



# Business Disputes Settlement through Electronic Mediation

Firman Freaddy Busroh<sup>1</sup>, Fatria Khairo<sup>2</sup>, Putri Difa Zhafirah<sup>3</sup>

<sup>1, 2, 3</sup> Sumpah Pemuda School of Law, Palembang, Indonesia

<sup>1</sup>firmanbusroh@gmail.com, <sup>2</sup>fatriakhairo79@gmail.com,  
<sup>3</sup>putridifazhafirah@gmail.com

**Abstract.** In Indonesia, mediation is a kind of alternative dispute settlement. Indonesian law regulates the use of mediation under Law Number 30 of 1999, and Rule 1 of the Supreme Court of 2008 and refined by Supreme Court Regulation Number 1 of 2016. Dispute resolution through mediation needs to be strengthened, especially in business dispute resolution. Business disputes are increasing day by day and involve parties from abroad, both individuals and legal entities. Due to the parties' disparate legal systems, action must be taken to swiftly settle disputes through electronic mediation. Electronic mediation must be carried out by the parties using the services of a certified mediator. The role of the Mediator in resolving business disputes is highly desirable because of the advantages of resolving business disputes through mediation. For this reason, electronic mediation can be the answer to resolving business disputes both in Indonesia and abroad.

**Keywords:** Business Disputes, Disputes Settlement, Electronic Mediation.

## 1 Introduction

The effects of globalization can be seen in the increase of commercial disputes that are occurring nowadays. The rapid growth and development of electronic engineering, which has an impact on virtually every aspect of people's lives and activities, is a hallmark of globalization. The third wave of society, which the internet has marked, has been produced by the advancement of modern technology and the creation of a completely transparent worldwide information network.

The global economy is greatly impacted by internet technology. The world economy has entered a new phase thanks to the internet, known more commonly as the "digital economy." The increasingly common commercial activity that makes use of the internet as a tool for communication, teamwork, and company serves as a defining characteristic of it. 2002's Topio Puurunen

In today's trading world, 2 (two) main trading models have developed, namely the conventional business trading model and the modern trading model, or called modern business. A cutting-edge trading system that uses internet technology permits the quick transmission of information throughout cyberspace to every corner of the globe. Information is positioned as a valuable and lucrative commercial resource. E-commerce, or online business transactions, is one economic activity that makes use of information technology. 2013's Syamsia Amali

The many advantages offered by e-commerce services have resulted in an increase in e-commerce users. Based on a report from Google Temasek, in the Southeast Asia region, including Indonesia, between 2015 and 2019, e-commerce development grew quickly. The data shows an increase in transaction value of up to 7 (seven) times the total transaction in 2015 to 38 billion US Dollars in 2019. It is also estimated that transactions through e-commerce will reach a value of 150 billion US Dollars by 2025. Reported on the Global Web, that Indonesia recorded the highest e-commerce transactions by consumers in the world, with a percentage of 90 (ninety) percent of users are aged 16-64 years. As of January 2020, total Business Consumer (B2C) transactions in Indonesia reached US\$11 billion (Muhammad Faiz Aziz, 2020).

E-commerce refers to a trade transaction involving 2 (two) people, i.e., the buyer and the seller, that takes place through the internet. Due to the increase in Internet usage, businesses and individuals may now offer and sell their products or services to customers all over the world. E-commerce is a form of contemporary business that does away with a transaction that, in traditional business, calls for the physical presence of the parties and the signing of necessary paperwork. This corporate strategy is more faceless and unsigned. (Adel Chandra, 2014)

The fact that there is no specific legal certainty surrounding online dispute resolution in Indonesia illustrates the fact that the extremely rapid advancement of internet technology cannot be matched by slower legal advances. Conventional dispute resolution usually involves going to court or engaging in litigation. The lawsuit process shifts the opposing parties' positions away from integration, which is a win-win solution, and more toward a win-lose one.

The lengthy and uncertain litigation-based settlement procedure leaves the disputing parties with unanswered questions. In the business world, where quick, low-cost dispute resolution is required, informal procedures are also necessary, conventional dispute resolution has a tendency to be slow and harmful to justice seekers in all aspects. It can also drain the potential and resources of the parties to the dispute and result in a high-cost economy. The existence of e-commerce is designed to remove obstacles in traditional commercial transactions, thus it is naturally not expected that dispute resolution through the judiciary will be carried out as it just wastes time and money (Purwanto, 2005).

