, *Law on Electronic Transactions No. 20/2023/QH15*, adopted June 22, 2023, effective July 1, 2024, <https://vanban.chinhphu.vn/?docid=208421&pageid=27160>; *Law on Protection of Consumers' Rights No. 19/2023/QH15*, adopted June 20, 2023, effective July 1, 2024, <https://vanban.chinhphu.vn/?docid=208363&pageid=27160>; Government of Viet Nam, *Decree No. 13/2023/ND-CP on Personal Data Protection*, April 17, 2023, effective July 1, 2023, <https://vanban.chinhphu.vn/?docid=207759&pageid=27160>.

¹³ National Assembly of Viet Nam, *Law on Promulgation of Legal Documents No. 64/2025/QH15*, adopted February 19, 2025, effective April 1, 2025, <https://vanban.chinhphu.vn/?docid=213327&pageid=27160>; National Assembly of Viet Nam, *Law No. 87/2025/QH15 Amending and Supplementing a Number of Articles of the Law on Promulgation of Legal Documents*, adopted June 25, 2025, effective July 1, 2025, <https://vanban.chinhphu.vn/?docid=214592&pageid=27160>; Politburo of Viet Nam, *Resolution No. 68-NQ/TW on Development of the Private Economy*, May 4, 2025, <https://xaydungchinhhsach.chinhphu.vn/toan-van-nghi-quyet-so-68-nq-tw-ve-phat-trien-kinh-te-tu-nhan-119250505101309949.htm>; Government of Viet Nam, *Resolution No. 138/NQ-CP Issuing the Government Action Plan for Implementation of Resolution No. 68-NQ/TW*, May 16, 2025, <https://vanban.chinhphu.vn/?docid=213667&pageid=27160>; Politburo of Viet Nam, *Resolution No. 57-NQ/TW on Breakthroughs in Science, Technology, Innovation and National Digital Transformation*, December 22, 2024, <https://xaydungchinhhsach.chinhphu.vn/toan-van-nghi-quyet-ve-dot-pha-phat-trien-khoa-hoc-cong-nghe-doi-moi-sang-tao-va-chuyen-doi-so-quoc-gia-119241224180048642.htm>.

¹⁴ John Gillespie, "Testing the Limits to the Rule of Law: Commercial Regulation in Vietnam," *Journal of Comparative Asian Development* 8, no. 2 (2009): 245–72, <https://doi.org/10.1080/15339110903326566>; Edmund J. Malesky and Markus Taussig, "Out of the Gray: The Impact of Provincial Institutions on Business Formalization in Vietnam," *Journal of East Asian Studies* 9, no. 2 (2009): 249–90, <https://doi.org/10.1017/S1598240800003003>; Adam Fforde, "Vietnam: Economic Strategy and Economic Reality," *Journal of Current Southeast Asian Affairs* 35, no. 2 (2016): 3–30, <https://doi.org/10.1177/186810341603500201>.

whole-of-government function. It emphasises clear policy objectives, impact assessment, public consultation, review of existing regulations and institutional oversight of regulatory quality. These standards are not politically neutral, but they provide a vocabulary for evaluating whether legal rules are capable of doing the work assigned to them.¹⁵

The European Union's better-regulation approach illustrates a more procedural model. Before important legislative proposals are adopted, impact assessments examine problems, objectives, options and likely economic, social and environmental consequences. Evaluations and fitness checks later ask whether rules remain effective, efficient, relevant and coherent. This approach is imperfect and contested; it may privilege quantifiable costs over distributive justice. Nevertheless, it offers a useful discipline: economic legislation should not be justified by general developmental aspiration alone. It should explain what problem is being addressed, why law is necessary, and how the chosen instrument affects enterprises, workers, consumers and public authorities.¹⁶

