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Legal Protection for Consumers in Cross-Border E-Commerce Transactions: An International Private Law Analysis of Jurisdiction and Choice of Law

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Abstract

Cross-border electronic commerce enables consumers to purchase goods and services from businesses located in other countries, but it also creates legal uncertainty when disputes arise over defective products, non-delivery, misleading information, payment, or unfair contractual terms. This article examines the legal protection of consumers in cross-border e-commerce through the perspective of international private law, focusing on international jurisdiction and the determination of applicable law. It uses doctrinal legal research with statutory, conceptual, and comparative approaches. The analysis considers Indonesian consumer and electronic transaction legislation alongside the European Union's Brussels I Recast and Rome I frameworks, relevant Hague instruments, and international soft-law standards. The study finds that consumer protection depends not only on substantive rights but also on whether consumers can bring claims before an accessible court and rely on mandatory protections that cannot be waived through standard-form terms. The European Union provides a relatively structured protective model through consumer jurisdiction and choice-of-law rules, particularly where a trader directs commercial activities to the consumer's country. Indonesia recognizes electronic contracts and requires specified contractual information, including choice-of-law provisions, but cross-border enforcement and coordination of jurisdiction remain challenging. The article argues for a consumer-oriented connecting factor based on the consumer's habitual residence where the trader purposefully targets that market, limits on pre-dispute forum and law-selection clauses, stronger platform accountability, and accessible cross-border dispute resolution. These measures can improve predictability while preserving legitimate party autonomy.

Keywords Cross-Border E-Commerce; Consumer Protection; International Private Law; Jurisdiction; Choice of Law; Electronic Contracts

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INTRODUCTION

The expansion of digital platforms has transformed consumer markets by allowing individuals to order goods and services from businesses located beyond their own national borders. A consumer may conclude a contract through a marketplace operating in one country, purchase from a seller established in another, make payment through a third-party provider, and receive delivery through an international logistics network. Although the transaction appears to take place through a single interface, its legal elements may be distributed across several jurisdictions. When a dispute occurs, the consumer may face uncertainty about which court has authority, which country's law governs the contract, and how a judgment or remedy can be enforced abroad (Hill, 2008; Hörnle, 2021).

Cross-border e-commerce creates familiar consumer risks in a transnational form. These include misleading product descriptions, counterfeit or unsafe goods, non-delivery, hidden charges, unauthorized payment, misuse of personal information, and contractual clauses that restrict refunds or direct disputes to distant courts. Such risks are intensified by information and bargaining asymmetry: standard terms are commonly drafted by traders or platforms and accepted through a click, often without meaningful negotiation. The consumer's practical ability to pursue a claim may therefore be undermined even where substantive consumer rights exist (Howells & Weatherill, 2017; Loos, 2010).

The central problem is not simply whether a consumer is legally protected, but whether that protection can be invoked effectively when the trader is abroad. International private law (also known as conflict of laws) addresses this problem through rules on jurisdiction, applicable law, and recognition and enforcement of judgments. Jurisdiction identifies the court entitled to hear the dispute; choice-of-law rules identify the substantive law governing the contractual relationship. These questions are connected but distinct. A court may have jurisdiction while being required to apply foreign law, and a contractual choice of law does not automatically determine which court may hear a claim (Dicey, Morris, & Collins, 2022; Briggs, 2013).

Indonesia's legal framework includes Law No. 8 of 1999 on Consumer Protection, Law No. 11 of 2008 on Electronic Information and Transactions as amended most recently by Law No. 1 of 2024, Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions, and Government Regulation

No. 80 of 2019 on Trading Through Electronic Systems. These instruments recognize consumer rights and regulate electronic transactions, electronic contracts, and obligations of electronic-commerce businesses. In particular, Government Regulation No. 71 of 2019 requires electronic contracts directed to Indonesian residents to be in Indonesian and to contain specified information, including a choice-of-law provision (Indonesia, 1999, 2019a, 2019b, 2024).

However, domestic rules do not by themselves resolve every cross-border conflict. Questions remain where a foreign trader has no physical presence in Indonesia, where a marketplace operates through several corporate entities, or where the contract selects foreign law and an overseas forum. The practical costs of litigation, difficulty serving foreign defendants, and obstacles to enforcing judgments may make formal rights inaccessible. International standards therefore provide useful comparative guidance, even where they do not directly bind Indonesia (United Nations Conference on Trade and Development [UNCTAD], 2017; OECD, 2016).

