



## CROSSING BORDER TRANSACTIONS: UNRAVELING THE INFLUENCE OF E-COMMERCE ON THE ADVANCEMENT OF TRANSNATIONAL BUSINESS LAW

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### ABSTRACT

Transnational transactions conducted through E-Commerce platforms open the gates of growth in the legal and economic spheres. In this regard, legislators should be able to create a transnational body of law as uniform rules and contractual patterns for commercial transactions conducted through e-commerce. Complex international business transaction activities such as investment, licensing, franchising, and so on have not escaped the development of e-commerce and the convenience that comes with it. The research uses a normative juridical approach and a descriptive analytical research method to describe the facts related to the problem being studied. Data collection is done through a literature study, searching for relevant data from various sources of primary and secondary legal materials related to the existing problems. The data is then analyzed qualitatively. Legal certainty in this case is rooted in matters that have been agreed upon by the parties and are mandated to continue to refer to the principles of international business transaction law and relevant international trade conventions or agreements. With the existence of e-contracts, agreements for transnational transactions can have permanent legal force and dispute resolution through litigation and non-litigation channels such as arbitration can be carried out virtually.

**Keywords:** transnational business law; e-commerce; trade.

### I. INTRODUCTION

Globalization is a phenomenon that cannot be avoided and has a major impact on all areas of life in today's society. Globalization encourages the growth of technology and information, including the advancement of business and trade transactions that can be carried out via the internet. This has shifted the conventional practices of transnational trade and business transactions because in today's business world, the use of the internet is one of the facilities for business improvement and processing. Global competition is increasing rapidly due to the use of the internet and electronic transactions carried out by the community are also increasing. With an increasingly borderless transaction system, international legal subjects including states and international organizations must be able to formulate rules regarding transactions in domestic and international e-commerce in order to create legal certainty despite the rapidly changing times.

This technological advancement can contain criminal threats and unfair trade practices due to weak regulations and supervision of fintech, the vulnerability of technological development, and many illegal activities (such as buying and selling customer data) which add to the urgency of the importance of legal harmonization regarding e-commerce in multinational trade transactions. In this case, examples of legal subjects of e-commerce transactions can be individuals (consumers) who want to buy goods online from sellers in different countries, or e-commerce platform platforms such as amazon, shopee,

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tokopedia, and so on which are engaged as multinational companies because they operate in various countries, as well as the state as a lawmaker and supervisor of e-commerce transactions within its jurisdiction. This paper will discuss the legal development of transnational transactions after the existence of e-commerce and the legal consequences arising from this.

The rapid advancement of information technology and the widespread presence of the internet have fostered seamless communication and information exchange among people. Former barriers in business transactions, such as distance and time, have become surmountable, thanks to the diverse online facilities available today. An illustrative instance of this phenomenon is evident in transnational buying and selling activities, where Indonesian business actors can efficiently promote and conduct transactions with counterparts in Singapore without needing physical presence in the country, all due to the internet and e-commerce platforms. This newfound convenience contributes to "the economic integration of the world," representing an opportunity for countries to foster market openness by reducing or eliminating trade and monetary policy coordination, thereby facilitating access to foreign markets.<sup>1</sup>

It is undeniable that the rapid development of internet technology has significant impact on the development of online transactions or e-commerce. Electronic commerce ("**e-commerce**") can be defined as the process of buying and selling commodity products electronically by consumers and from company to company with technology as an intermediary for business transactions.<sup>2</sup> According to Julisar and Miranda, e-commerce is an advanced technology that covers a process of authority of every process exists in the company, such as ordering goods, making up goods, sending order to customers by creating customer relationship management. E-commerce is the technology that is a need of every organization that is involved in trade, and the benefits of this technology can be directly perceived by the customers and businesses.<sup>3</sup> Many individuals perceive trade transactions conducted via e-commerce as offering convenience and efficiency, primarily due to reduced administrative costs for each transaction. E-commerce provides streamlined and transparent trade processes, shortening business cycles and fostering improved relationships with business partners. The effectiveness of e-commerce lies in its ability to motivate consumers and yield returns on companies' investments, achieved through connections, creation, consumption, and control.<sup>4</sup> There are two main approaches to conducting business marketing through e-commerce: (1) Active marketing involves regular promotion of products and commodities on the internet and (2) Passive marketing refers to providing information through a website without actively engaging in extensive customer outreach.

From definitions above, we can conclude that the characteristics of e-commerce including:

- (1) E-commerce transactions enable parties (sellers and buyers) to enter international global market quickly, regardless the distance and national borders;
- (2) E-commerce transactions make it possible for sellers and consumers not to have to meet face-to-face in making transactions;
- (3) In e-commerce transactions, there is an exchange of goods or services between sellers and buyers; and
- (4) E-commerce transactions are highly dependent on the existence of technology information.

<sup>1</sup> Michael Mussa, "Factors Driving Global Economic Integration", *International Monetary Fund*, <<https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp082500>> accessed on 30 July 2023.

<sup>2</sup> Mahir Pradana, "Klasifikasi Jenis-Jenis Bisnis E-Commerce di Indonesia", *Jurnal Neo Bis*, Vol. 9, No. 2, 2015, p. 34.

<sup>3</sup> Yesa Tiara Purnama Sari, "The Role of E-Commerce in the Business World". *Journal of Economic Studies*, Vol. 04, No. 01, 2020, p. 32.

<sup>4</sup> Donna L. Hoffman dan Marek Fodor, "Can You Measure the ROI of Your Social Media Marketing", *MIT Sloan Management Review*, Vol. 52, No.1, p. 41 - 49.