The rise of the regulatory state in Europe also reveals a broader institutional transformation. As states privatise, liberalise or marketise sectors, they do not merely retreat. They often create specialised regulators, licensing regimes, supervisory techniques and accountability mechanisms. In digital markets, this transformation becomes more complex because platforms may exercise private regulatory power over market access, ranking, visibility and dispute resolution. Public law must therefore govern not only the state's direct commands but also the conditions under which private ordering affects economic rights.¹⁷

Responsive regulation adds a further lesson. Enforcement should not be mechanical. Where firms are willing but confused, guidance and compliance assistance may work better than immediate punishment. Where firms repeatedly evade obligations, escalation becomes necessary. This graduated model is valuable for Viet Nam because many household businesses and small enterprises face real compliance-capacity constraints. A state committed to private-sector development should distinguish between bad-faith evasion and inability to navigate excessive or unclear procedures.¹⁸

¹⁵ OECD, *Recommendation of the Council on Regulatory Policy and Governance* (Paris: OECD Publishing, 2012), <https://doi.org/10.1787/9789264209022-en>; OECD, *G20 Survey on Agile Approaches to the Regulatory Governance of Innovation: Report for the G20 Digital Economy Task Force* (Paris: OECD Publishing, 2021), <https://doi.org/10.1787/f161916d-en>.

¹⁶ European Commission, *Better Regulation Guidelines*, SWD(2021) 305 final (Brussels, November 3, 2021), https://commission.europa.eu/system/files/2021-11/swd2021_305_en.pdf; European Commission, *Better Regulation Toolbox*, updated December 1, 2025, https://commission.europa.eu/law/law-making-process/better-regulation/better-regulation-guidelines-and-toolbox/better-regulation-toolbox_en; European Commission, "Impact Assessments," https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/impact-assessments_en; Claudio M. Radaelli and Anne C. M. Meuwese, "Better Regulation in Europe: Between Public Management and Regulatory Reform," *Public Administration* 87, no. 3 (2009): 639–54, <https://doi.org/10.1111/j.1467-9299.2009.01771.x>; Martin Lodge and Kai Wegrich, *Managing Regulation: Regulatory Analysis, Politics and Policy* (Basingstoke: Palgrave Macmillan, 2012), <https://doi.org/10.1007/978-1-137-26552-4>.

¹⁷ Giandomenico Majone, "The Rise of the Regulatory State in Europe," *West European Politics* 17, no. 3 (1994): 77–101, <https://doi.org/10.1080/01402389408425031>; David Levi-Faur, "The Global Diffusion of Regulatory Capitalism," *Annals of the American Academy of Political and Social Science* 598, no. 1 (2005): 12–32, <https://doi.org/10.1177/0002716204272371>; Jacint Jordana, David Levi-Faur, and Xavier Fernández i Marín, "The Global Diffusion of Regulatory Agencies: Channels of Transfer and Stages of Diffusion," *Comparative Political Studies* 44, no. 10 (2011): 1343–69, <https://doi.org/10.1177/0010414011407466>.

¹⁸ Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New

International human-rights standards also matter. Economic management affects property, work, social security, privacy, access to information and remedies. A tax database, procurement blacklist, business-registration refusal or platform-driven consumer decision can have immediate consequences for livelihoods. Human rights therefore enter economic regulation not as external rhetoric but as criteria of legality: non-discrimination, due process, privacy, participation and effective remedy.¹⁹

5. The Risks of an Over-Instrumental View of Law

A developmental state may be tempted to treat law primarily as an instrument for policy execution. That view is understandable in periods of rapid transformation: law is needed to mobilise resources, accelerate infrastructure, attract investment, formalise businesses and discipline markets. Yet an over-instrumental view can become self-defeating. When law is drafted mainly to authorise intervention, it may under-specify limits on administrative discretion. When implementation is measured mainly by dossier volume or sanction numbers, agencies may neglect fairness. When digital platforms are treated as neutral tools, their embedded legal assumptions remain invisible.

