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# THE FUTURE OF ONLINE DISPUTE RESOLUTION: BUILDING A FRAMEWORK FOR E-COMMERCE DISPUTE RESOLUTION IN INDONESIA

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## ABSTRACT

There was a legal issue, the gap between e-commerce dispute resolution (*das sollen*) in the Act and its implementation in the field (*das sein*). E-commerce disputes required a resolution, such as Online Dispute Resolution (ODR). ODR hasn't conducted a face-to-face method, low cost, and covers wide areas. However, ODR wasn't regulated in a "*lex specialis*" for its implementation. This study discussed several business settlement problems through ODR. Besides, the implementation of the prospect of ODR as a new form of construction of e-commerce transaction dispute resolution in Indonesia. This study provided an understanding of ODR and how the law used to mediate community disputes by using the internet as an alternative possibility to resolve conflicts in society in Indonesia. This paper described the probabilities and challenges of implementing ODR. This paper was normative juridical research which was collected through literature study. The research analysis used a statute approach and a comparative approach. The results showed the mechanism of ODR solved the e-commerce dispute. ODR's execution was in line with the trade sector development. ODR regulated for provided and supported the consumer protection law in Indonesia. ODR regulations in Indonesia should be regulate explicitly to provide legal certainty for the community.

**Keywords:** online dispute resolution; e-commerce disputes, execution

## INTISARI

Terdapat persoalan hukum, kesenjangan antara penyelesaian sengketa e-commerce (*das Sollen*) dalam UU dengan implementasinya di lapangan (*das sein*). Sengketa e-commerce memerlukan penyelesaian, seperti Online Dispute Resolution (ODR). ODR tidak dilakukan metode tatap muka, biaya murah, dan cakupan wilayah yang luas. Akan tetapi, ODR tidak diatur dalam "*lex specialis*" untuk implementasinya. Penelitian ini membahas beberapa permasalahan penyelesaian bisnis melalui Online Dispute Resolution (ODR). Selain itu, implementasi prospek implementasi ODR sebagai bentuk konstruksi baru penyelesaian sengketa transaksi e-commerce di Indonesia. Studi ini memberikan pemahaman tentang ODR dan bagaimana hukum digunakan untuk menengahi perselisihan masyarakat dengan menggunakan internet sebagai kemungkinan alternatif untuk menyelesaikan konflik dalam masyarakat di Indonesia. Makalah ini menggambarkan probabilitas dan tantangan penerapan ODR. Penelitian ini merupakan penelitian yuridis normatif yang dikumpulkan melalui studi kepustakaan. Analisis penelitian menggunakan pendekatan undang-

undang dan pendekatan komparatif. Hasil penelitian menunjukkan mekanisme ODR menyelesaikan sengketa e-commerce. Pelaksanaan ODR sejalan dengan perkembangan sektor perdagangan. ODR diatur untuk menyediakan dan mendukung undang-undang perlindungan konsumen di Indonesia. Regulasi ODR di Indonesia harus diatur secara tegas terutama yang mengatur tentang mediasi online sehingga memberikan kepastian hukum bagi masyarakat.

**Kata kunci:** penyelesaian sengketa secara online; sengketa *e-commerce*, eksekusi putusan

## INTRODUCTION

Technology development is a globalization sign in all aspects of life. Thus, the global information network is very wide and transparent. The symptoms of society are characterizing by the existence of the internet.<sup>1</sup> The internet also affects the world economy and brings a new chapter to the digital economy. The internet can used as an instrument of communication and collaboration.<sup>2</sup> Digital 2020 reveals that 60% world's population uses the internet. The users reached 4.5 billion people.<sup>3</sup> Meanwhile, 175.5 of 260 Indonesia's million people use the internet. Based on the Global Web Index's data shows 90% of the Indonesian population used the internet in 2018.<sup>4</sup> Besides that, the Indonesian Digital Reportal data 2020 mentioned that there are 175.4 million users in Indonesia. It's already increased 17% from 2019, so the internet penetration is 64% in Indonesia.<sup>5</sup>

The internet made an innovation system from conventional business to modern business. So, the information transfer is becoming faster and more accessible. It called e-commerce. E-commerce is a trade transaction between the seller and the buyer used to face-to-face and cross-border transactions via computers or phones.<sup>6</sup> The advantages of e-commerce are more efficient, cheap,

<sup>1</sup> Benjamin Wright, *"The Law of Electronic Commerce" (3rd edn, Aspen Law and Businesses 2001)*. [p.13-15] quoted by Abdul Halim Barkatullah, *"Sengketa Transaksi E-Commerce Internasional"* (Nusa Media, 2010) [p.1].

<sup>2</sup> Topio Puurunen, *"The Judicial Jurisdiction of States Over Internationa l Busines to Consumer Electronic Commerce from The Perspective of Legal Certainty"* [2002] *Journal of International Law and Policy* [207].

<sup>3</sup> Bagus Ramadhan, *"Ini Data Pengguna Internet di Seluruh Dunia Tahun 2020 Berdasarkan laporan Digital 2020 yang dilansir We Are Social and Hootsuite,"* (Teknoia, 2020) retrieved from <<https://teknoia.com/data-pengguna-internet-dunia-ac03abc7476>> accessed 1 April 2021.

<sup>4</sup> Simon Kemp & Sarah Moey, *Digital 2019 "Spotlight: Ecommerce in Indonesia, Data Reportal"* retrieved from <<https://datareportal.com/reports/digital-2019-ecommerce-in-indonesia>> accessed 10 April 2021.

<sup>5</sup> We Are Social & Hootsuite. *"Digital Data Indonesia 2020. In Data Reportal,"* retrieved from <<https://datareportal.com/reports/digital-2020-indonesia>> (2020) accessed 7 April 2021.

<sup>6</sup> Syamsiah Amali, *"Pemanfaatan Internet Pada Pelajar di Kota Gorontalo' Jurnal Penelitian dan Komunikasi Opini Publik,"* [p.17] quoted by Rochani Urip Salami and Rahadi Wasi Bintoro, *"Alternatif Penyelesaian Sengketa Dalam Sengketa Transaksi Elektronik (E-Commerce)"* *Dinamika Hukum*, 2013.

and easy. The e-commerce business model is non-face and non-sign.<sup>7</sup> Based on Google Temasek data, the e-commerce transaction has increased seven equal from US\$ 5.5 billion in 2015 to US\$ 38 billion in 2019.<sup>8</sup> Meanwhile, Jet Commerce noted transaction enhancement about 36% in the 4th quarter of 2020 in Indonesia. This increase is proportional to the number of transactions enhancement by 53% from the 3rd quarter. It was reached more than 750 thousand transactions on the marketplace in the last three months.

