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Online Alternative Dispute Resolution for Consumer Dispute Settlement in the Digital World

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ABSTRACT Online dispute resolution by consumer dispute resolution agency has not been regulated in consumer protection law. The aims of this study: (i) showing online alternative dispute resolution is concept of consumer dispute resolution by consumer dispute resolution agency in digital world in Indonesia; (ii) showing the urgency of regulation and matters regulated in consumer protection law relating to online alternative dispute resolution. The author uses normative juridical research. The results show first, online alternative dispute resolution for consumer dispute resolution by consumer dispute resolution agency can overcome the problem of long time and not cheap costs incurred by consumers to resolve disputes, in line with the increase in digital consumers, whose implementation can improve assessment of alternative dispute resolution related to effectiveness rule of law. Second, online alternative dispute resolution needs to be regulated in consumer protection law so that consumer dispute resolution agency get legal certainty to apply them in consumer dispute resolution. Regarding the regulation, it can refer to International Council for Online Dispute Resolution and strengthen the institution of consumer dispute resolution agency. The regulation and implementation of online alternative dispute resolution by the consumer dispute resolution agency has been strengthened by success in several other countries.

KEYWORDS Online Alternative Dispute Resolution, Consumer Dispute Resolution, Consumer Dispute Resolution Agency, and Digital World.

INTRODUCTION

Today's digital world opens up a huge space for humans to be able to conduct trade transactions through e-commerce. Based on reports from Google Temasek and Bain & Company, in Indonesia there were 21 million new digital consumers during the COVID-19 in 2020 and the first half of 2021. Meanwhile, e-commerce itself grew by 52%. By 2025 the internet economy is expected to reach a value of US\$146 billion. This increase in consumers using digital services occurs for 2 reasons, namely daily activities become easier and are part of the routine. The most frequent transactions are daily shopping followed by beauty (Google Temasek and Bain Company, 2021).

The rapid growth of cross-border transactions has also increased the volume of consumer complaints for violations committed by business actors. From January to September 2021, the Ministry of Trade of the Republic of Indonesia recorded that there were 7,368 consumer complaints in the e-commerce (Catriana, E, 2021, Money.Kompas.com). These consumer complaints are certainly linear with the emergence of consumer disputes due to the absence of response and compensation from business actors. The estuary is a follow-up to the complaint to be resolved either through court or out of court.

The large volume of consumer disputes requires an effective dispute resolution system and mechanism with legal certainty to achieve justice. Contrary to what is expected, according to the World Justice Project Rule of Law Index in 2021, out of 139 countries in the world, Indonesia is ranked 68th with a score of 0.52. This ranking has decreased from 2020, which was 59 with a value of 0.53 (World Justice Project, 2021). One of the factors assessed is civil justice. with a score of 0.45 and Indonesia as a country which is ranked 105th in this factor. Civil justice factors are divided into 7 sub-factors consisting of: (i) people can access and obtain civil justice; (ii) civil justice is free from discrimination; (iii) civil justice is free from corruption; (iv) civil justice is free from undue government influence; (v) civil proceedings may not be unreasonably postponed; (vi) civil justice is served effectively; and (vii) alternative dispute resolution mechanisms that are accessible, impartial, and effective (World Justice Project, 2021).

Settlement of consumer disputes out of court as access to justice as regulated in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law), regarding mechanisms that are accessible, impartial, and effective in Indonesia is actually considered low compared to some other countries. The following is a table of details of the comparison of the assessments:

Table 1. Comparison of Ratings and Values of Alternative Dispute Resolution Mechanisms, Accessible, Impartial, and Effective in Several

Countries	Rankings Ratings	Values	Description
Norway	1	0.91	3 top countries rankings
St. Lucia	2	0.86	
Estonia	3	0.86	
Argentina	46	0.72	3 rankings countries in the middle
Croatia	47	0.72	
Barbados	48	0.71	
Indonesia	118	0.54	Almost in the lowest rankings countries

Source: Data processed by the author obtained from the World Justice Project, 2021.

The data above shows alternative dispute resolution Indonesia is still lagging behind other countries. Digging deeper, the settlement of consumer disputes out of court based on the Consumer Protection Law is the duty and authority of the Consumer Dispute Settlement Agency as regulated in Article 52. Settlement of consumer disputes is carried out by means of mediation or arbitration or conciliation. Regarding this, if examined, there are regulatory loopholes found starting from the crisis of settlement mechanisms through the consumer dispute resolution agency and online not yet regulated in the Consumer Protection Act.

