

E-commerce legislation in some countries - lessons for Vietnam

Pháp luật thương mại điện tử tại một số quốc gia - bài học kinh nghiệm đối với Việt Nam

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Abstract: E-commerce is a key factor in the globalization process, serving as a significant driver for economic development. Transparent conduct of e-commerce is a crucial condition for fostering a healthy economic environment and enhancing the competitiveness of businesses. Despite being widespread globally, the legal regulation of e-commerce in Vietnam remains an area that requires continuous improvement. This article examines the e-commerce laws of leading countries such as China and the United States, aiming to draw lessons and experiences for Vietnam to enhance its legal framework for e-commerce in the current context.

Keywords: *Contracts; data transmission; e-commerce; electronic transactions; transactions*

Tóm tắt: Thương mại điện tử là nhân tố chính của quá trình toàn cầu hóa, tạo động lực quan trọng thúc đẩy sự phát triển kinh tế. Thương mại điện tử được tiến hành một cách minh bạch là điều kiện quan trọng để nền kinh tế phát triển lành mạnh và nâng cao sức cạnh tranh của doanh nghiệp. Mặc dù đã xuất hiện phổ biến trên thế giới nhưng việc điều chỉnh về thương mại điện tử của pháp luật Việt Nam vẫn còn là vấn đề cần tiếp tục hoàn thiện. Bài viết này nghiên cứu về pháp luật thương mại điện tử của một số quốc gia hàng đầu trên thế giới như Trung Quốc và Hoa Kỳ để từ đó rút ra một số bài học kinh nghiệm cho Việt Nam trong việc hoàn thiện pháp luật về thương mại điện tử trong bối cảnh hiện nay.

Từ khóa: *Hợp đồng; giao dịch; giao dịch điện tử; thương mại điện tử; thông điệp dữ liệu*

1. Introduction

Electronic commerce activities encompass the partial or entire process of commercial transactions conducted through electronic means connected to the Internet, mobile telecommunication networks, or other open networks (Clause 1, Article 3 of Decree No. 52/2013/NĐ-CP dated May 16, 2013, amended and supplemented by Decree No. 08/2018/NĐ-CP dated January 15, 2018, and Decree No. 85/2021/NĐ-CP dated September 25, 2021). In tandem with the development of the Fourth Industrial Revolution, electronic commerce activities are progressively increasing, playing a crucial role in Vietnam's economic development index. Major e-commerce enterprises in Vietnam, such as Lazada, Sendo, Zalora, and Hotdeal, have adopted mobile shopping applications.

In Vietnam, the number of disputes related to electronic commerce has been on the rise in recent times, primarily involving issues related to personal information, the form of entering into commercial contracts, and cybercrime [6]. However, the level of safety and trust in this type of transaction remains relatively limited, especially for high-value transactions. Poorly managed electronic commerce poses numerous potential negative consequences, resulting in harm to consumers. One contributing factor to this phenomenon is the lack of clarity, comprehensiveness, and strictness in Vietnam's current legal framework for electronic commerce.

Currently, the United States and China are regarded as the largest electronic commerce markets globally. As a nation experiencing robust growth in electronic

commerce, Vietnam must reference the regulations of these two countries. Drawing lessons and experiences, Vietnam can construct a legal framework governing electronic commerce that aligns with the country's current needs. This is a crucial undertaking to address the challenges posed by electronic commerce and to foster trust and security in transactions for the Vietnamese populace.

2. Experience with the E-Commerce Legislation in the United States

In the present day, the United States is recognized as a pioneering nation in the development of technology and the application of electronic transactions, such as data exploitation and the establishment of contract processes through electronic messages. Currently, the United States is the third-largest country by land area and the fourth-most populous globally, with over 300 million residents across 50 states. Consequently, online commerce activities, supplying goods and services, have flourished, and the usage rate of electronic commerce is the second-highest globally, surpassed only by China. According to a 2023 study, the revenue generated in the field of electronic commerce in the United States reached USD 1.03 trillion, with an internet access rate of 7% per person per day [7]. With a massive volume of electronic commerce transactions, the United States has established a robust legal framework and applied advanced information technology to protect the rights of buyers and sellers during transactions while minimizing potential risks.

In the United States, the development of the legal framework for commercial activities and electronic transactions is based on four fundamental principles. Firstly, establishing electronic commerce transactions and contracts must adhere to

the principles of voluntariness, equality, honesty, and good faith and should not involve illegal activities. Secondly, legal regulations must ensure technological neutrality and be applicable to both current and future technologies, meaning they should not regulate specific technologies or restrict the application or deployment of new technologies in this field. Thirdly, the legal framework must be subject to modification, supplementation, and the issuance of new regulations when necessary to ensure compatibility with the appropriate exploitation of electronic technology. Lastly, regulations must ensure fairness for all entities involved in electronic commerce in society, including consumers and electronic commerce platform providers [8].

