

E-COMMERCE DISPUTE RESOLUTION USING ONLINE DISPUTE RESOLUTION (ODR) AS AN ALTERNATIVE DISPUTE RESOLUTION IN INDONESIA

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ABSTRACT

The developments in technology, communication, and information have changed; This has resulted in changes that greatly facilitate everyone's activities, such as being able to make buying and selling transactions using only smartphones, the internet and the marketplace. It is no need to do face-to-face like traditional transactions. However, in practice, these developments have led to new problems called e-commerce disputes that occur due to many factors such as goods that do not match the description, the goods that arrive do not match what was purchased or fraud that often occurs between business actors such as sellers and buyers, since this unused issue, there's called Online Debate Determination as a shape of elective debate determination with the point of making it less demanding for business actors.

This research used the normative law method, which is prescriptive by reviewing regulations Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law Number 11 of 2008 on Information and Technology, Law Number 7 of 2014 on Trade Trade and several other supporting regulations. With the presence of Online Dispute Resolution as an Online Dispute Resolution is a form of modern renewal that is indispensable in this modern era because when viewed from the usefulness of Online Dispute Resolution which is an alternative form of dispute resolution which is a settlement developed with technology and the internet by making it easier for dispute actors in an effort to resolve disputes only through the internet and also has many advantages such as no need to meet in person, cost more light and also the completion process is not long.

Keywords: Business Disputes, E-commerce Disputes, Online Dispute Resolution

INTRODUCTION

According to the latest research from the service under the title "Digital 2020", internet users in Indonesia are currently reported to have reached 175.4 million out of a total of 272 million population in Indonesia. It means that 64 percent of the Indonesian people are connected to the internet. The internet also allows humans to talk to various people in various countries worldwide without taking up space, money, and a long time to do so. One of the conveniences offered by the internet is that we can make buying and selling transactions without meeting face-to-face, or conventional buying and selling transactions have begun to be abandoned. Currently, transactions via the internet are preferred because of their convenience. Trading transactions through electronic systems, especially the internet, promises several advantages, but at the same time, there is also the potential for several losses.¹

The development of technology in the field of trade that utilizes internet media through electronic systems is well known as electronic commerce (abbreviated as e-commerce), or it can also be said online marketing. Given the quick development of e-commerce related to the rules e-commerce has been regulated in Law Number 7 of 2014 on Trade (Trade Law).² This phenomenon is an essential factor that opens up opportunities for consumers to participate actively in the global market³. When we took a gander at the stage of the deal, the five biggest commercial centers in Indonesia in light of the quantity of month-to-month guests in the second quarter of 2020 are Shopee (93.4 million), Tokopedia (86.1 million), Bukalapak (35.2 million), Lazada (22 million), and Blibli (18.3 million).⁴

Online business is an exchange among vendors and purchasers utilizing the web. The advancement of online business is indistinguishable from the pace of web development since internet business goes through the web organization. The development in web use makes the web a successful vehicle for organizations and people to present and offer labor and products to purchasers from everywhere in the world. Web-based business is a cutting-edge plan of action that dispenses with exchanges as in ordinary organizations that require the presence of the parties and letters as documents that must be completed. This business model is more non-face and non-sign. There is a relationship between seller and buyer in e-commerce. Legal relations that give rise to rights and obligations are basically regulated in laws and regulations called legal relations. Civil law regulates the rights and obligations of people who enter into legal relations which include written regulations in the form of statutory regulations and unwritten ones in the form of customary law and habits that live in society.

E-commerce has a sufficient role in increasing product competitiveness in Indonesia due to a new global economic change, namely the digital economy. The high-level improvement of the web is one of the driving variables for creating internet business in Indonesia. The development of web-based business is directed in Law Number 11 of 2008 juncto (jo), Law Number 19 of 2016

¹ Edmon Makarim. *Introduction to Telematics Law Compilation Studie*, (PT. Raja Grafindo Persada.: Jakarta, 2005) page 342

² <http://www.pajak.go.id/content/e-commerce-di-indonesia-sudah-diatur-dalam-uu-perdagangan> accessed on March 20, 2022

³ Imam Sjahputra. *Consumer Protection in Electronic Transactions*, (Alumni: Bandung, 2010) page 14

⁴ Tim Inews, "E-Commerce Terpopuler Di Indonesia Tokopedia Terdepan Shopee Geser Bukalapak", quoted from www.inews.id accessed on March 22, 2022

on Information and Electronic Transactions (UU ITE), and Government Regulation Number 82 of 2012 on the Implementation of Electronic Systems and Transactions. Not at all like the trading system, which is one kind of understanding directed in the Civil Code, web-based business is a cutting edge trading exchange model that infers development.⁵