The first risk is normative overload. Economic laws often contain broad objectives: competitiveness, innovation, consumer welfare, social protection, environmental sustainability and security. These objectives are legitimate, but they may conflict. A legal system that declares every objective equally urgent without specifying priority rules leaves administrators to reconcile conflicts case by case. In such circumstances, enterprises experience regulation as negotiation rather than law. The remedy is not to simplify policy ambition artificially, but to require clearer rule-making reasons and explicit balancing.

The second risk is procedural thinness. Economic management frequently occurs through inspections, licensing, approvals, guidance, eligibility assessments and data verification. These decisions may appear routine, but they determine whether a person may operate a business, access a subsidy, participate in procurement or receive recognition of a digital transaction. Procedural justice requires notice, reasons, access to evidence where appropriate, correction mechanisms and independent review. The Vietnamese administrative-law reform literature has long recognised that market transition requires a movement from bureaucratic permission to legally accountable administration.²⁰

The third risk is digital opacity. Digital public administration can reduce face-

York: Oxford University Press, 1992), <https://global.oup.com/academic/product/responsive-regulation-9780195093766>; John Braithwaite, *Regulatory Capitalism: How It Works, Ideas for Making It Work Better* (Cheltenham: Edward Elgar, 2008), <https://doi.org/10.4337/9781848441262>.

¹⁹ United Nations Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, U.N. Doc. A/HRC/17/31 (March 21, 2011), https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf; United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, U.N. Doc. E/C.12/GC/24 (August 10, 2017), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2017-state-obligations-context>.

²⁰ Brian J. M. Quinn, "Legal Reform and Its Context in Vietnam," *Columbia Journal of Asian Law* 15, no. 2 (2002): 219–92, <https://doi.org/10.7916/cjal.v15i2.3211>; Phan Thi Lan Huong, "Reforming Law on Administrative Procedures towards a Rule-of-Law State in Vietnam," *Gdańsk Journal of East Asian Studies* 16 (2019): 152–63, <https://doi.org/10.4467/23538724GS.19.022.11867>.

to-face discretion, but it may create new forms of unreviewable power if databases are inaccurate, algorithms are unexplained, portals are inaccessible or inter-agency data-sharing lacks a clear legal basis. In economic governance, digital opacity may affect business registration, tax risk scoring, customs classification, consumer complaints, e-procurement, land-related information and social insurance contributions. A digital state governed by law must therefore make data provenance, access authority, correction rights and accountability logs legally visible.²¹

The fourth risk is uneven local implementation. A national law may produce different economic realities across provinces and communes because implementation depends on administrative capacity, interpretation, digital infrastructure and informal norms. Comparative and Vietnamese evidence on business formalisation shows that local institutional quality affects whether entrepreneurs choose formal legal status or remain in the grey zone. Legal reform therefore cannot stop at national drafting. It must address implementation incentives and local accountability.²²

6. The Economic Legality Cycle

The article proposes the economic legality cycle as a practical framework for law-based economic management. The cycle has six stages: mandate, diagnosis, instrument choice, implementation, remedy and review. It is deliberately simple because complex reform programmes often fail when they lack an operational sequence. The cycle can be used by central ministries, provincial authorities, sectoral regulators and local service bodies when designing or revising economic rules.

Legal mandate. The first question is whether the public authority has a legal mandate. In a rule-of-law state, convenience cannot substitute for competence. Economic regulation may restrict property, enterprise freedom, contract autonomy or data privacy; therefore, the legal basis must be clear. This is particularly important after reforms to the system of legal normative documents. If the legal document system is simplified but guidance proliferates through informal letters, portals or administrative instructions, legal certainty will decline rather than improve.²³

Problem diagnosis and evidence. The second question is what problem the rule addresses. Economic governance often responds to genuine problems: market dominance, unsafe products, speculative bubbles, tax evasion, low productivity, consumer deception, data misuse or exclusion of small enterprises. Yet the legal response should be grounded in evidence. A licensing condition without demonstrated risk becomes a barrier. A subsidy without targeting criteria becomes rent distribution. A digital reporting requirement without data-use justification becomes compliance noise. Regulatory impact assessment is not a foreign ritual; it is a legal method for preventing arbitrary burdens.²⁴

²¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 (General Data Protection Regulation), O.J. L 119 (May 4, 2016), <https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng>; Regulation (EU) 2022/868 of the European Parliament and of the Council of May 30, 2022 (Data Governance Act), O.J. L 152 (June 3, 2022), <https://eur-lex.europa.eu/eli/reg/2022/868/oj/eng>.

