



# *Reconstruction of Online Dispute Resolution in Indonesian Regulation*

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**Abstract**— Industry 4.0 Era is characterized by the massive development and utilization of Information technology in the society life. The using of information technology will allow the parties to interact each other and carry out some business transactions remotely. These parties which are located in very long distance, for example inter-islands or even inter-nations can interact each other and do business transactions. *Online Dispute Resolution (ODR)* is a mechanism that can be used as an alternative resolution in Indonesia. However, on its implementation, ODR needs to be optimized in order to better accommodate the interests of the parties. This study aims to strengthen provision concerning ODR implementation in Indonesia. Doctrinal legal research methods accompanied with conceptual and statutory approach used as analytical tools. The result of the study has concluded that it is important to make amendments to Law of Arbitration and Alternative Dispute Resolution (ADR) by inserting some rules on the mechanism of ODR. The intended amendment is by inserting some regulations on the mechanism of ODR in the Chapters which regulate ADR. More specifically, it needs to be regulated in the Article 6 which regulates the Alternative Dispute Resolution by inserting regulations on the mechanism of online media.

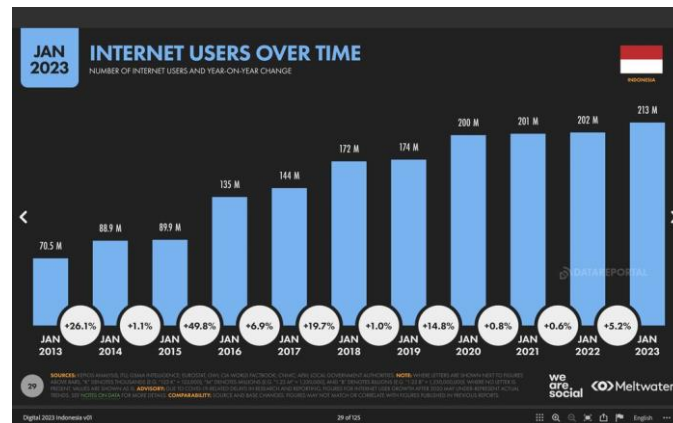
**Keywords**— *Dispute; Digital Transformation; Resolution*

## I. INTRODUCTION

Law is created with an aim to achieve some goals which are envisioned by the society, which then makes law is never silent.[1] Human interests always change and develop according to the times. However, the interests of each people are different thus it needs the highest guideline that is law in order to maintain that the interests among the people are not colliding with one another. This explanation becomes a foothold in seeing social reality happened in the current Indonesian society.

Currently, Indonesian society has been in an Industry 4.0 era, where all aspects of industry are designed automatic and digital, with a purpose to fulfill the society's needs.[2] Industry 4.0 era is an effort of transformation towards an improvement by integrating online world and production line in industry, where the whole process of production work by internet as the main support. The existence of internet in industrial world and business activities has encouraged the growth and development of online business. Online business is a marketing system or way through internet. Online business is also very easy and does not require much cost, for example for renting a shop, buying stocks of goods, paying employees, etc. Online business players market their products through internet with various ways so that they earn money. In online business, there are more advantages found, than in offline business.

In Industry 4.0 era, one of the interests and demands which should be fulfilled is an ease in obtaining financial services. The more developed technology and digitalization, the society's needs of some easy, fast, and flexible activities in financial service are also increasing.[3] Besides that, there are still many online businesses which are growing rapidly in Indonesia such as culinary business, fashion business, and others. The developing of online business in current Indonesian society is continuing to increase. The data in the following graph shows that the Indonesian population is getting closer to information technology and the Internet. This condition is shown by the number of internet users, which continues to increase yearly.

**Graph 1.** Internet users in Indonesia January 2013 – January 2023[4]

Based on the data the graph 1, it is known that over the years, the internet users are increasing. This condition has encouraged a rapid growth in online business sector. The result of survey which has been carried out by *Badan Pusat Statistik/ BPS* (Indonesian Central Bureau of Statistics) to online business in Indonesia (e-commerce) of year 2022 shows the amount of e-commerce business in Indonesia in 2021 are 2,868,178 businesses. Meanwhile at the previous year that is in 2020, the number of e-Commerce in Indonesia is 2,361,432 businesses.[5]

