

Legal Guarantee Mechanism for Digital Economy

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Abstract:

The development of the digital economy is dependent on the rule of law guarantee, by the connotation of the digital economy and current situation of the development of the rule of law guarantee faced with some problems of the digital economy, digital economy development of the rule of law guarantee has its necessity, this from the three aspects such as legislation, law enforcement and judicial guarantee mechanism for the digital economy law demonstrates embodiment, in order to determine the road of the digital economy of the rule of law guarantee mechanism.

Keywords:

Digital Economy, Under the Rule of Law, Legal Protection Mechanism

1. Introduction

As a new economic form, digital economy is gradually penetrating into the economy and society with the comprehensive popularization of all kinds of information technology, and has an important impact on social development. In this context, China also attaches great importance to the development of digital economy. In the 14th Five-Year Plan and the outline of the 2035 vision goal, it is pointed out that we will accelerate the development of digital economy and build a digital China. However, economic development is inseparable from the rule of law guarantee, so is the digital economy. The establishment and improvement of the rule of law guarantee mechanism is the key step to promote the high-quality innovative development of the digital economy. The research on the rule of law guarantee mechanism of the digital economy is of great practical significance.

2. Question Raising

Digital economy is a new economic form after agricultural economy and industrial economy. With the advent of the information age and the promotion of the COVID-19 pandemic, digital economy has gradually become a key factor to promote social development in the new era, spurting out huge development potential in the global economic development.

With the continuous development of information network technology, the role of digital economy in promoting global economic operation is more and more obvious. Not only the corresponding network infrastructure is constantly improved, but the most key data production factors are also growing with huge development potential. On the whole, the value added of digital economy in 47 countries in 2021 was \$38.1 trillion, accounting for 45.0% of GDP. The digital economy of all major countries has accelerated. In terms of scale, the digital economy of the US continues to rank first in the world, with a scale of 15.3 trillion dollars, while that of China ranks second with a scale of 7.1 trillion dollars.

The development of digital economy has reconstructed the economy and society, but also brought about a series of related legal protection issues such as network security, platform governance, data standards, personal information protection and so on. At present, China has introduced the Network Security Law, the Data Security Law and the Personal Information Protection Law, three key pieces of legislation on the digital economy, the national policy also put forward to accelerate the digital transformation of traditional industries, make the digital economy bigger and stronger. Therefore, to standardize the development of digital economy and promote the further healthy development of digital economy through legal protection has become the only way to standardize the digital economy.

3. Trend and Dilemma of Legal Guarantee of Digital Economy

3.1. Trend of rule of law in digital economy

The economic basis determines the superstructure, and the legal guarantee mechanism and the economic basis model are always in contrast with each other. Digital economy as a new field in the process of economic development, its corresponding legal protection mechanism is bound to be different from the legal model behind the traditional economic model. At the same time, in the face of the overall situation of global economic decline in the post-pandemic era, further regulating the digital economy with the guarantee of the rule of law is also a necessary means to optimize the industrial structure and promote the effective growth of the digital economy.

China has also been concerned about the legal protection of digital economy since it proposed to develop digital economy. The Civil Code adopted in 2020 has given a response to the legal norms of digital economy, which is involved in such aspects as information technology application, personal information protection, data and virtual property protection, etc. Not only that, China has formed the network safety ", "data security law" and "personal information protection law" legislation legs and stand the situation of the three data, as well as auxiliary "anti-monopoly law", "anti-unfair competition law" in the network operator's new rules, these are to meet the requirements of the digital economy of the business environment, It is also to further promote the establishment of a legal protection mechanism for the development of the digital economy.

Therefore, along with the digital economy is still in development, the rule of law guarantee system of digital economy construction is faced with a new phase of development, the continuous perfect of the rule of law guarantee mechanism and overall coordination need attention, promote to form the government, enterprises,

public participating, jointly safeguard the rule of law guarantee system, good to continue to escort healthy development of the digital economy.

3.2. The legal dilemma of the digital economy

At present, the legal protection of digital economy has been put on the agenda and some basic problems can be solved, but for the legal protection of digital economy, there are still some problems, and the legal dilemma of digital economy is still not solved.

First of all, digital technology is a key field of research and innovation. The legal protection mechanism in the field of digital economy is highly professional and cannot be generalized with the traditional legal model. It is necessary to actively refer to the beneficial legal experience of foreign countries. Digital economy relying on the development of information network technology has led to many new frontier legal issues, the most attention is the emergence of Internet virtual space and platform economy caused by many social problems. For example, the use of huge data resources by large Internet platforms has brought about problems such as data monopoly and big data killing, which not only distorts the normal development of the digital economy market, but also damages the interests of users. At the same time, due to the continuous development of digital technology, the problems in the economic field caused by digital technology have not fully emerged, which means that the professionalism of digital technology has also laid hidden dangers for the development of digital economy. These problems must be faced and dealt with in the process of legal protection of digital economy.

