



UNCITRAL Technical Notes on Online Dispute Resolution as Soft Law Instrument for Online Dispute Resolution: An Indonesia Perspective

Danrivanto Budhijanto^{*a}, Anangga W. Roosdiono^b, Mursal Maulana^c

^a Faculty of Law, Universitas Padjadjaran, Indonesia

^b Bani Arbitration Center, Indonesia

^c Faculty of Law, Universitas Padjadjaran, Indonesia

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*Corresponding author e-mail address: danrivanto@unpad.ac.id

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Abstract

This article discusses the UNCITRAL Technical Notes on Online Dispute Resolution, a soft law instrument designed by UNCITRAL. The Notes are non-binding instrument in nature, descriptive, and could be used as procedural rules governing online dispute resolution (ODR). With the rise of e-commerce, ODR can be considered an effective and efficient mechanism for resolving disputes arising from cross-border transactions worldwide, including in Indonesia. To ensure optimal implementation of ODR, a legal framework governing the online dispute resolution process is essential. To date, most countries and ODR institutions still lack substantive and procedural rules regarding ODR. The emergence of the UNCITRAL Technical Notes on Online Dispute Resolution is considered to be potential option, notwithstanding its purely soft law character. While not legally binding, disputing parties can consensually agree to use the Notes as rules of procedure.

This article is structured in four parts. The first part is an introduction that briefly discusses the existence of ODR in last recent decades as a consequence of the rise in e-commerce activity. The second part discusses the history of ODR and recent developments in several jurisdictions. The third section discusses the scope of the UNCITRAL Technical Notes on Online Dispute Resolution and the final section as a conclusion proposes that Soft Law instruments such as the UNCITRAL Technical Notes on Online Dispute Resolution can function as instruments that can be used as alternative sources of ODR law.

I. INTRODUCTION

The development of advanced Information and Communication Technology (ICT), which was marked by the emergence of the internet and the World Wide Web in the 19th century, has changed the paradigm of social interaction among people. Such development is often dubbed as the era of digital disruption that causes fundamental changes in the social order. Digital disruption has indirectly changed people's behavior in conducting business transactions, one of which is the business relationship that is carried out as a result of digital disruption through e-commerce.

The Covid-19 pandemic also has changed the paradigm of the global community in conducting business transactions. Social restriction has led business transaction patterns shifted from using traditional way of purchasing products directly from stores to online shopping by using e-commerce. Digital literacy is highly considered as the main factor driven the increasing number of online shopping transaction all over the world.

In Indonesia, based on the 2020 e-commerce Survey conducted by the Central Statistics Agency (BPS), out of the 16,277 business activities, 71.18 percent of business entities started selling via the internet over the last three years. Meanwhile, 26.90 percent of businesses started selling online from 2010 to 2016¹. Responding to that development, Indonesia's government has enacted several related regulations such as the XIV Economic Policy Package on e-commerce, Presidential Decree No. 74 of 2017 concerning the National Electronic-Based Trading System Roadmap (SPNBE) and Government Regulation Number 80 of 2019 concerning Trading through Electronic Systems (PMSE).

Online environment is constantly evolving in novel, varied, valuable and complex way so that such evolution is considered as a powerful dispute-creation engine. It also fosters more disputes and new kind of disputes including those arising from e-commerce activities². It is inevitable that rapid development of e-commerce could trigger disputes to come about. Disputes in e-commerce can occur in the form of Business to Business, Business to Consumer and Consumer to Consumer. Therefore, an effective and efficient dispute resolution mechanism related to e-commerce is paramount important. The most suitable option that can be utilized to answer that challenge is Online Dispute Resolution (ODR).

In domestic level in several jurisdiction, there is hardly any regulation governing ODR mechanism. In Indonesia for example ODR provisions are scattered in various regulation, among others are the Law No 11 of 2008 concerning Electronic Information and Transaction as amended by the Law No 19 of 2016 (Article, 18 (1) (2) (3) (4) and Article 41 (1) (2) (3)), Government Regulation Number 80 of 2019 concerning Trading through Electronic Systems (Article 72 (2)), the Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolutions. In term of procedural law, Indonesia Arbitration Center has just issued Decree Number 20.015/V.SK-BANI/HU concerning the Rules and Procedures for Organizing Electronic Arbitration to support arbitration hearing conducted electronically. Meanwhile, in regional level, there are efforts to create legal framework on ODR such as effort made by ASEAN and APEC.

