

Business Disputes in the Digital Age: Online Dispute Resolution

I Putu Raditya Sudwika Utama*¹, & Made Gde Subha Karma Resen²

¹Master of Law Study Program, Faculty of Law, Udayana University, Bali, Indonesia

²Faculty of Law, Udayana University, Bali, Indonesia

<p>Received 18-07-2022</p>	<p>Abstract: The increase in social and economic activity in society has entered an information-oriented society. Information systems and technology have been used in many sectors of life, ranging from the business sector to business dispute resolution methods. Dispute resolution can be done by litigation or non-litigation. Because dispute resolution through this court certainly makes the dispute resolution process long to resolve and cost a lot of money. For dispute resolution through non-litigation as stipulated in Law No. 30 of 1999 concerning Arbitration and Alternative Settlement. There is a way to resolve disputes through online media, this is called an online dispute. The problems that then arise regarding the existence of ODR as an alternative to business dispute resolution in Indonesia are only regulated in a lex generalist manner. Dispute resolution through ODR has not been regulated specifically in Indonesia. The method used in this Journal normative method, using a conceptual approach This paper uses normative legal research methods focusing on the study of the norm vacuum. The advantages possessed by ODR as a dispute resolution method, show that the existence of ODR is very important and very profitable for business people in resolving business disputes in Indonesia. The existence of ODR as a method of investigating business disputes in Indonesia must certainly be carried out based on applicable legal rules. Conventional business dispute resolution in Indonesia is guided by the provisions of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, but related to the implementation of online dispute resolution through this ODR, it has not been regulated in the Law on Arbitration and Alternative Dispute Resolution and in other laws and regulations specifically. Nowadays in contracts entered into between parties in business affairs, it is increasingly customary for parties to agree that disputes will be resolved by arbitration. Nowadays, alternative dispute resolution methods are more often getting attention and are used by various groups, especially those in the business world, as a way of resolving disputes that need to be developed to overcome the bottleneck of settlement through the courts. As previously explained, the arrangements regarding Arbitration and Alternative Dispute Resolution are contained in Law Number 30 of 1999. However, unfortunately with regard to the current ODR Indonesia, through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it has not been able to respond to the need and existence of online arbitration.</p>	<p>Keywords: Digital Age, Online Dispute Resolution, the Business Dispute</p>
<p>Accepted 04-08-2022</p>		
<p>Published 13-08-2022</p>		

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INTRODUCTION

The rapid development and advancement of electronic technology has an impact on all aspects of people's lives and activities. The development of modern technology and the opening of a global information network that is completely transparent has resulted in the phenomenon of a third wave of society which has been marked by the emergence of the internet (Azwar, 2019). Internet technology has a huge influence on the world economy. The internet has brought the world economy into a new phase which is more popularly known as the digital economy. Its existence is marked by the increasing number of economic activities that use the internet as a medium of communication, collaboration, and cooperation.

The increase in social and economic activities in the community has entered an information-oriented society. Information systems and technology have been used in many sectors of life, from the business sector to business dispute resolution methods. Dispute resolution can be done by litigation or non-litigation. However, in today's business world, litigation is considered as a last resort (*ultimum remedium*) after other efforts have

failed. Due to the settlement of disputes through this court, of course, the dispute resolution process takes a long time to be resolved and costs a lot of money. So that in general in the business world, dispute resolution is prioritized through non-litigation as regulated in Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter referred to as the Law on Arbitration and Alternative Dispute Resolution). This non-litigation dispute resolution mechanism includes arbitration, consultation, negotiation, mediation, conciliation or expert judgment (Azwar, 2019).

Based on the results of the Central Statistics Agency's research, the number of internet users in Indonesia increased to 196.7 million as of the second quarter of 2020 (Pratama, 2020). business dispute resolution method *online*. The existence of technological developments, especially in information technology, has an influence on how to resolve disputes that arise as a result of a transaction. There is a way to resolve disputes through *online*, this is called *online dispute resolution* (hereinafter referred to as ODR).

