

Cross-Border Consumer Disputes in the Digital Marketplace: Rethinking Jurisdiction and Law in Global E-Commerce Governance

Taufiqurokhman¹, Rineke Sara², Wahyu Hanggoro Suseno³, Ricky Muhamad Zakaria⁴

¹Universitas Borobudur, Indonesia

²Universitas Muhammadiyah Jakarta, Indonesia

³Biro Organisasi dan SDM Kementerian Kesehatan, Indonesia

⁴Badan Kepegawaian dan Diklat Kabupaten Garut, Indonesia

Correspondent: taufiqurokhman@umj.ac.id¹

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ABSTRACT: Cross-border e-commerce has created unprecedented opportunities for global trade but also introduced complex legal challenges regarding jurisdiction and applicable law in consumer disputes. This article explores how legal systems particularly those of the European Union (EU), the United States (US), ASEAN, and Indonesia govern jurisdiction and applicable law in business-to-consumer (B2C) e-commerce transactions. Using a doctrinal and comparative legal method, the study analyzes key instruments such as the Brussels I Recast, Rome I and II Regulations, Hague Conventions of 2005 and 2019, and relevant national laws. Case law from the CJEU and US courts is used to illustrate doctrinal interpretations, with attention to the targeting test, forum-selection enforceability, and protection of consumer rights. Procedural tools such as the Hague Service and Evidence Conventions are also examined. Findings reveal that while the EU offers a harmonized, consumer-focused regime, enforcement across borders remains inconsistent. The Hague 2019 Convention presents a pathway toward enforceability but requires broader ratification. The US system emphasizes contractual freedom, often limiting consumer protections. Regional efforts, particularly in ASEAN and Indonesia, demonstrate varied progress in legal harmonization. Jurisdictional ambiguity, enforcement gaps, and fragmented legal standards continue to affect legal certainty in cross-border e-commerce. The article concludes that harmonized jurisdictional and applicable law standards, coupled with technological and institutional innovation, are necessary to ensure consumer protection and support legal predictability in global digital markets.

Keywords: Cross-Border E-Commerce, Jurisdiction, Applicable Law, Consumer Protection, Private International Law, Rome I Regulation, Hague Convention.



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INTRODUCTION

The emergence of cross-border e-commerce has reshaped global commerce by enabling transactions to occur across jurisdictions with unprecedented ease. As consumers increasingly engage with foreign online vendors, the legal implications of such transactions particularly in dispute resolution have grown in complexity. Traditional private international law (PIL)

frameworks, built around territorial concepts of jurisdiction and applicable law, face difficulties adapting to the uniquely transnational and digital nature of online commerce. The core difficulty lies in adapting these legal doctrines to environments where neither the parties nor the supporting digital infrastructures such as servers, platforms, and payment gateways are confined to a single state (Lutzi, 2017).

Jurisdictional uncertainty is one of the most pressing issues. Courts often must determine whether they have authority over disputes involving parties from different countries. In the context of cross-border e-commerce, this involves interpreting whether a business has “targeted” consumers in a specific jurisdiction, often with little clarity provided by existing legal norms (Ayunda, 2022). Even when jurisdiction is established, questions about which national law should apply persist. Many jurisdictions offer strong consumer protection domestically, but these protections vary widely when disputes cross borders (Ariyaratna, 2021; Hörnle, 2021). National rules designed for territorial commerce now confront the borderless nature of the internet, creating conflicts of law that render legal outcomes unpredictable.

Traditional procedural tools, such as the service of process and the gathering of evidence, have also proven inadequate. These instruments often require significant bureaucratic coordination when applied internationally, resulting in delays and diminished access to justice. The effectiveness of consumer protection is often hindered by differing levels of legal development across jurisdictions. While the European Union has implemented coherent rules through the Brussels I Recast and the Rome I Regulation, other regions like ASEAN and Indonesia rely on evolving or fragmented legal mechanisms (Wolde, 2022).

In domestic e-commerce transactions, consumer protection frameworks are often comprehensive, offering rights such as withdrawal from contracts, disclosure of terms in native languages, and jurisdictional access to courts. However, in the cross-border context, consumers frequently lose these protections due to conflicting legal systems and weak enforcement mechanisms (Umar et al., 2023). Consumers face heightened vulnerability due to a lack of awareness about their rights, difficulties in navigating foreign legal systems, and disparities in regulatory regimes. These problems are compounded by cyber-related risks, such as data theft and privacy violations, which are regulated inconsistently across jurisdictions (Gugava et al., 2024; Sargsyan, 2016).

