

Implementation Of Online Dispute Resolution (Odr) In Indonesia's E-Commerce Disputes (Comparative Study With Usa)

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Abstract: ODR is the best alternative dispute resolution option in resolving E-Commerce disputes. In 2020, BANI has implemented this mechanism, but there are still shortcomings in its application. Because the existing obstacles have not been fully resolved. Adopting, and imitating the mechanisms, processes, and arrangements of countries that have successfully implemented ODR in their countries is one way to make the implementation of this mechanism successful in Indonesia. The normative legal research method is used by the author in writing this final project. The theory used is legal protection and certainty. Legal protection is used so that in analyzing the formulation of the problem it remains to protect the community from the law that will apply without the interests of the authorities. Restorative justice is used when the author concludes the deficiencies in the comparison of the two countries. All of this is done so that the author can analyze and conclude about the opportunities and obstacles to the implementation of ODR in Indonesia, as well as draw conclusions regarding the comparison between the two countries, in this case the United States and Indonesia. So that in the future ODR can be used as an option by all LAPS and the government can issue special arrangements related to ODR so that people do not hesitate in choosing this option in alternative dispute resolution, both E-Commerce business disputes and other civil disputes.

Keywords : Online Dispute Resolution (ODR), Arbitration, E-Commerce.

INTRODUCTION

The development of technology allows people to carry out buying and selling or trading transactions without face to face through E-Commerce. In carrying out its activities, internet technology is used as an innovative supporting system and allows the rapid transfer of information throughout the world via cyberspace. Google Temasek stated that the E-Commerce sector experienced very rapid development in 2015 - 2019 in the Southeast Asia region.¹ E-Commerce as a modern business eliminates transactions that conventional businesses require the presence

of parties and documents that must be fulfilled or completed.²

Disputes or disputes do not only occur in conventional businesses but also occur in business transactions that use E-Commerce. Disputes in business transactions are caused by unlawful acts and defaults on the part of one of the parties. The existence of these disputes causes losses, therefore a dispute resolution mechanism is needed that can protect the interests of the parties involved in this business.³ However, the rapid development of technology cannot be accompanied by developments in laws or regulations that regulate it. This can be seen from the fact that

¹ Google Temasek, e-Conomy SEA 2019. Swipe Up and to the right: Southeast Asia \$100 billion Internet economy, diakses dari https://www.blog.google/documents/47/SEA_Internet_Economy_Report_2019.pdf, p. 10, pada 19 September 2021. pukul 08.00 WIB.

² Adel Chandra, 2014. Penyelesaian Sengketa Transaksi Melalui Online Dispute Resolution (ODR) Kaitan Dengan UU Informasi Dan Transaksi Elektronik No. 11 Tahun 2008. *Skripsi. Esa Unggul*, Jakarta, hlm.85.

³ Bambang Sutiyoso, 2008. Penyelesaian Sengketa Bisnis melalui Online Dispute Resolution dan Pemberlakuannya di Indonesia, *Jurnal Mimbar Hukum*, Vol. 20. No. 2, Yogyakarta, hlm.43

there has not been any explicit legal certainty regarding online dispute resolution in Indonesia. If a dispute occurs between the parties involved in trading, the dispute can be resolved through litigation and non-litigation. Litigation dispute resolution is dispute resolution carried out through judicial institutions and the process is carried out using court procedures, while what is meant by non-litigation dispute resolution is dispute resolution outside the court or can be called alternative dispute resolution.⁴

In Sharyn Roach's book, *Anleu* from Flinders University (Australia), states that since the seventies, critics have stated that it is impossible to leave all case resolutions to the courts. This will cause a backlog of cases in court which will make dispute resolution take a long time and cost a lot of money. This is contrary to the principles of simplicity, speed and low cost.⁵ With the feeling of dissatisfaction with the court process, a mechanism for peaceful resolution or dispute resolution through non-litigation was born.⁶ This practice is usually referred to as Alternative Dispute Resolution (ADR), which according to the statutory definition is an institution for resolving disputes or differences of opinion using procedures agreed upon by the parties, by means of mediation, consultation, negotiation and conciliation.⁷