The increasing number of e-commerce activities must be supported by the existence of legal rules governing dispute resolution procedures, especially rules regarding ODR. This article discusses the UNCITRAL Technical Notes on Online Dispute Resolution as procedural rules that can be used by disputing parties in resolving their dispute.

II. DISCUSSION

2.1 Historical Development of ODR and Current Development in several Jurisdictions

Similar with other alternative dispute resolutions such as arbitration, mediation, conciliation, etc, ODR is an alternative form of modern dispute resolution where the use of Information and Communication Technology (ICT), particularly internet is the main character of this mechanism. In various literatures, the term ODR is used interchangeably with other terms such as e-ADR, Cyber ADR and Internet Dispute Resolution (iDR). ODR is considered as an alternative dispute resolution that is simpler, faster, efficient and convenient for the disputing parties compared to traditional alternative dispute resolution and litigation.

¹ Statistik E-Commerce 2020, Katalog BPS: 8101004

² Ethans Kats and Orna Rabinovich-Einy, *Digital Justice Technology and the Internet of Disputes*, Oxford University Press, 2017, p. 2.

UNCITRAL Technical Notes on Online Dispute Resolution defines ODR as mechanism for resolving disputes through the use of electronic communications and other information and communication technology. The process may be implemented differently by different administrators of the process, and may evolve over time³.

In its implementation, ODR not only resolves disputes arising from online business transactions, but also offline transactions⁴. Until recently, there are several platforms offers ODR such as CyberSettle, PayPal Online Mediation, iCourthouse, ClickNsettle, Smartsettle, TRUSTe, Rechwijzer 2.0, Youstice, Modria, Online Schlicher, Financial Ombudsman Service, Nominet and SquareTrade⁵.

Historical Development of ODR

The first ODR procedure was originally introduced by a Virtual Magistrate (VM) located at Villanova University (Philadelphia, USA) which was established by the National Center for Automated Information Research in 1995. VM is a voluntary online arbitration procedure aimed at resolving disputes between Internet Service Providers (ISP) and users. VM has the competence to handle disputes arising from defamation, intellectual property, fraud and illegal seizure of commercial secrets, etc.

Pablo Cortés divides the history of the development of ODR into four phases:

- i. The first phase, *the Hobbyist Phase*, was marked by the emergence of the internet in 1995. At that time, ODR was not yet known formally, but informally.
- ii. The second phase, *Experimental Phase*, this phase developed from 1995 to 1998 which was marked by the emergence of ODR formation initiatives by Non-Profit Organizations such as VM.
- iii. The third phase, *Entrepreneurial Phase*, this phase started from 1998 to 2002. This phase was marked by the emergence of ODR initiatives from several industries. For example, SquareTrade and CyberSettle.
- iv. The fourth phase, *Institutional Phase*, has been developing since 2002 until now. Since then, ODR services have started to increase significantly. Based on observations from Conley Tyler, as of March 2006, there are 149 ODR services worldwide.

The Arbitration Law 4.0 as Applied Theory for ODR

William Twining in *Globalization and Legal Theory* argues that it is necessary to categorize legal theories according to their era, that it is problematic to universal legal theory.⁶ Legal theories established in the 19th or 20th century due to different backgrounds and different approaches. Legal theories since the 21st century will be prejudiced by the challenges of the development of science and technology and globalization in various fields will greatly colour the legal theories.

The main factor for the law to be able to play a role in economic development is whether the law is able to create " *stability* ", " *predictability* " and " *fairness* ".⁷ The first two conditions is a prerequisite for any economic system to function as intended, namely *Firstly*, the function of the stability is potential balancing for law and accommodate the interests of competition. *Secondly*, the need for a legal function

³ Section IV UNCITRAL Technical Notes on Online Dispute Resolution.

