



Digital Business Problems and Regulations in an Integrative Legal Perspective

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Abstract

The development of digital business actually raises various problems, one of which is in the aspect of legal certainty and transactions in digital business that are carried out indirectly (virtually). In addition, digital business practices also often do not regulate the development of digital business which develops along with the development of society. This research aims to unravel the problems as well as formulate appropriate legal arrangements related to the development of digital business. This research is a normative legal research with statutory and conceptual approaches. The results of the study confirm that the problems and problems related to digital business in the legal aspect include guarantees of certainty in transaction practices that may not be carried out by the parties in digital business. Therefore, it can be concluded that the orientation related to digital business issues is by revising several rules related to business and the economy by facilitating aspects of digitization and can also be carried out by prioritizing analogical legal constructions by applying rules related to conventional business practices with digital business practices. Digital business regulation in an integrative legal perspective is directed at two aspects, namely the populist aspect which emphasizes the awareness, role and participation of each individual in digital business practices and also emphasizes the bureaucratic aspect by prioritizing the participation, role and progressivity of the state and its apparatus to provide regulation and protection for the digital business community.

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INTRODUCTION

Rapid and comprehensive business development is influenced by the development of technology and information (Novendra & Syifa, 2020). The development of technology and information indicates the progressivity of society to carry out various daily activities by optimizing the development of technology and information. One of the aspects affected by

the development of technology and information is related to business practices in society. Business practices are intertwined with the development of society, especially concerning the development of technology and information (Rosita, 2020). The massive development of technology and information has created a new way of doing business by optimizing the development of technology and information. Business practices optimizing technology and information development are commonly referred to as digital business (Novita, 2021). Digital business is generally understood as a business process that emphasizes the development of technology and information, especially in the digitalization aspect (Osinovskaia, 2021). Digitalization then becomes a new space for business practices. If, in general, business practices are carried out face-to-face, then in the era of digitalization, business practices are carried out face-to-face (Yuliana, 2021).

In this virtual face-to-face orientation, even though the parties are not directly involved in business practices, the parties have carried out business practices virtually. This can be seen from digital practices in which parties can enter into digital agreements, buy and sell digitally, and various other digital transactions (Pane, 2022). Digital business practices are also finding relevance in the COVID-19 pandemic. The COVID-19 pandemic began to spread in Indonesia in early 2020, forcing people to maintain social distancing (Latif & Pangestu, 2022). That impacts the reality of human social relations, which must be carried out virtually or through optimizing the development of technology and information. That is also linear with digital business practices, which are increasingly mushrooming during and after the COVID-19 pandemic—reporting from Kompas media that from the beginning of the 2020 pandemic to the end of 2021, the development of digital business has become increasingly massive and has even resulted in a turnover of up to 37% for business people, especially for MSMEs. That is reinforced by a report released by economy SEA 2021, officially issued by Google, Bain & Company, stating that the value of Indonesia's digital economy has reached 49%, which is US\$70 billion by the end of 2021 (Kominfo, 2021).

In fact, in 2022, Google, Temasek, and Bain & Company reported from the economy SEA 2022 report that the value of Indonesia's digital economy reached 77 billion United States Dollars, an increase of around 22% compared to 2021 (Tirto.id, 2022). The development of digital business certainly makes the law responsive in providing regulations for parties involved in digital business. In this case, an integrative legal perspective must be presented as an "alternative" in viewing and analyzing digital business developments. *Integrative law* is a

legal theory and idea put forward by Romli Atmasasmita by reconstructing the progressive legal theory initiated by Satjipto Rahardjo and the legal theory of development initiated by Maochtar Kusumaatmadja (Atmasasmita, 2012a). One of the keywords from an integrative legal perspective is the need for cooperation between the community and the bureaucracy (government) to optimize the various potentials to obtain legal protection. Law in an integrative legal perspective is placed as a means to create a responsive, just, and optimal society in dealing with societal development (Matnuh, 2018). This research aims to unravel the problems and formulate appropriate legal arrangements related to digital business development.

Research on digital business has been carried out by previous researchers, such as: (i) Basri Effendi concerning Supervision and Law Enforcement of Digital Business (E-Commerce) by the Business Competition Supervisory Commission (KPPU) in Unfair Business Competition Practices which focuses on law enforcement digital business by KPPU (Effendi, 2020). Furthermore, research conducted by (ii) Ahmad Sabirin and Raafid Haidar Herfian (2021) on the Impact of Digital Ecosystems on Business Competition Law in Indonesia and Optimizing the Role of the Business Competition Supervisory Commission (KPPU) in the Digital Economy Era which focuses on impact studies on digital business as well as its enforcement by KPPU (Sabirin & Herfian, 2021). Furthermore, research conducted by Elvlyn and Delpedro Marhaen (2022) on the Influence of the Job Creation Law on the Digitalization of MSMEs during a Pandemic focuses on the effect of the passage of the Job Creation Law related to business digitalization by MSMEs (Elvlyn & Marhaen, 2022). Based on the three previous studies, research on digital business from an integrative legal perspective has never been carried out. Thus, this research is original.