Secondly, the lag and limitations of the law itself will also bring difficulties to the establishment of the legal protection mechanism. Law is not omnipotent, and it is impossible to solve all the problems encountered in the digital economy through law. Based on the rapid development of digital economy, the formulation of legal guarantee mechanism will inevitably lag behind the emergence of problems. However, the changes of infrastructure brought by digital economy and the formation of a large number of new business models all require the synchronization of legal guarantee mechanism. Therefore, if the rapid development of information network technology and the digital transformation of the economy and society cannot be compatible, then the legal guarantee mechanism required by the development of the corresponding digital economy cannot be changed in time due to its own characteristics. Without the constraints of legal protection, the digital economy will only create more and more problems, some of which may be unimaginable, and some of which cannot even be solved by legal means.

Finally, the legal system of the digital economy has not been formed, and the current legislation is still independent in each field. It is easy to cause the problem of application conflict or concurrence of laws and regulations when applying different laws, which obviously cannot help the regulation of the digital economy. At the same time, China's current legal protection mechanism of digital economy is not only not perfect legislation, the corresponding law enforcement mechanism is not clear enough, there is a tort after the judicial solution is more inadequate. Therefore, it is more important to develop and implement a sound legal protection mechanism system for digital economy.

4. Legal Guarantee for Digital Economy

4.1. Perfecting the legislation

The establishment and improvement of the legal guarantee mechanism of digital economy is a dynamic systematic project, and the first thing is to improve the legislation. From its basic structure, specifically speaking, it is the network infrastructure, network service platform, data elements and individual users, etc.

First of all, network infrastructure is the hardware carrier of information network technology and the hardware infrastructure for the development of digital economy, such as 5G network, industrial Internet, big data processing center and other information infrastructure. Legislation to protect network infrastructure mainly includes two aspects. One is to clarify the status of network infrastructure as a public infrastructure to promote economic and social development into a new stage, and to standardize its applicable system; On the other hand, it is to make preparatory legislation for network security risks and threats faced by network infrastructure. Therefore, it is urgent to develop a targeted and effective legal protection mechanism to enhance the protection capacity of network infrastructure, so as to create a secure and stable hardware support facility for the development of the digital economy, and further promote the digital transformation of all industries.

Secondly, the network service platform is not only an important carrier of the digital economy, but also an organizational form of the new business form of the digital economy. One of the most representative is some of the large Internet platform has the monopoly position, the large Internet platform for the development of the digital economy creates the exchange to network virtual platform, greatly has made the operation of the digital economy, but it also means that the web services platform by the carrier has become a need to undertake the social responsibility of the public service institutions. From the legal point of view, Internet platform is a medium to provide information release and transaction matching for all parties involved in e-commerce transactions, and it is also a place to create online transaction space for all parties involved. The definition of legal nature of the platform must be determined according to the different types of services it provides. At present, the E-commerce Law, Anti-Unfair Competition Law, Anti-Monopoly Law and other laws have stipulated that operators use the network to conduct transactions, but there is no clear stipulation on how to restrict the specific Internet platform, and the targeted legislation should be put on the agenda urgently.

Secondly, data element is the kernel of digital economy, and data security is the fundamental guarantee of digital economy operation. With the development of information and communication technology, data has gradually become a new kind of resource that attracts much attention and plays a crucial role in the digital economy. The digital economy needs the rule of law, and the most dynamic element of the digital economy also needs the rule of law. Is digital economy in our country, in terms of data protection, insist on the security and development in parallel, the data safety ", for example, the law is from the system of data security and development, data security, data security and protection obligations, and open the data safety, and legal liability and so on several aspects has carried on the rules, but the punishment dynamics data protection legislation is still imperfect. Digital economy involves the roles and responsibilities of users, merchants, platforms, third-party service organizations and other subjects in the data industry chain. A healthy digital economy

order needs to correctly treat the balance between data property protection, data security and personal information, and form a reasonable data security governance system.

Finally, there is much concern about the individual users who receive the end services of the digital economy. Individual user is the provider of all kinds of information resources, but also the smallest unit in the digital economy participants, the protection of individual user is mainly to protect personal information. Personal information, also known as personal privacy or personal data in different countries and regions, refers to all kinds of information recorded in electronic or other ways that can identify the personal identity of a natural person alone or in combination with other information. The development of the digital economy benefits from the use of all kinds of personal information, but it also leads to the large-scale disclosure and malicious use of personal information. Therefore, it is imperative to protect personal information in the digital economy, which is not only for the safety of consumers, but also to promote the effective development of the digital economy. The current Personal Information Protection Law has a relatively perfect level of protection for personal information, but its connection with the digital economy is not very close. Therefore, in the process of further implementation of the Personal Information Protection Law, it is necessary to actively link it with the development of the digital economy in the legislation.