It can be explained that *first* crisis of the mechanism in question is the settlement of consumer disputes through the consumer dispute settlement agency which is considered to take a long time and is not cheap because it still maintains a direct interaction mechanism. In fact, such consumer dispute resolution is not a legal choice that is expected to obtain justice because it reflects the ineffectiveness of law enforcement. Thus, the effective mechanism was defeated by time and distance. *Second*, stemming from these problems and increasing statistics on e-commerce also suppresses the presence of an effective, efficient, and low-cost consumer

dispute resolution mechanism, namely online, but has not been regulated in the Consumer Protection Act.

Online alternative dispute resolution is an out-of-court dispute resolution mechanism that is carried out online. This mechanism becomes an oasis in the heat of the desert. For example, justice seekers find the right mechanism to enforce consumer protection laws in today's digital world. Based on the description in the previous introduction, the problem that will be discussed in this paper is: (i) what is the concept of online alternative dispute resolution for consumer dispute resolution in the digital world?; and (ii) how are online alternative dispute resolution for consumer dispute resolution in the digital world in Indonesia?

RESEARCH METHODS

In this writing, the author uses a normative juridical writing method with the approach of: (i) laws and regulations by examining relevant laws and regulations relating to existing legal issues (Peter Mahmud Marzuki, 2011; 93). The laws studied are the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection; and (ii) conceptual, namely an approach used to find answers to legal issues (Muhaimin, 2020, p. 57). The types and sources of data in this study use secondary data obtained by the author through literature studies from various books, journal articles, proceedings, statutory regulations, and online pages. After the data is obtained, the writer collects the data and then proceeds with the analysis and provides a conceptual framework as an answer to the existing legal issues.

RESULTS AND DISCUSSION

1. Online Alternative Dispute Resolution: The Concept of Consumer Dispute Resolution in the Digital World in Indonesia

The consumer dispute resolution agency is an agency mandated by the Consumer Protection Act to resolve consumer disputes out of court. This makes the consumer dispute resolution agency have a strategic role

in providing legal protection for consumers, but its existence is faced with problems related to funding sourced from the regional budget. It is explained in the Regulation of the Minister of Home Affairs Number 77 of 2020 concerning Technical Guidelines for Regional Financial Management that the grant recipient agency from the regional revenue and expenditure budget does not continue every fiscal year. This problem has shaken the existence of the consumer dispute resolution agency until it was found that someone had stopped the service of complaints from the public as happened in Solo (Rahayu, T, 2014).

The development of the digital world which is characterized by the advancement of information and communication technology is not a mere science fiction fantasy that cannot be implemented in every area of life. This started with a major revolution that was planned and communicated by the German Government in 2011. It is industry 4.0 with strong characteristics such as real-time networking and digital intelligence in terms of equipment, objects and people regarding industrial management (U. Dombrowski, T. Richter, P. Krenkel, 2017). This transformation leads to a situation where there is an identification of the elements that make up society in knowledge. This is known as society 5.0. The focus is on placing humans at the center of technology and innovation to provide humanitarian benefits (Andreia G. Pereira, 2020).

The description above converges between technology, commerce, and law. There is a shift in the buying and selling system from conventional to electronic transactions, which is the ability of e-commerce to reach more consumers and open up opportunities for many business actors (Agus Riswadi, B, 2003, p. 115-116). This is evidenced by the increasing statistics of Indonesia's internet economy in 2021 which has reached \$70 billion with the e-commerce platform being the main driver. E-commerce is the buying and selling of goods and services on the internet. E-business is sometimes used as another term for the same process. More often, however, it is used to define the

broader processes of how the internet is changing the way companies do business, the way they relate to their customers and suppliers, and the way they think about functions such as marketing and logistics (Gaffar Khan, A, 2016).

Activities in the network (online) such as the use of e-commerce disputes online (Katsh E, Rifki J, Gaitenby A, 1999). Katsh and Rifkin argue that if the transaction online, the disputing parties have a tendency to accept online to resolve disputes that arise between them. Therefore, the development of e-commerce requires new ways of resolving disputes. Alternative methods of resolving consumer disputes in the electronic space have been demonstrated by legal doctrine. In this case, the parties do not need to interact face to face in front of the arbitrator or mediator. This discussion is known as the Online Dispute Resolution (ODR) (Katsh E, and Rifkin J, 2001).

Online Dispute Resolution (ODR) has a similar term with Online ADR (oADR). In this discussion, the author will use the Online ADR (oADR) nomenclature. Online Alternative Dispute Resolution is a way of resolving disputes through negotiation, mediation or arbitration using technological facilities. In this case, the online dispute resolution is categorized as part of the Alternative Dispute Resolution (ADR). The difference lies in ODR changing the traditional view with the use of innovative techniques and online in the process (Petrauskas, F, and Kbartiene, E, 2011, p. 2-5).

