

Developing E-Commerce Regulatory Standards for Online Dispute Resolution

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ABSTRACT

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Disputes involving losses or defaults suffered Prolong the process and create uncertainty for the company or the disputing parties. Consequently, alternative dispute resolution facilitates the dispute resolution process for online transactions. One is to provide alternative dispute resolution via Online Dispute Resolution (ODR). The Method study employs the descriptive-analytic approach to acquire in-depth data that will be meaningful. This study intends to examine the opportunities and challenges faced by buyers in using Online Dispute Resolution. Concluded Although juridically, the Arbitration and Alternative Dispute Resolution Law do not regulate ODR, Some forms of legal discovery that can be done are interpretation and analogy to explain the provisions of the articles in the Arbitration Law and Alternative Dispute Resolution.



1. Introduction

Globalization and free trade, aided by developments in communication and information technology, have increased the amount of space available for commodities transactions domestically and internationally. Information technology serves as a means of conducting two aspects of online commerce: offering media services via the internet. The internet is supplied as a means for customers to select their desired products.¹ Online business is chosen because it is more efficient, economical, and speedier, which both producers and customers feel, thanks to the conveniences and facilities supplied by information technology's function and influence. People enter the virtual world through electronic media, which is abstract, universal, and independent of circumstance, location, and time. It is also inextricably linked to a mode of communication that allows people to communicate over large distances, notably the internet.²

The Internet has been widely utilized for information and electronic communication for various activities, including browsing (browsing, surfing), looking for data and news, sending e-mail messages, and trading. Electronic commerce (abbreviated as e-commerce) or online trading refers to the use of internet media through an electronic system due to technological advancements in business. Regulations relating to e-commerce have been controlled in Law (UU) Number 7 of 2014

¹Roland Schmuck, 'The Use of Online Business Models', *Procedia Manufacturing*, 54 (2020), 45–51
<https://doi.org/10.1016/j.promfg.2021.07.008>

²Najib A. Mozahem, 'The Online Marketplace for Business Education: An Exploratory Study', *International Journal of Management Education*, 19.3 (2021), 100544
<https://doi.org/10.1016/j.ijme.2021.100544>

regulating Trade in light of the rapid rise of e-commerce. One of the leading causes for the growth of e-commerce in the United States is the internet's more advanced development.

Law No. 11 of 2008 junto Law, No. 19 of 2016 concerning Information and Electronic Transactions (hence abbreviated as UU ITE) and Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, control the growth of e-commerce (from now on abbreviated as PP PSTE). Unlike the buying and selling procedure, which is a contract governed by the Civil Code (hence referred to as the Civil Code), e-commerce is a modern purchasing and selling transaction model that entails innovation. E-commerce is the result of advances in information technology and telecommunications. It significantly impacts how people interact with their surroundings, which in this case, is tied to the trading mechanism.³ Consumers benefit greatly from the availability of e-commerce because they do not have to leave their homes to shop, and the variety of goods/services is likewise wide, with relatively lower pricing. Consumers can choose the type and quality of goods and services that best suit their needs.

However, if a dispute arises due to losses or defaults, the aggrieved party can file a lawsuit. Then there's the matter of filing a lawsuit in court, which will take a long time. In the past, business disputes were usually settled through the courts (litigation).⁴ It takes a long time and leaves the company or contesting parties in a state of uncertainty. However, there are currently numerous disagreements over the internet, or what is generally referred to as e-commerce.⁵ Electronic issues that arise on the Internet are expected to be handled on the Internet as well. As a result, alternative conflict resolution is being pursued, which is projected to make the dispute settlement process more accessible with the use of technology. One is to provide online conflict resolution as an alternative to traditional dispute settlement (ODR).

2. Research Method

This study employs the descriptive-analytic approach to acquire in-depth data, as stated by Sugiyono, and it will be meaningful. Qualitative methods significantly impact the research's content, suggesting that qualitative approaches reveal the nature of the relationship between researchers and informants, objects, and research subjects⁶. Meanwhile, descriptive research is a study that aims to describe current phenomena, whether natural or manufactured. Descriptive research provides systematic, factual, and accurate descriptions of a population's or area's facts and features. This study intends to examine the opportunities and challenges faced by buyers in using Online Dispute Resolution.

