

## Online Dispute Resolution: The Conceptualization of Business Dispute Resolution Model in Indonesia

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### Abstract

Increased trade and investment, including e-commerce, also has the potential to increase disputes. Business Dispute Resolution requires prompt and confidential means. Alternative dispute resolution online (online or internationally known as Online Dispute Resolution (ODR)). Seeing the development of ODR as a business dispute resolution, especially e-commerce, in the international scope including in Asian countries, the question arises what about the development of ODR in Indonesia. This paper uses normative research methods with conceptual and legislative approaches, with primary and secondary legal materials through literature studies. ODR has been used as a business dispute resolution mechanism in Indonesia in several fields, although not quite a lot. The opportunity is even greater if Indonesia can form an ODR system as a form of Indonesia's commitment as an ASEAN country within the framework of ASAPCP 2016-2025. There are quite a lot of ODR service providers, either separate or integrated with E-commerce platform.

**Keywords:** E-Commercer; Online Dispute Resolution; Trade.

### 1. Introduction

Globalization has led to an increase in trade and investment business. In its development, during the era of the industrial revolution 4.0 and the industrial revolution 5.0 or society 5.0, the development of information and communication technology (ICT) has also driven electronic commerce (e-commerce). The increase in trade and investment, including electronic commerce (e-commerce), also has the potential to increase disputes. Business Dispute Resolution requires a quick and confidential method. Currently, in addition to the use of conventional alternative dispute resolution, alternative online or online dispute resolution is also being developed, internationally known as Online Dispute Resolution (ODR).

There are several means of online dispute resolution. They can vary from one country to another. In general, there are several types of ODR, namely: Online Settlement, Online Arbitration, Online Resolution of Consumer Complaints, and Online Mediation. There are also three categories, namely through negotiation, mediation, and arbitration. The latter opinion may refer to the UNCITRAL Technical Notes on Online Dispute Resolution which divides the three stages of the resolution process through ODR: Negotiation, Facilitated Settlement through mediation/conciliation, and the Final Stage that is open depending on the agreement of the parties, for example, can be through binding arbitration or a non-binding recommendation by the neutral.

In the ODR Framework, there are three types of disputes that can be resolved through ODR: Business to Business (B2B), Business to Consumer (B2C), and Consumer to Consumer (C2C). The dispute resolution process through ODR can be done completely on the internet

or online, through email, video conferences, or both. Parties can also meet directly or offline. Sometimes ODR uses a combination of online and offline methods.

ODR has evolved along with the development of online transactions in the early 1990s. The tendency of dispute resolution via ODR can be seen from dispute resolution handled by eBay in 2010. ODR, which initially focused on dispute resolution related to online activities, is also used for disputes that occur offline.

ODR is not only growing in Western countries but also in Asian countries. This is due to the fact that Alternative Dispute Resolution, which is the foundation of ODR, is nothing new for Asian countries. Asia can even be considered the most fertile region in the development of ODR, marked by the emergence of new ODR service providers in the Philippines, Malaysia, India, Korea, and China following what exists in Singapore and Japan. In these countries, ODR centers have been established.

With the increasing use of ODR for the resolution of e-commerce disputes, as well as offline business, there is a need for guidelines whose applicability can be universally accepted, as is usually done through model law. Recognizing the importance of ODR as a resolution for e-commerce disputes, especially those that cross national borders, the UNCITRAL (United Nations Commission on International Trade Law) has sought to have guidelines for the use of ODR as a dispute resolution mechanism for e-commerce. Unlike other areas, such as e-commerce and digital signatures, which were made in the form of model law, for ODR, UNCITRAL was only able to create in the form of Technical Notes. After a long effort, from 2010-2016, finally, the Technical Notes on Online Dispute Resolution were accepted by the UN General Assembly. The Technical Notes on ODR are non-binding and merely descriptive. Business in Indonesia has grown rapidly, following the development of business in the world, marked by the proliferation of e-commerce. While in the Western world there is eBay, in Indonesia there are Tokopedia, Shopee, Bukalapak, and various other e-commerce platforms. The effects of this growing business development in Indonesia will lead to business disputes.

Given the development of ODR as a resolution for business disputes, especially e-commerce, internationally including in Asian countries, it raises questions about the development of ODR in Indonesia. Is ODR regulated in Indonesia, are there ODR service providers in Indonesia, and what influences the development of ODR in Indonesia? These questions will be discussed in the next section in this paper.

