

Legal Advocacy for Balanced Protection of *Jastip* Business Actors

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Abstract

This study examines the legal protection of online personal shopping service (*jastip*) business actors within Indonesia's rapidly evolving digital economy, where existing regulations remain largely consumer-oriented and do not adequately address the vulnerabilities faced by business actors. The research aims to analyze the legal structure of *jastip* agreements and evaluate whether current legal frameworks provide balanced protection for all parties involved. Using a normative juridical method with statutory and conceptual approaches, the study finds that *jastip* agreements have a hybrid contractual nature, combining elements of mandate, sale, deposit, and service contracts. Nonetheless, such agreements existing beyond the boundaries of civil law categories make legal uncertainty and unduly burdensome business actors, especially in relation to bad faith on behalf of consumers and wrongdoing by third-parties. This research is in line with the discourse by suggesting that law needs to set more proportionally business actors as subjects of protection, these regulations are yet to adequately accommodate and

address digital intermediary practices, and therefore urges the need for specific creating adaptive regulation while optimizing electronic contracts as preventive regulatory instruments to secure fairness, legal certainty, and balance risks in *jastip* transaction.

Keywords *Jastip, legal protection, business actors, e-commerce*

A. Introduction

The increasing presence of technology and digital networks have prompted people to perform purchasing and selling transactions (e-commerce) via the Internet.¹ As mobile technology advances, replacing desktop devices as the main platform for e-commerce amidst its rapidly growing use, this method of trade will only increase. Given this, it is easy to understand the unique features of e-commerce (which traditional trade does not have): ubiquity (users can shop regardless of location and time), high information density (lesses pricing opacity for consumers) etc.² Economic approaches to the emergence of new types of transactions, such as e-commerce, justify their use on pragmatic grounds, with a particular focus on transaction delivery over the internet and making it possible for consumers and suppliers to carry out face-to-face transactions without having ever met in person.

Complementing this trend, the COVID-19 pandemic served as a major catalyst for a lasting shift in consumer behavior, reflected in the surge of global e-commerce retail growth by more than 25% in 2020.³ In this context, the COVID-19 pandemic, which limited physical access to shopping centers, in tandem with the growth of e-commerce, has also given rise to an economic phenomenon known as “jasa titip or (*jastip*)” as a digital bridge that utilizes social media platforms and marketplaces

¹ Kenneth C. Laudon and Carol Guercio Traver, *E-commerce 2023–2024: Business, Technology, Society*, 18th ed. (New York: Pearson Education Limited, 2023), 46–56.

² Laudon and Traver.

³ Laudon and Traver. *See also* Liam Harris, “Fostering Economic Justice in the Post-Pandemic Era: Indonesia’s Recovery Plans and Economic Fairness”. 2025. *Indonesian Economic Justice Review* 2, no. 1 (2025) <https://doi.org/10.65815/9xm9mt67>.

to fulfill consumers' shopping desires without having to leave their homes.⁴

Conceptually, *jastip* can be understood as a form of personal shopping service in which an individual acts as an intermediary by visiting stores, malls, or wholesalers to purchase specific goods or brands according to consumer preferences. This informal service serves as a practical solution for consumers who face limitations of distance and time in obtaining desired products directly.⁵ In its development, the existence of *jastip* in Indonesia has not emerged merely by chance, but has instead been driven by a number of interconnected structural factors. Technological advancement, marked by high internet penetration and widespread smartphone use, has expanded access to the digital economy, which is then reinforced by the dominance of visually based social media such as Instagram as an effective marketing medium in shaping consumer preferences and trust, as well as by a consumerist culture reflected in the large contribution of household consumption to Gross Domestic Product (GDP), which simultaneously creates significant demand for *jastip* practices.⁶

Complementing this view, Fitrianiatsany regards the emergence of *jastip* as a social phenomenon driven by a fundamental shift from a mode of production to a mode of consumption, in which individual existence in post-industrial society is defined more by the signs and symbolic meanings attached to consumed objects than by their actual use value. This shift encourages prestige- and status-oriented consumption through the ownership of branded goods, further reinforced by advertising as a system of ideas capable of shaping and manipulating consumer tastes and desires. Ultimately, this forms a symbiotic mutualistic relationship that benefits all parties: *jastip* actors

⁴ Fitrianiatsany, "Fenomena Jasa Titip Beli (*Jastip*) Sebagai Bentuk Budaya Konsumtif Masyarakat pada Masa Pandemi Covid-19," *Urban Sociology* 5, no. 1 (2022): 48–58, <https://doi.org/10.30742/Jus.V5i1.1971>.

⁵ Anggit Dyah Kusumastuti, "Fenomena Jasa Titip (*Jastip*) dan Polemik bagi Kelangsungan Produk UMKM," *Ekonomi Bisnis dan Kewirausahaan* 9, no. 1 (2020): 33–39, <https://doi.org/10.47942/iab.v9i1.645>.

⁶ Kusumastuti. *See also* Rayyan Harits Anshari, "Taxation of Cross-Border Digital Services After Supreme Court Rulings in Indonesia". *Indonesian Tax Justice Review* 2, no. 2 (2025). <https://doi.org/10.65815/9fs40b66>.

gain new business opportunities, stores maintain their sales turnover, and consumers obtain both convenience and social recognition from the products they consume.⁷

Although jastip has effectively become one of the prevailing economic practices today, it still conceals various unresolved legal issues. A number of risks continue to create legal loopholes, including practical and juridical problems such as online fraud, whether through falsified proof of payment by consumers or service providers who disappear after receiving advance payments.⁸ Not only that, legal uncertainty is also evident in the potential for incorrect or exchanged orders, the risk of goods being damaged during delivery through personal baggage or shipping services, as well as the possibility of tax violations or tax evasion in overseas jastip activities that carry goods exceeding the duty-free threshold of USD 500.⁹

From the foregoing description, it is evident that jastip practices cannot be viewed merely as informal economic activities, but have evolved into a digital economic phenomenon with complex and multidimensional legal implications. The absence of specific regulations governing the legal relationship between jastip actors, consumers, and third parties has the potential to create legal uncertainty, particularly in relation to determining liability and ensuring adequate legal protection for jastip business actors.

Building on the issues outlined above, this research is important to conduct as it is not limited to formulating a conceptual understanding of online personal shopping services (*jastip*), but also to emphasize the urgency of establishing specific legal regulations to provide legal protection for jastip business actors. At the same time, this study offers a normative contribution in the form of recommendations for the government and relevant stakeholders in formulating

⁷ Fitrianatsany, "Fenomena Jasa Titip Beli (Jastip) Sebagai Bentuk Budaya Konsumtif Masyarakat pada Masa Pandemi Covid-19," pp. 48–58.

⁸ Jaya Setiawan Sinaga and Raymond Paradeys Fenetiruma, "Jasa Titip: Menyingkap Risiko dan Celah Perlindungan Hukum di Indonesia," *Zaaken: Journal of Civil and Business Law* 6, no. 1 (2025): 42–55, <https://doi.org/10.22437/zaaken.v6i1.36987>.

⁹ Fitrianatsany, "Fenomena Jasa Titip Beli (Jastip) Sebagai Bentuk Budaya Konsumtif Masyarakat pada Masa Pandemi Covid-19,"

comprehensive and adaptive regulations, with the aim of preventing potential losses and creating greater legal certainty and justice in the practice of online jastip services.

The challenges in jurisprudence over jastip practices are only a tip of the iceberg, part of larger governance constraint in spirit with economic digital sector. The existing legal order has been challenged to keep up with the speed of growth in digital commerce, thus posing a complex web of legal and ethical challenges for actors operating under asymmetrical legal conditions.¹⁰ The lack of specific regulations for platform-like transactions in particular, leaves market actors in the legal grey zone; furthermore, taxonomic issues and algorithmic biases disproportionately affect structurally vulnerable populations whenever religious and non-privileged minority groups are discriminated against by opaque community governance.¹¹ As a result, digital platforms assume ever more the role of regulatory intermediaries that structure commercial and social relations beyond anything envisioned or legally defined to date.¹²

Complementing this argument, Suhandi, through his study on merger policies in the era of the Fourth Industrial Revolution, found that the rapid transformation of the digital economy is often not matched by the adaptive capacity of Indonesia's existing legal frameworks.¹³ This condition creates structural risks and legal uncertainty for economic actors operating within rapidly evolving market dynamics.¹⁴ Building upon this logic, the present study situates

¹⁰ Muhammad Azam *et.al*, "Religious Diversity in the Digital Economy: Interfaith Legal Pathways to Harmonize Sharia, Christian Ethics, and International Law." *Contemporary Issues on Interfaith Law and Society* 4, no. 2 (2025): 207–264, <https://doi.org/10.15294/ciils.v4i1.33011>.

