

ONLINE DISPUTE RESOLUTION (ODR) AS AN ALTERNATIVE FOR ELECTRONIC TRANSACTION DISPUTE SETTLEMENT.

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ONLINE DISPUTE RESOLUTION (ODR) AS AN ALTERNATIVE FOR ELECTRONIC TRANSACTION DISPUTE SETTLEMENT.

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Abstract

The development of communication and information technology has an impact on all aspects of human life. Technology has changed the business world from traditional trading patterns to a more modern trading system, namely an online trading system known as electronic commerce (e-commerce). Electronic commerce/electronic-commerce/e-commerce is the distribution, sale, purchase, marketing of goods and services that rely on electronic systems, such as the internet, television, or other computer networks. The agreement is also made online, basically, an online sale and purchase agreement (e-commerce) is the same as a general sale and purchase agreement, which requires an agreement between the seller and the buyer regarding the goods or services being traded and the price for the goods or services. Alternative Dispute Resolution (ADR) is dispute resolution out of court. that the parties to the dispute by mutual agreement are free to choose the forms and procedures contained in the alternative dispute resolution and will be applied in dispute resolution. Agreements made online are expected to be completed online as well. For this reason, alternative dispute resolution is sought which is expected to facilitate the dispute resolution process with online transactions. One of the breakthroughs is by using an online arbitration model known as Online Dispute Resolution (ODR) so that the disputing parties can settle wherever they are.

The method used is through normative legal research, which is a scientific research procedure to find the truth based on scientific logic from the normative side, carried out to produce arguments, theories, or new concepts as prescriptions in solving problems at hand. The nature of this research is descriptive-analytical. In the future, this discussion will open a new way to facilitate the Indonesian people, especially those seeking legal certainty, in resolving disputes using ODR

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Abstrak

Perkembangan teknologi komunikasi dan informasi, membawa dampak terhadap segala aspek dalam kehidupan manusia. Teknologi telah mengubah dunia bisnis dari pola perdagangan tradisional menjadi sistem perdagangan yang lebih modern, yakni sistem perdagangan secara online dan dikenal dengan istilah *electronic commerce (e-commerce)*. Perdagangan elektronik/*electronic-commerce/e-commerce* adalah penyebaran, penjualan, pembelian, pemasaran barang dan jasa yang mengandalkan sistem elektronik, seperti internet, televisi, atau jaringan komputer lainnya. Perjanjiannya pun dibuat secara online, pada dasarnya, perjanjian jual beli online (*e-commerce*) sama dengan perjanjian jual beli pada umumnya, di mana dipersyaratkan terjadinya kesepakatan antara pihak penjual dan pembeli mengenai barang atau jasa yang diperdagangkan serta harga atas barang atau jasa tersebut. Alternatif Penyelesaian Sengketa (ADR) adalah penyelesaian sengketa di luar pengadilan. bahwa para pihak yang bersengketa dengan kesepakatan bersama bebas memilih bentuk dan tata cara yang terdapat dalam alternatif penyelesaian sengketa dan akan diterapkan dalam penyelesaian sengketa. Perjanjian yang dibuat secara online diharapkan mampu diselesaikan secara online juga. Untuk itu, dicari alternatif penyelesaian sengketa yang diharapkan memudahkan proses penyelesaian sengketa dengan transaksi online. Salah satu terobosannya dengan menggunakan model arbitrase online yang dikenal dengan *Online Dispute Resolution (ODR)*, sehingga para pihak yang bersengketa dapat menyelesaikan di mana pun dia berada.

