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# The Legality of ODR Arbitration under International and National Legal Instruments

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## ABSTRACT

Online Dispute Resolution by Arbitration (ODR Arbitration) is arbitration where the online communication plays major part in the process of arbitration: from the beginning of arbitration to the end. It begins with the request of arbitration to the issuance of the award. Is this process legal according to (1) the existing international legal instruments, and (2) national legal instruments in particular Indonesia?

The method used in this article was the normative legal approach to the laws or regulations instruments both international and national legal instruments. The former included among others the 1996 UNCITRAL Model Law on Electronic Commerce, the 2017 UNCITRAL Technical Notes on Online Dispute Resolution. The national legal instrument covered the Arbitration Law No. 30 of 1999, Law No. 11 of 2008 on Electronic Information and Transaction; and BANI Arbitration Rules. The applied approach examined the practice of arbitration under BANI Arbitration Rules on Electronic means to resolve business disputes.

This article concluded that both international and national legal system, i.e., Indonesian legal system deem the ODR arbitration a valid and enforceable mechanism of resolution of commercial, as well consumer, disputes.

**Keywords:** *international and national legal instruments; ODR arbitration*.

## I. INTRODUCTION

The main characteristic of arbitration proceedings is the communication process between the arbitral tribunal and the parties. Communication is defined as "the sending and receiving of messages or information between two or more people so that the intended message can be understood; a contact relationship.[1]

Two tools are used in the communication process. First, the primary means is the language used are the one agreed upon by the parties. Second, supporting tools are the use of communication aids commonly found in courtrooms, such as loudspeakers and microphones.

The use of relatively cutting-edge information technology in dispute resolution has evolved. At this stage, parties no longer attend the venue of arbitration but simply use technological tools to communicate. This development is evident in the resolution of disputes related to domain names under the online dispute resolution mechanism known as the Uniform Domain Name Dispute Resolution Policy (UDRP), facilitated by the World Intellectual Property Organization (WIPO) since 1999. [2]

Subsequently, the use of information technology tools has grown rapidly since the global COVID-19 pandemic. The pandemic has halted physical arbitration proceedings. This situation has prompted arbitration institutions to turn to electronic means to resolve their disputes. They are using various platforms such as Zoom, Google Meet etc., to ensure that arbitration hearings, which were temporarily suspended due to the pandemic, can resume online.

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[1] *Kamus Besar Bahasa Indonesia* – daring. (Indonesian Language Grand Dictionary – Online) https://kbbi.web.id.

[2] https://www.wipo.int/amc/en/domains/

The development of information technology, especially since the beginning of the 21st century, has accelerated tremendously. The problem is, some voices or opinions argue that this rapid development has not kept pace with legal developments. The development of positive law is slow, while technology is moving fast. It therefore is reasonable, as they argued, to have a special law regulating the ODR in Indonesia.[3] Given the background on the fast development of communication technology in particular the use of ODR in arbitration and the slow pace of law, this article would try to solve two legal problems: (1) is the existing international legal system giving the appropriate legal basis for the conduct of ODR arbitration?; And (2) Is the existing the Indonesian legal system providing legal basis for the commencement of ODR in arbitration?

## II. RESEARCH METHOD

To reach the conclusion to the two legal questions above, this article took a normative and applied approaches. The former analyzed the provisions of international legal instruments in particular the 1996 UNCITRAL Model Law on Electronic Commerce and the national legal instruments in particular the Arbitration Law, i.e., Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. The later, the applied approach, examined the practice of BANI Arbitration Center in resolving the commercial disputes through the use of electronic means.

## III. DISCUSSION AND RESULTS

### 3.1 The Development of Human Communication

The history of civilisation shows that humans are thinking creatures. The famous French philosopher Rene Descartes famously stated, "Cogito ergo sum" (I think, therefore I am). By using their rational thinking power, humans (continue to) maintain their existence in the world's civilizations wherever they are.

Descartes' view illustrates how humans use their rational power to understand the nature, develop knowledge and science and most importantly, to survive. [4] With reason, humans try to develop ways or means of communication so they can communicate with one another when communication or a message is needed, whether due to emergencies or danger, providing warnings of messages that need to be conveyed or communicated immediately even though they are far apart.

History shows that relying on physical strength alone is impossible. In the legend of the marathon, in 490 BC, a Roman soldier named Pheidippides was ordered by his superiors to report the Roman victory over the Persians on the battlefield. He ran to Athens, carrying this news for approximately 42 km. Upon arriving in Athens and delivering news of the victory to the King, he collapsed in exhaustion.

