

# Consumer Protection in Transaction of Electronic Trading on Especially on Social Media (E- Commerce)

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## Consumer Protection in Transaction of Electronic Trading on Especially on Social Media (*E-Commerce*)

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**Abstract :** The use of internet media for business and trade needs began to be known in recent years and is rapidly widespread, especially in developed countries. With trade via the Internet is also developing a *virtual business systems*, such as *virtual stores* and *virtual company* where business people running a business and trade via the Internet and no longer rely on conventional real business enterprise.

Approach method used in this research is normative *juridical approach* and completed with empirical *juridical* approach.

Law No. 8 of 1999 on Consumer Protection has not been able to protect the consumer in *e-commerce* transactions because of the provisions contained in Law No. 8 of 1999 on Consumer Protection not accommodated consumer rights in *e-commerce* transactions. That is because *e-commerce* has its own characteristics compared to the transaction *Conventional*.

In Indonesia, the protection of consumer rights and business actors has been regulated in Law Number 8 Year 1999 regarding Consumer Protection. However, Law No. 8 of 1999 on Consumer Protection, effective since April 1999, only regulates the rights and obligations of consumers.

Noting the increasing number of problems which arise as a result of *e-commerce* in trade activity as well as the need to obtain *penyelesaian* disputes effectively, efficiently and impartially. Then the application of alternative dispute resolution mechanisms (*alternative dispute resolution*) in electronic trading is an alternative solution to overcome the dispute as well as a form of legal protection.

**Keywords:** Consumer Protection, e-commerce, Social Media.

### I. INTRODUCTION

Already more than forty years ago, computer technology has had a positive impact to date. This impact affects the people and on the ways in which people can carry out their jobs. Computers have penetrated almost every profession, commercial and industrial activity, as well as many organizations that may experience difficulties in competition if not relying on computer technology.<sup>2)</sup>

Today the world has entered a global era. In this era of globalization, the progress of information technology, especially computers is very fast. With the internet,<sup>3)</sup> then the accelerating globalization. The Internet is a global information dissemination tool, a mechanism for disseminating information and a medium for collaborating and interacting between individuals using a computer without any geographical boundaries. The Internet is an example of a successful investment, dedication, and commitment to an information infrastructure research and development.<sup>4)</sup>

Likewise, trade has undergone trade globalization. Now the globalization of trade is not only marked by changes in the flow of goods among countries that make trade transactions. Currently, trade globalization is also marked by the utilization and use of internet media as a means in the process of international trade transactions.

The use of internet media for business and trade needs began to be known in recent years and is rapidly widespread, especially in developed countries. With trade via the Internet is also developing a *virtual business systems*, such as *virtual stores* and *virtual company* where business people running a business and trade via the Internet and no longer rely on conventional real business enterprise. In developed countries, business development via the Internet can expand rapidly with the support of the *settlement* means are available, such as

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<sup>2)</sup>David F. Bainbridge, *Computer and The Law*, (New York: Longman Group Limited, 1990), p. 1.

<sup>3)</sup>IsrulSani, *Vehicle Computer, What and How E-Commercc*, (Yogyakarta: Andi Offset, 2002), p. 3.

<sup>4)</sup>PjeykeUstadiyanto, *Frame Work E-Commerce*, (Yogyakarta, Andi Offset, 2001), p. 1.

the delivery system that is fast and reliable, secure payment methods, and especially the support of the existing legal instruments.<sup>5)</sup>

The emergence of trade through the internet, bring different implications. For the economic interests the presence of computer and internet technology has led to real efficiency measures. As for the world of law, the advancement of computer and internet technology, has brought implications on the emergence of a new legal phenomenon. This gave rise to new legal issues.<sup>6)</sup> *Electronic Commerce* is primarily a contract trade transactions between sellers and buyers using the Internet media. So the process of ordering goods, payment transactions until delivery of goods communicated electronically, such as through the internet. Although the term *e-commerce* attention in the last few years, but *e-commerce* has appeared in various forms has been more than 30 years.