4.2. Synergy in administrative law enforcement

The legal guarantee of digital economy needs administrative means to implement, which is inseparable from effective government governance. In this regard, relevant laws and regulations and corresponding law enforcement agencies should be integrated to achieve external molding and internal refinement of two aspects, that is, on the one hand, to speed up the construction of digital government, local governments to fully promote the digitalization of government services, on the other hand, to implement the national general decision-making and detailed digital management of departments.

External shaping refers to the promotion of the digitalization of government services and the formation of a digital government model with the interconnection of the whole network. Government departments are public service organizations that provide services for the society. With the advent of the information network era, it has become an inevitable trend to strengthen the network government service mode, and cyberspace governance has been gradually put on the agenda. To promote the construction of the Internet-connected digital government model requires all government departments to connect with each other, actively respond to the new requirements of the digital era, and facilitate the networking of government affairs in various regions. At the same time, under the promotion of government affairs interconnection, we should also pay attention to the rule of law supervision of cyberspace governance, establish a matching supervision mechanism for digital government, and promote the security and progress of government services. It IS NECESSARY NOT ONLY TO PROMOTE THE WHOLE platform of E-government, but also to ensure the safe operation of government services, so as to build the standard mechanism of digital government mode, so that the government's administrative law enforcement force can be implemented.

The internal refinement is to realize the general decision-making and the detailed management mechanism of the department, always adhere to the overall guidance of national policies and laws, and make practical provisions on how to participate in the rule of law activities of the digital economy among various government departments. In this regard, according to the regulations in the field of digital economy, the relevant laws and regulations should be roughly divided into two parts: competition order and consumer interests, and the corresponding laws and regulations should be applied according to different parts in the actual enforcement process. We should also assign specific problems to specific departments to solve them, adhere to the state's overall decision-making, and each region and department is in charge of specific affairs. In terms of the specific application of laws, the detailed management in charge of relevant departments is reflected in specific laws and regulations. For example, the Anti-Unfair Competition Law states that The State Council is responsible for establishing a coordination mechanism against unfair competition, and people's governments at all levels shall take measures against unfair competition. Specifically, it also requires the administrative departments of industry and commerce in the people's governments at and above the county level to investigate and punish the acts of unfair competition. The Network Security Law is clear that the state department of Internet and information technology is responsible for coordinating the work of network security and related supervision and management, and the departments of The State Council are responsible for network security protection according to their respective scope of responsibility. It also points out the respective scope of duties and responsibilities of network operators, network related industry organizations, people's governments at all levels and their relevant departments, public security organs and state security organs. Therefore, all departments will fulfill their responsibilities in accordance with the requirements of their duties, and the legal protection mechanism of the digital economy can be really implemented.

4.3. Strengthening judicial protection

The legal protection mechanism of digital economy is finally settled in judicial protection, which mainly includes two aspects. One is to realize the data interconnection between judicial departments and form the data network of judicial handling cases. Second, the legal liability for violating laws and regulations on the digital economy should be clarified.

The data interconnection of judicial protection is the combination of government services and legal norms. On the one hand, we need to promote the government public service platform of information and data sharing work to develop a deeper level, to achieve cross-regional, across levels of data sharing, the construction of all kinds of large theme database, the social security, ecological and environmental protection, urban and rural construction and public credit data in a structured form can handle import database, Form the data interconnection situation between the various judicial departments of the government. Also want to strengthen technical talents reserves work in order to enhance risk prevention and control and emergency handling ability, to do big data technology innovation of the whole society public security prevention and control system, set up a national public security command platform of grid management pattern, truly with information to support to improve the overall level of public security. On the other hand, in the work involving specific legal norms, it is necessary not only to use big data technology to provide technical support for procuratorial work to improve the construction of procuratorial work platform, but

also to improve the data level of trial work to improve the construction of trial work platform. In this way, the online filing system can automatically detect the filing situation, optimize the allocation of judicial resources by using big data technology, and make overall use of the existing cases in the database, so as to realize the resource communication with various departments of the judicial organ. At the same time, on the premise of adhering to the principle of judicial independence, it is also necessary to understand the particularity of public opinion communication, pay attention to the trend of public opinion, and conduct public opinion risk warning and timely response, so as to complete the benign interactive relationship between the public prosecutor and the public. In a word, the data interconnection of judicial protection is to establish and improve the data network system of judicial protection by using the grid processing of database to coordinate the services of judicial departments and legal norms.

