

Online Dispute Resolution (ODR) as an Alternative Resolution of Sharia Economics in Indonesia

Karimatul Khasanah, Hendri Hermawan Adinugraha, Putri Ayu Mayangsari

Institut Agama Islam Negeri Pekalongan

karimatul.khasanah@iainpekalongan.ac.id

Abstract

The development of sharia business activities and Islamic Financial Institutions in Indonesia can dispute the parties. Therefore, it is necessary to resolve disputes by current conditions where almost all activities are carried out quickly and efficiently through the help of the internet. This paper analyzes the legality of ODR in Indonesia and ODR from the perspective of sharia economic law. The method used is documentation with a normative juridical approach. The results showed that ODR is an effective method chosen by the parties in resolving sharia economic disputes because it is by current needs which require 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, then ODR is the right choice in resolving disputes on the sharia economy of Indonesia.

Keywords: *Financial Institution; Online Dispute Resolution; Sharia Business*

Abstrak

Perkembangan aktivitas bisnis syariah dan Lembaga Keuangan Syariah di Indonesia berpotensi menimbulkan sengketa diantara para pihak. Oleh karena itu diperlukan cara menyelesaikan sengketa yang seharusnya sesuai dengan kondisi saat ini di mana hampir semua aktivitas dilakukan dengan cepat dan efisien melalui bantuan internet. Penelitian ini bertujuan untuk menganalisis legalitas ODR di Indonesia dan ODR dalam perspektif hukum ekonomi syariah. Metode yang digunakan adalah dokumentasi dengan pendekatan yuridis normatif. Hasil penelitian menunjukkan bahwa ODR merupakan metode yang efektif dipilih para pihak dalam menyelesaikan sengketa ekonomi syariah, karena sesuai dengan kebutuhan saat ini yang menghendaki segala aktivitas secara cepat dan mudah. Online Dispute Resolution (ODR) juga telah mempunyai dasar hukum yang jelas melalui dalam Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa. Dalam perspektif hukum ekonomi syariah, selama prinsip, tujuan dan mekanisme ODR tidak bertentangan dengan prinsip syariah, maka ODR menjadi pilihan yang tepat dalam menyelesaikan sengketa ekonomi syariah Indonesia.

Kata kunci: *Bisnis Syariah; Lembaga Keuangan; Online Dispute Resolution*

Introduction

The existence of internet technology significantly changes the patterns of interaction between humans and other humans, including in matters relating to the economy. Economic activities, which are dominated by trading activities, are no longer carried out directly (meaning face to face) or direct selling. However, currently being widely practiced is to take advantage of advances in internet technology, where business or trade transactions do not require meeting directly between the transacting parties, which is termed e-commerce (Sanusi, 2001, p. 12).

Along with the development of Islamic financial institutions, the practice of sharia economics in Indonesia also causes a lot of potential for sharia economic disputes, so a way to resolve conflicts is needed, which should be following current conditions where almost all activities are carried out with the help of internet technology, including sharia economic activities. The characteristics of economic activities carried out with internet technology are fast, easy, and unlimited. If a dispute occurs, the parties also want a quick, easy, and non-limiting settlement where it must resolve. One of the alternatives that can select through the Online Dispute Resolution (ODR). ODR is a method of dispute resolution through the help of internet media so that the disputing parties are not required to meet in person (Basarah, 2011, p. 92).

The writer found several previous studies regarding online dispute resolution. These are generally related to general e-commerce and financial technology and those specifically related to dispute resolution in sharia economic law. Those are relevant to my research, including a study conducted by Muaidi. His research tries to find answers and legitimacy for conflict resolution methods in positive law in Indonesia from the conflict resolution methods practiced by the Prophet. The findings of this study indicate that the way of conflict resolution in positive Indonesian direction is in line with the technique of *sulh* practiced by the Prophet. In positive law, *sulh* is known as Alternative Dispute Resolution (ADR) (Muaidi, 2017).

In contrast to Muaidi's research, Sugiarto seeks to argue for the urgency of resolving business disputes outside the litigation path by using the internet, known as Online Dispute Resolution (ODR). He put forward the development of ODR in European and American countries to argue the importance of resolving business disputes through cyberspace media

without physical meetings (Sugiarto, 2019). Meanwhile, Putra and Setyowati's research shows arguments about the advantages of Online Dispute Resolution (ODR) for resolving disputes that occur between investors and capital market parties in the sharia capital market amid the Covid 19 pandemic, compared to conflict resolution with trial channels (Putra et al., 2020) (Putra et al., 2020).

The research that aims explicitly to reveal the advantages and disadvantages of Online Dispute Resolution (ODR) was carried out by Rule. He showed that the ODR, integrated with the judicial system, would open the broadest possible access to justice and minimize trial costs. Despite its many advantages, the Rule reveals the drawbacks of ODR, such as fraud and abuse. He put forward these findings by basing them on the evolutionary journey of Online Dispute Resolution (ODR) as a method of dispute resolution in the Western world (Rule, 2020). Meanwhile, in a case study in Pakistan, Khan revealed the advantages and disadvantages of Online Dispute Resolution (ODR) (Khan et al., 2018). The findings are not much different from Rule's research. In a different context, Larson revealed the accessibility of the Online Dispute Resolution (ODR) system for people with disabilities in America (Larson, 2019). Meanwhile, Putri announced the effectiveness of Online Dispute Resolution (ODR) implementation using internet-based applications in Indonesian and international law and the Netflix dispute case (Putri, 2019).