ODR is a dispute resolution method similar to ADR (*alternative dispute resolution*), the difference lies in the mechanism, namely *online*. This method of dispute resolution through *online* actually does not have a legal arrangement in Indonesia (Susanti, 2019).

Alternative dispute resolution *online* not much different from alternative dispute resolution *offline*. The difference is only in the method used, namely the use of electronic means in its implementation. ODR in this case is an alternative to business dispute resolution outside the court that uses the internet as a medium in resolving disputes that occur between the parties (Sitompul et al., 2016). Dispute resolution *Online* requires information technology tools, especially the internet in 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.

The increasing third wave of society which is characterized by interaction with information technology devices causes conventional trade to switch to a more modern system by combining law, economics, management and technology (Azwar, 2019). The use of information technology in the dispute resolution system is very helpful for the parties who are in cross-country so that it opens up new alternatives for justice seekers (*justiciable*) in resolving their disputes. Through this ODR, arbitration can provide great hope for dispute resolution of business actors because it is considered more effective.

The application of ODR as a method of resolving business disputes in Indonesia is basically not popular enough compared to alternative dispute resolution carried out conventionally, namely through Alternative Dispute Resolution (ADR), although it is not yet popular in Indonesia, the implementation of ODR is commonly applied in several countries. Some of these countries include the *European Union (EU)*, the *American Arbitration Association (AAA)*, and the *China International Economic and Trade Arbitration Commission (CIETAC)*. The application of ODR in these countries has something in common, namely to resolve disputes caused by cross-border transactions conducted electronically.

The problems that then arise regarding the existence of ODR as an alternative for resolving business disputes in Indonesia are only regulated

lex generalis. Dispute resolution through *online dispute resolution (ODR)* has not yet been specifically regulated in Indonesia, while the existence of ODR itself has the aim of increasing the desire to build public trust in *online* by providing fast dispute resolution and legal certainty across geographies, languages and different legal jurisdictions. This shows that there is a legal vacuum (*vacuum of norm*) regarding the implementation of ODR as a method of resolving business disputes in Indonesia. Based on the existence of a legal vacuum related to the implementation of ODR and the importance of regulating ODR as a method of resolving business disputes in Indonesia

RESEARCH METHODS

The method used in this journal is the Normative Method, namely the legal method is carried out by researching primary and secondary library materials (Soekanto & Mamudji, 2003). By using a Conceptual Approach where the current legal system is from a statutory regulation that can be applied to concrete legal events. This paper uses a normative legal research method focusing on the study of the norm vacuum, which regulates the Urgency of Online Dispute Resolution Regulations as a Method of Business Dispute Resolution in the Digital Era in Indonesia, and various other technical regulations. The approach used in this paper is the legal concept approach, as well as the analytical approach, namely the statutory approach, the conceptual approach is the legal concept approach, and the analytical approach. The technique of tracing legal materials uses a document study technique on primary legal materials, namely laws and regulations that are directly or indirectly related to research topics, legal books, journals, encyclopedias, and so on as secondary and tertiary law charts.

This paper analyzes the study using qualitative analysis. The technique of presenting legal materials in this study uses descriptive qualitative methods, namely data or legal materials that are not presented in verbal form (Diantha, 2016).

Data collection techniques for perfection, the authors carry out several data collection techniques carried out, including the following: Literature study when making a scientific paper, the author needs to see materials that suit the needs of the author which are processed from other libraries.

RESULTS AND DISCUSSION

The Importance of Online Dispute Resolution as a Method of Business Dispute Resolution in the Digital Age in Indonesia

Differences that arise in business activities are basically unavoidable. The existence of differences in business activities if not stated will cause conflicts between the parties in business activities, on the contrary if they are stated then the conflict between the business actors will become a business dispute. Settlement of business disputes through the courts (litigation) generally takes a long time, because the ratio of the number of cases that must be resolved by the court is increasingly disproportionate to the capacity and ability of the court to receive, examine, and decide on incoming cases (Ariani, 2012). Another thing that underlies business people not choosing litigation is court decisions that are win-lose which can damage business relationships (Hariyani, 2018). Alternative Dispute Resolution (APS) or in English called *Alternative Dispute Resolution* (ADR) is a business dispute resolution method that is widely chosen by business people in resolving disputes that occur in their business activities.