Only a few parties in today's corporate environment request dispute resolution through litigation or the court system. The judiciary or litigation institutions ultimately carry out the settlement. This is only used as a final resort (*ultimatum remedium*) when all other options have been exhausted. Given the circumstances, we require a suitable, efficient, and effective system. Due to the necessity for a quick and afforda-

ble dispute resolution, the modern corporate world has resorted to online dispute resolution as a solution.

### 1.1 Issues

In this research, there are 2 (two) issues discussed;

- What is the Indonesian Legal Policy for Resolving Business Disputes?
- How do Resolve Business Disputes through Electronic Mediation?

## 2 Research methods

This study employs normative legal research techniques and literature reviews that are based on secondary data. The normative juridical approach is the research methodology. The primary legal materials, or laws and regulations, make up the used legal materials. Secondary legal materials, namely research journal writing, proceedings, books, and opinions, while tertiary legal materials, namely valid internet sources and legal dictionaries.

The data obtained is processed using qualitative and descriptive methods that describe the legal events that actually occurred. The result is in the form of input to policyholders as a basis for making policies and decisions.

## 3 Discussion

Law Number 30 of 1999 in Indonesia governs alternative dispute resolution (ADR). The implications vary depending on which of the two phrases is chosen. If the initial definition is used as a benchmark, all out-of-court dispute settlement mechanisms, including arbitration, are part of ADR. Meanwhile, the notion of ADR as an alternative to adjudication means a dispute resolution mechanism that is consensus or cooperative, such as negotiation, mediation, and conciliation.

Prior until now, using alternative conflict resolution did not guarantee parties to a dispute satisfactory outcomes. This suggests that not all disputes, even those that meet the requirements for employing alternative dispute resolution (ADR), must always be resolved by ADR. To ensure the successful implementation of the Alternative Dispute Resolution mechanism, the prerequisites in the form of key success factors must be known. These factors include:

1. The dispute still has a chance to be resolved. The conflict between the parties is still moderate, meaning that hostilities are still within tolerable limits. A modest or suitable size depends much on context. For instance, if there is a strong dislike between the two parties, they do not want to meet. If there is a substantial disagreement, the hope of getting a win-win solution is difficult or impossible to achieve. Thus, they prefer a settlement with a win-lose solution through arbitration or court. In such conditions, settlement through ADR may not be able to

provide sufficient protective controls and influence to produce constructive decisions.

2. The commitment of the parties, entrepreneurs, or business actors in the dispute is indeed determined to resolve the dispute through, and they accept responsibility for their own decisions and receive legitimacy from ADR. The more the parties' commitment to and acceptance of the process, the greater the ability of the parties to provide a positive response to settlement through ADR.
3. Continuation of the relationship Settlement through ADR constantly seeks a win-win outcome. Therefore, there must be a desire on both sides to keep things civil. For example, two disputing businessmen, one from Indonesia and one from Japan, wish to continue their business relationship after their dispute ends. With future interests in mind, it drives them not to think about the outcome but also how to achieve it.
4. Negotiating a balance. The agreement between the parties must be balanced. However, it can be challenging to locate this, especially if the dispute involves multinational entrepreneurs and local entrepreneurs, where almost all resources are controlled by global entrepreneurs. However, these differences should not affect bargaining positions, meaning that one party must not dictate or even intimidate a settlement to be approved.
5. Both the process and the outcomes are secret. The parties are aware that, unlike court-based dispute resolution, the ADR procedure is private and confidential. The outcomes of conflict resolution are also thought to be confidential and are not meant to be made public or published to the general public. Therefore, in order for the purpose to be accomplished, it is crucial that the parties arrive at a suitable resolution to their commercial disagreement.

The choice of business dispute resolution through ADR is more promising and maintains the reputation of the parties. However, because business dispute resolution involves parties from various countries with different legal systems, the more efficient and effective option is Online Dispute Resolution. Online dispute resolution offers a great way to settle trade disagreements that are geographically distant, even between nations. Conventional trade has changed to a more modern system by merging law, economics, management, and technology due to the growth of a third-wave society characterized by interaction with information technology gadgets.