In resolving alternative disputes that are affected by advances in information technology, this can be called ODR or commonly referred to as Internet Dispute Resolution (iDR), or Electronic Dispute

Resolution (eDR) is one of them.⁸ ODR is an online development of the Alternative Dispute Resolution (ADR) mechanism. The tools or facilities and infrastructure used to support ODR vary, starting from the use of electronic mail (email), chat features, automated systems or artificial intelligence, video and audio conferences (video conference and audio conference), to a combination of all these features.⁹

Indonesia actually has a regulatory framework that supports ODR, namely Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 11 of 2008 on Electronic Information and Transactions and has been amended by Law No. 19 of 2016 (ITE Law), as well as Government Regulation Number 80 of 2019 on Trading via Electronic Systems (E-Commerce Government Regulation). The ITE Law and Government Regulations explain that dispute resolution can be carried out electronically and the public is allowed to play a role in forming dispute resolution institutions with mediation and consultation functions. In addition, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is an important foundation for the implementation of online-based ADR which is carried out outside of court using procedures agreed between the parties.

Several countries in the world have also implemented ODR systems, especially developed countries such as America and China.¹⁰ Both countries have advantages in their respective fields, America is superior in technological progress (HI-tech) while China is superior in its level of trade. These developed countries have implemented ODR

⁴ Dodoy Suharyati, 2013. *Perspektif Penyelesaian Sengketa Bisnis di Indonesia*, diakses dari <http://stihpada.ac.id/perspektif-penyelesaian-sengketa-bisnis-di-indonesia>. Pada 17 September 2021. pukul 16.00 WIB

⁵ Wahyu Benny Setiyawan, Churniawan E. Rudaty, 2020. *Online Dispute Resolution Sebagai Model Perlindungan Hukum Pelaku Bisnis*, *Jurnal Rechtsidee*, Vol. 15, No. 1. hlm. 3.

⁶ Sudjana, 2018. *Efektivitas dan Efisiensi Penyelesaian Sengketa Kekayaan Intelektual melalui Arbitrase dan Mediasi berdasarkan Undang-Undang Nomor 30 Tahun 1999*. *Ajudikasi : Jurnal Ilmu Hukum*, Vol. 2, No. 1.

⁷ Republik Indonesia, Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa, Pasal 1 angka 10.

⁸ Feliks Petrauskas & Egle Kbartiene, 2011. *Online Dispute Resolution in Consumer Disputes, Jurisprudencia, Mykolas Romeris University*, hlm. 5.

⁹ Esther van den Heuvel, *Online Dispute Resolution as A Solution to Cross-Border E-Disputes: An Introduction to ODR*, diakses dari <http://www.oecd.org/internet/consumer/1878940.pdf>, p. 11. pada 19 September 2021, pukul 19.00 WIB

¹⁰ *Online Dispute Resolution: ODR In Foreign Countries*, diakses dari <https://libraryguides.missouri.edu/c.php?g=557240&p=3832249>, pada 21 September 2021. pukul 14.00 WIB.

practices as a long-distance dispute resolution institution via the internet. Clear and detailed regulations can be found on the website so that it will make it easier for the parties to the dispute to better understand the procedures. In contrast to these developed countries, Indonesia as a developing country is deemed not yet fully capable of maximizing the ODR system because the regulations and provisions governing ODR are inadequate, such as the absence of specific regulations governing ODR in Indonesia.¹¹ Of course, with all these things, the Indonesian National Arbitration Board (BANI) settlement mechanism for electronic commerce disputes in Indonesia also has differences from other countries.

Looking at the E-Commerce situation in Indonesia and the regulatory framework of ADR institutions in supporting ODR in Indonesia, shows that there are opportunities, obstacles and challenges in implementing ODR to resolve E-Commerce disputes in Indonesia. Based on all the descriptions above, the author is interested in knowing the opportunities and obstacles for dispute resolution institutions in implementing ODR in Indonesia as well as a comparison of the mechanisms for resolving E-Commerce business disputes through ODR between Indonesia and the United States. So that in the future non-litigation dispute resolution institutions in Indonesia can complement things that are felt to be lacking in implementing ODR, especially BANI in adopting or developing several regulations from non-litigation dispute resolution institutions in the comparison country, in this case such as the American Arbitration Association (AAA) regarding online arbitration procedures.

