

LEGAL RECOGNITION OF ONLINE ARBITRATION IN INDONESIA RELATED WITH CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION ONLINE ARBITRATION RULES (CIETAC OAR)

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Abstract

The development of electronic commerce has opened up the possibility of disputes among cross-border traders. Online Dispute Resolution (ODR) is one emerging form of dispute resolution adopted by China through the China International Economic and Trade Arbitration Commission (CIETAC). While Indonesia has regulations such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and BANI Rules 2022 governing the electronic correspondence process of dispute resolution, ODR is not explicitly addressed. This research examines the legal recognition of ODR in Indonesia and explores the urgency of establishing ODR institutions with reference to CIETAC. The research findings indicate that Indonesia has not explicitly recognized ODR, signifying the urgent need to establish ODR platforms and revise arbitration regulations and dispute resolution in Indonesia. China's experience in recognizing ODR through the establishment of platforms and regulatory updates in its arbitration regime can serve as guidance for Indonesia in the future.

Keywords: *BANI, CIETAC, Legal Recognition, ODR Platform, Online Dispute Resolution.*

INTRODUCTION

With the development of information and communication technology, the use of the internet by society has now become a mandatory requirement. Indonesia experiences a significant increase in internet users every year. Based on data from 2010, there were 45 million internet users in Indonesia and reached 65 million in 2012. This data is data processed by the Ministry of Communication and Information of the Republic of Indonesia together with the National Development Planning Agency. Then, based on data from the Nielsen Indonesia "Streaming Content Ratings" survey, Internet users in Indonesia in 2019 were 55.1% and will increase rapidly in 2022 to 76.7% or around 200 million users (Ruth, 2013).

The internet has had many positive and negative impacts. The positive impact of the internet can be seen from the relationship between the internet and a sustainable economy. In Economics, an indication of the level of prosperity and economic level of a country can be measured from the trading activities of its people. Therefore, it can be said that trade is a crucial point in a country's economic structure. The role of trade, both at the domestic and international levels, has a very striking importance in efforts to develop a region's economy.

The internet plays a major role in improving the economy and development of the country. Since the advent of the internet, there has been a transformation of trading systems throughout the world. Trading activities that previously used conventional face-to-face methods are starting to switch to digital systems. One real form is the emergence of electronic trading systems or Electronic Commerce (E-Commerce). Black Law's Dictionary defines e-commerce as "the activity of electronically buying or selling goods and services through online consumer services on the Internet." The existence of e-commerce transactions provides an efficient and fast means of trade transactions for sellers and buyers, enabling meetings between various parties from various regions without restrictions.

During the first quarter of 2022, the Coordinating Ministry for Economic Affairs of the Republic of Indonesia noted that total e-commerce transactions, both domestic and international, had reached IDR 108.54 trillion. Compared to the same period in the previous year, this number experienced good growth of 23%. Bank Indonesia in the September 2022 edition of the Financial Stability Study Book said that digital economic and financial transactions have now penetrated all levels of society and have even become a new choice and habit. During the first semester of 2022, there was an increase in e-commerce transactions by 22.1% with a nominal value reaching IDR 227.8 trillion. Meanwhile, e-commerce transaction volume increased by 39.9% annually to 1.74 million. This is thought to occur because there are 76.7% of internet users in Indonesia. From the total number of transactions, you can imagine the number of disputes that may occur and need to be resolved quickly.

Law Number 7 of 2014 concerning Trade (Trade Law), the government has regulated various regulations regarding electronic trading. This law regulates business via the internet network (e-commerce). Apart from that, this law also discusses the meaning of Trading Through Electronic Systems (PMSE) and provides protection and certainty for business actors, PMSE managers and consumers when carrying out trading activities via electronic systems.

From electronic trade transaction data in Indonesia, it can be seen that disputes between traders via electronic systems are very likely to occur. During 2022, the Directorate General of Consumer Protection and Orderly Commerce, which is part of the Ministry of Trade, has handled 7,464 reports. According to the Director General of PKTN, of the total 5,042 complaint reports received, 99 percent or 5,035 reports have been resolved. Meanwhile, 7 cases The complaint is still in process, because it was only received at the end of the year.

In general, dispute resolution in economic activities is carried out through court (litigation). Frans Hendra Winarta stated that in the business world, conventional litigation is a dispute resolution method that is generally used. The litigation process places the parties in a confrontational position with each other. Furthermore, if other alternative dispute resolution is not successful then the litigation process is used as a last resort or ultimum remedy (Winarta, 2016).