The large number of internet users and online business players in Indonesia, at one side is the main support for the national economy of Indonesia. But on other side, it leaves several legal issues which are complex and need to find the solution immediately. Because the nature of online business is the possibility of parties who have transaction not to meet directly, thus it is possible that these parties are living in different islands even different countries. If there is a problem happened between the two parties in the online business activities, then it will be difficult to be solved by face-to-face meeting, whereas the regulation which regulates dispute resolution by online in Indonesia has not been clear enough. Starting from this issue, this study will specifically discuss the problem on the importance to regulate the ODR as an alternative resolution in Indonesian business sector. The aim of this study is to give some feedback to the regulator on the alternative mechanism for business dispute resolution by regulating the Online Dispute Resolution into the Law of Arbitration and ADR in Indonesia.

## II. LITERATURE REVIEW

The rapid development of information technology has provided opportunities for growth in the types of services the public can access. The various conveniences offered by digital platforms using the internet network have become one of the factors causing the increasing distribution of internet users in Indonesia. This performed online transaction can be for a purpose of either business transaction, or other transaction such as information exchange. This online transaction is not uncommon to make some legal dispute to arise. Legal dispute of business in Indonesia actually has been regulated and accommodated for example in Arbitration and ADR Act. Mechanisms for resolving conflicts or business disputes can be carried out inside or outside the court. ADR is an alternative solution in resolving business disputes that arise cooperatively so that both parties will get a win-win solution to the incident. Of course, this mechanism is part of conflict resolution efforts carried out outside the judicial process. [6]

However, the rules on business dispute resolution which are mentioned above and applicable in Indonesia when it is applied in online business dispute resolution seem to be ineffective. The problem or disputes of online business usually including dissenting opinion, conflict of interests, and the fare of being disadvantage often become the causes for the problem or dispute arise.[7] In Industry 4.0 era like now, legal state is a concept which is highly relevant and ideal when every set of the state activities is based on a clear and straight law mechanism. Based on this explanation, in simple terms it can be understood that Indonesia is a legal state which is based on Pancasila, which means that every law must be in accordance with Pancasila values.

Law is formed by a number of non-legal factors, including economic interests, races, gender, or politics by relying on the interactions and negotiation inter-groups of society.[8] The same as the development in online business happened in Indonesia, law will always look for its ideal form to give the win-win solution to the parties who are having transactions by online. This is in line with the statement of Prof. Satjipto Rahardjo that law that is progressive law will always be in the process of becoming (*law in the making*) and is not final.[9]

A supporting theory which is used to analyze the importance of rules on the ODR in Indonesia is the theory of legal system from Lawrence M. Friedman. The theory of legal effectiveness put forward by Friedman emphasizes the importance of elements in law that can make legal work more dynamic. These elements at least include substance, structure and legal culture.[10] These three elements are independent but at the same time are mutually bound to each other. Furthermore, Friedman stated that the effectiveness of the application of the law was the fulfillment of the function of the application of the legal system. *First*, applying the legal system can at least be used to exercise control over people who regulate their behavior. *Secondly*, law is applied as a mechanism to resolve disputes that arise in society. *Third*, the law acts as social engineering, which can be used to maintain social stability when a condition needs to be maintained.[11]

Based on this theory, every legal rule will work dynamically. Laws are not only made to influence people's lives but laws can also be influenced by society's legal culture. Legal culture, as part of culture in general, is the logic that underlies people's attitudes and behavior. This condition then causes differences in the rational choices of a social group in responding to problems that arise in their lives. Dissatisfaction with the conditions they experienced then gave rise to a desire for the government to accommodate their demands by creating new regulations. Various ways can be chosen to voice these aspirations. The rationality of society's legal culture differentiates the choice of ways to influence the structure and substance of existing law. Ultimately, changes to the structure and substance of the law will again affect people's lives.

Based on descriptions the writer uses the view of Jimly Asshiddiqie to unify those three elements. Developing legal instruments is a means of building a solid legal state. A running legal system will ensure that every institution will carry out its function in realizing a just life. Every stakeholder must contribute to developing political, social, and economic institutions to run orderly and organized. Thus, legal awareness will build an excellent legal culture in society. Rationality and impersonality are very much needed in the life of the nation and state.[12] Starting from the view of Jimly Asshiddiqie above, it is known that a legal state needs a legal system in order to achieve the Indonesian objective to protect Indonesian people. The needs for a rule either written or not, either material law or formal law which can be the substance of law.

