

## LEGITIMACY OF INTERNATIONAL COMMERCIAL LAW IN RESOLVING CONSUMER PROTECTION DISPUTES IN E-COMMERCE TRANSACTIONS

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### **Abstract**

*The Development and Progress of Technology in the Era of Globalization Drive Changes in Various Aspects of Life. The rapid advancement of technology provides convenience and flexibility to its users, one of which is in the field of commerce. Alongside the swift technological progress in the world of commerce, society is presented with various transaction systems, one of which is the e-Commerce transaction system. E-Commerce transactions enable the trade of goods/services across borders rapidly and effectively, without the need for direct presence during the transaction. However, in this context, e-Commerce trade transactions inherently possess a high vulnerability to fraudulent activities or actions that could harm consumers. The method employed by the author in this writing is the normative method. The discussion to be examined by the author is how consumer protection in e-Commerce trade transactions and dispute resolution are based on international commercial law. Based on further examination, the conclusion drawn from this writing is that the existence of e-Commerce transactions is regulated by the international trade institution, the United Nations Commission on International Trade Law (UNCITRAL), through the Model Law on Electronic Commerce 1996. Meanwhile, in the event of disputes among parties engaged in e-Commerce transactions across different countries, resolution can be achieved through mutual agreement by the parties, either through litigation or non-litigation methods.*

*Keywords: International Trade Law, Consumer Protection, E-Commerce*

### **Abstrak**

Perkembangan dan Kemajuan Teknologi di Era Globalisasi Mendorong Perubahan di Berbagai Bidang Kehidupan. Pesatnya kemajuan teknologi memberikan kemudahan dan fleksibilitas kepada penggunanya, salah satunya dalam bidang perdagangan. Seiring dengan pesatnya kemajuan teknologi dalam dunia perdagangan, masyarakat disuguhkan dengan berbagai sistem transaksi, salah satunya adalah sistem transaksi e-Commerce.

Transaksi E-Commerce memungkinkan perdagangan barang/jasa lintas negara secara cepat dan efektif, tanpa memerlukan kehadiran langsung pada saat transaksi. Namun dalam konteks ini, transaksi perdagangan e-Commerce secara inheren memiliki kerentanan yang tinggi terhadap aktivitas atau tindakan penipuan yang dapat merugikan konsumen. Metode yang penulis gunakan dalam penulisan ini adalah metode normatif. Pembahasan yang ingin dikaji oleh penulis adalah bagaimana perlindungan konsumen dalam transaksi perdagangan e-Commerce dan penyelesaian sengketa berdasarkan hukum komersial internasional. Berdasarkan penelaahan lebih lanjut, kesimpulan yang dapat diambil dari tulisan ini adalah bahwa keberadaan transaksi e-Commerce diatur oleh lembaga perdagangan internasional, United Nations Commission on International Trade Law (UNCITRAL), melalui Model Law on Electronic Commerce 1996. Sementara itu, Apabila terjadi perselisihan antar pihak yang melakukan transaksi e-Commerce di berbagai negara, maka penyelesaiannya dapat dilakukan melalui kesepakatan bersama para pihak, baik melalui metode litigasi maupun non litigasi.

Kata Kunci: Hukum Dagang Internasional, Perlindungan Konsumen, E-Commerce

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## 1. Introduction

The economy is one of the factors influencing the progress of a nation or country. Economic growth can be defined as a process of sustainable and continuous improvement in the economic conditions of a country towards a better state over a specific period. High and stable economic growth can have a positive impact on people's welfare and the country's progress financially.<sup>1</sup> One of the fundamental components that impact a country's economic growth is the widespread and efficient development and utilization of information and communication technology by various parties, especially in the field of trade.

The era of globalization, coupled with advancements in information and communication technology, has driven numerous changes. Technological progress is capable of altering various aspects, particularly the indirect transformation of societal behaviors, thereby leading to swift social changes throughout human history across the globe. Today, inter-community relations are increasingly dynamic. This is supported by various facilities that are able to megacommodating the relationship between the

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<sup>1</sup> Sherly Puspa Dewi, Muhammad Iqbal Fasa, and Suharto, "Investasi Dan Inflasi Sebagai Instrumen Pertumbuhan Ekonomi Di Indonesia Dalam Perspektif Ekonomi Islam" 3, no. 2 (2021).

communities, namely the use of telecommunication devices.<sup>2</sup> Thus, it can be stated that information and communication technology contributes positively to enhancing human welfare, progress, and civilization. However, within this context, progress can also potentially take a negative turn in the course of future civilization's growth and development.

