

Sharia Banking ICT: Online Dispute Settlement (ODR) As Alternative Settlement In The Sharia Banking Industry In Indonesia

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Abstract: The development of sharia business activities and Islamic financial institutions in Indonesia has the potential to cause disputes between the parties. Therefore, it is necessary to resolve disputes following current conditions where almost all activities are carried out quickly and efficiently through the help of the internet. Information and communication technology (ICT) is growing rapidly and is used in various fields of life, including the banking industry in Indonesia. Departing from legal uncertainty in the settlement of Islamic financial disputes in Indonesian Islamic Banking and existing alternative dispute resolution institutions, access to justice for offline and online financial consumers in Indonesia has been limited. This study aims to examine the dispute resolution mechanisms available to Islamic finance consumers and the feasibility of adopting an ODR mechanism for the industry. In addition, the relevant laws and concepts of Islamic law in practice and theory of contemporary dispute resolution about ODR in industry. The research method used is documentation with a normative juridical approach. The results of the study indicate that ODR is an effective method chosen by the parties in resolving sharia economic disputes due to current needs that demand all activities quickly and easily. ODR also has a clear legal basis through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In the perspective of sharia economic law, as long as the principles, objectives, and mechanisms of ODR do not conflict with sharia principles,

Keywords: Indonesian Islamic Banking, Online Dispute Resolution, Financial Mediation Bureau

INTRODUCTION

Competition in the banking industry in Indonesia is something that cannot be avoided so every bank must try to survive in a situation to be successful in competition, so companies must try to create and retain customers by producing products that consumers want. Therefore, every company must strive to understand the behavior of consumers or customers. The survival of the company is largely determined by customers, both end customers, and industrial customers. In addition, it is necessary to have the key to business success, especially in terms of the ability to anticipate changes in the market environment, and the ability to take advantage of opportunities and overcome challenges. These changes include market dynamics, changes in vision, and being closer to consumers (Apriyanti, 2017).

The banking industry has different characteristics compared to other industries. Thus, in contrast to industry conditions in general, over-competition in the banking industry will force banks to take excessive risks, especially in the competition for the credit and deposit markets. So the banking industry is facing competition and is required to be more proactive in capturing the aspirations of stakeholders before setting various policies. The rapid development of information and communication technology (ICT) cannot be denied that it has changed various patterns of life in all fields, including the banking industry. Information technology today is a vital human need to interact with each other (Chaidir, 2022).

Even if viewed from the side of the socio-technological environment, information systems are one of the critical factors that affect the performance of the business processes of an enterprise organization. Very competitive competition in today's global era demands competitive prime performance, so like it or not, sooner or later, information systems will affect every organization in winning the competition that continues to sharpen. Even information systems are part of the solution to achieve a strategic advantage (strategic advantage) for an enterprise/organization (Widayanti, 2021). Financial transactions between individuals and domestic and international corporate entities are a necessity for social interaction. At the center of commercial transactions are individuals, banks, and other financial institutions to facilitate credit and payment systems, thereby creating one or more financial relationships known as banker-customer relationships. Financial regulators enforce rules and guidelines for interactions between financial institutions and customers to facilitate trade flows and consequential issues such as dispute resolution (Sutiyoso, 2006).

Alternative Dispute Resolution Mechanisms (ADR) in the Islamic finance industry are restricted because banker and customer disputes within the industry are being referred to litigation without considering the ADR process. The emergence of disputes is inevitable in financial matters. However, regulatory bodies have faced these challenges by embracing ADR with flexible mechanisms such as negotiation, mediation, arbitration, and hybrid proceedings. This flexible process has become a formal method of resolving commercial disputes with wide adoption in both international and national legal instruments (Pardede et al., 2021).

Court systems globally have incorporated it into their dispute resolution processes. ADR has proven to be the most suitable and cost-effective method for disputes arising from commercial and financial transactions in recent years. However, ADR has not yet achieved the desired result where disputes arise from transactions carried out partially or completely in cyberspace. The growth of commercial activity in cyberspace is extraordinary because web users can make payments for the desired merchandise online, otherwise known as E-commerce. Indeed, modern trade is developing rapidly in the field of technology, and technology fundamentally shapes international trade; hence the new challenge of ICT-based dispute resolution (Oseni, 2016).

