

# The Urgency of Reforming Indonesian Commercial Law in Facing Digital Trade

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Info Article	Abstract
<p><b>Article History</b>            Received : 2023-07-01            Revised: 2023-07-08            Published: 2023-07-30</p> <p><b>Keywords:</b>  <i>Digital Trade Law; Electronic Commerce (Ecommerce); Consumer Protection; Electronic Contracts; Legal Regulatory Updates.</i></p>	<p>The development of digital technology has significantly changed trade patterns in Indonesia, marked by the emergence of e-commerce, fintech, and the platform-based economy. However, this progress has not been matched by adequate legal preparedness. Indonesian trade law still relies heavily on the Commercial Code (KUHD), which was historically designed for conventional transactions, thus failing to accommodate the complexities of digital transactions. This study aims to analyze the current state of trade law, identify normative limitations, and examine the urgency of legal reform in the face of digitalization. The method used is a qualitative approach through a literature review analyzing various regulations such as the KUHD, the ITE Law, and the Consumer Protection Law. The results indicate a gap in norms related to electronic contracts, click-wrap agreement mechanisms, digital platform liability, personal data protection and online dispute resolution. Furthermore, legal relationships in digital transactions involving third parties, such as marketplaces, add to the complexity and have not been comprehensively regulated. This situation has the potential to create legal uncertainty and weaken protection for consumers and businesses. Therefore, adaptive and integrative normative reform of trade law is needed to create legal certainty, justice, and effective protection in the digital trade ecosystem in Indonesia. This update is expected to be able to answer the challenges of the digital era while supporting sustainable national economic growth.</p>

## I. INTRODUCTION

The rapid advancement of technology in the digital era has transformed the global business industry. In Indonesia, this trend has given rise to new phenomena such as e-commerce, fintech, and the platform-based economy, transforming the way we trade (Rahman, 2024). However, this progress has not been accompanied by adequate legal preparedness. As the backbone of the economy, commercial law is required to go beyond simply regulating physical transactions and adapt to complex and dynamic electronic systems (Lazuardi, 2024).

The lack of specific regulations poses significant risks, from rampant online fraud to weak personal data protection. Although we already have legal instruments such as the Consumer Protection Law and the ITE Law, their implementation in the digital world still often encounters obstacles in the field. (Ulfa, 2024) This research aims to map the extent to which our trade laws have developed and what urgent changes are needed. The goal is clear: to create legal certainty that can protect business actors

while guaranteeing consumer rights amidst the rapid flow of digitalization. (Rahman, 2024).

## II. RESEARCH METHOD

This research uses a qualitative approach with a literature study method to dissect the dynamics of commercial law in the digital era. Instead of conducting field observations, the main focus of this research is to analyze various legal documents and scientific literature to see how Indonesian commercial law is developing in the face of business digitalization.

## III. DISCUSSION RESULTS.

### A. Current State of Commercial Law and Challenges of Digitalization.

Current Indonesian trade law still relies on the Commercial Code (KUHD), a legacy of the 19th-century colonial era. Historically, these regulations were designed for physical trade involving face-to-face meetings, thus substantially lagging behind the dynamics of today's digital economy (Prasisto, 2023). Although the government has issued supporting regulations

such as the ITE Law and the PP PMSE to fill this gap, existing legal arrangements remain partial and sectoral (Dunan, 2022). This creates the potential for overlapping regulations and legal uncertainty, as we do not yet have a single commercial law system that comprehensively accommodates the complexity of electronic transactions and the involvement of third parties such as marketplaces (Lazuardi, 2024).

Along with the development of the times, especially the advancement of information and communication technology, trade patterns have undergone very significant changes. The emergence of the internet and various digital platforms has changed the way people conduct trade transactions. Trade no longer depends on physical meetings, but can be done online through electronic systems that allow the exchange of goods, services, and information in a very short time. This phenomenon is known as digital trade, which is characterized by efficiency, speed, and broad market reach.