To regulate electronic commerce activities, the United States enacted the Uniform Electronic Transaction Act (UETA) in July 1999 and the Electronic Signatures in Global and National Commerce Act (ESIGN) on June 30, 2000. These serve as the foundational legal basis for regulating electronic commerce in the country [9]. UETA is considered a model law and has been adopted by most states in the United States. Through UETA, states reference its provisions to form the basis for constructing electronic commerce laws in their respective regions. UETA contains regulations governing electronic data, forms of electronic transactions, electronic signatures, and other electronic documents [1, Articles 5-7]. Simultaneously, the Law provides favourable conditions for electronic contract formation by specifying that methods and technologies have equal legal standing. The model law on electronic transactions is viewed as a foundation in the process of constructing electronic commerce laws at the state

level, creating harmony in the application of regulations and ensuring longevity. In addition to UETA, the United States has also passed the Electronic Signatures Act, aiming to facilitate the use of electronic records and electronic signatures in commerce between states and internationally, ensuring the legal validity and effectiveness of electronic commerce contracts. This is a federal law applicable to all states in the United States [2, Article 104]. Building upon the provisions of the UETA, the ESIGN supplements additional regulations regarding electronic signatures. Accordingly, the legal recognition of electronic signatures is considered equivalent to traditional signatures in writing. This ensures that the formation of a contract is not terminated because the contract is rendered void or one party provides this as a reason to refuse to fulfil its obligations. Specifically, the Law determines that no contract, signature, or record is deemed invalid solely because its form is in the form of an electronic message; an agreement cannot be denied solely because an electronic signature or electronic means has been used to form it [2, Article 101].

Concerning electronic contracts, there is no specific federal law in the United States governing electronic contracts at the federal level. Although the Federal Government has enacted the Uniform Commercial Code (UCC) to harmonize commercial regulations at the state level, specific provisions addressing electronic transactions in commercial activities have not been explicitly mentioned [8]. Instead, depending on technological developments and applications, individual states may enact specific laws, resulting in variations in legal provisions on online contracts across states. For instance, the state of Illinois has enacted the Electronic Commerce Act, while

Massachusetts has the Electronic Records and Signature Act. Some states also incorporate contemporary technologies into electronic contracts, recognizing their legal validity, such as blockchain technology and smart contracts, as seen in the Arizona Electronic Transactions Act (AETA). Additionally, Nevada's Electronic Transactions Act recognizes the legal validity of records, signatures, and electronic contracts based on the applied technology conditions.

2. Experience with China's E-Commerce Legislation

China stands as the world's largest electronic commerce market, with global e-commerce transaction revenue through exports increasing by over 40% to CNY 1.12 trillion in 2021. To regulate and ensure healthy electronic commerce activities, China has developed and continuously refined its legal framework through two laws: the Electronic Commerce Law and the Electronic Signature Law.

Firstly, the Electronic Commerce Law includes provisions governing online commercial activities, effective from January 1, 2019. The Law aims to protect the legal rights and interests of parties involved in electronic commerce transactions while providing conditions for state agencies to manage the online market tightly. One of the critical aspects of online transactions is the need for comprehensive statistics and management of all industries and specific activities within this market. Therefore, the Law mandates that all businesses and stores engaged in online commerce must register their businesses and obtain state licenses for the specific registered products to be allowed to operate. Currently, to protect both consumers and online operators in a legally competitive environment, the Law also requires accurate disclosure of all product and

service information [8]. E-commerce platforms are obligated to establish functionalities for consumer comments, product and service reviews, and reporting functions in case businesses provide inaccurate information or engage in misleading advertising or unhealthy competition practices, causing harm to consumers and other providers.

Privacy in transactions and the retention of customer records at business establishments are subjects of great concern in the Electronic Commerce Law. The Law addresses these issues by implementing safeguards to protect consumers from the misuse of personal information, securing information through specific terms and conditions, such as the "non-acceptance" of certain services. Furthermore, the Law is structured into specific chapters for ease of comprehension, covering topics such as contracts, electronic payments, secure methods for online transactions, user information protection, dispute resolution methods, forms of competition between enterprises, and, notably, the emergence of a chapter dedicated to consumer protection and cross-border e-commerce transactions [10].

