

The Settlement of Electronic Commerce Transactions Through Online Dispute Resolution Mediation (ODR) in Indonesia

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Abstract

Nowdays, the internet has become a vital necessity in the daily life of people over the world. Once the internet is publicly opened, the internet was used also to benefit trade. At this moment, it is easy to find out plenty of common modern trade transactions that use technology as a medium, which is commonly known as electronic transactions or electronic commerce (e-commerce). A challenge of the changing era that needs serious attention is how to use the internet safely without getting into trouble because of the unpreparedness of Indonesia in various aspects (mainly in legal aspect) in order to anticipate all of the possible occurrence relating to the electronic trading system. The problem is usually resolved through the courts and alternative dispute resolution. The problems that occurred at this time encompassing the justice seekers (in this case society) who are suffering a loss as a result of e-commerce transactions which is blocked by a considerable distance between the buyer with merchant. E-commerce and judicial process at court also takes up a long time and requires sophisticated mechanism. In connection with this, this paper will outline the settlement of e-commerce by implementing a mediation via online dispute resolution (ODR) for dispute resolution electronic commerce transactions in Indonesia.

Keywords : Settlement; Ecommerce Transaction; Mediation; Online Dispute Resolution;

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INTRODUCTION

Trade activities of a country indicate the level of affluence of its people and serve as a barometer for the level of the country's economy, hence trade can be considered the lifeblood of the economy. The importance of commerce in a region, both internal trade and trade between countries (international trade) is well recognized in terms of economic development. (T. Gilarso, 2004).

The current state of globalization has resulted in a number of substantial changes in numerous parts of the world, including the economics, trade, politics, culture, and a variety of other factors. Globalization's continued development can be seen in the international trade sector, as well as in international trade activity itself. International trade activities evolve in tandem with globalization, and trade activities, in particular, are influenced by improvements in information technology which is one of the foundations of globalization. (Shinta Dwi, 2009 on Suprihantosa Sugiarto, 2019)

The growth of the internet is now developing very rapidly and is nearly used by everyone. Once the internet is open to the general public, the internet began to be used for the sake of trade. There are at least two things that encourage trade activities in connection with the advancement of technology, firstly the increasing demand for the products of the technology itself and secondly convenience for the trade transactions. (Asril Sitompul, 2004) In addition, the development of information technology is very rapid and has brought about many changes. Life pattern changes occur in almost every area, social, cultural, economic, or

otherwise. These changes include increasing use of Internet technology (ICT), which is part of the evolution of information and information technology.

The area of economics has seen a significant transformation as a result of the advancement of information technology. The evolution of information technology has radically altered the traditional economic system, transforming it into a digital economy. This digital system allows businesses to conduct a transaction using electronic media with easier, more speed, and more efficiency. Today many common modern trade transactions use the technology as a medium, this is commonly known as electronic transactions or electronic commerce.

Certain problems will rise as a result of the changing times, the development of conventional trade shifted into the modern trading system / electronic transactions. One of the problems that arise from the electronic transaction system is the issue of the validity of the transaction system. Specifically, the validity referred to here is the validity of a trade agreement or contract for sale made through the electronic system. It has become a habit if any trade agreements is always poured in an agreement or contract. According to the theory of civil in general, a transaction is a legal action involving the two sides, required to accept each other in terms of the economic value, and usually realized through an engagement called a term of the contract, (Rahma, 2003) because the contract itself serves to secure a deal. (Marzuki, 2001)

In addition to the above, some of the legal issues that arise in the field of law in the activity of e-commerce, among others:

1. Authentication to a corporation that conducts transactions via the Internet.
2. The current effect and effect of the contract is legally binding.
3. Target of sales transactions.
4. Mechanism of transfer of rights.
5. Legal relationships and responsibilities of the parties involved in the transaction document.
6. Electronic records and digital signatures as proof are legal.
7. A means for resolving disagreements.
8. Dispute settlement law selection and jurisdiction judicial authority location.

A changing-times difficulty that requires considerable attention if you do not want to "get into trouble" as a result of Indonesia's lack of preparedness in different aspects (mostly legal) to foresee all possible outcomes related to this electronic trading system. (Kuspraningrum, 2011)

Legal issues in e-commerce also requires a solution that will be able to give a legal certainty and creates confidence (self-confidence) on the e-commerce business people in particular, and at all levels of society in general. Indonesia has set the legal framework on e-commerce activities namely by Information and Electronic Transactions Law No. 11 of 2008 and Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions Law No. 19 of 2016 (herein after referred to as the ITE Law).

