



Dispute Resolution Mechanism in Buying and Sale Transactions Conducted in E-Commerce

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ABSTRACT

The advancement of information technology today provides freedom of distance, space and time to improve human performance in various activities, thereby increasing productivity and efficiency. People also use this technology as a source of income in their spare time, as entrepreneurs and consumers who offer goods and services through electronic media connected via the Internet. With the development of information flow and increasingly sophisticated digital technology, as well as the increasing use of mobile devices, this has led to changes in consumer behavior. Many people are starting to use online stores. The use of technology and information through online media in business is known as online buying and selling. The nature of the investigation itself is to obtain the truth based on the actual facts. This research method uses a normative legal research method, with a statutory approach and a conceptual approach. The legal materials used are primary legal materials including: the Law Code from the results of the research it can be concluded that: if a dispute occurs in a buying and selling transaction via the internet, it can basically be done through the courts (litigation) or outside the courts (non-litigation) such as Negotiation, Mediation and Arbitration. However, in general, the disputing parties will be more inclined to resolve the dispute through non-litigation channels because the costs are relatively cheap, decisions can be made in a relatively short time, and the force of the decision is the same as a court decision which is final and binding.

Keywords: Consumer Protection, Dispute Resolution, Non Litigation.

Introduction

The buying and selling transaction via social media or online is a buying and selling system that is carried out online or is also commonly called E-Commerce. This is due to the increasingly rapid development of existing technology which is



increasingly developing rapidly with the aim of facilitating people's buying and selling activities online.¹

The presence of online buying and selling transactions also offers benefits for both business actors and consumers. However, online buying and selling transactions also have the potential for losses that cause disputes or legal problems between the parties. Disputes related to online sales usually occur after a breach of contract or an act of resistance results in a loss.²

Such conditions make many people seek justice to overcome it, therefore Law Number 30 of 1999 concerning Arbitration and Alternative Legal Efforts for Dispute Resolution was formed to create space for the resolution of disputes by the wider community through judicial or non-judicial institutions and not using a formal legal approach. Procedures for peaceful dispute resolution Arbitration, negotiation, and mediation.³

Law Number 19 of 2019 concerning Electronic Information and Transactions (UUITE) and Law Number 8 of 1999 concerning Consumer Protection (UUPK) have a similar relationship in maintaining consumer protection and resolving consumer disputes. Both laws regulate consumer protection and consumer dispute resolution in electronic transactions.

Overall, Law Number 19 of 2016 concerning ITE and Law Number 8 of 1999 concerning Consumer Protection show that the Indonesian government places great emphasis on the importance of protecting consumers and safeguarding consumer rights in electronic transactions. By regulating consumer protection and consumer dispute resolution in electronic transactions, these two laws aim to protect consumers from errors and abuse.

Dispute Resolution that occurs in an online sales agreement if there is a party who is harmed, namely, they can ask for compensation for default, because the default has harmed the other party. Compensation for default can be in the form of fulfillment

¹ Admiral, “kebebasan berkontrak yang berorientasi pada penyelesaian sengketa di luar pengadilan”, jurnal uniks, Jakarta, 2010 h.45.

² N, Amriani, Mediasi Alternatif Penyelesaian Sengketa di Pengadilan, Grafindo Persada, Jawa Barat (2012) h.23.



of the agreement, fulfillment of the agreement and compensation, ordinary compensation, cancellation of the agreement with compensation, and in an online sales agreement the stage that can be taken to resolve the dispute is through Litigation or through the court process.

Research Method

This research uses a normative legal research method, namely legal research conducted by examining library materials or secondary data. According to Peter Mahmud Marzuki, normative legal research is a process of finding a legal rule, legal principles, or legal doctrines in order to answer the legal issues faced..⁴

Because the type of research used is normative juridical, the approach used is a legal and conceptual approach. The statutory approach is carried out by reviewing all laws and regulations that are related to the legal issue being handled.

The conceptual approach is an approach that starts from the views and doctrines that have developed in legal science, in order to find ideas that give rise to conceptual understanding and relevant legal principles as a basis for building a legal argument in solving the legal issues faced.