Secondly, China's Electronic Signature Law is enacted based on the UNCITRAL Model Law on Electronic Commerce of the United Nations Commission on International Trade Law regarding the authentication of digital signatures in electronic transactions. This Law signifies a significant step in the widespread adoption and promotion of electronic signatures, considering them legally equivalent to handwritten signatures and seals in ordinary commercial activities and even public utilities. According to Article 14 of China's Electronic Signature Law, a "reliable electronic signature is legally effective and equivalent to a handwritten

signature or seal" [3, Article 14]. This electronic signature is defined as data attached to or logically associated with electronic data messages, identifying the signatory and expressing their intent to agree. The reliability of electronic signatures, as noted in Article 13, includes criteria such as "electronic data used to form the signature is under the control of the signatory at the time of signing, capable of detecting any changes to the electronic signature after signing, and any changes to the content and form of the data message after signing can be detected" [3, Article 13].

Furthermore, there is a regulated market for online authentication service providers to ensure security in electronic commerce activities. These service providers must obtain permission, operate under government supervision, and agree to the scope of their activities. In the event of violations, such as operating without a license or failing to meet professional standards, these providers are held accountable and subject to legal sanctions.

In China, the use of digital currency in consumer applications, finance, and electronic commerce has gradually replaced cash payments, significantly reducing individual demand for cash. Data from the People's Bank of China shows that in the second quarter of 2023, banks nationwide processed CNY 110.456 trillion in non-cash payments, equivalent to CNY 116.573 trillion, representing increases of 6.32% and 7.86%, respectively [11, p. 170]. Currently, Consumer Insights data from Statista indicates that by 2023, Alipay and WeChat Pay will be the two most popular digital payment platforms [11, p. 170]. To control the use of e-wallets in electronic commerce activities, the People's Bank of China issued Circular No. 43, implementing policies and management

measures for electronic wallet services, preventing misuse of e-wallets for illegal activities, and licensing, monitoring, and supervising organizations providing e-wallet services [12].

3. Lessons Learned for Vietnam in E-commerce Legislation

Several lessons can be drawn from Vietnam regarding e-commerce, which is an inevitable trend in economic development amid globalization and the Fourth Industrial Revolution. To establish a more tightly controlled legal framework for e-commerce business operations, transparent e-commerce transactions fostering healthy competition should be facilitated. This, in turn, creates conditions for the development of e-commerce, contributing to enhancing the competitiveness of businesses. Vietnam can consider the following experiences:

Firstly, Vietnam needs to enact a comprehensive "Law" to regulate e-commerce instead of the current regulations solely governed by Decree No. 52/2013/ND-CP dated May 16, 2023 (amended and supplemented by Decree No. 08/2018/ND-CP dated January 15, 2018, and Decree No. 85/2021/ND-CP dated September 25, 2021). Currently, Vietnam's legal framework governs all civil transactions conducted through electronic data in the digital environment solely through the Electronic Transactions Law of 2023. In practice, e-commerce platforms such as Shopee, Lazada, and Tiki have experienced significant growth, attracting numerous consumers and contributing substantial revenue to the national economy. As e-commerce activities give rise to specific issues, such as licensing on e-commerce platforms, criteria for constructing e-commerce websites, personal data protection, prohibited activities, and regulatory responsibilities of state agencies, the current issuance of Decree

No. 52/2013/ND-CP is insufficient as it is merely a guiding document with limited enforceability. Therefore, it is essential to enact a comprehensive e-commerce law akin to China's as e-commerce activities in Vietnam continue to flourish.

Secondly, in the future "Law" on e-commerce, precise regulations should be established to control e-commerce contracts tightly and link them with other specialized laws. Given the distinctive features of e-commerce compared to traditional commerce, the e-commerce law (if enacted) needs to specifically address the conclusion and execution of contracts according to templates on e-commerce websites. The essence of a contract is the agreement of the parties; hence, without a consensus, there can be no contract. The introduction of template contracts allows consumers to negotiate terms and conditions, cancelling any pre-set arrangements made by the seller beforehand. To ensure consensus in contracts and fairness in the relationship between traders and consumers, e-commerce laws should provide more specific requirements for template contracts on e-commerce websites. Specifically, the "Law" on e-commerce needs to outline the rights and obligations of the parties regarding the protection of personal data, information disclosure on websites, termination of e-commerce contracts according to the procedures of this activity, and the joint liability of relevant parties in the case of transactions on e-commerce platforms. Moreover, in many cases where transactions are conducted through electronic contracts smart contracts, the Law also needs to be reviewed and harmonized with the Electronic Transactions Law of 2023.

Thirdly, it is essential to establish a comprehensive system for notarizing electronic commercial contracts. The legitimate and legal need for electronic

notarization by citizens is undeniable. However, this aspect is not yet regulated. Article 9, Clause 2 of the 2023 Electronic Transactions Law stipulates: "2. In cases where the Law requires a document to be notarized or authenticated, the electronic message is considered to meet the requirement if notarized according to the provisions of the notarization law, authenticated according to the provisions of this Law and the authentication law." Therefore, the 2023 Electronic Transactions Law has laid the necessary legal foundations for electronic notarization, especially concerning electronic signatures. The next necessary step is to research the organizational model and operations of electronic notarization as well as to study the enactment of legal provisions to regulate this activity to meet the legitimate and legal requirements of citizens [13].