¹¹ Azam *et.al*,

¹² Azam *et.al*,

¹³ Farid Ibrahim Suhandi, "Kebijakan Pre-Merger Notification Badan Usaha Sebagai Penegakan Hukum di Era Revolusi Industri 4.0," *Lex Scientia Law Review* 3, no. 2 (2019): 129–142, <https://doi.org/10.15294/lesrev.v3i2.35395>.

¹⁴ Suhandi. *See also* Rhido Jusmadi, "The Existence of Digital Platforms and the Challenges in Enforcement of Indonesian Competition Law." *Unnes Law Journal* 9, no. 1 (2023): 183–204. <https://doi.org/10.15294/ulj.v9i1.37279>; Dimas Dwi Arso, "Artificial Intelligence and Its Impact on Business Competition: A Review of Business Law in Indonesia." *Contemporary Issues on Indonesian Social*

the jastip phenomenon within the broader trajectory of digital economic transformation, arguing that informal digital commerce likewise requires a regulatory response that is both adaptive and balanced in protecting consumers as well as informal digital business actors.

The novelty of this study lies in its focus on the vulnerability of jastip business actors, which distinguishes it from a number of previous studies that predominantly emphasize consumer protection. For example, the study conducted by Raysa Fitriana, Fokky Fuad, and Aris Machmud highlights the weak bargaining position of consumers resulting from the informal contractual system and the implementation of “buy as is” practices by business actors who refuse refunds or product exchanges, even when the products received do not match the advertised photos or contain defects.¹⁵

In contrast, Choirunnisa et al. develop a more casuistic analysis by highlighting consumer protection in cases of jastip fraud involving concert tickets. This is examined not only through the framework of positive law, such as the Consumer Protection Law (UUPK) and the Electronic Information and Transactions Law (UU ITE), but also through the perspective of Islamic law, which constructs jastip as an *wakalah bil ujah* contract. In this context, jastip business actor involved in fraud cases can be positioned as subjects subject to sanctions within the framework of *jarimah ta'zir*.¹⁶

On the other hand, Panggabean et al. compare business law regulations concerning jastip practices in Indonesia and Thailand,

Justice and Legal Reform 1, no. 1 (2025): 78-98. <https://journals.arteslibres.org/index.php/law/article/view/5>; Fadhel Arjuna Adinda, “Assessing the Economic Impact of Competition Law Enforcement on Market Efficiency in Indonesia”. *The Indonesian Journal of Economic Analysis of Law* 1, no. 1 (2026): 31-60. <https://inleads.id/publications/index.php/IJEAL/article/view/9>.

¹⁵ Raysa Fitriana, Fokky Fuad, and Aris Machmud, “Perlindungan Hukum Terhadap Konsumen Pengguna Jasa Titip Online,” *Binamulia Hukum* 4, no. 1 (2025): 43–52, <https://doi.org/10.37893/jbh.v14i1.971>.

¹⁶ Cholqi Choirunnisa, Nisbati Sandiyah Humaeroh, and Rahma Eka Fitriani, “Perlindungan Hukum terhadap Konsumen yang Tidak Menerima Produk Pembelian Jasa Titip (Jastip) Berupa Tiket Konser melalui Media Twitter Ditinjau dari Hukum Positif dan Hukum Islam,” *Hakim: Jurnal Ilmu Hukum dan Sosial* 1, no. 3 (2023): 254–278, <https://doi.org/10.51903/hakim.v1i3.1251>.

primarily focusing on licensing, consumer protection, and taxation aspects. This study highlights the limited and fragmented level of regulations surrounding jastip in Indonesia, focused mostly on business registration administrative requirements (such as Business Identification Number [NIB]) and import duty taxes. Consequently, this lack of regulation remains a source of legal uncertainty for the actors and consumers that rely on said technology.¹⁷ Meanwhile, Thailand enjoys a more mature special legal framework via measures like the Digital Platform Services Law (2023) and the Cybersecurity Act (2019), devoted to securing online transactions as well as stringent control over counterfeit products.¹⁸

These three studies consistently position jastip business actors as legal subjects who bear the primary burden of responsibility, thereby opening space for this research to offer a different perspective. This study emphasizes that the law should also provide protection for jastip business actors against risks and losses that arise not only from their own actions, but also from the conduct of consumers or third parties within the practice of online jastip services.

The three studies consistently construct the notion that jastip actors are legal subjects who bear the burden of responsibility. This, in turn, opens up space for the present research to propose a different reading by highlighting how the law should also afford protection to jastip actors against risks of loss that do not solely arise from their own fault, but also from the actions of consumers and third parties within the practice of online personal shopping services.

The structural gap identified in previous studies becomes even clearer when examined alongside scholarship on the asymmetric legal position of economically weaker parties in digital and platform-based commercial relationships. In his study on legal protection for outsourced workers in Indonesia, Herlambang argues that actors occupying structurally subordinate positions often face a mismatch

¹⁷ Azra Sri Devi Panggabean, Lista Ade Sumiati Bondar, Putri Melani Tampubolon, Jonathan Agung Silalahi, and Martono Anggusti, "Perbandingan Hukum Usaha Jasa Titip: Perspektif Hukum Bisnis Indonesia dan Thailand," *Al-Muamalat: Jurnal Ilmu Hukum & Ekonomi Syariah* 9, no. 2 (2024): 37–57, <https://doi.org/10.32505/muamalat.v9i1.9894>.

¹⁸ Panggabean, et.al

between their actual vulnerability and the legal protections formally available to them.¹⁹ Drawing on Sitompul and Agus (2015), he further explains that such actors are “juridically free but economically unfree,” resulting in disproportionate exposure to risks without adequate legal protection.²⁰

This analytical framework is directly applicable to the context of jastip practices. Although jastip business actors are formally positioned as commercial subjects under consumer protection law, in practice they remain vulnerable to information asymmetry and disproportionate liability burdens that extend beyond the scope of the existing normative framework. In this regard, the present study contributes to the growing discourse questioning the adequacy of general legal instruments in protecting actors operating at the margins of formal regulatory categories, while also offering a perspective that complements the consumer-oriented approach dominating existing jastip scholarship.

The focus of this research lies in advocating for the legal rights of jastip business actors, which are normatively protected under Article 6 of the Consumer Protection Law. These rights include the right to receive payment in accordance with the agreed terms and the value of the goods or services provided, as well as the right to obtain legal protection from consumers acting in bad faith. Beyond that, this research also examines the role of preventive legal services through the optimization of electronic contracts as an instrument to mitigate transactional risks while simultaneously providing predictability and legal certainty for the parties involved in jastip actors practices. This is mainly because the emergence of jastip as an intermediary with some role in digital practices adaptive within social media thru a contractual relationship to supply as well transforming society with its different streams for goods/services thrown onto this which can be attributed due rapid change base-driven under legal framework reshaped by disruptive technology era new demands at pace towards consumer behaviours and trends/businesses transcend boundaries swiftly etc. These dynamics

¹⁹ Pratama Herry Herlambang, "Implementation on Transfer of Undertaking Protection of Employment to Outsourcing Labors in Semarang Indonesia: A Legal Approach." *Journal of Indonesian Legal Studies* 3, no. 1 (2018): 109–130, <https://doi.org/10.15294/jils.v3i01.23211>.

