Research on the Status Quo, Problems and Countermeasures of Digital Legal Governance in China

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Abstract—In China’s fight against COVID-19, digital technology and digital services have played an important role, demonstrating broad development prospects and strong growth potential. In the era of digital economy, digital technology has affected the entire industrial economy for hundreds of years. In the face of the continuous impact of new economic forms of business, the legal governance of digital economy has fallen into the dilemma of weak governance mechanism and insufficient institutional supply, which will promote the repositioning of the standards of social governance. Therefore, it is necessary to follow the development trend of digital economy on the basis of digital economy, construct the economic governance mode of diversified co-governance; break through the restriction of digital economy "online and offline separation", improve the legal system of digital economy with clear responsibilities and rights; use digital technology to empower judicial reform, and improve the dispute handling mechanism of digital economy.

Keywords—Digital Economy; Legal System Construction

I. INTRODUCTION

In the context of the digital economy era, the network platform as the transaction structure has built a completely different competitive space and development environment under the conditions of the real economy, which has made the capital monopoly and expansion present some new characteristics and new problems, and put forward a series of new examination questions for the creation of the development environment and the maintenance of market order. China's "Data Security Law" and "Personal Information Protection Law" have provided basic legal guarantees for the safe development of the digital economy, while the "Implementation Outline of the Strategy for the Cyber Power" and the "Strategic Outline for the Development of the Digital Economy" are deployed at the national level to promote the development of the digital economy. In the context of weak global economic growth, the digital economy has become a new base point for promoting economic growth and an important support for countries to boost their economies. Improving the laws, regulations, policies and systems of the digital economy, improving the institutional mechanisms, and promoting the innovative development of the rule of law construction model of the digital economy are of great significance to improving the modernization level of the digital economy governance system and governance capacity.

II. THE DEVELOPMENT OF THE DIGITAL ECONOMY UNDER THE EPIDEMIC

In the fight against COVID-19, online shopping, home work, telecommuting, distance education, telemedicine and other businesses have highlighted the value of digital transformation. In the process of economic recovery after the epidemic, the digital transformation also shows a huge role, and the "new infrastructure" policy to promote the economic recovery after the epidemic directly promotes the development of the digital economy industry. The in-depth development of digital transformation will promote the innovation and growth of cloud computing, mobile applications, big data, artificial intelligence, Internet of Things and other technology applications, and drive the upgrading and growth of various ICT products, software, IT services and communication services. China's Economic data of National Bureau of Statistics from January to July 2020 showed that online shopping maintained rapid growth, and online retail sales of goods sharply increase. From January to July, online retail sales of physical goods increased by 15.7% year on year, 1.4 percent faster than that of January to June; online retail sales of physical goods accounted for 25.0% of total retail sales of consumer goods, 5.6 percentage points higher than the same period of last year. In terms of digital education, offline courses for students and extracurricular tutoring institutions have been completely cancelled due to the epidemic, and online live streaming is the best choice for these courses, Taking TikTok as an example, based on the educational resources accumulated in the DOU knowledge plan and its own K12 teaching, TikTok's educational live broadcast saw a significant increase in February, and the number of anchors, shows and viewers increased by 110%, 200% and 550% compared with the last month. According to Frost & Sullivan, the market size of K12 online learning in 2019 was 64 billion yuan, with an online penetration rate of 15.7% by the number of students. Meanwhile, Frost & Sullivan predicts that by 2023, the market size of online learning is expected to grow to 367.2 billion yuan for K12, and the online penetration rate based on the number of students will reach 45 percent. According to the above forecast, the compound growth rate of China's online K12 extracurricular tutoring market will reach 55% from 2019 to 2023. According to IDC, more than 25% of the world's GDP output will rely on digital drivers by 2020. At the same time, by 2023, the global market is expected to account for more than 50% of GDP.