⁴ Example of ODR Platform dealing with offline transaction is CyberSettle.

⁵ Each platform has different of their level automation.

⁶ William Twining, *Globalisation and Legal Theory*, Butterworths, London, 2000, p. 52-53.

⁷ Leonard J. Theberge. Law and Economic Development, *Journal of International Law and Politic*, vol. 9 (1989). H. 232.

to be able to predict the consequences of a step taken is especially important for a country where the majority of its people enter economic relations beyond the traditional social environment for the first time. *Thirdly*, the aspect of justice (*fairness*), namely equal treatment and standard behaviours patterns (governance) The government is necessary to establish and maintain market mechanisms and prevent excessive bureaucracy.

The significant role of Arbitration Law 4.0 as a theoretical basis for ODR is to ensure the achievement of stability, predictability, and justice (fairness) in an legal, economical, and technological system towards human civilization in New Normal. The Arbitration Law 4.0 in the Development Law Theory approach has articulation as Arbitration Law which includes principles and rules and includes institutions and processes that embody Arbitration Law into the reality of people's lives the Industrial Revolution 4.0 as a global digital civilization.⁸

The Arbitration Law 4.0 is a actual manifestation of Convergence Legal Theory (CLT) as the author's conceptual and theoretical understanding of the convergence of technological, economical, and legal variables on human and community relations in the Digital Information Age, at the national, regional and international levels.⁹ The Arbitration Law 4.0 as Arbitration Law which includes principles and rules and includes institutions and processes that embody Arbitration Law into the reality of people's lives Industrial Revolution 4.0 as a global digital civilization theoretically are as follows:

1. The Law of Arbitration 4.0 applies universally and eternally which is reflected in principles and principles in accordance with the conceptual "principles" originating from the thoughts of the Natural Law Legal Theory with its scholars, namely Thomas Aquinas, Dante, and Hugo Grotius;
2. The Arbitration Law 4.0 is an order (command), obligations, and sanctions as contained in the norms of legislation by those who have power (the state) in accordance with the conceptual "rules" which are based on thoughts from the Positivism and Legism Legal Theories with the scholars namely Jellinek, Hans Kelsen, and John Austin;
3. The Arbitration Law 4.0 is the way of life or fundamental ideology of the nation (*Volk Geist*) which various according to time and place, and comes from the association of human life from time to time (historical, actual, futuristic) reflected through the behaviours of all individuals to a modern and complex society, where legal awareness the people are articulated by legal scholar (doctrine) as conceptual "institutions" derived from the thoughts of the History Legal Theory with the scholars, namely Carl von Savigny and Puchta; and
4. The Arbitration Law 4.0 is law that is in accordance with the law that lives in society as conceptual "process" comes from the thoughts of the Sociological Jurisprudence Legal Theory with its scholars, namely Roscoe Pound, Eugen Ehrlich, Benjamin Cardozo as well as ideas from the Pragmatic Legal Realism Legal Theory with scholars are Oliver Wendell Homes, Karl Llewellyn and also Roscoe Pound, that law is "*a tool of social engineering*" and understands the importance of intellectual or reason as a source of law.

⁸ Lili Rasjidi dan Ira Thania Rasjidi, *Dasar-Dasar Filsafat dan Teori Hukum*, Citra Aditya Bakti, Bandung, 2007 and HR Otje Salman S dan Anton F. Susanto, *Teori Hukum: Mengingat, Mengumpulkan dan Membuka Kembali*, Refika Aditama, Bandung, 2004.

⁹ Danrivanto Budhijanto, *Teori Hukum Konvergensi*, Refika Aditama, Bandung, 2014.

