



The Role Of Trade Law In Business Development In The Digital Era

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Abstract

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Commercial law is a science that regulates the relationship between one party and another party relating to commercial matters. The purpose of this article is to analyze and explain the role of commercial law in supporting business development in the digital era, identify and describe the role of commercial law in consumer protection, digital business regulations, intellectual property protection, business dispute resolution, digital business collaboration, agreements and contracts. electronics, then discuss the challenges and opportunities faced in business regulations in the digital era. The research method was carried out using the Google Scholar and database PubMed. Results from research Commercial law plays a very important role in regulating business in the digital era. Consumer protection, digital business regulations, intellectual property protection, dispute resolution, digital business cooperation, electronic agreements and contracts, tax regulations, and challenges are some aspects that need to be managed wisely in an ever-changing digital environment. Despite the challenges and rapid changes in the digital business environment, effective commercial law is key to ensuring sustainable business growth and stakeholder protection. Wise regulation in the digital era will help create a strong legal foundation to support fair and sustainable business growth.

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Introduction

As a country with rapid technological and information development, Indonesia cannot avoid the arrival and growth of the digital era which has changed people's economic activities. Due to the rapid expansion of the digital economy, the

flow of products not only impacts local economic actors, but also extends beyond national borders. Further changes in the digital economy may impact corporate competition and pose problems for law enforcement in Indonesia¹.

In essence, everyone without exception is obliged to obey and obey the applicable laws so that humanity can experience justice, independence, unity, sovereignty, and what is called justice and prosperity. All of this is done so that we as humans can understand the concept of organized freedom².

The evolution of social life in society today has given rise to complex legal and social challenges. The digital era has had a significant influence on people's lives, both positive and negative. With the convenience of technology, the beneficial influence of the digital era makes mobility more effective and efficient³.

Changes in people's lifestyles may not always have a good effect; in fact, the following negative impacts sometimes cannot be controlled due to the lack of legal restrictions. On the one hand, the influence of changes in people's lifestyles from the contemporary era to the digital era provides convenience and increases crime internationally. Technological progress always has a direct or indirect impact, both positive and bad, on the activities and mental attitudes of all members of society.

Business law is the science that regulates the relationship of one party with another party in a business situation. Commercial law is part of civil law, especially contract law. The reason is because commercial law is related to human behavior in business matters. As a result, commercial law is excluded from substantive law. Then there is business law which relates to the rights and obligations of parties involved in commercial matters. This is regulated by the law of engagement. Therefore, business law is divided into contract law. Contract law is the body of law that governs business transactions.

Currently, commercial law is a branch of civil law that regulates business entities and/or entrepreneurs, as well as economic activities developed jointly with entrepreneurs or other customers (Hasyim, 2023)⁴.

In this general concept of Commercial Law we can distinguish different parts (Sumadi, 2019)⁴:

- a. Entrepreneur: rights, duties and obligations
- b. Company Law
- c. Contract
- d. Trading securities
- e. Bankruptcy Law
- f. Competition Law and Industrial Property

As a rule of law, all types of actions, including corporate behavior in the digital era, must comply with statutory regulations. Indonesia already has laws and regulations that can be used to defend the rights of consumers and corporate actors, but these regulations were created long before digitalization so they are no longer able to balance human life which is always changing. Failure to update consumer protection laws makes law enforcement more difficult for consumers and corporate actors who suffer losses.

If the law is implemented well and obeyed by the community, it reflects the successful operation of the law in society. The law must be able to guide people's behavior so that legal objectives can be achieved (Nugrahaningsih, 2017).

Objective

The purpose of this article is to analyze and explain the role of commercial law in supporting business development in the digital era, identify and describe the role of commercial law in consumer protection, digital business regulations, intellectual property protection, business dispute resolution, digital business collaboration, agreements and contracts. electronics, as well as protecting data privacy, then discussing the challenges and opportunities faced in business regulations in the digital era.

Methodology

The first literature search was carried out using the Google Scholar and database PubMed. The keywords commercial law and digital era are used to monitor original research papers and literature reviews published in national and international English-language journals in the previous 5 years which can be accessed freely (open access). This literature study was carried out to combine information from various studies regarding the important challenges of business law in the digital era.

Discussion

Based on the problem formulation, theoretical studies and relevant previous research, the discussion of this article is:

1. The Role of Commercial Law in Supporting Business Development in the Digital Era

Indonesia, as a developing country, is currently experiencing extraordinary growth, even though it is experiencing difficult times due to the recent economic crisis. Overall, all development carried out by the Indonesian people in all sectors of life is not easy, but requires consistent hard efforts and collaboration from all levels of society.

And development carried out for the progress of the Indonesian state is called comprehensive development or total development. Meanwhile, economic development is the main engine of national development. However, economic progress must be followed by strengthening related initiatives that are intertwined with other development sectors.