Instruments such as the Brussels I Recast and the Rome I Regulation have been pivotal in setting consumer-oriented legal standards. Brussels I allows consumers to bring claims in their home jurisdictions, while Rome I ensures that their national consumer protections apply even when foreign law is selected in the contract ((Hoek, 2024). Nevertheless, the implementation of these instruments remains uneven, and their effectiveness is diluted by interpretive divergences and enforcement obstacles (Lutzi, 2017). In the United States, courts apply the “minimum contacts” test to assess jurisdiction, but the fragmented nature of state and federal law introduces further inconsistencies (Ayunda, 2022).

Meanwhile, efforts in ASEAN to harmonize e-commerce rules through soft-law instruments, such as the ASEAN Agreement on Electronic Commerce, represent a step forward but fall short of the enforceability and legal certainty provided by the EU model (Obioha & Masumbe, 2023). Indonesia’s regulatory landscape, governed by instruments like PP 80/2019 and Permendag

31/2023, imposes obligations on foreign merchants targeting Indonesian consumers. However, it lacks clear rules for foreign judgment recognition, leaving significant legal uncertainty (Andrian & Lie, 2024).

Cross-border e-commerce introduces unique vulnerabilities for consumers. The complexity and opaqueness of online contracts, disparities in legal literacy, and inconsistent data protection standards contribute to an environment where consumers may struggle to assert their rights (Wiraguna et al., 2024). The inability to effectively enforce legal remedies further discourages consumers from pursuing claims. These issues underline the urgent need for legal reform and harmonization.

While the Brussels I Recast and Rome I have provided a strong foundation for harmonization within the EU, legal scholars question whether these instruments have kept pace with technological developments. Their effectiveness in protecting consumer rights remains limited in cross-border contexts where enforcement involves third countries (Zelst & Besouw, 2021). Moreover, many challenges such as liability for digital intermediaries and jurisdiction in multi-party platforms remain unresolved (Hörnle, 2021; Gugava et al., 2024).

This article aims to examine and compare the key frameworks governing jurisdiction and applicable law in cross-border e-commerce consumer disputes. It evaluates their strengths, weaknesses, and adaptability to digital commerce. By analyzing PIL instruments, jurisprudence, and regional developments, this article seeks to identify pathways for reform and propose a more coherent legal structure that reconciles consumer protection with the realities of global online trade.

METHOD

This study employs a doctrinal legal methodology with a comparative lens, examining how private international law (PIL) frameworks regulate jurisdiction and applicable law in cross-border e-commerce consumer disputes. The doctrinal approach provides a structured examination of primary and secondary legal materials, including legislation, case law, treaties, and academic commentary. While this method enables clarity in analyzing legal texts and frameworks, it is also complemented by comparative elements to contextualize divergent regional approaches.

The strength of doctrinal methodology lies in its ability to extract and synthesize core legal doctrines across multiple jurisdictions (Majeed et al., 2023). It facilitates a coherent legal interpretation of formal sources such as the Brussels I Recast, Rome I and II Regulations, and Hague Conventions of 2005 and 2019. This analysis focuses on how jurisdictional authority and conflict-of-law rules operate within B2C e-commerce transactions. However, limitations of the doctrinal approach include its lack of empirical engagement with law in practice and its occasional detachment from socio-economic contexts (Pradhan & Haris, 2021). These limitations are acknowledged but addressed through integration of contextual case studies and comparative insights.

This research also benefits from cross-jurisdictional analysis, drawing on comparative legal methods to examine differences and overlaps among the EU, UK, US, ASEAN, and Indonesia.

Such analysis highlights the influence of supranational regulation in the EU, the decentralization and case-driven norms in the US, and the emerging legal frameworks in ASEAN and Indonesia (Yussof et al., 2023). The comparative approach reveals how various jurisdictions adapt their rules to online transactions, thus exposing areas of convergence and fragmentation in global PIL frameworks.

The study also considers the enforceability of jurisdiction and choice-of-law clauses. These are assessed using three key criteria derived from legal scholarship: (i) mutual consent and procedural fairness; (ii) the operation of public policy exceptions in cases of overreach or consumer disadvantage; and (iii) the clarity and intelligibility of the contract terms (Sargsyan, 2016). Courts, particularly in the EU, have heightened the threshold for enforceability in consumer contracts to protect weaker parties from being bound to foreign forums or laws that negate their substantive rights (Pakadang & Muryanto, 2024).