Based on the previous research above that showed the development of Online Dispute Resolution (ODR) implementation in international and Indonesia's context and sharia economics law, I hypothesize that Indonesia has not optimally utilized internet technology in terms of sharia economic dispute resolution. This hypothesis is supported and evidenced by the interviews I conducted at BASYARNAS; it is stated that Online Dispute Resolution (ODR) cannot be fully implemented. According to Nugroho, this situation is also caused by the unpreparedness of the legal system in this country, because the legal system does not automatically adjust to the times and technological advances, it requires a long study and process in changing the law to become a newly legal product (Nugroho, 2009, p. 40). Nevertheless, the hypothesis must be examined.

Then, after considering that ODR is urgent today and will be needed in the future, a special study is needed to reveal the possibility of sharia legitimacy for the ODR to be used as an alternative to sharia economic dispute resolution in Indonesia. The question: is the ODR mechanism contradicting or not with the principles contained in sharia economic

law? Considering that ODR did not exist in the classical era of Islam. Suppose the ODR does not conflict with the principles of sharia economic law. In that case, it can be an alternative solution to sharia financial disputes in Indonesia and as a form of driving the development of the sharia economy in Indonesia. In addition, I would like to measure how effective and efficient ODR to dispute resolution on sharia economic disputes. Because currently Islamic financial institutions continue to develop in Indonesia, so it is undeniable that sharia economic disputes are increasingly occurring.

Result and Discussion

1. Sharia Economic Dispute Resolution System in Indonesia

In general, there are two systems for resolving sharia economic disputes in Indonesia. First, in litigation, namely, the settlement of arguments resolved in court institutions with various law procedures. Second, non-litigation, namely the settlement of disputes that are settled outside the court. Payment through non-litigation institutions also recognizes different ways and mechanisms, namely sharia economic dispute resolution through Alternative Dispute Resolution (APS) through arbitration institutions and consumer institutions.

Although the form of sharia economic dispute resolution through consumer institutions is categorized as a non-litigation type of dispute resolution, it is different from the methods and mechanisms applied in alternative dispute resolution (APS) and arbitration. The difference is that apart from being regulated by a separate law, it also has a unique character. Many advantages are arising from non-litigation dispute resolution so that it is more desirable by many parties. The settlement of this model is called the Alternative Dispute Resolution (ADR). The Indonesian government, in general, has confirmed the ADR in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Therefore, since the enactment of this Law, the Alternative Dispute Resolution (ADR) model as an out-of-court dispute resolution has been legally implemented because it has entered the legal system in Indonesia. Online Dispute Resolution (ODR) is included in the Alternative Dispute Resolution (ADR) category. ODR has three types of dispute resolution; are mediation, negotiation, and arbitration (Widnyana, 2014, p. 47).

ODR itself has been implemented in several countries such as Australia, Thailand, Singapore, Malaysia, China, India, and the Philippines (Keuangan, 2017, p. 28). ODR is an

alternative dispute resolution using electronic media and internet networks in the settlement process so that the disputing parties do not need to meet physically. Initially, ODR was developed in information technology to resolve disputes that occur in cybercrime, such as theft of data or content on websites, misuse of personal data use, and so on (Khan et al., 2018, p. 2). However, over time, ODR began to resolve disputes in other fields, including controversies in the economy.

ODR is an umbrella term that covers many forms of Alternative Dispute Resolution (ADR). In practice, ODR uses the internet, websites, e-mail communications, streaming media, and other information technology in a mixed combination as part of the dispute resolution process (Reddy & Jambulingam, 2017). ODR was born because of the synergy between ADR and Information of Computer Technology (ICT) as a method or stepped to resolve disputes that arise in online processes where traditional resolution is very ineffective and impossible (Barnett & Treleaven, 2018); (Katsh et al., 2001, p. 9); (Sidiropoulou & Moustakas, 2008). In short, Alternative Dispute Resolution (ADR), when combined with communication and information technology, is Online Dispute Resolution (ODR). In other words, ODR is the resolution of e-commerce disputes between parties using information and communication technology.

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

Conception of thinking that law is a means of reform and community development has been accepted in Indonesia. Law as a means of community reform is an absolute necessity because it is the manifestation of the community's desire in development and reform efforts for maintaining order and order. On the other hand, the law as a means of development is a channel for human activities as desired by these reforms (Kusumaatmadja, 1986, p. 88). In this case, part of the reform and development of Indonesia's business sector is through the means of dispute resolution. Then led to the formation of faster business dispute resolution arrangements, and then in 1999 passed Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which opens vast opportunities to settle business cases out of court.

Electronic dispute resolution (e-commerce) is included in the realm of agreement law so that the principle of freedom of contract applies, meaning that the parties are free to make legal choices and the choice of dispute resolution forums that will be used in the

event of a civil dispute 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 point 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, regulates the pattern of dispute resolution outside the court, in accordance with the times that are undergoing modernization. Suppose you pay attention to current business trade practices developed through the internet (e-commerce). In that case, the pattern of dispute resolution outside the court can be developed by providing alternative opportunities for online dispute resolution (Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, 1999).