Business is also one of the normal tasks in an effort to transform the economy for the betterment of humanity. Business is also an activity that involves cooperation with society to achieve the main goal, namely making money, which is one of the basic needs in human life. Because economic success in social life allows people to fulfill their basic needs such as clothing, food and shelter, their life can be established, or their economic needs can be met, or it could also be said that someone is economically successful because of the success of their business.

The term "Business" comes from the English word "Business" which refers to business activities. Based on the definition above. Business looks like a trading activity, but it also involves larger features.

Commercial law is very important for the smooth running of commercial operations. Business law consists of two different elements: law and business, each of which has its own meaning. Law is a collection of norms stated or believed by the authorities of a state or society as mandatory laws for some or

all members of society, with the aim of creating the order intended by the authorities. Meanwhile, legal scholar HMN Purwosutjipto defines business as "all activities involving the provision of goods and services needed and desired by other people with the aim of making a profit".

2. Identify and describe the role of commercial law in consumer protection, digital business regulation, intellectual property protection,

Several regulations regarding legal protection for consumers and corporate actors are as follows: a) Civil Code; b) Criminal Code; c) Consumer Protection Law Number 8 of 1999; d) Law no. 19 of 2016 Amendment to Law no. 11 of 2008 Information and Electronic Transactions e) Trade Law no. 7 of 2014 f) Government Regulation no. 71 of 2019 concerning Implementation of Electronic Systems and Transactions g) Government Regulation Number 80 of 2019 concerning Electronic Trading

UUPK and Civil Code are laws and regulations that precede the rapid development of technology and digitalization. Now, when digital business becomes a reality in people's lives, the UUPK and Civil Code have several weaknesses in compensating for difficulties that were previously not regulated.

Because vendors and customers may come from different regions, virtual transactions in online buying and selling use banks as payment intermediaries so that sellers and buyers do not need to meet face to face (Susanti, 2017)⁵.. However, as a result of the buying and selling procedures, a legal relationship arises between the seller and the buyer, and the laws regarding buying and selling as regulated in Articles 1474 to 1540 of the Civil Code can apply to them.

Law Number 8 of 1999 concerning Consumer Protection strictly regulates consumer protection regulations. UUPK is divided into 15 chapters which explain in sequence: "general provisions, principles and objectives, rights and obligations of consumers and business actors, prohibited acts for business actors, inclusion of standard clauses, responsibilities of business actors, guidance and supervision, national consumer protection institutions , non-governmental consumer protection agencies, dispute resolution, consumer dispute resolution agencies, investigations, sanctions, transit."

UUPK was born long before digitalization so it is not yet fully able to guarantee consumer rights in internet commerce. According to Helldya in his paper (Simanullang, 2017), one of the very essential rights that cannot be guaranteed adequately in digital transactions is the right to guarantee the confidentiality of the personal data of the parties, including the personal data of sellers and buyers. UUPK does not yet regulate the protection of these rights. The confidentiality of this data is very important for the security and comfort of the parties, as well as to avoid fraudulent activities such as exploitation of personal data or buying and selling personal data for the benefit of one party (Simanullang, 2017)⁶.

However, in the digital business era, consumer protection efforts are strictly regulated in the ITE Law, which has undergone several changes to keep up with legal developments in society. The ITE Law provides repressive protection, meaning that the provisions of the ITE Law are based on activities that are considered criminal acts, which are punishable by imprisonment and criminal penalties (Tumbel, 2020).

Next is Article 28 of the ITE Law which regulates prohibitions on carrying out actions in online sales and purchase agreements, including that sellers are prohibited from spreading false and misleading news that can harm buyers. Sellers who violate these rules face a maximum prison sentence of six years or a fine of one billion rupiah based on Article 45A paragraph (1) of the ITE Law (Tumbel, 2020)⁷.

The provisions of the ITE Law which regulate online buying and selling activities include warnings in Article 9, enforcement in Article 28 paragraph (1), and criminal sanctions in Article 45A paragraph (1) (Tumbel, 2020).

Information, documents and electronic printouts can be accepted as evidence because they are an extension of the evidence as intended in the Civil Procedure Law, provided that the information and documents are stored in an electronic system as intended in the ITE Law and Government Regulation Number 28 of 2012 (Akhmaddhian, 2016).

Apart from the ITE Law, digital buying and selling transactions are regulated in the Trade Law and its implementing regulations. Articles 65 and 66 of the Trade Law and its implementing regulations apply and must be complied with by all participants in every digital buying and selling transaction carried out by local and international business actors targeting the Indonesian market (Pariadi, 2018).

Article 65 of the Trade Law requires business actors carrying out digital buying and selling to provide complete and accurate data and information to make it easier to trace the legality of transactions (Pariadi, 2018).