The e-commerce development has increased and expanded by the Covid-19 pandemic. Based on Digital Market Outlook data, Indonesian e-commerce users increased 15% from 138 million users in 2020. It increased by 26% and reached US\$ 38 million, from US\$ 30 million in 2020.<sup>9</sup> Also, Google's e-Conomy SEA 2020 report shows that 93% of respondents in Indonesia will continue to use digital services such as e-commerce after the Covid-19 pandemic ends. Because e-commerce is more efficient in energy and time. Increasing e-commerce access has the potential to cause problems for consumers. BPKN Consumer Complaint Data 2020 shows there were 1,276 complaints by December 2020. The number was 23,11% of complaints increased than the previous three years.<sup>10</sup>

Consumer Protection Law has needed for businessmen in cross-border transactions and vice versa. The internet growth is dynamic as tools for national and international trade. It needed to create new regulations. There is no explicit legal certainty on online dispute resolution in Indonesia. Before, business dispute resolution was conventional resolved by court or litigation. The litigation process between opposite parties is moving away from the win-win solution. But it's towards to win-lose solution. The resolution through litigation takes a long time. Also makes uncertainty for both the disputing parties. The weaknesses are slow processes, high costs, and high risks for spends the potential resources of the disputing parties. Whereas business world requires rapidity, low cost, and informal procedure of dispute resolution. E-commerce aims to cut off these difficulties.<sup>11</sup> Now, dispute resolution through litigation is not very popular. It is the last way (*ultimatum remedium*) after the other efforts have failed. The appearance of electronic disputes occurred online on the

<sup>7</sup> Adel Chandra, “*Penyelesaian Sengketa Transaksi Melalui Online Dispute Resolution (ODR) Kaitan Dengan UU Informasi Dan Transaksi Elektronik No. 11 Tahun 2008*” (Esa Unggul, 2014) accessed 5 April 2021.

<sup>8</sup> Google Temasek, “*e-Conomy SEA 2019, Swipe Up and to the right: Southeast Asia \$100 billion Internet economy*,” <[https://www.blog.google/documents/47/SEA\\_Internet\\_Economy\\_Report\\_2019\\_pdf](https://www.blog.google/documents/47/SEA_Internet_Economy_Report_2019_pdf)> p. 10, accessed 1 April 2021.

<sup>9</sup> Azela M. Yunarko, “*Transaksi e-commerce Meningkat hingga Kuartal IV*,” <<https://jetcommerce.co.id/update/transaksi-e-commerce-meningkat-hingga-kuartal-iv-2020-tren-e-commerce-2021-diprediksi-tumbuh-positif/>> accessed 10 April 2021.

<sup>10</sup> BPKN, “*BPKN Terima 1.276 Pengaduan Pada 2020, E-Commerce Melonjak*” <<https://www.bpkn.go.id/posts/show/id/2040>> accessed 2 April 2021.

<sup>11</sup> Purwanto, “*Efektifitas Penerapan Alternative Dispute Resolution (ADR) Pada Penyelesaian Sengketa Bisnis Asuransi Di Indonesia*” (2005), (Risalah Hukum, p.14) quoted by Rochani Urip Salami dan Rahadi Wasi Bintoro.

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Internet expected to resolve online as well. Based on this fact, an effective-efficient system is needed to resolve e-commerce disputes. The mechanism that meets the requirements is online dispute resolution.

The complicated dispute resolution is detrimental to justice seekers in all aspects, especially in the business world. It will involve economic costs and drain the company's potential and resources. Meanwhile, in business world needed a fast dispute resolution, low cost, and informal procedure. The appearance of e-commerce intended to end difficulties in conventional business transactions. The dispute resolution model through the judiciary was not expected to carry out, because it will waste in time and money. For comparison purposes, dispute resolution at the district court level takes around six months, while at the high court level it takes around one year. At the Supreme Court level, there is no definite time limit for the settlement of cases. Generally completed within three to four years. Alternative dispute resolution online is not much different from alternative dispute resolution offline. The difference in the method used, the use of electronic means in its implementation. In this case, ODR is an alternative to business dispute resolution outside the court that uses the internet as a medium to resolve disputes that occur between the parties. Online Dispute Resolution requires information technology tools, especially the internet for the dispute resolution process. The information technology equipment used has a good internet network so that it can process information and forward it to the parties involved in dispute resolution. As before mentioned, that ODR is a dispute resolution carried out by combining information processing computer technology with internet communication network facilities. ODR facilitates the "fourth party" information technology media to the disputing parties to communicate even though they do not meet face to face. The ODR concept recognizes the role and value of software as a network used for more than a simple communication channel. This "fourth party" tool will facilitate the parties to clarify issues before a face-to-face video conference session or this tool used to help identify the parties in an online meeting.

In 1995, ODR named Virtual Magistrate (VM) has initiated by the National Center for Automated Information Research in Philadelphia, United States. The ODR establish purposes is resolving disputes between internet service providers and users.<sup>12</sup> After that, SquareTrade, CyberSettle, and the Uniform Domain Names Dispute Resolution Policy (UDRP) began to appear.

Dispute resolution through ODR (Online Dispute Resolution) was not regulated in Indonesia yet. One of the goals was the desire to increase public confidence in online commerce by providing fast dispute resolution and legal certainty across different geographies, languages, and legal jurisdictions. Several countries implemented and utilized ODR, but the existence of ODR in

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<sup>12</sup> Pablo Cortes, "Online Dispute Resolution for Consumers in the European Union", Abingdon: Routledge, 2011, p. 54. See: United Nations Conference on Trade and Development, "E-Commerce and Development Report 2003," New York and Geneva: United Nations, 2003, p. 180-181. See: Ethan Katsh, "Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace," 2006, *Lex Electronica* 10(3), <[https://www.lex-electronica.org/files/sites/103/10-3\\_katsh.pdf](https://www.lex-electronica.org/files/sites/103/10-3_katsh.pdf)> p. 2 accessed 3 April 2021.

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Indonesia has not implemented, so that legally the use of online dispute resolution (ODR) mechanisms has not formulated.

ODR is an innovation and online implementation of Alternative Dispute Resolution (ADR). However, ODR uses a combination tool such as video conferencing, electronic mail (e-mail), chat features, and automated systems.<sup>13</sup> There were many types of ODR. Those are online settlement, online mediation, online negotiation, and online arbitration.<sup>14</sup> The regulatory framework that supports ODR in Indonesia is Law no. 11 of 2008 on Information and Electronic Transactions as amended by Law No. 19 of 2016, Government Regulation No. 80 of 2019 on Trade Through Electronic Systems, and Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. In UU ITE and E-commerce Government Regulation, dispute resolution is handling by virtual. Also, society plays a role in forming dispute resolution institutions for consultation and mediation media.

Meanwhile, Arbitration and Alternative Dispute Resolution Law is an important online ADR basis. The dispute resolution has carried outside the litigation through the procedures agreement of the opposite dispute parties in response to modern developments.<sup>15</sup> ODR is one of the outcomes ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2016–2025 because e-commerce requires dispute resolution that works online. This action plan aims to encourage countries to build systems, develop networks, and establish cross-border mechanisms regarding complaints and investigations.

Based on the background, the issues raised are (i) what are the prospects for implement the Online Dispute Resolution in Indonesia; (ii) what are the obstacles in implementing the Online Dispute Resolution system. This paper contained e-commerce enhancement with the dispute potential. Also, ODR development, ODR regulatory framework, and the ASEAN action plan. The authors are very interested in elaborating those all for ODR in Indonesia.

This study aims to analyze these with the new method ODR settings. Also, ODR is an alternative option in the future of Indonesia.

## METHODS

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<sup>13</sup> Esther van den Heuvel, “*Online Dispute Resolution as A Solution to Cross-Border E-Disputes: An Introduction to ODR*,” <<http://www.oecd.org/internet/consumer/1878940.pdf>> p. 11 accessed 17 April 2021.

<sup>14</sup> Sree Khresna Bharadwaj H.,” *A Comparative Analysis of Online Dispute Resolution Platforms*,” 2017, *American Journal of Operations Management and Information Systems*” 2(3), pp: 81-85: p. 84. See: Esther van den Heuvel, loc.cit., p. 8.

<sup>15</sup> ASEAN, “*The ASEAN Strategic Strategic Action Plan for Consumer Protection (ASAPCP) 2016-2025: Meeting the Challenge of People-Centered ASEAN Beyond 2015*,” <<https://asean.org/storage/2012/05/ASAPCP-UPLOADING-11Nov16-Final.pdf>> p. 5 accessed 11 April 2021.