The problems that are currently occurring are for those seeking justice, in this case they are disadvantaged as a result of e-commerce transactions that is blocked due to a considerable distance between him and the e-commerce merchant. Furthermore, solving the case via the court requires a long time and a long process. In this regard, this paper will detail how e-commerce payments can be made in Indonesia by establishing a mediation through Online Dispute Resolution (ODR) for dispute resolution electronic commerce transactions. Given the current situation, a system that is appropriate, effective, and efficient is required. The system must be capable of resolving conflicts in a simple, quick, and low-cost manner. Because of the requirement for quick and low-cost dispute resolution, the modern corporate

world looks to Alternative Dispute Resolution (ADR) as an alternative dispute resolution. (Chandra, 2014)

MATERIALS AND METHODS

The research is normative legal research, which is a scientific research technique for determining the truth using scientific logic from a normative standpoint. Normative research is a method of locating laws, legal principles, and legal doctrines in order to resolve legal problems. This normative legal study is conducted in order to generate arguments, hypotheses, or novel concepts that can be used as prescriptions for resolving the issues at hand. (Marzuki, 2011) The study's data emphasizes the use of secondary data gleaned from documents or literature. The following are the secondary data: 1) Primary legal materials, such as statutory regulations and other legal materials with binding legal authority. 2) Secondary Legal Documents, such as reference books and research journals, are legal materials that explain primary law. 3) Tertiary Legal Materials, which include encyclopedias, dictionaries, and other legal resources. (Mardani, 2010)

RESULTS AND DISCUSSION

A. The Challenge of E-commerce Settlement Nowadays

If e-commerce becomes a criminal or civil offense in Indonesia, the terms of the state's laws and regulations will be governed by the national law, particularly Law No. 11 Year 2008 on Information and Electronic Transactions. In this case, the ITE Law gives legal protection in e-commerce trading.

Article 30 of the ITE Law regulates e-commerce crime and has many articles:

- (1) A person who knowingly and illegally gains unauthorized access to another person's computer or electronic system.
- (2) A person who accesses a computer and/or electronic system deliberately, without authorization, or unlawfully in order to obtain electronic information and/or electronic records.
- (3) A person who has entered a computer or network without permission or in an unauthorized manner.

Furthermore, the penalty provisions regulated under Article 46 of ITE Law as follows:

- (1) Anyone who meets the elements listed in Article 30 paragraph (1) faces a maximum penalty of 6 (six) years in prison and/or a fine of Rp. 600,000,000.00. (six hundred million rupiah).
- (2) Anyone who meets the elements listed in Article 30 paragraph (2) faces a maximum penalty of 7 (seven) years in prison and/or a fine of Rp. 700,000,000.00. (seven hundred million rupiah).
- (3) Any person who fits the elements listed in Article 30 paragraph (3) faces a maximum penalty of 8 (eight) years in prison and/or a fine of Rp. 800,000,000.00. (eight hundred million rupiah).

Furthermore, Article 39 of ITE Law states that civil actions must be carried out in line with the law. In addition to a civil litigation settlement, the parties can settle their issue through arbitration or other alternative dispute resolution organizations in compliance with the law.

Based on the above, the settlement of disputes in electronic commerce transactions can be either civil or criminal, so to give legal protection to the community in Indonesia.

Indonesian state can be said to support the establishment of Online Dispute Resolution (ODR) based on the clause mentioned in the Article 41 ITE Law, which states:

- (1) The public may contribute to improve the utilization of information technology through the implementation of electronic systems and electronic transactions.
- (2) The role of people as in paragraph (1) may be held by an institution established by the community.
- (3) The board as in paragraph (2) may have the function of consultation and mediation.

According to Article 41 paragraph (3) of the ITE Law. Indonesia firmly supports the formation of the ODR as a consultation and mediation entity. In accordance with the terms of the ITE Law, the Government of Indonesia is required to defend the public interest from any kind of interference as a result of improper use of electronic information and electronic transactions that disrupt public order. As mentioned earlier, the purpose of the ODR is to facilitate online disputes over electronic transactions to a disadvantaged particular party. Any dispute arising can interfere with the public interest and should be quickly dealt with despite the warring parties across geographic, language and a different legal jurisdiction.

