THE RECONSTRUCTION OF BUSINESS DISPUTE RESOLUTION IN ELECTRONIC TRANSACTIONS (E-COMMERCE) BASED ON THE VALUE OF JUSTICE IN INDONESIA

by sentosadelimandiri 1

Submission date: 15-Sep-2020 07:55AM (UTC-0700) Submission ID: 1387704388 File name: Artikel_Sarman_Sinaga.docx (35.84K) Word count: 2424 Character count: 13875

THE RECONSTRUCTION OF BUSINESS DISPUTE RESOLUTION IN ELECTRONIC TRANSACTIONS (E-COMMERCE) BASED ON THE VALUE OF JUSTICE IN

INDONESIA

¹Sarman Sinaga, ²Jonner Lumban Gaol

¹Universitas Darma Agung, Medan/e-mail : <u>sarmansinaga17@gmail.com</u> ²Universitas Darma Agung, Medan, e-mail : jonnerlumbangaol20@gmail.com

ABSTRACT

The violation of consumers' rights is very likely to happen, so legal protection is highly required to protect consumers in such e-commerce transactions, especially in the emergence of a dispute. The purpose of this research was to find out and analyze the reconstruction of business dispute resolution in e-commerce transactions based on the value of justice. This research is a rejection of the paradigm of constructivism. The research is descriptive, evaluative analysis, and prescriptive. Research methods used were normative legal research methods (normative juridical) and sociological legal research methods (sociological juridical). Primary Data Collection Method was done by Observation and Interview Data sources was taken from Primary Data Collection and Secondary Data Collection. The data analysis was qualitative descriptive. The result of the research was stated that e-commerce transactions cannot be separated from the possibility of violations committed by one or both parties. The parties may resolve the dispute through an alternative dispute resolution institution or arbitration, if it cannot yet be resolved, one can file a lawsuit in the Court. The drawbacks were that ITE law is general in its relation with the implementation of electronic transactions. Electronic systems and the very narrow scope of business dispute resolution in electronic transactions (e-commerce) regulated by UUPK, thereby causing regulatory confusion as well as Confusion of dispute resolution process. The reconstruction of the law of the diversion arrangement stated that the Formula of Article 39 of the ITE Law before it was reconstructed only consisted of 2 (two) paragraphs, then after being reconstructed it turned out into 4 (four) paragraphs by adding specifically laws about Consumer E-Commerce can make a dispute resolution effort by pursuing a nonlitigation path through BPSK, and if it has not been successful, they can pursue it by attempting the litigation through the Court. The discovery of a new legal theory, namely: Social Justice E-Commerce Dispute Resolution Theory, meaning a dispute resolution effort in E-commerce Transaction that balanced and based on the justice of Pancasila in the future

with non-litigation dispute resolution through BPSK and e-commerce dispute resolution Article Error (1) Article Error (1

Keywords: Business Disputes, Electronic Transactions, Value of Justice

I. INTRODUCTION

Information and communication technology has globally changed the behavior of human society and civilization. [1] With the emergence of the Internet, there come a new kind of world that was previously never known to humans, the so-called virtual world.

The presence of the internet which although still a new industry that still in the growth phase, which is still changing, and full of uncertainty, has strengthened confidence in the importance of the role of technology in achieving the company's financial goals through modification and efficiency on business processes, namely by utilizing e-commerce. The advantage of e-commerce is that it provides convenience for consumers in transaction, because consumers do not have to meet physically, while for sellers, e-commerce can cut operational costs.

Disputes in various business activities are actually something that is not expected to be occured because it can result in losses on the parties in dispute, whether they are in the right position or in the wrong position. One thing that is often encountered in such situations is the onset of disputes. Disputes are one thing that is already part of human life.