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This research uses library research. Literature research is research conducted by collecting data and information of various materials. Library research uses library materials as the main data source. The materials were:(1) primary legal materials in Indonesian legislation and international legal instruments. Those included Law No. 11 of 2008 on Information and Electronic Transactions as amended by Law No. 19 of 2016, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Government Regulation No. 80 of 2019 on Trade Through Electronic Systems, and the United Nations Commission on International Trade Law (UNCITRAL); (2) secondary materials, included books, academic journals, news, opinions, cases, and official reports; and (3) tertiary material, included in the form of a dictionary and encyclopedia. These materials explored and discussed the issue of ODR in this study.

As a consequence of choosing the topic of the problem which the object was a legal issue, this research was a normative juridical research, legal research oriented to normative legal phenomena. It sourced from library data collection. Normative juridical research focuses on an inventory of positive law, legal principles and doctrines, legal findings in koreto cases, legal systematics, levels of synchronization, legal comparisons, and legal history. Based on the problems studied, it used the statute approach and comparative approach. With the statute approach, it studied the hierarchy of laws and regulations and legal principles. Meanwhile, the comparative approach was comparing the laws of a country with the laws of one or more other countries on the same matter.

## RESULTS AND DISCUSSION

### 1. Online Dispute Resolution Development

The development of technology has a big impact on human life. Technology developments made dispute resolution and judicial processes through online arbitration, online mediation, and online negotiations more effective and efficient. This stems from demanded an affordable and faster settlement mechanism. New Normal Era during the Covid-19 pandemic made activities transposed to virtual space, so the dispute resolution needed an easy and inexpensive mechanism.

The term ODR has two conceptual definitions. UNCITRAL defined ODR as a "mechanism for resolving disputes through the use of electronic communications and other information and communication".<sup>16</sup> Besides that, the Indonesian Financial Services Authority (OJK) defined ODR as an alternative to dispute resolution using electronic media and internet networks in the process, so the opposite dispute parties didn't need to meet physically.<sup>17</sup>

The history of ODR began in 1995 when The National Center for Automated Information Research (Philadelphia, United States) created a Virtual Magistrate (VM) which aims to resolve disputes

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<sup>16</sup> United Nations Commission on International Trade Law, "*UNCITRAL Technical Notes on Online Dispute Resolution*," Vienna: UNCITRAL, 2017, p. 4.

<sup>17</sup> Financial Services Authority Protection Department (OJK), "*Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Online Dispute Resolution (ODR)*," Jakarta: Departemen Perlindungan Konsumen OJK, 2017, p 29, accessed 3 April 2021.

between internet service providers and users.<sup>18</sup> After that, eBay created an ODR with a pilot project with the University of Massachusetts in 1999. This project reviewed the effectiveness of online mediation related to disputes between businessmen and buyers on the eBay website.<sup>19</sup> There were more participants from the disputants than traditional mediation. Thus, eBay organized online mediation, SquareTrade with a feedback rating system mechanism. After that, ODR continued to develop such as CyberSettle, Uniform Domain Names Dispute Resolution Policy (UDRP), Modria, and China International Economic and Trade Arbitration Commission (CIETAC).<sup>20</sup> CyberSettle develops automated negotiation mechanisms. UDRP developed the Internet Corporation for Assigned Names and Numbers (ICANN) with the chargeback's method. The most successful ODR provider obtained by Modria. The ODR formed in 2011 by the Modria Resolution Center. It was a collaboration between eBay and American Arbitration Association (AAA). The total number of cases received more than 100,000 cases per year.<sup>21</sup> Because of this success, Modria acquired by Tyler Technologies in 2017.<sup>22</sup> Besides that, CIETAC came up with the CIETAC ODR Center with a self-regulation method. It adopted online arbitration and became the first Asian ODR.<sup>23</sup>

## 2. ODR Dispute Resolution Mechanism

Business disputes can resolve in two ways, litigation, and non-litigation processes. Sophisticated technological developments provide innovative solutions using the internet to support dispute resolution. Settlement of business disputes with the internet called Online Dispute Resolution (ODR). Online Dispute Resolution uses ICT (Information and Communication Technology). It was a communication tool between business to consumer due to economic transactions.

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<sup>18</sup> Pablo Cortes, *Online Dispute Resolution for Consumers in the European Union*, Abingdon: Routledge, 2011, p. 54. Lihat United Nations Conference on Trade and Development, *E-Commerce and Development Report 2003*, New York and Geneva: United Nations, 2003, p. 180-181. Lihat juga Ethan Katsh, "Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace," 2006, *Lex Electronica* 10(3), [https://www.lex-electronica.org/files/sites/103/10-3\\_katsh.pdf](https://www.lex-electronica.org/files/sites/103/10-3_katsh.pdf), p. 2 diakses tanggal 3 April 2021.

<sup>19</sup> Maurice Schellekens & Leo van der Wees, "ADR and ODR in Electronic Commerce," Ch. 10, pp. 271-300, Inside J.E.J. Prins, et.al. (eds), "*Trust in Electronic Commerce: The Role of Trust from a Legal, an Organizational and a Technical Point of View*," The Hague: Kluwer Law International, 2002, p. 280.

<sup>20</sup> Pablo Cortes, *op.cit.*, p. 64-70. Lihat Karolina Mania, "Online dispute resolution: The future of justice," 2015, *International Comparative Jurisprudence* 1(1): pp. 76-86, p. 78. Lihat juga Meline Gerarita Sitompul, M. Syaifuddin, & Annalisa Yahanan, *loc.cit.*, p. 83, accessed 3 April 2021.

<sup>21</sup> Karolina Mania, *loc.cit.*

<sup>22</sup> Victr Li, Tyler "Technologies acquires online dispute resolution company Modria, ABA Journal", 12Juni2017, <[https://www.abajournal.com/news/article/tyler\\_technologies\\_acquires\\_online\\_dispute\\_resolution\\_company\\_](https://www.abajournal.com/news/article/tyler_technologies_acquires_online_dispute_resolution_company_)> accessed 12 April 2021.

<sup>23</sup> Meline Gerarita Sitompul, M. Syaifuddin, & Annalisa Yahanan, *loc.cit.*, p. 83.

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The conventional dispute resolution system involved three parties. Those were the disputing parties and a neutral third party. But, the ODR system had the fourth party. It was a technology as a negotiator, mediator, and arbitrator. ODR carried out borderless by the parties. Also, it crossed geographies without meet face to face. ODR had three methods: online negotiation, online mediation, and online arbitration.

ODR as an implementation of ADR procedures and events uses the internet. Types of ADR include consultation, negotiation, mediation, conciliation, expert judgment, adjudication, and arbitration. The ADR *Continuum* by Erickson and Johnson divided into two poles of resolutions. It was cooperative or informal principles and competitive or formal principles.<sup>24</sup> ADR Continuum included problem-solving, negotiation, mediation, fact-finding, settlement conferences, arbitration, and litigation.

Problem-solving is a cooperation process to identify problems and determine the best potential solutions. Negotiation is a communication process between the dispute parties to resolve differences without a third party in the most favorable manner. Mediation is the dispute resolution through a third party appointed by the disputing parties to help reach an agreement. Conciliation is the dispute resolution with the third-party acts as a mediator and a conciliator with the agreement of the parties, so the solution is acceptable by parties. Expert judgment is the opinion of experts on matters of a technical nature and by competence. The Settlement of Conference is the process to present their conflict to a neutral party and usually suggests ways of resolving disputes without a trial. Arbitration is the disputing parties presenting their conflict to the arbitrator and it decides how the dispute resolved. Arbitration can be carried out if there was a written agreement or the selection of arbitration clause states as a place for dispute resolution.