3. Results and Discussion

Definition of E-commerce in Dispute Resolution

The distribution, acquisition, sale, and promotion of goods and services via electronic systems such as the internet, television, www, or other computer networks is known as e-commerce or electronic commerce (English: electronic business or marketing). Electronic financial transfers, electronic data interchange, automated inventory management systems, and automated data collecting systems are all examples of e-commerce. Trading using an electronic system, as defined

³Teresa Garín-Muñoz and others, 'Models for Individual Adoption of ECommerce, EBanking and EGovernment in Spain', *Telecommunications Policy*, 43.1 (2019), 100–111 <https://doi.org/10.1016/j.telpol.2018.01.002>

⁴Alper Uyumaz and Kemal Erdoğan, 'The Theory of Legal Clinic in Education of Law', *Procedia - Social and Behavioral Sciences*, 174 (2015), 2116–22 <https://doi.org/10.1016/j.sbspro.2015.02.010>

⁵Damian Clifford and Yung Shin Van Der Sype, 'Online Dispute Resolution: Settling Data Protection Disputes in a Digital World of Customers', *Computer Law and Security Review*, 32.2 (2016), 272–85 <https://doi.org/10.1016/j.clsr.2015.12.014>

⁶Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), 201–7 <https://doi.org/10.1016/j.sbspro.2016.05.006>

in Article 1 number 24 of the Trade Law, is a trade in which the transactions are carried out through a sequence of electronic operations.⁷

E-commerce is a multidisciplinary field that includes technical areas such as telecommunications data networks, security⁸, data storage and retrieval from multimedia, business fields such as marketing, purchasing and sales (procurement and sales), billing and payment (billing and payment), distribution network management (supply chain management), and legal aspects such as information privacy⁹, intellectual property rights (intellectual property), taxation (taxation), and legal aspects such as information privacy, intellectual property rights (intellectual property), and taxation (tax So, to summarize, e-commerce is a new form of business conducted via the internet; thus, e-commerce can be defined as internet trading¹⁰.

Arbitration and Alternative Conflict Settlement are the two types of dispute resolution available outside of the judicial system, according to Law Number 30 of 1999. Non-litigation conflict resolution is a vast field that encompasses almost every element of life that can be settled legally. Guaranteed confidentially of the parties' disagreements, prevented delays caused by procedural and administrative procedures, entirely resolved difficulties in togetherness, and kept good relations through an out-of-court method leading to a "win-win" agreement solution Alternative Dispute Resolution (APS)/Alternative Dispute Resolution (ADR) is a term used to describe dispute resolution outside of the courtroom (ADR).¹¹

Arbitration is a legal process in which a party submits a disagreement or difference of opinion between two or more people (or groups) to one or more mutually agreed-upon experts to get a final and binding ruling¹². Arbitration is a method of resolving a civil dispute outside the regular court system, based on a written arbitration agreement between the disputants. An arbitration agreement can be in the form of an arbitration clause in a written agreement entered into by the parties before a dispute develops or a separate arbitration agreement entered into by the parties after a disagreement has arisen.

Alternative dispute resolution is a dispute resolution outside the court that is carried out peacefully. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution as the basis for institutionalizing APS in Indonesia, besides regulating arbitration at length, shows us that the law emphasizes alternative dispute resolution, which is carried out through deliberation of the disputing parties¹³. Through a procedure agreed upon by the parties, an out-of-court settlement using consultation, negotiation, mediation, conciliation, and expert judgment. Although the Law on Arbitration and Alternative Conflict Resolution appears to place a greater focus on alternative dispute settlement through the parties' agreement, mediation, the employment of experts, or

⁷ Nur Azimah Bt Mohd and Zarul Fitri Zaaba, 'A Review of Usability and Security Evaluation Model of E-Commerce Website', *Procedia Computer Science*, 161 (2019), 1199–1205 <https://doi.org/10.1016/j.procs.2019.11.233>

⁸ Bing Xu, Darong Huang, and Bo Mi, 'Smart City-Based e-Commerce Security Technology with Improvement of SET Network Protocol', *Computer Communications*, 154.December 2019 (2020), 66–74 <https://doi.org/10.1016/j.comcom.2020.02.024>

⁹ Zareef A. Mohammed and Gurvirender P. Tejay, 'Examining Privacy Concerns and Ecommerce Adoption in Developing Countries: The Impact of Culture in Shaping Individuals' Perceptions toward Technology', *Computers and Security*, 67 (2017), 254–65 <https://doi.org/10.1016/j.cose.2017.03.001>