In practice, dispute resolution through non-litigation channels is often adopted as a solution or first approach or *primum remedium*, as the initial step taken by parties to resolve business disputes with an approach that prioritizes a dispute resolution process that protects the interests of all parties. Rachmadi Usman, revealed that dispute resolution is not only limited to court processes (litigation), but can also be carried out outside of court through an approach commonly known as Alternative Dispute Resolution (ADR) or Alternative Dispute Resolution (APS). In Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, hereinafter referred to as the Arbitration Law, alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment.

ODR has various definitions, Callies and Hetkamp explain ODR as a digital process of alternative dispute resolution with the help of technology. Meanwhile, Barnett and Treleavan argue that ODR can still involve human labor or be completely automated. Collin Rules believes that ODR utilizes information and communication technology as a method for resolving existing disputes (Barnett & Treleavan, 2018).

These two opinions give rise to differences in the definition of ODR, Callies and Hetkamp together with Collin Rules argue that ODR is an APS process carried out with the help of technology in the process, while Barnett and Treleavan argue that ODR is a separate procedure that uses technology or can be carried out with human intervention and is based equivalent to APS.

Several international organizations provide definitions of ODR. The ASEAN ODR Guidelines explain that ODR is a "system consisting of an online platform that, apart from allowing for electronically filing a consumer complaint, enables the parties to resolve their dispute without the need for physical presence during the proceedings." Meanwhile, UNCITRAL Technical Notes on ODR defines ODR as "a dispute resolution mechanism through the use of electronic communications and other information and communication technologies.

APEC through the APEC ODR Framework follows UNCITRAL by stating that "ODR or online dispute resolution is a mechanism for resolving disputes through the use of electronic communications and other information and communication technology."

UNCITRAL Technical Notes on ODR provides further explanation regarding the ODR Platform, that ODR dispute resolution using electronic communications and information technology is a series of processes that require a system to send, receive, store, exchange and carry out ODR dispute resolution by guaranteeing data and system security. this is referred to as the ODR Platform.

Based on several definitions provided by international organizations, ODR is more than just e-ADR. As stated in the UNCITRAL ODR Technical Guidelines, APEC ODR Framework, and ASEAN ODR Guidelines. ODR is a technology platform that must be provided to parties to offer ODR as a complete solution. To date, there are 130 ODR organizers in the world, either considering ODR as an aid to conventional dispute resolution, or considering ODR as an equivalent dispute resolution method.

Until now, Indonesia has only implemented Electronic ADR, namely a dispute resolution process assisted by an electronic system. When it comes to Indonesian arbitration

practices with remote hearings, the only certainty is uncertainty. These uncertainties include issues related to implementation, supervision, confidentiality, and mandatory preparations, and much more. To overcome all these problems, a concrete regulation must be implemented so that there is certainty in carrying out the remote hearing itself. Provisions regarding ODR actually exist in several arbitration and dispute resolution regulations in Indonesia. However, no one explicitly explains the ODR platform in detail. Government Regulation Number 90 of 2019 concerning Trading Through Electronic Systems (PP PMSE) in Article 72 paragraphs 1 and 2 has been explained (1) In the event of a dispute in PMSE, the parties can resolve the dispute through court or through other dispute resolution mechanisms. (2) PMSE dispute resolution as intended in paragraph (1) can be held electronically (Online Dispute Resolution) in accordance with the provisions of statutory regulations (Akbar & Amalia, 2021).

The main issue surrounding the implementation of ODR in Indonesia is that there is no ODR platform that can be implemented in the country and the applicable legal framework. The Indonesian National Arbitration Board (BANI) has regulated procedures for conducting arbitration via electronic means. This includes, but is not limited to, teleconferences, video conferences and virtual conferences through the issuance of Decree No. 20.015/V/SK-BANI/HU. However, the electronic arbitration procedures offered by BANI can only be used in emergency situations (pandemic, natural disaster, etc.) or in special circumstances (the parties have difficulty traveling to the relevant physical location due to the emergency or illness). The procedure implemented by BANI is only in the form of an online hearing, not a fully regulated ODR platform like the definition of ODR in the ASEAN ODR Guidelines or the practice of ODR institutions in other countries (Aziz, 2021).

This issue raises questions regarding legal recognition of dispute resolution through the ODR method in Indonesia. According to terminology, recognition is a thing or condition that is recognized, also called recognition. Acknowledgment means the process, method, act of confessing or admitting, while the word "acknowledge" means declaring the right. In the context of legal science, based on its form, there are two types of recognition concepts, namely *de facto* and *de jure* recognition. This concept of recognition can be implemented in legal recognition of ODR practices in Indonesia, *de facto* there is no body or agency that implements or uses ODR in the dispute resolution process. *De jure*, the government has not yet established a special ODR institution with a strong legal framework to implement ODR practices. Without legal recognition of ODR, there is an urgency to form an ODR platform as a way to acknowledge the existence of ODR in Indonesia and provide legal recognition for ODR practices in Indonesia.