Results and Discussion

Dispute resolution of Online Purchase Transactions is possible to be resolved especially those involving small value disputes in the right forum, namely with Online Dispute Resolution (ODR) online which is a practical way to provide customers with the right, cheap and effective remedy and reduce the determination of cases in foreign countries. There are several advantages for buyers and E-Commerce transaction business actors in resolving disputes through ODR (Online Dispute Resolution), including: First, saving time and money. This advantage is because the parties do not need to pay the costs that must be incurred to attend the trial and the costs associated with it. The speed of ODR is one of its basic advantages, the parties and the neutral party do not need to travel to meet, they do not need to be there at the same time, the

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*. Kencana Prenada Group, Jakarta, 2007, h.35



period between submissions can be short, settlement can be based on documents alone. Second, usually the cost of civil dispute resolution services is a combination of the costs of the dispute resolution institution, fees, and costs of the neutral party, the costs of the parties, legal costs. In ODR some of these costs are absent or significantly reduced.

Dispute resolution in online transactions refers to the process of resolving conflicts or disputes that arise between buyers and sellers in the context of transactions conducted online. This can involve various types of transactions, ranging from the purchase of consumer goods to digital services.

The definition of dispute resolution in online transactions includes several things:

1. Resolution Process: This includes the series of steps taken to resolve a dispute between a buyer and a seller. This process can take place informally through direct negotiation, or through a formal process such as mediation, arbitration, or court.
2. Collaborative Approach: In online dispute resolution, there is sometimes a greater emphasis on a collaborative approach, where the buyer and seller work together to find a mutually satisfactory solution. This can be done through direct communication or through mechanisms such as mediation.
3. Application of Law: Online dispute resolution also involves the application of relevant laws, be it consumer law, e-commerce law, or the applicable law in the jurisdiction where the transaction took place. The application of these laws can help establish the rights and obligations of each party.
4. Formal and Informal Mechanisms: There are various mechanisms that can be used to resolve disputes in online transactions. These can include formal processes such as arbitration or courts, or informal mechanisms such as direct negotiation or resolution via social media platforms.
5. Importance of Efficiency and Trust: In the context of online transactions, it is important to resolve disputes in an efficient and trustworthy manner. This helps maintain trust between consumers and businesses, and ensures the smooth running of e-commerce.

Basically, dispute resolution in online transactions aims to create a safe and fair environment for consumers and businesses, and to ensure that disputes can be resolved in an appropriate and effective manner. A dispute is a situation where a party feels



disadvantaged by another party, which then conveys this dissatisfaction to the second party. If the situation shows a difference of opinion, then what is called a dispute occurs.

Mediation is a method that can be chosen by the parties to resolve the problem outside the court mechanism. The peace agreement reached in the mediation process can be strengthened into a peace deed by the first instance court. In order for the mediation process to run smoothly, there are various things that need to be considered, including the stages of mediation. Mediation can be done either in or out of court.

Negotiation is one of the dispute resolution methods outside the court. Dispute resolution in this way is also called non-litigation. In general, negotiation is the resolution of disputes through direct discussion or deliberation between the disputing parties.

Arbitration is an efficient trial process, conducted in private, the decision is final and binding, and cost-effective. The parties suing each other can also choose an arbitrator according to their expertise and the disputed case, not necessarily based on legal background.

In every reciprocal work there are always 2 (two) kinds of legal subjects, each of which has reciprocal rights and obligations in implementing the agreements they make. A sale and purchase agreement is a reciprocal agreement between the two legal subjects, namely the buyer and seller certainly have reciprocal rights and obligations.

In an agreement, including a sale and purchase agreement, there is a possibility that one party does not carry out the agreement or does not fulfill the contents of the agreement as they have agreed together. If one party does not carry out what was agreed, or more clearly what is the obligation according to the agreement they made, then it is said that the party is in default, which means not fulfilling the performance promised in the agreement. From the existence of this default, a dispute will arise. Wirjono Prodjodikoro, said that: "Default means the absence of a performance in contract law, meaning that something must be carried out as the contents of an agreement. Perhaps in Indonesian the term implementation of a promise can be used for performance and the absence of implementation of a promise for default".



Mariam Darus Badruzaman stated more firmly that: "If in a contract the debtor due to his own fault does not carry out what was agreed upon, then the debtor is said to be in default."⁵.

From the description above, it is clear what is actually meant by default. To determine whether a (debtor) is guilty of default, it is necessary to determine under what circumstances a person is said to be negligent (*alpa/culpa*) in not fulfilling the performance. R. Subekti, stated that: "A debtor's default (negligence or negligence) can be in the form of 4 (four) types⁶:

1. Not doing what he promised to do
2. Carrying out what was promised, but not as promised
3. Carrying out what was promised, but late
4. Carrying out something that according to the agreement should not be carried out.