Metode yang dilakukan ialah melalui penelitian hukum normatif, yaitu suatu prosedur penelitian ilmiah untuk menentukan kebenaran berdasarkan logika keilmuan dari sisi normatifnya, dilakukan untuk menghasilkan argumentasi, teori atau konsep baru sebagai preskripsi dalam menyelesaikan masalah yang dihadapi. Sifat penelitian ini adalah deskriptif analitis. Di kemudian hari, pembahasan ini kiranya akan membuka jalan baru untuk memfasilitasi masyarakat Indonesia, khususnya yang mencari kepastian hukum, dalam menyelesaikan sengketa menggunakan ODR

I. INTRODUCTION

The development of technology that is increasing has an impact on all aspects of human life. The internet is one of the largest electronic information and communication media that is highly utilized by humans to carry out various browsing activities, search for data information, news information, communicate, to carry out economic/trade activities, hereinafter better known as electronic commerce or e-commerce. Electronic commerce/electronic-commerce/e-commerce is one part of the distribution, sale, purchase, marketing of goods and services that rely on electronic systems, such as the internet, television, or other computer networks. Agreements made online are the same

4
as buying and selling agreements in general, where an agreement is required between the seller and the buyer regarding the goods or services being traded and the price for the goods or services.

One thing that needs to be known and gets attention in e-contracts is the existence of an electronic signature. Electronic contracts have been recognized in Article 8 paragraph (1) of the United Convention on the Use of Electronic Communications in International Contracts as valid contracts and binding on the parties. Indonesia has also recognized the existence of electronic contracts in Article 18 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) which has been amended by Law Number 19 of 2016 concerning Amendments 18 Law Number 11 of 2008 concerning Information and Electronic Transactions and Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems.

The ease and efficiency of electronic contracts are often used by business actors in trading activities. However, on the one hand, this development is not followed by provisions that protect consumers in electronic transactions, especially transactions using electronic contracts. Meanwhile, consumers in electronic contracts have a weaker position than business actors, this is due to the characteristics of electronic contracts themselves and weak regulations regarding consumer protection at the international and national levels.

Disputes arising from losses or defaults experienced, a lawsuit can occur from the aggrieved party. The emergence of electronic disputes that occur online on the Internet, is expected to be resolved online as well. 23 For this reason, the problem that arises is whether Online Dispute Resolution (ODR) can be used as an alternative to resolving electronic disputes?

RESEARCH METHODS

5
The type of research carried out is normative legal research, which is a scientific research procedure to find the truth based on scientific logic from the normative side. Normative research is a process of finding laws, legal principles, and legal doctrines, to answer the legal issues faced. This normative legal research is carried out to produce new arguments, theories, or concepts as prescriptions in solving the problems at hand.³ The data used are only secondary data sources, namely books, diaries, laws and regulations, court decisions, legal theories, and opinions of leading legal scholars.⁴

DISCUSSION

With the recognition of an electronic contract, an electronic contract in

20
³ Peter Mahud Marzuki, *Legal Research*, Jakarta: Kencana, 2005, p. 25

⁴ *Ibid*, hlm.27

Indonesia is considered a valid and binding contract for the parties. In general, an e-contract is a contract made on electronic media or in other words an agreement in which the digitization of the document is carried out in the form of a scan or soft copy. Therefore, the offering party must be able to ensure that the recipient reads the terms of the offered agreement. E-commerce business is not always good. Like other businesses, e-commerce transactions are not free from problems. In e-commerce, all transactions can be carried out as long as it is supported by the internet. So with the presence of e-commerce, it is expected that there will be an informal settlement of procedures that are fast and low-cost.⁵

In Indonesia the Electronic Information Technology (ITE) Law. it is stated in Article 1 number 16 that: "Electronic Contract is an agreement of the parties made through an electronic system". Judging from its content, an electronic contract is the same as an ordinary agreement, so it must follow the rules in the Civil Code. This is regulated in Article 1320 of the Civil Code which states that the conditions for the validity of a valid agreement are binding on both parties, these conditions are: (1) Agree with those who bind themselves; (2) The ability to make an engagement; (3) A certain matter; and (4) A lawful cause.

E-commerce is a process of trading transactions in goods and services carried out by buyers and sellers with an electronic system via the internet. In this case, e-commerce has content that involves data/system/management that is executed automatically. transactions such as fund transfers, online marketing, buying and selling, and so on. e-commerce is part of e-business, where the scope of e-business is wider, not just commerce but also includes collaboration with business partners, customer service. etc.

