

DUALISM IN E-COMMERCE DISPUTE RESOLUTION: BETWEEN LITIGATION AND ARBITRATION

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Abstract

The purpose of this research is to analyze the Legal Challenges in E-commerce Dispute Resolution: Arbitration and Litigation Approaches. This type of research is a literature review, with data collection through documentation. Data analysis is conducted using SLR (Systematic Literature Review). The research findings indicate that the legal challenges in resolving e-commerce disputes involve regulatory complexities that are rapidly evolving amidst the dynamics of online transactions. Arbitration and litigation approaches are the two primary options that parties involved in e-commerce disputes must consider. Arbitration offers speed and confidentiality, while litigation provides a more structured process with public disclosure of information. However, the biggest challenge remains the adaptation of the existing legal system to the dynamics of technological advancements and the continuously growing e-commerce business.

Keywords: Dualism, Dispute, Litigation and Arbitration

Abstrak

Tujuan dari penelitian ini adalah untuk menganalisis mengenai dualisme dalam penyelesaian sengketa e-commerce: Pendekatan Arbitrase dan Litigasi. Jenis penelitian ini adalah kajian pustaka dengan pengumpulan data melalui dokumentasi. Analisis data dilakukan dengan SLR (Systematic Literature Review). Hasil penelitian menunjukkan bahwa tantangan hukum dalam penyelesaian sengketa e-commerce melibatkan kompleksitas regulasi yang berkembang pesat di tengah dinamika transaksi online. Pendekatan arbitrase dan litigasi merupakan dua pilihan utama yang harus dipertimbangkan oleh pihak-pihak yang terlibat dalam sengketa e-commerce. Arbitrase menawarkan kecepatan dan kerahasiaan, sementara litigasi menyediakan proses yang lebih terstruktur dengan pengungkapan informasi secara publik. Namun, tantangan terbesar tetap pada penyesuaian sistem hukum yang ada dengan dinamika perkembangan teknologi dan bisnis e-commerce yang terus berkembang.

Kata Kunci: Dualisme, Sengketa, Litigasi dan Arbitrase

1. Introduction

The digital era has significantly transformed the global trade landscape with the emergence of e-commerce as one of its key components. This phenomenon has not only changed the way consumers shop but has also introduced new legal challenges in dispute resolution within the business world. These challenges encompass various aspects, ranging from consumer protection to online transaction security. Amidst this complexity, dispute resolution has become increasingly crucial in maintaining stability and trust within the e-commerce ecosystem. In this context, the most commonly used approaches to resolve e-commerce disputes are arbitration and litigation (Iqbal, 2019).

First and foremost, arbitration has become a popular choice for resolving e-commerce disputes for several reasons. One of the main advantages of arbitration is the speed of the dispute resolution process. Compared to litigation, which often takes months or even years, arbitration offers a faster process as it is typically not bound by the crowded court schedules. This speed is crucial in the context of e-commerce, where transactions can occur rapidly, and business operators want to resolve disputes efficiently without disrupting their operations (Umar et al., 2023).

In addition to offering speed, arbitration also provides the advantage of greater confidentiality compared to litigation. The dispute resolution process in arbitration is typically conducted behind closed doors, and the arbitration award is usually kept confidential. This allows the parties involved in the dispute to protect their sensitive information from public disclosure, which can be a significant advantage, particularly in the highly competitive e-commerce context, where business reputation plays a crucial role. In the ever-evolving digital world, where customer data, marketing strategies, and product innovations are often valuable assets, this confidentiality helps companies avoid potential reputational damage that may arise from the public release of details about the dispute or its proceedings, which could harm their image. Furthermore, by avoiding open court proceedings, companies can maintain positive relationships with business partners, investors, and customers without being affected by conflicts highlighted in the media or by third parties. Thus, arbitration offers a sense of security and greater control over a company's reputation and internal information, while ensuring that disputes are resolved efficiently and professionally.

However, despite the advantages of arbitration, there are also challenges that need to be addressed. One of these is the cost associated with arbitration. The expenses for arbitration can be quite high, especially if the dispute involves a large transaction value or parties from different countries. These costs include administrative fees, arbitrator fees, and legal fees, all of which must be borne by the parties involved in the arbitration (Rahman et al., 2023).

