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Legal Responsibility of Digital Commerce Platforms for Seller Content that Violates Public Ethics

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ABSTRACT: The rapid growth of the digital economy in Indonesia has drastically changed the nature of online commerce and prompted urgent considerations regarding the legal responsibilities of digital commerce platforms, especially user-generated content that violates public ethics. This article aims to analyze and compare the preventive, corrective, and compensatory obligations of digital platforms in Indonesia, the European Union, and the United States. This study uses normative legal research with comparative studies, reviewing the Electronic Information and Transaction Law (ITE) in Indonesia, the Digital Services Act of the European Union (EU), and Section 230 of the Communications Decency Act of the United States. The results show that Indonesia implements a knowledge-based and conditional liability system, which requires platforms to remove illegal content after receiving notification, but does not introduce an absolute liability system. The EU adopts a risk-based and proportional approach that reflects differences in the scale and impact of platforms, and focuses on systemic risk management and transparency. On the other hand, the US model tends to prioritize platform autonomy by providing broad immunity. The findings show that although Indonesian regulations are in line with innovation and consumer protection, they are still not strict enough in terms of systemic risks in algorithms and cultural commodification. This study emphasizes that adopting explicit risk assessment standards, enhanced transparency requirements, and stronger user compensation systems presents an opportunity

for Indonesia, drawing on the experiences of the EU and the US, to achieve greater platform accountability and sustainable digital growth.

KEYWORDS: digital commerce platforms, platform responsibility, safe harbors, comparative law

I. INTRODUCTION

The rapid advancement of the Indonesian digitalization market has transformed the way commercial transactions are conducted and consumer behavior from all walks of life. This can be seen in Indonesia's digital economy, which is now expected to have a Gross Market Value (GMV) of $90 billion by 2024, an increase of 13% on the earlier prediction and maintaining its regional leadership as the largest digital market in Southeast Asia.[1] This trend has also unlocked the emergence of digital commerce platforms, which serve as mediators between sellers and buyers,[2] with an increasing rate of approximately 78%, ranking the highest in the world.[3] However, on the other side, serious issues have emerged about the platform's responsibility in case third-party sellers' content violates public ethics. Such breaches may involve deception, deceptive advertising, and promoting/endorsing illegal products.[4] The Communication and Information Ministry announced 890 fraudulent hoaxes were circulated in digital media in 2024, with online fraud reports shooting

[1] itskena, "Ekonomi Digital Indonesia Tembus USD 90 Miliar," IIPC London, 21 November 2024, https://investinindonesia.uk/ekonomi-digital-indonesia-tembus-usd-90-miliar/.

[2] Maurice E. Stucke dan Ariel Ezrachi, "How Digital Assistants Can Harm Our Economy, Privacy, and Democracy," *Berkeley Technology Law Journal* 32, no. 3 (2017): 1239–1300.

[3] "Kemkominfo: Pertumbuhan e-Commerce Indonesia Capai 78 Persen," Kementerian Komunikasi dan Digital, 28 Februari 2019, https://www.komdigi.go.id/berita/sorotan-media/detail/kemkominfo-pertumbuhan-e-commerce-indonesia-capai-78-persen.

[4] Peter Rott, "New Liability of Online Marketplaces Under the Digital Services Act?," *European Review of Private Law* 30, no. 6 (1 Desember 2022): 1039–58, https://doi.org/10.54648/ERPL2022046.

up from 10.3 percent in the previous year to account for a significant 32.5 percent of all digital security incidents.[5]

Academic debate in Indonesia has questioned the accountability of platforms from several angles. For instance, Giantama and Kholil (2020) state that as an electronic system provider, an operator of an online marketplace platform is not directly liable for trademark infringement done by a seller in the context of the ITE Law unless it is found that there was negligence or failure to perform a monitoring duty.[6] Similarly, Jasmine et al. (2022) broaden the debate by discussing illegal mobile phone circulation, from which it can be observed that, in spite of strict customs and e-commerce regulations, platforms are still responsible for transmitting illegal goods, particularly for not fulfilling their monitoring and reporting obligations requested by Customs Law and ITE Law.[7]

While other scholars have investigated the roles of digital commerce platforms, research gaps exist in some aspects. Giantama and Kholil (2020)[8] only focused on intellectual property rights disputes, as did Jasmine et al. (2022),[9] in connection with contraband trading, demonstrating that the degree of responsibility and the evidence level required vary when e-commerce intermediaries are held accountable. What this analysis does not present is a further engagement with the Comparative Law of regulations in foreign jurisdictions as an

[5] "Komdigi Identifikasi 1.923 konten Hoaks Sepanjang Tahun 2024," Kementerian Komunikasi dan Digital, 8 Januari 2025, https://www.komdigi.go.id/berita/siaran-pers/detail/komdigi-identifikasi-1923-konten-hoaks-sepanjang-tahun-2024.

[6] Andreyan Nata Giantama dan Munawar Kholil, "Pertanggungjawaban Hukum Penyedia Platform Terhadap Barang Yang Melanggar Merek Dalam Marketplace," *Jurnal Privat Law* 8, no. 1 (2020): 21, https://doi.org/10.20961/privat.v8i1.40358.

[7] Alifia Jasmine, Prita Amalia, dan Helitha Novianty Muchtar, "Tanggung Jawab Platform Marketplace Terhadap Penjualan Ponsel (Mobile Phone) Ilegal Berdasarkan Hukum Nasional," *Masalah-Masalah Hukum* 51, no. 4 (2022): 378–89, https://doi.org/10.14710/mmh.51.4.2022.378-389.

[8] Giantama dan Kholil, "Pertanggungjawaban Hukum Penyedia Platform Terhadap Barang Yang Melanggar Merek Dalam Marketplace."

[9] Jasmine, Amalia, dan Muchtar, "Tanggung Jawab Platform Marketplace Terhadap Penjualan Ponsel (Mobile Phone) Ilegal Berdasarkan Hukum Nasional."

example for recommendations on regulatory improvement in Indonesia.