In a sale and purchase agreement, if one of the parties, either the seller or the buyer, does not carry out the agreement they have agreed to, it means that the party has committed a breach of contract. The possible forms of breach of contract according to the forms of breach of contract as stated by R. Subekti, include::

1. Not carrying out what was promised to be done For example, in a sales agreement, it is agreed to use a payment system in stages, namely the price of the goods is given 20% (twenty percent) paid after the agreement letter is agreed upon by both parties. However, after the seller delivers the goods, it turns out that the 20% (twenty percent) has not been paid in full by the buyer, even though the seller has sent the invoice to the related party.
2. Carrying out what was promised, but not as agreed, for example, in a sales agreement it is agreed to provide a down payment, given at 20% (twenty percent) after the agreement is approved. In reality, the remaining payment has not been paid by the buyer to the seller while the goods sold have been handed over to the buyer. In this case, even though the buyer has paid a down payment for the initial selling price of the goods to

⁵ Mariam Darus Badruzaman, *Hukum Perdata Tentang Perikatan*, Penerbit Fakultas Hukum USU, Medan, 1974, h.32.

⁶ R. Subekti, *Hukum Perjanjian*, Cetakan XI, PT. Intermasa, Jakarta, 1987, h. 23.



the seller, but the rest has not been paid, it means that the buyer has defaulted on part of his obligations in this sales agreement.

3. Carrying out the agreement that was promised, but late For example, in a sales agreement, it is agreed to use a term system in paying the selling price of goods, namely after the warranty period of the goods sold has expired. However, after the warranty period of the goods sold has expired, the buyer does not immediately make the payment, but only makes the payment after the agreed time has passed. In this case, even though the buyer finally fulfills his obligations after the agreed time has passed, but because it is late, it can be said that the buyer has committed a breach of contract. So if the seller cannot receive payment for reasons of delay, he can dispute that the buyer has committed a breach of contract because he is late in fulfilling his obligations.
4. Carrying out something that according to the agreement is not allowed to be done For example, in this case, the seller does not sell goods with the actual quality or the goods sold are imitations, but the price remains the same as the price of the original goods. So in this case, it can be said that the seller has committed a breach of contract and the buyer can file a claim for breach of contract for the seller's actions.

Furthermore, in examining the issue of default, it is necessary to question whether the result of the default is that one party feels disadvantaged, and if a dispute eventually arises between the two due to the default. What efforts can be taken by the disadvantaged party so that he does not feel very disadvantaged? As usual, due to the failure to perform a performance by one party in an agreement, the other party will suffer a loss. Of course, this is not desired at all by the party suffering the loss, but the case has already occurred, the parties can only try to keep the losses as small as possible.

Default is a legal term used to refer to a breach or non-compliance with an agreement by one of the parties involved. In the context of a contract, a default occurs when one party fails to fulfill an obligation agreed to in the agreement, whether it is an obligation to pay, deliver goods or services, or perform certain actions in accordance with the terms of the contract.

When a default occurs, the injured party usually has several options, including:

1. File a Damages Claim: The injured party can file a claim for damages to obtain compensation for losses incurred due to the breach of contract.



2. Demand Fulfillment of Contract: The injured party can also file a claim so that the party in breach of contract fulfills its obligations in accordance with the provisions of the contract.
3. Cancellation of Contract: In some cases, serious breach of contract may provide grounds for the injured party to cancel the contract.

Each country has different rules and procedures regarding handling cases of default. Therefore, it is important to consult a local legal expert or refer to the laws applicable in a particular jurisdiction to understand the rights and obligations associated with default.

In the event of a default, the other party as the party suffering the loss can choose between several possibilities, namely:

- 1) The injured party demands the implementation of the agreement
- 2) The injured party demands compensation
- 3) The injured party demands the implementation of the agreement along with compensation
- 4) The injured party demands the cancellation of the agreement
- 5) The injured party demands the cancellation of the agreement along with compensation.

From several possible lawsuits from the injured party mentioned above, for a reciprocal agreement, the provisions of Article 1266 of the Civil Code stipulate that if one party does not fulfill its obligations, the cancellation of the agreement can be requested from the Judge. Thus, based on Article 1266 of the Civil Code, in a sale and purchase agreement, if one party defaults, the injured party can take legal action by suing the Judge for cancellation of the agreement.