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[3] See for example: Syahriana Hannan Fathya Achya, et.al., "urgensitas Pembentukan Reghulasi Khusus Onlie Dispute Resolution (ODR) sebagai Alternatif Penyelesaian Sengketa di Indonesia" (transl. "Urgency of Special Regulation on Online Dispure Resolution (ODR) as alternative of settlement of dispute in Indonesia"), *Jurnal Kebijakan Reformasi Hukum*, Vol. 8 No 12 (2024); Muhammad Faiz Aziz and Muhammad Arif Hidayah, "Perlunya Pengaturan Khusus Online Dispute Resolution (ODR) di Indonesia untuk Fasilitasi Penyelesaian Sengketa E-Commerce" ("The Need a special regulation on online dispute resolution (ODR) in Indonesia to facilitate the settlement of dispute")," *Journal Rechtsvinding*, Volume 9 No. 2, August 2020, p. 275; Meline Gerarita Sitompul and M. Syaifuddin, Annalisa Yahanan, "Online Dispute Resolution (ODR): Prospec Penyelesaian Sengketa E-Comemrce in Indonesia" (Online Dispute Resolution (ODR): Prospect of the Resolutionof E-Commerce Dispute in Indonesia"), *Jurnal Renaissance*, Volume 1 No. 02, August 2016, pp: 75-93. Also quite interesting and deep analysis and comparative study on this issue: see: Rahul Nikam and Bangkim Singh Nongthombam, "An Analytical Study on Legal Validity of Online Dispute Resolution (ODR) System in India and Indonesia," *Indonesia Law Review* No 12 No. 2 (2022). (The authors argued, there may be separate regulations drafted to put things in a more detailed manner while using ODR in ADR in Indonesia (and in India)).

[4] Terence P. Mora, *Introduction to the History of Communication: Evolutions and Revolutions*, New York: Peter Lang, 2010, p. 1. On Rene Descartes, see: Rene Descartes, Meditations on First Philosophy (transl. Michael Moriarty, Oxford: Oxford U.P., 2008; Huala Adolf, *Filsafat Ilmu: Suatu Pengantar (Philosopy of Science: An Introduction)*, Bandung: Keni Media, 2022, pp. 106-112.

History also shows that humans think and use tools to communicate. In medieval Europe, people used the practice of sending messages on small pieces of paper tied to the legs of pigeons. Native Americans, for example, used fire and smoke from mountains or hills to convey messages to his comrade in other places. With the discovery of electricity and messaging technology, Samuel F.B. Morse invented the telegraph. This technology was further developed into voice, telephone, video communication, and so on.

The development of communication technology can be classified into two types of media: old media and new media. [5] Old media includes long-standing communication methods that do not use computers (non-computer-mediated technology). This type of communication media includes face-to-face communication, desk phones, faxes, or letters. Second, new communication media are media that use computer-mediated technology, such as email and video conferencing. voice mail, group ware (communication with many parties).[6]

If the above means or media are juxtaposed with legal issues, for example with arbitration hearings, do the above means have legal consequences or implications? Can existing laws be applied to communications using the two means above, namely non-computer and computer-mediated technology? An example of such communication is online arbitration or also known as online dispute resolution (ODR). The specific question is whether arbitration proceedings conducted online are different from physical or traditional proceedings and if there are differences, are there any legal consequences?

This note is of the opinion that the communication technology is neutral thing. They are not subject of the law. They should not be subject to the law including its validity of the media or any media used in the arbitration or other mechanisms such as mediation proceedings. Like wise, the communication tools or product may not either be subnected and its validity should not be subjected to the law.

### 3.2 The Legal Value of Tools of Communication

#### a. The Important Role of the 1996 UNCITRAL Model Law on Electronic Commerce

Legal development, in the sense of positive law, is relatively slow. Enacting or amending laws is subject to the constitutional (legal) rules of the state. Each State has its own constitutional procedure for enacting or amending its law.

This constitutional procedure is usually relatively complicated. And, the process can be either fast or extremely slow. The tug-of-war of political power or influence, disinterest in the law's substance, limited budgets, etc., are some of the reasons why this law-making process moves slowly.

The United Nations Commission on International Trade Law (UNCITRAL), the specialized agency of the UN responsible for overseeing and fostering harmonization of the progressive development of international trade law, has focused on this issue. In 1996, UNCITRAL issued the UNCITRAL Model Law on Electronic Commerce (MLEC).