This article addresses three research questions: (1) how should international jurisdiction be determined in consumer disputes arising from cross-border e-commerce; (2) how should the applicable law be selected while preserving mandatory consumer protection; and (3) how can Indonesian law strengthen effective consumer remedies in transactions involving foreign traders and platforms? The article argues that consumer protection requires a coordinated approach combining a predictable consumer-residence connection, limits on unfair pre-dispute clauses, effective platform obligations, and accessible cross-border redress.

METHOD

This study employs doctrinal legal research using statutory, conceptual, and comparative approaches. The statutory approach examines Indonesian legislation governing consumer protection, electronic information and transactions, electronic systems, and trading through electronic systems. The conceptual approach analyses party autonomy, habitual residence, targeting activity, mandatory rules, weaker-party protection, and access to justice. The comparative approach considers the European Union's Brussels I Recast Regulation and Rome I Regulation as influential models for allocating jurisdiction and determining applicable law in consumer contracts.

Primary legal materials consist of Indonesian statutes and regulations, relevant European Union regulations, and international instruments concerning choice of court, electronic communications, and consumer protection. Secondary materials

include books and peer-reviewed scholarship on international jurisdiction, e-commerce, consumer contracts, and conflict of laws. The materials were identified through legal and scholarly sources and selected for their direct relevance to jurisdiction, choice of law, and cross-border consumer remedies.

The analysis is qualitative and prescriptive. Legal provisions and scholarly arguments are interpreted systematically, compared across jurisdictions, and assessed against the practical objective of ensuring that consumers can identify the competent forum and obtain the benefit of mandatory protections. This study does not report empirical interviews or statistical measurements; its conclusions are based on normative legal analysis.

FINDINGS AND DISCUSSION

1. Cross-Border E-Commerce and the Need for Effective Consumer Protection

A cross-border consumer transaction generally involves a consumer acting for purposes outside a trade or profession and a trader acting in the course of business, where the parties are connected with different states. The cross-border element may arise from the trader's establishment, the location of the platform, the place of delivery, the payment intermediary, or the consumer's habitual residence. The existence of a website that can technically be accessed worldwide should not, by itself, mean that a trader has deliberately entered every national market. A more balanced analysis asks whether the trader has directed commercial activity toward the consumer's country (Chen, 2023; Hill, 2008).

The targeting inquiry may consider the language and currency used, international delivery options, country-specific advertising, domain names, customer-service arrangements, and whether the trader actively solicits consumers in the relevant state. No single indicator should necessarily be decisive; the overall commercial context matters. This approach distinguishes a trader who intentionally serves a foreign market from one whose website is merely accessible abroad, and it provides a principled basis for applying protective jurisdiction and choice-of-law rules (Chen, 2023; Pammer v. Reederei Karl Schlüter GmbH & Co KG, 2010).

Consumer protection in this context has both substantive and procedural dimensions. Substantive protection includes accurate information, product conformity, remedies for defective goods, protection against unfair terms, and safeguards for payments and personal data. Procedural protection concerns the consumer's ability to bring a claim without disproportionate travel, translation, legal,

and enforcement costs. A legal system that recognizes extensive consumer rights but requires an individual to litigate in a distant country may provide only nominal protection (Hörnle, 2021; Howells & Weatherill, 2017).

2. International Jurisdiction in Consumer Disputes

Jurisdiction rules determine which national court may adjudicate a dispute. Traditional bases include the defendant's domicile, the place of performance of contractual obligations, and a valid agreement on jurisdiction. In consumer contracts, however, unrestricted reliance on these bases can place the weaker party at a disadvantage. The trader may be able to litigate in multiple locations, while the consumer may lack the resources to pursue a claim outside the state of residence. Special consumer jurisdiction rules seek to correct this imbalance without eliminating legal certainty for businesses (Briggs, 2013; Dicey et al., 2022).