In e-commerce trade, direct interaction between buyers and sellers becomes less relevant, thereby eliminating the obstacles of distance and time in trade transactions. The defining features of e-commerce transactions include borderless interactions, anonymity in transactions, involvement of both digital and non-digital products, and the exchange of intangible goods. However, e-commerce also has a negative impact especially for the consumers. For the example when they buy goods from online store, but the item is not in accordance with what the store sells once it arrives. Or worse, consumers often already transferred the money but the items are not shipped. With the fast development, many problems arise in the world of e-commerce, therefore the consumers should be careful to choose the safe online store that never commit fraud or potential fraud.<sup>5</sup> In these matters, many regulations emerge regarding the protection of consumers and sellers in various countries. In the legal system of Indonesia, electronic transactions and electronic documents within e-commerce are acknowledged and integrated into Law Number 11 of 2008 on Electronic Information and Transactions ("ITE Law"). This law recognizes e-commerce transactions in terms of contractual agreements and evidentiary matters, and it also identifies violations related to trade transactions conducted through e-commerce.

In addition to national legal instruments, transnational trade transactions through e-commerce are governed by the United Nations Commission on International Trade Law ("**UNCITRAL**"). UNCITRAL formulated the UNCITRAL Model Law on Electronic Commerce in 1996, which is considered soft law, meaning it is not directly binding on countries. Nonetheless, it serves as a valuable reference and guidance for countries in shaping their legal frameworks regarding electronic commerce. In the present day, the existence of e-commerce has brought about a vast array of business transactions, encompassing both simple and large-scale operations. E-commerce platforms like Amazon, Alibaba, Shopee, Tokopedia, and others play a significant role in facilitating buying and selling activities, streamlining the process into four key stages: (1) find and explore: buyers utilize e-commerce platforms to search and explore the type of goods they desire, (2) select: after finding the desired goods, buyers choose them and add them to their shopping cart, (3) buy: the buying process involves checking out and making payment through the merchant's services, and (4) ship: following the purchase, the merchant arranges for the shipment of the goods to the buyer's designated address.<sup>6</sup>

Because of this convenience, even the buyer does not need to think about how to send the goods purchased from abroad as well as the import duties because in general this will be borne by the merchant, whose costs will be calculated directly during the payment process for the goods. Several business actors that are involved in e-commerce transactions, including buyers, sellers, delivery service and marketplaces providers. This condition may lead to the uncertainty when there is a default problem in one of the procedures.<sup>7</sup> Unconsciously, there is an engagement from the contractual stage in this E-commerce buying and selling transaction when the seller agrees to the buyer's order despite the difference in citizenship and country territory between the seller and the buyer. Thus, customers can easily complain when there is a problem settling consumer transactions, and the all the actors can restore their rights.

In the contemporary context, the notion of transnational law encompasses a diverse array of legal disciplines that defy categorization as purely domestic or international, public or private. Examples

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<sup>5</sup> Vira Aprillia Santoso, "Legal Protection on E-Commerce Transactions: Problems and Challenges in Global Business", *Semarang State University Undergraduate Law & Society Review*, Vol. 1, No. 1, 2021, p. 96-97.

<sup>6</sup> Ni Nyoman Ernita Ratnadewi, "Pelaksanaan Transaksi E-Commerce berdasarkan Undang-Undang Nomor 11 Tahun 2008", *Jurnal Ius*, Vol. 2, No. 5, 2014, p. 388.

<sup>7</sup> Muhammad Mufti Mubarak, "The Mapping of Electronic Commers Issues and Consumer Protection Policy in Indonesia", *Journal of Economics, Business, & Accountancy Ventura*, Vol. 24, No. 3, 2022, p. 434.

include Comparative Law, Immigration and Refugee Law, International Business Transactions, International Commercial Law, International Trade Law, Foreign Relations Law, National Security Law, Law of Cyberspace, Law and Development, Environmental Law, and the Law of Transnational Crimes.<sup>8</sup> In these legal domains, global standards have achieved full recognition, integration, and internalization within domestic legal systems. To grasp the functioning of transnational law, it is essential to comprehend the concept of Transnational Legal Process which is a transsubstantive process at work in each of these areas, wherein states and other transnational private actors blend domestic and international legal processes to incorporate international legal norms into their domestic laws.<sup>9</sup>

In this paper, International Business Transaction Law or Transnational Business Law encompasses a collection of principles from national and international law that address issues arising from agreements involving sovereign states and foreign entities. Additionally, according to renowned international law scholar Lauterpacht, transnational law encompasses all legal principles and rules that extend beyond national boundaries and regulate international business practices as an alternative to domestic law. Prof. Horn further categorizes the concept of transnational law into three parts: (1) transnational law as encompassing all laws relevant to transnational transactions, (2) transnational law as uniform rules and contractual patterns governing commercial transactions, and (3) transnational law as a legal source of uniform rules.<sup>10</sup>

In correlation with this background, the authors formulates problems of this issue as follows:

- a. How is the development of Transnational transaction Law after the existence of e-commerce?
- b. How is the legal certainty and dispute resolution of transnational transactions dispute in e-commerce transactions?