However, in Indonesia, there has been no specific law or regulation regulating its relation to ODR as an alternative to dispute resolution. Therefore, the current existence of ODR refers to several related rules, which will be explained in the following description.

a. The concept of Online Dispute Resolution (ODR) in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

UU No. 30 of 1999 is a law that regulates the disputing parties (in matters related to economic activities) and parties who do not want dispute resolution through the court to choose other more suitable and comfortable channels for them to resolve disputes that occur. Article 1 number 10 Law no. 30, 1999 stated that the pattern of dispute resolution outside the court includes consultation, negotiation, mediation, conciliation, expert judgment, and arbitration (Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, 1999). The six kinds of choices provide an opportunity for the disputing parties to choose the best way for them to resolve the dispute that occurs.

Electronic dispute resolution (e-commerce) is included in the realm of agreement law. The principle of freedom of contract applies, meaning that the parties are free to make legal choices and the choice of dispute resolution forums that will be used in the event of a civil dispute 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) Law no. 30 of 1999, states that the arbitration agreement must be made in writing (Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan

Alternatif Penyelesaian Sengketa, 1999). Then it was strengthened again by Article 9 of Law no. 30 of 1999, which states that:

"(1) In the event that the parties choose to settle the dispute through arbitration after the dispute has occurred, the agreement regarding this matter must be made in a written agreement signed by the parties. (2) In the event that the parties are unable to sign the written agreement as referred to in paragraph (1), the written agreement must be made in the form of a notary deed. (3) The written agreement as meant in paragraph (1) must contain: a problem in dispute; full names and residence of the parties; full name and residence of the arbitrator or arbitral tribunal; a place where the arbitrator or arbitral tribunal will make a decision; full name of the secretary; the period of dispute resolution; a statement of willingness from the arbitrator; and a statement of the willingness of the disputing parties to bear all costs necessary for dispute resolution through arbitration. (4) A written agreement which does not contain the matters referred to in paragraph (3) shall be null and void (Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, 1999)."

Therefore, Law no. 30 of 1999 requires an arbitration agreement in written form because there are no provisions regarding arbitration made electronically. Whereas Article 54 of Law no. 30 of 1999 states that international arbitration awards must be made in writing and signed by the parties and the arbitrator handling the dispute. Law No. 30 of 1999 distinguishes between national arbitral awards and foreign arbitral awards. In the implementation of national arbitration awards, the provisions stated in Article 59 shall apply (Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, 1999).

However, for the implementation of a foreign arbitration award, it must meet the requirements stated in Article 66 of Law no. 30 of 1999, as follows:

"International Arbitration Awards are only recognized and enforceable in the jurisdiction of the Republic of Indonesia, if they meet the following requirements: (a) International Arbitration Awards are handed down by an arbitrator or an arbitral tribunal in a country with which Indonesia is bound by an agreement, either bilaterally or multilaterally, regarding the recognition and implementation of an International Arbitration Award; (b) International Arbitration Awards as referred to in letter a are limited to decisions which, according to the provisions of Indonesian law, fall within the scope of commercial law; (c) International Arbitration Awards as referred to in letter a can only be implemented in Indonesia, limited to decisions that do not conflict with public order; (d) International Arbitration Awards can be implemented in Indonesia after obtaining execution from the Chairperson of the Central Jakarta District Court; and (e) International Arbitration Award as referred to in letter a concerning the Republic of Indonesia as a party to a dispute, can only be implemented after obtaining executor from the Supreme Court of the Republic of

Indonesia which is subsequently delegated to the Central Jakarta District Court (Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, Lembaran Negara Republik Indonesia (1999), n.d.).

In connection with the determination of the arbitration clause in the leading online agreement, in Law no. 30 of 1999, there are 2 (two) kinds of arbitration clauses, namely: the *pactum de compromitendo* and the compromise deed. The form of the *pactum de compromitendo* clause is set before the dispute occurs, which can be made simultaneously when making the main agreement or after that. It means that the arbitration agreement becomes part of the agreement. Meanwhile, the compromise deed is a special agreement determined after the occurrence of a dispute 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 deal.

Article 37 paragraph (1) Law no. 30 of 1999 stipulates that the parties determine the arbitration seat. Still, if the parties do not determine the arbitration seat, 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 determine them, the rules and procedures for dispute resolution follow the rules and procedures that apply and are in accordance with the rules and policies of the arbitral institution selected.

In-Law no. 30 of 1999, the loophole for conducting arbitration online can be seen from the provisions of Article 4 paragraph (3) as follows:

"In the event that it is agreed that dispute resolution through arbitration occurs in the form of an exchange of letters, then telex, telegram, facsimile, e-mail or other forms of communication, must be accompanied by a note of acceptance by the parties (Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, Lembaran Negara Republik Indonesia (1999), n.d.).

Based on the above provisions, in my opinion, online arbitration selection can occur if there is an agreement between the parties. For the editorial of the article above, there is the word "other means of communication," enabling the parties to use the internet as a means of dispute resolution. The admit-able or dis-admitable of this ODR in Indonesian law as stipulated in Law no. 30 of 1999 and its implementation in Indonesia, can be observed from conventional legal arrangements which state that every implementation of domestic and foreign arbitral awards always requires registration in the court, either the

District Court or the Religious Court. From this context, the question is whether this ODR can also be registered in court. In Indonesian law, Law no. 30 of 1999 has not provided a firm regulation. So, if viewed from a juridical point of view, it is natural that ODR should be questioned in Indonesia's civil procedural law system, which regulates dispute resolution issues. Even though in fact, in Indonesia no site tries to develop this ODR dispute resolution system, it must be remembered that other countries' websites that provide ODR services, such as www.adronline.com, have also finally entered the jurisdiction Indonesia (Sutiyoso, 2008, p. 222). This allows users in Indonesia to take advantage of this internet service to resolve their disputes.

