

Online Dispute Resolution for Consumers of E-Commerce in Malaysia: A Preliminary Study

Penyelesaian Pertikaian Secara Dalam Talian bagi Pengguna E-Dagang di Malaysia : Satu Tinjauan Awal

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ABSTRACT

The internet and digital technologies have affected most of our live trend including consumer behavior, especially in the post-covid era. More and more consumers are using e-commerce to fulfil their needs whether goods or services, and hence there is also a rise in the number of disputes. In Malaysia, disputes involving consumers including consumers in e-commerce will be dealt using the traditional platform of judicial institutions or the Consumer Claims Tribunal established under the Protection of Consumers Act 1999, and until this paper is published, Online Dispute Resolution (ODR) has yet to be implemented. This paper provides the preliminary literature study on the need of ODR to be implemented in disputes involving consumers in e-commerce in Malaysia. This study using qualitative method by analyzing secondary data collected from previous studies in journals, articles and websites of other jurisdictions on ODR. Documents and other related studies on consumer protection in Malaysia were also examined. This paper shows that there is a need for Malaysia to implement the ODR to deal with disputes arise from e-commerce transaction for the interests of consumers in Malaysia as well as the e-commerce business itself. The results of this study may provide an input to law and policy makers to establish ODR as the prime means of dispute settlement in e-commerce transaction in Malaysia.

Keywords: consumer; e-commerce; Online Disputes Resolution

INTRODUCTION

The era of information technology has created a borderless world with the use of the internet enabling fast communication worldwide, both locally and internationally. It also changes consumer behavior where more and more consumers use e-commerce in order to fulfil their needs whether buying goods or getting services via internet. Time, geographical distance and language are no longer barriers to trade and consumption, as a result, cross-border disputes are also on the rise. A major challenge in cross-border e-commerce is the ability of consumers and merchants to resolve complaints related to online transactions. In this situation, using the traditional physical court proceedings has appear to be not

effective, expensive and time-consuming process. Therefore, other mechanisms are needed as a medium to obtain justice outside the judicial system (Zalina Zakaria, 2021). In this context, online dispute resolution or ODR offers an attractive solution (Sakina Shaik et. al, 2011).

Online Dispute Resolution

ODR refers to the use of digital technology to facilitate the resolution of disputes between consumers and businesses through electronic communication platforms. It encompasses a variety of techniques such as negotiation, mediation, arbitration, and adjudication, conducted online (Aziz & Hidayah, 2020). Globally, ODR has gained recognition as an accessible, efficient, and cost-effective method of dispute resolution, particularly suitable for addressing the increasing number of small-value claims in e-commerce (Tseng, 2023).

PROBLEM STATEMENT

In e-commerce, all the transactions are done online, through internet and electronic means. However, when it comes to the disputes in Malaysia, currently it is being handled through physical court proceedings or Tribunal for Consumer Claims established under the section 85 of the Consumer Protection Act 1999 (CPA). The rapid growth of e-commerce in Malaysia after the Covid-19 pandemic has increased the number of consumer complaints related to online transactions. However, the existing dispute resolution system still relies on physical processes, which are not aligned with the digital nature of these transactions.

LITERATURE REVIEW

E-commerce or electronic commerce, also known as e-business, refers to the transaction of goods and services through electronic communications. The emergence of e-commerce is said to be in practice for more than 30 years. (Yan Tian, 2006). Then it has gradually been accepted by the community worldwide and has grown rapidly during the era of covid-19 and post covid. E-commerce become the new norms because it is convenience for consumers, offers variety of products and sellers with good prices, and also various mode of payment available. Apart from that, it is safer than traditional face-to-face transaction since it involves zero physical contact and thus the consumers' physical safety is protected from common danger of snatch, theft or burglaries. (Anusha and Manimekalai, 2017). In addition to that is the danger of exposure to air-borne viruses such as covid and influenza.

Jain.V, (2021) defines e-commerce as the electronic media and the internet for dealing with buying or selling goods and services, thus e-commerce entails a company accessing the internet as well as IT, such as the electronic data interchange. E-commerce concerns an internet trading goods or services to the user directly from the platforms such as vendor's website, any social media marketplaces or shopping applications. The gateway uses a wireless purchase cart or a purchase basket to pay by credit card, debit card or electronic fund transfer. The contracts between the parties in e-commerce is mainly in electronic form though all the traditional elements and principles of contracts is applicable. E.E.Gordon (2004) observes that the electronic communications and digital information processes in business transactions are used to create, modify and redefine value generation relations between individuals and between organizations and individuals.

The sophistication of technology has enabled a revolution in production and distribution techniques for the benefit of consumers, the development of this technology also has the potential to result in unethical behavior among business groups, further bringing danger to consumers (Sakina et al. 2011). Thus protection of consumers in e-commerce transaction via legal provisions and legal processes including disputes settlement becomes of great importance.