Fourthly, Vietnam needs to diversify and adopt various forms and means of digital payment to facilitate all parties involved in e-commerce activities. Specifically, Vietnam needs to consider recognizing and regulating cryptocurrencies. Currently, Vietnam does not recognize cryptocurrencies as a means of payment, and even under the prevailing regulations of the 2015 Civil Code on property, cryptocurrencies fall outside the scope of regulation as they are not considered valuable documents or tangible or intangible assets. However, in reality, cryptocurrencies are actively traded with considerable real value on e-commerce platforms. The trend of using cryptocurrencies for transactions instead of traditional currency is becoming increasingly popular and recognized in many developed countries such as the United States, Australia, Singapore, and Japan. The lack of a legal framework leads to difficulties for state agencies in managing the use of this type of asset, as

well as in resolving disputes between parties [14]. Therefore, the Law needs an appropriate framework to regulate issues related to cryptocurrencies. Specifically, the concept, nature, and forms of expression of cryptocurrencies need to be defined. The state also needs to establish mechanisms and licensing authority, conditions for the supply of cryptocurrencies, protect customer data, control risks, ensure anti-money laundering regulations to protect the interests of relevant parties and ensure the development trends in the digital age. In addition, the reality shows that the number of users of digital wallets such as Momo, ZaloPay, and Viettelpay is increasing, and there is a tendency to replace cash in the future. However, the current regulations on digital wallet services are still somewhat generic and lack specific guidance. The legal framework mainly addresses basic issues such as the definition of digital wallets, the licensing process for providing digital wallet services, secure payment accounts for digital wallets, and the rights and responsibilities of relevant parties. Meanwhile, issues related to inspection mechanisms, audits, supervision, handling of violations by state agencies, the management responsibility of organizations providing digital wallet services, conversion methods, and limits are not yet clarified and create difficulties in practical application [12]. Therefore, Vietnam's laws need to improve further various aspects related to digital wallets. Fifthly, the Law needs to enhance the protection of consumer rights, particularly in the context of electronic commerce activities. Firstly, the Law should examine the joint responsibility of third parties in collecting personal information in e-commerce. In the legal framework of e-commerce, there are often more than just two parties involved—

sellers or service providers and customers—but also intermediaries such as e-commerce platforms. To ensure the transparency of e-commerce transactions, customers are obliged to provide personal information to intermediaries. However, the specific responsibilities of these intermediaries are not clearly defined in the Law. Recently, the government issued Decree 13/2023/NĐ-CP on personal data protection on April 17, 2023. Nevertheless, this is a general guiding document with relatively low legal value and lacks specific regulations related to the field of e-commerce. To eliminate the unauthorized use, buying, and transfer of consumers' information, the e-commerce law needs to provide specific details on protecting information and personal data in e-commerce activities, aligning with the regulations of the Consumer Protection Law and Decree 13/2023/NĐ-CP [15, p. 254]. Additionally, the Law needs to establish regulations on criteria describing the characteristics of goods and services provided on e-commerce platforms, including origin, status, responsible entities, supplier information, service and product descriptions, functions, and usage regimes [15, p. 254]. This enables consumers to make informed choices, reducing confusion during transactions. Lastly, the Law should amend regulations on the disclosure of the list of recommended e-commerce websites to caution consumers, as stated in Article 67 of Decree 52/2013/NĐ-CP on e-commerce. Specifically, the provision "List of e-commerce websites reported to have signs of legal violations" should be removed. Instead, the Law should supplement criteria allowing e-commerce websites to be removed from the published list of violations according to regulations set by the Ministry of Industry and Trade to provide opportunities for e-commerce service

providers to rectify and improve in line with consumer requirements. In cases of serious violations, the Law should include penalties such as prohibiting business operations, prohibiting assuming positions or managing, or owning e-commerce websites for a specific period.

4. Conclusion

The purchasing habits of Vietnamese consumers have undergone positive changes in recent years. From being accustomed to traditional face-to-face business transactions, where products could be held, examined, and even tested, many people now prefer the online shopping method [16]. To further stimulate the robust development of e-commerce, ensuring legal safety and transparency in these transactions, the perfection of the legal framework for e-commerce is crucial. Building and improving the legal framework for e-commerce in our country needs to be approached and harmonized with both reality and international standards. Some lessons from the United States and China, particularly in diversifying payment methods, the role of organizations providing e-commerce services, state management, consumer protection policies, and personal data, contribute to the sustainable development of e-commerce, enhancing awareness among agencies, organizations, and individuals in production, business, and economic development [17].

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