

Indonesia's Settlement Procedure of Small Claims: A Proposal for the Implementation of Online Dispute Resolution

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Abstract

This research primarily aims to investigate the opportunities for the internalized implementation of Online Dispute Resolution (ODR) within the judicial system for the settlement of small claims in Indonesia. Several positive features of ODR, such as its ease, speed, and cost-effectiveness, can serve as catalysts for the settlement of small claims. Currently, Article 6A of the Supreme Court Regulations No. 4 of 2019 concerning the Settlement Procedure of Small Claims (the Small Claims Regulation) also allows for the use of electronic case administration in accordance with relevant legislation. This study employs a normative juridical research approach with a qualitative descriptive analysis method. The data used consist of secondary data, including primary legal sources from various legislative regulations.

Additionally, data from journal articles, reports, and other literature related to ODR and small claims are utilized. A comparative study with the United States is employed to gain insights into best practices for implementing ODR in small claims settlement. Subsequently, this research proposes several steps for the ODR process in resolving simple lawsuits, including case initiation, negotiation, mediation, and adjudication. Furthermore, it emphasizes the principles of ODR that need to be upheld, such as voluntariness, accountability, and impartiality. Ultimately, integrating technology into civil justice systems through ODR will enhance the effectiveness and accessibility of justice in resolving small claims.

Keywords

Online Dispute Resolution, Small Claims, Access to Justice

A. Introduction

The 2023 Rule of Law Index Report, published by the World Justice Project, ranks Indonesia at 66 out of 142 surveyed countries.¹ This ranking provides insights into the state of legal compliance in Indonesia, particularly in the context of civil justice. The report underscores that Indonesia still lags below the average score concerning accessibility, effectiveness, and affordability in civil justice.² As of 2023, there were 136,775 civil cases examined at the district court level, with 9,519 of them undergoing appeal proceedings.³ Furthermore, the ratio of the caseload of civil cases to the number of judges at the district court and appeal court stands at 1:469 (one judge handling 469 cases).⁴

In response to this situation, the utilization of Information Technology (IT) in the resolution of civil disputes has opened

¹ Andrej Bukovnik et al., *The World Justice Project: Rule of Law Index 2023*, 2023, <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2023.pdf>.

² Bukovnik et al., p. 98.

³ Supreme Court of the Republic of Indonesia, "Executive Summary of Annual Report 2023", available at https://kepaniteraan.mahkamahagung.go.id/images/laporan_tahunan/FA-LAPTAH_MA_2023-_low.pdf.

⁴ Supreme Court of the Republic of Indonesia.

opportunities for improvement in access to justice. This includes cost savings, shorter case settlement times, convenience, and the possibility of procedural customization to individual preferences.⁵ One such application of IT is Online Dispute Resolution (ODR). In several practices, ODR enables real-time dispute resolution using video and the sharing of documents from individual devices as an alternative to physical courtroom attendance.⁶ Another form of ODR can be observed in online mediation provided by e-commerce platforms like eBay, Paypal, Amazon, and others.⁷

In essence, the implementation of ODR can be divided into two forms. *First*, ODR integrated within the judicial system, encompassing the resolution of civil cases through litigation and non-litigation means. In the litigation context, ODR bears similarities to the concept of e-court, wherein processes such as registration, payment, summons, and case examination are conducted through applications.⁸ In the non-litigation context, ODR is applied to alternative dispute resolution mechanisms, one of which is mediation conducted as part of the judicial system. *Second*, ODR used in the resolution of online disputes and consumer disputes.

This research fundamentally seeks to investigate the opportunities for the internalized implementation of ODR within the judicial system for the resolution of small claims in Indonesia. Several positive features of ODR, such as ease, speed, and affordability in resolving cases, can serve as catalysts for the resolution of small claims. Currently, the resolution of small claims is guided by Supreme Court Regulations No. 4 of 2019 concerning the Settlement Procedure of Small Claims (Small Claims Regulation). Article 6A of Small Claims Regulation also allows for the use of electronic case administration in accordance with relevant legislation.

⁵ Brian A Pappas, "Online Court: Online Dispute Resolution and The Future of Small Claims", *UCL Journal of Law & Technology* 12, No. 2 (2008).

⁶ Vivi Tan, "Online Dispute Resolution for Small Civil Claims in Victoria: A New Paradigm in Civil Justice", *Deakin Law Review* 24 (2019): 101–138.

⁷ Tan.

⁸ Tria Prabawati, *et. al*, "Efektivitas Penerapan Aplikasi E-Court dalam Upaya Peningkatan Kualitas Pelayanan Publik (Studi di Pengadilan Negeri Tanjung Karang Kelas 1A)", *Administrativa* 3, No. 1 (2021): 37-39.

