Analysis of Dispute Resolution in the Marketplace For Consumer Losses: A Comparative Study Between Shopee And Amazon

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Abstract: This study aims to identify and analyze comparisons of dispute resolution when defaults occur in the Shopee and Amazon marketplaces, especially when consumers settle disputes by returning goods to sellers to receive compensation. This study uses the Economic Analysis Of Law theory by Richard Posner with an economics approach based on three principles, namely value, benefit, and efficiency. This research is normative legal research that is prescriptive and applied. Types of research data using secondary data include primary and secondary legal materials that are relevant to legal research. This research approach uses a statutory approach and a comparative approach. The data collection technique used is a literature study. The results of the study show that the settlement of disputes through the return of goods between Shopee and Amazon using the Economic Analysis Of Law theory by Richard Posner is different. In the Shopee marketplace, it is concluded that returning goods to their place of origin fulfills three principles of economics against law: maximum value, benefit, and efficiency because consumers do not bear the costs of returning goods to sellers. However, resolving disputes by returning goods to their place of origin on the Amazon marketplace based on these three principles is said to be not optimal because consumers must bear the costs of returning goods to their place of origin themselves, moreover consumers have to bear taxes and customs duties because they buy from outside the jurisdiction of Indonesia, namely the United States.

Keywords: E-Commerce; Economic Analysis of Law; Marketplace;

1. Introduction

Today, the world’s economy has entered a new phase that feels more popular, marked by economic activities that use the internet to communicate. In the business world, the use of the internet as a means of communication is commonly referred to as "Electronic Commerce/E-Commerce". E-commerce is an innovation in making it easier for business partners and customers to streamline time and costs, namely by making transactions via the internet. This becomes a bridge in the buying and selling business world between parties, namely sellers and buyers, to exchange information about a product via network-based internet.

The definition of electronic transactions is explained in Article 1 point 2 of Law No. 19/2016 concerning amendments of Law No. 11/2008 concerning Information and Electronic Transactions (Information and Electronic Transactions Act) which reads:
"Electronic Transactions are legal actions that carried out using computers, computer networks, and/or other electronic media".

A marketplace is a place to transact, buy, and sell products electronically, bringing together many sellers and buyers (Nuraida Wahyuni, Ade Irman Saeful Mutaqin, and Akbar Gunawan, 2019). The number of e-commerce that are used by Indonesian people as a means of conducting online-based transactions, one of which is the Shopee marketplace. Data reported by iPrice, Shopee ranks second with an average monthly visitor of 132.77 million in the first quarter of 2022, up 0.6% from the previous quarter which was still 131.9 million after Tokopedia which ranks first, reaching 157.2 million in the first quarter of 2022. This figure is up 5.1% from the fourth quarter of 2021 which recorded 149.6 million visits (Databoks, 2022). This proves that the interest and enthusiasm of Indonesian citizens in buying and selling online through Shopee is very high.

Amazon is a popular and world-leading online shopping platform in the United States. Approximately 150.6 million mobile phone users in the world access this online e-commerce site to buy goods and services. Amazon was founded by Jeff Bezos in 1994 and is based in Seattle, Washington, United States and has established branch offices in many countries such as Mexico, Poland, Singapore, South Africa, Korea, Taiwan, India, Japan, and others. The company initially started by selling books online before finally 1998 devoting itself to selling PC games and music. At the same time, Amazon expanded its administration globally by purchasing other online bookstores in the UK and Germany. In the 2000s Amazon delivered its amazon web service so that it can be accessed in many countries until now. Amazon offers the best prices, complete products, and an easy shopping experience for its customers (Warrie, Uma et al, 2021).

Reporting from similar web data regarding Top Websites Ranking, Amazon.com was ranked number 1 as the world's most popular website in the e-commerce & shopping category in August 2022. The average amount of time users spend on the website is 7 minutes, and they view an average of 8.95 pages per visit. Pages per visit is a popular engagement metric that is calculated by dividing the total number of website views by the total number of visitors. The bounce rate for amazon.com is 34.09%, meaning 34.09% of visitors leave the website after viewing only one page followed by ebay.com which is 2nd on the list (Similarweb, 2022).