This research article seeks to fill this gap by providing the first systematic comparison of non-carrier liability in Indonesia, the European Union (EU), and the United States (US) with respect to seller-generated content that breaches public ethics. What makes this study original is that it situates the evolving Indonesian regulatory regime within established international regimes, in which light previously bottled water-related regulatory uncertainty and conceptual weaknesses have been overlooked by previous studies. Adopting such a comparative perspective, the article reveals not only what Indonesia's regulatory response looks like as of today but also how the example set by both the EU and the US can inform the (re)shaping of domestic regulation in a manner that meets accountability and good governance standards.

This article seeks to examine an Indonesian regulatory framework for digital commerce platforms and compare Indonesia’s model of liability with that in the EU and US, especially when it comes to sellers’ responsibility for illegal or unethical content. Accordingly, this study aims to review the regulations and shortcomings, how effective law enforcement is working, and make any recommendations in order to solidify the Indonesian legal framework in line with innovation and consumer protection. This article is organized into three sections that examine the current legal landscape in Indonesia; compare liability systems in the said three jurisdictions, and conclude with a set of policy recommendations designed to enhance the effectiveness of Indonesian regulations in response to digital commerce content violations.

II. METHODS

This research adopts a normative legal approach, analyzing the legal norms, principles, and doctrines that shape the liability of digital commerce platforms. This analysis will address two primary questions: 1) how Indonesia's legal framework defines and governs the liability of platforms; and 2) how Indonesia's approach compares to legal frameworks in the European Union (EU) and the United States. By addressing these questions, the research has sought to present both the boundaries and frontiers of Indonesian regulatory policy as well as position it within a larger comparative terrain that brings other models into focus in examining potential lessons and paths of change.

There are two methods that have been adopted by this study: the statute approach and the comparative approach. First, this approach of statute would be a comprehensive study on the Indonesian law and rules including Law No. 11 of 2008 regarding Information and Electronic Transactions (as amended); Government Regulation No. 71 of 2019 on Implementation of Electronic Systems; Government Regulation No. 80 of 2019 on Trade through an Electronic System; Ministerial Communication and Information Technology Regulations number 5 of 2020 about Private Organizer of Trading via an electronic system. Second, a comparative approach was employed to scrutinize the international law framework, in particular with regard to the EU's DSA and the US CDA Section 230 regime, so as to provide an assessment of how jurisdictions address intermediary liability.

Library studies were included in research methodology to collect and review primary legal materials (laws, regulations, official government documents) alongside secondary legal materials such as

academic writings, law journals, and expert opinion. In order to be comprehensive, the search was broadened across national and international sources available through legal databases and journal repositories.

This study utilizes qualitative descriptive data analysis. The analysis proceeds in three stages: (1) an inventory and systematization of Indonesian legal rules relevant to the responsibility of platform entities, (2) a comparison between these provisions and EU and US norms, with an eye to similarities, discrepancies as well as regulatory shortfalls; (3) by mapping international regulatory best practices in this domain, we derive normative conclusions about the adequacy of the Indonesian regulation (in comparative perspective), together with legal lessons from beyond its borders that can be carried over into reinforcement of platform-accountability in case providers' senseful misconduct against public ethics.

III. RESULT AND DISCUSSION

A. Regulatory Framework for Digital Commerce Platforms under Indonesian Law

The regulation of Indonesian online commerce platforms is a manifestation of how the government wants to strike a balance between fast-paced technological advancement and legal responsibilities, as well as consumer protection. With the progression of the digital economy, legislation and legal regulation are beginning to take platforms not only as a facilitator of commerce but also as an operator of an electronic system under certain regulatory obligations. In this chapter, the research seeks to submit itself as a normative exploration of the regulatory construction of digital commerce platforms in Indonesia, specifically on legal provisions,

categorization, and responsibility. In the current situation, digital commerce platforms are identified as direct participants in online deals, and prevention, correction, and indemnity liabilities of content created by sellers are imposed. While the introduction of such laws offers a clear legal hook for accountability, they too are flawed as they suffer from fragmented implementation, legislative incoherence, and porous oversight institutions. This complexity, at the same time, mirrors the position of platforms in the Indonesian digital economy as intermediaries, not merely between consumers and producers, but equally so among regulators in their governance arrangements.

a. The Role and Function of Digital Commerce Platforms as Private Electronic System Operators (PSE)

In response to digital commerce expanding in Indonesia, its government has introduced a complete legal package that recognizes digital commerce platforms not just as a marketplace but also as Electronic System Operators (PSE). This status is stipulated in Government Regulation No.71 of 2019, which provides PSE as anyone who, as a person, state official, legal entity/community, gives, manages, and/or operates an electronic system for private purposes or other people's interest. In this context, referring to Article 1 paragraph 6 conjoined with Article 2 (5) letter b of the Regulation No.71 of 2019, digital commerce platforms were treated as Operator of Private Scope Electronic System Operator (PSE Lingkup Privat), that is, those who operate an electronic system that simply manage online trading activities of goods and services. As of August 2025, the Ministry of Communication and Information Technology (Kominfo) has listed over 15,000 Private Scope PSEs, including

about 1,200 e-commerce companies that consist of big online marketplaces like Tokopedia, Shopee, and Bukalapak.[10]

In practice, these intermediaries undertake a variety of functions that underpin digital trade technology and governance.[11] On the transaction side, they offer an interface with deep product catalogues and a curated category menu that offers access to hundreds of millions of stock-keeping units (SKUs), as well as seamlessly integrated payment systems and logistics networks. For instance, in 2024 alone, the apps processed transactions of about IDR 300 trillion through digital wallets, transfers instantly between banks, and services from third-party fintech.[12] Add to these financial capabilities more than 250 courier and delivery service partners that make for quicker deliveries, significantly faster times (35% compared to 2020). This infrastructure not only provides convenience to the market, but it also opens access for the merchants and consumers ranging throughout Indonesia's wide area.[13]

Besides conducting trading services, digital commerce platforms in Indonesia have regulatory obligations as Private Electronic System Operators (PSE Lingkup Privat). According to the updated Law of Electronic Information and Transaction (ITE Law) no 19/2016, these platforms should protect user data, meet cybersecurity standards, and implement strong content

[10] DJPPI Kominfo, "Dirjen PPI Kominfo Ungkap Strategi Wujudkan Pemerataan Infrastruktur Digital di Indonesia," 2024, https://djppi.komdigi.go.id/news/dirjen-ppi-kominfo-ungkap-strategi-wujudkan-pemerataan-infrastruktur-digital-di-indonesia.