One of the reasons for UNCITRAL's issuance of this MLEC instrument is the increasing use of electronic means in international trade. This rapid development raises relevant questions. Electronic commerce differs from conventional commerce. Conventional commerce requires paper media and signatures or other formalities. Formal requirements require documents to be written,

[5] Bettina S.T. Büchel, *Using Communication Technology: Creating Knowledge Organisations*, New York: Palgrave, 2001, p. 6.
[6] Bettina S.T. Büchel, *Ibid.*

signed, and produced in original documents. [7] In contrast, electronic media is paperless. All trade transactions are conducted through electronic data messages.

UNCITRAL also believes that the MLEC can assist countries worldwide, particularly those whose national laws do not yet regulate electronic transactions. As far as the States with sluggish national laws making are concerned, their market access to international trade will be hindered. Furthermore, differing national laws governing electronic commerce can also result in limited access to international markets. UNCITRAL provides the following assertion:[8]

> "*The Model Law may also help to remedy disadvantages that stem from the fact that inadequate legislation at the national level creates obstacles to international trade, a significant amount of which is linked to the use of modern communication techniques. Disparities among, and uncertainty about, national legal regimes governing the use of such communication techniques may contribute to limiting the extent to which businesses may access international markets*."

This new development in electronic transactions raises questions about the form of transaction. Are transactions via electronic data messages legal? What is their validity? Will the courts uphold them?

In response to these questions, UNCITRAL initiated a study. One important reference point for this institution is comparative research on the practices of countries around the world that have recognized and even regulated electronic commerce transactions within their countries. [9]

The most important contribution of the MLEC is that, first, it paved the way for or legally enabled the use of electronics in trade transactions. Second, the MLEC also provides equal treatment to users of paper-based documents and users of information that utilize computers as an important tool or medium to improve the economy and efficiency in international trade. [10]

Based on the results of legal studies among countries around the world, UNCITRAL finally succeeded in issuing the UNCITRAL Model Law on Electronic Commerce in 1996. The Model Law is not a binding legal instrument. It is merely soft law, a legal instrument containing legislative guidelines (Model Law) for countries worldwide to decide whether to adopt ir or not.

UNCITRAL also uses the Model Law as an instrument for electronic commerce. The rationale for using this non-binding instrument is to encourage more countries to adopt it in their efforts to regulate electronic transactions. With the Model Law as a guideline, countries worldwide are not legally bound by this legal instrument. Even with this non-binding nature, countries can adopt it while creating legal policies that differ from UNCITRAL's legal instruments.

**b. The Application of MLEC to the ODR Arbitration**

The application of the MLEC rules to the issue of online arbitration raises a key question: is the application of the MLEC rules relevant to arbitration proceedings?

It is true that the 1996 MLEC does not regulate online arbitration. However, references to the MLEC regarding the application of online arbitration become relevant in relation to the media or means used in arbitration proceedings, namely online media or the internet.

Tools of communication are divided into two categories: simple and modern. According to the legal principles (below), the use of means before the law should not be differentiated between one means and another. This includes the means used and how the communication is conducted, as

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[7] UNCITRAL, *Op.cit.,* p. 16.
[8] UNCITRAL, *Op.cit.,* p. 16-17; UNITED NATIONS, *Information and Communication Technology Policy and Legal Issues for Central Asia: Guide for ICT Policymakers*, New York and Geneva: United Nations, 2007, p. 7.
[9] UNCTAD, *Information Economy Report 2006,* New York and Geneva: United Nations, 2006, p. 300.
[10] UNCITRAL, *Op.cit.,* p. 17.

long as the communication function can be implemented and agreed upon by the parties and the arbitral tribunal, namely, in this case, online media (ODR). The means or media for ODR proceedings, namely, first, the use of internet media platforms compared to physical (face-to-face) proceedings, should not be discriminated against.

Second, the product of the use of ODR in the form of an arbitration decision delivered online is also not discriminated against as an arbitration decision that does not meet the written requirements and signatures of the parties.

**c. Interpretation**

Another important provision in the 1996 UNCITRAL MLEC is the provision on the interpretation of the MLEC's articles. Article 3 of the UNCITRAL MLEC outlines how to interpret its provisions. Article 3 states:

> *"(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.*
> *(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based." (Italics are added).*

The provisions of this article provide guidelines or direction for how the provisions of the articles (substance) of the MLEC are to be interpreted. *First*, in interpreting the provisions of the articles, it is necessary to consider the background of the convention as an international convention (international origin). [11] The message conveyed by Article 3 is to avoid the use of interpretative principles based on the national laws of each country regarding the provisions of the articles (agreements).

