

Strategy of Dispute Resolution By Business Enterprises in Online Sale Transactions

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Abstract

Introduction: The practice of online buying and selling, there are often defaults that disadvantage related parties and cause disputes. Dispute resolution is often faced with problems such as complicated procedures, lack of public understanding of available mechanisms, imbalance of power between business owners and consumers, and limited capacity of dispute resolution institutions.

Purposes of the Research: The purpose of this research is to find out how consumer protection against online buying and selling disputes.

Methods of the Research: This research is normative in approach with a statutory approach and conceptual approach. The research sources are legal sources related to online transactions in order to increase understanding of the principles of justice, consumer protection, and dispute resolution due to default.

Findings of the Research: The results show that as a settlement of disputes due to default, it is necessary to make preventive efforts, namely being aware of the rights and obligations as buyers and sellers to prevent default and repressive efforts for consumer protection with compensation and which can be resolved by litigation and non-litigation. Dispute resolution needs to be synchronized with existing regulations on each e-commerce platform, so that consumers and sellers can follow the dispute resolution mechanism effectively.

Keywords: Resolution; Dispute; Default; E-commerce.

Submitted: 2025-02-12

Revised: 2025-02-26

Accepted: 2025-03-27

Published: 2025-03-31

How To Cite: Tesalonika Luana Joris, Ronald Saija, and Marcelo Valentino Geovani Pariela. "Strategy of Dispute Resolution By Business Enterprises in Online Sale Transactions." TATOHI: Jurnal Ilmu Hukum 5 no. 1 (2025): 15-22. <https://doi.org/10.47268/tatohi.v5i1.2940>

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INTRODUCTION

The development of technology and science has led humans into the Digital Age, where the most significant is the development of electronic technologies that have influenced almost all aspects of human life¹. The availability of mobile phones provides instant access that allows many activities to be carried out efficiently, one of which is online buying and selling transactions. However, behind this convenience, various challenges arise, one of which is disputes due to default in online buying and selling transactions. Default is the performance of an obligation that is not on time or not as it should be².

Default resolution in online buying and selling transactions often involves complexities in terms of jurisdiction, applicable law, and dispute resolution procedures. Consideration of the legal aspects involved is important in designing an effective resolution strategy. The surge in disputes is also fuelled by the rapid growth of digital platforms, often outpacing the regulatory pace. Some e-commerce platforms have provided dispute resolution mechanisms, such as mediation between buyers and sellers, but not all disputes can be

¹ Agung Noegrobo, *Teknologi Komunikasi* (Yogyakarta: Graha Ilmu, 2010), p. 2.

² Eri Sefira Martha, *Hukum Perdata, CV Nata Karya*, vol. 3 (Ponorogo: Nata Karya, 2017), p. 108.

resolved through these mechanisms. When cases are not resolved, consumers must take the matter to formal legal channels, which are often perceived as complicated and time-consuming. Without a comprehensive solution, the risk of loss for consumers and sellers will continue to increase, which in turn may inhibit the growth of e-commerce itself.

Online transactions buyers and sellers of this online business do not meet in person, so buyers cannot see the products where they want. This is an opportunity for default. Examples are mismatches of promised goods, inaccuracy in the delivery of goods, and security of payments in online transactions are also an obstacle for those who buy goods online. These types of discrepancies often occur in violation of Section 7 letter e of Law No. 8 Year 1999 on Consumer Protection (Consumer Protection Law), which regulates the obligation of business actors to provide true and honest information.

Online buying and selling transactions demand a high level of trust between buyers and sellers, as buyers cannot inspect the goods in person. In addition, the presence of digital platforms as intermediaries adds a layer of security, especially in verifying the identity of businesses, providing complaint services, and helping to resolve disputes. However, this system also presents challenges, such as the potential for fraud, goods that do not match the description, or delivery issues. Therefore, the success of online buying and selling transactions is not only determined by technological sophistication, but also by the commitment of each party to fulfil their responsibilities according to the agreement, supported by regulations that protect the rights of buyers and sellers. E-commerce was created to facilitate transactions that are different from conventional transactions, namely non-face and non-sign. Therefore, conventional dispute resolution or *wanpretasi* will take a lot of time, energy, and it is hoped that the settlement in e-commerce will be faster, more precise, and efficient³. Based on the description above, this research is needed in order to examine the applicable legal regulations so as to provide ideas related to legal protection for buyers and dispute resolution strategies that occur due to default in electronic transactions.