Based on the description above, I believe the Online Dispute Resolution (ODR) has not been regulated in detail and explicitly in Law no. 30 of 1999. Furthermore, if we return to the principle of freedom of contract, 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 an arbitration award must be authentic and guaranteed authentication, then to fulfill the provisions of the law 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 physically accept the award.

b. The concept of Online Dispute Resolution (ODR) in Law Number 11 of 2008 concerning Electronic Information and Transactions

Online arbitration issues 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 essential for Indonesia because Indonesia is one of the countries that has used and made extensive use of information technology. 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 the activities of internet criminals. This information and communication technology can provide positive benefits. Still, on the other hand, it also needs to be realized that this technology also offers the opportunity to be used as a medium for committing crimes or crimes that are popularly known as cybercrime. Cyber Law is required.

Law Number 11 of 2008 concerning Electronic Information and Transactions exists because of the urgency of thinking about the importance of regulating electronic contract practices in Indonesia. Regarding electronic transaction dispute resolution efforts held in Article 18 paragraph (4) Law Number 11 of 2008 concerning Electronic Information and Transactions, which states:

"(1) Electronic transactions that are entered into an electronic contract are binding on the parties; (2) The parties have the power to choose the law that applies to the international transactions they make; (3) If the parties do not make a choice of law in international electronic transactions, the applicable law is based on the principles of international civil law; (4) The parties have the authority to establish a court forum, arbitration, or other alternative dispute resolution institution that is authorized to handle disputes that may arise from international electronic transactions they make; (5) If the parties do not make the choice of forum as referred to in paragraph (4), the determination of the authority of the court, arbitration, or other alternative dispute resolution institution which is authorized to handle disputes that may arise from the transaction, is based on the principles of international law (Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, Lembar Negara Republik Indonesia (2008), n.d.).

Meanwhile, suppose the locus of dispute and the disputing parties consist of parties from across countries. In that case, the provisions for dispute settlement shall be made with the international arbitration institution of their choosing. It is regulated in article 18 paragraph (1), (2), and (5) of Law No. 11 of 2008. ODR service providers will also be protected by Law Number 11 of 2008 through Article 33 regarding prohibited actions if there are parties who try to interfere or stop the function of ODR using Information technology facilities, namely:

"Every person intentionally and without rights or against the law takes any action that results in disruption of Electronic Systems and / or results in Electronic Systems not working properly (Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, Lembar Negara Republik Indonesia (2008), n.d.).

Communities who use ODR facilities are also protected and limited by Law Number 11 of 2008 in the event of things that cause losses to the disputing parties through ODR through Article 35, namely:

"Every person intentionally and without right or against the law manipulates, creates, changes, removes, destroys, electronic information and / or electronic documents with the aim that the information and / or electronic documents are considered as authentic data."

The Indonesian government has convinced the Indonesian government to use the ODR function through Article 38 paragraph (1) of Law Number 11 of 2008, which states:

"Anyone can file a lawsuit against the party that operates an electronic system and / or uses information technology that causes losses to the state (Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, Lembar Negara Republik Indonesia (2008), n.d.).

Indonesia can also be said to support the formation of an Online Dispute Resolution based on the clauses stated in the provisions of Article 41 of Law Number 11 of 2008 concerning Electronic Information and Transactions:

"(1) The public can play a role in increasing the use of information technology through the operation of electronic systems and electronic transactions. (2) The role of the community as referred to in paragraph (1) can be carried out through an institution established by the community. (3) The institution as referred to in paragraph (2) can have a consultation and mediation function (Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, Lembar Negara Republik Indonesia (2008), n.d.).

Based on the paragraphs in article 41 above, it can be understood that the Indonesian government supports the formation of the ODR as an institution that has functions of consultation, mediation and arbitration. This means that people can form institutions that function to resolve disputes online.

c. The concept of Online Dispute Resolution (ODR) in Law Number 7 of 2014 concerning Trade

Various regulations related to e-commerce have been regulated in Law Number 7 of 2014 concerning Trade (from now on referred to as the Trade Law) in line with the rapid growth of e-commerce in Indonesia. E-commerce arrangements provide certainty and understanding of what is meant by Trading via Electronic Systems (from now on, abbreviated as PMSE). In addition, this arrangement also includes protection and certainty to traders, PMSE operators, and consumers in conducting trading activities through electronic systems.

The rapid and complex economic growth gave birth to various forms of business cooperation. Given the increasing business activities, it is impossible to avoid a dispute between the parties involved. Conflict of interest between parties is one of the main reasons for disputes.

Article 65 paragraph (5) of Law Number 7 of 2014 concerning Trade states:

"In the event of a dispute related to trade transactions through an electronic system, the person or business entity experiencing a dispute can resolve the dispute through a court or through other dispute resolution mechanisms (Undang-Undang Nomor 7 Tahun 2014 Tentang Perdagangan, Lembar Negara Republik Indonesia (2014), n.d.).

