

Consumer Legal Protection on Electronic Transactions through the Platform without the Collective Account Features by Trusted Third Parties



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ABSTRACT: This study examines the existence of a marketplace to meet the needs of the e-commerce-based community and legal protection for consumers in the event of a default that harms them due to online transactions without a trusted third-party intermediary as joint account holders. The formulation of the problem discussed is how a marketplace among the public facilitates online shopping, and how is legal protection for consumers who transact without a joint account? The research method used is normative and literature study based on primary materials (laws), secondary materials (scientific works, journals, books, documents, and other literature), and tertiary legal materials (legal dictionaries). The study results are that the ease of transacting online makes people start to depend on the existence of e-commerce platforms and marketplaces with various exciting features. If there is a default in transactions carried out without a joint account, legal protection can be given to consumers through complaints to the Consumer Dispute Settlement Agency), which is resolved through litigation or non-litigation.

KEYWORDS: Marketplace, Electronic Transactions, Legal Protection, Joint Account, Good Faith

I. INTRODUCTION

The formation of law is a set of norms that bind people to obey the rules and maintain the behavior in relationships with other people (Rahardjo, 1991:27). The legal relationship arises according to Article 1313 of the Civil Code (from now on referred to as the Civil Code); "An agreement is an act by which one or more persons bind themselves to one or more other persons." If an agreement is reached between the seller and the buyer, there is a sale and purchase.

The Government has given the parties' position in buying and selling a legal umbrella in Law Number 8 of 1999 concerning Consumer Protection (from now on, referred to as UUPK). According to Article 1 paragraph (2) UUPK, the term buyer states, "Consumer is every person who uses goods and/or services available in the community, both for the benefit of oneself, family, other people, and other living creatures and not for trading." While the term seller, according to Article 1 paragraph (3) UUPK; "A business actor is every individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement to organize business activities in various economic fields."

One of the benefits of technological developments is to receive and provide information quickly, as well as communicate without boundaries of distance, space, and time, resulting in a borderless world and significant social change. In addition, it also contributes to the community, company, or government, especially to the emergence of marketplaces and business networks without boundaries (Rokfa, et.al., 2022:162). The Internet is an intermediary medium of interaction in communicating globally and connecting millions of computer networks via satellite, telephone, and others (Priyanto, 2009). The number of users of e-commerce platforms is increasing and triggering a shift in media consumption patterns because it reaches all circles, so it is used as an accurate strategy in marketing products/services. Besides selling products, Internet media can also be used for endorsement or paid promotion activities by celebgrams and/or influencers who are increasingly doing digital marketing because the promotion has been optimally visualized using photos, videos, posters, and animations (Ramli, et.al., 2020:121) The progress of internet-based cyberspace has also affected the economic sector known as digital economics or digital economy, then gave birth to a new buying and selling system, namely electronic transactions or electronic commerce (e-

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commerce) (Indrajit, 2001:33). The World Trade Organization (WTO) explains that the scope of e-commerce consists of production, distribution, marketing, sales, and delivery of goods or services via electronics.

Digital economics requires business actors to run their business with internet media without the need for a physical store so that they play a significant role in changing the face of trade which was initially conventional, namely the direct buying and selling process between business actors and consumers who are both present on the spot, turning into virtual which is done indirectly or indirectly, without meeting face to face in the place. E-commerce is considered to provide convenience for many parties, especially consumers, to fulfill their needs without having to leave the house, access through a device connected to the internet network, and then choose to use a platform or website that is increasingly mushrooming. In line with the understanding according to Black's Law Dictionary, which explains that e-commerce is an online transaction facility that utilizes the internet primarily related to buying and selling a product (Garner, 2014). The e-commerce platform on social media is a computer-based technology that facilitates ideas, ideas, thoughts, and information through the construction of networks and virtual communities regarding electronic communications, personal information, documents, videos, and photos (Dollarhide, 2020).