In recent times, Information and Communication Technology (ICT) has penetrated all areas of human life and changed the way we transact. Although at first, the technology was adopted mainly for data processing, it has developed into a real commercial tool,

providing real-time information and services to customers known as E-commerce. Online Dispute Resolution (ODR) can be seen from the use of traditional web-based complaint/feedback options adopted by banks to receive complaints, comments, and feedback from their customers. This tool, originally intended to hear customer views regarding service delivery, was later utilized to further increase mandatory ODR for financial institutions worldwide (Pardede et al., 2021)

The use of technology in financial dispute resolution mechanisms has been encouraged in international trade instruments but much has not been seen in the convergence between ICT and legal procedures in financial dispute resolution. The need for an ODR framework appears to be justified if disputants complete their contracts online, they can agree to resolve issues online following a conceptual affinity view. If the dispute involves a combination of offline and online presence, offline ADR should be the primary reference for enforcement. However, the need for rapid access to justice would provide sufficient justification for an ODR mechanism that is entirely independent of the nature of the commercial dispute and the number of claims involved (Sutiyoso, 2006).

ICT has developed into a necessary tool for faster delivery of justice in the last two decades with its spread in aspects of legal research, case management, legal reporting, and others. Recent legal developments have witnessed the use of video conferencing in the delivery of justice. Therefore ICT and legal convergence can be taken to the next level, where technology can be the center of attention in dispute resolution through the use of ODR.

METHOD

Legal research is a scientific activity based on certain methods, systematics, and thoughts that aim to study one or several certain legal phenomena by analyzing them (Soekanto, 2017). The method used in this research is normative research, using the approach of legislation and the thoughts of figures. Normative legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the issues or problems that occur. Sources of data used in this study are secondary data, namely data obtained from legislation, scientific journals, and legal literature. The data analysis technique used in this research is qualitative analysis with a library research approach.

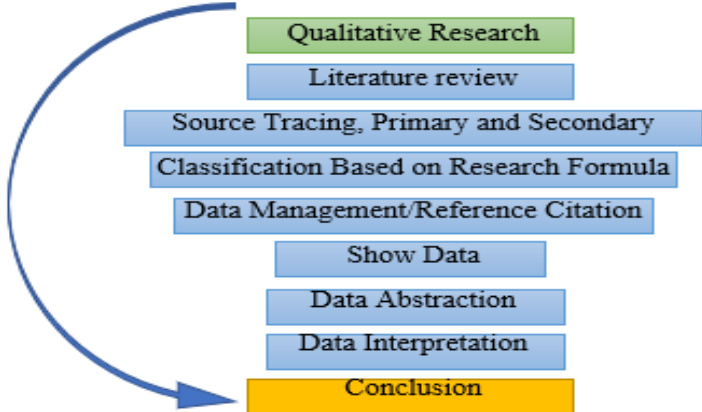


Figure 2. Qualitative Research Flow Literature Study

The figure above explains the editorial in the scenario of the type of qualitative research literature study. This research is a qualitative type through literature study. Stages of research are carried out by collecting library sources, both primary and secondary. This study classified the data based on the research formula. In the advanced stage, data processing and or reference citations are carried out to be displayed as research findings, abstracted to obtain complete information, and interpreted to produce knowledge for concluding. As for the interpretation stage, analysis or approaches are used, for example, philosophical, theological, Sufistic, exegesis, Sarah, and others.

RESULT AND DISCUSSION

1. The legality of Online Dispute Resolution (ODR) in Indonesia

The conception of the idea that law is a means of reform and community development has been accepted in Indonesia. Law as a means of community renewal is an absolute necessity because it is a manifestation of the community's desire for development and reform efforts to maintain order and order. On the other hand, the law as a means of development is a channel for human activity as desired by the reform. In this case, part of the reform and development of Indonesia's business sector is through dispute resolution. Then it led to the establishment of a faster business dispute resolution arrangement, and then in 1999 passed Law 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which opened up great opportunities to resolve business cases out of court.

