

Customer Legal Protection: Resolution of Online Purchase Disputes Based on Non-Governmental Organization in Ternate, Indonesia

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Abstract

This study has a goal to highlight the resolution of online sales and purchase disputes that commonly occur due to errors in transactions between sellers and buyers online. Applying empirical normative research, this study used statutory regulations as a reference for law in book and law in action by examining and comparing what is written in the law and what applies in society. Descriptive-qualitative approach was used in this study. There are two kinds of legal protection, preventive and repressive. Preventive protection prevents disputes from occurring. Meanwhile, repressive protection aims to handle disputes through court and non-court. This study was applied in Indonesia, and legal protection is provided for consumers of electronic transactions. People are still afraid of resolving their disputes through litigation, which is likely to be convoluted. Online dispute resolution is a solution for dispute resolution between consumers in online sales and purchase transactions. The concept of online dispute resolution based on non-government organization is a new solution for online sales and purchase dispute resolution between online buyers and sellers in Ternate with technology as an alternative to dispute resolution, such as Online Mediation, Online Arbitration, etc., which can facilitate consumers to obtain justice and legal certainty without distance, time, and cost constraints.

Keywords

legal protection, customer, online, dispute resolution, purchase.

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Introduction

The emergence of e-commerce or online sales and purchase is a phenomenon that greatly changes the business world because it has characteristics different from general transactions; e-commerce is global, borderless, virtual, and anonymous (Alfons, 2010). These characteristics, on the one hand, help people to do business transactions; on the other hand, e-commerce provides problems that "seem" new to law. Consumer protection is an interesting issue in e-commerce to discuss. Legal protection for consumers is important due to consumers' weak bargaining position (APPJII, 2020) moreover, e-commerce allows parties to make transactions without meeting face to face, such as in online buying and selling transactions that enable transactions without having to meet face to face and where the products cannot be seen, touched, and tried directly by consumers. This poses consumers to several problems, including the fraudulent attitude of business actors when sales and purchase contract is executed, such as unclear content of standard contracts, defective products, unsatisfactory services, misleading advertising, and after-sales service issues (Hakiki, Wijayanti, & Kharismasari, 2017). Therefore, there is a need for consumer protection mechanisms to accommodate consumer interests in electronic transactions (e-commerce) including online sales and purchase transactions.

One of the horrendous cases in Ternate is a dispute between an online Turkish carpet seller and her 11 buyers. The seller, Rosmiati, is a resident of Sidrap Regency, north to Makassar City, South Sulawesi Province. She was arrested by the Makassar Police and handed over to the Ternate Police for fraud reports from 11 Ternate residents who felt disadvantaged due to accumulation, namely late delivery. The shipment did not match the specifications offered or it did not come with a sales and purchase value of 500 million Rupiah (USD17, 000). The seller was charged with fraud and imprisoned by the Ternate Police (Azam, 2007). Resolving any dispute in online transactions in Ternate with criminal law is not a wise choice considering the long and complex litigation or criminal process. In Indonesia, the provisions regarding consumer protection are contained in Law Number 8 of 1999 concerning Consumer Protection. Consumer protection is an effort that ensures legal certainty to protect consumers. However, in practice, consumers in some areas of Indonesia have not been properly protected and have not received legal certainty. This is due to the perspective of consumer protection law in Indonesia which still refers to the conventional transaction aspects (Alfons, 2010). In fact, technological advances accelerate development, including in business and transaction.

The birth of Law Number 11 of 2008 concerning Electronic Transactions and Information (UUITE) is a legal instrument that supports the implementation of legal protection, known as telematics law or cyber law in the new legal regime (Explanation of the Law on information and electronic transactions). UUITE provides a legal basis for e-commerce activities and protection for consumers (Barakatullah, 2010). Broadly speaking, support for consumer protection through the law on electronic information and transactions is the establishment of electronic documents as valid evidence (Cortés, 2010), provision of complete information from business actors (Education, 1990), certification of business actors (Dewi, 2009) electronic signature (Elbadriati, 2014) scope of electronic transactions (Fuady, 2013) and lawsuits (Law on electronic information and transactions). A large number of users of online transactions not only give business opportunities for all Indonesian people but also leads to disputes (Foundation, 2019). Of 210,399 people in Ternate, 36,187 are Internet users. This figure will increase along with the increase in population and more cost-efficient facilities, connection tools, and Internet quota. This leads to the assumption that the increased use of the Internet in Ternate will increase the number of people who make transactions via the Internet/online media and may cause consumer disputes in the marketplace. Meanwhile, the Consumer Dispute Resolution Agency (BPSK) as a non-litigation consumer dispute resolution institution has not yet been established or has not been actively working, so consumers are constrained in fighting for their rights when a dispute turns up. Besides, the complex and long process of dispute resolution through court/litigation channels makes most Indonesians reluctant or afraid to do so.

