

## The Impact of Justice Values on Business Disputes in Electronic Transactions

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### ABSTRACT

Type of research used was descriptive-analytical research. The approach method used was socio legal research. The study of socio legal research is a study that "combines" the study of doctrinal law with social studies. Sources of the data in the study consisted of data obtained directly and from library materials. This study used secondary and primary data obtained through data collection methods in the following way: Library study and field study done by conducting interviews. The data analysis used was descriptive qualitative. Research Results show that online arbitration is very appropriate to be applied as an effort to resolve the dispute in e-commerce. The e-commerce nature does not know the distance, anyone can connect with only using internetconnection. In Indonesia, it has been regulated on Information and Electronic Transaction in Law No. 11 of 2008 and Law No. 7 of 2014 in Chapter VIII on Trade through electronic systems. This opportunity should be utilized by the government to immediately make a new regulation on the dispute settlement through online arbitration as Law No. 30 of 1999 which regulates conventional arbitration which is currently still used as an alternative dispute resolution in the case of e-commerce disputes. It is in the sense of not following the development of the times to be enacted in the settlement of the Online Dispute. E-commerce is becoming more modern with technological developments that are increasingly advanced. Therefore, it is needed appropriate ways and clear legal efforts.

**Keywords: Business Dispute, Dispute Settlement, Justice Value**

### BACKGROUND

The existence of the information society is characterized by the use of the Internet that tends to expand in various activities of human life. This has placed information as a very important and profitable economic commodity. Information technology has a major influence on people's lives. Information and communication technology has also changed the behavior of society and human civilization globally. With the emergence of the Internet, emerging a new kind of world that had never before been known by humans, the world called the virtual world.

The emergence of the virtual world has changed the habits of many people especially in their life accustomed to use the Internet. Starting from changing the ways and means of business transactions or banking transactions conducted by using the Internet. It takes place in the virtual world called electronic transactions, education, health, tele-work, transportation, tourism industry, environment, up to the entertainment sector. In addition to creating new opportunities in people's

lives, the sophistication of information and communication technologies has provided ease in everyday work.

Technological advances marked by the emergence of the Internet can be operated by using electronic media such as computers. Computers are one of the causes of social change in society. It changes the behavior in interacting with other human beings, which continue to spread other parts of the human life, so that it creates new norms, new values, and so forth.

Nowadays, the advancement of information technology, electronic media and globalization occurs almost in all areas of life. Technological advances are characterized by the emergence of the Internet that can be operated by using electronic media such as computers, mobile phones, and gadgets. Along with the rapid technological progress, it also affects the implementation of trading activities in the community that is also growing very rapidly. Utilization of information systems in the business sector will help and improve performance. One aspect of economic activity in the world is almost entirely using internet media. Economic activity using internet media is known as e-commerce. It should be emphasized that e-commerce is a dynamic set of technologies, applications and business processes that connect companies, consumers and communities through electronic transactions and trade in goods, services and information held electronically.

In order for a company to compete in today's information age, a company must transform its internal foundations structurally by developing an e-business strategy. The presence of the Internet, while still a new industry, is in a constantly changing phase of growth, and full of uncertainty. It has reinforced the belief in the importance of technology's role in achieving corporate financial goals through the modification and efficiency of business processes by utilizing e-commerce. The advantage of e-commerce is to provide convenience for consumers in transactions, because consumers do not have to meet physically, while for sellers, ecommerce can cut operating costs.

In order to anticipate the development of technology and its utilization, especially commercial transactions, in 2008 established Law Number 11 Year 2008 About Information and Electronic Transactions. The government needs to support the development of information technology through legal infrastructure and its arrangement, so that the utilization of information technology is done safely to prevent its misuse by taking into account the religious and socio-cultural values of Indonesian society.

