

The Default of Trading Transactions Online (E-Commerce) on Economic Law Perspective

Wery Gusmansyah¹, Wahyu Abdul Jafar²

^{1,2}Universitas Islam Negeri (UIN) Fatmawati Sukarno Bengkulu, Indonesia
E-mail: werygusmansyah@iainbengkulu.ac.id¹, wahyujafar@iainbengkulu.ac.id²

Abstract: This study aims to find out how to solve the problem of default of trading transactions online (e-commerce) from an economic law perspective. This study is library research with a normative juridical approach, which uses documentation techniques in collecting research data. At the same time, the analysis technique used in this research is the descriptive inductive technique. After conducting in-depth research, a conclusion was found that in general, a person is declared to have defaulted because: Completely not fulfilling the contents of the agreement; the contents of the agreement made are imperfect; Late in fulfilling the contents of the agreement; and Doing something that is forbidden to do in the agreement. Legal remedies that can be taken due to default in online trading are litigation (court) and non-litigation (outside court). Some legal remedies that can be taken are: Requesting the seller to deliver the goods; Request a replacement item; Request compensation; Request cancellation of the agreement; Request a price reduction; Report the seller to the police. In the perspective of economic law, parties who must carry out the contents of the agreement but are not carried out can get penalties or sanctions in the form of Paying for losses suffered by producers/consumers (compensation); Cancellation of agreement; Risk transfer. The promised object of the agreement from the moment the obligation is not fulfilled becomes the responsibility of the producer/consumer; Paying court fees if they are brought before a judge. Meanwhile, if a man wants to resolve a default dispute in an online sale and purchase contract through the Non-Litigation route, Mediation, Conciliation, and arbitration methods are used.

Keywords; Default, Trading Transactions Online, E-Commerce, Economic Law

1. INTRODUCTION

Advances in Internet technology have made the world economy enter a new phase that is more popular with the digital economy. Its existence is marked by the increasing number of economic activities that use the internet as a medium of communication and trade. For example, in commerce, more and more traders rely on electronic commerce (e-commerce) as a transaction medium when making payments or purchasing specific products. Trade based on advanced technology, e-commerce has reformed conventional commerce where interactions between consumers and companies that were previously carried out directly become indirect interactions. E-commerce has changed the classical business paradigm by growing interaction models between producers and consumers in the virtual world. The trading systems used in e-commerce are designed to sign electronically. This electronic signature is designed for purchase, inspection, and delivery.[1]

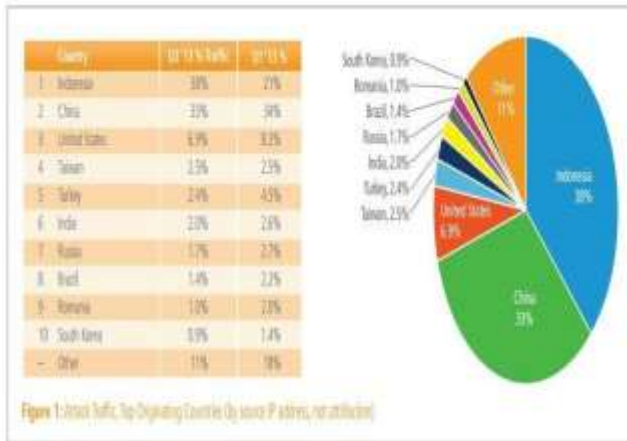
Currently, e-commerce transactions have become part of national and International commerce. In 2022, it is predicted that Indonesia's e-commerce growth will be number two after India.[2] The data can be seen in the table below, Table 1. E-Commerce annual growth forecast



Prediction The potential for e-commerce growth in Indonesia is extraordinary, ranking second after India. If this prediction is correct, e-commerce will cover many trade commodities. Currently, e-commerce can cover electricity payments, credit payments, clothing payments, zakat payments, animal sacrifice payments during Eid al-Adha; even very personal drug orders are also covered through e-commerce. Nowadays, it is enough for people to carry out trading activities, both selling, and buying, with the help of internet media. With e-commerce, trading activities become easy, flexible, can be done anytime and anywhere without being limited by time and place. For example, if someone wants to buy a book or buy a magazine, then that person does not need to go to a bookstore, but the transaction can be done with the help of the internet. Payments can be made non-cash by debiting cellular credit via SMS facility.[3]

The ease of transacting on e-commerce has some negative impacts that can cause losses for one of the transacting parties. Moreover, Indonesia is the first country in cyber attacks.[4] The potential for cybercrime is very high in Indonesia. These data are shown in the table below.

