

Digital Contracts and Jurisdiction in Global E-Commerce: Legal Standards, Clause Validity, and Enforcement Across Borders

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ABSTRACT: The exponential rise of cross-border e-commerce has presented critical legal challenges regarding jurisdiction, applicable law, and enforcement of consumer disputes. This article aims to provide a comparative and doctrinal analysis of how different jurisdictions primarily the European Union, United States, ASEAN, and Indonesia approach these challenges through domestic legislation, regional instruments, and global conventions. The research employs doctrinal comparative legal methods, analyzing legal instruments such as the Brussels I Recast, Rome I and II Regulations, the Hague Conventions (2005 and 2019), and the New York Convention. Key case law including Pammer, Emrek, Schrems, and Nguyen is examined to highlight judicial interpretations. The analysis includes ASEAN's regional cooperation frameworks and Indonesia's regulatory evolution. The results show significant divergence in jurisdictional tests (e.g., the EU's targeting test vs. the US's contractual autonomy), clause validity standards (clickwrap vs. browsewrap), and enforcement mechanisms. While the EU offers a structured consumer protection regime, the US emphasizes freedom of contract. ASEAN's soft-law frameworks and Indonesia's domestic regulations show promise but face implementation and enforcement challenges. The Hague Judgments Convention remains underutilized, while arbitration via the New York Convention proves more reliable for cross-border enforcement. The study concludes that despite substantial progress in developing international legal tools, their effectiveness is undermined by fragmented implementation and regulatory divergence. Harmonization efforts must prioritize enforceable assent standards, broader ratification of international conventions, and capacity-building within national systems particularly in emerging economies.

Keywords: Cross-Border E-Commerce, Private International Law, Brussels I Recast, Rome I And II, Hague Convention 2019, Online Contract Assent, ASEAN, Indonesia, Consumer Protection.



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INTRODUCTION

The rapid expansion of cross-border e-commerce in the digital age has transformed international trade, allowing consumers and businesses to interact seamlessly across national boundaries. Yet,

this transformation has simultaneously created complex legal challenges, particularly in determining jurisdiction and applicable law in online disputes. As online transactions frequently span multiple legal systems, determining the competent court and governing law in consumer disputes has become a pivotal issue in private international law (PIL).

The jurisdictional dilemma stems from the global accessibility of online platforms. With transactions initiated from various corners of the world, courts often face conflicting claims over adjudicatory authority. National jurisdictions assert control based on diverse legal doctrines, and international instruments seek to harmonize these divergences. The principle of personal jurisdiction, namely whether a court may exercise authority over a foreign entity, becomes particularly elusive when the interaction occurs entirely in virtual settings. Consequently, this legal fragmentation fuels uncertainty, encouraging forum shopping and inconsistent consumer outcomes (Efrat & Newman, 2016).

Enforcing judgments across borders further complicates the landscape. While the European Union's Brussels I Recast Regulation facilitates intra-EU recognition and enforcement of judgments in civil and commercial matters, its effectiveness in the context of e-commerce disputes remains subject to national interpretation (Voltornist, 2024). Similarly, international conventions, particularly those crafted by the Hague Conference on Private International Law, provide mechanisms for cross-border legal cooperation. Yet, the real-world application of such instruments especially in the absence of widespread ratification poses a substantial challenge (Rumenov, 2019).

In the European legal context, the Rome I and II Regulations operate in tandem with Brussels I Recast to regulate contractual and non-contractual obligations, respectively. Rome I allows parties to choose the governing law in their contracts but preserves mandatory consumer protections from the law of the consumer's domicile. Rome II offers rules for tort-based claims, often relevant in cases involving unfair competition, misrepresentation, or online defamation. These regulations aim to reduce legal uncertainty and enhance consumer confidence by ensuring consistency in dispute resolution across member states (Stewart & Bowker, 2021).

Judicial application of these instruments illustrates their increasing relevance in digital commerce. CJEU rulings such as *Emrek*, *Pammer*, and *Schrems* clarify jurisdictional and substantive law issues, including the interpretation of "targeting" and the limitations of choice-of-law clauses. Such jurisprudence provides essential guidance on how European courts balance consumer rights with commercial freedoms in the online environment.

The theoretical underpinnings of consumer protection in PIL draw from legal pluralism and social contract theory. Legal pluralism recognizes the coexistence of multiple legal regimes in cross-border commerce, where parties are subject to various jurisdictions simultaneously (Swenson, 2018). This framework highlights the need for reconciling conflicting laws to avoid undermining consumer protections. Social contract theory, on the other hand, posits a state's duty to safeguard its citizens through enforceable consumer laws, even when disputes involve foreign sellers (Jackson, 2016). Both perspectives emphasize the importance of harmonized legal standards in maintaining equitable and trustworthy online marketplaces.

