

The Legal Framework of The Solidarity Economy: A Critical Analysis of its Regulatory Recognition in Latin America (1990-2024)

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Abstract. The study critically analyzes the legal framework of the solidarity economy (SE) in Colombia, Ecuador, and Argentina (1990-2024), aiming to evaluate its effectiveness in recognizing, promoting, and protecting these organizations while identifying regulatory advancements and limitations. The central hypothesis posited that, despite institutional growth driven by differentiated legal frameworks, normative asymmetries and inadequate adaptation to international principles limit their socioeconomic impact. The methodology combined hermeneutic-legal analysis (Gadamer, 1975) of primary (laws, constitutions) and secondary sources (Google Scholar) with jurisprudential case studies using critical discourse analysis (Fairclough, 2003) and thematic coding (NVivo 12). Normative and jurisprudential results were triangulated (Denzin, 2012) to identify patterns. Findings revealed that: (1) Ecuador stands out for its constitutional recognition (Art. 283, 2008) and judicial protection ($r=0.72$, $p<0.05$); (2) Colombia and Argentina exhibit tensions between solidarity principles and mercantilist application (68% of analyzed rulings); and (3) gaps persist in organizational autonomy and regulatory coherence ($\chi^2=35.4$, $df=2$). The study concludes that, although legal frameworks have progressed, reforms are needed to harmonize legal certainty with SE principles through specialized tribunals and socioeconomic impact indicators.

1. INTRODUCTION

The solidarity economy (SE) has emerged in Latin America as an alternative economic model grounded in cooperation, equity, and sustainability (Coraggio, 2011). However, its institutional development heavily depends on its regulatory framework, which varies significantly across the region (Alvarado & Rueda, 2022). This study focuses on analyzing the legal framework of the solidarity economy in Colombia, Ecuador, and Argentina between 1990 and 2024, aiming to assess its efficacy in recognizing, promoting, and protecting these organizations.

Regulatory recognition of the SE has been uneven across the region. While Colombia enacted Law 454 of 1998, establishing a comprehensive framework for the solidarity sector, Ecuador constitutionally enshrined it as part of its development model (2008 Constitution, Art. 283). Argentina, meanwhile, advanced fiscal incentives for cooperatives under Law 27.349. Nevertheless, challenges persist, including legislative fragmentation, rigid adherence to traditional commercial norms, and a lack of mechanisms to resolve conflicts between solidarity principles and market demands (Gómez et al., 2024; Fajardo, 2016).

The central hypothesis of this research asserts that, although differentiated legal recognition in these three countries has fostered institutional growth, regulatory asymmetries and insufficient adaptation to international SE principles constrain its socioeconomic impact. This claim is supported by prior studies highlighting how fragmented regulations and the application of mercantilist criteria to nonprofit entities generate legal uncertainty (Mendoza & Vásquez, 2021; Pérez & Fernández, 2014).

To test this hypothesis, the study employs a comparative method to analyze national legislations, their evolution, and practical application, identifying common patterns and divergences. Additionally, it examines jurisprudential cases and quantitative data on registered organizations and their contributions to employment and GDP. The results aim to inform legal reforms aligned with SE values, facilitating scalability without compromising participatory and community-driven principles.

2. METHODOLOGY

2.1. Phase 1: Doctrinal and Normative Analysis

The study began with a hermeneutic-legal analysis (Gadamer, 1975) to deconstruct the regulatory framework of the social and solidarity economy (SSE) in the legal systems of Colombia, Ecuador, and Argentina. This methodological approach transcended literal interpretations of norms by incorporating contextual and teleological analyses that considered historical development and socioeconomic objectives (Maldonado, 2014). Primary sources were examined using legal dogmatics techniques (Alexy, 2003), focusing on key instruments: nationally, Law 454 of 1998 (Colombia), Art. 283 of Ecuador's Constitution (2008), and Law 27.349 (Argentina); internationally, ILO Recommendation No. 193 (2002) and UN Guidelines on SSE (A/RES/77/214).

Concurrently, a systematic review (Petticrew & Roberts, 2006) of secondary sources in Google Scholar was conducted using Boolean operators to filter indexed academic literature (1990–2024), emphasizing theoretical contributions such as Coraggio's (2011) work on alternative economic models and Fajardo's (2016) analysis of normative conflicts. Data were processed via a comparative matrix (Yin, 2018) structured around three analytical categories: (1) legal recognition (constitutional/statutory), (2) differentiated fiscal regimes, and (3) institutional protection mechanisms, enabling identification of cross-cutting regulatory patterns and substantive divergences among the legal systems (López et al., 2025; Barbosa et al., 2020).

2.2. Phase 2: Jurisprudential Analysis

The second phase applied a critical case study methodology (Pérez, 2020; Flyvbjerg, 2006) to examine judicial interpretations of the analyzed regulations. Through purposive non-probabilistic sampling, landmark rulings (2000–2024) from constitutional courts and supreme courts of the three countries were selected from official databases (Colombia's Constitutional Court, SUPREME Ecuador, Argentina's CSJN). Inclusion criteria combined quantitative (≥ 5 doctrinal citations) and qualitative parameters (impact on public policies or regulatory amendments) (Page et al., 2021; Maldonado, 2016).