¹⁰ Xiang T.R. Kong and others, 'Cyber Physical Ecommerce Logistics System: An Implementation Case in Hong Kong', *Computers and Industrial Engineering*, 139.April 2019 (2020), 106170 <https://doi.org/10.1016/j.cie.2019.106170>

¹¹ Laine Fogh Knudsen and Signe Balina, 'Alternative Dispute Resolution Systems Across the European Union, Iceland and Norway', *Procedia - Social and Behavioral Sciences*, 109 (2014), 944–48 <https://doi.org/10.1016/j.sbspro.2013.12.569>

¹² Chia Kuang Lee, Tak Wing Yiu, and Sai On Cheung, 'Selection and Use of Alternative Dispute Resolution (ADR) in Construction Projects - Past and Future Research', *International Journal of Project Management*, 34.3 (2016), 494–507 <https://doi.org/10.1016/j.ijproman.2015.12.008>

¹³ Ayyappan Palanissamy and R. Kesavamorthy, 'Automated Dispute Resolution System (ADRS) - A Proposed Initial Framework for Digital Justice in Online Consumer Transactions in India', *Procedia Computer Science*, 165 (2019), 224–31 <https://doi.org/10.1016/j.procs.2020.01.087>

arbitration, it encompasses all kinds of dispute resolution outside the agency¹⁴. The author agrees that settlement through non-litigation has advantages because it is realistic, resolves together, and preserves good connections, based on the previous explanation of dispute resolution through litigation and non-litigation.

Legal Certainty of Online Dispute Resolution

It controls the patterns of dispute settlement outside of the court in Article 1 Number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution by the growth of the period undergoing modernization. The out-of-court conflict resolution patterns can be designed based on present corporate trade activities to provide alternative online dispute resolution options. Article 79 paragraph (1) of the Convention on the Settlement of Disputes in Trading Transactions Through Electronic Systems states, "In the event of a dispute in a trade transaction through the electronic system, the parties may resolve the dispute through the courts or other dispute resolution mechanisms." "The settlement of trade transaction disputes through the electronic system referred to in paragraph (1) can be carried out electronically (Online Dispute Resolution) in compliance with the norms of laws and regulations," according to Article 79 paragraph (2).

One of the most significant differences between ADR and ODR is that with ODR, the parties' disputes can be resolved without their physical presence. In fact, in some circumstances, the use of ODR to resolve conflicts is on the rise because ODR will adhere to a set of minimum requirements to ensure quality and impartiality (fairness).¹⁵ Law, according to Hans Kelsen, is a set of rules. Norms are statements that include restrictions on what to do and highlight the "should" or *das sollen* parts. The creation of norms is the result of deliberate human action¹⁶. Laws containing general norms guide how individuals should conduct in society, both with their peers and with the community. These norms serve as boundaries for humanity when burdening or punishing individuals. The existence of these rules, as well as their application, provide legal certainty.

Meanwhile, legal certainty has two meanings, according to Utrecht: first, there are general rules that allow individuals to know what actions they may or may not take, and second, individuals are protected from government arbitrariness because general regulations will enable them to understand what the state may charge or do to them¹⁷. This legal certainty comes from Juridical-Dogmatic teachings based on the Positivism school of thought in the legal world, which tends to see the law as autonomous and independent because, for adherents of this school, the purpose of the law is nothing but guaranteeing the realization of general laws. The general nature of the rule of law proves that the law does not aim to achieve justice or benefit but solely for certainty.

The existence of legal certainty gives justice seekers optimism in the face of arbitrary actions by law enforcement personnel who are sometimes arrogant in carrying out their duty as law enforcement officers. People will know the clarity of their rights and obligations under the law if there is legal certainty. People will not know what to do if there is no legal clarity; they will not know if their actions are right or wrong, whether they are prohibited or not by law. This legal certainty can be achieved through explicit and accurate characterizations in a statute and its application. In other words, legal certainty refers to the fact that the law is valid, the subject and goal of the law, and the danger of penalty. Legal certainty, on the other hand, should not be thought

¹⁴Shigeru Matsumoto, 'A Duration Analysis of Environmental Alternative Dispute Resolution in Japan', *Ecological Economics*, 70.4 (2011), 659–66 <https://doi.org/10.1016/j.ecolecon.2010.10.014>

¹⁵Karolina Mania, 'Online Dispute Resolution: The Future of Justice', *International Comparative Jurisprudence*, 1.1 (2015), 76–86 <https://doi.org/10.1016/j.icj.2015.10.006>