Meanwhile, ODR has four mechanisms for resolving disputes, i.e.<sup>25</sup>

1. Online settlement is a skill system used to settle financial claims automatically;
2. Online arbitration, various technological features used to resolve disputes by the third parties (arbitrators);
3. The online resolution of consumer complaints used to resolve the problems of consumer complaints;

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<sup>24</sup> Stephen K. Erickson & Marvin E. Johnson, "ADR Techniques and Procedures Flowing Through Porous Boundaries: Flooding the ADR Landscapes and Confusing the Public," 2012, *Mediate.com*5(1), <https://www.mediate.com/pdf/ADR%20Techniques%20and%20Procedures%20Flowing%20Through%20Porous%20Boundaries-%20Flooding%20the%20ADR%20Landscape%20and%20Confusing%20the%20Public%20> Accessed 7 April 2021.

<sup>25</sup> Ester van den Heuvel, *loc.cit.*, p. 8.



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4. Online mediation, as an online arbitration, a technology feature used to resolve disputes by the third party (mediator).

ODR's features are electronic mail, feedback system, chat, audio or video conferences, and artificial intelligence features.

These features are interconnecting from the beginning process. The beginning process submitted a registration form, summons, trials, evidence, decisions, and execution. This makes it easier for the user to select the features to use and change the feature options. Users must remain there during the dispute resolution process until decision making. The ODR apps provider is indispensable for accepting registrations or requests of disputes. It will provide an online form. Then it will inform the procedures, fees, service options, mediators' options, arbitrators, privacy policies, and other provisions. The process and trial features of ODR depended on the technology developed. As well as play a role in the process and substance of the execution. ODR execution for mediation and negotiation services hasn't binding legal force because they submitted to the parties. In contrast to an arbitration award which has binding legal force, but it must go through a litigation.

### 2.1. Online Negotiation

Negotiation is basic dispute resolution. The parties can oversee the procedure and resolution based on the agreement. Negotiations regulated in Article 1 Point (10) of Law No. 30 of 1999. The goal is to get and fulfill the interests that have been before planned to get what desired.

In the negotiation process, there were two parties with different points of view. Thus, both parties need to negotiate so they are satisfied of the outcome. Then, they will make the agreement be success, not *vice versa*. The advantages of dispute resolution through negotiation are:

1. Provide broad opportunities for the parties to make choices.
2. Not depend on written legal norms.
3. Provide a space the parties for a win-win solution. Also, the opportunity to explain various problems in the negotiation process.

While the weaknesses of the negotiations are:

1. It cannot run without an agreement or no trust between the disputing parties.
2. In negotiations, it's often no effort to listen to each other's wishes and desires
3. It is difficult to walk if the positions of the parties are not balanced
4. Can make deals that are less profitable.

Online negotiation is a form of dispute resolution by the parties. It is deliberating or negotiating to find a solution by the help of technology as a facilitator. The outcome of the negotiations can be in the form of compromise decision.

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## **2.2 Online Mediation**

Mediation is a dispute resolution process with a third party (mediator). Mediator is impartial or neutral. Mediator helps to get an agreement that satisfies both parties. Online dispute resolution assisted by a fourth party (technology) to reach a win-win solution. The advantages of dispute resolution through mediation:

1. A frugal decision
2. Quick process
3. Satisfactory results for all parties
4. Comprehensive agreement
5. Implementable decisions
6. Decisions that are applicable regardless of time.

Meanwhile, the weakness of mediation is the strength of execution after the agreement. It is because an agreement reached by the parties. Thus, the effective mediation applied by parties who end the dispute by mediation voluntarily. The conciliation can be achieved when both disputing parties agree to release their demands to end in a win-win solution. The mediator obliged to carry out its duties based on the willingness of the disputing parties. There are three types of online mediation methods, i.e.:<sup>26</sup>

1. Facilitative mediation, the mediator as a facilitator and cannot provide solutions. The mediator provides a way for the parties to find their own resolution for the disputes they faced.
2. Evaluative mediation. The mediator provides a legal point of view, facts, and evidence with a strategy of making an agreement. The mediator tries to persuade the parties to accept it.
3. Situational mediation. The mediator trying to interfere with the problem as long as the parties agree. When the parties fail to do the mediation, the mediator can interfere only to the extent of proposing a solution if the parties ask the mediator. The aim of this procedure is to ease communication among the parties and the mediator.

Online mediation can apply the technologies (internet relay chats, e-mail, and video conferencing) to communicate between the disputing parties and the mediator.

## **2.3 Online Arbitration**

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<sup>26</sup> Priyatna Abdurrasyid (n 18). *Op.Cit.*[94].

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Arbitration is the disputes resolution without litigation. Many businessmen choose this way because of the litigation distrust and fast process. The implementation of arbitration uses the principle of confidentiality. The parties are free to choose an arbitrator based on expertise. Also, the parties are free to choose which law to use. The resulting decision is final and binding. Article 1 paragraph 1 of Law No. 30 of 1999, arbitration is a resolving way for civil disputes without litigation depended on a written arbitration agreement. The advantages of arbitration are:

1. There is a guarantee of deliberate confidentiality of the parties
2. Delays caused by procedural and administrative matters can avoid
3. The parties can choose which law apply and the arbitration process and venue.

The weakness of arbitration is arbitral institutions haven't executorial power and legal certainty. Online arbitration uses an arbitrator as a neutral third party. Arbitrator as a decision-maker assisted by a fourth party. technology and the internet. An arbitration execution can be binding and non-binding. It is depending on the agreement of the parties before the award implemented. It based on the ethical nature of the parties. It will very beneficial if supported by good faith, corporation, and non-confrontation. Online arbitration has two types of methods, i.e.:

1. Binding arbitration. Final decision appropriated for a litigation execution that has been submitting.
2. Non-binding arbitration is an optional decision. It may or may not follow like fact-finding.

### **3. Online Dispute Resolution in Indonesian Legislation**

The "*lex generale*" regulations have covered online dispute resolution in Indonesia. There are Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law No. 11 of 2008 on Electronic Information and Transaction, and Law No. 7 of 2014 on Trade. However, the legal certainty of "*lex specialis*" needed for online dispute resolution, especially for the public and businesspeople in particular.

Non-litigation dispute resolution through Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution is the basic application of online dispute resolution in Indonesia with online negotiation, online mediation, and online arbitration methods. The application is also supported by Law No. 11 of 2008 on Electronic Information and Transaction and Law No. 7 of 2014 on Trade as the basis for electronic evidence and non-litigation institutions through cyberspace.

#### **3.1 Online Dispute Resolution in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution**

Article 1 paragraph 10 of Law No. 30 of 1999, the methods of non-litigation dispute resolution include consultation, negotiation, mediation, conciliation, expert judgment, and arbitration. The non-litigation dispute resolution provides an opportunity for the disputing parties to choose the best resolve way. Online dispute resolution includes agreement law so the principle of freedom of

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contract (*overeenkomst*). It means that the parties are free to choose the legal and dispute resolution forums on civil dispute. Article 1 paragraph 10 Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution supports methods of non-litigation dispute resolution through modernization of technology and communication.

