

Improving Access to Justice in E-commerce: The Potential of Online Dispute Resolution (ODR)

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Abstract

This study aims to analyze the potential of Online Dispute Resolution (ODR) in increasing access to justice in E-commerce with a normative legal approach. This research method is carried out through an in-depth literature analysis on the concept of ODR, comparison with conventional dispute resolution, and case studies of ODR implementation in the context of E-commerce. In the literature analysis, legal norms related to ODR, consumer rights, and data protection aspects are analyzed to understand the existing regulatory framework. The study also compares the advantages and disadvantages of ODR compared to traditional dispute resolution mechanisms, with reference to the principles of fairness, efficiency, and accessibility. In addition, this method involves analyzing ODR implementation case studies in leading E-commerce platforms. This study also conducted interviews with digital law experts to get views on legal aspects that need to be considered in the implementation of ODR. The results of this study outline the potential of ODR in facilitating easier and more efficient access to justice for consumers in E-commerce disputes. However, data protection norms and ODR regulations need to be strengthened to maintain privacy and security. The implications of this study will provide valuable legal guidance for policymakers, lawyers, and E-commerce platforms in integrating ODR effectively, while maintaining normative and ethical aspects in dispute resolution in an ever-evolving digital world.

I. Introduction

In the increasingly evolving digital era, E-commerce has played a crucial role in connecting consumers with products and services globally. However, the rapid growth of the E-commerce industry has also brought new challenges, one of which is the increasing number of disputes between consumers and sellers. When disputes arise in the E-commerce environment, access to justice becomes a critical issue that needs to be addressed. Geographical limitations, high costs, and the complexity of traditional legal processes often hinder consumers from gaining easy and fair access to dispute resolution.¹

The main purpose of this study is to investigate the potential of Online Dispute Resolution (ODR) in improving access to justice in the context of E-commerce. This research aims to gain a deeper understanding of how ODR can facilitate efficient and fair dispute resolution between consumers and sellers in the digital world.

The main contribution of this research lies in the resulting guidelines for the integration of ODR in E-commerce platforms. The practical implications of this guide are expected to assist E-commerce platforms, legal experts, and regulators in developing better approaches to fair and effective dispute resolution. The research gap in the current study is the lack of a comprehensive review of the potential of ODR in overcoming obstacles to fair access in E-commerce. M. Faid Aziz in his article explained the need for special arrangements for online dispute resolution (ODR) in Indonesia to facilitate e-commerce dispute resolution.² In addition, A. Putra has also explained how online dispute resolution (ODR) in sharia capital market investment disputes in Indonesia.³ While there is some research on ODR, this research will focus more on normative legal aspects and the impact of ODR on access to justice, which will enrich our understanding of dispute resolution solutions in this digital age.

2. Research Method

This study uses a qualitative approach to normative legal research and relies on secondary data. Information gathered from previous works includes books, articles, and research findings relevant to the current subject matter. The analysis method used involves a thorough examination and description of the data.⁴

¹ Karolina Mania, 'Online Dispute Resolution: The Future of Justice', *International Comparative Jurisprudence*, 1.1 (2015), 76–86 <https://doi.org/10.1016/j.icj.2015.10.006>

² 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*, 9.2 (2020), 275 <https://doi.org/10.33331/rechtsvinding.v9i2.449>

³ Aista Wisnu Putra, Rofah Setyowati, and Et.al., 'Online Dispute Resolution (ODR) in Sharia Capital Market Investment Disputes in Indonesia', *USM Law Review Journal*, 3.2 (2020), 235–58.

⁴ Wahyuddin, F., Sudirman, S., & Umar, W. (2024). Technology and the Evolution of Civil Law: Implications of Cryptocurrency Transaction Regulation. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 23(1), 268-297. DOI: <http://dx.doi.org/10.31941/pj.v23i1.3388>

3. Results and Discussion

Online Dispute Resolution (ODR) in Improving Access to Justice in E-commerce

Access to justice is an essential framework for understanding the challenges in dispute resolution in the E-commerce environment. In an era where transactions and interactions take place in digital networks, the concept of fair access is becoming increasingly relevant. It emphasizes the importance of providing equal opportunities for all individuals to access the legal system and obtain fair settlements.⁵

In the context of E-commerce, the growth of this industry is in line with the increase in disputes between consumers and sellers. However, geographical complexity and barriers in conventional settlement systems result in inequalities in access to justice.⁶ Consumers, especially those in locations far from sellers, often face high cost barriers, long times, and complicated processes in resolving disputes. This creates a fairness access gap, where some consumers can obtain fairness more easily than others.

