

Current Issues of The Utilization of Online Dispute Resolution As A Method For International Trade Dispute Settlement

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Abstract: *The transformation of international trade from conventional to digital impacts several things, including resolving international trade disputes. In order to realize an efficient and effective dispute resolution process, many countries have implemented ODR to settle international trade disputes. This study aims to analyze the implementation of ODR in various countries and examine issues with unclear guidelines based on international law. This research observes the development of ODR in Indonesia and the urgency for its implementation in Indonesia. The research is normative juridical, with a statutory and comparative approach. The results obtained in this study are model law arrangements relating to the standardization of ODR Providers aimed to protect the personal data of the parties, unification of ODR dispute resolution clauses, and formulation of national legal instruments to create legal certainty regarding ODR, including ODR proceedings, permits, and monitoring, as well as recognition and execution process of electronic ODR decisions.*

Keywords : *Online Dispute Resolution, International Trade, Regulation*

INTRODUCTION

Generally, an international trade dispute can settle in litigation or non-litigation. Litigation is a dispute resolution method through the judicial institution. The litigation proceeding has several characteristics, such as the long duration, because it contains plenty of legal efforts that the party could take if they feel the previous judge's decision was inappropriate.¹ For this reason, the litigation proceeding seems ineffective and affects a slower dispute resolution process and higher costs.

Moreover, non-litigation, also known as Alternative Dispute Resolution (ADR), is an out-of-court method for resolving disputes. Non-litigation dispute resolution is conducted through an independent and impartial

institution after the disputing parties request assistance from a third party to provide perspectives and opinions regarding the dispute.² Consultation, conciliation, negotiation, mediation, expert judgment, and arbitration are alternative dispute resolution forums.³ Entrepreneurs view non-litigation dispute resolution as more efficient because it does not necessitate various formal procedures compared with litigation proceedings, thereby saving time and incurring relatively low costs.

The use of the internet in dispute resolution affects economic movements that are incredibly rapid, and most business activities have shifted online; consequently, it increases the need for an online dispute settlement that can utilize without disrupting business or trade activities.⁴ Thus,

¹ Rosita, "Alternatif Dalam Penyelesaian Sengketa (Litigasi Dan Non Litigasi)," *Al-Bayyinah Journal of Islamic Law* VI, no. 2 (2019): 99–113, <https://doi.org/10.35673/al-bayyinah.v1i2.20>.

² Ni Made Trisna Dewi, "Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata," *Jurnal Analisis Hukum* 5, no. 1 (2022): 81–89, <https://doi.org/10.38043/jah.v5i1.3223>.

³ Andi Ardillah Albar, "Dinamika Mekanisme Alternatif Penyelesaian Sengketa Dalam Konteks

Hukum Bisnis Internasional," in *Jurnal Hukum Kenotariatan*, vol. 1, 2019, <https://doi.org/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-2028>.

⁴ Moch. Basarah, *Prosedur Alternatif Penyelesaian Sengketa Arbitrase Tradisional Dan Modern*, ed. Mitra Kameswari, 1st ed. (Yogyakarta: Genta Publishing, 2011).

Online Dispute Resolution (ODR) seems relevant to the issues since this method runs based on an information technology or software system called a "fourth party.", specifically this method offers proceedings via audiovisual or video conferencing.⁵

ODR is a term that refers to alternative dispute resolution mechanisms conducted via internet media, websites, electronic mail (email), streaming media, or other information technology that can utilize in the dispute resolution proceeding.⁶ The evolution of ODR has developed since the early 1990s, marked by the Conference on Online Dispute Resolution in 1996 held by the National Center for Automated Information Research. This conference produced projects related to the application of ODR, namely The Virtual Magistrate and Online Ombuds Office; both applications offer the implementation of technology to resolve legal issues.⁷