Therefore, disputes are inseparable from human life. [2] Business disputes need to be avoided in order to maintain good reputation and relationships going forward. However, disputes are sometimes unavoidable due to misunderstandings, violations of the law, broken promises, conflict of interests, and or losses to either party. [3]

In order to anticipate the development of technology and its utilization, especially in business transactions, in 2008 Law No. 11 of 2008 on Electronic Information and Transactions was established. The government needs to support the development of information technology through its legal infrastructure and regulations, so that the use of information technology is carried out safely to prevent its misuse by taking into account the religious and socio-cultural values of Indonesian society. [4]

II. RESEARCH METHODS

The research method that the author used was normative law research method (normative Article Error and sociological) with an analysis of legislation and sociological law research method (sociological)

juridical), namely finding between abstract legal concepts and social environmental analysis.

The object being reviewed was a law conceptualized as a meaningful symbol, hermeneutic theory of law was used in order to reveal the reality of the object. After the data being reinterpreted then an evaluation that was associated and interpreted based on progressive legal thinking was being carried out.

This evaluation step was carried out to find out if Business Dispute Resolution in Electronic Transactions (e-Commerce) has been implemented in The Reconstruction of Business Dispute Resolution in Electronic Transactions (E-Commerce) in Indonesia.

In this research, the source and type of data collected consisted of 2 (two) types, namely primary data and secondary data. While data collection techniques were taken from field studies and literature studies. In this research, the analysis technique used was qualitative analysis that is after the data was collected, then it was selected, compiled, explained and analyzed.

Run-on 📧

III. RESULTS AND DISCUSSIONS

1. Value Reconstruction

Reconstructing the value of dispute resolution in e-commerce transactions in Article 39 of Law No. 11 of 2008 on Information and Electronic Transactions, because Wrong Article (1) that article does not provide uncertainty and a sense of justice.

The scope of business dispute resolution in electronic transactions (e-commerce) regulated by UUPK is very narrow in sense. Whereas if we look at the characteristics of e-commerce, one of them is trading with electronic transactions even across the borders of the Country.

Policies that protect consumers in various transactions on the internet do not appear to have been formulated by the Indonesian government yet, so a new formula is needed for the rights of consumers and the responsibility of businesses in transaction through the internet, as well as settlement mechanisms that can be done by consumers. If a dispute arises between a consumer and a business, a fair dispute resolution is required.

In each work there are always 2 (two) kinds of legal subjects, each of which the subject of the law has a reciprocal right and obligation in the implementation of the agreement one made. If one of the subjects does not carry out what should be done in accordance with the agreement then the act is said to be a breach of contract.

A breach of contract consisted of four kinds, namely: (a) not doing what is expected to be done, (b) carrying out what is promised but it is too late, (c) carrying out Missing "."

what is promised, but not as promised, (d) doing something that should not be done according to the agreement. In most cases, the breach of contract is done by the business, for example the delay in sending goods, mistakenly sending the ordered goods, the goods purchased do not match the information displayed or can also be businesses that deliberately intend not to fulfill their obligations compensation can be made through:

a. Litigation

In accordance with Article 38 of the ITE Law which explained that the parties wrong Article (c) wrong

b. Non-Litigation

In article 39 paragraph (2) of the ITE Act which explains that in addition to the settlement of civil claims, the parties may resolve disputes through arbitration, or other institutions. Dispute resolution through non-litigation pathways can be reached through non-governmental organizations, the Directorate of Consumer Protection of DISPERINDAG, the Consumer Dispute Resolution Agency (BPSK) and its own business institutions on a family-friendly way. Each of these legal entities has different approaches in resolving existing cases.

Settlement of disputes that occur in online trade agreements stated that if any Article Error (E) happened, because the breach of contract has harmed the other party. Compensation for such breach of contract can be in the form of fulfillment of the agreement, fulfillment of the agreement and compensation, ordinary compensation, Article Error (E) Cancellation of the agreement accompanied by compensation. If in the online trade agreement, the stage that can be taken is: through Litigation under Article 38 paragraph (1) of ITE Law and through non-Litigation in accordance with Article 39 paragraph (2) of ITE law. In the event of a dispute, Article 38 and 39 of the ITE Act said: Article 38 (1) Shall anyone file a lawsuit against the party that administers the electronic system and/or use the information technology that incurred the loss; (2) The Public may file a representative lawsuit against the party that administers electronic systems and/or uses information technology that harms the public, and Article 39 (1) Civil lawsuit is made in accordance with the applicable Laws and Regulations; (2) In addition to the settlement of civil claims as referred to in paragraph (1) the parties may resolve the dispute through alternative dispute resolution institutions or arbitration in accordance with applicable laws and regulations.