Article 18 paragraph (4) of the ITE Law, which is a form of Indonesia's support for the establishment of the ODR, adds to Article 41 paragraph (1), (2), and (3) that states "The parties are empowered to establish jurisdiction courts, arbitrations, or other institutions authorized to deal with disputes that may arise from international electronic transactions," he said. "The jurisdictional decision has been made. No party, as in paragraph (4), establishing the jurisdiction of a court, arbitration, or dispute resolution organization is more for dealing with issues that may arise from a transaction based on the principles of private international law. Has a lot of authority. This means that in paragraph (5) it is made clear that the ODR is able to function as an alternative dispute resolution institution that is based on private international law. Knowing that the ODR is now a part of alternative dispute resolution that is recognized internationally through the activities of the United Nations which has always held an annual conference and has established an ODR Expert Group on ODR.

The Government of Indonesia ensures the function of ODR is protected by ITE Law Article 38 paragraph (1), which states: "Anyone can start an action against a party arranging the use of electronic systems and information technology that causes damages to the state." It can be observed that the public is State requested to file a proceeding in case of loss due to electronic transactions systems such example is (e-commerce), (e-payment), (e-procurement) and (e-contract). Citizens who use the facilities ODR, even this is protected and restricted by the ITE Law case of things that are undesirable adverse parties to the dispute through the ODR to Article 35 of ITE Law which states that "Anyone who intentionally and illegally manipulates, creates, modifies, deletes, or destroys electronic information or documents for the purpose is considered genuine".

Confidentiality disputes, as well as electronic documents, are resolved through ODR, which states that "any person intentionally and without authority or unlawfully in any way to move or transfer electronic information and / or electronic documents to the system electronic others who are not eligible" is protected by Article 32 paragraph (2) ITE Law.

If someone tries to use information technology to disrupt or stop the operation of the ODR, service providers will be protected under Article 33 of the ITE Act, which states that "every person intentionally and without authority or unlawfully taking any action that results in disruption of the electronic system and/or causes the electronic system to not work as it should". (Chandra, 2014)

B. The Settlement of Online Dispute Resolution via Mediation

In the event that a disadvantage arises as a result of electronic commerce transactions that are hampered by a significant distance from the electronic commerce merchant, and while resolving the dispute through the courts takes time and effort, justice seekers can seek an alternative through mediation, which is a type of Alternative Dispute Resolution (ADR). This method is generally regarded as a humanitarian and just method of resolving disputes. Because the decision-making process (a peace accord) is delegated to the authority of the disputing parties, good relations are maintained. Unfair because each party has the option of negotiating a solution to the problem, which results in a win-win outcome.

According to Article 1 paragraph 10 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, an agency for resolving disputes or disagreements in the procedures agreed between the parties, the court settlement by way of consultation, negotiation, mediation, conciliation, or expert assessment is an agency for resolving disputes or disagreements in the procedures agreed between the parties, the court settlement by way of consultation, negotiation, mediation, conciliation, or expert assessment. (Widnyana, 2014) As a result, litigation is becoming outdated, and people are turning to mediation. Mediation has been introduced into the legal system through Supreme Court Regulation (*PERMA* in Indonesian) No. 1 of 2008, which was later revised to Supreme Court Regulation (*PERMA*) No. 1 Year 2016 on Mediation. Every civil case should be settled through mediation first. Each judge's ruling that is made without first going through mediation is null and void. (Effectiveness of Mediation In Divorce Settlement Case In Central Java Religious Court, 2021)

In the mediation process, a third party dispute to intervene in the negotiations with the ability to create unlimited ability or no ability to make decisions or to assist the parties to reach a settlement process. There is no authorized decision-making power that separates mediation of arbitration and litigation.

The difference between online mediation and face-to-face mediation is that one is conducted via the Internet utilizing electronic communication. Mediation global online describes the offline world in a set of strategies, styles and services provided, although only one online provider that clearly illustrates the recognized standard, designed for offline mediation. This institution is an online dispute resolution service that follows the American Bar Association's (ABA) Society Of Professionals In Dispute Resolution's mediation practice standards (SPIDR). Most of the online provider is mediation facilitative mediation compared to online evaluative mediation.