## II. RESEARCH METHOD

This research paper adopts a normative juridical legal research method, which examines legal issues by referencing the applicable norm system to seek scientific truth from a normative perspective. The paper utilizes both a statutory approach and a theoretical-descriptive conceptual approach in its composition. Data analysis is conducted through qualitative analysis, involving tasks like classifying, grouping, and identifying patterns within the data, presented in descriptive narratives. Regarding data sources, the research paper draws upon various materials, including primary law sources such as basic norms, national laws, international conventions or treaties, and jurisprudence. Additionally, secondary law materials such as scholarly doctrine, books, publications by international organizations, and journal articles from esteemed researchers are also incorporated

## III. DISCUSSION

### A. Legal Development of Transnational Transactions After the Existence of E-Commerce

Transnational transactions have been happening for hundreds of years, even before the concept of "state" was formed. One region with another region conducts trade activities to meet internal needs within its territory. The concept of Transnational Transaction Law includes national and international law as well as public and private law as its legal domain. Any state conducting transnational transaction activities must adopt a transnational legal process where the state and other transnational private actors

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<sup>8</sup> Harold Hongju Koh, "Why Transnational Law Matters", *Penn State International Legal Review*, Vol. 24, No. 4, 2006, p. 746.

<sup>9</sup> *Ibid.*

<sup>10</sup> Huala Adolf, *Hukum Transaksi Bisnis Transnasional*, Bandung: Keni Media, 2020, p. 11 – 12.

combine domestic legal processes and international legal processes to internalize international legal norms into national or domestic law.<sup>11</sup>

The evolution of Transnational Transaction Law stems from a multitude of factors, encompassing the mutual reliance of nations on the production and supply of goods and services, the establishment of global financial institutions facilitating banking operations, the creation of international private entities promulgating exclusive regulations for member states, advancements in commercial public and private legal frameworks, and the continuous progress of information technology.<sup>12</sup> The activities of transnational transactions and scope of its study can take the following forms:<sup>13</sup>

a. Sale and purchase of goods

Buying and selling activities conducted with different nationalities, which the rules of it is codified under the Convention on the International Sale of Goods ("**CISG**").

b. Export

Activities of trade commerce involving the exchange of goods or services originating in one country and sold to buyers located in another country.

c. Import

The act of purchasing or obtaining products or services from a foreign country or a market outside one's own. In the realm of international trade, the importation and exportation of goods are subject to constraints imposed by import quotas and regulations set forth by the customs authority in a country.

d. Technology transfer

The transfer of technology from one country to another is a dynamic process that entails the exchange of knowledge, skills, technical expertise, as well as the transfer of intellectual property rights, patents, and licenses. This technology transfer plays a pivotal role in fostering innovation, stimulating economic development, and encouraging global cooperation.

e. Franchising

A cross-border agreement wherein a party in one country grants authorization to a company in another country to utilize its operating system, brand name, trademark, and business logo in exchange for a royalty.

f. Capital financing

The process of sourcing funds from international origins to invest in a project or business. This can be achieved through foreign borrowing or by obtaining equity from foreign investors in the form of multilateral capital financing and mobilization activities such as debt guarantees, multilateral debt, debt conversion, etc.

g. Corporate financing and project transactions

Corporate financing or project transactions encompasses the strategies and funding origins that corporations employ to sustain their operations, investments, and expansion. In a transnational framework, corporate financing entails procuring capital from international outlets, including foreign investors, banks, or financial institutions. This financing can take diverse forms, such as equity financing, involving the issuance of shares to investors, or debt financing, which involves borrowing funds through loans or bonds, or a hybrid combination of both. Notably, transnational

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<sup>11</sup> Harold Hongju Koh, *Op. Cit.*, p. 746.

<sup>12</sup> Huala Adolf, *Hukum Transaksi Bisnis Transnasional*, Bandung: Keni Media, 2020, p. 6.

<sup>13</sup> Budi Ristandi Kartawinata (et.al), *Bisnis Internasional*, Bandung: PT. Karya Manunggal Lithomas, 2014, p. 6

corporate financing is subject to international laws, regulations, and agreements that govern cross-border investments, securities offerings, and financial transactions.

h. Foreign direct or indirect investment activities (investment)

Foreign investment activities denote the allocation of capital from one country to another, where investors obtain ownership stakes in domestic companies or other assets. This results in capital flows between nations, empowering foreign investors with significant ownership interests in domestic enterprises and assets.

i. Alternative dispute resolution and international courts

Alternative dispute resolution and international courts entails approaches to resolving conflicts outside the conventional national court proceedings. This forum is valuable in cross-border disputes, where involved parties may encounter complexities arising from diverse legal systems, languages, and cultural differences.

The aforementioned factors are intricately interconnected and give rise to intricate Transnational Transactions. Market globalization, the convergence of multiple markets into a single vast global arena accessible to all business entities regardless of their location, further influences this complexity. Notably, the growth of information technology and e-commerce appears to accelerate the development of transnational transactions by offering unparalleled conveniences. The International Monetary Fund ("**IMF**") identifies fundamental elements of globalization and its evolution as trade and transactions, capital movements, migration, and investment.<sup>14</sup>

The existence of e-commerce brought a convenience to consumers without having to be limited to the bars from national jurisdiction. E-commerce provides all in one transaction, where buyers no longer need to worry about the shipment of goods purchased from abroad or the import duties, as these responsibilities are typically shouldered by the merchant. The costs are calculated and included directly during the payment process for the goods. Unbeknownst to many, there is a contractual engagement at the stage of this E-commerce buying and selling transaction when the seller agrees to fulfill the buyer's order, even if there are differences in citizenship and country territory between the seller and the buyer.