*Electronic Commerce* for professional managers have a high economic value, because it is a new market segment that is very broad and potentially, an innovative product marketing areas.

At this time, we use electronic equipment to carry out commercial transactions in such a way that we do not need to ignore the implications that will result. For example, withdrawing money from an ATM, pay for goods using an *ATM Card* or *Credit Card* or *Debit Card*. Use of *ATM Card* or *Credit Card* in the trade have become a regular because we no longer feel that these activities are not something extraordinary.

With such a phenomenon, namely the advance of science and technology which is the driving force for productivity and producer efficiency of goods or services it produces in order to achieve business goals, the protection of consumers is considered very important existence. Therefore, in order to pursue such productivity and efficiency, eventually, either directly or indirectly, the consumer bears the consequences.<sup>7)</sup>

It is undeniable that internet usage in Indonesia is increasing now, although not yet comparable with internet usage in developed countries. Nevertheless, the last few years of Internet usage in Indonesia is no longer confined to the use of information that can be accessed through this medium, it is also used as a means to trade the electronic commerce (*Electronic Commerce*).

It is evident from the many emerging sales through social media such as *facebook*, *twitter*, *instagram*, *line @ account*, *the official website* and others. *Bisnis Indonesia* daily proclamation dated August 24, 2000 stating that the Society of Electrical Communication and Information Indonesia (MEKII) proposed the establishment of regulatory bodies *cyberlaw* internet and the need to set some crucial issues in the use of the internet. Seeing this phenomenon, it is considered necessary if the government to prepare a legal device to regulate all activities carried out on the internet.

This research will be limited to the issue of consumer protection in *electronic commerce* transactions ie in trade transactions *business to consumer* (B2C), and is focused on electronic commerce (*e-commerce*) are in a payment system using a credit card. Because Indonesia already has Law no. 8 of 1999 on Consumer Protection as a parent regulation for consumer protection in Indonesia, and Law no. 36 Year 1999 on Communications which is the current legislation to regulate communication activities including activities on the internet. Indonesian society have largely become consumers of products that are offered in *e-commerce trading*. Thus requiring the existence of a regulation that will provide legal protection to the consumer *e-commerce*. Therefore, the authors are interested in conducting research on aspects of legal protection for consumers in trade through *e-commerce*.

## 35 II. THEORETICAL REVIEW

### a. Understanding e-commerce

*E-commerce* is a multidisciplinary field, which includes the fields of engineering, business and legal aspects.<sup>8)</sup> Onno W. P. and AangArifWahyudi tried to describe *E-commerce* as a comprehensive coverage of the technology, processes and practices that can conduct business transactions without the use of paper as a means

<sup>5)</sup>AsrilSitompul, *Internet Law Legal Issues Regarding Introduction In Cyberspace*, (Bandung: Aditya Citra Bhakti, 2001), p. 1.

<sup>6)</sup>Mariam DarusBadruzaman, *E-Commerce Overview of Contract Law of Indonesia*, Jakarta, Business Law Journal, Vol. 12, (2001), p. 28

<sup>7)</sup>Sri Redjeki Hartono, *Aspects of the Law of Consumer Protection in the Era of Trade Free, the Consumer Protection Law*, (Bandung, MandarMaju, 2000), p. 33.

<sup>8)</sup>Sutan Remy Sjahdeini, *E-Commerce* (Overview Of Legal Aspects and Legal Perspective), the paper presented on the Socialization Transactions *E-Commerce*, held at the Bank BNI on June 7, 2000, p. 2.

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<sup>13</sup> of transaction mechanism. This can be done in various ways such as via e-mail or can be via the *World Wide Web*.<sup>9)</sup>

In general David Baum, cited by Onno W. Purbo and AangArifWahyudi "E-commerce is a dynamic set of technologies, applications, and business processes that link enterprises, consumer and communities through electronic transactions and the electronic exchange of goods, services and information". E-commerce is a dynamic set of technologies, applications and business processes that connect corporate, consumer and certain communities through electronic transactions and trade in goods, services, and information that will be conducted electronically.<sup>7</sup>

### **b. E-commerce in the perception of contract law**

Basically, the form of Electronic contract include:

- 1) Contract through communication e-mail. Offer and acceptance conducted through e - mail, or in combination with other Electronic communication for example fax;
- 2) Contracts through the web that offer the sale of goods and services and the consumer may accept the offer by filling out the form emblazoned on the screen;
- 3) Contracts through *chat* and *video conferencing*.