It also underscores that this experience not only impacts individuals personally, but also on overall trust in E-commerce transactions. Consumers who find it difficult or not recognized in resolving their disputes tend to lose trust in the E-commerce platform and the existing resolution process. In the long run, this could hinder the growth of the E-commerce industry due to uncertainty and lack of trust from consumers.

Another obstacle is the weakness in the dispute resolution system which is not suitable for the characteristics of E-commerce transactions that are often carried out online and across geographical boundaries.⁷ Conventional legal processes require physical presence, submission of files, and convoluted procedures. In the context of fast and dynamic E-commerce,⁸ this approach is no longer adequate and may actually exacerbate barriers to access to justice.

Therefore, an innovative and efficient approach is needed in E-commerce

⁵ D E Rusmawati and others, 'Penyelesaian Sengketa Pada Transaksi Bisnis Elektronik Melalui Arbitrase Online', in *Hukum Dan Era Digital* (Fakultas Hukum Universitas Lampung, 2022), pp. 42-49 <http://repository.lppm.unila.ac.id/46252/%0Ahttp://repository.lppm.unila.ac.id/46252/1/MONOGRAF%20dianne%20dkk%202022.pdf>

⁶ Mosgan Situmorang, 'Measuring the Effectiveness of Small-Value Consumer Dispute Resolution in E-Commerce', *De Jure Legal Research Journal*, 22.04 (2022), 537-50

⁷ Nanik Sutarni, 'The Urgency of Applying Online Dispute Resolution to Electronic Commerce Dispute Resolution Reviewed from the Theory of Economic Analysis of Law', *Privat Law*, 10.1 (2022), 153-67 <https://jurnal.uns.ac.id/privatlaw/article/view/60480>

⁸ Tutik Mustajibah, 'The Dynamics of E-Commerce in Indonesia in 1999-2015', *E-Journal of History Education*, 10.3 (2021), 3-11.

dispute resolution. Online Dispute Resolution (ODR) has emerged as a promising solution to overcome these obstacles and provide more equitable access to justice for all parties involved in E-commerce transactions.

In overcoming obstacles to access to justice in E-commerce dispute resolution, Online Dispute Resolution (ODR) has emerged as a promising alternative. ODR is a concept that applies information and communication technology to facilitate the dispute resolution process through digital channels.⁹ By leveraging technological advancements, ODR provides a platform that allows parties to a dispute to communicate, negotiate, and reach an agreement online.

One of the main advantages of ODR is its lower cost compared to conventional legal processes. In traditional legal proceedings, high costs are often a major obstacle for consumers seeking justice. ODR reduces travel expenses, legal fees, and other administrative costs associated with dispute resolution.¹⁰ This opens up opportunities for consumers from different economic backgrounds to access an effective dispute resolution system.

In addition, ODR also offers speed in completion.¹¹ In the midst of the rapid development of E-commerce transactions, time is an important factor in resolving disputes. Conventional legal processes that are long and complicated often take months or even years. In ODR, the interaction between the parties to the dispute can occur in real-time, speeding up the settlement process significantly.¹²

Not only that, ODR also provides convenience in the completion process. Consumers and sellers do not need to be physically present at the settlement or court, which allows them to stay focused on business activities or other activities.¹³ Communication in the digital environment also allows the parties to the dispute to participate in the settlement process anytime and anywhere, according to their schedules.

However, despite its great potential, ODR also has some weaknesses that need to be addressed. There are concerns related to data privacy and security in

⁹ Meline Gerarita Sitompul, M Syaifuddin, and Annalisa Yahanan, 'Online Dispute Resolution (ODR): Prospects for E-Commerce Dispute Resolution in Indonesia', *Renaissance Journal*, 1.2 (2016), 75–93.

¹⁰ riella Gitta Sari, Hery Lilik Sudarmanto, and Divi Kusumaningrum, 'Online Dispute Resolution (ODR) as an Alternative Form for Fintech Business Dispute Resolution in Indonesia', *Legal Transparency*, 5.1 (2022), 20–39 <https://doi.org/10.30737/transparansi.v5i1.2268>.

¹¹ Suprihantosa Sugiarto, 'Online Dispute Resolution (ODR) as an Alternative to Dispute Resolution in the Modernization Era', *Qawānīn Journal of Economic Sharia Law*, 3.1 (2019), 50–65 <<https://doi.org/10.30762/q.v3i1.1484>>.

¹² Armansyah, 'Online Dispute Resolution Sebagai Alternatif Penyelesaian Sengketa Transaksi Digital', *Jurnal Selisik*, 7.2 (2021), 44–46

¹³ Aziz and Hidayah.

