

# E-Commerce Dispute Resolution Through Online Dispute Resolution

Jusman Dg. Takenang<sup>1</sup>, Ma'ruf Akib<sup>2</sup>, Sudirman<sup>3</sup>, Wahyudi Umar<sup>4\*</sup>, Fe Fikran Alfurqon<sup>5</sup>

<sup>1,2,3,4</sup> Faculty of Law, Universitas Muhammadiyah Kendari, Kendari, Indonesia.

<sup>5</sup> School of Law, Australian National University, Canberra, Australia.



: wahyudi.umar@umkendari.ac.id

Corresponding Author\*



## Abstract

**Introduction:** The rapid growth of the e-commerce industry has brought significant economic benefits. Still, it also raises challenges regarding dispute resolution that is efficient, fair and meets the needs of all parties.

**Purposes of the Research:** This study aims to examine and analyze the use of Dispute Resolution in E-commerce (Electronic Commerce) through the Online Dispute Resolution (ODR) mechanism as a solution to provide easier and faster access to justice in the context of online business transactions.

**Methods of the Research** This study uses doctrinal legal research with a statute and conceptual approach. It uses primary legal materials that are authoritative and binding, such as laws and regulations, and secondary legal materials. This study uses legal interpretation techniques as analysis techniques.

**Results of the Research:** The results of this study are expected to provide deeper insight into the potential of ODR in handling e-commerce disputes and its impact on access to justice for all parties involved. This research can also provide recommendations to the government, the e-commerce industry, and other relevant institutions to consider and develop a better framework for integrating ODR in e-commerce dispute resolution to ensure fairness and satisfaction of online businesses.

**Keywords:** E-Commerce; Dispute Resolution; Online Dispute Resolution.

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## INTRODUCTION

The e-commerce industry's rapid growth has transformed the commerce landscape and provided unprecedented economic opportunities while presenting significant dispute resolution challenges. With increasing online transactions, conflicts inevitably arise between consumers and businesses, necessitating efficient and fair mechanisms for resolving such disputes. Traditional court systems often prove inadequate due to their complexity and inefficiency in managing cross-border electronic transactions. Previous research has identified several solutions for e-commerce dispute resolution, predominantly focusing on conventional methods such as litigation and arbitration. For instance, Tang highlighted the limitations of these approaches in terms of time consumption, costs, and accessibility,<sup>1</sup> while

<sup>1</sup> Zheng Tang, "An Effective Dispute Resolution System for Electronic Consumer Contracts," *Computer Law and Security Report* 23, no. 1 (2007): 42-52, <https://doi.org/10.1016/j.clsr.2006.11.002>.

McCafferty emphasized the jurisdictional challenges faced in e-commerce disputes.<sup>2</sup> Despite the emergence of Online Dispute Resolution (ODR) mechanisms, which leverage technology to facilitate dispute resolution, existing literature has mainly concentrated on theoretical frameworks rather than practical applications.<sup>3</sup> Moreover, the integration of ODR within the legal systems of specific jurisdictions, particularly in Indonesia, remains underexplored. This gap in research underscores the need for a comprehensive examination of how ODR can be effectively implemented to enhance access to justice in e-commerce.

This study aims to fill these gaps by analyzing the applicability of ODR as a viable solution for e-commerce disputes in Indonesia. By employing a doctrinal legal research methodology, this research examines existing legal frameworks, relevant case studies, and the latest technological developments in ODR. The novelty of this research lies in its focus on a practical implementation framework for ODR that addresses the unique challenges Indonesian stakeholders face in e-commerce transactions. Unlike previous studies, this research proposes a structured model that integrates ODR within the existing legal infrastructure, offering a new approach to dispute resolution that is both efficient and accessible.

This study addresses the research problem: How can Online Dispute Resolution (ODR) be effectively implemented in Indonesia to improve access to justice for e-commerce disputes? This question will guide the investigation into the potential benefits, challenges, and regulatory requirements for establishing ODR as a mainstream dispute resolution mechanism in the Indonesian e-commerce sector. Through this exploration, the study aims to contribute significantly to the discourse on enhancing legal access in the digital economy.

## LITERATURE REVIEW

### A. ODR Development

Technological advancements can significantly benefit the legal sector, particularly in facilitating dispute resolution and achieving justice. By investing in technology, the dispute resolution process through arbitration, mediation, and online negotiations can become more efficient and cost-effective.<sup>4</sup> With more activities moving to virtual spaces, it is important to have an accessible and affordable mechanism for resolving disputes.