As mentioned above, the advancement of information technology in the modern era brings forth positive impacts, including convenience across various aspects of life. The rapid access to information and communication technology networks presents an opportunity for the development of new endeavors in various fields, such as trade as previously mentioned. One of the roles of information technology in the realm of trade is the emergence of various types and systems of transactions that are easier, more efficient, and effective (modern transactions).

The term 'modern transactions' is used to refer to contemporary trade transactions, involving both goods and services, that can occur without regard to location, time, or national boundaries. Trade is an activity of exchanging goods and services. This activity does not only occur within the country but can also be between countries which is commonly referred to as international trade.<sup>3</sup> Thus, we can understand that one of the advantages of international trade is the expansion of market reach or trading regions, which indirectly contributes to the increase of income for each business participant.

In the real of international trade, the utilization of information and communication technology is of paramount importance for parties across various countries. Online transactions are one of the human activities that utilize digital means. The benefits of digital technology can be used as a business transaction tool.<sup>4</sup> Trade facilitated by information and communication technology can be executed through e-Commerce transactions. E-Commerce itself is a term within international trade denoting transactions conducted via

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<sup>2</sup> Erry Fitrya Primadhany et al., "Legal Aspects Of Consumer Protection In Illegal Sale Of Telecommunication Devices In Indonesia," *Syiah Kuala Law Journal* 4, no. 3 (December 31, 2020): 369–84, <https://doi.org/10.24815/SKLJ.V4I3.18608>.

<sup>3</sup> Erry Fitrya Primadhany, *HUKUM DAGANG INTERNASIONAL* (Klaten: Penerbit Lakeisha, 2020), 1.

<sup>4</sup> Ratna Indah Lestari, Nur Wulan Suci, and Eka Maisara Amalia, "Perlindungan Hukum Terhadap Konsumen Yang Terlibat Dalam Transaksi Jual Beli Pada Media Sosial Instagram," *Jurnal Analisis Hukum* 5, no. 2 (2022), <https://doi.org/10.38043/jah.v5i2.3621>.

the intermediary of information and communication technology, also referred to as electronic commerce.

The rapid growth of e-Commerce businesses in this era of globalization is further supported by the ease provided by technology through various broadcasting platforms, which serve as the venues for e-Commerce transactions. Within the realm of international trade, the development of e-Commerce transactions holds significant benefits. The opportunities presented by e-Commerce transactions have substantial impacts on international trade, benefiting both business operators and consumers. E-Commerce transactions offer advantages to businesses of all scales—large, medium, and small—serving as a means for trading goods and services. Simultaneously, the advantages for consumers lie in the ability of e-Commerce transactions to transcend national borders, providing ease in accessing goods and services that were previously not easily attainable but can now be acquired conveniently and efficiently.

Transactions conducted through e-Commerce can be seen as a new solution or alternative in trade transactions between consumers and producers across borders, erasing limitations and distances. In practice, consumers can access the desired websites or those of companies/producers offering goods or services subject to transactions. Through e-Commerce transactions, producers have broader and greater opportunities for production development, driven by an expanded consumer base.

Thus, it can be affirmed that the e-Commerce transaction system provides a plethora of conveniences and advantages for various parties. However, in this context, e-Commerce transactions also come with certain drawbacks, one of which pertains to consumer protection for those engaging in such transactions. In reality, consumers, as the parties in need of goods/services, are often susceptible to harm. Transactions conducted through e-Commerce bear a high susceptibility to violations of consumer rights. This is due to the fact that electronic network-based transactions often cannot guarantee security; fraudulent sales websites proliferate, and transaction breaches occur frequently. As a result, within the realm of international trade, e-Commerce transactions carried out by consumers and producers from different countries become a vital issue to be discussed.