This all-digital Internet technology can serve as an effective and efficient strategic promotion venue, since the internet can reach all the legal jurisdictions of countries in the world as opposed to that positive indicator, are a number of factors that integrate effectively harm consumer rights. One of these factors is that the marketed product is unfit for consumer consumption and is not in accordance with what the businessperson promotes, so that consumer rights are often ignored by them. For the less sensitive parties, the existence of the Consumer Protection Act is considered adequate to protect consumers who transact through the internet media.<sup>1</sup>

Economic activity using internet or e-commerce media, on the one hand, is very beneficial to the consumer, because it has more choices in getting goods and services. On the other hand, this type of e-commerce trading can occur violations of the rights as a very risky consumer occurs, then it is very important that legal protection of consumers in the e-commerce transaction is required.

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man Sjahputra, *Perlindungan Konsumen Dalam Transaksi Elektronik*, Alumni, Bandung, 2010, page. 3.

Disputes or issues in various business activities are actually something that is not expected to happen because it can cause harm to the parties to the dispute, whether they are in the right position or in the wrong position. Something that is often faced in situations like this is the emergence of disputes. Disputes are things that have become part of human life. Therefore, the dispute cannot be separated from human life. The occurrence of business dispute should be avoided to maintain good reputation and good relationships ahead. Nevertheless, disputes are sometimes unavoidable due to misunderstandings, violations of legislation, broken promises, conflicting interests, and or loss to either party.

There is a relationship between the seller and the buyer in an e-commerce. Legal relationships that give rise to rights and obligations are essentially regulated in legal regulations, it is called legal relationships. Civil law regulates the rights and duties of persons who enter into legal relations that include regulations is written in the form of legislation and the unwritten form of customary law and customs that live in the community.

In Article 1313 of the Civil Code it reads "An agreement is a work in which one or more parties commit themselves to one or more persons". The definition of the agreement described in this article has made it clear that there is a binding element between each other to make an agreement which in the author's study is a sale and purchase agreement through internet e-commerce.

However, in the observation of some experts based on the meaning of the agreement according to them, the definition of the article is not clear because every act can be regarded as agreement, unclear definition according to the Article is because in the formula only mentioned its actions alone, so that the experts have their own views with the definition of the agreements include:

According to Subekti, the formulation of the agreement is as follows that: "The agreement is a legal event between two or more parties on the basis of an agreement to cause a legal effect". According to Sudikno Mertokusumo, agreement is a legal relationship between two or more parties based on mutual agree to cause legal consequences. That is, both parties agree to set rules or rights and obligations that bind them to be obeyed and implemented. The agreement is to cause the legal consequences of raising rights and obligations, so that if the agreement is violated, there will be legal consequences or sanctions for the offender.

The contents of the Internet sell and purchase agreement in e-commerce has differences in marking or declaration of intent, but the essence of the contents of the agreement is generally the same. The existing agreement is essentially the same that the components of the party's actors and consumers who make transactions similar to the trade in general, only different media used

Legal Protection in the agreement. Legal protection for the customer lies in the guarantee of return or exchange of goods if the goods received are not in accordance with the ordered ones as described in Article 19 of Law no. 8 of 1999 concerning consumer protection. In the case of compensation made by the seller to the consumer states that "The business actor is responsible to provide compensation for damage, pollution, and or loss of consumers due to consuming goods and or services produced or traded". In terms of Electronic evidence. The law of evidence in Indonesian electronic transactions still bases its provisions on the Civil Code.

In Indonesia there are actually some things that lead to the use and acknowledgment of electronic documents as valid evidence, for example: (a) The recognition of online trading in stock

exchange activities, (b) arrangement of micro film as a storage medium of Company documents which have been assigned as authentic written evidence in Law Number 8 Year 1997 regarding Company Documents. However, such arrangements cannot support and accommodate cyberspace in general and e-commerce transactions in particular.

Responsibility of the parties in the sale and purchase transactions through the internet media. The parties' responsibilities in electronic sell and purchase transactions are carried out by the parties concerned, although the parties do not meet directly with each other in the transaction, but the transaction is connected via the Internet. In sell and purchase electronically, the parties involved are: First, the seller or merchant that offers a product through the Internet as a business actor; Secondly, the buyer is everyone not prohibited by law, which receives an offer from the seller or the business actor and willing to conduct sale and purchase transactions of products offered by the seller, Third, the bank as the channel of funds from buyers or consumers to sellers or business actors/merchants. Since the sale and purchase transactions are made electronically, sellers and buyers do not meet face to face, because they are on different locations so that payment can be made through intermediaries in this case that is Bank, Fourth, provider as provider of Internet access service.