## **2. Method**

This paper uses normative research to seek coherence between what exists and what should be. The legislative approach is used to trace the series of existing legal products, as well as the conceptual approach to find and understand ideas related to alternative dispute resolution in general, and ODR in particular. Legal materials used consist of primary and secondary legal material collected through library study.

## **3. Analysis and Discussion**

### **Legal Basis**

Until now, there have been no specific laws and regulations that regulate ODR. However, there are several laws and regulations that can be used as a legal basis.

1. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution

Basically, ODR is another form of Alternative Dispute Resolution (ADR), so Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution can be used as a basis for the use of ODR. Article 1 Number 10 and Article 6 regulate types of Alternative Dispute Resolution namely through consultation, negotiation, mediation, conciliation, or expert assessment. However, this provision does not specifically regulate how these dispute resolution methods should be conducted, whether it can only be carried out offline or can also be conducted online.

Another basis that can be used is Article 4, paragraph (3) which regulates arbitration agreements made through an exchange of letters that can be done via telex, telegram, facsimile, email, or other communication means must be accompanied by a note of receipt by the parties. This provision can also be interpreted as opening the possibility for conducting arbitration online.

2. Law No. 7 of 2014 on Trade and Government Regulation No. 80 of 2019 on Trade through the Electronic System (PMSE)  
Article 65 paragraph (5) of the Trade Law stipulates that disputes related to electronic trade transactions, individuals or business entities who experience disputes can resolve them through the court or through other dispute resolution mechanisms. Other dispute resolution mechanisms here can be interpreted as ADR. Further regulation of Article 65 is regulated in Article 72 of Government Regulation No. 80 of 2019. Article 72 paragraph (1) provides that in the event of a dispute in PMSE, the parties may settle disputes through the court or through other dispute resolution mechanisms. Other dispute resolution mechanisms may mean dispute resolution outside the court or ADR. Paragraph (2) stipulates that PMSE dispute resolution as referred to in paragraph (1) can be held electronically (online dispute resolution) in accordance with the provisions of the legislation. The provision of paragraph (2) is a clear basis for dispute resolution through ODR. However, the question arises as to what is meant by ODR here, including dispute resolution through the courts and outside the courts, or only covering dispute resolution outside the court. Similarly, the referred legislation is unclear because until now there has been no specific legislation that regulates ODR.
3. Law Number 11 of 2008 on Electronic Information and Transactions as amended by Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Electronic Information and Transactions.  
Paragraph (4) of Article 18 provides that the parties have the authority to determine the court, arbitration, or other alternative dispute resolution institutions authorized to handle disputes that may arise from international electronic transactions they make. This provision can also be interpreted to include online (ODR) dispute resolution agreed upon by the parties.

From the above legislation, it can be concluded that based on the Law on Arbitration and Alternative Dispute Resolution, there is a possibility of dispute resolution through ODR because there is no specific provision on whether the dispute resolution method must be carried out online (online) or offline (offline). Similarly, in the Law on Electronic Information and Transactions, it can be interpreted to include online dispute resolution methods because there is no specific provision that determines that dispute resolution must be offline. Dispute resolution through ODR is clearly regulated in the Government Regulation regarding Trade Through the Electronic System, although the legislation that becomes the reference for online dispute resolution still raises questions or is not clear. However, at least this provision can be used as a basis for online dispute resolution.

## ODR Provider in Indonesia

E-commerce transactions in Indonesia are quite developed with the increase of e-commerce platforms. Data from the Central Bureau of Statistics (BPS) shows that the e-commerce industry in Indonesia over the past 10 years (2019) has increased by up to 17 percent with a total number of e-commerce businesses reaching 26.2 million units. The addition of e-commerce platforms has recorded a fairly large transaction value. Bank Indonesia (BI) recorded that during the first semester of 2022, the total value of e-commerce transactions reached IDR 227.8 trillion, or an increase of 22.1% from the same period the previous year. From the volume side, there has also been a significant increase. Where, throughout January-June 2022, the total number of e-commerce transactions recorded 1.74 million transactions or grew by 39.9% yoy.

This coincides with the increase in the number of e-commerce users in Indonesia. Citing from Databoks, e-commerce users in Indonesia in 2017 reached 139 million users, then increased by 10.8% to 154.1 million users in 2018. Meanwhile, in 2019 it is projected to reach 168.3 million users and 212.2 million by the year 2023.