2. Reconstruction of Norms

The formula of Article 39 of the ITE Law before reconstruction consists of only 2 (two) paragraphs, then after being reconstructed into 4 (four) paragraphs by adding specifically on the rights of e-Commerce Consumer to make a dispute resolution attempt with a non-penal line through Arbitration, if the settlement of the dispute has not been reached, then a penal attempt can be made.

The formulation of Article 39 of the reconstructed ITE Law added 2 (two) paragraphs, it reads:

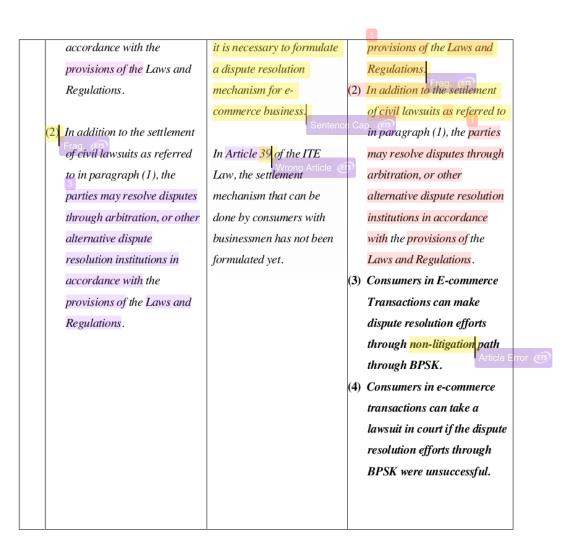
- 1. Consumers in e-commerce Transactions can make dispute resolution efforts through non-litigation path by using BPSK
- 2. Consumers in e-Commerce transactions can file a lawsuit in court if the dispute resolution attempts through BPSK were unsuccessful.

Furthermore, the formula reconstruction of Article 39 of the ITE Law can be described as follows:

Table

The reconstruction of Business Dispute Resolution in E-Commerce Based on Justice Value

No	Before reconstruction	Drawbacks	After Reconstruction
1	Law No. 11/2008 on	The policy framework that	Law No. 11/2008 on Electronic
	Electronic Information and	protects consumers in	Information and Transactions
	Transactions	various e-commerce	
		transactions has not been	Article 39
	Article 39	formulated by the	(1) Civil lawsuits are made in
	(1) Civil lawsuits are made in	Indonesian government, so	accordance with the



IV. CONCLUSION

The dispute resolution in e-commerce Transactions with the implementation model of the e-Commerce Equilibrium Dispute Resolution Theory, meaning a dispute resolution effort in the e-commerce Transaction that balances and based on the value of Pancasila in the future with non-litigation dispute resolution through BPSK and settlement of E-commerce disputes through the Court if the dispute resolution attempts using BPSK were unsuccessful.

REFERENCES

 Ahmad M. Ramli, Cyber Law dan HAKI dalam Sistem Hukum Indonesia, Rafika Aditama, Jakarta, 2004, hlm. 1.