Based on the provisions in article 65 paragraph (5) above, it is possible to carry out ODR as an alternative to dispute resolution regarding online activities. In addition, the Directorate of Trade Business Development, Directorate General of Domestic Trade, and the Ministry of Trade of the Republic of Indonesia in 2011 made a final report on the academic text of the Draft Government Regulation (RPP) on Electronic Commerce (e-commerce). In Chapter III regarding the content of the RPP on electronic commerce and its relationship with other positive laws, in point 6 regulates electronic trade dispute resolution.

"Electronic Dispute Resolution. The RPP Dispute Resolution Mechanism for electronic commerce will focus on the ADR (Alternative Dispute Resolution) mechanism, including mediation, negotiation, and arbitration on all private relationships. Meanwhile, public relations will be directed directly to the court mechanism" (*Naskah Akademik Rancangan Peraturan Pemerintah (RPP) Tentang Perdagangan Elektronik (E-Commerce)*, 2011).

The Draft Government Regulation (RPP) on Electronic Commerce regulates the Online Dispute Resolution (ODR) mechanism. One of the legal breakthroughs to protect parties in electronic commerce transactions in the online dispute resolution procedure. This existence dramatically affects the strength of consumer protection more greatly in conducting transactions. The RPP for Electronic Commerce emphasizes the importance of freedom of access to clear and correct information about ODR procedures, enhancing consumer technical capabilities, and understanding the existence of a legal umbrella regarding ODR procedures related to electronic commerce. Thus the concept of dispute resolution through the Online Dispute Resolution system based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 11 of 2008 concerning Information and Electronic Transactions, and Law Number 7 of 2014 concerning Trade can be used for the future as a reference basis for making more specific legislation regarding Online Dispute Resolution.

3. Online Dispute Resolution (ODR) in the Perspective of Sharia Economic Law

Effective sharia economic dispute resolution (win-win solution) is a necessity in every business activity. The more developed the Islamic economy and business activities, the more likely the number of disputes will increase. The development of an economy and business based on sharia principles has caused the types of arguments to be increasingly diverse, both in patterns and styles. The Religious Court as a litigation institution that has absolute authority in resolving sharia economic disputes is a concern considering that it is known as a litigation institution that only resolves conflicts in the field of family law.

The first step that needs to be taken when resolving disputes, especially those related to sharia economic disputes is through peaceful means. To achieve the essence of peace, the main principle that needs to be put forward is the parties' awareness to return to Allah (Al-Qur'an) and His Messenger (Al-Sunnah) in solving all problems. Such peaceful efforts are usually pursued through deliberation (shura) to reach a consensus between the disputing parties. With considerations that prioritize the principles of sharia, it is hoped that what is the problem of the parties can be resolved (Mujahidin, 2010, p. 133). If deliberation has not yet been resolved, the dispute can be resolved through arbitration or court proceedings. These various dispute resolution channels are an entry point for preventing disputes and resolving disagreements and conflicts later known as *ishlah*. If this conflict is allowed to continue for an extended period, it will lead to destruction. Therefore *ishlah* prevents things that will cause destruction and eliminates things that generate slander and contradiction (Ath-Tharabilisi, Imam Alauddin Abil Hasan bin Khalil, 1973, p. 123).

Dispute resolution includes sharia economic disputes; in Islamic law, there are several verses of the Qur'an that provide instructions for settling peacefully, as for some of these verses include QS 4: 128, QS 49: 9, QS 49: 10, QS 4: 114, and QS 4: 35. Even in the context of disputes or conflicts that have escalated into open warfare, Islamic teachings still support peace. As explained in QS 8: 61, the translation is "*but if the enemy incline towards peace do thou (also) incline towards peace and trust in God: for He is the one that beareth and knoweth (all things).*"

The Qur'anic ethos of peaceful settlement is evidenced by early practices, including the attitude of the Prophet Muhammad himself. The Holy Prophet also said that *shulh* (peace agreement) is allowed between Muslims, except the *shulh* that forbids

something lawful or justifies something *haram*. The Prophet also liked the spirit of peace, among others; From Amr bin 'Auf al-Muzani, that the Prophet said, peace between Muslims is permissible, except for the (peace) agreement to forbid what is lawful and to justify what is *haram* (Imam Tirmidhi, Abu Daud, and Ibn Majah) (Rokhmad, 2017, p. 58). The Prophet and the early leaders of the Muslim community afterward often served as mediators for private and public disputes and spoke about the virtues of *sulh*. Therefore *sulh* is used as a form of legal and even desirable settlement.

Apart from the Qur'an and prophet traditions, according to the Ijma' (consensus) the scholars state that in Islamic historical records, the validity and existence of *tahkim* institutions (arbitration) at the time of the companions were many, and they did not oppose it (Zen, 1994, p. 11). Furthermore, three pillars must be fulfilled in a peace agreement that people must carry out to make peace, namely consent, *qabul* and *lafadz* from the peace agreement. If these three things have been fulfilled, then the agreement has been carried out as expected (Farhum, n.d., p. 19).