There are a lot of studies highlighting the disadvantages of the traditional court proceedings and therefore give rise to alternative disputes resolutions (ADR) where parties involved try to settle their disputes outside of the court through mediation, arbitration and etc. With the advancement of information and communication technology, this ADR is being done via online communications and been referred to as the Online Disputes Resolution (ODR). According to Anusha R. and Manimekalai

J.(2017) ODR makes the law more accessible to consumers involved in an e-commerce dispute, which as a result reinforces their trust in e-commerce transactions and acts as a driving force for world peace.

Ethan Katsh and Janet Rifkin (2001), ODR is a branch of the ADR system and thus exhibits the same advantages as ADR such as advantages from the point of view of efficiency, more control of disputing parties, less cost, the use of high technology that makes ADR better from the court system. ODR is also known as 'e-ADR', 'Electronic ADR', 'Internet Dispute Resolution (iDR)', 'Electronic Dispute Resolution (eDR)' or 'online ADR (oADR)'. Both refer to ADR mechanisms that are carried out through the use of 'ADR', 'Electronic ADR', 'Internet Dispute Resolution (iDR)', 'Electronic Dispute Resolution (eDR)' or 'online ADR (oADR)' technology. Both refer to ADR mechanisms that are carried out through the use of electronic technology (Sakina et al. 2011).

The implementation of ODR in this era of technological advancement is seen as a necessity. The increase in litigation has caused a backlog of cases in the traditional court system thus preventing access to justice and resulting in the need to find alternative dispute resolution in Malaysia that will meet the people's needs for a fast, efficient and cheaper system (Anusha R, Manimekalai, J., 2017)

METHODOLOGY

This preliminary literature study is qualitative in nature, using the document analysis method whereby articles from journals, books and relevant materials were examined to clarify on the status of ODR in Malaysia. The study focuses on the law and regulations pertaining to contracts, online contracts and consumer protection in Malaysia. The purpose of this study is to find gap in the previous literatures and to identify the importance of establishing ODR in consumers disputes involved in e-commerce transaction in Malaysia.

FINDINGS AND DISCUSSIONS

The Law Governing E-Commerce Transaction in Malaysia

In general contractual transaction in Malaysia are governed by the Contract Act 1950 (CA). The Act provides for the legal principles for all types of contracts in Malaysia. As long as its provisions do not conflict with any provisions in specific legislation on a matter, then the Act will prevail. For electronic contract transactions or online contracts, the 1950 Act should be read together with the Electronic Commerce Act 2006. However, the enactment of the 2006 Act still does not solve the problem of protection required by online users since this Act only aims to provide for the legal recognition of electronic messages in commercial transactions, the use of electronic messages to fulfill the requirements of the law and to enable and facilitate commercial transactions through the use of electronic means and other matters related thereto. (Sakina et.al, 2011)

Apart from that, there is the Consumer Protection Act 1999 which contains provisions for consumer protection, the establishment of the National Consumer Advisory Council and the Consumer Claims Tribunal and related matters. Although this 1999 Act should protect consumers from various aspects, but section 2(2) has limited the application of this 1999 Act as it does not include some transactions involving consumers. The 1999 Act became the main act applicable to all goods and services offered to consumers in commerce.

Consumers Protection in Malaysia

In Malaysia, consumers protection is put under the preview of The Ministry of Domestic Trade and Cost of Living (formerly known as The Ministry of Domestic Trade and Consumers' Affairs).

The main law regarding consumer protection in Malaysia is the Consumer Protection Act (CPA) 1999 (or Act 599) which has come into force on the 15th of November 1999. Part XII of the CPA provides for the establishment of the Tribunal for Consumers' Claim (TCC), a tribunal for hearing disputes involving consumers, with less formal and less technicality compared to court proceedings. The resolution of consumer disputes was initially carried out in civil courts. However, after the concept of

consumer protection was comprehensively introduced, the Malaysian Consumer Claims Tribunal (TCC) was established under the first Consumer Protection Act 1999 to better fight for and protect consumer rights in Malaysia (Zakaria Z. 2021).

Since then, seven amendments have been made. In 2002, subsection 17 (1) was added which lists down the types of Future Services Contract gazette by the Ministry for the purpose of the section. A year later in 2003, the TCC membership has been amended to include members from judicial and legal services and to increase the TCC award from RM10, 000 to RM25, 000. This was later increased to RM50,000 and penalty for non-compliance of award in 2019 amendment.

Consumers in e-commerce transactions are included in the CPA though 2007 amendment. Later in 2010, CPA was later amended to introduce Part IIIA: Unfair Contract Terms which defines the provisions to protect consumers from unfair terms in a standard form contract and Part XIA: Committee on Advertisement which provides power to the Minister to establish a committee, to monitor and take necessary action against the supplier that produces false and misleading advertisement. Amendments to this Act in 2007 and subsequently in 2012 have strengthened consumer protection with the enactment of the Consumer Protection (Electronic Commerce Transactions) Regulations 2012. (Naemah Amin & Roshazlizawati Mohd Nor, 2013).

