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IMPLEMENTATION OF MEDIATION AS ONLINE DISPUTE RESOLUTION (ODR) IN CIVIL JURISDICTION

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Abstract:
This writing aims to examine and analyze business/civil dispute resolution through online dispute resolution (ODR), the institutionalization of mediation in civil cases in court, implementation of mediation as online dispute resolution (ODR) in civil courts, obstacles and legal implications for parties - the litigants. Mediation as an alternative dispute resolution mechanism outside the court has long been used in various business and civil cases, the environment, labor, land, housing, and consumer disputes, which is a manifestation of society's demand for fast, effective and efficient dispute resolution. The issuance of Perma Number 1 of 2016 concerning Mediation Procedures in Courts and Perma Number 3 of 2022 concerning Electronic Mediation in Courts further strengthens efforts to reconcile as stipulated in Article 130 HIR/154 Rbg. Even so, dispute resolution through mediation in court is a vulnerable mechanism, meaning that the possibility of failure is also substantial. Anticipating this requires prerequisites that must be met, such as trust, willingness or willingness to waive some of the rights of each party to the dispute, and the availability of a professional mediator.

Keywords: Mediation, Online Dispute Resolution (ODR), Civil Court.
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INTRODUCTION

In the world of trade, two main models developed the traditional trading model or conventional business and the model that refers to modern trading behavior or is called modern business. The two models have different methods, problems, juridical consequences and dispute resolution. The use of internet technology as an innovative trading system allows information to quickly spread to all corners of the world in cyberspace (Sanusi, 2005). In the free market system and free competition between countries in today's digital era, business transaction activities are developing rapidly, primarily online. With hundreds of thousands of business transactions daily, the intensity of business transactions both domestically and internationally is expected to increase daily, which will trigger an increase in the frequency of disputes (Suparman, 2004).

Every business dispute that occurs must be resolved quickly. The more and the extent of trading activities, the higher the occurrence of disputes, resulting in many disputes that must be resolved. Allowing trade/business disputes to be resolved late will result in inefficient economic development, decreased productivity, the business world barren, production costs increase and lead to the welfare and social progress of the workers hampered (Margono, 2000).

Based on the Indonesian Internet Service Providers Association (APJII) survey, 210.03 million internet users will be in the country in 2021-2022. The number of internet users in Indonesia continues to increase every year. That number increased by 6.78% compared to the previous period of 196.7 million people. It also makes the internet penetration rate in Indonesia 77.02% (dataindonesia.id). The boom in internet facility users opens up opportunities for disputes between internet service users, where the dispute occurs in online electronic communication traffic. For

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example, there is a dispute regarding online trade or what is commonly referred to as e-commerce (Zakaria, 2006).

Internet technology has significantly changed the interaction between humans, including the area of trade relations. Trade transactions are not carried out directly (face, to face, direct selling), but transactions can be via electronic mail (e-mail), and payments can be made via credit cards (credit cards). Card and dispute resolution via the internet (Online Dispute Resolution).

The use of information technology in the civil dispute resolution system, especially online dispute resolution (Online Dispute Resolution), is beneficial for parties across countries to shorten distances, reduce costs, simplify processes and speed up settlements. In addition to providing benefits, on the other hand, the use of information technology in dispute resolution can cause legal problems. The fundamental problem regarding the ODR system is the issue of agreements that can change from one legal system to another due to the different positive laws of each party. One of the conditions for forming an arbitration agreement is the choice of a forum to resolve possible disputes. The selection of forums generally considers several things, including where the agreement is signed/approved, the place of implementation, and the domicile of the party submitting the dispute. The problem is that transactions are carried out in cyberspace, so the selection of forums if done carefully, can avoid problems in the future (Sutiyoso, 2008).

In Indonesia, online buying and selling sites such as OLX, Shopee, Tokopedia and many more provide product sales services via the internet, but many people need to use this method. They still prefer conventional transactions by visiting and face-to-face. Directly with the seller, Indonesian people who use a modem transaction system via the internet mostly transact with sellers abroad because the product they want to buy is difficult to find in Indonesia. Transactions like this, along with technological and social developments in society, will continue to increase, so there are fears that it will cause disputes that continue to increase. It is necessary to find a dispute resolution mechanism relevant to the needs of today's modern society.