With the growing online buying and selling transactions that carry many conveniences, it is undeniable that there will be new disputes, known as e-commerce disputes, which may occur by accident or by one of the parties intentionally. The complexity of the activities in e-commerce does not rule out the possibility of conflicts in transactions, such as issues of price, quality of goods, and delivery time.⁶ Disputes over business transactions that use e-commerce are caused by default and unlawful acts of one of the parties. Since the disagreement causes losses, a dispute resolution mechanism is needed to protect the interests of these business actors. In general, dispute resolution can be made by litigation or non-litigation.

Many e-commerce disputes have been experienced by buyers and sellers, for instance, shared by users of one of the e-commerce (Shopee) with the username Kenzo said that he felt aggrieved because he got goods which did not appropriate in the store sales description. Then he decided to raise the dispute to an appeal because he did not find a silver lining after mediation with the seller or business actor and chose to use the services of the Online Dispute Resolution team. If it is resolved only with related parties such as sellers and buyers, the e-commerce dispute will not find a bright spot, so the disputing parties will use the ODR facility that has been prepared by the e-commerce concerned.

In today's commercial world, dispute resolution through the courts is disliked by many parties. Even if the solution is finally carried out through the judiciary, this is merely the last option (ultimatum remedium) after other efforts have not resulted. Viewing the existing conditions, finding an appropriate, effective and efficient system is necessary. The framework should can determine debates in a basic, quick, and minimal expense way. The emergence of the Online Dispute Resolution, which is part of the Alternative Dispute resolution, is the answer to e-commerce problems or disputes.

RESEARCH METHOD

This research is doctrinal normative law research (doctrinal research) using a legal approach, an analytical approach, a conceptual approach, and a case approach. The legal procedure is carried out to review the laws and regulations relating to written legal issues.

The type of data in this study was secondary data sourced from the literature study. Secondary data consists of primary legal materials, including the Civil Code, Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law No. 19 of 2016 on Information and Electronic Transactions, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law No. 7 of 2014 on Trade, Law No. 8 of 1999 on Consumer Protection, Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions, PP No. 80 of 2019 concerning Trading Through Electronic Systems, and several regulations from the Financial Services Authority (OJK) and tertiary legal materials, including dictionaries, research results, literature, journals/scientific articles, especially those related to arbitration or non-litigation dispute resolution, encyclopedias and other sources from websites/internet.

DISCUSSION

Actually, in positive Law, it has not been regulated regarding Online Dispute Resolution. However, in general, several regulations or laws control the procedures for resolving disputes and electronic transactions. Article 1 of Law No. 30 of 1999 under Article 1 number 1 of the Law. 30 of 1999 on arbitration and alternative dispute resolution is "a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties.

Online Dispute Resolution itself is another form of alternative dispute resolution, because the slow and convoluted dispute resolution is detrimental to justice seekers in all aspects, especially when it comes to the business world, will result in high economic costs, and can drain potential and resources. company strength. In turn, this has an impact on disharmonious relationships between business partners. Meanwhile, in the business world, fast dispute resolution, low costs, and informal procedures are needed. Given that the emergence of e-commerce is intended to eliminate difficulties in conventional business transactions, the dispute resolution model through the judiciary is certainly not expected to be carried out, because it will only waste time and money.

In the principle of contract law, there are many principles. Four of them widely discussed are the principle of consensual, the principle of freedom of contract based on Article 1338 Section (1) BW and Paragraph 1320, the principle of binding agreements, and the principle of good faith, which explains the conditions for the validity of the contract.⁷ Law No. 8 of 1999 on consumer protection meant by the Consumer Dispute Resolution Agency is "an agency tasked with handling and resolving disputes between business actors and consumers." Handling and resolving consumer disputes is carried out through courts and non-courts, which are non-court determined through mediation, conciliation, and arbitration. According to Law number 11 of 2008 on Electronic Transaction Information, namely in Article 41 Paragraph 1, "the public can play a role to increase the use of information technology

⁵ Setia Putra. Legal Protection for Consumers in Buying and Selling Transactions Through E-Commerce, *Journal of Legal Studies*, Vol 4 No 2 (2014) p290

⁶ Salami, Rochani Urip, Rahadi Wasi Bintoro. Alternative Dispute Resolution in Electronic Transaction Disputes (E Commerce), *Journal of Legal Dynamics*. Vol 13 No 1. (2013)