- [2]. <u>http://marullohtekindustri.blogspot.co.id/2012/06/penyelesaian-sengketa-perusahaan-secara.html</u>, *accessed on Feb 28, 2018 at 21.20 WIB*.
- [3]. Sanusi Bintang, Dahlan, Pokok-Pokok Hukum Ekonomi dan Bisnis, Citra Aditya Bakti, Bandung, 2000, hlm. 113.
- [4]. The model of business dispute resolution on electronic transactions in Indonesia, Sinaga, S., Siregar, G.T.P., Hutabarat, L., Journal of Advanced Research in Dynamical and Control Systems (2020), 12 (6) ,pp.573.
- [5]. Legal Implementation of Electronic Information and Transaction Law in Preventing the Spread of Content Containing SARA Issues through Social Media, Gomgom T.P Siregar, Syawal Amry Siregar, Rudolf Silaban, IJICC (2020), Vol 13 Issue 10.
- [6]. The model of business dispute resolution on electronic transactions in Indonesia, Sinaga, S.,Siregar, G.T.P.,Hutabarat, L., Journal of Advanced Research in Dynamical and Control Systems (2020), 12 (6), pp.573.
- [7]. Restorative justice as a protection model for juveniles againts the law, Lubis, M.A.,Siregar, G.T.P.,Silaban, R., Journal of Advanced Research in Dynamical and Control Systems, 2020, 12 (6) ,pp.581.
- [8]. The model of business dispute resolution on electronic transactions in Indonesia, Sinaga, S., Siregar, G.T.P., Hutabarat, L., Journal of Advanced Research in Dynamical and Control Systems (2020) 12 (6) ,pp.573.
- [9]. Ichsan, Reza Nurul, Eddi Surianta, and Lukman Nasution. "PENGARUH DISIPLIN KERJA TERHADAP KINERJA PEGAWAI NEGERI SIPIL (PNS) DI LINGKUNGAN AJUDAN JENDERAL DAERAH MILITER (AJENDAM)-I BUKITBARISAN MEDAN." Jurnal Darma Agung 28.2 (2020): 187-210.
- [10]. Yusuf, Mohammad, and Reza Nurul Ichsan. "Analisis Efektifitas Penggunaan Cadangan Devisa, Utang Luar Negeri dan Ekspor Terhadap Stabilitas Nilai Tukar." JURNAL PENELITIAN PENDIDIKAN SOSIAL HUMANIORA 4.2 (2019): 544-561.
- [11]. Ichsan, R. N., & Nasution, L. (2019, September). PENGARUH PERSEPSI KEMUDAHAN PENGGUNAAN DAN PERSEPSI DAYA GUNA TERHADAP MINAT NASABAH MENGGUNAKAN MANDIRI ONLINE PADA PT. BANK MANDIRI (PERSERO) KCP GATOT SUBROTO 2. In *PROSIDING SEMINAR* NASIONAL HASIL PENELITIAN (Vol. 2, No. 2, pp. 1128-1136).
- [12]. Ichsan, R. N. (2019). KEPEMIMPINAN, KOMUNIKASI DAN EFEKTIVITAS KERJA PEGAWAI PEMERINTAH KOTA LHOKSEUMAWE. JUMANT, 11(1), 13-18.
- [13]. The effect of working atmosphereand discipline towardemployee work productivityinpt. Duta margalestarindomedan, Jonner Lumban Gaol, Reza Nurul Ichsan, Lamminar Hutabart, Journal of Advanced Research in Dynamical and Control Systems (2020), Pages:554-564. <u>https://www.jardcs.org/abstract.php?id=4882</u>
- [14]. Emerging Supply and Demand as a Mix of Social, Economic, and Psychological Factors, Lukman Nasution, Reza Nurul Ichsan, Mega Arisia Dewi, Buyung Perdana Surya, Efriyani Sumastuti, Journal of critical reviews JCR.2020; 7 (17): 421-424. http://www.jcreview.com/?mno=19953

THE RECONSTRUCTION OF BUSINESS DISPUTE RESOLUTION IN ELECTRONIC TRANSACTIONS (E-COMMERCE) BASED ON THE VALUE OF JUSTICE IN INDONESIA

ORIGINALITY REPORT

	6% ARITY INDEX	% INTERNET SOURCES	% PUBLICATIONS	% STUDENT PAPERS		
PRIMAR	Y SOURCES					
1	es.scribd			4%		
2	Pujiastuti On Sale I	asih, B. Rini Her . "Legal Protectio Purchase Agreer ces, 2018	on for Consum			
3	unpan1.u			2%		
4	jurnal.uni	ssula.ac.id		1%		
5	repository	y.theprakarsa.or	g	1%		
6	Submittee Malaysia Student Paper	d to University T	un Hussein Oi	nn 1 %		