W.E. Burger in Ofir Turel and Yufei Yuan's writing explains that the idea that people want fancy courtrooms and well-dressed lawyers to settle their disputes is not valid. When someone is in trouble, they want help quickly and affordably, like someone in pain.<sup>5</sup> The term ODR has two main definitions: one from UNCITRAL (United Nations Commission International Trade Law), ODR which refers to resolving disputes using electronic communication,<sup>6</sup> and another from the Financial Services Authority of Indonesia (FSA), which defines ODR as a form of alternative dispute resolution that uses electronic media

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<sup>2</sup> Anne McCafferty, "Internet Contracting and E-Commerce Disputes: International and United States Personal Jurisdiction," in *The Global Business Law Review*, 2, 2011, 95.

<sup>3</sup> Ayelet Sela, "The Effect of Online Technologies on Dispute Resolution System Design: Antecedents, Current Trends, and Future Directions," *Lewis & Clark Law Review* 21, no. August (2017): 635–80; Rina Elsa Rizkiana, "The Future of Online Dispute Resolution: Building A Framework for E-Commerce Dispute Resolution in Indonesia," *The Lawpreneurship Journal* 1, no. 2 (2021): 114–38, <https://doi.org/10.21632/tlj.1.2.114-138>.

<sup>4</sup> Nada Rohani and Rani Apriani, "Efektifitas Negosiasi Sebagai Alternatif Penyelesaian Sengketa Dalam Penerapan Online Dispute Resolution Pada Masa Pandemi Covid-19," *Jurnal Kertha Semaya* 10, no. 11 (2022): 2609.

<sup>5</sup> Ofir Turel and Yufei Yuan, *Online Dispute Resolution Services: Justice, Concepts, and Challenges, Handbook of Group Decision and Negotiation: Second Edition*, 2021, [https://doi.org/10.1007/978-3-030-49629-6\\_25](https://doi.org/10.1007/978-3-030-49629-6_25).

<sup>6</sup> UN Commission on International Trade Law, "United Nations Uncitral Technical Notes on Online Dispute Resolution" (2016).

and internet networks so that parties do not have to meet in person.<sup>7</sup> These definitions reflect the need for modern technology, such as laptops and mobile phones, to provide methods for resolving disputes.

ODR was first introduced in 1995 when the National Center for Automated Information Research in Philadelphia created Virtual Magistrate (VM).<sup>8</sup> This system was designed to resolve disputes between internet service providers and their users.<sup>9</sup> In 1999, eBay developed its own ODR system as a pilot project with the University of Massachusetts. The project aimed to examine the effectiveness of online mediation for resolving disputes between buyers and sellers on their platform. This project showed that online mediation had higher participation rates than traditional mediation methods. eBay's ODR system is called Square Trade.<sup>10</sup>

eBay, a virtual marketplace, prioritizes safety through a feedback rating system. Sellers and buyers must meet specific requirements to remain active on the site, motivating them to fulfill their obligations in disputes to avoid jeopardizing their position in the eBay community. Other ODR providers, such as CyberSettle, UDRP, Modria, and CIETAC, have emerged to resolve internet and e-commerce disputes. CyberSettle offers an automated negotiation mechanism, while UDRP uses chargebacks to reverse transactions in case of false use or contract breach.<sup>11</sup> Modria, founded in collaboration with eBay and the American Arbitration Association (AAA) in 2011, is one of the most successful online dispute resolution (ODR) providers. It facilitates online mediation and arbitration in a user-friendly manner. Despite being a relatively new player in the ODR sector, Modria has emerged as the leader, with over 100,000 cases admitted annually. In 2017, Tyler Technologies acquired Modria due to its remarkable success.<sup>12</sup>

Meanwhile, the CIETAC ODR (China International Economic and Trade Arbitration Commission Online Dispute Resolution) Center in Asia was established by the CIETAC, which adopted online arbitration to provide dispute resolution services. It is the first ODR center in Asia and has developed its website as a platform for resolving disputes. The CIETAC has self-regulatory mechanisms governing online arbitration, ensuring fair and effective dispute resolution.<sup>13</sup>

## B. ODR Mechanism

ODR is the application of ADR events and procedures using the technology.<sup>14</sup> In Indonesia, ADR encompasses consultation, negotiation, mediation, conciliation, "expert judgment, adjudication, and arbitration" as per applicable laws and regulations. However, based on the ADR Continuum, a series of dispute resolution units, ADR can be divided into two settlement poles: cooperative or informal settlement and competitive or formal

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<sup>7</sup> Hudiyanto et al., *Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Online Dispute Resolution (ODR)*, Departemen Perlindungan Konsumen, 1 (Jakarta, 2017).