At the meeting of the Indonesian E-commerce Association (IdEA), some problems had to be addressed so that the local e-commerce industry could develop; 1) find solutions to the challenges of unstable internet infrastructure and unreliable transportation, and inefficient customs clearance procedures; 2) dependence on cash payments; 3) low consumer confidence and security in conducting online transactions; 4) negative stigma of e-commerce; 5) the government's regulatory support has not been maximized for e-commerce start-ups, tiny and medium-sized businesses, primarily related to tax determination; 6) completion of the e-commerce industry protection plan (<https://id.techinasia.com/solusi-rudiantara-pemerintah-kominfo-masalah-e-commerce-indonesia>). E-commerce must remain subject to the general principles of contract law, namely the principle of good faith contained in Article 1338 of the Civil Code; "Agreements must be executed in good faith." This means that the parties involved must have good intentions in carrying out their obligations.

Law Number 11 of 2008 concerning Information and Electronic Transactions, which was subsequently changed to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 (from now on referred to as UU ITE), the meaning of electronic transactions in Article 1 paragraph (2) ITE Law; "Legal actions carried out using computers, computer networks and/or other electronic media." E-commerce creates rights and obligations as a legal consequence of the parties' agreement (Priowirjanto, 2014:287). The agreement is in the form of consumer approval for goods and/or services offered by business actors through a display on the website page, also known as the electronic signing process during purchase, inspection, and delivery (Barkatullah & Prasetyo, 2005:VII).

However, progress that provides many benefits cannot be separated from negative impacts, such as product fraud that does not match the description or the product is not delivered to consumers, thus making consumers suffer losses and decreasing the level of trust in the e-commerce system. Although currently, there are many marketplaces offering services as a trusted third party, namely holding the money paid by consumers not to be directly handed over to business actors until the product ordered is received by them. This method is known as a joint account, so consumers don't have to worry if they want to shop online.

Based on the explanation above, the author would like to study further in the research entitled "Consumer Legal Protection for Electronic Transactions Through Platforms Without Joint Account Features by Trusted Third Parties." The problems discussed are; 1) How is a marketplace among the public to facilitate online shopping, and 2) What is the legal protection for consumers who transact without a joint account?

II. RESEARCH METHODS

The method used in this research is the normative method and literature study; the study of research objects based on sources of legal materials that are still relevant, both primary such as related laws and regulations, secondary such as literature and other reading materials, as well as tertiary namely legal dictionaries. Furthermore, these materials are inventoried and researched using positive laws in force in Indonesia (Waluyo, 1991:14). This research is based on the statute approach and descriptive qualitative approach. The qualitative approach creates descriptive data such as written or oral from the informant and attitudes that are considered and not stated in the form of variables or hypotheses (Moleong, 2000:2).

III. RESULTS AND DISCUSSION

A. The Existence of a Marketplace in the Community as an Effort to Ease Shopping Online

Article 1457 of the Civil Code explains, "A sale and purchase is an agreement in which one party binds himself to deliver an object, and the other party pays the promised price." A sale and purchase agreement is an agreement in which the seller

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transfers or agrees to transfer ownership of the goods to the buyer in exchange for a sum of money called the price (Muhammad, 2010:243). Electronic Commerce (e-commerce) is the process of buying and selling or exchanging products, services, and information through computer networks, requiring databases, electronic mail (e-mail), and other non-computer technology, such as; delivery systems and payment methods. The payment method is a method that consumers can use to pay for goods or services to get the product's benefits.

E-commerce was born based on electronic buying and selling contracts between business actors and consumers, which require a legal force like conventional contracts (Rantung, 2022:89). Article 1 number (17) of U ITE explains that; "Electronic Contract is an agreement of the parties made through the Electronic System." Furthermore, it is also regulated in Article 47 paragraph (3) of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (from now on referred to as PP PSTE), at least containing; identity data of the parties; objects, and specifications; electronic transaction requirements; prices and fees; procedures in the event of cancellation by the parties; provisions that give the injured party the right to be able to return the goods and/or request a replacement of the product if there is a hidden defect; and choice of law for electronic transaction settlement."