R. Subekti explained the definition of buying and selling, namely an agreement that is reciprocal in nature in which one party (the seller) promises to surrender ownership rights to an item while the other party (the buyer) promises to pay a price consisting of a sum of money as compensation for the acquisition of such property rights (Rahayu Subekti, 1995). Meanwhile, Article 1457 of the Indonesian Civil Code defines buying and selling, namely: "Buying and selling is an agreement, by which one party binds himself to surrender an object, and the other party to pay a price what was promised."

The thing that is ultimate goal of the agreement is when the achievements promised by the parties involved in the agreement are fulfilled. The notion of achievement is something that must be fulfilled by the debtor as well as something
that can be demanded by the creditor, where in Article 1234 of Indonesian Civil Code it is explained that each engagement is to give something, to do something, or not to do something (R. Soeroso, 2011).

However, behind the convenience of buying and selling transactions through electronic commerce/e-commerce, fraud often occurs because sellers and buyers do not meet face-to-face in buying and selling transactions, but transactions are carried out online via the internet. One of the phenomena that are currently happening is the loss experienced by the buyer, namely the buyer does not receive the goods/products according to what is in the specifications. As for what is meant by specifications here, namely information attached to an item/product. This, of course, makes the buyer feel disadvantaged because they receive goods/products that are different from what has been described and promised in the marketplace, resulting in a default.

This writing compares the dispute resolution that can be taken by consumers for acts of default on the Shopee and Amazon marketplaces using the Economic Analysis Of Law theory by Richard Posner, especially regarding returning goods to their place of origin. As for what the author examines the parties here, namely, the parties involved and agree to enter into an electronic sale and purchase agreement, namely the seller (seller), the consumer (buyer), and the marketplace company as the provider of facilities. This provision refers to Article 18 Paragraph (1) of Information and Electronic Transactions Act: "Electronic transactions contained in electronic contracts are binding on the parties".

Economic Analysis of Law or economic analysis of law is defined as an economic analysis of law. Legal issues as objects that are arranged, regulated, and associated with economic concepts and considerations (Fajar Sugianto, 2013). The aim is to find out how to position the essence of legal issues in such a way that they become more elaborated. Economics explains that the level of supply can be influenced by prices so that when prices are high, supply will decrease, and vice versa. If economic principles are used in analyzing the law, then the offer is an act of delict and the price is a sanction. So if the sanction for an offense is high, the level of offense will decrease. Posner said that people will obey the provisions of the law if he estimates that he can get more benefits than breaking them, and vice versa (Fajar Sugianto, 2013).

This applies to the seller’s actions when he defaults on buying and selling online in e-commerce, if he does not carry out his obligations, he will receive sanctions that are duly accepted if they are not based on good faith, one of which is the provision of compensation. This is what the author will examine regarding the return of goods to get compensation. The leader in the analysis of the economics of law is Richard Posner, who uses an economics approach based on three principles, namely value, utility, and efficiency (Agus Darmawan, 2015).

This section shall contain the Author’s explanation of how the research is conducted. The Author must clearly and explicitly elucidate why they chose a certain research method and how that research method will be applied in its analysis and discussion of issues. Research methods have been numerous elucidated by various experts, therefore it is recommended that the Author uses existing research methods.
Should the Author use a new research method that has yet been elucidated or used, the Author must explain clearly the new research method they have chosen to use. Authors are allowed to use multiple research methods in one paper (Peter Mahmud Marzuki, 2021).

2. Implementation Of Sale Purchase Agreement Online Marketplace Shopee and Amazon

E-commerce is a form of legal action carried out through electronic transactions using internet technology. E-commerce has changed consumers to get their needs practically. The business relationship is outlined in an agreement that aims to fulfill the rights and obligations of the parties and to avoid the risk that the worst will happen. For parties who neglect their responsibilities by the initial agreement that has been made and agreed upon, the party who feels disadvantaged can be sued for compensation. In an online buying and selling transaction, there must be an agreement or agreement between the two parties, namely the seller and the buyer. Because in this case, the parties did not meet face to face, the agreement was made virtually or did not use paper. This is by article 1 point 17 of law no. 19/2016 concerning amendments to law number 11/2008 concerning Information and Electronic Transactions act: "electronic contracts are agreements between parties made through an electronic system".