Online alternative dispute resolution to Katsh and Rifkin: (i) the dispute resolution process can occur at any time; (ii) regardless of geographical distance; and (iii) the possibility of asynchronous communication. Furthermore, there are elements that can identify an alternative online dispute resolution: (i) the parties involved; (ii) a “third party” is a neutral person or mediator or conciliator or arbitrator; (iii) the so-called “fourth party” which refers to the technology involved in the process; and added J. Zeleznikow and AR Lodder (iv) “fifth party”

information and communication technology providers and technical players (S. Bol in J. Zeleznikow and AR Lodder (eds.), 2005, p. 23-30).

Meanwhile, there are 4 types of alternative online dispute resolution in resolving disputes: (i) online settlement (network settlement) which uses an expert system to settle financial claims automatically; (ii) online arbitration using the website to resolve disputes with qualified arbitrators; (iii) online resolution of consumer complaints by using e-mail to handle consumer complaints; and (iv) online mediation using a website to resolve disputes with a qualified mediator (Esther van den Heuvel).

Online alternative dispute resolution which is closely related to technology, there are several features that are usually used in online alternative dispute resolution such as electronic mail feature (e-Bay in America), feedback feature (e-Bay in America), chat feature, audio conferencing feature or video conferencing (Concilianet in Mexico) (Del Duca L, Rule C, and Loeb Z, 2012) to artificial intelligence (CyberSettle). In the implementation of each mechanism, depending on the features to be used. Institutions can use one feature or can also combine each feature.

The concept of online alternative dispute resolution can be implemented by consumer dispute resolution agencies in Indonesia. This concept will strengthen the institution of consumer dispute resolution agency because by utilizing technology in the dispute resolution process, in addition to reducing costs for institutions and litigants, it will also save time in litigation and reach all communities considering that not all districts or cities in Indonesia have consumer dispute resolution agency. Thus, the existence of the consumer dispute settlement agency is guaranteed to be able to provide legal protection for consumers.

2. Arrangements *Online Alternative Dispute Resolution* for Consumer Dispute Resolution in the Digital World in Indonesia

In the midst of the difficulties faced in the digital world especially due to the expansion of e-commerce in Indonesia, a barrier was created by the difficulties in resolving consumer disputes. This is evident in disputes of small value which in their resolution either through court or out of court becomes useless when it takes a long time and the non-cheap costs of obtaining recovery will be greater than the amount recovered. The implication is that consumers do not make efforts to get their rights.

In addition to the problems above, the significant increase in new digital consumers, the growth of e-commerce in Indonesia, the low assessment of alternative dispute resolution regarding accessible, impartial, and effective mechanisms based on the Rule of Law Index as described above, gives the urgency of online alternative dispute resolution for consumer dispute resolution out of court carried out by consumer dispute resolution agencies in the digital world in Indonesia.

Furthermore, regarding the alternative dispute resolution regulated in the Consumer Protection Law, the online alternative dispute resolution has not been accommodated in the regulation. Then, regarding the institutional aspect that has the duty and authority to resolve consumer disputes outside the court, namely the consumer dispute resolution agency, it has not yet been regulated in detail to open the implementation of online alternative dispute resolution by the consumer dispute resolution agency, so it is necessary to strengthen this government institution. The estuary is the amendment to the Consumer Protection Law which regulates the implementation of consumer dispute resolution by the consumer dispute resolution agency in the Consumer Protection Law through alternative online dispute resolution methods. Without the amendment to the Consumer Protection Law, the consumer dispute resolution agency will not get legal certainty to be able to carry out consumer dispute resolution through online alternative dispute resolution. The implication is that consumer dispute resolution will still take a long time and costs are not cheap, consumer

rights as described in the Consumer Protection Act will not be fulfilled, and assessments of alternative dispute resolution regarding accessible, impartial, and effective mechanisms are difficult to improve. compared to other countries so that the context of the rule of law in Indonesia will be questioned.

Regulations regarding consumer dispute resolution mechanisms by consumer dispute resolution agency through online alternative dispute resolution can refer to the International Council for Online Dispute Resolution (ICODR). There are guidelines on mediation and arbitration in the network that can be considered as provisions for online alternative dispute resolution. The guidelines in question can be described as follows (International Council for Online Dispute Resolution):

1. *Accessible*

Confirm individually with each party their willingness to use the technology. Ensure that all parties have effective connections. Using a reliable video conferencing platform and easy to log in. Send reminders to parties with login information at least 2 days before and 2 hours before the scheduled start time.