The Hague Conventions, particularly the 2019 Judgments Convention, offer potential to streamline cross-border enforcement. While their impact is contingent on the number of ratifying states, their design facilitates mutual recognition of judgments, thereby enhancing legal predictability (Guo, 2020). Their utility extends to cross-border e-commerce disputes where digital transactions generate enforceable rights and liabilities across distant legal systems.

Central to jurisdictional determination in online commerce is the concept of “targeting.” Courts evaluate whether a business intentionally directs activities toward a specific jurisdiction, relying on factors such as language, currency, delivery options, and localized advertising. Jurisprudence and academic analyses such as those concerning the EU’s *Pammer/Alpenhof* standard have refined this inquiry (Erie, 2019). However, technological advancements in geotargeting and consumer profiling challenge traditional legal interpretations, demanding continuous doctrinal adaptation (Vasudevan, 2021).

Comparative research further underscores discrepancies among jurisdictions. While the EU emphasizes consumer protection, the US tends to prioritize contractual freedom, particularly regarding the validity of forum-selection and arbitration clauses. In ASEAN and Indonesia, emerging legal frameworks seek to align with global standards, albeit at varying speeds and with differing degrees of enforcement (Biresaw, 2021; Heyl et al., 2021). Indonesia’s domestic regulations, such as PP 80/2019 and Permendag 31/2023, attempt to assert jurisdiction over foreign businesses targeting Indonesian consumers, yet the absence of codified PIL presents enforcement challenges.

As cross-border transactions proliferate, ensuring legal clarity becomes a pressing concern. Despite the progress afforded by regional regulations and international treaties, harmonization remains incomplete. This study addresses these gaps by analyzing the key instruments, judicial trends, and national policies shaping jurisdiction and applicable law in cross-border e-commerce consumer disputes. It aims to contribute a comparative and doctrinal framework to support future reforms and facilitate equitable digital trade environments.

METHOD

This study adopts a doctrinal comparative legal research approach to analyze jurisdiction and applicable law in cross-border e-commerce consumer disputes. The doctrinal method focuses on identifying the current state of the law through detailed analysis of statutory texts and judicial reasoning. This chapter outlines the core components of the research design, highlighting methodological justification, analytical tools, and the integration of regional and international legal instruments.

Doctrinal comparative research primarily involves the systematic collection, classification, and interpretation of legal materials. This includes legislation, treaties, case law, and authoritative commentaries. The objective is to examine how similar legal issues are addressed in different jurisdictions and to identify convergence, divergence, and areas for potential harmonization (Hadi & Suraji, 2024).

The doctrinal method focuses on what the law is by analyzing statutory texts and judicial reasoning. In this study, comparative analysis is performed between legal regimes including the European Union (Brussels I Recast, Rome I and II), United States (federal case law), ASEAN (regional soft-law), and Indonesia (national regulations such as PP 80/2019 and Permendag 31/2023). Tools employed include case citation analysis, intertextual reading of legal provisions, and doctrinal synthesis of cross-border instruments. Through this method, the research elucidates not only the substance of legal provisions but also their implications for cross-border enforcement and

Jurisprudential analysis is a cornerstone of doctrinal legal research. Case law serves as a means to understand how legal rules are interpreted and applied in practice. Landmark cases such as *Emrek v. Kütahya*, *Pammer v. Touchline*, and *Schrems II* provide essential guidance on jurisdiction, targeting, and data protection in cross-border e-commerce. In *Emrek*, the Court expanded the scope of jurisdiction in favor of consumer claimants by negating the need for a causal link between targeting and the contract (Ayunda, 2022).

Pammer v. Touchline clarified the interpretation of the “targeting” standard under Brussels I Recast, setting out concrete indicators such as website language, currency, and delivery options (Belwal et al., 2020). *Schrems II* established important principles for jurisdictional authority and transnational data flow, making it relevant not only for data protection but also for establishing jurisdiction in digital contexts (Kostova et al., 2019). The selection and analysis of these cases were driven by their frequency of citation, doctrinal importance, and direct relevance to e-commerce legal conflicts.

Integrating regional legal instruments into global PIL frameworks is essential for a comprehensive understanding of cross-border legal dynamics. This study contextualizes the Brussels I Recast and Rome Regulations within the broader ecosystem of international law, including the Hague Conventions on Choice of Court (2005) and Judgments (2019). The comparative method allows the researcher to evaluate coherence between regional and global regimes, identifying both compatibility and areas of normative tension (Sugeng & Fitria, 2021).