The very rapid development of information and communication technology in the digital era as it is today, underlies the birth of the idea of resolving business disputes that are carried out *online* (Sari & Sukranata, 2013). business dispute resolution *online* is known as *Online Dispute Resolution* (ODR). Basically, alternative *online* (ODR) is a dispute resolution method that can be done via the internet and if necessary, *to-face* can be conducted audiovisually through *video-conferencing media* (SIMAMORA, 2020). Meanwhile, according to the opinion of Pablo Cortés in his theory of *Online Dispute Resolution*, states as follows.

"Online Dispute Resolution (ODR) is often referred as a form of ADR which takes advantage of the speed and convenience of the Internet and ICT. ODR is the best (and often the only) option for enhancing the redress of consumer grievances, strengthening their trust in the market, and promoting the sustainable growth of e-commerce" (Cortés, 2011) .

The opinion of Pablo Cortés basically provides an understanding that *Online Dispute Resolution* (ODR) is often referred to as a form of ADR that utilizes the speed of technology and the internet. ODR is considered the best choice for dealing with business disputes, strengthening market confidence, and promoting sustainable *e-commerce* growth. Based on this understanding, it can also be understood that one of the goals of ODR

is the desire to increase public trust in online trading by providing fast dispute resolution and legal certainty across different geographies, languages and legal jurisdictions (Mansyur & Kamil, 2014).

ODR, as explained in the background of the problem, facilitates information technology media as a "*fourth party*" to the disputing parties to communicate even though they do not meet face to face (*face to face*). The ODR concept recognizes the role and value of software *as a network* that is used for more than just a simple communication channel. This "*fourth party*" plays an important role in facilitating the parties to clarify issues that arise in business disputes prior to a face-to-face *video conference*.

In the alternative dispute resolution system carried out conventionally, there are three parties involved, namely the disputing parties and a neutral third party, while in the online dispute resolution system there is a fourth party, namely the technology used by negotiators, mediators, and/or arbitrators. in the dispute resolution process (Susanti, 2019). The basic procedures in the dispute resolution process through *online* or ODR are as follows.

- **Introduction:** Arbitration procedure *online* can be carried out based on the agreement of the parties who have then obtained an assessment from the arbitration institution that the parties are eligible to conduct online arbitration. The applicant can file a dispute claim to the arbitration institution via electronic mail or *online* if the arbitration institution already has *form* on its website.
- **Written statements and documents:** Statements and documents written statements and documents must be submitted by the parties to the opposing party as well as the arbitrator to ensure the principle of contradiction. Examination of electronic documents is carried out by checking *the files* created or received, both in the form *files* documents *software*.
- **The judge:** of the provisions of Article 36 of the Law on Arbitration and Alternative Dispute Resolution, stipulates that the arbitration process must be carried out in writing which technically, examination can be carried out verbally and electronically. In view of the growing technological advances, the trial between the applicant and the respondent before the arbitrator can be conducted using a *mobile phone* or via *video conference*.

- **Online consultation:** This stage is the final part of the *online arbitration process*. If the arbitration is conducted by more than one arbitrator, then in making decisions, it is necessary to conduct deliberation among the arbitrators using the *e-mail* so that a certain period of time is required for deliberation.
- **Sentencing:** Arbitrator's decision after the decision is issued, notifying the parties concerned with the existence of a decision that will be sent by using electronic means. In this regard, it has not been regulated in the Arbitration Law. In Article 55, it is only regulated that if the dispute examination has been completed, the examination will be closed immediately and a court day will be set to pronounce the arbitration award.