In digital commerce, transactions are often conducted through electronic contracts that are automatically generated, for example through one-click approval or acceptance of terms and conditions on a digital platform. Furthermore, platform or marketplace providers play a crucial role in digital transactions as intermediaries connecting sellers and buyers. These characteristics demonstrate that the legal structure of digital commerce is far more complex than conventional commerce, which involves only two parties.

However, from a normative perspective, the Commercial Code (KUHD) does not explicitly regulate digital commerce. Its provisions still focus on physical transactions and trade activities. Consequently, the KUHD is unable to directly address various legal issues that arise in digital commerce practices, such as the validity of electronic contracts, the responsibilities of digital platforms, and consumer protection mechanisms in online transactions (Lazuardi, 2024).

## **B. Limitations of Norms in the Commercial Code**

The main weakness of the Commercial Code lies in the absence of norms governing electronic contracts, such as the click-wrap agreement mechanism, which is standard in digital

transactions (Pambayun, 2023). Furthermore, our law does not clearly define the legal responsibilities of digital platform providers. This gap often leaves consumers in a weak position, as platforms tend to disclaim responsibility in the event of losses, claiming they are merely service providers (Prasisto, 2023). Without regulations regarding digital signatures, personal data protection, and online dispute resolution systems, conventional commercial law becomes less relevant in providing protection for both businesses and consumers in cyberspace (Megawati, 2023).

In addition, the Commercial Code also does not regulate the legal status and responsibilities of digital platform or marketplace organizers. In digital trade practices, legal relationships involve not only sellers and buyers, but also third parties in the form of digital platforms that provide transaction facilities. The Commercial Code does not recognize the concept of digital business actors or intermediary platforms, thus creating a normative vacuum regarding the extent to which platforms can be held legally responsible for losses to consumers or violations by sellers. This ambiguity often harms consumers, because digital platforms tend to disclaim responsibility on the grounds of only being service providers. (Megawati, 2023).

## **C. Urgency of Normative Legal Updates.**

Normative updates to commercial law are an urgent need to ensure legal certainty and justice for all parties. For businesses, especially MSMEs, clear regulations are essential to legitimize digital contracts and mitigate the risk of default (Kurnianingrum, 2023). For consumers, these updates serve as a bulwark against the risk of online fraud and misuse of personal data (Kurnianingrum, 2023).

Sociologically and economically, the law must continue to adapt to the changing lifestyles of today's digital society (Najmudin, 2024). If not updated promptly, our legal system will not only lose its effectiveness in resolving disputes but

could also hamper Indonesia's digital economy's competitiveness on the international stage (Laksito, 2023).

On the other hand, consumers in digital commerce are often in a weaker position than businesses. Consumers face various risks, such as online fraud, non-transparent information, delayed or failed deliveries, and misuse of personal data. Trade law reforms are needed to strengthen consumer protection in digital transactions and provide clear legal mechanisms for violations of consumer rights. With legal certainty, consumers will feel secure.

#### **D. The Ideal Direction of Commercial Law Reform**

Going forward, the direction of reforming Indonesian trade law must be integrated and adaptive. The primary step that needs to be taken is to harmonize various scattered regulations (the ITE Law, the Consumer Protection Law, the PDP Law) into a single, consistent trade law framework (Najmudin, 2023). This reform should ideally include full recognition of smart contracts, establishing fair limits on digital platform liability, and providing a fast and affordable, technology-based dispute resolution mechanism. By aligning domestic law with international standards, Indonesia will not only create a conducive business climate for investors but also build a safe, transparent, and trustworthy digital trade ecosystem for all levels of society (Laksito, 2023).

The urgency of normative updates to trade law is also related to the harmonization of legislation. Currently, digital trade is regulated by various stand-alone regulations, such as the ITE Law, the PP PMSE (Emergency Business Entity Regulation), the Consumer Protection Law, and the Personal Data Protection Law. These regulations are not always integrated with the Commercial Code (KUHD) trade law, thus creating potential overlap and legal uncertainty. Normative updates to trade law will unify these rules into a single legal framework that is clear, consistent, and easy to implement (Laksito, 2023).

