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LEGAL FRAMEWORK FOR DATA AND ELECTRONIC TRANSACTIONS IN VIETNAM'S DIGITAL ECONOMY: CURRENT ISSUES AND DIRECTIONS FOR IMPROVEMENT

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Abstract

In the context of the digital era and the Fourth Industrial Revolution, data has emerged as a strategic factor of production, while electronic transactions serve as the foundational mechanism underpinning the operation of the digital economy. However, the current legal framework still exhibits notable bottlenecks and regulatory gaps. This article examines the current state and proposes directions for improving the legal framework governing data and electronic transactions in Vietnam. Employing a qualitative legal research methodology combined with a Law and Economics approach, the study systematically analyzes normative legal documents and academic literature. The findings identify two major bottlenecks: first, the ambiguity surrounding the legal status of data and the structure of rights over data; and second, the lack of coherence between electronic transaction law and civil and commercial law, compounded by regulatory gaps regarding cross-border transactions. Accordingly, the paper highlights the urgent need to clarify the structure of legal rights, delineate the responsibilities of relevant stakeholders, and ensure systemic legal compatibility. This study provides a solid scientific and practical foundation for addressing institutional bottlenecks, unlocking data resources, and ensuring legal certainty, thereby contributing to the effective and sustainable development of Vietnam's digital economy.

Keywords: Digital economy; Data; Electronic transactions; Legal framework.

1. INTRODUCTION

In the digital era and under the profound impact of the Fourth Industrial Revolution, both the global and Vietnamese economies are undergoing a fundamental structural transformation from traditional growth models toward a digital economy built on digital technologies, big data, and artificial intelligence. Within this

emerging economic landscape, data has increasingly emerged as a distinctive factor of production and a strategic asset that determines the competitiveness of enterprises and nations, while electronic transactions have become a principal mode of operation and the “lifeblood” through which commercial, financial, and investment activities circulate in cyberspace. The rapid expansion of digital

business models, cross-border e-commerce, and digital financial ecosystems is consequently posing unprecedented challenges to legislative development and state governance.

Recognizing the central role of institutions in a socialist-oriented market economy, the Communist Party and the State of Vietnam have, in recent years, adopted numerous important policies and strategies for national digital transformation. The National Assembly and the Government have also made substantial efforts to improve the legal framework through the promulgation of the amended Law on Electronic Transactions, the Law on Cybersecurity, regulations on personal data protection, and relevant implementing legislation. These legislative efforts have established an initial legal foundation for protecting the legitimate rights and interests of relevant stakeholders while fostering a dynamic environment for the development of electronic business activities.

However, from the perspective of legal scholarship and the practical enforcement of economic law, the current legal framework governing data and electronic transactions still reveals a number of bottlenecks and regulatory gaps that require timely resolution. First, legal provisions governing property rights over data, mechanisms for the exploitation and sharing of open data, and technical standards for data safety and security remain insufficiently harmonized and have yet to keep pace with the rapid pace of market innovation. The legal framework governing cross-border data flows, privacy protection, and the security of personal information also remains fragmented, with sanctions that may be insufficiently robust to effectively deter violations. In addition, the implementation of complex electronic transactions in modern commerce, such as smart contracts, decentralized electronic authentication, and electronic identification and authentication, continues to encounter difficulties due to conflicts with, or a lack of compatibility with, traditional provisions of the Civil Code and the Law on Commerce. These shortcomings not only increase legal risks and create uncertainty for investors and technology enterprises but also impede the mobilization and efficient utilization of data resources for socio-economic development.

Against the objective requirements of institutional reform in the economy, a systematic and comprehensive examination of both theoretical and practical dimensions is essential to identify effective and transformative solutions. Accordingly, this article examines the topic “Improving the Legal Framework for Data and Electronic Transactions in Vietnam’s Digital Economy: Current Status and Directions for Improvement”. Through an analysis of the theoretical framework and a comprehensive assessment of the practical implementation of existing laws, the article seeks to identify shortcomings and inconsistencies within the current legal system and, on that basis, propose a set of scientifically grounded and feasible solutions for improving the legal framework governing data and electronic transactions, thereby contributing to the rapid and sustainable development of Vietnam’s digital economy.