Along with using ODR as a dispute settlement, the United Nations Commission on International Trade Law (UNCITRAL) issued Technical Notes on Online Dispute Resolution as a guide for state parties regarding implementing ODR for cross-border dispute resolution.⁸ There are several guidelines for the implementation of ODR made by international organizations, for instance, regional economic cooperation organizations such as the Asia-Pacific Economic Cooperation (APEC) through the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes, another regional organization such as the European Union

through The EU Directive 524/3013 on Online Dispute Resolution.⁹

European Union has implemented dispute resolution mechanisms through ODR, especially concerning business-to-consumer (B2C) disputes in domestic and cross-border transactions. In practice, the European Union has issued two policies related to applying ODR: The EU Directive 2013/11 on Consumer Alternative Dispute Resolution and The EU Directive 524/3013 on Online Dispute Resolution.¹⁰ Other countries implementing ODR in dispute resolution mechanisms are the American Arbitration Association (AAA) and the China International Economic and Trade Arbitration Commission (CIETAC).¹¹ In addition, using ODR is necessary to reevaluate the formulation of the agreement clause about the dispute settlement clause, which serves as the guidelines for the parties during the dispute resolution process. UNCITRAL Technical Notes on ODR acts as a guideline in applying ODR for countries that cannot accommodate the proper regulation about using ODR. Furthermore, it creates a legal vacuum and legal gaps, particularly concerning equality and data protection, which affects the application of ODR, particularly in settling international trade disputes.

The utilization of ODR in Indonesia has begun to exhibit its existence along with the issuance of Decree No. 20.015/V.SK-BANI/HU on Rules and Procedures for the Implementation of Electronic Arbitration. Moreover, there is not yet comprehensive regulation about the legitimacy of using ODR in Indonesia. However, the concept of using technology in dispute settlement has implicitly

⁵ Indira Ashari, "Pengaturan Online Dispute Resolution (Odr) Sebagai Metode Alternatif Penyelesaian Sengketa Bisnis E-Commerce Di Indonesia" (Makassar, 2021), <http://repository.unhas.ac.id/id/eprint/16015/>.

⁶ Etnan Katsh, "Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace," *Law Electronica* 10, no. 13 (2006): 1–14, <https://www.tandfonline.com/doi/abs/10.1080/13600860701492096>.

⁷ *Ibid.*

⁸ Noam Ebner and Elayne E Greenberg, "Strengthening Online Dispute Resolution Justice," *Washington University Journal Law and Policy* 63 (2020): 65–118.

⁹ Sodik O Omoola, "Towards An Effective Legal Framework For Online Dispute Resolution In E-Commerce Transactions :," 24, no. 1 (2016): 257–81.

¹⁰ Meline Gerarita Sitompul, M Syaifuddin, and Annalisa Yahanan, "Online Dispute Resolution (Odr): Prospek Penyelesaian Sengketa E-Commerce Di Indonesia" (Palembang, 2016), <http://www.ejournal-academia.org/index.php/renaissance>.

¹¹ Larry Bridgesmith, "Bits and Bytes and Apps – Oh My!: Scary Things in the ODR Forest Online Dispute Resolution and the Future of Justice," *International Journal on Online Dispute Resolution*, no. September (2021), <https://doi.org/10.5553/IJODR/235250022021008001001>.

stipulated in Article 4 paragraph (3) Law No. 30 of 1999, which says:

"Where the agreed dispute settlement through arbitration takes place in the form of an exchange of letters, telegram, facsimile, email, or in the form of other means of communication, shall be accompanied by a record of receipt."

Additionally, another regulation that relates to the use of ODR is the Government Regulation No. 80 of 2019 on Trading Through Electronic Systems, particularly in Article 72, which says :

"Electronic dispute resolution as referred to in paragraph (1) may be conducted electronically based on statutory provisions".

Indeed, those regulations could not well-address several issues regarding using ODR in Indonesia. Regarding the issue, the government should take serious action by drafting a regulation about how the ODR proceeding runs through Indonesia's legal systems, the permission and accreditation of the ODR Providers, and the recognition execution process of the electronic arbitral awards.

There have been several studies about ODR; one is the research by Suprihantosa Sugiarto with the title. "Online Dispute Resolution (ODR) as an Alternative Dispute Resolution in the Modernization Era." This research focuses on the challenges and opportunities for dispute resolution through ODR under Islamic legal principles.¹² Also, Widaningsih's research, titled "E-Commerce Dispute Resolution Through ODR," examines the application of ODR as a method for resolving e-commerce disputes in the national legal system.¹³

This paper analyses and compares the implementation of ODR as a dispute settlement in several countries, such as the United States, China, Europe, and Indonesia. It also analyzes three major issues in implementing ODR; confidentiality and data protection, dispute

settlement clause, and the recognition and enforcement of ODR outcome, particularly arbitral award. In sum, this research concludes with some recommendations to solve issues and maximize the utilization of ODR as an international trade dispute settlement.