¹⁶Vladislav Arkhipov and Victor Naumov, 'The Legal Definition of Personal Data in the Regulatory Environment of the Russian Federation: Between Formal Certainty and Technological Development', *Computer Law and Security Review*, 32.6 (2016), 868–87 <https://doi.org/10.1016/j.clsr.2016.07.009>

¹⁷Salahuddin Gaffar and others, 'The Concept of Procedural Law Regarding the Implementation of Collective Agreements with Legal Certainty in Termination of Employment in Indonesia', *Heliyon*, 7.4 (2021), e06690 <https://doi.org/10.1016/j.heliyon.2021.e06690>

of as something that exists at all times; rather, the means employed should be in line with the context and conditions, taking into account the principles of benefit and efficiency.

ODR is an institution that replaces the way the courts work. The parties negate the court's jurisdiction by choosing ODR as a dispute resolution¹⁸. Arbitration is the binding adjudicative procedure, which means that arbitration is a dispute resolution that results in a decision binding on the parties. Therefore, the arbitrator is given the power to make a binding decision in this case. The ODR award is made online and issued by the arbitrator via e-mail, as discussed in the previous chapter, indicating that the prize is in softcopy format. Meanwhile, under the New York Convention, the party seeking recognition and enforcement of an arbitral award must submit a duly authenticated original award or a certified copy of the prize (New York Convention Article IV paragraph (1)). This requires a trusted third party, such as the diplomatic corps or the consulate general, to authenticate the arbitrator's signature. The arbitrator is not present and is not a party to the recognition and implementation of the arbitral award, so this stricter requirement is enforced. Undoubtedly, an online prize is ineligible for enforcement under the New York Convention. The Law on Arbitration and Alternative Dispute Resolution also requires the honor to be made in writing, original, and based on Law No. 30 of 1999 concerning international decisions. Still, it is unclear whether a signature is required.

The application submission for implementation, as referred to in paragraph (1), must be accompanied by: the original sheet or an authentic copy of the international arbitral award, by the provisions regarding the authentication of foreign documents and the official translation in the Indonesian language. The requirements provided by the Arbitration and Alternative Dispute Resolution Act do not require that the original sheet be authenticated first, as provided for in the New York Convention¹⁹. However, this does not mean we cannot use ODR to resolve disputes. Although juridically, the Arbitration and Alternative Dispute Resolution Law do not regulate ODR, it does not mean that it cannot be enforced in Indonesia. Arbitrators and judges can use the discovery method in terms of implementation²⁰. Several ways of legal discovery can be interpreted and analogy to explain the provisions of the articles in the Arbitration Law and Alternative Dispute Resolution. The use of interpretation methods can be emphasized with futuristic, teleological, systematic, comparative, and extensive interpretations. While the analog At the same time, is applied because the Arbitration and Dispute Resolution Law does not discuss online arbitration, so similar things that are not regulated by law can be equated with those in the law²¹. Therefore, both agreements, decisions, and signatures made through electronic means can be correlated with contracts, judgments, or signatures using ink on paper because they are similar or similar.

4. Conclusion

Although juridically, the Arbitration and Alternative Dispute Resolution Law do not regulate ODR, it does not mean that it cannot be enforced in Indonesia. Arbitrators and judges can use the discovery method to implement ODR decisions. Some forms of legal discovery that can be done are interpretation and analogy to explain the provisions of the articles in the Arbitration Law and Alternative Dispute Resolution. Therefore, both agreements, decisions, and signatures made through electronic means can be equated with contracts, judgments, or signatures using ink on paper because they are similar to or similar to agreements, decisions, or signatures made conventionally.

¹⁸Fahimeh Abedi, John Zeleznikow, and Chris Brien, 'Developing Regulatory Standards for the Concept of Security in Online Dispute Resolution Systems', *Computer Law and Security Review*, 35.5 (2019) <https://doi.org/10.1016/j.clsr.2019.05.003>

¹⁹Valentina Dimitrova-Grajzl and others, 'Courts in a Transition Economy: Case Disposition and the Quantity-Quality Tradeoff in Bulgaria', *Economic Systems*, 40.1 (2016), 18–38 <https://doi.org/10.1016/j.ecosys.2015.09.002>

²⁰Lee, Yiu, and Cheung.

²¹Meirong Guo, 'Internet Court's Challenges and Future in China', *Computer Law and Security Review*, 40 (2021), 105522 <https://doi.org/10.1016/j.clsr.2020.105522>

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