METHODS OF THE RESEARCH

This research applies normative legal methods based on principles, norms, and regulations, court decisions, agreements and doctrines⁴. This research uses a statutory approach and a conceptual approach by collecting laws and regulations and other literature such as books, journals and analysed and can be concluded.

RESULTS AND DISCUSSION

A. Rights and Obligations in Online Buying and Selling

In transactions, there are rules governing rights and obligations so that there is an agreement that does not harm. The Indonesian Civil Law in article 1457 describes buying and selling as an agreement in which one party binds himself to deliver an item, while the other party pays the agreed price. This clearly shows that buying and selling is an agreement that promises one party to get goods / services after the other party has paid the agreed price. In this case the parties are called buyers and sellers. According to Law Number 11 of 2008 concerning Electronic Information and Transactions (Electronic Information and

³ Rochani Urip Salami and Rahadi Wasi Bintoro, "Aletnratif Penyelesaian Sengketa Dalam Sengketa Transaksi Elektronik (E-Commerce)," *Jurnal Dinamika Hukum* 2, no. 4 (2008): 124–35.

⁴ Sigit Sapto Nugroho, Anik Tri Haryani, and Farkhani, *Metodologi Riset Hukum*, (Oase Pustaka, 2020), p. 29.

Transaction Law) from electronic transactions, namely: The seller is obliged to provide a complaint mechanism that is easily accessible to consumers if there are problems in the transaction. The complaint shall be responded to quickly and professionally.

Parties who agree to enter into a contractual agreement will be bound by legal rights and obligations according to the law. Although online, the contract between the seller and the buyer is made verbally and in writing, but the writing is in the form of digital data or digital messages. An Electronic Contract occurs when a business actor (Seller) submits a form containing an agreement and the Consumer (Buyer) agrees to the clauses of the agreement by checking the box or by clicking the accept button as a statement of approval.⁵

B. Consumer Protection in Online Buying and Selling Transaction Dispute

Legal protection efforts against default in online buying and selling are very important to maintain consumer rights and ensure that business owners fulfill their obligations according to the agreement. This protection can be done through several steps regulated in Indonesian law, both preventively and repressively.

Preventive protection can be provided by ensuring that online buying and selling agreements made between sellers and buyers are clear and binding, by including clear terms and conditions regarding the rights and obligations of both sides. This includes ensuring that the product information provided is accurate, the payment mechanism is transparent, and the delivery schedule of the item. Repressive protection, consumers who are harmed by default, such as items that do not match the description or are not delivered, can pursue compensation through mediation, arbitration, or litigation. If proven to have made a default, the disadvantaged party must pay the losses suffered by the creditor; Cancellation of the agreement; Transfer of risk; and Paying case fees if it is brought to court.⁶

In the context of Indonesian law, this compensation is regulated by the Civil Code, specifically Article 1243 to Article 1252, which states that a wronged side can claim the cost of actual losses, expected losses, as well as interest due to delay or default. Before damages are pursued, the defaulting party must receive a formal notification or warning as an opportunity to fulfill its obligations. E-commerce platforms used for transactions also often provide consumer protection features, such as returns, refunds, or dispute resolution mechanisms, which aim to prevent defaults. It is important to attach receipts, conversations, or transaction history to support your claim for compensation. For this reason, legal protection against default in online buying and selling depends not only on contract law and consumer protection, but also on platform providers who must ensure fair and transparent dispute resolution mechanisms, as well as compliance with applicable regulations.

