



THE IMPLEMENTATION OF ONLINE DISPUTE RESOLUTION IN INDONESIA'S DIGITAL ECONOMIC SECTOR (CASE STUDY: TOKOPEDIA)

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ABSTRACT

Online Dispute Resolution (ODR) is a form of Alternative Dispute Resolution (APS) with the help of electronic media. This research provides a thorough analysis of the implementation of ODR in disputes that occur in the digital economy sector with a case study of Tokopedia. This research is also supported by a review of regulations and literature related to the legal issues that the author examines. Regarding the implementation and existence of Online Dispute Resolution in Indonesia, there is no specific regulation that specifically regulates it. However, the existence of Law Number 11 of 2008 on Electronic Information and Transactions as amended by Law Number 19 of 2016 ("ITE Law"), Government Regulation Number 80 of 2019 on Trading Through Electronic Systems ("PPE-Commerce"), Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution ("Arbitration and ADR Law") can be said to be sufficient to support the validity of ODR mechanisms and decisions. Looking at digital developments, special arrangements for ODR in an electronic or online-based transaction have become urgent at this time. This is due to the potential disputes that may arise in daily transactions.

Keywords *Online Dispute Resolution; Digital Economic System; Alternative Dispute Resolution; Online-based Transaction*

ABSTRAK

Online Dispute Resolution (ODR) merupakan bentuk dari Alternatif Penyelesaian Sengketa (APS) dengan bantuan media elektronik. Penelitian ini memberikan analisis menyeluruh mengenai implementasi ODR dalam sengketa yang terjadi di sektor ekonomi digital dengan studi kasus Tokopedia. Penelitian ini juga didukung dengan tinjauan terhadap peraturan dan literatur yang terkait dengan isu hukum yang penulis teliti. Terkait dengan pelaksanaan dan keberadaan Online Dispute Resolution di Indonesia, belum ada regulasi khusus yang mengaturnya secara khusus. Namun, keberadaan Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik sebagaimana diubah dengan Undang-Undang Nomor 19 Tahun 2016

("UU ITE"), Peraturan Pemerintah Nomor 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik ("PPE-Commerce"), Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa ("UU Arbitrase dan APS") dapat dikatakan cukup mendukung keabsahan mekanisme dan putusan *ODR*. Melihat perkembangan digital, pengaturan khusus untuk *ODR* dalam suatu transaksi berbasis elektronik atau *online* telah menjadi hal yang mendesak pada saat ini. Hal ini dikarenakan adanya potensi sengketa yang mungkin muncul dalam transaksi sehari-hari.

Kata Kunci: Penyelesaian Sengketa Online; Sektor Ekonomi Digital; Alternatif Penyelesaian Sengketa; Transaksi Berbasis Online

INTRODUCTION

In the last few years, we have seen rapid advancement in technology as a result of globalization. The numerous cross-sectoral industries in a nation are significantly impacted by this growth. These technological advancements had an influence on a variety of fields, including entertainment, economics, telemedicine, transportation, and even education (electronic education). Undoubtedly, in times of advancement, social programs concentrate on the effects on the nation's economic sector. Globalization has led to the emergence of a free market and free competition within nations. It is challenging to avoid a dispute with all parties involved as economic and business practices evolve. For example, in digital economic sector, this influence can be seen from the progress of internet-based or online business transactions (e-commerce). In Indonesia, e-commerce is divided into several types of business models, ranging from:

- 1) B2B, business to business (trade between business actors);
- 2) B2C, business to consumer (trade between businesses and consumers);
- 3) C2C, consumer to consumer (trade between consumers);
- 4) C2B, consumer to business (trade between individuals and other businesses);
- 5) B2G, business to government (trade between businesses and government);
- 6) G2C, government to consumer (interaction between government public services and consumers).¹

Disputes that occur in e-commerce or the Marketplace occur due to default. This can occur from the business actors or consumers, consumers. The basis of this default is due to a violation of an agreement. in an agreement. Keep in mind that in e-commerce and the Marketplace, there is an electronic agreement (contract) that needs to be approved by the parties concerned before conducting a transaction. Default in e-commerce or marketplace usually occurs to the consumer who is the weak party in this business transaction. the weak party in this business transaction. This happens because of the unequal risk burdens between business actors and prospective consumers. At this stage, prospective consumers cannot see and identify the product or goods directly, but they have an obligation to pay for it. Meanwhile, there are rampant

