



PREPARATION FORMAT AND GUIDE THE MEDIATION AS A PATTERN FOR RESOLVING E-COMMERCE DISPUTES IN INDONESIA'S BUSINESS LAW SYSTEM

Aryani Witasari^{1*} Ida Musofiana^{2*} Erwin Riduan^{3*}

¹ Faculty of Law, Sultan Agung Islamic University, Indonesia
Email: aryani@unissula.ac.id

² Faculty of Law, Sultan Agung Islamic University, Indonesia
Email: ida.musofiana@unissula.ac.id

³ Student of Law Doctoral Program, Sultan Agung Islamic University, Indonesia
Email: erwinriduanppat@gmail.com

Abstract:

The purpose of this research is to find out, analyze and explain various ways to solve problems in the event of a dispute in the E-Commerce field and to study, analyze and explain the mediation patterns based on Act No. 30 of 1999 concerning Alternative Dispute Resolution. Research on mediation patterns for E-Commerce business disputes is to use a normative juridical approach so that it uses secondary data and the type of legal study is analytical comprehensive on secondary legal materials, tertiary legal materials and is supported by primary data. All of these legal materials will be analyzed qualitatively regularly. The discussion and conclusions from research on Mediation as a pattern of dispute resolution in the E-Commerce business sector are that 1) There are various ways that parties can do in the event of a dispute in the business field (E-Commerce). By using litigation or non-litigation. If the injured consumer generally uses deliberation and consensus media or is resolved with kinship. Lack of knowledge of how to complain, do not want to be complicated with legal issues and also because the object factor of the dispute is not that big. 2) Mediation in choose as a pattern of dispute resolution between them because it has several advantages compared to having to be resolved by litigation. Indonesia has established a mediation settlement system as stipulated in Act No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

Keywords: Mediation; Dispute; E-Commerce.

Introduction

Indonesia as a legal state which has the objective of one of them is to prosper the people's economy, as seen in the Preamble to the Constitution of the Republic of Indonesia paragraph 4, namely in the sentence to promote general welfare. Besides that, it is also seen in the provisions of Article 33 of the 1945 Republic of Indonesia Law which shows that the State is responsible for the

economic welfare of the Indonesian people. In order to achieve this goal, various regulations in the economic sector and those related to economic matters are required, including regulations to anticipate disputes in the economic sector. Lately there are many people doing business ventures, from those with large capital to those without capital. The increasing need for life causes people to try to increase their income and one of



them is by doing business. Business through online¹ media or E-Commerce is a business that is in great demand by people. Indonesia as a legal country and upholds human rights does not prohibit its citizens from doing business, including doing business online with regulations made by the Government and the Council to strive to ensure that the business that is run in Indonesia runs well, mutually beneficial and not harmful one party.

The more vibrant the E-Commerce business that is run by someone, of course, does not always have to run as expected, because no human being does not make a mistake, whether intentional or not, even though the rights and obligations that must be fulfilled have been regulated in such a way.

If there are business actors who do not fulfill their obligations or if there are other parties whose rights have not been fulfilled, of course it will cause losses, and if the losses suffered continuously and are not sought for a solution, of course this cannot be justified. If something like this happens and one of the aggrieved parties has taken it to find a solution and the other party is not willing to fulfill its obligations, then the party that has been injured can make certain legal measures.

There are various ways that business actors take to resolve problems if a dispute occurs between them, namely by means of litigation and non-litigation.

The methods for solving problems in the event of a dispute with other parties have been taught by *Pancasila* is by deliberation to reach consensus. This persuasive approach has actually become an option for business actors who have problems with other parties, especially their business partners. In their business contracts, they usually contain clauses for resolving disputes by deliberation to reach consensus.

¹ Yahya, W. K., Hashim, N. H., Husin, N., & Abdul Rahim, N. (2020). Online customer shopping behaviour: The mediating role of online perceived risk. *UUM. Global Business Management Review*, 12(2), 1-18

E-Commerce cases that occur can happen to anyone, both buyers and sellers. Receiving goods that are different from those ordered by the buyer, goods are not sent as promised or goods are not sent after we transfer a certain amount of money, these things cost the buyer a lot, but can also occurs where the victim is the seller, such as cases of fraud selling used cars online. After negotiating through gadgets and the internet, buyers and sellers meet to see the condition of the car. Not a few stories end in grief ranging from failing to get money to lives lost because of being a victim of robbery.

The example above is an illustration of how business in cyberspace is full of risks, especially not dealing directly with buyers and sellers, each of whom knows each other via data and virtually. If the case has penetrated into the realm of crime, then the parties will try to report it to law enforcement officials, but if the risk of harm to each party is not large, then they will use peaceful means.

The option of using third party services will be used if the E-Commerce business contract contains a clause on the use of media for dispute resolution by mediation. Mediation is the process of involving a third party in resolving a dispute as an advisor. Mediation is a conflict resolution effort by involving a neutral third party, who does not have the authority to make decisions that help the disputing parties reach a resolution (solution) that is accepted by both parties. Mediation as an alternative to dispute resolution has been packaged by the Government with the emergence of Act No. 30 of 1999 concerning Alternative Legal Dispute Resolution.