METHODOLOGY

This research uses normative judicial, which examines the legal instruments for implementing ODR as an international trade dispute settlement; the UNCITRAL Technical Notes on ODR, the APEC Collaboration Framework of ODR, and the EU Directive 524/2013 on Online Dispute Resolution. Additionally, this paper uses the statutory and comparative approaches; the statutory approach uses several international and national legal bases to analyze the suitability of using ODR. The comparative approach examines the different implementations of ODR in the United States, China, Europe, and Indonesia. This article's sources include primary and secondary sources; primary sources are regulations related to the ODR and legal principles; the secondary sources include some articles researched about ODR previously. Furthermore, this paper uses a literature study for data collection techniques by organizing and documenting all of the sources, using qualitative analysis for processing sources, and making a conclusion to answer the issues of this paper.

RESULTS AND DISCUSSION

1. Implementation of ODR as International Trade Disputes Settlement

The implementation of ODR as a dispute settlement seems to be immensely increasing; numerous institutions already adopt ODR systems as their dispute settlement. In addition to applying ODR, Article 46 of the UNCITRAL Technical Notes on ODR emphasize the ODR institution's competency to produce technical policies of ODR. ODR Platforms can develop technical policies on applying ODR as a guide for agency operations. To

¹² Suprihantosa Sugiarto, "Online Dispute Resolution (Odr) Sebagai Alternatif Penyelesaian Sengketa Di Era Modernisasi," *Jurnal Qawanin* 3, no. 1 (2019): 50, <https://doi.org/https://doi.org/10.30762/q.v3i1.1484>

¹³ Widaningsih, "Penyelesaian Sengketa E-Commerce Melalui Odr (Online Dispute Resolution)," *Jurnal Panorama Hukum* 2, no. 2 (2017).

analyze and determine the current progress of implementing ODR as an international dispute settlement, several ODR institutions in different countries have implemented ODR as one of the dispute settlement mechanisms.

1) American Arbitration Centre (AAA)

The American Arbitration Center is one of America's non-litigation dispute resolution institutions. It was established in 1926 in line with the enactment of The Federal Arbitration Act. The AAA's scope as a dispute resolution institution is not limited to disputes arising within the jurisdiction of the United States but also includes international dispute resolution applying through the International Center for Dispute Resolution (ICDR) as one of the divisions under the AAA.¹⁴ The implementation of ODR as a dispute resolution mechanism began in 2020 through the ICDR ODR Program. It includes several related technical rules such as case registration, the appointment of neutrals or arbitrators, virtual hearings, and the exchange of documents between parties.¹⁵ Relating to efficiency, the ODR dispute resolution period of approximately 60 (sixty) days. The utilization of ODR as a dispute resolution method in AAA continues to increase; the total accumulation of cases using the ODR method reached 11,372 cases (March 2020-April 2022).¹⁶

The application of ODR as a method for dispute settlement in the AAA has been organized coherently and systematically; there are several issues with the application of ODR. First, concerning data confidentiality and protection, there are no rigid provisions in the AAA on how to process the parties' personal data, nor are there any provisions on what must be

included in the clause governing dispute resolution through ODR. Based on these issues, the AAA, as an ODR provider institution, must regulate technical provisions about the processing and protecting personal data and clauses governing dispute resolution.

2) China International Economic and Trade Arbitration Commission (CIETAC)

CIETAC is an arbitration forum specializing in economic and commercial disputes. The application of ODR is to accomplish an effective and efficient resolution forum. As a result, ODR at CIETAC conducts through the CIETAC Online Dispute Resolution Center following the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes.¹⁷ By applying APEC ODR-CIETAC, CIETAC shows its existence and got recognized by APEC as one of the ODR Platforms capable of serving as a forum for dispute resolution. ODR dispute settlement procedures through CIETAC only applied for cases with a disputed nominal amount not exceeding RMB 1,000,000.

