



Online dispute resolution: Does the system actually enhance the mediation framework?

Dewi Sulistianingsih, Alviona Anggita Rante Lembang, Yuli Prasetyo Adhi & Muchammad Shidqon Prabowo

To cite this article: Dewi Sulistianingsih, Alviona Anggita Rante Lembang, Yuli Prasetyo Adhi & Muchammad Shidqon Prabowo (2023) Online dispute resolution: Does the system actually enhance the mediation framework?, Cogent Social Sciences, 9:1, 2206348, DOI: [10.1080/23311886.2023.2206348](https://doi.org/10.1080/23311886.2023.2206348)

To link to this article: <https://doi.org/10.1080/23311886.2023.2206348>



© 2023 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group.



Published online: 04 May 2023.



Submit your article to this journal



Article views: 5031



View related articles



CrossMark

View Crossmark data



Citing articles: 2 View citing articles



LAW | RESEARCH ARTICLE

Online dispute resolution: Does the system actually enhance the mediation framework?

Dewi Sulistianingsih^{1*}, Alviona Anggita Rante Lembang¹, Yuli Prasetyo Adhi² and Muhammad Shidqon Prabowo³

Received: 07 March 2023

Accepted: 19 April 2023

*Corresponding author: Dewi Sulistianingsih, Faculty of Law, Universitas Negeri Semarang, Semarang, Central Java 50229, Indonesia
E-mail: dewisulistianingsih21@gmail.com

Reviewing editor:
Heng Choon (Oliver) Chan,
Department of Social Policy,
Sociology, and Criminology,
University of Birmingham, United
Kingdom

Additional information is available at
the end of the article

Abstract: Online mediation as a form of Online Dispute Resolution has become a global movement that is increasingly actively developed as a form of mediation flexibility which is believed to increase the effectiveness and efficiency of alternative dispute resolution through the use of technology as the purpose of the Online Dispute Resolution itself. This paper aims to i) identify the obstacles and challenges faced in implementing online mediation; and ii) analyze the effect of the Online Dispute Resolution system on enhancing the mediation framework. This paper uses a normative juridical method, with the results showing that i) because it is a system that is still being developed, the implementation of online mediation still faces various obstacles and challenges; and ii) the obstacles and challenges faced in implementing online mediation are barriers to enhancing the mediation framework. Instead of providing an increase in the process, the use of technology in mediation actually seems to present new problems, such as causing legal uncertainty, security and confidentiality are not guaranteed, difficulties in building relationships, and so on. Online mediation is still in the development stage without clear rules and boundaries. If these barriers can be overcome, then the Online Dispute Resolution system can achieve its goals and enhance the mediation framework, so that an alternative dispute settlement will be created through mediation that is more effective and efficient.

ABOUT THE AUTHORS



Dewi Sulistianingsih

Alviona Anggita Rante Lembang is a final-year undergraduate student, majoring in law in the Faculty of Law, Universitas Negeri Semarang, concentrating in private and commercial law. During her university time, she has published several papers in national journals as well as in an international journal
Yuli Prasetyo Adhi is a lecturer at the Faculty of Law, Diponegoro University since 2006 until now. He graduated with a Bachelor of Law at the Faculty of Law, Diponegoro University and completed Master of Notary at the same university. He has various writings in the field of trade, specifically on security law and civil disputes.

M. Shidqon Prabowo is a lecturer at the Faculty of Law, Wahid Hasyim University Indonesia. He graduated with a Doctoral Program in Law at Diponegoro University in 2015. He has written at various national and international seminars and has written several books related to business law. His writings focus on business law and company law.

Dewi Sulistianingsih is a lecturer in the Private and Commercial Law Department at the Faculty of Law, Universitas Negeri Semarang from 2005 until now. She graduated with a Bachelor of Law in 2003, a Master of Law in 2008, and a Doctoral Program in Law in 2015 at Diponegoro University. She has written several books, especially on the topic of intellectual property and civil law, and has attended various seminars, both national and international seminars.

Subjects: Commercial Law; Dispute Resolution; Philosophy of Law; Law, Ethics and Professional Values

Keywords: mediation; online dispute resolutions; online mediation; technology

1. Introduction

Technological developments that have taken place over the last few centuries have provided many changes in human life. In fact, almost all sectors have taken advantage of technological developments for their business with the aim of benefiting from this technology, starting from the banking, insurance, education, trade, entertainment facilities, to public services sectors. There is a shift towards digitalization of various sectors enabling communication and transactions without knowing boundaries.

Along with technological developments, relations between individuals in society are still facing problems that trigger disputes. The opportunity to carry out online transactions without having to conduct face-to-face meetings has also increased the number of disputes which in turn has led to the need for effective and efficient alternative dispute resolution. The parties to the dispute can actually submit dispute resolution to the available formal justice institutions. However, formal justice institutions are often criticized for their slow and complicated process. Slow and complicated dispute resolution will certainly harm justice seekers in all aspects. This will result in a high cost economy, and can drain the company's potential and resources. On the other hand, there is a great need for fast, low-cost dispute resolution, as well as an informal procedure that is not rigid and adheres to formal provisions.

The development of information and communication technology can be used to be a solution to this problem. Technological developments are used to create new breakthroughs that are considered more practical and make it easier for parties to settle disputes outside the court, namely by using Online Dispute Resolution as part of the Alternative Dispute Resolution that has been developed earlier. Online Dispute Resolution exists as an Alternative Dispute Resolution using technology that is believed to be the answer to problems generated by formal justice institutions, such as being slow and complicated. In addition, Online Dispute Resolution is believed to be able to resolve issues of cross-border disputes because it does not require face-to-face meetings.