Legal responsibility is a clear requirement for the punishment of illegal acts, and also the final foothold of strengthening judicial protection. Combined with the current legal system, it can be roughly divided into two parts: one is to regulate the market operation order for the purpose of anti-monopoly, anti-unfair competition, and the other is to maintain the smooth transition of the digital era to establish network data protection. In terms of anti-monopoly and anti-unfair competition, this can be seen in the newly revised Anti-Monopoly Law. For example, the added Article 9 stipulates that operators shall not use data and algorithms, technology, capital advantages and platform rules to engage in monopoly activities prohibited by this Law. Accordingly, paragraph 2 of Article 17 is changed to Article 22, which stipulates that operators with dominant market position shall not use data, algorithms, technologies and platform rules to engage in the abuse of dominant market position as stipulated in the preceding paragraph. All these are emphasizing the way to regulate monopolistic behavior in digital economy. And "Anti-unfair competition Law", it is in the fourth chapter of the legal liability to make provisions, the operators violate the act of the fine or revoke the business license, and the supervision and inspection department responsible for the supervision of their own illegal behavior has also formulated punishment means. In terms of network data protection, the sixth chapter of the "network security Law" is the provisions of legal liability, the network operators in violation of the law to double penalty system for punishment, at the same time for other actors in violation of the law and responsible for the supervision of the network and IT departments, the relevant departments of illegal behavior has also formulated punishment measures; The sixth chapter of "Data Security Law" also provides legal liability, double penalty system or single penalty system for organizations, individuals and institutions violating the provisions of the law according to the severity of the act, and the fine amount is significantly increased, and the relevant responsible departments, organs and staff are also strongly constrained; The Personal Information Protection Law stipulates legal liability in the seventh chapter, prescribes the punishment means of double punishment system for violations of the law, and at the same time has different degrees of liability investigation mechanism, and additionally stipulates various circumstances that should bear administrative liability, civil liability and criminal liability. The above provisions on legal liability are all based on fines, supplemented by other measures of different degrees, which is the most effective guarantee to strengthen judicial protection, and also the most powerful embodiment of legal coercion.

To sum up, the strengthening of judicial protection requires judicial organs at all levels to constantly improve their awareness of using big data and form an information exchange network system among judicial organs. It also requires judicial organs to take specific legal responsibilities for all kinds of illegal acts, and combines these two aspects to seek breakthroughs from cases by using big data processing, improve the quality of supervision of judicial organs, and promote the promotion of judicial openness and judicial credibility.

5. Conclusions

As a new economic form emerging with the information age, digital economy not only brings new opportunities to social development, but also brings new challenges to social governance. Law is an important norm of social governance. Providing legal protection mechanism for digital economy is conducive to the healthy development of digital economy. But at the same time, we should also realize that digital economy is different from the previous economic forms, and the new challenges it causes also put forward new requirements for legal protection. Therefore, it is necessary to understand the adequacy of digital economy and legal protection, not only to understand the development needs of digital economy, but also to study the difficulty of the implementation of legal protection.

For the promotion of legal safeguard mechanism of the digital economy is building the country under the rule of law, rule of law society, the inevitable choice of the rule of law economy, and China's current legal system of digital economy is mainly composed of the network security law of the People's Republic of China, the data security law of the People's Republic of China, the personal information of the People's Republic of China protects a law "the three laws, At the same time, it has supplemented the Anti-Monopoly Law and the Anti-Unfair Competition Law on data protection. The introduction of these laws and regulations conforms to the development of domestic and foreign situations, and has initially formed the overall institutional framework of data security governance. To standardize the development of digital economy, we should adhere to the two aspects of promoting development and data security, and standardize and develop in the process of development. In this regard, we should put forward an explicit solution to the realistic trend and specific dilemma of the digital economy legal protection, and make efforts to improve legislation, synergy of administrative law enforcement and strengthen judicial protection. We should not only understand the two major needs of the development and security of the digital economy, but also clarify all aspects of the legal protection mechanism, standardize the government, platform and individual aspects, and form a joint force of legal protection, so as to realize the common maintenance of the legal protection mechanism of the digital economy by the whole society.

The rule of law management of digital economy is a constantly changing process, in which all participants should actively adapt to the development of the digital era and promote the effective development of digital economy. The government should adjust the mode of government affairs and provide all-round legal guarantee for the digital economy. Large Internet platforms should define themselves and assume their responsibilities in the digital economy. Individuals should actively participate in the development of the big digital economy, so as to form a multi-scope digital economy governance model for the whole society. The rule of law should be used to promote the economy, and the government, society, the market and individuals should be able to cooperate in cyberspace governance, so as to truly combine the digital economy

with the rule of law, enable the legal protection mechanism to promote economic development, and enable the digital economy to promote a new pattern of rule of law development.

Conflicts of Interest

The author declare that there is no conflict of interest regarding the publication of this article.

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