²² Gillespie, "Testing the Limits to the Rule of Law," 245–72; Malesky and Taussig, "Out of the Gray," 249–90; Fforde, "Vietnam," 3–30.

²³ National Assembly of Viet Nam, *Law on Promulgation of Legal Documents No. 64/2025/QH15*; National Assembly of Viet Nam, *Law No. 87/2025/QH15*.

²⁴ Cass R. Sunstein, *The Cost-Benefit Revolution* (Cambridge, MA: MIT Press, 2018), <https://doi.org/10.75>

Proportional instrument choice. The third question is which instrument is proportionate. Not every economic problem requires a prohibition or a licence. Some problems are better addressed through disclosure, standards, risk-based inspection, sandboxing, public procurement, tax incentives, competition enforcement, public guidance or co-regulation. The principle of proportionality requires a fit between the regulatory problem and the chosen legal technique. In a digital economy, proportionality also requires attention to interoperability and data minimisation: the state should not collect or connect more data than necessary to perform the legal task.²⁵

Transparent implementation. The fourth question is how implementation occurs. Legal norms must travel through administrative forms, digital portals, inspection plans, local officials and business practices. Implementation should disclose responsible agencies, time limits, documentary requirements, legal grounds and complaint routes. In procurement and price management, for example, transparency reduces both corruption risk and distrust. In e-commerce and consumer protection, transparent complaint procedures help translate statutory rights into practical remedies.²⁶

Remedy and correction. The fifth question is how mistakes are corrected. An economic legality cycle without remedy is merely an administrative workflow. Citizens and enterprises must have channels to correct inaccurate data, contest refusal, request human review of automated validation, complain about delay and obtain compensation where unlawful state action causes damage. Corrective mechanisms are especially important for small enterprises because they often lack bargaining power and legal resources. The cost of challenging an unlawful decision may exceed the value of the administrative benefit at stake.

Ex post review and institutional learning. The sixth question is whether the rule still works. Economic regulation should be periodically reviewed against its objectives and its actual effects. A business condition may have been reasonable when adopted but obsolete after technology changes. A consumer rule may protect formal buyers while missing platform users. A subsidy may help small firms initially but later entrench dependency. Ex post review is the stage at which law learns from practice. Without it, the legal system accumulates obsolete requirements and enterprises pay the price.²⁷

7. Digital Economic Governance: Data, Platforms and Administrative Power

Digital transformation changes the legal form of economic management. In the analogue model, an enterprise often interacted with a named official, submitted paper documents and received a written decision. In the digital model, the interaction may occur through a portal, an identity system, a database, an automated check and an

51/mitpress/11571.001.0001; Dani Rodrik, "Second-Best Institutions," *American Economic Review* 98, no. 2 (2008): 100–104, <https://doi.org/10.1257/aer.98.2.100>.

²⁵ Black, "Decentring Regulation," 103–46; Baldwin, Cave, and Lodge, *Understanding Regulation*.

²⁶ National Assembly of Viet Nam, *Law on Bidding No. 22/2023/QH15*, adopted June 23, 2023, effective January 1, 2024, <https://vanban.chinhphu.vn/?docid=208419&pageid=27160>; National Assembly of Viet Nam, *Law on Prices No. 16/2023/QH15*, adopted June 19, 2023, effective July 1, 2024, <https://vanban.chinhphu.vn/?docid=208367&pageid=27160>.