*Second*, in interpreting the provisions of the articles, it is also necessary to consider the commonality of interpretation among countries. This message suggests that in interpreting a provision, courts or interested parties need to conduct a legal comparison of how the provision in question is interpreted by countries in order to achieve a common interpretation.

*Third*, it is also important to prioritize the principle of good faith in interpreting the provisions of the MLEC articles.

**d. Substance and Legal Principles of the 1996 MLEC**

The MLEC consists of 17 articles in two parts. Part 1 contains the MLEC articles under the heading "Electronic Commerce in General." Part 2 covers Electronic Commerce in Specific Areas. The essence of the regulations is to provide a model law for countries worldwide in establishing legal regulations regarding electronic commerce (e-commerce).

In terms of the substance of the regulations, an important article concerns the legal principles regarding electronic means in commerce. Although the MLEC regulates aspects of electronic means in commerce, it also contains legal principles regarding these means.

The four legal principles are:

(1) The principle of autonomy of the parties (Article 4 of the MLEC);
(2) The principle of non-discrimination (Article 5 bis of the MLEC);
(3) The principle of technological neutrality (Article 5 bis of the MLEC); and

[11] The concept of interpretation to the teks of international legal instruments is based on the "*international origin*" approach may be seen in among others *UNIDROIT Principles on International Commercial Contract* (UPICC) (1994). Article 1.6 UPICC under the sub headings "Interpretation and supplementation of the Principles" use the term "international character." Article 1.6 UPICC provides:
"(1) In the interpretation of these Principles, regard is to be had to their *international character* and to their purposes including the need to promote uniformity in their application." (Italics are provided by the author).

(4) The Principle of Functional Equivalence (Article 5 bis MLEC).

*Ad. (1) The Principle of Party Autonomy (Article 4 MLEC)*

The principle of party autonomy, often referred to as the freedom of the parties, is contained in Article 4 of the MLEC under the heading "variation by agreement." It reads:

*(1) As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III may be varied by agreement.*

*(2) Paragraph (1) does not affect any right that may exist to modify by agreement any rule of law referred to in chapter II.*

The principle of party autonomy is a fundamental principle in international trade law. It is enshrined in various important (main) instruments of international trade law (including international contract law). This principle implies the freedom of the parties to contract or trade. This freedom is not absolute; it is subject to mandatory law that cannot be overridden by agreement of the parties.

This principle is also a fundamental principle in the MLEC. This principle implies the autonomy or freedom of the parties regarding the use of agreed-upon technological means for communication. It is also within the agreement or autonomy of the parties to determine the course of arbitration proceedings, whether using physical (direct) communication or electronic communication based on computers or other communication media.

*Ad. (2). Principle of Non-Discrimination;*

The principle of non-discrimination is enshrined in Article 5 of the MLEC. Article 5, under the heading "Legal recognition of data messages," states: "Information shall not be denied legal effect, validity, or enforceability solely on the grounds that it is in the form of a data message." Translated: "Information may not be denied legal validity, validity, and enforceability solely because it is a data message."

The provisions of this article convey an important message to the parties and law enforcement agencies, including the courts. This provision also allays concerns about the legality of communication messages agreed upon by the parties using any media (whatever) they agree on. This article emphasizes that the media agreed upon by the parties cannot be denied legal certainty, including for the courts to enforce it.

*Ad. (3) Principle of Technological Neutrality (Article 5 bis MLEC)*

The principle of technological neutrality (and the principle of functional equivalence, below) falls under the provisions of Article 5 *bis* MLEC. Article 5 *bis* is an additional provision to Article 5 that UNCITRAL added in 1998. The provisions of Article 5 *bis* under the heading of provisions based on designation (incorporation by reference) read:

*Article 5* bis. *Incorporation by reference*

*“Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is not contained in the data message purporting to give rise to such legal effect, but is merely referred to in that data message.”*

The provision of Article 5 bis requires that the validity of a data message also applies to data messages referenced in another data message (incorporation by reference). In practice, this incorporation of reference has long been known and commonly practiced.[12]

*Ad. (4). Principle of Functional Equivalence (Article 5 bis)*

The principle of functional equivalence is a central principle in the UNCITRAL MLEC. UNCITRAL refers to it as the functional equivalence approach. The essence of this functional equivalence is the similarity of the function of the communication product: whether it is in written form or in the form of a data message generated through electronic or similar computer- or internet-based communication.