The urgency of this research lies in at least three arguments. *First*, there is a high compatibility between ODR and small claims, related to characteristics such as small monetary claims, parties residing at a distance from each other, and relatively straightforward issues.⁹ *Second*, in 2022, there were 7,432 small claims lawsuits at the district court level, with 455 cases remaining by the end of the year.¹⁰ The percentage of resolved small claims cases in 2022 reached 93.88%. However, when examining the trend of small claims from 2017 to 2022, there was a 50% increase. Therefore, anticipatory efforts are needed for the growing number of small claims cases. Third, ODR in small claims can contribute to improving access to justice for disputing parties. Seekers of justice do not have to resort to regular lawsuits in court, which require significant time and expenses. As long as the formal requirements are met, such as a maximum claim value of IDR 500,000,000.00, the disputing parties can utilize the relatively faster and more affordable procedure of small claims.

Hence, this research aims to address the research questions, including (i) what are the procedures and weaknesses in the resolution of small claims in Indonesia?; (ii) how are ODR procedures in the United States structured?; and (iii) what are the opportunities for the implementation of ODR concepts and procedures in Indonesia concerning the settlement of small claims?

B. Method

This study adopts a normative juridical approach, utilizing a qualitative descriptive analysis method. This methodology facilitates the examination of legal regulations concerning both simple lawsuits and ODR. Among these regulations are the 2015 Supreme Court Regulation on Small Claims and the Law on Judicial Authority, among others. The analysis of these regulations is then approached

⁹ Pappas, "Online Court: Online Dispute Resolution and The Future of Small Claims".

¹⁰ Mahkamah Agung RI, "Laporan Tahunan 2022: Integritas Tangguh, Kepercayaan Publik Tumbuh", available at https://kepaniteraan.mahkamahagung.go.id/images/laporan_tahunan/FA-LAPTAH-2022.pdf.

conceptually, aiming to establish an effective and efficient framework for resolving simple lawsuit disputes and implementing ODR. Particularly, insights from the legal landscape of ODR regulation in the United States serve as valuable lessons for proposing ODR strategies in Indonesia.

The analysis of the research objects is then organized into a procedural outline reflecting existing practices within simple lawsuits in Indonesia. This involves identifying legal gaps and juxtaposing them with the principles of ODR as observed in the United States. Finally, the study delves into discussing the legal framework for implementing ODR in the resolution of simple lawsuits in Indonesia.

C. Result and Discussion

1. Procedures and Weaknesses in Small Claims Settlement in Indonesia

The Small Claims Regulation serves as the legal foundation for the resolution of small claims lawsuits in Indonesia. Prior to its revision in 2019, the Small Claims Regulation was initially introduced in 2015. This initiative was grounded in the consideration of alleviating the caseload burden on the Supreme Court while concurrently enhancing expeditious and uncomplicated dispute settlement.¹¹ The targeted subject matter of Small Claims Regulation encompasses disputes characterized by low case value and complexity.

There exist at least six dimensions within the framework of small claims in Indonesia. *First*, nature of disputes. The disputes subjected to settlement within the context of small claim lawsuits can encompass both breach of contract and/or unlawful acts. *Second*, claim value. Small claim lawsuits are filed for material claims not exceeding IDR 500,000,000.00. *Third*, exceptions within the scope of small claim lawsuits include cases whose dispute resolution is pursued through specialized courts and disputes pertaining to land rights.¹² *Fourth*, each party comprises a single plaintiff and a single defendant. *Fifth*, both the

¹¹ Muhammad Noor, "Penyelesaian Gugatan Sederhana di Pengadilan (Small Claim Court) Berdasarkan Peraturan Mahkamah Agung Nomor 2 Tahun 2015", *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam* 11, No. 1 (2020).

¹² Please refer to Article 3 of Supreme Court Regulation No. 5 of 2019.

plaintiff and defendant must fall within the jurisdiction of the same court. *Sixth*, a single judge presides over the proceedings of a small claim lawsuit.

Concerning the procedural aspects of resolving small claim lawsuits, the Small Claims Regulation delineates seven sequential stages.¹³ *First*, registration stage. Initially, the plaintiff registers the small claim lawsuit in the district court with relative competence over the dispute. Typically, the plaintiff completes a "lawsuit form" comprised of three general sections. These sections encompass descriptions of the parties' identities, a narrative of the contested events along with the applicable legal provisions, and the plaintiff's claims. Additionally, the plaintiff is obliged to append legislatively recognized documentary evidence.