On the other hand, litigation is also a common approach for resolving e-commerce disputes. Litigation, or dispute resolution through the courts, offers several advantages compared to arbitration. One of the main benefits of litigation is greater legal certainty. Court rulings are final and binding, and the losing party does not have the possibility of unlimited appeals, as is the case in arbitration (Amelia et al., 2023).

In addition, litigation can provide stronger legal protection, especially when the dispute involves complex or sensitive legal issues. Courts often have the authority to interpret laws in a more detailed and comprehensive manner, which can offer legal clarity that may be difficult to achieve in arbitration. However, like arbitration, litigation also presents its own challenges. One of these is the time required to resolve a dispute through the courts. The litigation process often takes a long time and can delay business operations while incurring significant additional costs (Putra, 2015).

Thus, in the fast-paced dynamics of the e-commerce ecosystem, effective dispute resolution plays a crucial role in maintaining smooth operations, minimizing disruptions, and fostering trust in online trade. With the increasing volume of transactions and the complex nature of digital interactions, disputes are almost inevitable. While arbitration offers distinct advantages such as speed, flexibility, and confidentiality, it may sometimes lack the legal certainty and enforceability that litigation provides. On the other hand, litigation, though often slower and more public, promises a higher level of legal authority and a clear path to enforceable judgments, particularly in cases involving large-scale or international disputes (Chrisdanty, 2021).

Given the stakes involved, choosing the right dispute resolution method is not just a procedural decision, but a strategic one that can significantly impact a business's reputation, bottom line, and long-term sustainability. E-commerce businesses must carefully assess the nature of their potential disputes—whether they involve intellectual property, contractual breaches, customer grievances, or supplier conflicts—alongside their own priorities such as speed, cost, confidentiality, and the desire for a binding resolution.

In this context, a deep understanding of the strengths, weaknesses, and nuances of both arbitration and litigation becomes essential. Businesses must also consider factors such as the jurisdiction in which disputes may arise, the size of the dispute, and the specific needs of the business in order to make an informed decision. Developing a clear dispute resolution strategy and incorporating it into their operational and contractual framework can help e-commerce companies not only mitigate risks but also enhance their ability to manage conflicts effectively and efficiently in this digital age. By doing so, they can safeguard their reputation,

preserve customer relationships, and ensure that any disputes do not derail their growth or disrupt their operations.

2. Research Methods

This type of research is a literature review. A literature review is a comprehensive research method in which the researcher systematically collects, reviews, and analyzes existing scholarly works, articles, books, and other relevant sources that have been published on a specific field or topic. This process involves critically evaluating and synthesizing the findings, theories, and methodologies presented in the literature to identify patterns, gaps, and emerging trends (Afandi, 2022). The purpose of a literature review is not only to summarize the current state of knowledge but also to provide a deeper understanding of the context, key debates, and unresolved issues within the subject matter. By doing so, it helps to situate the researcher's work within the broader academic conversation, justifying the need for further investigation or offering new perspectives on the existing body of knowledge (Tan, 2021). Through this method, researchers can also identify theoretical frameworks, methodologies, and evidence that inform their own research design, ensuring their study is grounded in the most relevant and up-to-date information available. Data collection is done through documentation, taking data from Google Scholar. The data analysis is conducted using a Critical Literature Review. A Critical Literature Review is a type of literature review that involves a critical evaluation of the selected sources. The primary goal is to provide an in-depth understanding of a specific topic by analyzing, evaluating, and synthesizing relevant literature.

3. Results And Discussion

Understanding Disputes Arising from E-Commerce Transactions

The introduction to e-commerce, or electronic commerce, encompasses all forms of business transactions conducted over the internet. This phenomenon has transformed the global business landscape by enabling buyers and sellers to interact directly without needing to be in the same physical location. E-commerce has grown rapidly alongside advancements in information and communication technology, facilitating the efficient and swift exchange of goods and services. This development has also brought about a number of unique legal challenges, particularly related to disputes that may arise within the context of e-commerce (Fajrin & Sjaifurrachman, 2022).

Disputes in e-commerce can vary, ranging from transaction issues, such as the discrepancy between goods or services and their descriptions, to intellectual property violations, such as copyright or trademark infringement. A key challenge in handling e-commerce disputes is the potential conflict between the national laws of the seller's and buyer's countries. In cross-border e-commerce cases, disputes often involve questions regarding the applicable jurisdiction and the appropriate choice of law. For example, when an e-commerce platform based in one country sells products to consumers in another country, there is a potential mismatch between consumer protection laws in both countries (Tanaya, 2023).