The use of information technology in the dispute resolution system benefits parties from other nations, providing new options for those seeking justice in dispute settlement. Indonesia is a business area that is considered a productive and strategic region in investing on an international scale. Indonesia is one of the countries that has great economic influence in international eyes having more than 250 million inhabitants, placing Indonesia in a very strategic position in the intensity of domestic and international business transactions.

The significant frequency of these business activities triggers an increase in the number of disputes that occur, while conventional (non-litigation) dispute resolution is considered unable to balance these problems. Another thing that is problem is that the law governing online dispute resolution in Indonesia is still regulated by a *lex generale* but has yet to be regulated by a *lex specialist*. In the end, the state is required

to reform the law on online dispute resolution in Indonesia, this is seen as "faster, simpler, and lower cost" in order for businesspeople to settle their conflicts based on this premise. Application of online dispute resolution is seen as essential in Indonesian law reform since it is also thought to balance the rate of development in the information and technology era.

**Online Dispute Resolution Methods** In general, there are two (two) methods for resolving commercial disputes: litigation and non-litigation procedures. The modern digital era offers original and creative approaches that use technology and the internet as enabling elements to settle trade-related issues. Online dispute resolution, which is used in the digital age to settle business conflicts, is possible.

In his journal, Pablo Cortes defines online dispute resolution as "the use of ITC tools and methods (typically used as an alternative to the court system) employed by businesses and consumers (B2C) to settle disputes that arise out of economic transactions between the parties, particularly in e-commerce." (Pablo Cortes, 2007).

The use of ICT (Information and Communication Technology) in dispute resolution communications by business people and consumers (business to consumer) to resolve disputes that arise as a result of economic transactions between parties was stated in the context of trade, according to Pablo Cortes' opinion. Within the system However, the online conflict resolution system introduces a fourth party, namely the technology utilized by negotiators, mediators, and arbitrators in the dispute resolution process. In traditional dispute settlement, there are 3 (three) parties involved: disputing parties, neutral third parties, and arbitrators (Rifkin Janet Katsh, 2001).

Without having to physically meet, online dispute resolution is conducted by parties within national borders and across borders. Online negotiating, online mediation, and online arbitration are some of the approaches used for online dispute resolution.

The Supreme Court Regulation Number 1 of 2016 governs the legality of mediation in Indonesia. A mediator, who is a neutral third party who can work with disputing parties to help reach a resolution that is acceptable to both parties, mediates conflicts or disputes. In its use, technology serves as a fourth party that helps online dispute resolution come to a mutually beneficial arrangement. Alternative dispute resolution through mediation has several advantages:

1. a cost-effective choice;
2. a speedy resolution;
3. outcomes that satisfy all parties;
4. a through agreement;
5. decision that can be put into practice, and;
6. choices made without regard to the passing of time.

The weakness in the mediation process in Indonesia is in the power of execution because an agreement can only be reached freely by the parties, after achieving an agreement. Therefore, the mediation process will only be used effectively by parties that voluntarily desire to resolve their issues through mediation. If there are two parties that have previously disagreed, peace can be achieved, then the parties agree to release all or part of their demands mutually. This is so that the dispute between them can end in a win-win solution so that the agreement obtained is accepted by both parties previously disputing parties. (Widjaja Gunawan, 2004)

According to Dalam Black's Law Dictionary, mediation is a private, informal conflict settlement method in which a neutral third party, the mediator, aids disputing parties in coming to a resolution. No decision can be imposed on the parties by the mediator. (Black's Law Dictionary, 2009).

In WIPO Mediation Rules state, "Mediation Agreement" refers to the parties' agreement to submit all or specific problems that have arisen or may arise between them to mediation. A mediation agreement may take the shape of a distinct contract or a clause in an existing contract. The parties must follow the agreed-upon procedure for the mediation. The mediator will decide how the mediation will proceed in accordance with the rules if and to the extent that the parties have not reached such an agreement. The mediator and each side must work together in good faith to move the mediation along as quickly as possible. (WIPO Mediation Rules, 1994)

The definition of mediation given above makes it apparent that it involves a third party, either personally or in the form of an institution that serves as a mediator and is independent, neutral, and unbiased. The parties may appoint the third party directly or through a mediation organization as a neutral, autonomous, and unbiased neutral party. In this situation, the mediator must fulfill his obligations depending on the desire and willingness of the parties engaged in the dispute through negotiation. (Resolution Number 2 of 2003 of the Supreme Court)