Although Electronic contract is a new phenomenon, but all countries implement arrangements existing contract law by applying <sup>3</sup> the principle - the universal principle of the making of an agreement such as consensual principles, the principle <sup>3</sup> freedom of contract, good faith principles and terms of the validity of the agreement. Contract Electronic included in the category of the contract is not called that agreement - an agreement that is not regulated in the Law of Civil Law, but there is in the community but the birth of the agreement is still based on an agreement or *party autonomy* and apply Article 1338 Book of the Law of Civil Law about <sup>6</sup> the legality An agreement. Likewise, the terms of the validity of the electronic treaty shall remain in force. Article 1320 of the Civil Code reflects the principle of consensualism.<sup>10)</sup>

In the contract of Electronic agreement is a very important thing, this is because the parties do not meet directly so that a regulation is required when the deal occurs. In Indonesia, for determining the presence of an agreement it can be used several theories, namely:<sup>11)</sup>

- 1) The theory of will that teaches that agreement occurs at the time of the will of the recipient is stated <sup>4</sup>
- 2) The delivery theory that states the agreement occurs at the time the stated will is sent by the receiving party
- 3) The theory of knowledge which states that the offering party should have known that his offer was accepted
- 4) The theory of belief teaches that agreement occurs when a declaration of will is deemed worthy of acceptance by the offending party.

### **c. Consumer Protection Concept Consistent with the Consumer Protection Act**

Budi AgusRiswandi revealed that "The issue of consumer protection in *e-commerce* is an important aspect to be considered, because some of the typical characteristics of *E-commerce* will put the consumer in a weak position or harmed as:

- 1) Companies in the Internet (*the Internet merchant*) does not have a physical address in a particular country, so this will complicate consumers to return the product that does not comply with the order. <sup>2</sup>
- 2) Consumers are difficult to obtain collateral to get a local follow-up service or repair.
- 3) Consumer products purchased there might not be appropriate or not compatible with local requirements (*local requirements*).<sup>12)</sup>

The above conditions are clearly detrimental to both the consumer or for the first manufacturers of consumer relative bargaining power (*bargaining position*) lower than the producers / entrepreneurs. Weak consumer position is often the object of activity to gain the maximum profit from producers, so that the expected balance through buying and selling relationship is not achieved. <sup>34</sup>

Legal protection to consumers in Indonesia for the utilization of goods or services from producers / business actors is regulated in the Consumer Protection Act No. 8 of 1999 (UUPK). This law was adopted on April 20,

<sup>9)</sup>Onnow.Purbo and AangArifWahyudi, *Know Your e-Commerce, Jakarta* , (Jakarta: Elex Media Komputindo, 2001), p. 1-2. <sup>6</sup>

<sup>10)</sup>RichardusEkoIndrajit, *E-Commerce: Tips and Business Strategies in Cyberspace* , (Jakarta: Elex Media Komputindo, 2001), 110.

<sup>11)</sup>EndomMakarim, *Law Compilation Telematics*, (Jakarta: RajaGrafindoPerdasa, 2005), 170.

<sup>12)</sup>Budi AgusRiswandi, *Law and Internet in Indonesia* , (Yogyakarta: UII Press, 2003), p. 62-62.



1999, even though it was valid only a year later. However, after a semester of enactment of UUPK, there are still many consumers who have never heard of the existence of UUPK.<sup>13)</sup> In addition, *E-commerce* consumer ignorance of their rights became one of the obstacles the implementation of legal protection for himself.