More complex international transaction activities such as investment, licensing, franchising, and so on have not escaped the development of e-commerce and the convenience that comes with it. Currently, there is telegraphic transfer technology for online payment of transactions as well as electronic contracts or e-contracts or contracts for engagement facilitated by the internet network.<sup>15</sup> Electronic contracts were first introduced by the UNCITRAL through the Model Law on E-Commerce ("**MLEC**") which facilitated a model law for national law legislators to regulate electronic business transactions.<sup>16</sup> MLEC has several principles or main objectives that is the purposed of this document, these subjective including (1) facilitating electronic commerce between state; (2) validate transactions using technology; (3) promote and recommend the use of the latest information technology; and (4) promoting uniformity of law and supporting commercial practices.

In 1996, UNCITRAL adopted MLEC, which the primary objective of this model law was to establish a universally accepted set of rules to eliminate legal barriers and enhance legal predictability for e-commerce activities. MLEC aimed to set forth universally accepted rules for e-commerce,

<sup>14</sup> IMF Staff, "Globalization: A brief Overview", International Monetary Fund, <<https://www.imf.org/external/np/exr/ib/2008/053008.htm>> accessed on 30 July 2023.

<sup>15</sup> I Wayan Wiryanan, "Keabsahan Kontrak Elektronik dalam Perjanjian Bisnis", *Jurnal Kertha Semaya*, Vol. 8, No. 9, 2020, p. 1388

<sup>16</sup> United Nations, "UNCITRAL Model Law on Electronic Commerce (1996) with additional article 5 bis as adopted in 1998", <[https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic\\_commerce](https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce)> accessed on 30 July 2023.

encourage the adoption of paperless communication, and ensure equitable treatment for both paper-based and electronic information in legal matters. By doing so, MLEC aimed to create a conducive environment for the growth and development of electronic commerce on an international scale.<sup>17</sup> The MLEC has garnered widespread global acceptance and has proven to be instrumental in the enforcement and harmonization of laws concerning electronic commerce. It has played a vital role in assisting countries in formulating relevant legislation where such provisions were previously absent and has furthered the cause of unifying international trade laws. The purpose of MLEC for the harmonization of online transactions regulation are:<sup>18</sup>

- (a) Model law is acceptable to countries with different legal system, social, and economic situation. Model Law can also provide significant development of economic harmonization.
- (b) Model Law was chosen because it is previously states and organization has been an interested party.
- (c) Model Law can help countries in making national regulation in the field of e-commerce.

MLEC contains two important principles, which are: (1) *Functional Equivalence Approach*, that electronic documents and communications have functions and purposes the same as paper documents and communications; (2) *Technology Neutrality Approach*, which means that an electronic communication is treated equally as other technology communications. Thus, the general requirements considered as generally applicable technology.<sup>19</sup>

The goal of MLEC is to facilitate the trade world since all the electronic transactions that have occurred so far have revolved around commercial activities, which have been facilitated by old procedures that still rely on conventional information exchange and traditional agreements. Even though MLEC does not always updated by the latest technology, however with the enthusiasm for the development of online business transactions, MLEC will continue to update its provisions by following technological developments, with the aim of continuing to facilitate the use of information technology so it can be used very well in the commerce or business activities.

MLEC is formulated as a framework or soft law whose purpose is to guide countries that will later adopt it to set a regulation regarding the electronic business activities alongside with its standard provisions. MLEC can be said only as essential procedures and principles, which none other than basic principles and general procedures. Countries whose adopted the regulation of MLEC have the flexibility in implementing the regulation in accordance with the national law, as long as it does not contradict with the general principles of MLEC. This flexibility is also reflected in how the countries is free whether they want to adopt it or not. However, in order to maintain the initial goals and objectives of MLEC, it is highly recommended for these countries to adopt it not in a limited manner, but to adopt it widely in order to maintain the achievement of these goals and objectives.<sup>20</sup>

MLEC defines the term of ‘electronic commerce’ as a generic term that would include the following modes of transmission based on the use of electronic techniques, such as:

- (a) Communication by means of Electronic Data Interchange (“**EDI**”), i.e. computer-to-computer transmission of data in a standardized format;

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<sup>17</sup> Charles H. Martin, “The UNCITRAL Electronic Contracts Convention: Will It Be Used or Avoided?” *Pace International Law Review*, Vol. 17, No. 2, 2005, hlm. 265

<sup>18</sup> M. Alvi Syahrin, “Konsep Keabsahan Kontrak Elektronik Berdasarkan Hukum Nasional dan UNCITRAL *Model Law on Electronic Commerce*”, *Repetorium*, Vol. 9, No. 2, 2020, p. 114.

<sup>19</sup> *Ibid*, p. 115

<sup>20</sup> Gunawan Widjadja, “UNCITRAL Model Law on Electronic Commerce and Model Law on Electronic Signatures, *Cross-border*, Vol. 1, No. 1, 2018, p. 289.

- (b) Transmission of electronic messages involving the use of either publicly available standards of proprietary standards;
- (c) Transmission of free-formatted text by electronic means, for example, through the internet.