Based on this, an exciting idea emerged, namely how to resolve civil business disputes in Indonesia through an online dispute resolution mechanism through the internet, which is based on the innovation of the emergence of an Alternative Dispute Resolution system online (Online Dispute Resolution). One of these ideas was developed into an online mediation mechanism used to resolve disputes due to legal actions electronically and in general. The object, especially in disputes based on law, can be resolved through alternative dispute resolution processes. Online mediation is one way of resolving civil disputes arising from online transactions where the parties submit their cases to a neutral third party, the mediator, who is expected to reconcile the parties' wishes with a peace agreement.

Mediation as an alternative dispute resolution mechanism outside the court has long been used in various business and civil cases, the environment, labor, land, housing, and consumer disputes, which is a manifestation of society's demand for fast, effective and efficient dispute resolution. Christopher W. Moore argues that mediation is an intervention in a dispute by a third party that is acceptable to the disputing parties, is not part of both parties and is neutral. These third parties do not have the authority to make decisions. He is tasked with assisting the warring parties so that they voluntarily reach an agreement accepted by each party in a dispute (Moore, 2003).

Normatively, the regulation regarding mediation as an Alternative Dispute Resolution in Indonesia can be found in Law no. 30 of 1999. However, the legitimacy of online mediation only received recognition after the issuance of Supreme Court Regulation no. 3 of 2022 concerning Mediation in Courts Electronically. In this context, this paper seeks to examine and discuss several matters relating to the settlement of business/civil disputes through online dispute resolution (ODR), the institutionalization of mediation in civil cases in court, implementation of mediation as

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online dispute resolution (ODR) in civil courts, barriers to - obstacles and legal implications for the litigants. The description of this paper is expected to provide a more precise discourse regarding the implementation of mediation as an online dispute resolution (ODR) in civil courts and to what extent the existing laws and regulations regulate the settlement of civil disputes through the internet and the possibility of alternative settlement of civil disputes through ODR can be applied in Indonesia. With this online mediation in the future, it will open up new alternatives that are more effective and efficient for the community, especially justice seekers (justiciable) in resolving disputes online. Based on the explanation of the above phenomena, this study aims to analyze and find out how the Implementation of Mediation as Online Dispute Resolution (ODR) in Civil Jurisdiction.

METHODS

This research is normative juridical research, namely a process for finding legal rules, principles, and doctrines to answer the legal content faced. The approach method in this research uses a statutory approach, case approach and conceptual approach. The data sources used in this research are secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Data analysis is descriptive qualitative, namely by grouping and selecting the data obtained, then arranging systematically and describing by deductive thinking method, which will produce conclusions that will answer the problem formulation in this study.

RESULT AND DISCUSSION

ODR as an Alternative Form of New Dispute Resolution. ODR offers a new concept in dispute resolution on the internet but also provides several possibilities. Daewon Choi (2013), in his article entitled Online Dispute Resolution: Issues and Future Directions expressed his opinion: "Some of these possibilities include not only detemporalization and depersonalization but also dematerialization and dematerialization and deterritorialization of conflicts." From this statement, it is evident that ODR offers a comprehensive scope of resolution of disputes or conflicts. Forms of disputes that are very difficult to resolve through settlement systems in the real world, through this ODR, will be able to be appropriately resolved. The disputes include data protection disputes, transaction taxation, and defamation or privacy violations (Sutiyoso, 2008). In reality, the ODR model has started to be practiced by several parties, as evidenced by the presence of internet services that specifically provide services in terms of ODR. One of the things that can be observed is as done by a website from Australia known by its website name www.adronline.com.au. In addition, there are also other sites, namely www.squaretrade.com (Choi, 2013).

Online dispute resolution (Online Dispute Resolution / ODR) is an alternative business dispute resolution outside the court that uses the internet to resolve disputes between the parties. The alternative conventional dispute resolution system is similar to the online system. The steps or stages of the online dispute resolution process are more or less the same as the steps or stages of the conventional arbitration process, the only difference being the place and media for dispute resolution used. Online arbitration is conducted on the internet or cyberspace, and the dispute resolution process is generally not carried out face-to-face. It is different from conventional forms of dispute resolution in general, which are mainly carried out in the real world, and generally, the dispute resolution system brings together the parties directly. However, dispute resolution through ODR does not mean that the disputing parties will never meet and meet face to face. Sometimes, the online arbitration service provider may bring the two parties directly to resolve the dispute.