Several countries and institutions outside ASEAN have implemented and utilized ODR either with their own platforms or using ODR platforms provided by ODR developers. One of the countries in the world that has recognized and implemented ODR practices is China, which has the same legal system as Indonesia, namely Civil Law. Since 2016, the Supreme Court of China has released several official documents related to updating online dispute resolution methods. In its implementation, the government and courts at the local level try to use the ODR method with provisions in accordance with the provisions of the Supreme People's Court of China. In January 2016, the government and the Supreme People's Court of China proposed for the first time the concept of building a "Smart Court" (Shang & Guo, 2020).

The high level of acceptance of “Smart Court” and ODR in China in particular far exceeds similar responses in other countries. Chinese society in general tends to readily accept technological change, as seen in the adoption of electronic bill payments and e-commerce. Therefore, the author will make a comparison between Indonesia and China to understand how the China International Economic and Trade Arbitration Commission (CIETAC) organizes ODR which is based on independent regulations called CIETAC Online Arbitration Rules (CIETAC OAR). CIETAC also formed a special agency called the CIETAC ODR Center to provide ODR services and develop a platform in the form of a website which is used as a medium for implementing ODR, and the author will analyze the Guangzhou Arbitration Commission (GZAC) based on the Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes (GZAC ODR Rules) (Sitompul, 2016).

By carrying out legal comparisons with several ODR institutions in the world, the author will then answer several legal problems which include legal recognition of arbitration through electronic systems and the urgency of establishing arbitration institutions through electronic systems in Indonesia.

RESEARCH METHOD

This research was conducted using normative legal research methods, considering the object/focus of this research study is a product of statutory regulations (Marzuki, 2017). The approach used is the statutory approach (Statue Approach), an approach that utilizes an analysis of statutory provisions that have a link or relevance to the legal issues in this study (Ibrahim, 2013) and the case approach (Case Approach), an approach to cases related to the issues examined by the author.

Qualitative Research Method using the Normative Juridical approach method, namely legal research is a form of scientific activity, which is based on certain methods, systematics and thinking, which aims to study one or several specific legal phenomena, by analyzing them by prioritizing secondary legal materials such as books -books, articles, papers, law books, statutory regulations (Sunggono, 2015).

DISCUSS AND ANALYSIS

Legal Recognition of Arbitration through Electronic Systems in Indonesia

According to the Big Indonesian Dictionary, recognition in terminology is a thing or condition that is recognized. 'Acknowledgement' means the process, method, act of confessing or admitting, while the word 'acknowledge' means declaring the right. Axel Honneth defines legal recognition as legal recognition through law that provides guarantees of justice and equality. Later, Honneth will develop the concept of recognition in the legal context further by referring to the concept put forward in Hegel's "Philosophy of Right" (Honneth, 2014).

This recognition at the legal level includes the institutionalization of legal subject norms. Based on this opinion, it can be interpreted that legal recognition refers to formal recognition by a legal authority or state of the status, rights or legitimacy of an entity or action. Indonesian positive law recognizes or recognizes the existence of alternative dispute resolution and arbitration through the Arbitration Law. This law implicitly accommodates the potential use of electronic equipment as a method in the correspondence dispute resolution process as stated in Article 4, that in the event that dispute resolution through arbitration is agreed to occur

in the form of exchange of letters, sending telex, telegram, facsimile, e-mail, mail or other forms of communication means, must be accompanied by a note of receipt by the parties. However, there are no regulations regarding the ODR platform, the Arbitration Law only regulates the use of electronic tools as a means of supporting the correspondence process in arbitration.

BANI as an institutional arbitration recognizes arbitration through the 2022 BANI Arbitration Rules and Procedures (BANI Rules 2022), but BANI does not recognize the existence of ODR considering that BANI does not have a platform or ODR system according to the definition of ODR according to UNCITRAL Technical Notes, APEC ODR Framework, and ASEAN ODR Guidelines. BANI only runs e-ADR. Meanwhile, ODR is not just e-ADR, but a series of electronic system services in the form of an ODR Platform created by an ODR Provider which provides services in an integrated and one-stop shop and runs completely online.

To understand more deeply the legal recognition of the ODR process in Indonesia, researchers conducted interviews with representatives of the Indonesian National Arbitration Board. Based on interviews conducted, several obstacles were found to the legal recognition of ODR in Indonesia, although until now there is no prohibition on the arbitration process using electronic system methods, the ODR provisions in Indonesia do not yet have legal certainty. If you look at the definition of ODR according to UNCITRAL Technical Notes, APEC ODR Framework, and ASEAN ODR Guidelines, ODR is a dispute resolution mechanism through the use of electronic communications and other information and communication technologies. However, in Indonesia to date there are no regulations that accommodate ODR platforms that comply with this definition.