Legal protection of consumers in transactions *E-commerce* is absolutely necessary. Consumer protection itself according to Article 1 paragraph (1) UUPK mentions "Consumer protection is any effort that ensures the existence of legal certainty to provide protection to consumers".

### III. RESEARCH METHODS

Approach method used in this research is normative juridical approach and completed with empirical juridical approach.

Normative juridical approach used for this study will attempt to discover the extent to which positive law applicable in commercial transactions electronically (*e-commerce*), it is necessary to a study in the form of an inventory of positive law and trying to find the principles of law in commercial transactions electronically (*e-commerce*), and also trying to find a legal system on the basis that there is understanding of the legal system that is the subject of law, rights and obligations, legal relationships and objects of law in commercial transactions electronically.

Juridical empirical approach used for this study will seek to know the things that affect the workings of law in commercial transactions electronically (*e-commerce*), and legal protection for consumers in transactions, the trade electronically (*e-commerce*), as well as factors the influence on consumer protection in electronic commerce transactions (*e-commerce*).

### IV. DISCUSSION

#### a. Structures are at Dan Law Necessary Nature of Relationship Between Producers And Consumers In Trade Through *E-Commerce*

In the Electronic Information and Electronic Transaction Information Act it is stated that electronic transactions are legal relations conducted and / or generated through electronic systems. Whereas in the Draft Law on the Activity and Use of Information Technology it is said that electronic commerce is any trade whether goods or services are made through computer network or other electronic media. From the things mentioned above can be seen that.<sup>14)</sup>

- 1) *E-commerce* actually has a legal basis regular trading (buying and selling conventional trading or selling ordinary or civil).
- 2) *E-commerce* is a conventional trade that also is special because it is very dominant role of the media and electronic devices.

*E-commerce* is due to have a legal basis regular trading, it is necessary to study the provisions contained regular trading. As set forth in Articles 1457 up to Article 1540 of the Law on Commerce Law. According to Article 1457 of the Civil Code, the sale and purchase is an agreement with which the one party binds himself to surrender a material and the other party to pay the price already promised. Subsequently Article 1458 of the Civil Code stipulates that the sale is considered to occur between the two parties, immediately after which these people reach agreement on the material and the price, even though the material has not been submitted and the price has not been paid.

From both the above provisions, it can be seen that:

- 1) The sale and purchase is an agreement, so that there is a provision of engagement in Book III of the Civil Code.
- 2) Sale and purchase is a consensual agreement that has been formed since the agreement on the goods and the price.
- 3) The rights and obligations of the parties have occurred since there is an agreement even though the price has not been paid and the goods have not been delivered.

Forms of legal relationships that occur in commercial transactions electronically (*E-commerce*) is a form of civil law relations. In electronic commerce transactions in the payment using a credit card, simultaneously working three agreements that are mutually exclusive of each other, namely:

- 1) Agreement on the sale of goods / services between merchants and cardholders.
- 2) Agreement between the merchant and the card issuing company, under which the relevant trade agrees to accept payments using the card.

<sup>13)</sup>Dewi Lestari, *Consumer, E-Commerce and Issues* , July 31, 2004, available at [www.lkht-fhui.com/e-commerce](http://www.lkht-fhui.com/e-commerce)

<sup>14)</sup>Sanusi, M. Arsyad, *E-Commerce Law and Solutions* , (Bandung: Mizan Graphic Means, 2001), p. 74.

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- 3) An agreement between the card issuing company and the cardholder or account holder, pursuant to which the cardholder agrees to settle the payments made by the card issuer to the seller of goods and / or services with respect to the card's use by the cardholder concerned.

And in general, electronic trading transactions with B2C system between consumers and producers is done by using a standard agreement.

Please note that currently almost all products can be traded via the internet. Utilization of trading through companies engaged in sales services such as *berniaga.com* with or the like that accommodates all individual products. This can be equated physically with Mall building. There is also a sell or advertise their products through social media such as *face book*, *blackberry Messenger* or *tweeters* and others.<sup>15)</sup> Through this access, all free for the seller and the cost is expected to expand the sales area. The price offered plus postage, so the sales of *E-commerce* other business opportunities that delivery services. Post office activities can be pulsed again during this vacuum.