The principle of functional equivalence is also derived from the interpretation of the provisions of Article 5 bis above. Any form of data message originating from any medium, whether traditional or modern communication media using communication technology, must be treated equivalent. Equivalence means the function of the data message, namely, as a message conveyed using or through various media (as agreed upon by the parties).

This principle or approach of functional equality has also previously been included in the previous MLEC instrument, namely the UNCITRAL Model Law on International Commercial Arbitration 1985. Article 7 paragraph 2 of the UNCITRAL Model Arbitration Law of 1985 regulates and provides limitations on arbitration agreements as follows:[13]

*"2. The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract."* (Italics are provided by the author).

Prior to the 1985 UNCITRAL Model Law on International Commercial Arbitration, other hard-law or binding UNCITRAL instruments had also been enacted. In 1980, the UN enacted the Convention on the International Sale of Goods (CISG). Article 13 of the CISG states that the term written contract also includes contracts made electronically, such as by telegram or telex: "For the purposes of the CISG, "writing" includes telegram and telex."[14]

### 3.3 Evaluation

#### a. Electronic Information and Transactions Law of 2008

As a non-binding legal instrument, the UNCITRAL MLEC has received widespread acceptance from countries worldwide. As of May 2026, 88 countries and 171 jurisdictions (regional courts) had adopted the 1996 UNCITRAL MLEC into their national legal systems.[15] This significant number of countries demonstrates the success of the UNCITRAL MLEC in creating uniform regulations regarding electronic commerce.

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[12] UNITED NATIONS, *Information and Communication Technology Policy and Legal Issues for Central Asia: Guide for ICT Policymakers*, New York and Geneva: United Nations, 2007, p. 21.
[13] UNCITRAL, *Op.cit.,* p. 20.
[14] UNCITRAL, *Op.cit.,* p. 20.
[15] https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce/status (26 Mei 2026).

Of the 88 countries, Indonesia is not listed. Within ASEAN, countries that have adopted the UNCITRAL MLEC are Brunei Darussalam, the Philippines, Cambodia, Malaysia, Singapore, Timor Leste, and Vietnam. [16]

Indonesia has a law concerning electronic commerce, namely Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT) (as amended by Law Number 19 of 2016). Several important fundamental provisions in the EIT Law are listed in Article 3, namely the principle of legal certainty, the principle of benefit, the principle of prudence; the principle of good faith; the principle of freedom to choose technology, and the principle of technological neutrality.

The last two principles in Article 3, the principle of freedom to choose technology and the principle of technological neutrality, reflect or are the same as two of the four principles in UNCITRAL MLEC Articles 4, 5, and 5 *bis*. Both principles, namely the principle of freedom to choose technology, can be juxtaposed with the principle of autonomy of the parties. This principle of autonomy or freedom of the parties includes the freedom to choose technology. The second principle, the principle of technological neutrality, is the same as the principle of technological neutrality in Article 5 *bis* of UNCITRAL MLEC.

Principles that are not explicitly stated are the principles of non-discrimination and functional equivalence. These two unclear principles are actually evident in the provisions of Article 5 paragraph (1) of the EIT Law. Article 5 paragraph (1) states that: "Electronic Information and/or Electronic Documents and/or printed results are valid legal evidence." The wording of the provisions in terms of interpretation shows that the words Electronic Information or Electronic Documents and even printed results (EIT Law) have the same function as data messages from electronic media, the term used in UNCITRAL MLEC.[17]

From the wording of its provisions, it appears that the EIT Law has stronger provisions than the UNCITRAL MLEC. Article 5 (1) of the EIT Law reflects that Electronic Information and/or Electronic Documents, even printed copies (italics by the author), have the same function and are not differentiated from physical documents. This is because Article 5 (1) of the EIT Law states that Electronic Information and/or Electronic Documents, even printed copies, are valid evidence before the law. This means that these electronic documents have the same legal force as physical documents.

In conclusion, the EIT Law not only reflects the principles of the UNCITRAL MLEC. The EIT Law makes provisions that further emphasize that all electronic information or documents and printed copies are documents recognized by law and have legal force.[18]

**b. Arbitration Law of 1999**

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution ("Arbitration Law") reflects the data message principles of the UNCITRAL MLEC. The Arbitration Law also provides the legal basis for conducting arbitration proceedings electronically or online.

Article 4 paragraph (3) of the Arbitration Law states:

*(3) If an agreement is reached that dispute resolution through arbitration will occur in the form of an exchange of letters, then the sending of telex, telegram, facsimile, email, or other means of communication must be accompanied by a note of acceptance by the parties." (Italics by the author).*

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[16] https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce/status (26 Mei 2026).
[17] The Even the EIT Law confirms that the electronic signature is valid and has the legal basis as long as they fulfil the requirement under the RIT Law.
[18] The EIT Law is further implemented by the Government Regulation No. 80 of 2019 on Trading through Electronic Systems.