Furthermore, as a form of legal recognition of ODR, BANI is of the opinion that there is a need for a definition of ODR either by BANI as an arbitration institution or the government as a regulator. This is important so that there is a separation between conventional arbitration which uses information technology as a means or medium of correspondence, and ODR which is completely carried out privately. online in a system. Even though Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions hereinafter referred to as the ITE Law and arbitration legal regulations in Indonesia have accommodated correspondence that can be carried out via electronic means, recognition of ODR itself has not been explained in the legal framework for arbitration in Indonesia.

ODR also faces challenges related to the execution or enforcement of arbitral awards. Arbitration decisions can be implemented either coercively or voluntarily. Voluntary implementation of an arbitration decision refers to the implementation of the decision without any intervention from the Chairman of the District Court, but rather it is the responsibility of the parties to implement the contents of the arbitration decision without external interference. For forced execution of an arbitration award, the party requesting execution needs to follow a legal procedure known as drawing up a Registration Deed. Registration Deed refers to the act of recording and signing the end or margin of the original arbitration award, or a certified copy signed by the Arbitrator or his/her attorney and the District Court Registrar (Fuady, 2000).

Article 54 of the Arbitration Law stipulates that an award must be made in writing and signed by the arbitrator or panel of arbitrators. This provision explains that a signature from the arbitrator is required and Article 59 paragraph (1) of the Arbitration Law makes it clear that the

decision must be made in writing. Article 59 paragraph (2) clarifies that an arbitration award must be in writing, namely: Submission and registration as intended in paragraph (1), is carried out by recording and signing at the end or edge of the award by the District Court Registrar and the arbitrator or his/her proxy who submits, and notes This is a registration certificate.

In principle, ODR is an electronic system that carries out full dispute resolution in an integrated electronic system so that this is in contrast to the practice of executing decisions which require an authentic registration certificate in printed form. The information provided by BANI is also in accordance with this and in practice it is still It was found that if an arbitration award implemented via online correspondence is requested for execution in court, the court still requires a stamp or wet signature from BANI. This will give rise to new problems, namely with the implementation of ODR being completely digital and online, how the court can accept execution requests without any printed documents needing to be submitted and how the institution guarantees its authenticity.

BANI also stated that there is an urgency to establish an ODR platform in Indonesia as a form of recognition of ODR practices in Indonesia. BANI is currently carrying out a study to establish an ODR system in Indonesia. BANI did not provide further information regarding the form of the ODR platform that will be implemented in Indonesia. With this development, BANI intends to become a pioneer ODR provider in Southeast Asia.

Third, Brazil recognizes ODR regulations by strengthening the use of technology in the virtual sphere which is used for online mediation processes in the form of The New Civil Process Code which was published in 2015. In Article 334 Paragraph 7 Chapter V concerning Conciliation and Mediation, it is stated that: " The conciliatory audience or mediation audience may be realized electronically in the terms of the Law". The National Consumer Secretariat (SENACON) in Brazil also introduced an online platform that facilitates direct interaction between consumers and business actors. This platform was created in 2014. The main objective of this platform, which can be accessed via the website consumidor.gov.br, is to resolve disputes without involving the courts. The page provides an effective and efficient mechanism to address a large number of complaints.

The following is a matrix that summarizes the implementation of ODR in several countries, as a form of recognition of ODR:

	UNI (Europe Union ODR)	EROPA	BRAZIL (Consumidor)	AUSTRALIA	CINA
BENTUK REKOGNISI	<ul style="list-style-type: none"> Peraturan UE 524/2013 tentang ODR untuk Sengketa Konsumen 		<ul style="list-style-type: none"> The New Civil Process Code (Kita Hukum Acara Perdata Brasil/2015) 	<ul style="list-style-type: none"> NSW Online Registry / Online Court 	<ul style="list-style-type: none"> CIETAC ODR Centre
BIAYA	Para pihak dikenakan apabila Lembaga sebagai pihak	hanya biaya memilih ADR ketiga	Tidak dikenakan biaya	Dikenakan biaya pendaftaran	Dikenakan biaya yang disesuaikan dengan biaya klaim