Unfortunately due to being a trend, people flocked *online* shopping because it is something new. Because there is no face to face between the seller and the buyer, because the buyer / consumer can not directly see the goods to be purchased, so if there is a disappointment when the goods have been received, the consumer can not claim because it is on the weak side, the consumer is only an object that is exploited From the manufacturer. In the event of a claim, the Manufacturers will argue if the product has been specified in detail.

Manufacturers take advantage of the desire of consumers who want ease in shopping needs and desires. Using the visual sophistication of technology and information, making a product more interesting. Extraordinary pampering is provided to consumers. For consumers today is really a very narrow time to do shopping activities because of busy work, because the congestion on the road to make shopping on line to be an option. Online shopping can not be done by everyone, who can operate a computer, which has a certain type of mobile phone and internet access that can do it. The people who have these skills generally have a low level of education, but if not careful and careful will still be the object of exploitation. When the transaction occurs and the goods have been received, the goods are not in accordance with speech, the consumer can not claim. Generally consumers can only take for granted. Claim problems commonly experienced by consumers in the legal bidng*E-commerce* transactions:<sup>16)</sup>

- 1) Authentication of legal subjects that make transactions over the internet;
- 2) When the agreement is in force and has a legally binding force.
- 3) Object of merchant transaction;
- 4) Right transfer mechanism;
- 5) Legal relationships and responsibilities of the parties involved in the transaction either sellers, buyers, and advocates such as banking, *Internet Service Provider* (ISP), and others;
- 6) Legality of electronic record documents and digital signatures as evidence
- 7) Dispute resolution mechanisms;
- 8) Choice of legal and judicial forums in charge of settlement.

The position of producers in relation to trade transactions is relatively stronger when compared with consumers. One proof of the strong position it is the producer is in the provision of products while the consumer is on the party who need the product, so that whatever is determined by the manufacturer of all consumers need the product, then the consumer will agree to it, so was born the forms of contracts of raw accentuate principle *take it or leaves it*. The strong position of the producers should be supervised as far as possible because unattended it can cause harm to consumers. Therefore, in relation to consumer protection in *e-commerce* transactions, the protection of consumers can be given in the form:<sup>17)</sup>

- 1) Notice of clear producer / business acknowledgment which includes the address of the place of business (including e-mail), telephone, type of business being managed, if possessing a plant, plantation or other processing place, the address of the plant, plantation etc;
- 2) If the producer / actor is an office / branch company should be notified address of the office / parent company.
- 3) Have permission issued by authorized officers to conduct business.

Consumers as parties who need the product often before starting to do transactions must be to provide complete information about identity or company (if the consumer is company). It is reasonable if the producers are concerned about the information because it is through this information that producers can assess the credibility of consumers, whether the consumer is a genuine buyer or not. Conversely, is there any guarantee that the

<sup>15)</sup>Steger, Manfred <sup>17</sup> *Globalism: The Rise of Market Ideology*, Yogyakarta: LafadlPusatata, 2005. Translated by HeruPraseta of *Global <sup>16</sup> the New Market Ideology*, Rowman & Littlefield Publishers, Inc., USA, 2002.

<sup>16)</sup>Ade MamanSuherman, *Legal Aspects in the Global Economy*, Revised Edition, (Bogor: Ghalia Indonesia, 2005), p. 23.

<sup>17)</sup>*Ibid.*, p. 70.

personal data / consumer identity is not used by the manufacturer as for the delivery of the company's marketing brochure.

**b. Things to Do When Consumer Goods Purchased Not Conform To Order**

Basically an agreement is born when there is agreement or agreement between the seller and the buyer in relation to the matters which are the subject of the agreement. As a seller to a buyer he reached an agreement with their letter of demand for goods (*purchasing order*) sent the buyer to the seller. This is in accordance with provisions of Article 1458 Book of the Law of Civil Law ("Civil Code"), which reads:

"Sale and purchase is deemed to have occurred between the two parties, as soon as the people reached an agreement about the item and its price, even though the item has not been delivered and the price has not been paid."