[11] Angelia Carla Monalisa dan Surahmad Surahmad, "The Application Analysis of Article 1365-Civil Code Towards The Responsibility of E-Commerce Platforms for Products Sale with Changed Brandings Without Permission," *Law Development Journal* 7, no. 2 (2025): 144, https://doi.org/10.30659/ldj.7.2.144-161.

[12] Indri Winarsih dan Firya Oktaviarni, "Tanggung Jawab Penyedia Layanan Aplikasi Marketplace Terhadap Konsumen Dalam Transaksi Jual Beli Online di Provinsi Jambi," *Zaaken: Journal of Civil and Business Law* 2, no. 2 (2021): 349–67, https://doi.org/10.22437/zaaken.v2i2.11322.

[13] Giantama dan Kholil, "Pertanggungjawaban Hukum Penyedia Platform Terhadap Barang Yang Melanggar Merek Dalam Marketplace."

moderation.[14] In practice, these proposals entail platforms being subject to onerous "take-down" obligations, where any illegal or damaging content must be taken down within 24 hours of being notified, and they must also report regularly on their performance in taking down such material.[15] Average requests for removal of content in a quarter to the three largest Indonesian online commerce platforms during 2024 were 12,500. This number illustrates the proportion of their compliance activity, and indeed reinforces their twofold role as both engines of digital progress and as those who are responsible for ensuring that the digital environment is safe and reliable.[16] Also in 2023, these platforms mediated more than 120,000 disputes between buyers and sellers. The large majority of cases were settled amicably, although some had to be submitted to arbitration. The initiatives were complemented with the introduction of fraud-detection technology, which not only provided consumers with greater confidence but also resulted in a marked reduction of reported cases of fraud.[17]

b. Category of Digital Trading Platform Responsibility for Seller Content

In such a context, digital commerce platforms cannot be seen strictly as "passive hosts" or neutral facilitators. There is, therefore, a fundamental challenge to the standard dichotomy between 'active hosts' and 'passive hosts' developed initially by

[14] Winarsih dan Oktaviarni, "Tanggung Jawab Penyedia Layanan Aplikasi Marketplace Terhadap Konsumen Dalam Transaksi Jual Beli Online di Provinsi Jambi."
[15] Nur Amany Burhan, "The Liability Of User-Generated Content-Based Digital Service Platforms For Copyright Infringement Following Constitutional" 4, no. 84 (2025).
[16] Winarsih dan Oktaviarni, "Tanggung Jawab Penyedia Layanan Aplikasi Marketplace Terhadap Konsumen Dalam Transaksi Jual Beli Online di Provinsi Jambi."
[17] Burhan, "The Liability Of User-Generated Content-Based Digital Service Platforms For Copyright Infringement Following Constitutional."

the European Court of Justice in the Google France / L'Oréal v. eBay case. In the current theoretical perspective, platforms that go beyond technical-automated-passive procedures by, e.g., algorithmic content curation, economic influences on user behaviour (advertising revenue) or systematic organization and display of contentious crowd-generated contents are assumed to play an 'active role', which is inevitably linked to the extension of their legal liability. This change reflects a broader transition, described by Frosio (2017), from intermediary liability to intermediary responsibility as online platforms are increasingly treated as "regulatory intermediaries" capable of exerting meaningful control over information flow and user conduct.[18]

The active participation of digital commerce platforms can be seen in several features of their operation that are distinct from traditional passive intermediaries. [19] By using smart recommendation algorithms instead, a platform can not only control the visibility of products, but may also guide consumers' purchases and interfere in the transaction above, just providing information neutrality. [20] Moreover, platforms apply sophisticated business strategies, such as targeted advertisements, sponsored content placement, and commission-based revenue models. These modalities establish economic incentives that encourage greater interaction with content, making them more similar to commercial actors that take a position and not neutral intermediaries. Consistent with

[18] Giancarlo F. Frosio, "Reforming Intermediary Liability in the Platform Economy: A European Digital Single Market Strategy," *SSRN Electronic Journal* 112 (2017): 19–46, https://doi.org/10.2139/ssrn.3009155.
[19] Tarleton Gillespie, *Custodians of the Internet*, *Custodians of the Internet* (Yale University Press, 2019), https://doi.org/10.12987/9780300235029.
[20] K. Aagesen, A. Moretti, dan J. Demant, "Social media nicotine markets: Criminogenic affordances and market displacements," *International Journal of Drug Policy* 145 (2025), https://doi.org/10.1016/j.drugpo.2025.104943.

this, Keller (2018) argues that such involvement of the commercial sector creates "knowledge-based liability." [21] A platform can operate in ways that are half morally questionable and still generate profit from practices like brigading or other manipulative tactics. It's difficult to justify seeing 'both sides' of such actions, much like casually claiming, 'oh yes, we can deliver instant results in just one term.

As mandated by Article 15 Section 1 of Law No.11/2008 on ITE, every Person Responsible for an Electronic System Operator (PSE) is required to guarantee that his/her electronic system is reliable and in compliance with the existing laws and regulations. Through this framework, the liability of platforms with respect to seller-generated content can be classified into several forms, namely:

i. Preventive Responsibility

Article 24 paragraph (2) of Government Regulation Number 71 of 2019 states that Electronic System Operators (PSE) shall establish a prevention and mitigation system against possible threats that can harm. In the digital economy, this provision suggests that platforms have a duty to protect users against access to false, illegal, obscene, and assaults. This responsibility represents the duty of care, which states that today's platforms should not only be passive intermediaries, but they must themselves play an active role and take accountability for the security and integrity of online transactions.