The Brussels I Recast Regulation (Regulation (EU) No. 1215/2012) provides a structured model. Under its consumer-contract provisions, a consumer may generally sue a trader in the courts of the Member State where the consumer is domiciled when the trader pursues commercial or professional activities in that state, or directs such activities to that state, and the contract falls within the scope of those activities. A trader may generally sue the consumer only in the courts of the Member State where the consumer is domiciled. The rules restrict the circumstances in which parties may derogate from these protective provisions by agreement (European Parliament & Council, 2012).

The directed-activities criterion is particularly important for online commerce. In Pammer and Hotel Alpenhof, the Court of Justice of the European Union explained that accessibility of a website alone is insufficient; relevant indications may include the international character of the activity, directions to foreign customers, use of languages or currencies, and arrangements for international bookings or deliveries. The assessment is contextual rather than mechanical. This prevents jurisdiction from being based solely on the global reach of the internet while protecting consumers deliberately targeted by foreign traders (Pammer, 2010; Chen, 2023).

For Indonesia, the challenge is the absence of a single, comprehensive special jurisdiction regime specifically designed for consumer contracts concluded with foreign e-commerce traders. General procedural and private international law principles may not adequately address the realities of a platform-mediated transaction. A consumer's residence, the trader's purposeful targeting of Indonesian consumers, and the location of the relevant performance should be considered in a

clear statutory framework. Such a framework would make jurisdiction more predictable and reduce the risk that a consumer is forced to pursue a modest claim in a distant forum.

Forum-selection clauses require particular scrutiny. A clause embedded in standard online terms that assigns exclusive jurisdiction to a foreign court may be formally presented as consent, but the consumer may have had no realistic opportunity to negotiate it or understand its consequences. Party autonomy is important for commercial certainty, yet it should not permit a trader to contract out of mandatory consumer safeguards. The validity and effect of a clause should therefore be assessed by reference to the applicable jurisdictional rules, bargaining circumstances, transparency, and public policy (Hörnle, 2021; UNCITRAL, 2019).

3. Choice of Law and the Protection of Mandatory Consumer Rights

Choice of law identifies the substantive rules governing the contract. In international commerce, party autonomy is commonly accepted because it enables parties to select a legal system in advance. Consumer contracts require a more qualified approach: the consumer usually has less bargaining power and may not understand the practical consequences of selecting a foreign law. A choice-of-law clause should therefore not automatically deprive the consumer of non-derogable protection available under the law that would otherwise apply (Basedow, 2012; Symeonides, 2014).

Article 6 of the Rome I Regulation (Regulation (EC) No. 593/2008) illustrates this protective model. Where a professional pursues commercial activities in the country of the consumer's habitual residence or directs such activities to that country, and the contract falls within those activities, the contract is generally governed by the law of the consumer's habitual residence. The parties may choose another law, but that choice cannot deprive the consumer of the protection afforded by provisions that cannot be derogated from by agreement under the law that would have applied in the absence of choice (European Parliament & Council, 2008).

The Rome I approach balances autonomy and protection rather than rejecting contractual choice altogether. A consumer may benefit from a clearly disclosed choice of law, but the clause cannot be used as a device to remove mandatory protections. The targeting criterion also aligns the choice-of-law analysis with the jurisdictional inquiry under Brussels I Recast. This coordination improves predictability because both questions consider whether the trader deliberately served the consumer's home market (Chen, 2023; European Parliament & Council, 2008, 2012).

Indonesian Government Regulation No. 71 of 2019 requires electronic contracts directed to Indonesian residents to include a choice-of-law provision and stipulates that such contracts must comply with Indonesian rules on standard clauses. This is an important transparency requirement, but the mere presence of a choice-of-law term does not answer whether the selected law may displace mandatory Indonesian consumer protections in a particular cross-border dispute. The provision should be interpreted consistently with the protective purpose of Law No. 8 of 1999 and with the rules governing electronic commerce (Indonesia, 1999, 2019a).

A consumer-oriented approach would recognize the law of the consumer's habitual residence as a presumptive protective connection when the foreign trader intentionally targets that market. Party autonomy may remain available, provided that the choice is clear, informed, and does not deprive the consumer of mandatory protections. This approach is consistent with the broader conflict-of-laws principle that party autonomy operates within limits imposed by overriding mandatory rules and public policy (Basedow, 2012; Symeonides, 2014).