In 2015 CPA was further amended to widen the scope of CPA to include the consumer claim relating to aviation service. Credit Sale Transaction to control credit sales transaction was introduced in the 2017 amendment. These amendments demonstrates the commitment of the Government of Malaysia to cater issues relating to consumer protection.

The Ministry, according their official website, has identified the need to review the National Consumer Policy (NCP) and Consumer Action Plan (CAP) in ensuring the NCP and CAP concurs with Consumer Master Plan with current conditions in protecting the interests of consumers in this country. One of the missions is to strengthen domestic trade through value creation and digitization. It is therefore recommended that ODR to be included in the process and to make it available for complaints from consumers in e-commerce.

Moreover, the ASEAN ODR Guidelines, a 2021 milestone of the 2016–2025 Strategic Action Plan on Consumer Protection, aim to boost consumer confidence in the ASEAN Economic Community and cross-border trade. They provide practical guidance for ACCP members and ASEAN stakeholders to design and implement effective national ODR systems, laying the groundwork for a future ASEAN ODR Network. Hence, Malaysia may refer to the ASEAN ODR Guidelines in establishing a government-mandated platform of ODR, complementing the existing offline mechanisms. ASEAN foresees an integrated or interlink ODR systems between the member states, where the legal dan procedural standards can be harmonized at the regional level.

CONCLUSION

The implementation of ODR for consumer disputes in e-commerce is important to increase the confidence of consumers from all over the world to buy goods or get services from Malaysia. ODR is an important component in helping economic growth and it can help expand markets across borders (APEC Economic Committee, 2023). The benefits of ODR will be achieved if there is a clear legal framework, especially related to security, confidentiality, platforms, etc. (Sulistianingsih, D. etc, 2023). Therefore, it is very important to implement ODR for consumer disputes in Malaysia for e-commerce transactions. There is a need to provide for legal framework for ODR so that consumer disputes can be properly resolved through a comprehensive ODR processes. The ODR plays a critical role in increasing consumer empowerment and access to redress in an evolving digital economy.

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REFERENCES

- APEC Economic Committee. (2023). Study on Best Practices in Using ODR. January, 8–35.
- Anusha R, and Manimekalai, J, (2017) Online Dispute Resolution: A New Approach For E-Commerce Disputes, *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 13, Issue 4(August) ISSN 2289-1560
- Aziz, M. F., & Hidayah, M. A. (2020). Perlunya Pengaturan Khusus Online Dispute Resolution (ODR) Di Indonesia Untuk Fasilitasi Penyelesaian Sengketa E-Commerce. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 9(2), 275.
- E. E. Grandon and J. M. Pearson, “Electronic commerce adoption: An empirical study of small and medium US businesses,” *Inf. Manag.*, 2004, doi:10.1016/j.im.2003.12.010.
- Jain, V. ., Malviya, B. ., & Arya, S. . (2021). An Overview of Electronic Commerce (e-Commerce). *The Journal of Contemporary Issues in Business and Government*, 27(3), 665–670. Retrieved from <https://cibgp.com/au/index.php/1323-6903/article/view/1648>
- Naemah Amin & Roshazlizawati Mohd Nor. (2013). Online Shopping in Malaysia: Legal Protection for E-consumers. *European Journal of Business and Management*. Vol.5, No.24, 2013
- Sakina Shaik Ahmad Yusoff et. al. (2011). Pengguna Di Alam Siber: Penyelesaian Pertikaian Dalam Talian, Prosiding MACFEA Ke 15.
- Sulistianingsih, D., Anggita, A., Lembang, R., Prasetyo, Y., Muchammad, A. & Prabowo, S., Adhi, Y. P., & Prabowo, M. S. (2023). Online Dispute Resolution: Does The System Actually Enhance The Mediation Framework? <https://doi.org/10.1080/23311886.2023.22063> 48
- Tseng, Y. H. (2023). Consumer Protection In ASEAN's E-Commerce: Common Issues And The Path Towards Harmonization Of Regulatory Frameworks. A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Arts in Southeast Asian Studies Inter-Department of Southeast Asian Studies, Graduate School Chulalongkorn University
- Yan Tian, Concetta Stewart, (2006) Encyclopedia of E-Commerce, E-Government, and Mobile Commerce, DOI: 10.4018/978-1-59140-799-7.ch090
- Zakaria, Z., Mohd Amin, N. H., & Daud, M. Z. (2021). Kaedah Penyelesaian Pertikaian di Tribunal Tuntutan Pengguna Malaysia: Satu Kajian Lapangan. *Kanun: Jurnal Undang-Undang Malaysia*, 33(1), 159–184. [https://doi.org/10.37052/kanun.33\(1\)no7](https://doi.org/10.37052/kanun.33(1)no7)