

ONLINE DISPUTE RESOLUTION (ODR) AS AN ALTERNATIVE FOR DISPUTE RESOLUTION IN INDONESIA

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Abstract: Online Dispute Resolution (ODR) is a forum for resolving technology-based disputes to make it easier to resolve disputes between parties, whether through negotiation, mediation, arbitration or a combination of these three channels. In this article we use normative juridical and qualitative approaches, where this article discusses regulations that implement or regulate Online Dispute Resolution (ODR) in Indonesia, opportunities and challenges and recommends immediately making and ratifying regulations for Online Dispute Resolution (ODR). In Indonesia Online Dispute Resolution (ODR) is still in the beginner development stage, for example it is still in the process of processing complaints from consumers online. However, there are no regulations or laws that regulate Online Dispute Resolution (ODR) in detail and clearly. Therefore, this article aims to encourage the government and authorities to create and promulgate Online Dispute Resolution (ODR) in Indonesia.

INTRODUCTION

In the dispute resolution process in Indonesia, it can be resolved in 2 ways, namely through litigation and non-litigation. Litigation is dispute resolution through the judicial process. Meanwhile, non-litigation is dispute resolution outside of court.

Dispute resolution through litigation is seen as merely a formality because dispute resolution through litigation forces the disputing parties to implement and accept court decisions, even though sometimes these decisions are considered unfair to one of the parties. This will also prolong the conflict for the disputing parties. And decisions in court are win-lose in nature, thus also creating feelings of hostility between the parties to the dispute.

This makes dispute resolution through non-litigation one of the options put forward by the parties to the dispute. Because in resolving disputes through non-

litigation the results are seen to be better than through litigation. Apart from that, non-litigation dispute resolution also saves costs and the results of the settlement can be accepted by each party. However, in practice, sometimes the parties view non-litigation settlement as a protocol matter that must be carried out before a dispute or problem enters the court of law.

On the other hand, non-litigation dispute resolution or what can be called Alternative Dispute Resolution also embodies the principles contained in Pancasila, especially the 4th principle, namely democracy led by wisdom in representative deliberations. Thus, many Indonesian people choose Alternative Dispute Resolution.

With the development of technology, alternative dispute resolution mechanisms have also changed. With the internet, alternative dispute resolution can also be done online. Technology has been proven to make it easier for humans to live their lives.

This alternative dispute resolution is also known as Online Dispute Resolution (ODR) or online dispute resolution. The emergence of Online Dispute Resolution (ODR) as a method of non-litigation dispute resolution which is intended to be a medium for parties who want convenience in life. Online Dispute Resolution (ODR) has more or less the same flow as Alternative Dispute Resolution, but adds the use and assistance of technology.

Online Dispute Resolution (ODR) is included in Alternative Dispute Resolution, where Alternative Dispute Resolution has 3 types of dispute resolution, namely negotiation, mediation and arbitration. Mediation is a popular dispute resolution alternative for many reasons, including efficiency, lower costs, and a focus on collaboration to reach an agreement. (Sari Dewi et al., 2022)

Online Dispute Resolution (ODR) itself appeared in 1995. The first initiation was carried out by The National Center for Automated Information Research (NCAIR) by creating a Virtual Magistrate (VM) which is considered the first Online Dispute Resolution (ODR) in the world.

Then it was developed to make dispute handling more effective through online reporting and over time also utilizing online mediation features and controlling and observing disputes experienced by the disputing parties. It turns out

that more people use online mediation than traditional mediation. In fact, 90% of disputes in Online Dispute Resolution (ODR) are resolved without human assistance.

The presence of Online Dispute Resolution (ODR) from the first time until now shows that Online Dispute Resolution (ODR) is indeed one of the solutions in resolving disputes or problems. Family law cases can also be resolved using Online Dispute Resolution (ODR). Not only family law cases but also dispute resolution in small claims cases.

However, there are some disputes that cannot be resolved using Online Dispute Resolution (ODR), such as determining heirs or other decisions made by the Court. And also cases of extraordinary crime or extraordinary crimes as well as human rights violations such as sexual violence, corruption and others. The regulation for conducting trials conducted electronically is Supreme Court Regulation Number 4 of 2020 concerning the Administration and Trial of Criminal Cases in Court Electronically. This regulation was promulgated on September 29 2020 and became the basis for electronic criminal case trials throughout Indonesia.(Alimuddin et al., 2023)

Dispute resolution using Online Dispute Resolution (ODR) has its own obstacles and challenges for the Indonesian people, especially with the condition of the Indonesian people who are still new to the Online Dispute Resolution (ODR) system.