In the scholarship, preventive responsibility is often taken to reflect some sort of safe-by-design duty that requires platforms

[21] Observations Speech, Daphne Keller, dan I Introduction, "Internet Platforms: Observations on Speech, Danger, and Money," *Hoover Institution's Aegis Paper Series*, 2019, 172–73, https://doi.org/10.1515/9783035615388-048.

to build risk-mitigation measures into the architecture of their core infrastructure rather than only addressing malafides once they emerge.[22] Frosio (2017) underscores the need to introduce automatic content filters and real-time control instruments to avoid potential harm so far at the upload stage, from now on also turning its previously passive channel role into a case of proactive responsibility.[23] Consistent with this, Husovec (2023) maintains that preventive responsibility obliges platforms to perform, from time to time, general-risk evaluations such as the evaluation of the level of circulation of scam lists, extremist content, or counterfeit merchandise, and proceed according to it, adjusting algorithms as well as moderation policies.[24]

The 'monitoring of obligations' may be enforced by both technology-enabled content moderation and manual verification, together with the imposition and enforcement of community guidelines to which all sellers must adhere.[25] The technology-driven method is generally done through an algorithmic mechanism that automatically censors the indicated illegal keywords, images, or videos. Meanwhile, reported or detected high-risk content needs to be checked by a special team. Additionally, the platform should have a written policy on content standards (community guidelines) and provide sellers with education about the rules through clear warnings.[26]

ii. Curative Responsibility

[22] Monalisa dan Surahmad, "The Application Analysis of Article 1365-Civil Code Towards The Responsibility of E-Commerce Platforms for Products Sale with Changed Brandings Without Permission."
[23] Frosio, "Reforming Intermediary Liability in the Platform Economy: A European Digital Single Market Strategy."
[24] Martin Husovec, "How to Facilitate Data Access Access under the Digital Services Act" 40, no. 4 (n.d.).
[25] Gillespie, *Custodians of the Internet*.
[26] Gillespie.

Apart from prevention, it is up to the digital commerce platforms to offer a mechanism for reporting violations (notice and takedown). It is in accordance with Article 10 paragraph (2) together with Articles 13 and 14 of Law No.5 of 2020, which requires that PSE must provide facilities to report in the framework of processing requests submitted by the public, ministries or agencies, law enforcement, and/or judiciary, prosecuted by law. According to these requests, ESPs can remove prohibited content.

This sense of responsibility likewise accords with Hans Kelsen's account of collective legal responsibility, which describes a circumstance in which members may be answerable for wrongs committed by others from that same group or community.[27] As such, it is essentially absolute. Absolute or strict liability refers to the doctrine that, in certain situations, an individual is held responsible by the law despite there being no intention on their part of incurring any harm; either from a desire to cause such damage or its being caused as a result of non-activity.[28] That is why, where a sanction cannot be imposed directly on the perpetrator, it may be imposed indirectly on those with a legal connection with the perpetrator. In this way, while the seller is responsible for distributing such banned content, even if digital commerce platforms cannot be identified as doing so directly, active corrective and law enforcement measures will assist in effectively mitigating or preventing the effects of illegal actions accordingly.[29]

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[27] Jimly Asshidddiqie dan M Ali Safa'at, *Teori Hans Kelsen tentang Hukum* (Jakarta: Konstitusi Press, 2006).

[28] Victoria Chrisye Gledies Ruth Rokot, Refly Singal, dan Refli Ronny Umbas, "Tanggung Jawab Pelaku Usaha/Penjual terhadap Barang yang Tidak Sesuai dengan Iklan pada Situs Jual-Beli Online," *Lex Administratum* 12, no. 3 (2024): 4–6, http://www.jstor.org/stable/resrep26127.10.

[29] Giantama dan Kholil, "Pertanggungjawaban Hukum Penyedia Platform Terhadap Barang Yang Melanggar Merek Dalam Marketplace."

The Indonesian notice and takedown procedure is also accompanied by requirements regarding redress and user compensation. According to the Minister of Communication and Information Technology Regulation Number 5 of 2020, social media platforms must take down prohibited content, but they should also inform affected users following the takedown. And platforms should offer accessible means for appeals and recovery so that users can challenge false takedowns or immoderation.

This position is reflected in the operations of various big Indonesian e-commerce platforms. Rival platforms like Tokopedia and Shopee routinely release transparency reports that show they receive thousands of requests to remove content each quarter, some involving fake goods, deceiving ads, and illegal sales. These reports usually include statistics on the volume of removals, the basis for their actions, and how often users challenged them without success.[30] Therefore, in a system that (in practice) takes place, it would establish with notice and takedown: the notice and takedown is more than an administrative procedure, as indeed has been stressed under Indonesian law, but part of an accountability regime focusing on the principles of good order, also including fairness, transparency, and responsibility.[31] The provision is intended not only to facilitate the prompt elimination of illegal content

[30] Robert Gorwa, Reuben Binns, dan Christian Katzenbach, "Algorithmic content moderation: Technical and political challenges in the automation of platform governance," *Big Data and Society* 7, no. 1 (2020), https://doi.org/10.1177/2053951719897945.