Second, appointment of judge and designation of deputy clerk. The chief of the district court will designate a single judge for the settlement of small claim lawsuits. This aspect is distinctive in the context of small claim lawsuits due to the straightforward nature of the cases, a maximum examination period of 25 days, and the enhanced legal certainty. *Third*, preliminary examination. The third stage serves as a differentiator between the settlement of small claim lawsuits and regular lawsuits. In numerous civil procedure practices across various countries, the term "preliminary examination" is associated with preliminary procedures¹⁴ or pre-trial discovery.¹⁵ In essence, the judge assesses and categorizes the filed lawsuit as a small claim lawsuit during this phase. This assessment is grounded in two key criteria: (i) the scope of the small claim lawsuit and (ii) the simplicity of the evidence presented. If the judge deems the filed lawsuit to be a small claim lawsuit, the case proceeds to the next stage. Conversely, if the judge rejects it as a small claim lawsuit, the case is dismissed, and there is no legal recourse against the judge's decision.

¹³ Noor, "Penyelesaian Gugatan Sederhana di Pengadilan (Small Claim Court) Berdasarkan Peraturan Mahkamah Agung Nomor 2 Tahun 2015".

¹⁴ Hiroshi Oda, *Japanese Law*, (New York: Oxford University Press, 2009), pp. 413-419.

¹⁵ Anna Machnikowska, *et. al.*, "The Principles of Civil Procedure in Poland in The Twentieth Century: Doctrine, Drafts and Law in a Comparative Perspective", *Comparative Law Review* 22 (2016): 82-151.

Fourth, the presence of parties. This stage involves two conditions related to the presence of parties. If the plaintiff is absent from the first hearing after a proper summons, the small claim lawsuit becomes null and void. Conversely, if the defendant is absent from the first hearing, the proceedings continue by default (*verstek*).¹⁶ *Fifth*, mediation and case examination. There should be noted that mediation in the context of small claim lawsuits is also governed by the Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures.¹⁷ Accordingly, the mediation within the framework of small claim lawsuits relies on the active role of the judge. If a settlement agreement is not reached through mediation, the case proceeds to a comprehensive (default) examination. This examination involves an exchange of claims and evidences between the plaintiff and the defendant.

Sixth, evidence presentation. In this stage, both parties submit evidence in accordance with the provisions of civil procedure law. However, the nature of evidence presentation in small claim lawsuit cases tends to be less complex due to factors such as the parties involved, the relatively small claim value, and the limited time allocated for case settlement. Nevertheless, the evidence presentation process must prioritize fairness and equal opportunity for both parties. This underscores the principle of *audi et alteram partem*, which requires the judge to listen to the statements of both sides.¹⁸ *Seventh*, judgement. The judge delivers the final judgment in an open hearing accessible to the public. Legal recourse against a judgment in a small claims lawsuit are confined to objections submitted to the chief judge of the district court. Once an judgment of the objection is rendered, the judgment becomes final and binding (*inkracht*). The time frame for submitting a legal recourse is seven working days following the pronouncement of the judgment or following notification to the parties.

¹⁶ According to Article 125 of the *Herzien Inlandsch Reglemen* (HIR), *verstek* can be understood as the settlement of a civil case without the presence of the defendant after proper summons have been issued and without valid reasons.

¹⁷ Noor, "Penyelesaian Gugatan Sederhana di Pengadilan (Small Claim Court) Berdasarkan Peraturan Mahkamah Agung Nomor 2 Tahun 2015".

¹⁸ Achmad Ali, *Asas-Asas Hukum Pembuktian Perdata*, (Jakarta: Prenada Media, 2012), pp. 61-66.

Based on the described procedure for settling small claim lawsuits, there are at least five key issues that merit consideration. *First*, subjectivity in preliminary examination. The issue centers on the preliminary examination stage, where the acceptability of a small claim lawsuit is highly dependent on the subjectivity of the judge. On one hand, judges are required to play an active role (*dominus litis*) in assisting the parties in dispute settlement.¹⁹ However, the subjectivity of judges in determining the acceptance of a small claim lawsuit needs to be constrained within a framework of more precise evidence regulation. The argument for this constraint is grounded in the fact that judges in civil cases are bound by the theory of evidence known as the *positive wettelijk bewijs theorie*,²⁰ meaning that judges assess the correctness or incorrectness of an event based on evidence governed by the law.

If this principle is linked to the need for regulation in the preliminary examination, it can be formulated for each element of the preliminary examination, namely (i) the scope of the small claim lawsuit and (ii) simple evidence. Regarding the assessment of the scope of a small claim lawsuit, the judge primarily bases their consideration on five principles of the small claims lawsuit procedure as stipulated in the Small Claims Regulation, specifically regarding the nature of the dispute, claim value, single parties, jurisdiction of the parties, and the absence of exceptions. As for the element of simple evidence, there are three hierarchical parameters that can be employed such as the admissibility of the evidence presented in accordance with statutory regulations (admissibility), the legal significance of the evidence in substantiating the disputed events (relevancy), and the judge's ability to render a direct judgment based on the presented evidence (materiality).