METHODOLOGY

¹¹ M. Gerarita Sitompul, M. Syaifuddin, dan Annalisa Yahanan, 2016. *Online Dispute Resolution (ODR): Prospek Penyelesaian Sengketa E-Commerce di Indonesia*. *Jurnal Renaissance*. Volume 1 No.2. Magister Ilmu Hukum Universitas Sriwijaya, Palembang, hlm. 75-93.

In solving problems related to writing material, accurate data and information is very necessary. For this reason, the author will use scientific research facilities based on research methods. This research uses a type of normative legal research method. This means that the author uses scientific research procedures by finding the truth of the data in terms of its normative aspects.¹² This type of normative legal research is used to produce new arguments or theories as a perspective in solving a problem being faced and of course related to ODR.¹³

This research examines more about document studies, namely using various secondary data such as court decisions, legal theory, and can also be the opinions of scholars in the form of literature they have published.¹⁴ The approach used in a research will enable a researcher to utilize the findings of law and other sciences for purposes without changing the character of that science. Normative legal research is based on research conducted on legal entities and existing laws. Legal research has various approaches. From this approach, the writer or researcher will obtain information about the issue being written or researched.¹⁵ The author used a statutory approach and a comparative approach in conducting this research.

The data source used by the author in this research is secondary data. Secondary data in legal research is data obtained from understanding literature and various literature or library materials related to research problems which are often referred to as legal materials.

In carrying out the data analysis method in this research, the author used a qualitative

¹² Bambang Sunggono, 2003. *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta, hlm. 43.

¹³ Peter Mahmud Marzuki, 2011. *Penelitian Hukum*, Edisi I, Cetakan 7. Kencana, Jakarta, hlm. 35.

¹⁴ Heru Suyanto, Heru Sugiyono, Ilvana Oktalia, 2020. Implementasi Eksekusi Putusan BANI Dalam Penyelesaian Sengketa Perdata, *Jurnal Yuridis*, Vo.7 No.2. Jakarta hlm. 313.

¹⁵ Lulu Yulianti, 2019. Prospek Mekanisme Penyelesaian Sengketa Melalui Arbitrase Asing Berbasis Online Di Indonesia, *Skripsi Fakultas Hukum Universitas Pembangunan Nasional Veteran Jakarta*, Jakarta, hlm. 9.

analysis method. The research carried out was comparing the regulations and the application of the regulations themselves with other countries, comparing provisions, reference books and theories related to the formulation of research problems. Next, it is understood and analyzed qualitatively, then the data is described so as to provide a comprehensive picture of the legal aspects related to the problem studied. This research uses a statutory approach and a comparative approach in obtaining a systematic and comprehensive picture of the primary, secondary and tertiary legal materials obtained to produce prescripts and arguments. In this way, an explanation of the discussion will be obtained that can answer the problems in this research.

RESULTS AND DISCUSSION

Opportunities and Obstacles for Dispute Resolution Institutions in Implementing Online Dispute Resolution (ODR) in Indonesia

Looking at the situation and conditions of increasing electronic commerce or E-Commerce in Indonesia, shows that there are opportunities and challenges in implementing ODR in resolving electronic or E-Commerce transaction disputes. The opportunities that can be identified at this time are:

- a. Firstly, there is support in terms of rules or regulations in Indonesia, of course the presence of the ITE Law, AAPS Law, PP E-Commerce and other related laws and regulations can be the beginning of the formation of permanent regulations regarding ODR in Indonesia.
- b. The statistical support that occurs due to E-Commerce activity in Indonesia is very large and continues to increase significantly year after year. Until 2020, E-Commerce users in Indonesia reached 277,947,466 users and it is estimated that Indonesia will experience an increase of 70 percent in 2021. With the increase in electronic transactions or E-Commerce, it clearly shows that

there is a large potential for the emergence of disputes from these trade transactions.