## 2. Literature Review

### International Trade and International Trade Law

The definition of international trade is the relationship of economic activity between countries which is manifested by the process of exchanging goods or services on a voluntary and mutually beneficial basis.<sup>5</sup> It can be seen that several elements of international trade are activities of exchanging goods and or services, business actors and involving locations whose scope is between countries.

International trade is simply the process of entering and leaving goods between countries in the field of trade transactions. In general, the scope of international trade is as follows:<sup>6</sup>

- a. International buying and selling (export-import), which begins with agreements or contracts of agreement in buying and selling exclusively.
- b. Activities in the trading environment. For example securities or bank credit.
- c. A set of regulations that deal with either regulating or prohibiting trade.
- d. Insurance to prevent risks that must be borne.
- e. Freight or transportation. For example the transportation of goods by sea, air and land.
- f. Settlement of trade disputes through arbitration or other institutions.

International trade requires a set of rules that can guide its implementation, namely international trade law. International trade law includes multilateral, bilateral and regional international agreements. The definition that can be used as a guideline is that international trade law is a set of legal rules governing trade relations between countries in the field of goods, services and intellectual property rights by forming bilateral, regional and multilateral trade agreements.<sup>7</sup>

Sudargo Gautama quoted from the UN Secretary General's report that the formulation of international trade law was "The Body of rules governing commercial

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<sup>5</sup> Huala Adolf, *Hukum Perdagangan Internasional* (Jakarta: RajaGrafindo Persada, 2004), 1.

<sup>6</sup> Venantia Sri Hadiarti, *Langkah Awal Memahami Hukum Perdagangan Internasional Dalam Era Globalisasi* (Jakarta: Penerbit Unika Atma Jaya, 2019), 5.

<sup>7</sup> Hadiarti, 68.

relations of private law nature involving different countries". (All the rules governing trade relations are Civil Law in nature and cover various countries).<sup>8</sup>

International trade law consists of a collection of legal rules consisting of various types of rules or heterogeneous in nature. The rules governing international trade can be found in various sources of law namely customs, statutes, international conventions, court decisions and arbitral awards.<sup>9</sup>

### **Definition of e-Commerce Transactions**

The advancement of information and communication technology in the current era of globalization has created various opportunities and new types of businesses, where business transactions are increasingly conducted through electronic means. Trade carried out via electronic media enables individuals to easily engage in buying and selling transactions. These transactions conducted through electronic media are often referred to as e-Commerce transactions. Through e-Commerce transactions, individuals can swiftly and effortlessly engage in buying and selling without geographical constraints.

Electronic commerce, or e-Commerce transactions, involve trade transactions conducted through communication networks, computers, or other electronic devices in the process of business or commercial transactions. E-Commerce is popularly understood as transactions carried out via the use of the internet and computers through web networks or web browsers, facilitating the buying and selling of goods and services.<sup>10</sup>

E-Commerce, also known as electronic commerce, is an e-lifestyle that enables online buying and selling transactions to be conducted by various parties from different locations without geographical limitations. In several sources, it is mentioned that e-Commerce transactions can be understood through various definitions, one of which is as stated in the previous paragraph. Among other definitions concerning e-Commerce transactions are the following:<sup>11</sup>

1. E-Commerce is a transaction involving the purchase of goods and services through the

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<sup>8</sup> Hadiarti, *Langkah Awal Memahami Hukum Perdagangan Internasional Dalam Era Globalisasi*.

<sup>9</sup> Ajendra Srivastava, *Modern Law of International Trade*, International Law and the Global South (Singapore: Springer Singapore, 2020), 2, <https://doi.org/10.1007/978-981-15-5475-9>.

<sup>10</sup> Raymond McLeod, George Jr., and P. Schell, *Sistem Informasi Manajemen* (Jakarta: Salemba, 2008), 57.

<sup>11</sup> Taufik Hidayat, *Panduan Membuat Toko Online Dengan OSCommerce* (Jakarta: MediaKita, 2016), 5.

use of information and communication technology, particularly internet access, especially the world wide web.

2. E-Commerce is a business transaction or the act of buying and selling goods and services electronically through the internet as a general communication medium.
3. E-Commerce is the buying and selling or trading of goods and services through the medium of the internet.