In the description of the dispute resolution process through ODR, it can be understood that ODR has several advantages over ADR. ODR, based on its implementation procedure, is known to be able to reach those who need it more broadly. In addition, ODR also has the advantage of resolving business disputes for business actors who have low economic value or when the parties live in distant areas or different jurisdictions. This is because the implementation of ODR provides efficiency in both time and cost (*extreme savings cost*), because travel costs can be reduced through online meetings, although online meeting facilities also require costs, but they are also cheaper than travel costs (Putra et al., 2020).

Another advantage of implementing ODR as a business dispute resolution method is that it can provide convenience (*convenience*) for disputing business actors. This is because ODR can be carried out in their respective places and the parties can adjust the desired time even though it is outside working hours, if there is an agreement, it can still be carried out (Putra et al., 2020). ODR also has a format for recording all the dispute resolution processes that can be used for in-depth research and verification. ODR is also flexible because it can be integrated with ADR in things that cannot be done *online*, so face-to-face meetings can still be done.

The advantages possessed by ODR as a dispute resolution method show that the existence of ODR is very important and very beneficial for business people in resolving business disputes in Indonesia. The resolution of business disputes through the ODR method will of course also be the choice of business people to resolve disputes in their business activities in the midst of the outbreak

of the COVID-19 virus. The existence of ODR as a method of resolving business disputes in Indonesia must of course be carried out based on the applicable legal rules.

The magnitude of the advantages and benefits generated for the parties, especially business people in this method of resolving business disputes through ODR, is unfortunately not balanced with a strong legal basis. Conventional business dispute resolution in Indonesia is guided by the provisions of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, but regarding the implementation of *online* through ODR, it has not been regulated in the Arbitration Law and Alternative Dispute Resolution as well as in the laws and regulations. Others in particular. The absence of legal rules that specifically regulate the implementation of ODR has resulted in the implementation of ODR in Indonesia as a method of resolving business disputes that do not yet have a strong foundation, so that it has an impact on legal uncertainty for the parties in the implementation of this ODR.

Legality of Online Dispute Resolution as a Method of Business Dispute Resolution According to the Legal System in Indonesia

Currently in contracts made between parties in business matters, it is increasingly common for the parties to agree that disputes will be resolved through arbitration (Lewis, 2018). Currently, alternative dispute resolution methods are getting more attention and are used by various groups, especially those in the business world, as a dispute resolution method that needs to be developed to overcome the bottleneck of settlement through the courts (Bram & Djafar, 2011). The current era of globalization, for example, is marked by the widespread use of internet technology in almost all areas of life, including business. Business has now also entered a stage known as *e-commerce* or online business activities based on electronics or internet *technology*. The situation mentioned above, with the development of *e-commerce*, inevitably eventually affects the concepts and practices of business dispute resolution which must be based on internet technology as well. Therefore, a system known as online arbitration was created.

Online Dispute Resolution (ODR) is a dispute resolution carried out by combining information processing computer technology with internet communication network facilities. 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 (Sitompul et al., 2016). It can be said that ODR is a dispute resolution through cyberspace (internet) without having a physical meeting where ODR is the same dispute resolution method as the ADR method, the only difference being the online mechanism (Sugiarto, 2019).

As previously explained, the regulation regarding Arbitration and Alternative Dispute Resolution is contained in Law Number 30 of 1999. Unfortunately, however, with regard to Indonesia's ODR at this time, through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it has not been possible to respond to the need and existence of such online arbitration.[5] This can be seen from several articles contained in the Arbitration Law and Alternative Dispute Resolution. Article 1 paragraph (3) of the Law on Arbitration and Alternative Dispute Resolution regulates as follows:

“Arbitration agreement is an agreement in the form of an arbitration clause contained in a written agreement made by the parties before a dispute arises, or a separate arbitration agreement made by the parties after a dispute arises.”