The Arbitration Law 4.0 as a conceptual *Sui Generis Lex Arbitri* with virtual jurisdiction for ODR. *Sui Generis* comes from the Latin terminology "of its own kind or class; unique or peculiar. The term used in intellectual property law to describe a regime designed to protect rights that fall outside traditional patent, trademark, copyright, and trade secret doctrines. For example, a database may not be protected by copyright law if its content is not original, but it could be protected by a sui generis statute designed for that purpose".¹⁰ The Arbitration Law 4.0 is based on the understanding of arbitration legal subjects who carry out arbitration legal action and have arbitration legal consequences that are connected, interacted, and transacted digital data in cyberspace. The term of cyberspace was introduced in 1984 by William Gibson in his book entitled *Neuromancer* with the following understanding:¹¹

"Cyberspace as a consensual hallucination experienced daily by billions of legitimate operators, in every nation, by children being taught mathematical concepts... A graphical representation of data abstracted from the banks of every computer in the human system. Unthinkable complexity. Lines of light ranged in the non-space of the mind, clusters and constellations of data "

2.2 Comparative ODR in Various Jurisdictions

ODR in India

The Supreme Court of India has made efforts to establish a legal framework regarding ODR by affirming that India continues to strive to modernize the rule of law in accordance with technological developments. This effort is carried out by legitimizing the use of video conferencing in the examination of witnesses.

In the case *Grid Corporation of Orissa Ltd. v. AES Corporation*, The Supreme Court of India affirmed that:

"When an effective consultation can be achieved by resort to electronic media and remote conferencing, it is not necessary that the two persons required to act in consultation with each other must inevitably sit together at one place unless it is the requirement of law or of the ruling contracts between the parties."

The validity of the use of technology in dispute resolution is emphasized in Arbitration and Conciliation Act and Section 4 & 5 of Indian's IT Act read with section 65B of Indian Evidence Act¹²

ODR in European Union

Consumer protection became major concern of the European Union in their economic activities as a single market. The EU continues to comprehensively develop substantive rules related to consumer protection. In addition, EU Policy makers have also developed a set of legislative and non-legislative tools that aim to make the enforcement of consumer rights in the Member States more effective or known as (EU enforcement toolbox), one of the components in the toolbox is consumer ADR which is

¹⁰ Black's Law Dictionary, Ninth Edition, West Publishing Co, St. Paul, 2009, p. 1572.

¹¹ William Gibson, *Neuromancer*, New York: Berkley Publishing Group, 1989, p. 128.

¹² Sree Krishna Bharadwaj H, A Comparative Analysis of Online Dispute Resolution Platforms, *American Journal of Operations Management and Information Systems*, 2017.

In some arbitration cases, for example in *Shakti Bhog v Kola Shipping Ltd and Trimex International v Vedanta Aluminum Ltd* the Indian Supreme Court stated that the use of cyber arbitration is permissible provided that it complies with Sections 4 and 5 of the IT Act read with Section 65B of the Indian Evidence Act and Section 7, 12-18 of the A&C Act.

then regulated in the 2013/11/EU Directive on alternative dispute resolution for consumer disputes (ADR Directive).

The rationale behind the institutional promotion of consumer alternative dispute resolution (CADR) mechanisms is not simply to enable individual redress, but also to secure more effective compliance with and enforcement of consumer law, ultimately seeking to increase consumer trust in the market¹³.

Similar with other region, due to the increasing number of internet user, cross-border shopping by using e-commerce in Europe increased drastically since 2008 where one-third of EU citizen used e-commerce to buy something. Significant obstacle facing by EU is how to created dispute settlement arising from e-commerce activities, especially for small value claim. Since that period, EU was facing crucial choice either to adopt traditional dispute resolution or tailor new method equipped with Information and Communication Technology (ICT) which is eminently suited to the need of e-commerce¹⁴. Until recently, the substantive rules are regulated in Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes (ODR Regulation). The scope of application of ODR regulation is only restricted to disputes arising from e-commerce and at least fifteen Member States are developing national ODR platforms or help desks.

ODR in Indonesia

Until now there are no specific rules governing ODR in Indonesia, substantive rules related to ODR are regulated in several pieces of legislation, including the following:

1. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

Law No. 30 of 1999 does not specifically regulate ODR. Nevertheless, Article 4 paragraph (2) implicitly confirms the existence of ODR:

"In the event that it is agreed that dispute resolution through arbitration occurs in the form of an exchange of letters, the sending of telex, telegram, facsimile, e-mail or in other forms of communication means, must be accompanied by a note of receipt by the parties."