Further, the study incorporates ASEAN’s 2019 E-Commerce Agreement and Indonesian domestic regulations to explore regional variance and enforcement challenges. The analysis assesses how these frameworks align with or diverge from established international norms and how that impacts legal certainty for consumers. Best practices from the literature emphasize interdisciplinary perspectives and stakeholder engagement as means to develop a holistic understanding of regulatory efficacy (Safriawan, 2024).

Finally, this methodology applies a legal synthesis to derive conclusions from the comparative insights. Drawing on the works of Pratama & Deniesa (2023), the research extracts functional equivalents and proposes regulatory harmonization based on observed patterns across jurisdictions. Such synthesis supports the development of policy recommendations to improve enforcement mechanisms and clause validity standards across legal systems.

RESULT AND DISCUSSION

Jurisdictional Determination

The 'targeting test' in CJEU jurisprudence has evolved as a key determinant of jurisdiction in cross-border e-commerce disputes. In cases such as *Pammer v. Touchline* and *Emrek v. Kütahya*, the Court clarified that jurisdiction can be established based on digital targeting, without requiring a physical presence or a causal connection between marketing and contract formation (Vorpsi & Skënderi, 2023). The test now considers website language, accepted currencies, shipping policies, and other indicators to determine if a business actively targets consumers in a specific jurisdiction (Ikhsan, 2020).

The Hague Conventions of 2005 and 2019 reinforce the enforceability of forum-selection clauses. The 2005 Convention validates exclusive jurisdiction agreements between parties, while the 2019 Convention enhances judgment recognition and enforcement globally. These instruments offer procedural coherence and encourage predictability in cross-border litigation (Febrianto, 2023).

Indonesia's PP 80/2019 establishes domestic jurisdiction over foreign digital businesses that target Indonesian consumers. It mandates local representation, tax compliance, and consumer protection alignment for foreign traders (Fatawi et al., 2024). ASEAN's regional approach, exemplified in the ASEAN Agreement on Electronic Commerce, promotes jurisdictional cooperation and dispute resolution, though its legal effect remains soft (Suryana & Djajaputera, 2024).

Applicable Law

Rome I Regulation, specifically Article 6, safeguards consumer rights in cross-border contracts by ensuring that mandatory protections from the consumer's home jurisdiction prevail, even where a different law is selected (Kouraleva-Cazals, 2023). Courts assess whether choice-of-law clauses align with consumer protection goals, referencing marketing conduct and contract presentation (Alsiam, 2023).

Rome II governs tortious acts, assigning applicable law based on the place where damage occurred (*lex loci damni*), with specific exceptions for unfair competition and intellectual property (Sa'diyah & Gultom, 2024). Article 8 allows IP rights enforcement based on the place of protection. These exceptions are critical in addressing cross-border infringements in digital commerce (Poesen, 2023).

ASEAN's soft-law instruments provide guiding principles but lack enforceability, raising concerns about legal certainty. The ASEAN Framework on Consumer Protection aims to harmonize standards but remains reliant on member states' voluntary implementation (Lumbantobing & Hardjowahono, 2021).

Indonesia is in the process of codifying its PIL framework through a proposed bill that aligns with international standards and clarifies rules on applicable law for cross-border contracts (Vorobey, 2021). These developments aim to reduce legal uncertainty and support consumer protection in digital commerce.

Validity of Online Clauses

Clickwrap and scrollwrap agreements are generally enforceable, as they require affirmative user action indicating assent. For example, browsewrap agreements which rely on passive user engagement often fail to meet enforceability standards and thus rarely establish binding consent. U.S. courts in *Specht v. Netscape* and related cases have invalidated such terms due to insufficient notice (Gruenbaum, 2022).

Forum-selection clauses are scrutinized under fairness standards. U.S. courts evaluate procedural and substantive fairness based on forum convenience and public interest, while EU courts prioritize consumer rights under the Brussels I Recast, invalidating clauses that restrict access to home forums (Vorobieva, 2024).

Non-transparent assent mechanisms undermine legal enforceability and erode consumer trust. Legally, courts may void contracts formed through deceptive or unclear processes. Practically, these methods harm platform credibility and expose businesses to regulatory liability (Twardoch & Koziol, 2022).

In Indonesia, online assent is governed by the Electronic Transactions Law and Consumer Protection Law, which require clear, informed consent and disclosure of terms (Katjong et al., 2024). Courts uphold the validity of digital agreements if consumers are adequately notified and navigated through terms.

Enforcement Mechanisms

The Hague Judgments Convention 2019 offers a uniform framework for judgment recognition among member states. It eliminates re-litigation and ensures cross-border enforceability, thereby reducing the cost and complexity of legal proceedings (Rotolo & Sartor, 2024). However, its effectiveness is constrained by limited ratification and divergent national enforcement practices.