The strength of online buying and selling transactions that are carried out virtually is the same as in-person buying and selling agreements. This is explained in article 1320 of Indonesian Civil Code regarding the legal terms of the agreement, also explained in article 46 paragraph (2) of GR 71/2019 concerning the implementation of electronic systems and transactions reads: "electronic contracts are considered valid if:

a. There is an agreement between the parties;
b. Carried out by legal subjects who are capable or authorized to represent by the provisions of laws and regulations;
c. There is a certain thing; and
d. The object of the transaction may not conflict with laws and regulations, decency, and public order.

An agreement is an event where someone promises to someone else or an event where two people promise each other to do something. From this event, a relationship arises between two people, which is called an engagement. Thus, the relationship between the agreement and the engagement is that the agreement creates an engagement. This is regulated and stated in article 1233 of Indonesian Civil Code which reads: "each agreement is born good because the agreement is good because of the law (Rahayu Subekti, 2001).

In transactions through e-commerce, both domestically and abroad, in practice, there is the use of standard clauses that are said to be absolute because sellers and buyers do not meet face to face but only rely on internet electronic media. When a consumer wants an item in e-commerce, the seller will automatically apply a
standard clause in the form of an agreement containing terms and conditions that must be obeyed by the consumer.

Furthermore, in article 46 paragraph (1) GR 71/2019 reads: "electronic transactions can be carried out based on electronic contracts or other contractual forms as a form of the agreement made by the parties". So it can be concluded that before carrying out electronic transactions, both parties agree on the electronic system to be used when carrying out transactions.

The agreement mechanism that occurs between the parties in shopee and amazon consists of an offer and acceptance process. For electronic bidding in article 39 paragraph (1) GR 80/2019, it must contain at least the following information:

a. Specification of goods and/or services;
b. Price of goods and/or services offered;
c. Terms of the agreement;
d. Payment mechanisms and systems as well as payment grace periods;
e. Mechanisms and systems for the delivery of goods and/or services;
f. Unexpected risks and conditions; and
g. Limitation of liability in the event of an unexpected risk.

The electronic offer is declared to have been accepted by the recipient after electronic acceptance of the terms and conditions stated in the electronic offer. A contract or agreement of the parties in an electronic transaction is created when the transaction offer sent by the sender has been received and approved by the recipient. This can be done by approving a document stating the act of receiving and/or using the object by the user of the electronic system.

Therefore, it can be concluded that the implementation of online buying and selling agreements in electronic commerce (e-commerce) shopee and amazon, namely when an agreement is made between the parties is expressed directly using internet media. The parties can agree by selecting the agree button on the internet agreement or directly sending confirmation of their agreement via e-mail. The agreement on an e-commerce contract is different from an ordinary contract, which is generally agreed upon by affixing a joint signature, but an e-commerce contract is declared electronically. Mariam darus badrulzaman, through her interview, said with an electronic agreement that: "by selecting the agree button or confirming the agreement via e-mail, you have agreed (Rizka Syafriana, 2016).

3. Dispute Resolution Policy that Can Be Followed by Shopee Marketplace Consumers for Default Actions

In addition to the ease of buying and selling electronically through e-commerce, it cannot be denied that there is a condition where one party is disadvantaged, namely the goods/products received do not match the specifications stated in the product catalog. This causes a default by the seller to the buyer.

This is not by the initial agreement and non-fulfillment of achievements between the parties. This is of course contrary to article 52 pp. 80 of 2019 concerning
trading through electronic systems that electronic contracts are valid and binding on the parties if:

a. By the terms and conditions in the electronic offer;
b. The information contained in the electronic contract is by the information contained in the electronic offer;
c. There is an agreement between the parties, namely the terms and conditions of the offer sent by the party submitting the offer, received and approved by the party receiving the offer;
d. Performed by legal subjects who are capable or authorized to represent by the provisions of laws and regulations;
e. There are certain things; and
f. The object of the transaction may not conflict with laws and regulations, decency, and public order.

According to article 1234 of Indonesian Civil Code, what is meant by achievement is someone who gives something up, does something, and doesn’t do something. A person is considered in default if (Rahayu Subekti, 1984):

a. If the debtor does not do what he is willing to do;
b. The debtor carries out his promise but not as agreed;
c. The debtor is late in fulfilling the agreement;
d. The debtor does something that according to the agreement should not be done.