Meanwhile, the legal terms of a peace agreement (*sulh*) can be categorized into several aspects (Muaidi, 2017, pp. 12–14):

- a. The thing that concerns the subject
- b. The thing that concerns the object
- c. The object of the dispute that can be reconciled
- d. Peacemaker

Suppose all of the categories and conditions above have been fulfilled in the ODR practices. In that case, the decisions resulting from the ODR system can also be implemented due to the law from the perspective of Islamic law. In this case, the success rate of *ishlah* depends very much on the awareness of the position of each party and their cooperative attitude during the peace process until the goal of dispute resolution is achieved (Rokhmad, 2017, p. 57).

Furthermore, regarding the decisions that have been resulted from choosing to resolve disputes through alternative ways of dispute resolution and arbitration, where the decisions are final and binding, this is following the opinions of the scholars of the Hanafiyah, Malikiyah, Hambaliyah, and some Shafi'iyah schools who agree that everything the decision of the arbitrator (the arbitrator) is directly binding on the disputing parties, without asking for the consent of both parties (Minin, 2011, p. 7).

From the above explanation, it can be concluded that the option of sharia economic dispute resolution through the ODR is allowed as long as it meets the requirements, such as:

- a. There are no elements that violate religious provisions, such as the settlement of disputes from banned businesses, there is an element of fraud, there is an element of gharra, and so on;
- b. The dispute resolution option is an agreement of the disputing parties; there is no element of coercion or pressure from any party;
- c. There are clear rules and mechanisms for the choice of dispute resolution. The disputing parties understand their respective rights and obligations and a third party who helps resolve the dispute.

In addition, there are also four basic principles in sharia economic law, which, if applied to analyze the existence of ODR in Indonesia, can be stated as follows (Arison Hendri, 1999: 72):

- a. The first principle, where it is said that the law of all economic activity is allowed until there are arguments that prohibit or prohibit it. This strengthens the legality of the ODR from the perspective of sharia economic law because this ODR is a relatively new dispute resolution method. In classical Islamic times, ODR was never mentioned because, at that time, there was no internet. The ability of ODR is emphasized by the absence of arguments that prohibit ODR.
- b. The second principle, all activities related to economic activities must be carried out with the parties' agreement without coercion. Let's look at the characteristic of settlement by way of ODR, where ODR is included in the non-litigation category. This principle is also in line with the concept of non-litigation, where dispute resolution can only be resolved by non-litigation if the parties agree well through an agreement that the parties have previously stated. In a contract, as well as a deal made after the dispute arises.
- c. The third principle states that every economic activity or activity must always pay attention to its madharat and maslahat aspects. According to the author, this principle is also in line to establish economic dispute resolution through ODR. ODR is currently a necessity that must receive attention, because nowadays all activities, especially those related to economic activities, use internet technology. Therefore, if the state can facilitate the existence of ODR (with precise legal instruments) according to current

needs, it can encourage benefits in economic activity, significantly to reduce the resolution of economic disputes.

- d. The fourth principle, one of the elements that must be avoided is the element of gharar. Therefore, before the ODR is socialized and formally enforced through laws or regulations explicitly regulating it, the specific governing principles must be made clear to avoid ambiguity or misinterpretation of those who read it.

If the dispute resolution process through the ODR channel does not comply with the terms and conditions described above, then the law is not allowed (haram). This is important so that things that lead to harm and fraud do not occur to the parties in dispute and bring legal certainty because the expected goal of online dispute resolution options is to create benefit. So that if the ODR can be a benefit, the state must immediately make regulations that specifically regulate ODR. Therefore, the vision to make ODR regulations must be based on the goal of obtaining public or multi parties' benefits, as stated in the rules *تصرف الامام على الرعية منوط بالمصلحة* (Jalaluddin As-Suyuthi, n.d., p. 87).

4. The Effectiveness of Online Dispute Resolution (ODR) as an Alternative for Sharia Economic Dispute Resolution in Indonesia

The increasingly widespread use of the internet, coupled with an increasing level of transactions in the sale and purchase of products and use of services across countries, affect numerous disputes. While the current conditions of the Covid-19 pandemic demand facilities and ways of online dispute resolution. These are the main factors in developing the Online Dispute Resolution (ODR) framework nowadays. 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 Online Dispute Resolution (ODR) is so urgent to be implemented.

Apart from being needed, Online Dispute Resolution (ODR) has several advantages, such as:

- a. Time and money savings. Online dispute resolution will save more than traditional alternative dispute resolution because the parties do not have to pay the costs incurred to attend the trial and the costs associated with it;

- 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 their computer facilities;
- c. The parties who use internet access are more confident in facing the process they are going to undergo because they can easily control and respond to what happens in the process;
- d. Can avoid meeting with the opposing party. This is a psychological problem;
- e. Other benefits that other parties may obtain, such as software vendors (software makers) (Siburian, 2004, p. 111).

Furthermore, dispute resolution through ODR also has clear legality, regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In addition, various laws support the enforcement of ODR in Indonesia, such as Article 1338 of the Civil Code, Law Number 11 of 2008 concerning Electronic Information and Transactions, and PERMA No. 1 of 2016 concerning Mediation Procedures in Courts. Therefore, from a legal standpoint, the implementation and development of ODR in Indonesia should not have any juridical constraints; even in the empirical realm, ODR is very much needed amid many kinds of e-commerce and covid pandemic disruption.