⁷ Ahmad Miru. Islamic Contract Law, (Rajawali Pers: Jakarta, 2013) p.9

through the implementation of electronic systems and electronic transactions." Paragraph 2 stated that "the society play roles as in paragraph 1 can be systematized through institutions formed by the society".⁸

The resolve of consumer disputes in Indonesia is generally regulated in Law Number 8 of 1999 on the Consumer Protection Law. However, there are no specific regulations regarding what is meant by consumer disputes in the Consumer Protection Law. Based on Article 45 of the Consumer Protection Law, harmed consumers can sue business actors through a court within the general court environment, not to court, which is an aspect of civil and criminal law. Based on the description above and its relation to the rights of consumers, as stated in Article 4 of the Consumer Protection Law, it can be interpreted that consumer disputes occur between consumers and business actors. The consumer is the user of goods or services on the one-party and business actors on the other party who are considered to have violated consumer rights. According to the Minister of Industry and Trade in Decree Number: 350/MPP/Kep/12/2001 dated December 10, 2001, what is meant by consumer disputes are disputes between business actors and consumers or buyers who demand compensation for damage, pollution, and suffer losses due to consuming goods or using services.

PSHK also stated that Indonesia has several regulations that support ODR. They are Law No. 19 of 2016 on amendments to Law no. 11 of 2008 on Information and Electronic Transactions, Law no. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law no. 7 of 2014 on Trade, Law no. 8 of 1999 on Consumer Protection, Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions, Government Regulation No. 80 of 2019 on Trading Through Electronic Systems, and several Financial Services Authority (OJK) regulations.

Electronic disputes that occur online on the Internet and online shopping are expected to be resolved online. One of them is alternative dispute resolution through Online Dispute Resolution(ODR).⁹ ODR is a method of dispute resolution carried out through the Internet. The resolution process is carried out by parties in cross-border areas (borderless) without having to meet face to face. The dispute resolution mechanism is through alternative online dispute resolution is a new mechanism. ODR is the same as other conventional dispute resolution, but the difference lies in the Internet media medium (International Network).¹⁰

In the ITE Law and Government Regulation of E-commerce, it is stated that dispute resolution can be carried out electronically, and the public can play a role in establishing dispute resolution institutions and consulting and mediation functions. Meanwhile, the APS Law is a fundamental foundation for online-based ADR regulations where dispute resolution can be carried out outside the court through a procedure agreed upon by the parties. This agreed procedure paved the way for implementing online dispute resolution to respond to the development of an increasingly modern era.

In ODR, there are several dispute resolution mechanisms, such as alternative dispute resolution, consisting of negotiation, consolidation, mediation, arbitration, and other procedures. However, in this discussion, we will discuss the ODR online arbitration procedure. Online arbitration is rooted in arbitration that has the character of a final and contract decision.¹¹

The dispute resolution mechanism using ODR begins at the stage where the merchant or consumer feels aggrieved for a previously agreed transaction and feels aggrieved to signal to the ODR service provider the formulation of the desired solution. The ODR service then sends an email to report the journalist's dispute resolution request. After that, the Reported Party received the dispute resolution, explained the desired solution, and appointed a moderator. The service provider provides a designated moderator to the registrant, and the complainant can approve it. The ODR service provider forwards it to the moderator, in which case the moderator can approve or reject the bookmark. If the moderator agrees, the moderator reviews the resolution proposed by the parties. The moderator helps and gives the parties time to negotiate until they reach an agreement via email, Instant message, chat, or video conferencing. After an agreement is reached, the ODR service provider will announce the decision results according to the mediator appointed to resolve the dispute.

On the other hand, if it is declared unsuccessful, the parties can file a claim or seek a dispute resolution using other mechanisms such as arbitration or litigation. The ODR mechanism is applied in online mediation services, online negotiations, and online arbitration. The advantages offered by ODR, such as saving costs, saving time, and the dispute resolution process, are well recorded. However, some weaknesses are impersonal, confidentiality, lack of facilities, and knowledge of digital tools.