In most cases, agreements in transnational transactions use conventional contracts that are drafted with signatures and face-to-face meetings, however, this indicates that agreements, where two people agree to do something, can already be done via the internet without having to meet even though they come from two different jurisdictions. Under the MLEC issued by UNCITRAL, electronic contracts can vary and continue to use offer and acceptance like conventional contracts, with EDI. Legally binding offers and acceptances can be facilitated through electronic communications, such as email, and other online platforms. Transactions may be formalized via websites and online services, while direct online transfers are employed, requiring prior verification of consent from both parties.<sup>21</sup>

The validity of electronic contracts based on UNCITRAL is not much different from the provisions of Article 1320 of the Civil Code (*Burgerlijk Wetboek*) which requires the elements of agreement, capability, certain things, and lawful purposes. UNCITRAL states the conditions for the validity of an agreement and contract are as follows:

- a. Offer;
- b. Offer that is responded with acceptance;
- c. Both parties to the contract must have legal capacity.
- d. There is a reciprocal merit;
- e. Have clauses that are lawful or not contrary to law and decency; and
- f. There is an intention to establish a legal relationship

The emergence of international contracts and the facilitation of payments through telegraphic transfers demonstrate that crossing national borders has become less significant in the business realm. The convenience brought about by the advancement of e-commerce has led to a surge in transnational transactions. Information technology has pervaded traditional legal systems, and as a result, activities in transnational transactions necessitate regulation by international and national instruments to maintain control and ensure fair practices.

Besides United Nations, these matters also the concern of The Organization for Economic Cooperation and Development (“OECD”). They declared that the new transactions of e-commerce should be formulated and policies related to traditional business practices be re-evaluated from the look of the e-commerce growth. Since the harmonization is barred by the regulation of national legal framework, a non-harmonized and inconsistent national policy for electronic commerce is worse than complete inaction. Thus, the OECD believes there should be an international collaboration. The OECD has already held a series of meeting to find a solution regarding this problem. Those meetings were intended to achieve: (1) identification of main policy problems, potential plans for problem solving and organizations that can develop and implement these plans; (2) ensure the consistency and effective harmonization of inter-governmental actions; and (3) to reach an agreement between enterprises and the government in the terms of guiding principles that would constitute an electronic commerce policy framework.<sup>22</sup>

One of the focuses of OECD is the taxation of electronic commerce, so they held many related international conferences to discuss that matters. The conference was held in Turku, Finland in 1997,

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<sup>21</sup>I Wayan Wiryan, *Op. Cit.*, p. 1388

<sup>22</sup>Min Wang, “Establishment of an International Legal Framework for Cross-Border Electronic Commerce Rules: Dilemmas and Solutions”, *World Customs Journal*, Vol. 11, No. 2, p. 66.

the OECD ministerial discussed regarding the electronic commerce tax collection and administration. Also formed consensus on some issues, for example the principle of tax equity and tax neutrality. The discussion made the result one year later in 1999 at the Ottawa Conference on the taxation principle of electronic commerce. The meeting concluded an important agreement, such as the need to promote cooperation between governments, consumers, enterprises, and public institution. The policy settings that are conducted by countries in their own national law should be compatible with the international law, as the purpose of promoting the development of global electronic commerce. The OECD suggested that the governments for each country should remove the unnecessary trade barriers, and the government policies that regulated to develop e-commerce should be appropriate, transparent, consistent, predictable, and technology neutral. Therefore, the harmonization of international legal framework to regulate cross-border electronic commerce are necessary for the economic growths.<sup>23</sup>

### **A. Legal Certainty and Dispute Resolution of Transnational Transactions in E-commerce Transactions**

The incorporation of e-commerce into transnational transactions frequently gives rise to legal concerns concerning legal certainty, law enforcement, and dispute resolution in such dealings. Transactions conducted in the cyber world, particularly in the context of business, hold genuine legal significance, necessitating appropriate legal instruments to ensure a sense of legal certainty. Without the assurance of legal certainty, the efficacy of laws as behavioral guidelines for the community would diminish, highlighting the importance of addressing these issues effectively.<sup>24</sup> In this context, legal certainty ensures a clear set of norms, offering guidance to individuals engaged in transnational transactions through e-commerce. It entails a well-defined and consistent application of the law, unaffected by subjective factors. To achieve legal certainty, it requires a strong foundation based on legal substance, legal apparatus, and a legal culture that supports its implementation.<sup>25</sup> The legal substance in this case departs from the legal principles of transnational transactions, which include (a) the principle of the supremacy of national law, (b) the principle of harmonization of national law, (c) the principle of *pacta sunt servanda*, and (d) the principle of special provisions for developing countries. Most transnational transactions are based on contracts and/or agreements that become the basis of legal relations and mutual guidelines for business transaction actors in carrying out a cooperative international business transaction.<sup>26</sup>

Legal certainty in this case is rooted in matters that have been agreed upon by the parties and mandated to keep referring to the principles of transnational transaction law as well as relevant international trade conventions or agreements. International contracts as a manifestation of legal certainty guidelines for international business transactions have 7 (seven) main sources, namely:<sup>27</sup>

- a. National law;
- b. Contract documents;
- c. Commercial custom or *lex mercatoria*;
- d. General principles of contract law;

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<sup>23</sup> *Ibid*

<sup>24</sup> Fence M. Wantu, "Anatomi dalam Penegakan Hukum oleh Hakim", *Jurnal Berkala Mimbar Hukum*, Vol. 19, No. 3, 2017, p. 388

<sup>25</sup> R. Tony Prayogo, "Penerapan Asas Kepastian Hukum dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 tentang Hak Uji Materiil", *Legislasi Indonesia*, Vol. 13, No. 2, 2016, p. 194

<sup>26</sup> Jeany Anita Kermite dan Jeannie C. Rotinsulu, "Implementasi Hukum dalam Kontrak Bisnis Internasional", *Lex Et Societatis*, Vol. IX, No. 1, 2021, p. 113.

<sup>27</sup> Huala Adolf, *Dasar-Dasar Hukum Kontrak Internasional*, Bandung: PT. Refika Aditama, 2008, P. 61.

- e. Court decisions;
- f. Doctrine; and
- g. International treaties on contracts.