C. Disputes in Online Buying and Selling

If one of the subjects does not carry out what should be done in accordance with the agreement, the action is said to be defaulted⁷. The different transaction process with conventional buying and selling is also a factor to increase various kinds of negligence. Conventional buying and selling brings together sellers and buyers and goods that are

⁵ Abdul Rahman, "Wanprestasi Dalam Transaksi Jual Beli Online Melalui Fitur Cash On Dilevery Pada Aplikasi Marketplace," *Supremasi Hukum: Jurnal Penelitian Hukum* 31, no. 2 (2022): 117, <https://doi.org/10.33369/jsh.31.2.110-128>.

⁶ Abdullah, *Penafsiran Hakim Tentang Perbedaan Antara Perkara Wanprestasi Dengan Penipuan*, 2012, 16.

⁷ Fakhrlur, "Tinjauan Yuridis Penyelesaian Sengketa Konsumen Dalam Transaksi Jual Beli Online Melalui Media Instagram" 1, no. 2 (2016): 190.

directly valued and interested in front of the eyes so that there are less gaps for errors such as shipping errors or the quality of goods that do not match what is advertised through e-commerce.

In online transactions there are often two perspectives on when an agreement between the two parties occurs. First, the sale and purchase agreement occurs when the buyer clicks "buy" in the purchase column. This emphasizes that when a buyer wants to buy a product offered on the page, the terms and conditions provided by the seller through the website must be known and must be fulfilled by the buyer such as an agreement to pay and access to his address and data by the seller. second, namely that an agreement in an e-commerce transaction occurs when a product order letter is received via e-mail by the seller or information in the seller's control. In electronic transaction activities, the reality is not always in accordance with the rules that already apply. There is always the possibility of a violation by one of the parties and can be considered as a tort which is then prosecuted with compensation. Intentional wrongdoing is different from unintentional, so it needs proper assessment to overcome it and determine fair compensation efforts.

Default occurs due to error, negligence and intent. What is meant by the existence of "fault" must be fulfilled with the following conditions: 1) The act committed must be avoidable; 2) The act can be blamed on the offender, i.e. that he can foresee the consequences.⁸ Disputes in online buying and selling often arise due to default by one of the sides, either the buyer or the seller. This form of dispute can be categorized into several types based on the pattern of problems that often occur. One of the most common forms is the discrepancy between the goods received and the promised description. In this case, the buyer feels aggrieved because the goods received are different from the photos, specifications, or descriptions that have been displayed by the seller on the platform. For example, the item is of lower quality, inappropriate size or color, or even a counterfeit item.

The buyer can also be the one in default. Examples are unilateral cancellation after an order has been confirmed or failure to pay in a COD system. This is detrimental to the seller who has already prepared or delivered the goods. Such cases often implicate the terms of the contract that has been agreed upon, and the buyer can be held liable under Article 1338 of the Civil Code, which states that every agreement made legally shall apply as law to the parties that make it.

These disputes show that online buying and selling involves many interrelated legal aspects, including civil law, consumer protection and criminal law. In addition, technical factors such as logistics management, platform supervision, and the level of legal literacy of the public also affect dispute resolution. Most disputes are resolved through non-litigation mechanisms, such as mediation provided by e-commerce platforms, but litigation channels remain available for those who feel significantly disadvantaged.

D. Dispute Resolution Mechanisms for Online Buying and Selling

Dispute resolution is often resolved by litigation, namely by filing a lawsuit in court and ending with a judge's decision. However, there are also non-litigation events where settlement is carried out outside the court. Consultation is an action that is done privately or collectively, where the consulting party will be given an opinion in accordance with the problem or need by a party who is qualified or professional in their field. If it is connected

⁸ M Y Harahap, *Segi-Segi Hukum Perjanjian* (Penerbit Alumni, 1982), 60, <https://books.google.co.id/books?id=TASmNQAACAAJ>.

to the context of business dispute resolution, then the problem discussed is disputes (disputes) arising in or related to business activities, such as default disputes in business⁹. The consultant provides his views on the problem and dispute resolution as requested by his client, which in turn the decision regarding the dispute resolution will be taken by the parties themselves. The results of the consultation are in the form of advice that is not legally binding, meaning that the advice can be used or not by the client, depending on the interests of each party.