Problem

Based on the background above, the following problems will be formulated: 1) What have been the efforts of E-Commerce users in Indonesia to resolve business disputes (E-Commerce) so far? 2) What is the pattern of business dispute resolution (E-Commerce) with mediation in Indonesia?



Research Methods

Research on mediation patterns for E-Commerce business disputes is to use a normative juridical approach and the type of legal review is analytical comprehensive on primary legal materials, secondary legal materials, and tertiary legal materials.

The results of the research and discussion are described in a complete, detailed, clear and systematic manner as scientific work. Normative legal research examines law that is conceptualized as norms or rules that apply in society, and becomes a reference for everyone's behavior. The applicable legal norms are in the form of written positive legal norms formed by statutory institutions (basic laws), codification, laws, government regulations, and so on and written legal norms formed by judicial institutions (judge made law), as well as artificial written laws interested parties (contracts, legal documents, legal reports, legal records, and bills).

The source of data in this normative legal research comes from literature study data supported by data in the field. Field data is data that comes from respondents. Respondents are people or groups of

people as E-Commerce users who provide answers to questions raised by researchers² The data obtained will then be analyzed qualitatively, and the results will be compiled in a descriptive research report, then analyzed using theories about mediation in resolving business-related disputes.

Literature Review

Efforts by E-Commerce users to resolve business disputes (E-Commerce) in Indonesia

In the early 1990's E-Commerce in Indonesia has not shown its existence, but recently and it is also supported by the covid pandemic in 2019, E-Commerce transactions have undergone significant developments and improvements. Many consumers are looking for products and services that can be fulfilled through E-Commerce (Including the need for clothing, food and even shelter).

Enough with an agreement on goods and prices, then this E-Commerce agreement has occurred, no specific formality is required and is not bound by any form of agreement. Good faith is the main capital in running this E-Commerce business, because of the weak evidence³ where the

² HS., Salim & Erloes Septiana Nurbani. (2013). *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*. Jakarta: RajaGrafindo Persada. p. 24-25.

³ ABU BAKAR, Juliana et al. Empirical Evidence of Obstacles of Women Entrepreneurship's Growth in Malaysia. *Journal of Business Management and*



agreement that occurs is not carried out in writing manually.

Indonesia as a country that always follows world developments including in the economic sector presents many opportunities for business E-Commerce compared to other Asian countries. Currently, the projection shows that E-Commerce in Indonesia will reach a value of US \$ 130 billion by 2020. Reported from Progresstech.co.id, online retail sales in America have increased 15% since 2013, and are expected to reach USD 370 billion by the end of 2017. Even some E-Commerce in America are successful in the Indonesian retail market⁴ with their marketing strategies.

The E-Commerce industry is currently favored by our society, not only for those from the upper middle elite but also many from the lower middle class, especially young people, but not infrequently the elderly who live during this transition period. .

Based on the players in E-Commerce there are seven basic types of E-Commerce or forms of E-Commerce business with different characteristics⁵ :

Accounting, [S.l.], v. 10, n. 2, p. 67-84, nov. 2020. ISSN 2636-9249.

⁴ TINGTING, Xie; YONG, Wang. The Stock Market's Reaction to Strict Environmental Inspection: Evidence from Heavily Polluting Listed Companies in China. *International Journal of Banking and Finance*, [S.l.], v. 15, n. 2, p. 95-117, July 2020. ISSN 1675-722X.

⁵ Pratama, I Putu Agus Eka. (2015). *E-Commerce, e-Business Dan Mobile Commerce*. Bandung: Informatika. p.10.

1. Business-to-Business (B2B)
2. Business-to-Consumer (B2C)
3. Consumer-to-Consumer (C2C)
4. Consumer-to-Business (C2B)
5. Business-to-Government (B2G)
6. Government to Business (G2B)
7. Government to Citizen (G2C)

E-Commerce that is common in Indonesia is:

1. E-Commerce B2B (Business to Business)
2. E-Commerce B2C (Business to Consumer)
3. E-Commerce C2C (Consumer to Consumer)

Ad.1. E-Commerce B2B (Business to Business)

B2B E-Commerce is a type of E-Commerce that facilitates E-Commerce companies themselves to connect with other companies or bring together business actors. B2B models focus on providing products from one business to another. Although many e-commerce businesses in this area are service providers, you will also find software companies, office furniture supply and supply companies, hosting companies, and various other E-Commerce business models from this sector.⁶

⁶ <https://www.softwareseni.co.id/5-model-bisnis-ecommerce-b2b-b2c-c2c-c2b-b2g/diakses> accessed on March 18, 2020



In Indonesia, the B2B e-commerce business model has not been fully exploited by business people. One of the Indonesian startups that have successfully targeted this market opportunity is MBiz, a subsidiary of the Lippo Group.

Like MBiz, which was founded in July 2015, this company focuses on e-procurement specifically for B2B and B2C. This company provides integrated web-based goods and service procurement solutions for companies and government institutions ranging from technology products, office equipment, industrial equipment, to retail goods, said Ryn Hermawan, COO and Co Founder of MBiz.co.id.

Examples are indotrading, indonetwork, BZ Bizzy, Ralali.com, Kawan Lama, Electronic city.