Online Dispute Resolution is a type of dispute resolution that allows parties to resolve their disputes by utilizing technology through an online platform that has become a global movement worldwide. Since its development, Online Dispute Resolution's popularity has continued to grow due to its ability to provide dispute resolution services via the internet, which is a lower cost dispute resolution, prioritizes effectiveness and efficiency, and is able to answer cross-border disputes by changing the traditional view into something that is more innovative and technological in the process (Utama, 2017).

Several countries in the world have implemented the Online Dispute Resolution system, especially in developed countries such as America and China. The two countries have advantages in their respective fields, America is superior in technological progress (HI-tech), while China is superior in terms of trade. These developed countries have implemented Online Dispute Resolution practices as remote dispute resolution institutions via the internet. Clear and detailed regulations can be found on the website so that it will make it easier for the parties to the dispute to better understand the procedure. These countries have taken Online Dispute Resolution even further with ODR+. For example, in China, which is said to be a global leader in ODR+ development (Chaisse & Kirkwood, 2022), Online Dispute Resolution has evolved with the existence of smart courts which are usually used for transactions that occur virtually, such as cryptocurrency purchase transactions, crowdfunding financing, e-commerce transactions, insurance payments, and others, as well as with the existence of smart contracts consisting of a series of data codes in

a blockchain network or in virtual form without having a physical form like a conventional agreement (Rizqi & Prasetya, 2022). However, in technological aspects of ODR+, there are still some problem regarding lack of systematic infrastructure and human resources within the industry as a whole (Chaisse & Kirkwood, 2022).

This paper will focus on one type of Online Dispute Resolution, namely online mediation, as mediation appears to be one of the most popular types of Alternative Dispute Resolution because it is very useful for small and medium businesses who need alternative methods to resolve disputes faster and cheaper than resolving disputes in court. This condition is also supported by the occurrence of the COVID-19 pandemic which hit the world some time ago, disrupting the justice system in resolving this problem (Matsum et al., 2022). This has led to an increase in the number of disputes and delays in solving problems in court. Therefore, the current technological developments encourage online problem solving. Many people choose mediation as a way to resolve disputes they experience because generally the problems that are resolved tend to be mild and are often experienced by the community, so they don't have to go to legal channels (Schultz et al., 2001). Over time, the mediation process carried out by the community has changed, which now can also be carried out online, so that its implementation is considered much more effective and efficient.

Online mediation is the most developed and studied form of Online Dispute Resolution. One of the reasons behind the popularity of mediation is the fact that the mediator as a neutral third party is not given the authority to make decisions. In other words, decision-making is the right of the disputing parties themselves (Nugroho, 2019). At the beginning of its emergence, mediation was not designed to be implemented via the internet network. However, with the flexibility of mediation then it can be implemented via Online Dispute Resolution. It can be said that online mediation is a form of mediation flexibility.

While face-to-face meetings are essential in offline mediation, online mediation is conducted in virtual reality, where the disputants and the mediator do not actually meet in person. This means that individuals from different parts of the world can use online mediation to resolve disputes with anyone in a different region, using secure encrypted email or secure chat rooms or in some cases video conferencing. In online mediation, providers provide communication tools that can integrate e-mail with other communication tools, such as electronic conferencing, online chat, video conferencing, facsimile, and telephone (Simamora, 2020). Data from the Alternative Dispute Resolutions Institute of Canada, shows several applications that can be used to conduct video conferencing in the mediation process, such as GoToMeeting, Skype, and Zoom (Adric.ca, 2019).

Online mediation is currently being actively offered by Alternative Dispute Resolution institutions around the world. In the United States, there is Online Mediation which is a website that offers online mediation services directly through their website or through their affiliate program. There is also Squaretrade which is the company that resulted from a University of Massachusetts research project, offers online mediation to people and companies who come to their site through an affiliate program. Squaretrade itself does not only offer online mediation. Squaretrade will give the disputing parties an opportunity to try and resolve the issue through conciliation first. The next step is online mediation. If it does not produce a satisfactory result, the parties can ask the mediator to recommend a settlement.

Seeing the advantages offered by online mediation, the use of technology in the process seems to bring many advantages. With the development of increasingly user-friendly technology, it is certain that the use of Online Dispute Resolution will also continue to grow. However, there is still a lot of skepticism about online mediation and Online Dispute Resolution in general, despite their rapid growth. This is because there is no face-to-face meeting itself. Many people think that one of the most important reasons for the success of mediation is the result of face-to-face contact between the mediating parties. On the other hand, there are

essential things from mediation that are still being questioned when they are done online, such as how to build trust, digital signatures, data security and confidentiality, privacy, legal uncertainty, to compliance with the results of the mediation itself. Internet use in general has also developed into an environment of distrust due to factors such as the number of frauds. In line with this, in its implementation, online mediation still faces these obstacles and challenges, at least in Indonesia. This will certainly be an obstacle to achieving the goal of online mediation as part of the Online Dispute Resolution, namely creating alternative dispute resolutions that are more effective and efficient in order to enhance the mediation framework. Internet use in general has also developed into an environment of distrust due to factors such as the number of frauds. In line with this, in its implementation, online mediation still faces these obstacles and challenges, at least in Indonesia. This will certainly be an obstacle to achieving the goal of online mediation as part of the Online Dispute Resolution, namely creating alternative dispute resolutions that are more effective and efficient in order to enhance the mediation framework. Internet use in general has also developed into an environment of distrust due to factors such as the number of frauds. In line with this, in its implementation, online mediation still faces these obstacles and challenges, at least in Indonesia. This will certainly be an obstacle to achieving the goal of online mediation as part of the Online Dispute Resolution, namely creating alternative dispute resolutions that are more effective and efficient in order to enhance the mediation framework.