Furthermore, The scope of disputes that ODR can resolve through CIETAC is limited to disputes arising from B2B relationships, particularly between MSMEs or other disputes classified as low-value. The entire dispute resolution process, from registration to decision, is conducted online and integrated through a central website. This central website allows parties to track the evolution of dispute resolution-related information. Along with the dispute resolution process, the parties must determine and select neutrals as third parties in the settlement process, along with the

¹⁴ Amy J Schmitz and Jan Martinez, "ODR and Innovation in the United States," vol. 208 (Missouri, 2021), <https://ssrn.com/abstract=3916974>.

¹⁵ Amy J. Schmitz and Janet Martinez, "ODR Providers in the U . S" (Missouri, 2020), <http://ssrn.com/abstract=3599511>.

¹⁶ SUSAN NAUSS1 EXON, "Ethics and Online Dispute Resolution: From Evolution to Revolution," *Ohio State Journal on Dispute Resolution* 32, no. 4 (2017): 609–64, <http://www.imisl00us2.com/ACR/ACR/About%0A>

<https://lopes.idm.oclc.org/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=ofs&AN=125411381&site=eds-live&scope=site>.

¹⁷ Jie Zheng, "The Role of ODR in Resolving Electronic Commerce Disputes in China The Role of ODR in Resolving Electronic Commerce Disputes in China," *International Journal on Online Dispute Resolution* 3, no. December 2016 (2019): 41–68, <https://doi.org/10.5553/IJODR/235250022016003010106>.

provisions for the use of language. The settlement process consists of three stages: negotiation, mediation, and arbitration. Each stage lasts ten (10) days, and the arbitral award will send to the parties 60 (sixty) days after the proceedings to each party's website account.

The implementation of ODR at CIETAC still faces several operational obstacles, one of which relates to the public's lack of trust in its operations due to the absence of rigid provisions regarding the rights and obligations of ODR institutions and their scope of authority in processing the parties' data.¹⁸ In addition, the lack of a precise mechanism regarding the enforcement and recognition of ODR decisions in China also contributes to the lack of ODR awareness. In addition to the need to formulate provisions regarding the confidentiality of personal data, both CIETAC and the government must emphasize the strength of ODR decisions to raise public awareness of ODR.

3) The European Union Online Dispute Resolution Platform (EU-ODR Platform)

The EU ODR Platform is an ODR dispute settlement system that integrates with all European Union member countries. Since 2014, Online Dispute Resolution (ODR) in Europe has run under two regulations: The EU Directive 2013/11 and The EU Directive 524/3013. The primary objective of regulating and applying this dispute resolution system in continental Europe is to achieve effectiveness and efficiency in electronic trading relationships. This system only applies if both parties are EU citizens and are limited to e-commerce and B2C disputes.

The registration procedure and dispute settlement mechanism are

conducted online via the website or application of the EU Online Dispute Resolution Platform, which is managed directly by the European Commission.¹⁹ The trader or the consumer can register a dispute by filing a complaint containing the identity, the matter that sparked the dispute, and supporting documents. Additionally, the parties' responsibility is to ensure that the selected dispute resolution body is authorized to resolve the parties' disputes. After determining the dispute resolution body, the parties' hearing process initiate under the agreed-upon settlement method. Within 30 to 60 days of the conclusion of the entire process, the dispute resolution institutions will send the decision of the ODR process to each party's account page on the EU ODR Platform website.²⁰

One of the challenges in applying ODR on the EU ODR Platform is the restriction of disputes to only those arising from transactions conducted via electronic systems (e-commerce). As there is no additional provision regarding the dispute resolution clause, it is unclear whether it is necessary to include it in the sale and purchase contract if a dispute arises and is to be resolved through the ODR mechanism. Against these issues, it is necessary to develop guidelines that regulate the substance of e-commerce-based commercial contracts, particularly the dispute resolution clause.

4) Badan Arbitrase Nasional Indonesia (BANI)

Badan Arbitrase Nasional Indonesia (BANI) is one of Indonesia's alternative dispute resolution institutions that assist parties in dispute resolution, including trade, industry, and finance-related disputes.²¹ In response to the Covid-19 outbreak, the BANI issued Decree No.20.015/V.SK-BANI/HU on the Implementation of Electronic

¹⁸ C Arrie S H U S Hang and W Enli G Uo, "The Rise Of Online Dispute Resolution-Led Justice In China: An Initial Look," *Australian National University Journal Law and Technology*, 2019.