Because law is not located in a vacuum space and dealing with abstract things, but law is dealing with a society which is dynamic. A dynamic society is characterized by various new innovations which are directly able to change the pattern of interaction between communities like something happened in business world which is previously done by face-to face but now it can be done by online or usually referred as online business. Therefore, the concept of legal state has become the basis of the arrangement and supervision of online business in Indonesia.[13] State should be present to regulate and supervise online business because it is the mandate and ideals of or constitution and the Indonesian objective to protect Indonesian people and all the independence and all the land has been struggle for, which one of its manifestations is protecting the people of Indonesia in doing transaction in online business.

The rules of the alternative of dispute resolution has existed and been applicable in Indonesia that is in the Arbitration and the ADR Act, but it has not regulated the mechanism of online dispute resolution which in this study is referred as ODR. Moreover, the thing which should be emphasized here is that the regulation on ODR to online business dispute should be also supported by the society's awareness to obey and implement those established rules, because if there is not a legal awareness from the society to obey the existing rules then it will happened the thing which has been stated by Friedman that is the law will be powerless, likes a fish in the basket, not a fish swimming in the sea.

### III. METHODS

This study uses doctrinal research method, where conceptual and statutory approach used. Legal materials are obtained from primary sources such as regulations directly related to arbitration and ADR. A literature review was also carried out to obtain conceptual material regarding Friedman's theory of legal effectiveness. The analysis is done descriptively, that is an analysis technique by describing the studied objects.

### IV. DISCUSSIONS AND RESULTS

As already explained in the first discussion that it is important to regulate ODR as an alternative for dispute regulation which happened in online business activity in Indonesia, principally ODR is a development of ADR concept which is applicable in Indonesia, as well as which has been regulated in the Arbitration and the ADR Act. ADR is a mechanism for resolving disputes outside of court. This process prioritizes achieving consensus between the disputing parties. In reaching this agreement, the parties can ask for help from a neutral third party.[14] Law of Arbitration and ADR has not regulated the Online Dispute Resolution (ODR). The concept of ODR arrangements principally is a development of ADR concept which has been applicable in Indonesia. Whereas the main points of the rule of ODR which can be used as the material to renew the arrangements of alternative dispute resolution in Indonesia as follows.

In principle, there is a need to make a reconstruction to the regulation of ADR in Indonesia by making regulation on the mechanism of online mediation. This regulation is needed because every day the number of internet users is increasing and the online business players and users in Indonesia are also increasing. The regulation concept of online mediation has been applied in Europe as well as Med-Arb and mini-trial which are the development of classical mediation model which are carried out in person and then replaced by online mediation. The legal basis of online mediation refers to the regulations related to the method of alternative dispute resolution that the Arbitration and the ADR Act. Regulation on the online mediation is intended to create a freedom, security, and justice by absorbing the ADR principle, with specialized referrals to online mediation.

Online mediation makes new things which previously are not available become possible, likes all parties present without any other activity barriers from each disputing party. Online mediation gives a possibility for higher flexibility because of 24 hour access to electronic devices. Besides that, online mediation can create cost saving because there is not any need of attendance fee for the parties and document shipping cost. Online mediation which is carried out through electronic platform makes possible for all process being registered, and because of that it can be replayed. Based on the above explanation, it is important to do amendments to the Arbitration and ADR Act. The intended amendment is by inserting some regulations on the mechanism of ODR in the chapters which regulate ADR. More specifically, it needs to be regulated in Article 6 which regulates on the Alternative Dispute Resolution by inserting some rules on the mechanism of online mediation.

## V. CONCLUSION

It can be concluded that the objective of the Republic of Indonesia is to protect all of Indonesian peoples. The rules on the alternative dispute resolution already exist and are applicable in Indonesia, that is in the Law of the Arbitration and ADR Act which in this study is referred as Law of Arbitration and ADR. Meanwhile, there has not been any regulation on the mechanism of dispute resolution by online which in this study is referred as ODR. It is important to make an amendment to the Arbitration and ADR Act. The intended amendment is by inserting a regulation of ODR in the Chapters which regulates ADR. More specifically, it needs to be regulated in Article 6 which regulates the Alternative Dispute Resolution by inserting a regulation on the mechanism of online mediation.

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