With the convergence and integration of information technology and economic society, the human society is transforming from the physical world to the digital world. Although the popularity of computers, smart phones and Internet technologies has initially changed people's living habits and consumption patterns, the digital economy is not simply an industrial revolution. It has completely changed the way of value creation, redefined the process of value
distribution, and produced alienation with the old ideas and the old order rooted in the traditional real economy. The integration of the digital economy and the new ideas is still under way, which in turn restricts the development of the digital economy. Under the influence of the epidemic, the real economy has been greatly impacted, but the digital economy has ushered in an opportunity of rapid development. It forces people to completely leave the physical world for the first time and reflect on the causal relationship in the real world, which can accelerate the formation of social order and moral culture compatible with the digital economy. While most people are predicting that the real digital revolution will not be far away and that the epidemic will reshape our economy, it is not clear about the model and the outcome. Through the relevant data released by some authorities, we will have a more specific perception of the economic transformation in the post-epidemic period.

In the context of the digital economy era, with the network platform as the transaction structure, it has built a competitive space and development environment completely different from the real economy, making the capital monopoly and expansion present some new characteristics and new problems, and put forward a series of new questions for the construction of the development environment and the maintenance of the market order. The Data Safety Law and the Personal Information Protection Law, which have been formally implemented in China, have provided a basic legal guarantee for the safe development of the digital economy, while the Implementation Outline of the Network Power Strategy and the Digital Economy Development Strategy have been deployed at the national level, making specific arrangements for promoting the development of the digital economy. At the 34th collective study session of the Political Bureau of the 19th CPC Central Committee, General Secretary Xi Jinping put forward new ideas and clear new requirements for the development of digital economy. General Secretary Xi Jinping pointed out that attention should not only be paid to strengthening theoretical research on digital economy, but also to guarantee the role of policies, laws and regulations. At the same time, arrangements have been made to standardize the orderly competition of enterprises, maintain the vitality of fair competition in the market and the healthy development environment of the digital platform economy. For unhealthy and irregular signs and trends, Make it clear that this not only affects the healthy development of the digital economy, And they violate the laws and regulations, As a threat to the national economic and financial security, Must resolutely correct and governance; We must adhere to both development promotion and regulatory norms, Standardize in development, develop in norms, We will improve the market access system, the fair competition review system, and the fair competition supervision system. To establish a comprehensive, multi-level and three-dimensional supervision system; We must improve the laws, regulations and policies, Improve the systems and mechanisms, We will continue to improve the top-level design and institutional development of China's digital economy, Promote the innovative development of the legal construction mode of the digital economy in China, We will modernize China's governance system and capacity for the digital economy.

III. THE DILEMMA OF THE RULE OF LAW IN THE DIGITAL ECONOMY

A. The Government's Mechanism for Governing the Digital Economy Is Weak

Economic governance is one of the core functions of the government. It is the government to supervise and manage the economic behaviors of the subjects of economic activities according to law in order to achieve the specific public policy objectives. Since modern times, with the development of commodity economy, based on Keynes's national intervention theory, the main market-oriented countries have gradually built an economic governance system that fits their national conditions, and timely made flexible adjustments according to the needs of economic development. The rise of digital economy has prompted profound changes in social distribution, social power structure and social order, and the universality of digital economy makes the social interest relations increasingly diversified and complicated. Digital economy as a new digital technology economic paradigm, is different from the traditional technical and economic paradigm of new characteristics and new problems, the governance of the digital technology for the production system structure and social system structure, which requires the government governance economic system and mode to conduct a comprehensive change.

1) The contradiction between the generalization of governance objects and the limitation of governance resources

With the gradual penetration of digital technology into many fields of society, the industrial scale of the digital economy continues to expand, and the "smart army" has flooded into the market. New digital products and services such as artificial intelligence and autonomous driving continue to iterate and upgrade; diversified, diversified and personalized online and offline integration models are emerging, digital technology is profoundly rewriting the way of human production and life; online education, Internet medical care, Internet finance, micro economy, "unmanned economy" and other new business development, digital economy is reshaping the whole social ecological environment and becoming a new driving force of global economic development. According to data from the Boston Consulting Group, in 2015, more than 11 million individual businesses were employed on the Alibaba platform, creating more than 4 million fast and third-party service workers, and more than 10 million individual registered drivers on the Didi Taxi platform. Although the government is an abstract subject formed by the transfer of the power of all citizens, its specific operation is controlled by individual administrators with directivity in the knowledge category and serious limited rationality. They often lack the understanding of the new trends and new changes, and are more inclined to safeguard the original interests of the government. In addition, the government's adjustment of social and economic activities mostly takes the traditional offline economic model as the logical starting point. Facing the digital economy with large capacity, strong technology and flexibility, the traditional supervision is highlighted by the lag of technical means and the lack of knowledge structure of regulators. At present, the sharing economy such as housing sharing and online car hailing is mostly based on the old framework. Although the starting point of management may be good, it seems to cut the feet to fit, which in fact seriously affects the expansion of new business models in the field of digital economy.
2) The fragmented operation mechanism of public power cannot adapt to the deep cross-field, cross-regional and cross-departmental integration of digital economy