KEPUTUSAN	dalam proses penyelesaian sengketa Keputusan menyesuaikan dengan Lembaga ADR yang ditunjuk	Tidak mengikat, apabila sengketa tidak dapat diselesaikan melalui platform Consumidor maka disarankan menggunakan Lembaga ADR konvensional	Tidak ada Final dan mengikat	Tidak ada Final dan mengikat
KOMPETENSI SENGKETA	Sengketa dalam perdagangan melalui sistem elektronik	Perlindungan Konsumen	Sengketa Perdata	Sengketa transaksi perdagangan baik kontraktual atau non-kontraktual
JANGKA WAKTU	Estimasi jangka waktu selama 90 hari untuk mencapai kesepakatan	Estimasi jangka waktu selama 30 hari untuk mencapai kesepakatan	Estimasi jangka waktu selama 6 bulan sejak gugatan didaftarkan	Estimasi jangka waktu selama 4 bulan sejak arbitral tribunal dibentuk
PIHAK KETIGA	Institusi ADR yang terdaftar di Uni Eropa	Tidak ada	Tidak ada keterangan	Tidak ada keterangan
MEKANISME	<i>Online</i>	<i>Online</i>	<i>Online</i>	<i>Online</i>

The existence of ODR in these regions shows how each country recognizes ODR practices through regulatory updates and the establishment of ODR platforms. Even though the forms of platforms, competencies, methods or mechanisms they have are different, these countries recognize the existence of ODR practices based on their respective definitions. The existence of ODR regulations and the formation of platforms is a form of recognition by countries for ODR practices. Based on the results of interviews with the BANI secretary, explanations related to comparisons with other countries and based on the concept of legal recognition used, it can be seen that Indonesia has not recognized the existence of ODR practices according to the definition of ODR by UNCITRAL Technical Notes, APEC ODR Framework, and ASEAN ODR Guidelines.

The Urgency of Establishing an Arbitration Institution Through Electronic Systems in Indonesia: Comparative Study with China International Economic and Trade Arbitration Commission Online Arbitration Rules (CIETAC OAR)

The rapid development of ODR has encouraged the Chinese government to make changes. In 2021, the Chinese government issued a draft amendment to its arbitration law, in

Article 30 of the draft amendment it was written that arbitration could be carried out via online methods. Apart from pushing for amendments to China's arbitration law, digitalization in the realm of Chinese courts has begun to be massive since the Supreme People's Court of China (SPC) proposed the development of a "Smart Court". This new era began with the establishment of the first internet court in 2017 in Hangzhou. Chinese society is familiar with the use of technology such as electronic payments and electronic commerce, making it easier for Chinese society to accept "Smart Court" and ODR better than other ODR-organizing countries.

The appointment of CIETAC by the China Internet Network Information Center (CNNI) as a domain name dispute resolution provider, as well as the role of the Chinese government in encouraging CIETAC and GZAC as ODR Providers for APEC organizations has created a new electronic dispute resolution ecosystem for China, both public and private parties involved. wants to create an ODR arbitration institution with support from the Chinese Government.

CIETAC is one of the institutional arbitrations in the world that has been established since 1956. CIETAC independently resolves commercial disputes, including investment disputes through arbitration. The nearly 30,000 arbitration cases that have been resolved by CIETAC have involved more than 100 countries and regions outside China, and their awards have been recognized and implemented in 159 countries and regions.

In 2000, the China Internet Network Information Center (CNNI) issued regulations on the Chinese-Language Domain Name Dispute Resolution Policy, and the Chinese government appointed CIETAC as the domain name dispute resolution provider. CIETAC formed a body called the Domain Name Dispute Resolution Center (DNDRC) to handle domain name disputes. This agency was also appointed as a dispute resolution service provider for the use of domains managed by CNNIC, the resolution of which is subject to the CNNIC Keyword Dispute Resolution Policy issued on August 4 2001. With the successful use of DNDRC, CIETAC then formed the CIETAC Online Dispute Resolution Center in July 2005 while retaining DNDRC and starting to use that name since August 2007 to accommodate the trade transition that began to take place through electronic systems. The CIETAC ODR Center is a special body formed by CIETAC to provide ODR services and is tasked with developing a website which is used as a platform for implementing ODR.

With the increasingly rapid development of e-commerce, CIETAC issued Online Arbitration Rules in 2009. CIETAC based on the independent regulations it created, namely CIETAC Online Arbitration Rules (CIETAC OAR) created a breakthrough in the use of ODR. This shows CIETAC's efforts to increase the speed and ease of the dispute resolution process in the new information technology era. CIETAC OAR aims to resolve disputes independently, impartially, efficiently and economically, through online arbitration, disputes arising from economic and trade transactions, both contractual and non-contractual. These online arbitration rules apply to resolving e-commerce disputes and can also be applied to resolving other economic and trade disputes according to the agreement of the parties. In addition to online arbitration, CIETAC OAR also provides the possibility of online mediation. Based on Article 2 CIETAC OAR, it is explained that the CIETAC ODR Center refers to a special ODR platform established by CIETAC for resolving internet domain name disputes and electronic commerce disputes. CIETAC established the CIETAC ODR Center Website which is used to implement dispute resolution through an electronic system.