²⁰ Herlambang.

require renewed attention from scholars on the functions and responsibilities of legal advocates for confronting the challenges of the digital economy.²¹

This article is organized into two main sections. The first section examines the legal construction and legal uncertainty of jastip agreements within the civil law framework, focusing on the contractual basis of jastip under Indonesian civil law, its hybrid character between nominate and innominate contracts, and the resulting ambiguity in determining its applicable legal classification. The second section focuses on advocating for the protection of business actors, addressing liability imbalances and protection gaps in jastip practices by analyzing the occurrence of moral hazard, information asymmetry, and the unequal distribution of liability under the Consumer Protection Law, all of which reflect the vulnerability of business actors in jastip transactions. In addition, this section elaborates on contractual regulation, legal certainty, and the reconstruction of jastip governance by examining the role of electronic contracts in ensuring legal certainty, the regulation and limitations of standard clauses in digital transactions, and the need for regulatory reconstruction through the perspectives of social engineering and comparative legal insights from Malaysia and Singapore. Accordingly, this study addresses the following research questions: (1) how is the legal construction of jastip agreements within the Indonesian civil law framework? and (2) to what extent can the existing legal framework provide balanced legal protection for jastip business actors in digital transactions?

In order to achieve these objectives, this study employs a normative juridical method grounded in the examination of secondary legal materials obtained through library research, including statutory regulations, legal doctrines, scholarly writings, and relevant official documents. The approach adopted is not limited to a statutory interpretation of the law, but also incorporates conceptual and theoretical perspectives. The statutory approach is carried out by analyzing positive legal instruments within the Indonesian legal system,

²¹ Ridwan Arifin and Aprila Niravita, "Editorial Introduction: Contemporary Issues on Advocacy and Legal Services," *Indonesian Journal of Advocacy and Legal Service* 7, no. 2 (2025): 291–296, <https://doi.org/10.15294/ijals.v7i2.3400>.

including the Civil Code (KUHPerdata), the Consumer Protection Law, and the Law on Electronic Information and Transactions, while the conceptual approach is directed toward understanding the legal construction of jastip agreements within the framework of contract law, particularly in relation to the distinction between nominate and innominate contracts.

At the same time, a theoretical approach is employed to situate the analysis within a broader legal framework by engaging with legal theory as a means of examining how law operates beyond its textual dimension. In this regard, the study draws upon the conception of law as a tool of social engineering to analyze the role of legal norms in balancing competing interests and distributing risks within jastip practices. The analysis is conducted qualitatively through systematic interpretation and descriptive elaboration, with the aim of generating a comprehensive understanding of the issues examined, particularly in assessing the extent to which the existing legal framework is capable of providing balanced legal protection for jastip business actors in the context of digital transactions.

B. Legal Construction of *Jastip* Agreements within the Civil Law Framework

1. *Legal Basis and Contractual Character of Jastip Agreements*

Juridically, jastip practices reflect the characteristics of obligations arising from agreements as recognized under Article 1233 of the Civil Code (KUHPerdata), in which the legal relationship between the parties is based on an agreement that gives rise to reciprocal rights and obligations.²² Contract law within the civil law tradition is grounded in the principle of consensualism, whereby an agreement is considered to arise and become legally binding once mutual consent has been reached,

²² Lonna Yohanes Lengkong, Tomson Situmeang, and Stefanie Hardiandra Indraswari, "Perlindungan Hukum Terhadap Konsumen Jasa Titip Online dari Cacat Barang," *Jurnal Hukum to-Ra: Hukum untuk Mengatur dan Melindungi Masyarakat* 10, no. 2 (2024): 187–199, <https://doi.org/10.55809/tora.v10i2.345>.

without requiring additional formalities.²³ This principle is aligned with the principle of freedom of contract under Article 1338 of the Indonesian Civil Code, which grants parties the freedom to determine the contents and form of an agreement, thereby making a valid agreement legally binding as law upon the parties who enter into it.²⁴ Nevertheless, such freedom remains subject to the validity requirements of an agreement as stipulated under Article 1320 of the Indonesian Civil Code, namely the existence of consent, legal capacity of the parties, a certain object, and a lawful cause. In its implementation, an agreement must be carried out based on the principles of good faith, trust, equality, justice, and reciprocity in the relationship between the rights and obligations of the parties.²⁵

In this regard, the a quo relationship is not direct, but instead takes the form of a relationship involving the consumer, the jastip actor, and the store. Accordingly, the a quo relationship constitutes a power of attorney arrangement, namely the authority granted by the consumer to the jastip actor, which is embodied in an agreement.²⁶ It is on the basis of this authority that the online personal shopping service provider then conducts sales and purchase transactions with third parties. In this sense, the legal construction of jastip is not merely transactional, but also relational in nature, because the authority granted by the consumer becomes the normative foundation for the legal acts carried out by the jastip actor.

²³ Agustina Balik et al., “Registration of Copyright as Guarantee of Batik Motif Legal Protection (Comparison Study of Indonesia, Malaysia and Thailand),” *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 1–44, <https://doi.org/10.15294/jils.v8i1.61019>.

²⁴ Balik et al.

²⁵ Balik et al.

²⁶ Ifaldy Riski Fahlepy, Sunarmi Sunarmi, T. Keizerina Devi A., and Robert Robert, “Akibat Hukum Terhadap Pelaku Usaha Jasa Titip (Jastip) Barang dari Luar Negeri Ditinjau dari Undang-Undang Nomor 17 Tahun 2006 tentang Kepabeanaan,” *Journal of Science and Social Research* 7, no. 4 (2024): 1951–1959, <https://doi.org/10.54314/Jssr.V7i4.231>. See also Paulina Wena Wanggai, and Christina Sabu Tukan. “The Impact of International Tourism on Economic Justice: A Study of Indonesia’s Popular Tourist Areas”. *Indonesian Tourism Justice Review* 1, no. 4 (2024). <https://doi.org/10.65815/zt3h2g88>.

This positioning is important because it places jastip within the spectrum of civil obligations that are not purely bilateral in a direct sense, but rather mediated through delegated authority. Nevertheless, attempts to classify jastip within the juridical framework governing types of agreements in civil law still remain within a legal grey area. In other words, jastip cannot be reduced merely to a single form of contractual arrangement, as it contains a number of intertwined legal elements that form a complex structure of legal relations

2. *Legal Classification: Nominate, Innominate, and Hybrid Construction*

In general, agreements in civil law can essentially be classified into two categories, namely nominate (named) contracts and innominate (unnamed) contracts. For example contracts that are regulated in the Civil Code (KUHPerdara) such as sale and purchase agreements, lease agreements, deposit agreements, powers of attorney are referred to as nominate contracts. On the other hand, innominate contracts are indirectly established by the regulations of the Civil Code but their establishing and developments are based on the practices in society.²⁷ However, both these types of agreements continue to be governed by the general rules in Book III of the Civil Code (KUHPerdara).²⁸

Within this juridical construction, jastip is often classified as a nominate contract, namely an agreement that already has a specific designation and legal regulation within statutory law.²⁹ At this point, the legal construction reveals two simultaneous contractual relationships: first, a sale and purchase agreement between the jastip actor and the seller at the place of origin; and second, a deposit agreement between the consumer as the depositor and the jastip actor as the custodian, which may be either gratuitous or based on service remuneration. Although the regulation of deposit has been provided for

²⁷ H. Abd. Thalib and Nur Aisyah T., *Hukum Perjanjian* (Depok: Rajawali Pers, 2024), 25–27.

²⁸ Nur Jantra Hidayanto, “Analisis Konsep Perjanjian (Nominaat) Bernama dalam Perspektif Hukum Perdata,” *Media Hukum Indonesia (MHI)* 2, no. 4 (2024): 475–481, <https://doi.org/10.5281/zenodo.14211281>.

²⁹ Lengkong, Situmeang, and Indraswari, “Perlindungan Hukum Terhadap Konsumen Jasa Titip Online dari Cacat Barang.”

in Chapter XI, Articles 1694 to 1739 of the Civil Code (KUHPerdata), this agreement is nonetheless a real contract, meaning that the contract is only deemed to come into existence at the moment physical delivery of the goods is made. This stands in contrast to jastip practice, which instead presents an anomaly, as the agreement is formed before the goods are available or come under the control of the jastip actor.