<sup>8</sup> Václav Vacek, "ODR: A Look at History," *Klinická Mikrobiologie a Infekční Lekarství* 10, no. 1 (2004): 3–4.

<sup>9</sup> Taleh Abbasli, "Can Online Dispute Resolution Prevail Over the Traditional Methods of Resolution?," *Baku State University Law Review* 8, no. 1 (2022): 21–43.

<sup>10</sup> Colin Rule, "Designing a Global Online Dispute Resolution System: Lessons Learned from eBay," *University of St. Thomas Law Journal* 13, no. 2 (2017): 354–69.

<sup>11</sup> Rizkiana, "The Future of Online Dispute Resolution: Building A Framework for E-Commerce Dispute Resolution in Indonesia."

<sup>12</sup> Karolina Mania, "Online Dispute Resolution: The Future of Justice," *International Comparative Jurisprudence* 1, no. 1 (2015): 76–86, <https://doi.org/10.1016/j.icj.2015.10.006>.

<sup>13</sup> China International Economic and Trade Arbitration Commission, "CIETAC," [casettle.odrcloud.cn](http://casettle.odrcloud.cn), 2023.

<sup>14</sup> Jeremy Barnett and Philip Treleaven, "Algorithmic Dispute Resolution-The Automation of Professional Dispute Resolution Using AI and Blockchain Technologies," *Computer Journal* 61, no. 3 (2018): 399–408, <https://doi.org/10.1093/comjnl/bxx103>.

settlement. The dispute resolution continuum comprises problem-solving, negotiation, mediation, fact-finding, settlement conference, arbitration, and litigation.<sup>15</sup>

Problem-solving involves a collaborative process of identifying issues and their causes, followed by proposing potential solutions from which the best one is selected. Negotiation is a means of resolving differences between parties through communication without a third party's involvement, aiming to benefit both parties.<sup>16</sup> Mediation is a process where the disputing parties appoint a third party to help them reach an agreement.<sup>17</sup> Conciliation involves using a third party as an intermediary, acting as a counselor to help parties reach an acceptable solution.<sup>18</sup> Expert assessment is an expert opinion on a technical matter within their expertise.<sup>19</sup> Arbitration is a method of dispute resolution where a neutral third party, the arbitrator, decides how the dispute will be resolved. It can only be utilized if a written agreement or clause states its use as the venue for resolving the dispute.<sup>20</sup>

ODR dispute resolution methods are not as comprehensive as those of the ADR continuum.<sup>21</sup> ODR employs four mechanisms: online settlement, online arbitration, online resolution of consumer complaints, and online mediation.<sup>22</sup> Online settlement uses an expert system to settle financial claims automatically.<sup>23</sup> Online arbitration implements several technological features to resolve disputes with the assistance of third-party arbitrators. Online resolution of consumer complaints is used to settle consumer complaints. While, online mediation, which is like online arbitration, employs technology with the aid of a third party, namely the mediator, to resolve disputes.<sup>24</sup>

Regarding ODR technology, the features used for ODR usually include electronic mail, feedback system features, chat or chat features, audio or video conferencing, or even artificial intelligence features.<sup>25</sup> The mechanism that ODR maintains depends on the features of the technology used.<sup>26</sup> The use of audio or video conferencing relates to settlement mechanisms through virtual face-to-face meetings,<sup>27</sup> for example, Concilianet Mexico, which uses the Virtual Courtroom". Email, feedback, or chat features do not require face-to-face face-to-face meetings, either physical or virtual, for example, eBay with its Square Trade. The use of artificial intelligence features is related to automatic settlement

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<sup>15</sup> Nicola White, "Alternative Dispute Resolution: Mediation and Conciliation," *Law Reform Commission*, 2010.