Ad.2 E-Commerce B2C (Business to Consumer)

B2C E-Commerce is a type of E-Commerce that facilitates E-Commerce companies themselves to deal directly with their consumers, which includes B2C, namely:

a. Mainstream Platform

Is an E-Commerce company that sells directly to its consumers various categories of products or services. Examples are Lazada, Blibli, Elevenia, Mall, shopdeca, dinomarket and so on.

b. Etalier

Is an E-Commerce company that sells products or services directly to consumers, where previously the company was physically present in the offline world as a retail company. Examples are Indomart, Transmart Carefour, Electronic City and so on.

c. Daily Deals

Is an E-Commerce company that sells products or services directly to consumers in the form of coupons or vouchers. Examples are Groupon, Lakupon, Evoucher and so on.

d. Verticals

Is an E-Commerce company that sells products or services directly to consumers in a special category. Examples are Zalora for the fashion category, Bhinneka for the electronics category, Traveloka for the traveling needs category.

Ad. 3. E-Commerce C2C (Consumer to Consumer)

C2C E-Commerce is a type of E-Commerce that facilitates between consumers from the E-Commerce company, namely consumers as sellers and consumers as buyers.

This C2C e-commerce also has various forms, namely:

a. Marketplace

Is an E-Commerce company that facilitates between consumer and buyer consumers,



where the E-Commerce company is involved in securing transactions, from ordering, shipping to payment. Examples are Bukalapak, Tokopedia, Shopee and so on.

b. Classified

Is an E-Commerce company that only facilitates meetings between seller's consumers and buyer consumers, where the E-Commerce company is not involved in transaction activities. Examples are Rumah123, Carmudi, Kaskus and so on.

There is one more thing that is usually done by the people of Indonesia, namely *Payments, Logistics, Marketing* and other E-Commerce Support. Payments is a form of financial⁷ services or online payment, for example Go-Pay, Paytren, KlikBCA and so on. Logistics is a form of online and offline delivery services (for the offline category, it does not include E-Commerce but is closely related to the E-Commerce chain). Examples are Go-Send, JNE and so on.

Marketing Is another element related to E-Commerce in terms of online marketing. Examples are for media placement (trendingbisnis, detik, okezone), affiliate marketing (Taobao, googleadsense, acommerce) and so on. Other E-

Commerce supporters, namely things that can be done to support E-Commerce activities, such as E-Commerce enable, market research, consulting and others.

While validating the platform what is most popular among general respondents. Here the authors surveyed 100 respondents scattered in major cities in Indonesia and could only absorb 75 respondents' answers. The respondents consisted of productive age (15-25 years, about 58%) and some were over 50 years old (around 18.7 %). The survey findings show that 85.3% of the total respondents stated that they know E-Commerce from Social Media and only 12% know them from friends, the rest is obtained from children and learning. E-Commerce is a means of making legal relations with other people during this time of Covid, those who often use social media are increasingly loved, whether it's WA or other social media such as Instagram or Face book.

Not reaching 50% there are still groups of people who are not or not familiar with the E-Commerce platform, but for personal needs, not for business needs⁸. The several types of business E-Commerce has several advantages and disadvantages, for business people who plan to build E-Commerce. One of the advantages of E-Commerce is the affordability of the

⁷ Muhmad, S. N., W. Ismail, W. N. S., A. Rahim, N. A. A., & Ahmad, S. N.(2020). Islamic financing for small medium enterprises: Challenges and opportunities. *UUM. Global Business Management Review*, 12(2), 50-64.<https://doi.org/10.32890/gbmr2020.12.2.12527>

⁸ Translated from A Study of B2B Commerce Service Indonesia. (2018). p. 1



global market⁹ without having to imply a large financial investment¹⁰. Besides these advantages, there are several advantages of E-Commerce in general, including:

1. Products and services vary

The boundaries of this type of trade¹¹ are not geographically defined allowing you to make broad choices, obtain the information needed and compare the offers of all suppliers or providers of goods/services regardless of their location.

2. Shorten the distribution chain

It allows interaction with the end consumer, E-Commerce can shorten the product distribution chain or even eliminate it. In this way, a direct channel between producers or service providers and end users allows them to offer products or services that are suitable for their target market.

3. Payment is easier

Ease of payment systems, with the development of the existing payment systems, it is very easy for E-Commerce transactions.

The E-Commerce business activity which is currently booming in the early 21st century is a promising business¹².

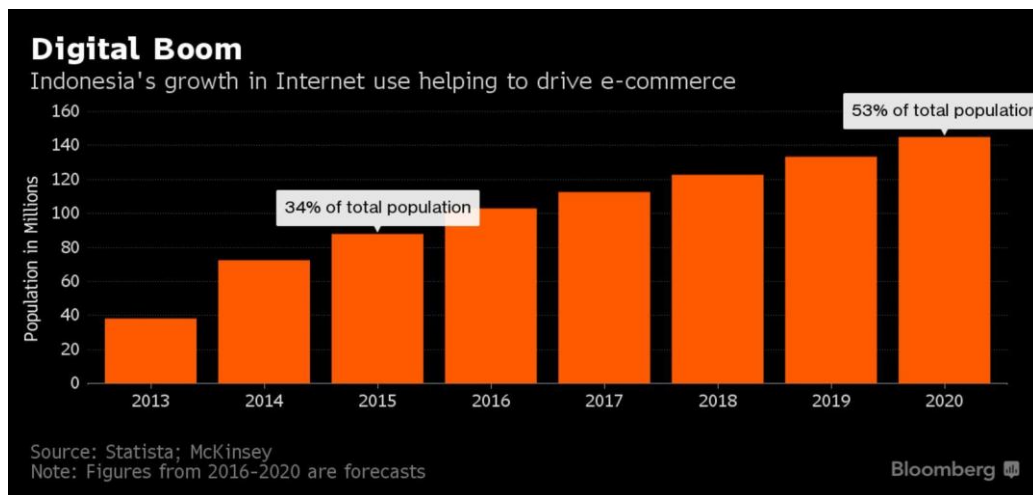
⁹ Nagalingam, K. & Anuar, H. S. (2020). Chemical warehouse operations: Experience from SWIFT Integrated Logistics Sdn. Bhd. *UUM. Global Business Management Review*, 12(2), 65-80. <https://doi.org/10.32890/gbmr2020.12.2.12529>