Table 2. The order of cyberattacks in the world



Cybercrime is any illegal activity used by criminals using computer network information system technology that directly attacks the victim's information system technology. However, more broadly, cybercrime can also be interpreted as all illegal acts supported by computer technology. According to data from the Indonesian National Police (POLRI), from April 2020 to July 2021, there were at least 937 reported cybercrime cases and 259 online fraud cases.[5]

Electronic commerce is one part of the discussion on cyber law, which has been hotly discussed lately. In Electronic commerce, there are many frauds. Fraud in E-commerce is not explicitly regulated by law. However, related to the occurrence of consumer losses in electronic transactions, there is a provision in Article 28 paragraph (1) of the Electronic Information and Transaction Law (UU ITE) which states: "Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions." [6] Violation of Article 28 paragraph (1) of the ITE Law is punishable by a maximum imprisonment of six years or a maximum fine of Rp. 1 billion, according to Article 45 paragraph (2) of the ITE Law. Some of the problems that arise in buying and selling agreements through electronic media are agreement issues, payment procedures, justice, legal protection, electronic signatures, settlement in case of default. In trading transactions online, the potential for misunderstanding or misunderstanding between the seller and the buyer is enormous because the seller and buyer have never met, and the buyer only sees the specifications of the goods from the catalog uploaded online by the seller. This raises many substantive problems, namely that the buyer or seller may allege that the other party has defaulted. Therefore, in this study, the researcher will examine how the process of settling defaults from an economic law perspective.

2. METHODOLOGY

This study is literature research with a normative juridical approach. The data collection technique used in this research is the documentation technique. At the same time, the analysis technique used in this research is descriptive inductive. The primary data in this study are online scientific journals and books directly related to the object being researched, namely online scientific journals or books related to defaults on trading transactions, online transactions, and economic law. While the secondary data used in this study are data from online scientific journals, books, and the internet, which are not directly related to the object of this research, the data strongly supports this research.

3. RESULT AND DISCUSSION

Definition of The Default

Default is an implementation of an agreement that is not timely, or implementation of the agreement is not carried out according to the agreement's contents or is not implemented at all. According to Article 1313 of the Civil Code (KUHPerdata), it is stated that an agreement is an act with one or more people who bind themselves to another person or more. Default occurs because the person transacting does not fulfill or carry out the agreement's contents as stipulated in an agreement. In general, a person is declared to have defaulted because: the person did not fulfill the terms of the agreement at all; the contents of the agreement made are imperfect; the person is late in fulfilling the contents of the agreement, and the person violates the contents of the agreement, he did what was forbidden in the agreed agreement.[7]

Forms of Default in online trading transactions
 Default in the sale and purchase agreement with the online system has several forms, both from the position of the business actor (the seller) or from the buyer's side.[8] For more details, the issue of trading transactions online defaults can be seen in the table below,

Table 3. The default table for trading transactions online contracts

NO	Forms of Default Buying and Selling Online	
	Seller	Buyer
1	Delivering Goods But The Delivery Time Is Late. This seller's actions fall into the category of default. The seller makes a late delivery to the buyer due to two factors: first, there is an element of intent from the seller. The delay in delivery to the consumer is due to the inventory of ordered goods is out of stock. It could also be due to a manufacturing error so that the seller	Late payment for goods purchased. The buyer must make payment before receiving the goods. The buyer must make a payment according to the agreement; if it is late, he does not fulfill the agreement's contents and violates the seller's rights. This buyer's actions are included in the category of default.

deliberately delays the delivery. Second, there is an element of coercion. Forced circumstances are conditions where the seller cannot fulfill the agreement's contents due to an event that is not his fault. Unforeseen or unknown events will occur at the time the agreement is made.

2 The seller does not ship the goods. The seller usually sends the goods after the buyer has paid for the goods in full. Some sellers do not deliver the goods even though the buyer has carried out the agreed obligations. This seller's actions fall into the category of default.

They were not Making Payments. Buyers usually make a payment after the goods arrive. Some buyers pay a deposit first and then pay it off later. Some buyers do not make payments even though the seller has carried out the agreed obligations by sending the buyer. This buyer's actions are included in the category of default.

3 Shipment Items Are Not Following The Predetermined Agreement. Communication is vital in carrying out an agreement or engagement, especially online. Communication must be reasonable because we are only connected to the internet; otherwise, there will be inappropriate communication, causing material and non-material losses. If the seller intentionally sends the goods to the buyer that is not following the agreement's contents, then the seller's actions are in the category of default.