However, jastip may also be classified as an innominate contract, which arises from the principle of freedom of contract. This principle allows individuals to enter into agreements outside the categories of contracts specifically recognized under civil law, provided that such agreements do not violate the validity requirements of a contract, the fundamental principles of contract law, or conflict with statutory law, public order, morality, and propriety. In simple terms, an innominate contract is an unnamed agreement whose designation is not regulated in the Civil Code (*KUHPerdata*), and whose contractual name is determined according to the needs of the parties entering into the agreement.³⁰

In practice, innominate contracts may take various forms, including cooperation agreements (joint ventures), profit-sharing agreements (production sharing), hire-purchase agreements (leasing), licensing agreements, and various other types of agreements that evolve in response to the changing needs of the parties involved.³¹ At this point, personal shopping services (jastip), which do not possess a specific nomenclature within the civil law regime, nevertheless derive their legitimacy from the principle of freedom of contract.³² Within a specific construction, jastip can be conceptualized as a service agreement, which is essentially an innominate contract because it is not explicitly regulated in the Civil Code (*KUHPerdata*). In this framework, a service agreement is understood as a functional legal relationship, in which one party bears the obligation to assist or facilitate the other party in carrying out a certain work or activity, in order to achieve a mutually agreed objective.

³⁰ Endro Martono and Sigit Sapto Nugroho, *Hukum Kontrak dan Perkembangannya* (Solo: Pustaka Iltizam, 2016), 141–142.

³¹ Thalib and Aisyah T., *Hukum Perjanjian*, p. 2.

³² Martono and Nugroho, *Hukum Kontrak dan Perkembangannya*, pp. 141–142.

3. *Binding Force and Legal Consequences of Jastip Agreements*

Building on the two categories of agreements discussed above, the author argues that the agreement underlying jastip transactions cannot be rigidly classified into either category. This is primarily due to the distinctive conceptual structure of jastip, which does not fully correspond to service contracts, deposit agreements, or power of attorney arrangements. In practice, online personal shopping service agreements are formed through contracts in which the service provider determines the terms and transaction mechanisms, which are subsequently agreed upon by the buyer. Such consent then gives rise to an obligation for the buyer to pay a fee to the service provider in accordance with the agreement established from the outset.

Within this relationship, a legal bond is established between the service provider and the jastip user, thereby giving rise to reciprocal rights and obligations for each party. The fulfillment of rights as a consequence of the performance of agreed obligations constitutes a legally accountable act, considering that the agreement is formed on the basis of mutual consent between the parties. Conversely, when such obligations are not properly performed, legal consequences become inevitable.

This construction is consistent with the principle of *pacta sunt servanda* as stipulated in Article 1338 of the Civil Code (BW), which affirms that every lawfully concluded agreement is binding as law upon the parties who have entered into it. Thus, jastip agreements obtain their binding force not only from doctrinal classification, but from the consensual nature of the agreement itself.

C. *Advocating for Business Actor Rights against Consumer Bad Faith and Moral Hazard*

1. *Legal Service Perspectives on Risk Mitigation through Optimized Electronic Contracts*

As a rule-of-law state founded upon the principle of the rule of law, Indonesia is required to establish and develop legal instruments that

are both functional and just.³³ Therefore, the state is required to fulfill, protect, and respect the rights of its citizens as recognized in the Constitution. In the context of protecting online personal shopping service (jastip) business actors, which falls within the dimension of economic, social, and cultural rights, the state is encouraged to act actively (*obligation of result*) by formulating regulations to prevent human rights violations committed by individuals or corporations (third parties) against other individuals.³⁴

This becomes important because, thus far, jastip practices have largely focused on consumer protection, while cases have also emerged involving losses suffered by business actors themselves. One example is the alleged fictitious electronic goods fraud case involving Wulan, a jastip business actor who reportedly suffered losses amounting to nearly IDR 200 million. The case originated from an invitation to participate in a “joint bulk purchasing” scheme (*kulak bareng/kulbar*) to meet the minimum order quantity (MOQ) in order to obtain lower prices; however, the ordered goods in the form of dozens of chopper and air fryer units were never actually available.³⁵ In this case, the jastip actor was demanded by resellers via WhatsApp to refund their funds, even though, in essence, the jastip actor was also a victim of a third party identified as T.³⁶

This condition reflects the concept of moral hazard, which is rooted in the existence of asymmetric information, namely the unequal distribution of information that may be exploited by one party for unilateral gain.³⁷ At this point, such actions have violated the principle

³³ Jimly Asshiddiqie, “Gagasan Negara Hukum Indonesia,” *Majalah Hukum Nasional*, no. 1 (Jakarta, 2012).

³⁴ Suparman Marzuki, *Hukum Hak Asasi Manusia* (Yogyakarta: Pusham UII, 2017), 229–231.

³⁵ Muhammad Isa Bustomi, “Cerita Korban Penipuan Jastip, Dikejar ‘Reseller’ Hingga Ganti Uang Ratusan Juta Rupiah,” *Kompas.com*, July 15, 2022, <https://megapolitan.kompas.com/read/2022/07/15/09453371/cerita-korban-penipuan-jastip-dikejar-reseller-hingga-ganti-uang-ratusan> (accessed April 19, 2025).

³⁶ Bustomi.

³⁷ Suprapti, Duhita Driyah, Nurul Fibrianti, and Anggun Meinanda Maharani, “Increasing Public Understanding of the Prevention and Complaints of

of *pacta sunt servanda* and the principle of good faith, which should serve as the foundation of every agreement as affirmed in Article 1338 of the Civil Code (KUHPerdara). Consequently, the absence of legal protection for jastip actors has led online personal shopping service providers to bear a heavy burden of compensation.

As discussed above, it can be understood that within jastip practices, not only consumers may suffer losses from their use, but jastip business actors themselves are also highly vulnerable to potential harm. Therefore, the state should provide both preventive and corrective mechanisms for jastip practices, which have become deeply embedded in the community's economic activities. This may be achieved by promoting greater legal certainty in jastip-related economic transactions. In this regard, legal certainty is particularly important as it constitutes an essential element of the legal system, enabling legal subjects to predict the consequences of their actions and to understand how norms will be interpreted and applied by authorities.³⁸

Normatively, jastip practices may be positioned as valid civil agreements insofar as they fulfill the requirements stipulated under Article 1320 of the Civil Code (KUHPerdara), namely the existence of mutual consent between the parties, legal capacity, a certain subject matter, and a lawful cause.³⁹ Within this framework, protection for business actors is essentially grounded in the principle of freedom of contract as stipulated in Article 1338 of the Civil Code (KUHPerdara), which affirms that every lawfully made agreement has the force of law for the parties, is binding upon them, and must be performed in good faith.⁴⁰

As a logical consequence, business actors are entitled to formulate the terms and conditions governing jastip practices, provided that such terms obtain the consumer's consent. In this way, both business actors and consumers are afforded the freedom to determine the construction

Fraudulent Investments,” *Indonesian Journal of Advocacy and Legal Services* 4, no. 2 (2022): 295–314, <https://doi.org/10.15294/ijals.v4i2.29829>.

³⁸ Zainal Arifin Mochtar and Eddy O. S. Hiariej, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum* (Depok: Rajawali Pers, 2024), 197.

³⁹ R. Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 1985), 85–87.

⁴⁰ H. Abd. Thalib dan Nur Aisyah T., *Hukum Perjanjian....*, 26–27.

of rights and obligations that bind them, as long as these arrangements do not conflict with applicable legal provisions. On the other hand, from the perspective of Islamic law, *jastip* practices are often constructed as a *wakalah bil ujah* contract, namely a contract of agency accompanied by remuneration.⁴¹ Thus, it can be concluded that business actors possess legitimate entitlement to remuneration for services rendered, while simultaneously reflecting a trust-based relationship that necessitates the proportional and good-faith performance of obligations.