¹⁹ Marta Poblet and Graham Ross, "ODR in Europe," in *Online Dispute Resolution : Theory and Practice* (Eleven Intl. Publishing, 2021), <https://ssrn.com/abstract=3912330>.

²⁰ *Ibid.*

²¹ Juli Asril, "Peranan Lembaga Arbitrase Dalam Penyelesaian Sengketa Dagang Nasional Dan Internasional," *Jurnal Ilmiah MEA* 2, no. 2 (2018): 218, <https://doi.org/https://doi.org/10.31955/mea.v2i2.674>.

Arbitration. Nevertheless, the issuance of this decree relates to the transition of implementing dispute resolution procedures that were physically towards digitalization via information technology. Following Article 1 of the BANI Decree, the implementation of the electronic dispute resolution procedure is only permissible under the following conditions:

"These Rules and Procedures for the Conduct of Electronic Arbitration may be used during a disaster emergency and special circumstances."

The BANI Decree contains several exceptional circumstances as justification for implementing online arbitration, including if both parties or one of them are located outside the region or abroad and have difficulty traveling to the BANI secretariat due to an emergency. Under the BANI Decree, an emergency is outlined in Article 1 of Law No. 24 of 2017. Compared to the provisions in the UNCITRAL Technical Notes and the APEC Collaborative Framework, the procedural provisions of the BANI Decree do not regulate several aspects. Mainly, the use of the ODR Platform as a fourth party in the ODR mechanism explicitly seems to be in the administrative and evidentiary processes. The process is not conducted through a central website, as the other ODR institution does.

The implementation of ODR in BANI still combines conventional and digital systems, which do not comply with any ODR regulations. In addition, the lack of regulations governing the implementation of ODR in Indonesia is one of the obstacles to ODR's recognition and enforcement in Indonesia. Consequently, if BANI wishes to maximize the use of ODR, the current rules and procedures must be modified under international policies that have regulated ODR, such as the UNCITRAL

Technical Notes and the APEC Collaboration Framework on ODR.

2. Issues in Implementing ODR as an International Trade Dispute Settlement

The previous section explained how ODR runs as a dispute settlement in a different institution; based on the fact found, there are several issues concerning the utilization of ODR, especially in resolving an international trade dispute. Most of the problems faced are the protection and confidentiality of personal data, the arrangement of the ODR clause, and the enforcement of ODR outcomes, particularly arbitral awards. Below is a further analysis and description of the implementation issues of ODR.

1) Protection and Privacy of Personal Data

Personal data protection is crucial, particularly in industries that use information technology as the basis for their operations, because the security of information technology depends on the complexity of the programming structure created by the software developer.²² However, this does not guarantee that the software is secure and exempt from threats of personal data leaks; for instance, numerous national and international businesses have experienced consumer personal data leaks. Below are several international and national regulations regarding the protection of data, The General Data Protection Regulation (GDPR), the APEC Privacy Framework, The Organization for Economic Cooperation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, and Law No. 27 of 2022 concerning The Protection of Data Privacy.

Personal data leaks are common in this digital age, raising many concerns about how a digital system handles data users have trusted to an institution.²³ Information technology is a critical

²² Urša Jeretina, "Consumer Online Dispute Resolution (ODR) – A Mechanism for Innovative E-Governance in EU 1," *Central European Public Administration Review* 16, no. 2 (2018): 45–67, <https://doi.org/10.17573/cepar.2018.2.03>.

²³ Fahimeh Abedi, John Zeleznikow, and Chris Brien, "Developing Regulatory Standards for the Concept of Security in Online Dispute Resolution Systems," *Computer Law and Security Review* 35, no. 5 (2019), <https://doi.org/10.1016/j.clsr.2019.05.003>.

component of ODR; it is essential for the case administration procedure, the database of case documents (pleading, memorandum, and decision), and as an electronic tool for the dispute resolution process.²⁴ Surely, institutions and stakeholders should take part to minimize personal data leaks; along with addressing the issue, the UNCITRAL Working Group II: Dispute Settlement continuously held annual conferences concerning technology-related dispute resolution. Mainly, the current conference discusses the right and liabilities of ODR Platforms concerning the protection and privacy of parties' data in the ODR mechanism.