Payments Made Not Following The Agreement. On transactions that the buyer carries it out, the price paid is determined according to the agreement with the seller. However, the buyer pays less than the predetermined price. This buyer's actions are included in the category of default.

agreement made by the parties. Electronic contracts or trading transactions online agreements are considered valid if:

1. There is an agreement between the parties to the transaction.
2. The transacting party must be capable of taking legal action or having the authority to represent it following the provisions of the laws and regulations.
3. There is the content of the agreement.
4. The object of the transaction must not conflict with the laws and regulations, decency, and public order.[9]

In buying and selling online, there are related parties, namely,

1. The seller who offers products on the internet is an online business actor
2. A buyer is someone who wants to make a purchase transaction on a product offered by business actors through online media
3. Banks have a role in channeling money (funds) from consumers to sellers as business actors because the transactions are carried out online, where buyers and sellers indirectly make transactions without meeting.
4. Provider as an internet service provider[10]

According to the Civil Code, due to a default by a party who should carry out the agreement's contents, it can be reported to the court. Default causes losses for parties who have the right to receive achievements (contents of the agreement). The legal consequences for parties who should carry out the achievements in the agreement but are in default, namely:

- a. He must pay the compensation suffered by the party who has the right to receive the achievements/contents of the agreement (see Article 1243 of the Civil Code);
- b. He must accept the termination of the agreement accompanied by payment of compensation (vide Article 1267 of KUH Perdata);
- c. He must accept the risk transfer from the time the default occurs (vide Article 1237 paragraph (2) of KUH Perdata);
- d. He must pay court fees if he is sued in court (vide Article 181 paragraph (1) HIR).

In addition, according to article 1266 of the Civil Code (KUH Perdata), in a reciprocal agreement, the default of one party gives the other party the right to terminate The contract in court. even if the termination of the non - fulfillment of the obligation is Stated in the agreement. If the terms of the termination are not stated in the agreement, then the The judge in court is free to demand the state of the defendant's claim to give the defendant an additional period to allow him to perform His obligations; such period shall not be more than one month. The obligation to compensate the party who should implement the performance in the agreement but commits a new default can be implemented if it has met four conditions, namely;

- a. He had indeed been negligent in default;
- b. He was not in a state of compulsion;
- c. He did not make a defense against the claim for damages;
- d. He has received a negligent statement or subpoena.[11]

Default Settlement Efforts on online trading transactions from an economic law perspective

Consequences of Default on sellers and buyers in online trading transactions

Electronic transactions can be carried out based on electronic contracts or other forms of contracts as a form of the

Default cases can be regarded as a form of violation of consumer rights and can cause harm to consumers. If consumer rights are violated, or there is a default in an ordinary or online sale and purchase agreement, the consumer can take legal action to prevent the dispute from occurring and provide a deterrent effect to sellers who do not have good intentions. Consumers can take various forms of legal remedies in the event of a default; the legal remedies taken depend on the form of default experienced by the buyer. Some of the legal remedies that can be taken are as follows:

- 1) Ask the seller to make delivery of the goods.
- 2) Request a replacement item.
- 3) Ask for compensation.
- 4) Requesting compensation.
- 5) Requesting the cancellation of the agreement.
- 6) Request a price reduction.
- 7) Report the seller to the police[12]

The negligence or default of the parties in this agreement must be officially stated in advance, namely by warning the negligent party that the consumer wants the fulfillment of the performance by the seller. According to the law, the warning must be stated in written form, but now this warning can be made verbally as long as it is firm enough to state the urge to immediately fulfill its achievements (the content of the agreement) against the agreement made by the parties. The warning can be stated in the form of a negligence statement.[13]

In general, legal remedies that can be taken by parties who feel disadvantaged in trading transactions online transactions are as follows,

1. Litigation

Litigation is a dispute resolution process through the courts. The opposite of litigation is non-litigation, namely the process of resolving disputes outside the court as stipulated in Indonesian law.[14]

Legal Aspects of Default in trading transactions online is something that must be fulfilled In every engagement, If the parties involved in the agreement do not fulfill the contents of the agreement, then he has committed an act of default. Article 65 paragraph (5) of the Trade Law: "In the event of a dispute related to a trade transaction through an electronic system, the person or business entity experiencing a dispute can resolve the dispute through the courts or other dispute resolution mechanisms." Meanwhile, according to the Civil Code, due to default by parties who should carry out achievements in the agreement, it can cause Losses for parties who have the right to receive the achievements/contents of the agreement. The legal consequences for debtors or parties who should carry out the achievements

in the agreement but are in default are punishments or sanctions in the form of:

- a. Paying for losses suffered by producers/consumers (compensation);
- b. Cancellation of agreement;
- c. Risk transfer. The promised object is the object of the agreement from the moment the obligation is not

fulfilled, becomes the responsibility of the producer/consumer;

- d. They are paying court fees if they are brought before a judge.