Apart from CIETAC, the Guangzhou Arbitration Commissions (GZAC) also has its own ODR institute. GZAC is an arbitration body established in China on August 29 1995. GZAC is one of seven arbitration institutions established under the Chinese Arbitration Law. GZAC has 2043 arbitrators from 23 countries and regions in the world. GZAC is determined to become an online arbitration platform, with this determination GZAC issued ODR implementation standards called Guangzhou Standards, apart from that GZAC together with CIETAC became an institution providing ODR platform services for members of the international organization APEC.

Asia Pacific Economic Cooperation (APEC), issued the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border B2B Dispute (APEC ODR Framework). with low value. The APEC ODR Framework is designed to promote and provide certainty for international trade actors by providing ideal electronic dispute resolution. Based on information obtained from the APEC website, there are 4 institutions that are partners providing dispute resolution platforms through electronic systems, CIETAC and GZAC are two of the four ODR platform providers.

In the study document issued by APEC regarding ODR, ODR has a broad definition that can cover almost every dispute resolution process, including negotiation, mediation, arbitration, or other adjudication processes, as long as it is carried out online. APEC's model ODR rules follow UNCITRAL's ODR technical guidelines which define ODR as "a dispute resolution mechanism through the use of electronic communications and other information and communications technologies." However, ODR is more than just e-ADR. As stated in the UNCITRAL Technical Notes on Online Dispute Resolution and the APEC ODR Framework, a technology platform must be provided to parties to offer ODR as a complete solution.

Based on this explanation, there is a note that needs to be understood, that an institution can be called an ODR arbitration institution, if the institution has a system in the form of an ODR platform. Both CIETAC and GZAC each issued independent regulations belonging to their agencies, and based on these regulations CIETAC and GZAC formed a new body in the form of an ODR platform which is a manifestation of these ODR regulations. The CIETAC platform can be accessed via the link <https://casettle.odrcloud.cn/CIETAC.html> and for GZAC it can be accessed via the link <https://newodr.gzac.org/en/>.

CIETAC OAR and GZAC Online Arbitration Rules (GZAC OAR) have similarities in the form of using the arbitration body's platform. Article 2 of the GZAC OAR has listed contractual or property rights disputes between individuals, legal entities and organizations as disputes that can be resolved through the ODR platform to the arbitration commission and these regulations apply. Article 3 of the GZAC OAR states, the ODR platform is an online platform created by the arbitration commission to resolve disputes between parties through negotiation, mediation and arbitration methods, all of which are carried out through online interactions with predetermined standards. Likewise with CIETAC, as regulated in the CIETAC OAR, it is stated that to resolve electronic disputes, the CIETAC ODR Center Website refers to the website that has been developed by the CIETAC ODR Center itself.

BANI as an Indonesian arbitration body has its own regulations regarding arbitration via an electronic system, these regulations are in the 2022 BANI Electronic Arbitration Regulations and Procedures. Through these regulations, it can be seen that BANI also has similarities in the electronic arbitration process with CIETAC and GZAC's ODR process , that

is, all stages in the dispute resolution correspondence process can be carried out online. However, BANI does not yet have its own platform like CIETAC or GZAC. Furthermore, Article 1 paragraph 3 of the BANI Rules 2022 regulates that the entire arbitration process must still be made in hard copy form and signed wet or with a verified digital signature if the document in question requires a signature.

In the absence of an ODR platform owned by BANI, BANI cannot yet be called an ODR Provider according to the explanation in the APEC ODR Framework and UNCITRAL Technical Notes on ODR and BANI can be said to have not recognized ODR as an alternative method of dispute resolution. An ODR Provider is an entity that has a platform with a legal framework that provides the opportunity for parties to resolve their disputes electronically. ODR Providers can be separate or within one ODR platform system. BANI, through this regulation, only implements e-ADR by making it easier for parties with electronic methods available in the world. However, it does not have a special platform for parties who wish to resolve their disputes through an electronic system as regulated in the ODR definition.

The use of technology can expand access to justice. One way is to develop an ODR platform as an answer to increasing access to justice. In this context, government support is needed as a regulator responsible for formulating a legal framework to recognize ODR practices in Indonesia.