Default is not carrying out achievements or obligations as they should. The form can be in the form of non-fulfillment of achievements, delays in the fulfillment of achievements, and imperfect fulfillment of achievements. Meanwhile, imperfect implementation of achievements can be in the form of material breaches or non-fulfillment of achievements as a whole. Therefore, what is meant by debt, in this case, is not only the mere act of handing over money (paying) but also the non-fulfillment of achievement in the engagement relationship (Aria Suyudi, Eryanto Nugroho dan Herni Sri Nurbayanti, 2004).

Default is a term in Dutch, namely "wanprestatie", which means not fulfilling the obligations set out in the engagement, both engagements arising from agreements and agreements arising from laws. Abdul Kadir Muhammad in his book entitled Indonesian Civil Law argues that default occurs due to 2 (two) possibilities, namely (Abdulkadir Muhammad, 2010):

a. Overmacht/force Majeure (forced circumstances);

Force majeure (overmacht/force majeure) is stated through (Reason of Article 1245 of Indonesian Civil Code which states that: "It is not necessary to reimburse costs, losses and interest, if due to coercive circumstances or due to an accidental event the debtor is unable to provide or do something that is required, or because of the same things have committed forbidden acts.”

3 (three) elements must be met for force majeure (overmacht, force majeure), based on Article 1245 of Indonesian Civil Code, namely:

1) Does not meet the achievements;
2) There is a cause that lies beyond the fault of the debtor; 
3) The causal factors were not suspected beforehand and cannot be accounted for by the debtor.

Abdulkadir Muhammad divides the absolute nature and whether or not (relative) of overmacht, among others (Abdulkadir Muhammad, 1992):

1) Circumstances that indicate achievement cannot be fulfilled due to an event that destroys and destroys the object of the agreement. This situation is said to be with the absolute nature of force majeure.
2) Circumstances that indicate achievement cannot be fulfilled due to an event that may hinder the debtor's actions to fulfill the achievement. This situation is said to be absolute or relative.
3) Circumstances that indicate uncertainty because it cannot be known or suspected to occur at the time of agreement by both the debtor and the creditor. This situation says that the fault is not on both parties, especially the debtor.

b. Caused by the negligence of the debtor, whether intentional or not.

As written in Article 1239 of the Civil Code, namely "Each agreement to do something, or not to do something, if the debtor does not fulfill his obligations, gets a settlement in the obligation to provide reimbursement of costs, losses, and interest".

According to Subekti, what can be demanded from a negligent debtor is as follows (Rahayu Subekti, 147):

1) requesting the implementation of the agreement even though the implementation is too late;
2) request compensation for losses, namely losses suffered, because the agreement was not or was implemented late, or was implemented but not as it should have;
3) demand the implementation of the agreement accompanied by compensation for losses suffered by him as a result of delays in the implementation of the agreement.

Of the 2 (two) possible defaults put forward by Abdulkadir Muhammad, the author examines the defaults committed by the debtor in buying and selling on the Shopee and Amazon marketplaces, namely due to negligence by the debtor. This is because the debtor does not fulfill his obligations in the agreement or agreement previously made. This of course raises disputes between the parties.

Society is a group of people who have lived together for a relatively long time and have the awareness that they are a unit bound by a common living system in which rules of behavior are regulated. In the life of society, various forms of interests can be said to be in line with each other, but there are also conflicting ones. If there are two or more interests that face each other, a conflict of interests occurs. This is what in juridical terms is called a dispute (Rosita, 2017).
A dispute is a condition when the parties involved in a commercial endeavor have a problem, namely wanting the other party to do or not do something but the other party refuses or does not do so. Disputes can also be intended as a discrepancy between individuals or groups who are in a relationship because the rights of one of the parties are disturbed or violated (Soerjono Soekanto, 1979).

There are two ways to resolve disputes, namely through the court, and outside the court. The process of resolving disputes through the courts produces an adversarial decision that has not been able to embrace common interests because it produces a win-lose solution decision, with the winning and losing parties, on the one hand, they will feel satisfied but on the other hand, they will feel dissatisfied, so can cause a new problem between the parties to the dispute. Not to mention the dispute resolution process which is slow takes a long time and costs relatively more expensive (Lestari Rika, 2013).