7	mafiadoc.com Internet Source	1%
8	www.scribd.com Internet Source	1%
9	eprints.undip.ac.id	<1%
10	Agus Sugiharto, Puspitasari Puspitasari. "CYBER STALKING ACTIVITY OF MILENIAL GENERATION IN URBAN SOCIETY IN INDONESIA", International Review of Humanities Studies, 2020 Publication	<1%
11	Budi Agus Riswandi. "A Shift in The Principle of Bank Secrecy due to Advancement in Information Technology", Varia Justicia, 2020 Publication	< 1 %
12	Muhammad Hatta, Ramalinggam Rajamanickam, Dahlan Abdullah, H Hartono et al. "Efforts to Overcome Cyber Crime Actions in Indonesia", Journal of Physics: Conference Series, 2018 Publication	<1%

THE RECONSTRUCTION OF BUSINESS DISPUTE RESOLUTION IN ELECTRONIC TRANSACTIONS (E-COMMERCE) BASED ON THE VALUE OF JUSTICE IN INDONESIA

PAGE 1	
ETS	Run-on This sentence may be a run-on sentence.
ETS	Article Error You may need to remove this article.
ETS	P/V You have used the passive voice in this sentence. You may want to revise it using the active voi
ETS	S/V This subject and verb may not agree. Proofread the sentence to make sure the subject agrees v the verb.
ETS	Article Error You may need to remove this article.
ETS	P/V You have used the passive voice in this sentence. You may want to revise it using the active voi
ETS	Article Error You may need to use an article before this word. Consider using the article the.
ETS	P/V You have used the passive voice in this sentence. You may want to revise it using the active voi
PAGE 2	
ETS,	Article Error You may need to use an article before this word. Consider using the article the.
ETS)	Missing "," Review the rules for using punctuation marks.
ETS)	Article Error You may need to use an article before this word. Consider using the article a .
ETS.	P/V You have used the passive voice in this sentence. You may want to revise it using the active voi
ETS?	Article Error You may need to use an article before this word.
PAGE 3	

Article Error You may need to use an article before this word.

(ETS



Article Error You may need to remove this article.

Run-on This sentence may be a run-on sentence.

Wrong Article You may have used the wrong article or pronoun. Proofread the sentence to make sure that the article or pronoun agrees with the word it describes.

- **Article Error** You may need to use an article before this word.
- P/V You have used the passive voice in this sentence. You may want to revise it using the active voi
- Missing "," Review the rules for using punctuation marks.

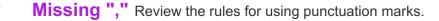
PAGE 4

- (ETS) Article Error You may need to use an article before this word.
- (ETS) Missing "," Review the rules for using punctuation marks.
- **ETS Run-on** This sentence may be a run-on sentence.
- **ETS)** P/V You have used the passive voice in this sentence. You may want to revise it using the active voi
- **Wrong Article** You may have used the wrong article or pronoun. Proofread the sentence to make sure that the article or pronoun agrees with the word it describes.
- **ETS** Article Error You may need to use an article before this word.
- **ETS**) **Prep.** You may be using the wrong preposition.
- **ETS** Article Error You may need to use an article before this word. Consider using the article the.
- Article Error You may need to use an article before this word.
- **ETS** Article Error You may need to use an article before this word. Consider using the article the.

PAGE 5







- **S Prep.** You may be using the wrong preposition.
- 5) P/V You have used the passive voice in this sentence. You may want to revise it using the active voi
- **Article Error** You may need to use an article before this word.
- (ETS)
- **Run-on** This sentence may be a run-on sentence.
- 5) P/V You have used the passive voice in this sentence. You may want to revise it using the active voi

PAGE 6



Frag. This sentence may be a fragment or may have incorrect punctuation. Proofread the sentence be sure that it has correct punctuation and that it has an independent clause with a complete subject and predicate.

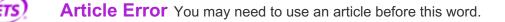


Sentence Cap. Review the rules for capitalization.

Frag. This sentence may be a fragment or may have incorrect punctuation. Proofread the sentence be sure that it has correct punctuation and that it has an independent clause with a complete subject and predicate.



Wrong Article You may have used the wrong article or pronoun. Proofread the sentence to make sure that the article or pronoun agrees with the word it describes.



Article Error You may need to use an article before this word.

PAGE 7