2. RESEARCH METHODS

The study employs a doctrinal and qualitative legal research approach, integrated with a Law and Economics perspective, to systematically examine the shortcomings within the legal framework governing data and electronic transactions in Vietnam’s digital economy.

2.1. Research Questions

To guide the investigation, the study addresses two primary research questions:

- What legal shortcomings and regulatory gaps in the existing framework governing data and electronic transactions are currently hindering the development of Vietnam’s digital economy?
- What legislative directions and institutional reforms should be pursued to ensure legal certainty and security while simultaneously fostering innovation and digital economic growth?

2.2. Data Sources

The study relies primarily on secondary data, categorized into three main groups:

- Normative legal documents: Including laws and regulations governing civil and commercial relations, electronic transactions, cybersecurity, and personal data protection.
- Policy and administrative documents: Comprising policy documents, resolutions, strategies, and official reports issued by state authorities concerning national digital transformation and digital economy development.
- Academic literature: Encompassing domestic and international scholarly studies on data governance, electronic transactions, smart contracts, and legal liabilities in the digital environment.

2.3. Analytical Methods

The study applies four principal legal research methods: doctrinal legal analysis, systematic analysis, comparative legal analysis, and qualitative content analysis. These methods are jointly employed to identify regulatory gaps and statutory inconsistencies, structure relevant legal concepts, draw insights from international comparative frameworks, and assess the practical implications of the existing legal regime for market stakeholders in the digital economy.

3. CONTENT

3.1. Establishing the Legal Status of Data and the Framework of Data-Related Rights in the Digital Economy

The development of Vietnam’s digital economy not only creates new opportunities for economic growth but also requires the removal of institutional and infrastructural bottlenecks and the enhancement of the capacity of economic actors to adapt to new conditions. According to Ước (2021), the development of the digital economy should be approached simultaneously from the perspectives of technology, institutions, and the capacity to mobilize and exploit emerging economic resources. From a legal perspective, this indicates that improving mechanisms for the governance, exploitation, and circulation of data should constitute an integral component of the broader institutional reform process for Vietnam’s digital economy.

From the perspective of legal scholarship and the practical enforcement of economic law, the findings indicate that clearly establishing the legal status of data and the framework of rights over data is a foundational issue of decisive importance for developing Vietnam’s legal framework for the digital economy. In

the digital economy, data can no longer be viewed merely as information generated, stored, and exchanged in electronic environments; it increasingly constitutes an economically valuable resource and a critical factor underpinning the competitiveness of enterprises and nations. However, under the current legal system, data-related matters remain governed by a disparate body of legislation, including civil law, electronic transaction law, information technology law, cybersecurity law, personal data protection regulations, and sector-specific legislation. This fragmented regulatory landscape highlights the need to further clarify the relationship among the rights to control, exploit, use, and share data, as well as the corresponding responsibilities arising from data-related activities. Furthermore, it is necessary to appropriately distinguish among personal data, organizational data, public data, and other categories of commercially valuable data.

From a legal standpoint, particular caution is therefore required: data should not automatically be equated with an independent category of property in the strict legal sense. Rather, the law should determine, in a context-specific manner, the legitimate rights and interests of each relevant actor with respect to different types of data across various legal relationships. This approach provides a sound legal basis for balancing the economic value of data with the protection of legitimate rights and interests, while facilitating the lawful, efficient circulation and utilization of data within Vietnam's digital economy.