TABLE 1. Preliminary Examination Assessment

No.	Element	Assesment Indicator
1.	The scope of the small claim lawsuit	<ul style="list-style-type: none"> • the nature of the dispute • claim value • single parties • jurisdiction of the parties

¹⁹ See Article 4 of Law Number 48 of 2009 concerning the Judicial Authority

²⁰ Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP* (Jakarta: Sinar Grafika, 2009), p. 273.

No.	Element	Assesment Indicator
2.	Simple evidence	<ul style="list-style-type: none"> • the absence of exceptions • admissibility • relevancy • materiality

Sources: Authors, 2023 (edited)

Second, there is no specific provision regarding counterclaims in the scope of small claims lawsuits. This means that the rules regarding counterclaims will once again refer to Article 132 of the *Herziene Indonesich Reglement* (HIR). By definition, a counterclaim is a claim filed by the defendant as a response to the plaintiff's claim against them. In the context of conventional civil case settlement, a counterclaim is filed simultaneously with the defendant's response. The substantive requirements for filing a counterclaim are based on jurisprudence that emphasizes a close connection between the conventional claim and the counterclaim. Therefore, a small claims lawsuit is no longer "simple" when a counterclaim is introduced. The judge's assessment of simple evidence will become complex as counterclaims and counterarguments are presented by the parties. This is also accompanied by the presentation of rebuttal arguments by each party. Therefore, counterclaims should be regulated in the settlement of small claim lawsuits.

Third, claims for non-material damages are not within the scope of small claim lawsuits. However, losses that arise, especially in cases of unlawful act, often involve both material and non-material losses simultaneously. However, assessing claims for non-material damages is very difficult and subjective from the judge's perspective. Generally, such assessments are based on Decision of the Case Review No. 650/PK/Pdt/1994, which states that non-material damages can only be awarded in specific cases such as death, severe injury, and defamation. Therefore, the regulation of non-material damages in the settlement of small claim lawsuits needs to be considered.

Fourth, the procedure for settling small claim lawsuits is carried out without the presence of legal advisors. This can pose problems when litigants do not have sufficient legal knowledge. The restriction on legal representation can be understood in the context of expediting the trial

process. However, the presence of legal advisors can help the parties present their core claims and find common ground among their interests. This becomes crucial when parties are directed to use electronic court systems (e-court), which require specific experience and skills. One thing that needs to be monitored is that the presence of legal advisors should not add to the litigation costs for the parties involved. There should be regulations regarding the technical aspects of legal representation by lawyers, especially concerning the remuneration for legal services.

Fifth, the limitation of small claim lawsuit to a single jurisdiction should also be reconsidered. This is because it's quite probable that the parties in question might be situated in different places, even though the case's value falls under the category of a small claim lawsuit. The reason for this restriction is to make it easier for the parties to attend court proceedings. Regrettably, this limitation diminishes the significant role of small claim procedure. Alternatively, initiatives could be undertaken to utilize technological support to overcome mobility challenges and ensure access to the judicial system.

2. Why is Online Dispute Resolution Necessary?

Katsh (2001) argues that Online Dispute Resolution (ODR) represents a mode of conflict resolution that emerges from the amalgamation of two pivotal domains: Alternative Dispute Resolution (ADR) and Information and Communication Technology (ICT).²¹ This conceptualization is underpinned by the discernment that traditional dispute resolution mechanisms are often deemed insufficient in delivering cost-effective, expeditious, and straightforward remedies in the context of civil litigation.²²

The ODR procedure utilizes techniques such as arbitration, mediation, and negotiation conducted online. It also can encompass formal legal processes by accommodating parties to settle disputes using video conferences, email document submissions, and evidence

²¹ Gagah Satria Utama, "Online Dispute Resolution: A Revolution in Modern Law Practice", *Business Law Review* 1 No. 3 (2017): 1-6.

²² Utama.

presentations.²³ Essentially, the ODR system is formulated based on efficiency and effectiveness in the realm of long-distance dispute resolution, accommodating forms of ADR.

In a historical context, the first ODR scheme to emerge was the Virtual Magistrate (VM) in the United States, introduced by The National Center for Automated Information Research in 1995. VM had the authority to settle disputes between internet service providers and users.²⁴ As technology advanced, and as an improvement on the previous system, several new services were introduced that provided ODR-based dispute resolution.

By considering the weaknesses of the settlement procedure of small claim in Indonesia, the utilization of ODR as a procedural undoubtedly will support a much more effective and efficient settlement of cases. In order to delve deeper into the procedures, principles, and evaluation of best practices in ODR utilization, this research will specifically examine the United States in the subsequent sections.