2. Non Litigation

Dispute resolution through litigation (court) is not the only dispute resolution method the disputing parties can take. In addition to litigation, there is dispute resolution out of court (non-litigation), namely dispute resolution through mediation, arbitration, and conciliation. In addition, there is also a form of dispute resolution that is very familiarly actualized in people's daily lives, namely peaceful dispute resolution (deliberation) by the village head. Dispute resolution is acceptable to the disputing parties because the process is based on self-regulation and is still heavily colored by local customs. All things that have been agreed upon are joint decisions of the disputing parties.[15] The basis for dispute resolution through the Non-Litigation route is Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law and APS) and Article 65 paragraph (5) of the Trade Law. Methods for resolving disputes out of court consist of:

- a. Mediation is dispute resolution using the services of a third party (mediator). An agreement must precede dispute resolution through mediation before the dispute arises, which is included in the mediation clause agreement, or after a dispute arises, the parties agree to submit the settlement through mediation (mediation submission). Mediation clause agreements are challenging to implement because the agreement between producers and consumers is not written or detailed clauses are not included; even people who are not bound by an agreement with producers can claim compensation, so it is more appropriate to use consumer disputes mediation submission. Mediation aims to achieve the result of dispute resolution in the form of a compromise that comes from the agreement of the parties. The advantage of this mediation is based on the parties' compromise so that the parties do not need to defend the facts and evidence they have.
- b. Conciliation, an alternative dispute resolution outside the court, can be interpreted as a meeting between the disputing parties assisted by a third party called a conciliator. The conciliator facilitates communication between the parties to develop a solution that is acceptable to the parties. The conciliator gives an opinion on the dispute submitted by the parties. However, the opinion of the conciliator is not binding on the conflicting parties, so dispute resolution through conciliation is highly dependent on the voluntary nature of the conflicting parties.
- c. Arbitration is an alternative dispute resolution outside the general court based on an arbitration agreement made by the disputing parties. The institution that oversees the arbitration is the Indonesian National Arbitration Board (BANI), established on November 30, 1977, based on the Decree of the Chamber of Commerce and Industry

(KADIN) No. SKEP/152/DPH//1977. The parties can carry out arbitration in the form of justice if they have included an arbitration clause in the agreement, which is the subject of the dispute, or entered into an arbitration agreement after the dispute arose between them. The advantage of this arbitration is that the decision is final, has permanent legal force, and is binding on the parties. The arbitration award has executive power so that if the defeated party does not comply with the award voluntarily, the winning party can request execution in court. Despite its advantages, arbitration has its drawbacks, such as more expensive than out-of-court dispute resolution and almost the same as through litigation; In addition, the settlement of arbitration is slow, even years, especially if there is a difference of opinion regarding the appointment of the arbitration or the law to be applied, this makes the settlement more complicated and lengthy. Of the three types of out-of-court dispute resolution, mediation is more beneficial to the parties because it aims to reach a compromise from the parties to accept the agreement, even though it is not binding and final.[16]

4. CONCLUSION

In general, a person is declared negligent or commits an act of default because It does not meet the contents of the agreement at all; the content of the agreement made is imperfect; Late to fulfill the contents of the agreement, and Doing something that is forbidden in the agreement to do. The Electronic contracts are considered valid if; (1)There is an agreement of the parties interacting. (2) the interacting party is a legal subject who is competent to take legal action or who is authorized to represent following the provisions of the legislation. (3) there is the content of the agreement agreed upon. (4) The object of the transaction must not be contrary to the rules of law, decency, and public order.

Legal remedies that can be taken due to default in online trading are litigation (court) and non-litigation (outside court). Consumers can take various forms of legal remedies in the event of a default. The legal remedies taken depend on the form of default experienced by the buyer. Some legal remedies that can be taken are: Requesting the seller to deliver the goods; Request a replacement item; Request compensation; Request cancellation of the agreement; Request a price reduction; Report the seller to the police.

In the perspective of economic law, parties who should carry out the achievements (agreements) in the agreement but are in default can get penalties or sanctions in the form of Paying for losses suffered by producers/consumers (compensation); Cancellation of agreement; Risk transfer. The promised object is the object of the agreement from the moment the obligation is not fulfilled becomes the responsibility of the producer/consumer; Paying court fees if they are brought before a judge. Meanwhile, mediation and arbitration methods are used if a man wants to resolve a default dispute in an online sale and purchase contract through the Non-

litigation route. Of the three types of out-of-court dispute resolution, mediation is more beneficial to the parties because it aims to reach a compromise from the parties so that the parties can accept the agreement, even though it is not binding and final.

