



## Legal Protection for Business Actors in Trade Agreements in the Digital Era

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### Abstract

The development of digital technology has brought significant changes in the practice of commercial law, particularly in the implementation of trade agreements, which are now often conducted electronically. Digital trade agreements provide convenience and efficiency for business actors, but on the other hand, they also give rise to various legal issues, such as the weak bargaining position of certain business actors, unclear clauses in electronic agreements, and increased potential for disputes due to default and data misuse. This study aims to analyze the forms of legal protection for business actors in trade agreements in the digital era and assess the effectiveness of applicable laws and regulations in providing legal certainty. The research method used is normative legal research with a statutory regulatory approach, a conceptual approach, and a case approach. The results show that regulations related to trade law and electronic transactions have essentially provided a basis for legal protection for business actors, but there are still obstacles in their implementation, supervision, and enforcement. Therefore, regulatory harmonization, strengthening legal protection mechanisms, and increasing legal literacy for business actors are needed to create a fair, safe, and sustainable digital trade climate.

## I. INTRODUCTION

The development of commercial law is inextricably linked to the dynamics of economic and trade activities, which continue to change along with technological advancements. Commercial law essentially serves as a legal instrument that regulates legal relations between business actors in conducting commercial activities, ensuring certainty, fairness, and legal protection (Subekti, 2001). In the modern context, digital transformation has shifted trade transaction patterns from conventional to electronic, necessitating adjustments in commercial law regulations (Sutedi, 2018).

Trade agreements are a key instrument in commercial activities, as they legally define the rights and obligations of the parties (Salim HS, 2019). According to R. Setiawan (2014), agreements serve not only as a binding tool for the parties but also as a means of legal protection in the event of a dispute. In digital trade practices, trade agreements are often made in the form of electronic agreements or standard contracts, which have the potential to create an

imbalance in position between business actors and their business partners (Sjahdeini, 2013).

The digital era has brought convenience to transactions, but it has also given rise to complex legal challenges. Digital trade transactions often take place without physical meetings, using automated systems, and involving electronic data as the primary form of evidence (Makarim, 2017). This situation raises issues related to the validity of agreements, the evidentiary power of electronic documents, and legal protection for business actors in the event of default or breach of agreements (Budiono, 2016).

Legal protection for business actors is a crucial issue in modern trade law. Business actors require legal guarantees to ensure safe and sustainable trading activities (Fuady, 2014). According to Hadjon (1987), legal protection aims to protect legal subjects from arbitrary actions and provide legal certainty through clear and enforceable regulations. In the context of digital trade, legal protection relates not only to the substance of the agreement but also to an effective system of oversight and law enforcement (Rahardjo, 2009).

In Indonesia, regulations regarding trade agreements and electronic transactions have been incorporated into various laws and regulations, such as the Civil Code and the Law on Electronic Information and Transactions (Mertokusumo, 2010). However, several studies have shown that there are still weaknesses in the implementation of these regulations, particularly in providing optimal protection for business actors in the digital era (Sutanto, 2020). This indicates a gap between legal norms and the rapidly evolving practices of digital commerce.

Based on this description, this research is crucial for analyzing legal protection for business actors in trade agreements in the digital era. This research is expected to contribute academically to the development of trade law and serve as a reference for policymakers in refining relevant regulations.

## **II. RESEARCH METHODS**

This research is a normative legal study, namely research that examines law as a norm or rule that applies in society (Soekanto & Mamudji, 2015). Normative legal research focuses on literature studies by examining laws and regulations, legal principles, doctrines, and court decisions relevant to the problem being studied (Marzuki, 2017). This approach was chosen because this study aims to analyze legal protection for business actors in trade agreements in the digital era based on applicable positive legal provisions.

The research approaches used include the statute approach, the conceptual approach, and the case approach (Ibrahim, 2006). The statutory approach is carried out by examining various legal provisions governing trade agreements and electronic transactions, such as the Civil Code and regulations related to information technology (Mertokusumo, 2010). The conceptual approach is used to understand the concepts of trade law, agreements, and legal protection put forward by legal experts (Fuady, 2014). Meanwhile, the case approach is used to analyze the application of legal norms in practice through court decisions related to digital trade agreement disputes (Sjahdeini, 2013).

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials (Soekanto, 2014). Primary legal materials include laws and

regulations related to commercial law and electronic transactions. Secondary legal materials include legal textbooks, scientific journals, research results, and expert opinions relevant to the research object (Marzuki, 2017). Tertiary legal materials are used as supporting materials, such as legal dictionaries and legal encyclopedias (Ibrahim, 2006).