However, the ITE Law has not accommodated the legal requirements for electronic contracts, so it still refers to Article 1320 of the Civil Code; agree, speak, a specific thing, and a lawful cause. According to Subekti, the sale and purchase agreement was born when an agreement was reached on goods and prices (Subekti, 1995:2). Agree is a critical point contained in the principle of consensual; if it is associated with e-commerce, it can be seen in Article 20 paragraph (1) of the ITE Law; "Unless otherwise specified by the parties, electronic transactions occur when the transaction offer sent by the Sender has been received and approved by the Recipient."

The existence of an e-commerce platform as a means of buying and selling online is closely related to consumer trust in sellers. Trust is built by one party's belief in his integrity and ability. Moorman, Deshpande, and Zaltman also state that trust is a willingness to rely on a trusted partner (Morgan, 1994). Marketplace management is entirely carried out by the platform provider, while business actors only take care of ordering goods or services (Silviasari, 2022:152). Now various marketplaces are competing to provide the best promos and offer to attract consumers, such as; Shopee, Tokopedia, and Lazada, as online marketplace providers (from now on, referred to as "OMP"). OMP is an application or site that provides e-commerce facilities from various existing sources (Utomo et.al. 2022:348).

The steps in e-commerce are business actors upload product catalogs accompanied by detailed descriptions on the site or marketplace. Consumers choose products to be included in the shopping cart after that fill in their data and address in the order format, then make payments that various methods can make; credit card, bank transfer or electronic wallet (e-wallet), Cash on delivery (COD) or Pay later (pay later). A consumer who submits an offer and places an order into a shopping cart, an agreement is reached, although not directly, and the business actor is obliged to send the goods that have been ordered or do what is his obligation. According to Munir Fuady, e-commerce is divided into (Fuady, 408):

- a. Business to Business (B2B): consumers and business actors are companies, not individuals. Usually, this transaction is done to establish cooperation between these companies.
- b. Business to Consumer (B2C): transactions between companies and consumers. Usually use the website is commonly used by the public.
- c. Consumer to Consumer (C2C): transactions between individuals and individuals who sell goods to each other.
- d. Consumer to Business (C2B): transactions that allow individuals to sell goods to companies.
- e. Non-Business Electronic Commerce
- f. Intra-business (Organizational) Electronic Commerce

Factors that cause e-commerce to develop rapidly; 1) e-commerce can reach more customers without a time limit because it can be accessed continuously by consumers; 2) e-commerce encourages the creativity of business actors and the distribution of information quickly and accurately; 3) e-commerce ensures the efficiency of various things and is informative; 4) e-commerce can increase customer satisfaction (Safitri, 1999). Meanwhile, Desruelle and Burgelman mention five other factors, namely; 1) globalization and trade liberalization; 2) increasingly fierce competition; 3) technological developments; 4) physical reduction of goals, and 5) publicity (Desruelle & Burgelman, 2001:485-497).

The existence of the marketplace is felt to be increasing because of the role of the community in the digital era, who are increasingly aware of the sophistication and ease of operating various online platforms to fulfill the needs of daily life. Marketplace shows more flexibility in services that attract consumers, especially if business actors have interesting strategies in promoting their wares so that they spark curiosity for consumers to buy them. E-commerce platforms at least comprehensively

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regulate the use of company data, storage practices, and other responsibilities held by third parties, namely business actors and consumers, regarding data privacy and security (Steinman & Hawkins, 2010:1-9).

B. Legal Protection for Consumers Who Transact without Joint Accounts

Technological advances that have penetrated the world of trade do not make law as a social engineering tool lose its role when juxtaposed with digital phenomena. According to Laura J and McCoy, the birth of electronic transactions as a business method can create new cyber law norms and standards (Azhari, 2015). This statement carries the connotation that the law will always embellish human life and even continue to fill the dynamics of the changing times so that it opens up opportunities for the birth of new legal norms and standards that play a role in shaping regulations.