Consumers sometimes do not understand how to transact through the internet, facing new trading methods with the internet media is unlike the usual trading in the market where sellers and buyers meet. The goods traded can be bargained, consumers can directly touch the goods they want to buy and anyone can do it, trading with internet media is very different from conventional trading. As for the Settlement of disputes in e-commerce transactions that are not covered by the Consumer Protection Act. E-commerce transactions are like a conventional transaction which creates rights and obligations between business actors and consumers. In the fulfillment of these rights and obligations are not always smooth.

## **RESEARCH RESULT AND DISCUSSION**

The development of online business is very rapid at this time. Internet that has been accessible almost all the people in the world up to this remote has made it easier for us to search for information in as much detail. But over time, accessing the internet now does not stop until just "looking for information" but it has evolved into service. For example, what Go-jek has done with service to buy food for customers (Go-food).

With the help of technology, everyday activities are getting easier, including shopping. Currently, there are hundreds of online shopping-based pilot companies that provide services with various promotions. Internet users just choose what online shopping service that h/she wants to use, of course based on attribution given e-commerce companies such as price competition, service, security, and others.

The ecosystem of e-commerce in Indonesia is growing bigger, the users are also increasingly widespread and loyal. Just like the proverb "the higher the tree, the faster the wind hits" this also applies to the e-commerce business. Various challenges must be faced in order to maintain the stability of companies that lead to customer satisfaction.

To achieve the expected goals, of course there are challenges for the of e-commerce business actors in Indonesia. According to the Chairman of Indonesia E-Commerce Association (idEA), Aulia E. Marinto, in the implementation of Indonesia E-Commerce Summit & Expo (IESE) 2017, he stated

that some of the main challenges of e-commerce include online transaction security, logistics, -other. However, the fundamental challenge that must be faced is the need for synchronization efforts that must be pursued by all industries and e-commerce actors in order to achieve maximum results.

Aulia is also optimistic by seeing this huge prospect and opportunity, it is not impossible that Indonesia will be the next China or India in the world of e-commerce. However, behind some of the great plans followed by e-commerce in Indonesia, some of them have found obstacles.

Currently, the development of e-commerce and digital economy is being intensified in Indonesia. Innovative things are increasingly done by e-commerce and UMKM (Small and Medium Enterprises) activists. Looking at some of the major e-commerce in Indonesia such as Go-jek and Tokopedia, this proved to have opened many jobs for anyone, ranging from small and medium business (UMKM) as merchant shop to Go-jek drivers.

Go-Jek now is no longer just a motorcycle taxi, but has become a lifestyle. Go-jek also has implemented a payment system with Go-pay that greatly facilitate payment. By working with banks, such a system would like to continue to advance the digital economy in Indonesia.

Economic activities using the internet or e-commerce media on the one hand is very beneficial to the consumer, because it has more options in getting goods and services, but on the other hand, this type of e-commerce trading can occur violations of the rights as consumers are very risky happen. Therefore, it is necessary to provide legal protection to consumers in the e-commerce transaction.

Disputes in various business activities are actually something that is not expected to happen because it can cause harm to the parties to the dispute, whether they are in the right position or in the wrong position. Something that is often faced in situations like this is the emergence of disputes. Disputes are things that have become part of human life. Therefore, the dispute cannot be separated from human life. The occurrence of business disputes should be avoided to maintain good reputation and good relations. However, disputes are sometimes inevitable due to misunderstandings, violations of legislation, broken promises, conflicting interests, and / or harm to either party.

There is a relationship between the seller and the buyer in an e-commerce. Legal relationships that give rise to rights and obligations are essentially regulated in legal regulations are called legal relationships. In civil law is regulated on the rights and duties of persons who enter into legal relations that include regulations is written in the form of legislation and the unwritten form of customary law and customs that live in the community.