Meanwhile, the process of resolving disputes outside the court results in a "win-win solution" agreement because the settlement of disputes outside the court is through agreement and deliberation between the parties to produce a joint decision that is acceptable to both parties, and the resulting decision the confidentiality of the parties’ disputes can be guaranteed because there is no obligation for the trial process to be open to the public and published. Dispute resolution out of court is generally called Alternative Dispute Resolution (ADR) (Lestari Rika, 2013).

Arrangements regarding dispute resolution are regulated in Article 45 of Law no. 8 of 1999 concerning consumer protection as follows:

1) Every consumer who is harmed can sue the business actor through an institution tasked with resolving disputes between consumers and business actors or through a court within the general court environment.
2) Settlement of consumer disputes can be reached through court or out of court based on the voluntary choice of the parties to the dispute.
3) The settlement of disputes outside the court as referred to in paragraph (2) does not eliminate criminal responsibility as stipulated in the law.
4) If an out-of-court consumer dispute settlement effort has been chosen, a lawsuit through a court can only be pursued if the said attempt is declared unsuccessful by one of the parties or by the parties to the dispute.

Referring to the provisions of this article, several dispute resolution mechanisms can be taken by Shopee consumers, namely through court and out of court. Dispute resolution policies that can be adopted by Shopee consumers in the event of default are:

a. Dispute Resolution Through Non-Litigation (Outside Court)

Dispute resolution outside the court is used in reaching an agreement between the parties regarding the form and amount of compensation and/or regarding certain actions to ensure that the losses suffered by consumers will not be repeated.
In principle, it is sought to settle consumer disputes peacefully, to satisfy the parties to the dispute (win-win solution). According to Leo Kanowitz, the settlement of disputes in court has a degree of attachment to the rules of the game which vary from the most rigid in carrying out the rules of the game to the most relaxed (Arif Rahman, 2018).

In Article 47 UUPK it is explained that the settlement of consumer disputes outside the court is held to reach an agreement regarding the form and amount of compensation and/or regarding certain actions to ensure that losses suffered by consumers will not occur again.

As for the settlement of disputes that can be carried out by Shopee consumers for acts of default committed by sellers, namely:

1) Amicable Dispute Resolution by the Parties Through Requests for Compensation for the Return of Goods/Funds

Reporting from Shopee, Shopee informs that buyers can apply for a return of purchased goods or a refund before the end of the Shopee warranty period which aims to assist users in resolving conflicts by communicating with one another to resolve differences that occur. Requests for the return of goods and/or a buyer's refund may only be submitted in several situations including when the goods received are not by the agreed specifications (for example wrong size, color, etc.

Compensation that can be made is by Article 19 UUPK which states that business actors are responsible for providing compensation for damage, pollution, and/or consumer losses as a result of consuming goods and/or services produced or traded. The compensation can be in the form of:

a) Refund or replacement of goods and/or services of the same or equivalent value; or
b) Health care and/or provision of compensation by the provisions of the applicable laws and regulations.

The compensation is carried out within a period of 7 (seven) days after the date of the transaction. Compensation does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of guilt. However, this provision does not apply if the business actor can prove that the error is the fault of the consumer.

Buyer requests must be submitted via the Shopee website. Shopee will review each buyer's application case by case and at its sole discretion, determine whether the buyer's application is successful or not. If the buyer has initiated legal action against the seller, the buyer may provide formal notification from the competent authority to Shopee requesting Shopee to continue withholding the purchase money until a formal stipulation is available. In its sole discretion, Shopee will determine whether it is necessary to continue withholding the purchase money.

If the information on the request for a return of goods/funds is still under review by Shopee, then the process for requesting a return of
goods/funds is still in the process of checking. After the checking is complete, the status of the buyer's refund/refund request will be updated and the buyer will be notified via notifications on the application and email. Shopee will ask to provide more evidence to help expedite the review process. The buyer must provide the necessary evidence within 1x24 hours so that Shopee can continue the review.

2) Dispute Resolution Through BPSK

If amicable dispute resolution cannot be reached by the parties in the event of a Shopee default, then out-of-court dispute resolution can be reached through the Consumer Dispute Settlement Agency (BPSK). In Article 52 UUPK, BPSK carries out the duties and authorities to handle and resolve consumer disputes using mediation, arbitration, or conciliation.