2. Law No 11 of 2008 concerning Electronic Information and Transaction

Similar to Law No. 30 of 1999, the ITE Law does not explicitly mention the existence of ODR in Indonesia¹⁵, although the rules related to ODR can be seen in several articles, particularly Article 18 and Article 41.

Article 18 paragraph (4) states that:

The parties have the authority to establish court forums, arbitration, or other alternative dispute resolution institutions that are authorized to handle disputes that may arise from international Electronic Transactions they made.

¹³ Pablo Cortés, *The New Regulatory Framework for Customer Dispute Resolution*, Oxford University Press, 2016, P.30-32.

¹⁴ Pablo Cortés, *Online dispute resolution for consumers in the European Union*, Routledge, 2011, P.2.

¹⁵ There are several other rules that implicitly regulate ODR in Indonesia, for example, Law No. 7 of 2014 concerning Trade, Law No. 8 of 1999 concerning Consumer Protection, Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions.

3. Government Regulation Number 80 of 2019 concerning Trading through Electronic Systems

Unlike the previous laws mentioned above, Government Regulation Number 80 of 2019 has explicitly stated the existence of ODR in Indonesia. The provisions are regulated in Article 72 paragraph (2):

Settlement of disputes in trade through an electronic system can be carried out electronically in accordance with the provisions of laws and regulations.

2.3 Advantages and Disadvantages of ODR

According to Final Report published by ODR Advisory Group in 2015 ODR has there are several challenges facing by court especially for small value disputes which ODR can deals with, among others are as follow:

- a. Affordable, especially for small value claims. If complainant (especially for litigant in person) brings the dispute to court it will be too costly, slow and complex;
- b. Accessible, particularly for citizens with physical disabilities;
- c. Intelligible, citizens can feel comfortable in representing themselves without having to hiring lawyer;
- d. Appropriate, especially for internet generation and online society;
- e. Speedy, so that the period of uncertainty of an unresolved problem is minimized;
- f. Consistent, providing predictability;
- g. Trustworthy, a forum in whose honesty and reliability users can have confidence;
- h. Focused, experience and knowledge are genuinely required;
- i. Avoidable, with alternative service in place;
- j. Proportionate, the cost of pursuing a claim are sensible by reference to the amount at issue;
- k. Fair, delivering outcomes that parties feel are just;
- l. Robust; underpinned by rules of procedures;
- m. Final.¹⁶

Compared with traditional ADR, ODR is considered cost savings and conveniences for disputants. Cyber-mediation for example, may be feasible option for individuals who are unable to afford travelling long distances cost for their e-commerce dispute. Another advantage of using ODR is avoidance of complex jurisdiction issues. Since disputants can bind themselves to resolution through an agreement, jurisdictional issue can be avoided altogether¹⁷.

Notwithstanding the advantages of ODR as mentioned above, ODR also creates several disadvantages, among others are as follow:

- a. Potentially Inaccessible/ Technological Problem, especially for those having limited access to online computer and less familiar with computer;
- b. Confidentiality Concern, protection of confidential material in ODR can be easily printed out and distributed;¹⁸

¹⁶ Online Dispute Resolution Advisory Board Group, ODR Report 2015, <https://www.judiciary.uk/reviews/online-dispute-resolution/odr-report-february-2015/>

¹⁷ Joseph W. Goodman, The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber Mediation Websites, *Duke Law & Technology Review*, 2013.

¹⁸ *Ibid.*

- c. Lack of Face-to-Face Contact, the absence of non-verbal cues may facilitate misrepresentation of identity and lead to miscommunication;
- d. Language Barrier, especially for those do not use English as first language, sometimes it can lead to miscommunication;
- e. Confidentiality Barrier, Confidentiality is a very crucial principle in ODR. Confidentiality in this case is defined as non-disclosure of information, documentation as well as communication. The ODR provider must ensure that the data submitted by the disputing parties can be stored properly and ensure that the data cannot be accessed by unauthorized parties. In some countries that already have legal regulations related to data protection, this principle may be guaranteed to be implemented. Therefore, the concern regarding confidentiality is not only a concern of the ODR platform but must also be supported by the national laws that govern it.
- f. Legal Difficulties, the absence of clear legal standards for ODR, particularly if the need of public enforcement arises¹⁹.