- c. Third, there is support for implementation in the world, because what we know is that the world today seems to be borderless with massive information technology supporting cross-border transactions. Currently, many pioneering E-Commerce companies or startups have emerged to facilitate E-Commerce transactions. These companies build relationships with parties including sellers and buyers in cross-border transactions.
- d. Finally, with regional support, ASEAN is encouraging the formation of ODR as one of the products or outputs of The ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2016-2025 or if defined as a plan in the consumer protection program.¹⁶

In fact, the four points above are enough to prove that the application of ODR can become a permanent choice for all LAPS in alternative dispute resolution outside of court. Appropriate implementation of the ODR mechanism through disputes that are related to business trading activities, especially disputes that are of small value. The ODR mechanism is of course very popular with e-commerce players because the process is fast, efficient and effective in resolving disputes that occur.¹⁷

Sooner or later, not only BANI will make ODR the preferred option in alternative dispute resolution methods. However, all

¹⁶ ASEAN, The ASEAN Strategic Strategic Action Plan for Consumer Protection (ASAPCP) 2016-2025: Meeting the Challenge of People-Centered ASEAN Beyond 2015 diakses dari https://asean.org/storage/2012/05/ASAPCP_UPLOADING-11Nov16-Final.pdf, p. 5, pada 15 Desember 2021, pukul 21.00 WIB

¹⁷ Vizta Dana Iswara, 2021. ANALISIS PENTINGNYA IMPLEMENTASI PENYELESAIAN SENGKETA ONLINE DI INDONESIA. *Legalitas: Jurnal Hukum*. Vol 13. No. 1. Riau. Hlm. 21

LAPS in Indonesia will definitely make this option an option. Thus, there will definitely be benefits from implementing ODR itself. This is based on something that has been found by countries using the ODR method as a preferred option in resolving disputes. These benefits are such as:¹⁸

a. Convenience in the Online Dispute Resolution (ODR) Procedure

If you look at other countries that have implemented the ODR method, it can be seen that ODR provides services in the form of communication using an asynchronous system. Asynchronous itself is an ICT system that can support dispute resolution via ODR, of course by utilizing programs that are controlled for users without having to take a long time.

b. Costs and time can be used more efficiently

Procedures that require someone to be in a predetermined area or place are very detrimental in terms of time and cost. It cannot be denied that dispute resolution can be done online and this is certainly very helpful for litigious business actors in saving time and costs from disputes arising due to cross-border trading activities. With this online process they can speed up dispute resolution procedures, even if the litigants are in different areas because it can be done virtually.

Obstacles or Challenges in Implementing Online Dispute Resolution (ODR) in Indonesia

Besides the opportunities and benefits of implementing ODR as an option in resolving disputes, there are also challenges or obstacles in making this ODR method an option. Looking at the current condition of Indonesia, it can be seen that the challenges in implementing ODR in the archipelago are;¹⁹

a. Technology Literacy Challenges

Of course, the first is the challenge of literacy regarding technology. If you look at the 2020 Global World Digital Competitiveness Index Survey by the Institute Management Development (IMD), it shows that Indonesia's digital literacy ranking has stagnated or stopped for two years. Indonesia was ranked 56th out of 63 countries surveyed in 2019 and 2020. Indonesia can be said to be quite far behind other Asian countries, such as Malaysia which is in 19th place, Thailand in 43rd place, and Singapore which is at the top of the top three. Even compared to the Philippines, Indonesia is still far from the bottom. According to experts including mediators or advocates, this challenge is considered quite complex. Apart from that, experts also believe that by implementing ODR it will be difficult to read the emotions and psychology of the parties to the dispute.

b. Technological Challenges

If knowledge of technology is the first priority, then the challenges of technology, access to technology itself, and the extent to which technology can be reached, are also no less important. Access to information technology and the internet in Indonesia is still limited by region and geography because Indonesia is a very large archipelagic country.