The platform's existence in Indonesia has shown how significant its role is to support the needs and lives of the people as a social networking tool and a forum for channeling content and creativity. Its novelty and consistency, which constantly adapts over time, with a display that continues to be packaged, is increasingly attractive and easy to use, making it accessible to users of all ages. There are also more opportunities to use a platform that does not only play a role in connecting relationships but also as a container or distributor of e-commerce, on the one hand being able to increase the efficiency of goods/services transactions and reduce purchasing and producer costs significantly. However, e-commerce has problems and flaws in information security if encryption is not used correctly (Abbasi & Zare, 2016:12-16). The digital transformation issues on e-commerce platforms are based on trust, privacy, and security.

E-commerce offers a variety of payment methods that are expected to provide legal protection for consumers to make transactions more secure, effective, fast, and reliable. One of them uses banking services as a channel of funds for product payments through transfers from consumer accounts to business actors' accounts or called account to account (Makarim, 2008:78). The transaction transfers ownership or enjoyment of goods or services from the goods or service provider to the consumer (Nasution, 1995:37). Business actors must send products paid for by consumers to fulfill achievements on e-commerce agreements. However, there is an understanding that consumers must be ready to bear the consequences of their choices in buying goods and/or services offered by business actors (Samsul, 2004:4, Sjahputra, 2010:48-49).

The rights owned by consumers are contained in Article 4 of the UUPK, including; the right to comfort, security, and safety in consuming goods and/or services; the right to choose goods and/or services, and to obtain such goods and/or services by the exchange rate and the promised conditions and guarantees; the right to correct, straightforward and honest information regarding the situation and warranty of goods and/or services; the right to have their opinions and complaints heard on the goods and/or services used; the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes; the right to be treated or served correctly and honestly and not discriminatory; the right to receive compensation, compensation and/or replacement, if the goods and/or services received are not by the agreement or not correctly.

The rights of business actors are contained in Article 6 of the UUPK; "the right to receive payments by the agreement regarding the conditions and exchange rates of traded goods and/or services; the right to obtain legal protection from consumer actions with bad intentions; the right to conduct appropriate self-defense in the legal settlement of consumer disputes; the right to rehabilitate reputation if it is legally proven that traded goods and/or services do not cause consumer losses; rights regulated in other laws and regulations."

An engagement born of an agreement or law creates a legal obligation that the parties must obey (Harahap, 1986:190). Consumers' responsibility in e-commerce is to find and compare information on goods/services needed more freely without being limited by area (borderless) (Dikdik, et.al., 2005:144). It must complete the payment of the price of the goods purchased. The legal terms and norms in the agreement must be by Article 1338 paragraph (3) of the Civil Code, which is dynamic, covering the entire process of the agreement (Syaifuddin, 1993:96); thus, the achievement is carried out adequately based on the principles of good faith and propriety.

The following are the obligations of consumers according to Article 5 of the UUPK; "read or follow instructions for information and procedures for the use or utilization of goods and/or services, for the sake of security and safety; have good faith in making transactions for the purchase of goods and/or services; pay according to the agreed exchange rate; follow the efforts to settle consumer protection disputes properly."

The obligations of business actors according to Article 7 of the UUPK are; "have good intentions in carrying out their business activities; provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation of the use, repair and maintenance; treat or serve consumers correctly and honestly and non-discriminatory; guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services; provide opportunities for consumers to test, and/or try certain goods

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and/or services as well as provide guarantees and/or guarantees for goods manufactured and/or traded; provide compensation, compensation and/or compensation for losses resulting from the use, use and utilization of traded goods and/or services; provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.”

This is confirmed in Article 1491 paragraph (2) of the Civil Code, which regulates the obligation of business actors to guarantee "there are no hidden defects in the goods, or in such a way as to give rise to reasons for canceling the purchase." Subekti stated that business actors are responsible for hidden defects (*Verborgen gebreken*) for goods sold if the deficiency results in reduced ability to use. Hence, consumers are reluctant to buy them (Subekti, 1992).