Then in connection with the ownership of goods, goods sold will belong to the buyer when the goods have been submitted by the seller to the buyer is marked by the ownership of buyers of goods that have been submitted. This is in accordance with Article 1459 KUHP which reads thus:

"The ownership of the goods sold does not transfer to the buyer, as long as the delivery has not been made under Articles 612, 613 and 616."

The author further convey the contents of Article 612 KUHP which reads thus:

"The transfer of material goods, except for the uninformed, is carried out by the actual delivery of the material by or in behalf of the owner, or by the handover of the key of the building, in which the material is located ...."

The terms of the validity of an agreement are stipulated in Article 1320 of the Civil Code (Civil Code) which states:

For the validity of an agreement four conditions are required:

- a. Agree those who bind themselves.
- b. The ability to create an engagement.
- c. A certain thing.
- d. A lawful cause. "

From the provisions of Article 4 letter h and Article 7 letter f of Consumer Protection Act I have mentioned above, in relation to goods purchased not to order, of course we are entitled to return it and the seller is obliged to replace it.

The remedies that we can do that is to restore the goods in question, and can also sue the seller with *tort* lawsuit to the district court where the seller is located domiciled.<sup>15)</sup>

However, when referring to Article 8 UUPK prohibits business actors to trade goods / services that are not in accordance with the promise stated in the label, etiquette, description, advertisement or promotion of the sale of such goods and / or services. Based on that article, the non-conformity of the specification of the goods you receive with the goods listed in the advertisement / photo of the offer of goods is a form of violation / prohibition for the business actor in trading the goods.

Based on the perception as the consumer in accordance with Article 4 letter h PK Law is entitled to receive compensation, compensation and / or reimbursement if the goods and / or services received are not in accordance with the agreement or not as they should. Whereas, the business actor itself pursuant to Article 7 Sub-Article g of the PK Law is obliged to provide compensation, compensation and / or reimbursement if the goods and / or services received or utilized are not in accordance with the agreement.

**c. Things to Do Consumers Against Manufacturer If There Dispute**

*E-commerce* transaction like a conventional transaction, in which the rights and obligations between businesses and consumers. In the fulfillment of these rights and obligations are not always smooth. So that the possibility of a dispute between business actors and consumers. If the business actors and consumers are equally located in the territory of Republic of Indonesia, the settlement of the dispute can be done according to the way of dispute resolution in Law No. 8 of 1999 on Consumer Protection. However, the problem is what if the business actor is not in the territory of the Republic of Indonesia while the consumer is Indonesian citizen. Effective and efficient ways to solve the problem must be selected. So the way to overcome this problem is to use alternative dispute resolution. Where alternative dispute settlement is more efficient than through court.<sup>16)</sup>

Noting the increasing number of problems which arise as a result of *e-commerce* in trade activity as well as the need to obtain an effective dispute resolution, efficiently and impartially. The adoption of alternative dispute settlement mechanisms (ADRs) in electronic commerce is an alternative solution to resolve disputes as well as one form of legal protection.

<sup>15)</sup>Khairandy, Ridwan, NandangSutrisno, JawahirThontowi, *Introduction to International Law Indonesia*, (Yogyakarta: Gama Media, 1999), p. 103.

<sup>16)</sup>Budi AgusRiswandi, *Law and Internet in Indonesia* (Yogyakarta: UII Pres, 2003), p. 84.



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Associated with the prevailing legislation in *e-commerce* transactions, especially in efforts to protect consumers, Act No. 11 of 2008 on and provisions that accommodate about electronic commerce is one of the main ornament in business.

Indonesia, the ITE Act states that electronic transactions can be poured in electronic contracts. In the electronic contract can be determined where the legal options that are used to settle disputes (*dispute*). If the choice of law is not made, then the applicable law is based on the principle of international civil law. Likewise with the choice of which court forum is eligible. The parties in *e-commerce* transactions can determine the forum court, arbitration or other alternative dispute resolution institutions which were selected in the *e-contract*. And if no forum selection is made, then dispute resolution will return to the principles of the International Civil Code.