<sup>16</sup> Yayan Hendrayana, "Peran Keterampilan Negosiasi Terhadap Manajemen Konflik Melalui Intermediasi Efektivitas Komunikasi," *Parameter* 5, no. 1 (2021): 113–26, <https://doi.org/10.37751/parameter.v5i1.144>.

<sup>17</sup> Dudung Hidayat, "Formalisasi Mediasi Sebagai Mekanisme Penyelesaian Sengketa Perdata," *Syntax Literate ; Jurnal Ilmiah Indonesia* 7, no. 9 (2022): 15438–56.

<sup>18</sup> Frans Hendra Winarta, *Hukum Penyelesaian Sengketa- Arbitrase Nasional Indonesia & Internasional* (Jakarta: Sinar Grafika Offset, 2011).

<sup>19</sup> Hadi Alamri, "Kedudukan Keterangan Ahli Sebagai Alat Bukti Menurut Kitab Undang-Undang Hukum Acara Pidana," *Lex Privatum* 5, no. 1 (2017): 31–38.

<sup>20</sup> Martin A Frey, "Does ADR Offer Second Class Justice?," *Tulsa Law Journal* 36, no. 4 (2000): 727–66.

<sup>21</sup> Fauzan Effendi, Vince Ratnawati, and Yesi Mutia Basri, "Penentuan Target, Strategi Dan Faktor- Faktor Yang Mempengaruhi Optimalisasi Pajak Daerah," *Jurnal Akuntansi Terapan Indonesia* 04, no. 02 (2021): 95–116.

<sup>22</sup> Vizta Dana Iswara, "Analisis Pentingnya Implementasi Penyelesaian Sengketa Online Di Indonesia," *Legalitas: Jurnal Hukum* 13, no. 1 (2021): 15, <https://doi.org/10.33087/legalitas.v13i1.245>.

<sup>23</sup> Ayudia Nur Rifdah, Mulyani Zulaeha, and Yulia Qamariyanti, "Commercial Business Dispute Settlement Through Online Non-Litigation Dispute Settlement in Indonesia," *Lambung Mangkurat Law Journal* 6, no. 2 (2021): 267–87, <https://doi.org/10.32801/lamlaj.v6i2.247>.

<sup>24</sup> Karim Benyekhlef and Fabien Gélinas, "Online Dispute Resolution," *Lex Electronica* 10, no. 02 (2005): 87–96, <https://doi.org/10.4018/978-1-59904-998-4.ch006>.

<sup>25</sup> Elena P. Ermakova and Evgenia E. Frolova, "Using Artificial Intelligence in Dispute Resolution," *Smart Innovation, Systems and Technologies* 254 (2022): 131–42, [https://doi.org/10.1007/978-981-16-4621-8\\_11](https://doi.org/10.1007/978-981-16-4621-8_11).

<sup>26</sup> Ahmad Habib, Al Fikry, and Nurul Fibrianti, "Online Alternative Dispute Resolution for Consumer Dispute Settlement in the Digital World," *Indonesian Journal of Law and Policy Studies* 3, no. 1 (2022): 2022.

<sup>27</sup> Susan Nauss Exon, "Ethics and Online Dispute Resolution: From Evolution to Revolution," *Ohio State Journal on Dispute Resolution* 32, no. 4 (2017): 609–64; Vivi Tan, "Online Dispute Resolution for Small Civil Claims in Victoria: A New Paradigm in Civil Justice," *Deakin Law Review* 24, no. 9505781573 (2019): 101–38, <https://doi.org/10.21153/dlr2019vol24no1art873>.



mechanisms such as blind bidding/blind negotiation used by ODR CyberSettle and Modria,<sup>28</sup> chargeback (used by PayPal),<sup>29</sup> or decision-making using algorithms (used by ODR Adjusted Winner).<sup>30</sup>

ODR offers a complete electronic system to aid parties in resolving their disputes, providing a range of devices and features that users can choose at any point in the process. These features are interconnected throughout the several stages of the dispute resolution process, including application/registration, summons, trial, evidence, judgment, and execution of judgments. Users can easily switch between features, such as replying to arguments via email, engaging in conversations, or video/audio conferencing. All feature changes are properly recorded, and users remain involved in decision-making.<sup>31</sup> The ODR provider's website or mobile app is the main gateway for registration and dispute requests, offering online forms and informing users about the process, procedure, dispute service options, fees, mediator/arbitrator selection, privacy policy, and decision terms through algorithms. The ODR system must offer a comprehensive electronic system allowing parties to resolve disputes. The system should provide several devices or features that the disputing party or its users can select, and these features should be interconnected with each process flow, starting from application/registration, summons, trial, evidence, judgment, and execution of judgments. This allows users to choose the most convenient feature and change it at any point, such as switching from email replies to conversations or from conversation features to video/audio conferencing. Proper recording of feature changes is also necessary, and users should always be involved in the dispute resolution process until a decision is made.<sup>32</sup>