4. Indonesian Legal Framework for Cross-Border E-Commerce

Law No. 8 of 1999 on Consumer Protection establishes fundamental rights, including the right to comfort, security, and safety; the right to choose goods and services; the right to accurate, clear, and honest information; the right to be heard; and the right to compensation where goods or services do not conform to the agreement or applicable standards. It also regulates business-actor obligations and prohibits certain standard clauses that transfer or eliminate business responsibility. These protections remain relevant when a consumer purchases through an electronic channel, although cross-border enforcement may complicate their practical use (Indonesia, 1999).

Government Regulation No. 80 of 2019 on Trading Through Electronic Systems provides a more specific framework for electronic commerce. It regulates parties involved in electronic trading, business licensing and obligations, consumer protection, electronic offers and contracts, payments, delivery, advertising, and dispute resolution. It is significant because it recognizes that electronic commerce creates responsibilities throughout the transaction ecosystem, rather than treating the online sale as an ordinary offline contract conducted through a different medium (Indonesia, 2019b).

Government Regulation No. 71 of 2019 sets requirements for electronic systems and transactions. Among other matters, it requires good faith, prudence,

transparency, accountability, and fairness in electronic transactions. It establishes conditions for the validity of electronic contracts and requires contracts directed to Indonesian residents to be made in Indonesian, to comply with standard-clause rules, and to contain essential information, including the choice of law for resolving electronic-transaction disputes. Law No. 1 of 2024, as the second amendment to the Electronic Information and Transactions Law, also addresses international electronic contracts using standard clauses in Article 18A, reinforcing the relevance of Indonesian law to specified international electronic-contract situations (Indonesia, 2019a, 2024).

These instruments should be read together. The Consumer Protection Law supplies the general rights and duties; the Electronic Information and Transactions Law recognizes the legal significance of electronic transactions and contracts; and the two government regulations elaborate operational obligations in electronic systems and trading. Nonetheless, the framework would benefit from clearer rules on international jurisdiction, the legal effect of foreign forum clauses, the application of mandatory consumer rules, and cooperation for cross-border redress. The issue is not simply the absence of consumer rights, but the fragmentation between substantive protection and transnational enforcement.

5. Standard Terms, Online Platforms, and Responsibility

Online consumer contracts commonly use standard-form terms presented through click-wrap or browse-wrap mechanisms. Consumers may be required to accept lengthy terms before completing a purchase, while important provisions on governing law, jurisdiction, refunds, liability limitations, and dispute resolution are placed in hyperlinks or dense legal language. Formal acceptance should not be treated as conclusive proof that the consumer has meaningfully agreed to a burdensome foreign forum or a term that removes statutory rights. Transparency, prominence, intelligibility, and fairness should be central to assessing such clauses (Loos, 2010; Howells & Weatherill, 2017).

The role of the marketplace must also be assessed carefully. A platform may merely provide digital infrastructure, or it may exercise substantial control over seller admission, product presentation, payment processing, delivery arrangements, complaint handling, and refunds. The appropriate allocation of responsibility should reflect the platform's actual functions, representations, and degree of control, as well as the applicable statutory framework. Consumer-facing statements that create a reasonable impression that the platform guarantees a transaction may be relevant

when determining responsibility and legitimate consumer expectations (UNCTAD, 2017; OECD, 2016).

The OECD Recommendation on Consumer Protection in E-commerce emphasizes fair business practices, clear information, payment protection, dispute resolution, and consumer education. The United Nations Guidelines for Consumer Protection similarly recognize the need for effective consumer protection in electronic commerce and international cooperation. Although these instruments are not equivalent to binding legislation, they provide useful policy benchmarks for national regulation and cross-border cooperation (OECD, 2016; United Nations, 2015).

6. Recognition, Enforcement, and Access to Cross-Border Redress

Winning a case is not the same as obtaining an effective remedy. If the trader's assets are located abroad, a consumer may need recognition and enforcement proceedings in the state where assets are found. The Hague Convention of 2005 on Choice of Court Agreements seeks to improve the effectiveness of exclusive choice-of-court agreements in international civil and commercial matters, but its scope and exclusions mean that it should not be assumed to provide a complete solution for consumer disputes. The 2019 Hague Judgments Convention can facilitate circulation of judgments in civil or commercial matters between contracting states, subject to its scope and exclusions; it likewise does not create a universal consumer-claims mechanism (HCCH, 2005, 2019).