Basically, there have been many researches that discuss online mediation in resolving various kinds of cases. First, namely research conducted by Wicaksana et al. (2021) with the title "*Mediasi Online sebagai Alternatif Penyelesaian Sengketa Hubungan Industrial pada Masa Pandemi COVID-19 di Indonesia*" (Wicaksana et al., 2021). This research wants to see related to online mediation arrangements as an alternative to resolving industrial relations disputes during a pandemic and its validity in legal times. Based on the research that has been done, it is known that in Law No. 30 of 1999 and Law No. 2 of 2004 has explicitly provided space related to the implementation of online mediation in dispute resolution. However, there is still no formal legal framework to regulate this matter.

The next research discussing online mediation is research conducted by Yusna Zaidah and Mutia Ramadhania Normas (2021) with the title "*Mediasi Online dalam Penyelesaian Perkara Perceraian di Era Pandemi*" (Zaidah & Normas, 2021). In this research, it is stated that the settlement of divorce cases in court should have been carried out in private, but due to conditions that made it impossible to do this online. In this way, of course, it is possible for all parties to listen and participate directly in resolving cases. However, in the implementation process, problems were found, namely network constraints which ultimately made the mediation efforts not run optimally.

From these two researches, it can be seen that in the implementation of online mediation, there are still obstacles and challenges that eventually interfere with resolving a dispute. In this case, online mediation, which is expected to bring enhancements to the mediation framework, in reality has not been able to make this happen. Therefore, this paper aims to analyze whether the Online Dispute Resolution system can actually enhance the mediation framework for the better. With this research, it is hoped that it can assist Indonesia to take the right step in developing Online Dispute Resolution in order to benefit from Online Dispute Resolution itself instead of presenting new problems. The formulation of the problem studied in this paper is formulated as follows:

- (1) What are the obstacles and challenges faced in implementing online mediation?
- (2) How does the Online Dispute Resolution system affect the enhancements of the mediation framework?

2. Literature Review

2.1. Types of online dispute resolution

According to I Made Widnyana, Online Dispute Resolution consists of 3 (three) types of dispute resolution, including online negotiation, online mediation, online arbitration, or even a combination of the three.

2.1.1. Online negotiation

Online negotiation is a simpler method than conventional negotiation, because its application utilizes electronic media and internet networks. Online negotiation does not require direct confrontation, so this will make it easier and simpler which will result in saving on the cost of settling cases (Sagala & Marpaung, 2021). The disputing parties only need to choose the electronic means that will be used as an Online Dispute Resolution facility to be able to negotiate.

2.1.2. Online mediation

Online mediation is a mediation process that uses electronic means where a neutral third party is involved to facilitate dispute resolution between the parties. For example, SquareTrade was founded in 1999 which offers online mediation services for e-commerce consumer disputes and works with several online businesses such as eBay and PayPal. (Zheng, 2020). The existence of this service will benefit online business users who are in various regions because mediation can be carried out in their respective places through the facilities provided by the service provider.

In online mediation, service providers will prepare communication devices connected to the internet network, which can integrate e-mail with other features, such as e-mail, instant messaging, chat conference rooms, audio conferencing, and video conferencing (Wang, 2009). Thus, this will reduce obstacles in resolving disputes due to regional differences, while increasing the flexibility of the mediation itself.

2.1.3. Online arbitration

Online arbitration utilizes technological facilities and the internet network as a meeting place for the parties to the dispute and the arbitrator as a third party. Its application is also carried out with the prior consent and agreement of the parties to the dispute (Sagala & Marpaung, 2021). In practice, the parties may apply to the arbitral institution that provides Online Dispute Resolution services.

2.1.4. Hybrid

Jie Zheng in their book entitled “Online Resolution of E-Commerce Disputes” calls the combination of the three forms of Online Dispute Resolution as a hybrid ODR. This understanding leads to a combination of various dispute resolution mechanisms in order to achieve efficient and effective dispute resolution. The parties agree that if a dispute arises, they will follow several stages with different procedures such as online negotiation, online mediation, and even if necessary, arbitration will be carried out (Zheng, 2020).

2.2. Online dispute resolution principles and minimum standards

There are several principles for implementing dispute resolution through ODR, including (Setiyawan et al., 2020):

- a. Process guaranteed confidentiality;
- b. Protection for the parties to the dispute;
- c. Transparent mechanism;
- d. Equality of position of the parties to the dispute;
- e. Safe system.

With regard to minimum standards, the ASEAN Guidelines on Online Dispute Resolution states that there are no international or regional standards in the implementation of Online Dispute Resolution. In contrast, Online Dispute Resolution can have varying degrees of automation and sophistication, depending on national policy objectives, sectoral priorities and/or other administrative considerations in different jurisdictions.

3. Method

The method used in writing this paper is a socio legal method. In this case there are two aspects of research, namely the legal research aspect, where the object of research remains in the form of law in the sense of "norm" and socio research, namely the use of methods and theories of social science about law to help researchers carry out analysis (Zaroni, 1992). Through socio-legal studies, it is hoped that from researches conducted, it will be known whether there are positive laws or laws that are born from patterns of relations between subjects in society, especially the parties involved in resolving disputes using mediation in Indonesia. This study tries to identify existing legal issues, online mediation mechanisms, legal consequences, and the problems that surround them.

This study uses a qualitative method. The use of qualitative methods is expected to find hidden meanings behind the research subject. This research begins with secondary data as initial data, then continues with primary data or field data. The sample to become an informant is determined purposively, where the number of informants is not determined in a limiting manner but follows the snowball principle, according to the need for informants in the research reality. The data collection technique used was in-depth interviews with mediation institutions in Indonesia using the sampling method and several mediators in Indonesia.

