

## Alternative Dispute Resolution for Breach of Contract in Electronic Transactions from a Legal Perspective in the Digital Era



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**ABSTRACT:** Along with the rapid development of globalization, all aspects of our lives are getting easier, one of which is in electronic transactions where we can order goods or services with one click, of course in the course there are a lot of problems that occur, one of which is default in electronic transactions. The formulation of the problems in this study is: 1). What are the legal consequences for business actors and consumers if they commit defaults in electronic transactions; 2). How to resolve default disputes in credit lending on Shopee PayLater. The research method used is a normative legal research type with a type of legislative approach and a conceptual approach. The results of the study show that the legal consequences of default in electronic transactions are the same as the settlement in conventional transactions. Consumers and business actors are obliged to pay compensation and can be held legally accountable. The resolution of the problem of default in electronic transactions can be resolved through litigation and non-litigation channels.

**KEYWORDS:** Electronic Transactions, Business Actors, Consumers, Default.

### 1. INTRODUCTION

The development of technology in the digital era is advancing very rapidly and this is in line with changes in human lifestyles. Based on the 1945 Constitution of the Republic of Indonesia in article 28 F that everyone has the right to communicate and obtain information, therefore it is important to ensure the security of communication and information media in Indonesia. The internet has now become a primary need for some people. The internet comes with various conveniences of services and access making all daily activities easily completed. The internet is developing very quickly today entering all aspects of our lives. This technological development can also be seen in financial institutions and the ease of online transactions. In today's era, we don't need to come all the way to shop because with one click the goods we want can be easily obtained through *e-commerce*, if you want to travel you don't need to wait for a long time for the vehicle to come because we can easily order it through online applications, we can also pay for all our needs with various payment methods, this is classified as an electronic transaction. In article 1 number 2 of Law number 11 of 2008 concerning information and electronic transactions as amended by Law number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) which states that Electronic Transactions are any legal acts carried out using Computers, Computer networks, and/or other electronic media ((H. Abdul Razak Nasution, Rahul Ardian Fikri., 2023).

Some of the things that are included in electronic transactions are *e-commerce*, where the purchase of products or services through *online platforms* such as Amazon, Tokopedia, or Shopee. Online banking, which includes fund transfers, bill payments, or investments made through banking applications. Streaming Services, subscribing to services such as Netflix or Spotify through digital transactions. Purchase of apps or digital content, Transactions involving the purchase of apps, games, or multimedia content from digital stores such as the Apps Store or Google Play store. Existing technology is very helpful for us in our daily lives, but of course it does not mean that technology does not have risks. Technological developments can certainly provide new problems in our lives. In electronic transactions, there are many cases that have occurred, as for some problems that can arise, namely, in the use of features in *e-commerce* for example *Shopee PayLater even though Shopee PayLater* in Indonesia is supervised by the Financial Services Authority (OJK) and Bank Indonesia, which ensures that this service complies with regulations related to consumer loans and payment systems and this service is designed to meet the needs of users in a way that which is safe and responsible, but still risky (Antonius Dwicki Cahyadi, 2019).

In practice, a debtor as a borrower does not always benefit from the online loan system. This can happen because the loan

## Alternative Dispute Resolution for Breach of Contract in Electronic Transactions from a Legal Perspective in the Digital Era

agreement between the debtor and the creditor is made by default by the system provided by the creditor, in this case, namely *e-commerce*. Several risks can occur in using Shopee *PayLater* if a debtor does not pay his debt according to the tempo, including the possibility of higher interest than other payment methods, especially if you choose the installment option. Fines or penalties may be imposed for late payment, and most importantly this can affect the user's future credit assessment in *BI Checking*. Therefore, it is important that the parties do not violate the promises that have been agreed upon, which can be called a breach of promise or injury (Yahma, 2016).

Another case that can occur in default in electronic transactions is buying and selling. Defaults that often occur in this buying and selling are consumers who do not get the goods as agreed or when consumers order goods with *the cash on delivery* (COD) feature, consumers do not want to pay for what they have ordered. In this case, there are 2 (two) business actors, namely *the Platform Owner* (*market place*) and the merchant (*merchant*) who entrust their goods on the *platform*. The most responsible in this default is the trader, because he is the seller of the agreed goods, but the platform owner is also responsible for the goods/services sold on the *e-commerce platform*. *E-commerce* becomes a Seller and also as the Owner of the Platform. It is appropriate for the party who committed the default to provide compensation, not exchange money for vouchers that are not needed by the buyer/consumer, and also because the initial form paid by the buyer/consumer is also in the form of cash. The many problems that arise due to electronic buying and selling cause the importance of evidence so that it can be proven in court. In the case of default disputes in electronic transactions, it is a question of how to apply electronic evidence in e-commerce default cases, and what is the legal force of electronic evidence in e-commerce default cases. Therefore, from several existing problems, the author is interested in discussing alternatives to resolving default disputes in electronic transactions (M. Fajar, 2024)

From the background mentioned above, the problem can be formulated, namely what are the legal consequences for business actors and consumers if they default in electronic transactions?, and how to resolve default disputes in credit lending at Shopee *PayLater*?