One of the crucial issues in e-commerce dispute today is on financial technology (FinTech) dispute. It was evidenced by many previous reports (Disemadi et al., 2020; Usanti et al., 2020). The growth of FinTech companies in Indonesia is speedy. Sulistyandari's research noted that currently, there are 142 FinTech companies in Indonesia. She found that dispute resolution in the event of a dispute between FinTech Companies and Indonesian FinTech Users is usually carried out in an agreement between Indonesian FinTech Companies and FinTech Users and law enforcement. This is in accordance with OJK Regulation No. 77 /POJK.01/ 2016. In this regulation, dispute resolution is carried out by submitting a complaint to the FinTech Company, the Financial Services Authority (OJK), or claiming it through the General Court. However, this method was deemed ineffective (GUMBIRA et al., 2021). Therefore, ODR can be an alternative offer for dispute resolution in FinTech cases. The effectiveness of ODR to dispute resolution on fintech and general e-commerce disputes under Islamic banking was reported by Umar A. Adewale, Abideen Adeyemi Omoola, and Sodiq O. Oseni, for Malaysian context (Oseni et al., 2018; Oseni & Omoola, 2015).

All in all, based on the analysis above, dispute resolution through ODR has good prospects to resolve disputes related to online activities in terms of legal, potential, technology, business, and social factors. However, applying them is not as easy as expected. In many possibilities, several obstacles could create other impediments to the implementation of ODR. One of the ways to overcome these obstacles is to create a detailed mechanism related to the performance of ODR, equipped with telecommunications infrastructure and a security system, and to create a unique institution that handles cases online.

ODR also has excellent potential to be an alternative dispute resolution as expected by many parties because it is following current needs where all activities use internet technology assistance and are carried out quickly and efficiently. So it is not an exaggeration if Indonesia has started to consider preparing more specific regulations regarding the application of ODR. My recommendation to Indonesia's government is to make regulations that specifically regulate the technicalities and mechanisms for online dispute resolution; this is very necessary to minimize various obstacles in the implementation of online dispute resolution. This regulation can be in a Government Regulation (PP) or a Financial Services Authority Regulation (POJK) on ODR.

Conclusion

The legality of sharia economic dispute resolution through ODR is indeed regulated in Indonesian law and regulation. Although, it has not explicitly regulated the technicalities and mechanisms of the ODR. In addition, ODR as an alternative to sharia economic dispute resolution in Indonesia has also gained legitimacy from the perspective of sharia economic law. It does not conflict with the basic principles in sharia economic law, which include, first, there are no arguments against it; second, based on the agreement and willingness of the parties; the third has the aim of creating benefit; fourth, there are clear regulations to avoid gharar elements. ODR in the form of alternative dispute resolution (negotiation, mediation, and conciliation) following the principles of deliberation in Islam and arbitration according to the *tabkīm* method. Furthermore, the strength of the decision issued by the ODR method is final and binding. It is also following the ulama consensus, which states that everything decided by the arbitrator is directly crucial to the disputing parties without asking for the consent of both parties.

Bibliography

- Ath-Tharabilisi, Imam Alauddin Abil Hasan bin Khalil, A. (1973). *Mu'inul Hukkam*. Musthofa al-Bab al-Halabi.
- Barnett, J., & Treleaven, P. (2018). Algorithmic Dispute Resolution the Automation of Professional Dispute Resolution Using AI and Blockchain Technologies. *The Computer Journal*, 61(3), 399–408. <https://doi.org/https://doi.org/10.1093/comjnl/bxx103>
- Basarah, M. (2011). *Prosedur Alternatif Penyelesaian Sengketa Arbitrase Tradisional dan Modern*. Genta Publishing.
- Disemadi, H. S., Yusro, M. A., & Balqis, W. G. (2020). The Problems of Consumer Protection in Fintech Peer To Peer Lending Business Activities in Indonesia. *Sociological Jurisprudence Journal*, 3(2), 91–97. <https://doi.org/https://doi.org/10.22225/scj.3.2.1798.91-97>
- Farhum, M. I. (n.d.). *Tabsirah al Hukkam fi Ushul al Qhadhiyah wa Manabij al Abkam*. Darr al Maktabah al Ilmiah.
- GUMBIRA, S. W., PUSPITAWATI, D., & TEJOMURTI, K. (2021). Unefficiency Settlement Of Fintech Lending Disputes And How Legal Framework To Settle It: Indonesia Perspective. *Journal of Contemporary Issues in Business and Government*, 27(2), 4021–4024. <https://doi.org/https://doi.org/10.47750/cibg.2021.27.02.413>
- Naskah Akademik Rancangan Peraturan Pemerintah (RPP) tentang Perdagangan Elektronik (E-Commerce)*, (2011) (testimony of Direktorat Bina Usaha Perdagangan Direktorat Jenderal Perdagangan Dalam Negeri Kementerian Perdagangan Republik Indonesia). <https://docplayer.info/30459594-Laporan-akhir-naskah-akademik-rancangan-peraturan-pemerintah-rpp-tentang-perdagangan-elektronis-e-commerce.html>
- Jalaluddin As-Suyuthi. (n.d.). *Al-Asybah wan Nadha`ir*. Darul Kutub Al-Ilmiyyah.
- Katsh, E. E., Katsh, M. E., & Rifkin, J. (2001). *Online dispute resolution: Resolving conflicts in cyberspace*. John Wiley & Sons, Inc.
- Kuangan, O. J. (2017). *Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Online Dispute Resolution (ODR)*. Departemen Perlindungan Konsumen OJK.
- Khan, M. D., Kaya, S., & Habib, R. I. (2018). Global Trends of Online Dispute Resolution (ODR) with Reference to Online Trade in Pakistan. *Review of Economics and Development Studies*, 4(2), 303–311. <https://doi.org/https://doi.org/10.26710/reads.v4i2.415>