For a long time, our government has been implementing the territorial management mode of "combining blocks, focusing on blocks, and hierarchical management". Under the territorial management system, governments at all levels are fully responsible for social governance within their jurisdiction, specifically the institutional arrangement of local affairs by various functional departments. The concept of hierarchy in the geographical space is divided into relatively independent administrative areas, commonly known as "blocks", and the blocks are divided into "blocks" through the corresponding departments at various levels, thus forming an administrative management structure combining "block management" and "block management". China has a vast territory, large differences in natural conditions, social and cultural environment, and unbalanced economic development. Local management based on the combination of rules and blocks is not only the necessity of historical development, but also the objective requirement of national conditions. By "delegating power and giving profits", local governments can improve the enthusiasm of local governments to govern the society, so that they can implement effective governance according to local conditions on the basis of making full use of the information and resource advantages of their jurisdiction, and realize the implementation of governance responsibilities at various levels. This administrative localized management system with local elements is easy to form regionalism, which to some extent makes national resources in a state of fragmentation, and the relatively fragmented management system brings difficulties to cross-regional collaborative governance.

First of all, in the digital economy environment, resources are allocated and integrated in a global scope, and business activities span the boundary of time and space, realizing the unboundery of the development of digital economy. Shared digital economy for "a platform, service the national" operating characteristics of the real economic activity has obvious interdisciplinary, cross-industry characteristics, the emphasis on territorial management and industry management of traditional regulatory system conflict increasingly highlighted, for example, in Tmall mall, jingdong mall and other domestic well-known e-commerce platform has many sellers, their registration, the actual location, economic activities may occur in different administrative areas, service customers are scattered around the world. In the process of economic communication, once there are business disputes, the territorial management mode will fall into the dilemma of independence, and the need for coordinated supervision in many places is increasingly urgent. Secondly, the cross-border integration of the digital economy has produced new requirements for industry regulation. For example, the new models of smart retail such as Hema Fresh and Super Species, which have entered the public view, actually integrate three different industries such as retail, catering and logistics in a "multi-dimensional" way, involving multiple regulatory departments such as transportation, health, market supervision and information and communication. This breaks the traditional model of fragmented industry regulation.

centreFor a long time, the public management system is based on regional governance and functional division of governance, and the government division of digital economy governance is the extension of extension, decentralized and localized economic management system lead to many, capital and technology management elements such as technology is scattered in many departments, the lack of effective coordination between departments, even appear policy requirements contradictory phenomenon, difficult to achieve governance resources communication and integration, unable to play to the government governance of digital economy.