The provisions of Article 4 paragraph (3) above indicate that agreements in the form of arbitration contracts or clauses can be made through various media. From traditional media such as telex, telegram, facsimile, to internet-based media such as email or other means of communication. The use of these types of media is subject to the written agreement of the parties.

**c. BANI Arbitration Rules and Procedures 2000 and 2003**

BANI's Arbitration Rules and Procedures have long had provisions governing the use of communication media in arbitration proceedings. Since its establishment in 1977, BANI has issued Arbitration Rules and Procedures and various other regulations for the administration of arbitration, such as regulations on arbitration fees, emergency arbitration, code of ethics for arbitrators, etc.

BANI's Rules and Procedures allow for the use of electronic means in resolving disputes. The author's research revealed that from its establishment in 1977 to 2026, BANI had issued 10 amendments to its arbitration rules. The amendment included the inclusion of the international standard arbitration rules such as the *competenz-competenz* ("*Competence-Competence*"), the Terms of Reference; the emergency arbitration, etc.

The Arbitration Rules that regulate the possibility of electronic arbitration proceedings are the 2000 Rules. Article 13d of the Arbitration Rules, under the heading "Venue of Hearing," states that hearings will, to the extent possible, be held at BANI's hearing venue. However, the parties may also propose other locations deemed appropriate by the Arbitration Tribunal. The Arbitration Tribunal may hold hearings at the location where goods, other property, or documents are examined at any time and place deemed appropriate, with sufficient prior notice to the parties to enable them to attend the examination. Internal meetings and hearings may be held by any means, at any time and place, including the use of cyberspace, as deemed appropriate by the Arbitration Tribunal.

The 2000 Arbitration Rules appear to use the term "cyberspace." The Arbitration Rules did not use the term "internet," perhaps because the more familiar term at the time was "cyberspace." It was only later in the 2003 Arbitration Rules, which replaced the 2000 Arbitration Rules, that the term "internet" appeared. Article 13, paragraph 4 of the 2003 Arbitration Rules, which use the internet, reads as follows:

*4. Venue of Hearing*

*"The hearing shall be held at a location determined by BANI and by agreement of the parties, but may also be held at another location if deemed necessary by the Panel with the agreement of the parties. The Arbitration Panel may request meetings to examine assets, other goods, or documents at any time and place deemed necessary, with the necessary notification to the parties to enable them to attend the examination. Internal meetings and sessions of the Panel may be held at any time and place, including via the internet, if the Panel deems it necessary." (Italics are added by the author).*

The provisions for the use of internet cyberspace (under Arbitration Rules 2000), which were refined into the internet network (under Arbitration Rules 2003), which were subsequently amended to Arbitration Rules 2025, demonstrate that the BANI Arbitration Rules drafters were forward-thinking. BANI did not view the development in communication technology as an obstacle to the use of communication tools in arbitration.

When the COVID-19 pandemic hit the world, the way people communicated changed completely. Face-to-face communication was avoided. People turned to communication technology. Popular communication technologies at that time were Zoom or Google Meet platforms.

The pandemic also prompted BANI to issue the 2020 Electronic Arbitration Rules and Procedures. These new 2020 rules were created to ensure that arbitration proceedings continued without interruption. The arbitration proceedings could continue using the internet network via the Zoom platform. There were concerns however that Zoom or electronic proceedings could potentially compromise the confidentiality of the proceedings by third parties, non-parties, colleagues, or anyone else who might be present and hidden behind a screen. This concern did not arise in practice. Throughout the electronic hearing, the parties maintained good faith. The hearing proceeded smoothly and without any obstacles.

According to observations by BANI Secretariat, electronic hearings can be more efficient than conventional hearings. For example, when hearing the expert testimony, conventional hearings typically involve only one witness in a session of arbitration hearings. However, in online hearings, the hearing of witnesses or experts can be conducted with more than one witness in a session.

In 2025, BANI participated in full ODR arbitration under the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes 2019 (APEC ODR Framework). To participate in this framework, BANI has developed a dedicated platform known as APEC-BANI ODR.

The development of BANI's Arbitration Rules, from the use of cyberspace, the internet, electronic means, to participation in the APEC-ODR Framework, demonstrates BANI's active participation and sturdy supporter in the implementation of arbitration using various means. From traditional means, namely physical proceedings, to the implementation of ODR arbitration through a special platform.