3. The Concept of Online Dispute Resolution in the United States

One of the treaties that adopted rules for the implementation of Online Dispute Resolution (ODR) is the Technical Notes on Online Dispute Resolution established by The United Nations Commission on International Trade Law (UNCITRAL) under the auspices of the United Nations (UN) in 2017. It affirms that ODR procedures are designed to accommodate all nations in resolving disputes, particularly for developing countries; nations in economic transition; nations serving as ODR administrators; nations providing ODR platforms; nations acting as neutral parties; and the parties involved in the development and utilization of ODR systems.²⁵ This legal framework represents a non-binding legal option (*soft law*) for nations. However,

²³ Brian A Pappas, “Online Court: Online Dispute Resolution and The Future of Small Claims”.

²⁴ Pablo Cortes, *Online Dispute Resolution for Consumers in The European Union*, Routledge Research in IT and E-commerce Law. (London: Taylor & Francis Group, 2010), p. 54.

²⁵ UNCITRAL, *Technical Notes on Online Dispute Resolution*, (United Nations Commission on International Trade Law, 2017), p. xi.

the regulations within it serve as a guide for the implementation of ODR in several countries, especially in the United States, where it has been used as a framework for dispute resolution schemes.

The outcomes of the UNCITRAL negotiations in the context of implementing ODR include:²⁶

- 1) Adoption of the Technical Notes on Online Dispute Resolution.
- 2) Delegation of authority to the Secretary-General to publish draft Technical Notes on Online Dispute Resolution concerning ODR. These notes should be made available in electronic form and in all six official UN languages. They should also be widely disseminated, including through electronic means, to governments and other relevant institutions.
- 3) Recommendation for all countries and other stakeholders to utilize the Technical Notes on Online Dispute Resolution in designing and implementing ODR systems for cross-border commercial transactions.
- 4) Requesting all countries to support the promotion and use of the ODR Technical Notes.

Furthermore, in the UN Charter, it is stipulated that parties involved in a dispute should strive for the resolution of their disputes through negotiation, investigation, mediation, conciliation, arbitration, or judicial settlement, utilizing regional arrangements or agencies, or other peaceful means of their choice.²⁷ These provisions serve as a legal basis for dispute resolution through ODR schemes within the context of dispute resolution in the United States as a member state of the UN.

The evolution of law in the United States, particularly the digitization of the litigation process, has experienced rapid advancements. In 1998, the Administrative Office of the United States Courts reported that numerous courts in various states had already begun using video conferences for testimony, judicial hearings, and counseling conducted at different locations.²⁸ Subsequently, the United States' civil justice system, specifically the Federal Civil Justice Reform

²⁶ UNCITRAL.

²⁷ Article 3 of the United Nations Charter.

²⁸ Anggita Doramia Lumbanraja, "Perkembangan Regulasi dan Pelaksanaan Persidangan *Online* di Indonesia dan Amerika Serikat selama Pandemi Covid-19", *Jurnal Crepido* 2, No. 1 (2020): 46-58.

Act of 1990, brought about a transformation in the United States legal landscape by facilitating the conversion of analog information into digital formats post the invention of computer chips.²⁹ Thus, the practice of litigation and dispute resolution using technology and information has indeed been a longstanding feature of the United States' legal landscape.

In addition to the judiciary implementing virtual court mechanisms, the United States also boasts various private or independent institutions that offer digitalized dispute resolution practices commonly referred to as the ODR. Some ODR services provided by private institutions in the United States include (i) CyberSettle; (ii) Uniform Domain Names Dispute Resolution Policy (UDRP); (iii) ODR by Tyler Technologies (Modria); (iv) All American Dispute Resolutions Online (AADROL); (v) American Arbitration Association (AAA); (vi) SquareTrade. Overall, these systems offer dispute resolution services to parties through processes such as discussion, mediation, arbitration, online filing, role-based data access in relevant matters, which are easy to implement, integrated, and provide accessible management.

Not limited to private institutions, several jurisdictional courts in the United States also employ ODR schemes in their proceedings with the aim of enhancing access to justice by reducing barriers to utilizing the legal process. These barriers include the cost of physical presence in court hearings, the “intimidation” factor in face-to-face trials, and the often perplexing nature of civil procedure rules for non-lawyers.³⁰

Disputes addressed through ODR systems extend beyond individual-to-individual or individual-versus-private entity conflicts. These systems also accommodate disputes involving individuals against the state, as they are considered to be more convenient for all parties involved.³¹ Consequently, the United States courts frequently utilize ODR systems to resolve small claims cases, such as traffic violations. ODR facilitates dispute resolution, both in the realm of public and private law, and provides access to justice for the public compared to

²⁹ Lumbanraja.