Negotiation is a consensus process used by the parties to reach an agreement between them¹⁰. Negotiation is often the first step taken before using formal mechanisms such as mediation, arbitration or court. The negotiation process is informal and flexible, allowing both parties to find mutually beneficial solutions quickly and cost-effectively. In this process, good and open communication is essential so that each side can understand the other's point of view and concerns. The legality of negotiation in Indonesia can be found in the principle of freedom of contract stipulated in Article 1338 of the Civil Code, which states that agreements made legally shall apply as law to the parties. Although informal in nature, the outcome of negotiations can be legally reinforced through a legal and binding written agreement, providing legal certainty for the parties involved.

Mediation is a negotiation attended by a neutral third party who does not have the authority to decide¹¹. Mediation in the context of the Consumer Protection Law can be conducted through the Consumer Dispute Resolution Agency. Which was established as a special institution to handle disputes between consumers and business actors in a simple, fast, and low-cost manner. Under Indonesian law, mediation creates a valid agreement if both parties sign the agreement. Although mediation is voluntary, if one of the parties does not fulfill the agreement, then the aggrieved party can still pursue further legal channels, such as suing in court to enforce their rights.

Arbitration resolution in disputes over online buying and selling transactions in e-commerce is stated in an arbitration agreement made in writing by those conflicting parties resolving online buying and selling disputes and has the nature of a binding decision. Arbitration is only used in resolving disputes in commerce. The settlement process through arbitration is conducted with confidentiality and is done with the help of a third party called an arbitrator. An arbitrator may not take sides and must be neutral¹². Arbitration also has its own shortcomings, such as lack of flexibility compared to mediation, higher costs, and longer settlement time compared to dispute resolution mechanisms provided by e-commerce platforms.

Litigation dispute resolution is carried out through formal judicial institutions. The word "litigation" is taken from the English word "litigation" which means court¹³. Article 45 of Law Number 8 Year 1999 on Consumer Protection regulates the settlement of consumer disputes through the courts. Article 45 reads: Article 45 (1) Any consumer who is harmed may sue a business actor through an institution tasked with resolving disputes between

⁹ Andi Ardillah Albar, "Dinamika Mekanisme Alternatif Penyelesaian Sengketa Dalam Konteks Hukum Bisnis Internasional," *Otentik's: Jurnal Hukum Kenotariatan* 1, no. 1 (2019): 23.

¹⁰ Gary Goodpaster, *Tinjauan terhadap Penyelesaian Sengketa*, dalam Agnes M. Toar, et al., *Seri Dasar Hukum Ekonomi 2, Arbitrase di Indonesia* (Jakarta: Ghalia Indonesia, 1995), hlm. 11.

¹¹ A Santosa et al., *Mendayagunakan Mekanisme Alternatif Penyelesaian Sengketa (MAPS) Di Indonesia: Sebuah Pengalaman* Santosa and Hutapea, 3, *an* (Kerjasama USAID dengan WALHI, 1992), 3, <https://books.google.co.id/books?id=JPXsAAAAMAAJ>.

¹² Tasya Adelia and D.S. Hamzah Marpaung, "Upaya Hukum Penyelesaian Sengketa Jual Beli Melalui E-Commerce," *Ilmu Hukum Dan Humaniora* 8, no. 6 (2021): 1445.

¹³ Hulman Panjaitan, "Hukum Perlindungan Konsumen" (Jala Permata Aksara, 2021), 110.

consumers and business actors or through the courts within the general judicial environment. (2) Settlement of consumer disputes can be pursued through the court or outside the court based on the voluntary choice of the parties to the dispute¹⁴.

E. Problems and Efforts to Improve

Although Indonesia has various regulations governing electronic transactions, such as Law Number 11 of 2008 concerning Electronic Information and Transactions (Electronic Information and Transaction Law), which has been updated by Law Number 19 of 2016, these regulations have not yet fully addressed the mechanisms for resolving disputes in online transactions. Some aspects that highlight the weaknesses of these regulations include: 1) The absence of a specific mechanism regulating online dispute resolution (ODR); 2) The unclear responsibility of e-commerce platforms in mediating or resolving disputes between users; 3) Limited regulations accommodating jurisdictional differences, especially in cross-border transactions.

