

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

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

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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 non-litigation 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 through the Court if the dispute resolution attempt using BPSK was failed.

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 occurred 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 juridical) 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 re-interpreted 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.

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 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

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. Consumer efforts to claim compensation can be made through:

a. Litigation

In accordance with Article 38 of the ITE Law which explained that the parties can sue if in the implementation of electronic transactions harms other parties. With the recognition of electronic evidence as a valid evidence tool in court as mentioned in Article 5 paragraph 1, 2 and 3 of the ITE Law, the evidence tools that can be used by consumers in court are proof of transfer or proof of payment, SMS or message from social media stating the agreement to make a purchase, name, address, phone number and account number of the business entity.

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 party was harmed, one is able to seek for the compensation on breach of contract 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, 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 Electronic Information and Transactions Article 39 (1) Civil lawsuits are made in	The policy framework that protects consumers in various e-commerce transactions has not been formulated by the Indonesian government, so	Law No. 11/2008 on Electronic Information and Transactions Article 39 (1) Civil lawsuits are made in accordance with the

	<p>accordance with the provisions of the Laws and Regulations.</p> <p>(2) In addition to the settlement of civil lawsuits as referred to in paragraph (1), the parties may resolve disputes through arbitration, or other alternative dispute resolution institutions in accordance with the provisions of the Laws and Regulations.</p>	<p>it is necessary to formulate a dispute resolution mechanism for e-commerce business.</p> <p>In Article 39 of the ITE Law, the settlement mechanism that can be done by consumers with businessmen has not been formulated yet.</p>	<p>provisions of the Laws and Regulations.</p> <p>(2) In addition to the settlement of civil lawsuits as referred to in paragraph (1), the parties may resolve disputes through arbitration, or other alternative dispute resolution institutions in accordance with the provisions of the Laws and Regulations.</p> <p>(3) Consumers in E-commerce Transactions can make dispute resolution efforts through non-litigation path through BPSK.</p> <p>(4) Consumers in e-commerce transactions can take a lawsuit in court if the dispute resolution efforts through BPSK were unsuccessful.</p>
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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.

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