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards may be relevant where a dispute is validly submitted to arbitration, but arbitration clauses in consumer standard terms raise separate questions of consent, fairness, cost, and access to justice. A theoretically enforceable arbitral award may be of little practical value if the cost of proceedings exceeds the value of the consumer's claim. Consumer dispute resolution should therefore include proportionate procedures, accessible online complaint mechanisms, and safeguards against compulsory procedures that effectively deter claims (Briggs, 2013; Hörnle, 2021).

Online dispute resolution (ODR), mediation, and coordinated complaint-handling systems can reduce the cost of low-value cross-border disputes. However, ODR should not become a mechanism for forcing consumers to waive court access or accept remedies below mandatory legal standards. Effective systems require neutral administration, clear procedural rules, accessible language, data security, transparent outcomes, and a route to judicial review where appropriate. International

cooperation among consumer authorities and platform regulators is also essential when the trader is outside the consumer's state (UNCTAD, 2017; OECD, 2016).

7. A Consumer-Oriented Framework for Indonesia

The analysis supports five complementary measures. First, legislation or authoritative procedural guidance should clarify when Indonesian courts may hear consumer claims against foreign traders, using the consumer's habitual residence and the trader's purposeful direction of activities to Indonesia as important connecting factors. This would avoid treating mere website accessibility as sufficient while ensuring that businesses deliberately serving Indonesian consumers cannot rely on distance alone to defeat claims (Chen, 2023; Hill, 2008).

Second, choice-of-law and forum clauses should be subject to meaningful transparency and fairness controls. Pre-dispute clauses in standard terms should not deprive consumers of mandatory Indonesian protection or make remedies practically inaccessible. Where the trader targets Indonesia, Indonesian mandatory consumer rules should remain applicable to the extent prescribed by law, even if another law is selected for other contractual matters. Third, electronic contracts should display governing-law, complaint, refund, and dispute-resolution information prominently and in accessible language, consistent with the requirements of Government Regulation No. 71 of 2019 (Indonesia, 2019a; UNCITRAL, 2019).

Fourth, platform obligations should be calibrated to the platform's actual role and control. Platforms should provide accessible seller identity and contact information, preserve transaction records, operate effective complaint and refund channels, and cooperate with competent authorities. Fifth, Indonesia should strengthen cross-border cooperation through consumer-authority networks, compatible ODR mechanisms, and practical arrangements for service of process and enforcement. These measures would translate substantive consumer rights into usable remedies (OECD, 2016; UNCTAD, 2017).

These recommendations do not require abandoning party autonomy or imposing unlimited liability on every intermediary. Rather, they seek to establish a fair allocation of risk. Traders that actively access a national consumer market should anticipate the application of that market's mandatory consumer safeguards. Consumers, in turn, should receive clear information about the trader, applicable terms, and available remedies. A predictable targeting test and proportionate procedural rules can serve both consumer confidence and legitimate cross-border

commerce.

CONCLUSION

Cross-border e-commerce exposes consumers to jurisdictional and choice-of-law uncertainty because the parties, platform, payment arrangements, delivery, and assets may be located in different states. Effective protection therefore requires more than recognition of substantive consumer rights. Consumers must also be able to bring claims before an accessible court, rely on mandatory protections, and obtain remedies that can be implemented across borders. The European Union's Brussels I Recast and Rome I frameworks offer a useful comparative model by linking protective jurisdiction and applicable law to the trader's pursuit or direction of activities toward the consumer's habitual-residence state.

Indonesia has an important foundation in Law No. 8 of 1999, the Electronic Information and Transactions Law as amended by Law No. 1 of 2024, Government Regulation No. 71 of 2019, and Government Regulation No. 80 of 2019. Nevertheless, further clarity is needed on international jurisdiction, the limits of foreign forum and choice-of-law clauses, the role of online platforms, and cross-border enforcement. A consumer-oriented framework should use purposeful targeting as a connecting factor, preserve mandatory consumer rights, require transparent standard terms, and develop accessible ODR and international cooperation. Such an approach can balance party autonomy and legal certainty with the practical need to protect consumers as the weaker party in global digital markets.

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