E-commerce disputes themselves are misunderstandings or problems between related parties such as sellers and buyers. When one party feels aggrieved, they will resolve the dispute with mediation between the two parties, but if they still do not find a silver lining, the parties will raise the dispute or issue into an appeal. Only then the Online Dispute Resolution party in each e-commerce can do as well in online mediation for an initiation point. There are three types of online mediation, namely:

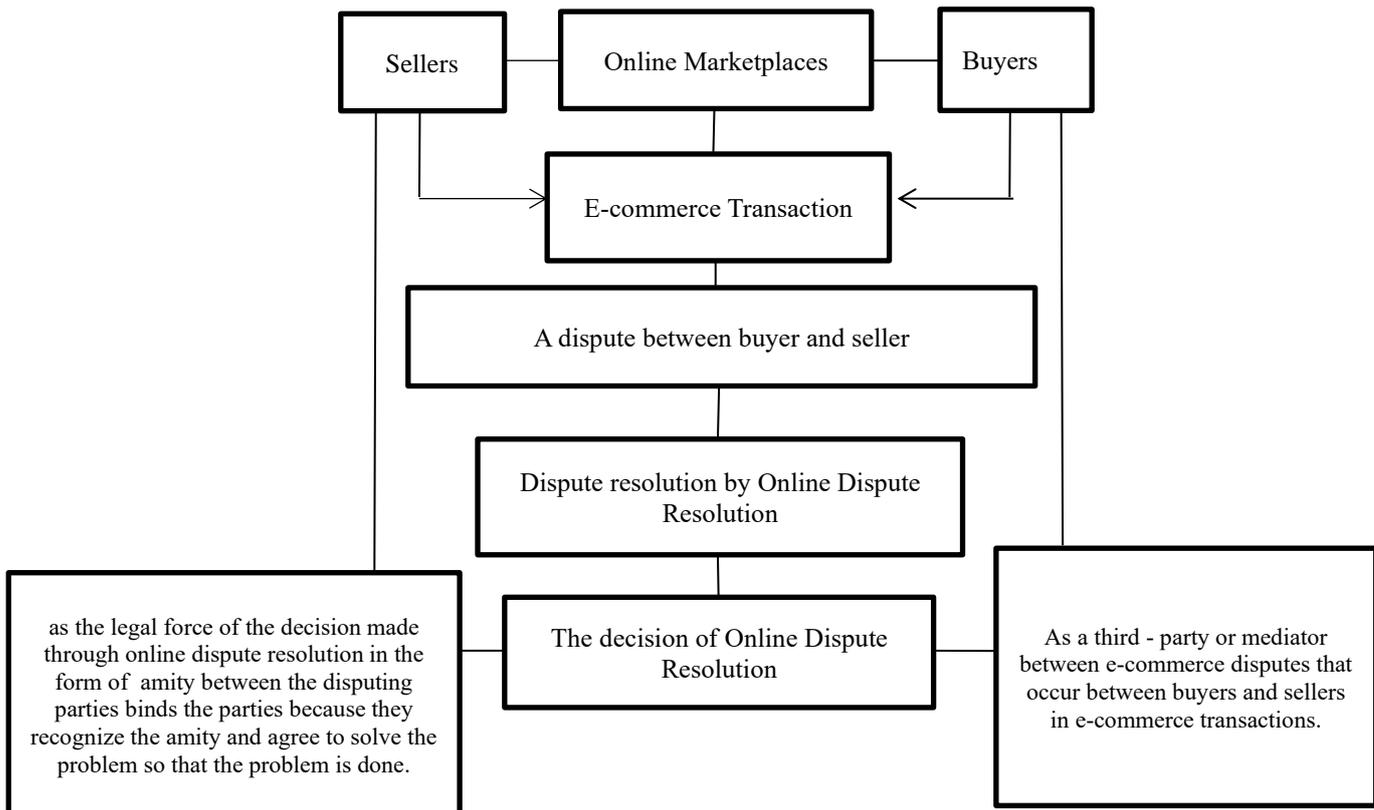
⁸ Hadiyanto, Wahyono, Sabar. Financial Services Sector Consumer Protection Study (Online Dispute Resolution), (Department of Consumer Protection: Jakarta, 2017) p.60

⁹ Meline Gerarita Sitompul. Dispute Resolution (ODR): Prospects of E-Commerce Dispute Resolution in Indonesia, *Renaissance Journal*.Vol 1 No 2. (2016) p.76

¹⁰ Widaningsih. E-Commerce Dispute Resolution Through ODR (Online Dispute Resolution), *Panorama Hukum Journal*.Vol 2 No 2. (2017) p.246

¹¹ Husseyn, M, Umar. A. Supriyani Kardono. Law and Arbitration Institutions in Indonesia, (Components of the Economic Law of the ELIPS Project: Jakarta, 2015)

1. Facilitative mediation is the point at which the middle person's capacities as a facilitator and can't give sentiments or suggest arrangements. In this situation, the go-between gives away to the gatherings to observe an answer to the question they face.
2. Evaluative mediation is intervention through a middle person who gives sees regarding Law, realities, and proof. This intervention procedure concurs with the go-between by conveying a satisfactory answer for the two parties and convincing them to acknowledge it.
3. An approach mediates the situation. The arbiter attempts to mediate with regards to this issue to the extent that the gatherings concur. The go-between possibly enters assuming the gatherings neglect to haggle among themselves, the middle person can mediate just to the degree of proposing an answer if the gatherings demand it. The underlying motivation behind this system is to assist with working with correspondence between the gatherings and the arbiter and between the actual gatherings.