Article 38 of the Electronic Information and Transaction Law does mention dispute resolution through electronic systems, but its implementation remains limited, particularly in terms of clear operational procedures for Online Dispute Resolution (ODR) platforms. This results in many disputes not being resolved efficiently and often requiring a longer process through more formal legal channels.

Access to dispute resolution institutions such as the Consumer Dispute Resolution Agency also poses a significant challenge. Law Number 8 of 1999 concerning Consumer Protection does grant authority to handle disputes between consumers and businesses. However, the presence of Consumer Dispute Resolution Agency is not evenly distributed across all regions of Indonesia, especially in remote areas. This often results in consumers who wish to file disputes being unable to easily access Consumer Dispute Resolution Agency services, ultimately leading to disputes not being adequately resolved.

Many consumers do not fully understand their rights as protected under the Consumer Protection Law, such as the right to receive goods as promised or the right to compensation in the event of losses caused by seller errors. This lack of awareness often makes consumers passive or unaware of the proper way to file claims or report disputes they encounter. As a result, violations committed by sellers often go unpunished, and affected consumers struggle to obtain their rights.

Efforts to strengthen legal regulations in resolving online sales disputes are crucial to prevent overlaps or contradictions between one regulation and another. In the context of online transactions, the various existing regulations—whether related to consumer protection, electronic transactions, or dispute resolution—must support each other and work harmoniously. Strengthening these legal regulations aims to create legal certainty for all parties involved in online transactions, both consumers and businesses, ensuring there is no confusion in their implementation. It is also important to pay attention to the dispute resolution procedures outlined in each regulation. For example, Law No. 30 of 1999, which governs arbitration as an alternative dispute resolution method outside the court system, needs to be synchronized with the regulations on e-commerce platforms. This ensures that consumers and sellers are not confused about how to proceed with their disputes.

¹⁴ I Wayan Widianjara and I Made Sarjana, "Upaya Hukum Dari Konsumen Yang Mengalami Wanprestasi Dalam Transaksi Jual Beli Online," *Kertha Desa*; 9, no. 5 (2021): 30.

Equally important, consumer education regarding their rights and obligations in electronic transactions must be prioritized. Many consumers are unaware of their legal rights, including how to file complaints if they suffer losses. Therefore, socialization of related regulations, such as the Electronic Information and Transaction Law and the Consumer Protection Law, must be enhanced through digital campaigns, seminars, and training. This education can also include practical guides on using dispute resolution mechanisms such as Consumer Dispute Resolution Agency, e-commerce platforms, and ODR. With increased legal awareness, consumers will be more empowered to assert their rights and avoid potential losses.

CONCLUSION

The consequences of online sales disputes or default of contract are losses suffered by both consumers and businesses. Online sales disputes occur because both parties fail to fulfill their rights and obligations in the transaction. There are two approaches to protecting and resolving online sales disputes: preventive measures, which aim to prevent defaults or disputes of contract from the outset by ensuring that both buyers and sellers understand their rights and obligations, and repressive measures, which involve legal actions to address violations or deviations from the agreement. These measures aim to provide compensation or cancel the agreement. Dispute resolution can be achieved through consultation, negotiation, mediation, arbitration, or litigation. To enhance the effectiveness of dispute resolution in online sales transactions, it is crucial for e-commerce platforms to continuously strengthen efficient and accessible mechanisms for resolving disputes or breaches of contract. This includes enhancing the role of mediators and clarifying dispute claim procedures. The use of technology should be increased, such as implementing online-based dispute reporting systems, direct communication features between disputing parties, and automating claim processes to expedite dispute resolution and reduce procedural obstacles. Business owners should also include clear and easily understandable arbitration clauses in their agreements to prevent prolonged disputes.

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