Within the Consumer Protection Law, it is emphasized that the objectives of national development are directed toward achieving equitable societal welfare, both material and spiritual, within a democratic economic framework founded upon Pancasila and the 1945 Constitution.⁴² Thus, national economic growth must support the development of the business sector in producing various goods and services through technology that is capable of promoting the overall welfare of society, while also providing certainty regarding the goods or services obtained in commercial transactions, without causing losses to consumers.

When viewed from the perspective of consumer protection law, personal shopping service providers may essentially be qualified as business actors. This is consistent with Article 1 point 3 of the Consumer Protection Law (UUPK), which defines a business actor as any individual or business entity, whether incorporated or unincorporated, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through agreements in various fields of economic activity. However, the regulation under the Consumer Protection Law remains general in nature and is predominantly oriented toward conventional trade transactions, and thus has not specifically accommodated

⁴¹ Choirunnisa, Humaeroh, and Fitriani, "Perlindungan Hukum terhadap Konsumen yang Tidak Menerima Produk Pembelian Jasa Titip (*Jastip*) Berupa Tiket Konser melalui Media Twitter Ditinjau dari Hukum Positif dan Hukum Islam."

⁴² Muhammad Johansyah Maulana, "Perlindungan Konsumen Dalam E-Commerce Terkait Kerugian," *Journal of Law, Administration, and Social Science* 4, no. 2 (2024): 265–275, <https://doi.org/10.54957/jolas.v4i2.569>.

electronic transaction practices. Nevertheless, both consumers and business actors engaging in electronic commerce (e-commerce), including online personal shopping service agreements, still rely on the Consumer Protection Law as a guiding framework in commercial transactions.

This is primarily because Article 6 of the Consumer Protection Law further stipulates that:

“Rights of Business Actors:

- 1. The right to receive payment in accordance with the agreed terms regarding the condition and value of the goods and/or services being traded;*
- 2. The right to obtain legal protection from consumers acting in bad faith;*
- 3. The right to proper self-defense in the legal resolution of consumer disputes;*
- 4. The right to rehabilitation of reputation if it is legally proven that the consumer’s loss was not caused by the goods and/or services being traded;*
- 5. Rights as regulated under other laws and regulations.”*

In this context, the norm provides legitimacy that business actors are not merely positioned as parties who must always bear responsibility, but also as parties entitled to legal protection from harmful actions committed by consumers. Meanwhile, Article 7 of the Consumer Protection Law (UUPK) also emphasizes various obligations that must be fulfilled by business actors, which further stipulates:

“Obligations of Business Actors are:

- 1. To act in good faith in carrying out their business activities;*
- 2. To provide true, clear, and honest information regarding the condition and guarantees of goods and/or services, as well as explanations on their use, repair, and maintenance;*
- 3. To treat or serve consumers in a proper and honest manner and in a non-discriminatory way;*

4. *To ensure the quality of goods and/or services produced and/or traded in accordance with applicable quality standards;*
5. *To give consumers the opportunity to test and/or try certain goods and/or services, and to provide guarantees and/or warranties for goods produced and/or traded;*
6. *To provide compensation, indemnity, and/or replacement for losses arising from the use, consumption, or utilization of the goods and/or services traded;*
7. *To provide compensation, indemnity, and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.”*

Within this framework, Article 6 of the Consumer Protection Law (UUPK) essentially affirms that business actors are entitled to legal protection from consumers acting in bad faith. However, this right cannot be separated from the obligation of business actors to continue acting in good faith, as emphasized in Article 7, so that the legal relationship established between the parties remains within the bounds of justice.

In addition to regulating the rights and obligations of consumers and business actors, the UUPK also governs the liability of business actors, one of which takes the form of professional liability, namely the responsibility of business actors as service providers for losses suffered by consumers as a result of the use of the services provided. In this regard, Article 19 of the UUPK affirms that:

“Business actors are responsible for providing compensation for damage, pollution, and/or losses suffered by consumers as a result of consuming goods and/or services produced or traded.”

Article 19 of the Consumer Protection Law adopts the principle of strict liability, under which business actors remain responsible for consumer losses without requiring consumers to prove the existence of

fault.⁴³ Such liability may take the form of refunds, replacement of goods or services of equivalent value, or the provision of medical treatment, all of which must be fulfilled no later than seven days after the transaction.⁴⁴

Complementing this, Article 2 of the Consumer Protection Law (UUPK) emphasizes that consumer protection is implemented as a joint effort involving society, business actors, and the government, based on five principles: the principle of benefit, the principle of justice, the principle of balance, the principle of consumer safety and security, and the principle of legal certainty. Collectively, these principles require balanced protection for both consumers and business actors, guarantees regarding the safety of goods and/or services, and the enforcement of legal certainty by the state in every consumer relationship.⁴⁵ Within the same framework, these principles are rooted in the philosophy of national development, which is oriented toward the holistic development of the Indonesian people.⁴⁶

As outlined above, jastip agreements constitute an extension of electronic commerce (e-commerce) transactions; therefore, both consumers and business actors are essentially subject to the legal regime of the Electronic Information and Transactions Law (UU ITE). In this regard, the Organisation for Economic Co-operation and Development (OECD) defines e-commerce as transactions based on electronic processes and the transmission of data.⁴⁷ Furthermore, business actors operating through social media or marketplaces remain protected under the Electronic Information and Transactions Law (UU ITE). This is because electronic contracts (e-contracts) essentially share the same principles as conventional contracts, namely the existence of an offer

⁴³ Mia Maulia Fajriana, "How Are Business Actors Responsible for Consumer Losses in Default Cases?," *Journal of Law and Legal Reform* 2, no. 2 (2021): 187–196, <https://doi.org/10.15294/jllr.v2i2.46614>.

⁴⁴ Fajriana.

⁴⁵ Anak Agung Sagung Ngurah Indradewi, *Hukum Perlindungan Konsumen: Hubungan Konsumen–Produsen, Asas, Tujuan dan Aspek Hukum Perdata, Administrasi, Pidana* (Denpasar: Udayana University Press, 2020), pp. 52–60.

⁴⁶ Indradewi.

⁴⁷ Ade Manan Suherman, *Aspek Hukum dalam Ekonomi Global* (Jakarta: Ghalia Indonesia, 2002), p. 179.

and acceptance that gives rise to mutual agreement between the parties.⁴⁸ At this point, electronic contracts can be categorized as innominate contracts as regulated under Article 1319 of the Civil Code (KUHPerdata).⁴⁹

Complementing this, the validity of electronic contracts essentially refers to the provisions of Article 1320 of the Civil Code (KUHPerdata) as well as Article 47 paragraph (2) of Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE), which stipulates that electronic contracts possess the same legal force as conventional contracts, insofar as they fulfill the requirements for a valid agreement.⁵⁰ Thus, it becomes evident that the Electronic Information and Transactions Law (UU ITE) primarily regulates electronic buying and selling transactions.

The normative description above reflects that activities within jastip transactions continue to exist within a latent zone of legal uncertainty. This is primarily because jastip agreements may be classified under various types of contracts. As a result, jastip practices remain far from enjoying a fully secure legal position, particularly due to the uncertainty in determining the applicable legal framework when violations occur that infringe upon the rights of jastip business actors. Nevertheless, jastip business actors may utilize electronic contracts through standard clauses to reduce unequal bargaining positions between the parties, and more importantly, to prevent the abuse of exoneration clauses or unilateral liability waivers by business actors that could potentially harm consumers, or vice versa.

2. Ensuring Legal Certainty Through Contracts in Jastip Practice

In modern society, contracts occupy a central position in the conduct of social life because they function as the primary instrument

⁴⁸ Yapiter Marpi, *Perlindungan Hukum terhadap Konsumen atas Keabsahan Kontrak Elektronik dalam Transaksi E-Commerce* (Tasikmalaya: PT Zona Media Mandiri, 2020), p. 92.

⁴⁹ Marpi, p. 80.