A contract or agreement made by business people is often faced with a problem. This problem arises as a result of the carelessness of business actors when agreeing to the contract. Generally, legal awareness is only awakened when the contract is in trouble. Understanding the contents of the contract when the contract will be approved is a must, not after the agreed contract is in trouble. In the trade that currently exists, namely traditional trading models or conventional business and models that refer to modern trading behavior or called modern business/e-commerce. The two models each have different ways of resolving disputes.

Alternative Dispute Resolution (ADR) based on Law Number 30 of 1999 provides an excellent solution in resolving conventional trade disputes that are separated by geographical location and between countries. The law opens up wide opportunities for resolving business cases outside the courts. UU no. 30 of 1999 is a very good law to guarantee businessmen who are reluctant to resolve their cases to the Indonesian National Court to choose other avenues that are more suitable and

⁵ Purwanto, Effectiveness of Application of Alternative Dispute Resolution (ADR) in the Settlement of Insurance Business Disputes in Indonesia, Legal Minutes, Samarinda, 2015, p. 14.

convenient for them in resolving disputes that occur.⁶ Article 1 number 10 of Law no. 30 of 1999 states that the patterns of dispute resolution outside the court are, among others, namely: a. Consultation, b. Negotiation, c. Mediation, d. Conciliation, e. Expert assessment (expert), f. Arbitration (arbitration). The six options above provide an opportunity for the disputing parties to be able to choose the best way for them to resolve the dispute.

However, with the shift to electronic commerce, trade disputes that are carried out electronically give rise to discourse and solutions to obtain alternative dispute resolutions that occur through internet media using Online Dispute Resolution (ODR). The ODR concept recognizes the role and value of software as a network that is used for more than just a simple communication channel. With this “fourth party” device, it will facilitate the parties to clarify issues before a face-to-face session, namely by video conferencing where this device is used to help identify the parties in an online meeting. The challenge that arises for the implementation of effective ODR dispute resolution is how to efficiently facilitate the process of information arising from this dispute activity in the internet transmission network. One of the goals of the desire for ODR is the desire to increase public confidence in electronic commerce (e-commerce) by providing fast dispute resolution and legal certainty across different geographies, languages, and legal jurisdictions.⁷

Article 18 paragraph (5) also states that if there is a dispute that crosses national borders, international arbitration is used. This is of course by using the provisions and principles of international civil law. Such a path does not guarantee the efficient resolution of cases. Therefore, it is more appropriate to choose an Online Dispute Resolution (ODR) dispute resolution. The existence of Article 18 of Law Number 11 of 2008 above, states that there are three options for resolving electronic transaction disputes that can be used by parties to resolve existing disputes, namely: legal choices made by the parties, legal choices made by litigation institutions, or non-litigation, and based on the principles of international civil law.

Article 41 paragraph (1)(2)(3), Article 18 paragraph (4) is a form of Indonesia's support for the establishment of the ODR which reads that “the parties have the authority to establish court forums, arbitrations or other institutions authorized to handle disputes that may arise from international electronic transactions that he made” followed by paragraph (5) which reads that if the parties do not choose the forum as referred to in paragraph (4), the determination of the authority of the court, arbitration or other alternative settlement institution authorized to handle disputes that may arise from the transaction, is based on the principles of international civil law”. This means that in paragraph (5) it is clarified that ODR can carry out its function as an alternative

19

⁶ Meline C²²rita Sitompul, M. Syaifuddin, Annalisa Yahanan. 2016. Online Dispute Resolution. Journal e-ISSN :2527±564 <http://www.ejournal-academia.org/index.php/renaissance> Renaissance Journal | Volume 1 No. 02 |

⁷ Chandra, Adele. Settlement of electronic transaction disputes through online dispute resolution (ODR) in relation to the Information and Electronic Transactions Law No. 11 of 2008. 2014. Journal of Computer Science.

dispute resolution institution based on international civil law. As we know that ODR is currently part of an internationally recognized alternative dispute resolution through the activities of the United Nations. This recognition is by always holding an annual ODR conference and has formed an Expert Group on ODR.