¹⁰ <https://emerhub.com/id/bisnis/apa-saja-kelebihan-kekurangan-e-commerce/diunduh> accessed on July 2, 2020.

¹¹ Aboya, Y., Hussain, A., Hassan, R., & N. Saleem, H. M. (2020). Different approaches to merchandise trade balance in Pakistan: An econometric evidence. *UUM. Global Business Management Review*, 12(2), 19-30.

¹² <https://jakartawebs.com/maraknya-perkembangan-ecommerce-di-indonesia-membuat-bisnis-logistik-menurun/> accessed on January 7, 2021.





The development of E-Commerce continues to create new problems for legal regulations that have been established in a single jurisdiction.¹³ From the data that is done by taking a sample of 100 people, most of them make transactions in the field of routine household purchases, followed by shopping for daily needs and finally fashion, shoes and accessories. As a trend business and supported by the Covid pandemic era, this business can be easily carried out by the Indonesian people, especially for young people and by productive age, of course not all can run smoothly or smoothly.

It cannot be denied that in addition to providing great benefits for business owners and consumers, E-Commerce application services also have problems. In general, these problems are divided into two categories, namely the existence of criminal acts in transactions in the digital world and on law enforcement related to crimes in the digital world.

For criminal cases that occur in digital transactions in E-Commerce, it is necessary to carry out legal protection against digital business transactions.

This uneasy business trip can occur if one of the parties does not fulfill its obligations

or one of the parties fulfills its obligations but the object in question is not in accordance with the agreement, so that there are parties who feel disadvantaged. In general, if something happens to the consumer in an E-activity Commerce, they will be passive and leave it alone by not doing anything to the seller, and some of them give chat or comments regarding the goods they receive. Deliberation to reach consensus is the most preferred choice. If there is something that causes harm to consumers, about 88% of them answer with kinship (deliberation). This shows that the Indonesian people generally have the spirit of *Pancasila*, especially the 4th and 5th principles,

Legal protection for E-Commerce users is provided in the form of a law, namely as regulated in Act No.19 of 2016 concerning amendments to Act No. 11 of 2008 concerning Electronic Information and Transactions. This law regulates two main things in the internet activities of the Indonesian people, the first is the ITE Law which guarantees legal security for online business people (sellers and buyers) so that the transaction process can run safely. The second part regulates what things can and should not be done on the internet.

¹³ Endeshaw, Assafa. *Hukum E-Commerce dan Internet Dengan Fokus di Asia Pasifik*. (2007). Yogyakarta: Pustaka Pelajar. p. 257.



Based on Tedispute resolution¹⁴, namely a theory that examines or analyzes the category or classification of disputes or contradictions that arise in society, the factors that cause disputes, and the methods or strategies used to end these disputes, then disputes or disputes in E-Commerce are categorized as civil or commercial disputes, namely disputes that occur between parties, which are based on an agreement, whether an oral or written agreement. Disputes or disputes on the E-Commerce business are about money and objects or goods that have a certain economic value.

Disputes between E-Commerce business users can occur due to several things such as if what is offered to the consumer, the producer cannot fulfill its promise, or if there is a delay in delivery, even the possibility of goods not being sent to the buyer. There is a possibility of fraud where someone loses financially because of the cheating of another party. Or the theft of confidential and valuable data and information which can result in large losses to the victim. Another potential loss is the loss of business opportunities or customer losses caused by system disruptions, such as human errors and sudden electrical disruptions, as well as access by other people without authorization, for example hackers breaking into the banking system¹⁵.

Normatively, if someone is going to have a business relationship with other people based on the Civil Code Article 1313, an agreement can be made, the agreement can be written and can be done verbally, the important thing is that the agreement must fulfill the elements of Article 1320 of the

Civil Code regarding the terms of the validity of the agreement, namely:

1. Competent
2. Agreed
3. A certain thing
4. Because that is lawful

The four conditions must be fulfilled, if numbers 1 and 2 cannot be fulfilled then the agreement can be canceled, but if conditions number 3 and 4 are not fulfilled then the agreement is canceled by law. In accordance with the principle of *pacta sunt servanda*, the written agreement made by the parties becomes law for those involved in it.