Now e-commerce is not only carried out through public platforms but has begun to transform into a marketplace that becomes explicitly a place for buying and selling transactions with various methods and features that make it easier for consumers to find and fulfill their life needs. Marketplace, as a trusted third party in practice, will act as a guarantor of security and consumer protection by providing a joint account feature, in which after the consumer makes a payment by transfer via the virtual marketplace account, the disbursement of funds will be forwarded to the business actor after the consumer receives the goods or services provided—ordered in good condition. The existence of a joint account offers a high sense of trust for consumers when they want to transact online; in addition to making the process easier, it also ensures that consumers can apply for a refund if the goods are not received or are received in conditions that do not match the product description. Thus, if there is a loss, the consumer has a place to complain so that the parties involved in the transaction are not only consumers and business actors but also the marketplace.

E-commerce is not just transactions via the internet but also deals with customer service and partner collaboration (Kumah, 2017). Some conditions are vulnerable to consumer protection through e-commerce platforms, mainly because the agreement only involves two parties without the role of a trusted third party. Hence, the anticipation of losses is minimal for the parties. Even though the marketplace is growing, people are still loyal to using public platforms for buying and selling transactions; for example, on Facebook, in paying for a product, users only need to register a MasterCard or visa to be given a unique pin so that the security of their bank data is guaranteed. This payment method prompted Facebook to create its marketplace and inspired millions of its users to transact privately. This also impacts other platforms such as Instagram, Twitter, or Tiktok. In addition to Facebook, there is also Carousell, a platform that provides a stall feature for business actors to sell their new and used goods. Carousell has no joint account feature; transactions only involve business actors and consumers, so they do not provide payment methods that guarantee consumer protection.

Some people still lack understanding about using a MasterCard or the like because it is easier if the payment is made by transfer from the consumer's account directly to the account of the business actor or instead choose the Cash on the Delivery method (pay on the spot). Thus, even though e-commerce users continue to experience an increase, fear or anxiety about fraud also goes hand in hand; legal protection is still needed for the parties to create optimal protection. It is possible that when carrying out the contents of the agreement, one of the parties breaks the promise; the following four elements are contained in the default (Subekti, 2000:50); 1) Not doing what it's supposed to do; 2) Carry out something but not as promised; 3) Did what was promised, but it was too late; 4) Doing something that according to the agreement should not be done. Therefore, if there is a default, it must be a responsible way of replacing costs, losses, and interest.

Three legal protections must exist in an e-commerce agreement; 1) legal protection for business actors, clear rules regarding the payment period so that they are not blamed if they sell goods/services that have been ordered because the payment deadline is over; 2) legal protection for consumers to obtain goods/services according to the qualifications offered and obtain compensation guarantees if the goods do not match the order; 3) protection of personal consumer data that can be accommodated using a privacy policy or privacy policy.” (Makarim, 2010)

If parties are harmed, then legal protection should be given by giving a sense of security to victims and witnesses (Fajar & Achmad, 2017). One form of protection in Article 38 paragraph (1) of the ITE Law; is "Everyone can file a lawsuit against the party that operates the Electronic System and/or uses Information Technology that causes losses." Furthermore, Article 39, paragraphs (1) and (2) of the ITE Law explain that; "Civil lawsuits are carried out by the provisions of the legislation. In addition to the settlement of civil lawsuits as referred to in paragraph (1), the parties may resolve disputes through arbitration or other alternative dispute resolution institutions by the provisions of the Laws and Regulations."

Consumers have a more vulnerable and weak position when shopping through e-commerce; they only based on feeling and trust that the goods they receive will not disappoint and match the photos displayed in the product catalog. Suppose it turns out that the item is unsatisfactory or even not as expected when buying it at the beginning. In that case, he can send a complaint accompanied by photo or video evidence when unboxing for the warranty claim process.

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The legal protection of e-commerce shows the Government's readiness for the rapid growth of information technology in the digital era. Further, it emphasizes the entry of humans into the business revolution, which is now also digital. However, regulations have not been able to answer concretely the responsibility and legal protection of consumers for their transactions with temporal business actors or through electronic systems.