ODR.¹⁴ Personal data, sensitive information, and evidence involved in the ODR process must be guaranteed to be secure so that it is not misused by unauthorized parties. Additionally, it is important to maintain the integrity and fairness of the ODR process, especially when not all parties are willing or able to actively participate in the settlement.

In conclusion, ODR has significant potential in overcoming obstacles to access to justice in E-commerce dispute resolution. The advantages of ODR in terms of cost, speed, and convenience open up opportunities to create a fairer and more efficient business environment in the digital era. However, challenges related to data security and active participation in the ODR process need to be carefully considered in an effort to optimize the utilization of ODR potential in the E-commerce environment.

Implementation of ODR in E-commerce in Indonesia

The implementation of Online Dispute Resolution (ODR) in the world of E-commerce in Indonesia is a complex challenge, but it is also full of opportunities to improve access to justice and strengthen the digital business environment in the country. As one of the countries with the rapid growth of the E-commerce industry, Indonesia needs to face a number of issues related to legal regulations, technology, culture, education, as well as cooperation between the government, industry, and civil society in realizing effective ODR implementation.

One of the main challenges in implementing ODR in Indonesia is navigating local regulations and building harmonization with international regulations. Although Indonesia already has an E-commerce regulatory framework and consumer protection, there is no regulation that specifically regulates ODR.¹⁵ Therefore, efforts are needed to formulate an appropriate regulatory framework, which can accommodate the needs of online dispute resolution without compromising consumer rights or the integrity of the settlement process. International cooperation also needs to be pursued to achieve cross-border regulatory harmonization, considering that E-commerce transactions often involve parties from various countries.

ODRs have not been governed by a comprehensive legal and regulatory framework, but have been mentioned in various regulations. For example, the Arbitration Act permits the use of electronic forms of communication in arbitral proceedings, such as telex, telegram, facsimile, email, or other similar media.

¹⁴ Damian Clifford and Yung Shin Van Der Sype, 'Online Dispute Resolution: Settling Data Protection Disputes in a Digital World of Customers', *Computer Law and Security Review*, 32.2 (2016), 272–85
<https://doi.org/10.1016/j.clsr.2015.12.014>

¹⁵ Aziz and Hidayah.

Digital transformation is being implemented as an alternative to traditional arbitration proceedings by the National Arbitration Board of Indonesia (BANI).¹⁶

The Consumer Protection Law and the ITE Law allow alternative methods for resolving consumer disputes out of court, as long as all parties involved agree to the chosen method. Although the ITE Law does not explicitly mention the ODR, THE ITE Law can still serve as a basis for disputing parties to choose ODR as their preferred means of resolving their disputes.¹⁷ Dispute resolution can be facilitated through the use of an online platform for ODR, which can be organized by an advocate or mediator, an accredited arbitration institution, or an authorized government agency. Where this is also regulated in Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems is an opportunity for the implementation of ODR in Indonesia.¹⁸

In addition, there is Supreme Court Regulation No. 1 of 2019, also known as Regulation 1/2019, which allows the use of electronic devices to manage cases and court proceedings.¹⁹ This includes electronic case entry and management, notifications, trials, and the filing and reading of judgments by the presiding judge or judge. The people of Indonesia can benefit from a fast and efficient dispute resolution process through the use of the e-court system, which is allowed for small claims processing in accordance with Supreme Court Regulation No. 2 of 2015. This implementation is feasible because of the amendments that allow the use of the e-court mechanism for the process.

BANI (Indonesia's National Arbitration Board) has also regulated this issue in Decree No. 20.015/V/SK-BANI/HU, which outlines the process of conducting arbitration through electronic methods such as video conferences, teleconferences, and virtual conferences. BANI's electronic arbitration proceedings may only be used in certain scenarios, such as during emergencies such as pandemics or natural disasters, or when the parties face the challenge of traveling to a physical location that is necessary due to the emergency or illness.²⁰

OJK has also established a dispute resolution institution called LAPS SJK through

¹⁶ Sarah Meilita Indrani and Hernawan Hadi, 'Keberadaan Arbitrase Online Sebagai Cara Penyelesaian Sengketa Bisnis Di Indonesia (Studi Di Badan Arbitrase Nasional Indonesia Jakarta)', *Jurnal Privat Law*, 5.2 (2017), 34 <https://doi.org/10.20961/privat.v5i2.19386>

¹⁷ Sulasi Rongiyati, 'Consumer Protection in Trade Transactions Through Electronic Systems', *State of Law*, 10.1 (2019), 1–25 <https://jurnal.dpr.go.id/index.php/hukum/article/download/1223/pdf>

¹⁸ Komang Restiawan, 'Perlindungan Bagi Pengguna E-Commerce Dalam Perluasan Ekonomi Global', *Jurnal Kertha Semaya*, 10.19 (2022), 475–84.