⁵⁰ Marpi, pp. 72–73.

for ensuring certainty and predictability in relationships between individuals, thereby enabling the coordination, planning, and execution of various activities with minimal risk of disruption.⁵¹ In an economic context, contracts primarily function to stabilize legal relationships by rendering obligations measurable and predictable, with their performance guaranteed through the external authority of the state and its legal enforcement system.⁵² On the other hand, contracts are important not only because they support economic structures, but also because they assume legal subjects to be equal, possess free will, and be capable of engaging in voluntary exchanges in accordance with their respective interests. It is under these conditions that formal equality in the formation of contracts can be realized.⁵³

Intertwined with this, *jastip* activities may essentially incorporate standard clauses adapted to the regulation of electronic contracts. In this regard, there are minimum requirements that must be fulfilled, as well as certain prohibitions that must be avoided, to ensure that such standard clauses do not become null and void by operation of law.⁵⁴

First, based on Article 47 paragraph (3) of Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions (PP PSTE), which states that:

An Electronic Contract shall at least contain:

- a. The identity data of the parties;*
- b. The object and specifications;*
- c. The terms and conditions of the Electronic Transaction;*
- d. The price and costs;*
- e. Procedures in the event of cancellation by either party;*
- f. Provisions granting the aggrieved party the right to return goods and/or request product replacement if there is a hidden defect; and*

⁵¹ Dragan Milovanovic, *Sociology of Law* (New York: Criminal Justice Press, 2003), pp. 11–12.

⁵² Marpi, p. 12.

⁵³ Marpi, pp. 13–14.

⁵⁴ Marpi, p. 177.

g. *The choice of law for the settlement of Electronic Transactions.*

Therefore, electronic contracts must at least unambiguously specify the identities of the parties, the object and specifications, properties or prior agreements relating to the goods and/or services which are subject matter contract proposal, clauses of an electronic transaction including procedure for ordering from suppliers; payment method; time for payment; delivery mechanism of goods as agreed between both parties. Second, referring to Article 18 of the Consumer Protection Law, which further stipulates that:

“(1) Business actors, in offering goods and/or services intended for trade, are prohibited from making or including standard clauses in any document and/or agreement if they:

- a. state the transfer of liability of the business actor;*
- b. state that the business actor has the right to refuse the return of goods purchased by the consumer;*
- c. state that the business actor has the right to refuse repayment of money paid for goods and/or services purchased by the consumer;*
- d. grant authority to the consumer to the business actor, either directly or indirectly, to perform any unilateral actions related to goods purchased by the consumer on an installment basis;*
- e. regulate matters regarding proof of loss of usefulness of goods or utilization of services purchased by the consumer;*
- f. grant the business actor the right to reduce the benefits of services or reduce the consumer’s assets as the object of service transactions;*
- g. state that the consumer is subject to new rules, additional rules, continued rules, and/or changes made unilaterally by the business actor during the period the consumer uses the purchased service;*

- h. state that the consumer grants authority to the business actor to impose a mortgage, pledge, or security right over goods purchased by the consumer on an installment basis.*
- (2) Business actors are prohibited from including standard clauses whose placement or form is difficult to see, cannot be clearly read, or whose wording is difficult to understand.*
- (3) Any standard clause set by a business actor in a document or agreement that violates the provisions referred to in paragraphs (1) and (2) shall be declared null and void by law.*
- (4) Business actors are required to adjust any standard clauses that are contrary to this Law.*

Under this provision, it is expressly stated that, in drafting contracts, business actors are prohibited from including standard clauses that unfairly disadvantage consumers. These include clauses that transfer liability, deny refunds or returns, grant unilateral authority to take certain actions, impose additional terms unilaterally, or place unilateral security burdens on purchased goods.⁵⁵ Third, from the aspect of presentation, standard clauses must be drafted in clear and easily understandable language and must not be presented in a format that is difficult for consumers to read, so as to avoid creating ambiguity in the interpretation of the agreement's contents.⁵⁶ Finally, standard clauses must also ensure aspects of confidentiality, data integrity, data availability, authorization, authenticity, non-repudiation, and auditability. In this regard, the contents of the agreement remain secure, are not unlawfully modified, can be retrieved when necessary, and, most importantly, possess legally binding force.⁵⁷

3. Reconstruction of Jastip Regulation Through Social Engineering and Comparative Learning

⁵⁵ Marpi, pp. 177–178.

⁵⁶ Marpi, p. 177.

⁵⁷ Marpi, pp. 140–141.

After examining the regulation of jastip practices, which has predominantly focused on consumer protection rather than safeguarding jastip actors from the various risks and potential losses they may face, it becomes evident that the existing legal framework has not yet fully functioned as a comprehensive umbrella governing the complex relationships embedded within jastip practices, particularly with regard to the distribution of liability and legal protection. This condition reveals the limitations of a normative approach that is overly text-centered and insufficiently attentive to the lived context of law within societal experience, thereby necessitating a deeper engagement through a theoretical framework that does not position law merely as a set of norms.

At this juncture, legal theory is positioned as a discipline that examines the essential characteristics of law, along with the elements that distinguish it from other social norms.⁵⁸ Nonetheless, even though it is methodologically grounded in a philosophical approach, legal theory continues to situate law as a social phenomenon, one that is shaped, operated, and directed toward social purposes, and thus, at a certain point, must necessarily be rooted in social reality.⁵⁹

One of the theoretical lenses that may be employed in the context of jastip is Roscoe Pound's conception of law as a tool of social engineering, which is particularly relevant as an analytical framework. This is particularly grounded in the assumption that legal thought is, in essence, required to organize and balance various interwoven demands, especially between the need for stability and the drive for change.⁶⁰ Change is indeed an inevitability in every society; however, at the same time, the pace of such dynamics must be directed and proportionately controlled so that it does not devolve into disorder that proves counterproductive to human development and progress.⁶¹

⁵⁸ Mochtar and Hiarij, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum*, p. 59.

⁵⁹ Fernanda Pirie, *The Anthropology of Law* (Oxford: Oxford University Press, 2013), p. 16.

⁶⁰ Mochtar and Hiarij, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum*, p. 192.

⁶¹ Mochtar and Hiarij.

In relation to jastip, this is particularly reflected in the transformations occurring within the configuration of contemporary trade practices, which have moved beyond the boundaries of conventional legal constructions as outlined above. At this juncture, jastip signifies a fundamental shift in the relationship between business actors and consumers, from patterns once grounded in direct interaction to relationships sustained by trust, social networks, and the mediation of digital platforms. Consequently, the law often lags behind, largely because the existing normative framework has yet to fully capture the complexity of practices that evolve fluidly and remain largely unformalized.

Within such a framework, the ideas advanced by Pound become particularly relevant. For Pound, law cannot be separated from the social purposes it seeks to achieve; accordingly, its validity is determined not only by normative consistency, but also by its capacity to respond to societal needs.⁶² In this regard, law is positioned as a tool of social engineering, functioning to organize social life through a process of balancing competing interests.⁶³ This conception underscores the instrumental dimension of law, wherein legal norms, as a system of regulation, are deliberately designed and implemented in a controlled manner, exercising a coercive force over social life.⁶⁴ On that basis, modern law is essentially employed as an instrument to channel various policies in order to bring about desired new conditions within society.⁶⁵

Accordingly, the function of law is not confined to serving merely as a mechanism of social control, such as maintaining order, but also extends to operating as an instrument of social engineering.⁶⁶ Pound employs the term *engineering* to underscore the active character of law

⁶² Achmad Baihaqi, "Hukum dan Perubahan Masyarakat Menurut Sociological Jurisprudence: Telaah Pemikiran Roscoe Pound," in A. Rohmanu, ed., *Memahami Teori Hukum: Percikan Pemikiran Ilmu Hukum Lintas Mazhab* (Yogyakarta: Q-Media, 2022), pp. 107–108.

⁶³ Baihaqi.

⁶⁴ Mochtar and Hiarij, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum*, p. 192.

⁶⁵ Mochtar and Hiarij.