The choice of law in commercial contracts has always been controversial. On the one hand, it should reflect the gap between the bargaining power of consumers and professionals. On the other hand, the contract must reach a level of balance between the parties. The development of *e-commerce* makes the problem more complicated. Some conventional rules can not be implemented effectively in *e-contracts*.

In Indonesia dispute such problems the author's knowledge has never been included in media reports and in court. Although in reality, consumer disputes in *cyberspace* is actually very likely to happen anywhere, including in Indonesia.

Especially if the litigants did not mention a clause on choice of law and choice of court agreements electronics. If this happens of course everything will refer back to the provisions of international

Legal action is the overall efforts to resolve a legal issue. In *e-commerce*, there are two kinds of legal remedy namely:<sup>17)</sup>

a. Efforts preventive law

Efforts preventive law can be interpreted as any attempt was made to prevent the occurrence of an event or situation that is undesirable. In the transaction *e-commerce*, this undesirable situation is the occurrence of a loss, especially the loss on the part of consumers. Preventive measures need to be implemented due to the settlement of disputes *E-commerce* is relatively difficult, requiring a long time in the solution and not infrequently require a high cost. For example, two people Hongkong and Austraiatakes 5 months to get a refund (repayment) on goods purchased. Therefore, *e-commerce* disputes should be avoided whenever possible.

1) Education regarding various modes of cyber crime

Consumer guidance by the government conducted by the minister / minister of related technical (BFL Article 29 paragraph (2)). But in practice, the role of government in education / guidance to consumers is not so optimal, it can be seen from the low awareness of consumers about the rights they have and still lack the courage consumers to sue businesses.

2) Supervision and Protection Agency by the Government Nor Related.

Obligation of the government to conduct surveillance and protection listed in the ITE Law Article 40 paragraph (2) and BFL Article 30 paragraph (1), which in Article 40 paragraph (2) of the Act ITE stated that "the Government to protect the public interest from any kind of disturbances as a result of abuse Electronic information and Electronic Transaction disturbing public order, in accordance with the provisions of Laws and Regulations".

b. Efforts repressive laws

Efforts repressive law is the law made an effort to solve a legal problem has occurred. This legal action is used when there has been a dispute between business and consumer. According to BFL one is getting the consumer rights advocacy, protection and dispute resolution efforts should (BFL Article 4 letter e). In addition, one of the obligations of businesses is to provide compensation, restitution and / or compensation for damages resulting from the use, handling, and use of goods and / or services traded (BFL Article 7 point f).

In the transaction *e-commerce*, many things that could lead to a dispute as mentioned above which can decrease the sense of consumer confidence in the system of *E-commerce*, so we need a dispute settlement mechanism that is effective and efficient.

Transaction *E-commerce* can be international or national. Dealing *Ecommerce* international nature means that transactions can be done by crossing the borders of a country, it is in accordance with the characteristics of *E-commerce* that are borderless. Therefore, the discussion in this section is divided into two legal remedy in case of international transactions take place and transactions occurring within the territory of Indonesia.

c. Legal remedies in the case of transactions *E-commerce* International

The problem that arises in the event of a dispute in *ecommerce* transactions in international traffic shall determine the legal / court which is used to resolve the dispute.

<sup>17)</sup> Esther DwiMagfirah, *Consumer Protection in E-Commerce*, (Yogyakarta: Faculty of Law of the University of Gajah Mada, 2004), p. 40.



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<sup>30</sup> the ITE Law, the provision of e-commerce transactions of an international nature contained in Article 18. According to article 18 paragraph (2) of the EIT Law authorities to determine the law applicable to transactions *E-commerce* is doing, so in this case the parties should where applicable law determine what happens when a dispute at a later date (choice of law).