## METHODS OF THE RESEARCH

This study uses doctrinal legal research with a statute and conceptual approach. It uses primary legal materials that are authoritative and binding, such as laws and regulations, and secondary legal materials. This study uses legal interpretation techniques as analysis techniques.

## RESULTS AND DISCUSSION

### A. Potential and Challenges

When considering the rise of e-commerce in Indonesia and the institutional framework of ADR, implementing ODR to resolve transaction disputes poses both opportunities and challenges. One opportunity is the significant number of e-commerce activities in Indonesia. In 2022, the e-commerce industry is projected to reach a value of IDR 883 trillion, accounting for 77% of the total digital economy. This sector has seen a growth of 22% compared to the previous year.<sup>33</sup> The increase in e-commerce transactions highlights the potential for disputes to arise. With the rapid growth in online transactions, the need for fast and effective

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<sup>28</sup> Deepak Verma, Anshu Banwari, and Neerja Pande, "Online Dispute Resolution," in *Intech Open*, 2018, 13.

<sup>29</sup> Paypal, "Dispute Resolution Process for Sellers | PayPal AI," PayPal.com, 2023.

<sup>30</sup> Elisabeth Wilson-Evered and John Zeleznikow, "Artificial Intelligence and Online Family Dispute Resolution," *Law, Governance and Technology Series* 45 (2021): 17–35, [https://doi.org/10.1007/978-3-030-64645-5\\_2](https://doi.org/10.1007/978-3-030-64645-5_2).

<sup>31</sup> Peter Cashman and Eliza Ginnivan, "Digital Justice: Online Resolution of Minor Civil Disputes and the Use of Digital Technology in Complex Litigation and Class Actions," *Macquarie Law Journal* 19 (2019): 39–79.

<sup>32</sup> Dheka Ermelia Putri, "Application of Online Dispute Resolution (Odr) in International and Indonesia Domain Names Disputes," *Lampung Journal of International Law* 1, no. 1 (2020): 19, <https://doi.org/10.25041/lajil.v1i1.2021>.

<sup>33</sup> Rahayu Widayanti, "Layanan E-Commerce Mendominasi Pasar Ekonomi Digital Indonesia Halaman All - Kompas.Com," money.kompas.com, 2023.

dispute resolution mechanisms has become increasingly urgent.<sup>34</sup> ODR can reduce the cost and time required to resolve disputes and provide better access for consumers and businesses involved in online transactions.<sup>35</sup>

Additionally, the world implements cross-border transactions, and several e-commerce startups or marketplace companies support implementing ODR. Although several initiatives from e-commerce platforms such as Shopee and Tokopedia have implemented ODR mechanisms, supportive regulations, and consumer legal protection are urgently needed to ensure fairness and security in the dispute resolution process.<sup>36</sup> ASEAN also encourages the establishment of ODR at the national level, to create a cross-border dispute resolution mechanism.<sup>37</sup> Finally, Arbitration and ADR Law, Electronic Information and Transaction Law, Government Regulation on e-commerce, and other related laws and regulations provide a regulatory basis for implementing ODR in Indonesia.<sup>38</sup>

Several challenges need to be addressed before ODR can be implemented in Indonesia. One of the major issues is the lack of access to technology and affordability for most of the population due to geographical constraints.<sup>39</sup> The implementation of ODR requires adequate technological infrastructure, including good internet access and secure systems to protect the parties' data.<sup>40</sup> In Indonesia, there is still a gap in access to technology, especially in remote areas, which can hinder the effectiveness of ODR.<sup>41</sup> Indonesia's connectivity index score is lower than neighboring countries such as Singapore, Thailand, Malaysia, Brunei Darussalam, and Vietnam.<sup>42</sup> Another challenge is the digital literacy gap, which affects the application of ODR, making it complex for mediators or advocates to read the emotional and psychological state of the parties involved in the dispute. Lastly, the issue of recognizing confidentiality and security is a challenge, considering that ODR uses internet means and other information technologies to facilitate the exchange and storage of data.<sup>43</sup>