From around many e-commerce business actors (platforms) currently in Indonesia, the top 12 positions are held by Tokopedia, Shopee Indonesia, Lazada Indonesia, Buka Lapak, BliBli, Orami, Rolali, Zalora, Klik Indomaret, JD.ID, Sociolla, and Bhinneka. Of the twelve e-commerce platforms, several platforms clearly use the ODR process before submitting it to other dispute resolution forums, namely Tokopedia and Bukalapak, Shopee, and Sociolla. This can be seen from the terms and conditions created by the platforms, which can be accessed on the respective platform's website. For Tokopedia, the ODR used is negotiation and mediation. Negotiations between parties are conducted through the Resolution Center provided by Tokopedia. If the parties' negotiations fail, Tokopedia will act as a mediator to help the parties resolve their disputes. (See terms and conditions about the Resolution Center). If the dispute cannot be resolved through the Resolution Center mechanism, then the dispute can be submitted to the Court in Indonesia. In the Shopee platform, the dispute resolution mechanism is carried out through negotiations through a system provided by Shopee, if a failure to reach an agreement occurs, the disputing parties can submit their disputes to the Court according to the jurisdiction of the disputing parties. The same dispute resolution mechanism is also carried out by the Klik Indomaret and JD.ID platforms. Meanwhile, Sociolla requires the parties to negotiate within a maximum period of 30 (thirty) days. If an agreement cannot be reached, the parties can submit their disputes to Indonesian National Board of Arbitration (BANI).

From the twelve e-commerce platforms, there are several platforms that regulate dispute resolution through BANI arbitration, namely Bukalapak, Lazada, and Sociolla. Thus there is the potential for online dispute resolution if the parties wish it and BANI is willing to provide online dispute resolution services.

In addition to ODR service providers in e-commerce in Indonesia, there are also ODR service providers related to Domain Name disputes, namely PANDI (Indonesia Domain Name System Manager) which handles Domain Name Dispute Resolution (PPND). Based on PANDI Regulation No. 005 of 2018 concerning Domain Name Dispute Resolution Policy, domain name disputes will be prioritized using mediation. If the parties maintain their respective opinions, then the dispute will be examined by the PPND Panel. The

implementation of the objection process and submission of evidence, and other communications is carried out electronically.

ODR can also be used in financial service disputes. At this time, financial sector disputes can be resolved through the Financial Services Sector Dispute Resolution Institution (LAPS SJK). The Financial Services Sector Alternative Dispute Resolution Institution (LAPS SJK) is an out-of-court dispute resolution institution established on September 22, 2020, by Self Regulatory Organizations (SROs) and associations within the financial services sector. In carrying out its activities, LAPS SJK obtained an operating license from the Financial Services Authority (OJK) on December 29, 2020, and began operating on January 1, 2021. As the only Alternative Dispute Resolution Institution (LAPS) in the financial services sector that obtained an operating license from the OJK, LAPS SJK replaced the role and functions of the 6 existing LAPS in the financial services sector (namely BAPMI, BMAI, BMDP, LAPSPI, BAMPPPI, and BMPPVI) and at the same time expanded its coverage to dispute resolution in the Fin-tech field. In resolving financial services disputes, LAPS SJK provides at least Mediation and Arbitration services and the dispute resolution procedure at LAPS SJK can be carried out online (Online Dispute Resolution).

ODR dispute resolution is also provided by BANI. In May 2020, BANI created Regulations and Procedures for the Implementation of Electronic Arbitration through the BANI Decree Number 20.015/V/SK-BANI/HU. In this Decree, the basic considerations for making these rules and procedures are to face emergency disaster situations and other conditions as well as the demands of the times that require more effective and efficient administration of arbitration cases and hearings electronically. This certainly supports the use of ODR in Indonesia. It takes time to see the success of ODR by BANI in resolving business disputes in Indonesia.

### **Opportunities and Challenges of ODR in Indonesia**

The use of ODR as a resolution for business disputes in Indonesia has opportunities and challenges. The opportunity to use ODR as a resolution for business disputes, especially for electronic trade transactions (e-commerce), can be based on several conditions. First, the number of e-commerce users and e-commerce platforms is increasing every year. This is very potential for the use of ODR. Second, the advantages possessed by ODR as a dispute resolution mechanism that is not owned by offline ADR, namely among others:

1. The nature of ODR which is generally informal, flexible, and creative dispute resolution that is not regulated by strict procedural provisions and evidence.
2. Can reduce litigation costs;
4. Can be the right choice for transactions of low value and a very large transaction volume because it is timely and relatively low cost.
5. Do not require travel costs if involving disputes between parties that are far apart.
6. Allows participation from parties who cannot be present in person due to disabilities
7. Confidential, unless otherwise determined by the parties.