Then with the development of dispute resolution methods through technology and communication, dispute resolution that occurs in terms of geographically separated circumstances is no longer a barrier. Article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, regulates the pattern of dispute resolution outside the court, following the modernization period. Suppose someone pays attention to the current business trading practices developed over the internet (e-commerce). In this case, the pattern of out-of-court settlement disputes can be developed by providing alternative opportunities for online dispute resolution. However, in Indonesia, there is no specific law or regulation that regulates ODR as an alternative dispute resolution (Widnyana, 2014).

UU no. 30 of 1999 is a law that regulates parties to disputes related to economic activities and parties who do not want dispute resolution through the courts to choose other channels that are more suitable and convenient for them to resolve disputes that occur. Article 1 number 10 of Law no. 30 of 1999 it is stated that the pattern of dispute resolution outside the court includes consultation, negotiation, mediation, conciliation, expert judgment, and arbitration. Six kinds of options provide an opportunity for the disputing parties to choose the best way for them to resolve the dispute. Electronic dispute resolution (e-commerce) is included in the realm of legal agreements (Hasbi, 2021).

The principle of freedom of contract applies, meaning that the parties are free to make legal choices and the choice of dispute resolution forum to be used in the case of

civil disputes between them. Then with the development of dispute resolution methods through technology and communication, dispute resolution that occurs in terms of geographically separated circumstances is no longer a barrier. Article 1 paragraph (3) of Law no. 30 of 1999, states that the arbitration agreement must be made in writing (Alternative Dispute Resolution, 1999).

In connection with the determination of the online arbitration clause in Law no. 30 of 1999, there are 2 (two) kinds of arbitration clauses, namely: *practicum de compromitendo* and deed of compromise. The form of the *compromitendo pactum* clause is determined before the dispute occurs, which can be made simultaneously at the time of making the main agreement or afterward. This means that the arbitration agreement becomes part of the agreement. While the deed of compromise is a special agreement determined after a dispute has occurred to regulate how to submit an argument that has occurred to one or several arbitrators to be resolved, meaning that the compromise deed is made as a separate agreement outside the main agreement. Article 37 paragraph (1) of Law no. 30 of 1999 stipulates that the parties determine the seat of arbitration. However, if the parties do not specify a seat of arbitration, the place of domicile will be determined by the arbitrator. In addition, based on Article 34 paragraph (2) that the parties also determine the rules and procedures to be used in the dispute resolution process, but if the parties do not specify them, the rules and procedures for dispute resolution follow the applicable rules and procedures and are following the rules and regulations. the policy of the chosen arbitration institution.

In principle, arbitration occurs based on the agreement of the parties. For example, the parties agree that dispute resolution will be pursued through online arbitration. However, because the law stipulates that award arbitrations must be authentic and their authenticity is guaranteed, to fulfill the legal provisions there must be an agreement, namely that the original decision can be sent by post or the like. Thus, the arbitration award obtained by the parties will be genuine because: the parties can physically receive the award.

2. Online Dispute Resolution

The issue of online arbitration cannot be separated from the point of view of information technology. Therefore, since the enactment of Law no. 11 of 2008 concerning Electronic Information and Transactions, Indonesia has entered a new era in the use of technology and information. UU no. 11 of 2008 is very important for Indonesia because Indonesia is one of the countries that has used and utilized information technology extensively. Violation of the law in electronic transactions and legal actions in cyberspace is a phenomenon that often occurs today, which uses the information to become part of criminal internet activities. This information and communication technology can provide positive benefits.

Cyber Law is needed There is Law Number 11 of 2008 concerning Information and Electronic Transactions because of the urgency of thinking about the importance of regulating the practice of electronic contracts in Indonesia. Regarding efforts to resolve

electronic transaction disputes carried out in Article 18 paragraph (4) of Law Number 11 of 2008 concerning Electronic Information and Transactions, which states:

“(1) Electronic transactions carried out in electronic contracts are binding on the parties; (2) The parties have the power to choose the law applicable to their international transactions; (3) If the parties do not choose the law in an international electronic transaction, the applicable law is based on the following principles: private international law; (4) The authorities establish court forums, arbitrations, or other alternative dispute resolution institutions that are authorized to handle disputes that may arise from international electronic transactions that they carry out; (5) If the parties do not determine the choice of forum as referred to in paragraph (4), the determination of the authority of the court, arbitration”