Legal remedies for transactions *E-commerce* is happening in Indonesia, related to the settlement of trade disputes electronically in *the common law system* is as follows:

d. Adjudication process

1. litigation

Litigation is the process of a lawsuit over a conflict that diritualisasikan to replace the real conflict. In this process, the parties filed two choices that are <sup>29</sup> rary to a decision maker.

The legal basis for filing a lawsuit in court contained in Article 38 paragraph (1) of the EIT and Article 45 paragraph (1) of BFL. In Article 38 paragraph (1) of the Act ITE stated that:

"Anyone can file a lawsuit against those who organized the Electronic Systems and / or use of information technology to cause harm". Meanwhile, a lawsuit filed in the form of a civil action (Article 39 paragraph (1)).

2. <sup>12</sup> Litigation

Consumer dispute resolution outside the court held to reach agreement on the form and amount of compensation and / or on certain actions to ensure there is no re-occurrence of the loss suffered by the consumer (Article 47 of BFL).

e. The process of consensus

1. Negotiations

Negotiation is a means of dispute resolution are the most basic and oldest used. The negotiated settlement is the most important. Many disputes are resolved on a daily basis by these negotiations without any publicity or attract public attention.<sup>18)</sup>

2. Mediation

Mediation is a way of settlement through a third party. He can be an individual (entrepreneur) or institution or professional organization or trade. Mediators take an active part in the negotiation process. Normally it to its capacity as a neutral party in the form of reconciling the parties to advise the settlement of disputes. proposals made settlement through mediation rather unofficial (*informal*). This proposal is based on available information provided by the parties. Not on his investigations.

3. conciliation

Conciliation has similarities to mediation. Either way, it is the third party involved to settle their disputes peacefully. Conciliation and mediation is difficult to distinguish. The term is often used interchangeably. However, according to Behrens, there is a difference between these two terms: conciliation is more formal than mediation.

Conciliation may also be completed by an individual or an entity seroang called conciliation boards or committees. The conciliation commission could already institutionalized or *ad hoc* (temporary) which serves to define the requirements of the settlement accepted by the parties. But the decision is not binding on the parties.<sup>19)</sup>

## V. <sup>10</sup> NCLUSION

a. Law No. 8 of 1999 on Consumer Protection has not <sup>10</sup> been able to protect the consumer in a transaction *e-commerce* because of the provisions contained in Law No. 8 of 1999 on Consumer Protection has not accommodate consumer rights in the transaction *e-commerce*. That is because *ecommerce* has its own characteristics compared with the transaction conventional. These characteristics are: no meeting of sellers and buyers, the media used is the Internet, transactions may occur across the boundaries of jurisdiction of a country, <sup>28</sup> traded goods can be goods / services or digital products such as software.

b. In Indonesia, the protection of the rights of consumers and businesses have been regulated in Law Number 8 of 1999 on Consumer Protection. However, Act No. 8 of 1999 on Consumer Protection in force since April 1999 that only the rights and obligations of consumers are still limited to trading done conventionally. As to the rights and obligations of consumer <sup>24</sup> in transactions of *e-commerce* has not been expressly provided for in the legislation. In other words, the Law No. 8 of 1999 on Consumer Protection that does not accommodate transactions of *e-commerce*. Associated <sup>23</sup> with the prevailing legislation in the transaction *e-commerce*, especially in efforts to protect consumers, Act No. 11 of 2008 on Information and Electronic Transactions able to accommodate about electronic commerce is one of the main ornament in business.

c. Noting the increasing number of problems which arise as a result of *e-commerce* in trade activity as well as the need to obtain an effective dispute resolution, efficiently and impartially. Then the application of alternative

<sup>18)</sup>RiykeUstadiyanto, *Framework of e-commerce*, (Yogyakarta: Andi, 2003), p. 49.

<sup>19)</sup>Mariam DarusBadurahman, *Law Compilation Engagement*, (Bandung: Citra AdityaBakti 2001), p. 72.

dispute resolution mechanisms (*alternative dispute resolution*) in electronic trading is an alternative solution to overcome the dispute as well as a form of legal protection.

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