## B. ODR Model in Several Countries

Online Dispute Resolution Systems have been implemented in several countries around the world. This study focused on America and China to show ODR models in several

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<sup>34</sup> Soleh H Wahid, "Formulation of a Risk-Based Online Dispute Resolution Model for E-Commerce in Indonesia: Legal Framework and Its Application," *International Journal of Arts and Humanities Studies* 3, no. 2 (2023): 9–23, <https://doi.org/10.32996/ijahs.2023.3.2.2>; Iswara, "Analisis Pentingnya Implementasi Penyelesaian Sengketa Online Di Indonesia."

<sup>35</sup> Emmy Latifah, Anis H Bajrektarević, and Moch N Imanullah, "Digital Justice in Online Dispute Resolution: The Shifting From Traditional to the New Generation of Dispute Resolution," *Brawijaya Law Journal* 6, no. 1 (2019): 27–37, <https://doi.org/10.21776/ub.blj.2019.006.01.02>; Wardaniman Larosa, "Application of Online Arbitration to Dispute Resolution E-Commerce Business in Indonesia (In Academic Discourse and Practice)," *Ajesh* 2, no. 3 (2023): 228–46, <https://doi.org/10.46799/ajesh.v2i3.56>.

<sup>36</sup> Lusiona M Sagala and Devi S H Marpaung, "Penegakkan Hukum Serta Upaya Penyelesaian Sengketa Online Marketplace Melalui Mekanisme Online Dispute Resolution," *Widya Yuridika* 4, no. 2 (2021), <https://doi.org/10.31328/wy.v4i2.2414>; Wahid, "Formulation of a Risk-Based Online Dispute Resolution Model for E-Commerce in Indonesia: Legal Framework and Its Application."

<sup>37</sup> Association of Southeast Asian Nation, "ASEAN Launches Guideline on Online Dispute Resolution for Consumers - ASEAN Main Portal," [asean.org/](https://asean.org/), 2022.

<sup>38</sup> Muhammad Faiz Aziz and Muhamamd Arif Hidayah, "Perlunya Pengaturan Khusus Online Dispute Resolution (ODR) Di Indonesia Untuk Fasilitasi Penyelesaian Sengketa E-Commerce," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 275, <https://doi.org/10.33331/rechtsvinding.v9i2.449>.

<sup>39</sup> Iswara, "Analisis Pentingnya Implementasi Penyelesaian Sengketa Online Di Indonesia."

<sup>40</sup> Larosa, "Application of Online Arbitration to Dispute Resolution E-Commerce Business in Indonesia (In Academic Discourse and Practice)"; Iswara, "Analisis Pentingnya Implementasi Penyelesaian Sengketa Online Di Indonesia."

<sup>41</sup> Athaya Atsiq and Amelia Husna, "E-Commerce Dispute Settlement Through Online Arbitration in Indonesia," *International Journal of Ethnoscience Bio-Informatic Innovation Invention and Techno-Science* 1, no. 02 (2022), <https://doi.org/10.54482/ijebiiits.v1i02.176>; Iswara, "Analisis Pentingnya Implementasi Penyelesaian Sengketa Online Di Indonesia."

<sup>42</sup> BRIN/Bappenas/KemenpanRB, "Cetak Biru Ekosistem Pengetahuan Dan Inovasi," 2021.

<sup>43</sup> Darin Thompson, "Addressing 'New' Challenges to ODR Implementation," *Scl.org*, 2023.

countries because each has different advantages. America is known for its technological advancements (HI-tech), while China is known for its expertise in trade.

### 1. Online Dispute Resolution Model in America

Alternative dispute resolution (ADR) institutions often offer online dispute resolution (ODR) as one of their options. The American Arbitration Association (AAA), an arbitration institution in America established in 1926 under the Federal Arbitration Act, provides ODR services. The AAA promotes effective, efficient, and economical dispute resolution through education, technology, and service-oriented solutions. As a full-service ADR operator, the AAA handles several disputes, including employment, intellectual property rights, consumer, technology, healthcare, financial services, construction, and international trade conflicts. In disputes, ADR methods such as arbitration, mediation, court, and online settlement procedures can offer efficient and effective solutions that satisfy all parties involved.<sup>44</sup>