In reality, in a legal event including electronic buying and selling transactions, there is the possibility of violations being committed by one or both parties, and such violations of the law may be categorized as Unlawful Acts as stipulated in Article 1365 of the Civil Code which states that:

“Every unlawful act which causes loss to another person, requires the person whose fault it is that caused the loss to compensate for the loss.”.

Article 1365 of the Civil Code does not differentiate between deliberate errors and errors resulting from carelessness, so the judge must be able to assess and consider the



severity of the error committed by a person in relation to this unlawful act, so that the fairest compensation can be determined.⁷.

A person cannot be charged with committing an unlawful act, if the act was carried out in a state of emergency/*noodweer*, *overmacht*, realization of personal rights, due to employment orders or a forgivable misunderstanding. If the element of fault in an act can be proven then he is responsible for the losses caused by his actions, but a person is not only responsible for losses caused by his own fault, but also for acts containing errors committed by people who are his dependents, goods and services. goods under his supervision and his pets, as specified in Article 1366 to Article 1369 of the Civil Code.

Losses caused by unlawful acts can be in the form of material losses and/or immaterial losses. Material losses can consist of actual losses suffered and expected profits. Based on jurisprudence, the provisions on compensation for breach of contract as stipulated in Articles 1243 to 1248 of the Civil Code are applied analogously to compensation caused by unlawful acts. Immaterial losses are losses in the form of a reduction in a person's comfort in life, for example due to insults, physical disabilities and so on, but a person who commits an unlawful act does not always have to provide compensation for the immaterial losses. In order to be able to claim compensation against a person who commits an unlawful act, in addition to there having to be an error, Article 1365 of the Civil Code also requires a causal relationship between the unlawful act, the error and the existing losses, thus the losses that can be claimed for compensation are only losses that are indeed caused by the unlawful act.

There are several legal actions that can be taken by interested parties regarding unlawful acts committed by other parties that result in losses, namely resolving the dispute, either through litigation or filing a lawsuit through an authorized judicial institution in accordance with the provisions of civil procedure law applicable in Indonesia, or based on the procedural law chosen by the parties, or through non-litigation or outside, including through adaptation, negotiation, mediation, conciliation and arbitration in accordance with applicable provisions.

⁷ Subekti, Pokok-Pokok hukum Perdata, Intermasa, Jakarta, 1979, h.56.



Determining the method of resolving disputes as mentioned above depends on the agreement of the disputing parties. If in the original sale and purchase agreement there is no agreement regarding the method of resolving the dispute, then the parties must still agree to choose one method of resolving the dispute that occurs, whether through litigation or non-litigation. If the dispute resolution chosen is through litigation, then the provisions of the applicable civil procedure law must be observed. In Indonesia, according to the provisions of its civil procedure law, an unlawful act must be proven through an examination process in a judicial institution starting from the first level (District Court) to the final level (High Court or perhaps the Supreme Court) on the condition that there is a judge's decision that has permanent and definite legal force.⁸

Thus, in dealing with cases of unlawful acts in electronic buying and selling transactions, existing and applicable provisions can be applied in accordance with the law chosen to be used, considering that buying and selling transactions via the internet have no spatial boundaries, so it is possible for Indonesians to have problems with foreign citizens. The choice of law referred to above is also determined by the contents of the initial agreement when the electronic buying and selling transaction occurs. The legal provisions that can be applied to unlawful acts that occur in electronic buying and selling transactions are the legal provisions contained in the Civil Code, including Article 1365 of the Civil Code. The application of the provisions of Article 1365 is carried out by means of extensive legal interpretation, namely expanding the meaning of the word unlawful act itself, not only those that occur in the real world, but also possible unlawful acts that occur in cyberspace, in this case in electronic buying and selling transactions..

In addition, Article 1365 of the Civil Code can also be applied by constructing analogous law, namely by comparing unlawful acts committed in the real world with the virtual world, so that in the end the elements of unlawful acts as required can still be fulfilled. Although in practice there are difficulties in its application, it is still hoped

⁸ Retnowulan Sutantio dan Iskandar Oerip, *Hukum Acara Perdata Dalam Teori dan Praktek*, Alumni, Bandung, 2000, h 156.



that unlawful acts that occur must still be sanctioned legally so that there is no legal vacuum.