Mediation is a dispute resolution process involving another person or a third party as a mediator. Mediation is a form of dispute resolution that provides views on the parties to the dispute and acts as a mediator and provides input on dispute resolution. Conciliation is a process to seek peace or an action to prevent litigation from being carried out. If the parties in resolving their dispute through mediation are not reached, then the parties based on a written agreement can submit efforts to resolve the dispute through an arbitration body. According to Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, arbitration is a way of settling a civil dispute outside the general court which is based on an arbitration agreement made in writing by the parties to the dispute and has a binding and final nature.

b. Dispute Resolution Through Litigation (Court)

If efforts to resolve disputes outside the court cannot be resolved by the parties to the dispute, then a lawsuit can be filed in court. Legal remedies that can be taken by consumers when there is a default in electronic transactions via Shopee according to Article 48 UUPK which states that the settlement of consumer disputes through the courts refers to general court provisions that apply in Indonesia. Based on Article 46 UUPK, parties who can file a lawsuit in court are as follows:

1) Lawsuits for violations by business actors can be filed by:
   a) consumer who is harmed or the heir concerned;
   b) a group of consumers who have the same interests;
   c) non-governmental consumer protection organizations that meet the requirements, namely in the form of legal entities or foundations, which in their articles of association clearly state that the purpose of establishing such an organization is for the benefit of consumer protection and has carried out activities by its articles of association;
   d) the government and/or related agencies if the goods and/or services consumed or utilized result in large material losses and/or many victims.
2) A lawsuit filed by a group of consumers, non-governmental consumer protection organizations, or the government as referred to in paragraph (1) letter b, letter c, or letter d shall be submitted to the general court.

3) Further provisions regarding large material losses and/or victims that are not small as referred to in paragraph (1) letter d shall be regulated in a Government Regulation.

In this case, the party that can file a lawsuit, namely Shoepee consumers who are harmed by business actors due to default, namely receiving goods that do not comply with specifications.

Settlement of disputes experienced by Shoepee consumers when default occurs in the form of returning goods or funds according to the theory put forward by Richard Posner, namely an analysis of the economics of law, which uses an economic science approach based on three principles, namely value, utility and efficiency. Richard Posner stated that the law of efficiency is the allocation of responsibilities between people involved in interacting activities in such a way that the same thing minimizes the cost of joint activity, or some amount for the same thing minimizes the cost of joint activity. Efficient law enforcement is in favor of quality control of a process (quality control assessment) and not merely in favor of effectiveness which focuses solely on quantity (Agus Darmawan).

So, according to Richard Posner, an analysis of dispute resolution by returning goods when there is a default by the seller when is associated with three economic principles of law, namely:

a. Value

   In terms of value, returning goods to their place of origin is said to be not the same as the value/cost incurred to buy the goods. This is because it is the marketplace organizer, Shoepee, that bears the costs of returning, so consumers do not bear the cost of returning goods to get compensation so that they have the maximum value.

b. Utilities

   This is by what is stated in UUPK that the development of the national economy in the era of globalization must be able to support the growth of the business world so that it can produce a variety of goods and/or services that have technological content that can improve the welfare of society at large and at the same time obtain certainty over goods and/or services. obtained from trading without causing consumer losses. Likewise to return goods as a form of compensation when there is a default in buying and selling at Shoepee, namely to get goods that are appropriate and desired according to the purpose of buying and selling at the beginning so that these goods can provide benefits and satisfaction for consumers. Utility reflects the benefits and benefits of economic goods. If someone believes that his actions were successfully efficient, then at the same time he concludes the results are satisfactory.

c. Efficiency

   The concept of efficiency is always associated with the notion of savings associated with the economic valuation of goods and/or services. If a buyer defaults at Shoepee, the way to return the item is said to be efficient. Due to the
cost of returning to the destination where the item was purchased, Shopee will bear it as long as it fulfills the applicable conditions, such as using the shipping service specified by Shopee. The buyer, before sending the goods back, requires evidence that the seller must review, does not cost money and the process is not difficult, so this can be said to be efficient according to the principles and theory of efficiency by Richard Posner.

4. **Dispute Resolution Policy that Can Be Followed by Amazon Marketplace Consumers for Default Actions**

One of the problems faced when conducting cross-border e-commerce transactions is the choice of law, including which country’s law to use in the event of a dispute between consumers and business actors domiciled abroad. The UUPK provisions are explained in Article 1 point 3 which reads:

"Business actor is every individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, both individually and jointly through agreements to carry out business activities in various economic fields".