This is supported by opinions and studies conducted by experts. Becker and Maia stated that access to justice is not only related to the ability to access the courts, but also includes widespread availability of information, ease of access, clear procedures, as well as support in obtaining dispute resolution and helping to handle the dispute. Access to justice also faces several problems such as cost factors, institutional problems, and complicated procedures so that good access to justice does not occur. In addition, ODR has the potential to increase access to justice according to Owen, Staudt, and Pedwell's analysis. Several opinions from Becker and Maia as well as Zeleznikow also support the opinion regarding the potential of ODR related to access for justice seekers.

Hukumonline, conducted a survey of the needs of arbitration institutions in Indonesia, dispute resolution which was considered to tend to be slow and had a potential negative impact on many sectors was the background for conducting this survey. As an alternative, arbitration institutions are considered as a solution to fulfill needs that have not been met through conventional court channels. This survey regarding the need for arbitration institutions was carried out with respondents divided into several groups, namely advocates, arbitrators and in-house counsel (IHC). In its implementation, the purposive sampling method was used and combined with incidental sampling. Most of the respondents, or 75%, had held proceedings at BANI, and of all respondents, 42.86% had held proceedings at the Singapore International Arbitration Center (SIAC). Most respondents in this study want arbitration to be carried out through a flexible medium or intermediary. Only 5.4% want arbitration to be carried out offline.

In the e-commerce sector, the United Nations Conference on Trade and Development (UNCTAD) conducted an online survey which was published in a document entitled "National Framework for Consumer Complaints Handling and Dispute Resolution in Indonesia". This survey aims to obtain stakeholder perspectives regarding e-commerce and ODR dispute resolution, online surveys and interviews were conducted with consumer sources, business people, law enforcement, government officials, professionals, academics and non-government

organizations. Respondents measured the extent of their knowledge, attitudes and opinions regarding consumer dispute resolution and the challenges in implementing ODR, especially for consumers in the era of e-commerce and cross-border e-commerce. Based on the survey results, it was found that Covid-19 created new habits that made respondents hope for an ODR platform. Based on the survey results, 47.1% of respondents hoped for an online dispute resolution method, then there were 20% who hoped for "Online Arbitration", 69.7% also agreed that it is time for Indonesia to implement ODR practices. This data shows the public's high expectations for digitizing the dispute resolution process. However, there are still doubts of 40/6% regarding regulations which are considered not to provide a strong foundation.

The development of technology and the internet is encouraging changes in all sectors of life, ODR is a new phenomenon that can play a major role in increasing access to justice, the economy and state development. Since the advent of the internet, there has been a transformation of trading systems throughout the world. Activities that previously used conventional face-to-face methods are starting to switch to digital systems. Social and economic disruption has occurred on a national and international scale since the advent of technology and the internet. Covid-19 is an event that shows how technology and the internet can help humans in times of limited space, time and distance.

During the formation of the Arbitration Law, there was an explanation that with the development of law and developments in the business world both nationally and internationally, the regulations contained in the Regulations on Civil Procedure (Regulation of *de Rechtvordering*) which were used as guidelines for arbitration were no longer considered relevant. Regulation of international trade has become an essential need (*conditio sine qua non*). Therefore, the Civil Procedure Regulations which do not regulate this matter require updating both from a philosophical and substantial perspective which is considered necessary and should be carried out. Based on the urgency that existed at the time of the formation of the Arbitration Law, that there was a disruption throughout the world, ODR can be used as a reason that the Arbitration Law needs to be updated in order to accommodate and recognize the existence of ODR practices in the arbitration regime in Indonesia.

Apart from Indonesia, the urgency for recognition of ODR practices also occurs in China, which has previously reformed its arbitration legal regime through amendments to its arbitration law. The ODR phenomenon not only encourages changes to arbitration law, but is also related to cyber security, the decision implementation process, implementation procedures, infrastructure development and human resources. CIETAC OAR has specifically regulated cyber security issues in Article 15 which states that ODR arbitration institutions must make the best possible efforts to maintain all data transmissions securely online for the parties, the arbitration panel and CIETAC and store information data through data encryption. Article 29 GZAC OAR also states that arbitration institutions must maintain the security of all online data transmission activities between the parties, the arbitration panel and the arbitration institution. Arbitration institutions are required to encrypt data and store the data to maintain confidentiality.

Apart from the need for reform, the Indonesian Government can learn from the Chinese Government by encouraging parties such as ministries to appoint existing arbitration bodies in Indonesia to encourage the formation of ODR arbitration institutions. This formation needs to be done in order to fulfill legal recognition for ODR arbitration.