One of the most crucial issues in the field of ODR is the implementation of the results. The parties reached an agreement after successful negotiation or mediation. This type of settlement is a contract that binds both the parties and other contracts. As a result, if one party does not comply, the other party has no recourse but to file a lawsuit in court or to seek arbitration. (Online Dispute Resolution, 2021)

Electronic commerce in resolving disputes, mediation can be used as a dispute resolution option for relatively shorter time than be resolved through the courts. Mediation, as one of the Alternative Dispute Resolution (ADR) options, can be harmonized by employing Online Dispute Resolution (ODR), which can be more efficient in terms of time and distance between the parties in electronic commerce disputes.

Online settlement need the information technology, particularly the internet for dispute resolution processes. Information technology devices used have good internet network so that it can process the information and forwarded to the parties involved in the settlement of disputes. As previously mentioned that the ODR is a dispute settlement

is done by combining information technology processing computer with internet communication network facilities. ODR is described by the dominant role of information technology that is considered the "fourth party" on the settlement of disputes. ODR provides a lot of themes and concepts of dispute resolution processes either arbitrase, mediation and negotiation.

ODR facilitates information technology media as the "fourth party" to the parties to the dispute to communicate although not met face to face. ODR concept recognizes the role and value of the software as a network that is used for more than just a simple communication channel. With the "fourth party" will facilitate the parties to clarify the issues prior to face sessions (face to face) with video conferencing or the device used to help identify the parties in an online meeting. The emerging challenges to the implementation of an effective dispute settlement ODR is how to facilitate the process of information arising from the activities of this dispute efficiently in the transmission network the Internet. One of the goals of their desire ODR is their desire to increase public trust in electronic commerce by providing a fast dispute resolution and legal certainty across geography, languages and different legal jurisdiction.

Urgency their online dispute resolution arrangements in resolving disputes and electronic contract, based on some principles that became the distinguishing feature of online dispute resolution than the conventional alternative dispute resolution, in the sense that is done without the help of electronic media, namely : (Alternative Dispute Resolution on Line, 2021)

1. Transparency, the question in this case is transparency obtained by the parties regarding the procedures of settlement of disputes and the result of the settlement of disputes openly;
2. Accessibility, which is referred to in this case is the absence of financial barriers, and the implementation of online dispute resolution allows the contracting parties to access electronic dispute resolution electronic contracts without the barriers of space and time;
3. Independence, the question in this case is the preservation of the independence of the parties as a result of dispute settlement decision makers of electronic contracts;
4. The practicality, the question in this case is the practicality of the completion of online dispute resolution and the turnaround time is faster than the traditional court process.

Although Indonesia has yet to embrace the notion of online dispute resolution, technical advancements and cyberspace transactions are allowing people to cross boundaries. The existence of Online Dispute Resolution (ODR) must inevitably be regulated in Indonesian laws and regulations. In the ITE Law case, international arbitration is used to resolve cross-border conflicts. "If the parties do not make a choice of an earlier forum, the establishment of the authority of a court, arbitration, or institute alternative dispute resolution more competent to deal with disputes arising from the transaction, based on the principles of civil law international," according to Article 18 of the ITE Law.

In my opinion, Despite the application of private international law provisions and rules, this path does not guarantee an efficient resolution of the case. Therefore, it is more suitable if the selected resolution of disputes Online Dispute Resolution (ODR). In a dispute settlement E-Commerce international is possible to be solved primarily include a row of little value in the right forum, namely the Online Dispute Resolution (ODR), or the APS online is becoming a practical way to give subscribers remedy precise, inexpensive and effective and reduce determination of the case in a foreign country.

Prospects for the development of Online Dispute Resolution in Indonesia, with attention to comparative practice of countries such as the United States, the European Union, and Singapore, as well as their social, technological, and legal approaches, can use the model merging of Electronic Consumer Dispute Resolution and Trust SG Case Trust, with the model chart depicted as follows:

FACTOR	INDONESIA
PRODUCT NAME	IndoComTrust
HOW	to take the online negotiation and online mediation
LEGAL BASIS	Consumer Protection Law No. 8 of 1999, Arbitration and Alternative Dispute Resolution Law No. 30 of 1999, Information and Electronic Transactions Law No. 11 of 2008, and Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions Law No. 19 of 2016
METHODS	Using safety technology with a secure socket layer and a combination of digital certificate
COMPENSATION MECHANISM	Through a system of small claims procedure and the general court

The existence of Law No. 11 of 2008 on Information and Electronic Transactions, as well as Law No. 19 of 2016 amending Law No. 11 of 2008 on Information and Electronic Transactions, is a bridge regulating the implementation of electronic commerce in Indonesia, as it fits in with their models. Additional dispute resolution regulatory model in the form of online dispute resolution, as well as combinations of settings in the comparator countries of Europe and Singapore, as a model framework described above, which is intended for the establishment of mechanisms for dispute resolution electronic contracts are fair, and can embody legal certainty for the perpetrator of electronic commerce.