Article 1313 of the Civil Code reads "An agreement is an act by which one or more parties commit themselves to one or more persons". The definition of the agreement described in this article has made it clear that there is a binding element between each other to make an agreement which in the author's study is a sale and purchase agreement through internet e-commerce.

In the new method of trading with internet media, consumers sometimes do not understand how to transact through the internet. It is unlike the usual trading in the market where sellers and buyers meet, goods traded, it is different between Trade through internet media with conventional trading.

The Consumer Protection Act cannot reach the Settlement of disputes in the commerce transactions. E-commerce transactions are just like a conventional transaction which creates rights

and obligations between business actors and consumers. In the fulfillment of these rights and duties are not easy.

Disputes between business actors and consumers are possible. If the business actor and the consumer are located in the territory of the Republic of Indonesia, then dispute settlement can be conducted according to the dispute settlement in UUPK. However, what if the business actor is not in the territory of the Republic of Indonesia while the consumer is Indonesian citizen? Effective and efficient ways to solve the problem should be selected. To overcome this problem is to use alternative dispute resolution. Alternative dispute settlement is more efficient than through court.

The development of e-commerce in Indonesia will continue to increase every year, so the chances of a dispute will be a very serious thing to note the Government. The utilization of internet technology in online trading requires rules in accordance with the times in the settlement of disputes that occur.

Gary Good Paster in the "Review of the Settlement of Dispute" in the book of Arbitration in Indonesia says:

"Every society has a variety of ways to gain consensus in the proceedings or to resolve disputes and conflicts. The way in which a particular dispute clearly has consequences for both conflicting parties and the community in the broadest sense. Because of these consequences is to channel certain disputes to the most appropriate dispute resolution mechanism for them. "

This means that in the settlement of a conflict, there are various ways that can be taken by a person or society. Each dispute settlement has different consequences. Currently dispute resolution or conflict has begun to move solvency by non-litigation known as Alternative Dispute Resolution (ADR). In the United States and in Australia nearly 90 percent of disputes are resolved through litigation, especially among businesspeople. Similarly in Indonesia the settlement of disputes through this institution has begun to appear, especially among businessmen, although the frequency is still very little.

Alternative Dispute Resolution (ADR) is a foreign term that needs to be drawn in its Indonesian equivalent. Various terms in the Indonesian language have been introduced in various forums by various parties, such as the Settlement Option (PPS), Alternative Dispute Mechanism (MAPS), non-court dispute resolution options, and mechanism of dispute settlement cooperatively.

ADR is defined as alternative litigation and alternative adjudication. The selection of one of these two meanings has different implications. In the case of an alternative litigation, the entire dispute resolution mechanism outside the court, including arbitration, is for the ADR. If ADR (outside litigation and arbitration) is part of the definition of ADR as an alternative adjudication may include consensual or cooperative dispute resolution mechanisms such as negotiation, mediation, and conciliation. Judging from the development of ADR in the United States, the ADR in question is ADR as an alternative adjudication. This is because the adjudication outcome of both the court and the arbitration tends to produce "win-lose" instead of "win-win", so that the acceptable solution after the very small mutual acceptable solution is achieved.

The term ADR gives the impression that the development of a dispute resolution mechanism by consensus can only be done outside the court (outcourt), whereas currently it is also required in

court (courtannexed or court connected). The various definitions of ADR are based on psychological considerations to gain support for settlement through ADR from the court. ADR seems to be the answer to the failure of the court to provide access to justice for the community so that the termination of this term invites insecurity jealousy for the court insane.