Any organization, including corporations/companies, government institutions, educational institutions, and the wider community are now using the internet network to carry out their

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performance activities, including communicating to obtain information and transact with various parties wherever they are, not limited by space and time barriers (borderless). Symptoms such as noodles are a good market for business people to run their business online in cyberspace. Many business transactions occur daily online (e-commerce). For example, eBay's online auction site has several million items for sale to each person, and over one million transactions occur weekly. In transactions with large amounts, such as eBay, errors can occur in terms of payment, delivery of goods and damage in shipping.

In settlement of trade disputes between eBay and its trading partners abroad, of course, a dispute resolution system that is fast and inexpensive is needed. In this case, conventional alternative dispute resolution and arbitration can no longer resolve disputes effectively and efficiently because it is different from transactions and trade agreements in general. Online transactions result in the transacting parties being unable to meet face-to-face. Cultural and language barriers are extra difficulties in negotiations because buyers often come from different countries. The disappearance of national boundaries and the faster and large number of transactions that occur in cyberspace demands a trade dispute resolution system that is better and more effective than arbitration and other alternative dispute resolutions that have been known so far.

To answer the need for a system mentioned above, in 1995, The Virtual Magistrate was created by cyber law academics who worked for the National Center for Automated Information Research (NCA1R) and the IMW Cyberspace Institute was founded by the American Arbitration Association (American Arbitration Association) (http:\\www.vmag.org). Under this system, at the cost of US$ 10 per case, anyone who has problems with the internet can visit the official website and submit a formal complaint and will then receive an e-mail (electronic letter) containing the decision of an elected arbitrator in less than a minute of ten days. Then in 19%, the University of Massachusetts Center for Technology and Dispute Resolution established the Online Ombuds Office, which is interested in resolving disputes arising from online activities. Unlike the virtual magistrate which provides arbitration services, the online ombuds office only provides mediation. Then the Cyber Tribunal was founded by the University of Montreal in 1998, which provides mediation and arbitration services (http:\\www.ombuds.org). However, this institution was only an experimental project and ended in 1999. This project did not disappear but turned into a joint venture company that operates commercially and changes its name to eResolution (http:\\www.eresolution.ca). Along with the development, there is also www.adronline.com.au from Australia and another site, namely www.squaretrade.com. The above dispute resolution services are pioneers of a new dispute resolution system known as Online Dispute Resolution, where in the ODR, there is online arbitration to resolve disputes.

On an Online Dispute Resolution service provider website (www.odmews.com), online arbitration works like in court where the arbitrator acts like a judge who, after listening to the parties, can decide which can be binding or non-binding depending on the agreement of the parties. The settlement technique is carried out online via the internet network so that the parties do not have to meet face-to-face with the arbitrator because they can use the facilities provided by service providers such as e-mail, video conferencing, radio buttons, electronic fund transfers, web conferencing online chat and other information technology (Mubarok, 2006).

The purpose of initiating this dispute resolution model is to provide alternative dispute resolution services for industry and consumers in electronic commerce marketing from business to business, business to consumer and business to government. Another thing that can be identified as the reason for this online dispute resolution model's emergence is the limitations of the dispute resolution system currently applied in conventional law (existing law). The characteristics of

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disputes in the context of conventional legal settlement differ from disputes arising from activities on the internet. The characteristics of disputes in internet activities are overlapping jurisdictions and the number of enforced laws. So this requires a new dispute resolution model in internet activities (Riswandi, 2006).

In some cases, Online Dispute Resolution (ODR) can use several media such as e-mail, instant messaging, secure chat conference rooms, teleconferencing, and video conferencing. Using technology like this proves that technology can also play a role in dispute resolution. It is in line with what was stated by Daewon Choi from Katsh and Janet Rifkin's in his book entitled Online Dispute Resolution. Katsh and Janet Rifkin's stated the following: "That technology can play the role of a "fourth party" in a dispute, bringing wholly new capabilities and capacities to dispute resolution process designers." (Riswandi, 2006).