In collecting data used in this research, the authors conducted research in various alternative dispute resolution institutions in Indonesia, namely Indonesia Dispute Board, Walisongo Mediation Center, and Pusat Hukum & Resolusi Konflik PURAKA. The data was collected through interview method with certified mediators at these institutions. The authors chose these institutions as they have implemented Online Dispute Resolution in various cases, therefore experiences faced might differ from one another in line with differences in cases and differences in clients handled.

4. Results and analysis

4.1. Understanding online mediation

Online Dispute Resolution in general is a dispute resolution process that is carried out by combining computer technology information processing with internet communication network facilities. Online Dispute Resolution facilitates information technology media as a "fourth party" for disputing parties to communicate even though they do not meet face to face. The Online Dispute Resolution concept recognizes the role and value of software as a network that is used for more than a simple communication channel. With this "fourth party" device, it will facilitate the parties to clarify issues before conducting face-to-face sessions with video conferencing or this device is used to help identify parties in an online meeting. The definition of Online Dispute Resolution has at least 2 definitions that are more or less the same. UNCITRAL defines Online Dispute Resolution as a mechanism for resolving disputes through the use of electronic communications and other information and communication (United Nations Commission on International Trade Law, 2017). Meanwhile, the Indonesian Financial Services Authority defines Online Dispute Resolution as an alternative dispute resolution using electronic media and internet networks in the settlement process, so that the parties to the dispute do not need to meet physically face to face. Through these two definitions, it can be seen that the application of ODR requires technology as a means in the dispute resolution process (Aziz et al., 2021). Online Dispute Resolution is a development of Alternative Dispute Resolution which changes conventional views to modern ones through the use of technology. The means used in implementing Online Dispute Resolution vary, such as the use of video conferencing, e-mail, chat features, automated systems, or a combination of these features.

The types of Online Dispute Resolution so far include online negotiation, online mediation, online arbitration, and a combination of the three.

Online Mediation can be defined as a process in which electronic communications are used by the disputing parties and the third-party neutral as the facilitation to resolve the dispute occurs (Zheng, 2020). Third-party involved must be neutral and independent. The third-party or the mediator is not given the authority to decide the dispute. Instead, the mediator only has a role as a mediating party to provide legal opinions to help the disputing parties decide their own disputes.

4.2. Obstacles and challenges in implementing online mediation

There are various ways that can be done to resolve various kinds of problems regarding disputes, one of which is through online mediation. Mediation itself is a process in resolving disputes based on negotiations which also involve third parties or mediators to help find a middle way in resolving disputes. In this case the neutral party who becomes the mediator does not have the authority to make a decision while the negotiations are still ongoing or can be said to be neutral or not taking sides with any party. Furthermore, in the process of implementing mediation which is carried out in person or online, there is not much difference, where the difference can only be seen from the technology used (Pangesti, 2019).

The use of technology in the online mediation process is not only done when conducting meetings, but also using it as a medium for communication. In this case, the existence of the provider has an important role in providing communication tools and integrating them with other communication tools that can be used to support the process carried out. Then, the settlement of disputes through online mediation generally has an unsustainable nature. This is an advantage considering that in the absence of this relationship, disputes that occur will be handled more quickly by those who have authority. At least there are several reasons or benefits provided by carrying out online mediation. As for these benefits, namely the disputing parties do not need to be present in person, the costs incurred tend to be cheaper, can be accessed anywhere, and so on.

Online mediation includes efforts made to resolve disputes by utilizing existing technology. Nevertheless, in the implementation process, attention must be paid to the fundamental principles of mediation, as stated on an international scale (Siswanto, 2018). First, the principle of confidentiality which is the ability to cover or protect the privacy of other people, so that when it is related to the mediation process, only the parties involved and the mediator have the right to attend the mediation hearing. Confidentiality must be given special attention, considering that it is directly related to the privacy of individuals about the problems or disputes they are facing (Siswanto, 2018). Remember, the government has also provided guarantees to every citizen for the privacy they have. Second, the voluntary principle which explains that disputing parties come to mediation on the basis of their will and without coercion from outsiders. This principle itself is built on the basis of individual willingness to find and resolve disputes so they don't drag on. Third, the principle of empowerment which is based on the assumption that someone comes to mediation to find a middle way about the problems they face. Fourth, the principle of neutrality which places more emphasis on the role of a mediator which only facilitates the settlement process and controls the course of mediation. Fifth, the principle of providing a unique solution which shows that the solution produced in the mediation process does not have to comply with existing standards, but can also be generated from creativity in resolving disputes. In this regard, the results of the mediation determined will have the opportunity to follow the wishes of the disputing parties.

The application of these principles must be considered by all parties involved in the mediation process, both online and offline. This is related to the many obstacles and challenges in carrying out mediation, especially mediation that is carried out online. The author chooses several obstacles or challenges which according to the author are the most influential in the development of

implementing online mediation. These are the several obstacles or challenges in implementing online mediation, namely:

4.2.1. There are still many parties who do not understand the mechanism for conducting online mediation and inadequate infrastructure

This condition occurred because the method used was still relatively new in society, considering that it had only been implemented during a pandemic. Besides that, the presence of media and signals that have not been maximized is also an obstacle in the process of implementing online mediation. Where, as is well known, online mediation really needs the existence of technology as its main support, so if adequate facilities and infrastructure are not available, it is certain that the implementation will not work properly (Shalahuddin, 2021). The implementation of online mediation by not meeting in person will make it difficult for the mediator to know the psychology and intentions of the disputing parties. In fact, the mediator has the duty to be a third party in resolving disputes. In this regard, the mediator is also required to be more careful in observing every movement made by the disputing parties. This is also related to the difficulty of building one's trust when carrying out online mediation, considering that there is limited space for a person to see the other party's seriousness in solving problems. In resolving a dispute, trust has an important role because later there will be decisions that must be made and must be accounted for by the party who is proven to have made a mistake or violation.