2. *Competent*

Checks the software in use before using it and offers to try it out with the individual parties before the session starts. Inform parties of what technology will be used prior to the session. Learn about the additional ethical obligations that accompany video mediation as well as address the parties' ethical obligations for video mediation in the ground rules.

3. *Confidential*

Informs the parties that neither parties nor neutral third parties will record video or audio in *online*. There needs to be a written commitment from the parties in advance that they will not also record audio or video, or take screenshots. If parties want to show documents or photos in the session, ask them to share their

screens and show them instead of emailing them to other participants. In this case it is also related to not allowing other parties to join.

4. *Fair/Impartial/Neutral*

Start a session with video and microphones on all parties. If either party is disconnected, suspend the session until they can rejoin. If either party's audio is cut off or distorted, notify them after the audio resumes and ask them to repeat what was said.

5. *Secure*

Use platform with end-to-end encryption. In this case do not use applications or software that require location information to be shared, or notify the parties that they have the ability to disable it. Ensures that the video conference will not be closed after a certain duration. Show all videos on the screen at the same time instead of just highlighting the speaker.

In addition to the mechanism, institutional aspects also need to be considered in the arrangement of online alternative dispute resolution. The direction of this online alternative dispute resolution is to provide legal certainty for the consumer dispute resolution agency as a special institution established by the government to resolve consumer disputes out of court through online alternative dispute resolution. In the Consumer Protection Law, it has not explained the alternative dispute resolution that applies the events and procedures by utilizing technology. The legal certainty in question will be realized if it is written in the provisions of the Consumer Protection Law to enable the implementation of online alternative dispute resolution in the settlement of consumer disputes out of court. Strengthening institutions (consumer dispute resolution agency) also needs to be done by placing competent members in particular to resolve consumer disputes through online alternative dispute resolution. This means, regarding the membership of the consumer dispute settlement agency which according to Article 36 of the Consumer Protection Law consists

of elements of the Government, business actors, non-governmental consumer protection institutions, academics, and experts, it also needs to be emphasized in the amendments to the Consumer Protection Law regarding the presence of parties. The fifth, as mentioned earlier in the scope of online alternative dispute resolution is as a technical player.

The successful implementation of online alternative dispute resolution in Europe provides insights and strengthens them to be implemented in Indonesia. Platform European Online Dispute Resolution to provide a sense of security and fairness for consumers in online with access to quality dispute resolution. merchants online in several European countries such as Norway, Iceland, and in Liechtenstein are required to provide easily accessible links to the ODR platform and email addresses so that the platform can contact consumers. This is based on European Regulation Number 524 of 2013 concerning online alternative dispute resolution.

Platforms online dispute resolution will notify merchants of consumer complaints and requests. Between consumers and merchants can exchange messages. Then, the dispute resolution also makes it possible for consumers to resolve the dispute to an approved dispute resolution agency and registered on an alternative online dispute resolution that meets quality standards and is independent at a lower cost and faster time than in court (European Commission).

There are great opportunities and support from various aspects for online alternative dispute resolution to be implemented in Indonesia. Another recommendation that needs to be considered in the implementation of online alternative dispute resolution is regarding ethical principles that can be referred to from The National Center for Technology and Dispute Resolution. There are 17 ethical principles, namely: (1) accessibility; (2) accountability; (3) competence; (4) confidentiality; (5) reinforcement; (6) equations; (7) justice; (8) honesty; (9) impartiality; (10) informed participation; (11) innovation; (12) integration; (13) legal obligations; (14) neutrality; (15) protection

from harmful things; (16) security; and (17) transparency (Wing, L, 2016).

CONCLUSIONS

Online alternative dispute resolution is a consumer dispute resolution concept that combines alternative dispute resolution and online dispute resolution as a solution to consumer dispute problems and consumer dispute resolution agencies. The success of online alternative dispute resolution which has been implemented in several countries, apparently has not been regulated in the Consumer Protection Act as the legal basis for its regulation, so it needs to be regulated so that the consumer dispute resolution agency can implement it. By implementing online alternative dispute resolution, it will strengthen and guarantee the existence of consumer dispute resolution agencies in Indonesia. In addition, the parties can resolve disputes in a short time, at low cost, and reach dispute resolution regardless of distance and geographical location. Reference to the regulation can refer to the International Council for Online Dispute Resolution mediation and arbitration online which is carried out by taking into account aspects of accessible, competent, confidential, fair/impartial/neutral, and secure. The implementation must also be based on the 17 ethical principles of The National Center Technology and Dispute Resolution.

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