²⁷ European Commission, *Better Regulation Guidelines*; European Commission, *Better Regulation Toolbox*; European Commission, "Impact Assessments."

electronic notice. This transformation is not merely technical. It changes where discretion is located. Discretion may move from front-office officials to system designers, database managers, risk-scoring rules and inter-agency protocols.

For that reason, digital economic governance should be governed by three legal principles. First, data legality: every collection, sharing and reuse of business or personal data should have a defined legal basis, purpose and retention rule. Secondly, administrative explainability: where a digital process affects rights or market access, the affected person should be able to understand the decisive legal and factual reasons. Thirdly, human responsibility: a public authority cannot avoid accountability by blaming a platform, software vendor or database error.²⁸

The personal-data dimension deserves particular attention. Economic governance increasingly combines personal and business data: household business registration, tax information, labour records, social insurance, consumer complaints, beneficial ownership, public procurement participation and digital identity. The boundary between economic regulation and privacy protection is therefore porous. Comparative European experience under the General Data Protection Regulation and Data Governance Act illustrates the need to connect data processing with legality, purpose limitation, accountability and remedy. Viet Nam's data-protection framework can develop in that direction while preserving national legal particularities.²⁹

Digitalisation also changes the relationship between public and private regulation. Platforms set rules that affect sellers, drivers, consumers, advertisers and service providers. Ranking, suspension, delisting and payment withholding may become quasi-regulatory decisions. State management of the economy by law must therefore include rules for platform accountability, consumer protection, competition control and fair dispute resolution. The law should recognise that private digital infrastructure may exercise market power similar to public gatekeeping.

8. Policy Recommendations for Viet Nam

First, Viet Nam should institutionalise regulatory impact assessment for economically significant legal documents. The assessment should not become a bureaucratic annex drafted after the policy decision has already been made. It should compare options, estimate compliance costs, identify affected groups, address impacts on small and medium-sized enterprises, and explain distributional effects. Where a rule advances social justice or national security at economic cost, the cost should be acknowledged rather than concealed. Candour improves legitimacy.³⁰

Secondly, economic rule-making should include structured consultation with enterprises, workers, consumer organisations, local authorities and experts. Consultation should not be limited to publication of draft texts. It should ask specific questions about implementation obstacles, documentary burdens, digital accessibility and enforcement

²⁸ National Assembly of Viet Nam, *Law on Electronic Transactions No. 20/2023/QH15*; National Assembly of Viet Nam, *Law on Protection of Consumers' Rights No. 19/2023/QH15*; Government of Viet Nam, *Decree No. 13/2023/ND-CP*.

²⁹ Regulation (EU) 2016/679 (General Data Protection Regulation); Regulation (EU) 2022/868 (Data Governance Act).

³⁰ OECD, *Recommendation of the Council on Regulatory Policy and Governance*; OECD, *G20 Survey on Agile Approaches*.

risks. In the Vietnamese context, consultation is also a way to detect local variation before a national rule is applied uniformly to unequal administrative conditions.

Thirdly, Viet Nam should adopt a statutory principle of proportionate economic regulation. Such a principle would not prevent necessary intervention. It would require agencies to justify why the selected instrument is suitable and no more burdensome than reasonably necessary. Licensing should be reserved for activities that pose legally significant risk. Notification, registration or ex post inspection may suffice for lower-risk activities. Proportionality would also support the agenda of private-sector development by reducing unnecessary barriers to formalisation.³¹

Fourthly, the law should distinguish compliance assistance from enforcement escalation. Small firms, household businesses and start-ups often need guidance rather than immediate sanction. A responsive model could use warnings, remedial plans and compliance support for first-time or low-risk violations, while reserving heavier sanctions for deliberate evasion, repeated violations or conduct that harms consumers, workers, competitors or the public budget. This distinction would improve both fairness and enforcement efficiency.³²

Fifthly, digital public administration should include a legal right to data correction and human review in economically consequential procedures. If a business is blocked from registration, flagged for tax risk, excluded from a procurement process or denied access to a support programme because of data held by the state, it should have a clear route to identify the data source, request correction and obtain a reasoned decision. Digital convenience must not displace administrative justice.