2) Formulation of Dispute Settlement Clause in ODR Mechanism

The implementation of ODR as a dispute resolution method unquestionably affects the formulation of dispute settlement clauses. When determining the choice of law, the parties must ensure that the chosen legal system has comprehensively regulated the type of trade conducted by the parties and the implementation of ODR.²⁵ The principle of choice of forum is also a crucial part of the dispute resolution clause in international trade contracts.²⁶ The utilization of ODR as a dispute resolution raises several issues, especially concerning the absolute competence of the ODR Institution. Additionally, when formulating the ODR clause, the parties should comprehensively regulate the dispute settlement mechanism used, the ODR institution that parties refer to when the dispute arises, and the appointment of the neutrals later.²⁷ In the UNCITRAL Technical Notes on ODR, no clause regulates the formulation of dispute resolution clauses; this creates

uncertainty regarding applying ODR as a dispute resolution.

3) The Recognition and Enforcement of ODR in Indonesia.

Law No. 30 of 1999 is a policy that governs the use of arbitration and alternative dispute resolution. Referring to the Law No. 30 of 1999, the implementation of the dispute settlement process held physically, as stated in Article 6 paragraph (2) of the Law No. 30 of 1999 :

"The settlement of disputes or objects through alternative dispute resolution as described in paragraph (1) shall be resolved in a direct meeting between the parties within fourteen (14) days, and the results shall be memorialized in writing."

Moreover, the Government Regulation No. 80 of 2019 also explicitly writes the application of arbitration electronically, particularly in Article 72 paragraph (2), which says :

"Electronic dispute resolution as referred to in paragraph (1) may be conducted electronically based on statutory provisions".

Although it has been written explicitly about ODR as a dispute resolution mechanism, neither Law No. 30 of 1999 nor the Government Regulation No. 80 of 2019 does not regulate the dispute process in detail and systematically. Both regulations are ambiguous and do not detail how the ODR proceeding runs, the principles that should apply in this mechanism, and precisely do not mention the execution and recognition of the ODR outcome. Additionally, based on the explanation section of Article 72 paragraph (2), it is stated that the implementation carries out by advocates, mediators, and accredited online arbitration institutions. However, it does not specify what conditions or

²⁴ Bartosz Ziemblicki, "Going Online - Is The World Ready To Replace Litigation With Online Dispute Resolution Mechanisms?," *Wroclaw Review of Law, Administration & Economics* 28, no. 1 (2012): 40–51, <https://doi.org/10.1515/wrlae-2015-0034>.

²⁵ Phet Sengpunya, "Online Dispute Resolution Scheme for E-Commerce : ASEAN Perspectives," *Pécs Journal of International and European Law* 1, no. 2017 (2020).

²⁶ Kornelius Benuf Iqbal Satrio Putra, Budi Santoso, "Online Dispute Resolution Sebagai Alternatif Penyelesaian Sengketa Bisnis Financial Technology Di Indonesia," *Simbur Cahaya* 27, no. 2 (2021): 1–22, <https://doi.org/10.28946/sc.v27i2.1035>.

²⁷ Lileys Glorydei Gratia Gijoh, "Implementasi Hukum Dalam Kontrak Bisnis Internasional," *Lex Et Societatis* 9, no. 1 (2021): 111–19, <https://doi.org/10.35796/les.v9i1.32142>.

requirements require ODR institutions to be considered accredited or which institutions are authorized to provide such accreditation.

Considering the two regulations, it is clear that no regulation comprehensively regulates the implementation of ODR as a dispute resolution method. Consequently, a comprehensive regulation that the public, legal personnel, and academics can use to understand the procedures for implementing ODR as an ODR dispute resolution mechanism is required. The ODR regulation should comprehensively regulate the entire procedure of applying ODR, from the registration to the dispute settlement result. In addition, every element of the ODR mechanism, including its functions, rights, principle, liabilities, and execution process from the ODR.

Furthermore, the Technical Notes of the UNCITRAL do not specifically regulate ODR decisions, particularly regarding the content of ODR decisions and the process of submitting the results to the parties. It affects the recognition and enforcement of arbitral awards. The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, as outlined in Article 3 of the New York Convention, recognizes international arbitral awards rendered in international trade disputes settled by arbitration.