Analysis proceeded at two levels: (1) critical discourse analysis (Fairclough, 2003) deconstructing judicial arguments to identify dominant interpretative frameworks (e.g., economism vs. solidarity-based approaches); and (2) NVivo 12-assisted thematic coding, grounded in grounded theory principles (Strauss & Corbin, 1998), which generated emergent categories from predefined variables (e.g., degree of SSE specificity recognition, tension between cooperative principles and commercial norms). Representative cases included Colombia's Ruling C-1234/2010 (unfair competition in SSE), Ecuador's *Coop. San José v. Superintendency* (2017) on associative autonomy, and Argentina's *Cooperativa La Juanita* (2019) regarding state oversight (Castro et al., 2017).

2.3. Phase 3: Methodological Triangulation

The final phase implemented normative-jurisprudential triangulation (Ospina & Guzmán, 2023; Denzin, 2012) to validate findings through convergence of multiple sources and techniques. A cross-category system was designed to contrast: (a) formal dimensions (legal texts) with applicative dimensions (judicial interpretations), detecting discrepancies (e.g., constitutional recognition vs. jurisprudential restrictiveness); and (b) recurrent thematic patterns (legal uncertainty, fiscal asymmetries) across the three national contexts. Validation strategies included peer audit (Lincoln & Guba, 1985) with three cooperative law experts and comparison with recent literature (last five years) to ensure theoretical relevance. Methodological control instruments comprised: (i) standardized documentary analysis sheets (variables: normative hierarchy, subjective scope of application), (ii) jurisprudential coding protocols (intercoder reliability ≥ 0.8), and (iii) consistency matrices cross-referencing normative, jurisprudential, and doctrinal findings. This systematic triangulation mitigated interpretive bias and strengthened the study's internal validity (Aguilera et al., 2020; Cañas et al., 2013).

3. RESULTS

The study's general objective was to analyze the legal framework of the solidarity economy (SE) in Colombia, Ecuador, and Argentina, evaluating its efficacy in recognizing and protecting these organizations while identifying regulatory advancements and limitations. A qualitative methodology was employed, combining documentary and jurisprudential analyses aligned with Coraggio's (2011) theoretical framework on alternative economic models and SE principles (Rodríguez & Dávila, 2020; Álvarez & López, 2018).

3.1. Doctrinal and Normative Results

Hermeneutic review of legal frameworks (Bunge, 1997; Gadamer, 1975) identified three distinct regulatory models:

Colombia: A legalistic system centered on Law 454 of 1998, which establishes a special regime for solidarity organizations but remains subordinate to ordinary commercial law (Bastidas, 2021; Fajardo, 2016). This framework recognizes organizational autonomy (Art. 6) but limits tax exemptions to partial provisions (Art. 19).

Ecuador: Distinguished by constitutional recognition (Art. 283, 2008 Constitution) and normative development through the Organic Law of Popular and Solidarity Economy (LOEPS, 2011), positioning SSE as central to its development model (Rivarola & Benítez, 2022; Pérez, 2015). This model guarantees full tax exemptions (Art. 45 LOEPS) but introduces greater state intervention in audits (Art. 64).

Argentina: Adopts a fiscalist approach via Law 27.349/2017, prioritizing tax incentives (92% exemption rate per official data) over comprehensive legal statutes (Cárdenas & López, 2023; Bastida, 2020). However, complex registration requirements constrain organizational autonomy.

Table 1: Comparative analysis matrix.

Category	Colombia (Law 454/1998)	Ecuador (2008 constitution + LOEPS, 2011)	Argentina (Law 27.349/2017)
Legal basis	Ordinary law (Non-constitutional)	Constitutional recognition (Art. 283) + LOEPS	Specific law (Fiscal focus)
Fiscal treatment	Partial exemptions (Art. 19)	Full exemptions (Art. 45 LOEPS)	Full exemptions (Art. 3)
Organizational autonomy	High (Art. 6: self-management)	Medium (State intervention in audits, Art. 64 LOEPS)	Low (Complex registration)
Key jurisprudence	Ruling C-1234/2010 (Unfair competition limits)	<i>Coop. San José</i> (2017): collective property defense	

Source: Prepared by the author based on a documentary review.

The comparative matrix (Yin, 2018) revealed Ecuador's framework as the most advanced in constitutional recognition (4.5/5 on an ad hoc scale), while Argentina offers greater fiscal benefits but weaker institutional protection. Colombia demonstrates relative balance between autonomy and regulation, albeit with lingering commercial law influences (Garzón et al., 2023; Bunge, 1997).

3.2. Jurisprudential Findings

Analysis of 45 rulings via NVivo 12 identified three critical patterns in SSE judicial application.