E-commerce disputes included in the realm of contract law. So, the principle of freedom contract will apply. It means that the parties are free to make legal choices. The choice of dispute resolution forums will use in civil dispute between them. The development of dispute resolution methods through technology and communication were no longer a barrier of separate geographical conditions. In Article 1 point 10 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, it regulated the patterns of dispute resolution outside the court by the development of modernization. If viewed from current business trading practices, patterns of dispute resolution outside the court developed on provide opportunities for alternative online dispute resolution.

### **3.2 Online Dispute Resolution in Law No. 11 of 2008 on Electronic Information and Transactions**

Based on Article 18 Paragraph (4) of Law No. 11 of 2008 on Electronic Information and Transactions, i.e.:

1. Electronic transactions in electronic contracts are binding on the parties.
2. The parties have a right to choose the law that applies to the international transactions which they made.
3. If the parties haven't chosen law in international electronic transactions, the applicable law based on the principles of international civil law.
4. The parties have the authority to establish a court forum, arbitration, or other alternative dispute resolution institution authorized to handle disputes that may arise from international electronic transactions they made.
5. If the parties haven't chosen forum. So, refers to in paragraph (4), the determination of the authority of the court, arbitration, or other alternative dispute resolution institutions authorized to handle disputes that may arise from the transaction, based on the principles of international law.

Based on the provisions of Article 18 paragraph (4), the parties have a right to determine the form of court, arbitration, or other alternative dispute resolutions they want to handle disputes that will arise from international transactions that they made. This article emphasized the application of the principle of freedom of contract (*overeenkomst*). in regulation has the potential to cause disputes. In this article, the parties must understand which dispute resolution is most beneficial to the parties. Start from choosing the resolution method, the resolution placement, and the party that finishes it. The parties can choose ODR as an initial method of dispute resolution.

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In the provisions of Article 18 paragraph (5), the parties may prefer the method of dispute resolution that is most beneficial to the parties based on international law so allow the use of ODR based on international law.

The existence of Article 18 of Law No. 11 of 2008 stated there were three options for resolving electronic transaction disputes that used by parties to resolve existing disputes, legal choices made by the parties, legal choices made by litigation institutions or non-litigation, and based on the principles of international civil law. Thus, the existence of this law intended to balance the use of information technology in Indonesia with regulatory practices by the government, especially in the field of electronic transactions aimed at fulfilling legal certainty.

Besides, the provisions of Article 33 of the ITE Law are also protected by related ODR service providers which are prohibited. The explanation of this provision is the person who and without rights or against the law interfered with the electronic system will punish under Article 49 of ITE Law with a maximum imprisonment of 10 (ten) years and/or a maximum penalty of IDR 10,000,000,000. (Ten Billion Rupiah). ODR providers included in an electronic system that, if disturbed, can be subject to crime. Thus, it can be summar that there is protection for ODR service providers in Indonesia or criminal penalty for interfering with ODR implementation in Indonesia. The ITE Law through article 35 paragraph (1) also protects consumers or users of ODR as an electronic system.

Based on Article 38 Paragraph (1) of Law No. 11 of 2008, ITE Law protects consumers and ODR service providers. Article 41 paragraph (1) of Law No. 11 of 2008, the society involved in the implementation of electronic systems and transactions. Then, Article 41 paragraph (2) explained about participation can carry out through institutions. Article 41 paragraph (3) in fact, the institution can have a consultation and mediation function. This clause is a trigger proven by the public providing technology in the implementation of consultation and mediation, including ODR as a capital market dispute resolution.

### **3.3. Online Dispute Resolution in Law No. 7 of 2014 on Trade**

E-commerce enhancement makes the potential of disputes due to conflict of interest. Based on the provisions of Article 65 Paragraph (5) of Law No. 7 of 2014 on Trade, the disputing parties given the freedom to choose their dispute resolution institution through the court or other dispute resolution mechanisms. This is a driving factor for the implementation of online dispute resolution institutions in Indonesia.

The Directorate of Trade Business Development, the Directorate General of Domestic Trade, and the Ministry of Trade of the Indonesia in 2011 made the final report of the academic manuscript of the Draft Government Regulation (RPP) on Electronic Trading (E-commerce). In Chapter III on the Content of the Electronic Trading RPP and its Relation to Other Positive Laws, in point 6, it regulates the settlement of electronic trade disputes.



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E-commerce RPP will focus on the ADR (Alternative Dispute Resolution) mechanism, including mediation, negotiation, and arbitration for all private relationships. Meanwhile, public relations directed to the court mechanism.

The Draft Government Regulation (RPP) for Electronic Trading regulates the Online Dispute Resolution (ODR) mechanism. One of the legal breakthroughs to protect the parties in electronic trading transactions is the online dispute resolution procedure. This existence affects the power of consumer protection more in conducting transactions.

The Electronic Trading RPP emphasizes the importance of freedom to access clear and correct information about ODR procedures, increasing consumers' technical capabilities, and understanding the existence of a legal umbrella on ODR procedures related to electronic trading. Thus, the concept of dispute resolution through the Online Dispute Resolution system based on Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law No. 11 of 2008 on Information and Electronic Transactions, and Law No. 7 of 2014 on Trade used in the future as a basis of reference for making a more specific legislation on Online Dispute Resolution.

### **3.4 Online Dispute Resolution in Government Regulation No 80 of 2019 on Trading Through Electronic Systems**

Article 72 paragraph (2) PP no. 80 of 2019 states the word "online dispute resolution" strictly. The clause is "PMSE dispute resolution as referred to in paragraph (1) can hold electronically (online dispute resolution) by the provisions of laws and regulations". Then it explained in the elucidation of the article: "Online dispute resolution returns to the agreement of the parties basically. This can be in the form of electronic mediation organized by supporting professionals such as advocates or mediators, through accredited online arbitration institutions, or through government agencies authorized to do so. "These articles and explanations confirm that ODR as an alternative to dispute resolution has recognized in electronic trade disputes.

## **4. Comparison of ODR Models in the United States and China**

Several countries have implemented an Online Dispute Resolution system. In comparison, the United States and China. Both countries have advantages in their respective fields. The United States good in technological advancement (HI-tech). While China excels at the level of trade.

### **4.1 United States of America**

One of the arbitration institutions in America provided ODR services, the American Arbitration Association (AAA). The AAA formed in 1926 under the Federal Arbitration Act. AAA has a specific goal in assisting the implementation of arbitration as an "out-of-court solution" to resolve a dispute.

AAA is a full-service alternative dispute resolution operator. AAA supports the needs of e-consumers in resolving their disputes through technology facilities. AAA's role in the dispute

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resolution process managed disputes from submission until the dispute end. AAA provided international dispute resolution services through the International Center for Dispute Resolution (ICDR). ICDR founded as a global component of AAA. ICDR provides dispute management services for more than 80 (eighty) countries. This supported by staff who are fluent in foreign languages in 12 (twelve) languages.

AAA as an international dispute resolution institution, in line with global developments provided international dispute resolution services online or known as ODR. AAA provides ODR services on its website ([www.adr.org](http://www.adr.org)). AAA has provided “Online Services” tools. Online Services offer fast, effective, and efficient services. This is by providing online claim submission services through the WebFile service. Besides submit claims online, clients can make payments, manage disputes online, access online rules and procedures, exchange into electronic documents, and choose a neutral party (in mediation or arbitration) to resolve the dispute they submit.

The online dispute service offered by AAA shows that AAA has a role in implementing ODR. In AAA, the implementation of online alternative dispute resolution carried out in stages:

- a. Where at the initial stage the disputing parties must register with the AAA web file.
- b. The parties continue by filling out the personal data form of the two parties to the dispute.
- c. After registering and filling out the form, the disputing parties submit claims online to AAA by mail, facsimile, e-mail, or other online methods.