The legal material collection technique is carried out through a literature study by tracing, inventorying, and classifying legal materials relevant to the research problem (Soekanto & Mamudji, 2015). The collected legal materials are then analyzed qualitatively using prescriptive and descriptive analytical methods, namely by explaining applicable legal provisions and providing legal arguments for the problems studied (Marzuki, 2017). The results of this analysis are then used to draw deductive conclusions to answer the research problem formulation.

## **III. RESULTS AND DISCUSSION**

### **A. Research result**

Research results show that legal protection for business actors in trade agreements in the digital era has been normatively regulated in various applicable legal provisions. Provisions regarding the validity of agreements as regulated in civil law remain the main basis in digital trade agreements, where the agreement of the parties, capacity, certain objects, and lawful causes must be met for the agreement to have binding legal force (Subekti, 2001; Setiawan, 2014). In practice, electronic forms of agreement are recognized as valid agreements as long as they fulfill these elements (Mertokusumo, 2010).

#### **1. Validity of Digital Trade Agreements**

Digital trade agreements essentially have the same legal standing as conventional agreements as long as they meet the requirements for a valid agreement as stipulated in civil law, namely agreement between the parties, capacity, a specific object, and a lawful cause (Subekti, 2001; Setiawan, 2014). Research results show that the electronic form of a trade agreement does not

eliminate its binding force, as long as the substance of the agreement meets applicable legal provisions (Mertokusumo, 2010). This recognition provides legal certainty for business actors in carrying out digital-based trade activities.

## **2. Forms of Legal Protection for Business Actors**

Legal protection for business actors in digital trade agreements can be divided into preventive and repressive legal protection (Hadjon, 1987). Preventive protection is realized through regulations regarding the validity of agreements, the recognition of electronic evidence, and the obligations of the parties to execute the agreement in good faith (Fuady, 2014). Meanwhile, repressive protection is provided through dispute resolution mechanisms in the event of default or breach of the agreement (Rahardjo, 2009).

## **3. Imbalance in the Position of the Parties in Standard Contracts**

Research shows that digital trade agreements are generally formulated in the form of standard, unilaterally drafted contracts, thus limiting the negotiation space for certain business actors (Sjahdeini, 2013). This situation creates an imbalance in the legal standing between parties and has the potential to disadvantage business actors with weak bargaining positions (Budiono, 2016). This imbalance can undermine the principles of justice and freedom of contract, which are the foundation of contract law (Rahardjo, 2009).

## **4. Effectiveness of Regulation in Digital Trade Agreement Practice**

Regulations governing trade agreements and electronic transactions have normatively provided a basis for legal protection for businesses (Makarim, 2017). However, research shows that the effectiveness of these regulations still faces obstacles in implementation and oversight (Sutedi, 2018). Weak law enforcement and a lack of understanding among businesses regarding the legal substance of digital agreements are

factors that hinder the realization of optimal legal protection (Soekanto, 2014).

## **5. Efforts to Strengthen Legal Protection for Business Actors**

Based on research findings, strengthening legal protection for business actors in digital trade agreements requires harmonization of laws and regulations and increasing legal literacy among business actors (Marzuki, 2017). Furthermore, more effective and efficient dispute resolution mechanisms are needed to ensure that business actors obtain justice quickly and at low cost (Fuady, 2014). Thus, legal protection for business actors can keep pace with the increasingly rapid development of digital trade.

This study found that regulations related to electronic transactions have recognized electronic documents and electronic signatures as valid evidence in legal proceedings (Makarim, 2017). This recognition provides legal certainty for businesses in executing digital trade agreements. However, business actors remain limited in their understanding of the legal force of electronic agreements, which could potentially lead to losses in the event of a dispute (Fuady, 2014).

Research also shows that digital trade agreements tend to use standard, unilaterally drafted contracts, creating an imbalance in the legal standing of the parties (Sjahdeini, 2013). This situation places certain business actors in a weak position because they lack the opportunity to negotiate the agreement's clauses. This imbalance has the potential to violate the principles of justice and freedom of contract (Rahardjo, 2009).

Furthermore, this study found that repressive legal protection mechanisms through dispute resolution are available, both through the courts and alternative dispute resolution. However, the effectiveness of these mechanisms still faces obstacles, such as relatively lengthy processes and significant costs (Soekanto & Mamudji, 2015). This has led some businesses to be reluctant to pursue

legal action when a digital trade agreement fails.