**d. ODR Arbitration according to International Institutions**

As described above, international institutions have been using electronic means (the internet) to resolve disputes since the 1990s. The main pioneer of the use of internet in resolving the dispute is the WIPO-UDRP (above). However, the scope of disputes resolved by WIPO-UDRP is limited. It facilitates the resolution of domain name ownership disputes.

Over time, several international (public) institutions have also encouraged and introduced the use of ODR for dispute resolution. One institution in the region is ASEAN which encourages the use of ODR to resolve consumer-related disputes. Other international institutions include UNCITRAL and APEC.[19]

1. United Nations Commission on International Trade Law (UNCITRAL)

   In 2017, UNCITRAL issued Technical Notes on Online Dispute Resolution (2017) ("Technical Notes"). The Technical Notes consist of 12 sections. They contain substantive rules and procedures for dispute resolution through ODR. Section I contains a general introduction to ODR; Section II covers the principles of ODR; Section III covers the stages of ODR; Section IV lays down the ODR process; Section V includes the definitions, roles, and communication; Section VI covers the initiation of ODR; Section VII regulates negotiations; Section VIII covers facilitated settlement (such as mediation); Section IX covers the final stage; Section X covers the appointment and authority of the neutral (the party resolving the dispute); Section XI covers the language used; and Section XII regulates order in the implementation of ODR (governance).[20]

   The Technical Notes were issued in response to the increasing number of online cross-border transactions. UNCITRAL views ODR as a means of resolving disputes arising from

[19] Another regional organization which issued its ODR regulation is the European Union, i.e., Directive No. 2013/11/EU and Regulation 524/2013/EU on ADR and ODR. See further: Julia Hörnle, Pablo Cortes, *Legal Issues in Online Dispute Resolution*, https://www.judiciary.uk/wp-content/uploads/2015/02/Legal-Issues-Hornle.pdf

[20] https://uncitral.un.org/en/texts/onlinedispute/explanatorytexts/technical_notes

online transactions simply, quickly, flexibly, securely, and without the parties' physical presence in the dispute proceedings..

The Technical Notes are not binding documents on States, ODR institutions, or the parties. They serve solely as guidelines. States may implement them in full or modify them as needed. The Technical Notes outline guidelines for resolving disputes through ODR principles, namely impartiality, independence, efficiency, effectiveness, due process, fairness, accountability, transparency, and mutual agreement.

Disputes that can be resolved through ODR are relatively small disputes arising from cross-border transactions involving sales or service contracts using electronic communications. The Technical Notes do not specify whether the parties are business-to-business. The Technical Notes are silent on business-to-consumer. Given the silence of the Technical Notes, the author is of the opinion that the parties to the dispute can include consumers as long as they agree to resolve their dispute by using the ODR.

The settlement consists of three mechanisms: negotiation, facilitated settlement (a type of mediation), and final third-party settlement (a type of arbitration). "Something like" is used here because the Technical Notes do not specifically name the mechanism. Dispute resolution through a third party other than mediation is arbitration or conciliation. In practice, arbitration is more commonly used.

2. ASEAN

In 2022, ASEAN issued the Guidelines on Online Dispute Resolution (ODR): Options and Orientation for the Design of National ODR Systems for Consumer Protection (“Guidelines”). The rationale for ASEAN issuing these Guidelines is the growing digital economy worldwide particuarly within the ASEAN region. This growth has created momentum for ODR in assisting parties, particularly consumers, to resolve their disputes. Consumer disputes are typically small in value. Essentially, the Guidelines assist consumers in ASEAN Member States in resolving their disputes. [21]

The Guidelines are soft law and are not binding on the ASEAN Member States. Member States are free to use these Guidelines as a yardstick in formulating their national policies, including legal regulations or the readiness of their domestic ODR institutions for the resolution of small disputes or small claims involving cross-border transactions or within ASEAN Member States. ASEAN acknowledges that the Guidelines themselves may continue to evolve in the future.

Although being soft law, ASEAN expects Member States to consider these Guidelines in formulating their national policies on ODR. This consideration is considered crucial to achieving uniformity across the ASEAN region in the implementation of ODR (Objective-to-Consumer Dispute Resolution) to assist consumers in resolving their disputes.

The ASEAN ODR dispute resolution mechanism has its own unique characteristics. First, as mentioned above, it resolves consumer disputes with small claims. Second, this dispute resolution mechanism is managed by the government and/or other parties (institutions) tasked with resolving disputes through negotiation, mediation, or other forms of dispute resolution assistance. This mechanism is separate from other forms of ADR dispute resolution, commercial arbitration, or online litigation procedures.