B. The Supply of the Legal System for the Digital Economy Is Insufficient

In the era of digital economy, new technology has affected the whole industrial economic system for hundreds of years, in the face of new economic forms, legal rules created with natural lag, the current legal system demand for digital economy response is still not specific, comprehensive, how to improve the requirements of digital economy development legal system is a major proposition facing the government. Under the traditional economic model, the field of social production activities is relatively stable and easy to be recognized by people. Therefore, the connotation of the supply of legal system and rules is also relatively certain, and it does not need too much innovation. In the past few years, the biggest common point of all industries in China's economic field is the integration and penetration of numbers. Data, as a new means of production, reconstruct traditional industries and organizational forms. In the context of digital economy, innovation is the driving force and source of its development. Whether it is implicit digital technology innovation or explicit business model innovation, the space of social production activities is infinitely expanded and concealed, giving new connotation and extension to traditional economic relations. Specifically, digital technology has given birth to many new rights subjects, based on the economic value of data, personal information and digital currency, diversified rights distribution needs. Value creation under traditional economic conditions, production and consumption are two separate processes. The roles of producers and consumers are clearly distinct, and value creation takes place outside the market and is created by producers alone. Under the condition of digital economy, the role of consumers has changed. They participate in the process of value creation more through personalized experience, and then put forward corresponding rights claims based on their respective contributions. For example, the collaborative operation of the dot, line and surface intelligent business promotes the sales of product group. "A more cost-effective online school" is itself a reflection of the joint participation of customers and enterprises in creating value. The buyers of online education products are a group of parents, this group is socially connected to the same demand group, with accurate touch rate and high credibility. Qingdong Education Parents Toutiao provides an experience sharing platform for some parents with excellent students, and obtains profits according to the reading amount of the article. Youxue squirrel provides efficient light distribution tools for some mothers with strong selling ability, which are obtained according to the promotion. In the context of digital economy, digital technology enriches the relationship between the subjects of economic activities, and enterprises and users realize the transformation from competition to symbiotic logic through mutual promotion. come into contact with a

Centre Looking at the existing policies and regulations, the legal norms governing the digital economy are scattered and absent. There are many laws, regulations and rules concerning the protection of personal information, but the protection of virtual property such as data and information is limited to the principle provisions without specific norms. The legislation has not yet clarified the data ownership and rights
content of different subjects, which leads to the plight of new infringement disputes in the field of digital economy. In May 2020, the thirteenth session of the National People's Congress examined and approved the civil code, the scope of personal information protection, data and virtual property protection, information technology application specification, etc., the legal regulation of digital economy made a certain response, but in the rights of data and virtual property ownership still not made clear rules."Civil code" only completed the empowerment of network virtual property, put into the law of virtual property and universal meaning of electronic data clarity, but how from the legislative level of principle regulation to complex legal practice, form a sound data and virtual property protection system, this is the department law need further solutions. The sharing economy model focusing on the sharing of use rights has blurred the boundary between general civil transactions and commercial business activities under the traditional legal framework. Under the circumstances of imperfect credit system, insufficient protection of personal information and unclear definition of platform responsibility, the sharing economy faces the challenges of "difficult supervision, difficult evidence collection and difficult rights protection". In addition, the rise of new technologies such as artificial intelligence and block chain, is vividly rewrite the social production activities of organization, implementation, block chain technology governance rules of unmanned responsibility, the subject qualification issues, and in transportation, education, medical care and other sensitive barriers to entry and ethical issues, etc., all need to respond from the legal level.

IV. THINKING ON THE PATH OF DIGITAL ECONOMY GOVERNANCE

A. Legal System Framework for Promoting the Digital Economy

Data resources approval, sharing, open and trading related to data elements of legal system become the important content of the rule of law system, digital economy includes: one is the data market regulation and configuration mechanism, need to further improve the multiple subject participation, collaborative work data elements of market governance system, resolutely combat and prevent data abuse and improper use of behavior. Second, the cultivation and promotion mechanism of the data trading market, stimulate the vitality of the market subjects, and clarify the standard and form of data trading is particularly urgent nowadays.

B. Experience in Digital Economy Legislation at Home and Abroad

The Regulations on Promoting Digital Economy of Zhejiang Province clarify the concepts of "priority development" and "inclusive and prudent supervision", encourage the government to use modern information technology to promote the transformation of human management to digital governance, and put forward the requirements of transformation from government management to diversified governance of the government, platforms, industries and the public. The Interim Regulations on Data of Shenzhen Special Economic Zone (Draft) proposes for the first time the protection of "data rights and interests", which clearly stipulates that the collection and processing of personal data involving privacy must be explicitly agreed, and forbids big data "killing". The proposed "negative list system for public data sharing" promotes the deep opening and comprehensive sharing of public data.