Based on these findings, it can be concluded that normatively, legal protection for business actors in digital trade agreements is available, however, in its implementation, it is still necessary to strengthen regulations, increase legal literacy of business actors, and improve law enforcement mechanisms so that legal protection can run effectively and fairly (Marzuki, 2017).

## **B. Discussion**

A trade agreement is the primary foundation in trade activities that legally binds the parties and forms the basis for the birth of rights and obligations (Subekti, 2001). From a civil law perspective, the validity of an agreement is determined by the fulfillment of the conditions as stipulated in Article 1320 of the Civil Code, namely agreement of the parties, capacity, a specific object, and a lawful cause (Setiawan, 2014). These provisions remain valid in trade agreements conducted digitally, although the form and mechanism have changed (Mertokusumo, 2010).

Advances in information technology have led to the emergence of electronic trade agreements, allowing for fast and efficient transactions without face-to-face interaction (Makarim, 2017). However, according to Sjahdeini (2013), electronic agreements are often formulated in the form of standard contracts drawn up unilaterally, potentially creating an imbalance in the legal standing of business actors. This situation can undermine the principle of freedom of contract if one party lacks the opportunity to negotiate (Fuady, 2014).

Legal protection for business actors in digital trade agreements is crucial to ensure legal certainty and justice. Legal protection can be preventive or repressive (Hadjon, 1987). Preventive protection is realized through clear legal regulations regarding the rights and obligations of the parties in a digital trade agreement, while repressive protection is provided through dispute resolution

mechanisms in the event of a breach of the agreement (Rahardjo, 2009). In practice, business actors often face the risk of default, data misuse, and unclear legal responsibilities in digital transactions (Budiono, 2016).

National regulations have attempted to provide legal protection for business actors through various statutory provisions. The recognition of electronic documents and signatures as valid evidence represents a legal adaptation to technological developments (Makarim, 2017). However, the effectiveness of this legal protection still faces challenges, particularly in law enforcement and oversight of the implementation of digital trade agreements (Sutedi, 2018). This is reinforced by Marzuki's (2017) opinion, which states that sound legal norms must be accompanied by consistent implementation mechanisms to provide legal certainty.

In addition to regulations, business actors' legal awareness also plays a crucial role in achieving optimal legal protection. Business actors are required to understand the substance of digital trade agreements before agreeing to them and to apply the principle of prudence in every transaction (Fuady, 2014). Therefore, legal protection for business actors in trade agreements in the digital era depends not only on the existence of legal regulations, but also on the parties' understanding and compliance with applicable provisions (Soekanto, 2014).

Based on this description, it can be concluded that legal protection for business actors in digital trade agreements is an urgent need in line with the rapid development of technology-based trade. Strengthening regulations, effective law enforcement, and improving legal literacy among business actors are necessary to ensure that digital trade agreements operate fairly, safely, and sustainably (Rahardjo, 2009).

## **IV. CONCLUSION AND SUGGESTIONS**

### **A. Conclusion**

Based on the research and discussion, it can be concluded that legal protection for

business actors in trade agreements in the digital era is normatively regulated in the applicable legal system. The validity of digital trade agreements remains subject to civil law provisions regarding the requirements for valid agreements, so that agreements made electronically are legally binding as long as they meet the specified elements. Regulations related to electronic transactions also recognize electronic documents and signatures as valid evidence.

However, research results indicate that in practice, this legal protection has not been fully implemented optimally. The use of standard contracts in digital trade agreements often creates an imbalance in the legal standing of the parties, particularly for businesses with weak bargaining positions. Furthermore, the effectiveness of law enforcement and dispute resolution mechanisms still face various obstacles, both in terms of regulation, oversight, and the level of legal understanding of business actors. Therefore, legal protection for business actors in digital trade agreements requires strengthening to ensure legal certainty, fairness, and the sustainability of trade activities.

## **B. Suggestion**

Based on these conclusions, the authors offer several recommendations. First, improvements and harmonization of laws and regulations governing trade agreements and electronic transactions are needed to more comprehensively accommodate the development of digital commerce. Second, the government and relevant institutions are expected to increase oversight and law enforcement regarding the implementation of digital trade agreements to provide effective protection for business actors. Third, business actors are advised to improve their legal literacy, particularly their understanding of the substance of digital trade agreements and the legal risks that may arise, so they can conduct trade activities more safely and responsibly. Finally, further research is expected to examine the legal protection of digital trade agreements through an empirical

approach to obtain a more comprehensive picture of the application of the law in practice.

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