5. REFERENCES

- [1] Cindia Auliya Khotimah and Jeumpa Crisan Chairunnisa, "Legal Protection for Consumers in Online Selling and Purchase Transactions (E-Commerce)," *Journal of Business Law Review*, 1, 1 (December 2016): 14.
- [2] Sabirah Islam, "Future E-Commerce Trends: 10 Possible Forecasts for 2022," weDevs, October 16, 2021, <https://wedevs.com/blog/266954/future-ecommerce-trends/>.
- [3] Rizka Ferdiana Sari, "Delict for Default in Online Sales and Purchase Perspective of Islamic Criminal Law," *Al-Jinayah: Journal of Islamic Criminal Law* 3, no. 2 (2017): 429, <https://doi.org/10.15642/aj.2017.3.2.426-453>.
- [4] Chloe Albanesius, "Indonesia Tops China as Cyber Attack Capital," PCMAG, accessed February 16, 2022, <https://www.pcmag.com/news/indonesia-tops-china-as-cyber-attack-capital>.
- [5] "Cyber Crime Rises Sharply During a Pandemic | Faculty of Social and Political Sciences - University of Indonesia," accessed February 16, 2022, <https://fisip.ui.ac.id/bhakti-cybercrime-menjadi-type-kejahatan-yang-mengalami-peningkatan-enough-tinggi/>.
- [6] Firda Laily Mufid and Tioma Roniuli Hariandja, "Effectiveness of Article 28 Paragraph (1) of the ITE Law concerning the Spread of Fake News (Hoax)," *Journal Of Rechtsens* 8, no. 2 (December 31, 2019): 181, <https://doi.org/10.36835/rechtsens.v8i2.533>.
- [7] Niru Anita Sinaga and Nurlely Darwis, "Wanprestasi And Consequences In Implementation Of The Agreement," *Journal Of Management Mitra* 7, no. 2 (October 14, 2020): 44, <https://journal.universitassuryadarma.ac.id/index.php/jmm/article/view/534>.
- [8] M. Rizqa Anas Fawzi and Suatra Putrawan, "Due To The Law Of Default In Online Purchase Agreements Based On The "Electronic" Information And Transaction Law," *Kertha Semaya : Journal of Legal Studies* 8, no. 4 (March 30, 2020): 650.
- [9] Endi Suhadi and Ahmad Arif Fadilah, "Settlement Of Damages Due To Default On Online Sales Agreements Related To Article 19 Of Law Number 8 Of 1999 Concerning Consumer Protection," *Journal of Research Innovation* 2, no. 7 (December 1, 2021): 1971, <https://doi.org/10.47492/jip.v2i7.11078>.
- [10] Fawzi and Putrawan, "Due To The Law Of Default In Online Purchase Agreements Based On The Electronic Information And Transaction Law," 651.
- [11] Ainul Yaqin, "Due To The Law Of Default In Online Buying According To The Electronic Information And Transaction Law," *Dynamics: Scientific Journal of Legal*

- Studies* 25, no. 6 (July 15, 2019): 17, <http://riset.unisma.ac.id/index.php/jdh/article/view/3169>.
- [12] I Wayan Widiyantara and I Made Bachelor, "Legal Effort From Consumers Who Experience Default In Online Buying Transactions | Kertha Desa," *Kertha Desa* 9 Journal of Law, no. 5 (2021): 31, <https://ojs.unud.ac.id/index.php/kerthadesa/article/view/70083>.
- [13] Syamsir Hasibuan and Nika Rahmania, "Juridic Review Of Defaults On Online Purchase Agreements," *Journal Of Dimension* 9, no. 1 (February 28, 2020): 90, <https://doi.org/10.33373/dms.v9i1.2327>.
- [14] Manuasa Saragi, "Litigation And Non-Litigation For Business Dispute Settlement In The Framework Of Investment Development In Indonesia (Study on Enforcement of Law Number 48 of 2009 concerning Judicial Powers in conjunction with Law Number 30 of 1999 concerning Arbitration and Alternation," *Unpar Graduate E-Journal* 1, no. 2 (September 17, 2014): 60.
- [15] Rosita Rosita, "Alternatives In Dispute Settlement (Litigation And Non-Litigation)," *Al-Bayyinah* 1, no. 2 (December 1, 2017): 102.
- [16] Farah Rasyiqah Ahmad Rizal, "Sales Agreement Through The Internet Reviewed From Civil Law Aspects," *Lex Privatum* 9, no. 2 (March 31, 2021): 200, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/33163>.