## 2. RESEARCH METHODS

Research is a staple in the development of science or technology. This is because the research aims to reveal the truth systematically, methodologically and consistently. The simple definition of a research method is a procedure for how to conduct research. The research method discusses the procedures for conducting research. In writing this study, the legal research used is normative legal research by conducting research from literature or secondary data.

Meanwhile, the problem approach used is the statutory approach (*Statute approach*) and the conceptual approach (*Conceptual approach*). The legislative approach, and the legal concept analysis approach are used, because according to the author, what will be discussed in this study are various legal rules and cases associated with legal concepts, which then become the focus as well as the central theme in this research. The legislative approach is to review and research the laws and regulations that regulate the regulation of the Standard Agreement in the provisions of civil law in Indonesia. The conceptual approach is an approach carried out by using the concepts of legal experts that are still related to law enforcement and the meaning of Legal protection in standard agreements from the perspective of justice and legal experts' views on standard agreements.

## 3. RESEARCH RESULTS AND DISCUSSION

### Default Dispute Resolution in Credit Borrowing at Shopee *PayLater*

Online loans are the process of implementing financial services until a lending agreement occurs on the electronic system. Electronic transactions, in this case online lending transactions, are part of an agreement, which according to the Civil Code article 1313, namely the borrower is called the debtor and the lender is called a creditor. Borrowing and borrowing activities will not be separated from the agreement between the parties involved in the agreement, the elements of the agreement in it are not much different from agreements in general, namely containing clauses that are binding between the parties. The agreement made by the parties between the debtor and the creditor on an online loan is a form of standard agreement. The content of the clause in the online loan agreement is in the form of a standard form that remains to be approved by the prospective debtor. Therefore, prospective debtors must carefully read every point of the clause that has been written in it, before agreeing to the agreement on the online documents that have been provided. According to Article 1763 of the Civil Code, the debtor has the obligation to return the goods in the same amount and circumstances and at the specified time, and if he is unable to return the loan, he is obliged to pay installments according to the interest and maturity date agreed at the beginning. The agreement in online transactions, in this case borrowing online through Shopee *PayLater*.

*PayLater* itself is a form of P2P (*peer to peer lending*) lending, which means that this activity involves lenders and borrowers through intermediaries other than banks or known as *peer-to-peer lending platforms*. When viewed from the legal aspect of the agreement, there are three parties who are legally involved in the agreement with the *paylater* feature, namely:

1. Consumers as Loan Recipients, namely people who want to buy goods or products on the Shopee application but have limited cash funds. If the consumer buys the item with the Shopee *PayLater* feature, he becomes a Debtor. This debtor will have liabilities to fulfill the agreement according to the time of agreement.

## Alternative Dispute Resolution for Breach of Contract in Electronic Transactions from a Legal Perspective in the Digital Era

2. Shopee *PayLater* feature provider or Lender, which is a Shopee company that sells products with the pay later method so that in other words Shopee is also called a Creditor.
3. Fintech as an Information Technology-Based Money Lending Service Provider, namely the party that will distribute the loan and also collect the loan.

*Fintech* serves as a service provider that will bring together lenders and borrowers to enter into agreements with electronic systems. There is a legal relationship that occurs between the lender and the borrower as stipulated in articles 1754-1773 BW. In Article 1754 BW, it is explained that borrowing and borrowing is an agreement that makes one of the parties obligated to pay and return goods or services in accordance with the initial agreement. Agreements that occur between business actors and consumers are also regulated in the UUPK. An agreement can be said to be valid if it meets the terms of the agreement stipulated in article 1320 BW. In it there is an agreement between the parties, there is an agreement, there is legal proficiency between the parties who make the agreement, and there is a valid and halal cause (Vina Tiarawati, and Hana Faridah., 2022).

In online transactions, where the convenience is just "clicking" without a physical signature on paper, prospective debtors are often easily tempted by easy loan advertisements without collateral. This is what must be watched out for as well as something that requires prospective debtors to be more careful in agreeing to the online loan agreement that has been provided.