In the Indonesian national legal regime, the law governing agreements and contracts is the Civil Code located in Book III Chapter II section II. Meanwhile, international level, the Indonesian legal regime is committed to regulated Law Number 24 of 2000 concerning International Agreements which defines international agreements as agreements, in certain forms and names, which are regulated in international law made in writing and give rise to rights and obligations in the field of public law.<sup>28</sup>

International legal instruments, such as the international buying and selling convention facilitated by CISG or MLEC issued by UNCITRAL, play a pivotal role in determining the enforcement of regulations for e-commerce trade transactions, binding the involved parties. These instruments provide clear and specific rules to guide national legislative bodies in matters pertaining to e-commerce. In the case of MLEC, all electronic information in the form of data carries legal effect, validity, and force, reinforcing the significance and recognition of electronic transactions within the legal framework.<sup>29</sup> Thus, according to MLEC and other relevant international legal instruments, proof can still be established using written information in the form of electronic data. Moreover, electronic signatures hold validity and are legally recognized, further solidifying the credibility of electronic documents and transactions in the legal context.

There are several general principles in MLEC, such as the *freedom of contract and legality*. *Freedom of Contract* is the first principle is upheld the formation of standard agreement which are used to establish procedures for creating, sending, receiving, and storing data messages. It is considered in Article 4(1), declares that “*As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III may be varied by agreement.*” This provisions broadly regulate that the procedures for data message communication still binding, but it can be varied as long as it has the consent of both parties. MLEC contained regulations that can be used by the parties in order to reach a conclusion of agreement, as well as basic standard if there are no provisions agrees upon by the parties beforehand.<sup>30</sup>

The second principle is the recognition of the legality data messages. MLEC strictly regulates that a data message has the same status and equal to physical or paper documents. Article 5 describes “*Information shall not be denied legal effect, validity or enforce ability solely on the grounds that it is in the form of a data messages.*” It also implemented in Article 11(1) which “*In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.*” The practical regulation is formed in Article 12(1) that is embraced the same legality of both documents, says “*As between the originator and the addressee of a data message, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the grounds that is in the form of a data message.*” It is very clear that in these articles the application of the principle of legality recognition of data messages, as a means of forming contract and has the same legal effect as paper-based documents. With these provisions, if there are problems or uncertainties arises from national laws that cannot be avoided by the provisions agreed in the contract,

<sup>28</sup> Article 1 (1) Law Number 24 of 2000 concerning International Agreements.

<sup>29</sup> Article 6 Model Law on E-Commerce UNCITRAL

<sup>30</sup> Gunawan Widjadja, *Op. Cit.*, p. 289-290.

these provisions can become a reference for regulations that exclude those national law related to legal transactions.<sup>31</sup>

Transnational transactions conducted through e-commerce are certainly not free from the existence of disputes between the parties. Transnational e-commerce disputes can be complex and challenging to resolve due to the cross-border nature of the transactions. A case illustrating a transnational e-commerce dispute arises when a buyer from one country acquires a product from a seller in another country, only to discover that the product does not match the description or is faulty. The buyer may attempt to return the item or request a refund, but the seller might decline the refund or ignore the buyer's inquiries. Another instance of a transnational e-commerce dispute arises when a seller from one country accuses a buyer from another country of involvement in fraudulent activities. To specify, disputes arising from e-commerce transaction can take the following forms:<sup>32</sup>

a. Breach of Contract in E-commerce Transactions

In e-commerce transactions, parties are bound by the agreement to fulfill their obligations, which typically involve delivering the sold goods and remitting payment as stipulated. If the seller fails to deliver the goods as agreed or the buyer neglects to make the required payment for the delivered goods, it constitutes a breach of the agreement and can lead to disputes between the parties.

b. Non-Conformity in E-commerce Contracts

E-commerce contracts generally encompass similar elements to traditional contracts. These agreements specify the goods requested by the buyer, and the seller is obligated to adhere to the promised specifications. For instance, if the buyer and seller commit to a transaction involving 200 goods, delivering only 190 goods would constitute a violation of the contractual promise.

c. Delayed Performance in E-commerce Agreements

E-commerce contracts typically specify a delivery date or an estimated time for the goods to reach the buyer. If the goods are usable but arrive later than the agreed-upon time, this constitutes delayed performance.

d. Breach of Prohibited Actions in E-commerce Contracts

Transnational transactions involve contracts that outline both mandatory requirements and prohibited actions between the parties. Should either party engage in actions forbidden by the contract, a dispute may arise. For instance, if a seller and buyer agree not to disclose each other's identity to anyone or the public, but one party breaches this agreement, it results in a contract violation.

By this case, both of the parties may face a challenge when resolving the dispute for the existence of different legal systems, languages, and cultures. In e-commerce platforms, the buyer's ability to choose the applicable law is generally limited, as the seller pre-determines the governing law at the outset of the sales process.<sup>33</sup> Dispute resolution arising from transnational transactions offers various avenues for resolution, including negotiation (the most common method), litigation (filing a lawsuit in court), and non-litigation options (such as arbitration). In both arbitration and court proceedings, electronic data can serve as evidence using the same principles applied to conventional evidence.