Based on the paragraphs in article 41 above, it can be understood that the Indonesian government supports the establishment of the ODR as an institution that has the functions of consultation, mediation, and arbitration. This means that people can form institutions that work to resolve disputes online. Various regulations related to e-commerce have been regulated in Law Number 7 of 2014 concerning Trade (hereinafter referred to as the Trade Law) in line with the rapid growth of e-commerce in Indonesia. The regulation of e-commerce provides certainty and understanding of what is meant by Trading through System Electronics from now on, abbreviated PMSE. In addition, this regulation also includes protection and certainty for traders, PMSE operators, and consumers in conducting trading activities through electronic systems. Rapid and complex economic growth has given rise to various forms of cooperative efforts. Given the increasing business activity, it is impossible to avoid disputes between the parties involved. Conflict of interest between parties is one of the main reasons for the dispute.

Based on the provisions in Article 65 paragraph (5) above, it is possible to conduct ODR as an alternative for dispute resolution related to online activities. In addition, the Directorate of Trade Business Development, the Directorate General of Domestic Trade, and the Ministry of Trade of the Republic of Indonesia 2011 made a final report on the academic text of the Draft Government Regulation (RPP) on Electronic Trade (e-commerce). In Chapter III concerning the Contents of the Electronic Trading RPP and its relation to other positive laws, point 6 regulates the resolution of electronic trade disputes.

The Draft Government Regulation (RPP) on Electronic Trading regulates the online dispute resolution (ODR) mechanism. One of the legal breakthroughs to protect parties in electronic commerce transactions is in online dispute resolution procedures. This existence dramatically affects the power of consumer protection is greater in conducting transactions. The RPP for Electronic Commerce emphasizes the importance of freedom of accessing clear and correct information about ODR procedures, improving consumers' technical capabilities, and understanding the existence of a legal umbrella regarding ODR procedures related to electronic commerce. So the concept of dispute resolution through the Online Dispute Resolution system based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution,

According to Sayyid Sabiq and Wahbah Az - Zuhaily, it is permissible to use Al - Shulh in resolving disputes. This law is based on QS. Al – Hujarat verse 9:

وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتَ إِحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

Meaning: And if there are two groups among the believers who fight, then make a settlement between them. But if one of them oppresses the other, then fight the oppressor until he returns to the decree of Allah. And if it comes back, then make a settlement between them just and fair. Verily, Allah loves those who act justly.

3. Application of Online Dispute Resolution (ODR) as an Alternative for Online Dispute Resolution in Indonesia

The increasingly widespread use of the internet, coupled with the level of transactions in the sale and purchase of products and the use of services across countries, contributes to many disputes. While the current state of the Covid-19 pandemic demands online dispute resolution facilities and methods, this is a major factor in developing the current Online Dispute Resolution (ODR) framework. In addition, traditional dispute resolution mechanisms, such as litigation, can be time-consuming and costly and create jurisdictional problems. This situation is sufficient to explain why (Habib, 2018). Regardless of whether the underlying dispute was generated face-to-face or electronically generated transactions, ODR has been used partially or completely in various types of disputes, ranging from family disputes, and negotiations to armed conflicts, business-to-consumer disputes, domain name disputes, and workplace disputes. E-commerce as a form of the borderless market generates unique disputes between parties who transact virtually in cyberspace (Nafi, 2021).

Electronic disputes are generated in the commercial process of transactions. Sharia-compliant businesses that are major players in international commercial trade are not left behind in the e-commerce revolution. ODR has the potential to resolve the growing number of disputes emerging from the Islamic finance industry (Ilmih et al., 2019). Sharia-compliant businesses that are major players in international commercial trade are not left behind in the e-commerce revolution. ODR has the potential to resolve the growing number of disputes emerging from the Islamic finance industry. Sharia-compliant businesses that are major players in international commercial trade are not left behind in the e-commerce revolution. ODR has the potential to resolve the growing number of disputes emerging from the Islamic finance industry.