In addition, e-commerce also presents challenges related to data security and privacy. In an online environment, sensitive information such as payment details and personal data is often transmitted over the internet, increasing the risk of data misuse by unauthorized parties. This highlights the need for a strict legal framework to protect consumer privacy and establish responsibilities for businesses in securely managing customer data. Furthermore, in e-commerce, proving disputes is often more complex than in conventional business transactions. Most e-commerce transactions involve communication and information exchange through digital platforms, and this electronic evidence can easily be manipulated or falsified. Therefore, a key challenge in resolving e-commerce disputes is how to collect, verify, and preserve valid electronic evidence in court or arbitration proceedings (Novita & Santoso, 2021).

To address these challenges, there is a need for the development of clearer and more relevant laws in the context of e-commerce. This includes the development of regulations that govern online transactions, consumer protection, data privacy, and dispute resolution. Additionally, the integration of blockchain technology and artificial intelligence in the dispute resolution process can help enhance the security and validity of electronic evidence. Overall, the introduction to e-commerce and the disputes that arise reflects the complexity and dynamics of the current digital business environment. With a better understanding of

these legal challenges, stakeholders can collaborate to develop effective and efficient solutions for handling e-commerce disputes in the future (Fista et al., 2023)

Dispute Resolution Approaches

Dispute resolution approaches are strategies used to resolve conflicts or disagreements between parties involved in a transaction or business relationship. In the context of e-commerce, where transactions occur online and across borders, dispute resolution approaches become increasingly important to address disputes that arise between sellers and buyers, e-commerce platforms, or other involved parties. The two main approaches used in dispute resolution are arbitration and litigation.

Arbitration is an alternative dispute resolution process where the parties in conflict agree to submit their dispute to a third party, known as an arbitrator, who is independent and neutral. Arbitration is often chosen in the context of e-commerce because it is considered faster, more efficient, and adaptable to the needs of the parties involved. The arbitration procedure is generally more flexible than litigation procedures, allowing the parties to tailor the dispute resolution process according to their requirements. Additionally, arbitration can be a more cost-effective option than traditional litigation, as court fees and administrative costs are often lower. However, arbitration also presents its own challenges in resolving e-commerce disputes. One major challenge is the limitation in collecting electronic evidence that can be used in the arbitration process. E-commerce transactions often generate electronic evidence, such as emails, text messages, or transaction records, which are crucial for supporting the arguments of the disputing parties. However, this electronic evidence may be difficult to collect and verify in terms of authenticity within the context of arbitration, especially if the data is dispersed across various e-commerce platforms or different servers (Aziz & Hidayah, 2020)

In addition, data security and privacy issues also pose challenges in the arbitration process. The reliability and confidentiality of e-commerce transaction data must be ensured to prevent misuse or unauthorized access during the arbitration proceedings. This requires the adoption of advanced security technologies and compliance with applicable data privacy regulations to protect the integrity and confidentiality of the information related to the dispute. Another challenge in the arbitration approach is determining the applicable jurisdiction and the appropriate choice of law in the context of cross-border transactions. E-commerce often involves transactions between parties in different countries, which can add complexity in determining the relevant jurisdiction and laws to resolve the dispute. This can be a barrier in the arbitration process, as the arbitrator needs to understand and apply various legal regulations from the jurisdictions involved in the dispute (Suherman, 2019).

On the other hand, litigation is a dispute resolution approach that involves submitting a case to the relevant court or legal forum to be adjudicated by a judge or jury. Traditional litigation is often considered a more formal and structured option than arbitration, with procedures established by the applicable laws and court regulations. Although litigation can provide greater legal certainty because court rulings are binding, this approach often takes longer and incurs higher costs than arbitration. Litigation can also become more complex in the context of e-commerce, as courts must address technical challenges in ensuring the validity of electronic evidence presented during trials. Thus, while both arbitration and litigation can be used in e-commerce dispute resolution, each has its own advantages and challenges that need to be considered by the involved parties. The use of appropriate technology and a deep understanding of the applicable legal regulations can help overcome these challenges and ensure effective dispute resolution in the ever-evolving e-commerce landscape (Hariyana, 2018)