Indirectly, we are invited to follow and learn the latest technology. However, Indonesia has very wide and diverse regions and tribes. This is one of the challenges that will be faced when we use the Online Dispute Resolution (ODR) process.

So, in this article we will discuss the advantages and disadvantages of Online Dispute Resolution (ODR), how Online Dispute Resolution (ODR) works in Indonesia, what regulations regulate Online Dispute Resolution (ODR) and provide solutions to overcome existing challenges and shortcomings. in Online Dispute Resolution (ODR).

RESEARCH METHODS

This article uses a normative juridical and qualitative approach, where this article discusses regulations that implement or regulate Online Dispute Resolution (ODR) in Indonesia, opportunities and challenges and recommends immediately making and ratifying regulations for Online Dispute Resolution (ODR).

RESULTS AND DISCUSSION

Conceptually, the term Online Dispute Resolution (ODR) has two definitions. The first is according to UNCITRAL and the second is according to the Financial Services Authority. According to the Financial Services Authority (OJK), Online Dispute Resolution (ODR) is an alternative dispute resolution by utilizing electronic media and internet networks in the resolution process so that the parties to the dispute do not need to meet face to face.

Not only that, here are various expert views regarding the definition of Online Dispute Resolution (ODR). The first according to Petrauskus and Kybartiene, (Kybartiene, 2011) defines Online Dispute Resolution (ODR) as a forum for resolving technology-based disputes to make it easier to resolve disputes between parties, whether through negotiation, mediation, arbitration or a combination of these three channels.

Then, according to Cortes' view, Online Dispute Resolution (ODR) is a bridge for resolving disputes which is supported by convenience in terms of information and communication technology based on needs. The last one according to Mellisa Conley Taylor (Basarah) who think that Online Dispute Resolution (ODR) is a process for resolving disputes that makes reference to Alternative Dispute Resolution, but utilizes the help of communication technology, especially internet-based.

Online Dispute Resolution (ODR) itself was initially known to resolve disputes between internet service providers (providers) and users. Then Online Dispute Resolution (ODR) exists to review online mediation for disputes experienced by buyers and sellers. In the next development, Online Dispute Resolution (ODR) emerged to resolve disputes related to the internet and e-commerce. Online Dispute Resolution (ODR) uses various features such as electronic mail, conversation or

chat features, audio or video conferencing and even artificial intelligence features or what is commonly known as AI.

In Indonesia itself, Online Dispute Resolution (ODR) is still at a beginner's development stage, for example it is still in the process of processing online complaints from consumers. The next stage will provide integration of the consumer voice system to resolve disputes. (Muhammad Faiz Aziz, 2021).

In 2020, Online Dispute Resolution (ODR) increased in use due to the Covid-19 disease outbreak. Which requires the parties in dispute to resolve their problems remotely or not meet face to face. So the existence of Online Dispute Resolution (ODR) is used by the parties as a forum for resolving problems during the pandemic.

Indonesia already has regulations governing alternative dispute resolution in Law Number 30 of 1999. This Law includes regulations regarding dispute resolution, such as mediation, arbitration, negotiation, conciliation and expert assessment. Not only that, but also the events or procedures applied in alternative dispute resolution.

This Law does not yet include regulations regarding Online Dispute Resolution (ODR). However, this is not a reason that Online Dispute Resolution (ODR) cannot be implemented. In other words, Online Dispute Resolution (ODR) already has a regulatory basis, but it is not specifically intended for Online Dispute Resolution (ODR).

Apart from this Law, there is Law Number 11 of 2008 concerning Electronic Information and Transactions as amended into Law Number 19 of 2016 and Government Regulation Number 80 of 2019 concerning Trade via e-commerce or electronic systems which can also provide a legal basis for implementation. Online Dispute Resolution (ODR) especially for e-commerce. In fact, based on the e-commerce PP, dispute resolution can be done online in accordance with statutory provisions.

Then, in Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Court, it is also permitted to conduct electronic trials with the consent of the plaintiff and defendant after the mediation process is declared unsuccessful.

Furthermore, there is also Supreme Court Regulation Number 1 of 2016 concerning mediation procedures in Court, Article 5 states that it allows mediation meetings to be conducted via long-distance audio-visual communication media which allows all parties to see and hear each other directly and participate in the meeting.

Even though the above law does not specifically support Online Dispute Resolution (ODR), this legislation can be a reference in making more specific and detailed legislative regulations regarding Online Dispute Resolution (ODR).