Dispute Online Dispute Resolution (ODR) is urgent to be implemented. Apart from being required, Online Dispute Resolution (ODR) has several advantages, such as:

- a. A. Time and money saving. Online dispute resolution will save you more than traditional dispute resolution alternatives because the parties do not have to pay the costs incurred to attend the trial and associated costs.
- b. For consumers who avoid high costs in dispute resolution, of course, it will be easier to accept electronic dispute resolution because they can do it themselves with computer facilities

- c. Parties who use internet access are more confident in dealing with the process they will undergo because they can easily control and respond to what happens in the process; Can avoid meeting with the opposing party. This is a psychological problem;
- d. Other benefits can be obtained by other parties, such as software vendors (software makers).

The ODR system is a secure application used for sending, receiving, and storing digital complaints. This system also allows the parties to check the progress of the dispute resolution process. The Islamic finance ODR system must be compatible with the nature of Islamic financial transactions, which encourages partnerships and joint ventures. It also inherently complements the practice of amicable dispute resolution, where the parties can suggest possible solutions or offer settlements. Banks may also try to avoid reputational risk by seeking a peaceful settlement (Suhartanto, 2019).

Figure 1 shows the proposed stages for online complaint submission where the financial consumer is dissatisfied with the results of the complaint bank and wants to file a complaint with institutional dispute resolution bodies such as FMB, and KLRCA.