How about this online business? In order to maintain the responsibility of each party, it is best if before carrying out business activities online, of course there should be cooperation between business people, even though a business that is run online a business agreement contract must also be made, this is done as a form of evidence that There is an agreement. But the contract has not been carried out in an orderly manner, in fact they only rely on their respective parties.

According to Edmon Makarim online contract means the same as an electronic contract, namely a legal bond or relationship that is carried out electronically that combines a network of computer-based information systems with systems. In Indonesia, many entrepreneurs have used online contracts in their business.

The various types of contracts that have been mentioned above, this research will focus on businesses with the B2C and C2C types because online business activities with the B2B type in Indonesia have not been well handled.

Contracting must be made through an agreement between the two parties. Where, both parties make up the agreement is

¹⁴ HS., Salim. Op.cit. p.139

¹⁵ Lee, A.X., & Hooy, C.W. (2020). State ownership and risk-taking behaviour: Evidence from Malaysia's banking industry. *International Journal of Banking and Finance*, 15(2), 65-94



expected to agree on the main matters stated in the contract agreement. The agreement referred to here is an agreement that becomes the will between the two parties that is free from error (dwaling, mistake), coercion (dwang, dures), and fraud (bedrog, fraud). If this happens, according to article 1321 of the Civil Code, the agreement becomes invalid.¹⁶

Various contracts made by parties or business actors to establish business cooperation with other parties must be respected by the execution of the business contract. But because not all business actors are responsible people or there could be business actors who, due to their business trip, encounter obstacles or difficulties in being able to fulfill what has been agreed upon, then these things can trigger disputes or disputes with business partners.

Act No. 30 of 1999 regarding Arbitrase and Alternative Dispute Resolution is a law made by the Government with the aim of serving as a legal umbrella for those who have disputes with other business actors.

There are efforts that can be taken by the perpetrator efforts in dealing with disputes with other parties can be done through litigation or non-litigation channels. This too can be seen from the contents of the contract agreement. These disputes do not have to be resolved by litigation to court but can be done by resolving them outside the Court of Justice (this shift is a manifestation of a shift in the legal system adopted by our country which no longer absolutely adheres to the civil law system). In business related to software, usually the

parties (sellers) determine their own choice of law, either firmly or quietly.¹⁷

In the business world, dispute resolution through courts not interested by many parties and even if in the end the settlement is carried out through the judiciary, this is merely a last resort (*ultimatum remedium*) after other efforts do not bear fruit¹⁸ Seeing the existing conditions, it is necessary to find a system that is appropriate, effective and efficient. This system must have the ability to settle disputes in a simple, fast and low cost. In order to answer this, the modern business world has turned to Alternative Dispute Resolution (ADR) as an alternative dispute resolution because of the need for quick dispute resolution and low cost as regulated in Act No.30 of 1999. -This law consists of XI CHAPTER XI and 82 articles, announced in the Republic of Indonesia State Board of 1999 no.138. Alternative Dispute Resolution (ADR) is a term that was first coined in the United States.¹⁹ Business dispute resolution E-Commerce that may occur can be resolved by litigation, negotiation, mediation or through arbitration institutions and complaining to the Consumer Dispute Resolution Agency. Litigation as a final option, if deliberation or negotiation process, mediation cannot solve their problem. Peaceful dispute resolution (negotiation and mediation) when viewed from its nature, then this

¹⁶ <https://libera.id/blogs/kontrak-online-apakah-sah-menurut-hukum-di-indonesia/> accessed on March 20, 2020.

¹⁷ Syahrin, M.Alvi. (2017). Refleksi Teoritik e-Contract: Hukum yang Berlaku Dalam Sengketa Transaksi Bisnis Inyernasional Yang Menggunakan e-Commerce. *Jurnal Lex Librum*, Vol. 3 No. 2 June 2, 2017.

¹⁸ Aprilia, Dwi. (2018). *Penyelesaian Sengketa Dalam Transaksi E-Commerce*. Blog Kangbudi weblog. July, 2018.

¹⁹ Muryati, Dewi Tuti & B.Rini Heryanti. (2011). Pengaturan dan Mekanisme Penyelesaian Sengketa Non-Litigasi Di Bidang Perdagangan. *Jurnal Dinamika Sosbud* Vol. 13 No.1 Juni 2011, ISSN 1410-9859, p.51.



settlement is ideal considering justice emerges from the parties.

Mediation as an alternative pattern for resolving Business Disputes (E-Commerce) based on Act No. 30 of 1999 is used as an alternative to dispute resolution in Indonesia

Indonesia has various models and patterns for resolving disputes, including Mediation. Mediation in the realm of litigation and mediation outside of litigation. For Mediation in the realm of litigation, as stipulated in the Supreme Court No. 2 of 2003, is Mediation which must be carried out by the judge before the case is submitted to the Court, this mediation often does not produce satisfactory results because generally the parties consider this mediation process only as a formality that must be traversed. Meanwhile, mediation outside of litigation is often carried out by bodies that are legally established to carry out the mediation process or are carried out independently by certified mediators. There is a BPSK institution²⁰, Arbitration institutions, mediation that is held cannot be separated from the existing rules, namely Act No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Good Mediation which is organized by an institution such as BPSK and other institutions²¹. In order to deal with disputes that may occur in the implementation of E-Commerce, Indonesia has not yet regulated electronic dispute resolution. Act No.19 of 2016