Furthermore, normative reforms also have strategic implications for the growth of the

national digital economy. Modern, clear, and adaptive trade laws will encourage businesses to be more innovative, increase consumer trust, and attract investment. With legal certainty, MSMEs can leverage marketplaces and platforms.

digital platforms to their full potential, while consumers feel safe and protected during transactions. This will strengthen Indonesia's digital commerce ecosystem and increase national competitiveness globally.

#### **E. Discussion**

Reforming commercial law in Indonesia is an inevitability and urgency that cannot be postponed amidst the rapid flow of economic digitalization (Lazuardi, 2024). The use of the Commercial Code (KUHD), a legacy of the colonial era, has proven to be legally lagging and significantly lacking in norms to address modern business phenomena, such as automated electronic contracts, marketplace platform liability mechanisms, and consumer data privacy protection (Megawati, 2023). Although the government has attempted to fill this gap through supporting regulations such as the ITE Law and the PMSE PP, current policies remain partial, sectoral, and not yet harmoniously integrated into a unified national commercial law system (Najmudin, 2023). This ultimately creates legal uncertainty that risks harming business actors in terms of transaction legality and weakens consumers' bargaining position in disputes (Pambayun, 2023).

Therefore, the ideal direction for legal reform must be comprehensive, unifying disparate regulations into a single, adaptive, transparent, and equitable legal framework (Dunan, 2022). This legal transformation must include recognizing electronic signatures, strengthening the limits of responsibility of electronic system providers, and providing a fast and affordable online dispute resolution mechanism in line with the characteristics of digital commerce (Prasisto, 2023).

By harmonizing domestic law with international standards, Indonesia will not only provide strong legal protection for its citizens but also create a conducive investment climate and increase the competitiveness of the national digital economy on the global stage (Prasisto, 2023). Collective awareness among the

government, academics, and legal practitioners is key to ensuring that the resulting regulations are truly applicable and can serve as a supporting pillar for economic justice in the future (Laksito, 2023).

## VI. CONCLUSION AND SUGGESTIONS

### A. Conclusion

Indonesia's current trade law situation is at a crossroads. Although we have supporting instruments such as the Electronic Information and Transactions Law (ITE) and the Regulation on PMSE (Emergency Trading), these regulations remain sectoral and separate from the centuries-old Commercial Code (KUHD). As a result, there is a gap between the reality of rapidly evolving digital businesses and the legal certainty available. Without updates that address the root of the problem, both businesses and consumers will continue to be trapped in a legal gray area, particularly regarding the validity of electronic contracts and the responsibilities of marketplace platforms.

The lack of norms in conventional trade law is not merely an administrative issue, but a real threat to public trust and the growth of the digital economy. Unclear regulations regarding personal data protection and online dispute resolution mechanisms leave businesses—especially MSMEs—and consumers vulnerable to fraud and transaction losses. This demonstrates that adaptive legal interpretation alone is insufficient; Indonesia needs a new, stronger and more specific legal framework to encompass the entire digital trade ecosystem in an integrated manner.

As a step forward, future trade law reforms must be directed toward harmonizing regulations capable of addressing future technological challenges. The ideal direction for reform should not only focus on digital contract formalities but also encompass fairness for digital service users and alignment with international legal standards. By involving collaboration between the government, academics, and practitioners, the new trade law system is expected to not only oversee transactions but also become a key driver of Indonesia's digital economy's global competitiveness.

### B. Suggestions

The government and legislative bodies are advised to immediately codify or unify digital economy regulations into a comprehensive national trade law framework. This step is crucial to avoid overlapping regulations between the ITE Law, the Consumer Protection Law, and the Personal Data Protection Law, thus creating a single standard that is easily understood by the public and businesses. Furthermore, the government needs to encourage the strengthening of online dispute resolution mechanisms so that digital trade cases can be resolved quickly without complicated court procedures.

Businesses and digital platform providers are expected to be more proactive in improving the transparency and security of their transaction systems to build consumer trust. Furthermore, widespread digital legal literacy education is needed for the wider public to ensure consumers understand their rights and avoid various forms of cyber fraud. This cross-sector collaboration is key to ensuring legal reforms are not only good on paper, but also effective and applicable in protecting all parties involved in digital commerce.

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