According to Priyatna Abdurrasyid, three different sorts of methods exist for online mediation, including (Priyatna Abdurrasyid, 2011):

1. In facilitative mediation, the mediator solely serves as a facilitator and is not permitted to offer an opinion or suggest a resolution. The mediator here offers a path for the parties to settle their differences.
2. In evaluative mediation, the mediator offers opinions based on facts, evidence, and legal reasoning. Providing a solution that is agreeable to both parties and attempting to convince them to accept it is the goal of this mediation method, which aims to reach an agreement through the mediator.
3. Situational mediation is where the parties agree that the mediator should intervene in the dispute. Only in cases where mediation between the parties is unsuccessful will the mediator enter. Only if the parties request it can the mediator intervene to the point of making a suggestion for a resolution. This procedure's original goal is to aid in facilitating dialogue between the parties and the mediator as well as between the parties themselves. This is another way that online mediation can be used, with communications taking place over the internet via relay conversations, email, and video conferencing as fundamental elements in online mediation, which are a means of communication between disputing parties and mediators.

Indonesian law's conception of online dispute resolution In Indonesian law, online dispute settlement has been conceptualized. This is evident in the laws that govern positive law in Indonesia, specifically Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 11 of 2008 concerning Information and Electronic Transactions, and Law Number 7 of 2014 concerning

Trade. These three regulations serve as a "lex generale" for Indonesia's online dispute resolution options.

The legal umbrella element is one of the supporting factors that must be put into place for the implementation of online dispute resolution in Indonesia in order to provide the community and the actors with legal certainty, efforts to develop and renew the economy to maintain order in Indonesia. This then encourages the formation of faster business dispute resolution arrangements. The means of conflict settlement outside of the court include consultation, discussion, mediation, conciliation, expert judgment, and arbitration, according to Article 1 Number (10) of Law Number 30 of 1999. The process of out-of-court dispute settlement gives the disputing parties the chance to select the most effective means of resolving their conflict.

Internet-based litigation essentially falls under the purview of contract law, therefore the freedom of contract concept is applicable. This means that in the event of a civil disagreement, the parties are free to select the applicable law and the dispute resolution forum. In accordance with the times, which are undergoing modernization, and so that geographical limitations are no longer a barrier at this time, Article 1 Number (10) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has encouraged methods of dispute settlement outside the court through technology and communication.

Online dispute resolution is described in Law No. 11 of 2008 Concerning Information and Electronic Transactions. Indonesia's Law Number 11 of 2008 Concerning Electronic Information and Transactions was created as a result of the urgent need to consider the significance of regulating electronic contract practices. Article 18 Paragraph (4) of Law Number 11 of 2008 Concerning Electronic Information and Transactions specifies the rules for electronic transaction dispute settlement, as follows:

1. Contracts formed through electronic transactions bind the parties.
2. The parties are free to decide which law will govern their foreign business dealings;
3. In international electronic transactions, the relevant law is based on international private law principles if the parties do not specify a different law;
4. The venues for courts, arbitrations, or other organizations for alternative dispute resolution authorized to address disputes that may result from the parties' international electronic transactions are chosen by the parties;
5. Should the parties not choose the venue as specified in paragraph (4), international legal principles will be used to determine which court, arbitration, or other alternative dispute resolution institution has the authority to handle any disputes that may result from the transaction.

Every issue, including the use of technology, such as e-commerce, e-payments, e-contracts, and other kinds of information technology media, is actively participated in by the community. This demonstrates that Indonesia can be deemed to foster the development of online dispute resolution under these regulations.

The provisions of Article 41 of Law Number 11 of 2008 Concerning Information and Electronic Transactions mention another component that is a driving force: 1. By

implementing electronic systems and transactions, the public can contribute to a rise in the usage of information technology. 2. The institutions created by the community can carry out the function of the community as mentioned in paragraph (1). 3. Institutions may serve in a consultative or mediating capacity. Institutions involved in information technology and electronic transactions are what is intended by "institutions formed by the community" according to the definition of Article 41 of Law Number 11 of 2008. The public now has the opportunity to establish a body that works to settle disputes online in Indonesia. The Supreme Court Regulation Number 3 of 2022 about Mediation in Courts Online has also boosted conflict resolution through online mediation.