On the Shopee platform, there are 2 (two) types of Shopee PayLater programs, namely for sellers and buyers, the difference is in the loan system. To pay, simply enter your Shopee account, click on your Shopee profile, then click choose a payment method using an account that can be paid through ATM, E-Banking, Mobile Banking or pay through minimarkets such as Indomart, Alfamart. If there is a delay in payment, a fine of 5% of the total bill will be imposed. If the Shopee user is late in paying the bill, then Shopee will contact the user through the registered mobile phone number and Shopee will come to the user's house to collect the debt (Fina Agustina Suhyana, Sigid Suseno, and Tasya Safiranita Ramli., 2021). And if you can't pay off the debt, then Shopee gives authority to a third party, namely *Asia Collect*, who is in charge of settling the bill. Shopee *PayLater* which is intended for sellers only needs to be done once for activation, for example in August to apply for a loan. So, the Seller can immediately withdraw funds in August and then in September and October as long as the withdrawal amount is still within the limit given. In addition, the Shopee *PayLater* verification process for Sellers takes a very fast time (1 day) and the loan can be disbursed at that time to the Seller's Balance. These terms of service are explained in the shopee article, namely "Terms and Conditions of Shopee *PayLater Service*" (Melati Sukma, Abdi Wijaya, and Sofyan., 2022).

The consequences caused if consumers do not carry out their payment obligations are as follows:

1. The first risk is that the Shopee account will be frozen.
2. Will get a fine of 5% of the total bill.
3. The fine will continue to increase along with the repayment time. Not to mention the interest reaches 2.95% per month.
4. The opportunity to upgrade the Shopee *PayLater limit* will be reduced.
5. Entered the BI *Checking* list or now referred to as SLIK OJK.
6. Shopee has the right to do field billing with debt collectors who can terrorize you into paying bills. If the debtor borrows at Shopee PayLater, the existence of an agreement between the parties makes an obligation in the form of achievements that must be fulfilled by the other party. And if the party cannot fulfill its obligations, it is considered to have broken its promise or default.

And if in practice there is a party who is unable to fulfill his achievements as written in the agreement, he can be sued through the court for a claim for default, but before that a letter of summons must be sent about how the debtor is negligent, and if after the letter of summons is still not fulfilled its achievements, then the aggrieved party can then immediately demand compensation to the court by including a letter Summons as evidence. Dispute resolution can be done in 2 (two) ways, namely litigation and non-litigation.

The litigation dispute resolution process takes a long time, and the costs incurred are also erratic, so they are relatively more expensive. Dispute resolution by non-litigation means is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Alternative Dispute Resolution is very necessary to be developed to overcome the accumulation of disputes that need to be handled by the courts. In proving electronic transactions in the courts of countries that adhere to conventional document proof, it is really difficult to apply *the Model Law*. Article 11 of the UNCITRAL Model Law explains that the making of contracts through *e-commerce* is a valid and *enforceable contract*. The will of both parties, both the maker and the receiving party must have legal consequences, as well as their validity. This is what requires both parties to be careful in carrying out agreements. The consequences of this carelessness can be losses (Alfred Yetno, 2022).

Evidence in electronic transactions is that with the enactment of the ITE Law, there is a new regulation regarding electronic document evidence. Based on the provisions of Article 5 paragraph 1 of the ITE Law, it is determined that electronic information and/or electronic documents and/or printed results are valid legal evidence. Furthermore, in Article 5 paragraph 2 of the ITE Law, it is determined that electronic information or electronic documents and/or printed results as referred to in paragraph 1 are an extension of valid evidence and in accordance with the applicable procedural law in Indonesia. Thus, that the ITE Law has determined that electronic documents and/or their printed results are a valid evidence and an extension of valid evidence in

## Alternative Dispute Resolution for Breach of Contract in Electronic Transactions from a Legal Perspective in the Digital Era

accordance with the procedural law that has been in force in Indonesia, so that it can be used as evidence before the trial.

### 4. CONCLUSION

Default Dispute Resolution in Credit Lending at Shopee *PayLater* is divided into two, namely through litigation and non-litigation, in terms of settlement through litigation is the *ultimate remedy* or last resort, in non-litigation settlement through *Alternative Dispute Resolution* or Alternative Dispute Resolution. Shopee as a *PayLater* service provider is one of the features provided by *PayLater* is a medium for borrowing money without collateral, and in the borrowing process we will be given several conditions and if we have met all the conditions, it means that we have agreed to the agreement. If the debtor is late in paying his bill, he will be fined 5% of the total bill. This loan certainly has a limit to limit consumers in making loans and if consumers default, the Shopee account will be frozen, get a 5% fine which will continue to grow, the opportunity to upgrade the limit will decrease, our BI *Checking* or SLIK OJK will be bad so if you want to apply for a bank loan and mortgage it will not be easy.

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