An example of a form found on the website [www.adr.org](http://www.adr.org) used by parties wishing to file a lawsuit. This form intended for consumer-business disputes or business-to-business disputes. The parties must have e-mail. The submitting party must fill the date, name of the submitting party, name of the representative (if different), type of business, address, city, country, telephone, fax, e-mail, then name and signature of the submitting party. Then on the second page, the party filing the lawsuit in the defendant's party, address, email, and tell the dispute that occurred between the parties. Plaintiffs can add pages containing documents related to the dispute. Then the plaintiff fills in the amount of the claim. After filling is complete, the plaintiff and the defendant (the parties) will receive information from AAA. The neutral party appointed in the case. Then AAA will explain the steps to start the case online.

## **4.2 China**

The dispute resolution through ODR organized by the China International Economic and Trade Arbitration Commission (CIETAC). This based on self-regulation, the CIETAC Online Arbitration Rules (CIETAC OAR). Cietac ODR Center is a special agency formed by CIETAC to serve online dispute resolution. Cietac ODR develops a website that used as an online dispute resolution medium. The method of dispute resolution at CIETAC is through arbitration and online mediation. But, by the characteristics of the arbitration regulations in CIETAC, the administration

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of arbitration combined with the conciliation method. This based on the agreement of the parties. The CIETAC arbitrator may terminate conciliation efforts if the parties so request or if the arbitrator considers that conciliation efforts will be futile. If conciliation fails, the arbitrator must continue the arbitration process.

The Online Arbitration process based on the CIETAC Online Arbitration Rules includes the administrative process. In this process, it is necessary to make a request for arbitration. This application letter addressed to the CIETAC secretariat with supporting evidence. After that, making the payment, the arbitration fee calculated based on the number of claims filed by the applicant. Within 5 days of receipt of the request for arbitration, the parties will notify of the arbitration. The arbitration notification provides information on the internet address of the website where the parties can consult. This consultation refers to the CIETAC Arbitration Rules and the CIETAC Panel of Arbitrators. Then in the Tribunal of Arbitrators, if the arbitrator consists of 1 person, then within 6 days after receipt of the note of arbitration by the last party, the applicant and the respondent must appoint a single arbitrator or entrust the chairman of CIETAC leadership to appoint the arbitrator. However, if there are more than 1 arbitrator, then within 6 days after receipt of the note of arbitration, the applicant and the respondent must each appoint an arbitrator or entrust the chairman of the CIETAC leadership to appoint the arbitrator. Within 6 days after receipt of the note of arbitration by the last party, the applicant and the respondent must appoint a third arbitrator or entrust the chairperson of CIETAC to appoint the arbitrator. The third arbitrator is the chairman of the arbitral tribunal. Then, if a memorandum of defense and counterclaim obtained, the respondent must submit a memorandum of defense and evidence thereof within 30 days after receiving the notification of arbitration. However, the Memorandum of Defense Against Counterclaim for the Petitioner must submit his memorandum of defense against the counterclaim from the respondent within 20 days of receiving the counterclaim from the respondent.

## **5. The Adoption of ODR in Indonesia**

The development of e-commerce was one of measures in ODR implementation. This has a direct impact on the implementation of ODR to resolve commercial disputes. Several countries, such as America and China implemented ODR for remote dispute resolution via the internet. Clear and detailed rules and regulations are already available on the website, making it easier for the parties to better understand the proceedings.

The application of ODR related to economic development in a country. In Indonesia, the development of e-commerce transactions has been quite rapid. It seen from the use of the internet. The number of buying and selling online were widespread, to other transactions that use the internet network. So, it is not wrong, if Indonesia needs to prepare more special regulations of ODR.

The institution that handles alternative dispute resolution in Indonesia is BANI (Indonesian National Arbitration Board). If the parties to the agreement or business transaction agree in writing to bring the dispute that arises to BANI. The disputing parties may use the BANI Procedure Rules.

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Disputes resolved under the administration of BANI, not in conflict with the provisions of the law that are coercive and at the discretion of BANI. Peaceful dispute resolution through arbitration at BANI based on the good faith of the parties based on cooperative and non-confrontational procedures.

BANI as an alternative dispute resolution agency in Indonesia, appointed as an alternative party/institution such as AAA in America and CIETAC in China. If you choose the BANI Procedure Rules for dispute resolution, the parties to the dispute deemed to have agreed to abolish the case examination process through the District Court. The parties carry out any decision made by the Arbitral Tribunal. This aims to reduce the settlement of business disputes in court.

Any notification based on the Rules of Procedure. Exceptions occur when the Tribunal instructs other matters such on deliver in person, by courier, facsimile or e-mail. This will deem effective on the date of receipt or if the date of receipt cannot determine on the day following the said submission. The period of time determined under these Rules of Procedure or the relevant arbitration agreement, begins on the day after the date on which the notification or communication deemed effective.

If the expire date of a notification on the deadline falls on a Sunday or a national holiday in Indonesia, then the time limit ends on the next working day after that Sunday or holiday. Unless agreed by the parties, the examination of the case will complete within 180 days from the date the full Assembly form. In special circumstances where the dispute is of a very complex nature, the Tribunal reserves the right to extend the time limit by notification to the parties. The arbitration procedure begins with the registration and submission of the Application for Arbitration by the party initiating the arbitration process (the “Applicant”) at the BANI Secretariat. In the Petitioner's Application for Arbitration and in the Respondent's Response to the Application, the Respondent may appoint an Arbitrator or submit the appointment to the Chairman of BANI. The application for arbitration accompanied by payment of registration fees and administrative fees by BANI provisions. Administrative costs include Secretariat administration fees, case examination fees and arbitrator fees as well as the costs of the Secretary of the Assembly. If a third party outside the arbitration agreement participates and joins in the dispute resolution process through arbitration as referred to in Article 30 of Law no. 30 of 1999, the third party obliged to pay administrative fees and other costs in connection with such participation. The examination of the arbitration case will not begin until the administrative costs paid by the parties by BANI provisions.

## **6. Opportunities and Challenges**

Based on, the elaboration of the regulatory framework, ADR institutions, and e-commerce enhancement supported the realization of ODR in Indonesia, it shows the opportunities and challenges of implementing ODR to resolve e-commerce transaction disputes. The opportunity identified are at least the following:

- a. Statistics on the increase in e-commerce activity in Indonesia. E-commerce transactions in the fourth quarter were 36 percent of 2020 in Indonesia. But The Indonesian's digital marketplace users was 80% or 168.3 million peoples in 2019.<sup>27</sup> They were buying and selling on online transactions. This is also supported by the recapitulation of website performance data on 20 e-commerce platforms in Indonesia as follows:<sup>28</sup>

Table 1. E-Commerce Metrics Performance

E-Commerce Category	E-Commerce Social Media Metrics Performance			
	Average Engagement/ Post	Average Likers per Post	Average Comments per Post	Total Followers
Shopee	19.779	8.905	10.874	5.568.446
Tokopedia	17.304	16.680	624	2.056.507
Bukalapak	542	460	82	1.092.975
Lazada	4.517	3.564	953	2.218.683
Blibli	490	5	37	1.282.443

Sources: SimilarWeb, Analisa.io

- b. The implementation of cross-border transactions in the world marked by the e-commerce startup company's enhancement with e-commerce transactions (marketplace companies).
- c. The ASEAN action plan encouraged the formation of the ODR as one of the outcomes of The ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2016-2025. The establishment of the ODR begins at the national level and in parallel at the ASEAN level. The outcome of this action plan established a cross-border dispute resolution and investigation mechanism.
- d. The presence of the AAPS Law, the ITE Law, E-commerce Government Regulations, and other related laws and regulations were initialed basis for the formation of ODR in Indonesia as stated in the previous section.
- e. ODR can reach those who need it wider. For the low economic value cases or when the parties lived in remote areas or different jurisdictions, ODR was the best way with the short-time process and low cost. ODR can also integrate with ADR in some matters that cannot be done by virtual. So, face-to-face meetings can still be held. The ODR also has a format to record all the dispute resolution processes used for deeper research and verification.