Although data from Indonesian Central Agency on Statistics shows a high level of internet usage in Indonesia, which from the results of the The National Socioeconomic Survey for Indonesia data shows that there are 62.10% of Indonesia's population using the internet in 2021, but in practice, the internet is not yet supported by a good network. In the other hand, the fact that Online Dispute Resolution is still being developed in Indonesia means that this system is still being studied by the relevant parties.

From 3 (three) interviews conducted by the authors, clients who resolve disputes by mediation through ODR choose the most common applications, such as WhatsApp, Zoom and Google Meeting because of their practicality in use. With regard to the implementation of the mediation itself, from the data collected from the informants, there are still many areas that do not have adequate infrastructure, such as an internet network or electronic devices, which can hinder the implementation of the mediation itself. For example, a camera that cannot follow every movement, or an unstable internet network. This will more or less affect the mediation process which really needs a humanist touch. Our informant from Indonesia Dispute Board stated that,

“Conventional mediation is not tied to conditions, eg rain, storms for network factors.”

Obstacles and challenges caused by limited devices, facilities, and infrastructure greatly affect the communication process of the parties which can become a benchmark for the success of mediation, where if communication between the disputing parties in conveying their respective perspectives and wishes is not optimal, then the agreement will be difficult to achieve and mediation may fail.

4.2.2. Lack of guarantee of confidentiality of personal data

The implementation of online mediation, which is widely practiced by the community, will intersect with filling in data online, be it personal data, digital signatures, and other matters. Where, the information or data includes a privacy that is owned by everyone because it relates to his own security. It is undeniable, in resolving various kinds of disputes which are entirely carried out online, it requires someone to provide a digital signature and personal data to other parties. This is done to complete the data needed in the dispute resolution process. If the data is not available, then dispute resolution will not be carried out, so inevitably the parties involved must submit their personal data. Even though the state has guaranteed the confidentiality of personal data owned by every citizen, it cannot be denied that there are still many cases of leakage of personal data.

The findings of this case certainly give a sense of excessive concern to the public by reflecting on several problems that have occurred, such as misuse of personal data, fraud, and so on. The problem that occurs shows that the security of data owned by the government or related parties is still lacking, so it is easy to be taken over by irresponsible parties. On this basis, it is hoped that the government will be able to provide guarantees to the public about the security of their personal data by strengthening Law Number 27 of 2022 concerning Personal Data Protection (Calizta & Ruhaeni, 2023). That way the public will more easily believe in resolving disputes through online mediation.

The confidentiality of personal data is very dependent on good faith, both from the disputing parties, as well as third parties who are not related to the dispute that occurred. Our informant from Walisongo Mediation Center stated that in carrying out mediation through ODR, there is no guarantee that the parties have the good faith to keep the mediation process confidential, even though there are mutually agreed rules in the early stages of mediation which prohibited the dissemination and leaking of information. Our informant from Walisongo Mediation Center stated that,

Confidentiality guarantee depends on the good faith of the parties themselves. If at the beginning we agree not to record and distribute it, it means we expect good faith to comply with that. Same with offline though, who can guarantee they don't leak outside?

With regard to personal data, all of the institutions interviewed often uses Google Drive to store data, which cannot guarantee that the data cannot be hacked by unauthorized parties. Our informant from Pusat Hukum & Resolusi Konflik PURAKA stated that,

Documents are usually sent via e-mail or on Google Drive, but other people can hack them.
So, security is not guaranteed.

Whereas, the confidentiality and security of data in mediation is a very important aspect that distinguishes mediation and other alternative dispute resolution from litigation dispute resolution.

4.2.3. Lack of legal basis regarding online mediation

Problems related to the obstacles and challenges of implementing online mediation also come from the legal position of online mediation itself. Where, until now online mediation does not have a legal basis that is "*lex specialis*" regarding the procedures and mechanisms of online mediation (Wicaksana et al., 2021). *Lex specialis* is a principle in the interpretation of law which states that law is special in nature and overrides law which is still general in nature. In addition, this online mediation has not been explicitly regulated in relation to the settlement of various types of disputes that occur, so that there is a great potential to create a legal vacuum and abuse of decisions for some irresponsible parties. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution as the legal basis of Alternative Dispute Resolution has not regulated Online Dispute Resolution explicitly. Therefore, legalization of online dispute resolution only from the interpretation of the law and several other laws, such as Law No. 11 of 2008 as amended by Law No. 19 of 2016 concerning Information and Electronic Transactions. It is important to have regulations as a clear legal basis for the application of mediation through Online Dispute Resolution to provide legal certainty for justice seekers, so that the application of mediation through ODR is not only applied on the basis of self-interpretation of various laws and regulations. In this case, our informant from Walisongo Mediation Center suggests that,

"From the aspect of the rules, it should be equipped with ... refinements."

On this basis, it is hoped that the government can pay special attention to legal standing in the implementation of online mediation, considering that there are still many disputes that must be resolved immediately and the many benefits that can be felt by the wider community.

Table 1. Application(s) used and problem(s) faced by several institutions

| No. | Institution | Application(s) Used | Problem(s) Faced |
|-----|--|---------------------|---|
| 1. | Indonesia Dispute Board | WhatsApp, Zoom | Parties who do not understand the mechanism for conducting online mediation |
| 2. | Walisongo Mediation Center | WhatsApp | Inadequate infrastructure |
| 3. | Pusat Hukum & Resolusi Konflik PURAKKA | Zoom, Google Meet | Lack of guarantee of confidentiality of personal data |

Table 1 shown below shows applications used and problems faced by the institutions as the subjects of our research. Two of the institutions stated that they find there are parties who do not understand the mechanism for conducting online mediation due to the unfamiliarity with the use of the applications or factors from the mechanism itself and all institutions stated that they find there is still problems occur because of the inadequate infrastructure and lack of guarantee of confidentiality of personal data.