Legal sources include EU regulations (Brussels I Recast, Rome I/II), CJEU decisions (Emrek, Pammer/Alpenhof, Schrems), US case law (Nguyen, Carnival Cruise, Atlantic Marine), the Hague Conventions, and national legislation (e.g., PP 80/2019 and Permendag 31/2023 in Indonesia). These materials are critically interpreted to understand how jurisdiction and applicable law rules operate across legal systems. The doctrinal and comparative synthesis aims to identify best practices, expose legal gaps, and inform policy and legal reform in the field of cross-border e-commerce.

RESULT AND DISCUSSION

Jurisdiction Rules

The CJEU has shaped the doctrine of “targeting” in B2C e-commerce disputes through cases like Corman-Collins, emphasizing the importance of specific indicators such as language, local currency, and service availability. These elements help determine whether a business intended to target consumers in a particular Member State (Hörnle, 2021). By reinforcing consumers’ rights to litigate in their home jurisdictions, the CJEU has advanced consumer access to justice.

The Hague Convention on Choice of Court Agreements (2005) has enhanced the global enforceability of forum-selection clauses, particularly in B2B contexts. However, its effectiveness is limited by uneven adoption across jurisdictions (Voltornist, 2024). National legal frameworks can still override such clauses, affecting uniformity.

In the U.S., the Bremen and Carnival rulings support forum-selection clauses under a reasonableness standard. While these uphold party autonomy, they also raise concerns about consumer disadvantage due to power imbalances (Ariyaratna, 2021). Current frameworks do not fully address jurisdictional challenges posed by digital anonymity or complex fraud patterns.

Applicable Law

Rome I Article 6 protects consumers by ensuring that even when foreign law is chosen, mandatory protections of the consumer's habitual residence apply (Harahap, 2024). This maintains legal consistency and encourages consumer confidence in cross-border dealings.

Rome II provides for *lex loci damni* in torts and market-focused rules for unfair competition. Digital commerce complicates the application of these rules, especially in cases with distributed harm (Zhang, 2017). Courts struggle with assigning a single place of damage, increasing litigation complexity.

Multi-system application in online disputes leads to uncertainty and consumer confusion. Differing protections, liabilities, and enforcement mechanisms hinder redress and discourage cross-border participation (Igbinenikaro & Adewusi, 2024).

Enforcement and Procedure

The absence of universal enforcement standards means successful judgments in one jurisdiction may not be executable elsewhere (Xi et al., 2023). Platform evidence gathering and service of documents are further complicated by varied national procedures and tech-company cooperation (Putra et al., 2024).

Hague Conventions aim to mitigate these barriers, but their effectiveness is moderated by state reservations and uneven compliance (Zhang, 2024). Despite procedural frameworks, practical challenges like delays and limited jurisdictional reach remain significant.

National courts increasingly recognize the need to modernize responses to e-commerce disputes. Innovations in judicial cooperation and technology integration are emerging, but divergence in legal interpretations and procedural standards still obstruct streamlined litigation.

Regional/National Developments

The ASEAN E-Commerce Agreement (2019) reflects a regional effort to harmonize legal responses to digital commerce. It promotes consumer protection and mutual recognition of electronic contracts, but implementation gaps and regulatory disparities persist (Yokomizo, 2024).

Indonesia's PP 80/2019 and Permendag 31/2023 mandate platform compliance with registration and consumer protection rules. Critics note the complexity for SMEs and enforcement challenges. Most notably, Indonesia lacks a formal mechanism for recognizing foreign judgments, creating serious barriers in international consumer claims.

The broader Southeast Asian context shows potential for regional PIL harmonization, but economic and legal disparities hinder full integration. ASEAN's role could be instrumental in fostering shared standards, enabling legal coherence and supporting the growth of cross-border e-commerce (Yokomizo, 2024).

The comparative analysis of jurisdiction and applicable law frameworks for cross-border e-commerce reveals significant strengths and limitations in both EU and US legal systems. The EU's legal architecture anchored by the Brussels I Recast and Rome I Regulations favors consumer-centric remedies. Consumers are entitled to litigate in their home jurisdiction, benefitting from clear protections that prioritize legal accessibility and justice. The targeting test developed by the CJEU further bolsters this approach by requiring demonstrable intent from businesses engaging with specific consumer markets (Lutzi, 2017; Hörnle, 2021).