Data from APPJII (Hadjon, 1987) states that only one case out of thirty-nine online transactions was resolved through litigation, while most of the other cases were resolved independently through non-litigation, by negotiation between the disputing parties. For non-litigation resolution, it was carried out by third-party (the Police and apparatus) mediation instead of the Institution Non-Government Organization Consumer Protection (LPKSM) or commonly known as Non-Government Organization (NGO) engages in consumer protection in Ternate City (Hendiana & Aly, 2016). The resolution process through litigation requires a long time and causes uncertainty for the disputing

parties.

E-commerce is intended to eliminate constraints in conventional business transactions so that it is not advised to solve disputes through a court as it is time- and cost-inefficient. The resolution is eventually carried out through court or litigation, only as a last resort (*ultimatum remedium*) after other channels have failed (APJII, 2020). Given the current conditions, a system that is appropriate, effective, and efficient is required. In response to this, the modern business world has turned to ODR as modernization of dispute resolution due to the need for prompt dispute resolution at a low cost (JAWAPOS, 2010). There needs to be a concept of consumer dispute resolution processes in online transactions in Ternate as a solution. Therefore, this study will mainly discuss the implementation of consumer legal protection in online sales and purchase transactions/e-commerce in Ternate City.

Methods

Research method is used to find, record, formulate, and analyze the data. A mixed-method of empirical and normative methods with a qualitative approach was used. Empirical legal research method is about the law in book (statute law) and law in action (reality). Empirical research explains how the law can be implemented. Empirical research can be an interpreter and a constructivist like positivist (doctrinal). Applying empirical normative research, this study used statutory regulations as a reference for statute law (law in book) and legal facts in the field (law in action) by examining and comparing what is written in the law and what applies in society. Qualitative research is a research method that produces descriptive-analytical data that is researched and studied comprehensively. A quantitative approach is based on constructing a detailed view of the subjects, formed with words and detailed descriptions. This study was conducted in Ternate City with supporting/secondary data from several agencies. This study examines online dispute resolution as an alternative for online sales and purchase disputes in Ternate and interviews related parties, online business actors and online business activists, to collect the data.

Results

Below is the data about the use of Internet access by the residents of Ternate City (Helmi, 2020).

Table 1
Data on Internet Usage out of 36,187 Ternate City Residences

No.	Usage of Internet	Percentage (%)
1	Email	95.75
2	News	78.49
3	Science and Knowledge	77.81
4	Product and Service	66.07
5	Social Media	61.23

Then, the data below shows the percentage of online market users in Ternate City (Helmi, 2020).

Table 2
Data on Online Marketplace Transaction Users in Ternate City

No.	Year	Total	Percentage (%) of Internet Users
1	2019	21,661	66.07
2	2018	12,440	52.82
3	2017	12,988	43.34

Next, Table 3 shows the number of online transaction dispute resolutions in Ternate City (Helmi, 2020).

Table 3
Data on Online Sales and Purchase Dispute Resolution in Ternate City

No.	Type of Dispute Resolution	Total	Percentage (%)
1	Litigation/Criminal	1	3
2	Negotiation/Non-Litigation	23	59
3	Third-Party Resolution (Police Apparatus)/Non-Litigation	15	38
	Total	39	100

Consumer Dispute Resolution of Online Transactions in Ternate City

A dispute is anything that causes differences of opinion, contention, or argument (Mansyur & Kamil, 2014). In other words, a dispute is a conflict. Meanwhile, according to legal science, a dispute or conflict is something that causes differences of opinion between two or more parties in dispute or a case in court (Keen, Mougayar, & Torregrossa, 1998). Online transactions sometimes confront the seller (business actor) and buyer (consumer) in a dispute. This occurs as a result of one of the parties in default (Kusnadi, 2011) or an act against the law. The forms of dispute cases that often occur in the online sales and purchase transactions can be seen from the consumer dispute data below:

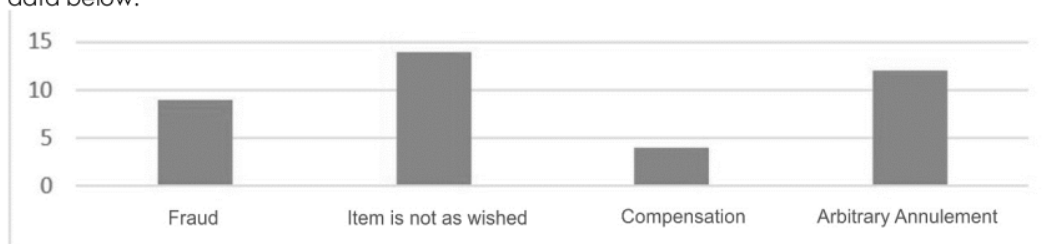


Fig.1 Data on online sales and purchase disputes via the marketplace in Ternate (from 39 cases)

The data above show that there are 39 cases of online sales and purchase disputes in Ternate in electronic transactions. Most cases are about the product received by consumers different from that in an online platform. The next most data are due to unilateral cancellations that are often done by consumers without logical reasons. The next data is related to cases of fraud and claims for compensation. The party that loses the most is the consumer even though there are losses from the producer or seller, such as unilateral order cancellation and fictitious order (fraud). Because business actors often experience default, online transactions require consumers to make a payment first before the product ordered is sent. The time range between payment, delivery, and

receipt of the purchased goods sometimes causes several problems for consumers, such as unilateral cancellation of the agreement, the product received not meeting the specifications as agreed, damaged product in delivery or even the product purchased never received (fraud) (Direct interview with Amir, 2019). Another thing that raises consumer disputes is the existence of standard clauses that can harm consumers, such as the transfer of responsibility, provisions on compensation, claims and refunds, and consumer complaint services (Direct interview with Sukma, 2019). Most consumers in Ternate who carry out online transactions still choose well-known online shops to buy items of their interest in the categories of gadgets, electronics, and fashion (Direct interview with Sutrisno, 2019). Meanwhile, online transaction business actors in Ternate still use social media to carry out marketing, and the transaction process (payment) is carried out directly (either visiting the business place or cash on delivery). The goods sold are mostly used clothes, gadgets, electronics, motorcycles, cars, to property (house and rent house) (Direct interview with Rifai Hanafi, 2019).

The Concept of Consumer Dispute Resolution in Online Transactions

The online sales and purchase transaction model as a form of e-commerce (Kusumastuti, 2015) emerged after the Internet was used massively for communication and data exchange. The use of the Internet as a means of business transactions is caused by the large number of Internet users leading to market opening and business opportunities for both small, medium, and large industries (Rule, 2020). There are several classifications of online sales and purchase transaction or e-commerce business actors in Indonesia, including (Chandra, 2014):

- 1) Classifieds/listing,
- 2) Marketplace,
- 3) Shopping mall,
- 4) Online shop,
- 5) Online shop on social media.

Meanwhile, most business actors in the online sales and purchase transactions in Ternate use marketplace through social media to market their products because most of them only sell food, clothing, and used goods (electronics, houses, and vehicles), and the consumers in Ternate still rely on the marketplace and online shopping mall which provide new products with discounts, rebates, and promos.