The absence of a unified and transparent framework governing rights over data may have significant implications for markets and business activities. First, it is necessary to clearly determine which actors possess the rights to collect, manage, exploit, use, and share data, as well as the scope and limitations of such rights, in order to mitigate the risks of unauthorized exploitation, data misuse, and violations of privacy and trade secrets. Furthermore, when data are leaked, misappropriated, used for unauthorized purposes, or cause harm to third parties, the determination of legal liability must rest upon a clear delineation of the respective roles of data collectors, data controllers, data processors, and relevant third parties. Simultaneously, the expansion of data markets raises critical questions regarding whether data can appropriately constitute the subject matter of contractual and commercial transactions, such as data-use licensing or data-sharing agreements, while ensuring that commercial exploitation does not infringe upon the legitimate rights and interests of individuals or organizations. These complexities, in turn, necessitate the further refinement of mechanisms for valuing data, allocating liability, compensating for damages, and resolving data-related disputes. Moreover, the State must determine an optimal level of regulatory intervention capable of simultaneously ensuring legal certainty, fair competition, and stakeholder protection, while avoiding unnecessary barriers to technological innovation and data flows.

The foregoing analysis demonstrates that the evolution of data-related legislation must be anchored in a balanced framework between data protection and data utilization. Accordingly, the State should progressively establish a transparent legal framework governing the rights and responsibilities of actors concerning data; refine regulations on data collection, processing, sharing, and exploitation; and institute robust safeguards for categories of data implicating privacy, trade secrets, national security, or the public interest. Crucially, legal reform should not be restricted to merely "recognizing data as property". More fundamentally, it must establish an enforceable rights-and-obligations framework capable

of practical implementation, thereby providing a sound legal foundation for the lawful, secure, and efficient exploitation of data. This is essential not only for safeguarding the legitimate rights and interests of stakeholders but also for unlocking the economic potential of data, fostering a transparent business environment, and propelling the rapid, secure, and sustainable development of Vietnam's digital economy.

3.2. Improving the Legal Framework for Electronic Transactions and Establishing Legal Liability in the Digital Environment

In addition to establishing the legal status of data and the framework of rights over data, the findings indicate that improving the legal framework for electronic transactions and clearly establishing legal liability in the digital environment is crucial to ensuring the safe, transparent, and effective operation of the digital economy. From the perspective of economic law, data can realize its full economic value only when it is lawfully exploited, circulated, and utilized within economic and commercial relationships. Accordingly, the development of the digital economy requires the law to ensure the legal validity and enforceability of the entire transaction cycle, encompassing identification and authentication of parties, contract formation, the use of electronic signatures, the performance of contractual obligations, payment, the storage of data messages, the use of electronic evidence, and dispute resolution. Although Vietnam has progressively established a legal framework governing electronic transactions, the rapid evolution of digital business models continues to necessitate improvements in the consistency, coherence, and adaptability of the legal system.

One of the key issues requiring attention is the relationship between electronic transaction law and the Civil Code, the Law on Commerce, and sector-specific legislation. In the digital environment, a single transaction may simultaneously be governed by multiple bodies of legal rules. Accordingly, in the absence of consistent standards for determining the legal validity of data messages, electronic signatures, electronic records, and electronic evidence, differences in interpretation and application may arise in the formation and performance of transactions as well as in the resolution of disputes. The issue extends beyond merely recognizing the electronic form of transactions to encompass the ability to establish the authenticity, integrity, time of formation, and identity of the party executing the transaction. These factors are directly relevant to the effective protection of the lawful rights and interests of businesses, consumers, and other market participants.

In addition, cross-border electronic transactions present more complex legal challenges for Vietnam. The growth of cross-border e-commerce, multinational digital platforms, and services delivered through cloud computing environments has rendered traditional territorial boundaries in economic relations increasingly fluid. This development requires further examination and refinement of mechanisms concerning the recognition of the legal validity of electronic transactions and signatures, identity authentication, data storage, and the determination of applicable law in transactions involving foreign elements. With respect to emerging technologies and novel transaction models, including smart contracts, the key issue is not simply to introduce separate and isolated regulations, but rather to determine their compatibility with the fundamental principles of existing contract law, civil liability, and commercial law.