Challenges in the Application of Arbitration in E-Commerce Consumer Disputes

Arbitration has become one of the main methods for dispute resolution across various sectors, including e-commerce. However, there are several legal challenges that need to be addressed when applying this approach in the e-commerce context. First, a major challenge in e-commerce arbitration is the limitation in collecting the electronic evidence required to build a case. E-commerce transactions are often conducted online, and relevant evidence, such as emails, chat logs, or transaction histories, is typically stored in digital formats. Therefore, it is crucial to ensure that this evidence can be accessed and properly considered during

the arbitration process. However, problems arise when this evidence is stored on third-party platforms, such as cloud service providers, which may be difficult to access or considered without their consent (Sulistianingsih et al., 2023)

In addition, data security and privacy issues are also significant challenges in e-commerce arbitration. During the arbitration process, the sensitivity and confidentiality of personal data from both parties must be strictly maintained. However, with the use of digital technology in e-commerce transactions, there is a considerable risk of data breaches or cyberattacks that could jeopardize the integrity of the arbitration process. Hackers or unethical parties may attempt to exploit security vulnerabilities in the system to influence the outcome of the arbitration or steal sensitive information that could be used for competitive advantage.

Furthermore, determining the applicable jurisdiction and choice of law also presents a challenge in e-commerce arbitration. E-commerce transactions often involve parties from different jurisdictions, making it complicated to determine the correct jurisdiction. Additionally, the choice of law for e-commerce disputes can become a subject of debate between the parties involved. Differences in electronic commerce laws and consumer protection regulations between countries can complicate the process of determining the applicable law, thereby slowing down and complicating the arbitration process (Barkatullah, 2010)

To address these challenges, several steps can be taken. First, a clear and comprehensive legal framework is needed to regulate e-commerce arbitration, including standards for collecting and using electronic evidence, as well as strict data security guidelines. Additionally, training and certification for arbitrators on e-commerce technology and data security are essential to ensure they have an adequate understanding of the relevant issues. Furthermore, it is important to develop effective mechanisms for handling cross-border disputes, such as cooperation between arbitration institutions from different jurisdictions and the use of blockchain technology for transaction verification (Hibatullah, 2019)

Additionally, transparency in the arbitration process and broader dissemination of information about procedures and best practices can help build trust and fairness in the system. Parties involved in e-commerce arbitration should be encouraged to actively participate in the process, including providing greater access to neutral third parties to monitor and evaluate the proceedings. By addressing these challenges and implementing appropriate solutions, e-commerce arbitration can be expected to become an effective means of dispute resolution in this digital age.

Challenges in Litigation-Based Dispute Resolution

The litigation approach in e-commerce dispute resolution faces a number of complex and diverse legal challenges. One of the main challenges is the delay and high costs associated with traditional litigation processes. Litigation often involves complex and time-consuming steps, from filing a lawsuit to trial and final judgment. In the rapidly evolving context of e-commerce, where transactions can occur in seconds, delays in dispute resolution through litigation can be detrimental to all parties involved. Slow resolution can lead to significant financial losses for businesses and cause dissatisfaction among consumers who expect a quick resolution to their issues.

In addition, the complexity of determining the applicable jurisdiction in e-commerce cases also presents a serious challenge in the litigation approach. E-commerce transactions often involve parties from different jurisdictions, both nationally and internationally. This can complicate the process of determining which court has the authority to resolve the dispute. The issue of applicable law also arises, especially in cases involving cross-border transactions, where the laws governing the parties involved may come from different jurisdictions. The difficulty in determining the proper jurisdiction can lead to delays in the litigation process, as well as increase the costs and overall complexity of dispute resolution (Hasandinata & Priyanto, 2019)

Technical challenges in ensuring the authenticity of electronic evidence are also a key issue in the litigation approach to e-commerce dispute resolution. E-commerce transactions typically occur digitally, meaning the evidence related to these transactions is also in electronic form. The use of electronic evidence in court often raises problems, particularly concerning authentication, integrity, and validity of the evidence. Courts must ensure that the electronic evidence submitted is not tampered with or altered and that it can be

relied upon to make fair and accurate decisions. Technical issues such as manipulation or forgery of electronic evidence can undermine the integrity of the litigation process and trust in the fairness of the judicial system.