Altschul quoted by H. Priyatna Abdurrasyid in his book "Arbitration and Alternative Dispute Settlement" said that ADR is "a trial of fact before a private tribunal agreed to by the parties so as to save legal costs, avoid publicity, and avoid lengthy trial delays". Altschul said that the alternative dispute resolution is a dispute resolution by a private assembly agreed by the parties with the objective of saving the cost of the case, negating publicity and abolishing the ruthless examination, while Phillip D. Bostwick (going private with the judicial system: 1995) Alternative Dispute Resolution (ADR) is: "A set of experience and objective law (*A set of practices and legal techniques that aim*):

- a. Resolving lawsuits on the ground to judge the leverage of the parties (To permit legal dispute to be resolved out of the courts for the benefit of all disputants)
- b. Reduce the cost of conventional litigation and unusual time retention (To reduce the cost of conventional litigation and the delay to which it is ordinarily subjected).
- c. Prevent the occurrence of legal disputes that are usually filed in court (To prevent legal disputes that would otherwise likely be brought to the courts) "

Jacqueline M. Nolan-Haley quoted by Joni Emirzon in his book "Indonesian business law explains that ADR" is an umbrella term which refers to general alternative to court adjudication of disputes such as negotiation, mediation, arbitration, mini-trial and summary jury trial ". Here Jacqueline M. Nolan-Haley emphasizes that the alternative dispute settlement as a protective term refers generally to alternatives to adjudication of the courts of the conflict, without addressing conciliation as an alternative dispute resolution form.

Black's Law Dictionary explains ADR is:

Terms refer to procedures setting dispute by means other than litigation; e.g. by arbitration, mediation, mini-trial. Such procedures which are usually less costly and more expeditious, are increasingly being used in commercial and labor dispute, divorce action, in resolving motor vehicle and medical malpractice tort claims, and in other disputes that would likely otherwise involve court litigation.

In Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, Alternative Settlement of Disputes shall be construed as a dispute resolution or disagreement institution through a procedure agreed upon by the parties, namely settlement in the courts by means of consultation, mediation, consolidation or expert judgment (Article 1 number 10).

Therefore, it can be concluded that ADR or APS is a process of dispute resolution in which the disputing parties can assist or be involved in resolving a dispute or involving a neutral third party.

Alternative dispute settlements offer various forms of flexible completion process by applying one or several forms of mechanisms that are designed and adapted to the needs and hence the dispute is endeavored to reach a final settlement. These efforts are conducted through processes that are informal and appropriate to a sometimes very private dispute or through mechanisms that are jointly drawn up by the parties in order to be exploited in the future for larger, technical and complex disputes. Understanding disputes appropriately taking into account their implications will be able to

assist the requested third party neutrally / independently through alternative dispute resolution mechanisms to arrive at settlement. Or allow designing a process of most mechanisms with their disputes.

In Indonesia, in the settlement of trade disputes, we are familiar with litigation and non-litigation settlement. However, since the settlement using the litigation lane is considered a waste of time and costly, so most in the case of dispute resolution the disputing parties choose to use the non-litigation lane one of which is minimized arbitration, but in accordance with the conventional arbitration era is deemed to be no longer suitable for application in online trading cases.

Online arbitrage is one of the alternative dispute resolution currently used in some developed countries as an alternative to online dispute resolution. Online arbitrage is basically the same as Conventional arbitrage only Internet-based online arbitration and Website as the medium, if the e-commerce dispute that occurs between one country maybe It will not be a problem but what if the problems that occur between different countries of course this will be a problem in terms of time and cost.

Online arbitration is very appropriate to be applied in an e-commerce dispute solution that is not familiar with distance; anyone can connect using only internet connection. In Indonesia, it has been regulated on Information and Electronic Transaction in Law No. 11 of 2008 and Law No. 7 of 2014 in Chapter VIII on Trade through electronic systems.

This opportunity should be utilized by the government to immediately make a new regulation on the dispute settlement through online arbitration as Law No. 30 of 1999 which regulates conventional arbitration which is currently still used as an alternative dispute resolution in the case of e-commerce disputes, it is in the sense of not following the development of the times to be enacted in the settlement of the Online Dispute, which is becoming more modern with technological developments that are increasingly advanced. Therefore, it is needed appropriate ways and clear legal efforts.

With regards to the complexity of contractual relationships in the business world, particularly with regard to fairness in commercial contracts, we cannot be glued to the classical distinction of justice based on these thoughts. It means that the analysis of justice in a contract must combine the concept of equal rights in exchange (achievement-contra-achievement) as understood in the context of commutative justice and the concept of distributive justice as the basis of contractual relations.