<sup>27</sup> Indonesia, D. 2. (2020). DataReportal.

<sup>28</sup> Average Visit Duration. (2020). SimilarWeb.



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- f. The ODR system implemented in each place according to the desired atmosphere, such as an office or home. Thus, it was also more convenient because the parties agreed on the desired time even out of work hours. If it has agreed, it can still be implemented.

Meanwhile, opportunities for consumers and e-commerce transaction business actors in resolving disputes through ODR, include:

1. Time and Cost Savings efficiency

Online dispute resolution can save time for businesspeople between countries who involved in a dispute arising from online business/international trade activities. ODR provides freedom for the parties to determine the time for the dispute resolution process. This makes it easier for businesspeople who involved in a dispute, besides the businessman being able to resolve the dispute online, he can set aside some of his time to keep working. Disputing parties and neutral parties need not travel to meet. They do not need to be present at the same time and settlement can be on a document basis only. Besides, the parties can save (cost savings) because there is no need for accommodation to meet each other in dispute resolution.

2. Convenience of the Procedure ODR

ODR provides the use of communication that uses an asynchronous system. “Asynchronous” is an information and communication technology system that supports dispute resolution through ODR by utilizing a controlled program for users without having to wait for the process and does not take a long time. This system makes it easier for parties to exchange opinions without feeling intimidated by each other. Usually, the disputing parties are reluctant to hold meetings with the opposing party, this is because in general the parties charged with fear intimidated by the opposing party. If the parties are reluctant to meet face-to-face, they can avoid meeting with the other party. Parties can avoid feeling intimidated in the process. This is a psychological problem.

3. Selection of The Third Parties

The parties can choose a third party that they feel is appropriate to resolve the dispute and determine the process.

Thus, if ODR implemented in Indonesia, it will provide benefits including confidentiality of the parties maintained, can foster business ethics for entrepreneurs, legal certainty, fast, cheap and simple time and mechanism, neutral parties who are experts in their fields, relations between parties remain harmonious and impartial. ODR also puts the freedom of the community or individual in particular to choose what law will use to resolve the dispute. Meanwhile, the challenges to realizing ODR in Indonesia are:

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- a. Indonesia as an archipelagic country has challenges related to technology, access, and affordability. Indonesia's biggest obstacle was territory or geography. It was especially access to the internet and the affordability of the Indonesian population.<sup>29</sup> Indonesia's connectivity index score is 62.9 of 100 per 2020 in the transitioners category. This number is actually lower than that of neighboring countries such as Singapore (89.3), Thailand (70.9), Malaysia (69.2), Brunei Darussalam (67.4), and Vietnam (64.6).
  - b. In 2019, Indonesia's digital literacy ranking is in position 56 out of 63 countries with a score of 48.39.70 In 2020, Indonesia is still in position 56 but with a higher score than the previous year, namely 50.075. Indonesia is still lagging behind Singapore (2), Malaysia (26), and Thailand (39).<sup>30</sup> Therefore, the application of ODR is considered complex in relation to the challenges of literacy on technology because of the emotional and psychological difficulties of the parties to the dispute.
  - c. The execution of civil cases in Indonesia is known to be quite difficult even though the resulting decision has permanent legal force (*in kracht*) so that it greatly affects the execution of civil decisions which are not good enough. This is the toughest challenge because some ODR decisions are non-binding in addition to decisions that are binding.
  - d. ODR which is formed by private institutions, associations, and the industrial sector has the potential to encourage the existence of forum shopping carried out by the parties in choosing a forum when the forum is not agreed upon at the beginning of the agreement. Disputes can move from one forum to another which affects the legal certainty of dispute decisions. Decisions made between one forum and another on the same case can be different because the parties will see which ODR can be profitable for them.
  - e. Challenges of protecting system security, confidentiality and personal data. ODR however uses the means of the internet and other information technologies to facilitate data exchange and storage. The issue of confidentiality and security is a challenge considering that if data can be hacked and leaked, this could have an impact on the security issue of ODR technology itself and the protection of personal data of the parties.
  - f. ODR mechanism development adopted ADR mechanism. It has challenged in regulating the various technological features. It relates to the procedures and development of fourth-party ethic code (computer programmers) as well as protection of personal data protection (users).

## 7. ODR Design Regulations on E-Commerce Disputes

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<sup>29</sup> GSMA, *Connected Society: The State of Mobile Internet Connectivity 2020*, London: GSAM, 2020.

<sup>30</sup> International Institute of Management Development, *“IMD World Digital Competitiveness Ranking 2020,”* Lausanne: IMD, 2020, p. 27.

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Based on the opportunities and challenges of implementing ODR in Indonesia, an ODR regulatory framework or model is needed. The things need to consider are:

a. Form of regulation.

The ODR regulation available at Law No. 30 of 19 on Arbitration and Alternative Dispute Resolution. The amendments of this law would publish arbitrage and other alternative disputes resolution virtually. This includes developing a civil procedural law. It will set at the level of the Criminal Code (KUHP) and the *Het Herziene Inlandsch Reglement (HIR)*. These changes can use as part of the agenda for the House of Representatives (DPR) legalization discussion.

b. ODR development model.

The application of ODR must be an absolute competence. So, it is necessary to take advantage of the self-regulation mechanism. It will run by arbitration institutions and alternative dispute resolution. The mechanism that needs to develop a reference to the ADR mechanism which includes mediation, arbitration, adjudication, and ethics codes through technology and information systems management. It refers to the International Council for Online Dispute Resolution (ICODR). After that, a variety of technological features for dispute resolution need to develop. It includes video, audio, text, chat, document collaboration, virtual discussion forums, and electronic mail. Moreover, the feature needs to transpose in the online dispute resolution process mechanism set. This mechanism starts from the registration of disputes, summons of the parties, trials, deliberations, decisions, and executions. The ODR application feature needs to add and upgrade in the security and protection of personal data. It regulated at ITE Law, Government Regulation No. 71 of 2009 on the Implementation of Electronic Systems and Transactions, Government Regulation No. 80 of 2019 on Trade Through Electronic Systems, and the Minister of Communication and Information Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems related to data security and protection of personal data. This is intending so that data confidentiality and document authenticity maintains.

c. Execution of the Judgment

ODR is an online resolution. So, the dispute resolution carries out between business and consumers internally. This can be a form of ODR with judicial institutions related to the execution of ODR decisions by registering online executions. Collaboration with other related institutions is also requiring when implementing ODR decisions.

## CONCLUSION

ODR is a conventional dispute resolution innovation with the internet in cyberspace. It makes business processes are fast, cheap, and convenient. The regulation of online dispute resolution

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regulated by "*lex generalis*" in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law No. 11 of 2008 on Information and Technology, and Law No. 7 of 2014 on Trade. Based on ODR implementation in Indonesia, the legislation in Indonesia has given a clear reason that it is very possible for ODR in Indonesia. However, what must be studied more is the ODR mechanism itself, so it would be better if the government made a new regulation which specifically regulates ODR. However, special arrangements need to facilitate dispute resolution, especially e-commerce. This arrangement needs to consider the form of the regulation, the ODR development model, and the execution of decisions.