2.4 UNCITRAL Technical Notes on Online Dispute Resolution as Soft Law Instrument

Technical Notes on ODR is a legal product issued by the United Nations Commission on International Trade Law (UNCITRAL), which is a specialized agency of the United Nations given the mandate to modernize and harmonize the rules of international trade law. This organization was founded in 1966 through the United Nations General Assembly by resolution 2205 (XXI) of 17 December 1966. The legal rules issued by UNCITRAL can be in the form of legislative rules and non-legislative rules relating to commercial law.

In contrast to legislative rules that have binding character in the form of international agreements or convention such as the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention), UNCITRAL also created non-binding legal instruments known as soft law such as Model Law, Legislative Guides and Technical Notes.

One of examples of soft law instruments issued by UNCITRAL is Technical Notes on ODR. The process of formulating this instrument began in 2010 when the UNCITRAL Working Group III on ODR was formed. At that time, UNCITRAL realized that e-commerce disputes had increased exponentially, therefore UNCITRAL felt the need for a simple, quick and inexpensive rule. The discussion regarding the ODR rules initially faced several obstacles, especially regarding the form of the rules to be negotiated, whether in the form of hard law which has binding legal force or rules that are soft law. These obstacles were then resolved after Working Group III revised its mandate by only formulating soft law rules in the form of Technical Notes. In 2016, precisely in the 49th session of the Working Group, Technical Notes on ODR were finally agreed to be used as a non-binding descriptive instrument.²⁰

¹⁹ Pablo Cortés, *Online dispute resolution for consumers in the European Union*, *Op.Cit*, p.47-58.

²⁰ Nadine Lederer, *The UNCITRAL Technical Notes on Online Dispute Resolution – Paper Tiger or Game Changer?*, *Kluwer Arbitration Blog*, January 11, 2018.

2.5 UNCITRAL Technical Notes on Online Dispute Resolution as Potential Rules of Procedures in ODR

The technical note on ODR is a legal instrument that was approved as a result of a series of forty ninth discussion sessions conducted by 60 member countries and involving several other international organizations as well as a series of consultations with experts and related professional associations. This Agreement was later codified through the Resolution adopted by the General Assembly on 13 December 2016. The Technical Note consists of 12 sections. In this chapter the author will briefly discuss the contents of the technical notes.

Section I as introduction concisely overviews the scope of ODR by emphasizing the need of mechanism for settling dispute arising from online cross-border transaction. ODR is expected to be able to solve such disputes in a simple, fast, flexible and secure manner without physical presence of disputing parties on a meeting or hearing process.

In term of purposes of technical noted, it stipulates that the main objective of this legal instrument is to foster development of ODR and to assist ODR administrator, ODR Platforms, Neutral and the Parties to the ODR Proceedings by implementing its core principles ranging from principle of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency. There is one important thing to note that technical notes are only intended for disputes arising from cross-border low value and service contracts that use electronic communication. In section I it is also emphasized that the technical notes are merely non-binding instruments, only as descriptive documents. it does not impose any legal requirement binding.

Section II defines the principles in ODR. In this section it is emphasized that ODR must be carried out in a simple, fast and efficient manner. In addition, there are several important principles, including the principles of transparency, confidentiality, independence, expertise and consent of the parties.

Section III describes the stage of ODR Proceeding including negotiation, facilitated settlement and a third (final) stage. The first stage in ODR is technology-enable negotiation starting with claimant submission through ODR Platform or ODR Administrator, in which both the claimant and respondent can negotiate directly through ODR Platform. if the negotiation process fails, then the disputing parties proceed to the facilitated settlement stage, in which ODR Administration a neutral third party in charge to lead communication between them in an attempt to reach a settlement. if the facilitated settlement stage also fails, then the disputing parties can proceed to the final stage.

Section IV consist of scope of ODR Process with following criteria: (1) cross border in nature, (2) low value e-commerce transaction, (3) Business to Business as well as (3) Business to Consumer Transaction and (4) dispute arising either from sales or service contract.