- Kusumaatmadja, M. (1986). *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*. Bina Cipta.
- Larson, D. A. (2019). Digital Accessibility and Disability Accommodations in Online Dispute Resolution: ODR for Everyone. *Ohio St. J. on Disp. Resol.*, 34(3), 431.
- Minin, D. (2011). Penyelesaian Sengketa dalam Praktik Ekonomi Syariah di Luar Pengadilan menurut Hukum Islam. *Kanun Jurnal Ilmu Hukum*, 13(1), 1–22.
- Muaidi, M. (2017). Penyelesaian Sengketa dalam Hukum Ekonomi Syaria'ah. *TAFALQQUH: Jurnal Hukum Ekonomi Syariah Dan Ahwal Syabsiyah*, 2(2), 1–23.
- Mujahidin, A. (2010). *Prosedur Penyelesaian Sengketa Ekonomi Syariah di Indonesia*. Ghalia Indonesia.
- Nugroho, S. A. (2009). *Mediasi Sebagai Alternatif Penyelesaian Sengketa*. Telaga Ilmu Indonesia.
- Oseni, U. A., Adewale, A. A., & Omoola, S. O. (2018). The Feasibility of Online Dispute Resolution in the Islamic Banking Industry in Malaysia: an Empirical Legal Analysis. *International Journal of Law and Management*, 60(1).
<https://doi.org/https://doi.org/10.1108/IJLMA-06-2016-0057>
- Oseni, U. A., & Omoola, S. O. (2015). Banking on ICT: The Relevance of Online Dispute Resolution in the Islamic Banking Industry in Malaysia. *Information & Communications Technology Law*, 24(2), 205–223.
<https://doi.org/https://doi.org/10.1080/13600834.2015.1067968>
- Putra, A. W., Setyowati, R., Prananda, R. R., & Saptono, H. (2020). Online Dispute Resolution (ODR) dalam Sengketa Investasi Pasar Modal Syariah di Indonesia. *Jurnal USM Law*, 3(2), 235–258. <https://doi.org/http://dx.doi.org/10.26623/julr.v3i2.2707>
- Putri, D. E. (2019). Application of Online Dispute Resolution (ODR) in International and Indonesia Domain Names Disputes. *Lampung Journal of International Law*, 1(1), 19–26.
<https://doi.org/https://doi.org/10.25041/lajil.v1i1.2021>
- Reddy, A., & Jambulingam, M. (2017). Online Dispute Resolution: a New Approach for E-Commerce Disputes. *South East Asia Journal of Contemporary Business, Economic Law*, 13(4), 11–17.
- Rokhmad, A. (2017). Paradigma Hukum Islam dalam Penyelesaian Sengketa. *International Journal Ihya'Ulum Al-Din*, 18(1), 49–64.
<https://doi.org/https://10.21580/ihya.17.1.1731>
- Rule, C. (2020). Online Dispute Resolution and the Future of Justice. *Annual Review of Law*

- and Social Science*, 16, 277–292. <https://doi.org/https://doi.org/10.1146/annurev-lawsocsci-101518-043049>
- Sanusi, M. A. (2001). Transaksi Bisnis dalam Electronic Commerce (E-Commerce): Studi tentang Permasalahan Hukum dan Solusinya. *Jurnal Hukum Ius Quia Iustum*, 8(16), 10–29. <https://doi.org/https://doi.org/10.20885/iustum.vol8.iss16.art2>
- Siburian, P. (2004). *Arbitrase Online: (Alternatif Penyelesaian Sengketa Perdagangan Secara Elektronik)*. Djambatan.
- Sugiarto, S. (2019). Online Dispute Resolution (ODR) sebagai Alternatif Penyelesaian Sengketa di Era Modernisasi. *Qawanin: Journal of Economic Syaria Law*, 3(1), 50–65. <https://doi.org/https://doi.org/10.30762/q.v3i1.1484>
- Sutiyoso, B. (2008). Penyelesaian Sengketa Bisnis Melalui Online Dispute Resolution dan Pemberlakuannya di Indonesia. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 20(2), 229–250. <https://doi.org/https://doi.org/10.22146/jmh.16298>
- Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, Lembar Negara Republik Indonesia (2008).
- Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa, Lembaran Negara Republik Indonesia (1999).
- Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan, Lembar Negara Republik Indonesia (2014).
- Usanti, T. P., Silvia, F., & Setiawati, A. P. (2020). Dispute settlement method for lending in supply chain financial technology in Indonesia. *Int. J. Supply Chain Manag*, 9(3), 435–443.
- Widnyana, I. M. (2014). *Alternatif Penyelesaian Sengketa & Arbitrase*. Fikahati Aneska.
- Zen, S. R. E. M. (1994). *Arbitrase dalam Syari'at Islam*. Badan Arbitrase Muamalah Indonesia.