¹ M. Alvian Syahrin, 2018, Penentuan Forum yang Berwenang dan Model Penyelesaian Sengketa Transaksi Bisnis Internasional Menggunakan E-Commerce: Studi Kepastian Hukum dalam Pembangunan Ekonomi Nasional, Jurnal Rechtsvinding, Vol. 2 No.2, Pusat Analisis dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI Jakarta, pg.209.

discrepancies between the products on the products on the internet that are agreed to be purchased the same as those that will be received by prospective consumers. Thus, it can be seen that the probability of disputes arising in e-commerce and marketplace businesses is high.

Disputes are typically settled by the court system in the legal profession. The dispute should be settled expeditiously, practically, and precisely. The process of settling the dispute in front of the court, which is so drawn out due to a number of factors, is actually the real problem. No new dispute can be resolved until it takes years and costs more than enough money, due to the lack of personnel in the courtrooms handling civil cases and the large number of cases that must be resolved. Therefore, a dispute settlement process is formed outside the court which is expected to be able to resolve civil disputes with a simple process, a short time, and relatively cheaper prices than the process in the court which is then referred to as an Alternative Dispute Resolution (ADR).

ADR is widely regarded as having had a significant impact on how times and technology have changed for the better when it comes to resolving disputes, and it undoubtedly aids in this process. Form of ADR is then born in an online or internet-based to overcome problems that might arise in this age development, namely Online Dispute Resolution, hereinafter abbreviated as ODR. Given the development of the times and the progress of this technology, ADR is expected to continue to solve problems that might arise exactly as before. In order to resolve a dispute, ODR offers several benefits:

- 1) ODR can undoubtedly save the parties money and time by completing efficient disputes faster and more efficiently. The parties do not need to spend or accumulate time in face-to-face meetings because ODR applies the borderless concept and does not require it of parties during the case settlement process. For the parties, especially if they are businessmen with strict schedules, this is very effective. Systematic and structured procedures for resolving disputes
- 2) The parties' freedom to choose the applicable law (if it is an international law) and the freedom to choose the arbitrators. The freedom to choose one's own law (Lex Cause) is subject to a few limitations, such as the necessity that the law be one that does not conflict with the law or the public order, the requirement that the freedom be exercised in good faith, the restriction that it only applies to business relationships (contracts), and the restriction that it is only applicable in the area of business law (trade).

Considering the high probability of the dispute that might arise in online transaction, especially marketplace, so it is such an emergence for us to know how the ODR resolve the dispute in marketplace. The selection of these two marketplaces is due to the fact that Tokopedia is a well-known marketplace, they are a place for online transactions. The latest data reported by SimilarWeb, during the January-March period this year, Tokopedia's site received an average of 117 million visits per month, far surpassing its competitors (Lazada, Blibli, etc).

METHODS

The research method that the author uses in compiling this paper are normative juridical research as the author has alluded to above. The normative juridical research is a type of legal

research that focuses on the study of legal norms and their application. It is a prescriptive research method that aims to provide guidance on how the law should be applied in specific situations. Normative legal research is concerned with the development of legal principles, values, and rules that should be followed in a particular legal system. It is different from empirical legal research, which focuses on the study of how the law operates in practice. Normative legal research is often used in legal philosophy, legal theory, and legal ethics. This research method is useful in analyzing the legal system's principles and values, identifying gaps in the law, and proposing solutions to legal problems.

RESULTS AND DISCUSSION

Alternative Dispute Resolution

Alternative Dispute Resolution can be defined as a series of dispute resolution processes conducted outside the court. As stipulated in Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, it is stated that the form of Alternative Dispute Resolution is out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert judgment. As also further regulated in Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, has the following definition:

"Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert judgment".