If the consumer is harmed, the UUPK has made a particular article regarding the form of legal protection in Article 1 paragraph (1) of the UUPK; "Consumer protection is all efforts that guarantee legal certainty to protect consumers." The five principles that form the basis of consumer protection are a benefit, justice, balance, consumer safety and security, and legal certainty. Such legal protection is provided with the aim of; "Improving consumer awareness, ability, and independence to protect themselves; elevating the dignity of consumers by preventing them from the negative excesses of the use of goods and/or services; increasing the empowerment of consumers in choosing, determining, and demanding their rights as consumers; create a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information; raise awareness of business actors regarding the importance of consumer protection to grow an honest and responsible attitude in doing business; improve the quality of goods and/or services that ensure the continuity of the business of producing goods and/or services, health, comfort, security, and safety of consumers." Legal protection can be done before the transaction (no conflict/prepurchase) and/or after the transaction (conflict/post-purchase) (Gunawan, 1999:3):

1. Legislation; consumer legal protection before the transaction through establishing laws and regulations. So it is hoped that the limits and provisions governing transactions between consumers and business actors can guarantee their implementation correctly.
2. Voluntary Self Regulation; consumer legal protection is carried out before the transaction occurs. Namely, business actors are expected to make regulations for themselves to be more careful in running their businesses.

Furthermore, legal protection after the transaction (conflict/post-purchase) can be done through negotiation, consultation, mediation, or expert assessment. Article 19, paragraph (1) of the UUPK stipulates that the business actor is responsible for compensating for the loss to the consumer by returning the consumer's money, exchanging similar products or equivalent to the exchange price, providing health care, or providing compensation. Suppose the business actor is reluctant to take responsibility or provide balance. In that case, a lawsuit can be filed against him through litigation (court) or non-litigation (Consumer Dispute Settlement Agency / BPSK), which is adjusted to the agreement of the disputing parties. The losing party may file an objection to the District Court within a grace period of 14 days from receiving the notification of the BPSK decision. Thus, dispute resolution at BPSK is an alternative to resolving disputes quickly, easily, and cheaply (Nugroho, 2008:99). Quick, because the UUPK stipulates that within a grace period of 21 working days, BPSK is obliged to give its decision. Easy because the administrative procedures and decision-making are straightforward. Cheap lies in affordable court fees.

The implementation of this law has not been maximized because consumers lack awareness about how to defend their rights, especially if goods are purchased at low prices, making them lazy to follow up and consider the problem trivial (Geriya, 2016). Criminal sanctions are also contained in Article 28 in conjunction with Article 45 paragraph (2) of the ITE Law, which states that lying or misleading information about consumers is classified as a prohibited act, and offenders can be sentenced to a maximum imprisonment of six years and even a maximum fine of Rp. 1 billion.

Trading in cyberspace is a transaction across geographical boundaries that connects consumers and business actors from various countries. If a dispute arises, the parties can choose the Online Dispute Resolution (ODR) or online arbitration method to be more practical, low-cost, and effective (Khotimah & Chairunnisa, 17). Online arbitration is the development of non-litigation dispute resolution through Online Dispute Resolution (ODR), which is considered the best way for business people to resolve disputes in the virtual world (Barkatullah, 2010). Online Arbitration and Alternative Dispute Resolution (APS) is not much different from the conventional system, which differs only in using electronic means and their implementation. In online arbitration, case registration, selection of arbitrators, submission of documents, deliberation of arbitrators in the case of an arbitration tribunal with more than one arbitrator, making decisions, and notification of decisions will be made online. APS has advantages;

First, it is not done through the judiciary, so the costs are relatively low. Second, it is faster than court institutions that have to queue because many cases are handled, so it takes longer. Third, the injured party will receive compensation or compensation, meaning that a good relationship between business actors and consumers is restored. Fourth, confidentiality is guaranteed so as not to damage the good name of anyone, whether consumers, business actors, or e-commerce parties. Fifth, handled by parties who are experts in their fields and minimize injustice, such as siding with one party

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IV. CONCLUSIONS

A growing marketplace with various exciting features makes its existence one of the fulfillment of the needs of people's lives with ease and efficiency, especially as a trusted third party also provides legal protection for consumers with the existence of payment methods through joint accounts, thus building trust to shop online and become mediator if it turns out that there is a default which is detrimental to one of the parties. The legal settlement can be through litigation or non-litigation based on the parties' agreement

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