Currently, Indonesia is ranked 85th out of 131 countries in the 2020 Global Innovation Index, and 14th out of 17 countries in South East Asia, East Asia and Oceania (SEAO). This order has not changed at all since 2018. This number turns out to be lower than

¹⁸ *Ibid.*, .hlm. 25

¹⁹ Muhammad Aziz, Faiz Hidayah, dan Muhammad Arif, 2020. Perlunya Pengaturan Khusus

Online Dispute Resolution (ODR) Di Indonesia Untuk Fasilitas Penyelesaian Sengketa E-Commerce. Jurnal RECHTS VINDING. Vol.9 No.2. Jakarta. Hlm. 288

neighboring countries, such as Thailand, Malaysia, Vietnam and Singapore. For this reason, currently, Indonesia is still said to be in the transitioners category.

c. Institutional Challenges

Apart from all of the things above, there are also challenges caused by an institution by allowing ODR by private institutions, and the industrial sector which has the potential to encourage the presence of forum shopping carried out by parties by choosing a forum when the forum is not agreed upon at the initial agreement the dispute can move from the forum one forum to another which influences the legal certainty of dispute decisions. The decisions taken can be different even though the case is the same, this is because the parties see which ODR can benefit them.

d. Challenges to Execution of Decisions

In executing civil decisions in Indonesia, the track record is quite bad. The execution of civil cases is notoriously difficult even though the resulting decision has permanent legal force or is in *kracht*.²⁰ In order to implement ODR, this is a serious challenge because some ODR decisions are non-binding.

e. Challenges in Terms of Security

Personal data protection, confidentiality and security are among the challenges considered in realizing ODR as an option in alternative dispute resolution. ODR certainly uses internet facilities and information technology to provide data exchange and storage

facilities. This is both a challenge and an obstacle, considering that if data can be hacked it will have an impact on the issue of protecting the parties' personal data.²¹

In fact, not only Indonesia, other countries also have their own obstacles in implementing this ODR method. One of them is Brazil, a country with a population of 213,318 people that has been successful in making ODR an option as a method of resolving disputes outside of court.²² Behind its success, there are several things that become obstacles in implementing and promoting ODR as an effective method of dispute resolution. These obstacles include:²³

a. Society Prefers the Litigation Route

Before the success of ODR in Brazil, people in that country preferred to resolve cases or disputes through court. At that time, dispute resolution in court still dominated the way people understood their rights to resolve their claims. Initially the introduction of ODR faced resistance and doubt, but this was overcome when ODR consistently demonstrated greater efficiency and satisfaction than the court-based process itself.

In contrast to Indonesia, the Brazilian government is very interested in promoting ODR as an option for resolving disputes. Thus, although previously the Brazilian people doubted this method, over time and of course with the support of the Brazilian government in promoting ODR, the implementation of the ODR mechanism in Brazil has become a success.

²⁰ Alfeus Jababun, et. al., 2018. Initial Assessment Problems of Court Decision Enforcement System in Indonesia (Asesmen Awal Permasalahan Eksekusi Putusan Perkara Perdata di Indonesia); *Lembaga Kajian & Advokasi Independensi Peradilan dan International Development Law Organization*, Jakarta hal. 69-74.

²¹ Julian Iqbal, 2018. PERLINDUNGAN BAGI KONSUMEN ONLINE MARKETPLACE MELALUI MEKANISME *ONLINE DISPUTE RESOLUTION*. *Jurist-Diction Law Journal*. hlm. 43

²² CEIC DATA, Brazil Populasi
Diakses dari:
<https://www.ceicdata.com/id/indicator/brazil/population>,
pada 16 Desember 2021, pukul 14.00 WIB

²³ Muhammad Faiz Aziz, *Op.cit.*, Hlm.78

b. Brazilian Society Lacks Compliance with Agreements

Additional mechanisms are needed to ensure compliance with the requirements agreed to by the parties. Brazilians tend not to like agreements but only want results. Online alternative dispute resolution is considered a waste of time and is ignored by the people of the country.

Brazil can be said to be successful in providing a promising environment for the implementation and exploration of ODR. Support from the judiciary, the size of the market, as well as new laws that create visibility and momentum, are supporting factors in implementing ODR.