The Law No. 7 of 2014 Concerning Trade Introduces the Concept of Online Dispute Resolution Law Number 7 of 2014 Concerning Trade imposes the idea of e-commerce regulation. Business collaboration in both commodities and services has taken many different forms as a result of the rapid and complicated economic growth. It is impossible to avoid disagreements emerging due to many background elements and issues, especially due to conflicts of interest, in a more modern society and with increased economic activity. Due to requests from the populace to establish a legal framework that can safeguard all trade activities in Indonesia, the State has some research to do. According to Law Number 7 of 2014 concerning Trade's Article 65 Paragraph (5), "In the event of a dispute related to trade transactions through an electronic system, the person or business entity experiencing the dispute can resolve the dispute through the courts or through other dispute settlement mechanisms."

According to the requirements of Law No. 7 of 2014 regulating Trade, Article 65, Paragraph 5, the parties to the dispute are free to select the institution through which their issue will be resolved, whether that be through the courts or another conflict resolution process. The implementation of online dispute settlement in Indonesia is motivated by this.

## 4 Conclusion

Online business dispute resolution, including through electronic mediation, is a type of development and renewal in the modern commerce sector that emerged from traditional conflict resolution methods. In order to make it simpler and more profitable for business people to settle disputes that arise from all business activities, including business to business, consumer to business, and consumer to consumer interactions, online dispute resolution (ODR) was developed.

In the end, businesspeople prefer to settle business disputes through electronic mediation online because it is simpler, faster, and more affordable, and because time and money are important considerations in business operations in the modern business world. Law Number 30 of 1999 about Arbitration and Alternative Dispute settlement, Law Number 11 of 2008 concerning Information and Technology, and Law Number 7 of 2014 concerning Trade all envisioned the implementation of online dispute settlement in Indonesia. Finally, these three laws have a general umbrella (*lex generale*) regarding the prospects for implementing online dispute resolution in Indonesia.



However, the public and business people still demand that this country carry out legal reforms that regulate explicitly (*lex specialist*) so that dispute resolution is online in the future and will not experience a legal vacuum and make it easier for business people to resolve disputes.

## References

1. Adel Chandra, *Penyelesaian Sengketa Transaksi Melalui Online Dispute Resolution (ODR) Kaitan Dengan UU Informasi Dan Transaksi Elektronik No. 11 Tahun 2008 (Esa Unggul, 2014)* (<https://digilib.esaunggul.ac.id/penyelesaian-sengketa-transaksi-elektronik-melalui-online-dispute-resolution-odr-kaitandengan-uu-informasi-dan-transaksi-elektronik-no11-tahun-2008-3653.html>) accessed 04 Juli 2023
2. Muhammad Faiz Aziz, Muhammad Arif Hidayah. 2020. "Perlunya Pengaturan Khusus Online Dispute Resolution (ODR) di Indonesia Untuk Fasilitasi Penyelesaian Sengketa E-commerce." *Jurnal Rechtsvinding*. Vol. 9, No. 2. Jakarta: Badan Pembinaan Hukum Nasional, Kementerian Hukum dan Hak Asasi Manusia.
3. Pablo Cortes, *Online Dispute Resolution for Consumers: Online Dispute Resolution Methods for Settling Businesses to Consumer Conflicts'*, Oopen, 2007
4. Priyatna Abdurasyid, *Arbitrase Dan Alternatif Penyelesaian Sengketa*, Fikahati Aneska, 2011.
5. Purwanto, *Efektifitas Penerapan Alternative Dispute Resolution (ADR) Pada Penyelesaian Sengketa Bisnis Asuransi Di Indonesia*, *Jurnal Risalah Hukum*, 2005.
6. Rifkin Janet Katsh, *Online Dispute Resolution: Resolving Conclict in Cyberspace*, Jossey Bass 2001.
7. Syamsiah Amali, *Pemanfaatan Internet Pada Pelajar Di Kota Gorontalo*, *Jurnal Penelitian dan Komunikasi Opini Publik*, 2013.
8. Topio Puurunen, *The Judicial Jurisdiction of States Over International Busines to Consumer Electronic Commerce from The Perspective of Legal Certainty*, *Journal of International Law and Policy*, 2002.
9. Widjaja Gunawan, *Alternatif Penyelesaian Sengketa*, PT.Raja Grafindo Persada, 2004.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