²⁰ Badan Penyelesaian Sengketa Konsumen (BPSK) 2020

²¹ Sidabalok, Janu. (2006). *Hukum Perlindungan Konsumen di Indonesia*. p.144, in Helmi, Hanum Rahmani. (2015). Eksistensi Badan Penyelesaian Senketa Konsumen dalam Memutus Sengketa Konsumen di Indonesia. *Jurnal Adhaper*. Vol.1 No.1, 2015. p.80.

concerning Amendments to Act No. 11 of 2008 concerning Electronic Information and Transactions regulates the use of electronic media to conduct transactions and this law does not regulate in detail regarding the implementation of E-Commerce activities, whereas E-Commerce is in the civil domain, meaning that the basis for E-Commerce is an agreement, so it is also related to the things that make the agreement valid. Therefore there needs to be a regulation on E-Commerce. E-Commerce is full of risks because the basis for holding E-Commerce is trust.

In the mediation process, a mediator only acts as a facilitator. The mediator does not have the authority to make a decision that is binding on the parties. A mediator will help the disputing parties to identify issues that are the subject of the dispute, facilitate communication between the two parties.²²

Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution actually it is more biased, that is, it regulates a lot of arbitration, and it less regulates alternative dispute resolution²³.

This law does not specifically regulate the procedure for the conduct of mediation, but the law specifically regulates the procedure for mediation through an arbitration institution. So that the implementation of mediation that can be carried out by the parties according to their agreement can be carried out by mediation which is held by asking for the help of a third party as a mediator or with a slightly formal process through an arbitration institution.

²² Adolf, Huala. (2003). *Hukum Ekonomi Internasional*. Jakarta: PT Raja Grafindo Persada. p. 259.

²³ Talib, Idris. (2013). Bentuk Putusan Penyelesaian Sengketa Berdasarkan Mediasi. *Jurnal Lex et Societis*, Vol.1 No.1, January-March 2013.



The system used by the State of Indonesia to resolve E-Commerce disputes by mediation is as stipulated in Article 6 of Act No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as follows:

1. The parties will complete the dispute settlement through ADR within 14 days and the results are stated in a written agreement.
2. If the above matters cannot be resolved, then with the agreement the parties can ask for help from one or more expert advisors or through a mediator.
3. Within a period of 14 days if the number 2 (with the help of the mediator) fails to reach an agreement, the parties can contact an arbitration institution or an alternative dispute resolution institution to appoint a mediator.
4. After the appointment of a mediator by the arbitration institution within 7 days, the mediation effort must be initiated, and within 30 days an agreement must be reached in writing signed by all parties concerned.
5. If no agreement is reached, the parties based on the agreement can submit to an arbitration institution or ad hoc arbitration.

The process regulated in the Law does not yet refer to online settlement, and is still manual or conventional, while the development of the world of commerce urgently requires the availability of media to resolve disputes to anticipate if they occur. Therefore, the dispute settlement with the arbitration institution as written by Andi Julia that the arbitration that has been carried out by BANI has been conceptualized so that it can be carried

out online or online, from case registration, arbitrator selection, document submission, deliberation to decision making and notification to the parties, especially to settle the E-Commerce business, so that the discourse online settlement must also be put forward. The online arbitration settlement system are:

1. If it is related to consumer disputes, it is necessary to have an online complaint form available and if in a business to business dispute, there is an online form containing a request to arbitrate, including the provisions for the provision of an arbitration agreement.
2. Provides a way to select an arbitrator, accept a seat or reject it.
3. Provide procedures for arbitration such as provision of procedural rules such as procedures for filing cases online, submitting responses, submitting evidence and arguments and possible delays.
4. Provision of procedures for the use of electronic messages, such as implementing procedures that only use electronic documents, users of video conferencing and audio conferencing, including the provision of evidence in the form of testimony from witnesses and expert witnesses.
5. Provision of online decision making and the requirements necessary for a decision to be accepted and implemented.
6. Provision of possible procedures for contesting or appealing against a judgment.
7. Provision of facilities for data storage, especially in the event of resistance regarding the right of one party to fight because of the



allegation that the rights of one party have been violated.

8. Provision of procedures that allow the process to run confidentially by providing encryption technology and electronic signatures.

The Indonesian legal system has not explicitly acknowledged the decision issued by this online dispute settlement because it has not been regulated in Act No. 30 of 1999, so it is necessary to amend this law.

Between the mediation which is carried out or held by the parties themselves with formal mediation through the arbitration institution, each has advantages and disadvantages.

There are four drawbacks to arbitration²⁴. The four weaknesses are:

1. Arbitration is only for bona fide parties. That is, arbitration is only suitable for honest and trustworthy employers or parties. If one of the parties is always looking for loopholes to bring back the arbitration award, the process through arbitration will take more time, cost and effort.
2. Absolute dependence on the arbitrator. An arbitration award is highly dependent on the technical ability of the arbitrator to provide a satisfactory award to both parties. The general assumption of the arbitrator is that the arbitrator is an expert. But expertise alone is no guarantee that they will deliver a verdict that satisfies both parties at once.
3. There is no legal precedence for previous decisions. In deciding a

case, the arbitrator is not bound by the previous award. This means that arbitration awards on a dispute are wasted without benefit even though they contain weighty arguments from the arbitrators. As a result, it is very possible for conflicting arbitration awards to occur.