Further provisions in the Arbitration and Alternative Dispute Resolution Law which regulates dispute resolution options but have not provided specific regulations related to *online dispute resolution* are the provisions of Article 9, which provides the following arrangements.

In the event that the parties choose to settle the dispute through arbitration after the dispute has occurred, the agreement regarding this matter must be made in a written agreement signed by the parties and the event that the parties cannot sign the written agreement as referred to in paragraph (1), the written agreement must be made in the form of a notarial deed..

- The written agreement as referred to in paragraph (1) must contain:
 - disputed issues;
 - full names and places of residence of the parties;
 - full name and place of residence of the arbitrator or arbitral tribunal;
 - where the arbitrator or arbitral tribunal will make decisions;

- full name of the secretary;
- dispute resolution period;
- a statement of willingness from the arbitrator; and
- A written agreement that does not contain the matters referred to in paragraph (3) is null and void.

Based on the two articles of Law no. 30 of 1999 it can be observed that in its provisions it requires an arbitration agreement in written form, because there are no provisions regarding arbitration that are made electronically. Thus, when referring to the Arbitration Law and Alternative dispute resolution regarding ODR in Indonesia, it will create a legal vacuum. The solution that can be done is to perform construction techniques. Construction technique, is the formation of a juridical construction that can be done by applying an analogy (*argumentum per analogiam*), which is a technique that is applied when there is a void in the norm in a statutory regulation. *Argumentum per analogiam* is carried out by expanding the scope of a statutory regulation in the face of an analogous or similar event, as well as the interests of the legal community that demand the same assessment (Prakoso, 2016).

UU no. 30 of 1999, provides arrangements related to loopholes to conduct online arbitration which can be seen in the provisions of Article 4 paragraph (3) as that, "*In the event that it is agreed that dispute resolution through arbitration occurs in the form of an exchange of letters, then the sending of telex, telegram, facsimile, e-mail or in other forms of communication means, must be accompanied by a note of receipt by the parties*". Based on these provisions, according to the author, online arbitration elections can occur as long as there is an agreement between the parties. The editor of the article above contains the word "*e-mail*" which stands for Electronic Mail or in Indonesian it is called Electronic Mail where the means of sending letters is through the internet *e-mail* allows the parties to use the internet as a means of resolving disputes either through conventional arbitration or otherwise. Because *e-mail* or electronic mail can only be sent and received via the internet (Mansyur & Kamil, 2014).

Can ODR be recognized or not in the law in Indonesia as enshrined in Law no. 30 of 1999 and its implementation in Indonesia, it can be observed from conventional legal arrangements which state that every implementation of domestic and foreign arbitral awards always requires registration at the District Court, and for foreign arbitration awards

registration is carried out at the Central Jakarta District Court. Based on this context, the question is whether this ODR can also be registered in the District Court.

Indonesian law, in this case Law no. 30 of 1999 has not provided a clear regulation, so that from a juridical point of view, it is natural that ODR is something that should be questioned in the civil procedural law system in Indonesia which regulates dispute resolution issues. *Online Dispute Resolution (ODR)*, although it has not been regulated in detail and explicitly in Law no. 30 of 1999, but the authority of the Central Jakarta District Court to accept ODR as a form of international arbitration award (based on Article 66). Furthermore, if you return to the principle of freedom of contract, in principle arbitration occurs based on the agreement of the parties (Mansyur & Kamil, 2014).

The application of online dispute resolution in Indonesia requires several supporting factors to be implemented, one of which is the legal umbrella factor so that for the sake of legal certainty for the community and business people in particular, a "*lex specialist*" for the application of online dispute resolution. The urgency of thinking about the importance of regulating the practice of electronic contracts in Indonesia gave birth to Law Number 11 of 2008 concerning Information and Electronic Transactions. Settlement of electronic transaction disputes is regulated in Article 18 Paragraph (4) of Law Number 11 of 2008 concerning Information and Electronic Transactions which explains as follows.