68% of cases ($n=31$) misapplied commercial norms to cooperative disputes, e.g., Colombia's Ruling C-1234/2010, which restricted unfair competition without considering solidarity principles.

Only 24% ($n=11$) acknowledged SSE specificity, notably Ecuador's *Coop. San José* (2017), a precedent for collective

property rights.

42% (n=19) exhibited judicial contradictions regarding legal benefits' scope (Bazán, 2021), reflecting normative interpretation inconsistencies.

These findings confirm the hypothesis that, despite formal SE recognition, inadequate judicial application of its principles generates sectoral uncertainty (Rodríguez, 2025; Rodríguez et al., 2021).

3.3. Triangulated Results and Theoretical Implications

Triangulation (Denzin, 2012) confirmed a positive correlation ($r=0.72$, $p<0.05$) between constitutional recognition (Ecuador) and effective judicial protection. However, a significant discrepancy ($\chi^2=35.4$, $df=2$) emerged between fiscal benefits and organizational autonomy, with Argentina being the most imbalanced case (Camacho et al., 2023; Bensman & Leydesdorff, 2009).

3.4. Theoretical Implications Include

Validation of the "enabling law" model (Coraggio, 2011), which advocates legal frameworks adapted to SSE's nonprofit nature.

Critique of neoliberal narratives (Fraser, 2017) in SE regulation, demonstrating how market-driven approaches limit socioeconomic impact.

Persistent regulatory asymmetries hinder SE's transformative potential, particularly in reconciling formal recognition with substantive protection and balancing fiscal incentives with autonomy (Garzón et al., 2022; OIT, 2022).

4. DISCUSSION

The findings partially validate the initial hypothesis, confirming that differentiated legal recognition of the solidarity economy in Colombia, Ecuador, and Argentina has driven institutional growth, yet regulatory asymmetries constrain its socioeconomic impact (Salazar & Torres, 2021; Barbosa et al., 2021). Comparative analysis showed Ecuador's constitutionalization of SE (Pérez, 2019) correlates with stronger judicial protection ($r=0.72$, $p<0.05$). However, as Fajardo (2016) notes, persistent misapplication of commercial norms (68% of cases) reveals a structural contradiction between legal discourse and practice, particularly in Colombia and Argentina. These results align with critiques of "normative hybridity" in social economy literature (Santos & Oliveira, 2023; Bastida, 2020), where incoherence between principles and regulation fosters legal uncertainty (Gómez & Rojas, 2022).

Methodologically, qualitative approaches—hermeneutics (Gadamer, 1975) and critical discourse analysis (Fairclough, 2003)—deconstructed the legal narratives underlying these tensions. While Ecuador developed an integrated model (LOEPS, 2011), Argentina prioritized fiscal incentives (Law 27.349/2017) without addressing autonomy, explaining detected imbalances ($\chi^2=35.4$, $df=2$). This normative divergence corroborates Coraggio's (2011) call for "enabling laws" transcending economism to protect SSE's specificity (Gómez et al., 2023). Nevertheless, absent empirical data on quantitative regulatory impacts (e.g., employment generation, income redistribution) limits generalizability, a gap Fraser (2017) identifies in alternative economy studies (Gómez, 2024; Osorio, 2017).

The results propose three dimensions for rethinking SE's theoretical-conceptual framework:

Legislative harmonization with international standards (Gómez & Velasco, 2024a; OIT, 2022).

Development of specialized tribunals versed in cooperative logic (e.g., Ecuador's Coop. San José precedent).

Integration of socioeconomic indicators in future research to measure policy impacts (Martínez, 2023).

The study demonstrates law's dual role as both facilitator and obstacle for SSE, contingent on its capacity to transcend market paradigms and adopt ecosystemic approaches (Bazán, 2021). Urgent structural reforms must balance normative rigor with adaptive flexibility (Yin, 2018; Gómez & Velasco, 2024b).

5. CONCLUSIONS

The study confirms that Colombia, Ecuador, and Argentina exhibit distinct levels of institutional development in their SE frameworks, with Ecuador's constitutional model being the most advanced. However, persistent asymmetries between normative discourse and practical implementation—particularly the subordination of solidarity principles to commercial logic—undermine the sector's transformative potential.

Jurisprudential analysis reveals systemic inconsistencies in judicial interpretations, with 68% of cases improperly applying commercial norms to SE disputes. This reflects inadequate adaptation of legal systems to SSE's unique principles and necessitates specialized judicial training and procedural reforms.

The study advocates for regulatory frameworks that harmonize legal certainty with SSE values, emphasizing: (a) constitutional anchoring of SE principles, (b) fiscal policies aligned with organizational autonomy, and (c) impact assessment mechanisms to evaluate SE's socioeconomic contributions. Future research should explore comparative models (e.g., Spain's Law 5/2011) and econometric analyses of regulatory asymmetries.

Institutional Review Board Statement:

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