RESEARCH METHODS

This type of legal research is normative legal research, with the main focus of the study being relevant legal regulations regarding digital business (Irwansyah, 2020). In addition, this study also uses an integrative legal perspective as an essential aspect for analyzing problems in digital business. The primary legal materials in this study include the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law no. 7 of 2014 concerning Trade (Trade Law), and Law no. 11 of 2020 Concerning Job Creation (Job Creation Law). Secondary legal materials

include the results of studies and research on digital business and an integrative legal perspective. Non-legal materials include legal dictionaries. This study uses a conceptual and statutory approach.

DISCUSSION

Legal Problems Related to Digital Business: What's Happening?

Digital business, as part of the development of technology and information, also demands a responsive and applicable legal role to protect various legal actions within the business sphere (Ong, 2021). As part of legal actions, business processes must receive protection from the law. Laws that have a protective character demand that every business action must be framed by rules of the game called law (Lerman et al., 2020). The legal framework related to digital business processes demands that the law be more sensitive and applicable to the times (Muwahid, 2017). Law concerning technological developments demands that legal responsiveness be characterized by fair processes in digital business (Jati & Zulfikar, 2021). In the business world, fair relations between parties are a "key" aspect of the business. In digital business development, fair relations are also expected to be established between parties. Even though digital business emphasizes virtual relations, aspects of fairness in business must also maintain virtual propriety in digital business (Oltra Gras, 2021). In addressing the development of digital business, at least the law must place itself in three aspects, namely: the regulatory aspect (regulator), the protective aspect (protector), and the collaborator aspect, namely maintaining the essence of fairness in digital business relations (Budhijanto, 2014).

Businesses that are conventionally regulated, protected, and guarded by law demand that regulation, protection, and guarantees by law are also carried out in digital business. Suppose in conventional business, all of these things are carried out factually, in digital business. In that case, all of these aspects must be carried out virtually or at least carried out by prioritizing technological and information developments (Christantyawati et al., 2018). Law, in its function as a regulator in the practice of business law, emphasizes the role and function of the state to act proactively and progressively in seeing the development of the digital business that adopts technology and information developments (Harding, 2018). The state

must be able to predict various aspects of digital business that will develop so that if there is an increasingly massive digital business development at a certain time, the state actually has the means to regulate it (Kempley, 2015). Apart from that, regulation by the state regarding a digital business also emphasizes the state's role to always look at comparative aspects (developments and comparisons with other countries) related to digital business development. Comparative aspects (looking at developments in other countries) need to be carried out because digital business developments are comprehensively and holistically developing more quickly across national and continental borders (borderless) (Marpi et al., 2021).

That confirms, if, in optimizing the regulatory function regarding digital business, Indonesia can learn from other countries. The potential for making responsive regulations can be fulfilled or at least avoid the phenomenon of a legal vacuum. The next legal function related to digital business is the legal function to protect the parties' interests in business practices (Simanjuntak et al., 2021). In conventional business practices, the parties' interests are the business's core. That means, harming the interests of one of the business parties has injured the essence of business law. That confirms that business is based on the principle of *pacta sunt servanda*. This principle accommodates that each party's legal interests must be protected and accommodated in business practices through legal instruments. Even so, digital business practices can potentially reduce the existence of the *pacta sunt servanda* principle, including reducing the parties' legal rights. That is because digital business is not carried out face-to-face (Hadi et al., 2021). That is, of course, different from the essence of various regulations in business law, such as the Civil Code, which were formed during conventional business practices. That demands that in digital business practices, various legal rules need to adjust whether to make new regulations that accommodate digital business practices or simply carry out extensive interpretations or expansion of provisions in which provisions in conventional business are *mutatis mutandis* applied to digital business.

A further legal function in business law practice relates to legal orientation to ensure collaboration between parties in business processes. The collaborative aspect of business law emphasizes that even though business law specifically regulates various business law activities, it should be free of business practices that are elastic and flexible following the times (Dermawan et al., 2022). Business law must guarantee a proportional space not to shackle business practices that are linear with the times. In legal science, there is a legal orientation characterized by *dwingen recht* and *aanvullend recht* (Marzuki, 2017). Laws with

a dwingen recht character are laws with a coercive character. This law's coercive character emphasizes that every action must be based on legal rules or provisions. That means if it does not follow the rules and provisions of the law, there has been a violation. When viewed carefully, the strict dwingen recht character is irrelevant to the development of business law which is flexible and follows the times (Duke, 2019). Thus, the character of dwingen recht in legal science related to business law is only in the criminal aspects of business law practice, not in business development in the civil dimension. That is because the business aspects of civil society must be open, fluid, and able to adapt to the times.