The UNCITRAL Model Law on Electronic Commerce (MLEC) addresses the validity of electronic data in Article 5, stating that electronic data holds legal weight. Furthermore, Article 6

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<sup>31</sup> *Ibid*

<sup>32</sup> Rizal Alif, "Perspektif Transaksi E-Commerce di Era Globalisasi Perdagangan Bebas dalam Hukum Perjanjian di Indonesia", *Indonesian Journal of International Law*, Vol. 5, No. 2, 2008, p. 353

<sup>33</sup> Esthalitha Octavia Tobing, *Op. Cit.*, p. 21.

recognizes electronic data messages as meeting written requirements, while Article 8 confirms the validity of electronic signatures. According to Article 11 of the MLEC, contracting through e-commerce is legally valid and binding, and such electronic agreements can be used as evidence in dispute resolution. When using electronic evidence, it is vital to ensure the integrity of the information and its presentation to the involved parties as required.<sup>34</sup>

A transaction is a legal act that involves two parties who need each other in matters that have certain economic value and are realized through an agreement called “contract”.<sup>35</sup> An agreement obtains the legal relationship from electronic business transactions that are contained in an electronic contract. In Indonesia, contract is supervised by the Indonesian Civil Code *Burgerlijk Wetboek* (BW), specifically in Book III on Engagement. To be considered as legal valid, an agreement must meet some requirements,<sup>36</sup> such as:

- (a) Agreement on they who bind themselves (*agreement/toestemming*);
- (b) Capacity to make an agreement (*competence/bekwaamheid*);
- (c) Toward certain object (*certain object/een bepaald anderwerp*); and
- (d) Lawful cause (*cause/oorzaak*).

Based on these requirements, an online contract is legally valid as long as it complies with the Article 1320 of the BW. *First*, in e-commerce usually there is standards contract which listed all offers, and terms of purchased buyers should agree or not. In electronic purchase, it is determined by the buyers’ access and acceptance, this agreement becomes the basis for equal will of parties that eventually generates electronic contracts. *Second*, the person who makes an agreement based on the law should be a legally competent person at least 18 years old. Unfortunately, everyone in every age can do the transaction in e-commerce due to the fact that everyone despite the age can carry out electronic transaction. But such contract can be canceled through claims in court. *Third*, a certain object usually refers to an object that must be determinable. Product in online transaction contained in the form of images or photos with product specifications. Although, there is no guarantee that product will be going to the hand of the buyers after a payment is made. *Lastly*, the product that carried out in online transactions should not against the law, decency, and public interest. Both parties need to ensure that transactions are made in good faith. If such transactions are not met, the contract is null and void.<sup>37</sup>

Moreover, Indonesia created legal regulations to protect their civil on internet platform, this regulation is Law No. 11 of 2008 on Information and Electronic Transactions as amended by Law No. 19 of 2016 (ITE Law). Here, ITE Law given an explanation in Article 1 that the existence of Electronic Information and/or Electronic Documents is binding and recognized as valid evidence to provide legal certainty for the Implementation of Electronic Systems and Electronic Transactions, especially for evidence and other matters related to legal actions from Electronic Systems. With this provisions, Indonesia legal framework recognize the legal validity of electronic documents similar to MLEC. This recognition of electronic transactions and electronic documents in the ITE Law shows that e-commerce

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<sup>34</sup> Asep Ahmad Fauji, “Penerapan UNCITRAL Model Law dalam Pembuktian Kasus Transaksi Elektronik di Indonesia”, *UBELAJ*, Vol. 1, No. 1, 2017, p. 100.

<sup>35</sup> Hasanuddin Rahman, “*Contract Drafting Seri Keterampilan Merancang Kontrak Bisnis*”, (Bandung: Citra Aditya Bakti, 2003), p. 2.

<sup>36</sup> Article 1320 of the Indonesian Civil Code *Burgerlijk Wetboek*

<sup>37</sup> Ghansham Anand et al, “The Perspective of Indonesian Law on E-Commerce: Validity, Liability and Dispute Settlement”, *Padjadjaran Journal of Law*, Vol. 7, No. 3, 2020, p. 339.

has guaranteed by legal certainty. On top of that the existence of ITE Law which regulates the prohibition in the use of IT has provided signs in preventing *cybercrime*.<sup>38</sup>

There are two kinds of dispute resolution, which are litigation by judicial institutions and non-litigation or Alternative Dispute Resolution (ADR), which a settlement outside the institution judiciary. Dispute settlement forums in international commerce are the same as any dispute settlement law in general. These forums are:

(1) Negotiation

Negotiation is the most general and oldest method of dispute resolution. Through negotiation, is the most important and earliest process of resolution. According to Munir, negotiation is a process of bargaining or talks to reach an agreement on certain issues that occur between two parties. In this way, both parties can control the dispute resolution procedure and each settlement is based on the agreement or consensus of the parties. The implementation of negation needs to be distinguished in two ways. First, negotiation is used when a dispute has not yet arisen. Second, negotiation is used when a dispute has arisen.<sup>39</sup>

(2) Mediation

Mediation is a process of solving a dispute where an impartial third party and neutral working as mediator with the disputing parties to help them reach a solution. Here, the mediator is needed to find various settlements, identify things that can be agreed upon by the parties and make suggestions that can settle the dispute.<sup>40</sup>

(3) Conciliation

Conciliation is a settlement of dispute with the intervention of third party (conciliator), where the conciliator is more active by taking the initiative to compile and formulate the procedure of settlements, which later proposed and offered to the parties of the disputes.<sup>41</sup>

(4) Arbitration

Arbitration is a dispute settlement with third party (arbitrator) who take the lead and decide the decision for both parties. These arbitrators can be individual, institutional arbitration or ad hoc arbitration. According to Munir, definition of arbitration is a method of settling private civil disputes outside public court based on an arbitration contract by each party, where the arbitrator is chosen by the parties concerned, consisting of people who have no interest in the case in question (neutral), these people will examine and give decision on the dispute.<sup>42</sup>

Today, arbitration becoming more popular for the businesses actors to settle their disputes especially in the cross-border transactions because:<sup>43</sup>

- (a) The main advantage of resolving disputes through arbitration is that the settlement is relatively faster than litigation. In arbitration, some procedures such as appeals, cassation or judicial review is not needed since the arbitral award is final and binding.
- (b) Settlement of disputes through arbitration are famous for its confidentiality, both the confidentiality of the proceeding and the confidentiality of arbitral award.