In the online process, it is impossible to determine a physical location where the procedural rules of the ODR service provider can be carried out. Even the internet creates a technological basis for multimedia and computerized conversion so that the boundaries around it disappear. The internet creates an overall function of a virtual reality or a virtual world (cyberspace) which can effectively facilitate communication and relieve similar activities from territorial boundaries. All activities in cyberspace take unlimited places anywhere, not only in certain places. Processes on the internet whose functional character intersects with the application of conventional international law principles related to the problem of the place of activity, thus when the internet/cyberspace whose purpose of its functional system is to create a world without boundaries, then the opposite is valid with the principles of international law that are developed and intended for the development of the world based on territorial or national boundaries. In addition to legal issues such as the validity of online arbitration agreements, choice of forum, jurisdiction, laws used in cyberspace and law enforcement, there are other problems, namely technical and social problems in their use.

The technical problems of ODR include technical and social problems. Technically related to security and confidentiality (an advantage of Alternative Dispute Resolution) becomes a crucial issue online, even though rapid technological developments can protect documents and maintain confidentiality or authenticity. The absence of a face-to-face meeting of the parties is a fundamental criticism of online arbitration. Mediators and arbitrators will find it difficult to see the actual dispute and make a reasonable settlement if they only read written texts compared to face-to-face with the parties. Language differences are a problem in both conventional and online arbitrations. Some expressions or expressions that need to be translated correctly between parties in different countries will lead to different interpretations. Mediators and arbitrators must pay attention to this language problem, and if they do not use the language spoken by the parties involved, they can use a professional translator, but this will be more complicated. An ODR settlement can only be carried out if fewer parties are involved because it will make it easier in terms of supervision. A large number of participants will increase the number of tasks that are almost impossible for neutral third parties. It will be challenging to stay focused during the discussion because the parties can continuously send messages with various chat and e-mail characters. So ODR service providers should limit the number of parties involved. For example, only two parties, the seller and the buyer, are sufficient.

However, many obstacles hinder the implementation of this breakthrough in our country. One thing is clear according to the constitution, the legitimacy of ODR has been indicated. Efforts need to be made to make special regulations as well as the socialization of procedures regarding procedures for implementing online arbitration. Next, it is just a matter of the government's recommendations to related parties (Riswandi, 2006).

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Mediation in Settlement of Civil Cases. In the settlement of civil business disputes, in principle, the parties to the dispute are given the freedom to determine the desired dispute resolution options, either through non-litigation or litigation, as long as it is not specified otherwise in laws and regulations. Dispute resolution outside the court is carried out using mechanisms that live in a society of varied forms and types, essentially carried out through deliberation, peace and kinship (Sutiyoso, 2006). Dispute resolution through non-litigation channels is a mechanism for resolving disputes outside the court, using mechanisms that live in a society whose forms and types vary widely, such as deliberation, peace, kinship, and customary settlements. One way that is currently being developed and is in demand by business people is through alternative dispute resolution institutions (Alternative Dispute Resolution) (Margono, 2000).

Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stated that alternative dispute resolution is a dispute settlement institution or difference of opinion through procedures agreed upon by the parties, namely settlements outside the court by way of consultation, negotiation, mediation, conciliation, or expert judgment. Dispute resolution through non-litigation channels is often positioned as primum remedium or the first resort, namely as an initial effort for parties to resolve business disputes in a win-win manner. It is because if the non-litigation route is not reached, the parties to the dispute will likely continue their case through litigation in court.

One form of alternative dispute resolution, which is now institutionalized as part of the process of resolving cases in court, is mediation. Mediation is a method of resolving disputes through a negotiation process to obtain an agreement between the Parties with the assistance of a Mediator. The mediator, in this case, can be a judge or non-judge mediator who already has a Mediator Certificate as a neutral party who assists the parties in the negotiation process to seek various possible dispute resolutions without resorting to a way of deciding or forcing a settlement. Mediation, in this case, is seen as an instrument of peaceful dispute resolution that is appropriate and effective and can open wider access to the Parties to obtain a satisfactory and fair settlement.