Sixthly, Viet Nam should strengthen ex post review of business conditions, administrative procedures and digital reporting duties. Review should ask whether the rule remains necessary, whether it has produced unintended costs, whether it affects small enterprises disproportionately, whether local authorities implement it consistently, and whether digital systems have reduced or merely relocated administrative burdens. This would connect law-making with administrative learning.³³

Seventhly, developmental policy should be framed as mission-oriented but rights-constrained. The state may legitimately steer innovation, green transition, digital infrastructure and private-sector upgrading. However, mission-oriented governance must remain legally bounded: objectives should be public, criteria transparent, beneficiaries identifiable, conflicts of interest controlled and remedies available. The purpose of state direction is to expand human capabilities, not to replace private initiative with opaque allocation.³⁴

Finally, legal education and civil-service training should treat economic governance as an interdisciplinary discipline. Officials who draft and apply economic

³¹ Politburo of Viet Nam, *Resolution No. 68-NQ/TW*; Government of Viet Nam, *Resolution No. 138/NQ-CP*; Politburo of Viet Nam, *Resolution No. 57-NQ/TW*.

³² Ayres and Braithwaite, *Responsive Regulation*; Braithwaite, *Regulatory Capitalism*.

³³ World Bank, *Worldwide Governance Indicators: Methodology and 2024 Update* (Washington, DC: World Bank, 2024), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/09905210162424110>; World Bank, *GovTech Maturity Index 2025 Update* (Washington, DC: World Bank, 2025), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099121725193511608>.

³⁴ Mariana Mazzucato, "Mission-Oriented Innovation Policies: Challenges and Opportunities," *Industrial and Corporate Change* 27, no. 5 (2018): 803–15, <https://doi.org/10.1093/icc/dty034>; Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999), <https://global.oup.com/academic/product/development-as-freedom-9780198297581>.

rules need knowledge of administrative law, competition policy, data protection, public finance, behavioural compliance and digital systems. A rule-of-law economy cannot be built by lawyers alone, but it cannot be built without legal method. The human quality of administration remains decisive, even when the administrative interface becomes digital.³⁵

9. Conclusion

State management of the economy by law is not an old formula attached to a new market economy. It is a living constitutional method. Viet Nam's development path requires a capable state, but capability must be measured by legal quality as much as by administrative speed. A state that can issue many rules but cannot explain, coordinate, review or correct them is not a strong regulatory state. A digital administration that processes dossiers quickly but leaves citizens and enterprises unable to understand or challenge decisions is not yet lawful digital governance.

This article has argued for an economic legality cycle composed of legal mandate, evidence-based diagnosis, proportional instrument choice, transparent implementation, remedy and ex post review. The cycle draws from rule-of-law theory, institutional economics, regulatory governance and comparative better-regulation practice. It is not a foreign template. It is a way to translate Viet Nam's own constitutional commitments to property, enterprise freedom, social security, work, public interest and human dignity into the daily administration of the market economy.

The stakes are practical. If economic law is predictable, enterprises formalise and invest. If regulation is proportionate, innovation becomes less risky. If digital systems are accountable, citizens trust electronic administration. If remedies are accessible, legality becomes an experience rather than a slogan. The future of economic management in Viet Nam will therefore depend not only on what the state seeks to achieve, but on the legal form through which it seeks to achieve it.

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³⁵ Gunther Teubner, "Substantive and Reflexive Elements in Modern Law," *Law & Society Review* 17, no. 2 (1983): 239–85, <https://doi.org/10.2307/3053348>; Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (New York: Harper & Row, 1978), <https://search.worldcat.org/title/Law-and-society-in-transition-%3A-toward-responsive-law/oclc/716104383>.

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