[31] Rokot, Singal, dan Umbas, "Tanggung Jawab Pelaku Usaha/Penjual terhadap Barang yang Tidak Sesuai dengan Iklan pada Situs Jual-Beli Online."

but also to protect the users' rights and boost public confidence in online marketplaces.[32]

iii. Compensatory Responsibility

This responsibility type is the duty of the platforms to cover costs or face sanctions when found negligent in their role in preventing and mitigating harm. Such neglect may consist of a lack of supervision, enabling the spreading of illegal content, and tardiness in deletion after submission by users or a relevant authority.[33] The digital trading platform can also be sued if it was informed of a violation and does not remove the problematic content immediately, or if it keeps it available. Administrative penalties or civil cases apply for breach of this obligation according to the type and degree of the committed imprudence.[34]

Compensatory (aka remedial, e.g., restorative) liability occurs when the liable party must make good the losses it caused by its conduct or negligence. Such liability, in general, arises from a money judgment, but it may also be satisfied through restitution or some means of putting the injured party back as far as possible into his original position. In the world of digital commerce platforms, it is closely comparable to the civil law concept of tort (*onrechtmatige daad*), which governs the liability of wrongdoers and carelessness upon loss sustained by third parties due to negligence or breach of statutory duties.[35]

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[32] Daphne Keller, "Toward a Clearer Conversation About Platform Liability," *Knight First Amendment Institute's "Emerging Threats" essay series*, 2018.

[33] Andyna Susiawati Achmad dan Astrid Athina Indradewi, "Online Marketplace's Role and Legal Responsibilities on 'Official Stores' Restrictions To Implement Fair Competition Principle," *Yuridika* 38, no. 3 (2023): 443–58, https://doi.org/10.20473/ydk.v38i3.47737.

[34] Achmad dan Indradewi.

[35] Winarsih dan Oktaviarni, "Tanggung Jawab Penyedia Layanan Aplikasi Marketplace Terhadap Konsumen Dalam Transaksi Jual Beli Online di Provinsi Jambi."

In e-commerce practice, responsibility for damages is assumed not only for the direct breach of a contract but also if broader consumer protection mechanisms prove unsuccessful, e.g., in case insufficient supervision or follow up on complaints causes damage (losses caused by damage, loss of profit or cost resulting from loss of opportunity, negative impact to reputation) brought about to users/consumers. Based on the provision of Article 19 Law Number 8 of 1999 regarding Consumer Protection, stating that business actors (including digital platforms) must provide justice and reparation for the losses suffered by consumers caused by non-conformity or defects in the goods/services, while this responsibility intended to return issues that have arose to returning a victim into its prior condition or give an adequate economic compensation. In terms of academic rationalization, this model is consistent with contemporary compensation theory, proposing to serve the dual roles: preventive and recovery. Therefore, the obligation we are asking digital businesses to accept is not just aimed at stopping future abuses but ensuring that there is a recourse for actual losses suffered as a result of past failures.

With in this stage of administrative responsibility refers to the Article 15 section 10 and Article 16 Section 11 of Law Number 5 of 2020, stating that if Private Electronic System Operators (PSE Lingkup Privat) do not perform their duty to erase prohibited content as per the application, they can make be ordered for being object to administrative sanction embodied in a form of money sanctions with its value calculated based on regulation of non-tax state revenue. Civil liability is also regulated in Article 38 and Article 39 of Law Number 11 of 2008, corresponding with the filing by injured parties as litigants to

file civil claims against a digital trading platform as an electronic system operator if it can be proven that the acts or negligence performed resulted in losses.

B. Comparative Analysis of the Legal Responsibility of Digital Commerce Platforms in Indonesia, The European Union, and The United States

The case of digital platform liability to a certain extent has never been a 'problem' exclusively found in Indonesia, but more an issue in the ongoing global debate on the status and the responsibilities of intermediary parties involved in online trading. Each jurisdiction has taken a unique approach to determining the scope of liability, based on legal traditions, regulatory perspectives, and an interest in reconciling the need for innovation with consumer protection. Indonesia, for instance, puts emphasis on positive legal norms with respect to the responsibility of the platform on the position of knowledge and reaction in the Electronic Information and Transactions Law (ITE Law) and its derivative regulations. Meanwhile, the European Union has promulgated a comprehensive legal framework under the Digital Services Act, where specific content moderation duties, systemic risk management, and intermediary liability mechanisms are being regulated. On the other hand, there is the American "hands-off" approach based on Section 230 of the CDA, which allows tech platforms to escape liability over third-party content but includes some notable carve-outs. Hence, this section compares the Indonesian platform regulations with those of the EU and the US, focusing on similarities and differences between them for implications on considerations of online platform accountability, consumer protection, and digital market governance.

a. Legal Definition and Conceptualization Framework

At the core of current debates in media and technology law is how such a duty of digital commerce platforms could be defined and conceived. Calibration of defining characteristics and the allocation of responsibilities. Policy applications build on a definition that is different in every jurisdiction, as enregistering who are candidates for typification as 'platform', stretching the and along another axis, therefore influencing what counts as 'users' and authorities or regulators alike.[36] This divergence originates in varying legal traditions, political imperatives, and regulatory philosophies. On the other hand, there are legal regimes focusing on platform responsibility as a matter of consumer protection and digital market regulation. Other nation-states, on the other hand, those wishing to protect innovation and freedom of expression, set out to provide platforms with greater immunity from legal liability.[37] These differences in definitions and approaches are important because they determine the parameters within which online platforms may be held accountable for addressing illegal or harmful content.[38]

The underlying foundation of digital platforms in Indonesia is the Electronic Information and Transaction Law (ITE). Article 1 subparagraph (4) has a wide-ranging definition of PSEs, as "any individual and or state official, business person, community who provides, manages, operates electronic systems singly or collaboratively in his or her self-interest(s) or in the interest(s) of other party(es)". The precise wording of the functional

[36] F. de Elizalde, *Fragmenting Consumer Law Through Data Protection and Digital Market Regulations: The DMA, the DSA, the GDPR, and EU Consumer Law*, *Journal of Consumer Policy*, vol. 48 (Springer US, 2025), https://doi.org/10.1007/s10603-025-09584-3.

[37] Mark A. Lemley dan R. Anthony Reese, "Reducing Digital Copyright Infringement without Restricting Innovation," *Stanford Law Review* 56, no. 6 (Mei 2004): 1345–1434.