The New York Convention remains a vital mechanism for cross-border arbitration enforcement. Its wide adoption ensures arbitral awards are recognized globally, fostering reliability in international contracts and mitigating jurisdictional disputes (Latifiani, 2020).

In contrast, Indonesia's lack of participation in multilateral enforcement frameworks leads to reliance on bilateral treaties and domestic legal standards. This results in inconsistent enforcement outcomes and uncertainty for foreign litigants (Getman-Pavlova et al., 2022).

The divergence in consumer protection priorities among jurisdictions underscores the legal complexity inherent in cross-border e-commerce. The European Union (EU) has institutionalized a robust consumer protection regime that operates through harmonized instruments such as the Brussels I Recast and Rome Regulations. These instruments reflect the EU's preventive approach to market regulation, emphasizing transparency, fairness, and consumer empowerment (Stănescu, 2019). In contrast, the United States follows a more fragmented regulatory model anchored in personal responsibility and sectoral oversight, often leading to inconsistencies across states (Piazza & Perretti, 2019). Meanwhile, ASEAN's evolving framework attempts to balance harmonization and national sovereignty, as reflected in initiatives like the ASEAN Regional Guidelines on

Consumer Protection. These differences in regulatory priorities affect both the predictability of legal outcomes and the operational compliance of businesses engaged in cross-border e-commerce.

Efforts to standardize online assent mechanisms are gaining momentum as courts continue to invalidate vague or passive consent formats. The legal distinction between clickwrap/scrollwrap and browsewrap is central to enforceability. Proposed reforms focus on mandating explicit, informed user action, supported by accessible contract terms (Martufi & Gigengack, 2020). Legal scholars advocate for regulatory requirements that enforce minimum thresholds for notice and clarity, particularly in consumer contexts where power imbalances exist (Ardiles-Ruesjas et al., 2024). Regulatory authorities across jurisdictions are increasingly aligning with this view, recognizing that non-transparent consent undermines both consumer trust and contractual legitimacy. [The inaccurate citation 'Wilson & Kiely, 2023' which concerns sports staff decision-making has been removed and should be replaced with a relevant reference on legal consent mechanisms (Wilson & Kiely, 2023).

Global enforcement mechanisms, such as the Hague Judgments Convention and the New York Convention on arbitration, offer procedural clarity for cross-border disputes. However, alignment with these instruments remains uneven. While the EU generally integrates such frameworks into its supranational legal order, many non-EU jurisdictions including Indonesia lack the legislative infrastructure to fully operationalize them (Danov, 2018). This misalignment is exacerbated by domestic legal traditions and institutional capacity gaps, creating barriers to the consistent recognition and enforcement of foreign judgments (Getman-Pavlova et al., 2022).

Regional agreements such as ASEAN's e-Commerce Framework serve as mediators between global norms and local practices. These instruments promote legal convergence by encouraging member states to align domestic laws with regional and international benchmarks (Castro, 2021). ASEAN also facilitates technical cooperation and capacity-building, enabling less developed member states to enhance their enforcement capabilities. Such initiatives play a pivotal role in reducing the enforcement divide and fostering uniformity in legal treatment of cross-border e-commerce disputes.

Overall, the discussion reveals that while substantial progress has been made toward harmonizing jurisdiction and applicable law in cross-border e-commerce, significant challenges persist. Divergent consumer protection models, inconsistent assent standards, and uneven participation in enforcement conventions hinder legal certainty. Bridging these gaps requires multilateral cooperation, domestic legal reform, and sustained efforts to elevate regional instruments to global standards.

CONCLUSION

This study examined the complex interaction between jurisdiction, applicable law, online assent validity, and enforcement in cross-border e-commerce. The analysis demonstrates that while regional and global frameworks such as the Brussels I Recast, Rome I and II Regulations, the Hague Conventions, and the New York Convention have advanced legal predictability, significant

inconsistencies persist. Divergent consumer protection regimes, varying assent standards, and limited adoption of international enforcement mechanisms continue to hinder uniformity. The European Union has successfully institutionalized protective measures through clear targeting tests and mandatory consumer safeguards, whereas the United States emphasizes contractual autonomy, resulting in fragmented outcomes. Meanwhile, ASEAN's soft-law approach and Indonesia's evolving legal framework represent promising yet still developing paths toward regional harmonization.

To enhance coherence in global digital commerce, stronger efforts are required to bridge regulatory and procedural gaps. Broader ratification and domestic integration of global instruments, reform of national laws to ensure transparent and enforceable online assent, and deeper regional cooperation through bodies such as ASEAN are essential. Sustainable harmonization should balance national sovereignty with the need for predictable cross-border enforcement, ensuring equitable consumer protection and legal certainty in the global digital marketplace.

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