Black's Law Dictionary describes Alternative Dispute Resolution as follows²:

"Terms refers 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 dispute that would likely otherwise involve court litigation"

This out-of-court dispute resolution effort is recognized and strengthened in Indonesia in Law Number 48 of 2009 concerning Judicial Power in CHAPTER XII under the chapter title "DISPUTE RESOLUTION OUTSIDE THE COURT", precisely in Article 58 to Article 61. Article 58 to Article 61 clearly states that,

"Efforts to resolve civil disputes can be carried out outside the state courts through arbitration or alternative dispute resolution."

Other than that, the object of dispute that can be resolved in Alternative Dispute Resolution is a civil dispute. This is stated in Article 2 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.

The main purpose of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution is to provide a legal umbrella for the settlement of national and international business disputes, outside the court forum, whose results are acceptable to the disputing parties. Outside the court forum, the results of which can be accepted by the parties to the dispute. The

² Henry Campbell, 1990, Black's Law Dictionary, 6th edition, Minn West publishing Co. Saint Paul, p.78

establishment of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution is expected to provide legal certainty and protection in terms of commercial dispute resolution, as well as improve the ambiguity of the dispute resolution procedural law system which since the issuance of Presidential Decree Number 34 of 1981 still uses civil procedural law and Perma Number 1 of 1990. Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution has used the principle of reciprocity consisting of 82 articles, where the articles have regulated matters related to arbitration and tried to regulate all aspects of both procedural law and substance, as well as its scope which includes aspects of national and international arbitration and Alternative Dispute Resolution.

Online Dispute Resolution in Indonesia

Basically, ODR is the same as other conventional dispute resolution, the difference lies in the medium that uses internet media or online. Online Dispute Resolution, hereinafter referred to as ODR, is a method of dispute resolution carried out through the internet media, in the sense that the settlement process is carried out by parties who are in a cross-border region or country (borderless) without having to meet face to face. ODR has many other names, namely: "internet Dispute Resolution (iDR)", "Electronic Dispute Resolution (EDR)", "electronicADR (e-ADR)" and "online ADR (oADR)". It can be said that ODR is the result of collaboration between Alternative Dispute Resolution (ADR) and Information and Communication Technology (ICT). Then, ODR is an alternative dispute resolution that is in line with International Civil Law which has been recognized by the United Nations through the annual ODR conference and the establishment of the Expert Group on ODR.³

The origin of ODR was in the 1990s, ODR was used as a tool to predict disputes that might arise due to the rapid development of the internet. Initially, there were not so many conflicts or disputes arising from the use of the internet because its use was still minimal. However, the presence of ODR is used to predict the consequences of internet usage that will increase later because of course the more interactions that occur on the internet, the greater the risk of a conflict or dispute. Therefore, the presence of ODR is needed to prevent even, now to resolve a conflict or dispute due to the use of the internet. In its development, until now ODR has 4 types, namely:

a. Online Settlement

Online Settlement focuses on the settlement of financial claim disputes. This online dispute resolution uses a special system in resolving financial claims automatically.

b. Online Arbitration

Online arbitration requires a special website to resolve disputes with the help of an arbitrator. Currently, it is more often used or applied in Canada in domain name disputes and China in online trade (e-commerce).

c. Online Mediation

³ Jurnal PERLINDUNGAN HUKUM DAN PENYELESAIAN SENGKETA BISNIS JASA PM-TEKFIN <https://e-jurnal.peraturan.go.id/index.php/jli/article/download/136/pdf> accessed on 11 December 2022

The online mediation does not use face-to-face procedures. The process itself starts with the first step, which is the submission of the dispute on the website of the mediator or online mediation organization. The next step will be carried out by the mediation organization, they will contact the other party concerned to participate in the online mediation procedure. Then, the selection or appointment of the mediator will be done by the parties or will be selected by the website. Both parties are then informed of the mediation rules, usually accessible through a link on the website.