AAA is committed to supporting e-consumers by utilizing technology to resolve their disputes. AAA oversees disputes from submission to resolution as part of its role in the dispute resolution process. In addition to offering dispute resolution services within the United States, AAA's subsidiary, the International Centre for Dispute Resolution (ICDR), also provides international dispute resolution services. ICDR was established as a global division of AAA. ICDR was established as a worldwide component of AAA and provides dispute management services in more than 80 (eighty) countries with staff fluent in foreign languages in 12 (twelve) languages.<sup>45</sup>

The American Arbitration Association (AAA) is a global institution that handles international disputes and has expanded its services to include online dispute resolution (ODR) due to advancements in information technology. AAA's website offers "Online Services" for parties seeking to resolve disputes online, which include web-based claim submission, payment processing, dispute management, access to rules and procedures, electronic document exchange, and the option to choose a neutral third party for mediation or arbitration.<sup>46</sup> The implementation of ODR by AAA is done in stages, starting with registering on the AAA WebFile, filling out a personal data form, and then submitting a claim through several online channels.<sup>47</sup>

### 2. Online Dispute Resolution Model in China

The China International Economic and Trade Arbitration Commission (CIETAC) offers online dispute resolution (ODR) through the CIETAC Online Arbitration Rules (CIETAC OAR). The CIETAC has established the CIETAC ODR Center to serve as a platform for online dispute resolution.<sup>48</sup> According to Article 3 of the CIETAC OAR, CIETAC accepts cases related to economic, trade, and contractual disputes based on the parties' agreement. The dispute resolution methods used in online arbitration are arbitration and online mediation. The CIETAC arbitrator may attempt conciliation, in addition to arbitration, if agreed by the parties or deemed necessary by the arbitrator. If conciliation fails, the

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<sup>44</sup> American Arbitration Association, "About American Arbitration Association," ADR.org, 2023.

<sup>45</sup> Meline Gerarita Sitompul, M Syaifuddin, and Annalisa Yahanan, "Online Dispute Resolution (ODR): Prospek Penyelesaian Sengketa E-Commerce Di Indonesia," *Jurnal Renaissance* 1, no. 2 (2016): 75-93.

<sup>46</sup> Gary L Benton and Steven K Andersen, "Technology Arbitration Revisited," *Dispute Resolution Journal* 74, no. 4 (2019): 1.

<sup>47</sup> American Arbitration Association, "American Arbitration Association Rules, Forms & Fees," ADR.org, 2023.

<sup>48</sup> Hudiyanto et al., "Online Dispute Resolution - OD R," in *Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Online Dispute Resolution (ODR)* (Jakarta: Departemen Perlindungan Konsumen, 2020), <https://doi.org/10.5040/9781526511355.chapter-016>.

arbitrator will proceed with the arbitration proceedings. The types of disputes that CIETAC handles include international, foreign-related, domestic, and those related to the Hong Kong Special Administrative Region, the Macao Special Administrative Region, and the Taiwan region.<sup>49</sup> According to Article 8 of the CIETAC OAR, documents, notices, or written materials related to the arbitration process should be delivered to the arbitral tribunal through proper channels, such as in-person delivery, registered mail, express mail, fax, or any other means deemed appropriate by the Arbitration Court.

Therefore, the applicant and respondent must appoint a sole arbitrator jointly or entrust the chairman of the CIETAC to appoint one within 6 days of receiving the memorandum of arbitration. In the case of multiple arbitrators, both parties must appoint a respective arbitrator and entrust the CIETAC chairman to do so within 6 days of receiving the memorandum. The third arbitrator, the chairman of the panel of arbitrators, must be appointed jointly by the applicant and respondent or by the CIETAC chairman within 6 days of the last party receiving the memorandum of arbitration. The respondent must submit its memorandum of defense and evidence within 30 days of receiving the notice of arbitration, while the applicant must submit their memorandum of defense for the counterclaim within 20 days of receiving it from the respondent.<sup>50</sup>

In cases where no other agreement is made, the arbitrator makes decisions based solely on written evidence or documents without any oral examination. In situations where an examination is necessary, video conferencing and other electronic forms of communication are used. This also applies to online mediation. If an oral examination is held, evidence must be presented at that time, which must have been exchanged between the parties and not objected to before the examination. Online arbitration awards must be written and include the date, location, CIETAC's official label, and the arbitrator's signature. The online arbitration process at CIETAC can be divided into three procedures, which parties can choose from to resolve their disputes. These procedures differ in their required time and the type of dispute that can be examined.<sup>51</sup>