As part of the civil procedure law settlement process, mediation in court is expected to strengthen and optimize the judiciary's function in dispute resolution. It is under the provisions of the applicable civil procedural law, specifically, Article 130 HIR (Het Herziene Indonesisch Reglement) and Article 154 RBG (Reglement voor de Buitengewesten), which encourage parties to pursue a peace process that can be utilized through mediation by integrating it into the litigation procedure in court (Sutiyoso & Wardah, 2008). The obligation to carry out mediation related to the litigation process in the court, where recommendations by judges, mediators and parties are required to follow the procedure for resolving disputes through mediation. Based on Article 130 of the HIR and Article 154 of the Rbg, a case that does not go through the Mediation procedure violates the provisions of the HIR and Rbg, which results in the decision being null and void (Hanifah, 2016).

The institutionalization of mediation as an integral dispute resolution mechanism in the judicial process was initially regulated in the Circular Letter of the Supreme Court (SEMA) Number 1 of 2002, which regulates the empowerment of peace efforts based on article 130 HIR/154 Rbg. SEMA Number 1 of 2002 was later strengthened by the issuance of Supreme Court Regulation (PERMA) Number 2 of 2003, dated September 11, 2003, which regulates Mediation Procedures in Courts. PERMA Number 2 of 2003 does not require the parties to settle their case through mediation in court, but it is still optional. Therefore, PERMA Number 1 of 2003 was replaced with PERMA Number 1 of 2008 concerning Mediation Procedures in Courts which requires parties to undergo mediation procedures before the subject matter is examined.

However, in PERMA Number 1 of 2008, it turns out that there are still weaknesses because, in the mediation process, the parties or the principal may be represented by their legal counsel and do not have to be present alone, even though it is the parties who understand more about the problem.

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In addition, PERMA Number 1 of 2008 only regulates the existence of sanctions for parties if they have good intentions in the mediation process. To improve the provisions in PERMA Number 1 of 2008 were then replaced with PERMA Number 1 of 2016 concerning Mediation Procedures in Court, which is valid until now. The issuance of several PERMAs is very significant with the need for civil justice practice, considering the congestion condition (case arrears) in the Supreme Court is already so alarming, while the ability of the Supreme Court to resolve them is not proportional to the number of cases that come in every year. Through mediation in court, it is hoped that it will not only reduce the accumulation of cases but also, most importantly, the availability of tools for the community to resolve their disputes without having to go to court (litigation), which generally takes a long time and is expensive. The community or justice seekers (justiciable) are very interested in simple, efficient dispute resolution in terms of time and cost.

This court mediation institution is more beneficial to the parties because disputes can be resolved quickly according to the will of the disputing parties, simply because there are not many formalities required and costs are not expensive. The litigation procedure is taken as a last resort (ultimum remedium) if mediation does not produce results. In addition, compared to mediation outside the court, mediation in resolving disputes in court, if successful, has priority and added value, partly because it is executable so that it has authority. The mediation mechanism in the dispute resolution process in court can also encourage peace efforts as the main solution by the conflicting parties.

Substantially, some of the contents of Perma No. 1 of 2016 have similarities with Perma No. 1 of 2008. For example, the mediation procedure is mandatory and if the decision is not null and void, the mediator can be a certified judge or non-judge. It is just that the latest Perma Mediation settings are broader and more detailed than the previous Perma. Based on the provisions of Article 4 of the latest Perma, all civil disputes submitted to the court, including cases of resistance (verzet) against verstek decisions and resistance by litigants (partij verzet) and third parties (derden verzet) against the implementation of decisions that have permanent legal force, must first seek a settlement through mediation. As for the disputes that are excluded from the obligation to settle through mediation, among others, disputes whose examination in court is determined by a time limit for settlement, such as: 1) disputes that are resolved through the procedure of the Commercial Court; 2) disputes that are resolved through the procedure of the Industrial Relations Court (PHI); 3) objection to the decision of the Business Competition Supervisory Commission (KPPU); 4) objection to the decision of the Consumer Dispute Settlement Agency (BPSK); 5) request for cancellation of the arbitral award; 6) objection to the decision of the Information Commission; 7) settlement of political party disputes; 8) the dispute is resolved through a simple lawsuit procedure; and 9) other disputes whose examination at the trial is determined by the time limit for their settlement in the provisions of the laws and regulations.