The final stage of any arbitration, both online and conventional arbitration, is the reading of the arbitration award taken from the arbitrator or panel of arbitrators, the reading of the award directly in front of the parties can only be found in conventional arbitration, but in online arbitration there is also a reading of the arbitration award, but the reading is different, namely using electronic media, the online arbitration award in digital form will be submitted on a website that has been provided for the benefit of dispute resolution.

d. Online Resolution Of Consumer Complaints

This type of ODR uses electronic mail (e-mail) to handle disputes in the form of consumer complaints.

Related to implementation and existence of Online Dispute Resolution, in Indonesia, there have been no specific regulation that regulate it. However there are some regulations that mention ODR, which are:

1. Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution ("Arbitration and ADR Law"): ADR in Indonesia is mainly regulated through the Arbitration Law, which defines ADR as an alternative to court proceedings.
2. Government Regulation Number 80 of 2019 on Trading Through Electronic Systems ("PPE-Commerce"): This regulation allows e-commerce disputes to be resolved through electronic (ODR) platforms that are organized by advocates/mediators, accredited online arbitration agencies, and authorized government agencies.
3. National Framework for Consumer Complaints Handling and Dispute Resolution in Indonesia: This framework regulates consumer complaints handling and dispute resolution, including ODR. OJK Draft Regulation on Alternative Dispute Resolution: This regulation is drafted to settle complaints submitted by financial services players, since agreement between consumers and financial services.
4. In addition, the Circular regulates that all activities before the Supreme Court, including hearings, can be held online, and electronic trials are held by submission of documents. The regulatory framework that supports ODR in Indonesia is Law no. 11 of 2008 on Electronic Information and Transactions (EIT Law), which provides the legal basis for electronic transactions and electronic signatures.

Also discussing online court, in 2019 civil court practice implemented an e-court system via SC Regulation Number 1 of 2019 and SC Decree Number 129 of 2019, enabling parties to partially conduct hearings electronically. The ODR in Indonesia was also governed by this rule. Online arbitration is involved in this case. The following issues need to be thought about,

including whether or not this online arbitration is legal under Indonesian Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Also, the provisions and Explanatory Note to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution do not define what constitutes an appearance at an arbitral hearing, i.e., oral and exchange of opinions, or its form. Therefore, it is debatable whether Article 40, paragraph 2 of Law No. 30 of 1999 establishes the right to a physical hearing in arbitration. According to conventional legal settings, this is still a gray area; however, any implementation of domestic or foreign arbitration decisions must always be registered with the District Court, and registration of foreign arbitration decisions is conducted at the Central Jakarta District Court. The authority of the Central Jakarta District Court to accept ODR as a form of an international arbitration decision is derived from Article 66 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. If all of the requirements of the law are met, as described in the preceding section, it is possible to state that ODR, and online arbitration in particular, is recognized in Indonesia, albeit not explicitly.

Online Dispute Resolution and Marketplace (Tokopedia)

Marketplace is an internet-based business activity that provides goods and services, in the form of an online site that becomes a third party in an internet-based transaction between sellers and consumers. Internet-based transactions between sellers and consumers. Before the marketplace was heard of, e-commerce was first recognized. E-commerce (Electronic Commerce) is a process of buying and selling transactions which is a business transaction based on electronics, in this case, the Internet network. The legal basis that regulates e-commerce is Law Number 7 of 2014 concerning Trade, namely in CHAPTER VIII concerning TRADE THROUGH ELECTRONIC SYSTEMS, Article 65 and Article 66. Trading through an electronic system, hereinafter referred to as PMSE, is defined in Trade Law as trade in which transactions are conducted through a series of electronic devices and procedures. This definition is certainly in line with the definition of e-commerce. Thus, it is clear that e-commerce already has a legal umbrella in its existence in Indonesia.

The presence of e-commerce provides convenience to consumers. This is because consumers do not need to leave the house to shop, also the products are relatively cheap and have a wide variety of choices. The marketplace itself is a form of development of e-commerce, but the difference between the two is that generally, the marketplace is in the form of an application that brings together many sellers and buyers, such as Tokopedia, while e-commerce itself is in the form of a website and sellers are only 1 (one) person or the website owner. Other things that support the rapid use of e-commerce are some of the advantages offered through this online transaction, such as⁴:

- 1) Trade transactions become more effective and faster.
- 2) Trade transactions become more efficient, productive, and competitive.
- 3) Faster and more precise trade transactions to consumers.