³⁰ American Bar Association, *Online Dispute Resolution in the United States*. (American Bar Association: Data Visualizations, 2020), p. 4.

³¹ American Bar Association.

litigation methods. ODR schemes are deemed more efficient in terms of time, cost, and accessibility for all parties. To date, legal regulations related to ODR schemes continue to evolve, and many non-court institutions have maximized the provision of online dispute resolution facilities through specific platforms.

The practice of ODR in several independent institutions in the United States follows a relatively similar mechanism. In the case of the American Arbitration Association (AAA), the stages in the ODR scheme include: (i) registration; (ii) completing personal information forms; (iii) filing a claim online with the AAA via mail, fax, email, or other online means; (iv) allowing claimants to add pages containing documents related to the dispute; (v) filling out the claims along with the requested amount; (vi) the AAA will provide information about the neutral party appointed to handle the case to the parties (defendant and claimant); (vii) explanation of the online dispute resolution stages.

The SquareTrade system has slightly different procedures compared to other independent ODR platforms. The steps are as follows such as (i) the claimant submits a complaint through the SquareTrade portal by registering and entering claim details first; (ii) the parties resolve the issue independently, mediated by a computer, which typically takes about ten days.³² The dispute resolution process through SquareTrade has proven its effectiveness, as it has resolved over 60 million disputes annually.

It can be concluded that the stages carried out in the ODR schemes by private institutions in the United States accommodate the following processes, at the very least: (i) the claimant, as an interested party, registers by attaching the claim along with relevant supporting evidence; (ii) the platform plans the dispute resolution process; (iii) the parties are free to request the involvement of a neutral third party (facilitated by either a human or a computer system); (iv) there is an evaluative agreement or decision output for the parties. In the context of ODR practices in the United States, these schemes are facilitated by

³² Teresa Ballesteros, "International Perspectives on Online Dispute Resolution in the E-Commerce Landscape", *International Journal on Online Dispute Resolution* 8, No. 2 (2021): 85-101

independent institutions and are often adopted by several courts in the dispute resolution process.

From several ODR implementation schemes, advantages can be identified, including cost savings; time savings, faster and more practical processes; well-recorded dispute resolution procedures, and the minimization of legal issues. In the era of industry and modernization, disputing parties are often individuals with interests, high mobility, and limited time. It can be seen that the ODR process can be a solution because it does not require the parties to meet in the same physical location. ODR schemes are also considered to provide certainty in data documentation, and the recorded negotiation process can serve as evidence if any party disputes it, as it is integrated through a system.

Disadvantages of implementing ODR include limited facilitation of certain dispute issues; impersonality; confidentiality concerns; limited access to and knowledge of digital tools. Reading emotions and feelings through the body language of the parties is one of the factors used to gauge the situation in the dispute resolution process, but in ODR, this cannot be determined as the parties do not meet face-to-face. Furthermore, the digitalization system that documents the entire dispute resolution process poses potential risks, such as the leakage of personal data and case-related data.

4. Opportunities for Implementing ODR in Small Claim Settlement in Indonesia

The implementation of Online Dispute Resolution (ODR) in the settlement of small claim lawsuits in Indonesia integrated with the judicial system can be a significant proposal to enhance access to justice in Indonesia. To provide a detailed proposal, this subsection will primarily discuss four aspects: (i) the general stages in the settlement of small claim lawsuits, (ii) ODR principles, (iii) ODR procedures, and (iv) the implications of implementing ODR.

First, the general stages in the settlement of small claim lawsuits consist of four major parts: case initiation, negotiation (complaint and response), mediation, and dispute resolution in a contradictory (*default*) court hearing. Case initiation is the initial stage where the parties gather

the necessary information related to the small claim lawsuit.³³ This information includes the identity of the plaintiff, the identity of the defendant, the subject matter of the case, and the plaintiff's claims. After collecting this information, the next stage is for the data to enter the ODR system's database, and it will undergo an initial check by court personnel assigned to ODR, whether it be a judge or a court clerk. The initial check is to assess the scope of the small claim lawsuit and its simple character of evidence.

The next stage is negotiation. Negotiation can be understood as a dispute resolution process that does not involve a third party to reach a point of peace.³⁴ This negotiation process is pursued by giving the parties an opportunity to express their interests and claims, both in writing and orally. The aim is that during this negotiation, the parties understand each other's desires and intentions, and there is the possibility of formulating peace agreements.

On the other hand, during the negotiation process, the parties desire the involvement of a third party to assist in reaching a peace agreement, they can bring in a mediator. The mediator's role is to guide the discussion, seek common ground, and assist in formulating peace agreements. In the author's opinion, mediators can be drawn from both judicial and non-judicial sources, as stipulated in the Supreme Court Regulation Number 1 of 2016 concerning Mediation.