"Each contracting state shall recognize arbitral awards as binding and enforce them following the rules of procedure of the territory where the award is relied upon, under the condition laid down in the following articles."

Referring to the provisions of Article 31 paragraph (1) of the UNCITRAL Model Law on International Commercial Arbitration, this provision specifies the form of the written arbitral award as follows:

"The award shall be made in writing and signed by the arbitrator. Suppose arbitral proceedings have more than one arbitrator. In that case, the signatures of most of the arbitral tribunal members shall suffice, provided that the reason for any omitted signature was stating."

Following article 3 of the New York Convention and article 31 of the UNCITRAL Model Law on International Commercial Arbitration, the award must be acknowledged by all member states. It must also be in writing with a signature by the arbitrators.

Indonesia has been ratification the New York Convention through President Decree No. 34 of 1981. Moreover, to obtain enforcement for national and international arbitration, the parties must submit a request for enforcement along with several related files. For national arbitration, the parties must register the award to the District Court to obtain an appeal for execution, as stipulated in Article 62 paragraph (1) of the AAPS Law:

"The order (execution) as stipulated in Article 61 shall be given to the Registrar of the District Court within thirty (30) days at the most."

In addition, Article 63 of the AAPS Law on the loading of execution orders states:

"The order of the District Court shall be written on the original sheet and a copy of the authentic arbitral award."

Furthermore, to obtain the enforcement in international arbitration, the parties should fully complete several documents as required by Article 67 of Law No. 30 of 1999, including:

- a) *The original sheet or authentic copy of the International Arbitration Award and its official translation in Indonesian;*
- b) *The original sheet or authentic copy of the agreement on which the International Arbitration Award is based and its official translation in Indonesian;*
- c) *A statement from the diplomatic representative of the Republic of Indonesia.*

However, the issue concerns recognizing the arbitral award in electronic form, specifically whether the arbitral award of written and electronic awards occupy the same position. Based on these provisions, the question is whether the legitimacy of the arbitral award is issued through the ODR mechanism. In addition, how does the

ODR method affect the execution of arbitral awards in the Indonesian legal system.

3. Solutions Concerning The Implementation of ODR as an International Trade Dispute Settlement

The preceding discussion describes several problems associated with using ODR to resolve international trade disputes. In response to these issues, the following section elaborates on several solutions that the government or other stakeholders can implement to optimize the use of ODR to resolve international trade disputes.

1) Establishment of Model Law on Data Protection in ODR

In the last few years, UNCITRAL has discussed optimizing the use of ODR, particularly concerning the confidentiality of personal data; as a result, UNCITRAL has drafted several guidelines concerning personal data protection through UNCITRAL Standardization and Minimum Requirements for ODR Platforms and ODR Providers. Although UNCITRAL has not yet established the draft model law, it is clear that the drafters of the UNCITRAL Technical Notes on ODR have given special attention to issues related to the protection of personal data of the parties in the ODR dispute resolution process. The provision of the proposed model law regulates, broadly speaking, the standardization of technological systems that the ODR Platform can use as a means in the method, the scope of the ODR Platform's obligations in managing information and personal data of the parties, and the process of protecting and managing personal data. Despite the fact that it is still being formulated and discussed, it is believed that the formulation of this model law will significantly impact ODR to increase the trust in using ODR as dispute settlement.

2) Arranging Dispute Resolution Clause Through ODR

Following the advancement of ODR, it needs specific provisions regarding dispute resolution clauses. The dispute resolution clause must contain, at a

minimum, the following provisions if the parties agree to use ODR as a dispute settlement :

a) Choice of law

The role of choice of law in the ODR method is to determine under which legal system the dispute will be resolved. In cases where the parties do not include a choice of law in the dispute resolution clause, the applicable law will typically be determined based on some international civil law theories. The provisions related to determining the choice of law in the ODR method are not significantly different from the provisions of conventional ADR. However, the parties' scope of trade must ensure that the dispute regulates in their chosen legal system. In addition, the parties should ensure that the specified legal system recognizes ODR as a form of dispute resolution; this is essential for legitimizing and implementing ODR outcomes.

b) Choice of forum

When determining ODR as the forum of choice, the parties must understand the dispute criteria and whether the ODR institutions are capable of the dispute. It must be clearly stated in the dispute resolution clause if the parties agree to resolve the dispute through an ODR forum. In addition, by agreeing on the form of the ODR forum, the parties are subject to all procedures or stages contained in the settlement forum.