Judging from the presentation of the material above, it can show that there are advantages and disadvantages in implementing Online Dispute Resolution (ODR). The identified advantages include, among others:

- a. With Online Dispute Resolution (ODR), this makes it a low-cost option, because there is no need to come to the trial or the agreed location. Disputing parties can resolve their problems at home/residence by using equipment that can support dispute handling procedures through Online Dispute Resolution (ODR). This can indirectly reduce the costs incurred to resolve disputes, especially travel costs incurred by the parties.
- b. Online Dispute Resolution (ODR) also provides freedom for dispute resolution for parties in resolving disputes, no longer limited by space or deadlines and does not drag on.
- c. Online Dispute Resolution (ODR) guarantees that settlement procedures are well recorded because the negotiations and discussions that take place are well recorded using a digital process. All discussions between the parties will be used as evidence that can be held accountable for its truth if there is one party who evades the necessity of a decision that has been obtained from the process of resolving the dispute.

However, there are not only advantages that arise, there are also disadvantages and challenges that will be faced if we use Online Dispute Resolution (ODR), such as

- a. There is no guarantee of confidentiality in the Online Dispute Resolution (ODR) process, because the use of the internet network is a factor that requires consideration regarding security due to the increasing number of

hacker intrusions or data problems that are often leaked which can be a serious consideration because dispute resolution using ODR is arbitration because arbitration adheres to the principle of confidentiality.

- b. Because the Indonesian nation is a large nation and has diverse cultures and ethnicities, this can also be a challenge in implementing Online Dispute Resolution (ODR). For example, there are various tribes or regions that do not allow internet connections to enter their area. Or even the internet cannot be accessed within the village/region. And what is even more difficult is the problem of public stigma, it is not uncommon to find people who think that decisions other than those issued by the court, they think that these decisions are invalid or do not apply.

It is impossible for there to be a problem or challenge without a solution, here are some solutions or solutions that can be implemented so that Online Dispute Resolution (ODR) can be carried out properly in accordance with its function, including:

- a. Before going any further, Online Dispute Resolution (ODR) must first have a legal basis, even though there is already a law that regulates alternative dispute resolution, but the law is not detailed or does not specifically regulate Online Dispute Resolution (ODR). So the task of the legislative body together with the President is to make a law regarding Online Dispute Resolution (ODR).
- b. Online Dispute Resolution (ODR) must ensure security. Such as information security, so that information about those in dispute is not leaked to unrelated parties. There is also security regarding personal data and also guarantees confidentiality in carrying out Online Dispute Resolution (ODR).
- c. Not only is the system being improved, but the government must also take part in developing Online Dispute Resolution (ODR) because the government has the authority to provide facilities to develop facilities such as web networks. And the government can help Online Dispute Resolution

(ODR) to create and even change public stigma towards alternative dispute resolution.

CONCLUSIONS AND RECOMMENDATIONS

Online Dispute Resolution (ODR) is an alternative dispute resolution by utilizing electronic media and internet networks in the resolution process so that the parties to the dispute do not need to meet face to face. Or from another definition, Online Dispute Resolution (ODR) is considered as a forum for resolving technology-based disputes to make it easier to resolve disputes between parties, whether through negotiation, mediation, arbitration or a combination of these three channels.

Online Dispute Resolution (ODR) itself was initially known to resolve disputes between internet service providers (providers) and users. Then Online Dispute Resolution (ODR) exists to review online mediation for disputes experienced by buyers and sellers. In its development, Online Dispute Resolution (ODR) emerged to resolve disputes related to the internet and e-commerce. In Indonesia, Online Dispute Resolution (ODR) is still at a beginner's development stage, for example it is still in the process of processing online complaints from consumers.

Regarding the regulations governing Online Dispute Resolution (ODR) in Indonesia, they are not yet covered in detail and clearly. Still using the Arbitration and Alternative Dispute Resolution Law, Law Number 19 of 2016 and Government Regulation Number 80 of 2019 concerning Trading via e-commerce or electronic systems and using Supreme Court Regulation Number 1 of 2016 concerning mediation procedures in Court.

Apart from this, there are also challenges/obstacles and advantages of Online Dispute Resolution (ODR). The advantages can be seen from how Online Dispute Resolution (ODR) is carried out without the presence of the parties to the dispute. This can make Online Dispute Resolution (ODR) a cheaper alternative for dispute resolution. Apart from having advantages, there are also disadvantages. Online Dispute Resolution (ODR) has many challenges to face, especially since Indonesia consists of many ethnic groups. There are several tribes that do not allow

the internet to enter their territory and what is true is that the internet network cannot enter their territory because the coverage is too remote or too far. Not only that, but also the public stigma regarding Online Dispute Resolution (ODR). There are those who are of the view that decisions issued other than by the Court are invalid or not binding. Therefore, this article aims to encourage the government and authorities to create and promulgate Online Dispute Resolution (ODR) in Indonesia

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