In addition, in Perma Mediation No. 1 of 2016, several necessary arrangements are different from the previous Perma. First, regarding the shorter mediation time limit from 40 days to 30 days from the date of the order to conduct mediation. Second, there is an obligation for the parties (in person) to attend the Mediation meeting directly with or without being accompanied by a legal representative, unless there is a valid reason, such as health conditions that do not allow attendance. Third, the most recent thing is the rules regarding good faith in the mediation process and the legal consequences of parties who do not have good intentions in the mediation process. Article 7 of the latest Perma states: (1) The parties and their legal representatives must take mediation in good faith. 2) One of the parties or the Parties and/or their legal representatives may be declared to have no good faith by the mediator in the case of: a. not present after being properly summoned 2 (two) times in a row at the Mediation meeting without valid reasons; b. attended the first Mediation meeting

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but never attended the next meeting despite being properly summoned 2 (two) times in a row without valid reasons; c. repeated absences that interfere with the Mediation meeting schedule for no valid reason; d. attending the Mediation meeting, but not submitting and not responding to the Case Resume of the other party, and e. did not sign the draft Peace Agreement which had been agreed upon without valid reasons.

If the plaintiff is declared to have no good faith in the Mediation process as referred to in Article 7 paragraph (2), then based on Article 22, the lawsuit is declared unacceptable (Niet Ontvankelijke Verklaard/NO) by the Case Examining Judge. Plaintiffs declared not in good faith are also obliged to pay mediation fees. Furthermore, the mediator submits the report of the plaintiff who does not have good faith to the Case Examining Judge accompanied by recommendations for the imposition of Mediation Fees and the calculation of the amount in the report on the failure or inability to carry out mediation. Based on the mediator's report, the Case Examining Judge issued a final decision stating that the lawsuit could not be accepted along with the penalty for payment of Mediation Fees and court fees. With the provision of legal consequences for parties with bad intentions in the mediation process, the litigating parties will not play games in the mediation process, and it is also hoped that the effectiveness of mediation will increase in settlement of civil cases in court.

With the publication of Perma Perma No. 1 of 2016 concerning Mediation Procedures in the Court, then Perma No. 1 of 2008 which stipulates the same thing was previously declared revoked and no longer valid because its implementation is considered not optimal to meet the need for more efficient implementation of mediation and able to increase the success of Mediation in Court. Perma No. 1 of 2016 is expected to further increase the success rate of mediation both in the General Courts and Religious Courts. Dispute resolution through mediation institutions which previously could only be used in resolving various conflicts outside the court is now integrated into the proceedings in court.

Institutionalization of the mediation process in resolving disputes in court is a concrete form of denormalization of procedural law. Efforts to deformalize civil procedural law have been echoed for a long time. In August 1978, in Utrecht, Nederland, by the International Association for Procedural Law, a congress was held in the framework of the 8th Word Conference on Procedural Law, with the theme "Justice and Efficiency". One of the topics discussed at the conference was: "Informal Alternatives to or Within Ordinary Litigation" (Setiawan, 1992). Indonesia is one of the countries that need to catch up in responding to the demands of the world community to utilize the mediation mechanism in its judicial system. In a regulation called Subborndinate rules 1966, Singapore stipulates that before the parties proceed to the dispute to the court, the inter-party route must first be taken, while the institutionalization of mediation as an alternative dispute resolution is carried out at the Singapore subordinate court. In Sri Lanka, mediation is a mandatory effort that must be taken by justiciable before going to court (compulsory mediation or primary jurisdiction). Like Sri Lanka, the Philippines also adheres to compulsory mediation. A lawsuit cannot be filed before it is stated through a certificate issued by the secretary of the conciliation panel (Lupong Tagapaya) that conciliation efforts have been carried out and have not brought results. Meanwhile, if an agreement is reached, then the agreement becomes binding and executable, like a court decision.

Civil procedural law (HIR/RBG) has provisions that stipulate that before the subject matter of the dispute is examined, the judge must seek peace between the two parties to the dispute (article 130 HIR/154 Rbg). However, the implication in judicial practice is that this provision could be more effective as a formality. The judge only recommended that the parties make peace and not be

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involved in the peace process. In another article, there is also a provision that stipulates that if the lawsuit relates to a case that the village judge has not yet decided on, while the judge deems it necessary, the examination is postponed until the next trial day (HIR 135a paragraph 2). The reason for this provision is that the district court has guidelines and views on how village judges see cases from the perspective of customary law. The village judge's decision is considered so important that if it turns out the plaintiff does not bring the case to the village judge after being ordered by the Head of the District Court, then the lawsuit is deemed not to proceed (Tresna, 1984). This provision has long been no longer enforced in judicial practice. It can affect the community that peaceful efforts over disputes that occur by village magistrates are no longer needed but go straight to court. So the court for them is the main way (the first resort).