The legal framework is one aspect that can influence the success of consumer protection regulations implemented in the digital business era. In its role as a policy maker, the government is the legal framework that determines the effectiveness of a regulation. Through the UUPK, UUTE, Trade Law, several related PPs, namely the PP on the Implementation of Electronic Systems and Transactions and the PP related to Trading via Electronic Systems, even OJK regulations on Information Technology-Based Money Lending and Borrowing Services, the government has provided legal certainty to guarantee consumer rights. in digital business.

The government is less responsive to changes and technological developments, as evidenced by the absence of changes to the UUPK which has existed since 1999, long before the advent of digitalization, so that the UUPK technically does not regulate provisions related to consumers. protection in buying and selling. online, as well as the ITE Law and other regulations that do not formally regulate consumer protection in transactions via digital media (Nugrahaningsih, 2017).

Second, legal substance. Regulations that can become the legal basis for consumer protection in digital transactions have not been able to answer technological problems. In the case of digital buying and selling, for example, buyers may get goods that do not match the vendor's promises, resulting in losses for the buyer. Even though the seller provides a guarantee of exchange of goods, losses arise on the buyer's side because the shipping costs for exchanging goods are still borne by the buyer in several situations (Nugrahaningsih, 2017)⁸. Regulations that regulate technical matters, such as charging shipping costs due to carelessness of business actors, are very

necessary as binding norms to regulate the behavior of business actors in order to guarantee consumer rights.

The third factor is the culture of corporate actors, customers and government. Buyers and sellers in digital transactions often do not understand their respective rights and obligations, as well as things that are prohibited for sellers as business actors under UUPK. For example, Article 18 UUPK regulates the insertion of standard clauses. This rule prohibits the insertion of standard provisions whose placement and form are difficult to understand and difficult for buyers to understand properly. In practice, some sellers insert general conditions in small language in the bottom corner of the goods description, so that the seller is not aware of the existence of the clause. The contents of standard provisions that are prohibited are expressly stated in Article 18 UUPK, one of which is the standard clause which states that the seller has the right to refuse to return the money the customer has paid for a particular item. This provision is contrary to the obligations of business actors as stated in Article 19 UUPK which states that sellers are responsible for providing compensation to buyers for losses arising from consuming goods sold by the seller, with compensation in the form of a refund or replacement of goods. goods.

Some sellers insert standard clauses without knowing that entering standard clauses is prohibited, and buyers who do not understand that inserting standard clauses is prohibited do not oppose the seller when they suffer losses, nor do they file complaints due to lack of information about complaint procedures (Nugrahaningsih, 2017)⁸. The government should be more aware of this phenomenon, but to date there have been no changes to regulations related to consumer protection in the digital business era. In reality, due to the lack of technological standards governing consumer protection in the digital business era, the UUPK and ITE Law have become less effective.

3. Business Dispute Resolution,

Article 45 of the Consumer Protection Law regulates provisions for resolving conflicts between consumers and corporate actors, including firstly resolving them through legal channels or through the courts as regulated in Article 48 UUPK. According to Article 46 paragraph 1 UUPK, a lawsuit can be filed directly by consumers who feel disadvantaged and their heirs, or by consumer groups consisting of consumers who have the same interests, or by the Community Consumer Protection Institute (LPKSM), namely legal entities or in the form of a foundation. with the aim of implementing consumer protection as outlined in the organization's AD/ART. If the losses are large and there are many victims, the government can sue the business actor. Furthermore, filing a case is based on the method of filing a lawsuit as regulated in the applicable General Court laws and regulations.

Second, non-litigation or out-of-court settlement techniques. The existence of dispute resolution through non-litigation channels can be done in several ways, including: First, consumers can directly ask the seller for compensation for the losses they have suffered; in this case the UUPK stipulates that the seller must act in good faith and respond to the request within 7 days, as regulated in Article 19 paragraphs (1) and (3) of the UUPK. Second, according to the Arbitration Law Number 30 of 1999, dispute resolution can take the form of consultation, negotiation, conciliation mediation, or expert assessment. Third, the Consumer Settlement Agency resolves this issue. Consumers can

submit requests verbally or in writing to the BPSK secretariat containing the identities of the parties, the goods or services being complained about, evidence related to the acquisition of the goods, including the time and place where the goods were obtained, as well as witnesses who are familiar with the process of obtaining the goods. In response to this request, settlement efforts can be made in the following way: 1) the parties, especially consumers and business actors, will enter into an arbitration agreement which is binding on the parties and must be adhered to. 2) The problem is handed over to the conciliator who will provide a response to the problem, but the conciliator's response is not binding as stated in the Arbitration decision (Setiantoro et al, 2018)⁹. 3) Consumers and corporate actors ask for help from third parties, usually mediators, to mediate and provide input to the parties; However, the conclusions of the mediation process are not binding on the parties, and the parties are not obliged to comply with the findings of the mediation process. The results of mediation, conciliation and arbitration at BPSK will be stated in the BPSK Decision which is final and binding as regulated in Article 54 UUPK, and to this decision the parties can submit objections through the District Court as regulated in Article 56 UUPK within a certain period. 14 days after receiving notification of decision (Setiantoro et al, 2018)⁹.