From the above interpretation, the scope of business actors includes only the jurisdiction of the Republic of Indonesia. However, Article 1 point 21 concerning Information and Electronic Transactions Act explains the definition of a person which reads: "Person is an individual, whether an Indonesian citizen, foreign citizen, or legal entity". Furthermore, Article 2 explains the scope of the implementation, which reads: "This law applies to every person who carries out legal actions as stipulated in this law, whether in the jurisdiction of Indonesia or outside the territory of Indonesia, who has legal consequences in the jurisdiction of Indonesia and/or outside the jurisdiction of Indonesia and detrimental to the interests of Indonesia". Based on this interpretation, e-commerce companies from abroad can be categorized as business actors.

The provisions of the Information and Electronic Transactions Act do not only apply to legal actions within the territory of the Republic of Indonesia, but also apply to legal actions committed outside the territory of the Republic of Indonesia, both by Indonesian citizens and foreign citizens/legal entities that have legal consequences in Indonesia. In Article 18 paragraph (2) of Information and Electronic Transactions Act, it is explained that: "The parties have the authority to choose the law that applies to the international electronic transactions they make". Thus, in international electronic transactions, the parties bound in an electronic agreement/contract have the authority to choose which law applies to the international electronic transactions they make. The choice of law of the parties in an international contract, including electronically, is known as the choice of law which is part of the freedom of contract.

Choice of law is binding as the law that applies to contracts. If in a contract there is a choice of law clause, then the law that applies to the contract is the law as
specified in the contract, because what has been agreed upon by both parties applies as law for those who make it (Antonius Dwicky Cahyadi, 2019).

In Amazon e-commerce, there are standard clauses regarding legal choices listed in the EULA (End User License Agreement), namely “the laws of the state of Washington The laws of the State of Washington, without reference to conflict of law rules, govern this EULA and any dispute of any sort that might arise between you and us”. So that consumers who transact through Amazon, if there is a dispute, must comply with the laws of Washington.

As for the dispute resolution policies that can be pursued by Amazon consumers from the jurisdiction of the territory of the Republic of Indonesia, they are as follows:

a. Dispute Resolution Through Litigation (Court)

The issue of jurisdiction in which transactions occur is a matter of choice of law or choice of forum. Jurisdiction is when the court has the authority to examine and adjudicate a dispute. Juridically, this is important because it involves the jurisdiction of the competent court in the event of a dispute and a choice of law issue (Abdul Halim Barkatullah, 2007).

In Amazon’s provisions, there is a clause provision that all dispute resolution with Washington state law. If consumers want to file a lawsuit, they must file a lawsuit for default before an American court. This, of course, will cost many times the number of transactions made. Therefore, in the Amazon agreement clause, it would be nice to resolve disputes through non-litigation channels first.

b. Dispute Resolution Through Non-Litigation (Outside Court)

1) Amicable dispute resolution by obtaining a refund or an item purchased on Amazon directly
   a) Enter by going to the Amazon website by going to https://www.amazon.com and clicking sign in.
   b) Click on orders in the upper right corner of the screen to view all purchase history
   c) Select return or replace items next to the item you want to return.
   d) Explain the reason why you want to return the item. There are several reasons for returning goods: defective goods, no longer needed, wrong size, no longer needed, and so on. Choose the most suitable option and click submit/confirm.
   e) Request a refund or replacement item
      (1) If you want the money to be returned, then click "refund". However, if the product is defective or inappropriate and you want to replace it, click "replacement".
      (2) If you choose a refund, it usually takes 3-7 working days before the refund arrives in the buyer’s account.
      (3) Refunds will be credited to the card used to purchase the item in question, or the buyer’s Amazon account will receive a balance if the item was a gift.
(4) If you choose to submit a refund request, the item must be returned within 30 days.

2) Dispute Resolution Through Arbitration

As previously discussed, there is a clause in Amazon, namely that all disputes that occur are resolved according to Washington state law. This is of course burdensome for consumers because when a default occurs by Amazon, they must file a lawsuit with the state of Washington. Therefore, other efforts can be made when a default occurs when a transaction through Amazon is through arbitration as quoted from the Amazon website:

“Any dispute or claim relating in any way to your purchase will be resolved by binding arbitration. The Federal Arbitration Act and federal arbitration law apply to this EULA. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this EULA as a court would.”