4.3. The effect of the online dispute resolution system on enhancing the mediation framework

The current developments have brought many changes in various aspects of life, including the birth of the Online Dispute Resolution in resolving disputes that occur in society. Online Dispute Resolution is a dispute resolution that is carried out through internet media where the process is carried out by parties who are across regions or countries who do not have to meet face to face. Furthermore, Online Dispute Resolution is like any other traditional dispute resolution, where the difference lies only in the media used.

Dispute resolution using Online Dispute Resolution has several advantages, such as saving time and costs, convenience in the process, and the freedom to choose a neutral third party. This proves that online dispute resolution can streamline time and costs for the parties to the dispute, considering that these parties are dominated by people who are highly busy, so that the existence of this Online Dispute Resolution can provide freedom for each party to determine time to resolve existing disputes or can be said to be flexible. Besides that, the use of the online system also makes it easier for parties to exchange ideas without feeling intimidated or cornered.

However, besides having advantages, the implementation of this Online Dispute Resolution also has several drawbacks, especially because of the development factor which can still be said to be new. The drawback is that there is a potential difference in perception that is owned because dispute resolution is not done directly and is only done online. In this case, it shows that the implementation of Online Dispute Resolution has less intensity, thus causing no spontaneity and responses given by the parties involved. It cannot be denied, that dispute resolution will be more effective if it is done by communicating directly and avoiding misunderstandings in the settlement process. In fact, in mediation, the mediator plays a major role in creating an unemotional atmosphere. The mediator functions to control the emotions of the parties so that negotiations can take place properly. To achieve this, body language is an important factor that needs attention. Currently available technology, from the author's point of view, has not been able to assist the mediator in reading the body language of the disputing parties. This issue is a big challenge because the mediation process requires deep personal relationships. With text-based communication without face-to-face meetings, the parties basically never know who is behind the scenes and what each party's true intentions are. Texts typed online and sent by machine can do nothing but capture a person's emotions, feelings and desires. What could be seen were only a few words written by "someone". For example, if done via e-mail, then people usually try to sound more professional, solid and reliable when writing the e-mail. In other words, people usually use standard templates and set of phrases, which include formal words and expressions with no practical meaning and thus useless for the other party and the mediator to identify their true intentions (Sugiarto, 2019).

Furthermore, for all forms of Online Dispute Resolution, the technology and internet gap is still a significant problem. The drawback of implementing Online Dispute Resolution is influenced by internet interference. This of course can be a fatal problem considering that Online Dispute Resolution requires the internet to run properly. Despite being one of the countries with the most internet users in the world, there is still a digital gap, where there are still many areas in Indonesia that have not been properly reached by internet networks. In fact, online mediation as a means of obtaining justice should be utilized by anyone. This of course will be inversely proportional to the principle of justice that should be felt by everyone. This is also related to the control of the mediator over the parties. Related to the use of technology itself, the mediator will find it difficult to exercise control over the parties. In this case, if the flexibility of communication that can

be done anywhere is one of the advantages of online mediation, this can also be a challenge for the mediator. For example, if done via e-mail, the parties will need time to read the message and compose their reply. This has the potential to delay the process simply because of the inability of the parties to keep up with the speed of the procedure. The main reason is the lack of temporal discipline on the part of the parties which is beyond the reach of the mediator. This lack of effective controls is another drawback of online mediation. Since the means of communication are beyond the control of the mediator, nothing can be done to ensure the compliance of the parties, thus, the parties may communicate with each other and escalate the conflict, without the mediator even knowing what is going on.

Another drawback occurs is the existence of confidentiality issues (Sugiarto, 2019). Where, the implementation of Online Dispute Resolution which is carried out on the basis of this technology is very possible to be recorded on the system in electronic form. This condition certainly allows data to be stored automatically in the system that has been used in conducting meetings. This condition shows that there are positive and negative roles from the use of technology. On the one hand, the existence of these data can strengthen arguments and can be used as evidence in resolving disputes, but on the other hand this has damaged the confidentiality of disputes, both the process carried out, the parties involved, and so on. As previously explained, that confidentiality is the main principle of mediation. However, the use of technology in the mediation process actually presents a very fundamental new problem related to confidentiality. Moreover, one of the reasons many business people use mediation is for reasons of confidentiality. If this cannot be guaranteed, it can be said that online mediation has not been able to bring about an increase in the mediation framework itself.

The drawbacks of Online Dispute Resolution are of course related to online mediation. This is because online mediation is a type of Online Dispute Resolution, so that all the shortcomings of Online Dispute Resolution will also have an impact on the implementation of online mediation. Furthermore, the application of Online Dispute Resolution has the potential to make mediation better. This condition is due to the existence of several benefits or advantages provided by the implementation of Online Dispute Resolution in solving various kinds of problems, such as efficiency, saving time and costs, and several other things. However, when viewed from the current conditions it still shows that the implementation of this Online Dispute Resolution has not been able to provide a good direction in the implementation of mediation.

The many shortcomings and obstacles in the implementation of Online Dispute Resolution are the reasons for implementing online mediation that have not led to anything good. The most important obstacle is related to the lack of assurance of the confidentiality of personal data held by the public. Where, the confidentiality of personal data is very important considering the many cases of data misuse which result in loss to one party and if this has happened, no party can be blamed. Besides that, the implementation of alternative dispute resolution itself also prioritizes confidentiality for the parties involved. It is on this basis that it is necessary to have firmness from the government to provide guarantees for the confidentiality of data for the parties involved in a dispute.