The EU's "digital single market strategy" focuses more on protecting consumers' privacy. The General Data Protection Regulations are the world's most stringent data and privacy protection regulations; The Open Government Data Act and the Financial Services Information Protection Act of the United States focus on promoting the innovation and development of the digital economy. Protect the freedom of data transaction and also take into account the protection of citizens' privacy rights; Belarus has adopted a more aggressive model in its digital economy legislation. The Digital Economy Development Act passed in 2017 legalized activities such as cryptocurrency mining and trading, And through tax breaks and other incentives to attract foreign technology and investment.

C. Thoughts on the Digital Economy Legislation

1) Circulation and trading of data

In each link of data operation, data circulation and transaction occupy an important position, and are the key link to increase the value attribute of data. Reducing the threshold of data utilization will provide effective support and legal guarantee for data circulation, data transaction and data application among data subjects. Therefore, to improve the data circulation and transaction system, it is necessary to reconcile the conflict of interest of the data subject circulation, establish the trading rules in line with the market law and the rule of law requirements, increase the transaction value of the data, and stabilize the circulation order of the data. Legislation in the aspect of data utilization, can focus on the following aspects: the quality of data management, how to better realize the market development and utilization of public data, public data and social data fusion, data trading rules, the data sharing benefit distribution mechanism, data security protection, data protection of intellectual property rights.

2) Specification for the cross-border flow of data

In terms of cross-border data flow, it is mainly considered from three aspects: protecting personal privacy, maintaining the healthy order of the market and safeguarding national security. Among them, Shanghai, as one of the most developed cities in China, is the first to bear the brunt. The construction of "international data Fort" needs to promote the facilitation of international data circulation from the legislative level, promote the formation of international data industry agglomeration area, and build Shanghai into the core node of domestic data element configuration and the strategic link of international data circulation. In November 2020, the Shanghai municipal government issued the Shanghai comprehensively deepen service trade innovation development pilot implementation plan put forward to promote the cross-border safe and orderly flow, and to establish classified supervision mechanism, in Lingang safe flow pilot, drive the Yangtze river delta digital export service trade, explore the Yangtze river delta data flow mechanism, participate in cross-border data flow rules compliance fusion to make specific requirements. In January 2021, the Shanghai Municipal Party Committee and the Shanghai Municipal Government issued the Opinions on Comprehensively Promoting the Digital Transformation of Shanghai City, which proposed to support the construction of the international data port, carry out the first trial of international cooperation rules, and actively participate in the formulation of international rules such as digital technology, trade and taxation.
3) The governance capacity of the data

Data governance ability is the key link for the improvement of urban governance level. Therefore, we should focus on the following aspects: First, we should focus on the infrastructure construction of the digital economy and give new drivers to industrial development and upgrading. Second, to provide institutional guarantee for the development of digital economy, and establish more international and domestic industry standards and management standards. Third, we will deepen innovative ways of trade and distribution, and accelerate the development of cross-border e-commerce, new forms of trade and digital trade. Fourth, we should grasp the future direction of digital economy development and explore ways to build a new network hub connecting the world.

CONCLUSION

Engels pointed out: " The theoretical thinking of each era, including the theoretical thinking of our era, is a product of history, which has completely different forms in different times and has completely different contents. Digital rule of law governance thought contains the dialectical thinking, historical thinking, innovative thinking and the rule of law thinking, is closely combined with the new era background and practical requirements of new understanding of social and economic development. It contains the thought of guaranteeing economic development by the rule of law, the two-way driving force of guaranteeing economic development with the rule of law and economic development and promoting a new realm of the rule of law, promoting the efficient operation of economic development on the track of the rule of law. High-quality rule of law will guide and ensure high-quality economic development.

In the field of legal construction of digital economy, the thought of digital legal governance has played an important leading role in promoting the development of digital economy, and is also an important driving force for promoting high-quality development in China. The development of digital economy cannot be separated from data support and the deep integration of digital technology with all aspects of the economy and society. The new economic model and production and consumption mode have raised more new problems to the legal system and the practice of the rule of law. Therefore, it is necessary to sort out the complicated relations in the development of digital economy, start with the concept and practice of digital legal governance, explore effective ways to promote the high-quality development of digital economy, build a legal system with a competent government and an effective market, and ensure national economic security.

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