⁴ Abdul Halim Barkatullah dan Syahrída, 2017, *Sengketa Transaksi E-Commerce Internasional*. Nusa Media, Bandung. pg.25-26.

- 4) Reduced administrative costs.
- 5) Minimising trade problems due to differences in culture, language, and trade practices
- 6) Improve logistics distribution.
- 7) Open up opportunities for small businesses to sell their products globally.

Tokopedia has a special feature called the **PUSAT RESOLUSI / RESOLUTION CENTRE** which is a form of ODR implementation. Resolution Centre is a feature to assist sellers and buyers in submitting complaints related to their selling or shopping experience on Tokopedia. In this feature, sellers and buyers can discuss directly about the problems faced and the best solution. The Resolution Centre provides several solutions, such as:

1. Refund to the buyer;
2. Refund to the seller's account;
3. Exchange the product or send the remaining missing order.

This Resolution Centre can be accessed easily through the application or, website Tokopedia, through the following steps:

- 1) Sellers can view incoming complaints from buyers in the **COMPLAINTS** menu in the seller's account. Buyers can explain the transactions that occur by uploading photos of goods and offering the desired solution;
- 2) Then the conversation in the Resolution Centre can be accessed by sellers and buyers to reach a joint solution to the problem requested by the buyer through chat discussion in Tokopedia;
- 3) If a solution is still not agreed upon, the Tokopedia Care team will help mediate to provide a solution that of course not detrimental to both parties involved (buyer and seller);
- 4) Once the buyer and seller agree to implement the solution that has been agreed upon, then the transaction is considered complete.

In this Resolution Centre, if the seller agrees with the solution offered by the buyer, then the seller can choose the **ACCEPT** option. If they do not agree, then the buyer can offer another solution or choose the **APPEAL** option. If both parties do not reach an agreement, then the seller can press the **HELP** button to ask the Tokopedia team to help resolve the ongoing dispute. It is important to note that conversations in the Resolution Centre can only be initiated by the buyer. However, if the buyer suddenly disappears and does not continue the conversation for more than 3 (three) days, the buyer can still click the **HELP** button to ask Tokopedia to handle the unfinished dispute.⁵ For the duration of time to resolve dispute resolution through the Tokopedia Resolution Centre is not specifically written down however, disputes can be resolved in a relatively short time considering that the seller and buyer are directly confronted to resolve the dispute through an online real-time system.

CONCLUSION

Considering the digital advancement, the supply of ODR in an electronic or online-based transaction has become an urgent matter on this day. It is because the potential dispute that may appear in the daily transactions. Transactions include sales, leases, licenses, and investments,

⁵ Tokopedia. Pusat Resolusi. Accessed on Tokopedia Application 22nd March 2023.

international business agreements involve parties which include individuals, small and large multi-national companies and states. Related to implementation and existence of Online Dispute Resolution, in Indonesia, there have been no specific regulation that regulate it. However, the existence of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution ("Arbitration and ADR Law"), Government Regulation Number 80 of 2019 on Trading Through Electronic Systems ("PPE-Commerce"), National Framework for Consumer Complaints Handling and Dispute Resolution in Indonesia, OJK Draft Regulation on Alternative Dispute Resolution, Law Number 11 of 2008 on Electronic Information and Transactions (EIT Law), and civil court practice in 2019, which introduced an e-court system through SC Regulation Number 1 of 2019 and SC Decree Number 129 of 2019⁶ can be said to adequately support the validity of the online dispute resolution mechanism and its verdict.

Also we can analyze that tokopedia has run the ODR mechanism very well. This can be seen from the availability of Tokopedia's special feature called the **PUSAT RESOLUSI / RESOLUTION CENTRE** which is a form of ODR implementation. Resolution Centre is a feature to assist sellers and buyers in submitting complaints related to their selling or shopping experience on Tokopedia. In this feature, sellers and buyers can discuss directly about the problems faced and the best solution. The Resolution Centre provides several solutions, such as:

1. Refund to the buyer;
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