C. The Advantages and Disadvantages of Using Settlement Ecommerce Online Dispute Resolution (ODR) through Mediation

There are several advantages for buyers and businesses Electronic Commerce transactions in dispute resolution through mediation using ODR include: (Online Dispute Resolution, 2021)

1. First, saving time and money. Indeed, it is already apparent in the APS is traditionally compared to settlement through litigation. However, online dispute resolution would be more efficient than the alternative dispute resolution offline. This advantage is because the parties do not have to pay the cost to be incurred to attend the trial and the costs associated with it. ODR speed is one of the advantages. Essentially, the parties and neutral parties do not need to travel to meet, they do not need to be there at the same time, the period between the submission can be brief, the settlement can be based on the documents.
2. Secondly, it usually costs a civil dispute resolution services are a combination of the cost of dispute resolution institutions, fees, and cost neutral third party, the cost of the parties, legal fees. In ODR some of these costs is absent or significantly reduced.
3. Third, those who use the internet access more confident in dealing with the process to be lived, because they can easily control and response what happens in the process.

4. Fourth, if the parties are reluctant to do face to face, can avoid meeting with the counterparties. The parties can avoid feeling fear intimidated in the process. This is a psychological problem.

In addition to the aforementioned benefits, there are some barriers to the use of Online Dispute Resolution (ODR) in Indonesia, as ODR requires certain pre-requisites to be used in Indonesia. But, for the time being, there are a few roadblocks that could prevent the ODR from resolving conflicts in Indonesia, including: (Sitompul, 2016)

1. The Rule of Law is not yet Clear

The absence of the rule of law to file a lawsuit / dispute through the online system. As a result, it will cause confusion how should the parties will file a lawsuit, through the instrument of what their data can be transmitted, and how the legal protection of the confidentiality of the data of the parties. Therefore, the need for strengthening the rule of law related to this ODR. Cybercrime has become a concern to national security, making it difficult for the government to strike a balance between technological criminals and computer technology, particularly the internet and intranet. (Irawati et al, 2021)

2. The Organization has not Provided

If the American Arbitration Association (AAA) and the China International Economic and Trade Arbitration Commission (CIETAC) have institutions that deal with ODR, Indonesia has not had a specific institution or division that deals specifically with online mechanisms, including the trial mechanism, either stand alone or under the supervision of the National Arbitration Indonesia (BANI). The parties may send a written document by email, but they have not been able to use the technique of online input of data that can be read concurrently by the parties' joint panel of arbiters or mediators.

3. The website is not yet available

In Indonesia, have not yet set the rules, device software, specific page or website to manage online dispute such as that contained in the American state (www.adr.org) and China (www.cietac.org) for example with strict safety standards. The technological component of the enforceability of ODR also plays a crucial role, where the technology is tied to the ODR's safety.

Disadvantages event mediation procedure using ODR media when applied in Indonesia is the lack of legal instruments, completeness and adequate procedural support. Such as, websites that integrate with database applications to accommodate the incoming request, a list of arbitrators and regulations necessary regarding the request for arbitration. Of course, it is necessary also providing chat room and bulletin board-based real-time audio-visual streaming and a Content Management System specifically for the arbitrator / mediator. Thus, it can be concluded that the settlement of disputes through the ODR has good prospects in an effort to resolve disputes related to online activity seen from legal factors, potential, technology, business and social, but to apply the ODR is not as easy as expected. Some constraints make obstacles for the implementation of ODR. How to overcome these obstacles with the formulation of new legislation governing the application of ODR is equipped with telecommunications infrastructure and security systems and institutions to handle online cases.

CONCLUSION

Based on the description of the prospects for the implementation of ODR in Indonesia, legislation in Indonesia has given the obvious reason that ODR is very likely

to be implemented in Indonesia; however, the mechanisms of ODR must be studied carefully, so it would be nice if the government makes a new regulation that specifically regulates ODR or revises Law No. 11 Year 2008 on Information and Electronic Transactions, Law Number 19 of 2016 conc.

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