Section V explains the definitions, roles, responsibilities and communication. Unlike offline ADR, ODR requires a technology-based intermediary so that ODR can not be conducted base on ad hoc basis in which administrator must be presence. ODR requires well established platform that can generate, send, receive, store and exchange required information. ODR Administrator is assigned to coordinate and administer ODR Process. ODR Administrator can be independence or being integral part with ODR Platform. In term of communication, it consists of any form of communication as to statement, declaration, demand, notice, response, submission, notification or request which are made electronically.

Section VI sets up the commencement of ODR proceeding by which the claimant is required to provide related information before commencing the proceeding. It includes name and electronic address

of claimant and respondent as well as their correspondents, grounds for claiming and response to the ground made by respondent, proposed solutions, preferred language, signature and other means of identification.

Section VII elucidates the negotiation as the first stage of ODR. Section VIII depicts the facilitated settlement and Section IX describes the final stage. Section X arranges procedure for appointment, power and function of neutral. Section XI sets the rule for using language and last section emphasizes governance that can be used as guidelines for ODR administrator and ODR platform.

The Notes could be used by disputing parties as rules of procedure in ODR, provided that the parties explicitly agree to their application. Due to its soft law instrument in nature, their function is limited to offering efficient and flexible framework that parties may adopt, particularly in cross-border and low-value disputes.

2.6 Indonesia Perspective on ODR

The development of information technology should be responded to by the existence of legal rules that can answer the problems that arise in society. As explained above, until now there is no substantive legal rule that specifically regulates provisions related to ODR in Indonesia.

With the increase number of e-commerce, it is hoped that the Indonesian government can provide legal certainty to business actors, especially related to dispute resolution arising from e-commerce activities through ODR. So far, there has been a lot of pressure to revise the Arbitration Law and Alternative Dispute Resolution in Indonesia. The Indonesian government and the Legislature have in recent years intensively discussed amendments to the Arbitration Law and Alternative Dispute Resolution.

There are several obstacles to implementing ODR in Indonesia, not only obstacles related to regulations but also non-legal barriers such as the availability of infrastructure and digital literacy. In responding to these challenges, in the author's opinion, there are several efforts that can be made:

- I. To Carry out legal reforms related to ODR, the initial efforts can be made by revising the existing laws and regulations or by establishing separate legal rules related to ODR.
- II. To revitalize the infrastructure that supports the implementation of ODR in Indonesia.
- III. To Supervise the implementation of ODR, especially for the ODR Platform.

III. CONCLUSION

The development of Information and Communication Technology (ICT) has changed people's behavior. One of the aspects affected by this development is related to the online dispute resolution mechanism. In other words, advanced development of technology has changed the paradigm, dynamics and process of dispute resolution in the 21st century. One example of a dispute resolution mechanism that uses the development of Information and Communication Technology (ICT) is the Online Dispute Resolution (ODR). ODR can serve as a means of resolving disputes, either as a complement to or replacing traditional dispute resolution procedures so that it can provide answers to the challenges of the 21st century.

With the increase in electronic transactions, an efficient dispute resolution rule is needed. ODR is considered as an alternative dispute resolution that is simpler, faster, efficient and convenient for the disputing parties compared to traditional alternative dispute resolution and litigation. Notwithstanding of its advantages, ODR also has several drawbacks, particularly related to confidentiality and

technological barriers. Until now, several countries have continued to make legal reforms related to ODR, including Indonesia.

Sources of ODR law do not only come from national and international laws such as treaties, there are legal rules that are categorized as soft law instrument that can be used to fill legal voids. One of examples of soft law instruments is UNCITRAL is Technical Notes on ODR. The Technical Notes on ODR is a non-binding, descriptive and procedural rules governing Online Dispute Resolution (ODR) created by the United Nations Commission on International Trade Law (UNCITRAL). The emergence of UNCITRAL Technical Notes on Online Dispute Resolution is considered as an option even though the nature of this instrument is merely a soft law instrument. Although it does not have legal binding force, the consenting parties can utilize this rule as a rule of procedure.

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