### C. ODR Rule Design as E-Commerce Dispute Resolution

Establishing a regulatory and institutional framework is crucial to successfully implementing ODR in Indonesia. This framework should address several key factors, such as the appropriate form of rules and regulations, the necessary competence for ODR application, the development of existing ADR mechanisms, connections with relevant institutions like the judiciary, and proper execution. Ideally, the law should regulate ODR in Indonesia, with the necessary regulatory elements added to the Arbitration and Alternative Dispute Resolution (AADR) Act. However, amending the AADR Act to include ODR regulation is not simple. It may not occur until after 2024, as it is not currently included in the agenda for discussing the DPR's legislature for the medium term.

To facilitate online dispute resolution (ODR), it is important to utilize the self-regulation mechanisms developed by arbitration institutions and alternative dispute resolution. These institutions can create rules related to mediation, arbitration, and adjudication events, including developing a code of ethics for computer programmers who develop systems for

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<sup>49</sup> Yuan Wang, *Introduction and Comparison of Chinese Arbitration Institutions* (School of Law, Martin Luther University Halle-Wittenberg, 2013).

<sup>50</sup> CIETAC, "CIETAC Arbitration Rules" (2015).

<sup>51</sup> CIETAC.



managing disputes. In addition to regulations, technology and information systems should be adapted to accommodate the policies of these institutions. The International Council for Online Dispute Resolution (ICODR) standard, CIETAC OAR, and even AAA provision can be used as a reference in developing these policies. Regarding competence, changes to the AADR Law or new regulations can allow arbitral institutions and alternative dispute resolution that use ODR to expand the scope of disputes, such as those related to e-commerce. The policies of the institution concerned can adopt the addition of one absolute competence by referring to the Government Regulation on E-commerce.

The regulations and procedures outlined in the AADR Law and agency regulations are still applicable, but amendments are necessary to accommodate the development of ODR. These amendments should include regulating technological features used in dispute resolution, such as synchronous and asynchronous options for video, audio, text, chat, virtual discussion forums, and electronic mail. The regulations must align with the character of each institution's dispute resolution process. Additionally, arrangements for online proceedings should address dispute registration, summoning parties, hearings, mediator/arbitrator deliberations, awards, and execution. Parties should be able to switch between synchronous and asynchronous models, following the applicable procedure flow. Finally, ADR operators must adopt the regulations outlined in the Electronic Information and Transaction Law, Government Regulation Number 71/2019, PP E-commerce, and Minister of Communication and Information Regulation Number 20/2016 to ensure data security and personal data protection in electronic systems.

The AAPS Law already has provisions for connecting ODR with judicial institutions and enforcing ODR awards, particularly for arbitral institution awards and alternative dispute resolution. Online settlements are a form of ODR where businesses and e-commerce consumers can resolve disputes internally. These settlements must be registered to be enforceable, and changes to the AAPS and/or Supreme Court Rules are needed to accommodate ODR rulings. The execution process can be expedited by adopting alternative chargeback models or other methods, such as blocking accounts, documents, taxes, motor vehicles, and land. Collaboration with other relevant institutions is necessary to implement ODR rulings effectively.

Lawsuits, agreements for resolving disputes, and sector-specific policies (in the financial services sector) demonstrate that dispute resolution can still function effectively without legal arrangements. As a result, if current laws and regulations are adhered to, these institutions and business entities can soon oversee the growth of online dispute resolution (ODR) through self-regulation.

## CONCLUSION

The study shows that Online Dispute Resolution (ODR) has great potential to increase access to justice in Indonesia's e-commerce dispute resolution system. By leveraging technology, ODR can offer more efficient and cost-effective solutions than traditional dispute resolution methods. However, to realize this potential, it is necessary to develop supportive policies, increase digital literacy, and training for mediators and arbitrators. This analysis highlights the importance of integrating ODR into existing legal frameworks and adapting to local needs. This research significantly contributes to understanding how ODR can be implemented practically in Indonesia and offers recommendations for the

government and relevant institutions to create a fairer and more effective dispute resolution system. With the right steps, ODR can be an important pillar in strengthening access equity in the digital era.

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