Understanding fairness in commercial contracts should not lead us to a monistic attitude, but more than that must be comprehensive. In commutative justice the basis of the relationship between persons, including contracts, should not be understood as equality merely because this view will bring injustice when confronted with the imbalances of contracting parties. In commutative justice therein is contained the meaning of distribution-proportional. Similarly, in distributive justice that is patterned in state relations with citizens, the concept of proportional distribution contained therein may be drawn to the perspective of contractual relations of the parties.

Justice is one of the objectives of law in addition to legal certainty and legal benefit. The essence of law rests on the idea of justice and moral strength. The idea of justice is never out of touch with the law, for speaking of the law, clearly or vaguely is always a matter of justice. Kahar Masyhur states what he called fair:



- a. Fair is putting something in its place.
- b. Fair is accepting rights without more and granting the rights of others without less.
- c. It is fair to grant the right of every entitled to a fuller without less between the rightful fellow, in the same circumstances, and the punishment of the wicked or unlawful, in accordance with his error and offense.

One of the prevalence life of Indonesian society from time to time resolves various disputes by restoring brotherhood and friendship. In modern legal language it is known "WIN WIN SOLUTION" and this is the essential or essential objective of Arbitration, Mediation, or other means of resolving disputes outside the judicial process.

In general, arbitration, mediation or other means of dispute settlement outside of court proceedings are equivalent to disputes examined by persons skilled in the disputed object with relatively quick settlement times, mild costs and parties may resolve disputes without publication that could harm reputation and so forth. Arbitration, mediation or other means of settling disputes outside the court process have the intention to resolve disputes rather than simply deciding cases or disputes.

Online Arbitration as an Alternative to Settlement the dispute is not explicitly regulated in the Indonesian Legal System because Law Number 30 Year 1999 and Law Number 11 Year 2008 do not expressly govern the procedures of online arbitration. Arbitration arrangement online explicitly as an alternative dispute resolution can be applied in Indonesia because it is appropriate and not contradictory to the existing legislation, especially Law Number 30 Year 1999 and Law Number 11 Year 2008

Online arbitrage has several advantages among others: the confidentiality of the parties is maintained, can grow business ethics for employers, the legal certainty, timing and mechanism of online arbitration quickly, cheap and simple, arbitrators in the field, the relationship of the parties remain harmonious and impartial. The lack of an online arbitration procedure when applied in Indonesia is the absence of a sufficient set of complementary support and accessory procedures. Such as, websites integrated with data base applications to accommodate incoming applications, arbitrator lists and necessary regulations regarding the petition to arbitrate. In addition, adequate security applications and equipped with good encryption technology. Of course, it is also necessary to provide chat rooms and bulletin boards based on real-time audiovisual streaming and Content Management System specifically for arbitrators.

Future arbitrageonline has good prospects, but to apply online arbitration is not as easy as expected. These barriers include: regulatory factors, security, infrastructure, culture, customs and institutions. How to overcome these obstacles with the compilation of new laws governing online arbitration equipped with telecommunications infrastructure and security systems and institutions that handle arbitration cases online.

## CONCLUSION

With the help of technology, everyday activities are getting easier, including shopping. Currently there are hundreds of online shopping-based pilot companies that provide services with various promotions. Internet users just choose what online shopping service that he

wants to use, of course based on attribution given e-commerce companies such as price competition, service, security, and others. The development of e-commerce in Indonesia will continue to increase every year, so the chances of a dispute will be a very serious thing to note the Government, the utilization of internet technology in online trading requires rules in accordance with the times in the settlement of disputes that occur. Online arbitrage is one of the alternative dispute resolution currently used in some developed countries as an alternative to online dispute resolution. Online arbitrage is basically the same as Conventional arbitrage only Internet-based online arbitration and Website as the medium, if the e-commerce dispute that occurs between one country maybe It will not be a problem but what if the problems that occur between different countries of course this will be a problem in terms of time and cost.

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