The final stage, if the negotiation and mediation processes fail to result in peace, is to proceed to the court hearing for small claim lawsuits, as regulated in the Small Claims Regulation. However, if an agreement is reached in either the negotiation or mediation stages, the case will be terminated, and the peace agreement will be determined by the judge who examines the case.

Second, the principles that should be upheld in ODR for the settlement of small claim lawsuits is fundamentally based on the Technical Notes on Online Dispute Resolution established by The United Nations Commission on International Trade Law

³³ Lurdes V. Mesquita, "European Small Claims Procedure: An Effective Process? A Proposal for An Online Platform", *Access to Justice in Eastern Europe*, 2022.

³⁴ Hendry P. Panggabean, *Negosiasi: sebagai lembaga alternatif penyelesaian sengketa (APS) dan alternative Dispute Resolution (ADR)*, (Jakarta: Jala Permata Aksara, 2017).

(UNCITRAL). *First*, the implementation of ODR is non-binding, which has implications for the parties' freedom and authority to choose dispute resolution mechanisms, negotiations, and all matters related to the disputed issue as long as they have rights to the matter in question. *Second*, it is descriptive, meaning that the technical notes published by UNCITRAL serve as a guide or explanation (*soft law*) that clarifies how ODR should be conducted.

Third, it reflects the principles of impartiality and independence, where the system provided by ODR, whether involving a neutral third party or a computer system as a third party, operates independently and impartially towards any party. *Fourth*, it emphasizes efficiency and effectiveness in terms of time, cost, and accessibility through an easily accessible platform for all parties. *Fifth*, it incorporates legal processes that protect the rights of the disputing parties, ensuring justice and accountability. *Sixth*, it emphasizes transparency, meaning that the institution or body providing ODR must be trustworthy in the public perspective, especially for the parties involved in the dispute.

Third, the ODR procedure in the settlement of small claim lawsuits can be formulated as shown in the following graph (see Figure 1):

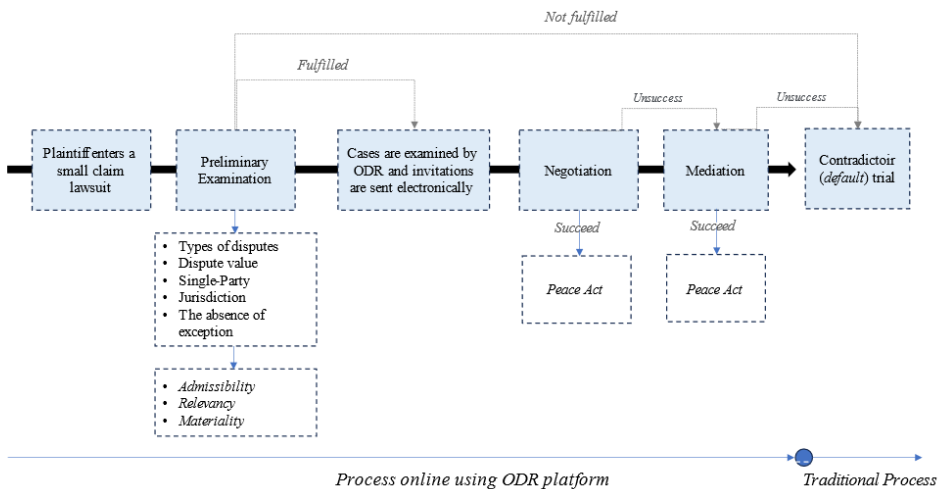


FIGURE 1. ODR Procedure in Small Claim Lawsuits

Sources: Authors, 2023 (edited)

In general, the ODR procedure starts with the plaintiff filing a small claim lawsuit through the provided platform. The plaintiff will

then fill out personal data and complete necessary documents such as the complaint, evidence, and others. After that, the assigned judge or clerk will conduct an initial examination to assess the scope and simplicity of the evidence. Once all preliminary examinations are met, the small claims lawsuit will proceed online using a specific platform, and the system will send invitations for the first ODR hearing.

Conversely, if these requirements are not met, the small claims lawsuit will be directly examined traditionally in a contradictoir session. Once a case is on the first stage, the ODR hearing will take place using the negotiation mechanism. Parties can request the involvement of a third party if they find it challenging to reach an agreement during the negotiation process. The presence of a third party signifies the mediation stage. If this stage succeeds, the parties will formulate a peace agreement, and the small claims lawsuit will conclude. However, if the parties fail to reach an agreement, the small claims lawsuit will proceed directly to a contradictoir trial. The author believes that the ODR process in small claims lawsuits can be completed in a relatively shorter time, approximately 30 days. This is intended to anticipate cases entering traditional trial proceedings, which would take more time.