4. The problem of obstacles to recognition and implementation of foreign arbitral awards. In practice, problems often arise in connection with the recognition and implementation of foreign arbitrations in Indonesia; or vice versa, an Indonesian arbitration award abroad. The execution of an arbitration award greatly determines the confidence of the parties in the institution itself. If it is difficult to execute, of course they will prefer a court with an execution apparatus.

Comparison of dispute resolution with mediation and arbitration can be seen in the table below:

²⁴ Gatot Soemartono, *Arbitrase dan Mediasi di Indonesia*, 2006, in <https://www.hukumonline.com/berita/baca/hol20225/untung-rugi-menggunakan-jalur-alternatif/> accessed on March 23, 2020.



Table 1. Comparison of Dispute Resolution Between Mediation and Arbitration

PROCESS	MEDIATION	ARBITRATION
Governing the Process	Mediator	Arbitrator
Procedure	Informal	To be Formal (in accordance with Act No. 30 of 1999)
Period of time	Fast (3-6 weeks), can also be longer, in principle there are no rules for the deadline	Maximum 180 days (extendable 30 days)
Cost	Lighter	There is a registration fee and an administration fee (because it is more formal in nature)
Rules of Evidence	No need	Sometimes needed (a little informal)
Publication	Closed/private	Confidential (unless the parties want it to be published)
Relations between the parties	Cooperative to resolve disputes	Hostile
Focus completion	Going forward	Past problems
Negotiation Way	Compromise (not yet regulated in law)	In accordance with legal principles (according to Act No. 30 of 1999)
Communication	Fixing the past	Facing a dead end
Process sanctions	There is no sanction if the mediator cannot make a decision	There are sanctions for Arbitrators of Article 20 of Act No. 30 of 1999
Process atmosphere	Emotion free	Emotional
Fulfillment	Be voluntary and happy	Always rejected
Decision	We win and/or still other legal efforts	Final and binding

Source : (Kurniawan, Shelly, in Journal Dialogia Iuridica, Volume 11, Number 1, November 2019)
 Dispute resolution using a mediation pattern is often used by business actors after attempts at negotiation or deliberation to reach a consensus do not find a solution



or an agreement cannot be reached. As we know that Mediation is the settlement of disputes that involves a third party as an intermediary or mediate dispute resolution.²⁵

Mediation is carried out in private, so that not everyone can avoid mediation negotiation sessions.²⁶ In settling disputes through mediation there is no element of coercion between the parties and the mediator, therefore the mediator is helpful even though there is an element of intervention against the conflicting parties. According to Christopher W. Moore in Bambang Sutioso's book, mediation is an intervention in a dispute by a third party that can be accepted by the disputing parties, is not part of the two parties and is neutral. This third party does not have the authority to make decisions. He is in charge of helping the conflicting parties to voluntarily reach an agreement that is accepted by each party in a dispute.

That Mediation is a process in which there is a third party who is independent and impartial, acts as a mediator, and is asked by the disputing parties to facilitate the settlement of a dispute whose final result is determined solely by the will of the disputing parties²⁷.

Based on Supreme Court Regulation Number 2 of 2003 concerning Mediation Procedures in Courts in Article 1 Point 6 that Mediation is the settlement of disputes through the negotiation process of the parties with the assistance of a mediator, then Article 1 point 5 states that the

mediator is a neutral and impartial party. , which serves to assist the parties in finding various possible dispute resolutions Initially mediation in court tended to be voluntary, but now leads to an imperative/compulsory nature. From the various opinions about mediation mentioned above, it can be concluded that mediation is a process chosen by the parties to resolve disputes by asking the help of a third party acting as a mediator.

Not all certified Mediators are willing to become business dispute Mediators. In particular, the implementation of the mediation pattern in big cities in Indonesia, based on the author's observations, has not been so significant, even though in the city of Semarang, trainings are often held to become a mediator, one of which is mediation training organized by the private sector or by universities.

There are two things in the mediation system in Indonesia, namely mediation in the realm of litigation and mediation for business cases outside the court. Based on the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedures in Courts, all cases must be pursued for peace through mediation, this can also be seen in the Health Law, the Industrial Relations Court Law, Bank Indonesia Regulations, National Land Regulations, and others. The Supreme Court Rule, shows how important the role of Mediator is and how important the Mediation process is, because with Mediation many things are obtained, such as: saving funds spent, saving time, saving energy and thoughts, simplifying problems, and maintaining good relations intertwined.

Before there is a written statement from the mediator stating that the mediation process failed to reach a peace agreement,

²⁵ Sutioso, Bambang. (2008). *Hukum Arbitrase dan Alternatif Penyelesaian Sengketa*. Yogyakarta: Gama Media. p.56

²⁶ Hutagalung, Shopar Maru. (2012). *Praktik Peradilan dan Alternatif Penyelesaian Sengketa*. Jakarta: Sinar Grafika. p. 327.

²⁷ Arief Surowidjojo's paper on the 2004 Mediation proceedings. *Kerjasama antara MA dan Pusat Pengkajian Hukum*. p. 153.



settlement through the litigation process may not be carried out.²⁸ Practitioners in the business world also want an informal dispute resolution system, and this kind of paradigm is difficult to regulate in the litigation system, because the litigation system prioritizes settlement based on enforcement and certainty.