The nature of the ASEAN ODR is consumer empowerment and consumer literacy within the ASEAN region. Because of this nature, government involvement, particularly officials

[21] https://asean.org/wp-content/uploads/2022/04/ASEAN-ODR-Guidelines-FINAL.pdf

involved in consumer protection plays a crucial role in assisting consumer dispute resolution through ODR. The presence of government consumer institutions is therefore decisive.

The primary resolution mechanism through the ASEAN ODR is mediation or conciliation. The procedure is flexible, informal, and direct. This procedure aligns with the consumer protection mandate of the ASEAN ODR. According to ASEAN, such a resolution system (flexible, informal, and direct) allows for future ODR dispute resolution, including arbitration, to the possibility of resolution of complex disputes with strict requirements.

Another characteristic is that the ASEAN ODR can be used to resolve consumer disputes with businesses arising from both online and offline transactions. This open nature is adopted because an independent system for specific transactions, such as online transactions only, or offline disputes, is not yet feasible. The primary reason for this is the relatively (very) small value of transactions involving consumers.

Furthermore, the ASEAN ODR system is optional. The existing dispute resolution institutions in each country that involve consumers remain the primary ones. For example, in Indonesia there is the Consumer Dispute Resolution Agency ("*Badan Penyelesaian Sengketa Konsumen" or BPSK*). ASEAN ODR will therefore only function if the parties, especially consumers, want this ODR settlement.

3. APEC

In 2019, APEC issued the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes (2019) ("APEC ODR Framework"). The APEC ODR Framework is a legal instrument containing substantive and procedural rules for dispute resolution through ODR platforms. [22]

APEC encourages ODR dispute resolution, given the important role ODR plays in assisting business-to-business parties within APEC members to resolve their disputes. APEC members may nominate an ADR institution within their country to administer this ODR. The Indonesian government, through the Coordinating Minister for Economic Affairs in 2024, proposed BANI to the APEC Secretariat as Indonesia's APEC ODR Framework.

After holding a series of discussions and considering the legal regulations in Indonesia, and after the Coordinating Minister for Economic Affairs reviewed the legal regulations related to ODR in Indonesia and BANI's readiness to implement ODR, APEC appointed BANI as the APEC ODR Provider in Indonesia in 2025.[23]

## IV. CONCLUSION

### 4.1 The Findings

Dispute resolution using electronic or internet-based means is a mechanism protected by generally accepted legal principles and laws. Electronic means serve the same function as traditional communication means. Their essence is the delivery of messages. For this purpose, the parties are free to use the various available communication options, traditional or modern (electronic or internet-based).

The above description suggests that resolution through ODR helps efficiently the parties, including the neutral (mediator or arbitrator, or the party resolving the dispute), both in terms of time and cost. The resolution is carried out online. The parties submit their claims and responses

[22] https://www.apec.org/seli/overview
[23] See further: https://www.baniarbitration.org/

online. The parties and the arbitral tribunal do not need to attend the hearing; they can submit documents through online based internet.

This process saves time and costs. The parties do not need to incur travel or hotel expenses. If the dispute is cross-border, the parties, mediator or arbitrator do not need to apply for visas. The parties do not need to make copies of documents that are typically presented in a physical hearing. Legal documents, evidence, contracts, or other documents typically run tens or even hundreds of pages. Under physical or traditional proceedings, the parties must photocopy these hundreds of pages according to the number of copies required: for the other party (the applicant or respondent), for the three judges or three arbitrators or the sole arbitrator, and a copy for the secretariat.

This method not only saves time and money, but also helps reduce the greenhouse effect (environment). Therefore, business dispute resolution under the APEC ODR Framework or UNCITRAL Technical Notes or consumer dispute resolution under ASEAN Guidelines is recommended dispute resolution methods especially for disputes between businesses and or consumers.[24]

### 4.2 The Conclusion

The analysis above lead to the conclusion with regard to the two legal problems of this article is as follows:

1) The international legal instruments analyzed showed that the law, principles and norms, does not prohibit the parties and arbitration tribunal to use ODR in in resolving the commercial or business disputes between the parties;
2) The national legal system of Indonesia as embodied in Law No 30 of 1999, BANI Arbitration Rules and Law No. 11 of 2008 on Electronic Information and Transaction surprisingly also allow the use of ODR Arbitration in resolving their dispute.***

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