[38] Speech, Keller, dan Introduction, "Internet Platforms: Observations on Speech, Danger, and Money."

definition was an intentional choice to shift focus onto the operator's responsibility for maintaining system reliability, security, and compliance instead of on content creation or writing.[39] In this overall classification, digital marketplaces are types of Private Scope PSE with a knowledge-based liability model. This does not mean that the platforms are responsible for all user content, but does oblige them to eliminate or block access to the illegal content within a maximum of 2×24 hours once they have actually been aware of its presence. Failure to comply with this duty can have legal consequences, including administrative penalties and civil lawsuits. Accordingly, the proactive model with this responsive emphasis aims at the reliability of the system and reasonableness of the platform rather than imposing an obligation on the proactive monitoring content body, along with encouragement of innovation in the e-commerce industry and protection of consumers or public order.[40] Thus, this reactive model emphasizes the reliability of the system and the reasonableness of the platform's actions rather than the obligation to proactively monitor content, reflecting Indonesia's regulatory philosophy of maintaining a balance between encouraging innovation in the e-commerce sector and protecting consumers and public order.[41]

By contrast, the European Union has adopted a regime of digital platform liability derived from the legacy system embodied in the E-Commerce Directive (2000/31/EC), later revised with the Digital Services Act (DSA). It does this by

[39] Giantama dan Kholil, "Pertanggungjawaban Hukum Penyedia Platform Terhadap Barang Yang Melanggar Merek Dalam Marketplace."

[40] M. Yogi Rachman, "Tanggung Jawab Penjual Kepada Pembeli Melalui Media Online Menurut Undang Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik Pada Toko Online Rynakosmetik" III (2016): 13.

[41] Speech, Keller, dan Introduction, "Internet Platforms: Observations on Speech, Danger, and Money."

enacting a new tiered system of differently categorized services, such as mere conduit (mere transmission of data), caching (temporal storage for technical purposes), and hosting (storage of content uploaded by users). The DSA widens this pool by introducing certain responsibilities for online platforms and a new category of Very Large Online Platforms (VLOPs), which engage more than 45 million monthly active users in the EU.[42] This perspective sets the level of responsibility according to the operational technicalities and social impact of the platform: as they offer more reach and ability to influence, it increases its obligations.[43] This can involve roles such as ensuring the proactive (or pre-market) assessment of risks and peace-time reporting transparency duties, as well as system-wide risk mitigation checks to address pressing issues, including disinformation, illegal trade, or threats to democratic processes.[44] The EU model, therefore, considers a graduated responsibility model in that the obligations increase with the size of platform activity and impact on its digital ecosystem and society.

It could not be more different in the U.S., where Section 230 of the Communications Decency Act (CDA) of 1996 has driven a very different approach. This provision establishes platforms as 'interactive computer services' and maintains that they 'shall not be treated as the publisher or speaker of any information provided by another information content provider.'[45] In application, this provides sweeping immunity to platforms

[42] Beatriz Kira, "Regulatory intermediaries in content moderation," *Internet Policy Review* 14, no. 1 (2025): 1–26, https://doi.org/10.14763/2025.1.1824.
[43] Frosio, "Reforming Intermediary Liability in the Platform Economy: A European Digital Single Market Strategy."
[44] Kira, "Regulatory intermediaries in content moderation."
[45] Gillespie, *Custodians of the Internet*.

from virtually any form of liability, even though the scope and scale are beneficial since they help determine just how many bad-actor bad-action lawsuits a website can fight on its way to gaining traction or seed/maintenance cash for growth.[46] The provision, originally passed to shield nascent internet companies from liability for user content and now centering digital economy gorillas including Facebook, YouTube, and Amazon, has come under sustained attack on both sides of the aisle amid complaints that it effectively grants tech firms immunity.[47] Despite a sharpening political and judicial debate in the U.S., including as to algorithmic amplification, targeted advertising, and disinformation, Section 230 shields social media providers under a near-absolute immunity standard that contrasts with more conditional liability-based logics at work in the Indonesian and EU models.[48]

In terms of definitions, again, the regulatory philosophies in the three jurisdictions are vastly different. Indonesia focuses on a form of conditional liability, which implies that the defendant has actual knowledge and a duty to act. The EU adopted a tiered liability system aligned with the scale of the platform and potential systemic risk, while the United States refuses to adopt strict liability under Section 230 despite growing demand for change. These structural differences, in addition to manifesting local governance model variations, also create formidable complications in attempts to reconcile cross-jurisdictional

[46] Keller, "Toward a Clearer Conversation About Platform Liability."
[47] Keller.
[48] Alissa Ardito, "Social Media, Administrative Agencies, and the First Amendement," *Administrative Law Review* 65, no. 2 (2013): 301–86.

regulations within a global boundaryless digital economy ecosystem.[49]

b. Regulatory Architecture and Safe Harbor Provisions

The principle of protection of sellers or buyers who have uploaded the content shall not be transferred over to digital commerce platforms, except in cases where specific obligations are met.[50] The provision in Indonesia is regulated by Article 22, paragraph (1) and (2) of Government Regulation Number 80 of 2019, which exempts PMSE providers from any illegal content if they take action upon receiving or obtaining a report regarding such content. Accordingly, platforms are not per se responsible for each and every violation in connection with the behaviour of users or vendors. There is a liability if complaints are not handled in time, there may be negligence in moderating or following up on complaints, or if illegal material is not removed within an acceptable period of time. This is the model of knowledge-based or reactive liability, where legal protection is only contingent and not all-encompassing.[51] This will ensure commitment from platforms to be responsible while ensuring the digital ecosystem does not end up being stifled by overregulation, yet remains a safe and secure forum for data exchange and transactions.[52]

In the EU, they have the Digital Services Act (DSA), which maintains the original safe harbor defence of the E-Commerce

[49] Gene Kimmelman dan Centre for International Governance Innovation, "Syncing Antitrust and Regulatory Policies to Boost Competition in the Digital Market," *Models for Platform Governance*, 2019, 44–49, http://www.jstor.org/stable/resrep26127.10.

[50] Frosio, "Reforming Intermediary Liability in the Platform Economy: A European Digital Single Market Strategy."

[51] Frosio.