David Baum suggests that the term e-Commerce transactions or electronic commerce, also known as digital commerce, encompasses a bundle of the dynamic development of technology, applications, and trade processes that connect producers with consumers through electronic or digital communication channels.<sup>12</sup> In line with the changing times and technology, e-Commerce transactions have evolved rapidly towards progress within the realm of commerce. In connection to this, the significance is evident when observing the quantity of transactions carried out through this medium. Some characteristics of transactions conducted through e-Commerce are as follows:

1. E-Commerce transactions provide opportunities for both producers and consumers to enter the global market rapidly, without the constraints of national boundaries.
2. E-Commerce transactions offer the possibility for parties to engage in buying and selling transactions without the need for direct physical interaction.
3. Technological infrastructure is a pivotal element in e-Commerce transactions.

Based on the above definitions, it can be concluded that e-Commerce transactions enable commercial transactions to occur across national borders with a higher level of efficiency and cost-effectiveness compared to traditional trading systems. Some benefits of conducting transactions through e-Commerce in the world of trade include higher levels of efficiency and effectiveness. Another advantage of these transactions for producers is the broadened scope of product marketing, which is not confined to geographical boundaries but can be undertaken wherever both consumers and producers are located.<sup>13</sup>

### **3. Methodology**

The research method is normative research using library law research methods. The

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<sup>12</sup> Ronald Saija and Roger F.X.V. Letsoin, *Buku Ajaran Hukum Perdata* (Yogyakarta: Deepublish, 2016), 158.

<sup>13</sup> M. Suyanto, *Strategi Periklanan Pada E-Commerce Perusahaan Top Dunia* (Yogyakarta: Andi, 2003), 27.

approach used is a conceptual approach. The legal materials used are regulations regarding international trade. In this study, the primary legal materials under scrutiny are regulations that pertain to international trade. These regulations could encompass a wide array of legal frameworks, agreements and treaties that govern trade relationships between nations. By dissecting these regulations, the research aims to extract valuable insights into the legal intricacies surrounding international trade. Secondary legal materials are in the form of books, journal articles, and research results.

#### **4. Results And Discussion**

As previously mentioned, one of the advantages of e-Commerce transactions is their efficiency. Transactions carried out through electronic media facilitate businesses, as producers, in marketing their products to various parties (across countries) without requiring substantial operational costs. Meanwhile, for consumers engaging in transactions via electronic media, one can save time due to the ease of swiftly and accurately accessing information about products. Additionally, consumers can conduct transactions from different locations without the limitations of time constraints.<sup>14</sup>

Based on the above information, despite the numerous advantages of e-Commerce transactions, it is important to note that transactions conducted through electronic means are sometimes vulnerable to misuse by third parties, such as theft of valuable confidential information, leading to significant losses. Moreover, a drawback of these transactions is the potential for unauthorized access. External parties gaining access to data that should not be used for their personal purposes, commonly referred to as hackers, is a significant concern. This drawback poses a risk that can result in substantial losses for all parties involved, especially consumers. Consequently, such incidents can erode consumer trust in producers when conducting transactions via electronic networks (e-Commerce)

#### **Consumer Protection in e-Commerce Transactions under International Trade Law**

E-Commerce transactions, as previously mentioned, involve trade transactions conducted electronically through internet networks. Therefore, discussing the legal aspects

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<sup>14</sup> Ebit Juanda, *Tujuh Cara Cepat Pintar Komputer* (Jakarta: Ebit Juanda, 2018), 26.

of e-Commerce transactions within the scope of international trade law is crucial. This strategic step ensures legal protection to all parties, offering assurance and recourse in cases of misunderstandings or disputes that may arise.

The legal aspects within international trade law that relate to technology and the internet are referred to as cyberlaw. Cyberlaw encompasses a set of legal regulations that govern systems and mechanisms aimed at providing protection, safeguarding, and ensuring security against fraudulent activities, theft, and the destruction of global information systems. Such actions are categorized as criminal offenses and can consequently be subjected to legal sanctions and penalties.<sup>15</sup> Based on the aforementioned points, the unification of laws governing e-Commerce transactions across various countries becomes highly important. Through such legal frameworks, it is anticipated that doubts and legal uncertainties can be minimized, if not eradicated, ensuring a more consistent and predictable legal environment.