⁶⁶ Widodo Dwi Putro, *Filsafat Hukum: Pergulatan Filsafat Barat, Filsafat Timur, Filsafat Islam, Pemikiran Hukum Indonesia hingga Metajuridika di Metaverse* (Jakarta: Kencana Media, 2024), p. 285.

as a means of social engineering, namely an effort to shape the structure of society in such a way that the fulfillment of needs can be achieved optimally, while minimizing conflict and waste to the greatest extent possible.⁶⁷

This idea was further developed through the formulation of a classification of interests as objects of legal protection into three categories that must be simultaneously accommodated by law, namely public interests, which refer to the existence of the state both as a juridical entity and as the guardian of collective social interests. These include public security, the continuity of social institutions, public morality, the protection of resources, social progress, and the conditions that enable individuals to properly develop themselves within social life.⁶⁸ Finally, there are individual interests, encompassing a more intimate spectrum, ranging from personal integrity—covering physical security, freedom of will, honor, privacy, and belief—to domestic relations and economic interests such as property, contract, and employment.⁶⁹

Within the context of *jastip*, law must simultaneously accommodate three sets of interests: public interests, which relate to the stability and continuity of the social system, including public trust in the law; social interests, which encompass collective needs aimed at achieving shared welfare, such as the creation of a healthy and inclusive economic system; and individual interests, which refer to the personal rights of each legal subject, including protection from potential harm. In practice, these three interests often compete, thereby necessitating legal intervention to maintain their equilibrium.⁷⁰

This configuration of interests can be concretely identified while also revealing the points of tension that arise within *jastip* practices. In this regard, public interest is reflected in the need to maintain trust in digital transactions as the foundation of a platform-based economy.⁷¹

⁶⁷ Achmad Baihaqi, "Hukum dan Perubahan Masyarakat Menurut Sociological Jurisprudence: Telaah Pemikiran Roscoe Pound," p. 105.

⁶⁸ Baihaqi.

⁶⁹ Baihaqi.

⁷⁰ Baihaqi.

⁷¹ Emha Diambang Ramadhany, Muhammad Qomarul Huda, and I Dewa Made Yuda Mahendra, "Analisis Kepercayaan Pelanggan E-Commerce Berdasarkan

Complementing this, social interests relate to the economic sustainability of small-scale *jastip* providers, whose role in the informal economy means that a lack of legal protection could potentially disrupt vital social and economic structures, social interests are closely tied to the economic sustainability of small-scale *jastip* providers operating within the informal economy, where the absence of adequate legal protection does not only threaten the continuity of individual livelihoods, but may also disrupt the stability of broader informal economic networks that have long supported goods distribution and everyday economic mobility.

In this context, the applicable regulations need to be designed in a streamlined manner, meaning that they must be accessible, understandable, and reasonably implementable by *jastip* actors without imposing disproportionate burdens. At the same time, such regulations should not obstruct the flow of goods and human mobility, while still ensuring a fair business environment for *jastip* providers.⁷² Therefore, the decision of the Ministry of Trade to revoke Ministerial Regulation No. 3 of 2024 can be seen as a commendable policy shift, as it moves the regulatory approach away from quantitative restrictions on goods toward a regime that is more based on import duties calculated from the value of goods, which ultimately proves to be more adaptive to the dynamics of trade and the evolving practices of the digital economy.⁷³

Finally, individual interests refer to consumers' rights to receive goods in accordance with their orders, as well as the rights of business actors to obtain payment and protection from bad-faith conduct.⁷⁴ At this point, the imbalance among these interests reflects a legal order that has not yet fully performed its primary function, namely serving as a

Persepsi Pembeli," *Jurnal Simki Economic* 6, no. 2 (2023): 497–507, <https://doi.org/10.29407/jse.v6i2.374>.

⁷² Mohamad Dian Revindo, Chairina Hanum Siregar, and Tarisha Yuliana, "Menilik Bisnis 'Jastip' dari Perspektif Iklim Usaha: Prospek dan Regulasi Bisnis Jastip," *Trade and Industry Brief (Seri Analisis Ekonomi)*, LPEM FEB UI, May 2024, <https://lpem.org/menilik-bisnis-jastip-dari-perspektif-iklim-usaha/>.

⁷³ Revindo, Siregar, and Yuliana.

⁷⁴ Syadzwina Hindun Nabila, "Penerapan Asas Itikad Baik dalam Perjanjian Jasa Titip Beli Barang Online," *PAMALI: Pattimura Magister Law Review* 4, no. 3 (2024): 297–302, <https://doi.org/10.47268/pamali.v4i3.2362>.

mechanism for balancing competing interests. In this regard, the law must be designed in such a way as to encourage both consumers and business actors to act responsibly, while at the same time ensuring that they are afforded equal protection.

Within the sphere of individual interests, one of the key instruments of social engineering is the contract, which forms the foundation of the legal relationship between jastip actors and consumers in the course of transactions. Contract law may be understood as a mechanism of empowerment that enables parties to use legally enforceable promises as instruments to influence the actions of others, thereby facilitating the fulfillment of a wide range of human needs and interests.⁷⁵ Through contracts, the distribution of rights and obligations is based on the principle of balance, placing the parties in an equal position so that neither dominates the other in determining the terms of the agreement.⁷⁶

This balance makes contracts not merely binding instruments, but also anticipatory tools for risk mitigation. Given that business activities inherently involve credit, operational, and legal risks, contracts must clearly define the agreed terms and the legal consequences of breach in order to ensure proportional protection of the parties' interests.⁷⁷ In practice, this risk distribution is implemented through mechanisms such as termination clauses that end the obligation and restore the parties to their original position, advance payment arrangements to manage financial risk, exclusion clauses that limit or release liability, and indemnity clauses that require one party to bear losses, costs, or third-party claims arising from contract performance.⁷⁸ Accordingly, the contract becomes a means of creating order in digital transactions.

Nevertheless, the effectiveness of contracts as instruments of social engineering cannot be separated from the support of a broader legal

⁷⁵ Robin Kar, "Contract as Empowerment," *University of Chicago Law Review* 83, no. 2 (2016): 760–834, <https://chicagounbound.uchicago.edu/uclrev/vol83/iss2/4>.

⁷⁶ RR. Dewi Anggraeni, *Hukum Kontrak Bisnis* (Tangerang Selatan: Unpam Press, 2021), 165.

⁷⁷ Anggraeni, p. vii.

⁷⁸ Anggraeni, pp. 129–214.

system. Accordingly, the role of the state becomes crucial in providing a regulatory framework that accommodates the existence of the parties involved in *jastip* practices while also offering clear normative guidance for their conduct. Yet, this role is not limited to the formulation of rules alone; the state must also ensure that such rules operate effectively within society. This reflects Roscoe Pound's emphasis that law should not remain merely a formal system of norms, but must function effectively within social life. In his sociological jurisprudence, Pound stresses that law must be evaluated in terms of its practical operation (law in action), namely its capacity to realize its intended purposes and respond to social needs.⁷⁹ In the context of *jastip*, this implies that the state must develop regulations that are adaptive to the characteristics of digital transactions, including by accommodating the forms of electronic contracts employed by business actors. The absence of specific regulation in this regard not only creates legal uncertainty, but also weakens the function of law as an instrument for guiding behavior.

Within this framework, advocacy for *jastip* business actors cannot be reduced to a partial effort concerned merely with technical contractual adjustments, but must instead be situated within a broader context as part of a process of social engineering aimed at creating a more just and responsive legal system. Social engineering may be pursued through both judicial and administrative channels; hence, from the perspective of sociological jurisprudence, it is essential to assess the extent to which judicial decisions and administrative policies generate tangible social impacts.⁸⁰

However, in the Indonesian context, which is rooted in the civil law tradition, Mochtar Kusumaatmadja argues that legislation plays a more dominant role than judicial decisions in the process of social engineering, in contrast to the Anglo-Saxon tradition, which relies more heavily on judge-made law.⁸¹ This condition is further reinforced by the strong influence of classical legal positivism, so that social engineering

⁷⁹ Baihaqi, "Hukum dan Perubahan Masyarakat Menurut Sociological Jurisprudence: Telaah Pemikiran Roscoe Pound," pp. 99–112.

⁸⁰ Putro, *Filsafat Hukum: Pergulatan Filsafat Barat, Filsafat Timur, Filsafat Islam, Pemikiran Hukum Indonesia hingga Metajuridika di Metaverse*, pp. 283–284.