The absence of a clear legal basis that is used to regulate dispute resolution using online mediation is also the reason underlying the implementation of this mediation has not been able to lead to good and optimal things (Kusumojati & Ferry Rosando, 2021). In the absence of a definite legal basis, there will be a legal void that is likely to be exploited by irresponsible people to take opportunities to commit acts of fraud, for example, such as not carrying out demands that have been given, abusing authority, and so on.

This legal vacuum can be seen in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution as the legal basis of Alternative Dispute Resolution which have not yet assigned a position to the implementation of online mediation (Wicaksana et al., 2021). It was explained that the peace agreement reached in mediation did not have binding legal force, without a peace

deed. This shows that the legitimacy of the results of online mediation as an alternative form of resolving disputes in the form of a written agreement cannot be legally binding or applicable law. These results are due to the absence of a legal basis that expressly provides legality to the results of online mediation. Although it cannot be denied that several laws and regulations have been made available that provide opportunities for Online Dispute Resolution to be implemented. For example, there is Government Regulation No. 80 of 2019 concerning Trading Through Electronic Systems which explicitly mentions Online Dispute Resolution. However, as the legal basis for Alternative Dispute Resolution, the Law Number 30 of 1999 still has a legal vacuum regarding the implementation of Online Dispute Resolution in Indonesia.

In this regard, the results of online mediation have relatively weak power, so they are very vulnerable to being violated and misused by irresponsible parties. If so, online mediation will not provide new benefits, and instead generate new problems, so that the implementation of direct mediation is more effective than online mediation which tends to cause new problems experienced by the community due to the absence of a clear legal basis.

As a whole framework, the author argues that online mediation has not been able to bring more significant changes to the mediation process framework. It is touted that the use of technology can make mediation more effective and efficient, even bringing new problems that will be fatal if no solutions are found. It is undeniable that technology provides great benefits in terms of communication. This is also the background for the use of technology in mediation. However, if the flexibility of communication creates new problems, such as legal uncertainty, security and confidentiality are not guaranteed, or difficulties in building relationships which are an important part of mediation and Alternative Dispute Resolution in general, then is it worth it?

Even so, it does not mean that the implementation of online mediation is ineffective, but it still needs to be done a lot of enhancements and reviews to carry out dispute resolution in this way so that online mediation can enhance the mediation framework, considering there are still many problems, obstacles and challenges that must be faced in the process implementation.

5. Conclusion

As a result of technological developments, the term Online Dispute Resolution is currently known, which is part of Alternative Dispute Resolution which allows parties to resolve their disputes by utilizing technology through an online platform. Online Dispute Resolution itself has several types, one of which is online mediation. From the research conducted by the authors in several alternative dispute institutions in Indonesia, online mediation still encountered several obstacles or challenges that had to be faced. As for some of the obstacles that exist in online mediation, namely the lack of guarantees for the confidentiality of personal data, the absence of a legal basis used to regulate, the lack of resources who understand the implementation of online mediation, and so on. This makes the implementation of online mediation itself not run effectively, so efforts are needed to carry out a review so that the impact or advantages can be felt by the community in order to enhance the mediation framework itself to be more effective and efficient. In order for online mediation to provide the expected benefits for the enhancement of the mediation framework itself, according to the author, the first effort that must be made is to formulate a clear legal basis as the legalization of online mediation itself. With a clear legal basis, the main things of the online mediation framework, such as security, confidentiality, platforms, etc. or improving Online Dispute Resolution technology in general can be enhanced in a more organized manner because there is already a clear legal framework for its implementation. If these obstacles or challenges can be overcome, then the Online Dispute Resolution system can achieve its goals and enhance the mediation framework, so that an alternative dispute settlement will be created through mediation that is more effective and efficient. This paper can be used as material for Indonesian government in taking the right steps to deal with this problem, whether by looking for solutions to

the obstacles and challenges of implementing online mediation or ignoring technological developments by sticking to conventional alternative dispute resolution solely.

Author details

Dewi Sulistianingsih¹
E-mail: dewisulistianingsih21@gmail.com
ORCID ID: <http://orcid.org/0000-0003-4152-0590>
Alviona Anggita Rante Lembang¹
Yuli Prasetyo Adhi²
Muchammad Shidqon Prabowo³

¹ Faculty of Law, Universitas Negeri Semarang, Semarang, Central Java, Indonesia.

² Faculty of Law, Universitas Diponegoro, Semarang, Central Java, Indonesia.

³ Faculty of Law, Wahid Hasyim University, Semarang, Central Java, Indonesia.

Disclosure statement

No potential conflict of interest was reported by the authors.

Citation information

Cite this article as: Online dispute resolution: Does the system actually enhance the mediation framework?, Dewi Sulistianingsih, Alviona Anggita Rante Lembang, Yuli Prasetyo Adhi & Muchammad Shidqon Prabowo, *Cogent Social Sciences* (2023), 9: 2206348.