With the development of technology and the need for legal protection, efforts toward legal harmonization in relation to e-Commerce transactions are imperative. These transactions have been regulated by an international judicial body, the United Nations Commission on International Trade Law (UNCITRAL), a UN entity. Through this Commission, the UNCITRAL Model Law on Electronic Commerce was created, approved in 1996 under General Assembly Resolution No. 51/162 on December 16th.

The UNCITRAL Model Law on E-Commerce implicitly addresses matters concerning legal protection in e-Commerce transactions and provides explanations regarding electronic data interchange (EDI). In this Model Law, e-Commerce transactions are defined as international trade transactions conducted using electronic technology facilities, such as data transmission through certain means, including internet networks as a primary basis for transactional mediums.

The United Nations Commission on International Trade Law (UNCITRAL) Model Law was established with the aim of substantively harmonizing internet law. However, this Model Law doesn't fully provide comprehensive legal protection for users or parties

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<sup>15</sup> Sukarmi, *Cyber Law: Kontrak Elektronik Dalam Bayang-Bayang Pelaku Usaha (Cyberlaw Indonesia)* (Bandung: Pustaka Sutra, 2008), 182.

involved in international cross-border transactions. This is due to the fact that the Model Law only offers protection for parties engaged in international transactions concerning transaction validity and digital signatures. Subsequently, the UNCITRAL Model Law serves as a foundation for the development of e-Commerce regulatory frameworks in many countries.

Based on the above, in the author's opinion, while the Model Law might not entirely offer comprehensive consumer protection for parties engaged in electronic transactions, it marks an initial step towards providing legal protection and certainty through substantive legal harmonization in global e-Commerce transactions for the world's population. This can be understood as the goal of this model law – the modernization of legal regulations in electronic trade transactions.

### **Resolution of e-Commerce Transaction Disputes**

Global trade is a vital economic process that greatly contributes to advancing a nation's economic expansion. The World Trade Organization (WTO) is an entity focused on matters related to trade, established due to international trade initiatives. The fundamental aim of global trade is to elevate domestic earnings, thus promoting heightened economic engagement and progress within the community. International relations established between countries, between countries and individuals, or between countries and international organizations, as well as interactions between individuals from different countries, are not always guaranteed to be smooth. Often, disputes arise within these relationships, leading to conflicts or disagreements.<sup>16</sup> A dispute refers to a disagreement or conflict that arises between two or more individuals regarding a matter, whether related to rights, obligations, or other issues. An international dispute is a conflict between parties, also known as subjects of international law, concerning disputed rights, obligations, claims recognized or denied by each party involved.

When discussing dispute resolution in international trade law, it's important to first understand the principles governing the resolution of international trade disputes. These principles include:

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<sup>16</sup> Huala Adolf, *Hukum Penyelesaian Sengketa Internasional* (Jakarta: Sinar Grafika, 2004), 1.

### 1. Principle of Consensus (Konsensus)

The principle of consensus, also known as agreement among the parties, is a fundamental principle in resolving international trade disputes. It serves as the basis for the implementation of the dispute resolution process in international trade. This principle is based on the agreement reached among the disputing parties on whether to settle the dispute through judicial means or amicably. Therefore, consensus is considered an essential principle in determining the resolution of international trade disputes.

### 2. Principle of Freedom to Choose Dispute Resolution Methods and Applicable Law.

Under this principle, the parties have the freedom to choose the methods of dispute resolution and the applicable law for settling their disputes. This means that the parties involved have the liberty to decide on the methods and laws that will govern the resolution of the dispute at hand. Hence, this principle acknowledges the full autonomy of the parties to select the mechanisms, methods, and laws they wish to use. These principles play a crucial role in shaping the approach to resolving international trade disputes. They reflect the importance of allowing parties the flexibility to choose the most suitable means of resolution while ensuring that any decision is made by mutual agreement and in accordance with the chosen legal framework.<sup>17</sup>

### 3. Principle of Good Faith (Prinsip Itikad Baik):

The principle of good faith emphasizes that in dispute resolution, the presence of good faith is a requirement and obligation that must be present. This principle is of paramount importance to ensure that the resolution of disputes is conducted in a manner that does not harm the parties involved.<sup>18</sup>

### 4. Principle of Exhaustion of Local Remedies.

This principle has its origins in customary international law. The United Nations International Law Commission (ILC) included this principle in their efforts to establish regulations for resolving international trade disputes, incorporating it into the ILC Draft Articles on State Responsibility. According to this principle, parties involved in a dispute

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<sup>17</sup> Adolf, 196.