Mediation is known to be one of the processes that are faster and cheaper, and it also gives access to the disputing parties to obtain justice or a satisfactory settlement of the disputing party's cases. The mediation process in the justice system can strengthen and maximize the function of court institutions in assisting the justiciable to resolve their disputes and the function of enforcing law and justice through cases submitted by a person or community in addition to adjudication processes. Based on Article 79 of the Supreme Court Law No. 14 of 1985, the Supreme Court has the authority to make regulations regarding matters needed for the smooth administration of justice if there are matters which need to be sufficiently regulated in the law (regelende functie).

The effectiveness of mediation institutions in court requires the participation of all parties involved in the dispute-resolution process. Especially judges, because judges are the holders of the main functions of the judiciary. Judges must assist justice seekers and try their best to overcome all obstacles and obstacles in order to achieve a simple, fast and low-cost trial. So judges must be active, especially in overcoming obstacles and obstacles to achieve speedy administration of justice. The protracted or delayed judicial process will reduce public confidence in the court, which results in reduced court authority (justice delayed is justice denied) (Mertokusumo, 1998).

Courts also have a public service function. No matter the content of the court's decision regarding a conflict or dispute, if the resolution or examination is fast, it will provide peace in society and thus will increase the authority of the court or the government in general. Fast justice shows good government services to the people who need them and which will increase people's trust in the courts/government. On the other hand, a protracted settlement or examination by the court will make justiciable apathetic and reluctant to bring the case to court. Slow service will reduce the trust and authority of the government.

Supreme Court Regulation No. 1 of 2016 was born when the image of our law enforcement world was in decline. It was born in blasphemy, scorn against the courts, and the alarming crisis of belief. It takes work to make it happen in practice in such a situation. The central pillar of the judiciary is the principle of "trust and good faith". Justice seekers submit their dispute resolution to the court because they believe that they will get justice as expected. With the principle of trust, the foundations of the court will continue. Therefore, there must be hard and continuous efforts from all components of the nation, and the quality and integrity of judges must be improved. The community, especially justice seekers or the disputing parties themselves, must be encouraged to participate in efforts to achieve a peaceful resolution as the primary and final way. However, in the end, they will determine the agreement on the dispute.

Institutionalizing mediation in court through the form of Supreme Court Regulations is likely less effective because judges may have another view. Namely, mediation is seen as fulfilling procedural formalities but seriously needs more empowerment in judicial practice. In addition, the Supreme Court Regulation has a lower status level than the law, even though it is formally required

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to use mediation to settle civil disputes. Therefore it needs to be improved in the form of a law. In the draft Civil Procedure Law, which is now in the National Legislation Program and is being discussed in the DPR, the court mediation process should have been maintained and its use optimized.

Mediation as Online Dispute Resolution/ Mediation as an online dispute resolution (ODR) in Indonesia gained its enforcement legitimacy after the Supreme Court issued Perma No. 3 of 2022 concerning Mediation in Courts Electronically. Whereas the development and progress of communication and information technology and certain conditions have created challenges in the implementation of mediation in court, prompting the need for electronic mediation implementation. Meanwhile, Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts does not yet clear and, in detail, regulates the implementation of electronic mediation in court, so based on this consideration, the Supreme Court then stipulates a Supreme Court Regulation concerning Electronic Mediation in Courts.

Supreme Court Regulation No. 3 of 2022 stated that what is meant by Mediation in Courts Electronically, from now on referred to as Electronic Mediation, is a way of resolving disputes through a negotiation process to obtain an agreement of the parties assisted by a mediator which is carried out with the support of information and communication technology. Electronic mediation is an alternative procedure for mediation in court if the Parties wish to carry out the Mediation process using electronic means. The mediator, in this case, is a judge or non-judge with a Mediator certificate as a neutral party who assists the parties in the negotiation process to seek various possibilities for dispute resolution through Electronic Mediation.