References

- Adric.ca. (2019). *ODR Tools and Platforms*. Adric.Ca. <https://adric.ca/online-dispute-resolution/odr-tools-and-platforms/>
- Aziz, M. F., Putra, A., Nugroho, E., & Arifianti, E. D. (2021). Digitalisasi dan Akses Konsumen terhadap Keadilan (Consumer Access to Justice) di Indonesia: Online Dispute Resolution (ODR). *PSHK - Pusat Studi Hukum dan Kebijakan Indonesia (Indonesian Centre for Law & Policy Studies)*, 4(1), i–xviii+126.
- Calizta, A. N. A., & Ruhaeni, N. (2023). Penegakan Hukum Terhadap Pelaku Penyalahgunaan Penyebaran Data Pribadi Jurnalis di Indonesia Berdasarkan Undang-Undang Nomor 27 Tahun 2022 Tentang Perlindungan Data Pribadi. *Bandung Conference Series: Law Studies*, 3(1). <https://doi.org/10.29313/bcls.v3i1.4960>
- Chaisse, J., & Kirkwood, J. (2022). Smart courts, smart contracts, and the future of online dispute resolution. *Stanford Journal of Blockchain Law & Policy*, 4(1), 62–91.
- Kusumojati, M. P., & Ferry Rosando, A. (2021). Peran Badan Pertanahan Dalam Mereduksi Konflik Dan Perkara Sengketa Tanah Melalui Mediasi. *COURT REVIEW: Jurnal Penelitian Hukum*, 1(03), 16–34. <https://aksilogi.org/index.php/courtreview/article/view/3>
- Matsum, H., Siregar, R. S., & Marpaung, R. A. S. (2022). Efektivitas Mediasi Online Terhadap Perkara Perceraian di Pengadilan Agama Medan Pada Era Pandemi Covid -19. *Hukum Islam Dan Pranata Sosial Islam*, 1(2), 437–454. <https://doi.org/10.30868/am.v1i02.2603>
- Nugroho, S. A. (2019). *Manfaat Mediasi sebagai Alternatif Penyelesaian Sengketa*. (I. Fahmi & Witnasari, Eds.). Prenadamedia Group (Divisi Kencana).
- Pangesti, O. A. (2019). *Online Dispute Resolution (Odr) Perspektif Hukum Positif Dan Hukum Islam Online Dispute Resolution (Odr)*. UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG.
- Rizqi, L. A. M., & Prasetya, D. F. (2022). Urgensi Penggunaan Smart Contract dalam Transaksi Jual Beli di E-Commerce. *Jurnal Hukum Lex Generalis*, 3(4), 327–338. <https://doi.org/10.56370/jhl.v3i4.247>
- Sagala, L. M., & Marpaung, D. S. H. (2021). Penegakkan Hukum serta Upaya Penyelesaian Sengketa Online Marketplace melalui Mekanisme Online Dispute Resolution. *Widya Juridika*, 4(2), 421–434. <https://doi.org/10.31328/wy.v4i2.2414>
- Schultz, T., Kaufmann-Kohler, G., Langer, D., & Bonnet, V. (2001). Online dispute resolution: the state of the art and the issues. *E-Com Research Project of the University of Geneva*, December(2001), 1–102.
- Setiyawan, W. B. M., Rudatyo, E. C., & Rudatyo, R. (2020). Online Dispute Resolution sebagai Model Perlindungan Hukum Bisnis. *RechtIdee*, 15(1), 114–132. <https://clik.dva.gov.au/rehabilitation-library/1-introduction-rehabilitation%0Ahttp://www.scirp.org/journal/doi.aspx?DOI=10.4236/as.2017.81005%0Ahttp://www.scirp.org/journal/PaperDownload.aspx?DOI=10.4236/as.2012.34066%0A10.1016/j.pbi.201>
- Shalahuddin, S. M. (2021). Efektivitas Hukum Mediasi Online Pada Masa Pandemi COVID-19 Di Pengadilan Agama Jakarta Selatan Tahun 2021 Menurut Perspektif Kaidah Fiqh Darul Mafasid Muqaddamun'ala Jalbi Mashalih. *IUN Syarif Hidayatullah Jakarta*, Desember(2021), 1–51.
- Srimamora, D. (2020). Tinjauan Normatif terhadap Online Dispute Resolution sebagai Metode Penyelesaian Sengketa E-Commerce. *Eksekusi*, 2(2), 185–208. <https://doi.org/10.24014/je.v2i2.10838>
- Siswanto, M. A. (2018). *Prinsip-prinsip Mediasi dalam Penyelesaian Perkara Kecelakaan Lalu Lintas*. Wijaya Kusuma Surabaya University.
- Sugiarto, S. (2019). Online Dispute Resolution (ODR) sebagai Alternatif Penyelesaian Sengketa di Era Modernisasi. *Jurnal Qawaniq*, 3(1), 50–65. <https://doi.org/10.30762/q.v3i1.1484>
- United Nations Commission on International Trade Law. (2017). *UNCITRAL Technical Notes on Online Dispute Resolution*. English, Publishing and Library Section, United Nations Office at Vienna. www.uncitral.org
- Utama, G. S. (2017). Online dispute resolution: A revolution in modern law practice. *Business Law Review*, 3(3), 1–6. <https://law.uii.ac.id/wp-content/uploads/2017/04/V-01-No-03-online-dispute-resolution-a-revolution-in-modern-law-practice-gagah-satria-utama.pdf>
- Wang, F. F. (2009). *Online Dispute Resolution (Technology, management and legal practice from an international perspective)*. Chandos Publishing. <https://www.venables.co.uk/businesses/odr/>
- Wicaksana, D. P. A., Dewi, A. A. S. L., & Suryani, L. P. (2021). Mediasi Online sebagai Alternatif Penyelesaian Sengketa Hubungan Industrial pada Masa Pandemi COVID-19 di Indonesia. *Jurnal Analogi Hukum*, 3(2), 177–182. <https://doi.org/10.22225/ah.3.2.2021.177-182>
- Zaidah, Y., & Normas, M. R. (2021). Mediasi Online Dalam Penyelesaian Perkara. *Journal of Islamic and Law Studies*, 5(3), 334–348. <https://doi.org/10.18592/jils.v5i3.5847>
- Zaroni. (1992). *Pengembangan Pengantar Teori Sosial Tiara Yoga*.
- Zheng, J. (2020). Online Resolution of E-commerce Disputes. *Online Resolution of E-Commerce Disputes*. <https://doi.org/10.1007/978-3-030-54120-0>