The character of *aanvullend recht* in legal science actually "complements" the dwingen recht character of law (Raden Roro et al., 2019). If dwingen recht is coercive and strict, then the character of *aanvullend recht* in law is "open" and flexible (Abdul Rahman, Annisa Khusnur Rosyida, Nur Afifah Aminudin, 2022). This is because the character of *aanvullend recht* in legal science is oriented towards the field of law, which is private or civil. A more "loose" dimension of *aanvullend recht* is indeed sought for civil legal relations. That is because private relations with civil tendencies are required to adapt to the development of society (Yahya, 2017). Based on the two legal characters that are dwingen recht and *aanvullend recht* above, in the context of business law, the emphasis is on the *aanvullend recht* aspect, where the law must be able to facilitate and provide space for the development of business practices. In this context, the presence of digital businesses has shown that business practices are flexible. The laws governing business must also be flexible to accommodate various developments in the business world, especially digital businesses (Ramli et al., 2020).

Referring to existing laws and regulations related to digital business is constitutionally a derivation from Article 28F of the 1945 Constitution of the Republic of Indonesia, which substantively affirms the right to develop technology and develop communication (Bloch, 2022). Furthermore, the Trade Law needs to explain further about digital business even though several laws and regulations regulate this matter. Even in the Civil Code, there is no regulation regarding digital business. Only a few arrangements in the Job Creation Law accommodate digital business practice (Suntoro, 2021). Selain itu, dalam praktik hukum, problematika dalam bisnis digital diantaranya adalah terkait jaminan validitas dan kepastian hukum. Hal ini dapat dipahami karena bisnis digital dilakukan secara virtual sehingga tidak menimbulkan problem terkait praktik dan penerapannya. In legal practice, problems in digital business include guarantees of validity and legal certainty. This is understandable because

digital business is carried out virtually, so it does not cause problems related to practice and its application.

Based on the description above, the problems and problems related to digital business in the legal aspect include guarantees of certainty in transaction practices that the parties in digital business may not carry out. Therefore, the orientation related to digital business issues is by revising several business and economy rules by facilitating digitization. It can also be carried out by prioritizing analogical legal constructions by applying rules related to conventional business practices with digital business practices.

Digital Business Management in an Integrative Legal Perspective

The development of digital business in society requires an analysis related to the orientation of the regulation. One of the orientations of the analysis is integrative legal theory. The integrative legal theory put forward by Romli Atmasasmita is precisely the law of the "middle way" by paying attention to aspects of community development as in progressive law and paying attention to aspects of bureaucracy or regulation by the state initiated by Mochtar Kusumaatmadja (Sayuti, 2018). Integrative law is appropriate and relevant in discussing digital business based on at least three arguments, namely: *First*, an integrative legal perspective takes and is inspired by the progressive aspects of law from progressive law, which emphasizes that law is a process that never stops (Rifai, 2020). Thus, integrative law explains that law should keep up with the times. *Second*, an integrative legal perspective emphasizes the state's role in responding to societal changes (Lathif, 2017). The role and orientation of the state are essential because only the state can provide regulatory guarantees and guarantees for the rights of parties in digital business (Katagiri, 2021). *Third*, integrative law's perspective actually emphasizes the connection and mutual attraction between the independence of society and efforts to protect it from the state. In the view of integrative law, the state can be the initiative for change and development in society.

However, on the other hand, the community can also request that the state facilitate the development of society which must be protected by the state (Atmasasmita, 2012b). Concerning digital business practices, the state has provided space with an open and more elastic character regarding the development of business law. Even so, the state's efforts, roles,

and facilities still seem not optimal because they have yet to be explicitly formulated in laws and regulations. In the Civil Code, the Trade Law, and various other regulations, no clause provides an orientation for community development as the primary orientation in business law. That is important so that the practice of developing digital business becomes one that must receive attention from the state, especially regarding regulations and policies that have been established (Halberda, 2020). Furthermore, from an integrative legal perspective, the state has a role in making anticipatory efforts toward community development (Antasari, 2019). In this case, countries can learn from other countries, especially in developed countries, about digital business development. That is especially so that Indonesia can study and prepare formulations related to the potential for digital business by preparing the orientation of the rules before these practices are realized in Indonesia (Ong, 2021). That is oriented to minimize the potential for a legal vacuum.