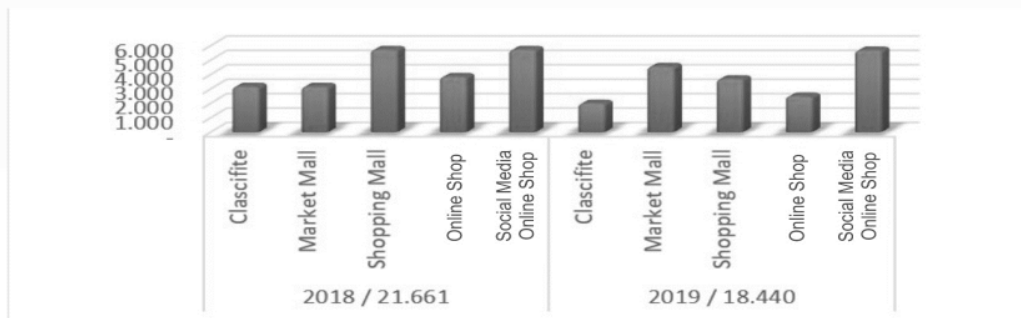


Fig. 2 Online Purchase Transaction Data 2018-2019

From a legal perspective, electronic transactions or e-commerce including online sales and purchase are categorized as legal actions (Maulana, Susilo, & Susilo, 2015). According to Mertokusumo (Mertokusumo, 2007) a legal action is an act of a legal subject aimed at causing legal consequences that are deliberately desired by the legal subject. A legal consequence is a continuation of legal actions resulting from legal events that give rise to rights and obligations to the legal subjects (Nugroho, 2008). There are 3 (three) types of legal relationships that exist in e-commerce, including Business-to-Business (Oktavira, 2019), Business-to-Consumer (Pradana, 2015) and Consumer-to-Consumer. In online sales and purchase transactions, there is Business-to-Consumer relationship involving two parties, namely business actors (sellers) and consumers (buyers).

In terms of civil law, the concept of e-commerce creates an engagement between the parties to provide an achievement (Puurunen, 2005). Online sales and purchase transactions are the same as transactions in general (conventional) which are bound by the law of engagement, agreement, and sales and purchase itself (Rahardjo, 2006). However, the means and procedures for transactions are different, where online sales and purchase uses an electronic system in transactions (JAWAPOS, 2010) which allows parties to transact anywhere (Reich, 2006). The nature of unlimited online sales and purchase transactions eventually raises several problems, including which country's legal jurisdiction should be enforced (Reddy & Jambulingam, 2017), consumer protection (Rohendi, 2015) and how to resolve consumer disputes (Salami & Bintoro, 2013).

Discussion

The Concept of Consumer Legal Protection

Consumers or buyers are end-users of a product, goods, and/or services that are used for their own, family, and other need (Muhdlor, 2012). Meanwhile, the consumer protection law defines a consumer as any person or user of goods or services available in society, whether for the benefit of himself, family, other people, or other living creatures not for sale (Saliman, Hermansyah, & Jalis, 2005). The Consumer Protection Law (UUPK) includes consumer rights that must be fulfilled by business actors (Serfiani, Purnomo, & Hariyani, 2013). The emphasis on consumer rights in UUPK is because the rights of most consumers of transactions, including online sales and purchase, have not been fulfilled. In some cases, in online sales and purchase transactions, for example, many consumers feel that they do not get goods and services that are not following the exchange rate and guaranteed conditions (Interview with consumers, Canu, Tomsio, Amin, Balgis, and Abbas, 2019), and some even get a different product (Jud) (Direct interview with Abbas and Amri, 2017). From the perspective of legal protection, there are two kinds of legal protection, namely preventive and repressive (Sitompul, Syaifuddin, & Yahanan, 2016). Preventive legal protection aims to prevent disputes (Sutiyoso, 2008) while repressive legal protection aims to handle disputes in law enforcement agencies and court (Taufikurrahman, 2015). In the consumer protection law, preventive consumer protection is reflected in efforts to implement consumer protection in the form of guidance and supervision. Meanwhile, the repressive form is reflected in efforts to resolve consumer disputes.

One of the repressive forms of consumer protection is the opening of opportunities for consumers to resolve disputes through litigation and non-litigation channels. Dispute resolution through litigation can be pursued through judicial institutions within the scope of the general court. Dispute resolution outside of court proceedings is carried out through the Consumer Dispute Resolution Agency (Mansyur & Kamil, 2014) via reliability certification includes identity seal, security seal, vulnerability seal, consumer rating seal, and privacy seal (Tutik & SH, 2015). Preventive consumer protection explains the legal function of a tool of social control (Tutik & SH, 2015). Guidance and supervision in implementing consumer protection are seen in the framework of carrying out the function of safeguard (Rahardjo, 2006) against the interests of consumers. Meanwhile, repressive consumer protection means that the social control or control function of the law also brings legal consequences to a certain behavior (Tutik & SH, 2015). In another legal context, repressive forms are consumer protection as a function of conflict/dispute resolution (Hakiki et al., 2017).