¹⁹ Dewi Asimah, 'Electronic Trials as an Effort to Modernize the Judiciary in the New Normal Era', *Journal of Law Peratun*, 4.1 (2021), 31–44.

²⁰ Sukawati Lanang Perbawa, 'Pelaksanaan Proses Arbitrase Online Di Indonesia', *Jurnal Magister Hukum Udayana*, 11.4 (2022), 871–81 <<https://doi.org/10.24843/JMHU.2022.v11.i04.p11.Tujuan>>.

Regulation No. 61/POJK.07/2020. This institution may conduct the dispute resolution process electronically as long as the platform allows the parties to communicate with each other visually and/or audibly.²¹

Technological advances are the main foundation in the implementation of ODR. The use of a secure and reliable digital platform, as well as the integration of data encryption technology, are key elements in maintaining the integrity and security of the ODR process.²² The security of personal data and evidence involved in the process is a top priority to ensure that there is no misuse of sensitive data and information. User trust in the ODR system will depend on the system's ability to maintain data confidentiality and security.

In addition, it is also important to consider the suitability of ODR with the local culture. Indonesia has a rich cultural diversity, and the implementation of ODR needs to be able to adapt to different cultural values. The preparation of ODR guidelines and procedures needs to take into account this diversity to ensure that the dispute resolution process does not violate existing cultural norms and ethics.

One of the key aspects of implementing ODR is the strong partnership between the government, the E-commerce industry, and civil society.²³ The government has an important role in formulating regulations, guidelines, and practical guidelines that support the implementation of ODR. This collaboration also helps build trust in this settlement mechanism. The E-commerce industry needs to contribute by providing a platform that facilitates ODR and ensures the technology used is safe and reliable. Civil society, including consumer rights institutions, also needs to be involved in ensuring that the implementation of ODR is carried out in accordance with the principles of justice and consumer rights.

In many cases, conflicts in E-commerce can be resolved through direct communication between consumers and sellers such as the Resolution Center on Tokopedia.²⁴ By providing a safe and secure internal messaging feature, the E-commerce platform allows the parties to the dispute to discuss, exchange information, and seek solutions cooperatively. This feature not only saves time, but also minimizes the risk of disputes escalating into larger conflicts.

²¹ Rehulina and Sugih Ayu Pratitis, 'PENGATURAN ARBITRASE SEBAGAI PENYELESAIAN SENGKETA ALTERNATIVE SECARA ONLINE', *Jurnal Privat Law*, 11.01 (2023), 117–29.

²² Riyadus Solikhin, 'The Development and Urgency of the Implementation of Online Dispute Resolution (ODR) in Electronic Commerce Dispute Resolution in Indonesia', *Padjadjaran Law Review*, 11.1 (2023), 66–80 <https://doi.org/10.56895/plr.v11i1.1235>

²³ ochani Urip Salami and Rahadi Wasi Bintoro, 'Alternative Dispute Resolution in Electronic Transaction Disputes (E-Commerce)', *Journal of Legal Dynamics*, 2.4 (2008), 124–35.

²⁴ Toko Pedia, 'What is Resolution Center? | Tokopedia Care', *Tokopedia.Com*, 2023 <<https://www.tokopedia.com/help/article/apa-itu-pusat-resolusi>> [accessed 30 August 2023].

In addition, several E-commerce platforms have also integrated algorithmic technology to analyze the evidence provided by the parties to the dispute. In the case of transaction disputes, evidence such as order history, communications, and payment details can be analyzed automatically to provide recommendations for fair settlement.²⁵ The use of this technology not only improves process efficiency, but also helps reduce ambiguous or misinterpreted evidence.

4. Conclusion

In the context of E-commerce, geographical complexity and barriers in conventional settlement systems result in inequalities in access to justice. ODR emerges as a promising solution to overcome these obstacles and provide more equitable access to justice for all parties involved in E-commerce transactions. However, there are still shortcomings and challenges in the implementation of ODR, such as data protection and regulations that need to be strengthened. In the long run, the implementation of ODR can increase consumer confidence in E-commerce platforms and accelerate the growth of the E-commerce industry.

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²⁵ Zheng Tang, 'An Effective Dispute Resolution System for Electronic Consumer Contracts', *Computer Law and Security Report*, 23.1 (2007), 42–52 <https://doi.org/10.1016/j.clsr.2006.11.002>

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