Indonesia itself needs to receive attention in the implementation and regulation of ODR in the future. In terms of regulations that are still scattered and incomplete, such as ODR has only been mentioned in several Indonesian regulations but does not yet have its own regulations. The settlement is carried out only by referring to the regulations of the Consumer Protection Law, the Arbitration and Alternative Dispute Resolution Law, and Civil Procedure. Thus, there is a need for complementary regulations regarding ODR. In fact, there are several potential regulations that need to be considered so that ODR can be used as an option for alternative online dispute resolution. The Civil Procedure Law Bill is one of the regulations that has this potential, because it can enable the implementation of ODR in judicial institutions by including provisions for the use of technology, mechanisms for ODR in judicial institutions, and even developments for E-Courts.²⁴

Comparison of E-Commerce Dispute Resolution Using Online Dispute Resolution (ODR) in Indonesia and the United States

The United States is the country with the largest number of ODR platforms, namely

around 62 platforms.²⁵ The United States first made ODR an alternative online dispute resolution option. In addition, the role of the private sector in developing ODR in the United States is a driving factor for the presence of a more independent ODR.²⁶

The American Arbitration Association (hereinafter referred to as AAA) is an institution in the field of alternative dispute resolution that was founded in 1926. This institution has the aim of assisting the implementation of arbitration as an out of court solution for resolving disputes. AAA itself has general procedural rules as well as additional regulations or supplementary rules to regulate certain matters related to alternative dispute resolution. This additional regulation has the aim of facilitating the use of electronic means to resolve disputes alternatively and if agreed by the parties. In short, the purpose of additional regulations or supplementary rules is so that the arbitration process can be carried out online.²⁷

AAA's role in the dispute resolution process is to manage the dispute from the initial submission until the dispute is resolved. Something even more interesting about AAA is that this institution can also provide international dispute resolution services through its body, namely the International Center for Dispute Resolution or ICDR. The purpose of establishing ICDR is to act as a global component of AAA and provide services in managing disputes in several other countries.²⁸

In line with the development of information and communication technology, AAA as an international dispute resolution institution also accompanies this by providing

²⁵ Aziz, *Loc.cit.*, hlm. 20

²⁶ Fialdi, Nathasya Anggia.dkk. 2019. Tinjauan kritis terhadap perlunya pengaturan penyelesaian sengketa secara daring (*Online Dispute Resolution-ODR*) di Indonesia: studi perbandingan dengan Cina, Amerika Serikat dan Uni Eropa. *Skripsi Ilmu Hukum Universitas Indoensia*. Hlm. 54

²⁷ Lulu Yulianti, *op.cit.*, hlm. 70

²⁸ Mark L. Shope, 2020. The International Arbitral Institution Response To Covid-19 and Opportunities For *Online Dispute Resolution*. *National Chiao Tung University School School of Law*. pg.92-101

²⁴ Aziz, *op.cit.*, hlm. 87

online alternative resolution services for national and international disputes or what we usually know as ODR. On its website, AAA has provided Online Service tools intended for parties who wish to use online dispute resolution. AAA's Online Service can also submit claims online, exchange electronic documents, and more advanced, clients can also manage disputes online..

CONCLUSION

ODR has actually been implemented by one of the arbitration institutions in Indonesia since 2020, but until now not all alternative dispute resolution institutions (LAPS) have made this option an alternative dispute resolution in Indonesia. This is caused by unequal understanding of technology and the technology itself in each region, apart from that, the only institution that has its own procedures for implementing ODR as a dispute resolution option in Indonesia to date is BANI. BANI itself in its implementation still combines offline and online procedures in implementing ODR, in contrast to Singapore and America which are completely online. Apart from that, there are supporting regulations regarding the implementation of this method. However, the public is still unsure about using the ODR system because there are no specific regulations regarding ODR issued directly by the regulator or the Indonesian government. Because if a special regulation regarding ODR has been issued, it will further guarantee legal certainty for the parties to the dispute. If you look at the opportunities that exist, such as the significant increase in e-commerce trade from year to year and support in terms of rules or regulations in Indonesia, this can be the starting point for establishing permanent regulations regarding ODR in Indonesia. Looking at the existing opportunities and obstacles, it can be concluded that the Indonesian state can be said to be capable of making the ODR mechanism an alternative dispute resolution option for both E-Commerce business disputes and other civil disputes, such as E-Court in terms of litigation channels. However, if it is forced without finding a solution to these obstacles, of course

the large provinces in Indonesia will only be able to use the ODR mechanism as a way of resolving disputes. This will of course create injustice regarding existing legal facilities.

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