Perma No. 3 of 2022 also stipulates that the parties to the dispute are two or more legal subjects who bring their dispute to court to obtain a settlement through Electronic Mediation. Electronic documents are documents related to Electronic Mediation administration that are received, stored, and managed in the court information system. Electronic domicile is the Parties' domicile in the form of verified electronic mail addresses.

Furthermore, Electronic Mediation Administration is a series of processes for receiving, noticing, resuming and managing the submission of summons/cases from the Parties and mediation documents using the electronic system applicable in each judicial environment. Electronic Infrastructure is all hardware, software, and facilities that become the primary support for running systems, applications, data communication, data processing and storage, integration/connection devices, and other electronic devices related to the implementation of Electronic Mediation.

In electronic mediation, using an application in the form of one or a set of computer programs and procedures designed to perform the tasks or functions of the Electronic Mediation Service. Electronic Mediation Virtual Room is an application that provides online meeting services to organize mediation activities electronically. Electronic Signature is a signature consisting of electronic information attached, associated or related to other electronic information used to verify and authenticate as regulated in the law governing electronic information and transactions. A manual Signature is a signature done using a pen and affixed on paper. Certain Circumstances are circumstances where it is not possible for the Judge Mediator to carry out the mediation process in the court mediation room due to natural disasters, disease outbreaks, other conditions determined by the government as an emergency, or other circumstances that the Judge Mediator considers necessary to conduct Electronic Mediation.

In electronic mediation, using an application in the form of one or a set of computer programs and procedures designed to perform the tasks or functions of the Electronic Mediation Service. Electronic Mediation Virtual Room is an application that provides online meeting services to organize mediation activities electronically. Electronic Signature is a signature consisting of

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The principle of Electronic Mediation is regulated in the provisions of Article 2 of Perma No. 3 of 2022, which states:

1. Electronic mediation shall be conducted with due observance of the following principles: a. volunteer; b. confidential; c. effective; d. safe; and e. affordable access.
2. The voluntary principle mandates that taking Electronic Mediation must be based on the mutual will of the Parties voluntarily.
3. The principle of confidentiality requires the Parties, the mediator, and other parties related to the mediation process to keep everything that occurs in the meeting and the sending and storage of electronic documents related to the Electronic Mediation confidential.
4. The practical principle prioritizes optimizing the utilization of effective Electronic Mediation supporting resources by the needs.
5. The principle of security is intended to ensure the integrity, availability, (non-repudiation) of authenticity and denial of information technology resources that support the implementation of Electronic Mediation.
6. The principle of affordable access is intended to ensure the ease of the Parties in obtaining and using applications that take into account internet Network access and the financing for the implementation of Electronic Mediation.

Electronic mediation can be carried out after the Parties and their proxies consent. If one of the parties does not agree to the implementation of Electronic Mediation, the mediation is carried out manually. Furthermore, if the Parties agree that the mediation is carried out electronically, the case examiner judge submits an Electronic Mediation approval form to be signed by the Parties and their proxies.

CONCLUSION

The existence of ODR not only offers a new concept in dispute resolution on the internet but also provides several possibilities. ODR offers a comprehensive scope of dispute or conflict resolution. Forms of disputes that are very difficult to resolve through a settlement system in the real world, through this ODR, will be able to be appropriately resolved. The disputes include data protection disputes, transaction taxation, and defamation or invasion of privacy.

Mediation as an alternative dispute resolution mechanism outside the court has long been used in various business and civil cases, the environment, labor, land, housing, and consumer disputes, which is a manifestation of society's demand for fast, effective and efficient dispute resolution. . The issuance of Perma Number 1 of 2016 concerning Mediation Procedures in Courts and Perma Number 3 of 2022 concerning Electronic Mediation in Courts further strengthens efforts to reconcile as stipulated in Article 130 HIR/154 Rbg. Even so, dispute resolution through mediation in court is actually a vulnerable mechanism, meaning that the possibility of failure is also very large. Anticipating this requires prerequisites that must be met. For example, there must be trust, good faith, willingness or willingness to relinquish some of the rights of each disputing party, and the availability of a professional mediator. This online mediation will open up new and more effective and efficient alternatives for the community and can minimize technical barriers to dispute

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resolution that has been done conventionally, especially justice seekers (justiciable) in resolving disputes online at a later time.

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