A legal vacuum is a legal phenomenon when the law cannot regulate something that has developed rapidly in society (Pitlo, 2013). The legal vacuum has the potential to reduce people's rights. This is because when the law cannot regulate a particular event, the law has the potential to escape in a community legal action (Mahfud, 2019). The absence of regulation by law makes the community as digital business actors potentially disadvantaged by non-optimum regulations in law (Antari, Kadek Widya, Ratma Artha Windari, 2019). Furthermore, related to the orientation regarding the role of the state and society in an integrative legal perspective, it can be seen from interrelated aspects, namely the populist aspect and the interrelated bureaucratic aspect. The populist aspect is related to the needs and needs of society (Al-Farabi, 2013). In the populist aspect, the people themselves take the initiative and design a separate mechanism to carry out digital business. Even so, from the populist aspect, it can also be seen when the community, with its initiatives, makes efforts to break down the law, namely by making various efforts so that the state can facilitate the development of law in society. This populist aspect emphasizes that the progressivity and creativity of society make the state have to facilitate social development (Suteki, 2013).

In the context of digital business, the comprehensive practice in society makes the state take the initiative to regulate it. The development of digital business can exemplify this in the form of NFTs, where NFTs actually develop first and then the state facilitates it in regulation

(Bao & Roubaud, 2022) (Bloch, 2022). In this context, the true example of the development of the NFT digital business has confirmed the populist aspect that focuses on society..

The bureaucratic aspect in the development of digital business, for example, starts from the state's role, which substantively initiates a rule of law or legal policy to facilitate the development of community law (Mulyadi, 2017). That is, the context of digital business, for example, can be seen from developments related to electronic transactions that potentially violate the law, especially criminal law (Novita & Santoso, 2021). In its inception, the ITE Law, in its legal ratio, is to facilitate the development of electronic transactions, especially a digital business (Koto, 2021). In addition, several crypto-related regulations are an initiative from the state to regulate the potential for crypto abuse in digital business (Hartono & Budiarsih, 2022)(Puspasari, 2020). This bureaucratic aspect of digital business development is relevant to integrative legal theory. As a development of the notion of development law, the role of the bureaucracy or the state is essential to update society (Amy Y.S. Rahayu, 2019). In digital business practices, the state's role is essential in facilitating and further regulating digital business, especially digital business practices with a public law dimension orientation, especially criminal law.

The importance of the populist role (community participation and orientation) and the bureaucratic role in regulating digital business is relevant to the idea of legal protection, as emphasized by M. Isnaeni. M. Isnaeni emphasized that, in the private or civil domain, legal protection refers to two aspects, namely the individual as the executor of legal actions and the state, which has the character of regulating and guaranteeing various guarantees of rights and equality of position between parties (Isnaeni, 2016b). In M. Isnaeni's view, the two legal protections are referred to as internal legal protection and external legal protection (Isnaeni, 2016a). In internal legal protection, each party is vital in determining their respective legal protection (Isnaeni, 2016a). That means that the participation and awareness of each party in digital business are essential to provide internal legal protection for each individual (Hadrian, Endang, 2020). In addition to internal legal protection, there is external legal protection, where the critical role of the state is to protect parties in digital business (Nurhayati, 2019). Referring to the idea of legal protection conveyed by M. Isnaeni above is relevant to the idea of integrative law in its efforts to protect society in digital business. Internal legal protection is synonymous with the populi aspect of integrative law, which emphasizes the importance of society's role, awareness, and participation (Gane, 2020).

In addition, external legal protection is synonymous with bureaucratic aspects, which is the critical role of the state in protecting digital business. Thus, the relevance of integrative legal ideas in digital business is essential to increase the populist aspect in the form of public awareness and participation, as well as an orientation to emphasize the importance of bureaucratic or state aspects in providing legal protection for the community related to digital business. Based on the description above, digital business regulation from an integrative legal perspective is directed at two aspects: the populist aspect, which emphasizes awareness, planning, and participation of each individual in digital business practices. The sensitivity of each individual is essential because digital business can quickly change according to societal developments, so people are expected to care about and be proactive with digital business activities that are carried out. Furthermore, integrative law also emphasizes bureaucratic aspects by prioritizing the participation, role, and progress of the state and its apparatus to provide regulation and protection for the digital business community.

Conclusion

Problems and problems related to digital business in the legal aspect include guarantees of certainty in transaction practices that the parties in digital business may not carry out. Therefore, the orientation related to digital business issues is by revising several business and economy rules by facilitating digitization. It can also be carried out by prioritizing analogical legal constructions by applying rules related to conventional business practices with digital business practices. Digital business regulation in an integrative legal perspective is directed at two aspects, namely the populist aspect, which emphasizes the awareness, eplan, and participation of each individual in digital business practices. The sensitivity of each individual is essential because digital business can quickly change according to societal developments, so people are expected to care about and be proactive with digital business activities that are carried out. Furthermore, integrative law also emphasizes bureaucratic aspects by prioritizing the participation, role, and progress of the state and its apparatus to provide regulation and protection for the digital business community..

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