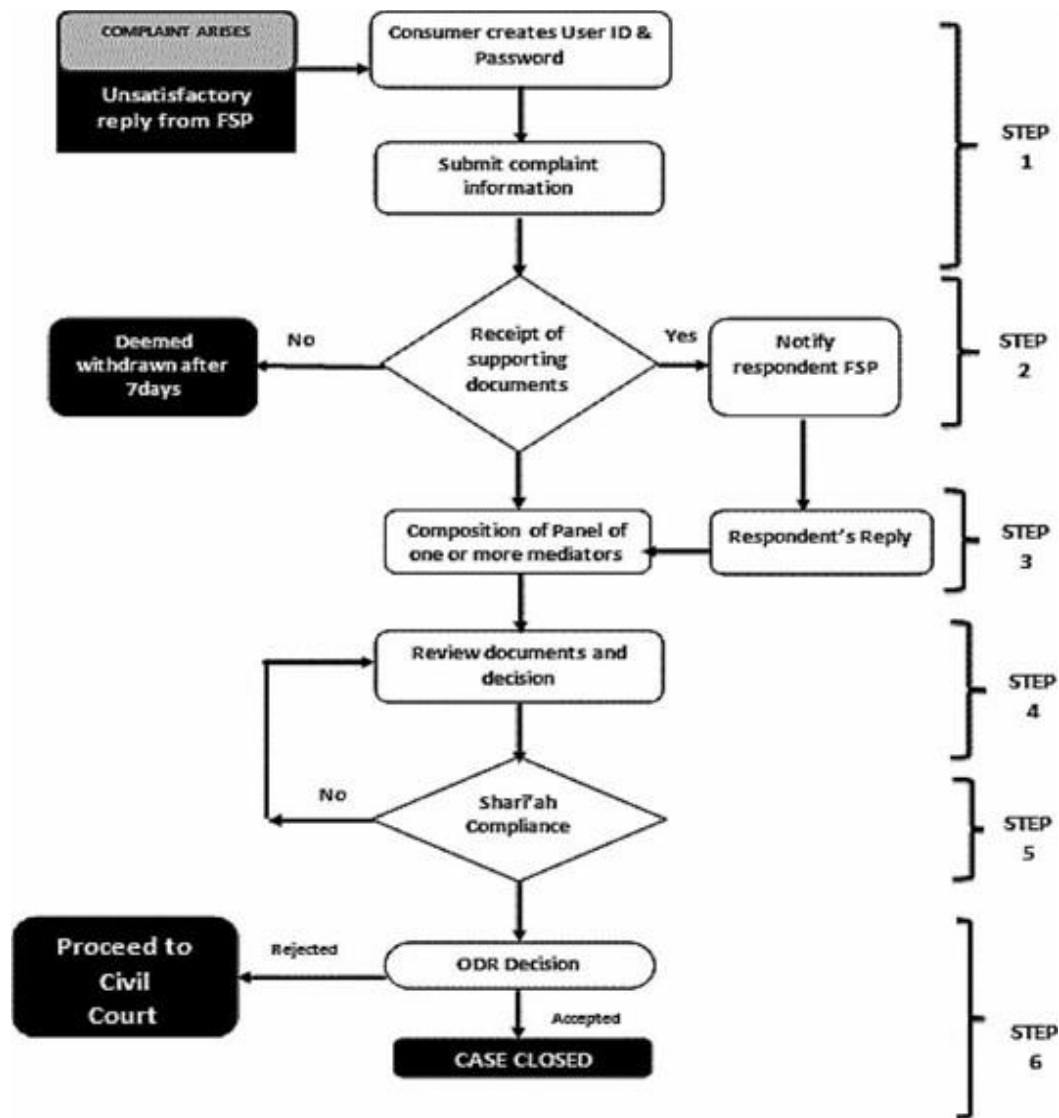


Figure 2. ORD Procedure

1. Complaints

To file a complaint, the consumer must create an account on the ODR System or the website. Complaint information and special information must be provided in the online form. After successful registration, 'user id' and 'password' are generated automatically and sent to the given email. The login details ensure that the ODR system is secure, and it will be used to access the dispute progress via the web app or smartphone app. Furthermore, consumers are expected to enter the complaint information as required by the ODR System.

2. Confirmation of received complaints and supporting documents

The ODR system generates a special ID and notifies the consumer via email, acknowledging receipt of the complaint. The mediation process can only be started with the respondent's financial institution if all supporting documents are submitted through the ODR system. The case is considered withdrawn if the supporting documents are not submitted within 7 days from the start of the case.

3. Notice of respondent financial institution and answer

After receiving the supporting documents, an email notification is sent to the respondent's financial institution to take advantage of the appropriate answer on the case. Respondents can respond to cases either by email or via the ODR system within a certain number of days, an extension of time in special cases may be requested. Similarly, respondents were instructed to state a settlement offer in their reply.

4. Panel composition

A panel of one or three mediators or arbitrators is formed to decide disputes. The nature of the ODR mechanism to be applied to a dispute is determined by the ODR agency and may be based on the choice of the parties. To facilitate the appointment of panel members, a list of certified ODR experts is maintained by the institution for subsequent appointments without delay.

5. Reviews, decisions, and assessments

The panel's decision was made after thoroughly reviewing the documents submitted by both parties and the offers made toward a settlement. However, the Shariah appraiser who can be appointed on an ad hoc basis by the ODR agency must review the decision. This is to ensure that the decision is following the basic principles of Islamic financial transactions. Where it is found that a decision is contrary to the principles of Islamic law, it will be returned to the panel for reconsideration; otherwise, it's the final decision.

6. Confirm decision

Panel decisions are communicated to the parties through the ODR system. Each ODR Decision is considered confirmed if the complainant does not object to the decision by starting the court process within certain days (ie 7 days) after the decision has been communicated to both parties. The respondent who is registered as a member of the dispute settlement agency cannot appeal the decision. To ensure the speedy delivery of justice, each step must be met within certain days, failure equals neglect (Beny et al., 2020).

CONCLUSION

The legality of sharia economic dispute resolution through ODR is indeed regulated in Indonesian laws and regulations. Although, it has not explicitly regulated the technical and ODR mechanism. In addition, ODR as an alternative to sharia economics Dispute resolution in Indonesia has also gained legitimacy from the perspective of sharia economic law. Does not conflict with the basic principles of Islamic economic law, which include, firstly, no arguments against it; second, based on the agreement and willingness of the parties; the third aims to create benefits; Fourth, there are clear rules to avoid the element of gharar. ODR in the form of alternative dispute resolution (negotiation, mediation, and conciliation) follows the principles of deliberation in Islam and arbitration according to the tahkim method. Furthermore, the power of decisions issued by the ODR method is final and binding. This also follows the consensus of the ulama, which states that everything decided by the arbitrator directly is important for the disputing parties without seeking the consent of both parties.

ODR, which relies on trust between the parties, can be found in a democratic society that adheres to the law. In Indonesia, what can be a non-legal factor is the culture of the people. The basic principles are kinship and cooperation. ODR relies on togetherness and mutual trust between the parties. Therefore, it is following Indonesian tradition, so it is possible to apply it. This shows that ODR has the opportunity to be implemented in Indonesia. Meanwhile, the obstacles to ODR when implemented in Indonesia are the absence of a complete set of regulations/regulations, procedural support, infrastructure, and institutions.

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