According to the provisions of the Law on Information and Electronic Transactions (ITE), specifically Article 38 paragraph 1, it is stated that the public can file a lawsuit as a representative against a party whose Electronic System and/or use of information technology results in losses for the public, in accordance with the provisions of statutory regulations.

Dispute Resolution According to Law No. 30 of 1999 It is explained that the arbitration decision has permanent legal force and is binding on the parties involved. Law No. 30 of 1999 also provides an explanation in general that the arbitration institution has its own privileges compared to other judicial institutions that make the parties interested in using arbitration. Law No. 30 of 1999 defines the meaning of arbitration as a method for resolving disputes. A civil dispute outside the regular court, the basis of which is an arbitration agreement, the disputing parties must make a written agreement. This is usually referred to as a third party with the arbitrator's term of office. In Indonesia itself, the arbitration path can be said to be open online, including in Article. 31 Article (1) of Law No. 30 of 1999. In this article, the parties can determine the form of the event in the arbitration themselves, including: Conducting Online Arbitration Using Internet-Based Devices. Article 4 paragraph (3) of Law No. 30 of 1999, dispute resolution through arbitration For other forms of communication, please attach confirmation of return of the page. In this case, there is a problem regarding the authenticity of the document. The number is broadcast and used at this event. Because with the advancement of technology like today, Hacking, changing and deleting documents is very easy and fast.⁹

Dispute Resolution According to ITE Law Number 19 of 2019. Online Buying and Selling Transactions According to Law Number 19 of 2016 concerning Electronic Information and Transactions. The definition of electronic transactions based on Article 1 paragraph (2) of Law No. 19 of 2016 Electronic Transactions are legal acts carried out

⁹Hetty Hassanah, Jurnal Wawasan Hukum. Vol. 22. No. 01, Sekolah Tinggi Bandung, Bandung, 2010, h. 78.



using Computers, Computer networks, and/or other electronic media. And from these transactions there must be an agreement between the parties, an agreement is an offer and acceptance made by the seller and buyer. This online offer and acceptance process is no different from the offer and acceptance process in general. The difference is only in the media used, in online transactions the media used is the internet.

In the above understanding there is a similarity, namely the creation of a legal relationship between the parties conducting legal transactions. Law Number 19 of 2019 concerning ITE is present because of the development of the Civil Code and to answer the needs of society which is now full of technology, because this buying and selling transaction uses online media, so that the contract or agreement has also been completed. considered made via the Internet.

Government Regulation (PP) Number 80 of 2019 concerning Electronic Trading (e-commerce) regulates various aspects related to e-commerce in Indonesia, including the resolution of online sales transaction disputes. According to PP No. 80 of 2019, the resolution of online sales transaction disputes must be carried out through mediation mechanisms, arbitration, or accredited consumer dispute resolution institutions..

Article 13 of PP No. 80 of 2019 provides provisions for online buying and selling organizers to provide truth and accuracy of information, conformity between advertising information and physical goods, suitability for consumption of goods or services, legality of goods or services and quality, price, and accessibility of goods or services.

Conclusion

Dispute resolution in online buying and selling transactions via social media can be done using various mechanisms. One effective method is Online Dispute Resolution (ODR), which allows for practical, cheap, and efficient dispute resolution without the need to involve cases in foreign countries. ODR has advantages such as saving time and costs because it does not require physical presence in court, and allows for resolution based on documents only. In addition to ODR, there are also other non-litigation dispute resolution mechanisms such as mediation, negotiation, and arbitration. In the context of dispute resolution, it is necessary to understand the concept of default which occurs when one party does not fulfill its obligations in the agreement, which can result in a



dispute between the parties concerned. In the event of a dispute, the injured party can take various legal actions, including demanding the implementation of the agreement, compensation, or cancellation of the agreement. In the Indonesian context, Law Number 30 of 1999 concerning Arbitration and Law Number 19 of 2016 concerning ITE provide a legal basis for online dispute resolution, with an emphasis on fast and efficient non-litigation resolution. The Consumer Protection Law provides a strong legal basis to protect consumers from various risks and losses. The importance of effective and efficient dispute resolution also requires a mechanism that is in accordance with technological developments, such as Online Dispute Resolution (ODR), which can be a solution to resolve disputes online without the need to involve cases in foreign countries. Thus, strengthening regulations and effective law enforcement are key to ensuring better consumer protection in this digital era.

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