Apart from the dispute resolution methods mentioned previously, as technology develops so rapidly, innovation in dispute resolution mechanisms needs to be implemented, one of these innovative mechanisms is ODR or Online Dispute Resolution (Widaningsih, 2017)¹⁰. ODR is a synergy between ADR ("Alternative Disputes Resolution") and ICT ("Information and Computer Technology") which simplifies the dispute resolution process to be space-free at a low cost and quickly compared to conventional ADR (Setiantoro et al, 2018). ODR begins with an agreement between the parties to resolve the dispute through a non-litigation mechanism, then the disputing parties will be given guidance by professionals to carry out the ADR mechanism online and use the software that has been provided as a tool for exchanging information (Setiantoro et al, 2018)⁹.

Of the various settlement models discussed above, the parties to a traditional or electronic sales and purchase agreement can agree in advance which model will be used if a disruption occurs.

The ITE Law regulates provisions that electronic transactions can be realized in the form of electronic contracts which contain a dispute resolution mechanism that will be used if a dispute arises between the parties, and if the chosen mechanism is not implemented then the principles of International Private Law apply. (Syafriana, 2016)¹¹.

4. Discuss the challenges and opportunities faced in business regulations in the digital era.

Opportunity

1. The Emergence of New Business Opportunities

People today rely on the internet every day. For example, consider going shopping. People's habits have changed since the Covid-19 outbreak, many prefer to buy online for their daily needs. From clothing to food, everything is covered. Because we do not need to involve or deal with large numbers of individuals, this method is considered easier, practical and efficient. Various necessities can be sent to your home by just pressing one button on your smartphone. This shows that the digital era can give birth to various new businesses.

2. Expanding Target Market

Based on data from the Ministry of Trade, the Covid-19 pandemic has changed people's shopping habits, this can be seen from the increase in use of e-commerce platforms from 11% to 25.5% in 2021.

Challenge :

1. Digital Transformation

Every day, the digital world continues to develop in a more sophisticated direction. This is done to bring benefits, including progress in the corporate sector. Business people can use technology to save time, energy and money while achieving optimal results. However, if the organization is unable to keep up with developments, digital transformation will become a difficulty. For example, business people are often hesitant to change existing habits which can lead to failure.

This can be overcome by maintaining a positive attitude and never giving up. In addition, organizations must be ready to adapt to constantly changing technology. To make this happen, business owners must have a strong desire to continue improving their business capabilities.

2. Rapid Change

The development of customer tastes, aspirations and demands, as well as technological developments have become corporate issues in the digital era. Because today's customers easily get bored with one product and have rather complex requests. If business owners cannot satisfy these desires, consumers will gradually leave the company. As a result, company owners may experiment with technology. This is due to the fact that companies combined with technology can develop faster because they follow market trends. For example, innovating requires thinking beyond the ordinary.

3. Human Resources

There are already costs associated with technological modernization. Apart from getting competent human resources, as a business owner you must also provide further training and frequently refresh your workers' abilities so that they are more up to date with current scientific and technological breakthroughs.

4. Competition is Increasing

In the digital era, the next company problem is increasing competition. Advanced technology will be able to integrate commercial channels without regard to space and time constraints. A company can then collaborate with other companies from around the world. On the other hand, a company may face competition from other companies in other regions of the world. Therefore, in order to compete healthily with competitors, a company must continue to innovate. A conducive business atmosphere will be created thanks to strong competition.

5. Zero-Surveillance

The absence of a leader is called zero-surveillance. This means that the owner exclusively talks to his staff about work-related issues. Additionally, business can now be conducted and handled remotely using websites, email and chat services. Apart from digital business issues, another challenge for a company is a lack of business capital.

Conclusion

Commercial law plays a very important role in regulating business in the digital era. Consumer protection, digital business regulations, intellectual property protection, dispute resolution, digital business cooperation, electronic agreements and contracts, tax regulations, data privacy protection, trade law innovation, as well as cross-border challenges are some of the aspects that need to be managed wisely in a digital environment that keeps changing.

Despite the challenges and rapid changes in the digital business environment, effective commercial law is key to ensuring sustainable business growth and stakeholder protection. Wise regulation in the digital era will help create a strong legal foundation to support fair and sustainable business growth.

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