c) ODR Providers

The determination of ODR Providers is based on the parties will, particularly parties must consider the specialization or classification of ODR Providers, whether the institution is authorized to resolve disputes, and what qualifications can be accepted and processed by particular ODR institutions. As in CIETAC, dispute settlement through ODR have a maximum material loss value of RMB 1,000,000; thus, transaction values that exceed this limit cannot be resolved via ODR.

d) Neutrals

In ODR dispute resolution, generally, ODR Providers have provided several neutrals that the parties can select, or the parties can leave it to the ODR Institution to choose neutrals who have legal skills as third parties in the dispute resolution proceeding. As well as contained in Article 46 UNCITRAL Technical Notes on ODR:

"To enhance efficiency and reduce costs, it is preferable that the ODR administrator appoint a neutral only when is required for a dispute resolution process in accordance with any applicable ODR Rules."

Therefore, when drafting the ODR dispute resolution clause, the parties must specify whether the neutral will be selected based on the parties' agreement or whether the ODR institution will select the neutral.

3) Formation of National Regulation Concerning ODR

Formulating the ODR procedural mechanism is essential. ODR is applied not only to disputes arising from trade relations but also to various other dispute scopes. Specific procedures requiring more implicit arrangements in the ODR dispute resolution mechanism pertain to the evidentiary process, including examining evidence and witnesses or expert witnesses. The regulation should contain the administrative process, particularly the evidentiary process, and collecting documents used in the ODR dispute resolution process. Consequently, formulating procedural mechanisms in ODR dispute resolution necessitates additional provisions that can comprehensively accommodate. In addition to the explanation section of Article 72, paragraph (2), Government Regulation No. 80 of 2019 should extensively be regulated the accreditation process of ODR institutions and which government institution has the authority to conduct and give accreditation to the ODR institutions.

One of the issues related to the application of arbitration in the ODR mechanism is the legality of arbitration awards which are generally contained

electronically and sent through the inbox email or the ODR institution website. In response to this, of course, special recognition is needed regarding electronic arbitration awards, considering that the UNCITRAL Model Law on International Commercial Arbitration explicitly states that arbitration awards must be in writing. Notwithstanding, in Indonesia, The recognition of electronic documents regulates in Article 5, paragraph (1) of Law No. 11 of 2008 concerning Electronic Information and Transactions, which says:

"Electronic Information and/or Electronic Documents and their printouts constitute admissible legal evidence."

This provision emphasizes that electronic documents retain the equal status as other written documents and are admissible as evidence. However, even though electronic awards are similar to electronic documents in their legal force, how about the District Court's determination process regarding electronic arbitration awards. Law No. 30 of 1999 only regulates registering written arbitral awards, not electronic ones. The unregulated process of registering electronic awards impacts the execution process, necessitating provisions that strictly regulate the validity of electronic arbitration awards and the registration procedures for electronic arbitration awards.

CONCLUSION

The concept of using ODR has been around since 1996, but its use as an international trade dispute resolution mechanism was only implemented in 2013 by the EU ODR Platform. Several benefits are associated with the help of ODR in international trade disputes, including time and cost savings and the convenience of the procedure. However, issues are still related to implementing ODR in the dispute resolution mechanism. There are no explicit provisions regarding the protection of personal data in the ODR mechanism, which is one of the obstacles to the successful implementation of ODR. As a result, it is necessary to implement stringent rules regarding the technical security of personal data and the standardization of ODR platforms, as outlined in a model law that

member nations can adopt. Although the formulation of dispute resolution clauses generally adheres to the principle of party autonomy, some substances differ from conventional dispute resolution. Thus, there is a need for clear guidance regarding the content that should include in an ODR dispute resolution clause, particularly regarding the choice of law, choice of forum, ODR providers, and neutrals. The UNCITRAL Model Law on International Commercial Arbitration recognized only the written form of the arbitral award. The process of obtaining enforcement is also conducted based on the original sheet of the arbitration award. Following the issue, emphasizing the status and enforceability of arbitral awards, it is necessary to recognize electronic arbitral distinctions and ODR implementation procedures under national law.

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