NGO-Based Online Dispute Resolution Legal Protection for Consumers in Ternate City

The emergence of online dispute resolution based on a non-government organization (NGO-based ODR) as the development of Alternative Dispute Resolution (ADR) can be a breath of fresh air as consumer legal protection, especially in the aspect of consumer dispute resolution. ODR arises as a result of technology that has changed our perspective from "how we do" to "what we need to do" and "what we can do" (Lekkas, 2015). NGO-based ODR is an online dispute resolution model for resolving disputes in online transactions or e-commerce or other disputes that arise not as a result of Internet use. In ODR, the disputing parties can carry out a dispute resolution process as in the common ADR model by involving the parties through mediation, arbitration, and negotiation. As the parties use web-based media, the dispute

resolution process can be fully carried out via the Internet through various means such as email and video conferences (Keen et al., 1998). Although Indonesia does not yet have more detailed provisions regarding ODR, from the perspective of applicable UUPK and UIITE, dispute resolution with ODR can be implemented. Moreover, UIITE explains about electronic transactions can be used in the public and private contexts. This indicates that the implementation of electronic transactions can also be used by agencies that provide public services, which means that the Law allows the use of electronic transaction systems to resolve disputes online. Therefore, the ODR concept, apart from gaining space in the Electronic Information and Transaction Law, can also be synchronized with ADR concept as regulated through the Consumer Protection Law through BPSK or the Indonesian National Arbitration Board (BANI). In carrying out consumer protection, BPSK can use ODR model including online mediation, online arbitration, and online complaints. The use of technology for consumer protection is not only limited to online dispute resolution, but it can also be used as a means of socialization, education, and supervision of consumer protection. Procedures of consumer dispute resolution with the ODR system can also be carried out by synchronizing with the existing regulations as stated by the Ministerial Decree of 2001. It only requires a system, media, and human resources. If online dispute resolution through NGO can be enforced, then there will be several advantages for buyers and e-commerce business actors, among others:

- 1) Saving time and money, because the parties do not have to pay the costs incurred to attend the trial and other related costs. The speed of ODR through NGO is one main advantage of parties in dispute, and neutral parties do not need to spend time to meet the disputing parties. They do not need to be present at the same time. It takes a short submission time and only requires documents for resolution.
- 2) The civil dispute resolution service costs are usually a combination of dispute resolution institution costs, fees, and neutral party fees, parties' fees, and legal fees. In NGO-based ODR, some of these costs are absent or significantly reduced.
- 3) If the parties are reluctant to meet face to face, they can avoid meeting with the opposing party. This model can prevent parties from fear of intimidation in the resolution process, which is a psychological problem.

If the implementation of NGO-based ODR can be practiced in Ternate City, it is unlikely that consumers who do not get legal certainty can be helped by simple resolution models (Hakiki et al., 2017; Lekkas, 2015).

Conclusion

ODR can be a solution to resolve consumer disputes. Using technology in alternative dispute resolutions, such as online mediation, online arbitration, etc., can help consumers to obtain justice and legal certainty without distance, time, and cost constraints. ODR is currently the most possible dispute resolution model, given the widespread use of the Internet, electronic transactions, and online sales and purchase that have touched almost all regions of Indonesia. Considering that Indonesia is an archipelago country, in which the distance between one region to another is sometimes quite far, direct/offline dispute resolution processes can be difficult for society. The disadvantage of ODR, when applied in Indonesia, is the absence of legal instruments, completeness, and adequate procedural support such as a website integrated with a database application to accommodate incoming requests, a list of arbitrators, and the necessary regulations regarding applications for arbitration. Chat rooms and bulletin boards based on real-time audio-visual streaming and a customized content management system for arbitrators/mediators are indeed required. Meanwhile, dispute resolution through non-litigation channels is considered to be more easily applied in Ternate City that has not maximally utilized BPSK as the mandated institution to handles consumer dispute resolution through simple non-litigation channels. Based on legal, potential, technology, business, and social factors, it can be concluded that ODR has the potentials to resolve online disputes event though the implementation is not as easy as expected.

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