In mid-2019 the Supreme Court has issued Supreme Court Regulation No.1 of 2019 concerning the Administration of Cases and Trials in Courts Electronically, this regulation was issued as a legal umbrella for the implementation of online trials. It is motivated by the fact that for the implementation of a simple, fast and low cost judiciary, it is necessary to have administrative and trial reforms as well as the demands of the times that require more effective and efficient trials in court. This *PERMA* is to improve *PERMA* No. 3/2018. The Supreme Court Regulation No. 1 of 2019 which came into effect on January 2, 2020 in its implementation is strengthened by other Supreme Court. The issuance of *PERMA* No.1 of 2019 is a form of the Government's efforts to provide legal certainty for those seeking justice in this pandemic era, so that people who seek justice do not have to worry about attending trials.

E-Commerce disputes or problems in general are in the civil domain, so if a dispute occurs, they can submit to the Court with a civil or commercial lawsuit. The settlement process through this litigation route must be passed first with mediation, if mediation fails, then the judge will proceed to trial. If *PERMA* regulates the trial online, then all methods of trial are carried out using virtual online, because this is a civil issue, then there will

be no difficulties compared to if the case is a criminal case, even so the weakness of the online system for this civil case is at the time of verification, is it also it is done by only showing evidence through virtual means, how about when swearing witnesses.

This online litigation model has also been initiated by several scholars by recommending the Government to immediately reconstruct the settlement of disputes outside the court online, while the online media mechanism can be carried out by the following conditions:²⁹

1. Just like ADR, both parties to a dispute must agree to settle their case outside the court. The difference is using the internet in the process of solving it.
2. There is a professional guide that directs the parties to carry out the ADR process using the internet.
3. Regulations regarding ADR apply to the implementation of settlement via the internet

²⁸Bintoro, Rahadi Wasi. (2016). Kajian Ontologis Lembaga Mediasi Di Pengadilan. *Jurnal Yuridika*, Vol. 31 No. 1, January 2016.

²⁹ Felikas Petrauskas, Egle Kbartiene. (2011). *Online Dispute Resolution in Consumer Disputes*. Mykolas Romeris University: Jurisprudencia. p.5, in *Jurnal Online Gagah Satria Utama*, Online Dispute Resolution: a Revolution in Modern Law Practice, <https://law.uui.ac.id/wp-content/uploads/2017/04/V-01-No-03-online-dispute-resolution-a-revolution-in-modern-law-practice-gagah-satria-utama.pdf> (Accessed on April 1, 2018) in Setiantoro, Arfian, Fayreizha Destika Putri, Anisah Novitarani, & Rinitami Njatrijani. (2018). Urgensi Perlindungan Hukum Konsumen Dan Penyelesaian Sengketa E-Commerce Di Era Masyarakat Ekonomi Asean (The Urgency of Consumer Law Protection and the E-Commerce Dispute Resolution in the Era of ASEAN Economic Community. *Jurnal Reckvinding* Vol. 7 No.1, April 2018, p.13.



4. *Software* used as a tool to exchange information on the internet. (Meet Online, Access Database, Send Document and Hold Meetings with Voice and Video Conference).

The resolution of E-Commerce business disputes by means of litigation and non-litigation is an option, because this is a business that of course begins with good intentions and intentions, agreements with other parties that are realized by making an agreement contract are proof of the sincerity of each party. In undergoing a business legal relationship, it is necessary to remember the clause to resolve problems that may occur in the future, don't forget to include it, this is an important thing in order to anticipate something bad in the future.

Conclusion

1. E-Commerce as a business arena and experiencing significant development has certainly experienced various problems in its implementation. Efforts to deal with the possibilities that occur in the E-Commerce business can be resolved through litigation and non-litigation channels. The Indonesian government has prepared by issuing various regulations from laws to regulations issued by the Supreme Court. One of the regulations in question is the Supreme Court Regulation No.1 of 2019 concerning the Administration of Cases and Trials in Courts Electronically and Act No.30 of 1999 concerning arbitration and alternative settlement of legal

disputes. Even though juridically, dispute resolution for e-commerce has not been explicitly regulated, it does not mean that Act No. 30 of 1999 does not adopt in the event of an E-Commerce business dispute. In addition to Act No. 30 of 1999, consumers can use Act No. 8 of 1998 concerning Consumer Protection as well as Act No. 19 of 2016 concerning Amendment to Act No. 11 of 2008 concerning Electronic Information and Transactions.

2. Things that are similar which are not regulated in the law can be equated, such as agreements, decisions and signatures made via electronic can be equated with agreements, decisions and signatures that use ink. This law does not implicitly regulate dispute resolution for objects. E-Commerce, but there are several articles that regulate implicit electronic settlement.
3. Mediation as a pattern for resolving segments between them is the right choice, if the E-Commerce business actor will take the process. The legal system in Indonesia related to the settlement of E-Commerce business disputes has regulated the settlement pattern by mediation as stipulated in Act No. 30 of 1999 Article 6 and mediation for civil cases in the realm of litigation has also been regulated in Supreme Court Regulation No.1 of 2019 concerning Electronic Case and Trial Administration in Courts.



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