Fourth, the implications of implementing ODR in settling small claim lawsuits can be summarized into several points. *Firstly*, it enhances the quality, effectiveness, and access to justice. This is related to the convenience of parties in using the ODR platform to resolve their disputes. To achieve this convenience, it is necessary to ensure the security and reliability of the system used as the basis for ODR. Additionally, increasing access to justice is closely related to the possibility for litigants to undergo the trial process independently. The accessibility of the ODR platform is easier and cheaper, eliminating the need for legal advisors. The use of ODR also provides convenience for people with disabilities due to the possibility of having a language interpreter appear on the virtual hearing screen. Another benefit is the prevention of physical confrontations between parties.

The use of technology in the form of ODR is somewhat paradoxical. When the goal of using ODR is to provide flexibility in litigation, it should not hinder parties in the category of "low digital literacy" from accessing the same justice. Actually, regulations that allow legal advisors to assist in resolving small claim lawsuits have specific

benefits, one of which is to help those in that category access ODR. However, again, the presence of legal advisors should not become a new burden for parties to access justice more affordably and simply. Therefore, the keywords in formulating this ODR platform are "uniformity" and "standardization" of procedures and ODR platforms in small claims lawsuits that run parallel to the efforts to meet the needs of each individual. The use of ODR in small claim lawsuits is also advantageous because its output is in the form of a final and binding peace agreement, automatically ending the case.

Secondly, the subsequent implication is the discourse on the legal validity of using ODR in small claim lawsuits. The issue that arises is that the system is highly dependent on the party that develops the system.³⁵ Therefore, aspects of transparency and accountability of the ODR system need to be considered. To emphasize this validity aspect, the implementation of ODR also needs to be accompanied by the development of legal regulations that provide a legal basis.

In the context, the parties involved in ODR implementation include the plaintiff, defendant, and a neutral party as a facilitator. It is not only that, but information technology media also plays a significant role in ODR implementation. Technology and information are considered as the "fourth party" that facilitates disputing parties to clarify issues; then there is a video conference session; and plays a role in identifying parties in a virtual meeting.³⁶ In other words, the existence of software in ODR is recognized as a network used for more than just a simple communication channel.³⁷

Therefore, information technology in ODR must act as a platform that can produce, send, receive, store, exchange, or process communication that ensures data protection.³⁸ Quoting from the UNCITRAL's technical notes on ODR, the ODR platform as the

³⁵ Robert J Condlin, "Online Dispute Resolution: Stinky, Repugnant, or Drab". *Cardozo Journal of Conflict Resolution* 18, No. 3 (2017): 717.

³⁶ Meline Gerarita Sitompul, M. Syaifuddin, and Annalisa Yahanan. "Online Dispute Resolution (ODR): Prospek Penyelesaian sengketa e-commerce di indonesia." *Jurnal Renaissance* 1, No. 2 (2016): 75-93.

³⁷ Sitompul, et.al.

³⁸ UNCITRAL, *Technical Notes on Online Dispute Resolution*, (United Nations Commission on International Trade Law, 2017), p. 4.

fourth party must be managed and coordinated through a body that implements the ODR scheme referred to as the "ODR administrator." An institution or state that acts as an administrator must accommodate and protect the implementation of ODR in accordance with its principles.

D. Conclusion

This research essentially concludes that the scope of small claim lawsuits includes the type of underlying dispute, the dispute's value, single parties, the jurisdiction of the parties, and the absence of exceptions. Meanwhile, the weaknesses in small claims lawsuits arise in five aspects, namely the lack of clarity regarding preliminary examinations, counterclaims, claims for immaterial damages, the absence of legal advisors, and the limitation of cases to a single jurisdiction. To complete the process of small claims lawsuits, information technology support in the form of ODR is needed. ODR, as applied in the United States, focuses on (i) the plaintiff as an interested party, registering by attaching the complaint with relevant supporting evidence; (ii) the platform will plan the dispute resolution process; (iii) parties are free to request the involvement of a neutral third party (facilitated by both humans and computer systems); and (iv) the existence of an agreement or decision output that is evaluative for the parties. This research then recommends several points regarding the concept of implementing ODR in the settlement of small claim lawsuits in Indonesia. This concept is then translated into (i) the general stages in the resolution of small claim lawsuits, (ii) the principles of ODR, (iii) ODR procedures, and (iv) the implications of ODR implementation.

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*Absolute sententia expositore
non indiget" translates to*

**An absolute statement requires no
exposition**

This phrase conveys the idea that a statement that is true or absolute in itself does not require further explanation or elaboration to support its truthfulness

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