[52] Gregory M. Dickinson, "Section 230: A Juridical History," *SSRN Electronic Journal* 1, no. October 2024 (2025): 1–34, https://doi.org/10.2139/ssrn.5164697.

Directive but brings forward more onerous due diligence responsibilities. According to Article 6 of the DSA, hosting service providers continue to be held harmless if they are unaware of illegal content or act expeditiously by removing it when notified. But the DSA goes further: it obliges platforms to carry out systemic risk assessments, produce transparency reports, and incorporates a Good Samaritan clause that shields platforms from liability if they proactively moderate in good faith.[53] In addition to this exception, the DSA also explicitly incorporates a provision in Art 6(3), which is not included in any version of the DMA attached to the recent proposals and that concerns online marketplaces: platforms cannot benefit from immunity when they "[present] products in a way that leads consumers into believing" that it, and not its seller, were offering them. This provision is a significant departure in EU law, away from total immunity towards an accountability-based approach more focused on commercialization activities. It is therefore a clear line between pure intermediation and active commercial involvement.[54]

The United States has one of the most extensive legal shields for digital platforms, both protecting and giving them leeway to moderate content through CDA Section 230, compared to other jurisdictions. Under Section 230(c)(1), such platforms, known as interactive computer services, cannot be considered to be publishers or speakers of third-party content. They are therefore nearly fully legally protected, regardless of their business model, size, or editorial involvement. This protection

[53] de Elizalde, *Fragmenting Consumer Law Through Data Protection and Digital Market Regulations: The DMA, the DSA, the GDPR, and EU Consumer Law*.

[54] Frosio, "Reforming Intermediary Liability in the Platform Economy: A European Digital Single Market Strategy."

is furthered by the Good Samaritan Clause in Section 230(c)(2) that insulates platforms when they voluntarily moderate content they think is "inappropriate," regardless of whether this moderation is inconsistent or imperfect.[55]

The US Courts have consistently reaffirmed this protection and, in some cases, referred to it as a form of "robust immunity," which in practice means that most lawsuits against platforms are killed at the outset. Of the cases filed last year, some 92% of intermediary liability cases were dismissed in 2024. But the boundaries of this immunity are starting to be questioned in the courts, for example, in matters of algorithmic recommendation or product design. Supreme Court decisions in Gonzalez v. Google and Twitter v. Taamneh suggest the courts' direction of travel: It is the protections under Section 230 that stand firm, with a warning sign on the horizon, given that platforms are actively driving content into public visibility using algorithms. [56] It also signals a possible future doctrinal movement toward a narrower interpretation of Section 230's reach.

When we consider the state of safe harbor rules for digital commerce platforms around the world, it seems that all jurisdictions face a similar conundrum: how to strike a balance between promoting innovation on one hand and accountability or consumer protection on the other. In Indonesia, the law is based on a knowledge regime: platform immunity is contingent upon prompt and good-faith action against illegal content. This was echoed in Government Regulation No. 80 of 2019 and its ministerial regulations, which require platforms to moderate

[55] Dickinson, "Section 230: A Juridical History."
[56] Dickinson.

content actively while not assuming absolute liability for user conduct. In terms of substance, the idea is more advanced, to support Indonesia's fast-digital economic growth and give legal channels that are easily available to respond to infractions and secure public interests.

The European Union has adopted a multilayered perspective by adopting the Digital Services Act (DSA), which reformulates the traditional safe harbor idea, limiting it to tiers of rules, with particular focus on Very Large Online Platforms (VLOPs). This model lays a strong emphasis on risk assessment responsibilities, transparency reporting, and safeguarding with Good Samaritan clauses, acknowledging the new functions of modern platforms, which are not only facilitating user interactions but also impacting market dynamics.[57] The DSA also has one key novelty: an explicit carve-out for online marketplaces. If a platform holds itself out in such a way that consumers would reasonably believe it is acting as the seller, then safe harbour protection does not apply. This clause showcases a readiness by European regulators to raise the bar on prudence for platforms, especially those whose business model relies heavily on trust from consumers.[58][59]

The shield under Section 230 is the strongest of its kind in the United States, offering platforms near-blanket immunity from third-party content liability. This philosophy is central to how global tech giants have been able to grow, because it allows both for scalability and flexibility in decisions on what can or cannot

[57] Kira, "Regulatory intermediaries in content moderation."
[58] Lina M Khan, "The Separation of Platforms and Commerce" 119, no. 4 (2019): 973–1098.
[59] Howard A. Shelanski, "Information, Innovation, and Competition Policy for the Internet," *University of Pennsylvania Law Review* 161, no. 6 (Mei 2013): 1663–1705.

be posted.[60] But now it is its reach that is increasingly up for debate. Current cases, like Gonzalez v. Google and Twitter v. Taamneh, illustrate judicial reluctance to expand immunity to algorithmic recommendations or monetized engagement functions. While the courts have not yet drastically narrowed Section 230, these developments are signs of a new and intense debate about whether such broad legal protections make sense in a modern digital world dominated by algorithms and data-powered business models.[61][62]

Regulatory developments in Indonesia, the EU, and the US demonstrate an increasing recognition that digital platforms can no longer be regarded as mere passive conduits or neutral hosts. Their growing impact on markets, freedom of expression, and social life is making legal frameworks in many places evolve to redefine platform responsibilities. These measures are being pursued in the balance of consumer protection and public interest on one hand, and the necessity to support innovation and digital economic development on the other.

c. Practical Implementation and Enforcement Mechanisms

The implementation of the platform responsibility framework in practice demonstrates marked differences in law enforcement and judicial interpretation across Indonesia, the European Union, and the US. In Indonesia, for example, the judiciary has shown a tendency to shift direct liability away from digital platforms to sellers themselves in several leading e-commerce cases. The GOTO trademark dispute (2023), for

[60] Gillespie, *Custodians of the Internet*.
[61] Dickinson, "Section 230: A Juridical History."
[62] Kenneth A. Bamberger dan Orly Lobel, "Platform Market Power," *Berkeley Technology Law Journal* 32, no. 3 (2017): 1051–92.