Nevertheless, efforts have been made to address some of the legal challenges in the litigation approach to e-commerce dispute resolution. The development of blockchain technology, for example, has offered potential solutions to issues of authentication and integrity of electronic evidence. By using blockchain technology, e-commerce transactions can be permanently recorded and cannot be altered, providing stronger and more reliable evidence in litigation. Additionally, some jurisdictions have adopted laws and regulations that are more aligned with the needs of e-commerce, including in the area of dispute resolution. These measures include providing legal clarity regarding jurisdiction and applicable law in e-commerce cases, as well as establishing a more responsive and adaptive framework to address the specific challenges faced in e-commerce dispute resolution (Setiantoro et al., 2018)

Litigation and Arbitration: Solutions and Alternatives

Solutions and alternatives to address legal challenges in e-commerce dispute resolution through arbitration and litigation are crucial in maintaining trust and efficiency within the e-commerce ecosystem. In this context, technology plays a key role in enhancing the efficiency and security of e-commerce dispute resolution processes, while also ensuring the protection of user privacy and data security. One promising solution is the use of blockchain technology for transaction verification in both arbitration and litigation.

Blockchain technology offers a decentralized system that records transactions chronologically and is immutable, providing authentic evidence that can be relied upon in resolving e-commerce disputes. In arbitration, blockchain can be used to securely record transactions and electronic evidence, protecting them from modification or forgery, addressing challenges in collecting electronic evidence. In litigation, blockchain technology can help validate the authenticity of electronic documents and transactions, assisting in the evidence collection process and accelerating the pace of trials (Prayuti, 2024).

In addition to blockchain technology, the development of regulations and laws more suited to the needs of e-commerce is a crucial solution in addressing legal challenges in dispute resolution. Governments and regulatory bodies must be actively involved in formulating regulations that cover the specific aspects of electronic commerce, including effective dispute resolution mechanisms tailored to the characteristics of e-commerce. These steps could include the establishment of specialized arbitration bodies to handle e-commerce disputes, as well as the development of a legal framework that recognizes the validity of electronic evidence and online transactions.

In addition to arbitration and litigation, mediation also presents a promising alternative in e-commerce dispute resolution. Mediation offers a more collaborative and flexible approach to resolving disputes, focusing on reaching a mutually beneficial agreement for both parties. In the context of e-commerce, mediation can be conducted online to expedite the dispute resolution process without compromising quality or fairness.

In addition to technological solutions and improved legal approaches, education and legal awareness are also crucial to help parties involved in e-commerce understand their rights and obligations, as well as the available dispute resolution procedures. Training and awareness campaigns can help raise awareness of the importance of effective and timely dispute resolution in building trust within the e-commerce ecosystem. Case studies and the implementation of best practices from various countries and e-commerce platforms can also serve as sources of inspiration for developing solutions and alternatives that cater to both local and global needs. Through cross-border exchange of experiences and learning, stakeholders can adopt best practices in handling e-commerce disputes and enhance the effectiveness of dispute resolution systems.

4. Conclusions

The legal challenges in resolving e-commerce disputes involve the complexity of rapidly evolving regulations amidst the dynamic nature of online transactions. As e-commerce grows and spans across borders, existing legal frameworks are often slow to keep up with the rapid technological and business changes that characterize the digital marketplace. This creates a need for both businesses and consumers to navigate a landscape that is frequently changing, making the resolution of disputes more complex.

Among the primary options for resolving e-commerce disputes are arbitration and litigation, each presenting its own set of advantages and challenges. Arbitration is often chosen for its speed, efficiency, and the confidentiality it offers, which can be crucial for businesses looking to protect sensitive information. However, while arbitration can be quicker, it may lack the transparency and formal legal structure that litigation provides. Litigation, on the other hand, offers a more formalized process with a public record and the possibility of appeals, ensuring that decisions are well-grounded in the law. However, the traditional court system is often slower and more expensive, and navigating jurisdictional issues in cross-border e-commerce disputes can be particularly challenging.

A key challenge lies in adapting existing legal systems to the rapid advancements in technology and the ever-evolving nature of e-commerce businesses. This includes managing the growing role of data protection, intellectual property, and cybersecurity in disputes. Furthermore, the global reach of e-commerce transactions means that jurisdictions across various countries must work together to create harmonized legal frameworks for effective dispute resolution. In this context, it is crucial for policymakers, regulators, and legal practitioners to stay ahead of technological developments, ensuring that legal frameworks are dynamic enough to meet the needs of the digital economy while protecting the rights of all parties involved.

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