The function of ODR to be utilized by the public¹¹ was assured by the Government of Indonesia through UU ITE Number 11 of 2008 Article 38 paragraph (1) which reads "everyone can file a lawsuit against the party that operates the electronic system and/or uses information technology that causes state losses". It can be observed that the public is asked by the state to file a lawsuit if there is a loss due to a transaction carried out by an electronic system, for example, namely electronic trading (e-commerce), electronic payment (e-payment), electronic auction (e-procurement), signing electronic work contracts (e-contracts), and other forms of information technology media. Communities who use ODR facilities are protected and limited by UU ITE number 11 of 2008 in the event of unwanted things that result in losses⁸ to the disputing parties through ODR with Article 35 which states that "everyone intentionally and without rights or against the law manipulates, creates, changes, deletes, destroys electronic information and/or electronic documents with the aim that the electronic information and or electronic documents are considered as if the data were authentic. It can be interpreted that the ITE Law Number 11 of 2008 Article 35 protects the parties¹⁴ who are harmed if there are parties to the dispute through ODR, manipulating electronic information and/or electronic documents to be considered as authentic and legal evidence. Confidentiality¹⁰ of disputes and electronic documents resolved through ODR is also protected through Article 32 paragraph (2), namely "every person intentionally and without rights or against the law in any way transfers or transfers electronic information and/or electronic documents to the electronic system of another person who not entitled to. ODR service providers will also be protected by the ITE Law through Article 33 if there are parties who try to disrupt or stop the function¹⁴ of ODR using information technology facilities with Article 33 which states that "everyone intentionally and without rights or against the law takes any action that results in disruption of the electronic system and/or results in the electronic system not working properly. Dispute resolution through ODR has the opportunity to be implemented in Indonesia. The implementation of online arbitration is possible if there is a prior agreement from the parties to conduct online arbitration.⁸ Online arbitration allows the disputing parties to find a win-win solution (both mutually beneficial). The obstacle to ODR, when implemented in Indonesia, is the absence of a complete set of regulations/regulations. With the support of the principle of good faith; prudence; transparency; trustworthiness; accountability²⁸; balance; and fair and healthy and there is evidence of PMSE transactions that can be used as other evidence in procedural law and cannot be rejected as evidence in court just because it is in electronic form.

If using an electronic signature supported by a trusted electronic certificate

⁸ Azwar, Muhammad. Prospects of Implementing Online Dispute Resolution in Business Dispute Resolution Efforts in Indonesia. 2019, Media Iuris, p.3.

under the provisions of the legislation. ODR has several advantages and disadvantages in its application, namely the time and the online arbitration mechanism is fast, cheap, and simple. Meanwhile, the weakness of the online arbitration procedure when applied in Indonesia is the absence of a set of completeness and procedural as well as adequate internet access. The country's prospects for implementing ODR are aimed at balancing the use of information technology in Indonesia with regulatory practices by the government, as well as in the context of legal reform, especially in the field of electronic transactions aimed at fulfilling legal certainty. The ratification of the ITE Law is a form of the Indonesian government's seriousness to provide legal certainty to the public. it is hoped that the government will form an ODR Institute for dispute resolution that occurs due to the increase in electronic transactions in Indonesia.

CONCLUSION

The prospect of implementing ODR in addition to legal reform in the field of electronic transactions is also related to efforts to create legal certainty in online dispute resolution in Indonesia. Online dispute resolution or ODR provides benefits in online dispute resolution, namely saving time and money, those who use internet access are more confident in dealing with the process they will undergo, and there are psychological factors. In addition, non-legal factors are also a reference in the implementation of the ODR system in Indonesia.

Suggestion

The government is expected to provide telecommunications infrastructure and establish a new institution to handle online dispute cases.

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