instance, is indicative of the procedural bent of the judiciary: The Jakarta Commercial Court threw out PT Terbit Financial Technology's lawsuit challenging the Gojek–Tokopedia merger based predominantly on technicalities like court jurisdiction and validity of legal representation rather than on a substantive review of trademark conflict. Narrower means by which platforms remain protected from liability even if they obviously look bad.[63] Also in MICE (2024), the court underscored that an intermediary of online marketplaces would be held liable only when it is apparent that its failure to supervise was itself clearly and badly negligent. These decisions express Indonesia's knowledge-based liability approach under GR No 80/2019, where a platform's awareness of the content and Inaction within a period of time Rule is to be established (e.g., how an IP block should have taken down infringing IP rights materials in fourteen days).[64] The reality of the stance taken by platforms has been a strong defense built on demonstration of compliance with notice and takedown regimes, and because they keep data records about users (apparently, Indonesian courts prefer reactive self-regulation to trying to force the extensive monitoring that applies for proactive regulation).

In the EU, DSA's law enforcement is forward-leaning and institutionally overseen. Instead of relying on the judicial settlement of disputes, responsibility for ensuring platforms comply with the DSA is entrusted to the Digital Services Coordinator (DSC) and the European Commission itself. The stringency of this legislation is emphasized by a number of

[63] Giantama dan Kholil, "Pertanggungjawaban Hukum Penyedia Platform Terhadap Barang Yang Melanggar Merek Dalam Marketplace."

[64] Burhan, "The Liability Of User-Generated Content-Based Digital Service Platforms For Copyright Infringement Following Constitutional."

recent actions: in 2024, TikTok ceased its "Rewards" program after the Commission identified its design as potentially addictive and harmful to children; AliExpress agreed to increase transparency in advertising and recommendation systems to curb the circulation of illegal products. Enforcement also searched the X platform (formerly known as Twitter), which was alleged to have breached its risk assessment and content moderation obligations.

But the EU still has to deal with asymmetrical application at the member state level. The commission is taking four countries, plus Poland (which has yet to name a DSC), to court for maneuvering its way through enforcement across 27 jurisdictions. However, some countries (such as Ireland and the Netherlands) have taken the lead in national monitoring of such online spaces through auditing and surveys that found widespread breaches among smaller sites. This test case only confirms that the EU system greatly relies upon systemic risk regulation and sustainable institutional control systems, rather than sporadic court litigation.[65]

In the US, law enforcement is dominated by litigation; Section 230 of the Communications Decency Act is that shield, an angel wing in for any platform facing a civil lawsuit. Courts have consistently read this statute to provide ``extraordinary immunity'' against liability for user-generated content.[66] Newly published research also reveals that around 92% of intermediary liability-related cases were rejected in the year 2024. But some recent cases seem to be indicating a change. In Gonzalez v. Google (2023), the family of a victim of terrorism

[65] Husovec, "How to Facilitate Data Access Access under the Digital Services Act."
[66] Keller, "Toward a Clearer Conversation About Platform Liability."

claimed that YouTube's recommendation algorithm aided in extremist videos' being shared.[67] The Supreme Court ruled that liability under the Anti-Terrorism Act could not be extended on the theory that algorithmic recommendations constituted "substantial assistance." The court nonetheless was careful not to claim that Section 230 invariably encompasses algorithmic design. In Twitter v. Taamneh (2023), the Supreme Court held that "the mere provision of a service to the general public is not enough to impose liability for terrorism, unless there is concrete and clear-cut assistance to an attack." And most recently, the California District Court in Ryan v. Twitter (X), (2024) recognized that an algorithm and moderation system may not be within section 230 immunity if it is deemed to function as the actions of the platform itself rather than being only engaged in third-party speech.[68]

These changes show how different philosophies play out in regulations on platform liability. Indonesia emphasizes conditional liability based on knowledge and response, thus establishing a safe harbor that can be easily predicted without excessive hindrance to innovation.[69] The EU, via the DSA, emphasizes systemic risk management, transparency, and proactive regulation; however, it hinges on uniform national application to be operational.[70] The US still enjoys broad immunity under Section 230, but growing concern over the harms caused by algorithms and design hints at a possible doctrinal evolution.

[67] Dickinson, "Section 230: A Juridical History."
[68] Dickinson.
[69] Burhan, "The Liability Of User-Generated Content-Based Digital Service Platforms For Copyright Infringement Following Constitutional."
[70] Kira, "Regulatory intermediaries in content moderation."

While Indonesia, the European Union, and the United States could not be more different in their legal approach, what is clear is that there is a worldwide movement unfolding where regulators and courts are coming to terms with the fact that digital platforms are intermediaries no longer (they shape markets, public discussion, and social behaviour. This understanding is pushing models of accountability within legal systems in different jurisdictions to converge, and away from a polarized model. We are doing this to leave room for innovation and digital economic growth, but in such a way that the best interests of society and consumers are at the core of governance.

IV. CONCLUSION

This research indicates that Indonesia adopts a conditional liability regime for digital commerce platforms, which appropriately includes preventive, remedial, and responsive elements. According to this model, the platform itself is not held fully liable, provided it carries out its removal and monitoring duties prescribed in law. To compare with the EU's Digital Services Act and the US' Section 230 Communications Decency Act: Indonesia stresses knowledge-based liability, the EU opts for systemic and risk-based responsibility, while the US continues to have broad immunity, only now it is being challenged by court intervention on algorithms/platform design elements. These results do confirm that, while the model is functional for Indonesia, it is likely to lack addressing capacity for more challenging problems, such as algorithmic amplification or systematic risks for consumer trust and public ethical issues. As for regulatory enhancements, better focus could in particular cover the

introduction of vividly articulated standards on proactive risk management and enhanced obligations for greater transparency and better dispute resolution methods, International Standards. These are intended not only to close current regulatory loopholes but also to strike a balance between two fundamental considerations: promoting digital innovation and safeguarding consumers in an increasingly interconnected global market.

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