In the provisions of Article 18 paragraph (4) concerning Information and Electronic Transactions, it is also explained that the parties have the authority to determine forums for courts, arbitration, or other alternative dispute resolution institutions that have the authority to handle disputes that may arise from international electronic transactions they make. It is better to use the ADR (Alternative Dispute Resolution) mechanism to resolve international disputes regarding e-commerce so that the parties do not have to worry about differences in the legal system, culture, and language.

The arbitration process begins with the consumer submitting a letter of request for arbitration and explaining his or her claim to an agent for Amazon Corporate Services Company in Washington. The arbitration will be conducted by the American Arbitration Association (AAA). Payment of filing, administrative and arbitrator fees will be governed by AAA rules. The consumer may choose to have the arbitration conducted by telephone, based on written submissions, or at a mutually agreed location. AAA is an organization in the field of out-of-court dispute resolution it can also be called AAA as a form of alternative dispute resolution (Alternative Dispute Resolution).

An analysis of dispute resolution by returning goods when there is a default by the seller on the Amazon marketplace according to Richard Posner when associated with three economic principles of law, namely:

a. Value

In terms of value, the return of goods to their place of origin is said to be equal/greater than the value/cost incurred to purchase the goods. This is because purchases made from abroad by Indonesian consumers are accompanied by taxes and customs. As reported by the Amazon website:
“Those items for shipment to countries outside of the U.S. may be subject to taxes, customs duties, and fees levied by the destination country ("Import Fees"). The recipient of the shipment is the importer of record in the destination country and is responsible for all Import Fees.

Therefore, because the costs incurred to return the goods are also said to be large to get compensation it has a value that can be said to be not optimal.

b. Utilities

The purpose of returning goods as a form of compensation when there is a default in buying and selling on Amazon is to get appropriate and desirable goods according to the purpose of buying and selling at the beginning so that these goods can provide benefits and satisfaction for consumers. Utility reflects the benefits and benefits of economic goods. If someone believes that his actions were successfully efficient, then at the same time he concludes the results are satisfactory. But in this case, it is said to be unsatisfactory because the benefits and customer satisfaction are not achieved.

c. Efficiency

The concept of efficiency always refers to savings associated with the economic valuation of goods and/or services. In the event of a default that buyers experience on Amazon, the way to return an item is inefficient. Due to the cost of returning to the original destination where the item was purchased, it will be borne by the buyer so besides consuming a lot of money it also takes a long time this can be said to be inefficient by the principles and theory of efficiency by Richard Posner.

5. Conclusion

The implementation of online buying and selling agreements in the Shopee and Amazon marketplaces is when an agreement is reached through an electronic contract between the parties, namely the seller and the buyer through an electronic system that begins with the offer stage by the seller and acceptance by the buyer. An agreement arises when the buyer agrees and presses the agree button on the terms and conditions presented at the time of the offer regarding a product. The agreement will give rise to a legal relationship between parties in the form of rights and obligations that must be met with one another.

Dispute resolution can be done by consumers when there is a default in buying and selling through e-commerce, both Shopee and Amazon are the same, namely through two (2) channels, namely litigation (court) and non-litigation (outside court). For both, it would be nice if all disputes were resolved through peaceful efforts first by both parties, namely the seller and the buyer. If in the end, you don’t find a solution, the marketplace will step in as the executor of the problems that arise. Dispute resolution outside of peaceful efforts will also cost a lot, especially if you buy through Amazon, which is e-commerce outside Indonesian jurisdiction.
The settlement of disputes when there is a default in the Shopee and Amazon marketplaces is based on the Theory of Economic Analysis Of Law by Richard Posner, which is based on three different principles (principles of value, utility, and efficiency). In the Shopee marketplace, it is said that it is maximal in fulfilling three economic principles because the costs incurred to return goods as compensation are not borne by the consumer but the organizer’s marketplace as long as it fulfills the terms and conditions for returning goods.

As for the Amazon marketplace, Richard Posner concluded that the three principles of economics against law are inefficient because the cost of returning goods to their destination is equal to or greater than the price of the goods purchased as well as taxes and customs duties that must be borne by Indonesian consumers for buying products from outside marketplaces. A country that will take a lot of money and a lot of time.

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Legal Documents

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