⁸¹ Putro.

in Indonesian law tends to rely more on norm formation through legislation rather than on the development of judicial decisions.⁸²

Intertwined with this, efforts to strengthen legal protection for digital business actors may draw important lessons from the experiences of Southeast Asian countries such as Malaysia and Singapore. This is particularly relevant because both countries have demonstrated more progressive developments in establishing legal regimes governing digital trade and electronic dispute resolution mechanisms, including those related to entrusted purchasing services, personal shopping, and cross-border e-commerce.⁸³ When compared to Indonesia, Malaysia and Singapore exhibit a more adaptive legal approach in protecting digital business actors, as reflected in greater regulatory certainty, the availability of online dispute resolution mechanisms, and a clearer allocation of responsibilities among consumers, platforms, and business actors.⁸⁴

In this regard, Malaysia, as a country geographically and socio-economically close to Indonesia, demonstrates a notable advantage in developing legal protection for digital business activities. Its regulatory framework is anchored in the Consumer Protection Act 1999 (CPA) as the principal foundation, which is further reinforced by the Electronic Commerce Act 2006 (ECA) in the domain of electronic transactions, as well as the Personal Data Protection Act 2010 in the sphere of personal data protection, thereby forming a relatively comprehensive legal regime.

As a prominent regulation, the CPA is supported by various subsidiary rules that provide conceptual clarity in trade practices, including in determining the legal position of business actors. Within this framework, the position of jastip actors may be more clearly situated under the scope of business actors as defined in Section 3 of the CPA:

“supplier means a person who, in trade.

⁸² Putro.

⁸³ Muhammad Sabir Rahman, “A Comparative Study of Fair Online Buying and Selling Regulations: A Legal Comparison Between Indonesia, Malaysia, and Singapore,” *SASI* 30, no. 2 (2021): 202–215, <https://doi.org/10.47268/sasi.v30i2.2021>.

⁸⁴ Rahman.

- (a) *supplies goods to a consumer by transferring the ownership or the possession of the goods under a contract of sale, exchange, lease, hire, or hire-purchase to which that person is a party; or supplies*
- (b) *services to a consumer, and includes:*
 - (i) *where the rights of the supplier have been transferred by assignment or by operation of law, the person for the time being entitled to those rights;*
 - (ii) *a financier who has lent money on the security of goods supplied to a consumer, if the whole or any part of the price of the goods is to be paid out of the proceeds of the loan and if the loan was arranged by a person who, in trade, supplied the goods;*
 - (iii) *a person who, in trade, assigns or procures the assignment of goods to a financier to enable the financier to supply those goods, or goods of that kind, to the consumer; and*
 - (iv) *a person who, in trade, is acting as agent for another person where that other person is not supplying in trade.*

The Consumer Protection Act 1999 (CPA), in conjunction with the Electronic Commerce Act 2006 (ECA), further strengthens the legal position of all electronic transaction activities. This is reflected in Section 5 of the ECA, which states that:

“commercial transactions mean a single communication or multiple communications of a commercial nature, whether contractual or not, which includes any matters relating to the supply or exchange of goods or services, agency, investments, financing, banking and insurance.”

This formulation provides a broad scope while simultaneously establishing a clear legal foundation for the existence of digital businesses within the Malaysian legal framework. At the same time, Malaysia demonstrates strong attention to defining and balancing the rights and obligations of the parties involved in transactions. Although

not always explicitly formulated, consumers remain bound to comply with the CPA as well as the contracts they have agreed upon. Complementing this, the ECA further affirms through Section 7 that:

(1) In the formation of a contract, the communication of proposals, acceptance of proposals, and revocation of proposals and acceptances or any related communication may be expressed by an electronic message. (2) A contract shall not be denied legal effect, validity, or enforceability on the ground that an electronic message is used in its formation.

Through this construction, electronic contracts obtain clear legal standing while also providing more adequate protection for business actors in digital transactions, including those conducted through private communication channels. In terms of enforcement and sanctions, the CPA stipulates that any legal subject who violates provisions relating to unfair contractual practices may be subject to sanctions as determined by law. Beyond conventional litigation mechanisms, Malaysia also provides an online dispute resolution pathway through Online Dispute Resolution (ODR), which offers an alternative means of resolving business disputes in a more efficient manner and one that is adaptive to the characteristics of digital transactions.⁸⁵

Within a similar landscape, Singapore has also developed a legal protection framework for digital business activities through a notably progressive approach. Normatively, this framework is grounded in the Consumer Protection (Fair Trading) Act 2003 (CPFTA), which is further reinforced by the Electronic Transactions Act 1998 and the Personal Data Protection Act 2012. To support its implementation, Singapore established the Consumer Association of Singapore (CASE) as an institution responsible for handling and facilitating dispute

⁸⁵ Nur Farahin Afiqah Daud and Norsalwati Mohd Razalli, "Online Dispute Resolution as an Alternative Dispute Resolution Mechanism in E-Commerce Disputes in Malaysia," *IIUM Law Journal* 33, no. 2 (2025): 321–354, <https://doi.org/10.31436/iiumlj.v33i2.1068>.

resolution between consumers and business actors.⁸⁶ In brief, the Consumer Association of Singapore (CASE) is an institution at the forefront of handling dispute complaints by providing a space for negotiation between consumers and business actors. In practice, offending business actors are generally directed to sign Voluntary Compliance Agreements (VCA), as a form of commitment not to repeat the violation and to provide compensation to consumers. However, if this mechanism is not complied with, the matter will be escalated to the Competition and Consumer Commission of Singapore (CCCS) for further handling.⁸⁷

As a supervisory body, the Competition and Consumer Commission of Singapore (CCCS) is authorized to conduct investigations and submit applications to the court against unfair business practices. A business actor's non-compliance with previously established mechanisms may serve as the basis for the CCCS to escalate the matter into litigation, which can ultimately result in the imposition of sanctions in the form of fines or criminal penalties. In practice, the fines imposed generally range between S\$20,000 and S\$30,000, depending on the agreement and the severity of the violation committed.

When compared, these three jurisdictions demonstrate a number of advantages that are relevant for adoption within the Indonesian context. To date, the protection of digital business activities, including *jastip* practices, continues to face significant challenges, particularly in the area of dispute resolution. Therefore, a more consistent and comprehensive regulation concerning the rights and obligations of both consumers and business actors is required. In this way, legal certainty does not merely function as an instrument of protection, but also as a foundation that drives the growth of a healthier and more sustainable digital economy in Indonesia.

⁸⁶ Galasintu Sareeya and Chanakant Loveera, "The Comparative Study on Consumer Protection Laws in ASEAN," *Kasetsart Journal of Social Sciences* 42, no. 4 (2021): 804–809.

⁸⁷ Sareeya and Loveera.

D. Conclusion

This study demonstrates that jastip can no longer be understood merely as an informal activity, but has evolved into a complex form of legal relationship within the digital economy. Although existing legal instruments provide a general normative foundation, the absence of specific regulations has created a regulatory gap that results in an imbalance of legal protection, particularly for jastip business actors who empirically bear disproportionate moral hazard risks. This condition indicates that the current legal framework has not yet fully functioned as an effective mechanism for balancing competing interests in digital transactions.

Therefore, a more adaptive and proportionate legal approach is required, one that positions electronic contracts as essential instruments for structuring risk allocation from the outset of transactions. However, the effectiveness of such contractual arrangements ultimately depends on the support of a responsive regulatory framework provided by the state, including stronger recognition of electronic contracts and more efficient dispute resolution mechanisms. Accordingly, the reform of jastip-related regulation should be directed toward establishing a legal framework that not only focuses on consumer protection but also equally recognizes the vulnerabilities and rights of business actors, thereby ensuring balance, legal certainty, and sustainability in digital economic practices.

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The essence of globalization is a subordination of human rights, of labor rights, consumer, environmental rights, democracy rights, to the imperatives of global trade and investment.

Ralph Nader

Ralph Nader was an American lawyer, politician, and political activist. He was known for his advocacy of consumer rights and for opposing large corporations for the sake of consumer rights.

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