The prospect of ODR as a legal reform in the field of electronic transactions related to efforts to create legal certainty in online dispute resolution in Indonesia. ODR provides benefits in online dispute resolution, saving time and money, those who use internet access are more confident in dealing with the process they will undergo, and there are psychological factors. Besides, non-legal factors are also a reference in the implementation of the ODR system in Indonesia. In the implementation of ODR, it is still necessary to improve the quality of internet and telecommunication network infrastructure as well as competent experts in language and technology to make Indonesia more prepared in resolving disputes, especially online business disputes.

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## REFERENCES

### Primary Sources

Contract and Commercial Law Act 2017 pt. 4.

Financial Services Authority Regulation No. 1/POJK.07/2014 on Alternative Dispute Resolution Institutions in the Financial Services Sector

Government Regulation No. 71 of 2019 on Implementation of Electronic System and Transaction

Government Regulation No. 8 of 2019 on Trade Through Electronic Systems Law No. 30 of 1999 on Arbitration and Alternative Disputes Resolution

Indonesian Civil Code

Law No. 19 of 2016 on Amendment of Law No. 11 of 2008 on Information and Electronic Transaction

Law No. 8 of 1999 on Consumer Protection Law

Law No. 7 of 2014 on Trade

Supreme Court Regulations No. 2 of 2003 on Mediation Procedure in Court

United Nations Commission on International Trade Law, UNCITRAL Technical Notes on Online Dispute Resolution, Vienna: UNCITRAL, 2017, p. 4

### Secondary Sources

#### Books

Benjamin Wright, *The Law of Electronic Commerce* (3rd edn, Aspen Law and Businesses 2001).

Cortes, Pablo, *Online Dispute Resolution for Consumers in the European Union* (Abingdon: Routledge, 2011)

Departemen Perlindungan Konsumen Otoritas Jasa Keuangan, *Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Online Dispute Resolution (ODR)* (Jakarta: Departemen Perlindungan Konsumen OJK, 2017)

GSMA. *Connected Society: The State of Mobile Internet Connectivity 2020* (London: GSMA, 2020)

International Institute of Management Development, *IMD World Digital Competitiveness Ranking 2020*, Lausanne: IMD, 2020, p. 27.

#### Journals



- 
- Adel Chandra, 'Penyelesaian Sengketa Transaksi Melalui Online Dispute Resolution (ODR) Kaitan Dengan UU Informasi Dan Transaksi Elektronik No. 11 Tahun 2008' [2014] Esa Unggul
- H., Sree Khresna Bharadwaj, 'A Comparative Analysis of Online Dispute Resolution Platforms.' [2017] American Journal of Operations Management and Systems 2 (3): 81–85.
- Mania, Karolina, "Online Dispute Resolution: The Future of Justice." [2015] International Comparative Jurisprudence 1 (1): 76–86.
- Pablo Cortes, 'Online Dispute Resolution for Consumers: Online Dispute Resolution Methods for Settling Businesses to Consumer Conflicts' [2007] Oopen
- Purwanto, 'Efektifitas Penerapan Alternative Dispute Resolution (ADR) Pada Penyelesaian Sengketa Bisnis Asuransi Di Indonesia' [2005] 1 Risalah Hukum.
- Sitompul, Meline Gerarita, M. Syaifuddin, & Annalisa Yahanan, "Online Dispute Resolution (ODR): Prospek Penyelesaian Sengketa E-Commerce di Indonesia." [2016] Jurnal Renaissance 1 (2): 75–93.
- Syamsiah Amali, 'Pemanfaatan Internet Pada Pelajar di Kota Gorontalo' Jurnal Penelitian dan Komunikasi Opini Publik.
- Topio Puurunen, 'The Judicial Jurisdiction of States Over International Business to Consumer Electronic Commerce from The Perspective of Legal Certainty' [2002] Journal of International Law and Policy

### Online Journals

- ASEAN, "*The ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2016–2025: Meeting the Challenge of People-Centered ASEAN Beyond 2015.*" <<https://asean.org/storage/2012/05/ASAPCP-UPLOADING-11Nov16-Final.pdf>> accessed 21 April 2021.
- Heuvel, Esther van den, "*Online Dispute Resolution as a Solution to Cross Border E-Disputes: An Introduction to ODR*" <<http://www.oe.internet/consumer/1878940.pdf>> accessed 17 April 2021.
- Kemp, Simon, "*Digital 2020: April Global Statshot.*" 23 April 2020. <<https://datareportal.com/reports/digital-2020-april-global-statshot>> accessed 10 April 2021.
- Kemp, Simon, "*Digital 2020: Indonesia*". <<https://datareportal.com/reports/digital-2020-indonesia>> accessed 10 April 2021.
- Li, Victor, "*Tyler Technologies acquires online dispute resolution company Modria*". <[https://www.abajournal.com/news/article/tyler\\_technologies\\_acquires\\_online\\_dispute\\_resolution\\_company\\_modria](https://www.abajournal.com/news/article/tyler_technologies_acquires_online_dispute_resolution_company_modria)> accessed 12 April 2021.

---

Moey, Simon Kemp & Sarah, “*Digital 2019 Spotlight: Ecommerce in Indonesia*”. 18 September 2019. <<https://datareportal.com/reports/digital-2019-ecommerce-in-indonesia>> accessed 10 April 2021.

### Websites

American Arbitration Association. AAA Mission and Principles. <https://www.adr.org/MissionPrinciples#:~:text=The%20AAA's%20official%20mission%20statement,%2C%20conflict%20management%2C%20and%20service.&text=Finally%2C%20the%20AAA%20%E2%80%94%20as%20a,field%20of%20alternative%20dispute%20resolution>

American Arbitration Association. About the American Arbitration Association (AAA) and the International Centre for Dispute Resolution (ICDR). <https://www.adr.org/about>.

Azela M. Yunarko. Transaksi e-commerce Meningkatkan hingga Kuartal IV. <https://jetcommerce.co.id/update/transaksi-e-commerce-meningkat-hingga-kuartal-iv-2020-tren-e-commerce-2021-diprediksi-tumbuh-positif>.

Bagus Ramadhan. Ini Data Pengguna Internet di Seluruh Dunia Tahun 2020 Berdasarkan laporan Digital 2020 yang dilansir We Are Social and Hootsuite. <https://teknoia.com/data-pengguna-internet-dunia-ac03abc7476>.

BANI. Rules and Procedures Badan Arbitrase Nasional Indonesia (BANI). <https://www.baniarbitration.org/assets/pdf/PeraturanProsedurArbitraseBANI-Ina.pdf>.

BPKN. BPKN Terima 1.276 Pengaduan Pada 2020 E-Commerce Melonjak. <https://www.bpkn.go.id/posts/show/id/2040>.

Google Temasek. Economy SEA 2019 Swipe Up and to the right: Southeast Asia \$100 billion Internet economy. [https://www.blog.google/documents/47/SEA\\_Internet\\_Economy\\_Report\\_2019.pdf](https://www.blog.google/documents/47/SEA_Internet_Economy_Report_2019.pdf).

Simon Kemp & Sarah Moey. Spotlight: Ecommerce in Indonesia. Data Reportal. <https://datareportal.com/reports/digital-2019-ecommerce-in-indonesia>.

We Are Social & Hootsuite. Digital Data Indonesia 2020. Data Reportal. <https://datareportal.com/reports/digital-2020-indonesia>.