Another critical issue concerns the allocation of legal liability among actors within the digital transaction ecosystem. Unlike traditional transactions, an electronic transaction may involve multiple actors, including buyers, sellers, payment service providers, intermediary platform operators, authentication service providers, and technology infrastructure providers. When contractual breaches, fraud, violations of consumer rights, information security incidents, or data breaches occur, the determination of liability should be based on the respective role, degree of control, legal obligations, and specific conduct of each party. Clearly and appropriately defined liability regimes can help minimize gaps in accountability while avoiding excessive legal burdens on businesses providing digital platforms and intermediary services.

These considerations demonstrate that improving the legal framework for electronic transactions should not be viewed merely as a matter of introducing additional technical rules for online transactions. Rather, it should be approached as an integral component of the broader process of developing the legal and institutional framework for the digital economy. The central priorities are to ensure consistency between electronic transaction law and the laws governing civil and commercial relations, enterprises, investment, consumer protection, cybersecurity, and data protection; to strengthen the recognition and enforceability of cross-border electronic transactions; and to improve mechanisms governing electronic evidence and dispute resolution in the digital environment. On this basis, a transparent and proportionate framework for allocating liability among relevant actors should be established, thereby protecting the legitimate rights and interests of the parties while creating an enabling legal environment for innovation. A clear, coherent, and adaptable legal framework for electronic transactions will help reduce legal risks and compliance costs, strengthen market confidence, encourage investment, and provide a sound legal foundation for the rapid, secure, and sustainable development of Vietnam's digital economy.

4. CONCLUSION

The rapid development of the digital economy has created an urgent need to reform and strengthen institutional frameworks, with legislation governing data and electronic transactions serving as a fundamental legal infrastructure for the digital economy. This study has systematized and clarified key theoretical and practical issues of strategic importance and makes the following principal contributions:

First, in terms of theory and problem identification: The study argues that data should not be viewed merely as digitized information but increasingly as a distinctive factor of production. It further identifies the central bottleneck in the current legal framework as the absence of a sufficiently clear structure of rights and obligations concerning data. The findings indicate that, without clearly establishing the legal status of data and ensuring coherence between electronic transaction law and other relevant areas of law, the entire value chain of the digital economy may be exposed to substantial legal uncertainty and compliance costs.

Second, in terms of practical implications and solutions: The study identifies major regulatory gaps concerning cross-border electronic transactions, electronic evidence, the legal compatibility of smart contracts, and the transparent allocation of liability among actors within the digital ecosystem. On this basis, the article proposes directions for improving the legal framework toward a

balanced approach that reconciles the requirements of security, privacy, and cybersecurity protection with the need to unlock the economic value of data, promote innovation, and foster the development of digital markets.

Future Research Directions and Limitations: Future research may focus on the empirical impacts of the legal framework, online dispute resolution (ODR), and the establishment of regulatory sandboxes for the digital economy. A limitation of this study is its primary focus on theoretical dimensions, macro-level legal frameworks, and overarching policies, without delving into quantitative empirical investigations regarding the compliance costs incurred by the business community. Furthermore, given the rapid pace of technological innovation and the continuous evolution of emerging business models, certain assessments of legal hurdles remain time-sensitive and require continuous updating in alignment with actual legislative developments. These academic gaps warrant further in-depth empirical studies across specific sectors and industries within the digital economy.

Future Research Directions and Limitations

Future research should focus on the practical impacts of the legal framework, online dispute resolution (ODR), and the development of Sandbox models for the digital economy. This study is limited by its primary focus on theoretical analysis and an overview of the legal and macro-level policy framework, without conducting an in-depth quantitative assessment of compliance costs among businesses. Furthermore, given the rapid evolution of digital technologies and the continuous emergence of new business models, some assessments of regulatory challenges are necessarily time-specific and require ongoing updates in line with legislative developments. These limitations highlight important research gaps that should be addressed through further empirical studies focusing on specific sectors and areas of the digital economy.

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