In accordance with the definition of law according to Mochtar Kusumaatmadja, law is the totality of principles and rules that regulate community life which aim to maintain order which includes institutions and processes in order to realize the validity of these rules as a reality in society. Budiono Kusumohamidjojo said that there are two groups of principles, namely principal in English which, when interpreted, is principle and principle as origin which comes from the Latin principum which means origin. In terms of terminology, a principle is a principle or a truth that is the basic basis for thinking, acting, and so on. G. W. Paton explains that principles tend to be more abstract, while legal rules or rules are more definite in regulating certain legal behavior or actions. This is based on his opinion which states that principles are the foundation for rules or legal norms that are created based on general formulations of existing ideas. Terminologically, a rule is a formulation of principles that become law; fixed rules; benchmark.

In the context of trade and dispute resolution, there are several principles or principles that apply, such as the Principle of Good Faith. There are two main stages in this principle, namely, first, good intentions are needed to prevent disputes. Second, this principle encourages the use of dispute resolution methods such as negotiation, mediation, conciliation, arbitration, litigation or other methods of the parties' choice. This principle demands and requires good intentions from all parties involved in dispute resolution. In principle, ODR is a method of dispute resolution mechanism through the use of electronic communications and other information and communication technologies without the need for the physical presence of the parties and is carried out entirely digitally.

These principles are collected and made into rules. Soerjono Soekanto also believes that norms or rules are measures or guidelines for behavior or actions in his life. In the context of alternative dispute resolution, ODR is generally a dispute resolution method implemented through an electronic system to simplify the dispute resolution process by eliminating time limits and distance between the parties to the dispute.

Furthermore, in order to create these rules in society, a series of processes are needed and there are institutions to make it happen. In terminology, a process is a series of actions, manufacturing or processing that produces a product. The main basis of this concept is that order and regularity in development and renewal efforts are desired, even considered an absolute necessity. In this context, it is hoped that law, which is defined as norms, can become a guide capable of directing human activities in the direction desired by development and reform efforts. Indonesia uses legal reform as a prominent legal process in recognizing a phenomenon. Institution in this case refers to an institution instituted by law, custom or habit.

From this legal definition, if it is related to the development of ODR, there is an urgency to establish an ODR institution in Indonesia and its legal framework to provide legal certainty for ODR practices. This legal recognition not only provides permission for the establishment of an ODR institution but also becomes a driving force for the formation of an ODR institution to fulfill the legal definition put forward by Mochtar. The explanation and analysis that has been carried out shows that there is no legal recognition of ODR in Indonesia, so there is an urgency for legal recognition of ODR practices.

Based on the comparison above and the existing urgency, several solutions that can be taken to achieve legal recognition of ODR practices in Indonesia include Indonesia being able to carry out centralized integration of ODR development, integration can be carried out from

the scope of litigation justice to alternative dispute resolution, so that there is a one stop solution for justice in trade disputes in Indonesia like China's "Smart Court". Second, the development of ODR in each ADR institution, both public and private institutions, and the judiciary. The development of this model has been used by APEC which created a dispute resolution portal with assistance from the Chinese ODR Provider. Indonesia only needs to re-develop the existing process, so that it is easier, faster and more coordinated in each institution.

For regulators, they can form a regulatory policy for ODR development in the form of providing boundaries and definitions of ODR institutions, their roles, functions or interests. This can be seen through independent regulations issued by CIETAC and GZAC. Second, determining the competence of the ODR institution that was formed, aims to clarify what disputes can be resolved through this institution, such as CIETAC through DNDRC. Third, determining the jurisdiction of the national ODR institution considering that digital transactions such as e-commerce can occur across national borders. Procedural regulations and events as issued by GZAC, CIETAC, and UNCITRAL, and system governance, development and security in the implementation of the ODR platform.

CLOSURE

Conclusion

Conclusion Indonesia has not recognized the existence of ODR in Indonesia according to the definition of ODR based on UNCITRAL Technical Notes, APEC ODR Framework, and ASEAN ODR Guidelines. This can be seen from the absence of an ODR platform as a form of embodiment of ODR rules in an institutional form to realize its implementation in society, as well as the absence of ODR regulations within the legal framework of the arbitration regime and alternative dispute resolution in Indonesia as an embodiment of the concept of legal recognition. In order for ODR to be recognized, it requires formal recognition by legal authorities or the state of its status, rights and validity.

Sugesstion

Based on research, it was found that there is an urgency to establish an ODR platform and update arbitration regulations and alternative dispute resolution in Indonesia as a form of legal recognition of ODR practices. This is based on comparisons made with China, where the Chinese government has appointed the CIETAC institution to create an ODR platform called CIETAC ODR Center based on CIETAC OAR legal regulations as a form of legal recognition of ODR practices in China itself, the Chinese government is also carrying out reforms to its arbitration law by including ODR as an alternative form of dispute resolution. With this comparison, the implementation and system of ODR in China can become a reference for the development of ODR practices in Indonesia in the future.

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