In contrast, the US system prioritizes freedom of contract. Forum-selection clauses are generally upheld unless proven unreasonable or inconsistent with public policy, affording greater predictability for businesses. However, this freedom often undercuts consumer rights, particularly in contexts where informational asymmetries and power imbalances persist. The lack of a cohesive national framework for jurisdiction in online consumer disputes perpetuates fragmentation and legal uncertainty (Hörnle, 2021; Ariyaratna, 2021).

The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019) represents a promising global instrument. By establishing uniform grounds for recognizing and enforcing judgments, it could address a core weakness in consumer dispute resolution: enforcement across borders. However, its success hinges on broad ratification and consistent domestic implementation. So far, uneven adoption and divergent interpretations of public policy exceptions limit its practical effectiveness (Ayunda, 2022).

Efforts to enhance B2C legal predictability have yielded several proposals. In the EU, networks like the CPC promote inter-jurisdictional coordination, but further integration and simplification of consumer laws are needed to reduce transaction costs for businesses and confusion for consumers (Lutzi, 2017). In the US, proposals for model laws or interstate agreements could address the interpretative discrepancies in forum-selection clause enforcement. Globally, reciprocity agreements and standardized disclosures around jurisdiction and applicable law can mitigate uncertainty and align expectations.

A key innovation lies in the operationalization of targeting analysis. While doctrinally grounded in case law, targeting remains underdeveloped as a compliance tool. Businesses can use indicators such as domain language, localized currency, shipping availability, and SEO configurations to assess market targeting. Compliance tools powered by AI can automate detection of targeted outreach, reducing litigation risk. Simultaneously, regional trade agreements should incorporate unified definitions of targeting to reduce differences in interpretation (Hörnle, 2021; Voltornist, 2024).

Southeast Asia offers a microcosm of both opportunity and challenge. The ASEAN E-Commerce Agreement lays groundwork for harmonization, but inconsistent legal capacity and infrastructural disparities among member states impede progress. Indonesia, while proactive in regulating e-commerce through PP 80/2019 and Permendag 31/2023, lacks foundational recognition of foreign judgments. This significantly weakens legal recourse for international actors and undermines trust in cross-border commerce (Wang, 2024; Yokomizo, 2024).

Ultimately, while robust frameworks like the EU model demonstrate the potential for consumer-centered jurisdiction and applicable law rules, their effectiveness is diminished when enforcement

gaps and definitional ambiguities persist. To move forward, harmonized legal standards, technological integration, and intergovernmental cooperation must underpin any reform of PIL for the digital economy.

CONCLUSION

This study examined the fragmented yet evolving landscape of private international law (PIL) that governs consumer disputes in cross-border e-commerce. Through a comparative analysis of the European Union (EU), the United States (US), and emerging jurisdictions such as ASEAN and Indonesia, it was found that differences in jurisdictional rules, applicable law, and enforcement mechanisms continue to undermine consumer legal certainty. While the EU model, represented by the Brussels I Recast and Rome I Regulations, ensures a degree of consumer protection by linking jurisdiction to the consumer's domicile, the US approach prioritizes contractual freedom, which can limit access to remedies for weaker parties.

The findings highlight that harmonization remains partial and uneven. Jurisdictional issues particularly the application of the targeting test still pose interpretive and procedural challenges. Similarly, applicable law frameworks, though robust in theory, face obstacles in transnational enforcement and digital contexts where harm is dispersed across multiple jurisdictions. Regional developments such as the ASEAN E-Commerce Agreement and Indonesia's PP 80/2019 indicate progress but also reveal the absence of mechanisms for recognizing foreign judgments, which weakens the enforceability of consumer rights.

To strengthen legal predictability and fairness in digital markets, future efforts should focus on developing consistent jurisdictional standards, enhancing procedural cooperation, and encouraging broader ratification of multilateral instruments such as the Hague 2019 Convention. Integrating technological innovation into dispute resolution and compliance processes can further improve accessibility and efficiency. Continued comparative and empirical research will be essential to ensure that PIL frameworks evolve in step with the realities of global e-commerce and adequately protect consumers in an increasingly digitalized marketplace.

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