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<sup>38</sup>Dita Hapsari, et al, "Kedudukan E-Commerce Dalam Perspektif Undang-Undang Nomor 19 Tahun 2016 Tentang informasi dan Transaksi Elektronik", *Diponegoro Law Journal*, Vol. 8, No. 1, 2019, p. 214-215.

<sup>39</sup>Benny Asrianto and Oksep Adhayanto, "Penyelesaian Sengketa Dagang Dalam Hukum Internasional (Suatu Tinjauan Terhadap Forum Penyelesaian Sengketa Internasional Non Litigasi)", *Selat Journal*, Vol. 1, No. 1, 2014, p. 68-69.

<sup>40</sup>Ervita Tri Aryani, "Penyelesaian Sengketa Dagang Internasional Antara Penjual dan Pembeli dalam Transaksi E-Commerce", *Privat Law*, Vol. 9, No. 1, 2021, p. 102.

<sup>41</sup>*Ibid*

<sup>42</sup>Benny Asrianto and Oksep Adhayanto, *Op. Cit*, p. 70

<sup>43</sup>*Ibid*

- (c) The parties have the freedom to choose the arbitrator who is according to the parties is neutral and an experts or specialist regarding the subject matter of the dispute they are facing. The arbitrator doesn't have to be a person from legal background. Not like lawyer in court, the arbitrator could have mastered in other fields, such as engineers, managers, insurance experts, banking experts, and others.
- (d) The arbitration body is based on fairness and decency principle.
- (e) In the case of international arbitration, the arbitral award is relatively enforceable in other countries, different from the litigation, where judicial decision cannot be enforced in other countries. This provision is regulated in the 1958 New York Convention concerning the Recognition and Enforcement of Foreign Arbitral Award, which has been ratified by most of the countries.

As time goes by, buying and selling activities can be carried out from online through e-commerce, so does the resolving disputes in online as well. Dispute resolution outside the court using the internet in known as Online Dispute Resolution (ODR). UNCITRAL defined ODR as “mechanism resolving disputes through the use of electronic communications and other information.” ODR is created to increase the public trust in e-commerce activities by presenting an effective and efficient settlement, also with a low cost to ensure consumers rights by fulfilling and providing the legal certainty. ODR refers to the use of internet-based ADR mechanism. The method is similar to the APS method, but ODR is done online while the APS is still done conventionally. Through ODR, the parties can resolve their dispute anytime and anywhere in accordance with the agreement of the parties. That way, the ODR is very suitable for resolving dispute in e-commerce in which parties comes from different regional.<sup>44</sup>

The emergence of ODR is mainly for the reason of affordable access to justice. In the dispute arises from electronic transaction, the cost of starting court process is more expensive than the actual transactions itself. The presence of ODR provides lower cost offers and the opportunity to gain access to justice for the people in electronic trade disputes. The scope of ODR is a commercial dispute that should be resolved amicably and does not need going through litigation process. ODR jurisdiction includes the authority to resolve legal cases in the field of commercial which resulted a win-win solution. Dispute resolution through ODR must be achieved under the principle of justice for both disputing parties.<sup>45</sup>

#### IV. CONCLUSIONS

Countries engage in trade activities with other nations to fulfill their internal needs within their borders. The concept of Transnational transaction Law encompasses both national and international law, as well as public and private law, within its legal domain. The development of Transnational transaction Law is influenced by multiple factors, such as the interdependence of countries on the production and supply of goods and services, the establishment of global financial institutions to facilitate banking operations, the formation of international private institutions issuing exclusive regulations for member countries, the evolution of commercial public and private law frameworks, and advancements in information technology. Today, the existence of e-commerce adds complexity and diversity to business transactions, ranging from simple to large-scale operations.

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<sup>44</sup>Muhammad Arvin Wicaksono et al, “Penyelesaian Sengketa Transaksi Online Perdagangan Internasional”, *Kertha Semaya Journal*, Vol. 10, No. 7, 2022, p. 1601.

<sup>45</sup>Riyadus Solikhin, “Perkembangan dan Urgensi Penerapan *Online Dispute Resolution* (ODR) dalam Penyelesaian Sengketa Perdagangan Elektronik di Indonesia”, *Padjadjaran Law Review*, Vol. 11, No. 1, 2023, p. 69.

Legal certainty entails a clear and consistent application of the law, immune from subjective influence. In the realm of transnational transactions conducted via e-commerce platforms, legal certainty must encompass the fundamental principles of transnational transaction law, which include: (a) the principle of national law's supremacy, (b) the principle of harmonizing national law, (c) the principle of *pacta sunt servanda*, and (d) the principle of providing special provisions for developing countries. The growth of e-commerce and its potential has drawn the attention of many countries and international organization. Various conventions and agreements have introduced model laws concerning e-commerce trade, with the UNCITRAL's MLEC being one such example. These Model Laws allows each country to adopted such principle from MLEC to adjust it according to their national legal framework. MLEC affirms that all electronic information in the form of data possesses legal consequences, validity, and strength. Hence, agreements made through e-contracts carry legal validity and enforceability.

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