<sup>18</sup>Indonesia, *Undang-Undang tentang Arbitrase dan Alternatif Penyelesaian Sengketa*, Undang-Undang Nomor 30 Tahun 1999, Pasal 6 ayat (1).

arising from a trade transaction should first explore the available dispute resolution procedures or remedies provided by the domestic law of the country where they feel aggrieved before resorting to international litigation. This principle emphasizes the importance of utilizing domestic mechanisms to resolve disputes before seeking recourse in international courts, thus promoting respect for national sovereignty and encouraging effective and efficient dispute resolution.<sup>19</sup>

As for the standards for conducting dispute resolution in international trade of e-Commerce transactions, there is no agreement within the world trade forum. However, in practice, every trade dispute should be pursued for amicable settlement between the parties.<sup>20</sup> In relation to this, in e-Commerce transactions, one of the active institutions involved in helping to address international electronic transaction issues is the Organization for Economic Co-operation and Development (OECD). The OECD is a consultative institution that focuses on providing assistance to parties engaged in international trade disputes. It also aids its member countries in advancing economic growth, employment opportunities, and quality of life standards by coordinating laws, regulations, and policies it establishes. Since 1997, the OECD has been hosting annual conferences on electronic transactions with the aim of developing legal protection guidelines for parties involved in international transactions (Guidelines on Consumer Protection), fundamental taxation rules, and policies related to dispute resolution for electronic business players, including countries like Indonesia.

Countries that are members of the OECD recognize the need for a coordinated international approach to address dispute resolution issues in electronic transactions. The Guidelines for Consumer Protection in the Context of Electronic Commerce is a significant document formulated by the OECD, serving as a framework for consumer protection for parties involved in international transactions and dispute resolution.

The function of these guidelines is to provide recommendations and reference points for governments, businesses, and parties engaged in international transactions, regarding

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<sup>19</sup> Huala Adolf, *Hukum Perdagangan Internasional*, 200.

<sup>20</sup> Edmond Makarim, "Kajian Hukum Transaksi Perdagangan Secara Elektronik (E-Commerce) Di Indonesia," in *Kompilasi Makalah Seminar Ikahi; Tahun 2013-2019* (Jakarta: Pengurus Pusat Ikatan Hakim Indonesia, 2019), 35.

effective legal protection for parties in electronic transactions (e-Commerce). The existence of these guidelines aims to describe the uniqueness of changes in terms of justice as a crucial factor in realizing legal protection for parties involved in e-Commerce transactions.

## 5. CONCLUSION

E-Commerce, also known as electronic commerce, is an e-lifestyle that enables online buying and selling transactions to take place between parties from various locations without geographical boundaries. E-Commerce transactions, also referred to as electronic trade or digital trade, represent a technological advancement, application, and process of trade or business that connects producers with consumers through electronic or digital communication.

The legal protection of e-Commerce transactions in international trade law is governed by the United Nations Commission on International Trade Law (UNCITRAL), which operates under the UN. Through this commission, the UNCITRAL Model Law on Electronic Commerce was established and approved in 1996 based on General Assembly Resolution No. 51/162, dated December 16. The UNCITRAL Model Law on E-Commerce implicitly covers aspects related to legal protection in e-Commerce transactions, as well as explanations regarding the concept of electronic data interchange (EDI). The Model Law was designed with the goal of achieving substantive harmonization of internet law, although it may not yet fully provide comprehensive legal protection for users or parties involved in cross-border international transactions.

There is currently no agreement on standardized dispute resolution mechanisms for e-Commerce transactions within the global trade community. However, in practice, every trade dispute should be resolved through peaceful means between the parties. In relation to this, one active institution that plays a role in resolving international electronic transaction issues is the Organization for Economic Co-operation and Development (OECD).

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