The picture above is a chart of the dispute resolution mechanism between related parties, such as sellers and buyers, which the ODR team resolves from e-commerce facilitated by a marketplace or e-commerce.

1. The meeting between sellers and buyers on marketplace or e-commerce sites
2. Conducting online buying and selling transactions and resulting in a sale and purchase agreement between related parties
3. Existence of a sale and purchase dispute because the goods obtained by the buyer are not following what was described by the seller on the old marketplace site
4. The parties did not get a precise point on the problem, then raised this dispute into an appeal and decided to use the Online Dispute Resolution team as a third party to help resolve online disputes.
5. The third party, the Online Dispute Resolution team, asks the parties concerned to fulfill the identity and provide online details case to send the supporting evidence such as photos, videos, scanned documents, recordings, purchase receipt numbers, and other evidence.
6. Observing and reviewing the evidence that has been sent by related parties (buyers and sellers)
7. Provide a final decision for both parties to the dispute.

CONCLUSION

The development of technology, information, and communication creates progress and e-commerce dispute resolution between buyers and sellers in a marketplace. Online dispute resolution is a form of renewal and development in the field of trade or buying and selling activities in a modern way that comes from conventional dispute resolution. Online dispute resolution is a dispute resolution developed with technology and the internet. So, it is easier and more profitable for business people or disputing parties to solve disputes arising from business to business, consumer to trade, and business or consumer to consumer. In Indonesia, online

dispute resolution has been conceptualized into Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law Number 11 of 2008 on Information and Technology, and Law Number 7 of 2014 on Trade. Online Dispute Resolution is beneficial and makes it easier for business people who have disputes, especially e-commerce disputes that only rely on the internet and the marketplace.

REFERENCES

Books :

Hussey, M, Umar. A. Supriyani Kardono. (2015). Law and Arbitration Institutions in Indonesia, Jakarta: Components of the Economic Law of the ELIPS Project.

Makarim, Edmon. (2005). Introduction to Telematics Law Compilation Studie, Jakarta: PT. Raja Grafindo Persada.

Miru, Ahmad. (2013). Islamic Contract Law, Jakarta: Rajawali Pers.

Sjahputra, Imam. (2010). Consumer Protection in Electronic Transactions, Bandung: Alumi.

Wahyono, Sabar. Hadiyanto. (2017). Financial Services Sector Consumer Protection Study (Online Dispute Resolution), Jakarta: Department of Consumer Protection.

Journals :

Cynthia, H. (2018). Registration of Personal Data Through Prepaid Cards in a Human Rights Perspective. *Jurnal HAM*. Vol 9 No 2. 191 – 204.

Graham, Graham. (2014). *Asian Data Privacy Laws-Trade and Human Rights Perspectives*. New York: Oxford University Press. 80.

Meline Gerarita Sitompul. (2016). Online Dispute Resolution (ODR): Prospects of E-Commerce Dispute Resolution in Indonesia, *Renaissance Journal*. Vol 1 No 2. 76.

Salami, Rochani Urip, Rahadi Wasi Bintoro. (2013). Alternative Dispute Resolution in Electronic Transaction Disputes (E Commerce), *Journal of Legal Dynamics*. Vol 13 No 1.

Setia Putra. (2014). Legal Protection for Consumers in Buying and Selling Transactions Through E-Commerce, *Journal of Legal Studies*, Vol 4 No 2. 290

Widaningsih. (2017). E-Commerce Dispute Resolution Through ODR (Online Dispute Resolution), *Panorama Hukum Journal*. Vol 2 No 2. 246

Website :

<http://www.pajak.go.id/content/e-commerce-di-indonesia-sudah-diatur-dalam-uu-perdagangan> accessed on March 20, 2022

Tim Inews, “E-Commerce Terpopuler Di Indonesia Tokopedia Terdepan Shopee Geser Bukalapak”, quoted from www.inews.id accessed on March 22, 2022

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