Another factor that can become an opportunity for the development of ODR in Indonesia is the commitment of APEC countries and ASEAN countries to develop ODR.

In addition to having advantages, ODR also has weaknesses that can be an obstacle as an effective business dispute resolution, namely:

1. The parties must master the technology to participate in the ODR process
2. ODR is a less personal dispute resolution because the parties are not in the same room, and often all discussions are in writing.

3. Party parties who have difficulty communicating/writing will be disadvantaged in the ODR process
4. If ODR is a non-binding process (for example, part of the negotiation or mediation phase), ODR cannot create legal precedents. However, if the ODR process results in adjudication, legal precedents can be born.

Another obstacle in the use of ODR in Indonesia is the small number of ODR service providers, including those provided by e-commerce platforms. This can be seen from the previous discussion of the top 12 e-commerce platforms in Indonesia, only three of which provide dispute resolution mechanisms through ODR. The lack of e-commerce platforms that provide ODR mechanisms makes ODR less popular as a dispute resolution mechanism, so that in the end the public does not know the advantages of using ODR.

Another important limiting factor is the unclear legal basis for the use of ODR. The legal basis for resolution through ODR specifically, relating to both principles and procedures, is very important to support ODR as an effective and efficient dispute resolution mechanism. This is what was done in the European Union. The European Union has issued new regulations that regulate consumer dispute resolution arising from electronic commerce in "REGULATION (EU) No 524/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR). Through this regulation an ODR platform is provided to resolve consumer disputes both domestically and across EU member states. Through these regulations, it is regulated as the mechanism for resolving consumer disputes online. The things that are regulated include:

- a. Establishment of ODR platforms;
- b. ODR platform evaluation;
- c. ODR contacts and their functions;
- d. Submitting an Application for Dispute Resolution through ODR;
- e. Dispute Resolution through ODR;
- f. ODR Decision;
- g. Database;
- h. Access and confidentiality of the parties' data.

Since February 15, 2016, the EU has had an ODR platform that can be accessed through the website <http://ec.europa.eu/odr>.

With the existence of specific provisions regulating ODR, it will provide legal certainty and trust for the disputing parties, because the ODR provisions must reflect the principles of an effective online dispute resolution mechanism. As a reference for effective online dispute resolution mechanisms, UNCITRAL Notes on Online Dispute Resolution can serve as a guideline. In the UNCITRAL Notes, the principles underlying the ODR process are stated as fairness, transparency, due process, and accountability. These principles are described in the ODR process and stages set out in the Technical Notes. In addition to principles related to the ODR process, legal provisions regarding ODR ideally regulate the binding force of the agreement to use ODR. Whether the binding force of dispute resolution agreements through ODR has the same binding force as ADR or Arbitration dispute resolution agreements. This needs to be regulated, to avoid multiple interpretations in its implementation.

## Conclusion

ODR has been used as a mechanism for resolving business disputes in Indonesia in several fields, although not yet widespread. The opportunity for resolution of business disputes, especially e-commerce, through ODR in Indonesia is quite large due to the significant number of e-commerce users and e-commerce platforms. This opportunity will be even

greater if Indonesia can establish a national ODR system through comprehensive specific provisions as a form of Indonesia's commitment as an ASEAN country within the framework of The ASEAN Strategic Action Plan For Consumer Protection (ASAPCP) 2016-2025. The drafting of comprehensive ODR provisions can refer to the UNCITRAL Technical Notes on Online Dispute Regulation. Comprehensive ODR provisions are needed to serve as a guideline for ODR service providers.

For ODR to develop well in Indonesia, a sufficient number of ODR service institutions are needed, both separate from the e-commerce platforms and integrated with them. It is hoped that more e-commerce platforms will provide ODR dispute resolution mechanisms, making ODR more known to e-commerce users and trusted as an effective dispute resolution mechanism. Furthermore, it is also hoped that providers of conventional ADR dispute resolution services will also provide ODR so that ODR can continue to grow.

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