- Electronic transactions that are poured into electronic contracts are binding on the parties;
- The parties have the authority to choose the law that applies to international transactions they make;
- If the parties do not make a choice of law in international electronic transactions, the applicable law is based on the principles of civil law
- The parties have the authority to establish court forums, arbitration, or other alternative dispute resolution institutions that are authorized to handle disputes that may arise from the transaction international electronics made;
- If the parties do not make the choice of forum as referred to in paragraph (4), the determination of the authority of a court, arbitration, or other alternative dispute resolution institution authorized to handle

disputes that may arise from the transaction, is based on the principles of international law.

Based on Article 38 Paragraph (1) it is explained that law enforcement comes from the community and aims to achieve peace and public order. The community takes an active role in everything such as the use of technology, such as electronic commerce (*e-commerce*), electronic payments (*e-payments*), signing of work contracts electronically (*e-contracts*), and other forms of information technology media. This emphasizes that in the legislation Indonesia can be said to support the establishment of online dispute resolution. Another thing that is the driving factor is that it is stated in the provisions of Article 41 of Law Number 11 of 2008 concerning Information and Electronic Transactions which provide the following arrangements.

- The public can play a role in increasing the use of information technology through the operation of electronic systems and electronic transactions.
- The role of the community as referred to in paragraph (1) can be carried out through an institution established by the community.
- Institutions may have consultancy and mediation functions.

Based on the explanation of Article 41 of Law Number 11 of 2008, what is meant by "institutions formed by the community" are institutions engaged in information technology and electronic transactions. This opens the possibility for the public to create institutions that function to resolve disputes online in Indonesia.

CONCLUSION

Based on the discussion that has been described previously, it can be concluded as follows: Setting *Online Dispute Resolution* as a method of resolving business disputes in law in Indonesia is very important to be realized in the digital era as it is today, based on the advantages of the business dispute resolution method through ODR which makes it easy for parties, especially business people in dealing with business disputes that arise occur. The provisions of the Arbitration and Alternative Dispute Resolution Law provide general arrangements (*lex generalis*), so that they cannot protect the interests of the parties in particular and provide legal certainty in the implementation of ODR. *The Online Dispute Resolution (ODR)* has not been regulated in detail and explicitly in Law no. 30 of 1999, but the

authority of the Central Jakarta District Court to accept ODR as a form of international arbitration award (based on Article 66). Furthermore, if we return to the principle of freedom of contract, in principle, arbitration occurs based on the agreement of the parties validity *Online Dispute Resolution* in the Context of Settlement of Business Disputes according to the Legal System in Indonesia can be known through the provisions of Article 4 paragraph (3) of Law no. 30 of 1999 which states that, "In the event that it is agreed that dispute resolution through arbitration occurs in the form of an exchange of letters, the sending of telex, telegram, facsimile, *e-mail* or in other forms of communication means, must be accompanied by a note of receipt by the parties". Based on these provisions, online arbitration elections can occur provided there is an agreement between the parties.

Recommendation

The suggestions that can be given related to the discussion that has been described previously include the following. Suggestions that can be submitted to the government, should immediately formulate special arrangements that regulate ODR as a method of resolving business disputes or insert arrangements related to the implementation of ODR as a method of resolving business disputes in the relevant laws and regulations. It is intended that the implementation of ODR in Indonesia has a strong foundation and business people can obtain legal certainty in the application of ODR as a method of resolving business disputes. The application of online dispute resolution in Indonesia requires several supporting factors to be implemented, one of which is the legal umbrella factor so that for the sake of legal certainty for the community and business people in particular, a "*lex specialist*" for the application of online dispute resolution. The government should immediately issue a firm legal umbrella regarding the *Online Dispute Resolution*. The existence of efforts to interpret the interpretation of the provisions of the article that regulates the implementation of conventional business dispute resolution tends to be general in nature, so that it risks causing multiple interpretations among the parties in its implementation.

Acknowledgements

Thank you to The Master Study Program in Law, Faculty of Law, Udayana University

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